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**COLLECTION**  
AGAINST GENDER VIOLENCE.  
DOCUMENTS



# ANNUAL REPORT OF THE NATIONAL OBSERVATORY ON VIOLENCE AGAINST WOMEN

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VIOLENCE AGAINST  
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# ANNUAL REPORT OF THE NATIONAL OBSERVATORY ON VIOLENCE AGAINST WOMEN, BASED ON THE PROPOSAL OF THE GROUP OF EXPERTS

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# 1

## INTRODUCTION

Organic Act 1/2004, of December 28th (Official State Bulletin, 29th), on Integral Protection Measures against Gender Violence (hereafter referred to as **Integral Act**), aims to improve the measures established by Spain in recent years by incorporating the new conceptual proposals and the gender focus recommended by international authorities to effectively address the serious problem of gender violence. Among the fundamental merits of the Integral Act, it is worth emphasising, on the one hand, the recognition of the violence that takes place in the partner or ex-partner relationship as gender violence and, on the other, the comprehensiveness with which its prevention, punishment and eradication is addressed, as well as the provision of maximum assistance to the victims. Also worth emphasising is the fact that this Integral Act has come about as a result of an intensive task, in which civil society and, in particular, women's organisations have played an active role, and as a result of strong consensus, manifested in the unanimous Parliamentary approval of this Integral Act.

The comprehensiveness with which gender violence is addressed in Organic Act 1/2004, and the introduction of the gender perspective in its drafting, make this Act the best regulatory instrument drafted by Spain to date, which is undoubtedly the reason why it has raised so much expectation in society as a whole. The Act in itself would be insufficient to eradicate and prevent violence if not combined with a set of instruments of multiple natures aimed at improving all the objectives of the Act. The presentation of its governing principles (covered in section 2 of the Integral Act) provides a good picture of the ambition with which the Act was passed and of the strong political commitment that has accompanied it during the drafting stage, and continues to do so in the implementation stage. The governing principles that run through the plurality of measures contained in the Act are the following:

- A. Strengthen the public-awareness prevention measures, conferring effective instruments to public authorities in the areas of education, social services, healthcare, publicity and the media.
- B. Establish rights which women victims of gender violence are entitled to claim from the Public Administrations, to ensure fast, transparent and efficient access to the services offered.

- C. Improve and reinforce the social services available at local and autonomous community level and ensure greater and improved co-ordination between them.
- D. Guarantee existing rights in the labour environment reconciling them with the specific circumstances of female workers or female civil servants victims of gender violence.
- E. Establish an institutional protection system in which the Public Administrative Service of the State, through the Government's Special Delegation on Violence against Women, in collaboration with the National Observatory on Violence against Women, promotes the adoption of public policies aimed at providing protection to victims of gender violence.
- F. Strengthen the penal framework and prosecute to ensure full protection on the part of the jurisdictional authorities.
- G. Co-ordinate all the resources and instruments of the public authorities to improve prevention and punishment.
- H. Promote the collaboration and participation of social entities, associations and organisations working to combat gender violence.
- I. Foster the specialisation of professional collectives involved in information, assistance and protection to victims.
- J. Guarantee the cross-cutting principle of the measures adopted so that the specific demands and needs of all women victims of gender violence are taken into consideration. This explains *the comprehensive and multi-disciplinary approach of the Act*.

If the phenomenon of gender violence is a result of a combination of factors, the technical and legal instruments with which to correct it should be equally broad. This has been the conclusion of important international forums, such as the Beijing Conference, organised by the United Nations in 1995, whose Declaration –Epigraph 53– stresses the need to «adopt a comprehensive and multi-disciplinary approach that enables to address the complex task of creating families, communities and States free of violence against women», and specifically emphasises that this must be done through awareness-raising<sup>1</sup>.

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<sup>1</sup> Other international initiatives on this issue are mentioned in the Integral Act itself, II.3º.

Everything that we have mentioned so far helps to understand that the Integral Act is an Act of Acts, which must be implemented in all areas, private and public, where gender violence exists. This general legislative framework is currently accompanied by new autonomous community Acts, some in force and others in the drafting stage, which also address this problem and, in the future, will give rise to regulatory duplicity in some areas. This plurality is evidence of all the public administrations' will to address this serious social and political problem from their respective spheres of competence. Spanish society is beginning to feel that gender violence is not a personal or private problem, but a problem that affects society as a whole, given that it prevents the construction of a just and egalitarian society in which everyone's human rights, without exclusion, are respected. Eradicating discrimination and strengthening Democracy, two legal and political premises that enhance any country's development and security, will enable us to move forward on the path to eradicating gender violence.

## 1.1. PRIOR CONSIDERATIONS

In second place, in the context of Organic Act 1/2004, of December 28th, on Integral Protection Measures against Gender Violence, we should explain the meaning of the term **gender violence** in the Spanish legal system. When drafting the Act, the Spanish State Legislator decided to confine the regulation of gender violence to violence perpetrated on women in the partner or ex-partner relationship on the grounds that it was the most frequent and most visible form of violence exercised against women, and because it presented specific characteristics as a result of the existence of psychological, economic, social and cultural dependence factors between the victim and the aggressor. However, this removes us from other comparable regulations and international instruments that address violence against women from a more global perspective, and include phenomena like sexist violence in the labour environment, combating prostitution, social violence against women, etc. It even appears that this option of the State Legislator is not followed by legislators of autonomous communities, who have used different interpretations of the term gender violence as well as different denominations. We should be aware that these discrepancies make it difficult to compare the data of different parts of Spain and to compare our data with that of other countries or institutions. Likewise, we should try to avoid that the discourse on violence against women, assimilated as violence within the partner or ex-partner relationship, gives way to ignoring even more other forms of sexist violence of major importance, such as violence in labour relations, sexual violence and

institutional violence, also known as structural violence. Obviously, the above-mentioned legal mandate explains the reason why the Report employs the concept of gender violence as per the meaning and content established by the Spanish Legislator in Section 1 of Organic Act 1/2004. Nevertheless, we would like to point out that when in any of the sections of this Report the term gender violence cannot be employed as per the meaning and content established in Organic Act 1/2004, due to the nature of the data available, the meaning and content of the term used in that particular context will be specified.

The objective of the National Observatory on Violence against Women is to gather information from all public and private institutions relative to all areas of interest to the law, for the purpose of analysing the scale of the phenomenon of violence against women and its evolution, with a view to improving the information used to assess the measures adopted, and to rectify, if necessary, any unforeseen failures or dysfunctions. It is believed that adequate information will help to increase the effectiveness of the law in all the areas that it touches. Together with the function of analysing and describing gender violence, the Observatory is entrusted with another vital function, that of developing future proposals. It is in the framework of this function that the Observatory plays the fundamental role of harmonising lines of action and proposing indicators.

Before we begin to analyse the measures that help us to present the scope of the gender violence phenomenon, we should point out that all the information available and, in particular, the statement of results approved by Government in December 2006 and sent to the Chamber of Deputies, has been taken into account. This statement of results presents the progress made in the eighteen months since the full content of the Integral Act came into force, and identifies areas that need improving, which are addressed in the National Plan on Awareness-raising and Prevention of Gender Violence and in the set of Urgent Government Measures, approved by the Council of Ministers on December 15<sup>th</sup> 2006.

## **1.2. PRESENTATION OF THE INTERNATIONAL AND EUROPEAN FRAMEWORK FOR COMBATING GENDER VIOLENCE: FROM AN INTERSUBJECTIVE PROBLEM TO A STATE PROBLEM**

A presentation of the International and European framework that embraces all the initiatives on violence against women is essential to understanding the legislative and political evolution of the last few years in Spain.

### **1.2.1. The evolution of the principle of equality in the international agenda and the introduction of the gender perspective in the public policies of States**

The four world conferences on women held from 1975 to 1995, organised by the United Nations, helped to place the cause of equality between women and men at the top of the world agenda, and joined the international community in support of a set of common objectives to achieve gender equality in all spheres of life, both private and public. Although at the time the fight for equality between women and men was on the political agenda of few countries (of the 51 original member States of the Rome Treaty only 30 allowed women to enjoy the same rights as men), the Charter specifically mentions «equal rights between men and women», and establishes «the dignity and the value of the human being», prior to then, there had been no reference to sex as a reason for discrimination. In the three decades following the constitution of the Rome Treaty, the efforts of the United Nations in favour of women centred on legal and political aspects. With time, it became evident that that formal equality was not sufficient to ensure effective equal rights between men and women, and a stronger commitment was made in this area, giving rise to the international conferences on women that we will now mention.

The first International Conference on Women was held in Mexico in 1975, and three fundamental objectives were identified: full gender equality and the elimination of gender discrimination; the integration and full participation of women in development; an increased contribution by women in the strengthening of world peace.

The Copenhagen Conference, held in 1980, recognised signs of disparity between rights secured and women's ability to exercise them and highlighted a lack of sufficient involvement of men in improving women's role in society; insufficient political will; a lack of recognition of the value of women's contributions to society; a lack of attention to the particular needs of women in planning; an overall lack of necessary financial resources; a lack of awareness among women about opportunities available to them; a shortage of women in decision-making positions. To boost progress towards equality between women and men, States were called to make reforms to ensure women's ownership and control of property, as well as improvements in women's rights to inheritance, child custody and loss of nationality. The Conference also established as an objective that legal changes should go hand-in-hand with an end to stereotyped attitudes towards women.

The third International Conference, named Third World Conference on Women to Review and Appraise the Achievements of the United Nations' Decade for Women: Equality, Development and Peace, was held in Nairobi in 1985, where International consensus on equality between women and men was eventually reached. The data gathered by the United Nations in the period 1980 to 1985 were decisive to reaching this consensus and to finding common ground for action.

Although the efforts had been significant, the programmes and initiatives adopted by States had only managed to benefit a small group of women, and their marginal effect forced a change of approach in the fight for equality between women and men. The Nairobi conference was entrusted with finding new ways of addressing the inequality suffered by women in the world; and in the final document, a list of national measures which States were called to fulfil was established: constitutional and political measures; equality in social participation, equality in political participation and in decision-making.

From this third International Conference it is worth highlighting that the women's equality proposed and pursued could no longer be addressed as an isolated or sectoral issue, but due to the fact that it embraced all spheres of human activity it needed a global political approach (so-called mainstreaming was emerging in Europe). It could be said that Nairobi was a milestone in the establishment of an International feminist agenda. This new approach was set in motion as of the Beijing Conference, and Europe incorporated it in the IV Community Action Programme for Equal Opportunities between Men and Women (1996-2000).

The new approach was no other than to incorporate gender in the principle of equality, and the gender perspective in all public policies. Meeting this objective required a thorough information gathering system, data broken down by sex, both from a qualitative and quantitative point of view, as well as doing away with the idea that policies are neutral, and to assess the differentiated impact of those policies on women and men. Finding out and analysing the systematic differences between women and men, as well as the specific needs of both sexes also required specialised education on the part of legal and social agents, a combined development of specific initiatives aimed at women and general initiatives aimed at society as a whole.

Although the efforts of the previous two decades had produced good results with respect to women's access to resources and opportunities, they

had not managed to change the basic structure of inequality in the power relations between women and men. This was the reason why the Beijing political document focused on strengthening the social and political role of women to enable them to enforce their priorities, needs and values in the political agendas of States. In short, gender had made its way into the political agendas of States and into the content of the principle of equality. The appraisal of the objectives established in Beijing took place in New York on June 5th-9th 2000, in the Special Session «Women 2000: Gender Equality, Development and Peace in the 21st Century», where the failure to meet the established objectives was denounced and the States reaffirmed the political commitment of Beijing. In this confirmation of objectives, it is worth highlighting the express reference made to violence against women<sup>2</sup> as an issue of public, not just private, concern; and the commitment of States to legislate or reinforce the existing mechanisms in their legislations to address the legal issues related to all forms of violence against women, marital rape and sexual abuse of women and girls. This commitment, as we will see below, is fulfilled by Spain.

The political agenda of Beijing is still in full force on the issue of equality, given that many of its objectives have failed to be met. On the December 16th 2004, in compliance with point 2, section 29, of its Rules of Procedure, the European Economic and Social Committee decided to draft an opinion report on the issue: «Beijing+ 10, Review of progress achieved in the field of gender equality in Europe and in developing countries», which analyses the achievements, but also points out that strong inequalities between women and men continue to exist in key areas, such as economic life, social and political participation and representation, the exercise of civil rights, civil life and in the representation of roles and stereotypes.

### **1.2.2. The integration of gender violence into the principle of equality and non-discrimination.**

It was in 1985, in Nairobi, in the Third International Conference on Women, organised by the United Nations, when for the first time abuse against women was recognised as a form of discrimination. A few years later, Re-

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<sup>2</sup> Both in the Beijing document, and, later, in the extraordinary sessions of the United Nations General Assembly «Women in the year 2000: Gender Equality, Development and Peace in the 21st Century», New York, 5th to 9th of June 2000, the expression violence against women is employed.

commendation 12 of the CEDAW Committee stated that the reports issued by States on the evolution of discrimination in their respective countries should include violence against women in all its manifestations and contexts. In 1992, Recommendation 19 of the CEDAW called on governments to adopt prevention and protection measures in the area of violence against women and, for the first time, violence against women was formally recognised as a form of discrimination. This new positioning, initiated at the end of the decade of 1980 and established in the decade of 1990, transformed the legislative and political panorama at International, European and Spanish level. Classifying violence against women as a discrimination problem placed the battle to eradicate it in the framework of the State and the Principle of Equality. This new classification and position turned violence against women into a political and democracy-entrenchment problem, in other words, violence against women found a place in the political agendas of democratic States.

This change in the classification of violence against women was rounded off with the recognition of violence as a violation of human rights. The Second Congress on Human Rights, held in Vienna in 1993, recognised that violence against women is a clear violation of human rights and that women's rights are an inalienable, integral and indivisible part of universal human rights. In 1993, the Declaration on the eradication of violence against women, for the first time, defines violence against women as gender violence (AG 48/104, December 20th 2003). The objective of this new definition was to introduce a broad concept of violence against women, highlighting the different forms and contexts in which violence against women takes place. It is a way of recognising that this is a structural problem requiring a complex, cross-cutting and multi-disciplinary approach, which the States have a responsibility to resolve.

These terminological changes are not mere political rhetoric as they require a strong determination on the part of States to put an end to violence against women in order to achieve higher levels of equality, development and safety. In 1994, for the first time, Resolution 45/1994, of the Human Rights Commission assigned responsibilities to States for acts of violence against women. Beijing, in 1995, compiled all the changes and produced a document backed with the unanimous commitment of States to eradicate violence and advance towards equality, development and peace. The importance of Beijing, with respect to the issue that concerns us here, was the broad definition of violence against women adopted in the platform for action in its paragraphs 113 and 118. In paragraph 113 of the Beijing Platform, gender violence is defined as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or

suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life; other forms of violence against women are also described in detail based on whether the violence is produced in the family or the community environment and whether it is perpetrated or tolerated by the State; and paragraph 118 establishes, without room for doubt, the origin of this specific violence: «violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement».

### **1.2.2.1. *European context of gender violence***

In the European context, in 1993, on occasion of the Third European Inter-Ministerial Conference on equality between women and men, strategies were adopted to eliminate violence against women, policies were developed to combat this phenomenon and a resolution on sexual abuse and rape was adopted. In 1997, in response to the Beijing commitment, a major zero tolerance to violence campaign was launched aimed at: analysing the social situation and the legislation of the different member countries of the European Union, promoting a common framework in the legislative area, and developing common public policies for intervention, with a view to eradicating violence against women. The European Observatory on Violence against Women was also established.

In 2000, the European Parliament conducted a survey to analyse the patterns of social feelings towards violence. The conclusions were negative, highlighting society's lack of information on the phenomenon of violence and the distortion and lack of realism with which society explains the phenomenon, justifying it as something natural that occurs in conflicts between partners or relatives. On this point, two fundamental issues are worth emphasising in relation to the subject that concerns us here: violent acts are justified and explained as owing to reasons external to the aggressor, such as alcohol or drugs, whilst women are blamed for being responsible for, or generators of, violent acts. In response to this information, the programme Daphne I, established through Decision no. 293/2000/CE of January 24th 2000, was introduced. The objective of Daphne I was the prevention of violence exercised against girls and boys, adolescents and women. When this programme came to an end and the results were assessed, the introduction of a second programme was decided, extending the objectives of the first programme to the

elimination of all forms of violence exercised against girls, boys, adolescents and women. This broader framework of action led to the creation of transnational frameworks for education, information, research and interchange of good practices, as well as the selection of projects at community level, to improve the measures, in accordance with the principle of subsidiarity established in section 5 of the Treaty. This second Daphne programme is scheduled to last five years (from January 1st 2004 to December 31st 2008), and it assesses the serious short and long-term repercussions of violence on health, psychological development, social development, and the equal opportunities of persons affected, whether the victims are individuals, families or communities, placing special emphasis on the high social and economic cost of violence.

After analysing and assessing the results of the first programme, it was considered that the expansion of knowledge, inter-change of information, awareness-building among professional groups and competent authorities should be extended to specific social sectors with a view to achieving zero tolerance. In addition to conducting studies, formulating indicators, elaborating statistics broken down by sex and age and organising seminars and meetings chaired by experts. This Report is in keeping with these objectives.

### **1.3. LEGISLATIVE INDICATORS, CORRECTIVE MEASURES AND THEIR CONSEQUENCES**

The objective of this first indicator is to show the Spanish State's sensitivity towards gender violence and the degree of compliance with its international and European commitments. Although there are always differences between legal texts and their application, the legislative evolution reveals what forms of violence are recognised, how they are defined, what acts are classified as gender violence and what protection measures have been put in place. But this indicator would be incomplete without the corrective measures and their consequences<sup>3</sup>.

Although the main objective of the this Report is to compile all the information on gender violence available from public and private institutions, in the social, education, judicial and political areas, as well as any other areas involved, to present the scale of the problem in Spain and its evolution, we believe that an assessment of the accomplishments, despite the lack of infor-

mation available, requires insight into the background or context of the origins of Organic Act 1/2004, of December 28th, on Integral Protection Measures against Violence, and its effects on the subject of this report.

### **1.3.1. Legislative precedents of the Integral Act and corrective measures**

#### **1.3.1.1. Legal precedents of the Integral Act**

As already mentioned the legal framework of a State establishes the basis for reparation to victims of violence. It is an indicator that shows the responsibility of the State and its will to act in the prevention and eradication of violence against women. In this respect, in the last few years Spain has made strong efforts, as explained below, to correctly deal with the punishment of gender violence and to develop protection and prevention measures.

The restoration of Democracy in 1977, and the enactment of our current Constitution, in December 1978, which, for the first time in our country, went beyond the mere recognition of formal equality between men and women, by expressly prohibiting discrimination and establishing equality between men and women as a basic principle of the Legal System, as well as by introducing the duty of public authorities to actively enforce real equality between men and women, did not however give way to the automatic expulsion of its androcentric negative values from our Legal System or to the immediate criminalisation of any of the different forms of violence exercised against women, not even those that make up the bulk of our forms of violence, the violence that occurs in intimate relationships (partner or ex-partner) and among relatives.

Indeed, 11 years had to go by after the enactment of the Constitution before the first category of criminal offence referring to one of the manifestations of these forms of violence was incorporated into the Criminal Code. Thus, Organic Act 3/1989, on the Criminal Code Review, introduced a new section 425, *which punished physical violence perpetrated on a regular basis* on «the spouse or person with whom the aggressor was associated through an ana-

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<sup>3</sup> In March 2002, the European Women's Lobby presented a set of proposals aimed at establishing a common framework of policies and indicators from which to establish a common European framework to measure progress in the battle to eradicate violence against women. These indications have been followed in the elaboration of the legislative indicator.

logous intimate relationship», on daughters or sons under parental custody, pupils, minors or disabled individuals under guardianship or custody. The punishment envisaged was imprisonment for more than one month but less than six months.

What is more, this specific option, based on the idea of regularity, exclusively centred on physical violence, thus excluding most forms of violence produced in the family environment and, obviously, those that tend to represent the initial manifestations of physical violence (psychological violence). The perpetrators of the offence could be men or women, as in the case of the victims, provided that they held the correct personal relationships defined in the category of criminal offence.

It therefore did not punish, by specifically distinguishing them, manifestations of violence exercised by men against women (although it did include them by clouding them over with violence exercised against relatives), despite the fact that the social phenomenon of violence exercised by men against women in the sphere of intimate relationships had already become visible.

This specific violence, as a social phenomenon worthy of special condemnation, had been expressly recognised by the Constitutional Court five years earlier, thus validating a differentiated treatment on the part of the criminal justice system for violence produced in partner relationships, based on who was the aggressor and who was the victim. Thus, under the Third Legal Grounds of Ruling 691/84, dated November 14th, the High Court, explains:

*«As the challenged Ruling affirms, it is indeed evident that, unfortunately, the abuse of women by men currently occurs with increasing frequency within the partner relationship, constituting a phenomenon worthy of special condemnation, whilst, on the contrary, the opposite, i.e., the abuse of men by women does not exist as a social phenomenon. It is therefore justified that, in order to suppress this social phenomenon, the severity of the Law should be accentuated for those who contribute towards it. Therefore, contrary to what the appellant alleges, discrimination in the application of the Law on grounds of gender has not taken place here, given that the man is not treated more severely on grounds of his male condition but for contributing, with his conduct, towards the existence of the social phenomenon of abused women, against which the Courts of Justice may and should react with the means allowed by Law».*

Despite the above, the new category of criminal offence, introduced in 1989, failed to be applied for many years, in the majority of cases maintaining

the old system of accusations for alleged minor offences, tried by Examining Magistrate's Courts and more than 80% of the cases went unpunished<sup>4</sup>. Several factors contributed to this large-scale impunity, with the obvious harm to the trust in the Justice System on the part of the victims of the offence and society in general: the absence of an investigation of the facts procedure (the pre-trial investigation of the facts procedure, prior to the Oral Proceedings, is only established in cases of offences and not minor offences, therefore the definition of minor offence entailed the automatic assignment of Oral Proceedings), delays in proceedings, even when classified as minor offences, absence of a lawyer to assist the person reporting the offence, lack of intervention from the Public Prosecutor's Office, not always mandatory in proceedings of certain minor offences, no medical examination to victims or the attitude of the victim herself, not always collaborative in the prosecution of these offences. All these factors contributed to justifying the subsequent and successive legislative reforms.

Despite appearing to have been aimed at combating violence against women, her sons and daughters, in the framework of intimate relationships<sup>5</sup>, in practice, this category of criminal offence was conceived as regular domestic violence. It was born unfocussed, given that it allowed, without distinctions, the protection of different members of the family, clouding over both the protected legal right and the specific passive parties to be protected.

What is more, the circle of passive parties was successively widened. Hence, initially, the *Criminal Code of Democracy* – Organic Act 10/1995, of

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<sup>4</sup>In both studies commissioned by the General Council of the Spanish Judiciary to the Laboratory of Legal Sociology of the University of Zaragoza, directed by D. Manuel Calvo García, centred, respectively, on an analysis of nearly 5.000 resolutions passed by Spanish courts in 1999, the first, and nearly 14.000 resolutions passed from 2000 to 2002, the second, the following conclusions were reached: the first confirmed 73% of acquittals in trials for minor offences of violence against women, a percentage to which we would need to add dismissals and prior stays of proceedings. The second confirmed 71% of acquittals in sentences passed on this subject by Examining Magistrate's Courts and 75% of acquittals in sentences passed by Courts of First Instance and Examining Magistrate's Courts. These percentages also excluded dismissals and prior stays of proceedings.

November 23<sup>rd</sup> – which transferred the previous precept to section 153, incorporated grandparents as new passive parties.

Organic Act 14/1999, of June 9th, changed, among other points, the mentioned precept, by including regular psychological violence in the typical conduct, as well as conduct exercised against persons who had previously been involved in an intimate partner relationship with the aggressor.

All these reforms reinforced a concept, domestic violence, and a legal right, constituted, as defined by doctrine and jurisprudence, for the dignity of the individual and *family peace*, introducing a veil of confusion between structural violence exercised by men against women in the area of present or past intimate relationships based on relations of asymmetric power, with violence exercised against other persons in the same context –the family home- but associated with situations of vulnerability, totally independent of violence against women (deficit of legal capacity –minors–, circumstances associated with biology –old age–, etc.)

Months prior to this reform, Organic Act 11/1999, of April 30th, which attempted to redefine and improve the protection of the sexual integrity and liberty of minors and disabled persons, had generally introduced, by redrafting section 57 of the Criminal Code –which Organic Act 12/1999 would subsequently go back to–, the possibility of imposing in sentences as ancillary punishments for specific offences, according to the seriousness of the offence and the danger posed by the offender, restrictions on approximation and communication with the victim or family, prohibition to return to the place of the offence or to go to the residence of the victim.

Later, Act 38/2002, of October 24th, introduced important procedural reforms aimed at the introduction of the **fast judgement** of specific offences and minor offences, enabling, in cases of straightforward pre-trial proceedings –including those associated with domestic violence– these cases to be jud-

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<sup>5</sup>The Foreword to Organic Act 3/1989 granted this legal principle the purpose of «responding to the deficient protection of the physically weaker members of the family group against the systematically aggressive conduct of other members of the same family group», although giving priority to minors and the disabled, the spouse was mentioned immediately afterwards. However, the phrasing of the category of criminal offence, referred in first place to the «spouse or person with whom the aggressor is linked through an analogous emotional relationship».

ged within 15 days from the perpetration of the offence, and the passing of sentences, following a prior plea of guilty by the defendant, immediately after the perpetration, in the Examining Magistrate's Court.

Act 27/2003, of July 31st, which regulates the **Protective Order** of Victims of *Domestic Violence*, was a particularly relevant step forward in the fight against this social scourge, introducing, for the first time in our Legal System, although only in its Statement of Motives, the difference between gender violence in the sphere of intimate relationships and other forms of intra-family violence, and calling for co-ordination between all sectors as well as the action of society in general to achieve its eradication. Thus, the above-mentioned Statement of Motives started off by saying:

«The violence exercised in the family environment, *and, in particular, gender violence*, constitutes a serious problem in our society that requires a global and co-ordinated response on the part of all the public authorities. The situation generated by these forms of violence transcends the domestic sphere to become a scourge that affects and involves all citizens».

Its provisions defined the so-called «integral status of the protection of the victim», enabling the adoption of precautionary judicial resolutions by the Examining Magistrate's Court which could include criminal, civil and assistance measures.

In that same year, Organic Act 11/2003, of September 29th, on concrete measures on public safety, domestic violence and the social integration of foreigners, affirmed in its Statement of Motives, acknowledging different international instruments:

«The phenomenon of *domestic violence* certainly has a multi-disciplinary scope. It is necessary to address it with preventive measures, assistance measures, social intervention measures in favour of the victim, measures to stimulate research, and also with legislative measures aimed at deterring perpetration of these offences».

To this end, the so-called «mixed circumstance of kinship» (which operates, depending on the cases, as a mitigating or aggravating factor), established in section 23 of the Criminal Code, was reformulated, hinting at the desire to combat the impunity of some of the initial manifestations of violence against women in the sphere of the partner or ex-partner relationship, and to place specific manifestations of violence in the section of the Criminal Code

alongside conducts worthy of strong social condemnation, by considering the former minor injury offences perpetrated in the family environment as offences, in the new section 153 of the Criminal Code, and including in the latter *any psychological effect or undefined injury as an offence* (that is, an injury, in the opinion of the medical authorities, not requiring medical or surgical treatment after the initial medical assistance) as well as *blows or forms of abuse that do not cause injuries and minor threats with arms and other dangerous instruments*. The new section 153 of the Criminal Code envisages the possibility of imposing a prison sentence of three months to one year, although, alternatively, doing community work for a period of 31 to 80 days. Also, these cases were also subject to a sentence of loss of one's right to possess and carry a gun, and, if considered adequate in the interest of the minor or the disabled individual, barring from exercising authority, guardianship, custody or fosterage for a period of six months to three years. The active and passive parties could be both men and women, within the mentioned family circle, it therefore continued to aim the repression at the sphere of *domestic violence*. The sentence had to be imposed from the top half of the punishment scale in specific instances, specifically, when the offence was perpetrated in the presence of minors, using arms, whether in the common residence or in the residence of the victim or on failure to comply with the terms of a sentence, precautionary or safety measures included in section 48 of the Criminal Code (prohibition to approach, reside or communicate).

The previous offence of *regular physical or psychological violence* in the sphere of *domestic violence*, established in section 153 of the Criminal Code, now came to be systematically considered an offence against the moral integrity in the new section 173.2 of the Criminal Code. In addition to the passive parties against whom the conduct in question was targeted at, the circle continued to be widened to include brothers, sisters, other parties to any other relationship through which they were integrated in the nucleus of the family unit and other persons who, due to their special vulnerability, found themselves under the custodianship or guardianship of public or private centres. The punishment envisaged was a prison sentence of six months to three years, loss of one's right to possess and carry a gun for a period of two to five years and, as applicable, if considered adequate in the interest of the minor or disabled person, the barring from exercising authority, guardianship, custody or fosterage for a period of one to five years.

After two Courts questioned the constitutionality of categorising as an offence acts that had previously been categorised as a minor offence, the Constitutional Courts dismissed both questions on grounds of being manifestly

unfounded, through Rulings dated June 7th 2004 and September 13th 2005, considering, among other opinions, the envisaged sanctions as appropriate «given that these are measures that will certainly contribute to preventing... the perpetration of acts of domestic violence, with a view to, as far as possible, achieving its eradication, as well as securing and ensuring the best and most adequate protection of victims». In both resolutions, the Constitutional Court also reminded that «it is the responsibility of the legislator, in the exercise of his legislative activity» to define the limits of the specific punishments envisaged for each category of criminal offence, that a prison sentence was not the only main punishment envisaged in the new category of criminal offence, and associated this pronouncement with «the scale that the social phenomenon of domestic violence» had reached in our country. And in both resolutions it concluded that «Such penological response... not only does not distance itself from the constitutional values protected by the legislation but it pursues a stronger and more effective protection of those values in light of the scale that domestic violence has reached in our society, the social perception of the current lack of punitive response against this phenomenon and, consequently, the insufficient protection conferred to victims».

The subsequent Act, Organic Act 13/2003, of October 24th, on reforms to the Code of Criminal Procedure on the subject of pre-trial detention, allowed the adoption of the precautionary pre-trial detention measure in this type of offence, even if the alleged committed offence was punishable with a prison sentence of less than two years, which was the new referential time limit for establishing the precautionary measure, when the aim was to prevent the suspect from acting against the legal rights of the victim.

On its part, Organic Act 15/2003, of November 25th, on reforms to the Criminal Code, introduced, as main novelty in this area, removing it from the judicial assessment of each particular case, in domestic violence offences, the obligatory imposition of the additional penalty of prohibition to approach the victim (non-molestation).

In addition to the previous measures, and for the purpose of facilitating information on previously adopted judicial decisions, which should have resulted in more protection of victims, Royal Decree 355/2004, of March 5th, established the Central Register for the protection of victims of *domestic violence*, centralising in a single Register information on all the punishments, safety measures and precautionary measures imposed in this area through sentences, including protective orders adopted in the course of criminal proceedings, to be used by judges, public prosecutors and the criminal investi-

gation police. Royal Decree 315/2005 extended access to this Register to the autonomous communities, given that these are obliged to guarantee compliance with specific assistance measures.

This is the context for the introduction of Organic Act 1/2004, of December 28th, on Integral Protection Measures against Gender Violence. A context marked by a long chain of reforms, whose effectiveness could not always be assessed due to the short period of time in force. Among the very wide range of instruments and measures defined in this Act, it envisaged the establishment of the National Observatory on Violence against Women<sup>6</sup>, as a collegiate body under the Ministry of Labour and Social Affairs, defined as an analysis centre of the situation and evolution of violence against women in the sphere of partner or ex-partner relationships, as well as against their sons and daughters, with the function, among others, of advising and collaborating with the Special Delegation of the Government on Violence against Women in the elaboration of proposals and measures to eradicate this type of violence.

Among other responsibilities, as mentioned above, the National Observatory on Violence against Women must issue an annual report to the Government and to the autonomous communities on, among other issues, the evolution of violence exercised against women, as defined in section 1 of the Integral Act, which must also highlight legal reform needs for the purpose of guaranteeing that the application of the adopted protection measures provide the maximum level of protection to women. This report is in response to this function.

### **1.3.1.2.** *The evolution of the reform proposals and of the interpretation criteria that accompanied the legislative changes*

Throughout the above-mentioned period different sectors and institutions worked towards presenting legislative reforms or suggesting interpretation criteria for the different regulations, with varying effects on the changes that were subsequently introduced.

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<sup>6</sup> Royal Decree 253 /2006, of March 3rd, establishes its functions, operation system and composition. The Plenary was constituted on June 28th 2006».

Thus, the Office of the Director of Public Prosecutions manifested its concern for combating family violence in its Directive 3/88, titled «Prosecution of occasional abuse of unprotected persons and need to enforce the alimony obligations established in family proceedings», and recommended particular attention to these conducts in order to repress them in an exemplary manner and to compensate for the evidence deficiency that was already surfacing as a consequence of victims going back on their word or exercising their right to refuse to testify against their spouse, in accordance with section 416 of the Code of Criminal Procedure.

After the enactment of Organic Act 3/1989, Circular 2/90 of the Office of the Director of Public Prosecutions offered a series of interpretation criteria on the new category of criminal offence of regular physical violence, for the purpose of harmonising criteria in order to provide a single and effective response to this phenomenon.

Circular 1/98 of the Office of the Director of Public Prosecutions, as regards the Intervention of the Public Prosecutor's Office in the prosecution of abuse in the domestic and family environment, provided further guidance to Public Prosecutors. This circular was highly influential, both from a jurisprudence and doctrine point of view, and was a source of inspiration for legal reforms after 1999.

Subsequently, in light of the above-mentioned concern, the Office of the Director of Public Prosecutions issued its 2/03 Circular «on a number of procedural issues associated with the protective order», highlighting, among the other issues, the justification for a protective order application, the legal nature of the protective order, as an entitlement to other types of measures (assistance, psychological, legal, financial, etc.) established in other laws, which confers the victim a comprehensive protection status, as well as the consequences and the effects of breaching the measures agreed in the protective order.

Circular 4/03 of the Office of the Director of Public Prosecutions provided a details of the new criminal categories introduced by Organic Act 11/2003 to prosecute domestic violence, specifically occasional abuse and regular abuse, focusing on the concept of «regularity» and on its meaning in the context of this type of violence, the problems of overlapping offences which the criminal precept that regulated it presented, and on the circle of individuals protected under this regulation. The confusing wording of the regulatory precept of domestic violence had given rise to different interpretations, which the Office of

the Director of Public Prosecutions tried to clarify by ensuring a univocal response on the part of public prosecutors.

Finally, after the enactment of the Integral Act, and to offer guidance to public prosecutors in their functions, the Office of the Director of Public Prosecutions issued Circular 4/05 «relative to the application criteria of the Act on Integral Protection Measures against Gender Violence». This circular explains that the entitlement document to enable victims of gender violence to gain access to the labour and economic rights, established in the above-mentioned Act, is the protective order and, in exceptional cases, pending court appearance for the adoption of the protective order, as the case may be, the situation of gender violence may be certified by the Public Prosecutor's Office. Two subsequent Directives were issued on this matter: 2/05, establishing the guidance criteria for public prosecutors on issuing these certifications, and 7/05, under the title «The public prosecutor against violence perpetrated on women and the public prosecutor's offices sections against violence», which establishes the functional model of the Public Prosecutor's Office and the organisation criteria of the new sections.

On its part, the Plenary of the General Council of the Spanish Judiciary, held on March 21<sup>st</sup> 2001, for the purpose of establishing the position of this constitutional body on the problem of domestic violence, adopted an Agreement that addressed technical-legal, organisational and structural issues in depth, as well as suggestions for legislative reforms (thus, the reform relative to the Criminal Code, to ensure that all aggressions produced in the family environment of sufficient relevance to warrant a penal response are considered offences). It also called for the creation of a Register of Measures against Domestic Violence and approved a «practical procedure guide against domestic violence», made up of a list of procedure guidelines. Two years later, the Plenary of the General Council of the Spanish Judiciary approved Directive 3/2003, on the rules of the system of distribution of cases among criminal law judges and on the computer register of domestic violence, which would help improve the judicial response.

In the early part of 2004, the Observatory against Domestic and Gender Violence based in the General Council of the Judiciary<sup>2</sup> disseminated among the judicial profession a «Practical Guide against Domestic Violence», prepared by its team of experts, which explored the successive substantive and procedural reforms (fast judgements and the regulatory system of the protective order, especially focusing on these). In this same line, and a few days before the Violence against Women Courts (introduced by the Integral Act)

began to operate, the Observatory disseminated, with the same collaboration, the «Practical Guide to Organic Act 1/2004, of December 28th, on Integral Protection Measures against Gender Violence», which explored the precepts reformed by the Act with regard to penal and procedural protection and judicial organisation, establishing comparison tables between the former and the new legislations, with their respective comments.

### **1.3.1.3. *Global assessment of the Integral Act and its evolution up until the presentation of this Report***

The incalculable value of the Integral Act, in the described context, is due to various factors: it is an act drawn up with a strong participation of women's organisations and academic feminism; it is an act that addresses the issue of gender violence from a global and multidisciplinary approach, as required by International bodies, and, in addition, it places the issue to gender violence within the framework of discrimination and the principle of equality. For the first time in Spain, the issue of gender violence is addressed as a structural and political problem requiring a firm commitment from all public authorities and the public. We specifically refer here to compliance with Recommendation 19, relative to the CEDAW, which calls on governments to adopt prevention and protection measures in the area of violence against women, within the framework of combating discrimination, and to the UN Declaration of 1994, on the elimination of violence against women, which defines violence against women as gender violence.

Although the progress has been very significant, a number of difficulties have come to light in its implementation: emphasis has been placed on penal and judicial measures, as opposed to few prevention measures, particularly with respect to measures targeted at the education system; the number of women going back on their word is still high; the introduction of re-education programmes aimed at abusers is very unevenly spread and there is a strong doctrinal resistance to the concept of gender violence and its positioning in the framework of discrimination.

Whilst waiting this decision, we should mention beforehand that positioning gender violence within the framework of the principle of equality and non-discrimination – the framework in which the Integral Act stands –, requires theoretical and practical changes. In the past, equality was considered a formal concept, which said nothing about its content. And discrimination was defined as a violation of the principle of equality, i.e., a breach of the egalitarian man-

date. This concept left the question of establishing who was equal and in what aspects open to political decision.

From the positions of legal dogma, violence against women cannot be legally characterised as discrimination. This explains why in 1979, when the CEDAW was approved, violence was not defined as a form of discrimination. At that time, the comparative element was still required for determining the existence or non-existence of discrimination. However, a few years later, as a result of pressure from the women's movement and women's organisations, and after the boost from the Third World Conference in Nairobi, in 1985, the Committee responsible for ensuring compliance with the 1992 Convention, through General Recommendation No. 19, affirmed that «gender violence is a form of discrimination that seriously limits women's ability to enjoy rights and freedoms on a basis of equality with men» (Paragraph No.1). This text changes the concept of discrimination, and from that moment, violence itself would be defined as discrimination. The inapplicability of comparison in this new concept makes its introduction have preformative or constitutive effects<sup>3</sup>. If we interrelate the new concept of discrimination with article 1 of the Convention, we could say that violence against women for the mere fact of being a woman or because it affects her in a disproportionate way is discrimination.

The introduction of violence against women into the concept of discrimination has revolutionary overtones which explain its theoretical and application difficulties. This new positioning of gender violence entails removing discrimination from the principle of formal equality to place it in interrelation with the interpretative concept of patriarchy, where violence against women is the most evident expression of relations of power that limit their ability to enjoy and exercise equality rights. As the «Study on the measures adopted by EU member States to combat violence against women», under the presidency of Spain, in 2002, recognises, one of the fundamental causes of gender violence is the uneven distribution of power between women and men, and it is also one of the most invisible. Hence why Integral Act 1/2004, of December 28th, acknowledging this information, attempts to contextualise gender violence and to include its origins, already established by the Beijing Platform in 1995, in the above-mentioned paragraph 118. The introduction of this new concept of discrimination generates strong resistance in traditional legal culture, and stirs a crisis in a centuries-old dogmatic and argumentation paradigm, which concealed that the rupture of the principle of equal treatment hides a situation of status inequality which generates violence, and limits the enjoyment of rights of equality between women and men. Thus the principle of equality and discrimination takes on a new meaning, to include inequality of status and vi-

olence as structural discrimination. But as is well known, a concept change is only the beginning of the long road to restructuring law and legal science.

Having explained the relevance of the Integral Act and the importance of its adequate contextualisation, we should also refer to the abusive uses that the term gender is experiencing in the Spanish and European legal-political discourse, by removing it from its natural interpretative framework - feminism.

### **1.3.2. Multiplicity of regulations problems**

One of the characteristics of our legal system is its complexity and plurality, derived from the political autonomy of the autonomous communities. This is also reflected in the multiplicity of regulations in the area of violence against women, given that State and autonomous community regulations co-exist on a same subject of regulation. Thus, parallel to the Integral Act, a number of autonomous communities have introduced regulations on the subject, in a process that seems to be in progressive expansion; for example, apart from several Acts that preceded the State Act, such as Act 5/2001, of the Autonomous Community of Castilla-La Mancha, of May 17th, on Prevention of Abuse and Protection of Abused Women, Act 5/2005 of the Autonomous Community of Madrid, on Integral Protection Measures against Gender Violence, of December 20th, and the Act introduced recently in Aragón, Act 4/2007, of March 22nd, on Prevention and Integral Protection to Women Victims of Violence, or Act 7/2007, of April 4<sup>th</sup>, introduced by the Autonomous Community of Murcia, on Effective Equality between Women and Men and Protection against Gender Violence; a new Act is currently underway in Catalonia, and a bill is in the course of Parliamentary review in Galicia, both on the prevention of and comprehensive response to gender violence. In the majority of cases, these regulations re-conceptualise the concept of violence against women with respect to the State Act, adding an additional complexity factor, which, far from being negative, should be valued as a generator of synergies between the different administrations.

It could be affirmed that the Acts of the autonomous communities that have a bearing on the phenomenon of violence against women incorporate the mandate of the Integral Act, given that it entrusts the Administrations of the Autonomous Communities with the organisation and provision of specific services and the recognition of specific rights, in their respective spheres of competence. However, many of these autonomous community regulations broaden the sphere of protection and assistance referred to in the State reg-

ulation, to also include violence in the workplace and education centres as well as social violence. Although this can be very enriching, in the sense that it introduces other points of view with respect to the phenomenon of sexist violence, it can also produce a number of dysfunctions in issues associated with violence prevention and awareness-raising, and in terms of the assistance provided. In this context, the Government's Special Delegation on Violence against Women must play a leading role in the collaboration process between the State and the autonomous communities, to ensure that the regulatory overlap does not generate situations of unequal protection and assistance and that a minimum standard of protection applicable to the entire territory is established. The mentioned duplicity in regulations does not exist in the penal and procedural spheres, as these are the exclusive competence of the State.

On another front, it is worth highlighting that a comparison of regulations is made difficult by the different concepts of gender violence employed in the acts of autonomous communities, which no doubt will add ambiguity and doubt. The different expressions employed –gender violence, violence against the woman, violence against women or sexist violence– highlight a different diagnosis of an initially coinciding phenomenon. The fact that this is not just a question of a simple problem of terminology becomes evident when we look at the objectives presented in each of the specific legislations: achieve gender equality, reach equality, achieve equal opportunities for men and women, eradicate violence against women or eradicate gender violence. Nevertheless, in our legislation's current state of development, the harmonisation of the terminology seems a tough objective, given that it is likely that each of these acts represent a different political and ideological stance, giving way to different forms of intervention and methods of developing the instruments: legislative changes or public policies. The mentioned heterogeneity explains the difficulty entailed in crossing the data provided by the different autonomous communities for comparison purposes. However, the eradication of violence against women constitutes a common objective and, to achieve it, we must overcome all the difficulties and try to reach the highest level of institutional synergy.

