
MAPPING THE LEGISLATION AND ASSESSING THE IMPACT OF PROTECTION ORDERS IN THE EUROPEAN MEMBER STATES (POEMS)

NATIONAL REPORT SPAIN

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2.2. OVERVIEW OF THE STRUCTURE OF THE NATIONAL REPORTS

2.2.1. IMPOSITION OF PROTECTION ORDERS

- 1) We would like to know about the different forms of protection orders in your country
 - a. Identify the laws in which protection orders are regulated. Through which areas of law (criminal, civil, administrative, other) can protection orders be imposed?
 - b. Are protection orders regulated in generic law or in specific laws on forms of (interpersonal) violence (e.g., domestic violence act)?
 - c. Are these laws (or the text on the protection orders) available on the internet in English or in your local language? If so, could you provide us with a link?

In the last few years, Spanish legislation has seen a number of advances in the fight against gender violence, including Organic Act 11/2003 of 29 September on Specific Measures relating to Citizens' Security, Domestic Violence and the Social Integration of Foreign Nationals; Organic Act 15/2003 of 25 November, amending Organic Act 10/1995 of 23 November on the Criminal Code and Organic Act of 28 December on Comprehensive Protection Measures against Gender Violence, in addition to the laws enacted by different Autonomous Communities within the scope of their powers. The provisions of these legal texts have covered different civil, criminal, social and educational areas.

It should be noted that Spanish law started by regulating domestic violence, which is the concept used in Act 27/2003 of July 31st on the protection order for victims of domestic violence [*Ley 27/2003, de 31 de julio, reguladora de la Orden de protección de las víctimas de la violencia doméstica*].¹ However, when Organic Act 1/2004 of December 28th on Comprehensive Protection Measures against Gender Violence [*Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección*

¹ Act 27/2003 of July 31st on the protection order for victims of domestic violence [*Ley 27/2003, de 31 de julio, reguladora de la Orden de protección de las víctimas de la violencia doméstica*]. Available at: www.boe.es/buscar/pdf/2003/BOE-A-2003-15411-consolidado.pdf.

English version:

www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/La_orden_de_proteccion_relacionados/Ley_27_2003_de_31_de_julio_reguladora_de_la_Orden_de_proteccion_de_las_victimas_de_la_violencia_domestica.

*Integral contra la Violencia de Género*² was adopted, the legal term used became 'gender violence'. Organic Act 1/2004 subsumes and broadens the scope of the protection order established under Act 27/2003.

In this respect, Art. 1(3) of Organic Act 1/2004 expressly provides: "The gender violence to which this Act refers encompasses all acts of physical and psychological violence, including offences against sexual liberty, threats, coercion and the arbitrary deprivation of liberty".

The most important regulation concerning the protection order, however, is the specific protection order for victims of gender violence in 2003, established by Act 27/2003 of July 31st on the protection order for victims of domestic violence [*Ley 27/2003, de 31 de julio, reguladora de la Orden de protección de las víctimas de la violencia doméstica*].³ This act establishes a comprehensive protection statute including precautionary measures in civil and criminal matters, as well as support and social protection measures. This protection order is to be respected by any authority or public administration (Art. 2 of Act 27/2003 of July 31st on the protection order for victims of domestic violence). This is a previous, complementary act, which is still in force by explicit provision of Organic Act 1/2004 of December 28th on Comprehensive Protection Measures against Gender Violence [*Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género*].⁴

2 Organic Act 1/2004 of December 28th on Comprehensive Protection Measures against Gender Violence. [*Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género*]. Consolidated version 2007: <https://www.boe.es/buscar/act.php?id=BOE-A-2004-21760>

English version:

www.isotita.gr/var/uploads/NOMOTHESIA/VIOLENCE/SPANISH%20LAW%20Organic%20Act%201%2028-12-04%20on%20Violence.pdf

3 Act 27/2003 of July 31st on the protection order for victims of domestic violence [*Ley 27/2003, de 31 de julio, reguladora de la Orden de protección de las víctimas de la violencia doméstica*]. Available at: www.boe.es/buscar/pdf/2003/BOE-A-2003-15411-consolidado.pdf.

English version:

[www.poderjudicial.es/cgpj/es/Temas/Violencia domestica y de genero/La orden de proteccion/relacionados/Ley 27 2003 de 31 de julio reguladora de la Orden de proteccion de las victimas de la violencia domestica](http://www.poderjudicial.es/cgpj/es/Temas/Violencia%20domestica%20y%20de%20genero/La%20orden%20de%20proteccion%20de%20las%20victimas%20de%20la%20violencia%20domestica).

4 Organic Act 1/2004 of December 28th on Comprehensive Protection Measures against Gender Violence. [*Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género*]. Consolidated version 2007: www.boe.es/buscar/act.php?id=BOE-A-2004-21760.

English version:

www.isotita.gr/var/uploads/NOMOTHESIA/VIOLENCE/SPANISH%20LAW%20Organic%20Act%201%2028-12-04%20on%20Violence.pdf

The content of the Act 27/2003 was integrated into Art. 544 ter of the Code of Criminal Procedure.⁵

- 2) a. Within the different areas of law (criminal, civil, administrative, other), you can also have different legal provisions through which protection orders can be imposed (e.g., a condition to a suspended trial, a condition to a suspended sentence, a condition to a conditional release from prison or as a condition to a suspension from pre-trial detention). Which different ways of imposing protection orders can be distinguished in the different areas of law? (please, be as exhaustive as possible).

The protection order for victims of domestic violence unifies the various instruments for the defence and protection of victims of these offences. It intends, by means of a quick and simple judicial procedure which takes place before the preliminary court investigation, to grant the victim a comprehensive protection status that brings together, in a coordinated way, precautionary measures both of a civil and a criminal nature. That is, a single judicial ruling that incorporates both measures restricting the freedom of movement of the aggressor in order to avoid him further approaching the victim, as well as those aimed at providing security, stability and legal protection to the abused person and her family, without having to wait for the formal completion of the civil marriage process.⁶

The competent courts in gender violence cases are the Courts for Violence against Women, set up under Art. 43 of Organic Act 1/2004 of December 28th on Comprehensive Protection Measures against Gender Violence [*Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género*]. These are specialized courts with competence to act in civil and criminal matters.

b. When it comes to criminal law: can protection orders be imposed in all stages of the criminal procedure?

Yes. Art. 2(11) of Act 27/2003 on the protection orders states: In cases which during the course of the criminal proceedings a situation of risk arises concerning any of the persons who are related to the accused by any of the relationships indicated in section 1 of this article, the Judge or Court dealing with the case may issue the protection order for the victim under the provisions of the preceding sections. The provision regarding the identification of the persons who may benefit from a protection order refers to Art. 153 of the Criminal Code⁷, which states:

⁵ Code of Criminal Procedure [*Ley de Enjuiciamiento Criminal*] Consolidated text 2013. www.boe.es/buscar/pdf/1882/BOE-A-1882-6036-consolidado.pdf. Not available in English.

⁶ Preamble of Act 27/2003 of July 31st on the protection order for victims of domestic violence. Paragraph II.

⁷ Organic Act 10/1995 of 23 november on the Criminal Code [*Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*] (Consolidated text 2012). Available at: www.boe.es/buscar/pdf/1995/BOE-A-1995-25444-consolidado.pdf.

English version in the translations of Spanish legislation of the Ministry of Justice (without specific access): www.mjusticia.gob.es/cs/Satellite/es/1288774502225/TextoPublicaciones.html

1. Whoever, by any means or procedure, causes another person mental damage or an injury not defined as a felony in this Code, or who hits or abuses another by action, without causing such person injury, when the victim is or has been his wife, or a woman with whom he has been bound by a similar emotional relationship, even without cohabitation, or an especially vulnerable person who lives with the offender, the offender shall be punished with imprisonment of six months to one year, or community service from thirty one to eighty days and, in all cases, with deprivation of the right to own and carry weapons from a year and a day to three years, as well as, when the Judge or Court deems it appropriate in the interest of the minor or incapacitated person, prohibiting him from exercising parental rights, guardianship, care or fostership for up to five years.

If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. In other words, make sure that the following questions are filled in separately for each category of protection order. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law which persons can apply for a protection order (question 3).

- 3) a. Who can apply for such an order (victims/complainants or only the police/the public prosecution service)?

The persons who are authorized to request a protection order are: the victim, their relatives or the Public Prosecutor's Office. The judge may grant it ex officio, without request, should the circumstances so require. Art. 2(2) of Act 27/2003 on the protection order provides that: "The protection order will be granted by the judge ex officio or at the request of the victim or person who has some of the relationships described above with respect to the victim, or by the Public Prosecution Office".

According to the Observatory against Domestic and Gender Violence [*Observatorio contra la violencia doméstica y de género*], the data of the first semester of 2013 demonstrate that protection orders have been requested on the basis of the complaints filed by the following authorised persons:

DISTRIBUTION OF COMPLAINTS ACCORDING TO THE WAY THEY WERE FILED (AS A PERCENTAGE OF REQUESTED ORDERS)
Police report based on the victim's complaint; 60,69%
Police report based on the family's complaint; 0,84%
Police report based on a police's direct intervention; 14,79%
Presented directly by family members; 0,53%
Presented directly by the victim; 10,10%
Injury report-based; 11,26%
Assistance services-based: 1,79%

.⁸ The Observatory on Domestic and Gender Violence is an instrument for analysis and policy making that puts forward initiatives and measures within the justice system aimed at eradicating domestic and gender violence. The memorandum through which the Observatory was established was signed on 26 September 2002. At the present time, it is formed by the following institutions: the General Council of the Judiciary (GCJ), which holds the presidency, the Ministry of Justice, the Ministry for Equality, the Office of the State Public Prosecutor, the autonomous regional governments with competence in justice affairs, represented through a yearly rotation system, and the General Council of Spanish Lawyers.

b. Which organizations or authorities are involved in applying for and issuing protection orders? (Do, for instance, probation services play a role in the issuing of criminal protection orders?)

The organizations and social services must immediately inform the judge or the public prosecutor any sign that may permit the quick adoption of a protection order. Article 2(2) of Act 27/2003 states that notwithstanding the general duty of reporting any criminal indication provided for in Article 262 of the Criminal Procedure Act⁹, assistance institutions or agencies, either public or private, which may have knowledge of any of the actions mentioned above, must immediately inform the judge on duty or the Public Prosecution Office so that they can initiate proceedings for the protection order.

In short: the initiative may be taken by the judge, the Public Prosecutor's Office, the victim or the organisations detecting indications of violence. The issuing of the order is the exclusive competence of the judge.

c. Can protection orders be issued on an *ex parte* basis (without hearing the offender)?

Act 27/2003 on the protection order provides that the judge shall summon to an urgent hearing the victim, the applicant and the aggressor, assisted where appropriate by an attorney, as well as the Public Prosecutor's Office. The hearing shall be held within 72 hours (3 days) upon the request of the protection order. Indeed, Article 2(4) of Act 27/2003 provides as follows: Once the application form for the order of protection has been received, the judge on duty in cases referred to in section 1 of this article, will summon to an urgent hearing the victim or her legal representative, the applicant and the aggressor, assisted where appropriate by a lawyer. The Public Prosecutor will also be summoned. This article establishes that in exceptional cases where it proved impossible to hold the hearing during the duty period, the judge with whom the application has been filed shall convene that hearing within the shortest possible time. In any case, the hearing will have to be held within a maximum of 72 hours after the application has been submitted. The same article states that the judge on duty shall take the appropriate steps to avoid a confrontation between the perpetrator and the victim, her children and other family members during the hearing. For this purpose, their respective statements will be conducted separately.

As a result, the presence of the aggressor is necessary for the issuing of a protection order. Nevertheless, the so-called 'trial in absentia' (*procesamiento en rebeldía*) is allowed in Spanish law whenever it has proven impossible to find the suspect of a criminal offence. The articles 487, 512, 513

⁹ Code of Criminal Procedure (consolidated version) [Ley de Enjuiciamiento Criminal]:

www.boe.es/buscar/pdf/1882/BOE-A-1882-6036-consolidado.pdf. Not available in English. Art. 262 provides that those who, on grounds of their position, profession or duties become aware of an offence, are obliged to report it immediately to the Public Prosecutor's Office, the competent court or examining magistrate, or in their absence, to the nearest police officer in case of 'in flagrante delicto'.

and 516 of the Code of Criminal Procedure regulate these proceedings.¹⁰ In cases where the judge has received the request for a protection order and the aggressor has been summoned, the person responsible for the aggression does not appear, the summons may be turned into an arrest warrant. In the event that the suspect cannot be found, the judge may initiate an investigation by all the legal means available, ordering that in case the aggressor is found, (s)he should be sent to a specific jail, as well as any other measure necessary to resolve the order protection's application. As a consequence, and provided that these legal requirements are fulfilled, the protection order may be granted without hearing the aggressor.

The main issue is whether temporary measures can be adopted during the proceedings bearing in mind that the hearing of the affected person may be detrimental to the measure's efficiency. It seems that it would be possible to grant a protection order for the victim, with possible repercussions for the aggressor, without hearing the aggressor, provided that: there is a sense of urgency that justifies its adoption; the affected person may oppose the decision, either by lodging an appeal or during the subsequent hearing; and provided this subsequent hearing takes place within a short delay.

- 4) a. Are protection orders available for all types of victims or crimes, or only for a certain subset of victims or crimes (e.g., only victims of domestic violence, stalking, female victims)? In other words, can all victims receive protection?

A distinction is made in Spanish law between 'protection orders' and 'protection measures'.

