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Fighting Domestic Violence

Pro Bono Initiative

Europe

In association with



Spain

Domestic Violence Legislation



“The national authorities understand acts of gender-based violence as the most flagrant attacks on fundamental rights...”

Spain

1 Legal provisions

1.1 What are the relevant statutes and codes?

General rules	
Comprehensive Protection Against Gender-Based Violence Law	Organic Law 1/2004, dated 28 December, governing Comprehensive Protection Against Gender-Based Violence
Effective Equality of Men and Women Law	Organic Law 3/2007, dated 22 March, on the Effective Equality of Men and Women
State Pact Against Gender Violence	Royal Decree-Law 9/2018, dated 3 August, on urgent measures for developing the State Pact Against Gender Violence
Statute of the Victim of the Crime Law	Law 4/2015, dated 27 April 2015, of the Statute of the Victim of the Crime
Equal Treatment and Opportunities Between Women and Men in Work and Employment Law	Royal Decree-Law 6/2019, dated 1 March 2019, on urgent measures to guarantee Equal Treatment and Opportunities Between Women and Men in Work and Employment
Criminal Code	Organic Law 10/1995, dated 23 November, on the Criminal Code
Criminal Procedural Law	Royal Decree, dated 14 September 1882, Criminal Procedural Law
Protection Law of the Minor	Organic Law 1/1996, dated 15 January, governing the System of Protection of the Minor (amended by Law 8/2015 on modification of the System of Protection of Children and Adolescents from Violence)
Protection of Children and Adolescents from Violence Law	Law 8/2015 on modification of the System of Protection of Children and Adolescents from Violence
Spanish Civil Code	Spanish Civil Code, dated 24 July 1989

General rules

Labor Act	Royal Legislative Decree 2/2015, dated 23 October 2015, on the Labor Act
Free Legal Assistance Law	Law 1/1996, dated 10 January 2010, on free legal assistance
Circular 3/2003	Circular 3/2003, dated 18 December 2003, of the State Attorney General's Office, on some procedural issues related to the protection order
Aid and Assistance to Victims of Violent Crimes and Against Sexual Freedom	Law 35/1995, dated 11 December 1995, on Aid and Assistance to Victims of Violent Crimes and Against Sexual Freedom
Organic Law of the Judicial Power	Organic Law 6/1985, dated 1 July, of the Judicial Power
Protection of Witnesses and Experts in Criminal Cases	Organic Law 19/1994, dated 24 December, on the Protection of Witnesses and Experts in Criminal Cases
Free Legal Assistance Regulation	Royal Decree 996/2003, dated 25 July, which approves the Free Legal Assistance Regulation

1.2 What is the controlling case law?

Spain does not have a common law system and, regarding all the cases judged in Spanish courts, there are not a very large number of cases that reach the highest levels of the Spanish legal system, such as the Supreme Court and the Constitutional Court of Spain. However, at certain points, the jurisprudence has established important tendencies that help to clarify different points that the substantive and procedural laws do not make clear:

- The victim is the only witness, which implies that the victim has a double role as part of the procedure and, at the same time, as part of the evidence. The Supreme Court considers that sufficient evidence can support the victim's statement as long as it has certain requirements (credibility, verisimilitude and persistence in the incrimination) "to avoid spaces of unacceptable impunity" (Judgment of 28 June 2012).
- The Judgment of 17 May 2010 of the Supreme Court establishes that no one must suffer harm by the reason that the facts that instigate the criminal proceedings have taken place in privacy between the victim and the defendant.
- There is no obligation for the victim to testify against the victim's partner or ex-partner (Supreme Court Agreement 24 April 2013) except in a case where the facts have taken place after separation or divorce. In a case where the victim exercises her right to go before the court in a private prosecution (through her lawyer), she will be obliged to declare her testimony or otherwise she must desist from her prosecution, leaving just the public prosecution.
- Unlike the general rule for criminal procedures, the territorial jurisdiction, in cases of violence against women, corresponds to the court where the victim had her habitual residence when the crime was committed (and not in the place where the crime was committed) (Supreme Court Agreement 31 June 2006).

- In the case of a breach of a precautionary measure adopted to protect the victim, her consent does not exclude punishment (Supreme Court Agreement 25 November 2008).
- A threat to commit suicide when the person warned does not do what is asked for is not a crime of coercion (Judgment of 3 March 2011 of the Supreme Court). On the one hand, the crime of coercion is a crime against individual freedom that consists of using violence to prevent a person from doing something that is not prohibited by law or to force them to do something they do not want, be it fair or unfair. On the other hand, an injury crime consists of impairing the bodily integrity or physical or mental health of another person. In this case, the judgment indicated with respect to the crime of attempted homicide that the intention to kill is not enough by itself to trigger this criminal type, establishing by the chamber that the acts declared proven are merely preparatory acts and not of direct execution. Nevertheless, the elements that make up the crime of coercion do not concur, since before the warning of taking their own life, if the warned person does not do what is required of them, typical criminal coercion is not committed. This is because there is no real limitation of freedom through fear or fear that is incompatible with its effective exercise, but rather a moral influence through feelings of compassion or pity — and even self-guilt — but its elimination is not in the area of protection of the criminal law of coercion.
- In the case of a crime of injuries in the area of gender violence, in addition to the right to financial compensation for such injuries, there is also the right to financial compensation for moral damages (Judgment 592/2003 of the Supreme Court).

1.3 What are the specific parts of the court system that address domestic violence?

The Courts for Violence Against Women address domestic violence and gender-based violence.

1.4 What are potential causes of action?

Potential causes of action include actions in the fields of criminal, civil, administrative and employment law. Please refer to Sections 4 and 5 for further information.

