



# THEN AND NOW IN THE SPANISH PROCEDURAL SYSTEM PROSECUTING VAW

**Dushanbe, 20 to 22nd October 2008**

*“WE SHOULD ASK OURSELVES NOT WHY FEW INDIVIDUALS COMMIT THESE ACTS,  
BUT WHY SUCH BEHAVIOR IS SO EXTENDED IN OUR SOCIETY”*

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## Some legal history

UNTIL 1975, ADULTERY COMMITTED BY A WOMAN WAS CONSIDERED A CRIME.

UNTIL 1975, AND FROM A LEGAL POINT OF VIEW, WOMEN WERE -IF MARRIED- IN FACT, DAUGHTER'S OF THEIR HUSBANDS. **THEY COULD DO NOTHING WITHOUT THEIR APPROVAL.**

UNTIL 1978, JUST BEFORE SPANISH CONSTITUTION, THE INEQUALITY BETWEEN MEN AND WOMEN WAS STABLISHED. SOMETHING NOT OFFICIALLY DISCUSSED.



## Some legal history

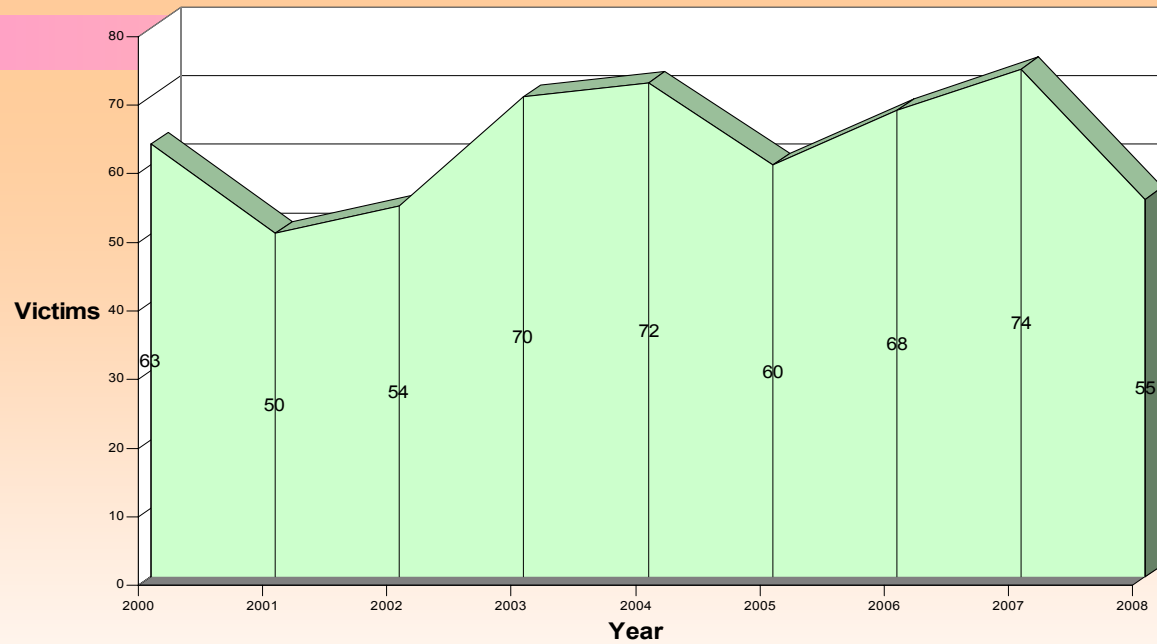
AFTER THE CONSTITUTION (DEC 1978), OUR *MAGNA CARTA* RECOGNIZES SUCH FUNDAMENTAL RIGHTS AS EQUALITY, LIBERTY, THE RIGHT OF ALL PEOPLE TO LIFE, AND TO PSHYSICAL AND MORAL INTEGRITY.