Protection measures are foreseen for any kind of victim and are scattered throughout Spanish law. Indeed, so far, no 'Statute of the victim' has been adopted even though the Ministry of Justice is currently drafting a new Code of Criminal Procedure that should incorporate it (the draft bill has not yet been published, we only know that it is under preparation). The main regulations that contain protection measures granted to all kinds of victims are the following:

- Act 29/2011, of 22 September, on the recognition and comprehensive protection of the victims of terrorism [*Ley 29/2011, de 22 de septiembre, de reconocimiento y protección integral a las víctimas del terrorismo*]. Available at: www.boe.es/buscar/pdf/2011/BOE-A-2011-15039-consolidado.pdf
- Act 35/1995, of 11 December, on aid and assistance to victims of violent crimes and sexual freedom [*Ley 35/1995, de 11 de diciembre, de ayudas y asistencia a las víctimas de delitos violentos y contra la libertad sexual*]. Available at: www.boe.es/buscar/pdf/1995/BOE-A-1995-26714-consolidado.pdf
- Act 52/2007 of 26 December, by which rights are recognized and extended and measures are set up for those who suffered persecution or violence during the Civil War and the Franco dictatorship [*Ley 52/2007, de 26 de diciembre, por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura*]. Available at: www.boe.es/buscar/pdf/2007/BOE-A-2007-22296-consolidado.pdf
- Organic Act 1/2004, of 28 December, on Comprehensive Protection Measures against Gender Violence [*Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la*

¹⁰ Code of Criminal Procedure (consolidated version) [Ley de Enjuiciamiento Criminal]:

www.boe.es/buscar/pdf/1882/BOE-A-1882-6036-consolidado.pdf. Not available in English

Violencia de Género]. Available at: www.boe.es/buscar/pdf/2004/BOE-A-2004-21760-consolidado.pdf

- Act 27/2003, of 31 July, regulating the Protection Order for Victims of Domestic Violence [*Ley 27/2003, de 31 de julio, reguladora de la Orden de Protección de las Víctimas de la Violencia Doméstica*]. Available at: www.boe.es/buscar/pdf/2003/BOE-A-2003-15411-consolidado.pdf
- Criminal Code, with provisions for the victims of human trafficking for sexual exploitation, by Organic Act 5/2010, of 22 June, amending Organic Act 10/1995, of 23 November, regarding the Criminal Code [*Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*]. Available at: www.boe.es/buscar/pdf/1995/BOE-A-1995-25444-consolidado.pdf
- Organic Act 10/2011, of 27 July, amending Sections 31bis and 59bis of Organic Act 4/2000, of 11 January, on the rights and freedoms of aliens in Spain and their social integration [*Ley Orgánica 10/2011, de 27 de julio, de modificación de los artículos 31 bis y 59 bis de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social*] with provisions concerning the victims of trafficking for labour exploitation. Available at: www.boe.es/buscar/pdf/2000/BOE-A-2000-544-consolidado.pdf

The *Protection Order* is established by Act 27/2003. It is exclusively aimed at victims of gender violence within the family unit. It establishes a swift and simple judicial procedure to provide complete protection to the victim in the form of a well-balanced mix of precautionary measures under civil and criminal law. The judicial protection order also implies that government bodies at the national, regional and local level immediately apply the social protection measures at their disposal within their respective legal systems.

b. Can protection orders be issued independent from other legal proceedings (e.g., independent from criminal proceedings if the victim does not wish to press charges or independent from divorce proceedings)?

Protection orders are strictly linked to the victims of gender violence that takes place within the family unit. They are issued by the courts specialized in gender violence. The protection orders may be issued at any time during the criminal proceedings, from the very beginning until the end.

The protection order is adopted by means of a single judicial decision that incorporates measures restricting the freedom of movement of the aggressor in order to avoid him further approaching the victim, as well as those aimed at providing security, stability and legal protection to the abused person and her family, without having to wait for the formal completion of the civil marriage process.

5) a. What procedures have to be followed in order to obtain a protection order? (please explain the different steps that need to be taken)

Firstly, criminal proceedings regarding gender violence must be initiated at any court specialized in violence against women. The competence of the Courts for Violence against Women includes criminal law, civil law and family law. When reporting the violence or at any other moment of the proceedings, the victim or her relatives (descendants, minors and incapacitated persons included), or the Public Prosecutor's Office may request a protection order. The judge may grant it *ex officio* whenever (s)he thinks that it is necessary for the victims' protection. The Courts, the Police, the Public Prosecutor's Office, branches of the Victim Support organization, municipal services, legal advice centres, social services or other public bodies providing services to the public, have at their disposal a protection order

request form in various languages (Spanish and the co-official languages in Spain, English and French) so that victims can exercise their right to request the court to adopt the protection measure.¹¹

Furthermore, the Public Prosecutor's Office now has special prosecutors for cases of violence against women. These prosecutors appear in criminal proceedings regarding facts constituting a criminal offence that falls within the competence of the Courts for Violence against Women. These special prosecutors also appear in civil procedures regarding the annulment of marriages, separation or divorce or regarding the guardianship of under-age children, whenever wife battering or cruelty to children is alleged.

As explained above a protection order may be requested by the victim, by family members or by others who maintain an emotional relationship with the victim (without having to be legally married or registered as partners. Notwithstanding their general duty to report criminal offences, any private or public body or organization providing social services that encounters facts that may warrant a protection order, must report those facts immediately to an examining magistrate on duty at a Police Court or a public prosecutor in order to start the procedure to issue a protection order. The request may be submitted at any police station of the local, regional or national police forces, at a court house or public prosecutor's office, at branches of the Victim Support organization, social services or other government bodies providing services to the public or at legal advice centres. The procedure to issue a protection order may also be initiated by a Police Court or by the public prosecutor.

Once the request has been made, it is sent on to the Police Court, which can then order the Judicial Police to take the necessary steps to pave the way for a protection order. The Courts for Violence against Women decide on protection orders for the victims, without prejudice to the authority of the Police Courts. Furthermore, when a judge hears a civil case in first instance and learns that a protection order has been requested, he must interrupt the procedure and forward the file as is to the competent Court for Violence against Women.

Depending on the seriousness of the facts and the need for complete protection of the victim, the court may take one or more of the legally established precautionary measures (e.g. preventive custody, restraining order, no-contact order, injunction to enter and remain in the common residence, requisition of arms, etc.) Measures that may be imposed by civil law must either be requested by the victim or her legal representative or by the public prosecutor when the couple has under-age or incompetent children. Possible measures include awarding the use and occupancy of the family home, determining guardianship, parental visits and contact with the children, maintenance orders and any measure that is deemed useful to keep minors out of harm's way. These measures are provisional and must be ratified, adjusted or revoked by a judge within 30 days.

The parties are notified of the protection order and the judge will immediately inform both the victim and the competent government bodies by sending them the full text of the proceedings. The latter may then take protective measures, which may range from security measures to social assistance, legal aid, medical treatment or psychological support, or any other help. For these purposes, rules are in place to set up an integrated system of administrative coordination that ensures communication runs smoothly. It should also be noted that a system of electronic surveillance of aggressors is being implemented by means of so-called (satellite controlled) "home links" in order to prevent them from getting close to

¹¹ The form to request the protection order is also available online (in the different linguistic versions): www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/La_orden_de_proteccion

victims of gender violence. The protection order also implies the obligation to maintain the victim informed of the legal situation of the accused and of the extent and validity of the precautionary measures that have been taken. In particular, the victim must be kept informed at all times about the detention status of the aggressor. For this reason, the Prison Service is notified of the protection order. The protection order must be entered into the Central Register for the Protection of Victims of Domestic Violence.

Since their creation in 2005, the Courts for violence against women have pronounced 963.471 criminal preliminary rulings; they have judged 71.142 offences and have issued a total of 137.408 decisions regarding gender violence.

b. Could you give an indication of the length of the proceedings?

The decision to grant a protection order must be taken by the judge either immediately or as soon as possible; as a maximum, the protection order must be issued within 72 hours upon the receipt of the request by the relevant court (Art. 2 of Act 27/2003). The protection measures that are established in the order are provisional and must be either confirmed, modified or revoked by a judge within 30 days. These measures may be maintained throughout the trial. However, the decision on their adoption is made very quickly, as stated above.

c. Does the protection order come into effect as soon as the decision on a protection order is made or are there any additional requirements before the orders really come into effect (e.g., in civil proceedings the notification/service of the verdict to the defendant)? In other words, is the victim immediately protected or can there be a lapse of time before the actual protection begins?

d. Is there a regulation for interim protection that can be given immediately upon request or very quickly? For how long? What steps have to be taken in order to finalize the protection after the interim order?

C. and d. Questions:

The protection order enters into force at the moment of its adoption. The measures are enforced immediately, without any delay, during 30 days. After this deadline, the order must be confirmed, modified or revoked by a judge within 30 days; the measures can be maintained throughout the trial.

6) a. What are the application requirements in order to (successfully) apply for a protection order? In other words, under what conditions will a protection order be imposed?

See answer to question 5).

b. Is legal representation/advice of victims required by law or in practice?

Act 27/2003 on the protection order states that the order must be requested directly by the victim, their relatives/representatives or the Public Prosecutor's Office (Art. 2(2)). In practice, the victim usually enjoys legal assistance, which may be either public legal assistance organized by the Bar association, or legal assistance organized by the individual himself.

c. Is free legal representation/advice available?

Act 1/1996 of January 10th on legal aid [*Ley 1/1996, de 10 de enero, de asistencia jurídica gratuita*]¹² determines the exact benefits of legal aid referred to in Article 119 of the Spanish Constitution and the procedure for its recognition and application. As a general rule, it is necessary to comply with certain economic requirements (low wages, the number of members in the family unit) but Article 3(5) exempts domestic violence victims from these requirements.

Art. 6 of Act 1/1996 on legal aid establishes that the benefits of legal aid include, among others:

- Free advice and orientation prior to the proceedings for those who want to claim judicial protection of their rights and interests, when these seek to avoid procedural conflict, or to analyze the viability of the claim.
- Free defence and representation by a solicitor and a barrister-at-law in judicial proceedings, when intervention by these professionals is legally required or, when it is not, it is specifically required by the Court of Justice by means of a reasoned decision to guarantee the equality of the parties in the proceedings.
- Free publication of announcements or edicts, in the course of the process, which are required to be published in official newspapers.
- Exemption from payment of the necessary deposits to lodge appeals.
- Free expert witness support during the proceedings, performed by the technical personnel assigned to the courts or, in their absence, performed by civil servants, bodies or technical services that report to the Public Administrations.

In addition, Article 20 of Organic Act 1/2004 of 28 December, on Comprehensive protection Measures against Gender Violence [*Ley orgánica 1/2004, de 28 de diciembre, de medidas de protección integral contra la violencia de género*]¹³, establishes that female victims of gender violence who prove they have insufficient means to initiate legal action, as stipulated in Act 1/1996 of 10 January on Free Legal Aid, have the right to be defended and represented free of charge by a lawyer or court representative in all administrative processes and proceedings that ensue directly or indirectly from the violence suffered. In such cases, a single legal counsel shall take on the defence of the victim. This right includes the successors in interest in the event that a victim dies. In any case, all victims of gender violence who so request shall be guaranteed free, specialist legal services, immediately available, notwithstanding that if they are later refused entitlement to free legal aid, they must pay the acting lawyer the fees corresponding to his or her intervention.

12 Act 1/1996 of January 10th on legal aid [*Ley 1/1996, de 10 de enero, de asistencia jurídica gratuita*]. English version on the web site of translations of the Ministry of Justice: www.mjusticia.gob.es/cs/Satellite/es/1288774502225/TextoPublicaciones.html

13 Organic Act 1/2004 of 28 December on Comprehensive protection Measures against Gender Violence [*Ley orgánica 1/2004, de 28 de diciembre, de medidas de protección integral contra la violencia de género*]. Available in English on the website of translations of the Ministry of Justice: www.mjusticia.gob.es/cs/Satellite/es/1288774502225/TextoPublicaciones.html

- 7) a. What types of protection can be provided for in the orders (e.g., 'no contact' orders, orders prohibiting someone to enter a certain area, orders prohibiting someone to follow another person around, etcetera)?

According to Article 2(6), (7) and (8) of Act 27/2003 on the protection order, the judge orders the protection of the victim through the adoption of civil and/or criminal precautionary measures, in addition to activating the necessary social assistance and protection measures, by reference to the protection order concerning the coordination points of the autonomous regions:

1. Criminal measures: The precautionary measures may include any of the criminal sanctions established in the criminal procedural legislation. Among others:

- a. Prison
- b. Restraining order
- c. Prohibition to communicate
- d. Prohibition to return to the scene of crime or the victim's residence
- e. Seizure of weapons or other dangerous objects

2. Civil measures: The measures of a civil nature shall be requested by the victim or her legal representative or by the Public Prosecution Office, when there are minors or incompetent children involved, provided that they have not been previously taken by a civil court, and without prejudice to the measures under Article 158 of the Civil Code. These measures are:

- a. Awarding of the use and enjoyment of the dwelling
- b. Conditions of custody, visits, communication with children
- c. Provision of food
- d. Child protection measures to avoid danger or injury

3. Assistance and protection measures: established by law, both at state or autonomic level. The protection order shall be notified to the parties, and immediately communicated by the judge, using an authenticated copy, to the victim and the public authorities which are in charge of taking the relevant protection measures, whether these apply to security, social assistance, legal, health, psychological support or otherwise.

Article 64 of Organic Act 1/2004 on Comprehensive Protection Measures against Gender Violence regulates the exclusion and restraining orders and no-contact injunction in these terms:

- 1. The Judge may order a person accused of gender violence to leave the dwelling he shared with the victim or where the family unit has its residence, and prohibit him to go back.
- 2. The Judge may exceptionally authorize the protected person to exchange the use of the family home co-owned with the accused, to which she is entitled, for the use of another home for the time and under the conditions determined, by arrangement with an agency, or public company where such an entity exists, whose activities include the renting of real estate.

3. The Judge may place the accused under a restraining order, prohibiting him to approach the protected person at any place where she is staying, go near her home, her workplace or any other place that she frequents. Technological means may be used in order to immediately alert to non-compliance with such orders.
4. The restraining order can be imposed regardless of whether the person concerned or those it is intended to protect have already left the location.
5. The Judge may prohibit the accused from entering into any kind of contact with the person or persons specified, with the warning that he will otherwise incur criminal liability.
6. The measures referred to in the preceding sections may be decided on cumulatively or separately.

Also, whenever it is appropriate to guarantee the protection of the life and physical integrity of the victim and her relatives, information about the aggressor's location may be requested secretly. As a result, Organic Act 19/1994 of 23 December on the protection of witnesses and experts involved in criminal proceedings must be taken into account insofar as it applies whenever the domestic violence victim is threatened and resides in a shelter.

In this respect, in the event that the victim does not wish to live in the family home out of fear, (s)he must be informed of the possibility to exceptionally request the relevant court permission to rent or permute the use of the family home that (s)he owns in joint property, with the assistance of an agency or public company, during the time and according to the conditions determined by them. In this case, the measure that obliges the aggressor to leave the family home shall be accompanied by an authorization from the judge to the authorized agency to rent or permute the family home during the time of validity of the protection order.

b. Is there an order that has the effect of moving/barring a violent (or threatening) person from the common or family home (eviction or barring order)? For how long can the violent/threatening person be barred? During the barring period, is help provided to the victims? And to the offender?

