

# The Treatment of Gender Violence in the Spanish Administration of Justice: Implementation and Effectiveness of the Organic Act 1/2004, on *Integral Protection Measures Against Gender Violence*\*

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The objective of this article is to evaluate the efficiency and effectiveness of the successive legal reforms on gender violence including the Spanish Ley Orgánica 1/2004, of 28 December, on *Integral Protection Measures Against Gender Violence*. A perspective of 15 years from the passing of the LO 1/2004 will assess the progress of its implementation, in particular, its effectiveness in the fight against gender violence. More specifically, the paper will address the evolution of data related to the treatment of gender violence in the Administration of Justice from a comprehensive approach that will integrate both judicial decisions and the activity of the various organizations and people that work in the implementation of the law in this area.

*Keywords:* gender violence, protection of victims, effectiveness of legal reforms, women rights

The Spanish Organic Act 1/2004, of 28 December, on *Integral Protection Measures Against Gender Violence*, is, without doubt, the reform that has had the greatest impact in the fight the violence exercised against women in Spain. This Act concluded the reforms that were started in Spain in 1999, consolidated the path set out by the Act 27/2003, of 31 July, on the *Regulatory Order of Protection for Victims of Domestic Violence*, and shifted the focus of legal intervention from family violence to gender-based violence<sup>1</sup>. In addition, this Act incorporates primary, secondary, and tertiary prevention objectives geared towards eradicating gender-based violence for the first time. Despite all of this, the intervention against gender-based violence still continues to have a clear penal judicial dimension with this Act.

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<sup>1</sup> Art. 1.1 of the Spanish Organic Act 1/2004 stated that its purpose was to: “take action against violence which, as a manifestation of discrimination, inequality and relations in which men hold power over women, is exerted over women by those who are or who have been their spouse or partner, or those who are or who have been linked to them through similar, equivalent relationships, even if not co-habiting”. We have already seen the establishment of “comprehensive protective measures with the aim of preventing, punishing and eradicating this form of violence and providing assistance to women, their minor children and minors under their protection, guardianship or custody who have been victims of this type of violence”.

With regards to this issue, the Act constitutes a fundamental shift in terms of how gender-based violence is treated within the Spanish Administration of Justice. First of all, the Courts of Violence Against Women (Spanish: *Juzgados de Violencia contra la Mujer*) were created as a fundamental means of improving the judicial protection of victims of gender-based violence, and ensuring coordination in terms of their overall protection and security. These legal bodies are Specialized Courts created based on the Spanish Magistrates Courts (JI, Spanish: *Juzgados de Instrucción*), i.e., they are criminal jurisdictional bodies, but they will hold both criminal and civil power of jurisdiction. The Courts of Violence Against Women will take the relevant protective measures in cases where there is evidence of criminal actions and an objective risk to the victim. As previously mentioned, these measures may relate to criminal or civil proceedings. They may also take other social or labour-related measures for the purpose of providing comprehensive protection and security to victims of gender-based violence. In parallel with these, the Criminal Courts (JP, Spanish: *Juzgados de lo Penal*) and the Provincial Courts (AP, Spanish: *Audiencias Provinciales*) are also specialised exclusively in acquiring knowledge of the issues relating to violence against women.

By looking back over the 15 years since the Spanish Organic Act 1/2004 came into effect, we can assess the practical legal and institutional changes to intervention mechanisms designed to eradicate and prevent gender-based violence in Spain. In more concrete terms, the effectiveness of the main reforms introduced shall be evaluated, analysing the implementation of the Act's key aspects into the Spanish Administration of Justice. To this end, data have been collected from secondary sources between 2006 and 2016<sup>2</sup>, firstly analysing the gender violence accusations or complaints (Spanish: *denuncias*), secondly the measures taken to protect victims, and thirdly, the decisions made by legal bodies in application of this Act.

### Accusations of Gender Violence

The data recorded since 2007 show the contrast between the increase in accusations within the first few years that the Organic Act 1/2004 was in effect, probably a result of greater “visibility” with regards to gender-based violence in Spain, and a clear decrease in the number of accusations from 2009 onwards. This is a trend which adjusts from 2014 onwards, with an increase in accusations that begins to get quite major from 2016 onwards (see Figure 1).

If we analyse Figure 1 more closely, it is evident that there is a clearly decreasing trend line from 2008 to 2013. Even so, in 2013, there were an average number of around 125,000 accusations, which is much higher than the two years before the OA 1/2004 (Spanish Organic Act 1/2004, of 28 December, on *Integral Protection Measures Against Gender Violence*) was passed. That aside, the current figures are clearly above even those from 2007-2008, the years in which there was a significant increase as a result of the new legislation coming into effect. In more concrete terms, the slight upturn in 2014 and 2015 turns into a significant increase in 2016-2017, which can be seen clearly in Figure 1. From the lowest point (124,894 in 2013), the figures went up to 142,893 in 2016 and 166,260 in 2017, which forces us to rule out the theory that has been heard repeatedly regarding the decrease in accusations since the Act was passed.

<sup>2</sup> With regards to their implementation in the justice system, the Spanish Organic Act 1/2004 came into effect six months after its publication, in June 2005. As a result, the first year for which there is complete data is 2006.

