

Victims of gender violence: a rocky road to justice*

Victimnes de violence de genre : un chemin difficile vers la justice

Daniela Heim[•]

Riassunto

L'articolo analizza: 1) le modalità tramite le quali la maggior parte delle importanti modifiche apportate ai diritti delle vittime sono state effettuate dalla legislazione spagnola; 2) gli ostacoli principali che le sopravvissute a questo tipo di violenza devono sormontare al fine di esercitare i loro diritti.

Résumé

Cet article porte sur deux volets : 1) l'analyse de la manière dont les changements les plus importants dans le domaine des droits des victimes ont été reçus et abordés par la législation espagnole sur la violence de genre ; 2) l'étude des obstacles majeurs auxquels se heurtent les survivantes de ce type de violence afin d'exercer leurs droits.

Abstract

This work analyses the way in which the most important developments made in the sphere of victims' rights were received and addressed by Spanish legislation on gender violence, and the most difficult obstacles that survivors of this kind of violence have to overcome to exercise their rights.

Key words: gender violence; victimisation process; victims' rights; Spain.

1. Introduction.

Coordinating claims for justice for women in the theoretical and practical context of human rights has contributed to redefine concepts in relation to the rights of victims of gender violence and their access to justice. However, there are many difficulties yet to be solved, if the aim is for the law to really hear the claims and satisfy the needs of victims, and for the victims to receive an adequate response to the violation of their rights and to the damage they have suffered.

This work analyses the way in which the most important developments made in the sphere of victims' rights were received and addressed by

* Translation from Spanish into English by María Florencia Lambruschini.

[•] Daniela Heim holds a PhD from Autonomous University of Barcelona. She is Professor of Law at National University of Río Negro - Argentina, member of Antígona Research Group belonging to Autonomous University of Barcelona and Director of the Research Program on Gender and Access to Justice Policies from the Institute of Governmental and Public Policy of National University of Río Negro.

Spanish legislation on gender violence, and the most difficult obstacles that survivors of this kind of violence have to overcome to exercise their rights.

2. Women and Patriarchal Violence: from Invisibility to Subject of Rights.

The original exclusion of women from the legal project of modernity gave rise to one of the most significant symbolic violence and social injustices of history. The legal system based in formal equality, developed in the Western Civilization as from the end of the eighteenth century and consolidated during the twentieth century (namely after the adoption of the Universal Declaration of Human Rights by the United Nations in 1949), made an attempt at addressing such injustice, but its task was only partially accomplished. Under this system, social inequality between men and women is no longer underpinned in the exclusion of women from legal frameworks as subjects of rights (that is to say, as citizens), but in the fact that, in practice, several forms of sexual discrimination prevail¹. For this reason, contemporary feminism had to allocate great efforts to the elimination of such form of discrimination.

The so-called radical feminisms embraced three fundamental ideas that have acquired crucial relevance in the feminist political agendas of the last decades: (a) structural sexual inequality in our

societies is the foundation of patriarchal dominance; (b) violence against women is one of the most cruel manifestations of male dominance; and (c) both sexual inequality and violence against women constitute a serious violation of human rights.

From this perspective, in order to recognize women as subjects of rights it is necessary both to build a model of rights and of access to justice that is not male-orientated or “substitutionalist”², and to dramatically transform the hegemonic patriarchal culture and the prevailing social values.

The gradual recognition of the right to sexual equality, followed by the recognition of specific rights for women, prepared the groundwork for the sphere of rights—and its enforcement channels—to be one of the fields (among others) where such social transformation can be made. For this task, it is essential to create spaces where the interests, needs, and experiences of women can be posed, heard and answered, as one of the most secure ways to guarantee women, in general, and victims of patriarchal violence, in particular, that they will play the most important role in their own emancipation.

The recognition of women’s right to speak for themselves and express their claims for justice in their own words, apart from reflecting their point of view and displaying their practical legal reasoning, enables the implementation of other legal-feminist methodologies that open up the possibility for women to be considered subjects of rights. It is about “raising consciousness”, for which it is

¹ Bodelón E., “Dos metáforas para la libertad: igualdad y diferencia”, in *Anales de la Cátedra Francisco Suárez*, N. 36, 2002, pp. 237-264; Bodelón E., “Derecho y Justicia no androcéntricos”, *Quaderns de Psicologia*, Vol. 12, Número 2, 2010, pp. 183-193; Rubio Castro A.M., “El derecho a la igualdad y a la no discriminación”, in Molina Navarrete C. et. al. (coord.), *Comentario a la constitución socio-económica de España*, Comares, 2002, pp. 927-978; Rubio Castro A.M., “Ciudadanía y sociedad civil. Avanzar en la igualdad desde la política”, in Rubio Castro A.M., Herrera Flores J. (coords.), *Lo público y lo privado en el contexto de la globalización*, Junta de Andalucía, Instituto Andaluz de la Mujer, 2006, pp. 23-66; Barrère Unzueta M.Á., *Discriminación, derecho*

antidiscriminatorio y acción positiva en favor de las mujeres, Civitas, Madrid, 1997.