## **2** SCALE AND ANALYSIS OF THE PHENOMENON

### **2.1. GENDER VIOLENCE: SCALE AND EVOLUTION**

Determining the scale of gender violence is a complex and difficult task which not only requires defining an objective reality, but also looking at and analysing the entire social framework that keeps violence against women hidden from the public eye.

Perhaps this is the reason why the constant references to equality in International declarations and Democratic constitutions of all the countries in the world highlight the need to regulate and develop a whole series of initiatives and instruments to protect this principle and to promote it in all areas where it still has not been reached. The social diversity and cultural changes that have taken place in the course of history have given way to the establishment of inequalities based on differences, and these inequalities have remained embedded in a «normality» based on specific cultural values that give meaning to that structure and, consequently, to strengthen it. No doubt, the inequality that has facilitated its general acceptance and promotion as a value, i.e., as a reference for action and the interpretation of realities, has not been the inequality generated by different social and cultural circumstances (education, purchasing power, status, type of job, place of residence, etc.) but one built on the foundations of the essence of mankind and, within it, the only one that has been ever present through time and in all different cultures has been the inequality between men and women. Gender violence appeared as a result of this inequality, but also as an active instrument for building, fuelling and consolidating inequality throughout history.

It is precisely this unaltered presence and its nature of ideological violence that places us so close to it that we cannot set it apart from other common conducts, behaviours and justifications in our daily lives, to the point of preventing us from becoming aware of its real scale; at the same time, however, when we step back to gain some kind of reference of the problem, the results tend to be so limited that the vision appears reduced, like «a bird's-eye view» due to the lack and dispersion of the data.

Obtaining a clear picture of this reality is therefore essential to assessing the instruments and measures in place to combat and monitor its evolution in time. In the Human Rights Conference held in Vienna in 1993, and in the Fourth World Conference of Beijing in 1995, the United Nations recognised that violence against women is a global problem that both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms, and it is an obstacle to the achievement of the objectives of equality, development and peace. Likewise, in its last report, «World Report on Violence and Health» (2002), the World Health Organisation affirms that the prevalence of gender violence in the world ranges from 10 to 69%, and recognises that physical violence goes hand-in-hand with psychological violence. In addition, in 33% of the cases, sexual aggressions form part of the context of violence established in partner relationships.

The Council of Europe, in its report «Stocktaking study on the measures and actions taken in the Council of Europe member States to combat violence against women» (2006), states that 20-25% of women in the European Union have suffered some type of physical violence at some point in their lives, and that more than 10% have suffered sexual aggressions, and these figures rise significantly to 45% when we include harassment. It also highlights that many of these aggressions take place after the break-up of the relationship, a factor that reflects the difficulty entailed in addressing and solving the problem. The consequences of gender violence go far beyond the result of an isolated, momentary aggression, giving way to serious physical, sexual, reproductive and psychological problems in women, as well as to serious repercussions on minors living in households where the partner relationship is marked by violence against women. These repercussions on minors can be physical, psychological and behavioural, as minors learn to live with violence and integrate it as part of their masculine or feminine identity roles. The social impact of this situation, explains the Council of Europe, apart from its toll on democratic values and social well-being, also generates high economic costs, given that the system must invest on assistance and adopting measures to combat the problem, both in relation to the cases that come to light as well as those that remain hidden behind the cloak of anonymity.

The fight against gender violence requires adequate insight into the scale of the phenomenon, as well as into the characteristics of the women who suffer it, in order to determine the main risk factors and provide adequate protection to the victims.

However, the information currently available in Spain presents deficiencies, often restricting adequate follow-up, comparison and analysis.

In any case, it is essential to get an overview from a statistical perspective to enable us to monitor the scale and the evolution of the phenomenon, at least with regard to some of its manifestations. In this respect, we have taken into account a series of data from the Macro Surveys on Violence against Women specifically related to the gender violence manifested in the surveys; we have also examined the complaints filed before the National Law Enforcement Agencies, the Police Department of the Autonomous Community of Catalonia (Mossos d'Esquadra) and the Police Department of the Autonomous Community of the Basque Country (Ertzaintza) and, lastly, we have analysed a series of significant data on the most extreme violence related to the mortal victims of the last few years.

### **2.1.1. Scale and evolution of gender violence according to the data of the Macro Survey on violence against women**

In 1999, 2002 and 2006, the Women's Institute organised a number of surveys aimed at gaining insight into the scale and characteristics of violence against women in the family environment<sup>9</sup>. These Macro surveys<sup>10</sup> constitute one of the means used by many experts as a reference for quantifying the scale of violence against women in Spain.

The results of these surveys, conducted on women aged 18 and over and residing in Spain, offer a picture of the scale of «technical abuse» (based on the statement of having suffered some type of conduct considered as abuse) and declared abuse occurring in the last year (when the interviewee explicitly states that she has suffered abuse).

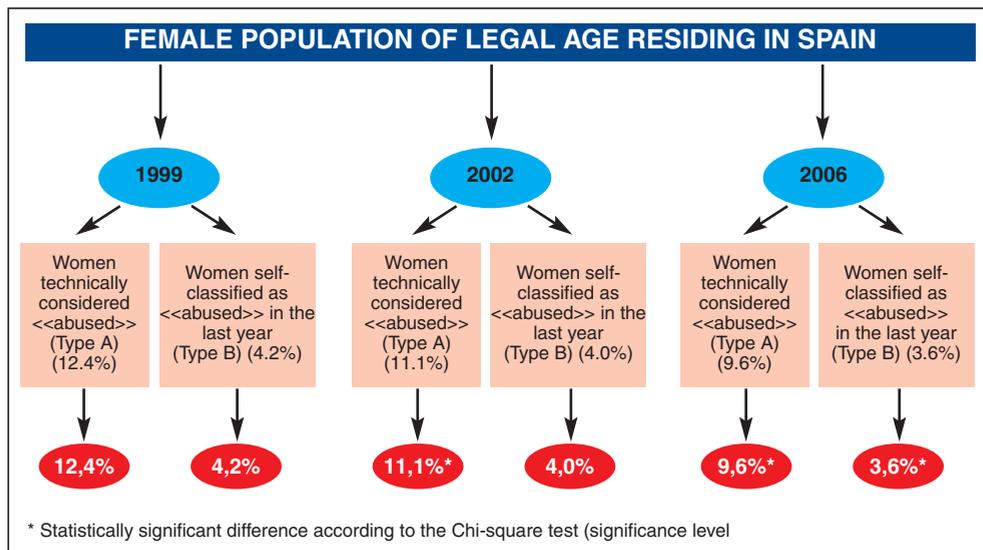
The percentage of women technically considered abused and the percentage of women who self-classified themselves as having been abused in

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<sup>9</sup> The detailed results of the survey, conducted by SIGMA DOS, as well as the methodology and the questionnaire used, are available on the website [www.mtas.es/mujer](http://www.mtas.es/mujer).

<sup>10</sup> In all the cases, large numbers of women were consulted (more than twenty thousand consulted by telephone in 1999 and 2002, and more than thirty thousand in 2006).

the last year have fallen according to all the surveys, as we can see in the following graph. Extrapolating the data for 2006 to the total number of women aged 18 and over residing in Spain at the beginning of that year<sup>11</sup>, the number of women technically considered abused would rise to more than one million eight hundred thousand, and the number of women who self-classify themselves as having been abused in the last year would be approximately six hundred and eighty thousand.



The evolution of violence against women in the domestic environment observed in the last few years shows a falling tendency, both with respect to technical abuse, which fell from 12.4% to 9.6% in the period 1999-2006, and to women who self-classified themselves as abused, which fell from 4.2% to 3.6% in the same period.

With specific reference to gender violence, as described in the Integral Act, it is worth highlighting that, in accordance with the results of the Macro survey conducted in 2006, 74.6% of the women who were considered technically abused, were abused by their partner (one million three hundred and fifty thousand women), whilst 57.3% of the women who self-classified them-

<sup>11</sup> According to the definitive data of the Municipal Register, on January 1st 2006, 18,844,946 women aged 18 and over resided in Spain.

selves as abused in the last year, were abused by their partner or ex-partner (nearly four hundred thousand women).

From the perspective of gaining insight into the gender violence described in the Integral Act, these surveys present the following limitations:

- In relation to «technical abuse», the questions and answers of the survey exclusively refer to situations occurring within the context of co-existence, therefore there is no possibility of gaining insight into technical abuse exercised by an ex-partner or a partner who does not live with the victim.
- As regards «declared abuse», this only refers to the last year, but the descriptive analysis of its evolution, through the three surveys, as well as of the socio-demographic characteristics of the women, make reference to women who have declared (or not) having suffered abuse by some member of the family.

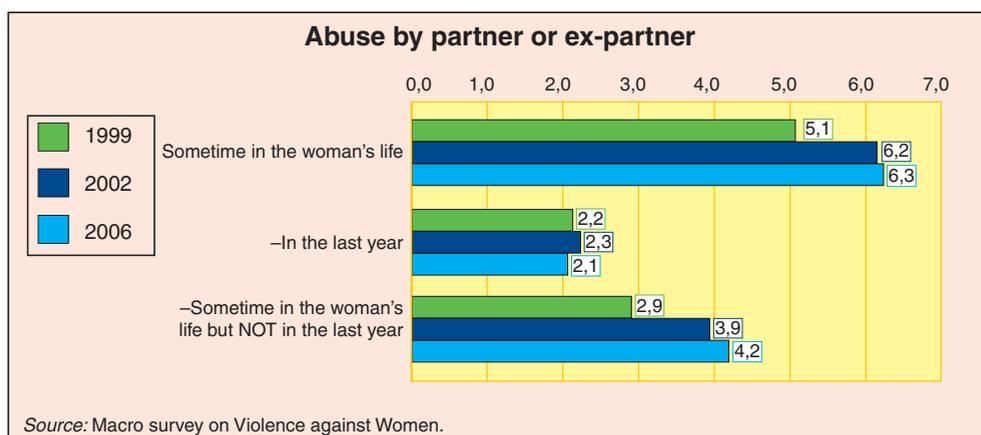
In this respect, the Special Delegation of the Government on Violence against Women, with SIGMA DOS, has re-exploited the data to gain further insight into violence against women exercised by their partner (spouse, intimate partner or boyfriend) or ex-partner (ex-spouse, ex-intimate partner or ex-boyfriend), whether or not living together, through a specific exploitation of data which, despite presenting some limitations, provides a picture of the profile of women who suffer this specific type of violence. This re-exploitation discarded, for the reasons mentioned above, «technical abuse», however, it incorporated the exploitation and analysis of declared abuse that refers to abuse suffered «at some point in the woman's life». Therefore, a new tabulation of the three macro surveys has been conducted based on the subgroup of the population made up of the interviewees who affirmed having been abused by their husband/partner and/or ex-husband/ex-partner.

The abuse of this approximation is established through the self-classification of the women interviewed, what we could call subjective abuse, which, as mentioned above, is significantly lower than the one detected through male behaviour.

Abuse by partner or ex-partner	1999	2002	2006
TOTAL WOMEN	100,0	100,0	100,0
Never	94,9	93,8	93,7
At some point in the woman's life	5,1	6,2	6,3
—In the last year	2,2	2,3	2,1
—At some point in the woman's life but NOT in the last year	2,9	3,9	4,2

*Source:* Macro survey on Violence against Women.

The figures in the above table show the percentages of women who, in the different macro surveys, declared having been, or not, abused at some point in their lives, as well as the percentages of women who affirmed that they considered themselves abused in the last year. The data reflect a statistically significant increase in the proportion of women who declared having suffered abuse by their partner or ex-partner at some point in their lives; on the other hand, there are no statistically significant variations in the percentages of women who, in the different surveys, declared having suffered abuse in the last year. The proportion of women who found a « way out » of the situation of abuse (i.e., those who manifested having suffered abuse at some point in their lives but not in the last year) increased significantly (from 2.9% of the total number of those interviewed in 1999 to 4.2% in 2006).



The information available enables us to analyse the differences between abuse suffered from the partner and the ex-partner, as well as its evolution from 2002 to 2006. In 2006, the percentage of women who declared having been abused at some point in their lives by their ex-husband/ex-partner (3.2%) was higher than the percentage of women who declared having been abused at some point in their lives by their husband/partner (2.9%). Compared with 2002, the latter percentage fell (from 3.6% to 2.9%) whilst the first increased (from 2.5% to 3.2%).

In relation to abuse suffered in the last year, the same situation can be observed: the proportion of women abused by their husband/partner fell from 1.8% in 2002 to 1.5% in 2006. By contrast, abuse by their ex-husband/ex-partner increased from 0.5% in 2002 to 0.6% in 2006.

The information relative to the differential impact of violence according to marital status corroborates the above data. Separated and divorced women manifest in far greater numbers having suffered violence and, to make matters worse, this seems to be a growing trend. In 1999, 37.5% of separated women and 27% of divorced women declared having suffered violence at some point in their lives; these figures fell among married women to 4.6%, among widows to 4.3% and among single women to 3%. Compared with 1999, in 2006 the incidence of violence among separated and divorced women increased sharply, reaching 46.9% and 45.2%, respectively, (however, these values are lower than those for 2002). From a statistical point of

Abuse by partner or ex-partner (% horizontal)	Never			At some point in the woman's life								
				Total at some point in the woman's life			At some point in the woman's life			At some point in the woman's life but NOT in the last year		
	1999	2002	2006	1999	2002	2006	1999	2002	2006	1999	2002	2006
TOTAL	94,9	93,8	93,7	5,1	6,2	6,3	2,2	2,3	2,1	2,9	3,9	4,2
Single	97,0	94,9	93,9	3,0	5,1	6,1	1,1	1,3	1,7	1,9	3,8	4,5
Married	95,4	95,5	96,0	4,6	4,5	4,0	2,5	2,5	1,9	2,1	2,0	2,2
Separated	62,5	45,8	53,1	37,5	54,2	46,9	16,7	15,2	14,1	20,8	39,0	32,8
Divorced	73,0	47,9	54,8	27,0	52,1	45,2	5,3	11,4	10,0	21,7	40,7	35,2
Widow	95,7	95,4	95,8	4,3	4,6	4,2	0,4	0,3	0,4	3,9	4,3	3,8

Source: Macro survey on Violence against Women.

view, the increase in the number of single women who manifest having suffered abuse from their partner or ex-partner at some point in their lives is significant; however, the increase in the number of single women who found a «way out» of the situation of abuse is equally significant.

Gender violence takes place among women of all ages, social classes, labour situations, size of municipality, academic background, ideological tendencies and religious beliefs, despite the different magnitudes. With reference to the «self-declaration» of having suffered abuse at some point in her life:

- By age group, the highest rate of declarations of abuse is among women aged 30 to 59 (more than 7.4% of the total number of women in that age group); also worth highlighting is the sharp increase in abuse declared by women in the 18 to 29 age group, which increased from 3.1% in 1999 to 6.0% in 2006.
- By size of municipality, a higher number of declarations of abuse are reported in large municipalities, manifested by 6.9% of women living in municipalities with more than 50,000 inhabitants.
- By labour situation, the highest percentages of declared abuse are among women (both in employment and unemployed), with percentages of 8.6% and 9.5%, respectively, in 2006, and these values double the percentages of abuse declared by women in other labour situations.
- By academic qualifications, it seems that education, even at higher levels, has little effect on violence, although the highest percentages of women who manifested having suffered gender violence are among those with mid-level academic qualifications. In 2006, these values respond to women holding a «General Certificate of Secondary Education» with 7.2%, and those holding an «Advanced Level Certificate of Secondary Education» with 7.7%; the latter group is the one with the highest increase in the period under study, rising from 4.3% in 1999 to 7.7% in 2006.
- Women claiming not to practice any religion, and agnostics or atheists, manifested having suffered abuse in greater numbers than those claiming to be Catholics (both practicing and non-practicing).
- If we analyse the evolution of this variable, women who describe themselves as «non-practicing Catholics» and «agnostics/atheists» expe-

rience increases similar to those observed in the total figures, those who describe themselves as «practicing Catholics» maintain a percentage that has varied little in the different years, whilst non-Catholics who «do not practise any religion» experienced a strong increase in 2002, reaching 11.3%, and in 2006 recover the percentage of 1999 (7.9%).

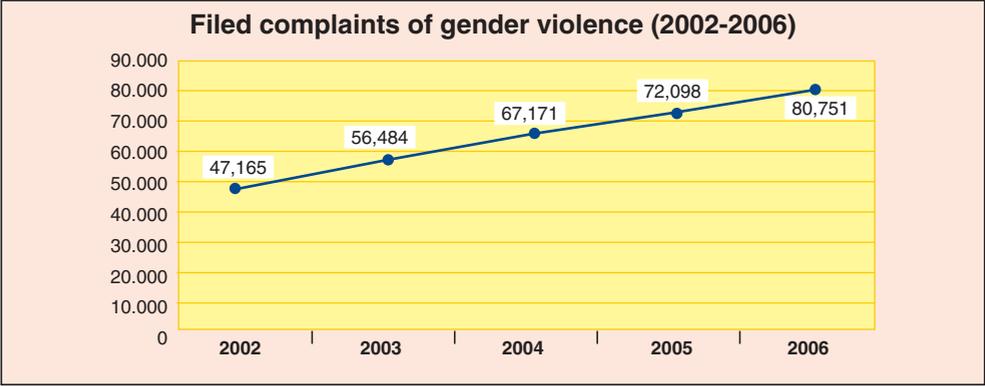
- By ideological tendencies, women who situate themselves on the centre-left, manifest abuse in greater numbers than those who situate themselves on the right; however, the values corresponding to violence declared by women who situate themselves on the left (7.4% in 2006) are similar to those manifested by women who situate themselves on the centre-right (7.3% in 2006).
- By household income, women with lower incomes declare a higher rate of gender violence, although the widest difference is only found in income levels that are «significantly below the average», where 9.1% of women declared having suffered abuse at some point in their lives.

With the above values we can affirm that none of the mentioned socio-demographic values provide a pattern that would enable us to affirm that certain characteristics of women are decisive for a higher or lower incidence of abuse.

### **2.1.2. Number of complaints filed**

The figures relative to complaints of gender violence that are normally used exclusively refer to the complaints filed in the National Law Enforcement agencies. They therefore do not include complaints filed in the police offices of the autonomous communities, local police offices or those filed directly in courts of justice.

This means that the information normally used is incomplete and that the scale of the problem is widely unknown. The complaints that remain excluded from those filed in National Police offices or Civil Guard offices do not just vary, as one would expect, with respect to the numbers for each period, but in addition, there is nothing that would allow us to affirm that the socio-demographic characteristics of the victim and of the alleged aggressor, and the circumstances of the acts subject of the complaints, correspond with the characteristics and circumstances of the complaints on which information is available.



The data below, which refer to complaints filed in the period 2002-2006, include those filed in the National Law Enforcement agencies (National Police offices and Civil Guard offices), the police offices of the autonomous community of Catalonia (Mossos d’Esquadra) and the police offices of the autonomous community of the Basque Country (Ertzaintza), but not the complaints filed in local police offices or courts of justice.

The data relative to the National Law Enforcement Agencies, which are published in the Annual Statistics Report of the Ministry of the Interior under the heading «women victims of abuse in the family environment», appear as «complaints» in the website of the Women’s Institute; it is worth highlighting that the data come from the Safety Statistics Programme of the Ministry of the Interior.

Taking these data as a starting point, the data corresponding to «known and/or reported criminal offences» relative to the Mossos d’Esquadra (which not only include violence against women by their partner or ex-partner, but also other violence against women in the domestic environment) have been added to the figures of Catalonia; likewise, the data on «victimizations of women by their spouse or similar» which include all occasions when an individual has been the subject of a criminal offence and, as such, are registered by the Ertaintza following a citizen complaint or statement, have been included in the data relative to the Basque Country. However, we will use the expression «complaints» to simplify the presentation and the analysis. The breakdown of the figures according to the source of the data is as follows:

Year	TOTAL	National Law Enforcement Agencies	Mossos d'Esquadra	Ertzaintza
2002	47,165	43,313	2.340	1.512
2003	56.484	50.090	4.621	1.773
2004	67.171	57.527	7.631	2.013
2005	72.098	59.758	10.319	2.021
2006	80.751	62.170	16.365	2.216

As we can see, the number of gender violence complaints from 2002 to 2006 followed an ascending evolution from one year to the next. The figure for complaints filed in 2006 gives a 71.21% increase compared with the figure for 2002.

In relation to the complaints of gender violence filed before the National Law Enforcement agencies, these make up 70% of the cases of offences against human life.

The increase in the total number of gender violence complaints has been accompanied, in the period under study, by an increase in the rate of complaints for every one thousand women aged 18 and over residing in Spain<sup>12</sup>, as illustrated in the following table.

Year	TOTAL COMPLAINTS	Women aged 18 and over	Rate of complaints for every one thousand women aged 18 and over
2002	47,165	17.702,200	2,66
2003	56.484	18,059,731	3,13
2004	67.171	18,265,026	3,68
2005	72.098	18,613,011	3,87
2006	80.751	18.844.946	4,29

By autonomous community, the evolution of the figures of complaints of gender violence has been irregular although, no doubt, the most significant data is that the evolution of the number of complaints in all the autonomous

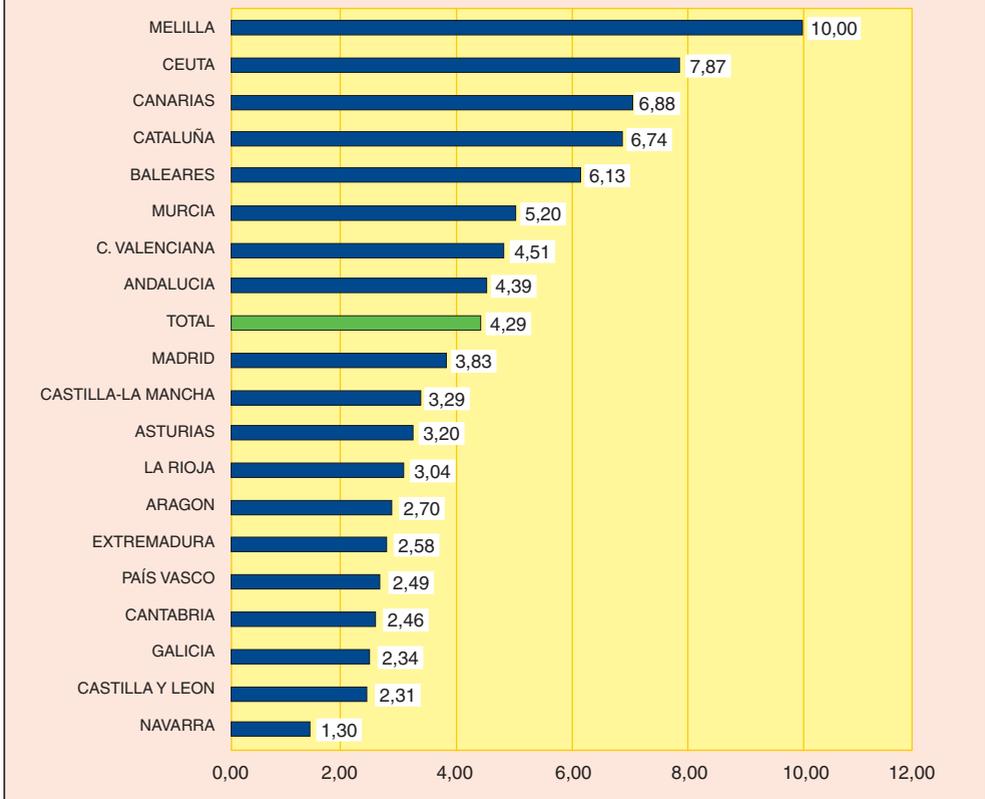
<sup>12</sup> The population of women aged 18 and over has been calculated using the data from the Municipal Register on the 1st of January of each year under study, as a reference.

communities has followed an ascending tendency (with the exception of Melilla and Navarra, which have very low figures), as we can see in the following table.

	2002	2003	2004	2005	2006	% Variation 2002-2006
<b>TOTAL</b>	<b>47.165</b>	<b>56.484</b>	<b>67.171</b>	<b>72.098</b>	<b>80.751</b>	<b>71,21</b>
Andalucía	8.848	10.503	12.421	13.691	14.248	61,03
Aragón	988	1.041	1.265	1.412	1.469	48,68
Asturias	1.000	1.248	1.354	1.501	1.586	58,60
Baleares	1.351	1.706	2.136	2.278	2.524	86,82
Canarias	3.981	4.630	5.377	5.586	5.599	40,64
Cantabria	496	608	651	668	614	23,79
Castilla-La Mancha	1.507	1.837	2.158	2.257	2.587	71,67
Castilla y León	2.045	2.167	2.367	2.463	2.544	24,40
Cataluña	7.453	9.808	13.242	15.018	20.239	171,56
Com. Valenciana	5.235	6.415	8.053	8.290	9.027	72,44
Extremadura	809	965	1.100	1.155	1.153	42,52
Galicia	1.985	2.275	2.464	2.737	2.912	46,70
Madrid	6.776	7.914	8.869	9.260	9.942	46,72
Murcia	2.076	2.460	2.516	2.621	2.793	34,54
Navarra	338	322	392	347	327	-3,25
País Vasco	1.534	1.794	2.027	2.036	2.332	52,02
La Rioja	257	314	309	334	388	50,97
Ceuta	212	234	240	222	222	4,72
Melilla	274	243	230	222	245	-10,58

Comparing the figures for 2006 with those for 2002, the highest increases are observed in Catalonia, the Balearic Islands and the Autonomous Community of Valencia. It is also worth highlighting that the autonomous communities of Castilla-La Mancha, Andalusia, Asturias, the Basque Country and La Rioja have experienced increases of more than fifty percent.

**Rate of complaints of gender violence as a proportion of the female population aged 18 and over by Autonomous Community (2006)**



As regards the rate of complaints according to autonomous community and for every one thousand women aged 18 and over, in relation to 2006, when 4.29 complaints were filed for every one thousand women aged 18 and over residing in Spain, as we can see from the above data, Navarra is the autonomous community with the lowest rate (1.30) and Melilla is the territory with the highest rate (10%). The rate in each autonomous community is provided in the above table.

With specific reference to the data obtained from the National Law Enforcement agencies, several basic points are worth mentioning. In general, the **diagnosis** based on the statistical information compiled from police action as a result of complaints **presents an ascending curve in all the parameters** associated with victims of gender violence:

- The number of **complaints of abuse in the family environment filed by women** increased by **260% in five years**, rising from 30,269 in 2000 to 78,256 in 2005.
- The most relevant variability in the ascending curve is attributable to the **events pre-classified by the National Law Enforcement agencies as offences** (which increased by 842% in five years) compared with the minor offences (which began to fall as of 2004). In this fall in the number of minor offences and the rise in criminal offences, within a general context of rising criminal gender violence offences, we assume a **causal effect** of the legal changes introduced by Organic Act 1/2004.
- Of all the women abused in the family environment, those abused by their **spouse or similar**<sup>13</sup> **tend to represent 75%**, and this trend has steadily increased since 2000 to make up 83% of the offences and 75% of the minor offences in 2005.
- In the Safety Statistics, the complaints filed by **men against their spouses or similar in National Law Enforcement agencies under the section of abuse** were **11.080** in 2005 (4.518 pre-classified by the National Law Enforcement agencies as offences and 6.562 as minor offences). **The complaints filed by men make up 14% of the complaints filed by women.**
- Contrary to what happens with the victimization of women, complaints filed by men are more frequently pre-classified by the National Law Enforcement agencies as **minor offences rather than regular offences**, and this difference is more evident when the alleged aggressor has been the man's spouse or similar.

In comparison with other criminal offences classified as offences against human life, **abuse in the family environment made up approximately 70% of this group of offences** in 2004 and 2005. For example, general injuries in offences against human life, which tend to make up the bulk of this category, only amount to 30% of cases of abuse in the family environment.

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<sup>13</sup> Which, since 2002, for the National Law Enforcement agencies include separated/divorced, intimate partner, boyfriend and ex-boyfriend.

The Safety Statistics of the Ministry of the Interior on offences against human life do not disaggregate arrests of individuals for gender violence offences other than as abuse in the family environment and, in addition, they are represented in another category as offences against freedom, where regular abuse in the family environment is normally recorded. The breakdown of arrests according to the characteristics of the arrested individuals does not include the subdivision of abuse, neither with respect to offences against human life nor to offences against freedom (and this **gap seems important** since the statistic includes a whole series of variables per person arrested, which, as in the case of consumption of alcohol or drugs, criminal record, age, academic background, and situation before and after the arrest, constitute factors whose relationship with gender violence is pending to be determined).

In any case, arrests for abuse in the family environment are very predominantly male, both in the section of offences against human life (31,744 men and 1,772 women) and in offences against freedom (5,888 men and 228 women). In general, **the persons arrested for abuse offences are men in 95% of the cases.**

As regards the relative numbers of persons arrested under the categories of family abuse compared with other categories of offences against human life, reflecting a clear parallelism with the categorization of victims of violent offences, the persons arrested for abuse in the family environment exceed **by more than double the second category of offences against human life - injury offences.**

This profile of arrests is all we can extract from the Safety Statistics of the Ministry of the Interior for 2005, given that prior to that year, the reports of previous years did not even provide breakdowns of offences against human life in order to get an idea of abuse in the family environment. This deficiency is not due to a lack of available information (which, as we mentioned, is contained in the standard police action forms), but to the structure of the statistical product of the Ministry of the Interior.

In short, a profile that includes socio-demographic data reflecting the characteristics of aggressors arrested by the state security apparatus (the police) has still not been published on a national scale.

Gender violence is an integral violence made up of acts of psychological and physical violence that manifests itself in the emotional, sexual, in-

terpersonal, family, labour, economic, cultural and social life of the abused woman. Since more than a decade ago, the reports issued by the World Health Organisation on general violence<sup>14</sup> and violence against women<sup>15</sup>, and the United Nations on the same subject<sup>16</sup>, recognise this multiplicity and multidimensional manifestation of gender violence. In Spain, sociological<sup>17</sup> and sociometrics<sup>18</sup> studies continue to remind us of the clinical observations that reflect the multifaceted nature and expression of violence against women.

The multidimensional structure of gender violence adapts, in each individual case of a person abused, to the specific topography of the aggressions exercised against the victim in a longitudinal manner but, in particular, to the violence tactics chosen by the aggressor to instrumentally administer the violence with the aim of achieving his domination objective. Violence, applied systematically, is an instrument of domination whose only objective is to achieve the subjugation of the victim to the aggressor's will.

From a safety point of view, up until 2006, there was no specific and detailed record of the different forms of violence perpetrated on victims, beyond the description of the facts contained in the police statement.

Insight into the forms of violence perpetrated by aggressors on victims for reasons of gender is not a minor issue. A clear typological classification of gender violence would not only have repercussions on preventive measures and on the general response to the phenomenon, but it would also tai-

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<sup>14</sup> World Health Organisation (2002). World Report on Violence and Health. Geneva: WHO

<sup>15</sup> World Health Organisation (1997). Violence Against Women: A Priority Health Issue. Geneva: WHO

<sup>16</sup> United Nations General Assembly (1993). Declaration on the Elimination of Violence Against Women.

<sup>17</sup> Alberdi, I. and Matas, N. (2002). La violencia doméstica. Informe sobre los malos tratos a mujeres en España: La Caixa Foundation.

<sup>18</sup> Women's Institute (2006). III Macro survey on Violence against Women.

lor the legal and procedural approaches to acts of violence. As an indicator of this importance, it is worth considering that psychological violence is recognised as one of the forms of violence with a stronger impact on the long-term health deterioration of the victim. However, from a criminal procedure point of view, it is one of the most complicated forms of violence to prove in court. In addition, on a phenomenological scale, we could see an increase in psychological violence if systematic aggressors were to adapt their violent behaviour in response to the detection mechanisms of physical aggressions used by public authorities. It sometimes occurs that specific tactics of violence, such as those belonging to the economic category (control of the victim's money) or the interpersonal sphere (control over communication or leisure time), are not recognised in criminal proceedings as aggressive or coercive ingredients of a relationship, due to the above-mentioned procedural oversight and the problems in using them as evidence, as well as to their non-inclusion in the typologies of gender violence recognised by the legal system, among other factors not included in preliminary hearings as points worthy of consideration.

## **2.2. ANALYSIS OF MAIN ELEMENTS AND CIRCUMSTANCES OF HOMICIDES OF WOMEN PERPETRATED BY THE PARTNER OR EX-PARTNER**

In this respect, it is worth mentioning the annual reports that, since 2001, are prepared by the Inspection Service of the General Council of the Spanish Judiciary on request of the Observatory against Domestic and Gender Violence, based in the first mentioned body.

It is also worth highlighting that several media and other entities publish in their websites updated and individualised information on all mortal victims.

On its part, the Annual Statistics Report of the Ministry of the Interior disseminates the figures of murdered women in the family environment, providing details of the kinship relationship with the aggressor. Its data however, in a similar way as mentioned in the previous section, corresponding to complaints, only include the information issued by the offices of the National Police and the Civil Guard.

The most widely used data source, however, has been the Women's Institute. Since the set up of the Special Delegation of the Government on Violence against Women, it continues to disseminate its permanently updated data, through the Women's Institute's website.

The data from the above mentioned sources do not always coincide, given that different criteria are used with respect to the moment of the aggression or the death, and a longer or shorter follow-up of the cases can determine whether or not the aggression or death is accounted for. In this respect, it is worth mentioning that, since the beginning of 2007, the Special Delegation of the Government on Violence against Women, the General Council of the Spanish Judiciary and the Prosecutor's Office are making efforts to co-ordinate the data.

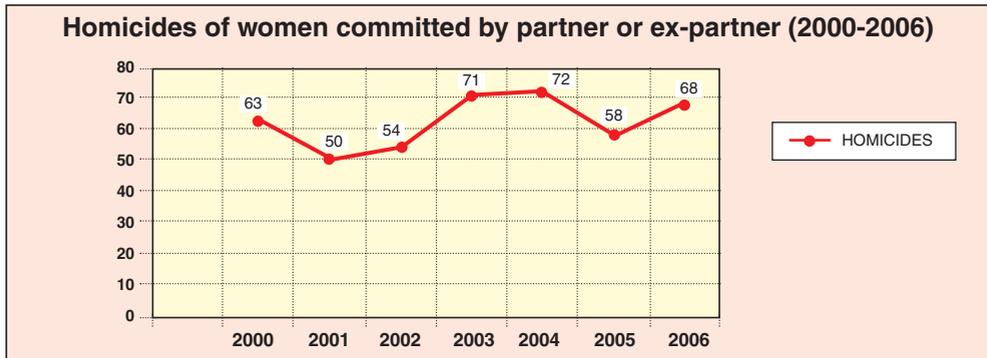
This section, which, except when otherwise indicated, uses data from the Women's Institute's website, focuses on the elements and circumstances that can be analysed from the data that is currently available, and with regard to homicides, because this is the manifestation of violence that tends to be accompanied by more exhaustive information. No doubt, this situation will gradually improve as more indicators become available that will broaden the analysis of the circumstances and will complete the ones considered here.

The circumstances included in this study are several aspects relative to the aggressor, the victim, the type of relationship, the place where the homicide took place and the mechanisms used to perpetrate the death of the women.

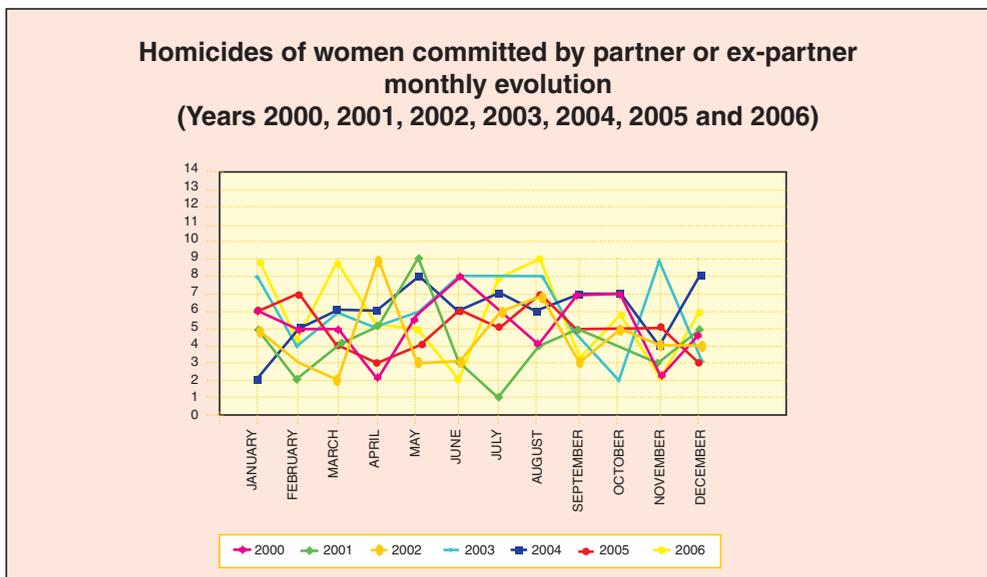
In some of these aspects, an analysis on their evolution during the years 2003-2006 will be conducted, given that this is the period during which the data relative to homicides have been gathered using homogenous criteria, and their behaviour will be compared using the Integral Act as the reference, although, given the short period of time considered, more than a statistical conclusion, the results will provide a description of the reality in the last four years.

## 2.2.1. Homicides of women perpetrated by the partner or ex partner

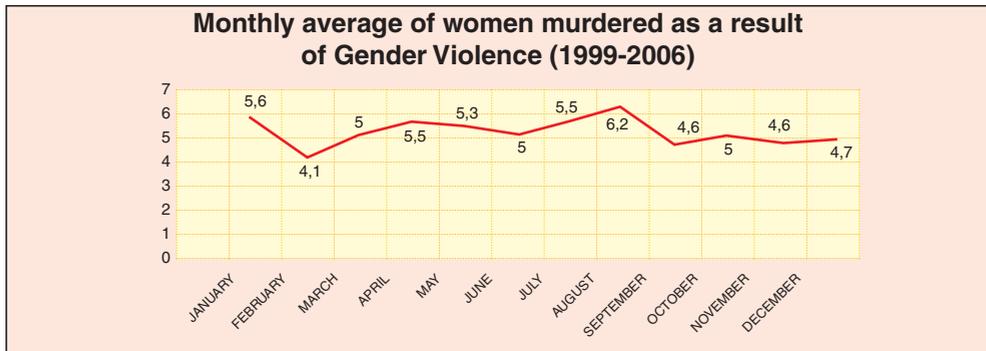
As of the year 2003, a change of criteria in the way data on gender violence, particularly with respect to homicides, was gathered took place. This change enabled the homogenization of information and facilitated diachronic comparative studies.



Although the annual pattern of homicides occurred in the different months follows a very irregular distribution, as we can see from the following graph, the overall assessment of the different crimes committed from 2002 to 2006 provides a pattern of enormous interest for analysing some of the circumstances surrounding these cases.



This overall assessment of homicides through time highlights the existence of two moments in which the number of homicides reached higher levels, one of them is August and the other is the Christmas period (December and January), a fact that indicates that the special circumstances of these periods have a direct effect on partner relationships and on how the aggressor interprets them, acting as an added factor in the triggering of homicide violence.



Another interesting piece of data, particularly because of its repercussions on the way news and information on cases of gender violence are handled, is the clustering of cases in the initial days following a homicide. In this respect, the following table offers the main data for the years 2003, 2004, 2005 and 2006.

<b>PERCENTAGE OF HOMICIDES PRODUCED IMMEDIATELY AFTER A PREVIOUS HOMICIDE</b>				
<b>Results in %</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
<b>First day after a homicide</b>	16.2	28.1	23	38
<b>First two days after a homicide</b>				<b>47.5</b>
<b>First three days after a homicide</b>				<b>61.9</b>
<b>Within seven days after a homicide</b>				<b>76.2</b>
<b>Most frequent time difference between homicides</b>	2 días (20.6%)	1 día (18.7%)	5 días (13.1%)	1 día (30.1%)
<b>Total number of homicides</b>	71	72	58	68
<b>Difference between homicides according to a homogenous distribution</b>	5.1	5.1	6.2	5.3

As we can see, there are certain factors that tend to cluster cases in the initial days following a homicide. Therefore, although the average length of time between homicides based on a homogenous distribution of the number of cases produced each year would be 5.4, 50.4% of all homicides take place within 3 days of a previous homicide, largely in the following two days: on the second day in 2003, with a percentage of 20.6; and on the following day in 2004 and in 2006, with percentages of 18.7 and 30.1, respectively. In 2005, despite the fact that 42.7% of the cases clustered in the initial three days following a previous homicide, the most common length of time between homicides was 5 days, with 13.1% of the cases of the annual total, very close to the expected difference between homicides according to a homogenous distribution, which would be 6.2 days.

The results point to the existence of factors that tend to cluster the cases, and although the factors involved are wide ranging, some exercising an influence on individual cases in a specific manner, and others interfering in the circumstances that generate a general rise in violence against women, as it tends to occur in summer and at Christmas, we should not discard general factors that may have a triggering effect on new aggressions, not as much due to imitation but for accelerating the idea previously inside the aggressor's head.

The relation with the total number of homicides and with other factors that have a direct or indirect effect on homicides, for example, gender violence awareness-raising, are elements that must be considered in a more in-depth analysis of these circumstances.

The following table shows a comparison between homicides perpetrated before and after the Integral Act.

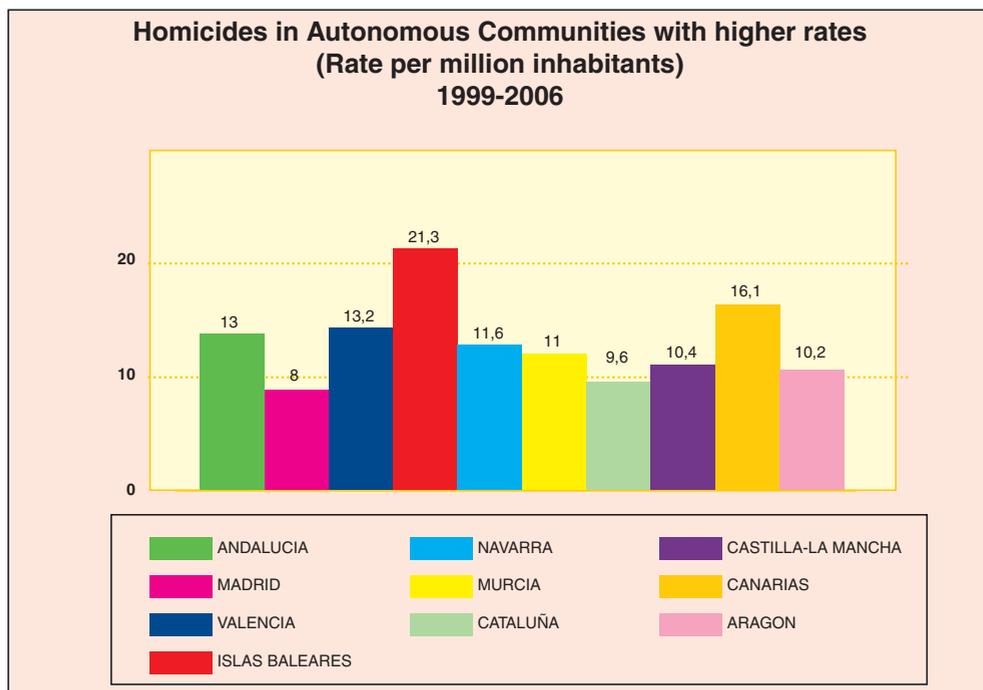
	<b>2003-2004 (Before Act 1/2004)</b>	<b>2005-2006 (After Act 1/2004)</b>	<b>VARIATION</b>	<b>% VARIATION</b>
HOMICIDES	71,5	63	(-) 8,5	<b>(-) 11,9%</b>

Although the analysis should not be confined to a fixed picture of the situation before and after the Integral Act, and we will complete it with an overall assessment of other elements and circumstances, a first general conclusion on the characteristics of gender violence in its most extreme

manifestation helps to contextualise the study and shows how Organic Act 1/2004 has introduced elements that have given rise to a change in the previously situation and, probably, to a new scenario in which the social impact of the new regulation has given way to different stances on gender violence. In this respect, the first consequence has been the significant fall in the number of homicides in the year 2005, although in the last year under study, 2006, the number increased again, albeit not reaching previous levels. This new more dynamic and interactive situation is closely associated with the critical stance of society towards violence, an element that we will analyse in chapter 3 of the report.