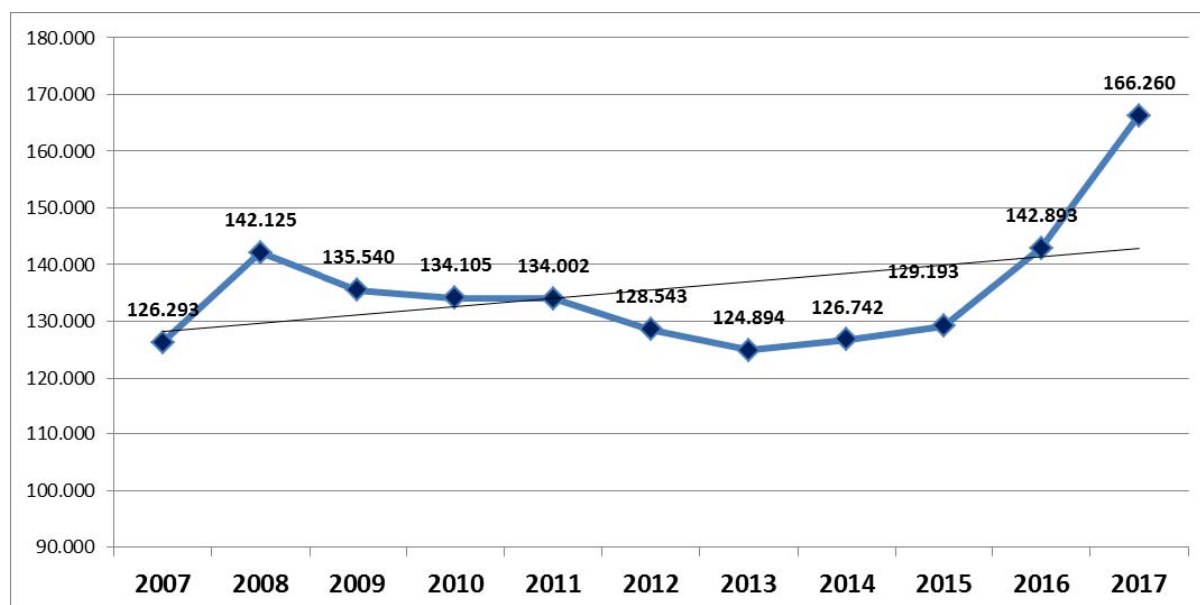


Figure 1. Accusations after OA 1/2004 came into effect (years 2007-2017).

Source: Preparing by the author based on data from the Spanish Women's Institute, [http://www.inmujer.es/estadisticasweb/10\\_Violencia/10\\_3\\_AmbitoJudicial/w851.xls](http://www.inmujer.es/estadisticasweb/10_Violencia/10_3_AmbitoJudicial/w851.xls).

The question that needs to be asked is whether the effectiveness of the Act, demonstrated by the increase in accusations, also translates into effectiveness when it comes to proving that gender violence is a social problem and not just a personal problem. To do so, we need to disaggregate the data regarding the origin of the accusations or reports (see Table 1).

Table 1

*Origin of Accusations or Reports (Years 2007-2017)*

		Reported directly by the victim in the Court	Reported directly by relatives in the Court	Police statement with accusation by the victim	Police statement with accusation by relatives	Police statement through direct intervention	Report of injuries	Support service and third parties in general	Total accusations
2007	N	14,166	463	83,601	964	13,072	13,321	706	126,293
	%	11.2	0.4	66.2	0.8	10.4	10.5	0.6	100
2008	N	13,672	869	90,724	1,606	17,576	16,528	1,150	142,125
	%	9.6	0.6	63.8	1.1	12.4	11.6	0.8	100
2009	N	10,872	451	87,635	1,436	17,445	16,138	1,563	135,540
	%	8.0	0.3	64.7	1.1	12.9	11.9	1.2	100
2010	N	11,158	487	86,760	1,697	18,137	14,640	1,226	134,105
	%	8.3	0.4	64.7	1.3	13.5	10.9	0.9	100
2011	N	12,082	450	83,693	1,092	19,633	15,290	1,762	134,002
	%	9.0	0.3	62.5	0.8	14.7	11.4	1.3	100
2012	N	10,495	435	82,127	1,189	17,372	14,743	2,182	128,543
	%	8.2	0.3	63.9	0.9	13.5	11.5	1.7	100
2013	N	12,270	625	75,767	1,247	18,222	14,363	2,400	124,894
	%	9.8	0.5	60.7	1.0	14.6	11.5	1.9	100
2014	N	9,769	651	78,758	1,421	18,984	15,029	2,130	126,742
	%	7.7	0.5	62.1	1.1	15.0	11.9	1.7	100

(Table 1 continued)

		Reported directly by the victim in the Court	Reported directly by relatives in the Court	Police statement with accusation by the victim	Police statement with accusation by relatives	Police statement through direct intervention	Report of injuries	Support service and third parties in general	Total accusations
2015	N	5,238	1,323	83,848	1,595	20,131	14,575	2,483	129,193
	%	4.1	1.0	64.9	1.2	15.6	11.3	1.9	100
2016	N	4,607	375	94,192	1,685	23,622	14,501	3,911	142,893
	%	3.2	0.3	65.9	1.2	16.5	10.1	2.7	100
2017	N	5,990	444	108,945	2,957	25,600	16,192	6,132	166,260
	%	3.6	0.3	65.5	1.8	15.4	9.7	3.7	100

Source: Preparing by the author based on data from the Spanish Women's Institute, [http://www.inmujer.es/estadisticasweb/10\\_Violencia/10\\_3\\_AmbitoJudicial/w851.xls](http://www.inmujer.es/estadisticasweb/10_Violencia/10_3_AmbitoJudicial/w851.xls).

If we refine the analysis of this data regarding the origins of accusations or reports, it must be noted first and foremost that the police statement with accusation by the victim is the main cause for proceedings being initiated; it is always above 60%, from 66.2% in 2007 to 65.9% in 2016, or 65.5% in 2017. The lowest it decreases to is 60.7% in 2007. Accusations reported directly by the victim or relatives are also a significant proportion, with a slightly decreasing trend (from figures above 11.5% in 2007, down to 3.9% in 2017).

In order to more clearly visualise the cases in which proceedings were initiated as a result of direct police intervention, we can refer to the figures for reports of injuries or communications provided by the support services and third parties in general in Figure 2. Here, we can clearly see an increasing trend in cases where proceedings were initiated as a result of direct police intervention and accusations by support services and third parties in general. This upward trend is the result of going respectively from around 10.4% in 2007, up to between 15.4% in 2017 and 16.5% in 2016, in the case of a police statement through direct intervention; and, in the case of accusations by support services and third parties in general, these have increased little by little from negligible figures, 0.6% in 2007, to 3.7% in 2017. In other words, accusations by support services and third parties in general have increased from 706 to 6,132 in 2017. This is a small increase in relative terms, but it is significant (although not enough) in terms of what it implies with regards to how well the early detection mechanisms are working and the involvement of society in the fight against gender violence.

One of the objectives of the OA 1/2004 was to promote awareness of gender violence as a social problem and not a personal problem for the victim, which is why progress was made in primary and secondary prevention measures, as well as tertiary prevention measures, which have been a particular focus up to this point. In addition, with a view to achieving real, comprehensive protection and security for the victims, there has been steady progress in the promotion of early detection mechanisms. However, in view of the results shown by the data obtained, it is clear that despite the timid progress made, these objectives have not yet been met in the first decade of the new legislation's application.