Yes. In order to protect the victims, among others measures, the judge may include the allocation of the use and enjoyment of the family home (Art. 1(7) of Act 27/2003 on the protection order, in concordance with Article 158 of the Spanish Civil Code¹⁴ concerning the protection of minors). During the barring period, the social and administrative authorities can establish measures providing social, psychological and economic help to the victims. Such assistance will be compatible with the aid envisaged in Act 35/1995 of 11 December on Aid and Assistance to Victims of Violent Crimes and Crimes against Sexual Liberty [*Ley 35/1995 de 11 de diciembre, de ayuda y asistencia a las víctimas de crímenes violentos y contra la libertad sexual*].¹⁵

14 Spanish Civil Code [*Código Civil Español*]. English version, on the website of translated legislation of the Ministry of Justice:

www.mjusticia.gob.es/cs/Satellite/es/1288774502225/TextoPublicaciones.html

15 Act 35/1995 of 11 December on Aid and Assistance to the Victims of Violent Crime and Crimes against Sexual Liberty [*Ley 35/1995 de 11 de diciembre, de ayuda y asistencia a las víctimas de crímenes violentos y contra la libertad sexual*]. Consolidated text. www.boe.es/buscar/act.php?id=BOE-A-1995-26714. Not available in English.

Moreover, Organic Act 1/2004 of 28 December, on Comprehensive protection Measures against Gender Violence [*Ley orgánica 1/2004, de 28 de diciembre, de medidas de protección integral contra la violencia de género*]¹⁶ establishes in Art. 19(2) that multidisciplinary care shall in all cases include:

- a) Information to victims
- b) Psychological assistance
- c) Social assistance
- d) Monitoring the claims regarding the woman's rights
- e) Educational support to the family unit
- f) Preventive training in the values of equality conducive to their personal development and the acquisition of skills in non-violent conflict solving
- g) Support to professional training and occupational reintegration.

Article 28 of the Organic Act 1/2004 of 28 December on Comprehensive Protection Measures against Gender Violence states that women suffering gender violence shall be given priority in accessing subsidized housing and residences for the elderly under the terms laid down in the applicable legislation.

The offender, after the adoption of the protection order, is normally in prison or subjected to a “no contact” order, with electronic surveillance through home links. Article 42 of Organic Act 1/2004 of 28 December on Comprehensive Protection Measures against Gender Violence states that the prison authorities shall provide specific programmes for inmates convicted for crimes related to gender violence, but this provision requires that the offender is in prison.

c. Which of these types of protection (e.g., no contact order) are imposed most often in practice?

There are no complete data available on this aspect in the reports of the Observatory against Domestic and Gender Violence. As explained above, the Observatory on Domestic and Gender Violence is an instrument for analysis and policy making that proposes initiatives and measures regarding the justice system aimed at eradicating domestic and gender violence.

After analysing the statistics of the first three months of 2013, we may distinguish between the criminal and civil measures (the information is not available in English and the image of the Observatory’s report cannot be converted into any other format).¹⁷

¹⁶ Organic Act 1/2004 of 28 December on Comprehensive Protection Measures against Gender Violence [*Ley orgánica 1/2004, de 28 de diciembre, de medidas de protección integral contra la violencia de género*]. Available in English on the website of translated legislation of the Ministry of Justice: www.mjusticia.gob.es/cs/Satellite/es/1288774502225/TextoPublicaciones.html

¹⁷ Between the date of submission of the first version of this report and the date of modification, the data on the website of the Observatory against Domestic and Gender Violence regarding the first quarter of 2013 have been replaced by the data regarding the second quarter. These data are available (only in Spanish) at: www.poderjudicial.es/cgpj/en/Subjects/Domestic_and_gender_violence/Activity_of_the_Observato

MEDIDAS PENALES DERIVADAS DE LAS ÓRDENES DE PROTECCIÓN Y DE OTRAS MEDIDAS CAUTELARES (De Seguridad y Protección)¹²:

14.009 (De ellas han sido acordadas en el ámbito de la Orden de Protección 9.854, el 70%, y 4.155, el 30%, como Medidas Cautelares).

MEDIDAS PENALES	PRIVATIVAS DE LIBERTAD	SALIDA DE DOMICILIO	ORDEN DE ALEJAMIENTO	PROHIBICIÓN DE COMUNICACIÓN	PROHIBICIÓN VOLVER AL LUGAR	SUSPENSIÓN TENENCIA Y USO ARMAS	OTRAS
OP	130	678	3.719	3.696	580	694	357
MC	232	203	1.395	1.386	298	335	306
% Medidas Penales OP adoptadas sobre total OP adoptadas	2,8%	14,8%	81,1%	80,6%	12,7%	15,1%	7,8%

MEDIDAS CIVILES DERIVADAS DE LAS ÓRDENES DE PROTECCIÓN Y DE OTRAS MEDIDAS CAUTELARES (De Seguridad y Protección):

3.603¹³. De ellas 3.464, el 96%, han sido acordadas en el ámbito de la OP y el resto, 139 el 4%, como Medidas Cautelares)

MEDIDAS CIVILES	ATRIBUCIÓN DE LA VIVIENDA	PERMUTA VIVIENDA	SUSPENSIÓN REGIMEN DE VISITAS	SUSPENSIÓN POTESTAD	SUSPENSIÓN GUARDA Y CUSTODIA	PRESTACIÓN DE ALIMENTOS	PROTECCIÓN DEL MENOR PARA EVITAR UN PELIGRO O PERJUICIO	OTRAS
OP	950	27	142	10	316	1.160	51	808
MC	44	0	4	1	14	39	4	33
% Medidas Civiles adoptadas sobre total OP adoptadas	20,7%	0,6%	3,1%	0,2%	6,9%	25,3%	1,1%	17,6%

¹² Cada resolución puede incorporar más de una medida.

¹³ Se mantiene la baja proporción de las medidas cautelares civiles respecto de las penales.

Regarding criminal measures, the restraining orders and the orders prohibiting contact are the most commonly granted (81.1% and 80.6% of the total). They may be issued together. As for the civil measures, the most granted are those the assignment of the family home and the obligation to pay maintenance (20.7% and 25.3% respectively; they may be imposed together). These statistics distinguish between the measures stemming from the protection order (OP) and from the ordinary precautionary measures (MC). If we only take into account the protection orders, the criminal measures most used are the restraining order (3.719) and the prohibition of contact (3.696). The civil measures which have been most used are the assignment of the family home (950) and the obligation to pay maintenance (1.160).

For information purposes only, we also offer the data on the issuing of protection orders by the 17 Autonomous Communities during the first quarter of 2013.

CONSEJO GENERAL DEL PODER JUDICIAL					
PROTECTION ORDERS GRANTED AND DENIED BY THE AUTONOMOUS COMMUNITIES					
CC.AA.	Pending	Resolved.	%	Resolved.	%
		Granted		Denied	
Andalucía	1.306	821	63%	485	37%
Aragón	129	103	80%	26	20%
Asturias	167	65	39%	102	61%
Baleares	185	137	74%	48	26%
Canarias	551	340	62%	211	38%
Cantabria	67	45	67%	22	33%
Castilla y León	282	173	61%	109	39%
Castilla-La Mancha	341	241	71%	100	29%
Cataluña	1.415	517	37%	898	63%
Valencia	902	718	80%	184	20%
Extremadura	193	164	85%	29	15%
Galicia	313	162	52%	151	48%
Madrid	1.259	588	47%	671	53%
Murcia	305	270	89%	35	11%
Navarra	78	50	64%	28	36%

País Vasco	200	136	68%64	32%
La Rioja	57	53	93%4	7%
Spain	7.750	4.583	59%3.167	41%

d. Can the different types of protection orders also be imposed in combination with each other (e.g., a no contact order and a prohibition to enter a street)?

e. If so, which combinations are most often imposed in general?

As indicated in the response to question 7, the measures may be imposed together. As a general rule, it appears that criminal orders of separation and prohibition of contact are imposed together.

8) a. Are there any formal legal requirements for the formulation of protection orders? In other words, are there certain elements that always need to be included in the decision or does it, for instance, suffice if the restrained person is told 'not to contact' another person?

b. How does this work in practice? How elaborate are these protection order decisions in general?

The procedure to request and adopt a protection order is described in detail in the responses to the questions 3, 5 and 6.

9) a. Are there any legal limitations to the scope of these protection orders – e.g., only a couple of streets – or are the legal authorities free to decide the scope of protection orders any way they see fit?

The jurisdiction on the scope of the protection order is provided by Art. 64 of Organic Act 1/2004 of 28 December on Comprehensive Protection Measures against Gender Violence. The judicial authority is the only one competent to decide on the radius of the restraining order. It may be of several kilometres around the home or workplace of the victim. Moreover, it may order a prohibition to enter the area where the victim lives or works. The main concern is to avoid contact between the victim and the aggressor.

b. If there are limitations, which factors do the legal authorities have to take into account when deciding on the scope of protection orders?

Rights-restricting measures shall be adopted by means of a reasoned order justifying their proportionality and necessity and, in any event, with the intervention of the Public Prosecutor's Office and respecting the principles of objection, hearing and defence (Art. 68 of the Organic Act 1/2004 on Comprehensive Protection Measures against Gender Violence)¹⁸.

¹⁸ Moreover, Article 64 of Organic Act 1/2004 of 28 December, on Comprehensive Protection Measures against Gender Violence states that:

1. The Judge may order a person accused of gender violence to leave the dwelling he shared with the victim or where the family unit has its residence, and prohibit him to go back.

c. Which factors do they take into account in practice?

In practice, the declaration of the victim to the police as well as the data provided by the social and assistance services (doctors, psychologists, specialized organizations, etc.) which took care of the victim at the beginning or were summoned by the judge are very important during the summary proceedings in order to inform on the nature of the aggression and the state of the victim.

- 10) a. How are prohibitions to enter a certain area mostly delineated? For instance, are these areas indicated on a map or are they indicated by naming the surrounding streets? Or do legal authorities use radiuses (“person A is no longer allowed to be within 200 meters of the victim’s house”)?

This depends on the circumstances of the case. The judge can decide, for instance, that the aggressor may not come within a radius of 500 m from the victim, or to live at a distance of at least 50 km from the victim. It is difficult to provide general examples, as the measures must take into account personal and professional circumstances in order to avoid both parties from meeting. These prohibitions may be used separately or jointly. The competent judge is the one who analyses the circumstances of the case and decides which are the most adequate measures.

- b. What is the average scope of an order that prohibits someone to enter a certain area (one street, multiple streets, a village)?

There are no systematic data on this aspect. The scope may vary according to the type of area and the victim’s conditions. Also, the Action and Coordination Protocol of the Security Forces and the Judicial Bodies for the protection of victims of domestic and gender-based violence [*Protocolo de Actuación de las Fuerzas y Cuerpos de Seguridad y de Coordinación con los Órganos Judiciales para la protección de las víctimas de violencia doméstica y de género*]¹⁹ considers that it is convenient to establish a perimeter

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2. The Judge may exceptionally authorize the protected person to exchange the use of the family home co-owned with the accused, to which she is entitled, for the use of another home for the time and under the conditions determined, by arrangement with an agency, or public company where such an entity exists, whose activities include the renting of real estate.
 3. The Judge may place the accused under a restraining order, prohibiting him to approach the protected person at any place where she stays, go near her home, her workplace or any other place that she frequents.

Technological means may be used in order to immediately alert to non-compliance with such orders.

4. The restraining order can be imposed regardless of whether the person concerned or those it is intended to protect have already left the location.
5. The Judge may prohibit the accused from entering into any kind of contact with the person or persons specified, with the warning that he will otherwise incur criminal liability.
6. The measures referred to in the preceding sections may be decided on cumulatively or separately.

19 Action Protocol of the Security Forces and Bodies, including Coordination with the Judicial Bodies for the Protection of the Victims of Domestic and Gender Violence

that would enable a swift police response and avoid any visual confrontation between the victim and the accused. It adds that a distance of at least 500 meters seems appropriate.

- 11) a. Are there any legal limitations to the duration of protection orders? Do the orders always have to be issued for a specified or a determined period? And is there a maximum or minimum duration attached to the orders?

According to the Guide on the action criteria of the judiciary facing gender violence [*Guía de criterios de actuación judicial frente a la violencia de género*]²⁰, the maximum duration of the precautionary measures granted with the protection order depends on whether these are criminal or civil measures. In case of criminal measures, the maximum duration is of 5 years for minor crimes, 10 years for serious crimes and 6 months in case of petty offences. In case of civil measures, their validity is temporary (30 days); after which the judge must ratify, modify or cancel them.

- b. Which factors do legal authorities generally take into account when deciding on the duration of a protection order?

As explained above, the judge considers the circumstances of the facts and the hypothetical danger or risk for the victims.

- c. What is the average duration of the different protection orders (half a year, one year, two years)?

The reports and statistics provided by the Observatory against Domestic and Gender violence do not contain that information.²¹ We can however explain the general criteria established in the action protocols of the police.

The Action Protocol of the Security Forces and Bodies, including Coordination with the Judicial Bodies for the Protection of the Victims of Domestic and Gender Violence, describes how police forces should act in these cases and establishes how these should collaborate with the victims' lawyers so that they can obtain access to a protection order and other measures to which they are entitled. More

20 Guide on the action criteria of the judiciary facing gender violence [*Guía de criterios de actuación judicial frente a la violencia de género*]. Directed to the judges, procurators and lawyers, is not available in English. See the annex archive at the link: www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/Guias_y_Protocolos_de_actuacion/Guias/Guia_de_criterios_de_actuacion_judicial_frente_a_la_violencia_de_genero_2008

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²¹ The most comprehensive document containing statistical data on protection orders is the balance of five years of activity of the Courts of Violence against Women, but this does not contain this specific information. See: Observatorio contra la Violencia Doméstica y de Género/Consejo General del Poder Judicial. Datos estadísticos judiciales en aplicación de la I.O. 1/2004. Resumen de los 7 años (datos desde julio 2005 a junio 2012). Available only in Spanish: www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/Actividad_del_Observatorio/Informes_de_violencia_domestica/Balance_de_siete_anos_de_la_creacion_de_los_Juzgados_de_Violencia_sobre_la_Mujer_2005_2012

specifically, the "Police Protocol to evaluate the level of risk of violence against women in the cases covered by Organic Act 1/2004" establishes three levels of potential risk for the victims of gender violence and provides for a series of measures, arranged according to three levels, which the Police should take for the purpose of prevention and regardless of the measures which may be adopted by the court at a later stage. Among these measures, the following compulsory measures should be highlighted:

Level 1 (low risk):

- Providing the victim permanent contact telephone numbers (24 hours) with the nearest Security Forces.
- Sporadic telephone contacts with the victim.
- Informing the aggressor that the victim has police support for her protection.
- Recommendations on self-protection and ways to avoid incidents.
- Accurate information on the mobile remote assistance service.