The distribution of homicides varies in the different autonomous communities, and although, in absolute terms, there is a relationship between number of inhabitants and number of homicides, as in the case of the number of complaints filed, when calculating the rate of homicides per million inhabitants, substantial changes are observed in this indicator.

The following graph shows the rate of homicides per million inhabitants in the autonomous communities with higher rates in the period 1999 - 2006.



We should point out that, in general terms, the autonomous communities with higher rates of filed complaints also present a higher rate of homicides, although in the case of La Rioja, Castilla y León and Navarra, the variations are higher due to the fact that the population of reference is smaller.

The challenge is big, given that, apart from the need to change the situation in relation to the previous manifestations, we must also change the culturally established references in society in order to be able to interpret the meaning of this kind of behaviour and, to do this, information and social awareness are crucial. In this respect, the media has a strong responsibility and it needs to break away from the criteria that the normalization of violence has established as references, a circumstance that leads the media to practically only concentrate on cases of homicide or victims of extreme violence, and to subsequently reconstruct the alleged scene of the partner relationship based on two suppositions, either highlighting a theoretical normality in the relationship and presenting violence as something abnormal that somehow interferes in the relationship, or portraying the opposite situation, where abnormality characterises the couple (deterioration of the relationship, confrontations, crisis, break-up, etc.) and gives rise to violence. In either case, gender violence is not presented as a construction established by the aggressor to maintain control, privileges and a position of superiority.

The scale of gender violence indicates that we are immersed in a complex and «mammoth» structure (for its historical nature and for its dimensions) which spans from the values of its foundations to the latest manifestations in the shape of aggressions and homicides, but it is all part of that same construction which must be the reference for comprehensive action to combat violence against women as a global problem. Therefore, based on this global concept and reference, some of its main elements are studied for the purpose of assessing the effectiveness of the measures and to adapt them to the reality of violence.

## **2.2.2. The aggressor in gender violence**

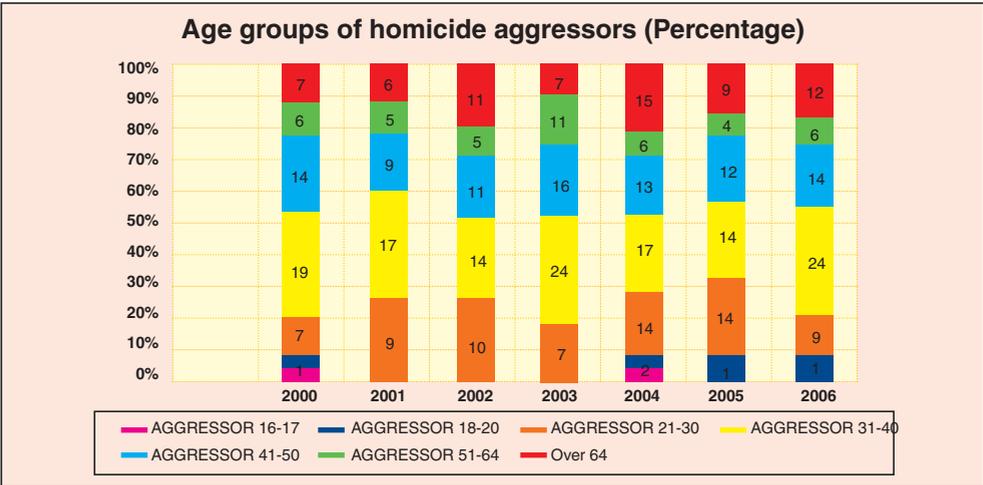
### **2.2.2.1. *Age of homicide aggressors***

One of the features of homicide aggressors that stands out the most is the enormous variability, which is something that shatters the idea of the «aggressor profile» and the link with specific social and cultural circumstances.



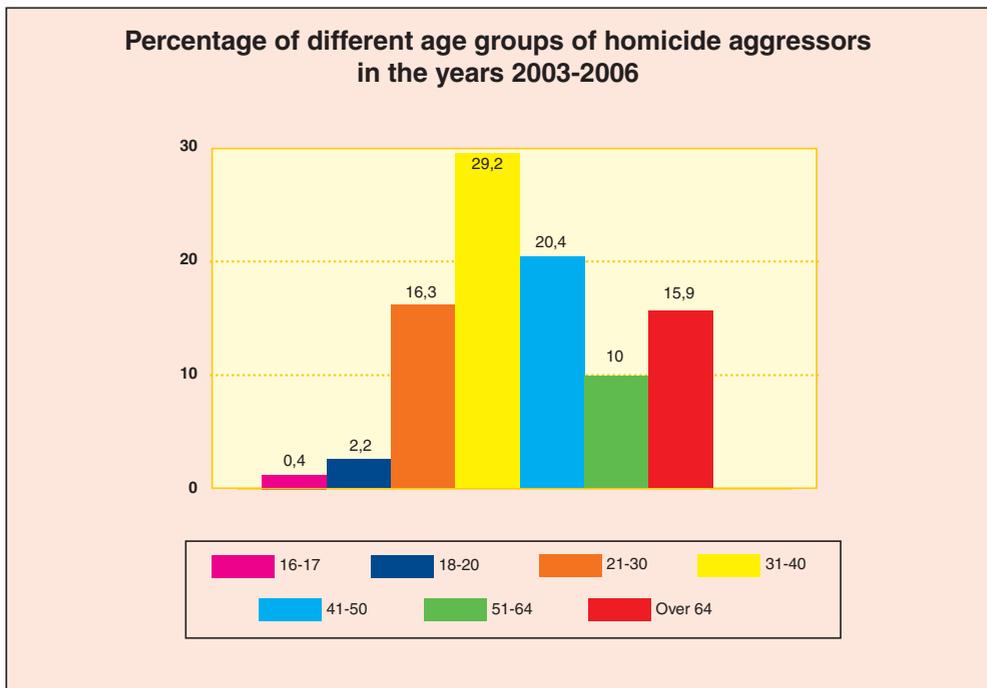
As we can see from the graph, all the age groups follow an evolution characterised by irregularity and discontinuity. Therefore, the behaviour follows rising and falling tendencies with a sharp variation between the increases and the decreases. We cannot see any consolidation or maintained position in any age group, which shatters the classic association that used to be made between gender violence and some circumstances arising more frequently in specific periods of life in society.

The percentage study illustrated in the following graph reflects the same situation.



One piece of data that stands out in the analysis of the age of homicide offenders is a certain consolidation of the tendency at both ends of the age scale, the 18-20 and the 64 plus age groups. This is a significant factor that emphasizes the absence of a profile and a set of social circumstances as directly responsible for violence, and reinforces the cultural context as the general factor that gives rise to gender violence through each of the aggressors, who, on an individual basis, turn to socio-cultural elements to build a relationship marked with violence, materialising it in a different way in each individual case.

Clustering the information on the age of aggressors in the period 2003 - 2006, we can observe that the largest group of homicide offenders is the 31-40 age group, followed by the 41-50 age group. Likewise, this highlights a significant variability, but, in particular, the resurgence of violence as of the age of 64, after its progressive fall as of the age of 40, a factor that coincides with that presented in the diachronic study, where we observed this increasing tendency within the inter-annual variability.

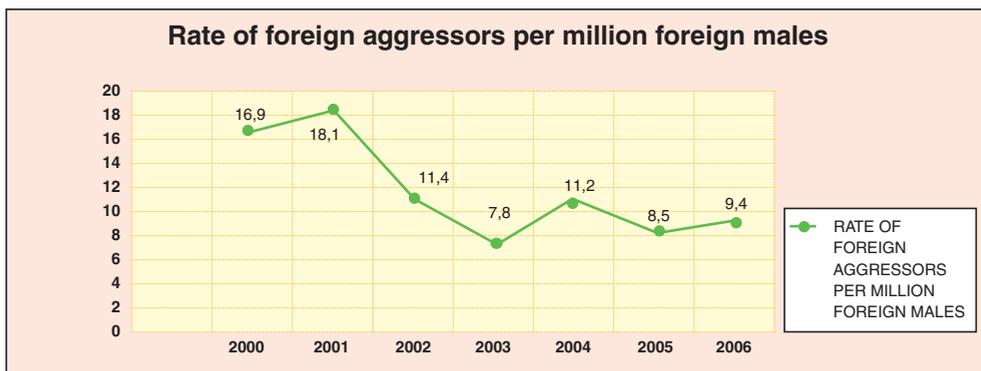
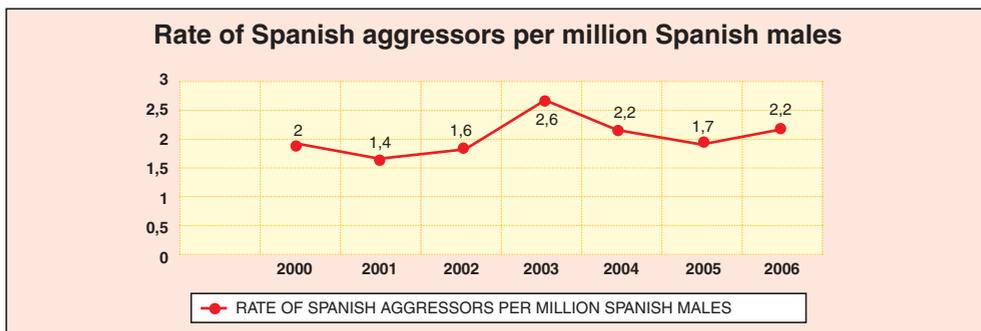


### 2.2.2.2. Nationality of homicide offenders

The majority of homicide offenders are Spanish. The graph below illustrates the percentage of Spanish and foreign offenders, objectively highlighting the large difference between both groups and their evolution in the last few years.

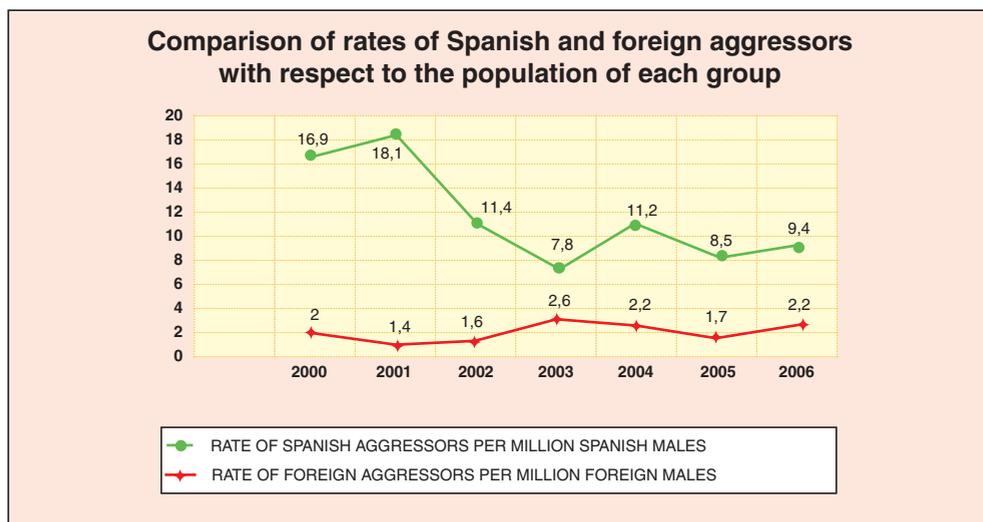


The rate of Spanish and foreign homicide offenders per million inhabitants in each of the groups analysed shows a different situation.



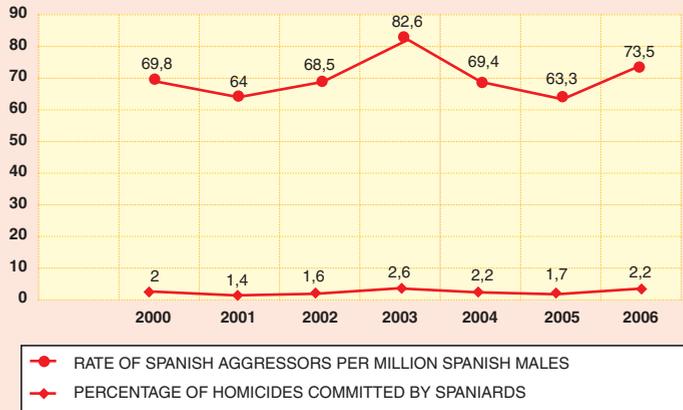
When calculating the rate of Spanish and foreign homicide offenders per million inhabitants in each group, we can see that whilst the average rate of Spanish offenders is 1.9, the rate of foreign offenders is 11.9, ten points higher than the first, indicating that although the number of Spanish offenders is higher than the number of foreign ones, in comparison with the resident population in our country, the latter are overrepresented, which highlights the different incidence of gender violence, in its manifestation of homicide, in both groups.

The comparative graph of both rates shows the different evolution followed by each group, and whilst the Spanish group has maintained a relatively stable situation, with a slight increase in 2003, the foreign group shows a descending evolution from 2001 to 2003, which is probably associated with the rise in the foreign resident population, although, as we can see below, this group has also seen an increase in the rate of violence.



The repercussion of the rate variations on the number of homicides provides significant data on the different behaviour of each of the populations considered. When establishing a relationship between the rate of Spanish offenders with the percentage of homicides perpetrated by this population group (following graph), we can see a parallel evolution between the causal element (rate of homicide offenders) and the result (number of homicides).

### Comparison between rate of Spanish aggressors per million Spanish males and percentage of homicides committed by Spaniards



However, when we compare these same elements in the foreign population (rate of offenders per million and homicides perpetrated by foreigners), we can see a different evolution with a significant increase in the percentage of homicides perpetrated by foreigners as of 2003, particularly in the year 2005, when the homicides perpetrated by this population group made up 36.7%, whilst the rate of foreign aggressors was 8.5.

### Comparison between rate of foreign aggressors per million foreign males and percentage of homicides committed by foreigners



The assessment of these elements, taking the Integral Act as the reference, reveals very relevant data, as illustrated in the following table.

	2003-2004 (Before Act 1/2004)	2005-2006 (After Act 1/2004)	VARIATION	% VARIATION
Average rate of foreign <b>aggressors</b>	9,5	8,9	(-) 0,6	<b>(-) 6,3%</b>
Average rate of <b>Spanish</b> aggressors	2,4	1,9	(-) 0.5	<b>(-) 20,8%</b>

The analysis shows a significant change as a result of the Integral Act, giving rise to a fall in the rate of aggressors in both groups, although, whilst the fall among the Spanish population was 20.8%, a percentage equal to a reduction in the number of homicides perpetrated by Spanish offenders from an average of 54 prior to the Act, to 44 in the last two years, in the foreign population the fall was just 6.3%, and does not entail a reduction in the number of homicides perpetrated by this population group, which in fact increased from an average 14.5 prior to 2004, to 17.5 after the Integral Act.

This situation reflects the positive effect of the new references established by Organic Act 1/2004, but it also highlights the difficulties and obstacles that exist among the different groups or sectors of the population, and whilst among the Spanish population a significant change has taken place as a result of the Act, in the foreign population the effect has been less significant, probably due to more difficulties in reaching this sector of the population, both with respect to the «new reality» defined by the Act, and to the measures and resources introduced after its enactment.

### **2.2.3. Victims of gender violence**

The victims of gender violence also make up a heterogeneous group with nothing in common except being women and holding a relationship with a man who turns to violence to build a partner relationship based on the dominance-subjugation model.

The existing differences between the victims, as we looked at when analysing the aggressors, are reflected in the variations of the different age groups over time.



The group with the highest number of victims is the 31 – 40 age group, however, as in the case of the aggressors, there is no uniform evolution, as it is marked by a sharp inter-annual variation, a factor that highlights the absence of a profile marked by social circumstances, as gender violence is often presented. We can also see a progressive increase in the highest age group (over 64 years), and a higher presence in the lower age groups.

The situation of the victims is conditioned by the perpetrators of the violence, therefore, an analysis aimed at defining preventive measures must necessarily be confined, although not exclusively, to the aggressors.

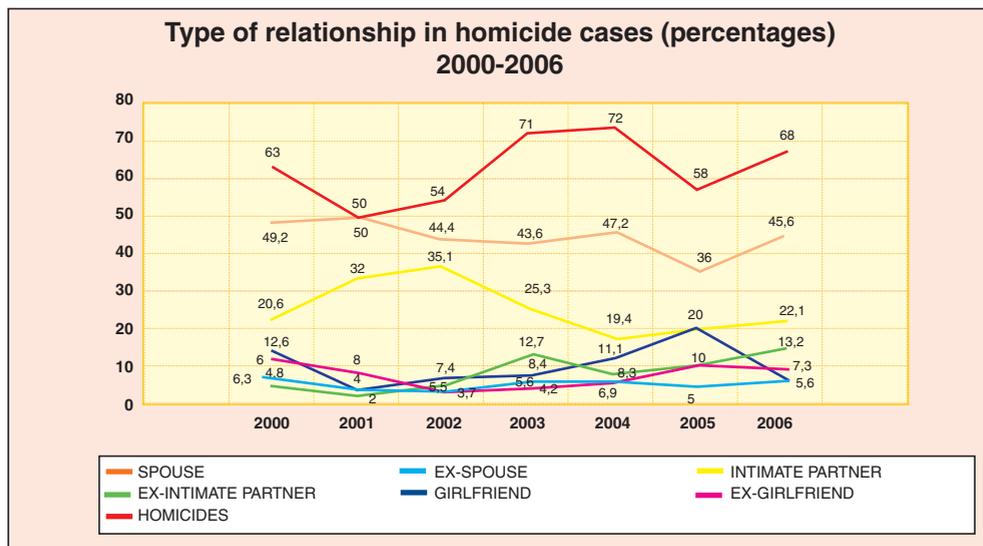
**2.2.4. Type of relationship between homicide offenders and victims**

Gender violence occurs in partner relationships built on a dominance-subjugation model, a dynamic and evolutionary situation that conditions the response of the woman who suffers it and that of the aggressor, and also gradually conditions the relationship to the new references introduced by the aggressor and the way in which the violence is manifested.

The main objective of violence against women is to gain control of the woman and to subject her to the demands imposed by her aggressor. Under these circumstances, an analysis of the characteristics of the relationship, particularly with respect to the moment of the break-up, are of enormous interest in understanding the aggressor’s motives and developing preventive

measures aimed at preventing new aggressions, particularly in their more serious manifestations.

The main types of relationships behind the homicides that occurred from 2000 to 2006 are covered in the following graph, together with the number of homicides, which are marked in red:



The most frequent type of relationship is the marital relationship, followed by the intimate partner relationship, girlfriend-boyfriend relationship in the third place, and in the fourth place, the ex-partner relationship.

When we analyse the different groups based on their characteristics in relation to a number of qualitative elements of the relationship, several interesting data come to light.

The evolution of the cases shows a decrease in the percentage of homicides committed in the partner relationship, both with respect to partners living together (spouses and intimate partners) and not living together (boyfriend-girlfriend), and an increase in the number of homicides committed in ex-partner relationships, and these trends have remained constant since 2003, independent of the number of homicides committed in those years.

When establishing a relationship between these data for the period prior to the Integral Act and the situation in the years 2005 and 2006, several differences stand out, as illustrated in the table below:

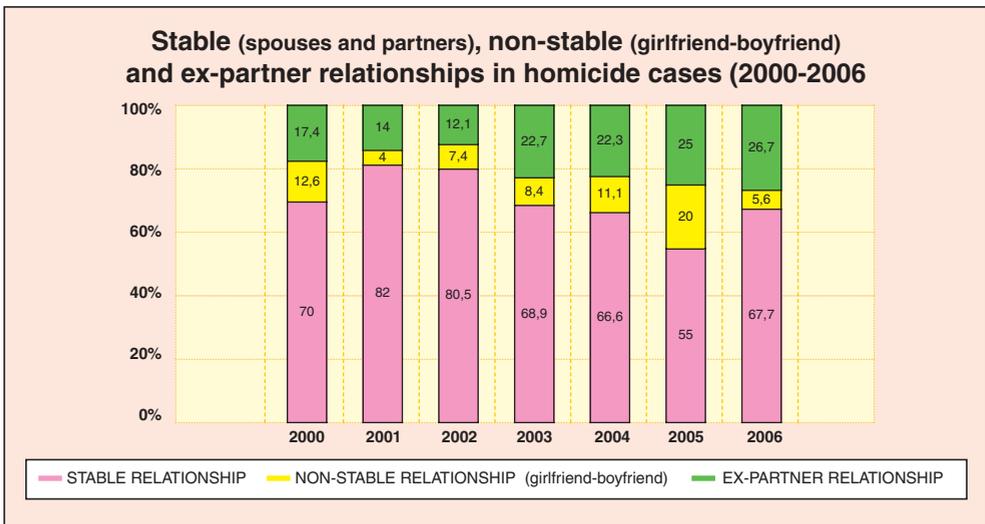
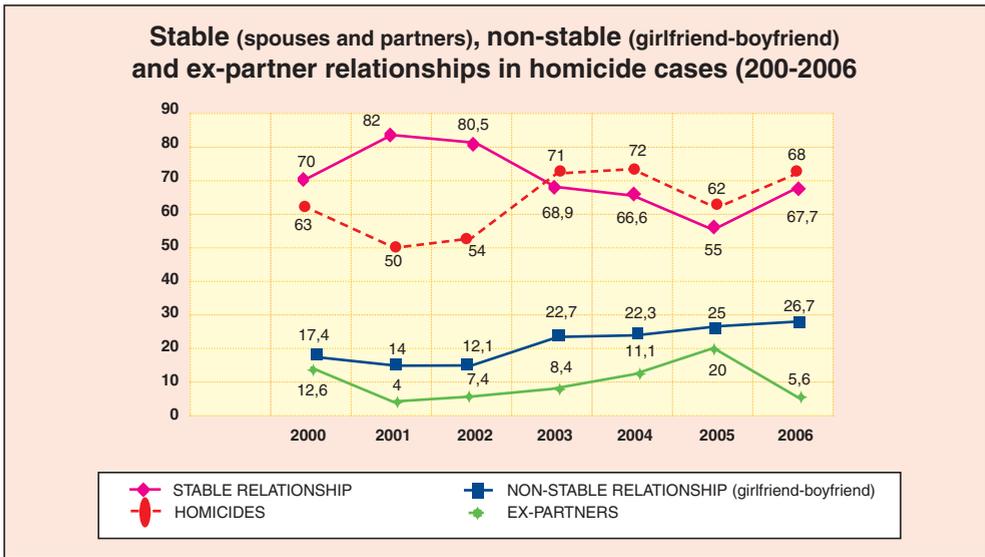
	2003-2004 (Before Act 1/2004)	2005-2006 (After Act 1/2004)	VARIATION	% VARIATION
% of homicides committed in <b>partner relationships</b>	77,5	74,1	(-) 3,4	<b>(-) 4.4%</b>
% of homicides committed in <b>ex-partner relationships</b>	22,5	25,8	(+) 3,3	<b>(+) 14.7%</b>

The number of homicides committed in stable partner relationships (whether or not living together) experienced a fall following the introduction of the Integral Act, whilst those committed in ex-partner relationships increased significantly, specifically by 14.7% compared with the period prior to the enactment of Organic Act 1/2004.

The homicides committed in the break-up phase of the partner relationship have evolved in a more irregular way, both when considered in isolation and together with those committed by ex-partners, although the graph reveals a very interesting piece of data in 2005, where we can see a sharp fall in the number of homicides committed in these circumstances, followed by a strong increase, a situation that coincides with the fall in the total number of homicides in the first year under study (the rate fell from 72 in 2004 to 62 in 2005), and subsequently increased to 68 in 2006.



If we compare the evolution of the percentage of homicides committed in stable relationships (spouses and intimate partners) with those committed in relationships where the partners do not live together and with those committed by ex-partners (following graph), we can see a falling tendency in homicides committed in stable relationships and a progressive increase in homicides committed by ex-partners (as we mentioned above) as well as in relationships where the partners do not live together, although in the first and latter case the tendency changes in 2006, coinciding with an increase in the number of homicides.



The analysis of the data on the type of relationship, with regard to the periods before and after the Integral Act, is summarised in the following table:

	2003-2004 (Before Act 1/2004)	2005-2006 (After Act 1/2004)	VARIATION	% VARIATION
% homicides committed in <b>co-existence</b> relationships	67,7	61,3	(-) 6,4	<b>(-) 9,4%</b>
% homicides committed in <b>non co-existence</b> relationships	9,7	12,8	(+) 3,1	<b>(+) 31,9%</b>
% homicides committed in <b>ex-partner</b> relationships	22,5	25,8	(+) 3,3	<b>(+) 14,7%</b>

After the enactment of Organic Act 1/2004, we also saw a fall in the number of homicides committed in relationships where the partners lived together, and an increase in the number of homicides committed by ex-partners (increasing by 9.4%) and, in particular, in homicides committed in girlfriend-boyfriend relationships, which went up by 31.9%.

### 2.2.5. Place where homicide takes place

The characteristics of the relationship condition the way in which the homicide takes place and, in particular, the place where it is committed.

The increase in the number of homicides committed by ex-partners and by boyfriends (not living with the victim) has given rise to a fall in the number of homicides committed in the homes of couples, and, as a result, to an increase in the number of homicides committed in the street or in places other than the homes shared by couples, as we can see in the graph that illustrates this evolution from 2003 to 2006.



The percentage study shows how when a significant fall in the number of homicides is produced, as it occurred in 2005, the tendency changes, and the number of homicides committed in the homes shared by couples increases, a factor that indicates that many of the girlfriend-boyfriend relationships that ended in homicide were in fact relationships where the couple lived together, given that it was in this type of relationship where the most significant increase took place that year.



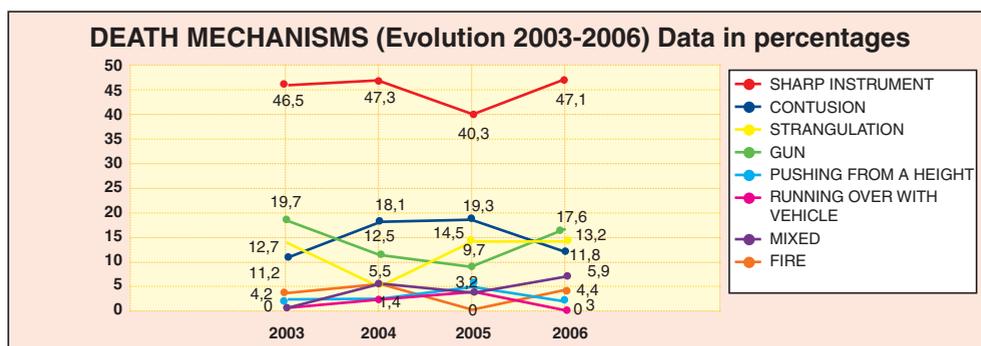
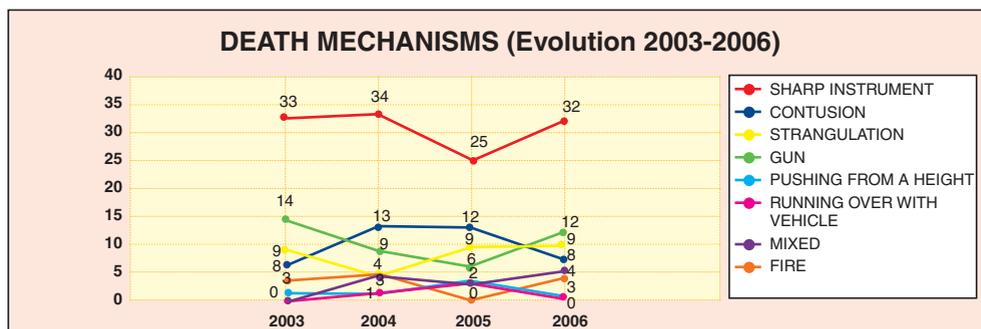
The analysis of the situation with reference to the Integral Act, as illustrated in the following table, shows that, after the new Act, the number of homicides committed in the homes shared by couples fell, and the number of homicides committed outside the home increased significantly.

	2003-2004 (Before Act 1/2004)	2005-2006 (After Act1/2004)	VARIATION	% VARIATION
% homicides committed <b>in home address</b>	70,5	64	(-) 6,5	<b>(-) 9,2%</b>
% homicides committed <b>outside home address</b>	29,3	36	(+) 6,7	<b>(+) 22,9%</b>

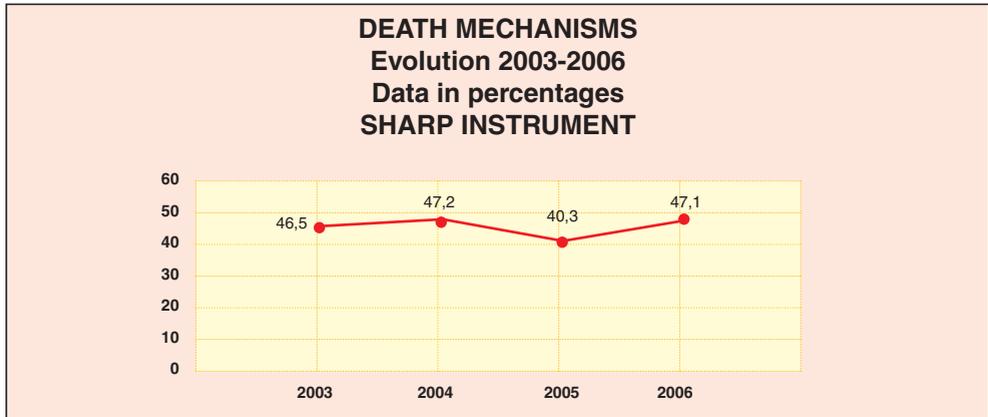
## 2.2.6. Death mechanisms used in homicides

The variability observed in the different elements of gender homicides analysed is also observed in the instruments and mechanisms used by aggressors to murder their partners.

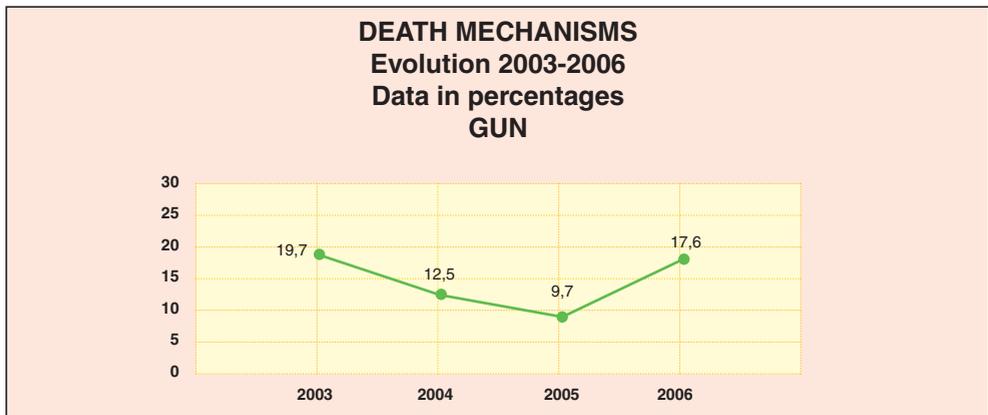
The graphs that illustrate the different mechanisms used in the different cases, both in absolute values and in percentages (based on the data supplied by the Women's Institute under the Ministry of the Interior and the Reina Sofía Centre) reveal the absence of a situation held in time, and the variation in the different mechanisms used over the years.



The individualised analysis of the main death mechanisms used and their evolution with reference to the Integral Act, sheds a series of interesting data, as we can see from the following graphs and tables.



	2003-2004 (Before Act 1/2004)	2005-2006 (After Act 1/2004)	VARIATION	% VARIATION
<b>SHARP INSTRUMENTS</b>	46,8	43,7	(-) 3,1	<b>(-) 6,6%</b>



	2003-2004 (Before Act 1/2004)	2005-2006 (After Act 1/2004)	VARIATION	% VARIATION
<b>GUNS</b>	16,1	13,6	(-) 2,5	<b>(-) 15,5%</b>

**DEATH MECHANISMS**  
**Evolution 2003-2006**  
**Data in percentages**  
**CONTUSIONS**



	2003-2004 (Before Act 1/2004)	2005-2006 (After Act 1/2004)	VARIATION	% VARIATION
<b>CONTUSIONS</b>	13,6	15,5	(+) 1,9	<b>(+) 13,9%</b>

**DEATH MECHANISMS**  
**Evolution 2003-2006**  
**Data in percentages**  
**STRANGULATION**



	2003-2004 (Before Act 1/2004)	2005-2006 (After Act 1/2004)	VARIATION	% VARIATION
<b>STRANGULATION</b>	8,7	13,8	(+) 4,9	<b>(+) 56,3%</b>

**DEATH MECHANISMS**  
**Evolution 2003-2006**  
**Data in percentages**  
**FIRE**



	2003-2004 (Before Act 1/2004)	2005-2006 (After Act 1/2004)	VARIATION	% VARIATION
<b>FIRE</b>	4,8	2,2	(-) 2,6	<b>(-) 54,2%</b>

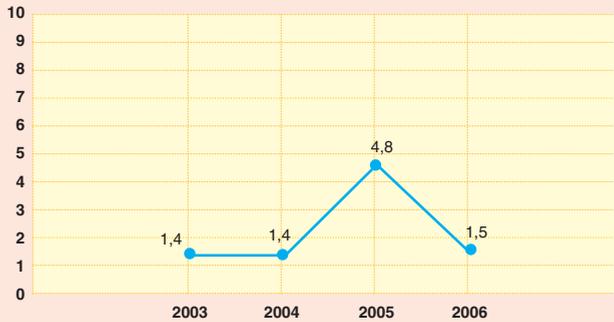
**DEATH MECHANISMS**  
**Evolution 2003-2006**  
**Data in percentages**  
**MIXED MECHANISM**



	2003-2004 (Antes Ley 1/2004)	2005-2006 (Después Ley 1/2004)	VARIACIÓN	% VARIACIÓN
<b>MIXED MECHANISMS</b>	2,3	4,5	(+) 2,2	<b>(+) 95,6%</b>

Other death mechanisms used, although rarely, have been pushing from a great height and running over with a vehicle. Both these mechanisms have held a very similar frequency, with a significant increase in 2005.

**DEATH MECHANISMS**  
**Evolution 2003-2006**  
**Data in percentages**  
**PUSHING FROM A HEIGHT**



**DEATH MECHANISMS**  
**Evolution 2003-2006**  
**Data in percentages**  
**RUNNING OVER WITH VEHICLE**

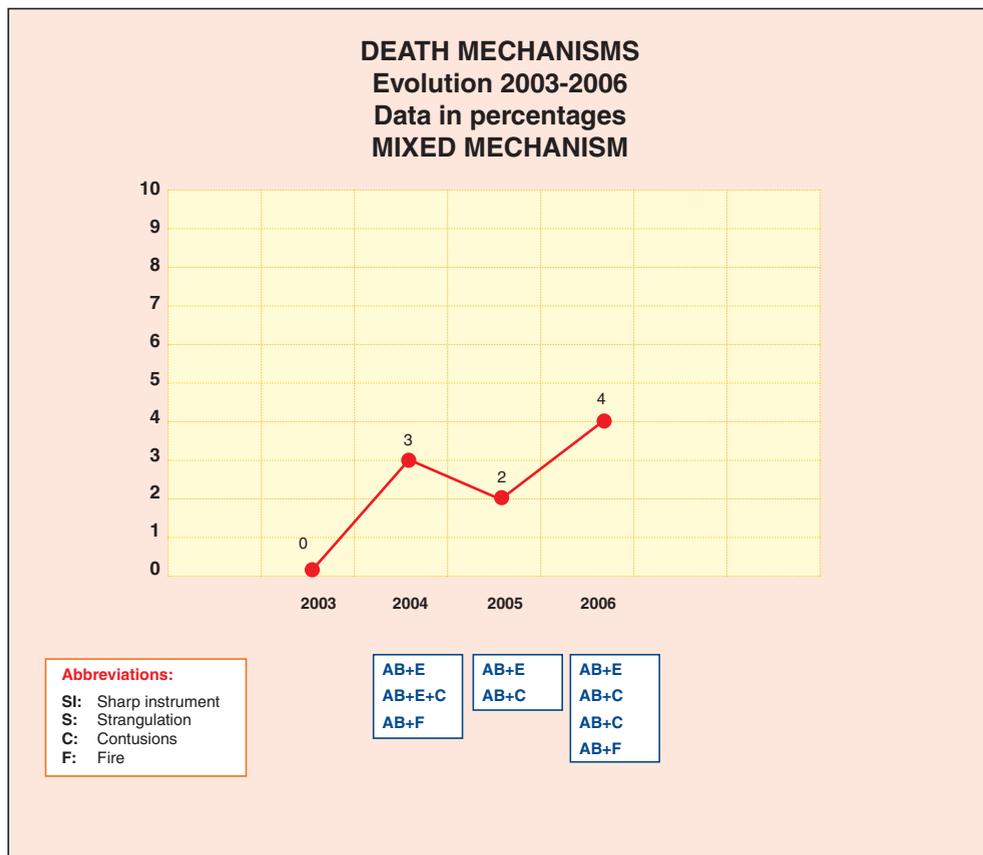


An overall assessment indicates that, after the Integral Act, there was a fall in the use of sharp instruments, guns and fire (pouring inflammable liquid over the victim and setting fire to it), and a rise in blunt force traumas, strangulation and mixed mechanisms (where two or three of the mechanisms are combined, although sharp instruments are always present, mainly accompanied by blunt force traumas or strangulation).

These data are highly interesting because they show that aggressors increasingly turn to instruments that are readily available (within easy access).

However, despite this evolution, the mechanisms based on the use of instruments capable of causing an immediate and fast death (acute evolution), generating a highly disproportionate situation between aggressor and victim, such as the use of sharp instruments and guns, still make up 47.6% of the mechanisms used.

The previously described situation, together with the strong increase in the use of mixed mechanisms (an increase of 95.6% following the Integral Act), and with the clustering effect of crimes in specific months of the year, which is something that had not previously occurred in a same year (according to the data supplied by the Women’s Institute, up until 2006, the maximum number of homicides committed in a same month was 9, and never in two months within the same year. However in 2006, there were three months with nine homicides each), which points to the existence of a stronger violence component in some cases.



## WOMEN KILLED BY PARTNER OR EX-PARTNER MONTHLY TOTALS

Women's Institute – Ministry of the Interior

	1999	2000	2001	2002	2003	2004	2005	2006
JANUARY	4	6	5	5	8	2	6	9
FEBRUARY	3	5	2	3	4	5	6	4
MARCH	4	5	4	2	6	6	4	9
APRIL	9	2	5	9	5	6	3	5
MAY	2	6	9	3	6	8	4	5
JUNE	4	8	3	3	8	6	6	2
JULY	3	6	1	6	8	7	4	8
AUGUST	5	4	4	7	8	6	7	9
SEPTEMBER	3	7	5	3	4	7	5	3
OCTOBER	4	7	4	5	2	7	5	6
NOVEMBER	8	2	3	4	9	4	5	2
DECEMBER	5	5	5	4	3	8	3	6
<b>TOTAL</b>	<b>54</b>	<b>63</b>	<b>50</b>	<b>54</b>	<b>71</b>	<b>72</b>	<b>58</b>	<b>68</b>

### 2.2.7. Gender violence and society: action and reaction

Gender violence must be studied and analysed within its social context, as this is where the reasons behind its existence can be found, and this context that must react and change as soon as the reality of gender violence comes to light. However, this circumstance contrasts with a social perception that tends to hide and contextualise known cases of gender violence by somehow finding justification for them.

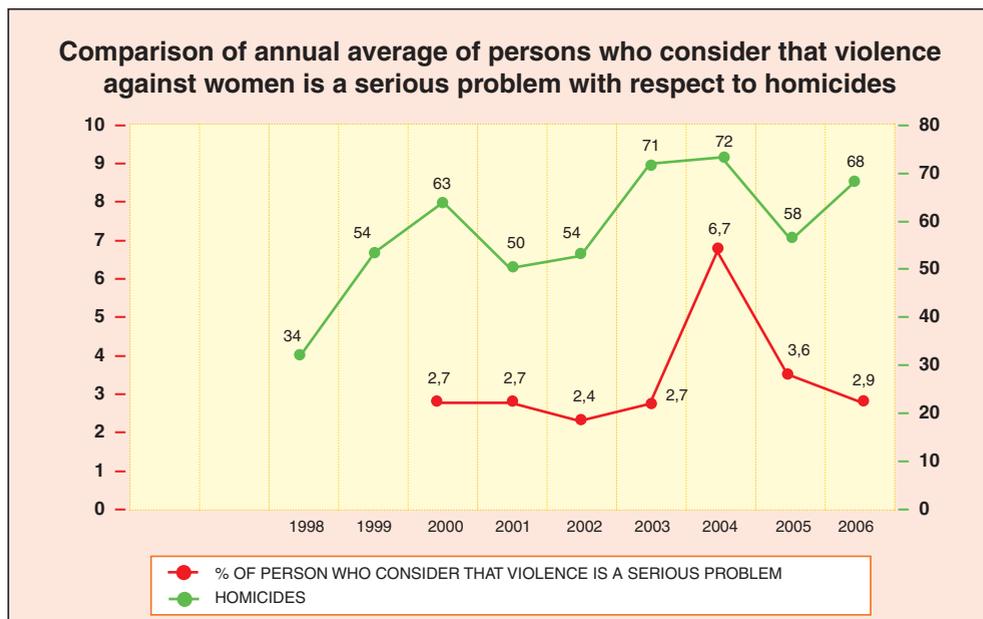
Let us focus the analysis of the cases on two references, on the one hand, social awareness and stance on violence, and, on the other, the suicidal and voluntary surrendering to the police behaviour of aggressors after committing the homicide of the woman, given that both behaviours are closely associated with aggressors' perceptions of society's stance towards violence.

#### 2.2.7.1. Social awareness and stance

The analysis of society's perception of gender violence indicates that there is an enormous gap between the reality of gender violence and society's knowledge of this serious problem. Perhaps this gap is the reason why society only holds a bird's-eye view of the reality, seeing it as a small and insignificant problem. This fact is no doubt associated with the cultural and historical roots of this form of violence, but the consequences of this lack of

awareness go far beyond a mere question of knowledge because, as the analysis of the data reveals, it has direct repercussions on the very manifestation of gender violence.

The first graph in this section illustrates the evolution of the number of homicides and of the percentage of the population that regards gender violence as a serious problem, according to the barometers of the Sociological Research Centre.



As we can see, the percentage of the «sensitized» population to gender violence is very low (the average in the last seven years is 3.8%), and it does not change as a result of the extent of the seriousness of its most extreme manifestations (homicides). The percentage only experienced a significant variation as of 2004.

The reason behind society’s increasing critical stance towards violence as of 2004 has been increased debate and knowledge of the reality of gender violence in general and of the different elements that comprise it. Throughout the length of 2004, Organic Act 1/2004 was going through all the stages of parliamentary procedure, giving rise to wide social debate on the different measures contemplated and to an analysis of everything involving the differ-

ent elements and characteristics of gender violence. The debate did not centre on the individual cases that appear in the media or on the condemnation generated by the most serious cases, but it was a discussion, often very heated, on gender violence itself. This helped many citizens to build a more comprehensive and real concept of violence against women from which to take a more critical stance against its manifestations, including those that do not involve physical aggressions.