### Judicial Measures of Victim Protection and Security

Consistent legal protective measures in the form of restraining orders and prohibiting communication with the victim were introduced in 1999 in order to mitigate the deficiencies of a system which was accumulating a backlog of delays of over a year in responding to accusations made by the victim. In this context, such protective measures could be considered merely palliative, but they represented a significant point of

innovation and opened the door for developing measures geared towards comprehensive protection of victims, although these never quite managed to be fully operational at that time.

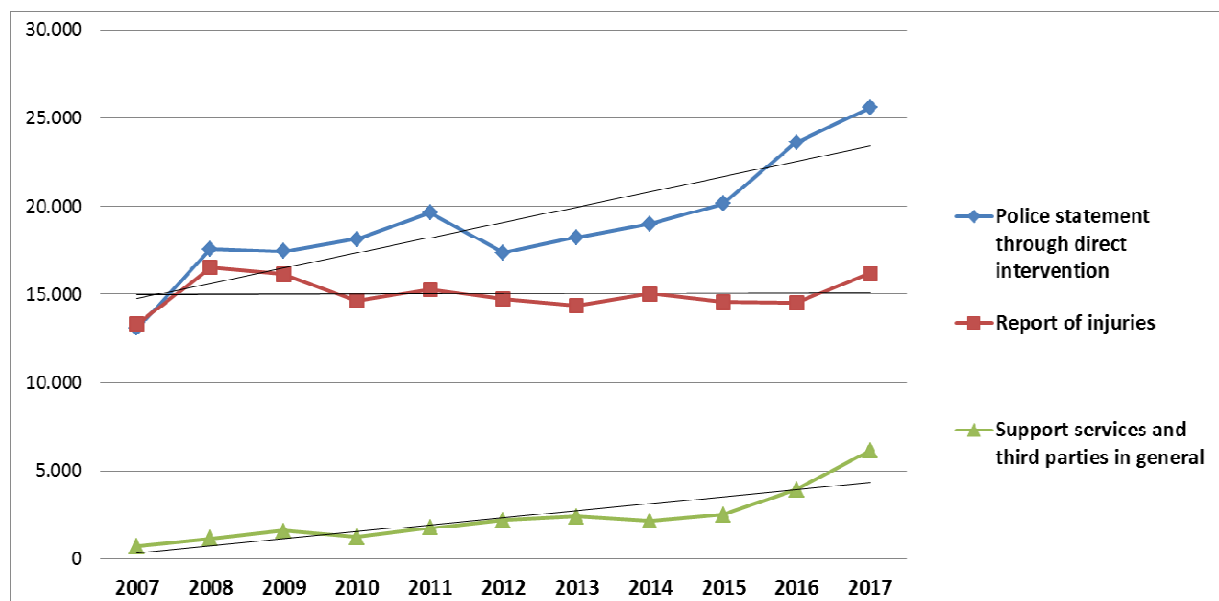


Figure 2. Initiation of proceedings by police statements through direct intervention, reports of injuries and by support services and/or third parties in general (years 2007-2017).

Source: Prepared by the author based on data from the Spanish Women's Institute, [http://www.inmujer.es/estadisticasweb/10\\_Violencia/10\\_3\\_AmbitoJudicial/w851.xls](http://www.inmujer.es/estadisticasweb/10_Violencia/10_3_AmbitoJudicial/w851.xls).

Protection measures for the victim improved considerably as a result of the legal reforms brought in 2003, particularly when the "Protection Order (PO)" (Spanish Act 27/2003 of 31 July) came into force. However, the substantial change in applying the protective measures was determined when the Organic Act 1/2004 of 28 December was passed: *Integral Protection Measures Against Gender Violence*. As already mentioned in the introduction, once the Integral Act came into effect, the Courts for Violence Against Women were given both judicial and civil powers and implemented protective measures of both types<sup>3</sup>.

The implementation of these judicial protective measures increased considerably between 2005 and 2008. However, in the years that followed, there was a marked decrease in the implementation of these protective measures, although it appears that in 2016, this downward trend was starting to change with a slight increase. With this in mind, it is also worth mentioning the low proportion of civil protective measures compared to the judicial measures, the former making up barely a quarter of these.

Table 2 and Figure 3 show this development. In particular, it is clear that there is a decreasing trend in protective measures implemented from 2010 onwards, until the figures start to stabilise from 2014, with a small upturn in 2016. Admittedly, the number of measures implemented is still significantly higher than the nominal amount of measures taken before these reforms. This decrease is mostly caused by the fact that fewer protective measures were taken based on requests for protection orders, although a slight decrease was also observed in legal measures taken by the Courts of Violence Against Women (see Table 2)<sup>4</sup>.

<sup>3</sup> A decision to implement a Protection Order may be made by the Magistrate for Violence Against Women, or by the Judge on Duty in accordance with the terms of Article 62 of OA 1/2004.

<sup>4</sup> In addition to measures derived from Protection Orders, which may be imposed at the request of the victim or the courts, Art. 544b of LECrim allows the Judge to impose legal protective measures.

Table 2

*Penal and Civil Protective Measures Implemented by Courts of Violence Against Women, via A Protection Order (Po) and via Other Rulings (Years 2006-2016).*

	Penal			Civil		
	With PO	Without PO	Total penal protect measures	With PO	Without PO	Total civil protect measures
2006	62,027	21,317	83,344	17,600	678	18,278
2008	70,955	21,916	92,871	22,318	1,306	23,624
2010	58,045	20,309	78,354	19,373	903	20,276
2012	47,001	19,705	66,706	15,505	669	16,174
2014	44,346	14,705	59,051	13,680	845	14,525
2016	41,581	19,277	60,858	15,363	1,122	16,485

*Notes.* Each ruling may incorporate more than one measure.