² Seyla Benhabib defined the moral theories of the Western Tradition (where we can include the theories of justice) as “substitutionalist”. These theories support a Universalist approach identified by the experiences of men (of adult age, white, and homeowners) and it is presented as an epitome of humankind (Benhabib S., *Situating the Self: Gender, Community, and Postmodernism in Contemporary Ethics*, Routledge, 1992, pag. 34).

necessary to identify the underlying gender implications in legislation and to claim that its implementation does not perpetuate inequalities against women, that is to say, that the neutral gender of the right or of its enforcement is not assumed³.

3. Rights of the Victims and their Access to Justice.

Victims of crimes were construed differently as of the second half of the twentieth century, and this shift in attitude had an impact on the implementation of mechanisms for access to justice that recognize, among others, the legal status of the victim as subjects of rights and the necessity of adopting specific legislation to protect them.

Although it did not necessarily bring the gender perspective into the spotlight, the so called return of the victims⁴ after World War II set the grounds for counter-hegemonic movements, including feminism⁵, to expand their own approach to the concept of victim in order to incorporate those victims that had been traditionally forgotten and silenced; such as the victims of patriarchal violence. The organized women's movement played a significant role in said development. First, by exposing and questioning gender preconceptions in the context of human rights and last but not least, by construing violence against women as a violation of human rights.

³ Bartlett K., "Feminist Legal Methods", in *Harvard Law Review*, vol. 103, N° 4, 1990, pp. 829-888; Rhode D., "Feminist Critical Theories", in Freeman, M.D.A., *Lloyd's Introduction to jurisprudence*, 6ta. Edición, Sweet & Maxwell, London, 1990, pp. 1036-1048.

⁴ Garland D., *La cultura del control. Crimen y orden social en la sociedad contemporánea*, Gedisa, Barcelona, 2005, pag. 46.

⁵ Gracia Ibáñez J., "El manantial de las víctimas", in *REDUR*, Vol. 12, 2014, pag. 35.

The definition of violence against women as a form of discrimination, in turn, signaled the beginning of the end of the Aristotelian legal approach that was in force for centuries and that concealed that there is an unequal status underlying unequal treatment and, more specifically, that unequal treatment arises out of an unequal status⁶.

The incorporation of these concepts into international legislation on human rights resulted in a demand for justice that has been long supported by both the rationale and the work of the feminist movement: access to justice for victims of gender violence must exceed jurisdiction per se, and the resources available for the victims of violence against women must add gender perspective.

The coordination of the claims for justice for women in the theoretical and practical context of human rights helped redefine the concept of access to justice for the victims, not only at the international level, but also in the domestic legislation of most countries around the globe. In this sense, the Declaration on the Elimination of Violence Against Women (United Nations General Assembly, 1993) opened a new path for victims of violence to access to justice that advised Member Countries, among other dispositions, on the necessity of creating general approaches and measures of legal, political, administrative, and cultural nature to protect women against every form of violence and to "effectively avoid the recurrence of women victimization as a consequence of legislation, law application and other interventions" that ignore structural sexual inequalities and the violence and discrimination against women arising from it.

⁶ Barrère Unzueta M.À., "Género, discriminación y violencia contra las mujeres", in Lorenzo P., Maqueda M.L., Rubio A.

The mechanisms to access justice accepted at the international level aimed at protecting victims, in general, and victims of violence against women, in particular, privilege reporting acts of violence as a way to access justice. However, most recent legislation provide for the countries to ensure that victim support measures are not subject to the submission of formal complaints, particularly in the field of criminal law (as stated in Directive No. 2012/29/EU⁷ Section 8.5, for instance).

The tendency to recognize rights without reporting an act does not confine the access to justice to being only a self-referential legal discourse⁸, but instead, it influences the relation between law and justice, especially in those contexts where access to justice is associated to social and economic exclusion and, at the same time, where it is evidenced that legal reforms have only succeeded in part regarding the deeply rooted social injustice.

When taking into account the diversity of elements and connections that may affect the access to justice, the starting point is to bear in mind that addressing the access to justice implicitly presupposes the existence of social inequalities, of imbalances and asymmetries in the distribution of power and resources within a given social context⁹. It is basically assumed that it is true that there is inequality in the facts (called material inequality) and

inequality in the rights or in the possibilities to enforce them (legal inequality).

Among the international devices accepted to guarantee access to justice for victims of gender violence, it is worth mentioning the “Council of Europe Convention on preventing and combating violence against women and domestic violence” (“Istanbul Convention”), dated May 11, 2011; the “100 Brasilia Regulations Regarding Access to Justice for Vulnerable People”, approved by the XIV Ibero-American Judicial Summit held in Brasilia on March 4 to 6, 2008; and the “Santiago Guidelines on Victim and Witness Protection” approved at the XIV Ordinary General Assembly of the Ibero-American Association of Public Prosecutors (AIAMP), held in the Dominican Republic on July 9 to 10, 2008. Spain was a state signatory to all of them.

The “Istanbul Convention” is considered the broader international treaty in the subject and the first one in demanding state signatories the commitment of criminalizing the several forms that violence against women may adopt. Together with the “Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women” (“Convention of Belém do Pará”), the Convention is the body of legislation that best materialized feminist epistemologies and methodologies in the context of violence against women.