Level 2 (medium risk): Measures of Level 1 plus:

- Regular monitoring at home, workplace and entrances and exits of schools.
- Accompanying the victims in as many proceedings, either judicial, administrative or for assistance, as it is required.
- Training the victim in self-protection measures.
- Seek to provide the victim with a mobile terminal (remote assistance service).

Level 3 (high risk): Measures of Level 1 and 2 plus:

- Continuous surveillance of the victim during the emergency, until the circumstances of the offender are no longer considered an imminent threat.
- Encouraging the victim to move to a support centre or to the home of a relative if she has not done so yet, at least during the first days and especially if the offender has not been arrested.
- Sporadic control of the aggressor's movements.

The evaluation of the risk is conducted periodically according to the objective risk assessed: every 7 days in case of high risk, every 30 days in case of medium risk and every 60 days in case of low risk. In the event that the situation is qualified as "extreme risk", the qualification of the risk must be reviewed every 72 hours²².

In case of discrepancies between the police protection measures agreed by the court and those which result from the police risk assessment, the measures decided by the court will always prevail and the

²² Guide on the action criteria of the judiciary facing gender violence [*Guía de criterios de actuación judicial frente a la violencia de género*], page 96.

judicial authorities will immediately be informed about the existing discrepancies in order to agree what it is most appropriate.

12) a. To what extent (if any) do the wishes of the victims influence the imposition of protection orders? Can victims, for instance, request the cessation of protection orders?

The competent judge is the one who decides whether or not the protection order is granted. (S)he must assess, as explained before, the circumstances of the case as a whole and the risk of danger for the victim. (S)he may grant the protection order *ex officio*. According to the data provided by the Observatory against Domestic and Gender Violence, a certain percentage of requests is not granted. Thus, from 2005 to 2012, the percentage of denied orders is the following:

<u>Percentage of protection orders denied</u> ²³							
2005	2006	2007	2008	2009	2010	2011	2012
19,39%	23,07%	24,94%	24,89%	30,26%	32,59%	34,20%	37,74%

However, the victim may withdraw the lawsuit, i.e. withdraw the complaint or formally abandon the lawsuit at any time of the proceedings. In these cases, as long as there is no judgment on the adoption of protection measures, the protection order would have no practical effect if the judge so decides.

The Observatory against Domestic and Gender Violence mentions in its statistics that 84.935 out of 735.760 complaints related to gender violence have been withdrawn since the creation of the Courts for Violence against Women 5 years ago.²⁴

These cases are complex and the victim is sometimes psychologically dependant on the aggressor to the point that the victim may wrongfully request the withdrawal of the protection measures. However, the judge is not obliged to follow the wishes of the victim and (s)he must assess whether there remains an objective risk for the physical or psychological risk for the victim in order to adopt a decision. One has to take into consideration that gender violence is qualified as a crime indictable *ex officio* (protection orders may be granted *ex officio* as well). Consequently, the renunciation of the victim cannot lead to the automatic termination of the proceedings since the renunciation does not bind the judge or the Public Prosecutor's Office.

b. In cases where a protection order is not directly requested by the victims, is there always an assessment of the victims' need for a protection order or do victims have to bring this up themselves?

23 *Observatorio contra la Violencia Doméstica y de Género/Consejo General del Poder Judicial. Datos estadísticos judiciales en aplicación de la L.O. 1/2004. Resumen de los 7 años (datos desde julio 2005 a junio 2012).* Page 6.

24 *Observatorio contra la Violencia Doméstica y de Género/Consejo General del Poder Judicial. Datos estadísticos judiciales en aplicación de la L.O. 1/2004. Resumen de los 7 años (datos desde julio 2005 a junio 2012).* Page 5.

As explained above, the procedure for adoption of the protection order contains different indicators to evaluate the needs of the victims.

c. Can victims influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?

As explained above, the adoption process of the protection order includes the hearing of the victim or of their legitimate representatives. After the intervention of the latter, the judge decides on the protection order and on the protection measures contained therein.

Article 69 of Organic Act 1/2004 on Comprehensive Protection Measures against Gender Violence states that the measures included in the protection order may be maintained beyond the issuing of a final judgment and during the process of any appeals lodged. In this case, the maintenance of the measures shall be expressed in the judgment.

13) a. Can offenders formally challenge/appeal the imposition of protection orders?

b. To what extent (if any) do the wishes of the offender influence the imposition of protection orders? Are, for instance, (disproportionate) disadvantageous consequences for the offender taken into account?

As in any state governed by the rule of law, any judicial decision may be appealed. In this regard, Article 44 of Organic Act 1/2004 on Comprehensive Protection Measures against Gender Violence attributes the competence for deciding the appeals to specialized sections, at criminal and civil level, created at the Provincial Courts. During the procedure and in case of appeals, the judge can maintain the protection order until the final judgment.

c. Can offenders influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?

The offender cannot influence the adoption of the protection order. As explained above, he is called during the first stage of the procedure, but subsequently the judge decides. The law obliges the judge to hear the victim, but as explained earlier, the protection order can be issued without being heard as a party.

14) To what extent (if any), do practical impediments (such as shortage of police personnel, lack of available resources in certain (rural) areas) to the enforcement of protection orders play a role in the decision to impose a protection order? Do legal authorities, for instance, refuse to impose certain protection orders, because they know their enforcement in practice is problematic or do they impose these protection orders anyway (e.g., for reasons of 'sending a message' to the offender)?

The judge is totally free in the adoption of protection measures, be they protection orders or other precautionary measures. We do not know of any pressures exercised on any judge or about measures adopted with caution for financial or any other reasons. There is a specific awareness in the judiciary and in the administrative authorities regarding gender violence issues, notably with respect to protection orders. The judges certainly deny protection orders when they feel like these are not necessary, but we do not think that is due to "practical" reasons.

15) Can previous protection orders be taken into account in other ensuing legal proceedings against the same perpetrator (e.g., as evidence of a pattern of violence)?

Article 61 of Organic Act 1/2004 on Comprehensive Protection Measures against Gender Violence, establishes that protection and security measures shall be compatible with any interim or precautionary measures adopted in civil (separation or divorce proceeding in which the existence of gender violence is discovered) or criminal proceedings (criminal proceedings initially started for reasons of, for instance, bodily harm, homicide or murder, during which the existence of gender violence is discovered). In these cases, considering the evidence of gender violence, the judge can decide, ex officio or at a party's request, to issue a protection order for the victim, as a precautionary and complementary measure to other measures. This article also establishes that in all proceedings relating to gender violence, the competent Judge shall, of his or her own motion or upon the request of the victims, the children, the persons sharing their home or under their guardianship or custody, the Public Prosecutor's Office or the Authority responsible for providing assistance or refuge to the victims, rule on the convenience of adopting the interim and precautionary measures, determining the duration of the same, as the case may be. Evidently, the existence or not of a protection order is important to evaluate the conduct of the aggressor, as the violation of such an order is in itself an offence, which will be added to the other offences under investigation.

Thus, there is a direct relation between the adoption of a protection order and the other proceedings that may exist, resolved or not, in which the same author may show a pattern of violence.

16) a. When a protection order is issued in a case of domestic violence, are the children automatically included in the protection?

The judge must assess who is to be included in the protection order (Art. 2(4) of Act 27/2003 on the protection order). (S)he shall take into consideration the existence of any children and assess the adoption of protection measures for them too. The judge hears the children during the proceedings, who must be heard separately from the aggressor. These measures, which are foreseen in Act 27/2003, are also laid down in the Code of Criminal Procedure.

The Spanish legislation establishes that during the hearings regarding the adoption of the protection order, the court shall adopt the necessary measures to avoid a confrontation between the suspected aggressor and the victim, her children and the other members of her family; to this end, the court may decide that the hearings will be held separately (Art. 544.ter.4 of the Code of Criminal Procedure).

As a general rule, meaning it can also be applied in cases of gender violence, art. 731 bis of the Code of Criminal Procedure states that the court, ex officio or at a party's request, may for reasons of utility, security or public order, as well as in cases where the appearance of an individual in any type of criminal procedure as defendant, witness, expert and especially in case of minors might be inconvenient or harmful, may decide that the relevant part of the proceedings will be carried out by means of videoconference or a similar system that allows for two-way visual and audio communication, according to the provisions of art. 229, paragraph 3 of the Organic Act on the Judiciary [*Ley Orgánica del Poder Judicial*]²⁵.

25 Organic Act 6/1985 of July 1st on the Judiciary. Consolidated tex. [*Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial*]. Available at: www.boe.es/buscar/pdf/1985/BOE-A-1985-12666-consolidado.pdf.
Not available in English.

Art. 229(3) of this Act regulates the use of videoconferences or similar systems during judicial proceedings. Not available in English.

It is after this procedure with a joint or separate hearing or through videoconference of the persons possibly affected by the protection order that the judge, when issuing the order, decides whether to include the children. There is no automatic inclusion, just as the protection order is not automatic. All this requires a reasoned judicial decision.

b. How is the order granted/implemented if the violent partner has visitation rights?

The Organic Act 1/2004 on Comprehensive Protection Measures against Gender Violence contains several provisions on this aspect. On the one hand, the judge may suspend the offender suspected of acts of gender violence from exercising parental authority, custody or guardianship with regard to the minors specified (Art. 65). On the other hand, the judge may order the suspension of the child visiting rights in the case of persons accused of gender violence (art. 66).

Just as the circumstances of each case must be taken into account when issuing the protection order and deciding whether the children should be included, the judge should rule in a reasoned decision whether or not to suspend visitation rights. Thus, there may be protection order that include the children, but do not suspend visitation rights.

c. Are there any problems with protection orders and custody/visitation decisions by the courts?

As far as criminal law regarding minors is concerned, these courts hear cases concerning violent crimes committed against the perpetrator's own descendants or against the children of his wife or partner. This also holds true when gender-based crimes are committed against minors or incompetent persons the perpetrator used to live with or whom his wife or partner has legal authority over as a legal or de facto guardian or as a foster parent. In the area of civil law, whenever gender-based violence has occurred, the Courts for Violence against Women hear cases concerning the determination of parentage, maternity or paternity or regarding the relationship between parents and their children. Similarly, they also hear cases intended to take or modify measures that matter to the family as a whole. These may exclusively concern the guardianship of under-age children or maintenance claims made by one of the parents against the other on behalf of under-age sons or daughters. Along the same lines, the courts decide if consent is required in case of adoption, and they hear cases of appeal against administrative decisions regarding the protection of minors.²⁶

Amongst the possible judicial measures laid down in Organic Act 1/2004 on Comprehensive Protection Measures against Gender Violence that are designed to protect and ensure the safety of the victims, some are of special interest to minors, such as the possibility to suspend the parental rights or the custody of minors of someone who is charged with gender-based violence, or suspend his visiting rights. The Organic Act 1/2004 on Comprehensive Protection Measures against Gender Violence distinguishes between acts committed against the wife or partner with whom the offender lives together and acts committed against his own descendants or those of the wife or partner or against minors or incapacitated persons who live together with the offender or are placed under parental authority, custody or guardianship of the spouse or partner of the offender.

In the latter case, the judge may suspend the perpetrator suspected of acts of gender violence from exercising parental authority, custody or guardianship with regard to underage victims and order the

²⁶ Art. 44 of Organic Act 1/2004 on Comprehensive protection Measures against Gender Violence, article 87 ter of Organic Act 6/1985, of July 1, on the Judiciary.

suspension of the child visiting rights in the case of persons accused of gender violence (Art. 65 and 66 of Organic Act 1/2004 on Comprehensive Measures against Gender Violence). The judge may suspend the perpetrator suspected of acts of gender violence against his/her spouse from exercising parental authority, custody or guardianship with regard to the minors. In this case the interests of the minor will be taken into account and the judge will decide on a case-by-case basis. There is no legal provision establishing in which particular cases the parental rights of the offender shall be suspended, so that the judge should weigh the interests concerned. Furthermore, it should be noted that these suspensions are provided for in the Chapter regarding judicial measures on victim protection and security and are thus aimed at the protection of the minor.

With regard to minors, Organic Act 1/2004 on Comprehensive Measures against Gender Violence modifies the Criminal Code and establishes that when the judge or court deems it is in the best interest of the minor or incompetent person, the accused may be declared unfit to exercise parental rights or the physical or legal custody, or act as guardian or foster parent. If the violence was perpetrated in the presence of minors, this is considered an aggravating circumstance (Arts. 153, 171 and 172 of the Criminal Code).

Moreover, minors are entitled to complete social security benefits. In cases where gender-based violence is alleged and a child maintenance order has been issued but no payments are made, the government guarantees payment of the allowance out of the social benefits guarantee fund (Organic Act 1/2004 on Comprehensive Measures against Gender Violence, Article 19 and Additional Provision 19).

17) a. Are so-called 'mutual protection orders' (i.e., protection orders that restrain both the victim and the offender) allowed in your country?

"Mutual protection orders" are not regulated in Spanish law. Exceptionally, the judge may establish precautionary joint measures for the victims and for the aggressors. In practice, "crossed complaints", in which both parties mutually accuse each other of violent conduct, may occur. In these cases, the circumstances of the case are analysed (for instance, the importance of the injuries to each of them, the physical magnitude, any use of arms, the existence of prior maltreatment, the existence of previous calls to the police or checking who called first). In sum, the genesis of the aggression will determine the decision of the judge that decides on the issuing of a protection order.²⁷

b. If not or if mutual protection orders are only accepted in particular cases, in which cases are mutual protection orders prohibited and what is the rationale behind this prohibition?

One example of these exceptional cases is when the electronic systems of positional control (the "home link") are applied to both the aggressor and the victim, so that they do not coincide in the same place.

18) a. Are protection orders provided free of charge?

Yes. The protection order is free of charge. Social services and institutions of protection of victims will provide the victims of domestic violence to whom they have provided assistance the application form for the protection order, by making available for this purpose the suitable information, forms and, where appropriate, telematic communication channels with the Judiciary and the Public Prosecution Office (Art.1(4) of Act 27/2003 on the protection order).

27 Guide on the action criteria of the judiciary facing gender violence [*Guía de criterios de actuación judicial frente a la violencia de género*], page 124.

b. If not, who has to pay for the legal costs/court fees?

Not applicable.

c. Can these costs/fees constitute an undue financial burden for the victim (and bar him/her from applying for a protection order)?