2 Introduction: framework guiding domestic violence law

2.1 Are there civil and criminal legal remedies for domestic violence victims?

Yes, both civil and criminal legal remedies are available in Spain. Please see the answer to Section 4.4.

2.2 Is protection from domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

No. The national authorities understand acts of gender-based violence as the most flagrant attacks on fundamental rights, such as the fundamental rights of freedom, equality, life, security and nondiscrimination stated in the Spanish Constitution, but national law does not explicitly identify gender-based violence as a fundamental right.

2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210)?

Yes.¹ Spain ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence, which entered into force on 1 August 2014.

2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?

Almost all of the conducts included in the Istanbul Convention are prosecuted in the Spanish legal system. The Criminal Code incorporates gender as a reason for discrimination and as an aggravating factor. With regard to other forms of violence against women, for the first time, it typifies the new crime of forced marriage to comply with the international commitments assumed by Spain in the Istanbul Convention (Article 172-*bis*).

In addition, the analysis of the level of compliance with the convention by Spain at present is very high.

The foundations and scope of the Istanbul Convention are in accordance with the regulations and actions carried out by Spain in this matter, since among the obligations to the states of the Istanbul Convention some measures already consolidated in our country stand out, such as the following:

- training of different groups of professionals who intervene in situations of gender violence
- the "016" information and legal advice service on gender violence, free of charge and available 24 hours a day, 365 days a year

- design and permanent updating of a statistical information system for data related to gender violence
- public awareness and prevention of gender-based violence through information and awareness campaigns
- the existence of the obligation to report those who because of their positions, professions or trades have news of a public crime, such as the various crimes of violence against women
- ensuring that victims have access to special protection measures

2.5 If it has not ratified or signed the Istanbul Convention, is it envisaged that your country will do so?

N/A

2.6 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

As explained in Section 2.4., Spain has already adopted measures that comply with some of the recommendations included in General Comment No. 35. Besides, since 2017, the Spanish government and Parliament have approved, among others, the following legislatives amendments and legal instruments. These legal measures are not a direct consequence of the official publication of General Comment No. 35 but they include measures with the same orientation and objectives as the recommendations included in General Comment No. 35.

- **State Pact Against Gender Violence:** This pact was approved in September 2017 and it includes measures structured around 10 lines of action to be implemented by the Government Delegation for Gender-Based Violence, in coordination with the other ministries and their dependent autonomous bodies, as well as the autonomous communities and local entities.
 1. Break the silence by encouraging actions for awareness in society and for the prevention of gender violence with actions aimed at increasing awareness in society of the damage that inequality and violent behavior causes, and raise people's awareness of the scale of the problem of violence against women and the consequences it has for the lives of women and their children.
 2. Improve the institutional response through coordination and connected work between responsible authorities and organs (e.g., using the resources available, promoting support resources in the local sphere and improving the protocols for intervention and communications between the agents involved).
 3. Improve the help, support and protection offered to women victims of gender violence and their children. The existing medical protocols will be reviewed and reinforced along with the job placement schemes for women victims, with the active engagement of social entities, while all the support systems foreseen by the law will be simplified and improved.
 4. Enhance support and protection for minors. The specific protection for minors derives from the recognition of their status as direct victims and the associated need to expand and improve the measures to support and safeguard them through the deployment of new services in cases where children are orphaned

though gender violence, a review of the civil law measures in relation to the custody of minors and encouragement of reinforcement actions in education.

5. Improve training of the agents to ensure better care services. To offer victims of gender violence the best possible support, all the professionals who have a role to play in the system, such as judges, prosecutors, psychologists and social workers, forensic pathologists, the police and security forces, medical staff and teachers, among others, must be offered specialist training. The commitment lies in ensuring that the training material is mandatory, approved by specialist bodies and subject to examination for all those involved.
 6. Improve knowledge as an essential ingredient in ensuring that the fight against all forms of violence against women is effective in all the areas where the Istanbul Convention applies, with more reliable, complete and detailed data on the forms, frequency, causes and effects. This is the reason for the commitment to ensure statistical monitoring of all kinds of violence against women, taking variables such as age, disability, stability of employment or frequency in rural areas into account, and the preparation of studies and reports that place special emphasis on the impact on the children of the victims, on sexual violence and on the employment situation of the women who are victims.
 7. Provide recommendations for autonomous communities, local entities and other institutions as essential collaborators to achieve the elimination of gender-related violence against women. The measures they adopt are directly related to the responsibilities they have acquired.
 8. Observe and pay attention to forms of gender violence that take place outside the context of the partner or ex-partner, with special focus on sexual violence, trafficking of women and girls for the purpose of sexual exploitation, female genital mutilation and forced marriages.
 9. Ensure financial commitment toward policies for the eradication of violence against women.
 10. Monitor the State Pact Against Gender Violence and the submission of the information required by the Pact Monitoring Committee, enabling it to carry out its functions of assessing and supervising the progress that has been made in deploying the pact.
- Royal Decree-Law 9/2018, dated 3 August, on urgent measures for the development of the State Pact Against Gender Violence: This Royal Decree-Law amends several sections of the Comprehensive Protection Against Gender-Based Violence Law, Law 7/1985, dated 2 April, regulating the Bases of the Local Regime and the Civil, with the aim of reinforcing judicial protection and access to justice and to assistance resources for victims of gender violence, as well as the protection of minors exposed to gender violence. The main measures implemented are as follows:
 - Improve the participation of the victim in the criminal process through the necessary measures that expedite the urgent appointment of lawyers and public prosecutors in the gender violence-related procedures, which ensure their immediate presence for the defense and representation of the victims.
 - Ensure the possibility that the victim is represented by the public defender assigned through the free legal aid system and holds her representation during the time the victim appoints an attorney to defend her in the legal proceedings and decides to appear as a private prosecutor.
 - Specify and expand the enabling judicial titles to prove the condition of a victim of gender violence; and other nonjudicial qualifying titles for cases in which there is no complaint and, consequently, there is no open judicial procedure.