BUT THE REALITY, WITH SO MANY WOMEN KILLED BY THEIR PARTNERS, WAS SENDING A CRUEL MESSAGE: THAT TOO MANY WOMEN WEREN'T ABLE TO EXERCISE SOME OF THOSE FUNDAMENTAL RIGHTS.



## Some legal history

Killed Women in Spain



**Sonia Chirinos - Spanish Judge for  
Violence Against Women. Madrid,  
Spain**



## Some legal history

UNTIL 2004, SLAPPING, INSULTS, KICKS, ... FROM A HUSBAND TO HIS WIFE WERE NOT CONSIDERED CRIMES, BUT MISDEMEANORS.

IN PRACTICE, THERE WAS NO PUNISHMENT FOR THIS MISBEHAVIOUR.

WOMEN WERE ADVISED BY THE JUDGES, THE POLICE, EVEN THE FAMILY TO RETURN BACK TO HER HUSBAND. AND ... TO FORGIVE THEM.



Some legal history

MANY OF THOSE WOMEN WHO ONCE FORGAVE THEIR HUSBANDS, DRAMATICALLY WERE KILLED BY THEM AFTER A TIME.



Some legal history

UNTIL 2003,

IF A WOMAN REQUESTED PROTECTION FROM THE COURTS, IT WAS SHE WHO WOULD HAVE TO LEAVE THE HOME OF THE MARRIAGE

SINCE 2004,

IT IS THE MAN WHO MUST LEAVE THE FAMILY HOME IF THE JUDGE FINDS THERE ARE INDICATIONS OF MISTREATMENT



Some legal history

UNTIL 2004,

THE EXPRESSION “GENDER VIOLENCE”  
WASN’T ADMITTED IN JUDICIAL LANGUAGE.

THE ONLY EXPRESSION ADMITTED WAS  
“DOMESTIC VIOLENCE”. INTRODUCED IN THE  
SPANISH LEGAL DICTIONARIES AROUND  
2000. NOT YET IN THE LAW.





Since 2004 in Spain we have a Law called:

“CONSTITUTIONALLY BINDING ACT  
1/2004 ON INTEGRATED PROTECTION  
MEASURES AGAINST GENDER  
VIOLENCE”



## PRECEDENTS:

- INTERNATIONAL RECOMMENDATIONS (BEIJING CONFERENCE BETWEEN OTHERS...)
- SOCIALS
- POLITICALS



## THE MOST IMPORTANT ASPECTS OF THIS LAW ARE:

Defines Gender Violence for the first time in the history of the Spanish legislation

Gender Violence is defined as “the violence exercised against women by their present or former spouses or by a man with whom they maintain or have maintained similar affective relations, with or without cohabitation”. Art. 1



## BATTERY OF MEASURES

- Guarantee employment conditions in the private and public sectors.
- Guarantee economic rights for women suffering GV
- Establish a comprehensive system of institutional protection.
- Creates the Special Government Delegation on Violence Gender.
- Introduces important novelties on the procedural level.



At the penal procedural level, there is a Huge novelty:

The Law against VAW creates the Gender Violence Courts.

After 3 years, the number of specialised courts have been increased from 17 up to 83.



This Courts assume double competence:

CRIMINAL

CIVIL

WITH THIS DOUBLE COMPETENCE FOR THE NEW CREATED COURTS, WHAT THE LAW GUARANTEES IS "TO GIVE VICTIMS THE MOST IMMEDIATE, COMPLETE AND EFFECTIVE PROTECTION"



## CRIMINAL COMPETENCE

As Article 1.3 says:

“The gender violence to which this Act refers encompasses all acts of physical and psychological violence, including offences against sexual liberty, threats, coercion and arbitrary deprivation of liberty”



From the criminal perspective, the VAW Courts function as any other Instruction Criminal Court:

- Investigate the crime together with the Public Prosecutor.
- Decide prison time or provisional liberty.
- Prescribe protection orders.
- Decide the forensic exam of the victim.
- Hear witnesses, etc.
- For severe crimes once the judicial investigation is concluded, the case is submitted with all the conviction pieces to the Tribunal responsible for hearing the case.