Source: Preparing by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

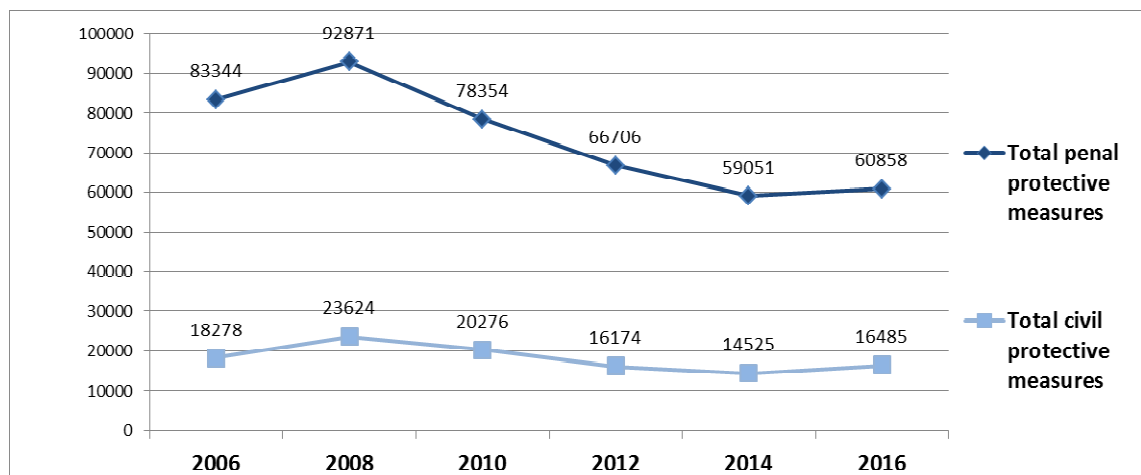


Figure 3. Judicial and civil protective measures implemented by Courts of Violence Against Women (years 2006-2016).

*Note.* Each ruling may incorporate more than one measure.

Source: Preparing by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

With regards to the civil measures, the first thing to highlight is the low proportion of civil protective measures compared to penal measures, with the former making up barely a quarter of these. It is also worth noting that, although it may be logical, there is a low number of legally imposed civil measures (see Table 4). In fact, the trends of civil protective measures run parallel to the judicial measures, although due to their smaller numbers, their inflections are not quite so pronounced (see Figure 3). The most common measures are the provision of food maintenance and housing allocation. Much lower figures are seen in the suspension of visiting arrangements and the suspension of guardianship and custody. The suspension of parental powers continues to be implemented in very few cases as a protective measure, although it may be an additional punishment. Another point to highlight is the low number of protection measures for minors<sup>5</sup> (see Table 4).

<sup>5</sup> These figures may be explained by the fact that until the reform in 2015, as amended by the Organic Act 8/2015 of 22 July, Amendment to the protection system for infants and adolescents, children were not visibly considered as victims of gender violence. After this reform, it was highlighted that they could be both direct and indirect victims.

Table 3

*Penal Protective Measures Implemented by Courts of Violence Against Women, via A Protection Order and via Other Rulings (2006-2016)*

		Year 2006	Year 2008	Year 2010	Year 2012	Year 2014	Year 2016
Custodial sentence	PO <sup>a</sup>	1,779	1,974	1,342	904	795	614
	MC <sup>b</sup>	1,421	1,126	1,010	832	568	618
Leaving residence	PO	5,153	4,896	3,955	2,905	2,468	2,206
	MC	1,217	1,565	1,191	1,172	1,021	1,098
Restraining order	PO	23,172	26,260	20,944	17,243	16,918	16,388
	MC	6,445	7,349	6,790	6,947	5,182	7,098
Prohibition of communication	PO	21,133	25,673	20,917	17,212	16,798	16,050
	MC	6,072	6,928	6,784	6,852	4,930	6,914
Prohibited from returning to scene of the crime	PO	5,034	5,362	3,965	3,228	2,217	1,917
	MC	2,449	2,074	1,558	1,348	1,229	1,329
Suspended from using or possessing weapons	PO	4,090	4,759	4,647	3,803	3,559	3,002
	MC	1,737	1,644	1,531	1,486	926	1,057
Other judicial measures	PO	1,666	2,031	2,275	1,706	1,591	1,404
	MC	1,976	1,230	1,445	1,068	849	1,163
Total	PO	62,027	70,955	58,045	47,001	44,346	41,581
	MC	21,317	21,916	20,309	19,705	14,705	19,277

*Notes.* <sup>a</sup> Protective measure requested by the victim via a Protection Order; <sup>b</sup> Protective measure legally imposed by a judicial body.

Source: Preparing by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

With this in mind, focusing once more on the judicial protective measures, Table 3 shows how these have been diversified. In 2016, the most significant measures in quantitative terms are still the so-called restraining order measures (37.4%) and the prohibition of communication (37.4%). Lower percentages can be seen in measures, such as leaving residence (5.9%), prohibited from returning to scene of the crime (5.8%), and other judicial protective measures (4.1%). Custodial sentence measures, on the other hand, only constitute 2.3%<sup>6</sup>.

Table 4

*Civil Protective Measures Based on Protection Orders and Other Protective Measures for Safety and Protection (2006-2016)*

		2006	2008	2010	2012	2014	2016
Housing allocation	PO <sup>a</sup>	5,458	6,606	5,653	4,266	3,972	4,411
	MC <sup>b</sup>	219	413	299	231	275	278
Transfer use of family home	PO	147	171	165	95	64	47
	MC	14	13	4	2	1	12
Suspension of visiting arrangements	PO	1,056	1,047	748	653	565	948
	MC	45	64	45	57	58	87
Suspension of parental powers	PO	101	85	76	76	56	110
	MC	18	4	3	3	6	11

<sup>6</sup> Detention and, where applicable, provisional detention may be imposed if the facts presented indicate an offence, regardless of the length of the sentence being imposed.

(Table 4 continued)

Suspension of guardianship and custody	PO	1,993	2,371	1,798	1,498	1,078
	MC	55	143	61	78	55
Food maintenance provision	PO	5,711	7,311	6,550	5,137	4,703
	MC	242	386	301	199	263
Protection of a minor	PO	112	170	283	182	240
	MC	6	61	21	9	35
Other civil measures	PO	3,022	4,557	4,100	3,598	3,002
	MC	79	222	169	90	152
Total	PO	17,600	22,318	19,373	15,505	13,680
	MC	678	1,306	903	669	845

Notes. <sup>a</sup> Protective measure requested by the victim via a Protection Order; <sup>b</sup> Protective measure legally imposed by a judicial body.

Source: Preparing by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

Once we have presented the array of agreed protection measures, both judicial and civil, we need to go back to the aforementioned question, i.e., after a considerable increase in the first few years after the legislation regarding the protection order was introduced, and in the first years of the OA 1/2004 being applied, how could the implementation of protective measures undergo such a significant decline (see Figure 4).