As explained above, the protection order is free of charge. Legal assistance for the judicial procedure is free for the victims of gender violence who prove they have insufficient means to initiate legal action, as stipulated in Act 1/1996 of 10 January on Free Legal Aid. According to Article 20 of Organic Act 1/2004 on Comprehensive Measures against Gender Violence, these victims have the right to be defended and represented free of charge by a lawyer or court representative in all administrative processes and proceedings that ensue directly or indirectly from the violence suffered. In such cases, a single legal counsel shall take on the defence of the victim. This right also covers the successors in interest in the event that a victim dies. In any case, all victims of gender violence who so request shall be guaranteed free, specialized legal services, immediately available, notwithstanding that if they are later refused entitlement to free legal aid they must pay the acting lawyer the fees corresponding to his or her intervention. Bar associations shall likewise take the necessary steps to allow the urgent appointment of a legal aid counsel in gender violence proceedings.

In general, the benefit of legal aid shall be recognized to those natural persons whose means and financial income, calculated annually from all sources and by family unit, do not exceed double the minimum inter-professional salary in force at the moment the application is submitted (Article 3(1) of Act 1/1996 on Free Legal Aid). As explained above, it shall not be necessary for the victims of domestic violence to provide sufficient initial evidence either that they lack sufficient means when applying for specialized free legal defence, in which case they shall be provided with this immediately, notwithstanding the fact that if their entitlement to this benefit subsequently is not recognized, they must pay the solicitor, and the barrister-at-law if one intervenes, the fees accrued (Art. 3(5) of Act 1/1996 on Free Legal Aid).

According to the Action and Coordination Protocol of the Security Forces and the Judicial Bodies for the protection of victims of domestic and gender-based violence [*Protocolo de actuación y coordinación de Fuerzas y Cuerpos de Seguridad del Estado y abogados ante la violencia de género*],²⁸ which further develops the content of Organic Act 1/2004 on Comprehensive Measures against Gender Violence, the bar associations shall establish on-call duty turns for the provision of this service; moreover, the attorney on call shall be available at all times, according to the conditions established by each bar, in order to ensure the victim's immediate legal assistance.

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²⁸ Action and Coordination Protocol by the Security Forces with the Judicial Bodies for the protection of victims of domestic and gender-based violence [*Protocolo de actuación y coordinación de Fuerzas y Cuerpos de Seguridad del Estado y abogados ante la violencia de género*]. Not available in English. See the annex archive at the link: www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/Guias_y_Protocolos_de_actuacion/Protocolos/Protocolo_de_actuacion_y_coordinacion_de_Fuerzas_y_Cuerpos_de_Seguridad_del_Estado_y_Abogados_ante_la_violencia_de_genero_regulada_en_la_Ley_Organica_1_2004_de_medidas_de_proteccion_integral_contra_la_violencia_de_genero

2.2.2. ENFORCEMENT OF PROTECTION ORDERS

If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law where and how protection orders are registered (question 1).

19) Where and how are protection orders registered?

The order of protection must always be registered in the Central Registry for the Protection of Victims of Domestic Violence (Article 1(10) of Act 27/2003 on the protection order).

Royal Decree 355/2004 of March 5th - repealed by Royal Decree 95/2009, of 6th February - regulated the operation of the Central Registry. Royal Decree 513/2005 provides access of the autonomous communities, through points of coordination previously designated for each of them, to the Central Registry, in order to ensure compliance with protection measures, be they temporary or final, agreed by the courts in their area of jurisdiction. Subsequently, Royal Decree 660/2007 of May 25th has allowed the access of Government delegations and sub-delegations to the necessary information to ensure the effective implementation of protection measures, be they temporary or final.

This registry, managed by the Ministry of Justice, is a database containing national penalties and security measures imposed on convictions for crimes or offences as well as protection measures and precautionary actions agreed in criminal proceedings on grounds of domestic violence. It provides information to: Family and Criminal Courts, the Public Prosecutor's Office, the Judicial Police, Autonomous Communities, Government delegations and subdelegations. The information is used to process the criminal and civil cases and, more specifically, to take, modify, implement and monitor protection and assistance measures.

20) a. Is the victim always informed of the imposition of a protection order and of the conditions that the offender has to comply with?

The victim is always informed (Art. 1(8) of Act 27/2003 on the protection order).

b. In what way is the victim informed? Does this happen automatically? By mail or letter?

The article 1.8 of the Act 27/2003 on protection order states that the order of protection shall be notified to the parties, and immediately communicated by the judge, using a full authenticated copy, to the victim and the public authorities which are in charge of taking the relevant protection measures, whether these apply to security, social assistance, legal, health, psychological support or otherwise. For this purpose, the regulations establish an integrated system of administrative coordination in order to ensure the agility of these communications.

The secretaries of the Courts and Tribunals shall transmit, by telematic or electronic means, or if this proves impossible, by fax or express mail, the protection orders to the coordination points designated by the relevant Autonomous Community within 24 hours following their adoption. They constitute the sole channel for notification of these decisions between the centres, entities, organisms and other relevant institutions in the field of social protection and the victims, in accordance with paragraph 8 of Article 544ter of the Code of Criminal Procedure.

The designated coordination point will provide the postal and electronic addresses, telephone and fax numbers, timetables as well as the persons responsible at the center, entity, organism or institution

which centralizes the information. In case of pluri-provincial Autonomous Communities, a specific connection point may be identified for each province.

The General Council of the Judiciary shall keep an updated list of the designated coordination points and provide full information with their modifications or updates to the Ministries of Justice, Employment and Social Affairs and the Interior, as well as to the Public Prosecutor's Office and the High Court of Justice, the Central Registry and the investigating courts of the relevant Autonomous Community.

21) Who is or which authorities are responsible for monitoring the compliance with protection orders? In other words, who checks whether these orders are violated or not?

The Observatory against Domestic and Gender Violence provided the impetus for the creation of the Monitoring Committee for the implementation of the Law governing Protection Orders for victims of domestic violence, covered in the Second Additional Provision of Act 27/2003 of July 31st.

On 22 July 2003, in view of the imminent adoption of the law by Parliament, this Commission was formed consisting of the institutions represented in the Observatory - Members of the General Council of the Judiciary, the Ministries of Justice, Labour and Social Affairs, Autonomous Communities with competence in the field of justice, the Ministry of the Interior and a representative from the Public Prosecutor's Office, the General Council of Lawyers, the National Bar Association, and the Federation of Municipalities and Provinces. This Monitoring Committee was responsible "for preparing general protocols with a view to implementing the protective order regulated under this Act, as well as the development of appropriate coordination instruments to ensure the effectiveness of protective and security measures adopted by judges and courts and by the competent government bodies."

Parliament approved Act 27/2003 on July 31st. The Commission approved the following on the same day:

a) The Protocol for the implementation of the protection order for victims of domestic violence [*Protocolo para la implantación de la orden de protección de las víctimas de violencia doméstica*],²⁹ which established the criteria for coordination between the Judiciary, the Security Forces and other government bodies responsible for providing responses in the security, legal, psychological, health and social areas as requested by the victim.

b) The Application Form for the protection order, available to all victims of domestic violence, which was distributed to all the institutions that under the statute are required to send to the Duty Court - and now also to the Court of Violence against Women - any formal complaints which are made.

The protocol and the application form were distributed by members of the Commission to the institutions and the people reporting to them and were posted on their respective websites.

The Commission at its meeting on 18 December 2003 approved:

29 Protocol for the implementation of the protection order for victims of domestic violence [*Protocolo para la implantación de la orden de protección de las víctimas de violencia doméstica*]. Not available in English. See the annex archive at the link: www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/Guias_y_Protocolos_de_actuacion/Protocolos/Protocolo_para_la_implantacion_de_la_orden_de_proteccion_de_las_victimas_de_la_violencia_domestica

a) The Guidelines of the system of communication between the judicial authorities and the judicial police which aimed to regulate or adjudicate a quick and safe procedure for communications between the judicial authorities and the judicial police for the sake of an effective and comprehensive protection of the victims of domestic violence. This document has been replaced by the “Action Protocol for the Security Forces, including coordination with the Judicial Bodies”, approved by the Monitoring Committee for the Implementation of the protection order at its meeting of 10 June 2004.

b) The Protocol for coordination between civil and criminal jurisdictions for the protection of victims of domestic violence: this establishes criteria for the effective coordination between both jurisdictions in order to provide effective protection to victims of domestic violence. Coordination between the two jurisdictions is intended to:

- Provide the victim with a comprehensive framework of protection, preventing the existence of conflicting resolutions,
- Provide family courts with adequate knowledge of the actions taken by pre-trial investigation courts in matters of domestic violence,
- Enable the Family Court to adopt the resolution within the legal time limit on the ratification, modification or revocation of the civil measures agreed in a protection order.

This document was distributed to the judiciary as a whole.

c) Regarding Administrative Coordination on welfare measures and social protection. Work is continuing on the development of the Coordination Points³⁰ that have been established by the Autonomous Communities, which are being constituted to receive notifications and communications from the competent authorities for the adoption of the appropriate social and welfare measures. The Autonomous Communities that have provided the Commission with Coordination Points have to this end established a number of offices for the Care of Victims and others at the Directorate-General for Women or the Women’s Institute of the respective Autonomous Community. The competent Courts and Tribunals have been notified of these Coordination Points.

d) The Commission has prepared a dossier on legal aid to victims of domestic violence and on the health care and protection resources that the Autonomous Communities make available to victims. The Commission at its meeting on 18 December 2004 approved the “Action and Coordination Protocol of the Security Forces and the Judicial Bodies for the protection of victims of domestic and gender-based violence”, as mentioned above. This protocol reflects the commitment of these institutions to achieve more effective protection for victims of gender-based violence, strengthening the presence in all judicial police units of officers of the Security Forces who specialize in the treatment of domestic and gender-based violence and regulating their actions to optimize protection. One of the main objectives of the protocol is the coordination between courts and the police to ensure quick and smooth communication between the two bodies to ensure the protection of victims. This protocol was adapted to the

30 see the list of Coordination Points in the annex at the link: www.poderjudicial.es/cgpi/es/Temas/Violencia_domestica_y_de_genero/La_orden_de_proteccion/relacionados/Puntos_de_Coordinacion

changes introduced by Spanish Organic Act 1/2004 on Comprehensive Protection Measures against Gender Violence, which was approved by the Technical Committee of the National Coordinating Committee of the Judicial Police on 28 June 2005.

In practice, at the police stations of the National Police, the Guardia Civil and the autonomic police in Catalonia, Basque Country and Navarre, depending on the competences of each corps, police units specialized in the protection of victims, which monitor the effectiveness of protection orders. However, these are only available in the major cities. In smaller cities and villages coordination is required between all police units, including the local police, which is done at the level of each autonomous community.

22) a. Which activities can the monitoring authorities undertake to check the compliance with protection orders? (e.g., GPS, extra surveillance, house visits, etcetera)

In fact all systems of control can be used to check the compliance of protection orders. The Action and Coordination Protocol of the Security Forces and the Judicial Bodies for the protection of victims of domestic and gender-based violence *regulates how* protection orders are monitored. It provides that mechanisms allowing a fluent and permanent communication between the victim(s) and the corresponding security corps or forces shall be established in order to have immediate access to all the necessary data to assess the risk at any moment. For that purpose and whenever possible:

- The said function will be assigned to specially trained personnel in assistance and protection of the victims of domestic violence.
- The victim will have access to a direct and permanent phone number in order to reach the assigned personnel to obtain individualized attention.
- The victim will benefit from technical mechanisms that allow a swift, fluent and permanent communication between the victim and the corresponding security forces and bodies, whenever the circumstances of the case and of the victim so require.

b. Which of these activities do they generally undertake in practice?

According to the Action and Coordination Protocol of the Security Forces and the Judicial Bodies for the protection of victims of domestic and gender-based violence, once the facts and the situation of risk are assessed, a decision is made on the necessity to adopt specific measures aimed at the protection of life, physical integrity as well as the rights and legitimate interests of the victim and their relatives. In this respect, the police may adopt the following measures in case of extreme urgency:

- Personal protection which, depending on the level of risk, may include permanent protection, 24 hours per day, by the police.
- Information / training on the adoption of self-protection measures
- Ensure that the victim is informed in a clear and accessible manner on the content, implementation and effects of the protection order, and of the other protection and security measures foreseen by the Act on Comprehensive Protection, as well as on the social services, victim care offices and coordination points that (s)he may have at her/his disposal.

On the other hand, the judge may include in the protection order any measure previously described that (s)he considers necessary. It should be noted that these measures are of urgent and temporary nature during the first 30 days; upon this deadline, the judge may ratify, modify or cancel them.

In case of discrepancies between the police protection measures agreed by the court and those which result from the police risk assessment, the measures decided by the court will always prevail and the judicial authorities will immediately be informed about the existing discrepancies in order to agree what it is most appropriate.³¹

c. If protection orders can be monitored with the help of technical devices (e.g., GPS), how often is this used in practice?

The Action Protocol on the implementation of the monitoring system by telematic means of the compliance of restraining orders in matters of gender violence [*Protocolo de actuación para la implantación del sistema de seguimiento por medios telemáticos del cumplimiento de las medidas de alejamiento en materia de violencia de género*]³² contains the following provisions. Since this means of control requires a “bodily intervention” (the electronic equipment must be put in the body of the person so that (s)he cannot take it off), its use is always granted by a judicial decision which indicates the duration of the measure. Also according to Article 68 of Organic Act 1/2004 on Comprehensive Measures against Gender Violence, the measure shall be adopted by means of a reasoned order justifying its proportionality and necessity and, in any event, with the intervention of the Public Prosecutor's Office and respecting the principles of objection, hearing and defence. Once the use of these means of control is decided upon, the registrar shall communicate the resolution, with immediate character and within 24 hours, to the territorially competent Security Forces and Bodies and to the centralized reception centers (Control Centers which are active 24 hours a day, 365 days a year) designated in each territory, by telematic means or by fax, with a receipt note. The Control Center shall include in its system the data of the victim, the aggressor, the police body responsible for the protection

31 Instruction no 10/2007 by the Secretary of State of Security approving the "Police Protocol to evaluate the level of risk of violence against women in the cases covered by Organic Act 1/2004 of December 28th and their notification to the Court and the Public Prosecutor's Office" [*Instrucción nº 10/2007, de la Secretaría de Estado de Seguridad, por la que se aprueba el "Protocolo para la valoración policial del nivel de riesgo de la violencia contra la mujer en los supuestos de la Ley Orgánica 1/2004 de 28 de diciembre", y su comunicación a los órganos judiciales y al Ministerio Fiscal*]. Available at: www.poderjudicial.es/cgpi/en/Subjects/Domestic_and_gender_violence/Guides_and_Protocols/Police_Protocol_to_evaluate_the_risk_level_on_grounds_of_violence_against_women_in_those_cases_under_organic_act_1_2004_of_28_December_Instruction_No_10_2007_by_the_Secretary_of_State_on_Grounds_of_Security

English version:

www.poderjudicial.es/cgpi/en/Subjects/Domestic_and_gender_violence/Guides_and_Protocols/Police_Protocol_to_evaluate_the_risk_level_on_grounds_of_violence_against_women_in_those_cases_under_organic_act_1_2004_of_28_December_Instruction_No_10_2007_by_the_Secretary_of_State_on_Grounds_of_Security

32 Action Protocol on the implementation of the monitoring system by telematic means of the compliance of restraining orders in matters of gender violence [*Protocolo de actuación para la implantación del sistema de seguimiento por medios telemáticos del cumplimiento de las medidas de alejamiento en materia de violencia de género*]. Not available in English. See: www.poderjudicial.es/cgpi/es/Temas/Violencia_domestica_y_de_genero/Guias_y_Protocolos_de_actuacion/Protocolos/Protocolo_de_actuacion_para_la_implantacion_del_sistema_de_seguimiento_por_medios_telematicos_del_cumplimiento_de_las_medidas_de_alejamiento_en_materia_de_violencia_de_genero

of the victim and the duration of the measure. The Control Center shall immediately send a request to the company in charge of the preparation of the corresponding devices. The installation of the equipment shall be done at the court where the measure was issued, upon its notification within the delay decided by the judicial authority.