As its Preamble clearly states, the Istanbul Convention recognizes that violence against women is a manifestation of historical inequalities between women and men, and considers that such inequalities have led to domination over, and discrimination against, women by men and to the prevention of the full emancipation of women; recognizes that the realization of de jure and de

(coordinadoras), *Género, violencia y derecho*, Tirant lo Blanch, 2008, pag. 34.

⁷ Directive of the European Union dated 25 October, 2012, establishing minimum standards on the rights, support and protection of victims of crimes.

⁸ Self-referential legal discourse identify law with the set of rules issued by the Government and thus, they consider that the best means to make justice available to citizens are strategies focused on the technical and legal aspect of the question, that are later taken over by law practitioners (Lista C., “Prólogo”, in Boueiri Bassil S., *El acceso a la justicia: contribuciones teórico-empíricas en y desde países latinoamericanos*, Dykinson, 2009, pp. 9-19).

⁹ *Ibidem*, pag. 13.

facto equality between women and men is a key element in the prevention of violence against women; it realizes that the structural nature of violence against women is gender-based, and that violence against women is one of the main social mechanisms whereby women are forced into a subordinate position compared against men; it understands that the forms of violence to which women are exposed —such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called “honor”, and genital mutilation— constitute a serious violation of the human rights of women and girls, and a major obstacle for achieving equality between women and men.

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence upholds several values of the feminist movement in this regard. For instance, it presents a proper outline of violence and a broader view of the access of justice for women, which includes, among others, the obligation imposed to state signatories to allocate financial and human resources to the proper application of integrated policies, measures and programs aimed at preventing and combating all forms of violence under the scope of this Convention, including those developed by non-governmental organizations and civil society (Section 8).

Furthermore, the Brasilia Regulations Regarding Access to Justice for Vulnerable People develop the principles contemplated in Charter of Rights of the People before the Judiciary in the Ibero-American Judicial Space” (Cancún 2002). The basic premise for these Regulations is that legal systems must recognize that there are individuals that are unable to access the justice system effectively in order to exercise their rights in danger and that, therefore, it

is important to carry out more focused, intense activities aimed at conquering, eliminating or mitigating such limitations.

The Brasilia Regulations establish the bases for reflection on the problems that vulnerable people face when accessing justice: they also include recommendations for public bodies regarding the implementation of public policies aimed at guaranteeing access to justice for these people, and at easing the everyday work of all servants and operators of the judicial system and of those who contribute to the operation of the system in one way or another.

The Regulations consider vulnerable those individuals that “for reason of age, gender, physical or mental state; or, for social, economic, ethnic, and/or cultural circumstances find it especially difficult to fully exercise their rights before the justice system as recognized to them by law” (Section 2). Among the specific causes of vulnerability, we can count age, disability, indigenous or minority status, victimization, internal and external migration, poverty, gender, and deprivation of liberty.

In addition, they establish that the vulnerable status of a victim of crime is granted by relevant limitations in avoiding or mitigating the damages caused by a criminal offense or by its contact with the justice system; or in facing the risks of suffering a new victimization.

Furthermore, the Regulations uphold that vulnerability may be derived from either the victim’s individual features or the circumstances of the criminal offense. Also, they highlight that vulnerable victims may be those of domestic or family violence, sex crime victims, as well as minors or senior citizens, and the relatives of victims who died violently (Section 5).

The Regulations encourage state signatories to adopt adequate measures aimed at mitigating the negative effects of the crime (primary victimization), and at ensuring that the damage suffered by the victim of the crime is not worsened as a result of their contact with the justice system (secondary victimization).

They recommend that, throughout all the phases of the criminal proceedings, justice systems must ensure the protection of the physical and psychological integrity of the victims, especially in favor of those who are at the highest risk of intimidation, reprisal or reiterated or repeated victimization (the same person being a victim of more than one crime over a certain period of time).

They also acknowledge that it may also be necessary to grant specific protection to victims who are going to give evidence in the trial. In addition, they state that “special attention shall be paid to cases of family violence, as well as to cases where the person accused of having committed the crime is set free” (Section 5.12).

Gender is considered a specific cause for vulnerability, as the Regulations clearly establish that “[t]he discrimination suffered by women in several spheres is an obstacle for their access to justice, which is worsened in cases where other vulnerability factors are also present...” (Section 8.17). In this sense, they urge state signatories to take “the necessary measures required to eradicate discrimination against women in the access of justice for the custody of their legitimate rights and interests shall be promoted, in order to achieve effective equality of conditions” (Section 8.20).

Lastly, the “Santiago Guidelines on Victim and Witness Protection” develop and expand the rationale of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,

adopted by the General Assembly of the United Nations pursuant to Resolution 40/34 dated November 29, 1985, which contains fundamental values on the concept of “victim,” its access to justice and fair treatment, restitution, compensation, and assistance.

The Santiago Guidelines expand the concept of “victim”. They consider that a victim is any individual who has suffered a detriment of his or her rights as a result of a crime, thus including both direct and indirect victims in the definition. The Guidelines also provide for the victims’ right to information and its effective articulation; they establish the necessity to create protocols of action and safety devices for the victims; they describe the contexts where the education and specialization of agents in charge of protecting the victims come into play; they estate the role the victim plays in the proceedings, its Statute and guidelines for action, they provide orientation on the elements to be compensated and the compensation mechanisms that the victims are entitled to in the different legal systems. They also especially mention the victims of human trafficking, to children and teenagers victims of crimes, to foreign and indigenous victims, to victims of terrorism, war, social violence and similar offenses, and to victims of domestic and family violence.