In principle, one might think that in accordance with the declining trend of data regarding accusations, the protection orders requested would also be fewer, and this would explain the decreasing figures with regards to measures being implemented. This is partially the case, as also shown in Figure 4; however, the decreasing trend is more pronounced due to the contrast between the decrease in protective measures requested via protection orders or agreed by the courts, and the increase in those that were refused or rejected. In fact, if we analyse more closely, it becomes even clearer—as can be seen in Figure 4.

If we look at the analysis of Protection Orders, it is not just the requests which have declined, which is immediately reflected in the number of Orders initiated, but the data also show variation in how the requested Protection Orders have been resolved. In 2006, Protection Orders were not just requested, but also granted as a general rule (Calvo-García, 2008). At the moment, as shown in Figure 5, we have gone from approved Protection Orders being higher than 75% in 2006, to figures closer to 55% in 2014, slightly increasing to approximately 62% in 2016. In general terms, it can be said that we are clearly facing a very pronounced decreasing trend.

Taking a step back from our analysis, after the reforms of 2003 and 2004, the most significant measures in qualitative terms are provisional detention and the measures of restraining orders and prohibition of communication. These show a clearly decreasing trend in all cases. Here, we are referring to the two most significant measures: custodial sentences and restraining orders which prevent the aggressor from coming within a specified distance of the victim. The former were initially a fairly major factor, but have progressively diminished quite considerably. Figure 6 clearly shows this decreasing trend, particularly with regards to custodial sentences based on a Protection Order, but less so in cases where the sentence was legally imposed by the Court as a protective measure.

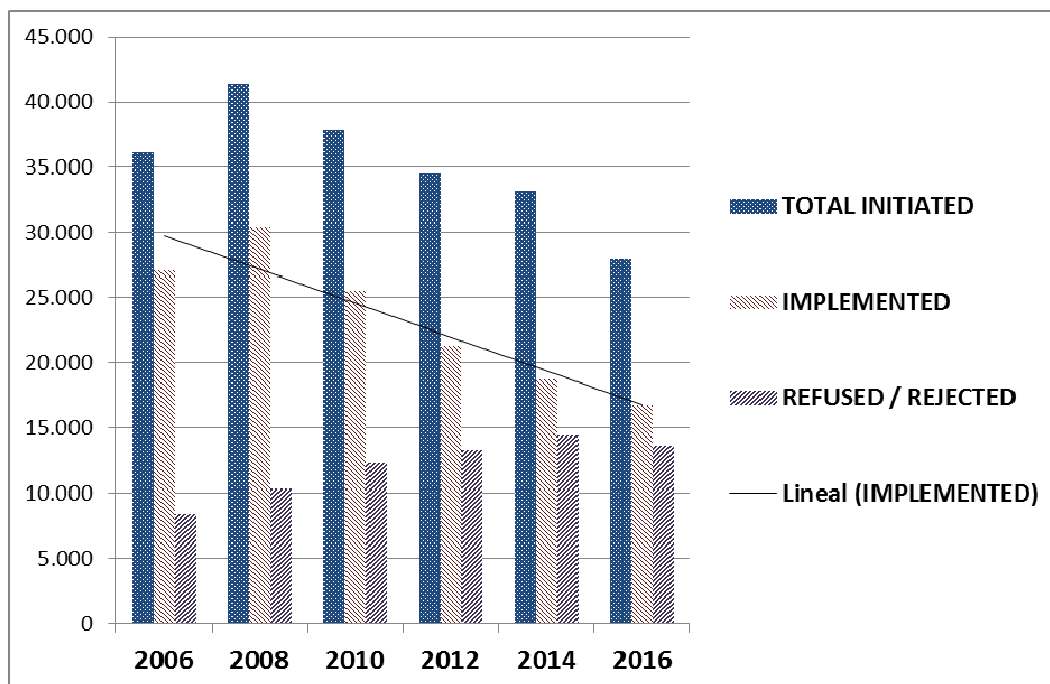


Figure 4. Development of protective measures initiated, implemented, refused or rejected (totals, 2006-2016).

Source: Prepared by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

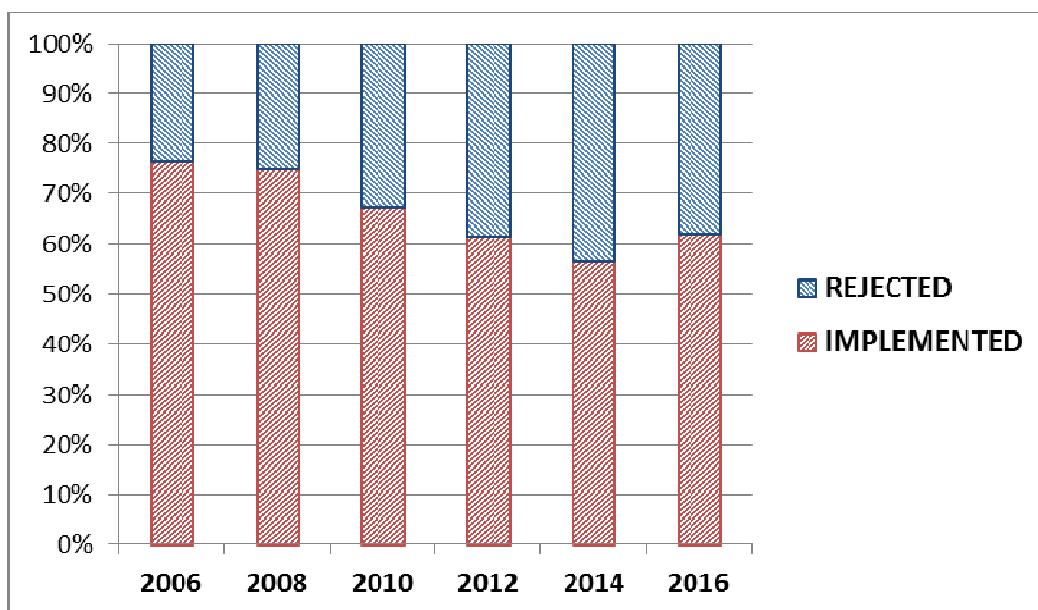


Figure 5. Development of protection orders implemented and rejected (2006-2016).