- Include in the catalog of competences of the local administrations those related to the promotion of equality between men and women, as well as against gender violence, since it is the administration closest to the citizenry. Provide a budget for administrations to adopt measures to implement the State Pact Against Gender Violence.
- Measure to unlink psychological intervention with minors exposed to gender violence from the exercise of parental authority. Specifically, the objective of the reform is that psychological care and assistance remain outside the catalog of acts that require a common decision in the exercise of parental authority (when any of the parents is involved in a criminal process initiated for, among others, gender violence against the other parent or against the children of both).

2.7 If the 1979 Convention has not ratified or signed, is it envisaged that your country will do so?

N/A

3 Similarities and differences in terminology

In Spain, there is an important difference between domestic violence and gender-based violence. Domestic violence is exercised within the family environment, irrespective of who are the passive and active subjects of the same, as long as it belongs to the family environment. Conversely, gender-based violence is defined as violence against women by virtue of being so, exercised by a man against a woman who is or has been his spouse, or who is or has been related to him by a bond analogous to marriage, even without coexistence (i.e., it must be violence exerted as a manifestation of discrimination, the situation of inequality and the power relations of men over women).

In the context of **domestic violence**, the victims of abuse, in practice, are mostly minors, disabled or other especially vulnerable people within the family, vulnerability that comes from a position of objective dependency (by age, disability, etc.). **Gender-based violence** constitutes a specific category of violence associated with the position of power that men still occupy in the current social structure.

Hence, these terms should not be confused, since there are specific provisions that apply only to gender-based violence (e.g., Comprehensive Protection Against Gender-Based Violence Law) while the regulations that cover domestic violence also protect victims of gender-based violence.

For the purposes of this analysis, we will analyze most of the questions based on the concept of gender-based violence, since we understand this is the specific focus of the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence and of this analysis. However, we include below a definition of all terms for a better understanding:

Term	Definition
Domestic violence	This refers to all acts of physical, sexual, psychological or economic violence that occur in the family, or in the home, or between spouses or former or current partners, regardless of whether there has been cohabitation.
Gender-based violence	This refers to any act of physical or psychological violence, including crimes against sexual freedom, threats, coercion or arbitrary privation of freedom, perpetrated by a woman's spouse or ex-spouse or by the person with whom she holds or held a similar relationship of affectivity, even without cohabitation. ² Gender-based violence is exerted by a man against a woman. The violence exerted by a woman against a man and violence between homosexual or intra-gender couples are excluded from the concept of gender-based violence (it constitutes domestic violence).
Stalking	This means carrying out repeatedly and insistently, and without being legitimately authorized, any of the following behaviors and, in this way, seriously altering the development of the victim's daily life: (i) watching or chasing a person or seeking his/her physical closeness; (ii) establishing or trying to establish contact with a person through any means of communication or through third parties; (iii) improperly using the person's personal data, purchasing products or merchandise, or contracting services, or having third parties contact a person; and (iv)

Term	Definition
	endangering a person's freedom or estate, or the freedom or estate of a person close to the victim. ³
Harassment	This means degrading another person, seriously undermining their moral integrity and carrying out hostile or humiliating acts that, without constituting degrading treatment, are intended to prevent legitimate life enjoyment. ⁴
Sexual harassment	This refers to any behavior, verbal or physical, of a sexual nature that has the purpose of violating or produces the violation of a person's dignity, in particular, when an intimidating, degrading or offensive environment is created. ⁵
Gender-based harassment	This refers to any behavior performed on the basis of a person's gender, with the purpose or effect of violating his/her dignity and creating an intimidating, degrading or offensive environment. ⁶
Sexual harassment offense	This means requesting favors of a sexual nature for oneself or for a third party in the context of an employment, teaching or service relationship, whether continuous or habitual, and such behavior causes the victim an objective and seriously intimidating, hostile or humiliating situation. ⁷
Victim	<p>As briefly explained above, the definition of victim depends on whether it is domestic violence or whether it is gender-based violence.</p> <ul style="list-style-type: none"> ▪ Victim of domestic violence: Victims of domestic violence could be: (i) a spouse or ex-spouse or person with whom they hold or held a similar relationship of affectivity, even without cohabitation; (ii) descendants, ancestors or siblings by nature, adoption or affinity, or of the spouse or partner; (iii) minors or people with disabilities in need of special protection who live with him/her or under his/her care (including guardianship and foster care), or of the spouse or partner; (iv) any other person integrated in the family; or (v) people who due to their special vulnerability are subject to custody or custody in public or private centers.⁸ ▪ Victim of gender-based violence: Any woman who is or has been a spouse or who is or has been linked to the aggressor man by an analogous affective relationship, even without coexistence, as well as another especially vulnerable person who lives with the aggressor. ▪ Victim: For the purposes of the Statute of the Victim of the Crime Law and, specifically to enjoy the rights and guarantees established in said law, the following definitions apply. A "direct victim" is defined as "any person who has suffered damage or harm to his/her own person or property, in special physical or mental injuries, emotional damages or economic damages directly caused by the commission of a crime." An "indirect victim," in case of the death or disappearance of a person, directly caused by a crime (except for those responsible for the facts) refers to: (a) the spouse and children of the victim or of the spouse who lived