Regarding the victims of family and domestic violence, the Santiago Guidelines do not explicitly contemplate gender perspective, but they do establish that these victims are in an especial relation of vulnerability and they often refrain from making the facts public. At the same time, they warn that, when dealing with protection measures, it is important to note that such victims often “act in a contradictory fashion, particularly as compared to

the stereotypical scheme that defines relations between aggressors and victims” (Section 8.1).

4. Victims of Gender Violence in the Spanish Legal System.

In Spain, the legal system prepared to face violence against women relies on Organic Law No. 1/2004¹⁰ (OL 1/2004), which entered into force in 2005 and bears several important amendments that provide for the protection of victims of gender violence under criminal law and the creation of specific mechanisms for the access to justice.

OL 1/2004 has privileged the intervention of courts of criminal jurisdiction but, nonetheless, it provides for some other courses of action in different environments. For instance, in the sphere of education, it imposes the obligation of teaching the values of respect towards the dignity of women and of equality between men and women. In the field of Mass Media, it states that the dignity of women and their right to a non-stereotyped, non-discriminatory portrayal shall be observed when creating advertisements that will be displayed in the media, both public and private. In the health sector, it stipulates that efforts should be aimed at early detection and assistance of victims, as well as at the application of sanitary protocols triggered by the attacks related to the form of violence governed by the Law. This way, the attacks can be addressed by the relevant Courts, thus accelerating legal procedure. Said legislation also governs labor rights and social security.

Regarding jurisdiction itself, one of the most innovative aspects of the Law is the creation of the Courts of Violence Against Women, bearing both criminal and civil jurisdiction. Therefore, they can

take part in all legal proceedings where women and their children are one of the parties. However, it is worth mentioning that they are not ad hoc courts, and they do not imply the creation of a new jurisdiction. In turn, they are ordinary courts inside the regular system and they are subject to the laws governing ordinary jurisdiction (namely the Organic Law of the Judiciary and the Law on the Distribution of Courts and Cases).

OL1/2004 is in line with several of the proposals emerging from feminist epistemologies and methodologies to address violence against women, protect victims, and safeguard their access to justice and, at the same time, it poses issues that deviate from them. Said issues often become obstacles impairing the access to justice.

Among others, the elements in common with feminist epistemologies and methodologies are the following (Bodelón 2008): it asserts the inequality of power between men and women and it relates it with the existence of violence against women; it adopts a comprehensive and multidisciplinary approach; it implements measures to raise awareness, protect, and detect conflicts especially in the fields of education, health and the media; it outlines the several rights held by women who were victims of gender violence in the context of social and legal assistance, of health services, and in the financial and working environment; and, as has been mentioned above, it creates a new kind of courts (courts of violence against women) with criminal and civil jurisdiction.

Other aspects of the aforementioned Law, apart from being in line with the feminist epistemologies and methodologies that gave rise to them, often constitute obstacles that difficult the access of justice for the victims.

¹⁰ Organic Law No. 1/2004 dated December 28, on comprehensive protective measures against gender violence.

5. Main Obstacles that Impair the Access to Justice.

The following is an analysis of the main obstacles that victims of gender violence encounter in our city in their attempt to access justice. The fieldwork that supports the quotations drawn from the interviews hereby used was made in Barcelona in the period from 2012 to 2014¹¹, where the research underpinning this work was conducted. However, most of these obstacles can be extrapolated to the entire Spanish territory; for they are structural elements that arise from the provisions of OL 1/2004 and from the main mechanisms for the access to justice contained therein, as several specialized researches have demonstrated¹².

(a) The “Famelist” paradigm and its inherent sexism.

OL 1/2004 uses the expression gender violence to refer solely to domestic violence and, therefore, it adopts what Alda Facio calls a “famelist paradigm”. Said paradigm is defined as a specific form of sexism, of insensitiveness towards gender issues, that consists in considering the family as the smallest unit for analysis, instead of analyzing the interests, needs, and acts of the people inside the

family¹³. This Law does not clarify feminist approaches to gender violence, it creates confusion around this concept and puts aside many kinds of acts of violence that were already provided for by international legislation and that the feminist debate had clearly defined: the concept of gender violence comprises any manifestation of violence against women, not only those taking place inside a romantic relationship. There is a large and complex amount of acts of violence that exceed the family level and romantic relationships, which might even be perpetrated by the Government¹⁴.

(b) The existence of criminal proceedings as a condition for the victims to exercise their rights.

The exercise of rights arising from situations of violence, namely, social assistance and labor rights, is subject to the existence of a protective order in favor of the victim, and sometimes even to a guilty verdict. Very exceptionally, they may be subject to a report from the Prosecution Service stating that there are signs that the victim experienced gender violence, until a protective order is issued (Section 23, 26 and 27.3). This situation is reported by some of the people interviewed, not only as an obstacle for the access to justice but also as an impediment for the victim's recovery: *“What seems an obstacle for the recovery stage of women is that the entire system of resources depends on the woman filing a claim [...]. Claims should not be a requirement for public service to intervene”*.