Source: Own formulation based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

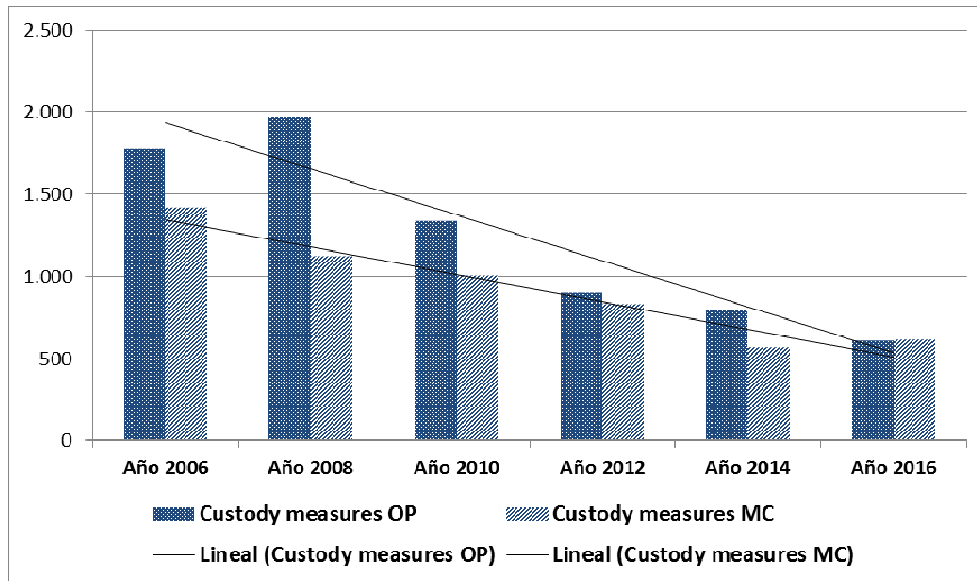


Figure 6. Development of custodial measures (2006-2016).

Notes. PO: Protective measure requested by the victim; MC: Protective measure legally imposed by a judicial body.

Source: Preparing by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

The same trend can be seen with regards to the restraining order measures, which decreased significantly between the years 2008 and 2012, and which have remained fairly stable since the year 2012 (see Figure 7). The linear trend, particularly with regards to restraining order measures requested in protection orders, is clear in this respect.

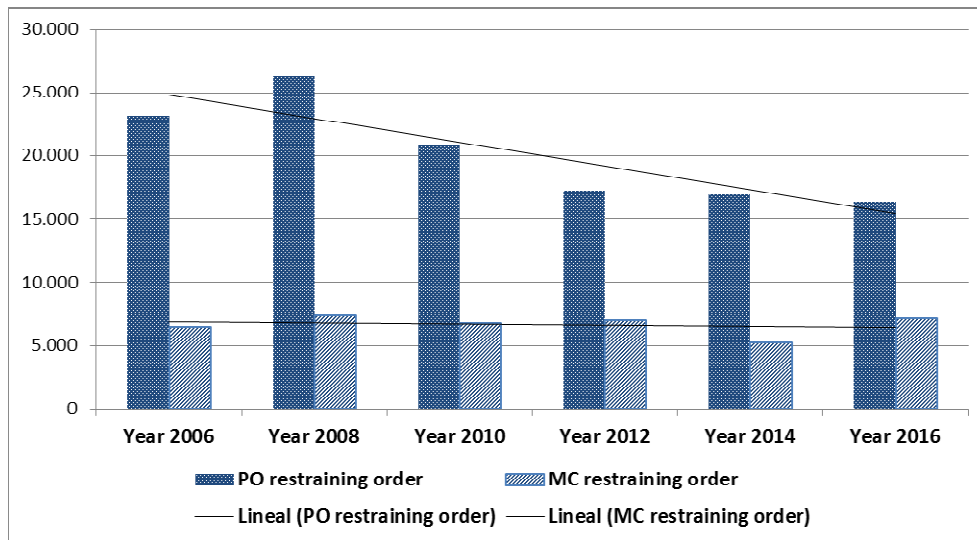


Figure 7. Development of restraining order measures (2006-2014).

Notes. PO: Protective measure requested by the victim; MC: Protective measure legally imposed by a judicial body.

Source: Preparing by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

It is obvious that this data are related to the reduction in Protection Orders requested and to the fact that, as already mentioned, they have also been rejected more often on average over the years since the Act came into effect. In any case, the hypothesis that emerges from this data is that, little by little, it is becoming apparent that the protection mechanisms put in place for women who are victims of gender violence are not being applied as rigorously as before. Admittedly, other protection methods have been developed for victims based on social action from public administrations. Social intervention aimed directly at protecting victims is a resource which has undergone significant change over recent years. However, it cannot be ignored that there is a decline in preventative protection for victims, particularly with regards to protection orders, which is why we come back to the aforementioned question. The following section attempts to compare this data with the data derived from the analysis of judicial rulings, in order to verify whether this point also reveals a decline in rigour when it comes to applying the legal protection mechanisms put in place for victims as stipulated in OA 1/2004.

### **Analysis of Judicial Decisions Regarding Gender Violence**

The treatment of gender violence in the Spanish Administration of Justice before the reforms in 2003 and, in particular, the reform introduced by the Organic Act 1/2004, of 28 December, on *Integral Protection Measures Against Gender Violence*, can undoubtedly be classified as dysfunctional and with a clear tendency towards impunity for crimes of violence against women within the context of emotionally attached relationships.

To begin with, until the aforementioned reforms came into effect, Misdemeanour Proceedings, i.e., proceedings for “minor” offences, were the main response from the criminal system in cases of gender violence, with percentages higher than 76% (Calvo-García, 2004). When these proceedings led to a conviction, they imposed a fine or a weekend’s imprisonment; in addition, in the latter case, these were not followed through due to a lack of infrastructure. This situation was also exacerbated by the fact that acquittal was the norm in these types of proceedings: acquittals constituted 72.3% versus 27.7% convictions (Calvo-García, 2004). This gave rise to a situation which fostered the general social impression of impunity for aggressors.

With the reforms in 2003, the majority of abusive actions towards women were classed as an offence, and this trend became more pronounced when the Organic Act 1/2004 was passed. In addition, when the reform to the Criminal Code (CP) came into effect in 2015, the “misdemeanours” disappeared and they were replaced by “minor offences”. These reforms have been clearly reflected in the Administration of Justice’s practices, making it possible to verify the aforementioned tendency towards the decline in misdemeanours as a legal response to gender violence. Indeed, before the reforms of 2003 and 2004, the proportion of cases judged as misdemeanours was higher than 90%. From 2004 onwards, the percentages were practically reversed.