Term	Definition
	with them, any person with an analogous relationship of affection, their parents and relatives in a straight line or collateral within the third degree who are under their guardianship, and children under their guardianship or foster care; or (b) in the absence of the above, the other relatives in a straight line and to their siblings, preferably, among them, the one who will hold the legal representation of the victim.
Abuser	In the context of gender-based violence, an abuser is man who has been a woman's spouse or ex-spouse or a person with whom a woman holds or held a similar relationship of affectivity, even without cohabitation, who perpetrated domestic violence against a woman.
Criminal and civil protection order	It is a judicial resolution in the form of an order that confirms the existence of an objective situation of risk for the victim of domestic violence and orders their protection during the processing of a criminal process for a crime or misdemeanor, through the adoption of criminal and/or civil precautionary measures, while communication is made to the competent authorities for the adoption of social assistance and protection measures. The scope of the protection order is exclusively the scope of domestic and gender-based violence and only for the investigation of crimes against life, crimes against physical and moral integrity, crimes against sexual freedom and freedom or security. ⁹
Causes of action	This refers to a set of facts sufficient to justify the right of the gender violence victim to sue her aggressor.
Marital rape	This means carrying out actions against sexual freedom through violence or intimidation that involves vaginal, anal or oral carnal access, or the introduction of limbs or objects through the vagina or anus, regardless of whether the victim is a woman or a man. ¹⁰ There is no conjugal duty in the marriage or for the couple, so a conjugal relationship exercised with violence or intimidation constitutes rape as defined above. ¹¹

3.1 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

Term	Definition
Comprehensive protection measures	Victims of gender-based violence, as defined in Section 1 of the Comprehensive Protection Against Gender-Based Violence Law, are entitled to the rights and comprehensive social assistance established in the Comprehensive Protection Against Gender-Based Violence Law. The purposes of the comprehensive protection measures are to prevent, punish and eradicate this violence and assist women, their minor children and minors subject to their guardianship, or guardianship and custody, who are victims of this violence. The rights and comprehensive social assistance include: (i) information rights; (ii) comprehensive social assistance; (iii) free

Term	Definition
	<p>legal assistance; (iv) employment and social security benefits; (v) rights for civil servant women; and (vi) economic rights.</p>
<p>Comprehensive social assistance</p>	<p>The comprehensive social assistance granted by virtue of the Comprehensive Protection Against Gender-Based Violence Law include assistance and emergency care, help and support and full recovery for victims of gender-based violence, such as information to victims, psychological care, social support, following up claims of women's rights, educational support for the family unit, preventive training in the values of equality aimed at personal development and the acquisition of skills in nonviolent conflict resolution, and support for training and job placement.</p> <p>The situation of gender-based violence that activates the rights and comprehensive social assistance regulated in the Comprehensive Protection Against Gender-Based Violence Law will be accredited: (i) by a sentence condemning the crime of gender-based violence; (ii) a protection order or any other judicial resolution that imposes a precautionary measure in the victim's favor; (iii) a report from the public prosecutor that indicates there is evidence that the claimant is the victim of gender-based violence; or (iv) reports from social services, specialist services, support services for victims of gender-based violence of the competent public administration or any other form of accreditation that may be included in the regulatory provisions of the sector that covers access to each of these resources and rights.</p>

4 Protection for domestic violence victims and relief granted

4.1 Civil protection orders

4.1.1 Are there civil protection orders available to victims of domestic abuse?

Yes, civil protection orders are available under Spanish legislation. According to Organic Law 1/2004 and Article 544-*ter* of the Criminal Procedural Law, the civil protection orders that can be adopted are as follows:

- (a) the use and enjoyment of the house, the furniture and the family trousseau
- (b) the attribution of the child custody
- (c) the suspension of the exercise of parental authority
- (d) the suspension of the regime of communications, visits and stays of the father with the children
- (e) fixing a food allowance
- (f) any other measure that is necessary to remove minors from danger or avoid harm

4.1.2 Who can petition for civil protection orders?

Article 544-*ter* of the Criminal Procedural Law states that a civil protection order request can be made by the victim herself, her closest relatives, her lawyer or the Public Prosecutor's Office.

Without prejudice to the duty to report, the social services that know the situation must inform the judicial body or the Public Prosecutor's Office so that the procedure for the adoption of the protection order can be initiated or urged.

In this regard, it is advisable to request the protection order at the same time the complaint is filed, although it can also be requested later.

4.1.3 Is there temporary custody of a child or child support orders?

Yes, as mentioned above, civil protection orders include child custody and food allowance regimes.

4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

Yes. Under Article 64 of Organic Law 1/2004, the judge may order the mandatory departure of the accused for gender-based violence from the domicile in which the family unit or residence has been established, as well as the prohibition to return to it.

The same article establishes that the judge may prohibit the accused from approaching the victim in her home, workplace or any other place that is frequented by her.

4.1.5 Are there any other types of emergency, preventive and civil protection orders?

In addition to the civil protection orders mentioned, the Comprehensive Protection Against Gender-Based Violence Law provides for specific measures to protect the dignity and privacy of the victim. Under this law, it is established that the personal data of the victim, of her descendants and the people who are under her custody are reserved. The confidentiality of the new address, workplace or schools of the children not only preserves the privacy of the victim, but it is also an important instrument for their safety by preventing this data from becoming known to the accused.

For this same purpose, the protection order application form provides that the victim may indicate a third person's address or telephone number to which the security forces or the judicial bodies may send communications or notifications.

Likewise, the court may decide, *ex officio* or at the request of the victim or the public prosecutor, that the judicial proceedings are not public and that the hearings are held behind closed doors.