If the rights of victims are subject to the filing of a claim or to the granting of a protective order or a

¹¹ Part of this research served as grounds for the author's PhD thesis entitled “Women and Access to Justice. From a Traditionally Androcentric Law to a Non-androcentric Law”, defended at Autonomous University of Barcelona, on March 20, 2014. The research compiled 17 testimonies from victims of violence and 20 of justice operators, through personal, semi-structured interviews, some of which are mentioned herein.

¹² See, among others: Bodelón E., “Introducción”, in Bodelón E., *Violencia de género y las respuestas de los sistemas penales*, Didot, Buenos Aires, 2012, pp. 15-26; Gil Ruiz J. M., “La violencia institucional de género. Editorial”, in *Anales de la Cátedra Franciso Suárez*, Vol. 14, *Violencia Institucional de Género*, 2014, pp. 9-16; Amnesty International, *Más riesgos y menos protección. Mujeres inmigrantes en España frente a la violencia de género*, Sección española de Amnistía Internacional, Madrid, 2007; Amnesty International, *Una vida sin violencia para mujeres y niñas. Las otras víctimas de la violencia de género: violencia sexual y trata de personas*, Sección española de Amnistía Internacional, Madrid, 2009.

¹³ Facio A., “Accés a la justícia, dret i familisme”, in Bodelón E., Giménez P., *Construint els drets de les dones: dels conceptes a les polítiques locals*, Diputació de Barcelona, Àrea d'Igualtat i Ciutadania, Barcelona, 2008, pp. 195-199.

¹⁴ Bodelón E., “La violencia contra las mujeres y el derecho no androcéntrico: pérdidas en la traducción jurídica del feminismo”, in Laurenzo P., Maqueda M.Luisa, Rubio A.(coords.), *Género, Violencia y Derecho*, Tirant lo Blanch, Valencia, 2008, pp. 284-286.

guilty verdict and, as a consequence, they are strongly dependent on the results of the criminal proceedings, then the women who do not file a claim remain totally unprotected. The data compiled by the Macro-survey on violence against women published by the Ministry of Health, Social Services and Equality in 2015 reveal that only 28.5 percent of the women who claimed to have suffered fear or physical or sexual violence actually reported the crimes. We are dealing with a serious problem in the access of justice, which reaches at least 2 out of 3 victims.

(c) The narrow conception of the access to justice of law enforcement administrative bodies and courts of legal application.

Administrative bodies and courts created by OL 1/2004 are crucial for the implementation of public policy aimed at preventing, punishing and eliminating violence against women, as well as for guaranteeing the protection of victims and the punishment of their aggressors, but their understanding of the access to justice is very limited. Emphasis is placed in Federal institutions, their actions or the lack thereof in order to achieve an improved administrative and judicial efficacy. In general, the structural aspects that give rise to violence against women are set aside.

The concept of access to justice set forth in the Law considered solely the technical and instrumental aspects of the thought. The efficacy of the legal system in itself prevails over the efforts to dramatically transform ideological, political, cultural, economic, and social constraints where violence against women is rooted.

They are institutions and procedures conceived from a top-down perspective, with special focus in public management capacity, which are not

complemented with bottom-up strategies. Said approaches may be useful to solve the most urgent problems of the victims and to effectively engage in the elimination of structural inequality between men and women in a given society. Thus, it is evident that these institutions and procedures stick to the formal justice rationale, which is far from the real claims for justice that, incidentally, are concealed by them.

(d) The distinctive features of the criminal justice system.

The response from criminal courts at least as it has been practiced in Spain so far, has been formulated under the security paradigm and not under the one of rights¹⁵. Considering that the main purpose of this Law is to eliminate violence, the security paradigm constitutes a true obstacle for its fulfillment. Criminal law is designed to control and punish the perpetration of crimes, and not to act as a launching pad for the exercise of the rights denied from the outset, let alone when this denial gave rise to those acts of violence.

In this sense, criminal procedure strongly constraints the exercise of women rights and thus, it does not constitute a valid tool to tackle the situation that has brought women to courts, that is to say, it is not useful to fight the social subordination underlying violence. For this reason, it may hinder the access to justice for women, which becomes even more serious for those women that have reported the crime, but were not able to sustain the procedure. Most recent research on the subject reveals the high proportion of women

¹⁵ Bodelón E., "La violencia contra las mujeres y el derecho no androcéntrico: pérdidas en la traducción jurídica del feminismo", in Lorenzo P., Maqueda M.Luisa, Rubio A.(coords.), *Género, Violencia y Derecho*, Tirant lo Blanch, Valencia, 2008, pp. 275-299.

facing this situation¹⁶. In Spain, according to official data, in those cases where women experienced fear and sexual and physical violence and, while this situation existed, reported it to the police or went to court to file a claim, the proportion of women in this position is around 20% (Ministry of Health, Social Services and Equality, 2015).

Among the main features of the criminal justice system are the inflexibility of the procedure, the delays in the administration of justice, the extreme bureaucracy that victims have to overcome to access to services, the distant, cold and impersonal treatment that victims receive from judicial servants in courts, and the technicalities of legal language; as demonstrated by some interviews: *“Legal issues are only understood by those who serve in courts”*; *“It is the coldness of their treatment”*.