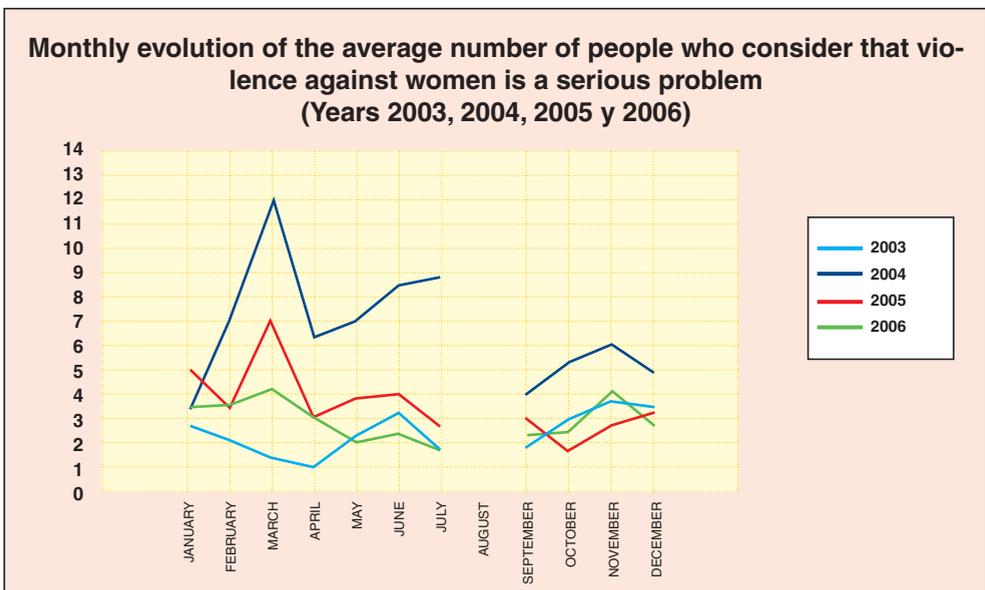
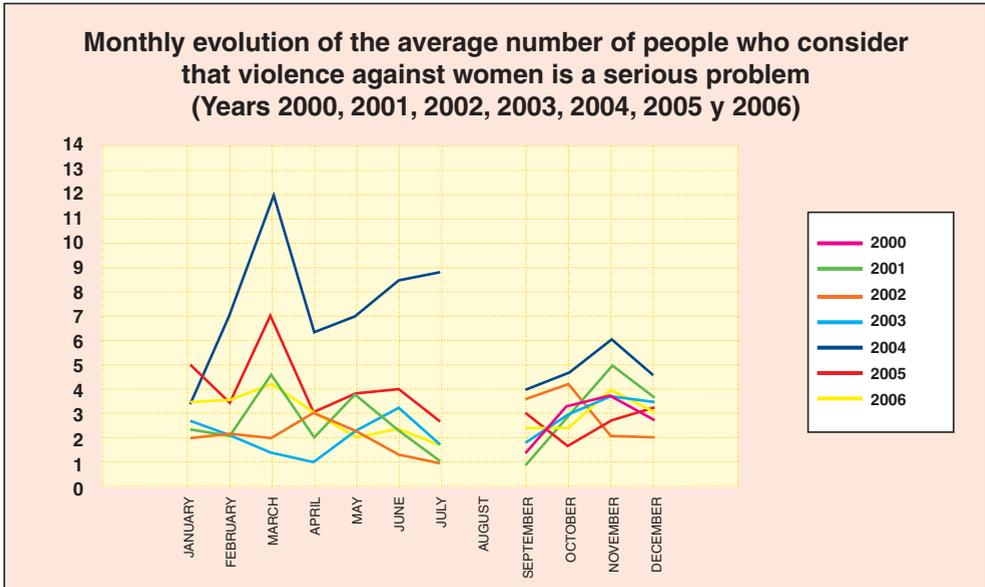
The repercussions went beyond society's theoretical stance against violence and generated a real fall in the number of women murdered by their partner or ex-partner in 2005, an occurrence that coincided with the existence of more references based on which to analyse the threatening and intimidating behaviour of many aggressors who persisted in their escalation of violence and, consequently, to take action to prevent such aggressions. However, the end of the social debate and the restriction on most of the information relative to the cases produced in 2005 and 2006, have given rise to a new fall in social «sensitization» and an increase in the number homicides.

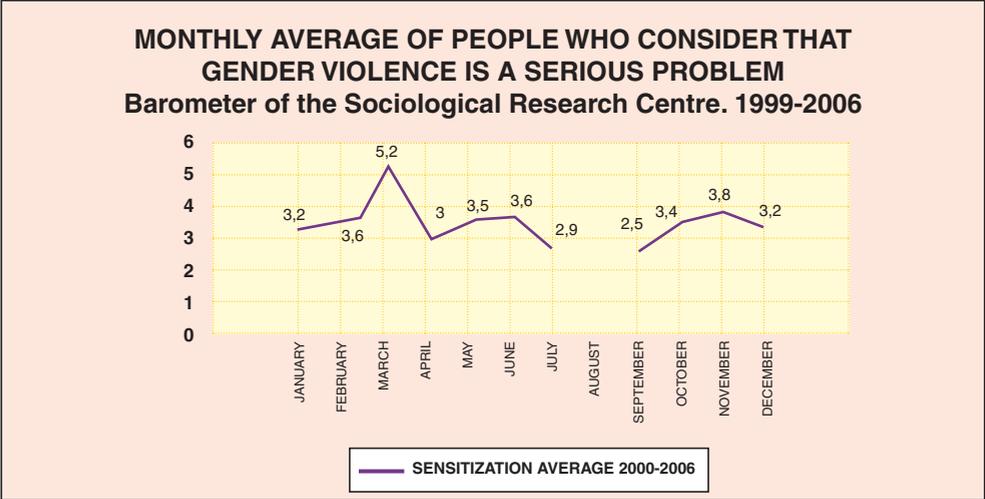
The general study based on the reference of the Integral Act shows that increased social sensitization and awareness of violence which, apart from what happened in 2004, gave rise to a 26.9% increase compared with the situation prior to the new regulation, although the subsequent decreasing tendency must lead to the adoption of measures to correct it. The data appear in the following table:

	2003-2004 (Before Act 1/2004)	2004 Parliamentary procedure to pass the Act	2005-2006 (After Act 1/2004)	VARIATION	% VARIATION
<b>SOCIAL SENSITIZATION TO GENDER VIOLENCE (CIS)</b>	2,6%	6,7%	3,3%	(+) 0,7	<b>(+) 26,9%</b>

The comparison of social awareness, according to the Barometer of the Sociological Research Centre in the years when gender violence appeared among the most worrying problems of the Spanish population, particularly in the last four years, shows that the highest scores correspond to 2004, followed by 2005 and 2006, due to the fall experienced as of 2004. It is also in-

teresting to note how, in addition, society's critical stance does not follow a more or less uniform distribution throughout the year, but it concentrates around the months of March and November, a situation that can be appreciated more objectively in the graph that illustrates the average rate of awareness in each month of the last seven years.





The reason for the social awareness peaks around the months of March and November is once again associated with increased information and social debate, given that these are the months when the majority of the campaigns, acts, debates, activities, etc., on the situation of women and gender violence take place, i.e., May 8th (International Women’s Day) and November 25th (International Day for the Elimination of Violence against Women).

**2.2.7.2. Examples of good forensic medicine practice**

In Andalusia, the specialised Courts on Violence against Women began to operate on the same day (June 29th 2005) in which the 8 Integral Assessment of Gender Violence Units (UVIVG) began to operate, one in each of the 8 Legal Medicine Institutes (IML) of this autonomous community.

These Integral Assessment of Gender Violence Units are comprised of multi-disciplinary teams and their objective is to conduct comprehensive assessments of gender violence in line with the terms described. To do this, the Units are equipped with computer systems through which appointments can be made for the different studies either immediately or in advance, avoiding chance meetings between the aggressor and the victim. The system can also generate a database of all the information obtained throughout the length of the study.

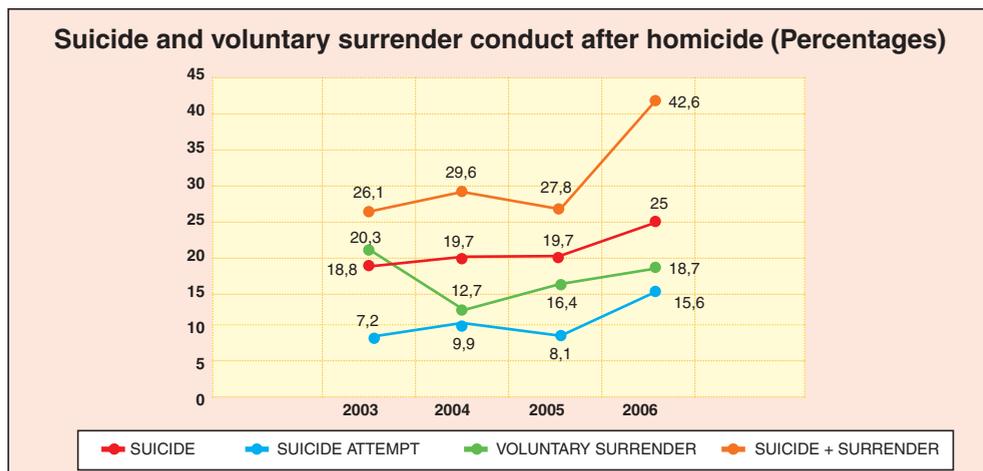
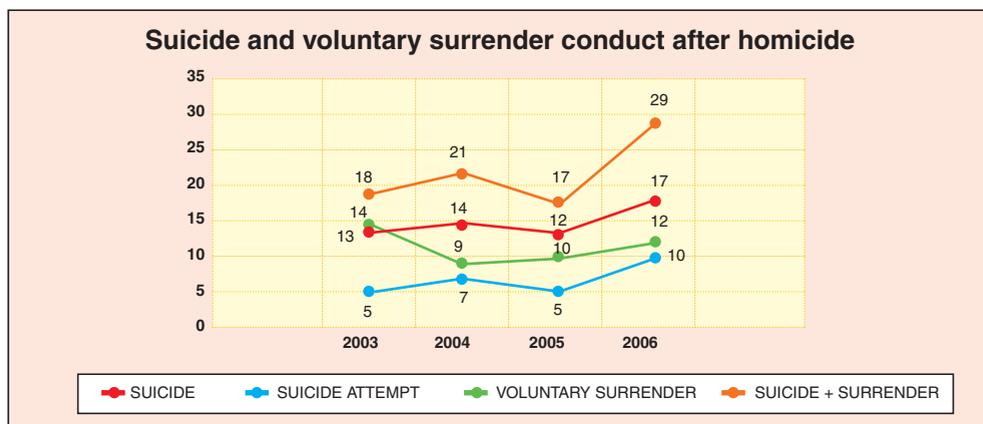
Currently, the Integral Assessment of Gender Violence Units (UVIVG) are in the process of being integrated into the Integral Assistance and Assessment

Service, which include the rest of the Justice psycho-social teams (Family, Minors and Victim Support Offices) and the Family Meeting Point.

### 2.2.7.3. Behaviour after the homicide of the woman: suicides and voluntary surrender

The perception held by victims and aggressors of the social climate towards violence is a factor that conditions their behaviour and response to the violence.

We can see a reflection of this in the conduct of aggressors after committing a homicide. The following two graphs show the absolute and percentage figures of committed suicides, suicide attempts and voluntary surrenders after committing a homicide.



The three conducts considered (suicide, suicide attempt and voluntary surrender) make up 48.1% of the different conducts of aggressors after a homicide. Of these, the most frequent is suicide, which makes up an average of 20.8%, followed by voluntary surrender (17.1%), and, in the third place, suicide attempt, with an average of 10.2%.

These conducts have their roots in the same circumstances that give rise to gender violence, and that make it an ideological crime that seeks to hold down the values and ideas established by the aggressor as a reference and a pattern in the family or the relationship. Despite the common cultural element in the origin of gender violence, and the similar objective of dominating and controlling the woman which lies behind the aggressor's concept of the partner relationship, aggressors' attitudes and perceptions towards their situation is not always the same. One of the existing differences makes reference to aggressors' degree of integration in their immediate environment and in the sources of support on which aggressors base their own recognition and identity. Based on this element, homicide offenders who are well integrated and feel that they are likely to be rejected after murdering their wives are the ones who commit suicide to avoid facing the rejection of the people and the circles that are important to them; on the other hand, aggressors who are not well integrated and use their conduct and behaviour as a form of protest and affirmation of status, are those who surrender voluntarily in a last attempt to reinforce their entire strategy, given that they somehow expect to be «understood or justified».

The social stance is key to understanding these conducts because the wider the perception of society's condemnation of violence and aggressors, more potential aggressors will think twice before committing aggressions. Furthermore, of those who still continue to commit homicides, even in the face of public scorn, a higher number of those who are integrated and perceive the condemnation of their pillars of support will try to end their lives before committing acts of violence, and there will be fewer aggressors left who continue to believe that murdering women and subsequently voluntarily surrendering to the police will serve as a protest and reinforcement device.

This stance is illustrated very graphically in the data for 2004, where the significant increase in social awareness (from 2.7 to 6.7) helped to fuel aggressors' perceptions that violence was strongly condemned by society, which led to a higher percentage of suicides among homicide offenders and a fall in the percentage of those who surrendered voluntarily. However, as of that year, a dissociation of these conducts took place, a circumstance that reflects the social division that took place as of 2004.

Since 2004, the percentage of suicides continued to increase, reaching 25% in 2006. This is associated with the more well-integrated aggressors' perceptions of the social stance towards violence. On the other hand, the percentage of homicide offenders who surrendered not only did not continue to fall, but it increased in the last two years, from 12.7 to 16.4% in 2005, and from 16.4% to 18.7% in 2006.

The evolution of these conducts in the period prior to the Integral Act and subsequent to its enactment is illustrated in the following table:

	2003-2004 (Before Act 1/2004)	2005-2006 (After Act 1/2004)	VARIATION	% VARIATION
<b>% of suicides after homicides</b>	19,2	22,2	(-) 3	<b>(+) 15,4%</b>
<b>% of voluntary surrenders</b>	16,5	17,5	(+) 1	<b>(+) 6,1%</b>

We can see how the Act gave rise to a stronger critical stance towards violence, which enabled aggressors to perceive society's and their immediate environment's condemnation of the crimes committed, a factor that may have had an impact on the increase in the number of suicides; however, the social division that emerged as a result of some of the measures contemplated in the Act could have been used to reinforce positions on and justifications of violence against women, a factor that not only failed to reduce the number of aggressors who surrendered voluntarily, as it occurred in 2004, on the contrary, the rate progressively increased in the last two years.



# **3 MEASURES ADOPTED, AND THEIR EVOLUTION, TO PREVENT, CORRECT AND ERADICATE GENDER VIOLENCE**

## **3.1. AWARENESS, PREVENTION AND DETECTION MEASURES**

### **3.1.1. In the education environment**

#### **3.1.1.1. Introduction**

Among the positive action measures, the Act on Integral Protection Measures against Gender Violence, highlights, first of all, the measures associated with awareness and education. Thus, under the first heading, the Act establishes the introduction of a National Plan on Awareness and Prevention of Gender Violence that includes the following elements:

- The introduction in the social scene of the new scales of values based on the respect of fundamental rights and freedoms and equality between men and women, as well as the exercise of tolerance and freedom within the democratic principles of coexistence, all of which from the perspective of gender relationships.
- Aimed at both men and women, based on a community and intercultural effort.
- That includes a broad supplementary and recycling education programme for all professionals that intervene in these situations.

Chapter one of the above-mentioned Act defines the principles of violence prevention for each education level, from Infant School to University, and specifies the need to apply them in both the initial education and the ongoing education of teachers, highlighting the role of the Education Inspectorate and the School Councils in ensuring that these measures are precise and effective.

To understand the relevance and generalised scope of the education task we should remember that, as recognised in the National Plan on Awareness and Prevention of Gender Violence (2007-2008), to prevent gender violence we must foster a change in the social model of relationships between men and women, replacing the ancestral model, based on domination and subjugation, the antithesis of the democratic values which our society identifies with, with mutual respect, as the concretion of respect for human rights on which we want to base our coexistence.

To replace the sexist model it is worth remembering that it is closely associated with the so-called duality of human existence, based on which each individual was taught to identify with half of the values: either the male or the female ones, as if aspiring to both were impossible. As well as imposing the relinquishment of half of the values, the individual was forced to identify with half of the problems: men with violence, lack of empathy, the tendency to dominate and to hold absolute control of other individuals; and women with dependency, weakness, submission and passivity. This duality is an integral part of the reproduction of the domination-subjugation model that underlies nearly all forms of violence and the majority of the anti-coexistence conduct that take place in schools and in the family, and which currently pose a serious social concern. From this we can infer that the education initiatives needed to eradicate the domination-subjugation model that leads to gender violence are also vitally important to achieving other important education objectives, such as the eradication of school violence.

The recognition of the crucial role that education can and should play in the eradication of gender violence is generalised, both among the people who work in this specific area, from different spheres, who nearly always highlight the priority of an educational change, as well as among the population as a whole, which regards education as an essential tool for changing the attitudes and conducts that lead to the perpetuation of gender violence from generation to generation. In this respect, in the barometer conducted by the Sociological Research Centre in March 2004, 96.4% of those interviewed manifested their agreement with the statement «teaching young people mutual respect could be a useful measure to combat domestic violence towards women». This is the measure whose usefulness was backed by the highest percentage of agreement, followed by «a stricter implementation of existing laws», with 94.7%.

But recognising the relevance that education can have in eradicating gender violence and the social model on which it is based is much easier than putting it into practice, as we can see from the comparison studies conducted in different countries (such as the study conducted by the Spanish EU-Presidency in 2002<sup>19</sup>).

To understand the above-mentioned difficulties it is worth bearing in mind the need to adapt the relationship models of traditional educational contexts, the school and the family structured during the Industrial Revolution, to the challenges of today's society. The nuclear family established during the Industrial Revolution isolated itself from the extended family and specialised in providing care and education based around one figure, the mother, who also isolated herself from what was happening beyond the small private world in which her life evolved, guaranteeing permanent affection and care. The nuclear family was strongly hierarchical, based on the paternal authority, responsible for establishing the limits. This traditional family structure, which is increasingly less frequent, does not help towards overcoming the ancestral relationship model, based on domination and subjugation, and hides many other difficulties as regards education in the Technological Revolution. These difficulties are more easily overcome by adult persons who are in contact with what goes on beyond the family circle, who share the responsibility of educating from a status of equality, who manifest an emotional bond based on mutual respect, and who can exercise the necessary authority and power to educate (empowerment) from ideals that are compatible with our current democratic values. Although important changes have taken place in these directions, they are sometimes insufficient or contradictory.

### **3.1.1.1.1. Indicators of the scale of the phenomenon among young people**

The strong progress made in overcoming forms of sexist discrimination among young women in specific environments, such as in access to education (for example, the fact that in 2006, 58% of the persons who passed university entrance exams in Spain were women, exceeding males by 16%, is an

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<sup>19</sup> Spanish EU-Presidency (2002) Study on Good Practices for Combating Violence against Women in the European Union. Madrid: Women's Institute

– Spanish EU-Presidency (2002) Good Practice Guide to palliate the effects of violence against women and achieve its eradication. Madrid: Women's Institute.

important indicator of their development potential), would lead us to expect a general reduction of gender violence among young people. However, the different indicators summarised below do not back this conclusion, reflecting the need to increase the efforts of the education system as a whole to eradicate this problem.

### 3.1.1.1.2. Based on the Macro survey

An initial indicator of this situation and its evolution is provided by the results of the three Macro surveys on the percentage of young women who recognise having suffered abuse in the last year (declared abuse).

YOUNG WOMEN WHO DECLARED HAVING SUFFERED ABUSE IN THE LAST YEAR		
	Young women: 18-29 years	Total women
In 1999	3,8%	4,2%
In 2002	3,3%	4,0%
In 2006	3,2%	3,6%

As we can see from the above table, the percentage of young women who, in the three surveys conducted, declared having suffered abuse is slightly below that of the total number of women who recognised having suffered abuse, a difference that is also observed with regard to technical abuse. In addition, the progressive reduction observed in the percentage of women abused over the years is also observed among young women.

From these results we can conclude that young Spanish women as a whole suffer less gender violence than women of previous generations, highlighting the need to increase measures aimed at its eradication from the education environment, because the generational relay alone does not seem likely to be able to eliminate this problem.

### 3.1.1.1.3. Based on the number of women killed

A second indicator of gender violence among young people is the percentage of women killed by their partner or ex-partner. As we can see from the table below, the percentage of young women (under 31 years of age) killed by

their partner or ex-partner from 1999 to 2006 ranges from 37% to 24%, which is higher than the percentage of young people aged 15 to 30 in the population as a whole.

WOMEN KILLED BY THEIR PARTNER OR EX-PARTNER AS A RESULT OF GENDER VIOLENCE ACCORDING TO AGE								
	1999	2000	2001	2002	2003	2004	2005	2006
<b>Number of young women killed</b>	13	18	18	20	17	22	19	17
<b>Percentage in relation to the total</b>	24%	29%	36%	37%	24%	31%	33%	25%
<b>Total</b>	54	63	50	54	71	72	58	68

*Source.* Prepared using the data published by the Women's Institute based on press news and the Ministry of the Interior. As of 2006, data from the Special Delegation of the Government on Violence against

#### 3.1.1.1.4. Based on the number of complaints filed

As we can see from the following table, the analysis of the percentage of complaints filed for abuse perpetrated by the partner or ex-partner according to age group also reveals that the proportion of young women who file complaints is higher than that of the population as a whole. The differences in this indicator are higher than in the previous indicator, highlighting a stronger tendency among young women to report gender violence compared with the tendency observed among older women.

COMPLAINTS OF ABUSE PERPETRATED BY PARTNER OR EXPARTNER FILED BY YOUNG WOMEN					
	2002	2003	2004	2005	2006
<b>Number of young women</b>	15.773	18.84 0	22.289	23.869	25.074
<b>Percentage of total</b>	36%	38%	39%	40%	40%
<b>Total</b>	43.313	50.090	57.527	59.758	62.170

*Source.* Prepared using the data published by the Women's Institute based on data supplied by the Ministry of the Interior.

The overall analysis of the three above-mentioned indicators reflects the complexity that overcoming gender violence among young people entails, given that:

- 1) Young women suffer less abuse than older women. This is the conclusion arrived at based on the results of the Macro survey, which is in line with other progress towards equality observed among young people.
- 2) Young women have a higher tendency to report gender violence, probably due to a lower tolerance level to this problem and to a stronger determination to end a relationship that they recognise as destructive. This determination enables the majority of young women to set out again on a new life without gender violence and the serious effects and suffering that it causes.
- 3) Young women are overrepresented in the total number of women killed by their partner or ex-partner. This reflects that the break-up of the relationship, which enables a large majority of young women who have suffered gender violence to embark on a new life without violence, in some cases hides a death risk, against which they must be protected by increasing the effectiveness of the measures aimed at offering such protection.

#### **3.1.1.1.5. Attitudes of young people towards gender violence**

To understand the complex nature of the change taking place among young people in relation to gender violence, it is also worth considering how gender violence manifests itself in their attitudes towards sexism and violence. In this respect, the studies conducted on adolescents highlight that<sup>20</sup>:

- 1) Progress among women is much stronger than among men. From which we can infer the need to also steer the prevention of this problem towards increasing condemnation of sexism and gender violence among young men, where such condemnation sometimes appears to be too superficial, without actually managing to assimilate it as part of their identity.

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<sup>20</sup> Díaz-Aguado, M. J.; Martínez Arias, R. (2001) La construcción de la igualdad y la prevención de la violencia contra la mujer desde la educación secundaria. Madrid: Women's Institute, collection of studies, no. 73.

Díaz-Aguado, M. J. (2002) Prevenir la violencia contra las mujeres construyendo la igualdad. Programme for Secondary Education. Madrid: Women's Institute. A book and two videos.

- 2) A significant influence of the media, particularly television, is observed, which is clearly higher than the school's influence in this subject, given that the majority manifests a certain understanding (generally, incomplete, imprecise and superficial) of gender violence and sexism concepts that are very common in television. However, we do not observe such a clear influence of the school curriculum and school activities, an influence that should be increased in order to improve the quality of the observed change.
- 3) The media messages on sexism and gender violence seem to be assimilated in different ways by male and female adolescents. The results reflect that female adolescents are more sensitive to this issue, and that they understand and remember the information which the media has disseminated on this subject over the last few years better than their male counterparts. This conclusion is worth bearing in mind in order to ensure that the efforts to eradicate this ancestral problem are effective not just among women but also among men, which seems more difficult to achieve.

To summarise, the studies conducted reflect that although considerable progress has been made over the last few years in eradicating sexism among young people, there is still a long road ahead to its complete eradication and for this eradication to be sufficiently entrenched in young people's identity, particularly among young men, to enable them to uphold it in critical situations. To explain this, it is worth considering the multiple conditions that influence this complex problem. One of which could be that the male-stereotype social pressure continues to be more rigid than the female-stereotype one. The majority of women tend to perceive the eradication of sexism as a gain, whilst the majority of men tend to perceive it as a loss. The tendency of men to respond with extreme gender violence in specific critical situations, imitating internalised conducts, could be explained by the superficiality with which the eradication of sexism appears among many young men.

### **3.1.1.2. *Measures adopted in the non-university education environment and Good Practices***

Based on the analysis of the education measures mentioned in the results overview of the implementation of Organic Act 1/2004, on Integral Protection

Measures against Gender Violence, approved by the Council of Ministers on December 15th 2006, which includes the Follow-up report of the Integral Act in the Autonomous Communities (2005), the following comes to light:

- 1) *Immediate schooling in case of gender violence.* The measure proposed in section 5 of the Integral Act appears to be complied with without any problems. Some autonomous communities have included specific references to this criterion in their regulations. Others specify that immediate schooling is managed through Shelter Homes or the Shelter System. In other cases, it is established that a specific regulation is not necessary because this measure was already being applied or because it is applied within a broader criterion of schooling as a result of a change of residence, regardless of the reason for the change. Among the best practices it is worth highlighting the practice of the entities that extend the protection in case of gender violence, also guaranteeing subsidised school meals in addition to immediate schooling.
  
- 2) *Fostering equality as well as initial and on-going education for teachers.* With regard to these measures, proposed in sections 6 and 7 of the Integral Act, two Good Practices are observed:
  - Elaboration of materials. The most widely used measure tends to be the elaboration and distribution of material on coeducation and equality between men and women or on non-violent resolution of conflicts, generally aimed both at primary and secondary education. Specific material on the detection and prevention of gender violence in partner relationships has also been elaborated, although it is hardly ever aimed at adolescents in the academic years in which it would be most recommendable to conduct a generalised prevention campaign among the compulsory secondary education as a whole, prior to reaching an age when the first partner relationships are established and the first manifestations of gender violence arise.
  - Pilot programmes. The second most widely used measure tends to be the introduction of specific programmes on coeducation and the promotion of equality, which are conducted in a small number of centres, sometimes with prior specific teacher training among the teachers who impart them. This measure can be an excellent practice, particularly if it specifically includes the prevention of gender violence and it is inserted in a context that encourages subsequent dissemination.

For which, four conditions which pose certain difficulties would need to met:

- a. Insertion into a research-action context, that includes the systematic assessment of the programme's effectiveness to facilitate its development and improvement
- b. Programme training to the teachers responsible for implementing and developing it.
- c. Co-ordination between the persons who conduct the programme and, in particular, between those responsible for the school centres and those working in the area of equality and prevention of gender violence
- d. Continuity and generalisation of the programmes so that they may reach the entire school population.

The research efforts conducted within the framework of the National Research Programme on Women, subsidised and published by the Women's Institute under the Ministry of Labour and Social Affairs, can be highlighted as a Good Practice of assessment and research, which can contribute to bringing about the above-mentioned four conditions.

- 3) *Measures to promote equality from the School Councils.* The measures of the autonomous communities mentioned in the above-mentioned Report, dated April 2007, to implement this recommendation of section 8 of the Integral Act, are very diverse, ranging from the reference to the principle of equality in the regulations of autonomous communities to a representative of the Entity responsible for equality policies in the School Councils of autonomous communities.
- 4) *Action of the education inspectorate.* The most frequently mentioned measures by the autonomous communities in relation to that provided in section 9 of the Integral Act, on the role of the inspection service to ensure the application of the values and principles established in the Act, make reference to: the Coexistence Plans, which are currently in the process of development, with the objective of preventing school violence, inspection initiatives aimed at guaranteeing the right of students to an education without sexist discrimination, and the obligation to elaborate procedure protocols to report incidents that conflict with coexistence. However, no reference is made to protocols on the detection of gender violence from the area of the school or on what to do when, through the pupils, the school learns of gender violence in a family. The specific inclusion of this subject in the plans on improving

coexistence that are currently in the process of development at different levels is an incipient Good Practice that should be generalised, as described below.

The Plans on Improving School Coexistence, which are currently in the process of development at different levels, should be highlighted as a context of extraordinary relevance for the implementation of permanent and generalised education measures aimed at education on equality, which should specifically include the prevention of gender violence within a comprehensive education on democratic values and against all forms of violence approach, which may be extended to the population as a whole. In this respect, the following main advances are worth highlighting as Good Practices:

- 1) The recognition at national level of the need to elaborate plans and establish contexts responsible for improving coexistence in a generalised and permanent manner. In this respect, we can highlight the explicit reference to this in the Organic Education Act as regards the Elaboration of the Education Project of each School, the Plan on Improving Coexistence, which is currently in the process of development in the Ministry of Education and Science in collaboration with the rest of the education community, the creation of the National Observatory on School Coexistence, comprised of 70 members, among whom, the Special Delegate of the Government on Violence against Women (who will also be participating in its Permanent Commission) and the specific inclusion of this issue as of its first tasks (in defining quality coexistence indicators and in the Teacher Training Plan).
- 2) The introduction in all the autonomous communities of autonomous plans on improving school coexistence in a generalised and permanent manner, which include protocols on reporting and detecting incidents that conflict with coexistence and that enable immediate and co-ordinated action, observatories aimed at detecting and preventing school violence, mediation programmes and teams, teacher training plans, and research studies on the situation in each autonomous community. Among the activities that are currently being conducted, it is worth highlighting the need for each education centre to issue a report on a regular basis, generally once a year, on school coexistence. The generalised inclusion of initiatives aimed at guaranteeing the principles of coeducation and the prevention of gender violence in these autonomous plans and in the plan of each

school centre can offer an opportunity of extraordinary relevance to overcome the difficulties that existed until now, so that prior to abandoning school, at the age of 16, the entire population will have had quality education opportunities that will enable everyone to eradicate gender violence from their lives. To achieve this, the different initiatives of the plans on improving coexistence (observatories, research studies, teacher training, inspection service, the plans of the school centres, the implementation of programmes in classrooms) must specifically include fostering equality between men and women and the prevention of gender violence, an inclusion that is already taking place in some cases and should be generalising.

As a manifestation of the existing international consensus, in this respect, we should highlight the welcome given to the coexistence plan by one of the autonomous communities working in the previously recommended direction: Andalusia. Its plan on improving coexistence «*Escuela: Espacio de paz*» (The School: A Place for Peace) has been selected by the European Union's Eurosocial Programme as a Good Practice, to be disseminated and shared by other countries currently designing measures in this area. Among the characteristics of this plan, which includes the participation of 1.770 centres, the following are worth highlighting:

- The adopted integral approach, aimed at improving all the relationships that are established in the school and preventing all forms of violence. Decree 19/2007 of the Government of Andalusia specifies the need for the coexistence plan prepared by each school to include specific activities aimed at eradicating sexist violence.
- The need for emphasis in the school curriculum, with more impact and permanence than the sporadic and occasional contexts where this subject was sometimes placed.
- The insertion of the programmes in a context of on-going teacher training and systematic assessment of the initiatives conducted.
- The allocation of enough resources to achieve the above-mentioned objectives. As an economic indicator of these resources, we can say that the current allocation is 3,980,000 euros.

All the autonomous communities are conducting plans and initiatives of enormous interest for improving coexistence. The absence of systematic and updated data on such measures has prevented us from including them in this report. It would be convenient for these data to be available for future reports in order to enable the dissemination and generalised knowledge of the Good Practices, to foster their use as a reference in the generalisation of the best measures.

### **3.1.1.3. *Measures adopted in the university education environment***

Although Organic Act 1/2004 confers a prominent role to the entire education system, for its potential of channel for interiorising egalitarian values, which should include education on respect for equality and awareness-raising on gender violence in all areas of education, the majority of university centres continue to hold the same education policies as they did prior to the introduction of the Act. The few measures adopted in regulated education are occasional, non-systematic and non-generalised, and do not filter through to all the cycles. However, the changes underway and the pressure exercised by important associations of women researchers, scientists and lawyers has made universities aware of their need and importance with respect to the effective implementation of the Integral Act and to fostering the prevention and eradication of gender violence.

There are several degree courses which should have already included compulsory gender violence education in their first university cycle syllabuses – in the current degrees and diplomas. However, judging from the data available to us, university institutions are waiting for the syllabuses reform, which will give way to the convergence of future university courses to create the European Space for Higher Education. As far as we know, from 2005 to 2006, some universities offered post-graduate courses that, in one way or another, included gender violence. Of the 73 Spanish universities, 4 public universities have introduced a specialist or expert in Gender Violence university title<sup>21</sup>, whilst 15 universities (3 of them private<sup>22</sup> and 12 public<sup>23</sup>) offer one or various specific master's courses on gender violence or that include at least one mod-

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<sup>21</sup> Alcalá, Castilla-La Mancha, Granada and UNED.

<sup>22</sup> Deusto, Pontificia de Salamanca and Vic.

<sup>23</sup> Autónoma de Barcelona, Autónoma de Madrid, Barcelona, Cádiz-Huelva, Girona, País Vasco, Salamanca, Santiago, Sevilla, Valladolid and Zaragoza.

ule on gender violence in their syllabuses. In addition, 6 public universities<sup>24</sup> have offered various postgraduate courses simultaneously (master's courses and the title of expert or specialist). The total number of master's courses (official and the universities' own titles) that include gender violence issues in their modules is 27. The university offer on gender violence courses is rounded off with sporadic summer courses and conferences organised by departments or faculties, often with the financial support of public institutions.

The University of Alcalá conducted a survey in early 2007 aimed at university institutions offering the above-mentioned post-graduate courses on gender violence. Although not all the universities were able to supply the data requested, the response received enables us to affirm that, despite the high number of credits offered, the number of students –both men and women– was low (there were only more than thirty students registered in six courses), which contrasts with the fact that one of the big deficiencies in our society is the lack of professionals specialised in gender violence, or at least with qualifications on gender issues. We should consider whether the small interest in these courses is due to a lack of adequate information or publicity on the part of universities, or to the fact that society still does not demand the education which the Act calls for with respect to professionals who deal with gender violence in their professional lives or who assist victims or perpetrators of gender violence.

On another front, although we do not have the full data, the information supplied by the universities indicates that the percentage of registered males in these courses is minimal (rarely reaching 10%) and, in some of the courses it is non-existent. This highlights that women continue to be practically the only ones who place the issue of gender violence in their agendas and who take the trouble to obtain the right qualifications to be able to collaborate in its eradication.

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<sup>24</sup> Complutense, Coruña, La Laguna, Las Palmas de Gran Canaria, Valencia and Vigo.

### **3.1.2. Awareness-raising measures in the media**

#### **3.1.2.1. *Perception of the sexes in the media***

In addition to the fundamental initiatives in the area of education, among the awareness-raising and prevention measures envisaged in Organic Act 1/2004, section 14 provides that the media must «foster the protection and defence of equality among men and women, avoiding all forms of discrimination between them». However, in general, the representations of women and men in the media continue to be unbalanced two years after the approval of the Act. On the one hand, the body of the woman continues to be portrayed as an object of male consumption and indulgence, even though it is generally accepted that treating women like objects leads to their victimization. On the other hand, women continue to be overrepresented as carers and servants, which can contribute to the establishment of servile, docile and self-sacrificing patriarchal femininity models and to women feeling forced to accept dependence and submission roles. In particular, videogames, music videos, videoclips, internet, T.V. series and entertainment shows portray women as subjugated and dominated by men. Sexist images are abundant on television, even during children's viewing time. At the same time, the media has not broadened the representation of women to the multiple and varied roles that they currently play in society, which can foster and reinforce forms of masculine behaviour based on the ideology of male supremacy. Ending the myth of female inferiority and the resulting underestimation of women therefore requires an emphasis on the need to represent the achievements and participation of women in society, and to widen the fields of representation to female politicians, writers, trade unionists, farmers and labourers, which, among other advantages, will reduce the overrepresentation of women victims in the press and the news broadcasts.

To eradicate gender violence, several autonomous community regulations (Andalusia, Catalonia, the Basque Country, etc.), not only place emphasis on the elimination of sexist messages from the media and on measures to foster female empowerment, but also on the use of non-sexist or androcentric language, which is an indication of some public authorities' awareness of the cultural roots of violence and of the urgent need to dismantle part of the symbolic apparatus that holds it in place. This recommendation on the non-sexist use of language in the media is combined with the efforts of different Administrations over several years to eradicate sexism from messages and documents addressed to the public by public

administrations, which has only been relatively successful, but has undoubtedly contributed to society's perception of the problem and to a new form of administrative phrasing which takes into account both men and women.

As regards publicity, there was an important need to adapt the publicity legislation to the new reality of women, as reported by the Professor in Constitutional Law, M<sup>a</sup> Luisa Balaguer, in 2003<sup>25</sup>, which is something that has been specifically addressed in the Integral Act. Chapter II and the sixth additional provision («Modification of the General Publicity Act») establish the need to prevent the dissemination, through the media, of sexist stereotypes, and images and contents that degrade women, they establish that any publicity that uses the image of the woman in a stereotyped, discriminatory or humiliating way (by using her body or parts of her body removed from the product being promoted) is considered illicit publicity and they define the public authorities with the power to take action to stop or correct such publicity, even allowing the Prosecutor's Office to take action in cases of emission of negative publicity contents. In this respect, it is worth mentioning some of the initiatives adopted at national level, such as the Observatory on Sexist Publicity of the Women's Institute and the recent creation of the Advisory Committee on the Image of Women in Publicity and the Media.

In the wake of the Act, and according to the data for 2005, many autonomous communities have gradually introduced publicity observatories (the autonomous communities of Andalusia, Valencia, the Canary Islands, Galicia, Melilla, etc.), publicity control agencies (the autonomous community of the Basque Country), or publicity vigilance subsections within the gender or equality observatories (autonomous communities of Castilla y León and Murcia) or within the autonomous community audiovisual councils (Catalonia). In some cases, for the sole purpose of supervising sexism in publicity appearing in the graphic media or in publicity broadcasted on the radio and television. In other cases, they act as a channel for complaints, and, lastly, as an instrument for public awareness-raising on sexist contents in publicity messages. Some of these observatories award prizes to the best publicity initiatives and to professional training initiatives. The

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<sup>25</sup> M<sup>a</sup> L. Balaguer (2003). «La regulación y el control de la publicidad en el ordenamiento jurídico constitucional español» C. Bulletin No. 21 of the UNED's Law Faculty. 21.

most ambitious project has probably been the creation of the Publicity Advisory Committee «Begira» by the Autonomous Government of the Basque Country, due to the wide social representation in its composition and because, among other functions, it offers guidance and advise to advertising companies, in an effort to work together to offer alternative criteria for production and creation.

Nevertheless, although society is increasingly sensitized to sexism and stereotypes in the media – as evidenced by the complaints received by the different observatories–, and despite the repercussions of the complaints filed against the campaigns of certain products, we do not have data on the sanctions imposed (if any). Regrettably, the principle of equality and non-discrimination is violated systematically and there are many advertisements containing highly sexist messages both in the state-owned and the private media.

### **3.1.2.2.** *Information to society and awareness-raising: media campaigns*

If the solution to gender violence in the medium and long term lies in the prevention of violence through education and media campaigns, as well as public awareness raising, there is no doubt that the media has a fundamental duty to fulfil. And, in general, it has fulfilled it satisfactorily. Not only has it echoed the different legislative developments and the initiatives introduced by the institutions to eradicate gender violence, but private media companies have conducted their own awareness-raising campaigns aimed at their clients<sup>26</sup>. Also praiseworthy are the efforts of feminist networks to provide constant updated information on violence against women and to disseminate the resources available to victims.

As regards public authorities, as provided in the results overview of the implementation of Organic Act 1/2004 on Integral Protection Measures against Gender Violence, approved by the Council of Ministers on December 15th 2006, which includes the Follow-up Report on the Integral Act in the autonomous communities (2005), and in the Public Administration, on occasion of November 25th, all the autonomous communities conducted different initiatives against gender violence, such as awareness-raising campaigns, in-

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<sup>26</sup> Also worth mentioning are the campaigns conducted by manufacturers of domestic goods and producers of food products, which have used their packaging as a support for awareness-raising campaigns.

formative and awareness-raising courses and professional training conferences and seminars.

And even though, according to the document of the EU-Presidency of 2002, Good Practice Guide to Mitigate the Effects and Eradicate Violence Against Women, «the work carried out in Spain [by the Women’s Institute] in the area of awareness-raising constitutes a good practice on assessing the impact of campaigns, stimulating debate in society and how to encourage the media to assume responsibility in combating sexism and violence against women», it would be advisable for such campaigns to cease to be episodic and more continuous

With regard to the content of the campaigns, the majority of public campaigns are aimed at encouraging or convincing women of the convenience to report and put an end to the situation (sometimes, of a controversial alleged “duty” to do so). Campaigns have also been launched with the aim of persuading the public that it is impossible to remain neutral and to report known cases of gender violence. Neither of these campaigns are always accompanied by the pertinent information. There is a lack of campaigns specifically aimed at aggressors to make them see the consequences of their actions as well as campaigns aimed at encouraging society to condemn perpetrators of gender violence.

### **3.1.2.3.** *The phenomenon of gender violence in media information*

The media has proven to be a powerful agent of socialisation and giving legitimacy to socially commendable or condemnable attitudes, values and behaviour. For this reason, different national and international entities coincide in stressing the need to involve the media in the eradication of violence against women. In fact, the decisive role that the media has played in Spain in reducing complicity and tolerance towards gender violence is unquestionable: statistical data and opinion polls made public by the institutions and subsequently widely published in the media; constant information through documentaries and reports, as well as the priority given to news of gender violence in front pages, press boxes, editorials, sections, headlines and prominent media space; dissemination of awareness campaigns, not just institutional, but of the media itself; etc. All of this has contributed to turning gender violence into a social problem, consistent with women’s groups and governmental, judicial, police and healthcare bodies.

The benefits obtained not only include the transformation of the issue into a social problem, but also putting the problem in the public eye, the incipient disappearance of the sense of impunity and, particularly, the sharp increase in the number of complaints filed<sup>27</sup>.

To mitigate the lack of education received in the faculties of journalism and communication on covering gender violence issues, the autonomous communities have prepared different publications on codes of good practice in communicating gender violence, the majority with the intention of establishing the bases for media self-regulation<sup>28</sup>. In other cases, the profession itself has turned to self-regulation protocols. A number of radio and television news have rigorously applied manuals and recommendations issued by their own media channels or autonomous communities. An example of a good practice are the reports prepared by the Official Institute of Spanish Radio and Television, with its on-going studies on gender information in its news broadcasts, which have been entrusted to teams headed by Pilar López Díez<sup>29</sup>. However, not all the newspapers and media channels adhere to their own codes. One of the reasons for this was suggested by the President of the Spanish Press Association, Fernando González Urbaneja, who manifested the need to disseminate the recommendations not only among ordinary reporters but also among publishing and editorial department heads, as journalism is a very hierarchical profession<sup>30</sup>.

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<sup>27</sup> Vives-Cases, C., Ruiz, M<sup>a</sup> T., Álvarez-Dardet, C., Martín, M. (2005b): "Violencia con-tra las mujeres, denuncias y cobertura periodística", *Gaceta Sanitaria*, Letters to the Director, vol. 19, no. 5: 410-401, Available at: [http://www.scielosp.org/scielo.php?pid=S021391112005000500013&script=sci\\_arttext](http://www.scielosp.org/scielo.php?pid=S021391112005000500013&script=sci_arttext).