On the other hand, now the punishments are much more serious, with practically all acts of violence against women being classified as an offence. As a result, the punishments given have increased. Convictions for gender violence are graded depending on their severity and the type of action that may cause the aggressor to be considered the responsible for homicide, miscarriage, injuries, harm to a foetus, crimes against freedom, crimes against moral integrity, against sexual freedom or identity, or any other crime committed with violence or intimidation within the context of gender violence. Since the reforms in 2003 and 2004, practically all cases of physical and psychological aggression have been punished with prison sentences, which are graded

depending on the severity of the offence<sup>7</sup>.

Based on the above, we are facing a situation of significant changes with regards to factors that it was not wise to include in the letter of the Act. As a result, we are going to revise the application of the legislation on gender violence, consolidated in OA 1/2004, in the practices of competent jurisdictional bodies for issues of gender violence: the Violence Against Women Courts (JVM), Criminal Courts, and Provincial Courts, respectively.

### **Violence Against Women Courts**

In cases of rulings by the Violence Against Women Courts<sup>8</sup>, after the OA 1/2004 came into effect, an average of around 80% of cases resulted in convictions. This constitutes a radical change with regards to the aforementioned situation.

However, this figure now needs to be qualified, as around 60% of the convictions are for offences punished by the Violence Against Women Courts in a negotiated process, i.e., cases in which the aggressor pleads guilty and accepts the punishment set for the accusations, in which the sentence is always a conviction. In Minor Offences Proceedings, carried out by these authorities until 2015, in which the decision was open, acquittals varied between 48% and 58%. A slight increasing trend can be detected in acquittals in recent years (see Figure 8). In any case, we are in a situation which differs radically from that which was established after the reforms of 1999 where, in addition to prosecuting the majority of cases as misdemeanours, acquittals were the norm in these types of proceedings, rising to 72.3% (Calvo-García, 2004). After the OA 1/2004 came into effect, the percentage of acquittals has varied between 18% and 25%.

There is still a question which needs to be considered. In general, the statistics on percentages of convictions and acquittals do not include data on case dismissals<sup>9</sup>; but if we include this data, it changes the overall picture significantly. Table 5 clearly shows that the general relationship between convictions and acquittals is largely dependent on the number dismissals, as the number of proceedings being dismissed in Violence Against Women Courts is greater than the number of sentences (around 74/26% in recent years), which clearly implies a significant reduction in relation to convictions. If we take this data into consideration, the number of cases which resulted in a conviction before these authorities is barely 20% in recent years.

<sup>7</sup> Cases of murder in the context of gender violence, prosecuted by the Provincial Courts and trialled by jury, are punished with sentences of around 20 years in prison. Injuries which damage the physical integrity, or physical or mental health of the victim of gender violence are punished with a prison sentence of around five years, in accordance with the outcome or the risk produced (147.1, 148, 4, CP). The basic offence of abuse (causing physical harm or minor injuries) in the context of gender violence is punished by a prison sentence of six months to a year, or with community service work for 31 to 80 days (153.1 CP). Minor threats in the context of gender violence are punished with a prison sentence of six months to one year, or with community service work for 31 to 80 days and the corresponding additional punishments (171, 4 CP) Similarly, cases of minor coercion to the person who is or was the offender's wife, or a woman who is or has been associated with him in a similar emotional relationship, even if not co-habiting, shall be punished with a prison sentence of six months to one year, with community service work for 31 to 80 days 172.2 CP.

<sup>8</sup> The Courts for Violence Against Women were responsible for knowledge and rulings of Misdemeanour Proceedings, which became minor offences of gender violence from 2015 (Art. 14.1 LECrim), which take place in accordance with the "Proceedings for minor offences" (Articles 962 and subsq. of LECrim). They are also responsible for the instruction of processes to demand criminal accountability for offences relating to homicide, miscarriage, injuries, harm to a foetus, crimes against freedom, crimes against moral integrity, against sexual freedom or identity, or any other offence within the context of gender violence (Art. 14.5 LECrim).

<sup>9</sup> Provisional dismissals of proceedings dictate the "stoppage or suspension of proceedings" when, according to the judicial body, there is reasonable doubt over the criminal offence itself due to a lack of evidence, or because it is not possible to accuse a certain person as an aggressor in the case of gender violence being heard. Free dismissals involve definitively terminating the hearing of the case and the case file. According to these definitions, strictly speaking, only free or definitive dismissals should be comparable to acquittals.

This implies a significant change in perspective, which forces us to stop and take a look at the analysis of dismissals.

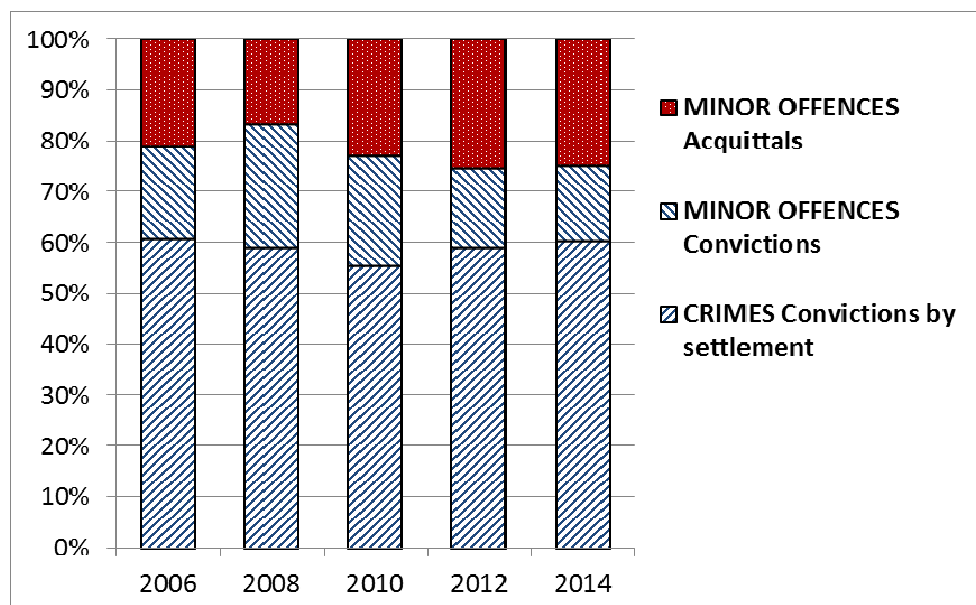


Figure 8. Rulings in criminal sentencing by Courts of Violence Against Women (2006-2014).