Control devices may be installed at the victim's house. In this case, the Control Center shall contact the victim personally, agree on the time and place of the installation of the device for the victim (OLV), ask for information on the other contact persons (family, etc.) and clarify any doubts on the functioning of the system.

d. Are protection orders actively monitored or are they generally left up to the victim to report violations?

The police and the judiciary actively follow-up on the protection order. The Action Protocol on the implementation of the monitoring system by telematic means of the compliance of restraining orders in matters of gender violence [*Protocolo de actuación para la implantación del sistema de seguimiento por medios telemáticos del cumplimiento de las medidas de alejamiento en materia de violencia de género*] regulates the management of the alarms and incidents, while taking their gravity into account. For example, any incident that affects one of the components of the system, the entry of the aggressor in the exclusion zone or his getting closer to the victim and the zone of exclusion while losing signal are considered as serious incidents.

The police protection mechanism shall be activated whenever necessary and, overall, whenever the bracelet is broken, taken off or separated from its GPS, as well as when its battery is off.

The victim shall always be informed of any incident that may occur during the validity of the protection order. (S)he shall always be able to push the “panic” button whenever (s)he thinks that the aggressor is acting illegitimately. In these cases, the Control Center shall immediately contact the victim to assess the situation and adopt the relevant measures.

e. How do the monitoring authorities generally become aware of a violation of a protection order: through the victim or through pro-active monitoring activities?

As explained above, the authorities may become aware of a violation through the system, through monitoring activities or through the victim. According to the information provided by the General Council of the Judiciary, the victims presented 73.23% of the complaints during the first semester of 2012, while 11.75% of the complaints were presented as a result of injuries and 12.21% as a result of a police intervention. Only in 1.29% of the complaints were presented by relatives, and 1.51% by the assistance services.³³

23) a. Is contact with the offender initiated by the victim considered a breach to the protection order?

33 See: Consejo General del Poder Judicial. Estadística de Violencia de Género: Casi 340 denuncias diarias y 13.138 sentencias dictadas en España en el primer trimestre de 2012.. Available only in Spanish at:

www.poderjudicial.es/cgpj/es/Poder_Judicial/Consejo_General_del_Poder_Judicial/Sala_de_Prensa/Archivo_de_notas_de_prensa/Estadistica_de_Violencia_de_Genero_Casi_340_denuncias_diarias_y_13_138_sentencias_dictadas_en_Espana_en_el_primer_trimestre_de_2012

Any contact between the victim and the aggressor constitutes an infringement of the protection order, regardless of who provoked the contact. A protection order's infringement is a violation of a security or precautionary measure and it constitutes a crime defined by the Spanish Criminal Code and is punishable by 6 months to one year of prison (Art. 468 of the Spanish Criminal Code). Nevertheless, this article states that if the perpetrator does not violate a prison sentence, the sanction shall be a fine comprised between 12 and 24 months, except if this is an infringement upon one of the prohibitions imposed as accessory penalties, such as restraining orders. In these cases, if the prohibitions imposed by the judgement as accessory penalties – among them, a restraining order – are infringed upon, the sanction shall not be a sentence of 12 to 24 months, but prison from 3 months to one year, or community work from 90 to 180 days for domestic violence cases.

The Criminal Code punishes the infringement of the protection order by the aggressor, not by the victim.

b. What (if any) role does contact initiated by the victim him/herself play in establishing or proving a protection order violation?

The infringement of a protection order constitutes an objective fact, regardless of the role of the victim. Depending on what legal interest is protected (victim's indemnity or compliance with judicial decisions), what is affected is an inalienable public interest. In this respect, the consent of the victim is not relevant when determining the sanction for the infringement.³⁴

c. What (if any) role does contact initiated by the victim him/herself play in the official reaction to protection order violation? Are the authorities, for instance, less inclined to impose a sanction on the offender if the victim initiated contact him/herself?

If it becomes clear that a protection order is violated, the police must report this forthwith to the judge or court that has issued the order in order to decide what action is to be taken against the offender and inform the public prosecutor about this. If the offender is arrested for violating the restraining order or protection order, standard procedure for summary proceedings will be followed (preliminary investigation and placing the detainee at the disposal of the court). The detention will be registered in the PERPOL database (national police database containing alerts) as an offence known as "disobedience or disregard of the terms of a conviction or precautionary measure", as explained above (Art. 468 of the Spanish Criminal Code). This does not imply in any way that the judicial order has been cancelled or expired: only the court that has issued the order can decide this.

34 Report of the Expert Panel on Domestic Violence and Gender and the General Council of the Judiciary about the technical problems encountered in the implementation of Organic Law 1/2004 on comprehensive protection measures against gender violence, and the related procedural, substantive or organic regulations, including suggestions for relevant legislative reform [*Informe del Grupo de Expertos y Expertas en Violencia Doméstica y de Género del Consejo General del Poder Judicial acerca de los problemas técnicos detectados en la aplicación de la Ley Orgánica 1/2004, de medidas de protección integral contra la violencia de género, y en la de la normativa procesal, sustantiva u orgánica relacionada, y sugerencias de reforma legislativa que los abordan*]. Not available in English. See the annex archive at the link: www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/Grupos_de_expertos/Informe_del_Grupo_de_Expertos_y_Expertas_en_Violencia_Domestica_y_de_Genero_del_Consejo_General_del_Poder_Judicial_acerca_de_los_problemas_tecnicos_detectados_en_la_aplicacion_de_la_Ley_y_Organica_1_2004

If, once the offender is detained and put at the disposal of the courts, the judge or court involved should decide to issue a new restraining order or any other order including new restrictions on approaching or seeking contact with the protected person or persons, or if protection is extended to other people or places that were not included in the first order, either the existing order will be amended or a new order will be registered in the PERPOL database. A special statistical module will be used to collect information and to monitor and control data related to requests for protection orders, the issuing of restraining and protection orders, detention on the grounds of violating such an order, etc. It is worth noting that breaching a protection order is considered an aggravating factor in the Criminal Code.

In principle, the victim has no direct influence on the imposition or reinforcement of protective measures granted by a judge. However, the victim will be heard during the proceedings and her/his testimony will be taken into account.

The Women's Institute³⁵ recalls that the Supreme Court's case law used to consider that the woman's consent constituted necessary cooperation as it incited to the breach (STS of 26 September 2005). Nevertheless, this doctrine has evolved, so that the only person that may be liable for a breach of a criminal sentence or precautionary measure (depending on the nature of the measure) is the aggressor under the restraining order or prohibition of contact with the victim, since he is the subject of the measure. The woman's consent cannot exclude the criminal responsibility of the person who violates the measure or the accessory measure pursuant to the Decision of the Second Chamber of the Supreme Court of 25 November 2008.

24) a. Which evidentiary requirements have to be met before a violation of a protection order can be established?

As explained above, the violation of the protection order can be detected by the police, by the administrative and social services and by the victim or her/his family. The information concerning the violation must be sent quickly to the judge or the public prosecutor. Moreover, the protection order is in force although the person to be protected has left the shelter (Art. 64(4) of Organic Act 1/2004 on Comprehensive Measures against Gender Violence).

b. Which procedure(s) has to be followed in order for the protection order to be enforced after a violation?

In case of infringement of the protection order, the Spanish legal system foresees two types of consequences: first, the judge may adopt temporary measures or new precautionary measures that impose greater limitations on the aggressor within the criminal proceedings that acknowledge the violation of the measure; on the other hand, the violation constitutes a separate crime, defined by Article 468(2) of the Spanish Criminal Code (modified by Art. 40 of Organic Act 1/2004 on Comprehensive Measures against Gender Violence).

25) a. What are possible reactions/sanctions if a protection order is violated?

As explained above, the violation of a protection order constitutes a crime under the Spanish Criminal Code (Art. 468).

35 See: *Instituto de la Mujer. Violencia de género. Preguntas y respuestas*. Available at: www.inmujer.gob.es/en/conoceDerechos/preguntas/violencia.htm. Not available in English.

b. Are there only formal reactions/sanctions available, or are there also informal reactions possible to the breach of a protection order (e.g., a change of the conditions, a warning)?

As explained above, the breach of a protection order is a violation of a security or precautionary measure and constitutes a crime under the Spanish Criminal Code, punishable by a penalty of 6 months to one year of prison (Art. 468 of the Spanish Criminal Code). Nevertheless, this article states that if the perpetrator does not violate a prison sentence, the sanction shall be a penalty comprised between 12 and 24 months, except if this is an infringement upon one of the prohibitions imposed as accessory penalties, such as restraining orders. In these cases, if the prohibitions imposed by the judgement as accessory penalties – among them, a restraining order – are infringed upon, the sanction shall not be a fine of 12 to 24 months, but prison from 3 months to one year, or community work from 90 to 180 days for domestic violence cases.

c. Which (official or unofficial) reaction usually follows on a protection order violation?

As explained above, if it becomes clear that a protection order is violated, the police must report this forthwith to the judge or court that has issued the order in order to decide what action is to be taken against the offender and inform the public prosecutor about this. If the offender is arrested for violating the restraining order or protection order, standard procedure for summary proceedings will be followed (preliminary investigation and placing the detainee at the disposal of the court). The detention will be registered in the PERPOL database (national police database containing alerts) as an offence known as “disobedience or disregard of the terms of a conviction or precautionary measure”. This does not imply in any way that the judicial order has been cancelled or expired: only the court that has issued the order can decide this.

If, once the offender is detained and put at the disposal of the courts, the judge or court involved should decide to issue a new restraining order or any other order including new restrictions on approaching or seeking contact with the protected person or persons, or if protection is extended to other people or places that were not included in the first order, either the existing order will be amended or a new order will be registered in the PERPOL database. A special statistical module will be used to collect information and to monitor and control data related to requests for protection orders, the issuing of restraining and protection orders, detention on the grounds of violating such an order, etc. It is worth noting that breaching a protection order is recognized as an aggravating factor in the Criminal Code. Protection orders are free of charge.

In principle, the victim has no direct influence on the imposition or reinforcement of protective measures granted by a judge. However, the victim will be heard during the proceedings and their testimony will be taken into account.

d. In your opinion, are the sanctions/reactions to protection order violations ‘effective, proportionate and dissuasive’?

During the first trimester of 2012, the Courts on Violence against Women treated 2.034 cases of breaches of measures – restraining orders – that amounted to 6.2% of the total of their activity.³⁶ On the other hand, the total of deadly victims during 2010 was 73 and the total of deadly victims from 2003 to 2010 was 545, so that more than half of the women killed in Spain during that period were killed by

36 See: Consejo General del Poder Judicial. *Estadística de Violencia de Género: Casi 340 denuncias diarias y 13.138 sentencias dictadas en España en el primer trimestre de 2012.*

their partner or ex-partner. Of the 73 deadly victims in 2010, only 30.1% (22 women) filed a complaint against their aggressor. Thus, 17 deadly victims had requested protection measures, of which 14 obtained them.³⁷

These data demonstrate that, on one hand, women often do not use the legal resources that they have at their disposal to fight against gender violence. On the other hand, the percentage of deaths resulting from gender violence (14) of victims who requested protection measures (17) is very high. Nonetheless, we do not know how many women would have been killed in the absence of these legal resources, notably protection orders.

As a concluding remark, it is difficult to ascertain whether the responses to the breach of protection orders are really effective, proportionate and dissuasive.

e. Are reports of PO violations, such as emergency calls by the victims, automatically given priority (e.g., with the police)?

Gender violence is a crime punishable under Art. 173 of the Spanish Criminal Code and consequently, the Police may and must arrest and bring to justice any person suspected of having committed the aggression (Art. 492 of the Code of Criminal Procedure). The "Action Protocol of the Security Forces and Bodies, including Coordination with the Judicial Bodies for the Protection of the Victims of Domestic and Gender" describes how the different police forces should act in these cases. There is also the "Police Protocol to evaluate the level of risk of violence against women in the cases covered by Organic Act 1/2004 of December 28th", which establishes the risk indicators that the Police should take into account in order to adopt preventive measures to avoid the repetition of violent acts.

Pursuant to the "Action Protocol of the Security Forces and Bodies, including Coordination with the Judicial Bodies for the Protection of the Victims of Domestic and Gender violence", the Security Forces and Bodies must intervene from the very moment they learn about the facts that may constitute a criminal offence in matters of domestic and gender violence.³⁸ In particular, they must:

- Inform the victim of her/his right to legal assistance in accordance with Annex 1 of the Protocol.
- Immediately and exhaustively file the declaration of the victim and the witnesses, where relevant.
- In the event that there are indications of a criminal offence, urgently collect information from the neighbours, family members, co-workers, classmates, social services, victim care offices, etc. on the existence of any previous maltreatment by the suspect, as well as his personality and possible addictions.

37 *V Informe Anual del Observatorio Estatal de Violencia sobre la Mujer. Informe Ejecutivo. Madrid, 25 de noviembre de 2011. Page 3. Available only in Spanish at: www.uca.es/recursos/doc/unidad_igualdad/1693412868_1122011112649.pdf*

38 Action and Coordination Protocol of the Security Forces and the Judicial Bodies for the protection of victims of domestic and gender-based violence [*Protocolo de actuación y coordinación de Fuerzas y Cuerpos de Seguridad del Estado y abogados ante la violencia de género*]. Page 5.