VAW Judges develop a very important function deciding:

In Quick trials

Protection Orders



## CIVIL COMPETENCE

THE ESTABLISHMENT OF CIVIL COMPETENCE  
IN THE NEW COURTS IS ONE OF THE  
NOVELTIES OF THE LAW.



## LAW ADVANTAGES

HOW DOES OUR SPANISH LEGAL EXPERIENCE AFFECT THE VIOLENCE AGAINST WOMEN IN OUR CONTEXT?

THE TARGET OF THE LAW IS TO MAKE PUBLIC WHAT IT WAS A PRIVATE AFFAIR. *WE GOT IT.*

TARGET OF THE LAW IS TO MAKE EASIER LIFE OF VICTIMS, WHEN THEY DECIDE TO DENOUNCE. *WE ARE IN THE CORRECT WAY, AS THINGS ARE CHANGING.*



There is a before and an after for the victims.

- There is an action coordinated by all the implicated institutions (Judges, Prosecutors, Police...), Governments.
- Above all, there is a very strong social conscience against the fact that women continue dying at the hands of their partner.



RIGHT NOW IN SPAIN, WE KNOW THAT FOR A CERTAIN GROUP OF CRIMES (THREATS, MINOR COERCION, INJURIES...) THANKS TO THE "QUICK TRIALS" SYSTEM, WE ARE GIVING A QUICK ANSWER TO THE VICTIMS.

WE KNOW AT THE SAME TIME THAT THE SEVERE ANSWER THAT THE LAW GIVES TO THE "GV" ACTS, IS ONE OF THE CLUES OF THE SOLUTION OF THE PROBLEM



OF COURSE WE HAVE SOME CONTRADICTIONS...

THERE ARE PROBLEMS IN THE LAW ITSELF OR PROBLEMS THAT DERIVE FROM A SYSTEM OF CONSTITUTIONAL GUARANTEES.

THE PRINCIPLE OF PRESUMED INNOCENT STILL FAVORS THE ACCUSED.

MANY TIMES, THE VICTIM, EITHER THROUGH FEAR, ECONOMIC NECESSITY, OR FOR FAMILY REASONS DROP CHARGES.

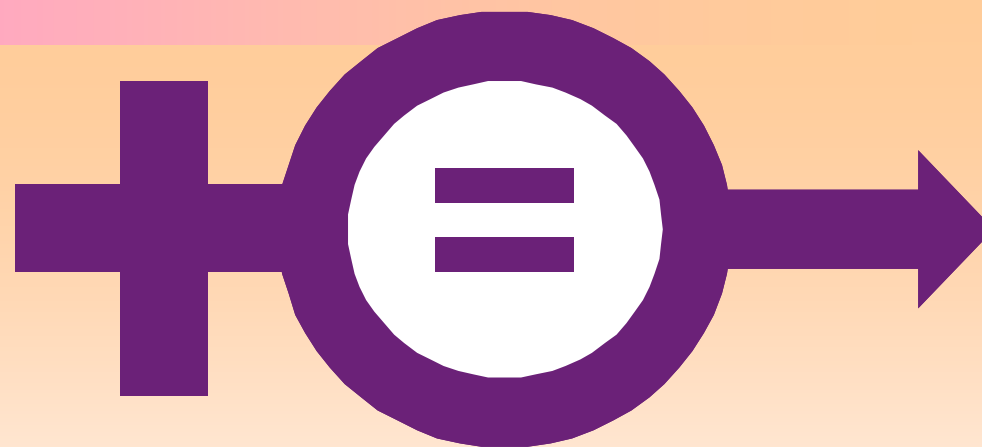


WE ALSO KNOW THAT THINGS CAN GO BETTER. BUT NOT WORST.

SO THAT'S OUR POSITIVE MESSAGE



For every woman who takes a step  
toward her own liberation



There is a man who rediscover the  
way to freedom