(e) The lack of due diligence in judicial investigations.

Due diligence is the Government's obligation to prevent, investigate and punish acts of violence against women, whether those acts are perpetrated by the State or by private persons (Declaration on the Elimination of Violence against Women, UN, 1993, Section 4). The Government has failed to comply with its obligation in several ways. For instance, violence that do not leave a mark is often not investigated: *“At a judicial level they still ask, is there any blood or not? Is there any medical report or not? Of course, this is extremely disappointing; it's a massive blow for the individual... I experienced it, though... How dare they question that?”*

Regular acts of violence are not investigated either and such crimes are not understood as a recurring

offense. This is demonstrated by some of the testimonies compiled for this work and it is also visible in the statistics published since 2003 by the Observatory against Domestic and Gender-Based Violence of the General Council of the Judiciary, where regular violence is hardly represented¹⁷.

(f) The lack of due diligence in monitoring protective orders.

Some of the testimonies obtained during the interviews evidence that it takes too long for protective orders to be applied. One common reason for this is the fact that protective orders are not effective until notice is served to the aggressor. Thus, if the aggressor cannot be found in their domicile or they moved, the implementation of orders is impaired. The testimonies also disclose that authorities often fail to monitor protective orders, thus exposing victims to new aggressions: *“They granted me the restraining order and they said: ‘keep this order with you at all times’. I had that ‘paper’ with me when he stabbed me”*.

(g) The lack of due diligence in applying the rule of consolidation of related offenses.

The victims also report about the failure to consolidate trials according to the rule of consolidation of related offenses in the context of multiple claims. Apart from causing strong secondary victimizations for victims, this situation evidences the lack of compliance with the recommendations issued by the General Council of the Judiciary, which since 2005 has established that,

“Derecho y Justicia no androcéntricos”, *Quaderns de Psicologia*, Vol. 12, Número 2, 2010, pp. 183-193.

¹⁷ The statistics published by the Observatory against Domestic and Gender-Based Violence of the General Council of the Judiciary are available at <http://www.poderjudicial.es/cgpj/es/Temas/Violencia-domestica-y-de-genero/Actividad-del-Observatorio/Datos-estadisticos/?filtroAnio=2003> (consulted on May 17, 2017).

¹⁶ Hester M., “Making it through the Criminal Justice System: Attrition and Domestic Violence”, in *Social Policy & Society*, vol. 5, n. 1, 2005, pp. 79-90; Bodelón E.,

when the offenses reported are of a similar character, they may be tried jointly according to criminal procedure before the Court of Violence Against Women, for having met the requirements set forth in Section 87 of the Organic Law on the Judiciary governing such competence. Despite the fact that said regulation does not explicitly mention it, said courts are also competent to address the breach of security orders or injunctions, when they refer to frequent acts and when they were perpetrated together with other crime falling under the scope of Courts of Violence¹⁸.

(h) Institutional abuse and re-victimization.

Several episodes of institutional abuse and re-victimizations were reported by the interviewed women. For instance, they experience these episodes when they are forced to testify in front of their aggressor, and/or when they unnecessarily encounter their offenders in court corridors or waiting rooms. This is particularly serious when, in those contexts, victims are exposed to new acts of violence that, even though they occur in front of judicial authorities, often go unnoticed.

Victims have pointed out that they do not feel comfortable in courts. In many occasions, they have also stated that they do not trust the justice system and they claim that this is one of the reasons why they feel discouraged to file a claim or to confirm it. In addition, when they assess the most useful ways to help them out of violence, most of the interviewed women deem productive the services available to them, but they cast serious doubt on the justice system which, paradoxically, is deemed to be the most relevant by the Government.

Among the situations of institutional abuse it is worth mentioning the sexist stereotypes supported

by justice operators and especially by the judges in charge of courts of violence and the fact that women's credibility is often called into question. Both situations were deeply analyzed in previous works¹⁹. These are aspects that evidence, among other facts, that violence against women is still regulated or deemed as a minor affair, and not as a violation of human rights by a criminal system that has long considered gender violence and any other kind of violence to be equally important²⁰; and that gender violence is so because it takes place inside a romantic relationship and not because the victim is a woman²¹.

(i) The poor developments made regarding victims' rights.

The right to legal advice is one of the rights that are not satisfactorily developed, or that is being openly breached. The interviewed women have often stated that they have never met their court-appointed lawyer; that they met them the very day of the trial (some minutes prior to the suit); and/or that they received deficient advice or information from their court-appointed lawyer. The lack of proper legal advice obliges women to consent to situations they do not fully understand and/or they consider unfair.

"There are many things that ought to be changed in the procedure. For instance, yesterday I arrived to a hearing without a lawyer because I was not contacted in a timely

¹⁹ See Heim D., Bodelón E. (coords.), *Derecho, género e igualdad. Cambios en las estructuras jurídicas androcéntricas*, Grupo Antígona, Universitat Autònoma de Barcelona, 2010, Vol. I.