- Check the existence of prior police interventions and/or complaints in relation with the victim or the suspect, as well as the antecedents of the latter, and the possible injuries of the victim reported by the medical services.
- Check the existence of protection measures ordered previously by the judicial authorities in relation with the persons involved.

For that purpose, and in all cases, the existing data recorded in the Central Register for the Protection of Victims of Domestic Violence shall be consulted.

26) a. Is the violation of civil, administrative or other protection orders criminalized? In other words, is the violation of any protection order an offense in itself?

As has been explained throughout this report, a protection order's infringement is a violation of a security or precautionary measure and it constitutes a crime under the Spanish Criminal Code, punishable by a penalty of 6 months to one year of prison (Art. 468 of the Spanish Criminal Code).

According to Spanish law it cannot be stated that the protection order is exclusively criminal in character, as the included measures may also be civil in character. However, the violation of the criminal measures included in the protection order is a criminal offence.

b. If so, what is the range of sanctions (minimum and maximum penalty) attached to a violation?

As explained above, infringing a protection order, as a violation of a precautionary measure, is punishable by 6 months to one year of prison (Art. 468 of the Spanish Criminal Code). Nevertheless, this article states that if the perpetrator does not violate a prison sentence, the sanction shall be a fine comprised between 12 and 24 months, except if this is an infringement upon one of the prohibitions imposed as accessory penalties, such as restraining orders. In these cases, if the prohibitions imposed by the judgement as accessory penalties – among them, a restraining order – are infringed upon, the sanction shall not be a penalty of 12 to 24 months, but prison from 3 months to one year, or community work from 90 to 180 days for domestic violence cases.

c. If so, how do the police generally react to a violation of a civil, administrative or other protection order?

Pursuant to the “Action Protocol of the Security Forces and Bodies, including Coordination with the Judicial Bodies for the Protection of the Victims of Domestic and Gender violence”, the Security Forces and Bodies must intervene from the very moment they learn about facts that may constitute a criminal infraction in matters of domestic and gender violence.³⁹ In that case, the “Action and Coordination Protocol of the Security Forces and the Judicial Bodies for the protection of victims of domestic and gender-based violence” applies, and the judge and the Public Prosecutor’s Office are informed about the violation of any aspect of the protection order. Moreover and as explained before, another way to be informed about the violation of a protection order is the use of telematic control systems .

d. If not, can the victim still call in the help of the police and how do the police react?

39 Action and Coordination Protocol of the Security Forces and the Judicial Bodies for the protection of victims of domestic and gender-based violence [*Protocolo de actuación y coordinación de Fuerzas y Cuerpos de Seguridad del Estado y abogados ante la violencia de género*]. Page 5.

As has been explained, the victim may call the police, the court or the Public Prosecutor's Office. The Action Protocols already explained above are automatically activated.

- 27) a. Is the monitoring authority capable of issuing a sanction following the breach of the order or does the authority have to report the violation to another authority in order for the sanction to be issued?

The monitoring authority (be it a policeman, a victim protection service or the telematic Control Center) must inform the judge about the protection order's infringement and, where applicable, detain the perpetrator since the violation of a protection order constitutes a crime under the Spanish Criminal Code.

- b. If so, are they obliged to report all violations or do they have a discretionary power not to report violations?

Since it constitutes a specific crime under the Criminal Code, with an objective character, and there is no discretionary power to report or not to report the protection orders' violations; each public authority must inform and report the violation to the court and Public Prosecutor's Office.

- c. If so, how is this discretionary power used in practice?

Not applicable.

- 28) Do monitoring authorities receive training in how to monitor and enforce protection orders?

In accordance with the stipulations of Organic Act 1/2009, which modified the Organic Act on the Judiciary, section 3 bis is introduced and Article 329 in section 5 is modified in the following terms: "3 bis. Those who obtain a post, through competitive examination or promotion, at the Courts for Violence against Women, the Courts for Criminal Matters specialising in gender-based violence or at criminal or civil sections specialising in gender-based violence are obliged to participate, prior to taking possession of their new post, in the specialized training activities in gender-based violence established by the General Council of the Judiciary."

As a development of this provision, the following guidelines were adopted: "Essential criteria that must govern the compulsory training activities aimed at judges and magistrates assigned to Courts for violence against women, Courts for criminal matters specializing in gender-based violence or criminal or civil sections specializing in gender-based violence (approved at the plenary session of the Council of the Judiciary on 17 May 2010)".⁴⁰ These guidelines include a plan of specific training in matters of gender

40 Observatory on Domestic and Gender Violence. "Essential criteria that must govern the compulsory training activities aimed at judges and magistrates assigned to Courts for violence against women, Courts for criminal matters specializing in gender-based violence or criminal or civil sections specializing in gender-based violence (approved at the plenary session of the Council of the Judiciary on the 17th of may 2010) [*Crterios básicos que han de regir las actividades obligatorias de formación para los Jueces/zas y Magistrados/as destinados en Juzgados de Violencia sobre la Mujer, en Juzgados de lo Penal especializados en violencia de género o en Secciones penales y civiles especializadas en violencia de género (Aprobados por acuerdo del Pleno del CGPJ de 17 de mayo de 2010)*]. Available in Spanish and in English at:

www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/Actividad_del_Observatorio/Formacion_previa/relacionados/Essential_criteria_that_must_govern_the_compulsory_training_activities_aimed_at_Judges_and_Magistrates_assigned_to_Courts_for_Violence_against_Women_Courts_for_Criminal_matters_specialising_in_gender_based_violence_or_Criminal_or_Civil_Sections_spec

violence, comprising a theoretical programme and a practical training at the specialized courts. They apply to all judges in charge of gender violence issues and consequently, responsible for decisions on protection orders. The courses are intensive and last 10 days.

As for the police forces (national, regional and local), each of the police bodies has its own training system. Thus, the Institute of Police Studies [*Instituto de Estudios de Policia – I.E.P.*] is the entity in charge of the National Police's training. The training of the Guardia Civil takes place at the Aranjuez Academy of Officials [*Academia de Oficiales de Aranjuez*]. The regional police forces in Catalonia, Navarre and the Basque Country have Police Training Schools that also train the local police of these Autonomous Communities. All these centers offer periodically updated training courses in matters of gender violence.

2.2.3. TYPES AND INCIDENCE OF PROTECTION ORDERS

*This section inquires after the presence of (empirical) studies into the **nature and incidence** of protection orders in your country. If such studies have been conducted, please refer to these studies and give a brief (English) summary of the research design, methods and most important outcomes of the studies in an appendix.*

- 29) Is there any (empirical) information available on the number of protection orders imposed on a yearly basis in your country? How often are protection orders imposed on a yearly basis? Please distinguish per area of law

The Observatory on Domestic and Gender Violence periodically publishes statistics on gender violence. Among them, there are quantitative data on the issuance of protection orders. The statistics are published quarterly classified by High Courts of Justice, provinces and judicial districts about reported crimes, protection orders, adopted measures, indicted people and the final result of the procedures. Moreover, the Observatory publishes quarterly report and annual reports. The last one is the 2012 Report, which includes the data on 2011. The website of the Observatory contains statistics about gender violence, the activities of the specialized courts, protection orders, etc.⁴¹

The website of the Ministry of Health, Social Services and Equality, offers the last global data for 2013.⁴²

The answer to the next question contains information concerning the criminal and civil measures.

[ialising in gender based violence Approved via the plenary session of the CGPJ on the 17th of May 2010](#)

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☐ See the website of the Observatory on Domestic and Gender Violence: www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/Actividad_del_Observatorio

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☐ See the website of the Ministry of Health, Social Services and Equality for the last data on 2013. Not available in English. www.msssi.gob.es/ssi/violenciaGenero/portalEstadistico/docs/Ultimos_datos_30Junio2013.pdf

30) a. Which types of protection orders (no contact, prohibitions to enter an area, eviction from the family home, other) are imposed most often?

To offer a concrete and complete picture, we should carry out a field study on the imposition of protection orders since 2003, but this would exceed the scope of this study. However, we can provide information about protection orders issued during the first semester of 2013, which are the most recent data. Based on these, the following conclusions can be drawn:

The measures most applied are, in this order: restraining order, no contact injunction, obligation to pay maintenance, assignment of the family home, expulsion from the family home, withdrawal of the permit to use arms, prohibition to go back to the residence of the victim, suspension of child custody, suspension of visits, and imprisonment. As a general rule, the criminal measures are applied much more often than the civil ones.

This is shown by the data of the General Council of the Judiciary [*Consejo General del Poder Judicial*] in the following table (only available as an image, which cannot be translated to English).

MEDIDAS PENALES DERIVADAS DE LAS ÓRDENES DE PROTECCIÓN Y DE OTRAS MEDIDAS CAUTELARES (De Seguridad y Protección)¹²:

14.009 (De ellas han sido acordadas en el ámbito de la Orden de Protección 9.854, el 70%, y 4.155, el 30%, como Medidas Cautelares).

MEDIDAS PENALES	PRIVATIVAS DE LIBERTAD	SALIDA DE DOMICILIO	ORDEN DE ALEJAMIENTO	PROHIBICIÓN DE COMUNICACIÓN	PROHIBICIÓN VOLVER AL LUGAR	SUSPENSIÓN TENENCIA Y USO ARMAS	OTRAS
OP	130	678	3.719	3.696	580	694	357
MC	232	203	1.395	1.386	298	335	306
% Medidas Penales OP adoptadas sobre total OP adoptadas	2,8%	14,8%	81,1%	80,6%	12,7%	15,1%	7,8%

MEDIDAS CIVILES DERIVADAS DE LAS ÓRDENES DE PROTECCIÓN Y DE OTRAS MEDIDAS CAUTELARES (De Seguridad y Protección):

3.603¹³. De ellas 3.464, el 96%, han sido acordadas en el ámbito de la OP y el resto, 139 el 4%, como Medidas Cautelares)

MEDIDAS CIVILES	ATRIBUCIÓN DE LA VIVIENDA	PERMUTA VIVIENDA	SUSPENSIÓN REGIMEN DE VISITAS	SUSPENSIÓN POTESTAD	SUSPENSIÓN GUARDA Y CUSTODIA	PRESTACIÓN DE ALIMENTOS	PROTECCIÓN DEL MENOR PARA EVITAR UN PELIGRO O PERJUICIO	OTRAS
OP	950	27	142	10	316	1.160	51	808
MC	44	0	4	1	14	39	4	33
% Medidas Civiles adoptadas sobre total OP adoptadas	20,7%	0,6%	3,1%	0,2%	6,9%	25,3%	1,1%	17,6%

¹² Cada resolución puede incorporar más de una medida.

¹³ Se mantiene la baja proporción de las medidas cautelares civiles respecto de las penales.

b. Which combinations of protection orders are most often imposed?

No combined information is available on these aspects. In the statistics above, the Observatory against Domestic and Gender Violence already indicates that each measure may be accompanied by others, but it does not cross data.

31) For which types of crimes are protection orders generally imposed (IPV, stalking, rape, other)?

This information is not available. The General Council of the Judiciary offers information on the number of cases judged by the Courts on Violence against Women, but it does not indicate if protection orders were issued. Moreover, a distinction is made between misdemeanours (minor illicit acts) and crimes (serious illicit acts).

The misdemeanours in gender violence matters include two types of criminal offences: minor injuries and maltreatment, as described below:

YEAR	TOTAL MISDEMEANOURS	MALTREATMENT	% Maltreatment / total	INJURIES
2 sem 2005	4.833	1.163	24%	2.064
2006	10.181	2.984	29,30%	4.040
2007	9.488	3.560	37,50%	3.946
2008	9.685	3.647	37,70%	4.287

2009	10.415	4.028	38,70%	4.649
2010	10.375	3.945	38%	4.879
2011	10.461	4.199	40,10%	4.681
1 sem 2012	5.704	2.574	45%	2.300
TOTAL	71.142	26.100	45%	30.846
	Increase 121%		Increase 11%	

As for the felonies, the following aspects must be taken into account:

DELITOS INSTRUIDOS (ART. 153, 173 Y 148 y ss del CP)

AÑO	TOTAL DELITOS	TOTAL LESIONES Y MALOS TRATOS	%	DEL ART. 153	DEL ART. 173	DEL ART. 148 Y SS DEL CP
2 sem 2005	61.118	26.290	43%	20.733	3.429	2.128
2006	125.497	55.042	44%	45.037	7.310	2.695
2007	136.873	90.958	66%	71.892	13.427	5.639
2008	148.213	100.908	68%	81.377	15.580	3.951
2009	142.867	111.313	78%	88.487	17.121	5.705
2010	139.522	108.569	78%	84.740	18.519	5.310
2011	141.228	110.495	78%	86.656	18.297	5.542
1 sem 2012	68.153	52.637	77%	41.917	8.217	2.503

Aumenta
102%

Aumenta
140%

Aumenta
18%

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Number of investigated crimes in decreasing order:

Injuries and maltreatment: 52.637. Article 153 CP (mental damage or injury not defined as a felony): 41.917. Article 173 (physical and psychological gender violence): 8.217. Article 148 and following (threats of any kind): 2.503.

We can also deduce from the statistics of the first semester of 2013⁴³ that the crime that generally accompanies gender violence cases is that of physical injury.

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⁴³ Consejo General del Poder Judicial. *Violencia sobre la mujer. Primer trimestre 2013*. Page 6. Not available in English. See the annex at the link: [www.poderjudicial.es/cgpj/es/Temas/Estadistica_Judicial/Informes_estadisticos/Informes_periodicos/ci.La violencia sobre la mujer en la estadística judicial primer trimestre de 2013.formato3](http://www.poderjudicial.es/cgpj/es/Temas/Estadistica_Judicial/Informes_estadisticos/Informes_periodicos/ci.La%20violencia%20sobre%20la%20mujer%20en%20la%20estadistica%20judicial%20primer%20trimestre%20de%202013.formato3)

TYPE OF CRIME INVESTIGATED⁹**CRIMES**

Injuries. Art. 153 CP	19.656	62,4%
Injuries. Art. 173 CP	3.544	11,3%
Against freedom	2.984	9,5%
Injuries. Art. 148 and following. CP	1.006	3,2%
Breach of measures	957	3,0%
Against moral integrity	689	2,2%
Breach of sentence	485	1,5%
Against family rights and duties	155	0,5%
Against sexual freedom and indemnity	206	0,7%
Homicide	22	0,1%
Abortion	2	0,0%
Fetal injuries	1	0,0%
Others	1.775	5,6%

Total 31.482

32) Is there any (empirical) information available on specific victim and offender characteristics?

a. Are protection orders generally imposed against male offenders on behalf of female victims?