Additionally, gender-based violence victims will have the right to be informed, to free social and legal assistance, employment rights, economic aid rights and the right to immediate schooling for victims' children.

Finally, in addition to civil orders, the precautionary criminal measures may include one or more of the following: (i) the aggressor's eviction from the family home; (ii) the aggressor's prohibition from living in a certain town/city; (iii) the aggressor's prohibition from coming within a certain distance of the victim and/or her family members or other persons; (iv) the aggressor's prohibition from contacting the victim and/or her family members or other persons by any means, including letter, telephone, etc.; (v) the aggressor's prohibition from going to certain places, including the victim's place of work, children's schools, etc.; (vi) the omission of data relating to the victim's address; (vii) the court protection of the victim in court liaison offices; and (viii) the confiscation of weapons and the prohibition of holding them.

(Articles 5, 18, 19, 20, 21, 27 and 63 of Organic Law 1/2204, on Comprehensive Protection Against Gender-Based Violence; Article 232.2 of the Organic Law of the Judicial Power; Article 15.5 of Law 35/1995, on Aid and Assistance to Victims of Violent Crimes and Against Sexual Freedom; Articles 2.a) and 3.1 of Organic Law 19/1994, on the Protection of Witnesses and Experts in Criminal Cases.)

4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

Civil protection orders may be requested by the victim or their legal representative, or by the public prosecutor, when there are minor children (Article 544-*ter* 7 of the Code of Criminal Procedure).

4.1.7 Are their different types of civil protection orders, e.g., for a short-term period?

The different types of civil protection orders are listed above. These orders will be granted for a 30- day period.

4.1.8 Are *ex parte* orders permitted without the aggressor being present?

Yes, protective orders and interim measures can be adopted when the aggressor voluntarily decides not to appear without providing any justification (Circular 3/2003 of the State Attorney General's Office, Section 1.2.c).

4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

Yes, Article 544-*bis* and -*ter* of the Code of Criminal Procedure grants protection to family members or other affected persons.

4.1.10 How long do the orders last?

Under Article 544-*ter* 7 of the Code of Criminal Procedure, the civil measures contained in the protection order will have a temporary validity of 30 days.

4.1.11 Please provide any data or hyperlinks to government or NGO website that include information on how often civil protection orders are issued, and any relevant demographic information, e.g., police reports, convictions, etc.

The Observatory Against Domestic and Gender-Based Violence provides diverse information on gender-based violence in Spain.

The Spanish government has published a guide gathering the specific rights of gender violence victims recognized through the various applicable legal texts:

https://www.mscbs.gob.es/va/ssi/violenciaGenero/Recursos/GuiaDerechos/DOC/GUIADERECHO_SMUJERESVICTIMASVIOLENCIAGENERO.pdf

4.2 Steps for receiving a protective order

4.2.1 What documentation is needed to obtain a civil protection order?

The social services and institutions in charge¹² will provide victims of domestic violence with the request form for the protection order, making available for this purpose information, forms and, where appropriate, telematic communication channels with the Ministry of Justice and the Ministry of Finance (Article 544-*ter* 3 of the Code of Criminal Procedure).

4.2.2 Does the victim need to attend a hearing?

The unjustified absence of the victim or the applicant for the protection order will not necessarily determine the suspension of the hearing, notwithstanding that the judge may grant it (Circular 3/2003 of the State Attorney General's Office, Section I.2.c)

4.2.3 Can you request remedies?

Yes (Article 109 of the Code of Criminal Procedure); please see the answers in Section 4.4. below.

4.2.4 Are there time limits?

The hearing must be held within a maximum period of 72 hours from the submission of the request (Article 544-*ter* 4 of the Code of Criminal Procedure).

4.2.5 Are there different rules in emergencies?

In case of emergencies, the judge may adopt interim measures based on criminal law proceedings. The investigating judge will adopt these and they will be adjusted to the need of the victim (Article 544-*ter* 5 of the Code of Criminal Procedure).

4.3 Judicial discretion

4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

Judges hold the discretion to grant civil protection orders and other protective measures within the framework of the applicable laws and respecting principles, such as proportionality.

4.3.2 Are there age limits on who can obtain orders?

The law does not foresee any age limitations regarding the order request.

4.4 Restitution and remedies available to victims

4.4.1 Can victims obtain reimbursement for costs and restitution paid?

Women victims of gender-based violence have the right to free legal assistance, regardless of their resources to litigate. This assistance will be provided immediately in those administrative procedures that are related, that derive from or that are a consequence of their condition as victims.

For the purposes of granting the benefit of free justice, the status of victim will be acquired when a complaint is filed or the criminal procedure is initiated and it will be maintained as long as the criminal procedure remains in force or when, after its completion, it has been issued a guilty verdict.

(Article 20 of Organic Law 1/2004, on Comprehensive Protection Against Gender-Based Violence; Law 1/1996, of dated 10 January, on Free Legal Assistance; Royal Decree 996/2003, which approves the Free Legal Assistance Regulation).

Additionally, according to Article 100 of the Code of Criminal Procedure, the commission of a crime or misconduct obliges the damages caused to be repaired. This civil responsibility includes the restitution of the thing, the repair of the damage and the compensation of material and moral damages. In the event that the victim has exercised civil action to demand this civil liability in the criminal process, in the judgment issued and provided that it is condemnatory, in addition to the penalty that is imposed on the perpetrator, the civil liability for the physical, psychological or moral damages caused to the victim by the crime will be established.

However, the victim can reserve her right to exercise civil action in a different process before the courts of civil order, so that in criminal proceedings civil action will not be exercised.