<sup>28</sup> At the end of the bibliography that concludes this Report, we provide a list of some of the decalogues on communicating gender violence, prepared by different media or institutions.

<sup>29</sup> López Díez, P. (Director) (2001b): *Representation of gender in radio and television news*, Madrid: Women's Institute and IORTVE; López Díez, P. (Director) (2005a): *2nd Report of the Research Study: Representation of Gender in radio and television news*, Institute of RTVE; López Díez, P. (Director) (2005b): «Representation of gender violence in TVE news», (Madrid: IORTVE), Available at: <http://www.pilarlopezdiez.eu/pdf/RepViolenciaTD.pdf>

<sup>30</sup> González Urbaneja, F. (2005): «Violencia doméstica: el papel de los medios, podemos o debemos hablar de un código de conducta?», *Cuadernos de derecho judicial [Monográfico: La Violencia doméstica: su enfoque en España y en el derecho comparado]*, 2: 257-61.

*The EU-Presidency's Good Practice Guide to Mitigate the Effects and Eradicate Violence against Women* (2002) concludes that the media should consider the need to specialise the staff responsible for reporting this problem in the same way in which quality journalism demands specialisation in other areas. However, the majority of journalism and communication university faculties have still not incorporated this issue into their syllabuses, and not enough education courses on gender have been offered to practicing journalists. There are not enough specialised personnel or with adequate training in this subject in the written press, the audiovisual media and in the press agencies. Perhaps this is another reason why the level of implementation of professional ethics codes and protocols is so varied.

On the positive end, we should recognise that increasing information is provided on measures and sentences that protect the victims. It is also true that increasing emphasis is placed on the image and the dignity of women victims of abuse and that the resources available to victims to help them put an end to their unjust situation are increasingly disseminated. In this respect, the webpage of a **national newspaper with a large circulation** dedicated to this information is an example of good practice, as are the feminist web sites of *Fundación Mujeres* (Women's Foundation) and *Red de Mujeres contra la Violencia de Género* (Network of Women against Gender Violence). Likewise, there is a gradual tendency to move away from anachronistic and sexist stereotypes and to place more emphasis on the structural aspect of gender violence. However, the news coverage approach is not always the ideal one. Violence against women tends to be confined to cases of death or, on occasions, physical violence with serious injuries. The voice of the victims and of their families continues to be unheard. We continue to have no knowledge of the effects on children and we often come across articles and television reports that provide the full name, including photographs, of the victim.

As Pilar López Díez pointed out, it would be recommendable for the media to focus its tele-lens on the aggressor, and not on the victim, and for the news spotlight to be placed on the aggressors, to talk about the «third assassin», instead of the «third victim so far into the year». However, we should not isolate them as if they were «individuals with some disease», but we must portray the scene where gender violence operates in order to give a comprehensive cognitive framework to the public. The sentences received by aggressors are also not sufficiently conveyed. Although the media is starting to consider providing information to the public on severe measures taken by the judicial system against aggressors for the purpose of trans-

mitting society's condemnation, there are still few occasions where a follow-up is made of cases that culminate in a judicial process and a subsequent sentence. It would be advisable for the media to dedicate more media space to the legal consequences of gender violence and to aggressors serving their sentences. This would also help the victims to recover their self-esteem and dignity.

On another front, victims continue to be represented as alien to the active labour market, with no mention of their professions or occupations. This can contribute towards the notion that the victims are illiterate, ignorant and without academic qualifications or a profession, an idea that fuelled the controversial decision of the Court of Violence against Women No. 1 of Valladolid which, on March 26<sup>th</sup> 2007, dismissed a complaint filed by a secondary education school teacher.

Associated with the need to present the full picture of women's current reality is the fact that success stories of women who have managed to put an end to their situations of suffering abuse and to begin a new life are not sufficiently disseminated. The media hardly ever presents solutions based on the options available to women: it rarely targets the information at possible victims and they are often encouraged to seek advice and information prior to filing a complaint. The typical conduct of the abuser is also not sufficiently defined, making it difficult for many women to realise the risk they are under. Very rarely are specialists on gender violence who can explain the facts, both from the aggressor's and the victim's point of view, invited to appear on the news, although experts and feminists are beginning to appear in extensive documentaries.

Another problem of the media coverage given to gender violence is the distorted picture that it conveys in its tendency to only focus on the most impacting violent cases or with the most serious consequences, rather than on the most frequent cases. By reconstructing the alleged relationship, portraying it as out of the ordinary, very often adding components that could be described as «strange» or uncommon, either because the couple was not married, as if violence were a product of a deteriorated situation alien to the «normal» family, or because the aggressor is portrayed as lacking education, an immigrant, a foreigner, ethnically different, a drug addict, out of a job, with physical or mental health problems or belonging to a low social class, the media helps fuel the idea that violence against women does not affect society as whole.

Likewise, the media can confuse the public by providing erroneous data, such as when the headline «gender violence increased by 36% in 2007» appeared in a newspaper on February 19th 2007, instead of the factual information which would have read «Gender violence goes less unpunished, the number of complaints and judicial proceedings on gender violence increased by 36% in 2006». Another cause of confusion may be the controversies that arise between institutions in their eagerness to exempt themselves from responsibility in the face of tragic events, controversies that are avidly covered by the media, without any kind of filter or verification of the information that supports such affirmations.

But, regrettably, perhaps the most extended practice is the media coverage of gender violence as accident and crime reports unconnected with the social reality, without a plausible cognitive interpretation of the facts, and without relating them to previous cases. The sensitization of the media and the zeal of the institutions sometimes lead to an excess of figures, whose narcotic effect would be reduced if they were accompanied by some thought on the meaning of the problem or by contextualising it. If the media discourse on gender violence was approached from a wider angle and the problem was placed within the framework of historical relationships between the sexes, we would also manage to gradually reduce the strangeness that abused women feel in relation to other women. What is more, only sporadically is the problem addressed through a comprehensive approach, addressing all its social, ideological and institutional dimensions and presenting an outlook that contextualises gender violence within the changing historical relationships between women and men. Instead, the tendency is to seek explanations that reconstruct the event, isolating the victim and the aggressor from the historical context, providing explanations on the peaceful or agitated relationship between the couple, family destructure and the consumption of drugs or alcohol, presenting the event as something freaky and reproducing the causes alleged by the aggressors or those that circulate in a neighbourhood victim of sexist stereotypes, without offering the opinions of specialists. Some media even go as far as to offer the opinion of neighbours on the victim's bad temper (for example, on April 20th 2007), that somehow seems to justify violence.

To summarise, there is a need for the media to unanimously and homogenously convey that it is not the resulting death that turns a beating or a murder into gender violence, but the intention of the act, based on the ideology of male supremacy and female inferiority, and the assumption of the

domination-subjugation gender roles. And, on occasions, there is a certain contradiction between the possible explanations and interpretations of the facts provided, for example, the term “chauvinist violence” is often combined with an indication of the structural origin of the violence, suggesting the woman’s awkward character or the bad patch that the man was going through, interpretations that appeal to cognitively opposing explanations. A certain justification of the behaviour of elderly husbands who look after their sick wives and murder them out of “compassion” for the wife’s real or alleged suffering, is also perceived.

### **3.1.3. In the healthcare environment**

The Fourth World Conference on Women held in Beijing in 1995, and the 49th World Health Assembly held in 1996, recognised violence against women as «a leading worldwide public health problem» and identified it as «a serious problem with immediate and future long-term implications on health, both due its scale and to its repercussions».

To analyse the scale and seriousness of the problem from a health point of view we use several dimensions: the frequency of the problem, mortality and morbidity, and the acute and chronic repercussions on women’s health.

In this section we will use the terms violence against women, gender violence and abuse, indistinctively, as used in the area of healthcare.

#### **3.1.3.1. *The scale of the problem from the healthcare point of view***

The studies published pose difficulties in comparing the results. These difficulties are associated with the methodology used in the research: the population studied, the definition of abuse, information gathering instrument and method, etc.

Both in Spain and in other countries, studies have been conducted on the subject of gender violence and healthcare. These studies are generally based on women who visit doctors’ surgeries. In our country, until now, the most extensive study was conducted in 22 primary healthcare centres belonging to three autonomous communities (Andalusia, Valencia and Madrid); 1,631

women aged 18 to 65 took part in the study by completing a self-administered questionnaire<sup>31</sup>. Thirty-two percent of the women affirmed that they had been abused at some point in their lives and 18% in the last year. In 38% of the cases the length of the abuse exceeded five years. Thirteen percent of the women reported physical abuse, 31% to emotional abuse and 11% to sexual abuse. Thirty percent of Spanish women and 65% of immigrant women had suffered abuse at some point in their lives. The results of the study showed a higher probability of suffering abuse in a current relationship when the victim had already suffered abuse in a previous relationship.

The differences between the scale of the violence learnt from this study and the figures of the Macro survey conducted by the Women's Institute in 2006 (3.6% of the women declared abuse) are associated with the fact that the population of the healthcare study are women who went to a healthcare centre and the population of the Macro survey is the public in general, as well as with the different methodologies employed, given that in the healthcare study it is the woman's doctor who informs her of the study, requests her participation, gives her the survey and collects it once completed, whilst the Macro survey is conducted by means of a telephone interview.

The figures on the frequency of abuse gathered from women who used the Mental Health services are higher than those gathered from women who used the Primary Healthcare Services.

The rate of declared abuse is higher in adult age (30-50 years), although it is also very significant in young women, if we bear in mind that the likelihood of having a partner –stable or not– at these young ages is lower. Foreign and disabled women presented a higher incidence of recognised abuse (Macro survey of the Women's Institute, 2006).

In recent years, different research studies conducted by the healthcare services highlight the concern for this problem of social, political and economic roots, and the need to address the enormous repercussions on women's health from the area of healthcare.

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<sup>31</sup> Ruiz-Pérez, I., Plazaola-Castaño, J., Blanco-Prieto, P., González-Barranco, J. M., Ayuso-Martín, P., Montero-Piñar, M.I. and the Research Group on Gender Violence, (2006): "La violencia contra la mujer en la pareja. Un estudio en el ámbito de la atención primaria.", *Gaceta Sanitaria*, 20 (3): 202-208.

A multi-centre research study is currently being conducted on 10,000 women (18-65 years) in primary healthcare centres spread throughout all the autonomous communities using a similar methodology as that of the above-mentioned study. This research study is backed and financed by the Healthcare Research Fund and follows the recommendations of the World Health Organisation on researching gender violence (World Health Organisation, 1999).

These recommendations, which were published in the publication «Putting Women First. Ethical and Safety Recommendations for Domestic Violence Research», are the following:

- The safety of respondents and the research team is paramount, and should guide all project decisions.
- Prevalence studies need to be methodologically sound and to build upon current research experience about how to minimise the under-reporting of violence.
- Protecting confidentiality is essential to ensure both women's safety and data quality.
- All research team members should be carefully selected and receive specialised training and on-going support.
- The study design must include actions aimed at reducing any possible distress caused to the participants by the research.
- Fieldworkers should be trained to refer women requesting assistance to available local services and sources of support. Where few resources exist, it may be necessary for the study to create short-term support mechanisms.
- Researchers and donors have an ethical obligation to help ensure that their findings are properly interpreted and used to advance policy and intervention development.
- Violence questions should only be incorporated into surveys designed for other purposes when ethical and methodological requirements can be met.

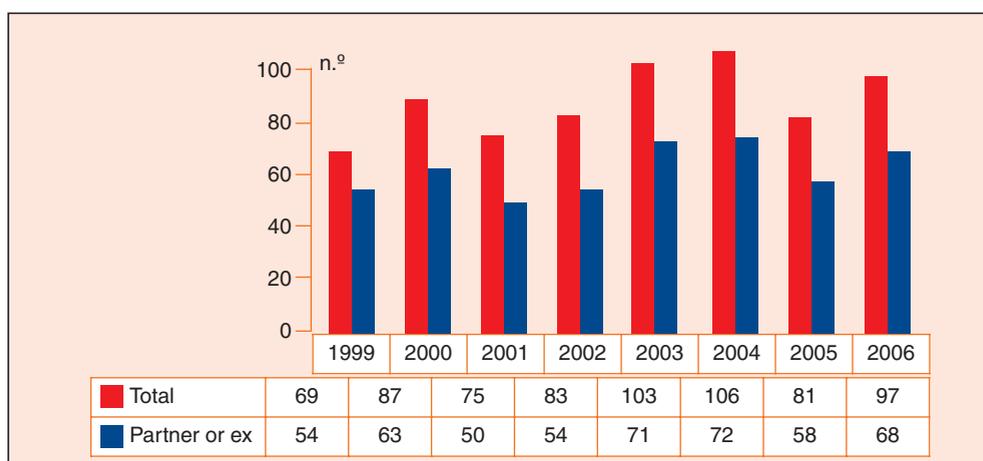
These recommendations must be kept in mind in all kinds of research studies conducted on the subject, whether in the area of healthcare or others.

### 3.1.3.2. Mortality

Currently, the Mortality Register established in the National Health System, which is compiled from the registers of the autonomous communities, and the analysis of the mortality by cause of death, do not include the identification of death cases as a result of violence against women perpetrated by men (femicides), which does not help the healthcare system to get an overview of the problem and it is an obstacle that must be addressed.

Therefore, the information that we use to measure the mortality is the data available in the website of the Women’s Institute (Ministry of Labour and Social Affairs).

Below, in figure 1, we present the number of women murdered in Spain in the last eight years. In the period 1999-2006 (available data), 701 femicides were recorded in Spain, of which 492 (70%) were perpetrated by the woman’s partner or ex-partner.



**Figure 1: Total women killed and those perpetrated by the woman’s (ex) partner. Spain, 1999-2006**

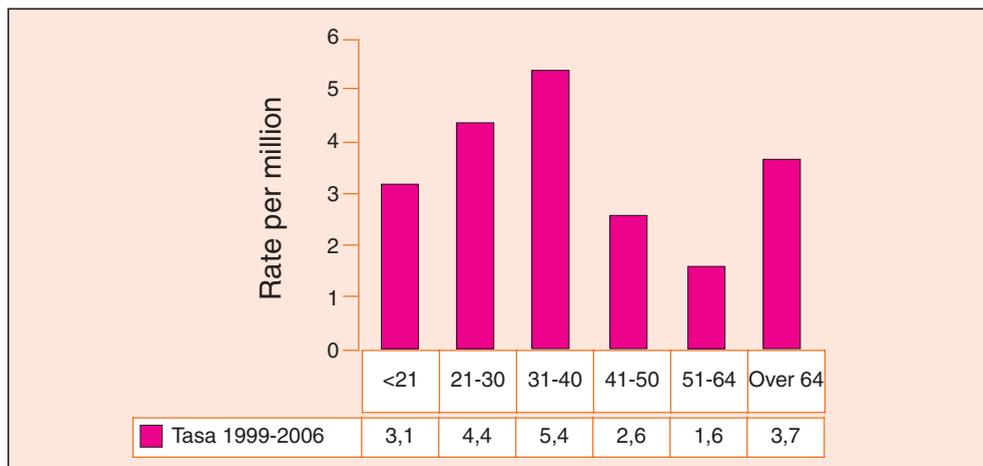
Source: [www.mtas.es](http://www.mtas.es)

In addition, in the year 2006, five minors, sons/daughters of the aggressor and/or of the woman, were murdered. The number of men killed by their partner or ex-partner was seven (Source: 2006 Report of the General Council of the Spanish Judiciary).

This indicator, the number of deaths, as the fatal outcome of violence against women and their sons and daughters, highlights the seriousness of the problem.

The terrible paradox of the fact that the highest number of women killed takes place in a theoretically safe environment is reflected in a communiqué presented in the XV Congress of the International Federation of Gynaecology and Obstetrics «It is still true that for a woman to be brutally or systematically assaulted, she must usually enter our most sacred institution, the family. It is within marriage that a woman is most likely to be slapped and shoved about, severely assaulted, killed, or raped»<sup>32</sup>.

As regards the age in which these murders took place (Figure 2), the highest incidence is found in the 31-40 age group, followed by the 21-30 age group, and one thing that stands out is the high incidence among young women (higher than the incidence in the 41-50 age group), if we bear in mind



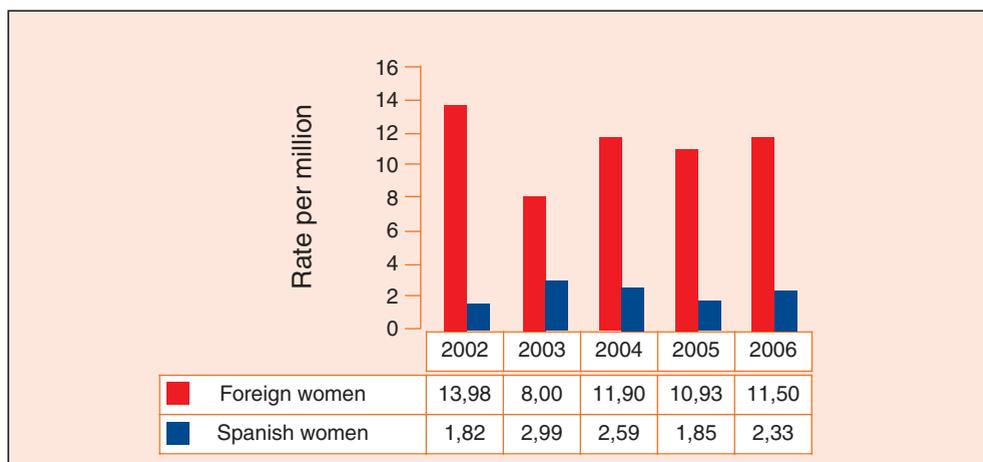
**Figure 2: Women killed in the partner or ex-partner relationship environment according to age. Spain 1999-2006**

Source: [www.mtas.es](http://www.mtas.es)

<sup>32</sup> Schei, B. (1998): New insights in Gynecology & Obstetric. Research and Practice. The Proceeding of the XV FIGO World Congress of Gynecology and Obstetrics. Copenhagen, 1997. London: The Parthenon Publishing Group.

that the likelihood of these young women living with their boyfriends or partners is lower. At these younger ages the incidence of filed complaints of abuse is also high and it increased by twofold in the last five years, which highlights that this group needs special attention.

Immigrant women presented a higher risk of death than Spanish women (Figure 3), and they also showed a higher rate of declared abuse than Spanish women in the Macro survey of the Women’s Institute, which highlights the vulnerability of this population, which, in addition, probably has less social support and difficulties in gaining access to social, legal and healthcare resources.



**Figure 3: Risk of death among Spanish and foreign women. Spain, 1999-2006**

Source: [www.mtas.es](http://www.mtas.es)

### 3.1.3.3. *The repercussions of violence on women’s health*

This is an issue of concern in the healthcare environment in recent years. The following chart describes the repercussions:

FATAL REPERCUSSIONS
Death (homicide, suicide, etc.)

### **PHYSICAL HEALTH REPERCUSSIONS**

Different injuries: contusions, traumatism, wounds, burns, etc., that can lead to disability.  
Functional deterioration.  
Unspecific physical symptoms (i.e., severe headaches)  
General deterioration of health

### **CHRONIC HEALTH REPERCUSSIONS**

Chronic Pain  
Irritable Bowel Syndrome  
Other gastrointestinal disorders  
Somatic complaints

### **SEXUAL AND REPRODUCTIVE HEALTH REPERCUSSIONS**

Due to forced sexual intercourse: loss of sexual desire, menstrual disorders, sexually transmitted diseases, including HIV/AIDS, vaginal bleeding and fibrosis, dyspareunia, chronic pelvic pain, urinary infection, unwanted pregnancy, etc.  
Due to abuse during pregnancy: vaginal bleeding, threat of miscarriage, foetal death, premature birth, low weight baby, etc.

### **MENTAL HEALTH REPERCUSSIONS**

Depression  
Anxiety  
Sleeping disorders  
Post-trauma stress disorders  
Eating disorders  
Suicide attempt  
Alcohol, drugs and psychoactive drugs abuse

### **SOCIAL HEALTH REPERCUSSIONS**

Social isolation  
Loss of employment  
Work absenteeism  
Reduction of number of days of healthy life

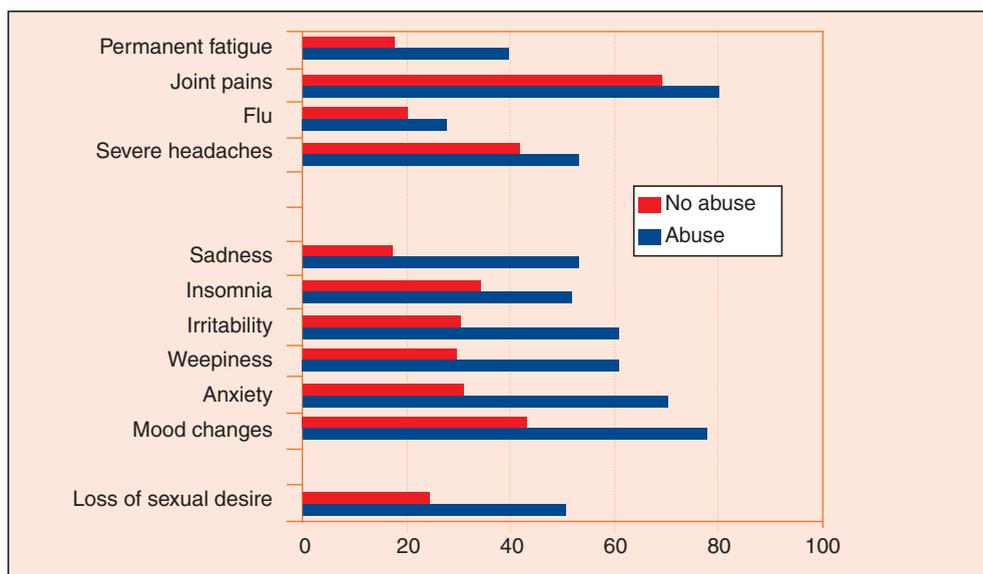
### **REPERCUSSIONS ON HEALTH OF SONS AND DAUGHTERS**

Risk of altering their full development  
Feeling threatened  
Learning and socialisation difficulties  
Adoption of submissive or violent behaviour with school friends  
Frequent psychosomatic illnesses  
Frequent victims of abuse by father  
Trans-generational violence with high tolerance to situations of violence  
Violence can also affect persons who depend, and live with, the woman

Taken from the **Common protocol for Healthcare Action in Gender Violence**

In the above-mentioned study conducted in the area of Primary Health-care it was evidenced that women who suffered abuse also presented a higher incidence of severe headaches, joint pains, mood changes, anxiety, insomnia, irritability, sadness and loss of sexual desire.

As we can see in figure 4, these same findings are revealed by the Macro survey of the Women’s Institute, both in relation to abuse suffered in the domestic environment and, in particular, to abuse suffered in the partner or ex-partner relationship. (Source: Analysis of the Women’s Institute Macro Survey conducted by the Special Delegation of the Government on Violence against Women)



**Figure 4: Presence of symptoms (%) in women who declare abuse by partner or ex- partner and those who do not. Spain, 2006.**

Foreign women who suffer abuse present higher percentages of all the symptoms (except insomnia) than Spanish women in the same situation, which highlights their higher vulnerability, as mentioned above.

### 3.1.3.4. *The difficulties in the healthcare system's response.*

In general, health problems associated with, or generated from, a relationship of abuse are not currently identified as such either by the healthcare system or by the majority of its professionals. The predominant biomedical training and approach in current clinical practice generates a high risk of med-

icating the suffering of women who go to a doctor's surgery seeking help for her discomfort, instead of addressing the real causes.

An example of this are the results of the study referred to in relation to the use (prescription) of psychoactive drugs by women who suffer abuse, presented in the following table:

CONSUMPTION OF PSYCHOACTIVE DRUGS BY WOMEN WHO SUFFER ABUSE AND WOMEN WHO DO NOT			
	Abuse		
	Yes		No
	Nº	(%)	Nº (%)
Psychological health			
Consumption of tranquilizers	44	(50,6)	47 (26,9)
Consumption of antidepressants	35	(44,9)	45 (26)
Consumption of analgesics	55	(56,1)	112 (46,7)
Consumption of alcohol	15	(25,9)	20 (13,5)
Consumption of illegal drugs	4	(8,5)	2 (1,5)
Psychological morbidity	76	(57,6)	89 (30,9)

*Source:* Ruiz-Pérez Isabel and col, 2006.

The Health Surveys present similar examples of «medicalization» among the general population when analysing the «consumption of tranquilizers, sedatives, sleeping pills». In the National Health Survey of 2003, 10% of women (and 3.8% of men) used such medication, the majority prescribed by health professionals.

In addition to this biomedical training, there are other factors that we will illustrate with the comments of primary healthcare professionals, which were gathered in a qualitative study on violence against women<sup>33</sup>.

<sup>33</sup> Mosquera Tenreiro, C., Uría Urraza, M. , García Ruiz, M. (2005): «La Salud de las Mujeres en Asturias. Reflexiones desde las propias mujeres», Department of Health and Healthcare Services.

The lack or non-existent specific training received on violence against women, a result of the lack of priority given to the issue in the healthcare environment,

**«When there is an epidemic of 90 deaths of pneumonia, it is not anecdotal... I have worked in different places and it is sad, because diseases are discussed among colleagues and this is commented on as if it were an anecdotal case. In order to detect something, one has to be previously aware of its existence».**

*«If I had to count the number of cases detected in my centre, and I imagine that in healthcare in general, I would be able to count them on one hand. And it can't be possible that 90 women died in 2003 and we only detected two cases of abuse, something is not right here...»*

The insecurity and fear that this lack of training generates among professionals who would otherwise be able to provide therapeutic assistance to women with this problem

**«They showered us with papers on how to draw bruises on the face and on different parts of the body... it is a very judicial approach. We are not prepared. We have not been trained to detect the problem... We don't know what questions to ask, we feel embarrassed, we have many pre-established ideas that it doesn't happen here. It is not a problem of bad training but of no training at all.»**

*«Also, it is very much like Pandora's box: you uncover something and then you find that you can no longer control the situation. And professionals are afraid to get involved in something, and then not know what to do...»*

*«If one is not clear about a referral system and one is not clear about a work procedure... it could even be dangerous. I think that a mistake has been made in thinking that the problem of abuse could be resolved like a legal problem: complaint, separation and that's it. But the problem is far more complex...»*

*«When we talk about abuse we are not talking about occasional acts, but about something that occurs continuously and over time. Therefore, that woman is damaged [psychological damage]... and if she is damaged she is not in the same conditions as someone who is not damaged... Many false expectations are generated among these women... because the damage has not been repaired.»*

The barriers in the personal sphere of these professionals, as in the case of other professions, such as attitudes, beliefs, prejudices, and the difficulties of the women themselves in dealing with these problems in the surgery.

*«Us doctors are not unbiased human beings, if we do not receive good training on gender, obviously, all our beliefs, when you hear the woman –the first thing that springs to mind is “I might get hit once, but not a second time”– all these beliefs interfere here... and then the feeling of guilt that the woman always, always, always has; the feeling of shame and guilt, if you have not been trained on gender, it is very difficult to understand and to address.... The first thing that must be introduced is the gender focus. There is a basic discrimination (between men and women) present there, which is already a form of violence in itself, the first. And it is from here that we ought to begin...»*

**«Yes, there is a gender tendency, being a man or a woman clearly affects whether you believe it or not [abuse]. It is clearly different.»**

Added to these difficulties are other problems of the organisation kind, such as *the lack of time available in the primary healthcare system* to change these practices in the sense of broadening the understanding of the disease or discomfort from a bio-psycho-social approach and adopting other therapeutic approaches. *The lack of knowledge on other resources and the co-ordination difficulties* between healthcare system professionals and professionals of other areas are basic needs to be addressed.

For all the above reasons, the current capacity of the healthcare system professionals to detect violence against women and to provide adequate assistance is low.

All this highlights the urgent need to introduce changes in undergraduate education of healthcare professions and to provide on-going training to practicing professionals.

### **3.1.3.5. The initiatives in place in the National Health System**

*The commitments defined in Organic Law 1/2004 of December 28th, in relation to the healthcare system are:*

- *«The healthcare administrations... will foster the early detection of gender violence.»*
- *«They will develop awareness-raising programmes and on-going training for healthcare personnel... for the purpose of improving and boosting early detection, assistance and rehabilitation.»*

- «They will promote the application, the continuous update and dissemination of protocols containing uniform procedure guidelines for healthcare assistance in cases of gender violence.»
- «The issue of gender violence will be included in the health plans.»

The current situation between the autonomous communities is very diverse as regards the initiatives developed: existence or not of a healthcare assistance protocol, awareness-raising and training initiatives aimed at professionals and research/knowledge on the problem.

In the last decade, most of the autonomous communities gradually developed specific initiatives, particularly in the area of training. Many of the autonomous communities have their own protocols, with unequal degrees of implementation and different definitions of violence against women (gender violence, domestic violence or violence in the partner relationship) depending on the moment in which the protocol was elaborated and how that was done.

For the purpose of responding to the limitations described in the previous section and complying with that established in the Integral Act, as well as with the measures included in the National Plan on Awareness-raising and the Prevention of Gender Violence, and in the Catalogue of Urgent Measures, with a view to establishing more homogenous procedure guidelines between the autonomous communities, the Inter-territorial Council is fostering the following initiatives for the entire National Health System:

#### **3.1.3.5.1. Inclusion of Gender Violence in the List of Services provided under the National Health System**

Royal Decree 1030/2006, which establishes the list of common services provided under the National Health System (NHS) and the procedure for updating the list, for the first time, includes the “detection and treatment of gender violence and abuse in all ages, particularly minors, the elderly and the disabled” in Primary Healthcare; and in Emergency Healthcare gender violence is included under the terms «communication to the competent authorities of situations where it is required, particularly in cases of suspicion of gender violence and abuse of minors, the elderly and the disabled»<sup>34</sup>.

This ensures that the initiatives implemented in the past in a scattered

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<sup>34</sup> Official State Bulletin (BOE) of September 16th 2006. Royal Decree 1030/2006, of September 15th, which establishes the list of services provided under the National

and voluntary manner in the area of Primary Healthcare, often depending on the initiatives of very committed professional teams or individuals, are now part of a compulsory service available to the population as whole under the National Health System. It is also essential to incorporate it into the areas of Mental Healthcare and Pregnancy Healthcare.

### **3.1.3.5.2. Elaboration of a common healthcare assistance protocol**

In the year 2004, the Inter-territorial Council of the National Health System established a Commission against Gender Violence. Under it, a Common Protocol on Healthcare Procedure in cases of Gender Violence was elaborated last year (March 2007) with the collaboration of the autonomous communities and the co-ordination of the Observatory on Women's Health of the Ministry of Health and Consumer Affairs.

The main objective of this protocol is to «establish standard and homogenous procedure guidelines in the National Health System (SNS) for the early detection, assessment and action in detected cases of gender violence and their follow-up. The ultimate purpose is to offer guidelines to the healthcare personnel of the National Health System on the integral care –physical, psychological, emotional and social– provided to women suffering gender violence who turn to a healthcare centre».

Other objectives, which are no less important, are associated with «sensitizing healthcare personnel on the seriousness of violence against women as a health problem... and to contribute, from the area of healthcare, to raising awareness among the public in general about this problem».

The protocol refers to any form of violence against women over 14 years of age, regardless of who the aggressor is; the initiatives that it refers to are very focused on violence perpetrated by partners or ex-partners, as this is the most common form of gender violence in our country and the most difficult to deal with, as it involves (or has involved) an intimate relationship.

It defines and highlights groups of women who, due to their personal characteristics, living conditions and social or legal situations need specific as-

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Health System and the procedure for updating the list. Ministry of Health and Consumer Affairs. <http://www.boe.es/boe/dias/2006/09/16/pdfs/A32650-32679.pdf> [Accessed May 23rd 2007].

sistance, as they are in more vulnerable situations. Such is the case of pregnant, disabled and immigrant women as well as those living in rural areas and in situations of social exclusion (such as for example, prostitutes and drug-addicts).

For the purpose of improving the assistance provided to women and the early detection of gender violence, the protocol defines and develops procedure guidelines for different situations and recommends the introduction of a question on the issue of abuse in the psycho-social history-taking process required when opening a new medical history file.

Lastly, the healthcare protocol seeks to contribute to finding a comprehensive assistance package for women in co-ordination between professionals of the healthcare system, other professionals and other institutions involved.

The introduction of this protocol must go hand-in-hand with the respective training initiatives.

### **3.1.3.5.3. Awareness-raising and training in the area of healthcare**

The training initiatives on gender violence must be aimed at all professional profiles: nursing and general medicine, psychology, psychiatry, obstetrics, paediatrics, social work and midwifery.

The priority areas for training are all the Primary Healthcare centres and professionals and their emergency units, the specific Specialised Healthcare services: Emergencies, Mental Health, Gynaecology and Obstetrics, Orthopaedics, and other particularly important healthcare services: Family Planning, Women's Health, Sexually Transmitted Infection Units and others.

The training initiatives proposed for the National Health System must establish defined quality criteria: minimum length, contents, teaching methodology, assessment, and training and practice of the lecturers imparting the training courses. They must also establish defined calendars and a budget, which must contemplate personnel substitution needs throughout the length of the training courses imparted during working hours, with a view to ensuring the participation of all the professionals.

The content of the training initiatives must include prevention, early detection and addressing violence against women, as well as professional

training to improve therapeutic listening and providing support during the woman's autonomy-building process for decision making. They must also include information on the resources available in the local social and legal areas as well as any other area that may be of help to the woman and that facilitates the inter-professional and inter-institutional task and co-ordination.

The assessment of the training initiatives must contemplate, at least, the following aspects 1) General attendance broken down by sex, professional profiles, attendance rate and level of responsibility 2) Length and content of course, in line with the established minimum requirements 3) Level of comprehension, empowerment and satisfaction of the professional participants.

The above-mentioned minimum common criteria for the entire National Health System are currently (June 2007) in the process of definition by a working group comprised of the autonomous communities, co-ordinated by the Ministry of Health's Observatory on Women's Health.

The autonomous communities which have conducted planned training initiatives have improved the detection of cases of violence against women.

### **Example of good practice: Training initiatives in the Autonomous Community of Cantabria.**

The Autonomous Community of Cantabria has been progressively establishing its «Healthcare Procedure Protocol for Abused Women» in its healthcare services since June 2005.

The establishment of the Protocol in Primary Healthcare Teams is preceded by an awareness-raising/training programme for healthcare professionals. These courses are part of the Primary Healthcare On-going Training Programme. From June 2005 to December 31st 2006, 21 Primary Healthcare Teams, of a total of 38, received the training. Therefore, 55.2% of the Teams are already applying the Protocol; a total of 628 Primary Healthcare professionals and 31 Specialised Healthcare professionals received the training.

Each course lasts 18 hours. All the members of the Primary Healthcare Team participated in the course, including those belonging to the

emergency services. The training took place during working hours and the participants were substituted. The attendance rate of the professionals was very high (86.62%) and so was their satisfaction with the course (3.58 out of 4 points).

As the teams receive the training, the centres gradually incorporate «gender violence detection and assistance» into their list of services, and the specific computer programme for this service. In addition, information posters and brochures are available in these healthcare centres to inform the population that violence against women is also a health problem for which the centre is equipped to deal with.

The Mental Health Units that provide support to the Primary Healthcare Teams that have already adopted the protocol have reorganised their units for the purpose of reducing the waiting time for psychological assessment and to always have a psychology professional at hand to assist women suffering gender violence.

This training programme has a budget for the training initiatives themselves and for the substitutes needed to replace the professionals attending the courses.

#### **3.1.3.5.4. Elaboration of minimum common indicators for the epidemiological vigilance of gender violence in the healthcare system**

Based on that established in the common protocol with regard to the detection and treatment of gender violence, this task involves defining indicators for the healthcare system, in order to assess the actions taken by the healthcare system and their evolution, through its own reporting and vigilance mechanisms: computerised medical history and systematic exploitation of the data. This will allow us to know what we do and how we do it, as well as to assess the improvement in clinical practice as a result of the adequate development of the training initiatives, in order to reinforce them.

The minimum common indicators to be developed must be geared towards measuring improvements in the detection of and assistance to cases of gender violence in the healthcare system, monitoring the evolution of the number of cases detected, the socio-demographic description of the cases, the type of violence detected and the relationship between the aggressor and

the victim, as well as the assistance provided to women in the healthcare system. This information would form part of the National Health System's Annual Report on Gender Violence.

The specific difficulties entailed in developing and generalising this system of indicators are associated with the heterogeneity of the information systems and the different paces of computerisation between the healthcare system of each autonomous community.

These minimum common indicators for the entire National Health System are in the process of definition (June 2007) by a working group comprised of the autonomous communities, with the co-ordination of the Observatory on Women's Health of the Ministry of Health.

### **3.1.3.5.5. Looking to the future**

Apart from constituting a pending human rights issue, violence against women has enormous repercussions on the health and discomfort of women and their children. Although it is a problem deeply rooted in the inequality that exists in the relationships and in the conditions of power between women and men, which is from where the solution must be approached, the healthcare system can and should contribute to addressing this public health problem. The difficulties involved are wide, but the bio-medical training received by healthcare professionals and the lack of knowledge and specific training on this issue is a main obstacle.

It is expected that the results of the training initiatives, primarily, and the introduction of the common protocol, will improve the detection of cases and the healthcare provided. It is important to acquire first-hand knowledge of the situation and the needs of healthcare professionals as well as the opinions of women on the assistance that they receive.

It would be convenient if, in the future, the improvements in the healthcare system could be evidenced in a reduction in the level of medicating women's discomfort and suffering and in a greater implication and satisfaction of healthcare professionals.

## **3.2. RIGHTS OF VICTIMS OF GENDER VIOLENCE**

### **3.2.1. Labour, social security and economic support rights**

The phenomenon of gender violence brings us face to face with a multi-faceted reality that cannot be solved through simple or one-directional approaches. Therefore, together with awareness-raising, prevention and sanction measures, it is vitally important to design other measures that address the difficult situation in which sufferers of gender violence find themselves. Thus, Title II of Organic Act on Gender Violence, «Rights of women victims of gender violence», recognises a number of rights that attempt to compensate the woman for her suffering, to incorporate or reintegrate her into a social status of real independence, without undermining her dignity, and to recover her condition of citizen with full rights. Therefore, the reductive perspective of social assistance to the victim is broadened in order to embrace the recognition of social and citizenship rights.

In recognising these rights, Chapters II, III and IV of Title II describe the existence of this type of violence, regardless of the social status of the victim. Therefore, the measures are aimed at women who work on an employee or a self-employed basis, women civil servants, unemployed women, and women who, due to their personal, social or professional circumstances, are unable to participate in employment integration programmes, as well as working mothers with schooling needs for their children, and elderly women who need access to state-owned old-people's homes.

These measures cater for the different real situations that women victims of gender violence may find themselves in, after acknowledging that the phenomenon of violence affects women of all age groups, social classes, nationalities, academic backgrounds, etc.

In view of the above, and in summarised form, the Act includes measures that affect the following areas:

- A. Labour measures that seek to adapt the working conditions of female workers victims of gender violence to the personal circumstances that they are facing, by adapting working hours, enabling geographic mobility, suspending the labour contract under the right for the company to reserve her job position, and enabling the termination of the contract (section 21 and Additional Provision 7 of Organic Act 1/1004). These

measures are also applicable to women civil servants (section 24 and Additional Provision 8 of Organic Act 1/2004).

- B. Associated with the previously described measures, the Act includes other measures related to Social Security. For example, the establishment of a new justification reason for the legal status of unemployed in cases of suspension or extinction of the labour contract on the grounds of the woman's status of victim of abuse; or the consideration of the length of the suspension as time during which the woman effectively contributes to the Social Security System for the purposes of the benefits that she is entitled to, among them, unemployment benefit.
- C. Employment policy measures aimed at enabling abused women to gain access to a labour activity, whether as an employee or a self-employed worker. The labour rights are rounded off with a specific employment programme for these victims (section 22 of the Organic Act 1/2004).
- D. Economic support, financed by the National Budgets, to cater for persons who cannot participate in the labour integration programmes due to their personal, professional or social circumstances, and whose integration in such programmes would not lead to a substantial improvement in their employability possibilities.

### **3.2.1.1. *The scale of the problem from a labour, social security and economic point of view***

Despite the current lack of information on the exact scale of gender violence, as defined in Organic Act 1/2004, affecting working women, the re-exploitation of data carried out by the Special Delegation of the Government on Violence against Women on the results of the «III Macro survey on violence against women» relative to the cases of declared abuse perpetrated in the last year by a partner or ex-partner, reveals that the majority of women who manifested having suffered violence in the last year are working women and that the employment rate among these women is much higher than among the women who manifested not having suffered abuse in the last year.

	TOTAL INTERVIEWED	Abuse in the last year	
		YES	NO
Active	44,8	56,7	44,6
Inactive	55,2	43,3	55,4
<b>TOTAL</b>	100,0	100,0	100,0

On the other hand, the rate of unemployment among those who manifested having suffered abuse from their partner or ex-partner in the last year is higher than amongst those who manifested not having suffered this type of abuse.

	TOTAL ACTIVE	Abuse in the last year	
		YES	NO
Employed	86,8	84,9	86,7
Unemployed	13,2	15,1	13,3
<b>TOTAL ACTIVE</b>	100,0	100,0	100,0

The Macro survey was conducted in 2006 and the above-mentioned re-exploitation of data reveals that 2.1% of all the women interviewed declared that they had suffered abuse from their partner or ex-partner in the last year<sup>35</sup>.

Labour active women, both in employment and unemployed, suffer more gender violence than inactive women. This data would lead us to believe that either being active raises more awareness of situations of abuse, or that being a victim of violence encourages the woman to work and to find independence from her aggressor. In the latter case, we should mention that, from the point of view of labour integration, this independence is maintained and strengthened when the situation of abuse ends, given that the activity rate among those who in the survey manifested that they had been victims of abuse at some point in their lives but not in the last year (62.9%) is much higher than the activity rate among the women who answered that they had never been abused by their partner or ex-partner (43.6%).

<sup>35</sup> «Against gender violence. Statistics bulletin. No. 1 – March 2007». Ministry of Labour and Social Affairs.

<b>Abuse in the last year</b>	<b>As a % of all interviewees</b>
In employment	2,5
Unemployed	2,9
Student	0,6
Housewife	1,8
Retired or disabled	1,4
<b>TOTAL</b>	<b>2,1</b>

Although the majority of the active women who declared that they had suffered abuse from their partner or ex-partner in the last year work for private companies (the majority holding a fixed post), there is also a significant proportion of women working on a self-employed basis and in the civil service.

<b>Abuse in the last year</b>	<b>Yes</b>
<b>TOTAL</b>	<b>100,0</b>
I am working on a self-employed basis	10,8
I work in the civil service	8,8
I work for a private company, in a fixed job	16,4
I work in a private company, in a temporary job	11,6
I am unemployed and looking for a job	8,5
I am unemployed and not looking for a job	2,1
I am a student	2,2
I am a housewife	29,9
I am retired or disabled	8,7
Did not know/Did not answer	0,8

Female students, as well as women in unemployment but not looking for work are minorities, however, housewives make up nearly thirty percent of the total number of women who declared abuse, and those in retirement or disabled make up nearly nine percent.

To conclude, we should mention that the data available in relation to the use that is being made of the labour, social security and economic support measures indicate that few women are taking advantage of them, probably because the information on their existence and how to gain access to them has not been readily available.

We can affirm that, from January 2005 to April 2007, a total of 1.049 initial contracts for victims of gender violence were registered in the Employment Offices, of which 29.8% were indefinite contracts. Also, 127 contracts for substituting victims of gender violence were registered.