Yes, the statistics of the first semester of 2013 (updated data) show that most of the persons affected by protection orders are men who committed aggression against women. We do not have more information than these judicial statistics, therefore, what can be deduced from these data is that protection orders are mainly imposed to protect women suffering aggressions.

PERSONS TRIED BEFORE THE COURTS ON VIOLENCE AGAINST WOMEN

	PERSONS JUDGED	CONVICTED	PERSONS	ACQUITTED	PERSONS
Men	4.431	2.405	796	1.052	178
Women	42	17	5	19	1
Total	<u>4.473</u>	<u>2.422</u>	<u>801</u>	<u>1.071</u>	<u>179</u>
Persons convicted:	Persons acquitted:				

b. Which percentage of the restrained already had a prior police record?

There are no detailed data available in this respect, but we can provide information about the control exercised through telephone and telematics services (GPS control). These data are recorded in the Annual Bulletin of Statistics of 2012 of the Government Delegation on Gender Violence.⁴⁴

Regarding the Telephone Service 016 for Information and Legal Assistance in Cases of Gender Violence, 353.392 calls of relevance were handled in the year 2012. The average number of monthly calls during 2012 was 152. On a daily basis, Monday is the day when most of the calls are made. 74% of the calls were made by the victim.

As for the Telephone Service for Care and Protection to victims of gender violence (ATENPRO), the number of users registered as of the 31 December 2012 was 9.045 women across Spain. The number of users increased compared with the year 2011 in the Autonomous Communities of Aragon, Galicia, Murcia and Catalonia.

With regard to the Monitoring System by Telematic Means of the Restraining Orders in Gender Violence Cases, there were 756 active devices employed in Spain as per 31 December 2012. Since the activation of the service, 772 restraining devices were installed.

c. Which percentage of the reestrained already had a previous protection order imposed against him/her?

It is difficult to draw conclusions in response to this concrete question to the extent that no statistics are available on the subject. The Report on deadly victims of gender violence and domestic violence killed by their partner or ex-partner in 2011 [*Informe sobre víctimas mortales de la violencia de género y de la violencia doméstica en el ámbito de la pareja o ex pareja en 2011*]⁴⁵ only provides information on cases in which the victim was murdered. According to these data, 26% of the deadly victims already

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▣ *La Delegación del Gobierno para la Violencia de Género. Informa. Boletín Estadístico Anual 2012.* Not available in English. See: www.msssi.gob.es/ssi/violenciaGenero/laDelegacionInforma/pdfs/BoletinEstadistico2012.pdf

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▣ Consejo General del Poder Judicial. Report on mortal victims of gender violence and domestic violence killed by their partner or ex-partner in 2011 [*Informe sobre víctimas mortales de la violencia de género y de la violencia doméstica en el ámbito de la pareja o ex pareja en 2011*]. Not available in English. It includes, in addition to information on violence against women, data on inverse violence (women against men). See the annex at the link:

www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/Actividad_del_Observatorio/Informes_de_violencia_domestica/Informe_sobre_victimas_mortales_de_la_violencia_de_genero_y_de_la_violencia_domestica_en_el_ambito_de_la_pareja_o_ex_pareja_en_2011

filed a complaint against their partner or ex-partner in the year 2011. It represents a slight decrease compared with the previous year, when the figure was 30%. 62% of the victims confirmed the complaint. 87.5% of the women requested protection measures, of which 78.5% were granted and 21.5% were denied. 7 victims benefited from restraining orders in force at the moment of death (47%); as for the 9 remaining victims (53%), either they did not benefit from restraining orders, or these measures were no longer in force at the moment of death. In the latter case, either the restraining orders were already terminated, or the victim had withdrawn the complaint. Of the 11 deadly victims with protection orders, a breach of the order occurred with the victim's consent in 37.5% of the cases and without her consent in 62.5% of the cases.

As of 14 February 2013, the Spanish Government decided to include information about gender violence in the National Plan of Statistics. As a result, the National Institute of Statistics will provide improved information in this regard. Nonetheless, it is too early to assess this change.

2.2.4. PROTECTION ORDER EFFECTIVENESS

*This section inquires after the presence of (empirical) studies into protection order **effectiveness** and the reaction to the violation of protection orders. If any such studies have been conducted in your country, please refer to these studies and give a brief (English) summary of the research design, methods and most important outcomes of the studies in an appendix.*

- 33) a. Is there any empirical information available on the effectiveness of protection orders in your country? Do protection orders stop or reduce the unwanted contact? Or do they have another effect (e.g. improve the well-being of the victims, change in the nature of the violence)?
 - b. Which percentage of the imposed protection orders are violated?
 - c. If protection orders are still violated, are there any changes in the nature of the violence (e.g., violent incidents are less serious)?
 - d. Is there any empirical information on the role that victims play in protection order violations (e.g., percentage of cases in which the victims themselves initiated contact)?
 - 34) Is there any empirical information available on factors which significantly influence the effectiveness of protection orders, either in a positive or a negative way?
-

35) Is there any empirical information available on the formal and informal reaction of the enforcing authorities to violations?

- a. How often (what percentage) do violations lead to a formal reaction?
- b. How often (what percentage) do violations lead to an informal reaction?
- c. How often (what percentage) do violations lead to no reaction?

There is no specific and reliable information available to answer these questions, as indicated earlier. As of 14 February 2013, the Spanish Government decided to include information about gender violence in the National Plan of Statistics. As a result, the National Institute of Statistics will provide improved information in this regard. Nonetheless, it is too early to assess this change.

2.2.5. IMPEDIMENTS TO PROTECTION ORDER LEGISLATION, ENFORCEMENT AND EFFECTIVENESS

36) Which impediments are present in your country when it comes to:

- a. Problems with protection order legislation

The legal provisions are scattered across various acts. As explained above, there are many laws that regulate the protection order, from Act 27/2003 on the protection order to Organic Act 1/2004 on Comprehensive Measures against Gender Violence. Both modify the Criminal Code and they are vital to ensure the effectiveness of protection orders. In addition, the Criminal Code, the Civil Code and autonomic laws provide further complementary rules on the protection offered to victims of gender violence.

- b. Problems with protection order imposition/issuing/procedure

The Protocols for the application of protection orders, contrary to the legislation, are very detailed and efficient (they have been analysed throughout the report). In the end, these are the instruments that regulate police action, as well as the coordination between the police, the judiciary and the attorneys when it comes to issuing and monitoring protection orders.

However, there still is an important number of female victims of gender violence who do not file complaints against their aggressors, or who are willing to forgive the aggressor once the situation of violence is detected and intend to terminate the protection measures. There is a fear among the women victims of gender violence that the complaint will provoke greater violence.

It should also be noted that considerable specialisation is required for the legal implementation of protection orders and that numerous protocols have been adopted which are applied differently depending on the way they are developed by the respective autonomous communities. This hinders a proper knowledge and implementation of protection orders when it comes to ensuring an effective protection of the victims, especially when they move between territories that adopt similar measures, but which monitor the execution of protection orders in a different way.

c. Problems with protection order monitoring

As explained above, the Protocols for the application of protection orders are very detailed. They also regulate the monitoring phase, be it physically or by telematics means, as previously explained.

d. Problems with protection order enforcement

The most important problem as regards the enforcement of the protection order relates to the victim's withdrawal of the complaint. Indeed, insofar as we are dealing with a measure of objective character, the judge and the Public Prosecutor's Office must assess whether they should maintain the protection or if there are sufficient and reasonable motives for the measure to be withdrawn. The objective character of the protection order is surely important, meaning the judge can even issue it ex officio. But the victim must be heard and if in practice she resists adoption of the protection order, the indications of risk must be considerable for the judge to issue a protection order.

In order to facilitate the judicial decision, there is also the Common Protocol for Sanitary Action in response to Gender Violence [*Protocolo Común para la Actuación Sanitaria ante la Violencia de Género, adoptado por la Comisión Contra la Violencia de Género del Consejo Interterritorial del Sistema Nacional de Salud*]⁴⁶, which regulates the action of the emergency services in order to evaluate the dangers or risks to the potential victim. For that purpose, a number of elements are taken into account, such as psychological aspects. It also includes indicators to assess with precision the required level of sanitary assistance and to detect violence, even when the victim does not recognize its existence. The Protocol establishes an action plan; the data collected in this phase may be used during the corresponding police or judicial proceedings. The victim's access to the social, police and judicial services is defined. It also includes a directory of telephone numbers and telematic resources to contact the authorities in charge of gender violence.

The Good Practices Guide for the elaboration of psychological reports on child custody and visits in cases of gender violence [*Guía de buenas prácticas para la elaboración de informes psicológicos periciales sobre custodia y régimen de visitas de menores adaptada a casos de violencia de género (2013)*]⁴⁷, is also useful, since in most cases the victim also has children or people under her/his care, who also acquire the status of victim.

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☞ Common Protocol for Sanitary Action in response to Gender Violence [*Protocolo Común para la Actuación Sanitaria ante la Violencia de Género, adoptado por la Comisión Contra la Violencia de Género del Consejo Interterritorial del Sistema Nacional de Salud*]. Not available in English. See the Protocol at the annex archive at the link: www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/Guias_y_Protocolos_de_actuacion/Protocolos/Protocolo_comun_para_la_actuacion_sanitaria_ante_la_violencia_de_genero

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☞ Good Practices Guide for the elaboration of psychological reports on child custody and visits in cases of gender violence [*Guía de buenas prácticas para la elaboración de informes psicológicos periciales sobre custodia y régimen de visitas de menores adaptada a casos de violencia de género (2013)*]. Not available in English. See the annex archive at the link: www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/Guias_y_Protocolos_de_actuacion/Guias/Guia_de_buenas_practicas_para_la_elaboracion_de_informes_psicologicos_periciales_sobre_custodia_y_regimen_de_visitas_de_menores_adaptada_a_casos_de_violencia_de_genero_2013

e. Problems with protection order effectiveness?

In principle, if the Protocols are well applied by all the relevant authorities, protection is effective. The main problems are, on the one hand, the possibility for the victim to contact the aggressor, and on the other hand, the aggressor's violation of a restraining order (or other measure). The legal responses to these issues have already been discussed in this report.

37) In your opinion, what is/are the biggest problem(s) when it comes to protection orders?

The psychological dependency of the victims on their aggressors (partner or ex-partner) constitutes the most important obstacle to effectively adopting/implementing protection orders.

2.2.6. PROMISING/ GOOD PRACTICES

38) Which factors facilitate the:

- a. Imposition
- b. monitoring, and
- c. enforcement of protection orders?

In all cases, the existence of coordinating protocols is a good practice.

The fact that Organic Act 1/2004 on Comprehensive Measures against Gender Violence includes comprehensive and coordinated educational measures aimed at the media, the public administration, the health services, etc. is a good practice.

39) Which factors increase the effectiveness of protection orders? In your opinion, which factor(s) contribute most to the success of protection orders?

Protection orders are not 100% efficient but they contribute to a large extent to the protection of the victims of gender violence. The great dissemination of protection measures, internet access to any kind of information, protocols and forms, as well as the training courses aimed at the judiciary, the police and other relevant actors contribute considerably to the efficiency of protection orders.

40) What would you consider promising practices in your country when it comes to protection orders? Why?

In Spain, several awareness raising campaigns involving celebrities have taken place, using written and audiovisual media. They aimed at raising awareness and providing information on the protection measures offered to the potential victims.

In the last years, these campaigns have reflected a positive image of women who survived these situations of violence, in order not to re-victimize them and to show that it is possible to start a new life free of violence.

41) Do you have any recommendations to improve protection order legislation, imposition, supervision, enforcement and effectiveness?

A good document in this respect is the Report of the Expert Group on Domestic and Gender Violence of the General Council of the Judiciary [*Informe del Grupo de Expertos y Expertas en Violencia Doméstica y de Género del Consejo General del Poder Judicial acerca de los problemas técnicos detectados en la aplicación de la Ley Orgánica 1/2004*], adopted on 11 January 2011.⁴⁸ The Expert Group was created within the General Council of the Judiciary.

This report contains a critical analysis, carried out by experts on the subject, as well as technical recommendations to adopt changes in the current legislation. It is one of the most complete reports on the application of Organic Act 1/2004 on Comprehensive Measures against Gender Violence.

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⁴⁸ Report of the Expert Group on Domestic and Gender Violence of the General Council of the Judiciary [*Informe del Grupo de Expertos y Expertas en Violencia Doméstica y de Género del Consejo General del Poder Judicial acerca de los problemas técnicos detectados en la aplicación de la Ley Orgánica 1/2004 y en la de la normativa procesal, sustantiva u orgánica relacionada, y sugerencias de reforma legislativa que los abordan*], adoptado el 11 de enero de 2011. Not available in English. See the annex at

the link:
www.poderjudicial.es/cgpj/es/Temas/Violencia_domestica_y_de_genero/Grupos_de_expertos/Informe_del_Grupo_de_Expertos_y_Expertas_en_Violencia_Domestica_y_de_Genero_del_Consejo_General_del_Poder_Judicial_acerca_de_los_problemas_tecnicos_detectados_en_la_aplicacion_de_la_Ley_Organica_1_2004

2.2.7. FUTURE DEVELOPMENTS

42) Do protection orders feature at the moment in current discussions (in politics) on the protection of victims?

According to the information websites of the Ministry of Health, Social Services and Equality and of the Spanish Parliament, no proposals or bills are being discussed to change the legislation on the protection of victims.

43) a. Will the legislation/practice on protection orders change in the nearby future? Are there, for instance, any bills proposing changes to the current practice?

b. If so, what will change?

c. Are there at the moment any pilots in your country with a new approach to victim protection orders.

Spain offers comprehensive protection to the victims of gender violence under its legal system since the entry into force of Act 27/2003 on the protection order.

44) Which (if any) developments in protection order legislation or enforcement do you foresee in the nearby future?

The content of the European Union directives on the European Protection Order and the Protection of Victims should be further developed.

45) You have probably heard about the introduction of the European Protection Order (EPO). From now on, criminal protection orders issued in one Member State have to be recognized in another Member State. What is your opinion on the EPO? Which problems/possibilities (if any) do you foresee in the implementation of the EPO in your Member State? Make a proofreading

A European protection order is absolutely necessary to render effective the freedom of movement when women who benefit from a protection order issued in their own country exercise their right to freedom of movement. Moreover, the Union Treaties provides for the recognition of judicial decisions throughout the EU territory. It is not tolerable that, in the EU, a victim who was granted a protection order loses the guarantees that (s)he had in her/his home country depending on the level of protection offered in another Member State.

Nevertheless, there is a lack of coordination when it comes to the EU legislation, as the two directives on this subject matter that should be understood as complementary were not elaborated with this concern in mind.