4.4.2 Can they recover wages and profits lost?

As explained above, victims will have the right to claim damages caused. In addition, regarding employment, the following rights are recognized:

- The worker victim of gender violence will have the right, in the terms provided in the Workers' Statute, to the reduction or reordering of their working time, to geographic mobility, change of workplace, suspension of the employment relationship with a job reservation and the termination of the employment contract.

- In the terms provided in the General Law of Social Security, the suspension and termination of the employment contract provided in the previous section will give rise to a legal situation of unemployment. The suspension time will be considered the effective contribution period for the purposes of social security and unemployment benefits.
- Absences or lack of punctuality at work motivated by the physical or psychological situation derived from gender violence will be considered justified when so determined by the social care services or health services.
- Regarding self-employed women victims of gender violence who cease their activity to make their protection effective, their contribution obligation will be suspended for a period of six months, which will be considered effective contribution for the purposes of social security benefits.

4.4.3 Is a separate civil process required?

No, a separate civil process is not required.

5 Prosecutorial considerations

5.1 Police procedures

5.1.1 When do the police get involved in domestic disputes or legal actions?

From the moment the police become aware of any facts that could constitute a criminal offense regarding domestic disputes/gender-based violence, they will get involved. In particular, they will: (i) take actions of investigation to determine the existence and degree of risk to the victim; (ii) establish measures to protect the victim; and (iii) arrest the alleged offender when the situation of risk is high (when applicable).

5.1.2 What circumstances affect law firm involvement?

The victim can file a complaint without the assistance of a lawyer. Nonetheless, from that moment onward, a lawyer is necessary for the continuance of the procedure. In this sense, the Spanish Law on Legal Aid recognizes the right of the victim to free legal aid regardless of the economic resources of the victim. Free legal aid is available to the victim from the moment the complaint is filed. This right is also recognized to successors in the event of the death of the victim (provided that he/she is not the perpetrator).

5.2 Standard of proof

5.2.1 Is proof required by any legal means?

Proof is required as per any other procedure. The plaintiff must prove the facts on which the causes of action of the claim are based. In particular, in the absence of proof, the court must acquit the defendant (*in dubio pro reo principle* — where doubts remain).

According to the principle of the presumption of innocence, the defendant is innocent until proven guilty and, thus, the prosecutor or plaintiff must prove all the elements of the offense.

5.2.2 Are there any requirements regarding evidence and documents?

Requirements for the filing of proof, such as documents, are the same as per any other procedure.

It is required for the evidence presented to be admitted in court that the same is relevant and related to the subject of the proceedings. Therefore, only evidence that contributes to the clarification of the facts deemed controversial is admissible in court.

All documents serving as evidence must be provided together with the claim or statement of defense. New documents before the trial hearing will be admitted as long as the parties became aware of their existence after the filing and the response to the claim or the documents are dated subsequent to such filing. Evidence regarding witness or expert testimonies may be introduced before the trial hearing.

Expert testimonies are only permitted in such cases where specific knowledge may be necessary to prove the facts that are relevant to the matter at issue. Experts may be appointed by the parties or by the court (only if the parties request the court to do so). The court cannot appoint an expert *ex officio* (save for cases concerning kinship, paternity or maternity, the capacity of an individual or matrimonial proceedings).

5.2.3 Is proof "beyond a reasonable doubt" required?

Yes.

5.2.4 Is the standard of proof different for *ex parte* orders?

Yes. *Ex parte* orders will be granted in cases where there are well-founded indications (*indicios*) that a crime or misdemeanor has been committed against life, physical or moral integrity, sexual freedom, liberty or security in relation to gender-based domestic violence.

5.3 Affirmative defenses

5.3.1 Are affirmative defenses available to the accused?

Spanish law recognizes the general criminal affirmative defenses such as self-defense, insanity, entrapment or necessity.

5.3.2 Is willful intent required?

According to the most recent doctrine, the Criminal Code does not require the concurrence of any other special or different spirit, it being sufficient to accredit the expressive action of violence, in each case, and the relationship, current or part between the aggressor and victim for the existence of the crime to be estimated.

5.3.3 Are false accusations punishable for the victim?

In general, a person who accuses someone with knowledge of the misrepresentation of the facts and absolute disregard for the truth before the judicial or administrative official who has the duty to proceed with the investigation is a crime under Article 452 of the Criminal Code. However, there is no specific punishment for false accusations in gender-based violence cases.

5.3.4 How is consent discussed in the law?

The doctrine of the Supreme Court established the need to effectively protect those who are victims of gender-based violence, which is an unavailable collective interest that has led to a whole legal scheme oriented to that end. Therefore, the enforcement of a sentence or precautionary measure imposed by a court as a result of the commission of these crimes cannot be left to the discretion of the convicted person or the victim.

5.3.5 Is self-defense or insanity a defense?

As explained in previous sections, the convicted person can use defenses such as self-defense or insanity if the conditions to be considered are met according to the Criminal Code.

5.4 Witness status

5.4.1 What is a witness's duty to testify honestly and completely?

Witnesses are obliged to tell the truth under the Criminal Code and they can be punished if they do not comply with the said obligation with imprisonment from six months to two years and fines from three to six months.

5.4.2 Who may abstain from testifying in certain situations?

The following persons can abstain from testifying: (i) the spouse or partner of the accused; (ii) his/her ascendants or descendants by blood or adoption; and (iii) minors under 14 years old or who are de facto incapable, but they may decide to do so through a legal representative.

5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

As stated before, ascendants, descendants, the spouse or partner (the victim can be excluded from testifying) and minors under 14 years old can be excused from testifying.