As regards recipients of the Active Income for Insertion, on April 30th 2007, there were 6.850 unemployed female workers receiving this benefit, which is an increase of 21% compared with the figure for the end of 2006

### **3.2.1.2. *Labour, social security and economic support measures***

Labour relations and the company, the latter being the physical space for such relations, are particularly relevant when considering the phenomenon of gender violence. This is due to three basic reasons: on the one hand, because through the labour activity, the necessary resources are obtained to enable the woman to reach a certain level of economic independence, providing her with an opportunity to leave behind one of the traditional elements of subordination or subjection to the male; on another hand, behaviour that attempts against the protected legal right can manifest itself in the company, through conducts that are nowadays clearly recognisable and punishable within that environment. And, finally, because gender violence, even when it takes place outside the company and, therefore, outside the specific labour relation, can have clear repercussions on the labour relation, and can even require the adaptation of the woman's role in the company as a consequence of the repercussions of such violence<sup>36</sup>.

It is therefore no surprise that Organic Act 1/2004 contains specific provisions that affect the points mentioned in the first and third place, i.e., obtaining economic resources and the repercussions of the phenomenon that takes place outside the labour environment. Organic Act 1/2004 does not adopt measures on the prevention of gender violence in the work place, given that section 1 confines gender violence to the violence perpetrated by the partner or ex-partner, even when the couple does not share the same roof. This does not mean that our legal system does not have mechanisms in place to respond to situations of gender violence, in the broad meaning of the term,

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<sup>36</sup> See, in a similar sense, Fernández López, M<sup>a</sup>. F., *La dimensión laboral de la violencia de género*. Albacete (Bomarzo), 2005, p. 9.

perpetrated in the work place, such as in the case of the classification of sexual harassment as an administrative offence<sup>37</sup> or a very serious labour offence. Let us also remember that the above-mentioned Act on Effective Equality between Men and Women contains specific measures that contemplate gender violence perpetrated in the work place.

This labour perspective is one of the most prominent innovations of the Integral Act, without precedents in the international environment.

It is true that since the Convention on the elimination of all forms of discrimination against women, adopted in 1979 by the UN General Assembly and, subsequently, the Declaration of the UN General Assembly on the elimination of violence against women (RES 48/104, of December 20th 1993) and, more recently, the above-mentioned Beijing Declaration, the company is mentioned, but only as the place where certain equal access and labour conditions between men and women must be guaranteed. That is, as a space where discriminatory practices and, therefore, gender violence, may take place.

Nevertheless, it could be said that there are in fact precedents in the regulations of the autonomous communities. In this respect it is worth recalling the regulations of some autonomous communities, which have been in place since before the Integral Act and were adopted by virtue of the administrative responsibilities transferred to those autonomous communities and through which employment policy measures were adopted. The importance of one such regulation lies, on the one hand, in the assumption of gender violence as a public problem and, on the other, in the recognition of the comprehensive nature of the measures to ensure their effectiveness. The fact is that this comprehensive approach is a mere declaration, albeit extremely important because it goes into great detail about the complexity of this phenomenon, given that the measures can only be addressed from the competencies transferred to the autonomous communities based on a constitutionally established distribution. These transferred competencies are the areas of social assistance, education, healthcare, and the one that concerns us here, active employment policies<sup>38</sup>.

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<sup>37</sup> Compare with art. 8.12 of the Social Offences and Sanctions Act (LISOS) and art. 54 of the Workers' Statute (ET) and, as an example, the Collective Bargaining Agreement of the Glass Trade and Manufacture Sector in Las Palmas [Resolution of General Directorate for Labour (undated) (Official Bulletin of Las Palmas, 13 en.06.)]

<sup>38</sup> These are awareness-raising and prevention measures focused on education and training for civil servants and all personnel of public and private entities involved in combating this social scourge; and other measures to establish a network of centres that

In its role of agglutinating agent of measures, the Integral Act draws together employment promotion measures. However, these measures are not new to national legislation, take for example the employment promotion programme which used to be included in the Legislation governing the National Budgets, and is now contained in Act 43/2006, of December 29th, on improving economic growth and employment.

Thus, the Integral Act adopts a series of measures without precedents in comparative law, neither internally nor externally, by virtue of which the vicissitudes of the situation of gender violence suffered by the victim are projected on to the labour environment –or the civil service-, either on to the individual labour relationship –or the civil service relationship-, on to employment policies and social security rights, -or special civil service regimes-, without forgetting the right to social assistance. The purpose of this projection is to mitigate the repercussions of this situation on working victims or, on the other hand, to adopt measures to help victims integrate into the labour market; also guaranteeing minimum welfare benefits when the victims' employability possibilities are limited.

### **3.2.1.2.1. The new legislative framework**

Having described the agglutinating role of the Integral Act, in which, among others, labour regulations converge, it is worth analysing these measures and how far they go towards guaranteeing the right of women victims of gender violence to full protection.

It is not the first time that Labour and Social Security Legislation addresses this personal dimension of the worker. The right to request leave of absence and the suspension of one's job for personal reasons are an excellent example of this. Furthermore, the regulations on balancing work with family life have also promoted this «affectation» of the labour environment by circumstances confined to the worker's most intimate environment<sup>39</sup>.

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guarantees basic assistance to victims, from psychological and healthcare assistance to labour integration. They also contemplate economic aid, access to housing and some of these legislations establish the appearance of the autonomous Administration as private prosecutor in proceedings held on these violent acts.

<sup>39</sup> In this respect, see the interesting thoughts of Fernández López, M.F. (*La dimensión laboral ...*, cit., p.22), by virtue of which this affectation imposes « a la empresa una racionalidad adicional a la meramente profesional, que incluye en su toma de decisiones

Therefore, the Act seeks to reconcile all the interests concerned, taking the business interests and the assistance needs generated by this violent phenomenon very much into account. Consequently, the most adequate instrument for defining many of the legally established measures is the collective bargaining agreement, the result of an agreement between the social agents, and, on occasions, the actual agreement between the worker and the employer. In this respect, let us remember that the Inter-confederation Agreement on Collective Bargaining<sup>40</sup> already considered collective bargaining as the adequate channel for the effective exercise of the rights recognised in the Integral Act.

This is the reason why it is so important to encourage the regulatory action of the social interlocutors in defining and developing the limits and conditions of the legally recognised labour rights, thus facilitating the interpretation that judges would necessarily have to make on issues that inevitably should be defined in collective bargaining. This task is already beginning to be addressed in social concertation.

Therefore, collective bargaining has a major role to play in the development of the rights recognised in the Integral Act, both with respect to employee-basis female workers and female civil servants who suffer gender violence. Hence the need to address conventional regulations on this issue.

We should remember that, even prior to the introduction of the Integral Act, a few isolated collective bargaining agreements addressed the problem, making the signatories aware of the special effects of all situations of gender violence and their repercussions on the labour environment, urging organisations at national level to negotiate formulas that contemplated and enabled persons suffering gender violence to preserve their jobs<sup>41</sup>.

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*la consideración de vicisitudes puramente personales de las trabajadoras a su servicio, que afectan a su rendimiento laboral, o que pueden aconsejar cambios en su prestación y que no obedecen a la evidencia de necesidades empresariales».*

<sup>40</sup> Resolution of the General Directorate for Labour, March 7th 2005 (Official State Bulletin, 16)

<sup>41</sup> In this respect, see the 3rd Final Provision of the sector collective bargaining agreement for *Transport Agencies and Transport Operators of Seville*. [Agreement DPCE and DT November 8th, 2004 (Official Bulletin of Seville, 25)].

Since 2005, the year in which the Integral Act came into force, the effects of the Act on conventional instruments has been growing, as we will see below with regard to the exercise of the rights analysed.

The first thing to highlight is that the term gender violence is making its way into collective bargaining agreements in a very significant way, as opposed to other less frequently used and less adequate definitions, such as domestic violence<sup>42</sup>.

We should also highlight that there are many collective bargaining agreements that address the regulation item by item in specific chapters, sections, articles<sup>43</sup> or provisions<sup>44</sup>, thus facilitating adequate implementation, as opposed to others which approach the regulation in a fragmented manner.

On the other hand, other collective bargaining agreements either just refer to all<sup>45</sup> or some<sup>46</sup> of the provisions of the Integral Act, literally reproduce the

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<sup>42</sup> See, as an example, art. 26 of the collective bargaining agreement for the Special Centres for the Severely Mentally Handicapped, whose title and administration is in private hands [Resolution of the General Directorate for Labour and Social Security, January 3rd 2006 (Official Bulletin of Valencia, Feb 13th)], under the heading “Domestic Violence”, although in its regulation it retakes the concept of gender violence.

<sup>43</sup> See, as an example, art. 41 of the sector collective bargaining agreement for the Wholesale Commerce and Imports of Industrial Chemical Products and Perfumery [Resolution, General Directorate for Labour, Jul. 1st 2005 (Official State Bulletin, 22)]

<sup>44</sup> Thus, the Final Provision of the sector collective bargaining agreement for Cleaners of Buildings and Premises of Valencia [Announcement DTEyT, Aug. 10th 2005 (Official Bulletin of Valencia, Sept. 29th.)] or the 5th Additional Provision of the sector collective bargaining agreement for Cleaners of Buildings and Premises of Castellón [Agreement, Aug. 3rd 2005 (Official Bulletin of Castellón, 25)].

<sup>45</sup> As in the 8th Additional Provision of the 5th collective bargaining agreement for workers at the service of the Regional Government of Extremadura [Resolution, General Directorate for Labour Jul. 13th 2005 (Official Bulletin of Extremadura, 23)]; art. 33 of the sector collective bargaining agreement for the Activities of Road Transport, Garages and Parking Areas of Burgos [Resolution, OTT Jul. 18th 2005 (Official Bulletin of Burgos, Aug. 12th)] or art. 27 of the sector collective bargaining agreement for Marzipan, Fried Pastries, Cakes and Chocolates of Toledo [Agreement DPCLyT May 8th 2006 (Official Bulletin of Toledo, 24)];

<sup>46</sup> In this respect, art. 35 of the sector collective bargaining agreement for Liquid Petroleum Gases Industries of Castellón [Agreement DTEyT, Aug. 9th 2005 (Official Bulletin of Castellón, Sept. 10th.)] or art. 1.4 of the collective bargaining agreement for the Animal Foodstuffs Industry [Resolution General Directorate for Labour, Dec. 1st 2006 (Official State Bulletin, Jan. 18th 2007)]

entire<sup>47</sup> or partial<sup>48</sup> contents of the Act, or they state that the stipulations of the Act are included in the collective bargaining agreement<sup>49</sup> All of which fail to fulfil the aim of more concretion called for in the Act.

### 3.2.1.1. *Labour rights*

The recognition of these rights seeks to mitigate the negative effects of the situation of gender violence suffered by the victim on her labour activity. The ultimate purpose is therefore to preserve her labour relationship, protecting it against the vicissitudes of the violent phenomenon that she suffering and, in the event of having to suspend or terminate her labour relationship, to compensate her with an income to replace the salary that she would cease to earn.

Thus, the labour rights recognised in the Act make it possible to adapt the intensity of the labour services rendered by the victim of violence to the circumstances that she may be going through, to her assistance, recovery and protection needs. At the same time, in determining the scope and extension of these rights, the interests of the company have been extensively considered. The company being a third party on to which a series of circumstances, that transcend those strictly required for its adequate operation, are imposed, affecting the way it organises its business operation. The accreditation of the situation of violence is the instrument that enables to reconcile all the interests concerned and provides legal security to the parties.

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<sup>47</sup> Thus, the Final Provision of the sector collective bargaining agreement for Cleaners of Buildings and Premises of Valencia [Announcement DTEyT Aug. 10th 2005 (Official Bulletin of Valencia, Sep. 29th)]; the 5th Additional Provision of the sector collective bargaining agreement for Cleaners of Buildings and Premises of Castellón [Agreement Aug. 3rd 2005 (Official Bulletin of Castellón, 25)] or art. 28 of the sector collective bargaining agreement for Drycleaners and Launderettes of the province of Valencia [Agreement DTEyT May 9th 2006 (Official Bulletin of Valencia, 31)]

<sup>48</sup> See, art. 55 of the sector collective bargaining agreement for the Textile and Confection Industry [Resolution of the General Directorate for Labour, Nov. 14th 2006 (Official State Bulletin, Jan. 4th 2007)]; art. 18 of the state framework agreement for Cleaners of Buildings and Premises

<sup>49</sup> As in the case of the 7th Additional Provision of the 9th collective bargaining agreement for Child Assistance and Education Centres, [Resolution General Directorate for Labour, April 14th 2005 (Official State Bulletin, May 6th)] or the 7th Additional Provision of the collective bargaining agreement for Private Universities, Private University Centres and Post-graduate Education Centres [Resolution General Directorate for Labour, Dec. 27th 2006 (Official State Bulletin, Jan. 18th 2006)]

Sector [Resolution General Directorate for Labour Aug. 18th 2005 (Official State Bulletin, Sept. 14th)] or art. 37 of the sector collective bargaining agreement for Seasoning, Filling, Packaging and Export of Olives Industries of Seville; or art. 20 of the 19th collective bargaining agreement for Railway Contractors [Resolution General Directorate for Labour, Sep. 21st 2005 (Official State Bulletin, Oct. 6th)].

Lastly, and before we move on to itemise the recognised rights, it is important to highlight that the Act declares null and void the dismissal of a victim of gender violence, by virtue of the rights recognised in article 55.5 b) of the Workers' Statute and the 7th Additional Provision of Organic Law 1/2004, which obliges the company to reincorporate the worker immediately and to pay her any salary that she failed to receive as a consequence of her dismissal (article 55.6 of the Workers' Statute). This provision was necessary to prevent the protection system established in the labour environment from acting with a boomerang effect on the worker victim of gender violence. Nevertheless, it would also be convenient for the previously mentioned article to include the declaration of null and void dismissal in cases where the dismissal is founded on work absenteeism or unpunctuality as a result of the physical or psychological situation derived from gender violence, otherwise the dismissal is classified as unfair dismissal, thus diminishing the protection.

### **3.2.1.1.1. Work absenteeism or unpunctuality are considered justified**

Article 21.4 of Organic Act 1/2004 established that *«work absenteeism or unpunctuality caused by the physical or psychological situation derived from gender violence were considered justified, when so determined by the social services or healthcare services, as the case may be, without prejudice to the worker's obligation to communicate such absenteeism to the company as soon as possible»*.

The objective of this provision was twofold. On the one hand, and of a general nature, to repeal the general provision contained in article 54.2.a) of the Workers' Statute, by virtue of which repeated and unjustified work absenteeism or lack of punctuality could be considered by the company as a serious contractual breach and a legitimate cause for the employer to exercise his disciplinary power in its most categorical manifestation, i.e., disciplinary dismissal. On the other hand, projected now on to the extinction of the labour contract for objective reasons, contemplated in article 52.d) of the Workers' Statute, which enables the employer to terminate a labour contract when the

level of absenteeism reaches specific thresholds<sup>50</sup>, the provision aimed to exclude from the calculation of absenteeism those associated with gender violence; therefore, point 6 of the 7th Additional Provision revised the second paragraph of section 52 of the Workers' Statute, by virtue of which «absenteeism caused by the physical or psychological situation derived from gender violence, duly accredited by the social services or healthcare services, as the case may be, shall not count as absenteeism».

To summarise, absenteeism is recognised as justified in order to avoid the extinction of the labour relationship on grounds of disciplinary dismissal, in the first case, and of objective dismissal, in the second case. However, justified absenteeism only includes absenteeism as a result of the physical or psychological situation of the female worker derived from gender violence, which is what prevents her from going to work regularly, a situation that must be confirmed by the social or healthcare services. The latter provision is an exception to the general rule of accreditation contained in article 23 of Organic Act 1/2004 when labour and Social Security rights may be affected, which requires the existence of a protective order or otherwise the report issued by the Public Prosecutor's Office, pending the protective order. In the case that concerns us here, and for the purposes described, it seems logical that the report issued on the situation of the victim by the social services or healthcare services, as applicable, should be a sufficient accreditation document. In this respect, certain conventional regulations contemplate this accreditation possibility, either the report issued by the social services, the protective order, or the report issued by the Public Prosecutor's Office<sup>51</sup>.

On the other hand, we should bear in mind that there are certain situations where the physical or psychological deterioration is such that the victim does not even recognise the situation of gender violence that she is suffering. In this case, the victim will hardly be able to justify the reason for her absenteeism, i.e., gender violence, which is what is generating the deterioration. Here, the

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<sup>50</sup> As is known, this precept establishes that the termination of a contract for objective reasons can take place «on grounds of absenteeism, even when justified and sporadic, that exceeds 20 percent of the working days of two consecutive months, or 25 percent of four discontinued months within a period of 12 months, provided that the total absenteeism rate of the workforce in the work centre exceeds 5 percent in the same time periods».

<sup>51</sup> Article 73.6 of the sector collective bargaining agreement for Healthcare Establishments of Hospitalisation, Assistance, Consultation and Clinical Analyses Laboratories 2004/2006 [Resolution DGRL Nov. 3rd. (DOGC 30)]

report issued by the social services or healthcare services, or even the report issued by the health surveillance services, accrediting the deterioration –without basing it on gender violence– should be considered as valid justification of absenteeism caused by an illness, as provided in section 52 of the Workers’ Statute, which is something that gives way to certain restrictions in the recognised justification right, broader in the event of gender violence.

However, we should consider the possibility of the victim accrediting the situation of violence that is causing her physical or psychological deterioration through other means of proof, such as the health surveillance services provided by the company or even no proof at all if the situation of gender violence is already known to the company.

In this respect, we would like to highlight the following:

- 1) It is the situation of gender violence that turns the victim into a subject to be protected.
- 2) The protective order, the report issued by the Public Prosecutor’s Office or the report issued by the social or healthcare services are an instrument that simplifies the accreditation of the situation of gender violence suffered, and this simplification, a guarantee for the company, is what the Law takes into consideration for facilitating the exercise of the recognised rights, provided that the existence of those rights removes all possibilities of assessing the reasons alleged.
- 3) Even when one of the main governing principles of the Act is to guarantee rights in the labour environment that reconcile the requirements of the labour relationship with those derived from the situation of gender violence suffered by the female worker, these can be considered reconciled if the victim can demonstrate through any means of proof, first to the company, and then to an employment tribunal judge, if the company does not accept the allegation that she is a victim of gender violence<sup>52</sup>.

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<sup>52</sup> In this respect Fernández López, M.F. (La dimensión laboral ..., cit., p. 36) «esta es la interpretación más acorde con la filosofía general de la Ley y con el régimen de las ausencias en el trabajo», pues, «en la interpretación actual de la expresión “justificadas” referida a las faltas de puntualidad o de asistencia, más que a la forma en que se acredita, nuestros jueces en la realidad de la causa de justificación alegada, que podrá probarse por cualquier medio admitido en Derecho». Based on this observation, this author highlights the need for specialisation in gender violence also in labour law

### 3.2.1.1.2. Reduction or rearrangement of working hours

Article 21.1 of Organic Act 1/2004 recognises the right of the worker victim of gender violence to reduce or rearrange her working hours as per the terms established in the Workers' Statute. The scope and the extension of this right are defined in point 1 of the 7<sup>th</sup> Additional Provision of Organic Act 1/2004, which introduced a new point 7 to section 37 of the Workers' Statute, by virtue of which *«the female worker victim of gender violence will have the right, in order to make effective her protection or her right to full social assistance, to reduce her working hours with a proportional reduction of her salary or to rearrange her working time by adapting her working hours, working flexitime or through any other methods of organising working time used by the company. These rights may be exercised in the terms established for these specific cases in the collective bargaining agreements, in the agreements between the company and the workers' representatives or the agreement between the company and the affected worker. Otherwise, the concretion of these rights will be effected by the worker, according to the rules established in the above section, including the rules relative to the resolution of discrepancies.»*

The first thing that we should consider is that the objective of the reduction or rearrangement of working hours is to make effective the female worker's protection or her right to full social assistance. Bearing in mind that the aim of the Act is to guarantee the full protection of the victim of gender violence, this distinction between protection and the right to full social assistance highlights two possible moments in which the victim may exercise these rights, an important distinction with regard to the accreditation of the situation of violence.

The right to full social assistance, included in the measures of the Act, whose aim is to guarantee assistance to the victim to help her break the circle of violence that she has suffered or is suffering, and to reintegrate her into her lost status of sovereignty and independence, is enjoyed whether or not the victim has filed a complaint. This means that the existence of the report issued by the social services on the situation of gender violence suffered by the victim is sufficient to justify the need to exercise the recognised rights of reducing or rearranging the working hours, provided that the right to full social assistance is exercised through the social services, and this also applies to irregular compliance with working hours.

As regards the exercise of these rights in order to «make effective the protection», understood as safeguarding the life and physical or psychologi-

cal integrity of the victim, this protection can only be guaranteed through the prosecution of the aggressor, which requires that the «*criminis*» news comes to the knowledge of the authority through any means, so that the offence can be prosecuted. That is, in this case, the exercise of the right should be accredited through the protective order or the report issued by the Public Prosecutor's Office, pending the protective order. It would also be worth considering, given the protected legal right - the protection of the victim – the possibility of accrediting the situation of violence suffered through any other judicial resolution that includes a precautionary protection measure, provided that it can be assumed that the measure has been adopted to safeguard the life or physical or psychological integrity of the victim, or a sentence through which the aggressor is prohibited from approaching the victim.

At the same time, the exercise of these rights must take place in accordance with the applicable conventional regulations, or the agreement between the company and the worker. Lacking an agreement, the working hours are established by the female worker.

This reference to individual or collective agreements highlights the will of the Integral Act to «*reconcile the requirements of the labour relationship – and of employment– with the circumstances of female workers –or civil servants– who suffer gender violence*», the governing principle in the labour environment established in section 2, letter d).

Some collective bargaining agreements establish the right to reduce working hours by up to half, with a proportional reduction of the salary<sup>53</sup>, or by a third with an equally proportional reduction of salary.<sup>54</sup> At the same time, these collective bargaining agreements stress the incompatibility of dedicating the time reduced with performing another labour activity, whether or not remunerated.<sup>55</sup> Likewise, the conventional concretion of the

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<sup>53</sup> See for example, art. 38.1 of the collective bargaining agreement for workers at the service of the Public Administration of the Autonomous Community of the Balearic Islands [Resolution General Directorate for Labour, Oct. 13th 2005 (Official Bulletin of the Balearic Islands, 18)]

<sup>54</sup> Art. 27 of the collective bargaining agreement for workers at the service of the Public Administration of the Autonomous Community of La Rioja 2004-2007 [Agreement Jul. 28th 2005 (Official Bulletin of La Rioja, Aug. 4th)]

<sup>55</sup> See, for example, art. 38.4 of the collective bargaining agreement for workers at the service of the Autonomous Community of the Balearic Islands [Resolution General Directorate for Labour Oct. 13th 2005 (Official Bulletin of the Balearic Islands, 18)]

rearrangement of working hours includes the pre-establishment of the vacation period.<sup>56</sup>

In the absence of such agreements, it is the worker herself who, in the exercise of her right, determines –gives her opinion or assesses– the working hours most suited to the situation of violence that she is suffering, in order to safeguard her protection and her right to full social assistance.

In the event of discrepancies between the company and the employee victim of gender violence, the Act refers to the regulations on balancing work with family life with regard to breastfeeding leave and reduction of working hours due to legal custody or care of a dependent relative, and the discrepancies are resolved through the urgent and preferential procedure established in article 138.bis of the Law on Labour Proceedings<sup>57</sup>.

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<sup>56</sup> Art. 37.4 of the sector collective bargaining agreement for the Textile Trade of the province of Barcelona for the period 2005-2007 [Resolution STB2 Sept. 2005 (Official Bulletin of the Autonomous Government of Catalonia, Oct. 3rd.)]. Also, art. 36.4 of the sector collective bargaining agreement for the Glass, China, Ceramics and similar Trade of Catalonia 2005-2009 [Resolution General Directorate for Labour Relations, Feb. 21st 2006 (Official Bulletin of the Autonomous Government of Catalonia, May 16th)]

<sup>57</sup> Procedural method introduced to implement the procedural channel through which to resolve controversies generated around the concretion of working hours and the determination of the period for taking breastfeeding leave and for reducing working hours for family reasons, subsequently extended to exceptional child labour circumstances, and currently to instances of gender violence.

As regards this process, on the substantive front it is worth highlighting that, despite what may appear, the right of the worker to enjoy the above-mentioned permits is not absolute or unconditional as regards the selection of dates or their automatic exercise upon a mere application. Quite the opposite, the existence of discrepancies between the company and the worker obliges her to present the respective claim to the judicial body through this procedural channel.

a) The process is initiated with the presentation of the claim by the worker before the Labour Tribunal, within a period of 20 business days as of the date the company communicates its disagreement with the working hours schedule or the period for enjoying the permits proposed by her. Said period should be understood as the deadline.

b) The proceedings are classified as urgent and the processing as preferential, ensuring a prompt judicial response to enable the worker to exercise the rights as soon as possible. However, this urgency comes into conflict with the prior conciliation procedure requirement (article 64 of the Labour Proceedings Act) and the prior administrative claim (article 70 of the Labour Proceedings Act), from which it should have been excluded; the failure to exclude these procedural requirements was probably due to a certain legislative rush and to a deficient technique used, but, despite this, they are legally required until the respective legislative change is made. More in line with its urgent configuration is the fact that the hearing must be held within five days from the date the claim is accepted by the court and that the sentence must be passed within a period of three days. In both cases, the deadlines are shorter than those

In this case, the Employment Tribunal Judge is responsible for judging the company's claim, and the company must prove that the working hours established by the worker have a negative impact on the effective operation of the company, causing damage to the company that could be avoided if the worker were to establish other working hours or a schedule already in existence in the company.

In the event of differing criteria, once the situation of violence suffered by the worker has been established, the judge must assess the rights to be protected, none other than the life or physical integrity of the worker. Therefore, as manifested by the Constitutional Court in its first sentence relative to the collision between the exercise of fundamental rights by the worker and safeguarding the legitimate interests of the employer, *sentence 99/1994, the mere affirmation of the employer's interests does not suffice to superimpose the latter on the prevailing fundamental rights protected by our legal system, therefore, any organisation requirements of the company that restrict the exercise of the fundamental rights must be especially justified by reasons of need, and the party seeking to superimpose his business needs on these*

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envisaged for the ordinary process (ten days for the hearing, ex article 82 of the Labour Proceedings Act and five days for passing the sentence, as per article 97 of the Labour Proceedings Act).

This preferential processing means that, minus the proceedings relative to the protection of trade union freedom and other fundamental rights (article 177 of the Labour Proceedings Act) and those relative to collective disputes (article 157 of the Labour Proceedings Act), the processing of these cases takes priority over all others. However, this procedural modality coincides, apart from those mentioned, with other proceedings that are equally preferential, and there are no established criteria on choosing which takes priority over others.

The legal standing to bring the case to court is attributed to the worker attempting to establish new working hours as a result of the gender violence that she is suffering. The defendant is the company who disagrees with the new working hour schedule.

As regards the requirements of the claim and the proceedings, there are no regulations in place for such requirements, although this gap can be filled with the rules of the ordinary process, in accordance with that provided in article 102 of the Labour Proceedings Act.

The sentence is final and beyond appeal. If the ruling sought by the claimant is upheld, the judge will declare that the worker has the right to enjoy such right, forcing the company to grant it. In such cases, the refusal of the company to comply with the ruling will be ineffective, given that the worker will hold a judicial resolution that guarantees that right and protects her against the company.

Lastly, notice the marked coincidence between the procedure of these proceedings and the previous procedure established in article 138 of the Labour Proceedings Act, both in terms of the expiration period, the urgent and preferential nature, the establishment of the hearing, the deadline for passing the sentence and the final and beyond appeal nature of the sentence. Similarities that could be used as an argument to neutralise the prior conciliation and claim requirements so negligibly maintained.

*fundamental rights must justify that he has no other way of achieving the legitimate objective pursued as there are no reasonable means through which to adapt the interests of the worker with those of the company.*

Furthermore, in the time period between the discrepancy and the subsequent judicial decision, the criteria held by our Courts on similar issues should be applied, such as the criteria relative to balancing work with family life, on which the Courts have affirmed that the company is obliged «*to grant the reduction of working hours and the specific working hour schedule chosen by the worker and to grant this without delay or arbitrary changes, given that this entails the right to a protection that the Law confers to a third party due to her situation of vulnerability and thus must be protected in a social state based on the rule of law like ours, and, as an instrument of such right, the worker is granted the reduction of working hours, which is an undeniable, unpostponable and unalterable right on the part of the employer, therefore, once the company receives the application, it cannot prevent or restrict the exercise of the right, and must proceed to grant it*»<sup>58</sup>.

Given that the worker has the right to determine her working hour schedule, based on the situation that she is suffering, she is also entitled to end that schedule, and any opposition from the company must be assessed by a labour tribunal judge as mentioned above.

### **3.2.1.1.3. Geographic mobility or change of work centre**

Article 21.1 of Organic Act 1/2004 grants the right of women victims of gender violence to transfer or change work centre as per the terms established in section 40.3.bis of the Workers' Statute, as revised by point 2 of the 7<sup>th</sup> Additional Provision of Organic Act 1/2004).

Section 40.3 bis) of the Workers' Statute provides that «*the worker victim of gender violence that is forced to abandon her job in the location where she had been rendering her services in order to make effective her protection or her right to full social assistance, will have a preferential right to fill another job position, of the same professional group or equivalent rank, that the company may hold vacant in any of its work centres. In such cases, the company will be obliged to communicate to the worker the currently existing vacancies*

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<sup>58</sup> Sentence of the High Court of the Autonomous Community of Madrid, March 5th 2002

*or those that may become vacant in the future. The transfer or change of centre will initially last six months, during which time the company will be obliged to reserve the job position previously held by the worker. After said period, the worker may choose to return to her previous job position or to continue in the new position. In the last case, the previously mentioned obligation to reserve her job position will expire».*

Here, once again, we find that the final objective of the above precept is to «make the protection or the right to full social assistance effective» which can be hindered by the proximity of the aggressor, the risk of attempting against her life or against her physical or psychological integrity or the negative effect that he produces on her recovery. In recognising the transfer to help the woman exercise this right, the Act highlights the peculiarity of this form of violence where the victim, far from distancing herself from the aggressor, has serious difficulties in breaking her ties of dependence, a circumstance that motivates her transfer to another location and even to another work centre, which the Act describes as «obligatory». This need for the worker to move to another location is what, in turn, justifies the obligation of the company to communicate any existing vacancies to her, otherwise she would be prevented from making her right effective, as well as to reserve her job position.

The reconciliation of the employer's interests is safeguarded with the six months period during which the job position is to be reserved. After this period, the worker may choose to return to her previous job or stay in the new job. It is true that the Act says «may», but it is also true that if the worker does not choose, the change will be consolidated and the obligation of the company to reserve her previous job position will expire.

Nevertheless, it appears that the legal regulation refers more to a move, despite its use of the generic term transfer. In which case, it would be reasonable to consider the possibility of extending this initial period of six months, which the law establishes for this right, to twelve months – normal benchmark period for displacements–, as per the terms established in the respective collective bargaining agreement. As regards the duration of this right, we should consider some collective bargaining agreements that establish that the length of the transfer or change of centre will be of a necessary and sufficient length, although it is true that the length of the reservation of the job position is established at six months.<sup>59</sup>

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<sup>59</sup> Article 19.3 of the 4th collective bargaining agreement for workers at the service of the National Tax Administration Office [Resolution General Directorate for Labour June 23rd 2006 (Official State Bulletin, July 11th)]

However, mobility between functions does not contemplate whether it should be regarded as a right to be exercised, given that it is in line with the full protection objectives pursued by the Act in the recognition of these rights, which, let us not forget, keep intensifying to the point of the extinction of the labour contract.

As regards the accreditation of the situation of gender violence, we repeat what we mentioned in relation to the right to reduce or rearrange working hours, in the sense of making the report issued by the social services in relation to the right to full social assistance valid, and the convenience of being able to accredit the situation of gender violence suffered through another judicial resolution that includes a precautionary protection measure, provided that the nature of such measure evidences that it was adopted to safeguard the life or physical and psychological integrity of the victim, or a ruling that condemns the accused to a sentence prohibiting him from approaching the victim. In this respect, it is worth highlighting a conventional regulation in which the exercise of this right is subject to the sole accreditation of the affected victim.<sup>60</sup>

We make the same reference with respect to the discrepancies between the female worker and the employer.

#### **3.2.1.1.4. Suspension with reservation of job position**

Provided in sections 21.1 and 3 of Organic Act 1/2004, the latter in relation to reincorporation, this right is included in letter n) of section 45 of the Workers' Statute, which provides that the employment contract may be suspended «on the decision of the worker forced to abandon her job position as a result of suffering gender violence», as revised by point 3 of the 7<sup>th</sup> Additional Provision.

Again, as in the case of the above-mentioned reduction, rearrangement and mobility rights, the legislator establishes the “obligation” of the victim to abandon her job position as a result of suffering gender violence, an obligation that should be interpreted in association with the previously analysed

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<sup>60</sup> Article 19.5 of the 4th collective bargaining agreement for workers at the service of the National Tax Administration Office [Resolution, General Directorate for Labour, June 23rd 2006 (Official State Bulletin, July 11th)]

rights, where an explicit association is produced with this need to exercise the right to safeguard the victim's protection and her right to full social assistance. This interpretation is also applicable to self-employed female workers victims of gender violence who must suspend their labour activities. Thus this right highlights the need for the situation of victim to prevail over company organisation and management demands and, in the event of a discrepancy between the parties, such discrepancy must be resolved by the Labour Tribunal on the basis of the above-mentioned considerations in relation to constitutional doctrine.

On its part, point 6 of section 48 of the Workers' Statute, introduced by the 4<sup>th</sup> Additional Provision of Organic Act 1/2004, regulates the exercise of the right by establishing that *«the suspension period will initially not exceed six months, unless the judicial protection proceedings conclude that the effectiveness of the victim's protection right requires the continuity of the suspension. In which case, the Judge may extend the suspension for subsequent periods of three months, up to a maximum of eighteen months.»*

It is in the light of this provision that we acquire a precise understanding of the recognised right.

Thus, the female worker can decide to suspend her labour relationship for up to six months. An extension of this period to a maximum of eighteen months is determined on grounds of judicial protection, making this extension an authentic precautionary protection measure and, therefore, adopted by a specialised Violence against Women Court.

As regards collective bargaining, where certain confusion between suspension of the employment contract and extended leave of absence is observed, it includes the right of the female worker in such circumstances to attend professional training courses,<sup>61</sup> and also recognises that the length of such courses should count towards her length of service.

### **3.2.1.1.5. Termination of employment contract**

Section 21.1, *in fine*, of Organic Act 1/2004, recognises the right of the victim of gender violence to terminate her employment contract. A decision

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<sup>61</sup> Art.24 Industry collective bargaining agreement for the flowers and plants trade [Resolution, General Directorate for Labour Oct. 5th 2005 (Official State Bulletin,26)]

which, through mandate of section 49.1.m) of the Workers' Statute, introduced by the 7th Additional Provision of Organic Act 1/2004, the worker may adopt if she is «*forced to definitively abandon her job position as a result of suffering gender violence.*»

Being one of the governing principles of Organic Act 1/2004, «*to guarantee rights in the labour environment (...) that reconcile the requirements of the labour relationship (...) with the circumstances of female workers (...) suffering gender violence*» (section 2.d), this provision may appear striking in that it facilitates the termination of the employment contract. It is even more striking when we consider that what is basically pursued in the recognition of these rights is the continuity of the labour relationship. Therefore, it is clear that the primary purpose of the Act is to adapt the intensity of the provision of labour, based on recognised rights that range from the rearrangement of working hours to the suspension of the provision of labour, to the possible vicissitudes which the victim may be going through in line with her recovery and her protection.

This regulation of rights is particularly necessary in view of another of its governing principles, established in letter e) of section 2, which is «*to guarantee economic rights (...) for the purpose of facilitating the victim's social integration*», given that here, the labour relationship plays an essential role in achieving social integration and economic independence.

However, the Organic Act cannot ignore factual situations where the aim of the full protection, i.e., the victim's right to full social assistance and protection, are irreconcilable with the provision of labour. A factual reality contemplated in the Act, based on which the victim is allowed to terminate the labour relationship.

We mentioned, with good reason, that to terminate her labour relationship, the victim of gender violence could turn to the generic cause established in section 49.d) of the Workers' Statute, as regards «*resignation*». But the specific inclusion of this new extinction of the labour contract cause fulfils, in our opinion, at least three interesting functions: first, a pedagogical function which, indeed, far from being irrelevant, sheds light on one of the most negative consequences of these situations of violence in the labour environment - the extinction of the labour relationship; second, it avoids negative repercussions on the victim of gender violence's unemployment protection; and, finally, the notice requirement typical of resignation is abolished in this new extinction of the labour contract cause recognised to women victims of gender violence,

which, in certain circumstances, allows the victim to save time and gives her an added advantage in her protection, without any negative economic repercussions.

In short, through this provision, the Act considers *a priori* that the situation of violence suffered by the woman is a justified cause for terminating her employment contract. The term “obliged” should be understood as in the case of “suspension”, therefore, what we mentioned on that point as regards accreditation of the situation is also applicable here. That is, the report issued by the social services, for the purpose of making effective the right to full social assistance, and the protective order or the report issued by the Public Prosecutor’s Office when it involves guaranteeing her protection.

On the other hand, it is important to highlight that the female worker victim of gender violence may terminate the contract, with the right to the compensation applicable to unfair dismissal, on grounds of a serious breach on the part of the company, if the company fails to agree to the changes requested or does not respect the conditions of such changes [section 50.1, letter c]. Also when, after requesting her reincorporation, such reincorporation does not take place under the previous work conditions [section 50.1, letter c) of the Workers’ Statute].

On another front, we must point out that some collective bargaining agreements are beginning to introduce gender violence as a very serious breach, punishable with dismissal, without further explanation, which is something that raises a number of doubts as to the effectiveness of the measure<sup>62</sup>.

### **3.2.1.2. Social Security rights**

Closely associated with the measures recognised in the sphere of the individual labour relationship, in section 21.2, the Integral Act envisages the protection of the victim in cases where, due to the situation of violence that she is suffering, and forced by it, the worker cannot take advantage of the rights that would enable her to continue her labour relationship, forcing her to suspend or terminate the labour relationship in order to guarantee her effective

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<sup>61</sup> See, for example, art. 98 of the collective bargaining agreement for workers at the service of the Public Administration of the Autonomous Community of the Balearic Islands [Resolution, General Directorate for Labour, Oct. 13th 2005 (Official Bulletin of the Balearic Islands, 18)]

protection. In these cases, the Integral Act makes sure that the worker victim of gender violence is compensated with the social security contributions that will enable her to exercise her social security rights and, at the same time, not prejudice her social security payment history. In this protection, the Act does not ignore self-employed workers, recognising that these women can also find themselves unable to continue performing their business activities for reasons of gender violence (section 21.5 of Organic Act).

### **3.2.1.2.1. Unemployment benefit**

As provided in section 21.2 of the Organic Act, the suspension and extinction of the employment contract gives rise to the legal situation of unemployment as described in the General Social Security Act. This provision was introduced in section 208.1.1.e), as regards the extinction of the contract, and in section 208.1.2., as regards the suspension of the contract, through point 2 of the 8<sup>th</sup> Additional Provision. Note that it is the only instance where the suspension of the employment contract on the decision of the worker gives rise to the legal situation of unemployment (the others are for intermittent permanent workers and periodic permanent workers during periods of inactivity, which implies involuntariness).

Once the situation of legal unemployment was declared, *«the period of employment during which contributions were made» had to be determined and, to this end, «all the contributions which had not computed towards the recognition of a previous right, whether of a contributory or assistance nature, were taken into account. However, the rights recognised by virtue of the suspension of the labour relationship as a result of gender violence are not categorised as a previous right»*. At the same time, *«the contributions made whilst collecting the benefit paid by the Social Security office or, as the case may be, the company, are not be computed, except when the benefit is received by virtue of the suspension of the labour relationship, as provided in section 45.1,n) of the Workers' Statute»* (section 210.2 of the General Social Security Act, revised by point 3 of the 8<sup>th</sup> Additional Provision of the Integral Act).

That is, the contributions that give rise to the right to unemployment benefit on grounds of suspension or extinction of the labour contract due to gender violence do not exhaust their effect. Thus, the contributions used to recognise a benefit during the suspension of the employment contract can be taken into account for entitlement to a new unemployment benefit for a new suspension or extinction of a labour contract, and, in the same way, the contri-

butions paid whilst the victim was collecting unemployment benefit during the suspension of the contract period will also be computed. In this manner, the rule of section 210.2 of the General Social Security Act is inverted and a kind of multi-use of the contributions is generated, giving rise or derived from the suspension of the employment contract.

As regards the obligations of the beneficiaries of unemployment benefit, the Public Employment Service adopts a lenient approach as regards the commitment to work, when so recommended by the reports derived from the institutional protection established by the Integral Act. This requirement is necessary to reconcile this commitment to work, whose aim is to ensure the availability of the beneficiary to take part in the active employment policies that will facilitate labour integration, with the special circumstances derived from the situation of gender violence suffered.

Any discrepancies are resolved in a Labour Court.

In relation to the accreditation of the legal situation of unemployment in cases of gender violence, the 42<sup>nd</sup> Additional Provision of the General Social Security Act, as revised by point 5 of the 8<sup>th</sup> Additional Provision, provides that *«the legal situation of unemployment... is accredited through a written confirmation from the company of the extinction or temporary suspension of the labour relationship, together with the protective order in favour of the victim or, otherwise, the report issued by the Public Prosecutor's Office confirming the existence of evidence of gender violence»*.

A doubt remains as to whether the worker is covered by this protection during the first six months of the suspension of the employment contract, given that during this time the suspension takes place on the decision of the worker and does not have to be founded on a precautionary protection measure adopted by the Violence against Women Courts, therefore she may not have a protective order or a protection measure as described above. The interpretation given in this case must be positive, otherwise it would go against the effective protection that is sought to be provided to the victim.

Now, having interpreted the term «obliged» as requirement to make effective the right to full social assistance and protection, we should be able to assume that during the first six months this accreditation could also be effected through the report issued by the social services assisting the victim in her right to full social assistance.

We could also make the same consideration with respect to the extinction of the labour contract and the accreditation of the situation of violence, depending on the safeguard sought to be made effective.

It is worth considering, when the female worker does not accredit the minimum contribution requirements (three hundred and sixty days in the last six years), the possibility of the worker generating the right to welfare benefit due to her condition of victim of gender violence, without the need to fulfil the specific requirements of age, family burdens, and lower, but always necessary, contributions, established in section 215 of the General Social Security Act. In this respect, it would be worth bringing this situation in line with the situation of inmates released from prison, who only need to justify a situation of need with a lack of income. Furthermore, 80 percent of the Public Indicator Multiple Effect Income (IPREM), which is what this allowance entails (110 percent, and 125 percent with two or three children under one's care, respectively) is not an excessive burden on the system.

### **3.2.1.2.2. Consideration of the suspension period as effective contribution**

Section 21.2, *in fine*, establishes that «the period of suspension of the contract is considered as effective contribution period for Social Security and unemployment benefit purposes».

On its part, point 1 of the 8<sup>th</sup> Additional Provision of the Integral Act adds a new point 5 to section 124 of the General Social Security Act, by virtue of which «*the period of suspension of the contract with reservation of the job position envisaged in section 48.6 of the Workers' Statute, is considered as effective contribution period for the purposes of the respective Social Security benefits for retirement, permanent disability, death or survival, maternity and unemployment*».

This means that,

- The total period of the protected suspension of the contract is only that provided in section 48.6, i.e., the suspension with reservation of the job position, and, as a result, the period established on the worker's decision, during the first six months, and, as the case may be, subsequently extended by the Violence against Women Courts up to a maximum of 18 months.

- The benefits for whose generation the effective contribution has been recognised are retirement, permanent disability, death and survival, maternity and unemployment. The benefit for temporary disability remains excluded (contribution time to generate it) which, if it takes place after the suspension period, could encounter coverage gaps. Although it is true that it is an exceptional occurrence, also bearing in mind that the benchmark contribution periods are longer than the suspension, it is nevertheless an unjustified distinction in view of the generalised aim of the protection.