²⁰ Bodelón E., "La violencia contra las mujeres y el derecho no androcéntrico: pérdidas en la traducción jurídica del feminismo", in Lorenzo P., Maqueda M.Luisa, Rubio A.(coords.), *Género, Violencia y Derecho*, Tirant lo Blanch, Valencia, 2008, pag. 85.

²¹ Schmal N., Camps P., "Repensando la relación entre la ley y la violencia hacia las mujeres. una aproximación a los discursos de los/las agentes del ámbito judicial en relación a la ley integral de violencia de género en España", in *Psicoperspectiva. Individuo y Sociedad*, vol. 7, no 1, 2008, pag. 30.

¹⁸ General Council of the Judiciary, 2005, pp. 96-97.

manner. He arrived with his court-appointed lawyer, so his lawyer and the Prosecutor reached an agreement. I wasn't part of it".

There is this common belief, shared by the victims and the law practitioners that were subject to interview, that women are lacking legal information or, in many cases, they are given deficient information. It is also asserted that legal information is extremely hard to understand and that it would be desirable to make it more apprehensible. Furthermore, the victim is not informed in a meaningful manner about the stage of proceedings affecting their offender, clearly violating her legally recognized rights. In addition, some women are not acquainted with the facts included in the charges or with the final judgment.

On their part, foreign women find it particularly harder to exercise their rights compared to local women; as many testimonies and further specialized research so evidence²². This is especially worrying considering that, according to official statistics, women born in a foreign country but residing in Spain are less preponderant than local women. For example, 19% of the women above 16 years of age said that they have suffered violence from their partner or ex-partner, compared to the figure of 9,2% for the women born in Spain²³.

(j) Lack of resources and absent or insufficient coordination in the rendering of services by the support system.

²² See, among others, Amnesty International, *Más riesgos y menos protección. Mujeres inmigrantes en España frente a la violencia de género*, Sección española de Amnistía Internacional, Madrid, 2007.

²³ Ministerio de Sanidad, Servicios Sociales e Igualdad, *Macroencuesta de violencia contra la mujer 2015*, Catálogo general de publicaciones oficiales, Madrid, 2015, pag. 391. Available at: <http://www.violenciagenero.msssi.gob.es/violenciaEnCifras/macroencuesta2015/home>

The testimonies obtained during the interviews showed that there are great deficiencies in the human and material resources allocated to address the victims' needs. The economic support provided for by regulations is minimal, and women cannot achieve financial independence through it, especially if they are in charge of children. Likewise, there are shortcomings in courts infrastructure, namely the lack of suitable spaces for hearings, so as to avoid contact between victims and their aggressors. There is a widely spread complaint that the recovery process for victims is not duly guaranteed. Finally, it is highlighted that some trouble remains in terms of coordination among the services rendered, resulting in re-victimization and, occasionally, in institutional abuse.

6. Conclusions.

The changes introduced in the legal status of women in the past sixty years had a strong impact in the development of their rights. However, many obstacles remain in their enforcement, especially for victims of gender violence.

The rights of victims of gender violence are not being properly developed, neither by courts nor by the out-of court alternatives. There are still women that are not fully aware of the rights they are entitled to and/or they don't know how to enforce them. They find themselves standing alone before courts, which causes detriment in the process of their recovery. Institutional abuse and re-victimization in courts constitute an extra cause for suffering. The fact that the evolution of women's rights depends on the existence of a judicial procedure hinders the access to justice in the broader sense of the word and separates the fight against violence against women from the fight against inequality, where said violence is rooted.

This gives rise to a serious contradiction regarding public policy, which is evidenced as well by the fact that the system designed to supply effective and real equality makes use of tools that are typical of the formal equality that is proper of the liberal rule of law and not of the social and democratic rule of law that the Spanish Constitution proclaims.

The criminal law approach is not connected to a broader public policy that integrates the fight against violence with the fight against structural social inequality between men and women and that searches suitable instruments to fulfill said purposes. Thus, the response of criminal law does not include social justice criteria.

What is more, the above mentioned circumstances, among others, evidence that, despite the improvements introduced by OL 1/2004 in comparison with the previous situation, it has failed to make significant progress in the development of victims' rights according to their needs. In addition, it has also failed to defy the traditional approach of the access to justice, which is limited to the access to actual courts.

In sum, the way of access to justice for the victims of gender violence is both long and rocky. One of the tasks of the feminist public policy agenda that will maintain us busier in the years to come is the effort of shortening that path and eliminating the rocks in the road.

Bibliography.

- Amnesty International, *Más riesgos y menos protección. Mujeres inmigrantes en España frente a la violencia de género*, Sección española de Amnistía Internacional, Madrid, 2007.
- Amnesty International, *Obstinada realidad, derechos pendientes tres años de ley de medidas de protección integral contra la violencia de género*, Sección española de Amnistía Internacional, Madrid, 2008.