5.4.4 What is the impact of domestic violence on witnesses who are children?

In Spain, any child capable of forming his/her own opinion on the case in question may appear before a court, regardless of his/her age. Therefore, each judge/tribunal must assess the capacity and justify when they decide to reject a child's statement for lack of judgment.

5.4.5 Can children be called upon to testify?

Yes, it is at the discretion of the court to call the children to testify. Nonetheless, it has to be taken into account the real need of obtaining information from the child and the possibility that it may be obtained by other evidentiary sources.

5.4.6 What is the effect of a child victim on the charges against the offender?

The child will be heard as any other witness and the judge will decide the importance of his/her witness statement.

5.5 Penalties and sentencing; penalty enhancements

5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

The person will be punished by imprisonment for six months to three years, by deprivation of the right to keep and bear arms for three to five years and, where appropriate, by a special disqualification from exercising parental authority for a period of one to five years.

5.5.2 Are there criminal penalties?

Yes.

5.5.3 What is the result of a violation of an existing order for protection?

According to the Criminal Code, the person violating an existing order for protection can be punished with imprisonment from six months to one year.

5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

As stated above, the following penalties may apply: (i) deprivation of the right to keep and bear arms; (ii) disqualification from exercising parental authority; and (iii) fines.

5.6 Post-release restrictions

5.6.1 Does the law notify the victim of the offender's release from custody?

In the case of victims of crimes of gender-based violence, the decision to release the offender from custody (among others) will be notified to the referred victim without the need for request (except in cases where the victim expresses the wish not to receive such notifications).

6 Special issues

6.1 Battered woman syndrome

6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered woman syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

Yes, lawyers can present evidence of battered woman syndrome or similar mental disorders suffered by the battered woman to justify crimes based on legitimate self-defense or loss of control.

Spanish courts are reluctant to apply the total exoneration of self-defense to justify the crime committed by the battered woman, given the difficulty to prove that the three components of self-defense are met, namely: (i) the imminent and actual danger for the woman at the moment she committed the crime; (ii) the proportionality of the means used by the woman to commit the crime; and (iii) the woman's intention to protect her own life against the imminent danger.

Alternatively, lawyers can use the evidence of battered woman syndrome (or similar) to justify the loss of control of the woman when she committed the crime. With this alternative, the lawyers would justify that the woman committed the crime in a moment of a total lack of consciousness.

Either way, the lawyers should be able to compile the necessary medical and psychological evidence to prove the concurrence of battered woman syndrome, post-traumatic stress disorder, depression, anxiety or any similar mental disorder suffered by the woman because of the gender violence.

6.2 Domestic violence in the workplace

6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

The Spanish employment rights of women victims of gender-based violence are aimed at avoiding their expulsion from the labor market because of the violence they suffered rather than to protect them from this situation.

Women victims of gender-based violence have recognized rights conducive to reconciling their jobs with the situation of gender-based violence, guaranteeing their protection if they are forced to give up their jobs temporarily or permanently and, if unemployed, ensuring their insertion in the labor market, as follows:

- (i) Women have the right to a **reduction of the working day** with a proportional reduction in salary or the **reorganization of working time** by rescheduling the hours, working flextime or through other forms of organizing the working time used in the respective company so that women can effectively enforce their protection and their right to comprehensive social assistance.

- (ii) Women who are forced to leave their place of work where they have been employed in order to ensure their protection of the right to integral social assistance have the **right to geographic mobility** and they will have preferential rights to occupy another position in the same or equivalent professional group or category that the company has at any of its premises. The company must retain their jobs during the first six months.
- (iii) An employee who has to leave their place of work as a consequence of suffering gender-based violence has the right to demand the **suspension of the employment contract**, with the retention of the position.
- (iv) An employee who has to leave their place of work as a consequence of suffering gender-based violence may demand the **right to terminate the employment contract**.
- (v) **Female employees who are victims of gender-based violence have the right to request the nullity of a contract termination** if they wish to exercise their right to a reduction or reorganization of their working hours, geographical mobility, change of their place of work or suspension of the contract under the terms and conditions recognized under the Workers' Statute.
- (vi) **Female employees have the right to request the nullity of a disciplinary dismissal if they wish to exercise their right** to a reduction or reorganization of their working hours, geographical mobility, change of their place of work or suspension of the contract under the terms and conditions recognized under the Worker's Statute.

Employees' rights in items (i) to (iv) are rights that employees' suffering gender-based violence can request from their companies without needing court involvement. However, if companies refuse to grant them, employees would need to sue their companies to enforce their rights.

Additionally, there are rights in the areas of social security contributions and benefits for women victims of gender-based violence, as well as rights in the areas of employment and insertion in the labor market (e.g., special employment programs, incentives to companies hiring women victims of gender-based violence, etc.).

On the other hand, victims of gender-based violence can request a court protection order consisting of the aggressor's prohibition from going to certain places, such as the victim's place of work (as explained in Section 4.1.4. above).

6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

For an employee's misbehavior to be fair grounds for termination, it must take place in the work environment or workplace or somehow affect the company.

Therefore, if actions of domestic violence or gender-based violence take place in the workplace, or between two employees of the same company around the company's premises or during working hours, those facts could be deemed as fair grounds for disciplinary dismissal of the aggressor employee.

For example, sexual harassment and gender-based harassment against the employer or against any employee of the company is specifically included among the grounds that justify a fair disciplinary dismissal in labor law (however, as there is an open list of grounds justifying disciplinary dismissals under Spanish labor regulations and collective bargaining agreements, usually, this further develops the disciplinary regime in employment).