The accreditation of this situation is as in the case of suspension.

### **3.1.2.3.** *Suspension of the contribution obligation for self-employed female workers*

Section 21.5 of the Integral Act establishes that *«female self-employed workers victims of gender violence who interrupt their labour activity to make effective their protection or their right to full social assistance will be suspended from their obligation to contribute for a period of six months, which will be regarded as effective contribution period for Social Security benefit purposes. Likewise, their situation will be considered as equivalent to being registered as active. For the purposes of that provided in the previous paragraph, a contribution base equivalent to the average of the contribution bases paid in the six months prior to the suspension of the contribution obligation will be taken»*.

This instance of suspension is equivalent to the six-month suspension of female employee-basis workers. Therefore, so far, the same is applicable.

However, an interpretation doubt arises when comparing the self-employed worker with the employee-basis worker:

The suspension of the contribution obligation is only for six months, whilst for employee-basis workers the suspension can last up to a maximum of 18 months through the intervention of the Violence against Women Court. An analogical interpretation should determine the same application rule in this case, otherwise self-employed workers are placed in a situation of an inferior right compared with employee-basis workers, which is inadmissible with respect to the protection aim of the Act, and in light of the guarantee that the intervention of the Violence against Women Court introduces against possible abuse of law.

### **3.2.1.3.** *Employment and professional training policy*

#### **3.2.1.3.1. Rebates to companies to guarantee zero costs in events of substitution contracts to fill in for a worker who has suspended her contract or has exercised her right to mobility**

Section 21.3 envisages rebates of the company contributions to the Social Security for common contingencies when the company executes substitution contracts to fill in for workers victims of gender violence who have suspended their labour contracts or exercised their right to geographic mobility or to change work centre, during the entire length of the suspension period or for a period of six months in the event of mobility or change of work centre.

This measure seeks to eliminate any additional cost to the company when it is forced to hire a worker to fill in for a female worker who has exercised the above-mentioned suspension or mobility rights, thus avoiding any dysfunctional situation derived from the adequate application of the regulation.

Likewise, the introduction of an identical rebate would be necessary in events where a self-employed female worker suspends her work activity and wishes to keep her business running by taking on a substitute worker, thereby avoiding the closure of the business.

#### **3.2.1.3.2. Direct support for hiring personnel**

In the area of employment policy, for the purpose of guaranteeing the independence of women victims of gender violence, the Act could not ignore women who are not integrated into the labour market, for whom special efforts must be made in the area of employment through direct employment support and specific employment and training programmes.

- Employment Promotion Plan. After the approval of the Organic Act, provisions on employment promotion were incorporated, first, as the 47<sup>th</sup> Additional Provision of the National Budgets Act, and subsequently, as the 45<sup>th</sup> Additional Provision of the successive National Budget Acts, by virtue of which companies hiring workers victims of gender violence or any family member living with the victim, are recognised a rebate of 65% of the company contributions for common contingencies, for a maximum period of 24 months. The same rebate is conferred when transforming training and early-retirement hand over and substitution contracts into indefinite contracts.

The established support measures cannot be combined with other employment public support measures if, together, they exceed «60% of the annual cost of the salary that is being subsidised» (section 7), which is of particular importance, bearing in mind the generalised existence of employment promotion measures at autonomous community level.

Act 43/2006, of December 29th, as regards improving growth and employment, and its predecessor, Royal Decree 5/2006, of June 9th, establish an employment promotion programme which envisages rebates for companies hiring victims of gender violence, even when the victims are not in a legal situation of unemployment, which is a requirement for hiring other individuals.

With indefinite contracts, the rebates are conferred for a period of 2-4 years, and with temporary contracts, for which the rebates are only applicable to specific collectives, such as the disabled, persons at risk of social exclusion and victims of gender violence, they are conferred during the entire length of the contract.

#### **3.2.1.3.3. Support for promoting self-employment.**

In the same way that hiring women victims of gender violence on an employee basis should be encouraged, and with the same objective of guaranteeing their independence, those who choose to work on a self-employed basis should also be motivated.

Therefore, the Ministerial Order TAS/1622/2007 of the Ministry of Labour and Social Affairs, of June 5th (Official State Bulletin of June 7th), which regulates the granting of subsidies to the self-employment promotion programme, envisages an increase in the amount of the subsidy when the beneficiary is a victim of gender violence.

#### **3.2.1.3.4. Specific employment programme**

Section 22 of Organic Act 1/2004 provides that *«within the framework of the Employment Plan of the Kingdom of Spain, a specific action programme for victims of gender violence registered as job seekers will be included. This programme will include measures to help start a self-employment initiative»*.

Currently, the National Reform Plan to meet the objectives of the Lisbon Strategy has introduced into its priority or specific lines of action the labour integration of victims of gender violence.

The Special Delegation of the Government on Violence against Women, together with the National Public Employment Service, and with the collaboration of the autonomous communities, is currently putting the finishing touches to this specific programme, which covers the training needs of victims of gender violence and rebates to companies which hire them, always guaranteeing the confidentiality of the victims.

In general terms, it is worth remembering that all the actors involved in issues associated with gender violence are bound to a confidentiality agreement.<sup>63</sup>

### **3.2.1.3.5. Specific training programmes**

The Active Income for Insertion Programme for unemployed persons with special economic needs and access to employment difficulties includes victims of gender violence as beneficiaries, for whom the access to the programme requirements are relaxed. Through this programme, apart from training, these women receive aid equivalent to 80% of the Public Indicator of Multiple Effect Income for a period of 11 months, which is supplemented with three additional monthly payments for those who, due to their situation of violence, have had to move to another residence.

These programmes should also be combined with those in place with the same aim in autonomous communities with transferred competencies in the area of managing and designing professional training initiatives in their territory within the framework of the general economic policy bases established by the State.

On another front, Royal Decree 395/2007, of March 23rd, which regulates the professional training subsystem for employment, establishes that priority must be given to victims of gender violence for participating in training initiatives.

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<sup>63</sup> Expressly recognised in relation to members of the Guarantee Commission, section 32 of the 5th sector collective bargaining agreement for private old-peoples homes in the Autonomous Community of Valencia [Resolution, General Directorate for Labour, Dec. 21st 2005 (Official Bulletin of the Autonomous Community of Valencia, Jan. 31st 2006)]. Also, section 19 of the 4th collective bargaining agreement for workers at the service of the State Tax Administration Agency [Resolution, General Directorate for Labour, Jun. 23rd 2006 (Official State Bulletin, Jul. 11th)]

Lastly, we should point out that Ministerial Order TAS/3698/2006 of the Ministry of Labour and Social Affairs, of November 22nd, which regulates the registration of non-EU foreign workers in public employment services and placement agencies, envisages the registration of women victims of gender violence who have obtained a residence permit as a result of their condition of victims of gender violence in the public employment services and placement agencies, entitling them to labour intermediation, the employment promotion measures and the services for improving the employability of job seekers, provided by the public employment services and placement agencies.

#### **3.2.1.4. Civil service measures**

The Act, which seeks to provide integral protection to women victims of gender violence, also regulates the rights of female civil servants as in the labour market, although with the peculiarities derived from the fact that the Public Administration is the employer. In this respect, it is worth highlighting conventional regulations that recognise the right to extended leave of absence in cases of abuse without subjecting this right to a minimum length of service or to a pre-established period of extended leave of absence<sup>64</sup>. Likewise, it is recognised that during the first six months of the extended leave of absence the civil servant will receive a full salary.<sup>65</sup>

##### **3.2.1.4.1. Rights of civil servants**

Section 24 of Organic Act 1/2004 establishes that *«the female civil servant victim of gender violence will be entitled to reduce or rearrange her working hours, to geographic mobility with regard to the work centre and to extended leave of absence as per the terms established in the specific legislation»*.

Total or partial absenteeism is also justified as in the case of the labour environment.

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<sup>64</sup> Article 33.3 of the Agreement between the Public Administration of the Government of La Rioja and the General Negotiation Table for amending section 33 of agreement 2004/2007 for civil servants of the Public Administration of the Autonomous Community of La Rioja, Agreement June 6th (Official Bulletin of La Rioja, 22)

<sup>65</sup> See letter l) of the Agreement on social measures for workers at the service of the Public Administration of the Region of Murcia [Resolution. General Secretariat for de Dept. of Economy and Income Tax, May 19th 2006 (Official State Bulletin, 20)].

These rights are therefore the same as those recognised to female workers victims of gender violence and, as a result, the same considerations are applicable, except those derived from the specific applicable legislation.

#### **3.2.1.4.2. Peculiarities of the civil service**

These are peculiarities derived from the need to co-ordinate the rights and interests of civil servants with the protection and pre-eminence of the public interest. Any discrepancies arising from this are resolved by a contentious-administrative judge, who must make a restrictive interpretation of the administrative reasons, given that, as opposed to what happens in the private sector, the defence of the interests and protection of victims of gender violence is assumed based on the Integral Act as a personal objective of the public authorities, prevailing in all areas, also in the public administration's role of employer.

Thus,

- ▶ In relation to the right to transfer to another work centre, as recognised in section 82 of Act 7/2007, as regards the Civil Servants' Statute, the woman will be entitled to transfer to another job position of similar characteristics within her corps, rank or professional category, and the transfer will be regarded as a forced transfer.
- ▶ Temporary leave of absence will take place through the applicable legal channel «without requirement of minimum length of service or pre-established extended leave of absence period». The maximum period is 18 months, defined in an identical way as in the suspension of the labour contract.
- ▶ This period is computable for purposes of promotions, three-yearly increments and passive rights.

#### **3.2.1.4.3. Protection of female civil servants**

Social protection is also defined in parallel terms to the labour environment, with the exceptions of the different nature of the relationship that binds private and public sector workers with their employers. Therefore, the bulk of civil servants registered in the General Social Security Scheme do not present a problem. As regards those registered in the Special Social Security Scheme for Civil Servants, its regulations must be interpreted in a systematic and teleological manner in order to ensure similar effects.

### 3.2.1.5. *Economic support measures*

Section 27 establishes the right to receive social support «*when victims of gender violence receive an income, calculated on a monthly basis, below 75 percent of the Minimum Inter-professional Wage, excluding the part proportional to two extraordinary payments, (.../...), provided that, due to age, lack of general or professional skills and social circumstances, the victim has difficulties in gaining access to employment and, due to this circumstance, does not participate in the employment programmes in place for professional integration*».

The amount of the aid is equivalent to six months of unemployment benefit and can be collected during a maximum period of 24 months, based on the level of family responsibilities and whether the victim or any family member living with the victim suffer from a disability.

The aid is funded through the National Budgets and the procedure for granting such aid is defined by the autonomous communities, which are responsible for the area of social services.

The regulation establishes that this aid is compatible with any other aid received by victims of gender violence as a result of Act 35/95, of December 11th, on Aid and Assistance to Victims of Violence and Offences against Gender Freedom, although, on the other hand, it is not compatible with receiving other social welfare aid, particularly stemming from autonomous community legislation.

The accreditation of the situation of gender violence is through the protective order or the report issued by the Public Prosecutor's Office, pending the protective order. On this point it is also worth considering the accreditation of the situation of violence through other means, bearing in mind the particular defenselessness of the victim as a result of these special circumstances which make her labour market integration difficult, and, as a result, place her in a situation of special dependence on her aggressor. Therefore, we believe that, on this point, a broad interpretation of the accreditation title should also be made by extending it to any other means of accreditation admitted in law. The cost of this extension would not be particularly burdensome to the Public Treasury, given that, apart from the foreseeable small cost of the measure, the system's first obligation is to ensure the reintegration of these women, and, in any event, this measure

would only be applicable to women experiencing special labour market integration difficulties.<sup>66</sup>

In this area, it is worth highlighting the need to provide economic support to women who suffer gender violence for the purpose of enabling them to change residence, a measure contemplated in some collective bargaining agreements.<sup>67</sup>

Likewise, with respect to demonstrating the condition of participant in pension plans, and for the purpose of determining the necessary period of contribution, interruptions resulting from gender violence are not discounted.<sup>68</sup>

Another initiative introduced with repercussions on the economy of women, both students and women caring for children attending university, is found in the recent amendment to Organic Act 6/2001, of December 21st, as regards Universities, which, in section. 45.4 expressly provides, in relation to grants, economic support and credits, the need to provide support to persons with family burdens and victims of gender violence.

Likewise, also worth mentioning as a measure aimed at facilitating women victims of gender violence priority access to housing, several provision have been introduced into the National Housing Plan 2005-2008, as established in section 28 of the Integral Act. Furthermore, as provided in section 31.2 of Organic Act 3/2007, as regards Effective Equality between Men and Women, within its sphere of competence, the Government is called to promote access to housing for women who have been victims of gender violence, in particular, when they have children under their exclusive care. Given that the area of housing is largely the responsibility of the autonomous communities, it is par-

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<sup>66</sup> Royal Decree 1452/2005, of December 2nd, which regulates the economic support established in section 27 of Organic Act, 1/2004, of December 28th, as regards Integral Protection Measures against Gender Violence.

<sup>67</sup> Agreement of the Commission for the Interpretation, Surveillance and Study of the 2nd collective bargaining agreement for workers at the service of the Government of the Autonomous Community of Valencia, on the social aid funds for the year 2000 and following. [Resolution General Directorate for Labour and Social Security, Oct. 5th 2005 (Official Bulletin of the Government of the Autonomous Community of Valencia, 24)]

<sup>68</sup> Section 12 of the industry collective bargaining agreement for companies dedicated to the flowers and plants trade [Resolution, General Directorate for Labour, Oct. 5th 2005 (Official State Bulletin, 26)]

ticularly worth mentioning the existence of regulatory provisions basically aimed at guaranteeing priority access to subsidised housing to women victims of gender violence. Some of these regulatory provisions were introduced prior to the Integral Act.

### **3.2.2. Civil rights**

Aware that the framework for combating gender violence is comprised of the human rights and, in particular, the development of the principle of equal rights between women and men, as well as combating any type of discrimination against women, it is specially worth mentioning here the list of rights recognised to women victims of violence in Organic Act 1/2004, aimed at reinstating these women in the full exercise of their fundamental rights in Spanish society. In this respect, we can provide a list of legislative measures, introduced both at national and autonomous community level, as of the recognition of the phenomenon of violence, which establish promotion measures to eradicate gender violence and to restore the situation of the victim to a state that will enable her to gain access to resources and services and to recover her full capacity as a person.

Among the measures aimed at benefiting women victims of gender violence, involving rights of a civil nature, we can list the following:

- The amendment to the Civil Code through Act 15/2005, facilitating the separation and divorce procedure, on the knowledge that delays in these types of processes and existing tensions in relationships increase the incidence of violence. The same Act reforms section 68 of the Civil Code, which regulates the obligations of both spouses by introducing a very important change, the obligation of each spouse «to share domestic responsibilities and the care of children and grandparents as well as other persons under their care».
- The Regulation on the Civil Register has been amended (through Royal Decree 170/2007, of February 9<sup>th</sup>) with the aim of simplifying the procedure for obtaining authorisation for victims of gender violence, and the children under their care who are also under the same threat, to change their surnames. This measure is established as a useful protection instrument and as a supplement to the possible non-molestation order, as a change of surname can make it difficult for the possible aggressor to locate the victim. These changes are included in cases of restricted publicity.

- Legislative measures aimed at facilitating women victims of gender violence access to ownership and use of land. Worth mentioning in this respect is section 30.1 of Organic Act 3/2007, as regards Effective Equality between Men and Women, which orders the definition of the legal concept of joint ownership, which is also contemplated in the First Additional Provision of the State bill as regards sustainable development of rural areas, which is currently in the stages of parliamentary procedure.
- Measures whereby the fact of having perpetrated gender violence prevents access to certain rights, as in the case of section 92., paragraph 7, of the Civil Code, which exempts the spouse from the possibility of shared custody in cases of having attempted against a person or other fundamental rights, and in cases of evidence of domestic violence.

### **3.2.3. Right to full social assistance**

We can obtain an idea of the scope of the social protection system for victims of gender violence through a description of the public and private resources available for each of the stages of the victimisation process. In this process, we should find resources specifically or non-specifically aimed at:

- (1) the detection of the victimisation situation in order to facilitate and create the necessary conditions to ensure that the victim comes out of the situation of violence;
- (2) emergency resources for victims of abuse, including:
  - a. legal support;
  - b. healthcare and psychological support;
  - c. economic support;
  - d. emergency accommodation;
  - e. social infrastructure for independence;
  - f. support for dependent sons and daughters of the victim.
- (3) shelter resources for victims of abuse, including:
  - a. legal support;
  - b. healthcare and psychological support;
  - c. economic support;
  - d. accommodation;

- e. social infrastructure for independence;
  - f. professional training;
  - g. support for dependent sons and daughters of the victim.
- (4) assistance resources in detected cases of violence which do not require emergency protection or shelter, among which:
- a. legal aid;
  - b. economic support;
  - c. healthcare and psychological assistance
- (5) assistance resources in civil and criminal court action associated with violence, among which:
- a. specialised legal aid;
  - b. specialised forensic-medical or psychological assessment assistance.

In addition, in all these resources we would need to consider the degree to which they are prepared for managing the victims' special situations of dependency or vulnerability, such as in the case of immigrants (those without residence permits), ethnic minorities, the disabled, etc.

All the autonomous communities in Spain have set up a network of assistance resources to cover the different stages of the victimisation process. The vast majority of the resources are public, generally belonging to autonomous community or **local** authorities. As per the order in which abused women and children make use of these resources when they leave the environment where they are suffering violence, all the public administrations in Spain are equipped with:

- **Advice and information centres**, which are mainly located in women's centres or equality centres and, all the autonomous communities combined, number 550, providing advice and information to 100.000 women (2005). In the majority of cases, given that the centres are multipurpose, the figures available<sup>69</sup> make a distinction between women as-

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<sup>69</sup> 2005 Follow-up Report of Organic Act 1/2004 on integral protection measures against gender violence in autonomous communities. Special Delegation of the Government on Violence against Women.

sisted for violence, although some autonomous communities do not provide such details.

- **Emergency Centres**, which provide initial shelter and assistance to women and their sons and daughters who are forced to abandon their homes to flee violence. In Spain, 11 autonomous communities provide data on the operative scale of this resource, with a total of 31 centres equipped to assist 556 women accompanied by their sons and daughters.
- **Shelter homes**, for the initial stay and recovery of abused women and children. These shelter homes number 149 spread among 16 autonomous communities and, according to the information available, are equipped to accommodate a total of 1293 individuals. In some autonomous communities, certain shelter homes are also emergency centres.
- **Protected flats**, which provide homes to abused women and children in the process of social integration. They are present in 13 autonomous communities and number 280.
- **Mobile tele-assistance service**, an assistance instrument which, originating from the Plan on Urgent Measures for the Prevention of Gender Violence approved by the Council of Ministers before the Integral Act entered into force, was developed through an Agreement between the Spanish Federation of Municipalities and Provinces and the Institute for the Elderly and Social Services (IMSERSO). The mobile tele-assistance service is aimed at women for whose protection a protective order or a non-molestation order has been issued, and operates round the clock 365 days a year, designed to offer immediate assistance to protected women with any type of problem. There are currently 6,763 women using this mobile tele-assistance service, a figure that jumped 20% in 2007 compared with 2006.

If we measure the correlation between the total number of victims assisted in 2005 in the different service units by autonomous community and the number of women who filed complaints before the National Law Enforcement Agencies in that same year (therefore, identified victims), the result is close to zero. This simply means that both parameters do not correlate, when one would intuitively assume that the correlation would be high and positive, i.e., the higher the number of abused women, the higher the number of women assisted by the services.

On another front, many autonomous communities are reporting low occupancy rates which, on average, only reach half of the assistance network capacity. None of the autonomous communities have reported excess demand.

Lastly, in the majority of cases, we have no information on the specialised human resources in place to man the resources described.

The above data reflect the lack of complete and exhaustive data on the assistance provided to women and their children, hence the need to establish a database in the National Observatory fed by all the public and private sources of information, and for its members (in this case, the autonomous communities) to assume the responsibility of feeding their information into it. Likewise, the data highlight the need to consider the changes that have taken place in the last few years with regard to the use of certain public resources, such as accommodation (in relation to the occupancy rate, the effects of the protective order and the changes that it has produced in the profiles of women who use turn to protective orders, are not taken into account).

#### **3.2.4. Legal aid to victims**

The Integral Act also establishes the right of victims of gender violence to specialised and immediate legal assistance, including free legal aid when the victim lacks the financial resources to litigate, in all administrative processes and procedures directly or indirectly associated with the violence suffered. Expanding on section 20 of the Act, Royal Decree 1455/2005, of December 2nd, amended the Regulation on free legal assistance, to establish that lawyers on legal aid duty are to fulfil their functions personally and effectively until the end of the proceedings, that legal assistance, as well as an on-call system, specialised in defending victims of gender violence, be ensured from the moment the woman requests it to provide legal advice, defence and assistance.

However, we cannot affirm that the full effectiveness of the right has been achieved; one of the reasons being that the presence of lawyers on duty under the legal aid scheme is not always requested from the detection points. Despite the fact that the new application form for the protective order now includes, as the first question to the applicant, whether she would like legal aid, it seems obvious that the way in which the question, or the information provided on the right concerned, is formulated will condition its effectiveness. This situation is worrying, given that the content of the complaint can affect po-

lice and judicial action, both with regard to the events that took place and to the specific investigation procedure. In particular, this can have an impact on the civil measures agreed in the protective order, whose adoption requires – except those that refer to minors– ex parte application.

Associated with the assigned budget allocation, we also detect insufficient specialised lawyers on duty under the legal aid scheme. Therefore, although as a result of the List of Urgent Measures, the number of lawyers on duty under the legal aid scheme to provide assistance to victims of gender violence has increased, there still isn't one lawyer available per judicial district, which is something that can also affect the victim's decision, as she is forced to weigh up, in generally critical moments, whether she waits as long as it takes for the lawyer to arrive at the police station or whether she ends the visit as soon as possible.

Also, there is a general deficit in specifically specialised training on equality and gender violence among duty lawyers under the legal aid scheme, which must be addressed in order to ensure the highest effectiveness of the right.

Consequently, an agreement between the Ministry of Labour and Social Affairs, the Ministry of Justice and the General Council of the Spanish Judiciary is currently in process of negotiation to guarantee training to duty lawyers under the legal aid scheme specialised in gender violence, and the Ministry of Labour and Social Affairs will contribute to finance the training courses. It is worth mentioning that, as an annex to the Agreement, a set of common criteria will be applicable to the training of the entire legal profession, including the provisional posts of the Justice Administration, to ensure homogenous and quality training.

Likewise, the Ministry of Labour and Social Affairs, through the Special Delegation of the Government on Violence against Women, the Ministry of the Interior, the Ministry of Justice, and the General Council of Spanish Advocates, with the collaboration of the General Council of the Spanish Judiciary and the Special Prosecutor for Violence against Women, are working on a Gender Violence Procedure Protocol for the Law Enforcement Agencies and lawyers with the aim of harmonising legal assistance when filing a complaint and applying for a protective order, as well as police assistance to victims, guaranteeing referral to the respective healthcare and social services.

## 3.3. PENAL AND JUDICIAL PROTECTION

### 3.3.1. Introduction

Organic Act 1/2004, of December 28th, as regards Integral Protection Measures against Gender Violence is the initial response of the public authorities to the reiterated and terrible offences of gender violence that are taking place in our country. It is a complex legislative text that includes all kinds of measures, and which also has a bearing on the penal aspects of this violent phenomenon. The penal system has been called to contribute, with more effectiveness and force, towards this state response, thereby amending the Criminal Code and the Code of Criminal Procedure.

Aiming to provide a general legal response to the phenomenon of gender violence, the Integral Act regulates educational, informative, assistance and labour measures, as well as several legal instruments, within the framework of criminal procedure, amending the Criminal Code to establish specific protection measures against injuries, abuse, threats, coercion and minor humiliations, as well as solutions in the civil sphere, as a result of cases of gender violence.

The legal treatment of gender violence, which obviously represents a violation of one of the basic fundamental rights, the right to life, to the physical and moral integrity of the woman and to her dignity, defined by pre-existing relations between the intervening subjects, has also had an impact on the ways in which legal protection is conferred.

At first glance, the Integral Act seems to address one of the most emphasised approaches in the modern science of Criminal Law, namely, the idea that the fight against illicit behaviour must be addressed by combining very diverse instruments, i.e., not just penal, but, among others, procedural, labour and civil instruments. This is particularly important when, once perpetrated, we address illicit behaviour from the offender's and the victim's perspective, consistent with the modern revitalising tendencies of the victimological approach. Moreover, this approach is obligatory in view of the gender violence criminology data. Indeed, we are up against an injustice with a «long history» which, as the statistics show, goes far beyond what could technically be described as "regular", in the sense that violence (physical, psychological and sexual) does not express itself by means of mere sporadic acts –of varying scope or intensity– no matter how consecutive within a specific time frame, but it generally stretches over a long period of time. This is logical if we consider that

gender violence has its root in «discrimination, the situation of inequality and the power relationships of men over women», and this explains the following characterising features of gender violence offences:

- a) The offender is an offender out of conviction, hence the reason why he is a «permanent offender», whose re-education poses particular difficulties, and tries to repeat his criminal behaviour in any given situation where he comes across the victim. This immediately reveals the vital need to take measures against him, in view of the high probability of attempting to repeat his «control» over the victim, including the adoption of precautionary measures during the proceedings and to ensure that the sentence, if condemned, goes further than a prison or pecuniary sentence, to include, when necessary, other measures that affect his rights, such as freedom of movement, residence, communication, etc., as a result of the offence.
- b) The victim is also a «permanent» victim, which poses an even greater danger, both physical and, particularly, psychological. These characteristics oblige (the term «oblige» has not been chosen at random here, but it is part of one of the characteristic aspects of the Rule of Law) the Public Authorities to get more involved in the protection of the victim than their regular involvement in the vast majority of offences. This protection effort must go beyond protection per se to guarantee, with all the available instruments, the safety of the person, and must also involve the necessary decisions for the recovery of the attacked woman.
- c) This is an offence which, as mentioned above, conveys relationships of power, of domination, giving these offences a particular feature that warrants a particular legal approach. Thus, within this sphere of relationships of power, the injuries caused to the victims are often disabling or **freedom restricting**, particularly from a social point of view, thus requiring the adoption of particularly strong measures that involve all the Public Administrations in order to ensure the social reintegration of the victim. It is here where one of the most frightening aspects of gender violence comes to light, the annulment or strong conditioning of the person in her social relationships. A self-isolation that gives rise to difficulties in reporting the offence (complaints), and in treating the victim to help remove her from an undesirable environment. This, in particular, is what calls for protection measures not only in the penal area, but also in the areas of labour, education, healthcare, etc. In short, we are up against criminal typologies that are often criminolog-

ically characterised by the reduction of a person to a state of total subjugation (conduct traditionally sanctioned in criminal codes, such as the Italian, under the proverbial denomination of “*plagio*”), which comes to mean the use of a free person as an authentic slave (MOLINER). We are therefore facing a modern slavery problem which has evolved behind the walls of silence erected around intimate relationships (from here the overwhelming «black figures»).

### 3.3.2. Penal measures adopted to prevent, correct and eradicate gender violence and its impact

- 1) There is no doubt that the most effective regulator of conduct is a **change of values**, hence why informal social controls have a strong impact on prevention of offences, sometimes even stronger than formalised controls, such as Criminal Law. However, controls like the family, the school, the social environment, etc., are traditionally less effective in some cases, such in gender violence. Hence the importance of continuing with the awareness raising and prevention measures in all areas.
- 2) One of the icons of the system – prior to the Integral Act, but adopted by it - is the prohibition to approach the victim. However, different institutions and doctrinal sectors have raised some problems derived from the obligatory imposition of the prohibition to approach the victim of domestic violence by virtue of section 57-2 of the Criminal Code, due to the legal nature of this penalty, which is an additional penalty of an inadequate nature that pursues special preventive objectives - the effective protection of the victim facing objective situations of risk. Therefore, a number of sectors (doctrine, judiciary, public prosecutor’s office, the bar, etc) suggest abolishing the automatic and imperative nature of the precept in order to enable the judicial assessment of the objective existence of the risk before this penalty is imposed.
- 3) There has been some controversy in some sectors about the content of section 153 of the Criminal Code – also sections 171 and 172 - as these sectors feel that discriminatory expressions have been used in regulating different de facto assumptions. The new wording of these assumptions has raised different doubts of unconstitutionality. The failure to resolve these doubts has led to the suspension of proceedings

founded on these assumptions and the failure to pass the respective sentences.

- 4) It has also come to our attention that the application of the Integral Act has not ceased to come across obstacles in different sectors. Specifically, in the prejudices that fuel the situation of effective discrimination against women in our society. The misogynist discourse has launched, with wide media coverage, the idea of the use of criminal proceedings for illegitimate ends by a considerable number of women. The small number of civil issues registered by the Courts of Violence against Women in comparison with criminal issues, and the small number of precautionary measures of a civil nature that have been applied for and/or agreed in comparison with those of a criminal nature, allow us to conclude that such arguments are totally unfounded, especially when there is no public register that provides information on conviction sentences for false complaints or accusations with regard to any of the criminal classifications contemplated in the Criminal Code. Therefore, the affirmation is a sign of the profound ignorance on the causes of gender violence, its manifestations, the cycle of violence and the consequences for the victims, as well as of an association with opinions that are opposed to the Integral Act and in favour of defending old values that seek to uphold the subjugation of women.

### **3.3.3. Psychological treatment for aggressors**

The therapeutic objective of psychological intervention with aggressors of women is to uproot violent behaviour from the aggressor's repertoire of behaviour which, no doubt, will have an impact on the prevention of gender violence, both in the partner or ex-partner relationship and in future relationships. From the perspective of the public administrations, in terms of direct involvement and financial backing through subsidies, there are two facets of psychological intervention with aggressors worth considering.

The first of these facets has to do with the criminal nature of the aggressor's violent acts. From this point of view, both the Spanish Constitution (section 25) and the respective legislation define the rehabilitation and the reintegration of the offender as one of the objectives of the criminal system. This intervention facet with detected aggressors channelled through the criminal justice system, is the only intervention contemplated in Organic Act 1/2004 with regard to developing therapeutic intervention programmes, consequently

in association with the penitentiary institutions and their specialised bodies (Penitentiary Social Services).

The second facet of psychological intervention with gender aggressors is not associated with punishing the criminal conduct and the aggressor's subsequent rehabilitation, but with the psychological treatment of the violent conduct, in any of its stages, in detected and non-detected aggressors by the public assistance systems. This intervention facet poses ethical problems to psychology professionals involved in the psychological treatment of aggressors as well as budgetary questions associated with subsidising or not subsidising programmes or offering psychological treatment under the public health system which, outside the penitentiary environment, is provided to deactivate and eradicate dysfunctional behaviour (violence in the aggressor). The ethical dilemma that arises in psychology professionals working in public and private practices with aggressors, outside penitentiary centres, stems from the situation whereby they are finding out about the existence of aggressions, of different scales and characteristics, exercised by one person against another, which the judicial system and the Public Prosecutor's Office have no knowledge about. In these cases, the ethical code of the professional associations of psychologists establishes that the professional must report the incident to the collegiate services, in order to assess whether to transfer the case to the competent authorities. However, many professionals are unclear about this procedure and the General Council of Psychology Associations has still not made a declaration on this issue.

With regard to the diagnosis of the situation, in relation to the existence and effectiveness of the intervention programmes, the reality is quite heterogeneous and poorly assessed. In the analysis of the therapies with aggressors of women, at least three situations must be differentiated:

- Treatment for inmates: the responsible bodies are the General Directorate for Penitentiary Institutions (Ministry of the Interior) and the Autonomous Community of Catalonia in its territory.
- Treatments associated with the suspension or substitution of a prison sentence: the responsible bodies are the General Directorate for Penitentiary Institutions (Ministry of the Interior) and the Autonomous Community of Catalonia in its territory.

- ▶ Voluntary programmes independent of judicial action: provided by the autonomous communities, generally within the framework of the social services, etc.

Therefore, except in Catalonia, neither in the cases of inmates nor in those of suspension/substitution of a sentence, can the source of information be the autonomous communities. However, given that the programmes associated with the suspension/substitution of the prison sentence are not guaranteed in the entire national territory, some autonomous communities and the Principal Court of Alicante may take the initiative to collaborate in this area by offering courses.

The typical itinerary of an aggressor who enters prison for a gender violence offence is to receive therapeutic treatment as part of the respective programme offered inside the prison, provided that he is under the ordinary prison regime, in order to subsequently continue with the intervention in a social intervention centre, generally in place through an agreement with an entity (normally an NGO or a combination of NGO and university centre) until the sentence is served, which is when both the treatment and the mandatory follow-up assessment on the aggressor are rare or non-existent.

The length, therapeutic design, composition, integration and follow-up on aggressors in the programmes associated with criminal reintegration processes, with the exception of the most protocolized programmes carried out inside prisons by professionals of Penitentiary Institutions, show inconsistent and heterogeneous definitions.

Currently, although with declared intentions of increasing them, there are specific re-education programmes for gender aggressors in 33 of the 77 penitentiary centres in Spain, with 319 inmates following these programmes and 3,067 convicted offenders attending them in open prison interventions. The small number of men following penitentiary treatment programmes, both inmates and those under open-prison regimes, contrasts with the 37,521 men judged (17,590 in Criminal Courts) and the 26,313 condemned (10,581 in Criminal Courts)<sup>70</sup>.

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<sup>70</sup> General Council of the Spanish Judiciary. Press release, April 16th 2007.

As regards the effectiveness of these programmes, no rigorous and comprehensive assessment reports have been published in Spain on the parameters or effectiveness, reliability or validity of the intervention programmes for aggressors. The impressions on some of these interventions programmes are wide ranging, some from a more scientific point of view and others with some degree of dissemination biasness. There is a general acceptance that the number of aggressors who join these intervention programmes, which are voluntary both in and out of prison, whether or not condemned for an offence, is a tiny percentage of the total number of men who exercise violence against women.

In relation to intervention programmes offered outside prison centres to treat men who have not come into contact with the criminal justice system, 10 autonomous communities report<sup>71</sup> that such programmes are offered in their territories. Again, the comparison data between the programmes are heterogeneous and do not respond to any harmonisation criteria, ranging from individual programmes of different lengths aimed at men «with self-control problems that give rise to situations of violence in the household» which contemplate the possibility of the couple remaining together (programme *Espacio*, in Asturias), to others that range from 5 months (Vizcaya), 20 interviews (Rioja), to one year (Fénix, in Castilla-León). Attendance and completion of the programmes are also wide ranging, from 12 men attending the programme and two dropping out (Rioja); 42 men attending (Guipúzcoa); 24 men attending and 1 dropping out (Galicia); 28 men attending and 12 dropping out (Valencia); to 28 attending and 14 dropping out (Castilla-La Mancha).

### **3.3.4. Procedural measures adopted to prevent, correct and eradicate gender violence and its impact**

1. The Integral Act started off from an unavoidable assumption: the seriousness of the social reality of violence against women, the complexity of the intimate and personal relationships of the subjects between whom the conflict arises, and the particular measures required for treating these forms of conduct, call for specific skills and preparation to ensure that the judicial response is truly effective.

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<sup>71</sup> Special Delegation of the Government on Violence against Women 2005, Op. Cit.

With this specific objective in mind, the Integral Act starts off by establishing, within criminal courts, an examining Magistrate's Court in each Judicial District to hear cases involving violence against women, through the creation of Violence against Women Courts, responsible for, in the investigation phase of the facts, criminal proceedings opened as a result of the perpetration of certain offences by the partner or ex-partner of the victim. Therefore, this measure must also pursue not only the necessary specialisation of the judge holding office in the court, but also of all the civil servants that work in these courts, otherwise the measure will fall into nominalism, which is something that would be counterproductive in the end.

At the same time, with a criminal procedure reform in the making, aimed at changing the distribution of the responsibilities of directing the investigation of the criminal acts in the early stages of proceedings, without prejudice to the function of the effective guarantee of the fundamental rights of the victims and the accused parties, entrusted by the Constitution to the judiciary, the Public Prosecutor's Office is the body which must make the strongest commitment to eradicate this social scourge by creating and fostering, as it has done so far, the specialisation of its members to empower them to intervene in proceedings of violence against women, facilitating the necessary means, in defence of society, of the rights of citizens and of the protected legal right, given that the Public Prosecutor's Office can and must play an important role in the execution of Criminal Policy.

The integral response which the Act seeks to provide must take advantage of all the potential that should arise from the moment the judicial bodies equip themselves with sufficient specialised personnel (psychologists, social workers, etc.). This is the reason why the judicial response to the phenomenon of gender violence is confined to a single type of court, not only in terms of the investigation of the aggressor's conduct, but also the personal and property repercussions on the victim of the break up of the relationship of coexistence with the perpetrator of the violent act, i.e., consequences of a civil nature that should and can be resolved by the same specialised court, backed by the necessary technical guidance on all the decisions to be adopted.

In cases of violence against women, when perpetrated in the intimate environment, a punitive response radically condemning the conduct must no doubt be adopted, without ignoring that the emotional element, past and present, between the aggressor and the victim sometimes conditions the aggressor's effective compliance with the sanction imposed.

### 3.3.5. Judicial protection

- A. The decision established in the Integral Act of a specialisation formula within the area of criminal law examining magistrates with criminal competencies to judge gender violence offences, within the specific sphere referred to in the Act: the pre-trial investigation of offences, with the possibility, in specific cases, of passing sentences following a plea of guilty, the regularisation of detainees and the resolution of applications for precautionary measures, within the judge's court hours, and civil competencies for family issues, in the broad meaning of the term, involving gender violence, materialised as exclusive Violence against Women Courts and Violence Courts, the latter sharing this area of law in combination with other criminal and/or civil issues.
  
- B. Although the formula of conferring these cases to a single Court in each judicial district (or to various, depending on the volume of the cases) is positive, practice has revealed dysfunctions in Violence against Women Courts with shared competencies, associated, to begin with, with the difficulty entailed in harmonising the agenda of the Court, which requires setting the dates for the different trials in advance, with the urgent attention and dedication required by the gender violence cases that enter the court each day, whose numbers and types of acts are impossible to forecast. The operation of Violence against Women Courts with shared competencies is also affected by the deficiencies in the number of staff prosecutors, forensic doctors and lawyers, both on specialised gender violence duty and on legal-aid duty for the accused or detained individuals. With regard to the latter, there is no generalised provision for specific legal-aid duty for accused or detained individuals on charges of gender violence, as these lawyers are shared with the duty court. These staff deficiencies give rise to delays in the commencement of proceedings, or to the outright suspension of previously fixed dates for trial, with the consequent detriment to the persons affected and to the running of the judicial body. Furthermore, it so happens that in many of these courts with shared competencies there are no Assistance to Victims Offices or Psycho-social Teams. These dysfunctions call for staff increases in exclusive Violence against Women Courts by clustering two or more judicial districts, as envisaged in the Integral Act itself, which would enable the above-mentioned dysfunctions to be solved and would facilitate the effective specialisation of all the legal operators, ensuring a better response from the Justice Administration. In this respect, it is

a pity that the reform to the Demarcation and Staff Act recently debated in Parliament, which attempted to address this problem, failed to gain support.

- C.** In this respect, we welcome the gradual staff increase of exclusive Violence against Women Courts. The National Plan on Awareness-raising and Prevention of Gender Violence, as well as the urgent measures approved in March 2007, envisage the creation of 43 new Violence against Women Courts. In compliance with this plan, of these Courts, 6 began to operate in April 2007, 8 will do so on June 30th 2007, and 18 will do so at the end of this year. In addition, plans to create 11 judicial units, with competence in gender violence, before the end of 2007, are currently under study.
- D.** On another front, there is a reform bill to the Regulation on Appurtenances to the Justice Administration, with the aim of establishing a duty-court system in judicial districts with 4 or more exclusive Violence against Women Courts, to facilitate tasks associated with protective orders and hearings
- E.** To date, the specialisation of one or various Criminal Courts in each province has not taken place, despite that provided in the 10th Additional Provision, 3 bis, of the Integral Act. However, the Urgent Measures approved by the Council of Ministers last December 15th envisage that this should be ensured prior to the end of 2007, a task that corresponds to the General Council of the Spanish Judiciary, as per section 98 of the Organic Act on the Spanish Judiciary.
- F.** Section 416 of the Code of Criminal Procedure recognises that relatives of the accused have the right to refuse to testify as witnesses in the proceedings. An amendment to this provision has been proposed in relation to criminal proceedings involving violence against women – which should also be mirrored in section 418 of the Code of Criminal Procedure–, so that this right is dropped in cases of abuse, as in the case of any person who witnesses or has knowledge of the perpetration of an offence, regardless of the kinship or intimate relationship that binds the witness to the accused.

In the daily practice of Violence against Women Courts, as well as in prosecution bodies, Criminal Courts and Principal Provincial Courts, there is a persistent tendency of women victims of gender violence to exercise their right to refuse to testify against their spouse or person related to them via an inti-

mate or similar relationship,<sup>72</sup> in accordance with section 416 of the Code of Criminal Procedure. Despite the fact that there are no statistical data that, in a generalised and totally reliable manner, indicate the frequency with which women exercise this right, according to the 2006 annual report of the Prosecutor's Office of the High Court of Justice of Madrid «in relation to gender violence, the victim exercised this right, or went back on her word in the hearing, giving rise to a verdict of not guilty in 62.86% of the proceedings» which ended in acquittals. Continuing with the statistical analysis that this report makes reference to, in Madrid, in cases of occasional abuse, (to use one example) 1,898 sentences were passed, of which 711 were acquittals, therefore, associating this with the previous data, it would seem that on 446 occasions the accused was acquitted for lack of proof because the victim refused to testify against him.

On the part of the Special Public Prosecutor for cases of Gender Violence, based on reports issued by Public Prosecutors on the causes for withdrawals of accusations during the trials, in the first 4 months of this year, in 37% of the cases the victim exercised her right to refuse to testify.

In addition to the above objective data, we should not forget that the basis of the dispensation provided in section 416 of the Code of Criminal Procedure is to respect the family solidarity of the witness towards the accused who commits an offence that does not attempt against her legal rights, therefore of the witness who is not a victim and has suffered an aggression perpetrated by her spouse or partner.

This is what has motivated the call from various institutions, among them, the majority of the National Observatory on Violence Against Women, for an amendment to this precept, given that faced with offences requiring the action of the law where the victim's forgiveness does not suffice, such forgiveness is being admitted, thus facilitating the impunity of the alleged perpetrators of such deplorable conduct, thereby making the integral protection of the victim, which the new legislation tries to ensure, totally ineffective.

According to another doctrinal sector, the abolition of this right on the grounds of having presented a complaint, or its complete abolishment in all

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<sup>72</sup> Although the precept only refers to the spouse, jurisprudence is unanimous in recognising this dispensation to persons related to the accused through emotional ties.

criminal proceedings involving gender violence, would require prior consideration of the following aspects:

- 1) The reasons that motivated the Legislator **in the 19th century** to establish this right to refuse to testify for reasons of kinship.
- 2) That such decision could, in some cases, lead to the definitive break up of the emotional ties, against the will of the victim, without hope of reconciliation, which is something that should be decided by the victim herself.
- 3) There are many who consider that such amendment would entail **restricting the freedom of the victim**.
- 4) We should also not forget that such decision could ultimately give rise to the accusation of the victim, either on grounds of disobedience or false testimony, as, in relation to the latter, it is evident that a percentage of victims, whose numbers could be significant, would give a false declaration to protect their aggressors.