- Amnesty International, *Una vida sin violencia para mujeres y niñas. Las otras víctimas de la violencia de género: violencia sexual y trata de personas*, Sección española de Amnistía Internacional, Madrid, 2009.
- Amnesty International, *¿Qué justicia especializada? A siete años de la Ley Integral contra la Violencia de Género: Obstáculos al acceso y obtención de justicia y protección*, Sección española de Amnistía Internacional, Madrid, 2012.
- Barrère Unzueta M.À., *Discriminación, derecho antidiscriminatorio y acción positiva en favor de las mujeres*, Civitas, Madrid, 1997.
- Barrère Unzueta M.À., "Iusfeminismo y derecho antidiscriminatorio. Hacia la igualdad por la discriminación", in Mestre i Mestre, Ruth M. (coordinadoras), *Mujeres, derechos y ciudadanías*, Tirant lo Blanch, 2008, pp. 45-72.
- Barrère Unzueta M.À., "Género, discriminación y violencia contra las mujeres", in Laurenzo P., Maqueda M.L., Rubio A. (coordinadoras), *Género, violencia y derecho*, Tirant lo Blanch, 2008, pp. 27-47.
- Bartlett K., "Feminist Legal Methods", in *Harvard Law Review*, vol. 103, N° 4, 1990, pp. 829-888.
- Benhabib S., *Situating the Self: Gender, Community, and Postmodernism in Contemporary Ethics*, Routledge, 1992.
- Bodelón E., "Dos metáforas para la libertad: igualdad y diferencia", in *Anales de la Cátedra Francisco Suárez*, N. 36, 2002, pp. 237-264.
- Bodelón E., "La violencia contra las mujeres y el derecho no androcéntrico: pérdidas en la traducción jurídica del feminismo", in Laurenzo P., Maqueda M.Luisa, Rubio A.(coords.), *Género, Violencia y Derecho*, Tirant lo Blanch, Valencia, 2008, pp. 275-299.
- Bodelón E., "Derecho y Justicia no androcéntricos", *Quaderns de Psicologia*, Vol. 12, Número 2, 2010, pp. 183-193.
- Bodelón E., "Introducción", in Bodelón E., *Violencia de género y las respuestas de los sistemas penales*, Didot, Buenos Aires, 2012, pp. 15-26.
- Comisión Interamericana de Derechos Humanos-CIDH, *Acceso a la justicia para las mujeres víctimas de violencia en las Américas*, Organización de Estados Americanos, San José de Costa Rica, 2007.
- Facio A., Fries L., "Feminismo, género y patriarcado", in Facio A., Fries L. (coords.) *Género y derecho*, LOM/La Morada, Santiago de Chile, 1999, pp. 21-60.

- Facio A., “Accés a la justícia, dret i familisme”, in Bodelón E., Giménez P., *Construint els drets de les dones: dels conceptes a les polítiques locals*, Diputació de Barcelona, Àrea d'Igualtat i Ciutadania, Barcelona, 2008, pp. 185- 218.
- Gil Ruiz J. M., “La violencia institucional de género. Editorial”, in *Anales de la Cátedra Francisco Suárez*, Vol. 14, *Violencia Institucional de Género*, 2014, pp. 9-16.
- Garland D., *La cultura del control. Crimen y orden social en la sociedad contemporánea*, Gedisa, Barcelona, 2005.
- Gracia Ibáñez J., “El manantial de las víctimas”, in *REDUR*, Vol. 12, 2014, pp. 27-65.
- Hester M., “Making it through the Criminal Justice System: Attrition and Domestic Violence”, in *Social Policy & Society*, vol. 5, n. 1, 2005, pp. 79-90.
- Holtmaat R., “De igual tratamiento a igual derecho”, in Heim D., Bodelón E. (coords.), *Derecho, género e igualdad. Cambios en las estructuras jurídicas androcéntricas*, Grupo Antígona, Universitat Autònoma de Barcelona, 2010, Vol. I, pp. 191-209.
- Lista C., “Prólogo”, in Boueiri Bassil S., *El acceso a la justicia: contribuciones teórico-empíricas en y desde países latinoamericanos*, Dykinson, 2009, pp. 9-19.
- Ministerio de Sanidad, Servicios Sociales e Igualdad, *Macroencuesta de violencia contra la mujer 2015*, Catálogo general de publicaciones oficiales, Madrid, 2015. Available at: <http://www.violenciagenero.msssi.gob.es/violenciaEnCifras/macroencuesta2015/home>
- Rhode D., “Feminist Critical Theories”, in Freeman, M.D.A., *Lloyd's Introduction to jurisprudence*, 6ta. Edición, Sweet & Maxwell, London, 1990, pp. 1036-1048.
- Rhode D.L., *Access to Justice*, Oxford University Press, New York, 2004.
- Rubio Castro A.M., “El derecho a la igualdad y a la no discriminación”, in Molina Navarrete C. et. al. (coord.), *Comentario a la constitución socio-económica de España*, Comares, 2002, pp. 927-978.
- Rubio Castro A.M., “Ciudadanía y sociedad civil. Avanzar en la igualdad desde la política”, in Rubio Castro A.M., Herrera Flores J. (coords.), *Lo público y lo privado en el contexto de la globalización*, Junta de Andalucía, Instituto Andaluz de la Mujer, 2006, pp. 23-66.
- Schmal N., Camps P., “Repensando la relación entre la ley y la violencia hacia las mujeres. una aproximación a los discursos de los/las agentes del ámbito judicial en relación a la ley integral de violencia de género en España”, in *Psicoperspectiva. Individuo y Sociedad*, vol. 7, no 1, 2008, pp. 33-58.