Conversely, if a company is aware that one of its employees is physically, sexually and/or emotionally abusing or harassing his/her intimate partner (i.e., a nonemployee of the company) and it occurs in their respective household, domestic violence or gender-based violence would not be deemed a fair ground for disciplinary dismissal.

6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

No. Employment measures so that the victim can obtain help and assistance (i.e., the right to a reduction of the working day with a proportional reduction in salary or the reorganization of working time by rescheduling the hours or working flextime) is only granted to the victim, not the family members of the victim.

6.3 Immigration

6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents of your country from using immigration laws to perpetrate domestic violence against their spouse?

Generally, an immigrant woman with a marriage-based residence permit obtained in Spain for being spouse of an EU citizen or third-country resident must provide evidence of the validity of the marriage and coexistence between the spouses in order to hold or renew the permit. In case of divorce, nullity of marriage or separation, she will have to obtain a new type of permit by complying with the relevant requirements for a self-petition application.

An exception to the above would apply if she has resided in Spain for five years as a legal resident, in which case she may be granted permanent resident status by applying without the assistance of the spouse. As a result, immigrant victims of domestic violence may feel compelled to remain in an abusive relationship for such time.

However, there are mechanisms intended to protect woman from losing their immigration status upon domestic violence. However, for this mechanism to activate, it is required for a woman to make a criminal impeachment and request protection against the abusive spouse. With this, she can file a petition for a domestic or gender-based violence work and residence permit.

If the victim does not hold regular status in Spain, she can also apply for domestic or gender-based violence residence and work authorizations.

6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

The remedies for domestic violence cannot be obtained unless a criminal impeachment is requested against the abusive spouse. The remedies derived from the impeachment are provisional; to obtain the relevant permit, a guilty hearing against the abusive spouse will be required.

Additionally, there is a type of residence permit for immigrants who cooperate with law enforcement for national benefit purposes. This is not specific for domestic violence cases, but may also be applicable.

6.3.3 Does domestic violence law discuss asylum accessibility?

Immigrant women have access to asylum for domestic violence reasons. Spain offers international protection to those with a well-founded fear of being persecuted in their country for reasons of race, religion, nationality, political opinions, belonging to a particular social group, gender or sexual orientation.

6.4 Armed forces

6.4.1 Can a victim seek a military protective order if the abuser is in active military?

There is no military protective order per se. However, if the abuser is in the military, the following preventive or definite measures can be taken:

- **If the abuser is forbidden to use weapons in a ruling or as a precautionary measure:** The abuser will be removed of all his/her professional weapons. Moreover, the military will need to inform the court if the employee has personal weapons in order for these to be removed. He/she would also not be allowed to participate in operations or trainings that require the use of weapons.
- **If the victim is in the military and the abuser has a restraining order:** She can request a change of destination, voluntary leave (without minimum seniority) or paid leave to go to social services or access medical services.
- **Professional impact on the attacker:** If the abuser is sentenced to a jail sentence of over a year, an internal investigation will be initiated that could lead to extraordinary sanctions. If the military has a labor relationship, his/her employment contract could be terminated.

Even in cases where there is no final ruling, the Ministry of Defense can decide to suspend their military service and prevent him/her from being promoted. If the ruling forbids the abuser from possessing weapons, he/she can be expelled from the military.

6.5 Child custody and child/spousal support

6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

Yes. Articles 65 and 66 of the Comprehensive Protection Against Gender-Based Violence Law establish a judge's right to suspend custody and visitation of children in domestic violence cases. If the judge does not suspend those rights, he/she should establish specific rules as to how the custody and the visitation of children should be carried out, adopting measures to guarantee the children's and the woman's safety, as well as a proper follow-up regarding the evolution of their recovery.

6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

Yes, when determining the custody, a judge should consider the testimonies of the other spouse and the children. Particularly, the right of the children to be heard is established in Article 92 of the Civil Code and Article 9 of the Minor Protection Law.

6.6 Housing rights of domestic violence victims

6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

No.

6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

No.

6.6.3 Can an order exclude the abuser from the residence?

Yes. The victim may seek this precautionary measure or a court may impose it.

6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

No. However, victims of domestic violence are considered an especially vulnerable collective, which allows them to suspend evictions due to a lack of payment of the mortgage in judicial or extrajudicial procedures.

Endnotes

- ¹ Instrument of ratification of the Council of Europe's Istanbul Convention, preventing and combating violence against women and domestic violence, made in Istanbul on 11 May 2011 ([https://www.boe.es/eli/es/ai/2011/05/11/\(1\)/con](https://www.boe.es/eli/es/ai/2011/05/11/(1)/con)).
- ² Definition of "gender-based violence" under Section 1 of the Comprehensive Protection Against Gender-Based Violence Law.
- ³ Based on the definition of a "stalking offense" under Section 173 of the Criminal Code.
- ⁴ Based on the definition of a "harassment offense" under Section 172-*ter* of the Criminal Code.
- ⁵ Definition of "sexual harassment" under Section 7 of the Effective Equality of Men and Women Law.
- ⁶ Definition of "gender-based harassment" under Section 7 of the Effective Equality of Men and Women Law.
- ⁷ Based on the definition of "sexual harassment" under Section 184 of the Criminal Code.
- ⁸ Based on the definition of a "domestic violence offense" under Section 173.2 of the Criminal Code.
- ⁹ Based on the definition of a "protection order" under Section 544-*ter* of the Criminal Procedural Law.
- ¹⁰ Based on the definition of a "rape offense" under Section 179 of the Criminal Code.
- ¹¹ Supreme Court Ruling dated 21 May 2019.
- ¹² The judicial authority or the Public Prosecutor's Office, the security forces and corps, the victim's attention offices, social services or welfare institutions dependent on the public administrations.

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