Should the amendment to sections 416 and 418 of the Code of Criminal Procedure not take place, it would perhaps be worth analysing another way to solve the problem of impunity and the risk that is currently in store for the victim who refuses to testify by exercising her right to this dispensation in the oral hearing, which is to confer value and effectiveness in the trial and, therefore, in the sentence, to the declarations made by the victim in the pre-trial proceedings, in the presence of the judge and with the contradiction guarantee, which, as the case may be, would require conferring such declarations the nature of evidence gathered before the trial. Also, in any event, a special vigilance duty on the part of the Public Prosecutor's Office, the Examining Magistrate and the Trial Judge must be introduced to ensure the free manifestation of the victim's will to exercise the right to refuse to testify, informing her of the means that can be made available to her to ensure her protection and to preserve her integrity, which will allow her to decide freely.

### **3.3.6. Civil aspects**

There are several gaps relative to the judicial protection provided in Organic Act 1/2004 as regards civil aspects, among them:

- 1) In the list of civil issues listed in section 44 of Organic Act 1/2004, no competence is conferred to Violence Courts to hear civil issues derived from criminal conduct that can be considered gender violence, but whose direct repercussions are not so much on the person, but on the property of the victim. An example of this would be when the aggressor destroys the woman's possessions, household contents or other kinds of tangible assets, a conduct that, from a criminal law point of view, can be classified as a damage or coercion offence, which the Violence against Women Court would have the competence to hear, as per section 87 ter, first paragraph of the Organic Act on the Judiciary. However, in these cases, the civil actions on prevention or defence of the victim's property rights must take place through the exercise of the corresponding negatory actions or other forms of action, through a civil procedure substantiated before civil courts, with regard to whom Violence against Women Courts do not have a say, not even of a preventive nature, in accordance with the civil competencies conferred to Violence against Women Courts by the mentioned precept. And this without prejudice to the fact that Violence against Women Courts can pass judgements on civil liabilities derived from the offence, as per the general terms of the Criminal Code and the Code of Criminal Procedure.
- 2) Also, Violence Courts have no civil competence in proceedings through which a person is declared disabled, when the person who ordered the proceedings is the husband or the partner and there have been acts of gender violence perpetrated on the woman to be incapacitated (unless considered included in section 87 ter.2 d) of the Organic Act on the Judiciary, if so interpreted by any doctrinal sector.
- 3) Likewise, we also note an insufficient guarantee of the effective reparation of gender violence in cases of non-payment of pensions and compensation owed to the victim, particularly in cases of insolvency on the part of the aggressor and debtor. Therefore, a draft Royal Decree on the organisation and operation of the guarantee fund for food to minors in cases of legal separation and divorce is in process. The draft takes into account the circumstances of victims of gender violence and seeks to guarantee a minimum threshold in the collection of child alimony agreed in the judicial sentence, thus to increase the current family protection measures.

Likewise, an amendment is being processed in Congress to confer the advance payments made by the Fund to victims the status of public credit, so

that the State can take-over (subrogate) from the beneficiary and demand said advance payments from the liable party.

### 3.4. EDUCATION FOR PROFESSIONALS

According to the document issued by the EU-Presidency in 2002, *Good Practice Guide to Mitigate the Effects and Eradicate Violence against Women*, gender violence education is included in the academic studies required to access job positions, and on-going training, in the police, the law enforcement agencies, and the law profession. Likewise, the document affirms that this subject is included in on-going education courses provided to social services professionals, in specific education courses provided to justice administration professionals and in on-going education courses for healthcare personnel. Also, the report issued by the Council of Europe, *Combating Violence against Women. Stocktaking study on the measures and actions taken in Council of Europe member States (2006: 59-60)* affirms that in Spain, both to gain access to the profession and subsequently, specific education on gender violence is provided to professionals of: law practice, the police, the judiciary, healthcare, infant and primary education, journalism and social work.

In this light, from the area of the Justice Administration, the Ministry of Justice, in consensus with the Centre for Legal Studies (CEJ), the Public Prosecutor's Office, the General Council of the Spanish Judiciary, the General Council of Spanish Advocates and the Delegation of the Government on Violence against Women, has defined a set of homogeneous and common education criteria or modules for all legal professionals working in the area of the Justice Administration associated with gender violence. These modules are on equality, violence against women and gender violence, and are to be imparted with varying intensity in accordance with the responsibilities of the different legal professionals (judges, public prosecutors, clerks of the court, forensic doctors, administrative and processing bodies, personnel of assistance to victims offices and lawyers).

The fact is that there is no complete, exact and updated information on the courses provided in national and autonomous community institutions. The small amount of information that we have raises serious doubts as to the alleged obligatory nature of the education and the extent to which these courses are followed by professionals who are either still studying or already practicing (for example, see the section of this report on university education). In any event, even if some progress has been made in this area, the practically unan-

ymous opinion is that education on gender violence aimed at members of the judiciary, the public prosecutor's office, penitentiary institutions personnel and law enforcement agencies should be improved and broadened, and, the Bar Association should offer such courses to the each duty lawyer in the legal aid scheme. Likewise, social services and healthcare personnel, as well as journalists and primary and secondary school teachers, should also receive gender violence education.

It would therefore be desirable to have updated information on the gender violence education courses aimed at professionals, whether exercising their profession or still studying, in order to be able to assess the effectiveness of the courses. Currently, neither their objectives nor their contents are assessed; and the learning level of their (practically always small) number of students is equally not measured. It is essential that this education manages to reach all the professionals involved in combating gender violence and that the education is imparted continuously and by specialists in the subject.

It is also important that the education reaches the professionals not only through an isolated module incorporated into the current education syllabus, but through a cross-cutting approach that goes all the way through the education process, until a new, non-androcentric approach can be applied to all future action.

It is particularly serious that the universities have not actively participated in the process of combating gender violence, neither in the prevention aspects nor in awareness-raising, despite the fact that it is one of their fundamental functions. This deficit is probably one of the most serious problems currently encountered by the Integral Act, reducing the potential of its comprehensive nature.

In this respect, we should bear in mind that although academic feminism holds certain recognition in Spain, in some areas it is inexistent and, in others, nearly inexistent, particularly in Law faculties. If we combine this with a positive legal theory model of the dogmatic type, not very open to trends imbued with feminist thought, we understand the difficulty entailed in building a legal perspective specialised in gender violence that provides the foundations and the interpretations that the new legislative framework on violence against women demands from the Spanish legal system and its interpreters. In the same way that this specialisation has taken place within the jurisdiction through the creation of the new Violence against Women Courts, the same specialisation must now be adopted in gender violence legal studies. Without

this specialisation, it will be difficult to improve the implementation of the legal regulations governing gender violence. We should not forget that the new position of gender violence in the framework of discrimination and the principle of equality requires a transformation of the legal dogma of the areas involved, particularly, criminal law, civil law and labour law.

# 4 ACTION PROPOSALS

Bearing in mind that it only has been two years since all the provisions of Organic Act 1/2004 entered into force and that, as a result, it is too soon to issue a reliable judgement on the awareness-raising, prevention and detection system, the normal exercise of the recognised rights, and the penal and judicial protection, and also that we currently find ourselves at the stage of consolidating the system and reinforcing its internal coherence, the proposals must be framed within the necessary assessment and continuous observation of the regulation's introduction and of the impact of the measures developed. Therefore, the proposals must be approached from the point of view of a possible review to ensure improved effectiveness of the measures already in place.

As mentioned, and in light of the analysis made in this report, the measures outlined below are lines of action which the National Observatory on Violence against Women proposes as reinforcement or continuation of the measures already in place as well as those included in the National Plan on awareness-building and prevention of gender violence (2007-2008) and in the List of Urgent Measures:

## 4.1. GENERAL ACTION PROPOSALS

- 1) *Creation of the National Observatory on Violence against Women database, using the indicators included in the Annex to this report.*

This requires the commitment and collaboration of the members of the National Observatory to facilitate, from their respective areas, the necessary information to feed the database, as well as to improve their data gathering systems.

With regard to the integration of information, except protected data by virtue of the data protection legislation, the system housed in the National Observatory on Violence against Women must fulfil its functions on the basis of the **collection of micro-data**, from, at least, all the sources of information of the Public Administrations, to be categorised and housed in the National Observatory **database**.

With regard to improving the information, the following action is proposed:

- Adaptation of the data-gathering methods to the type of violence.
- Connect to each other in an adequate manner the different manifestations of violence against women, which will result in improved insight into gender violence.
- Improvement of the data that assesses the prevalence and profile of the victim.
- Improvement of the methods that analyse the qualitative aspects in order to specifically assess the nature of violence against women, the deep causes that generate and maintain it and to recognise the attitudes that prevent its eradication and incorrect classification.
- Improvement of the records of the services by standardising the common indicators, to specifically assess the causes and the dynamics of acts of violence against women, as well as the social response.
- Improvement of collaboration with all the institutions involved advocating a common methodology and improved data.
- Conduct regular macro surveys that specifically include gender violence.
- Availability of an annual barometer to gain insight into the public's perception of the phenomenon of gender violence and its confidence in the public and private institutions in place to deal with these situations.
- Conduct surveys to gain insight into the level of satisfaction of victims with the response obtained, as well as that of the professionals involved in dealing with these situations.

## **2) *Education and specialisation***

- In education targeted at professionals, violence against women must be an obligatory curriculum content (professionals of medicine, psychology, nursing, law, education, law enforcement agencies, local administration workers, etc.)
- Specialised education, imparted by experts, aimed at the implementation of the measures established by law. As made clear in chapter 2, in relation to the measures adopted in the areas of healthcare, education, journalism, law enforcement agencies, etc., specialised education is an essential requirement for the effectiveness of the Integral Act. To prevent it from failing, this education must also be

on-going, to ensure more effectiveness and to avoid wasting resources.

- Research into education for professionals. We should obtain exact knowledge on whether education on gender violence and gender equality is obligatory in the initial education and specialisation courses of the Law Enforcement Agencies, Justice Administration personnel, Penitentiary Institutions personnel, Social Services personnel, teachers, access to the legal profession courses, healthcare professionals and psycho-pedagogical careers and journalism; and the number of participants (broken down by sex) in the courses. Likewise, we should know whether measures have been taken to sensitize and educate on gender violence and gender equality local Administration personnel who deal with families who are victims of gender violence, and politicians who must make decisions, as well as the number of education programmes to which NGOs were invited to provide information on gender violence and gender equality. The cost of this education should be calculated and the effectiveness of the courses imparted and the measures adopted assessed on a regular basis.
- On another front, if agreements are signed with private companies to guarantee the safety of victims, it is essential to adopt common criteria to provide education to all the intervening professionals, and such criteria must coincide with the education provided to the rest of the professionals involved in the prevention, assistance, prosecution and punishment of gender violence.

**3) *Co-ordination, follow-up and assessment of the different measures will lead to improvements and the adoption of common action guidelines to guarantee the continuity of the protection system.***

- Draw up a protocol model for basic inter-institutional co-ordination between the Administrations and the institutions that intervene in situations of gender violence, based on active collaboration.
- Increase efforts to co-ordinate the measures adopted by the different public administrations, to ensure that they act in synergy. With this objective in mind, we must encourage the execution and implementation of Agreements between the State and the Autonomous Communities, in order to co-ordinate all the preventive and curative measures aimed at the phenomenon of gender violence, including the existing violence units in the Delegations and Sub-delegations of the Government. In this

same line, local authorities must be fully involved in the efforts to eradicate violence, given that these are the closest political authorities to the public and probably the first to detect the phenomenon. Particularly in rural areas, where complaints are not frequently filed, the task of the local authorities could be the most important.

- Boosting collaboration with social agents, which play an important role in combating gender violence. To this end, feminist associations are particularly well qualified, as well as organisations involved in the fight against sexist violence.

#### 4) *Awareness-raising and prevention*

- Intensify efforts to undertake measures aimed at preventing the phenomenon of violence against women and to detect it in its early stages. Homicides or murders do not serve as a measure for assessing the effectiveness of the Integral Act. Penal action is necessary but its effects are limited and late, when the offence has already been committed. Therefore, the emphasis must be placed on preventive measures.
- Increase social knowledge and awareness of gender violence by boosting strategies aimed at public awareness-raising and sensitization, through fostering the use of Internet for these purposes (web pages, for example) and intervention in education.

## **4.2. ACTION PROPOSALS IN THE AREA OF NON-UNIVERSITY EDUCATION**

The existing indicators on gender violence in relation to young people reflect that we cannot expect that the generational relay will bring an end to this problem, and therefore we must increase educational measures aimed at its eradication. To achieve this, the following lines of action, aimed at reinforcing or continuing with those already in place, as well as those included in the National Plan on awareness-raising and prevention of gender violence (2006), are proposed:

- 1) *Increase research and assessment of the measures adopted in the area of education on prevention of gender violence, otherwise it will be very hard to counteract the existing strong tendency towards the re-*

production of the ancestral relationship model that leads to gender violence. Without the information and the confidence that research provides, and the education derived from research, it is unlikely that teachers will overcome their lack of confidence in addressing a problem in the classroom that, until recently, was taboo. Research is essential for building the necessary confidence to eradicate gender violence.

- 2) *Extend prevention awareness to all the population, from a comprehensive perspective based on respect for human rights* that teaches society to condemn all forms of violence and that includes specific activities against gender violence. As recognised in the Integral Act, these measures must be adapted to each education level, starting from Infant School. Research studies conducted on this subject highlight the special relevance that the last two years of compulsory school can have in this respect, given that it is in these two years when it is possible to teach students how detect initial signs of gender violence in the partner relationship and how these manifestations evolve, encouraging the rejection of gender violence in each individual and thus the population as a whole, prior to the first partner relationships and the first signs of violence. Given the importance of this measure, it would be recommendable for each centre to include initiatives to implement this measure and assess its effectiveness in its Coexistence Plan. One suggestion for its insertion in the curriculum is the subject “Ethics and Civic Education” in the fourth year of Compulsory Secondary Education (ESO), which is a subject that includes the areas of «Equality between men and women» and «Prevention of violence against women».
- 3) *Guarantee the continuance of education measures aimed at preventing gender violence.* To achieve this, it would be recommendable to include the subject in the school curriculum (instead of inserting it in the odd and sporadic activity), and to provide teachers with the necessary means to teach the subject in a systematised and effective manner, using educational approaches that stimulate critical thought, debate and team work, through which to encourage awareness raising on how to replace the ancestral model based on dominance and subjugation, with a model based on equality and mutual respect.
- 4) *Teach how to build gender equality through everyday practice, as handing out information is not enough,* through collaboration experiences between girls and boys based on mutual respect, in order to

advance towards overcoming the two main conditions underlying gender violence: the unequal distribution of power that exists in society and the resistance to change this situation, particularly among the male population.

- 5) *Develop protocols on how schools should act when they find out about gender violence taking place among students or families, in order to increase efficiency in the detection and eradication of these situations, fostering collaboration between schools and the rest of the institutions responsible for this area.*
- 6) *From the area of education, mitigate the effects and the risk of the inter-generational reproduction of gender violence on children who have suffered this problem. To achieve this, based on research studies carried out, we recommend developing the following:*
  - Quality emotional bonds, alternative to violence.
  - Rejection of all forms of violence, including gender violence and child abuse, incorporating into the identity of each individual the explicit commitment to exclude violence from future relationships.
  - The conceptualisation of violent behaviour experienced in the family as such, recognising its inadequacy and expressing to others the emotions that it raises (when such experiences are justified with sexist or patriarchal arguments, the risk of reproducing them increases).
  - Alternative skills to violence that enable individuals to deal with stress and resolve social conflicts effectively.
- 7) *Train all personnel appointed by the School Councils to each school centre to boost education measures that foster real and effective equality between men and women.*
- 8) *Systematic information gathering to establish with precision the progress and obstacles with respect to the recommendations described above, dissemination of Good Practices, and availability of indicators in the area of education, so that we can gain insight into how many education centres carry out systematic initiatives on gender violence prevention, including: detection and action protocols, the presence in the School Council of a specialised person in the subject, inclusion in the Coexistence Plan of initiatives aimed at gender violence prevention, assessment of initiatives carried out, and text-book review to correct sexist contents.*

### 4.3. ACTION PROPOSALS IN THE AREA OF UNIVERSITY EDUCATION

1) *Incorporation of men and women in designing a new pact between women and men*

The inexistent or practically inexistent presence of men in the classrooms of master's and courses on gender violence is indicative of the essential need to incorporate men into university education on gender in order to achieve a new social pact between women and men that envisages a change in patriarchal structures. Additionally, few research studies are underway on the way to involve men in this new pact, and the characteristics shared by egalitarian men are rarely studied, as Christian (1994) and Bonino (2001 & 2003) did<sup>73</sup>.

2) *Incorporation of specialised gender subjects in all degree qualifications to be defined in universities as of 2007.*

To achieve this new pact, one of the fundamental measures that cannot be postponed any further is the incorporation of specialised gender subjects in all degree qualifications to be defined in universities as of 2007. The subject should be imparted by specialised lecturers with a gender research background. Our wide knowledge on inequality, discrimination and gender biasness derived from gender research studies and women has been removed from conventional contents imparted in our universities, and, beyond its symbolic presence in optional subjects, has not been incorporated into the academic titles conferred by universities. Neither the Organic Act on Integral Protection against Gender Violence nor the Organic Act on Effective Equality between Women and Men can be effectively applied and developed if the different agents and authorities do not hold the necessary education. The provisions of the latter mentioned Act refer to initiatives aimed at creating and disseminating the essential knowledge to ensure the effectiveness of the Act: «adaptation of statistics and research studies» (article 20), «education on equality between women

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<sup>73</sup> Harry Christian, *The Making of Anti-Sexist Men* (London: Routledge, 1994); Luis Bonino, «Los hombres ante el problema de la igualdad con las mujeres». En Carlos Lomas (ed.), *¿Todos los hombres son iguales? Identidad masculina y cambios sociales* (Barcelona: Paidós); Luis Bonino, «Los hombres hacia la paridad en lo doméstico. Discursos y prácticas masculinas». Carolina Sánchez-Palencia y J.C. Hidalgo (eds), *Masculino plural: Construcciones de la masculinidad* (Lleida: Universidad de Lleida, 2001).

and men» (article 23), «integration of the principle of equality in education policy» (article 24), «equality in the area of higher education» (article 25). Article 25.1 explains that: «in the area of higher education, the competent public administrations must foster education and research on the meaning and scope of equality between women and men:

- Inclusion of education on equality between men and women in the appropriate syllabuses;

Creation of specific post-graduate degrees;

Specialised research studies on the subject».

3) *Education imparted by specialised lecturers. This in no way involves adding the question of gender as an additional variable to be considered. To obtain results, both in professional education institutions and universities, we need specialised gender lecturers not just able to put forward the existence of gender relations as power relations, but who are also able to question the pre-established models and paradigms of the human, legal and social sciences, who can reveal how the establishment of power relations came about as a result of the slanted experiences of men and who can make a critical analysis of language and the languages and dogmas of the sciences. The university cannot continue to base itself on an outdated social model.*

4) *The university must get involved in eradicating discrimination in the university institution.*

5) *Use of appropriate language.*

*The way women are treated in our inherited language contributes to their invisibility and marginalisation. It is therefore necessary to turn to a terminology that avoids discrimination.*

6) *Data gathering of the education imparted in universities.*

We need to have exact information on the number of universities that impart education modules on gender violence and gender equality, at least as part of degree syllabuses – and future degrees– in Medicine, Education, Psychology, Psycho-pedagogy, Law and diplomas in Nursing, Physiotherapy, Teacher Training, Social Education and Social Work; on whether the gender subject has been incorporated into future bachelor's and post-graduate degrees; on whether those mod-

ules are compulsory or optional; on the number of credits offered in each module; on the number of students (broken down by sex) who are studying them; on whether education material has been prepared for those courses; and on the finance available. In addition to the data supplied by the Autonomous Communities, it would be convenient to obtain information from the universities themselves because the obligation to report on the degree of compliance with the Act would perhaps encourage its effective implementation.

7) *Involvement of the University Co-ordination Council*

*It is essential to achieve a greater involvement of the University Co-ordination Council to boost the adoption of all the measures related to gender violence (awareness-raising, education, specialisation of lecturers, etc.) in the university environment.*

8) *Promotion of research on gender violence*

*Throughout this document we have highlighted the lack of data available to us and the need to conduct studies that shed light on a phenomenon as complex as gender violence, its causes, effects and the impact of the measures adopted to achieve its eradication.*

#### **4.4. ACTION PROPOSALS IN THE AREA OF THE MEDIA AND PUBLICITY**

1) *Advance in the area of self-regulation to report gender violence.*

2) *Existence of journalists specialised in gender issues in editorial departments and chief editor departments, capable of applying non-androcentric approaches in news and documentaries.*

3) *Centre information on the aggressor, encouraging social condemnation towards his aggressions and contextualise the information within the changing framework of relations between men and women, getting away from the «news event» type approach.*

4) *Ensure compliance with the law in the area of publicity, where, although we can be proud of our regulations, which are being used as a model in other countries, the administrations must be required to ensure compliance.*

5) *Data gathering on information campaigns*

With regard to awareness-raising initiatives and campaigns on gender violence conducted by the State Administration and the Autonomous Communities, it would be convenient if, in subsequent reports, we could provide information on the number of events, courses and campaigns carried out, as well as on the length of each activity (in hours), who the activity was aimed at, the number of participants (broken down by sex) and the financing in euros. It would also be convenient for all the activities to be assessed and, in particular, the fulfilment of the intended objectives measured.

6) *Data gathering on the influence of the media on gender perception*

We should also measure the impact of the measures adopted in the area of the media on the socialisation of girls and boys and the independence and empowerment of girls and young women. Likewise, we should measure the degree of change in social beliefs and attitudes.

7) *Specifically inform on the measures adopted aimed at the foreign population and the disabled.*

## **4.5. ACTION PROPOSALS IN THE AREA OF HEALTHCARE**

1) *Inclusion of gender violence in all the Health Plans and the List of Services provided in the Autonomous Communities, in harmony with the List of Services provided under the National Health System, as a priority work area, both in Primary Healthcare and Specialised Healthcare, including Mental Health, Gynaecology and Obstetrics services.*

2) *Design and development of education plans on gender violence in each autonomous community: as a priority task, that include at least the minimum requirements agreed in the National Health System's Inter-territorial Council, with specific calendars and budgets, and that encourage the participation of all professionals and the management ranks of the healthcare system.*

3) *Systematic assessment of the education plans.*

4) *Establishment of a Common Protocol for Gender Violence Healthcare Procedure in all the autonomous communities, within the context of the development of the education plans, as a priority.*

- 5) *Assessment of the implementation of the protocol.*
- 6) *Approval in the Inter-territorial Council of a set of common indicators of gender violence vigilance from the healthcare system, to at least enable the elaboration of indicators related to detection capacity, description of cases and assistance provided.*
- 7) *Annual elaboration of these indicators by the autonomous communities for the Annual Report on Violence issued by the National Health System and the analysis of those indicators.*
- 8) *Systematic inclusion of early detection procedures and adequate assistance for gender violence in all specific programmes, such as in the Mental Health and Pregnancy Assistance programmes.*
- 9) *Promote co-ordination between the healthcare professionals of the different levels (primary, specialised and mental health) and with professionals from other areas, assigning human and material resources.*
- 10) *Incorporación a los Registros de Mortalidad de las Comunidades Autónomas la vigilancia y documentación de todos los casos de femicidios, en coordinación con los servicios de Medicina Legal y Forense y el análisis sistemático de esta mortalidad.*
- 11) *Incorporación a los Registros de Mortalidad de las Comunidades Autónomas la vigilancia y documentación de todos los casos de muertes fetales de causa desconocida.*
- 12) *Promover la realización de investigaciones sobre Violencia de Género desde el ámbito sanitario que cumplan las recomendaciones éticas y de seguridad de la Organización Mundial de la Salud y que ayuden a orientar la planificación de actuaciones y la buena práctica clínica.*
- 13) *Promover la realización de investigaciones sobre las necesidades, motivación y satisfacción de las profesiones sanitarias en el trabajo en Violencia de Género.*
- 14) *Promover la realización de investigaciones sobre la percepción de las mujeres, nivel de satisfacción y necesidades de apoyo en relación con los y las profesionales del ámbito sanitario y profesionales de otros ámbitos a través de las encuestas periódicas del Centro de Investigaciones Sociológicas.*
- 15) *Análisis de las desigualdades entre mujeres y hombres, existentes en el sistema sanitario y desarrollo de medidas que erradiquen la discriminación en la propia institución sanitaria.*

## 4.6. PROPOSALS IN THE AREAS OF LABOUR, SOCIAL SECURITY AND ECONOMIC SUPPORT

- 1) *Strengthen the role of the social agents so that, through collective bargaining, they intensify the concretion and development of the exercise of rights, whose effectiveness is largely subject to conventional development.*
- 2) *Broader interpretation of the accreditation title of the situation of gender violence of the female worker or civil servant, in consideration of the most effective protection of the protected legal right.* Therefore considering, in suppositions of exercising the right to reduce or rearrange working hours, geographic and job mobility, which should also be considered as recognised within the legal body through a broad interpretation of the regulation, as well as the suspension or extinction of the labour contract, the possibility of the situation of gender violence to also be accredited either through the report issued by social services, when the aim is the exercise of the right to full social assistance, another judicial resolution that includes a precautionary protection measure, provided that from the nature of the measure it is assumed that it was adopted to safeguard the life or physical and psychological integrity of victim, or a sentence through which the accused is subjected to a non-molestation order, when the aim is to protect the life or physical and psychological integrity of the victim. Likewise, a broader interpretation of the accreditation title in cases involving access to the assistance described in section 27 of the Integral Act, is also recommended.
- 3) *Interpretation of the concept of transfer used in Organic Act 1/2004 as referring more precisely to cases of displacement, already referred to in collective bargaining.* This interpretation would enable the period of six months of reservation of the job position referred to in the Act to be extended to a maximum of twelve months, the period generally envisaged in cases of displacement.
- 4) *Analyse the possibility of a possible extension of the rights recognised to employee-basis female workers to self-employed female workers, particularly bearing in mind the growing importance and the quantitative weight of women in the latter collective.*
- 5) *Study the special situation of immigrant female workers in relation to the exercise of their labour rights.* In this respect, it would be worth

recognising, in relation to foreign women with temporary work and residence permits and victims of gender violence, that the periods of employment suspension for making their protection or their rights to full social assistance effective should count as effective working time for purposes of renewing their work and residence permits.

- 6) *Analyse the possibility of female workers victims of gender violence, who do not hold the minimum contribution period required for entitlement to unemployment benefit, generating a right to welfare benefit on grounds of the condition of victims of gender violence, without having to meet the requirement of prior contributions, even if for a shorter period than that provided in section 215 of the General Social Security Act, and provided that they can accredit special needs due to lack of income.*
- 7) *Study the possibility of eliminating the procedural requirements of prior reconciliation or prior administrative claim, derived from section 138.bis, for the purpose of obtaining fast judicial protection of these rights.*
- 8) *Study the possibility of expressly introducing in section 55.5.b) of the Workers' Statute the consideration of null dismissal when founded on work absenteeism or unpunctuality as a result of the physical or psychological situation derived from gender violence.*
- 9) *Disseminate information on labour and social security rights among female workers and companies, informing the latter of the rebates in place for hiring women victims of gender violence. To achieve this, the collaboration of the social agents is essential.*
- 10) *Study the inclusion of temporary disability benefit into the benefits towards which effective contribution during suspension with reservation of the job position period is recognised.*
- 11) *Assess the results of collective bargaining in the area of developing and guaranteeing the labour rights recognised in the Integral Act in favour of female workers victims of gender violence. This assessment should measure the outreach of labour rights through their incorporation in collective bargaining agreements, or, as the case may be, their effective development through improvement and concretion of these rights within the framework of collective bargaining.*
- 11) *Promote gathering, processing and exploitation of data associated*

*with gender violence affecting female workers, and conduct an exhaustive follow-up of the data relative to the use of female workers of the measures introduced by Organic Act 1/2004.*

#### **4.7. ACTION PROPOSALS IN THE AREA OF THE RIGHT TO FULL SOCIAL ASSISTANCE**

- 1) *Research study on the resources available in the area of integral social assistance.*

The decentralisation of assistance resources for gender violence is not just consistent with the administrative structure of the State, but it also allows policies to be adopted in proximity with the target public closely affected by them, such as in the case of healthcare and social policies. The modulation, in line with the factors of the local context factors, in the application of the mechanisms that give way to these policies is also a convenient advantage of decentralised models. However, one of the possible dysfunctions arising from decentralisation is that, in view of the global and integral problems faced by the Spanish State, as in the case of gender violence, the need for co-ordination between communities and local entities in the application of assistance resources has not materialised in real practice and, therefore, if we take a global look at the map of resources, we come to the conclusion that these are rationalised. To avoid this impression and, in particular, to make decisions on violence, it would be convenient for the National Observatory to conduct a study on the rationalisation of assistance resources for gender violence.

- 2) *Inter-territorial solidarity in assistance to victims of violence*

In connection with the previous proposal, it would be worth studying the extent to which inter-administrative collaboration instruments could be defined to enable the assistance resources financed by one autonomous community or local authority to be used by victims of other territories, particularly when such resources are closer to the victim's place of residence.

- 3) *Research into therapeutic resources and quality criteria for interventions*

Many of the resources available in Spanish cities and towns, particularly the local and autonomous community specialised social services units and refuge homes for abused women, girls and boys, are

conducting therapeutic interventions programmes with victims of violence. In the majority of cases, no information is available on the intervention models behind these therapeutic programmes, the degree of backing evidence, the reference frameworks, the assessment bases and, lastly, whether they achieve the objective of recovering the psychological well-being of the woman, boy or girl victim of violence, guiding them to a state of stability that will enable them to embark on the complex path to social integration from which they were removed by systematic aggressions. As in the case of the therapies for aggressors, it would be convenient to conduct a research study into therapeutic resources and establish a set of quality indicators to be met by all intervention programmes with abused women, boys and girls as a minimum requirement to be recognised by the public authorities and to receive subsidies.

4) *Accessibility guarantee*

The reality of disabled women must be observed in the right to information, in the resources and in the intervention models and their accessibility must be guaranteed. Whenever possible, sign language interpreters, augmentative communication systems and alternative oral communication systems must be available.

5) *Improvement of information aimed at foreign women.*

Information material for foreign women must be published in different languages and its distribution through the network of services and organisations working closely with them must be guaranteed.

6) *Gender violence education for interpreters and experts in intercultural mediation.*

Due to its indispensable nature, we propose the inclusion of the subject of gender violence in the education and academic titles of intercultural mediators and oral and sign language interpreters working with the social services and other services that provide assistance to women.

## **4.8. ACTION PROPOSALS IN THE AREA OF FORENSIC MEDICINE**

- 1) *Create the Integral Forensic Gender Violence Assessment Units in each of the Legal Medicine Institutes (IMLs), comprised of a multi-dis-*

disciplinary team made up of forensic-medicine, psychology and social work experts. There is currently one such unit in each exclusive Violence against Women Court, and, by the end of 2007 there will be 83 in the whole of Spain. To optimise the resources of these units, it is worth studying the possibility of each forensic unit lending its services not just to units sharing the same judicial district, but also to others in surrounding judicial districts, through a judicial district clustering system, always respecting a reasonable distance for the victim.

- 2) *Professionals of Integral Forensic Gender Violence Assessment Units should have specialised qualifications on gender violence, independent of the specific education on gender violence held by all the personnel working in the Legal Medicine Institutes.*
- 3) *The integral assessment should be carried out on the basis of the following axes:*
  - Assessment of the result of occasional aggressions and of the repercussions of prolonged exposition to violence exercised by the aggressor as a control mechanism over the woman within the partner relationship.
  - Assessment of the aggression and violence at physical and psychological level, and its repercussions on the couple's social environment.
  - Study of the woman and minors victims of gender violence, as well as of the aggressor in each individual case in order to integrate all the elements and circumstances of the violence and to acquire a global image of the reported situation.
  - In the case of the study on the aggressor, an assessment of the risk or danger that he presents at the time of each study must be systematically included.
- 4) *At the same time, the different assessment teams involved in the study of cases likely to be the result of a situation of gender violence or that may lead to gender violence, we are referring here to family and minors' psycho-social teams as well as to assistance to victims of violence offices, must be integrated into a single functional intervention model, where the result of each study is fed into a common database that will enable the sharing of the information acquired and fed into the database by the different teams.*

- 5) In this respect, it is also essential *to include the initiatives of the Family Meeting Point*, established for holding the visiting regime in situations of gender violence, in the same functional model so that the information obtained in the Family Meeting Point may be *fed into the common database and shared by the rest of the teams*, thus to achieve a comprehensive assessment of the situation of violence suffered by women and minors.

The Ministry of Justice has developed a *computer application named «Askeplios»*, which is already operating in all the forensic assessment units, for the basic purpose of achieving standardised forensic reports, ensuring improved communication with judicial bodies and the creation of a forensic database for judicial use, in order to be able to access the necessary risk assessment data to help the courts adopt the precautionary and protection measures and to assess expert evidence.

- 6) *Generalise the integral forensic assessment units in all the judicial districts.*

## **4.9. ACTION PROPOSALS IN THE LEGAL AREA**

### **4.9.1. Action proposals of a global nature in the legal area**

- 1) *Conduct a study on the legal situation of immigrant women who are in an irregular situation in Spain.* Due to their special situation of vulnerability, this collective of women must be especially taken into account, whether they have been subjected to gender violence in their countries of origin (possibility of asylum), or whether they are suffering gender violence in this country, hence why the Equality Act makes special reference to them.

### **4.9.2. Action proposals in the legal area, with special repercussions on civil issues**

- 1) Consideration of violence perpetrated on women and minors in cases of international child abduction. In order to prevent the restitution order from serving as an advantage to the aggressor, the incidence of gender violence must be taken into account by our authorities in the ap-

plication and interpretation of The Hague Convention and Regulation 2201/03.

- 2) Boost initiatives, of a legislative nature if necessary, to enable the application the possibilities provided in section 64.2 of the Integral Act, as regards the exchange of the use of the family home for the use of another home. The exchange envisaged in this regulation requires the active intervention of the Public Administrations - state, national and local - so that the victim may choose a place of residence where she will feel sufficiently safe.

### **4.9.3. Action proposals in the penal and judicial areas**

#### **4.9.3.1. *In criminal law***

- 1) *Suspension and substitution of the penalty.* Prior to the reform introduced by the Integral Act, the requirements for suspending or substituting a penalty (sections 83.1.6, II, and 81.1, III, of the Criminal Code) held certain characteristics in relation to all the subjects referred to in section 173.2 of the Criminal Code –specifically, the judge had to previously impose, in an imperative and not just discretionary manner, prohibitions on the offender to stop him from going to certain places and approaching or communicating with the victim, all of which in an attempt to ensure that the benefits of these alternative measures did not present a danger to the victim. The reform introduced by the Act –and independent of the considerations mentioned above, which would also be applicable here, in relation to the convenience or not of automatically imposing a specific type of sanction– has entailed replacing the imperative protection for a large group of persons with the obligatory exclusive protection of the spouse or partner. We should study the possibility of conferring the judge the power to weigh up the concurring circumstances in each individual case, and, in particular, those relative to the assessment of the risk warranting the imposition or not of such obligations.
- 2) *Determination of criminal law.* In some instances it would be convenient to reinforce specificity in order to avoid not only violations of the Principle of Legality, but also violations of the Principle of Equality and Legal Certainty. We are specifically referring to clauses like the following: «... the judge... in light of the offender’s personal circumstances and the concurring circumstances in the perpetration of the act, may

impose the lowest penalty in the classification», established in sections 153.4, 171.6 and 172.2, of the Criminal Code. Although not just specific to the offences that concern us here and applicable to other precepts of the Criminal Code, these clauses add certain uncharacteristic vagueness to the criminal precepts.

- 3) *Unitary treatment of the programmes which the suspension and substitution of prison sentences are subordinated to.* Faced with the variety of solutions adopted by the Integral Act, we propose a unitary regulation of the programmes which the suspension and substitution of prison sentences for individuals found guilty of gender violence offences are subordinated to (the law, in the current wording of section 83 of the Criminal Code, section 1,6, paragraph 2, envisages training programmes –but also labour, cultural, highway code, sex and other programmes– in the event of suspension, whilst the law requires, as per section 88, point 1, paragraph 3 of the Criminal Code, specific re-education programmes and psychological treatment in cases of substitution, without a reasonable justification for this unequal treatment).
- 4) *Generalisation of rehabilitation programmes for abusers.* We propose, in light of the current lack of programmes, the adoption of appropriate measures to achieve the generalisation of training and treatment rehabilitation programmes for individuals found guilty of gender violence offences, both in relation to those serving a prison sentence and those with a suspended or substitution sentence, not only because of the fact that such programmes are a condition for establishing the suspension or substitution of a prison sentence, but also based on the global perspective of the possibility of acquiring different social skills and behavioural guidelines.
- 5) *Elaboration of an Assessment Report on Intervention Programmes with Aggressors of Women in Spain*, which should be boosted and directed by the Special Delegation of the Government on Violence against Women.
- 6) *Elaboration or adoption<sup>74</sup> of a Quality Criteria System for Intervention Programmes with Aggressors of Women*, that will determine minimum

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<sup>74</sup> Group 25 (2006). *Quality Criteria for Interventions with Men who exercise Violence against their Partner*. Madrid: Cuadernos para el Debate Grupo 25.

standards, based on the evidence, to be met by public interventions or those subsidised with public funds.

#### **4.9.3.2. Judicial protection**

- 1) *Extension of the qualifying titles for the effective protection of victims. We propose an analysis of the legal framework with the aim of identifying the rights of victims of gender violence whose exercise is subject to the Protective Order, so that such rights may be extended to cases where a guilty sentence for a criminal offence, or another judicial resolution that also finds the accused guilty, are passed (for example, a resolution that adopts precautionary measures of a criminal nature, a pre-trial prison measure, etc.) associated with gender violence.*

*This extension should operate, for example, in that established in section 46.3 of Royal Decree 2393/2004, of December 30th, which approves the Regulation of Organic Act 4/2000, of January 11th, as regards the rights and freedoms of foreigners in Spain and their social integration, relative to temporary residence permits of victims of domestic violence. In this case, this could give rise to an amendment of Instruction 14/2005, of July 19th, of the State Secretariat for Safety, as regards the procedure in police stations in relation to foreign women victims of domestic or gender violence in an irregular administrative situation.*

#### **4.9.3.3. In procedural law**

- 1) *Establishment of a separate part of the case. The procedure for protection measures, which should be opened by operation of law in proceedings derived from acts of violence against women (section 61.2 of Organic Act 1/2004), should require the establishment of a separate part of the case in which the need, appropriateness and suitability of adopting a protection or safety measure in favour of the woman is substantiated, not just due to the specificity of the subject concerned or the content of the resolution that puts an end to the case, but due to the intervention in this part of the case of subjects who may not have taken part in the main proceedings, such as the victim herself, her children and direct relatives, and due to the independent procedural course of the measures, which require a specific follow-up on the compliance and maintenance of the protection measure.*

- 2) *Inclusion of the offence of violating the penalty or precautionary/safety measure, when involving prohibition of residence, molestation or communication with the victim of gender violence, in the list of offences mentioned in section 87 ter.1 a) of the Organic Act on the Judiciary, whose pre-trial investigation is competence of Violence against Women Courts.*

*This proposal is founded on the consideration that such violations comprise one the manifestations of violence against women, and the pre-trial investigation of these offences, when there is no additional act of gender violence involved, is currently competence of Examining Magistrates' Courts, thus dispersing among jurisdictional bodies the pre-trial investigation of part of the manifestations of gender violence and blurring its condition of manifestation of violence against women.*

- 3) *Elaboration of a Good Procedural Practice Guide on the subject of gender violence. The Council of Ministers, held on June 22nd 2007, approved the elaboration of a Good Procedural Practice Guide for the area of gender violence, to be followed by judges, public prosecutors, forensics, and the rest of the Justice Administration personnel and legal operators, to serve as a mechanism to clarify and facilitate the application of the different precautionary and protection measures, as well as to optimise the procedural resources in the area of penal and judicial protection against gender violence.*

*The Guide will address such issues as the effects of the rejection of the protective order by the victim, the so-called «withdrawal of complaints», referral to social and social intervention programmes by the Justice Administration, the need for risk assessment as part of the statement of reasons on which judicial decisions are based and the communication of such decisions to the police authorities, the legal situation in relation to meeting points for visiting regimes and the protective order, the possibilities of producing and examining evidence, the problems posed by accumulated civil trials in criminal proceedings on gender violence, the inclusion in the legal aid scheme of not just criminal but also the civil issues, the problems of fast trials, the possibility of decreeing protection and non-molestation measures before the other party is heard, or the improvement, in each procedural phase, of the necessary protection of the victim with instruments like screens or audiovisual supports. Likewise, efforts will be made to introduce a special vigilance duty –on the part of the Public Prosecutor's Office, the Examining Magistrate and the Trial Judge or Court–, to en-*

*sure the free manifestation of the victim's will when exercising her right to refuse to testify, informing her of the means that can be made available to her to protect her and to preserve her integrity – thus, to be able to guarantee that the woman's decision was adopted with the necessary information.*

*This Guide should be disseminated among all legal operators.*

#### **4.9.3.4. In the Judicial Office**

- 1) *Computer System. With regard to the courts' administration of the cases, in view of the dysfunctions derived from the diversity of computer systems and programmes used to record data in the Justice Administration of the autonomous communities with transferred competencies in the area of Justice and in the territories of the Ministry of Justice. There is an urgent need to ensure inter-communication between systems and for these systems to be homogenous and compatible, as well as to ensure their effective use by civil servants as a result of adequate training.*

#### **4.9.3.5. Others**

- 1) *Foreigners. The launch of an energetic campaign among collectives of foreigners is required to inform foreign persons of the values inherent in our system of rules and of the possible imposition of serious criminal sanctions for breaching such rules. It is also necessary to address collectives of foreign women to inform them of the protection measures for gender violence present in our legislation. In this respect, intercultural mediators should receive training, and we should study the possibility of including this information in applications for residence and work permits, as well as identity cards and visas.*
- 2) *On-line advice system for women victims of gender violence. It is necessary to facilitate, as much as possible, the mechanisms to enable women to get in touch with professionals capable of offering them the necessary help when they find themselves in a situation of gender violence. In this respect, we need an on-line assistance service to facilitate women access to the mechanisms of consultations, information and attention to victims of offences.*

- 3) *Review of sexist language to remove it from the Legal System. Given the symbolic nature and the ideology transmission role of language, we propose an updated review of the language used in legislative regulations (not just penal), both to remove concepts that perpetuate androcentric values and to redefine them so that they are respectful towards the fundamental values of equality between men and women, as a tool against gender violence, as well as to ensure non-sexist language in the use of pronouns, gender (masculine and feminine) and number (singular and plural), in order to foster the visualisation of women, their diversity and plurality, as an indispensable contribution to a society that recognises the equal value of men and women.*



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Section 10 of Organic Act 1/2004, of December 28th, as regards Integral Protection Measures against Gender Violence, establishes that the National Observatory on Violence against Women will issue an annual report to the Government and the Autonomous Communities on the evolution of gender violence and the effectiveness of the measures adopted to protect victims, including the action proposals which, as the case may be, may give way to legal reforms, with the aim of guaranteeing maximum protection for women.

In compliance with this legal mandate, the First Report issued by the National Observatory on Violence against Women, prepared as a result of a proposal made by a group of experts, was approved by the Plenary Session of the Observatory held on June 28th 2007, coinciding with the Observatory's first anniversary.

This First Report contains one Annex "System of gender violence indicators and variables on which to build the Database of the National Observatory on Violence against Women."

The publication of the full contents of the Report and the above-mentioned Annex initiates the Collection "Against gender violence. Documents", through which the Special Delegation of the Government on Violence against Women seeks to contribute to a better understanding of this social phenomenon by means of the dissemination of relevant, contrasted and exact information.



MINISTERIO  
DE TRABAJO  
Y ASUNTOS SOCIALES

SECRETARÍA GENERAL  
DE POLÍTICAS DE IGUALDAD

DELEGACIÓN ESPECIAL DEL GOBIERNO  
CONTRA LA VIOLENCIA  
SOBRE LA MUJER