Source: Preparing by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

Table 5

*Rulings and Dismissals (2006-2016)*

	2006	2008	2010	2012	2014	2016
Rulings	19,914	19,926	19,401	18,936	18,858	19,241
	42.9%	32.7%	30.0%	25.6%	27.2%	24.8%
Provisional dismissals	26,555	41,069	45,353	49,222	45,647	53,420
	57.2%	67.3%	70.0%	66.5%	65.9%	68.9%
Free dismissals	-	-	-	5,866	4,794	4,879
	0%	0%	0%	7.9%	6.9%	6.3%
Total	46,469	60,995	64,754	74,024	69,299	77,540
	100%	100%	100%	100%	100%	100%

Source: Preparing by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

Table 5 shows data on the percentages of rulings and dismissals. If we look at the figures from 2012 to 2016, taking into account free dismissals and provisional dismissals, there were a total of 55,088 dismissals in 2012, 50,441 in 2014, and 58,299 in 2016. These are very high numbers which require a more detailed level of specific research; however, it is worth noting to begin with that in those years, 128,543, 126,742, and 142,893 accusations were made respectively, meaning that approximately 40% of proceedings ended up being dismissed provisionally or definitively.

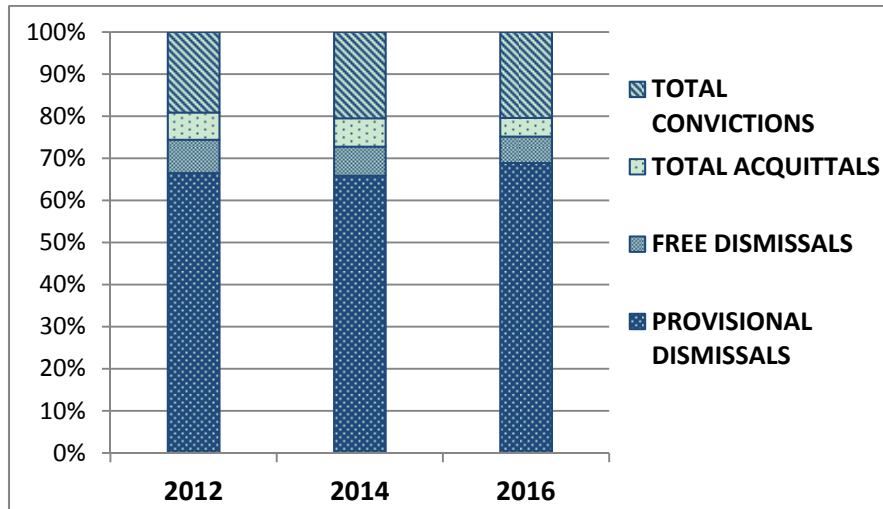


Figure 9. Rulings in courts of violence against women (years 2012-2014).

Source: Preparing by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

The question is obvious: Are not the figures for provisional dismissals a little on the high side? Provisional dismissals in particular are usually caused by a lack of evidence or difficulty in identifying the perpetrator, and thought must also be given to the lack of cooperation from victims, even though offences of gender violence are punishable by law in Spanish legislation<sup>10</sup>.

So, although a simple quantitative analysis is not sufficient to reach any definitive conclusions, it does force us to qualify relevant aspects relating to the percentage of convictions in Courts of Violence Against Women. As shown in Figure 9, this percentage decreases radically down to around 20% on average in the years 2012-2016. Obviously, many of the cases instructed by the Courts of Violence Against Women are escalated to competent legal bodies (Criminal Courts and AP), and these are, on the one hand, more serious offences, and on the other hand, they are cases for which no settlement is reached, meaning that it is important to also analyse what legal decisions are made by Criminal Courts as well as Provincial Courts.

As a conclusion to the analysis of the decisions made by Courts of Violence Against Women, it must be

<sup>10</sup> This issue requires additional qualitative research which cannot be included in this paper. For the moment, it is sufficient to provide a couple of opinions on the subject with extracts from discussion groups dated ... (DG 1) and ... (DG 2). In the words of a lawyer: "These figures make me think that the majority are women who make the accusation ... because it's got to the point where they exploit it. They go to the police station, have this act of bravery that society expects of them, make the accusation, and then the next day, when all the chaos that lies ahead of them starts, they withdraw the accusation. They take advantage of their right to remain silent and it gets archived. There is a provisional dismissal, and it doesn't go any further than that. They say, 'but will he go to prison?', 'but will that happen to him?', 'what will happen to my children?', 'where will I live?', 'I don't have a job, how will I eat, I don't have any money, I don't have anywhere to go, I've got no family', ... The other day I had four in one morning". (DG 1) However, another lawyer notes that, "we would have fewer dismissals if the prosecutor's training and awareness were different. With or without injuries, however much a victim might not want to continue, I as a prosecutor and a guardian of the law should continue. Then we wouldn't see such high statistics for dismissals like those we see here" (DG 1). This is not easy from the prosecutor's point of view and based on the experience of forensic experts. In the words of a gender violence Prosecutor: "When it comes in a police statement, and the woman doesn't want anything to happen, and I can see that there are at least a few injuries, and [...] if the police who went to the house [say] 'when I arrived and opened the door, the woman showed signs of having been hit, the man was very rattled and they told me this', even if the woman doesn't want me to, I have submitted an accusation, and got a conviction. Because the police officer is a direct witness to how the woman looked; as for how the injuries were caused, they're an indirect witness, so that's it ... you're in criminal proceedings. But if there are no injuries.... If a woman comes in and says 'he threatened me' and he says 'no I didn't', and the woman goes to the Court and says 'actually I want to stay silent', then..." (DG 2).

highlighted that the number of acquittals has declined considerably. However, not all cases that reach Violence Against Women Courts result in convictions or are escalated for prosecution in Criminal Courts or Provincial Courts. The analysis of dismissals has set us on the track that convictions are not the norm in JCM decisions, contrary to what may be supposed from a simple superficial analysis of the sentences given by these authorities. This aside, it is evident that the figures for acquittals and convictions in rulings by these authorities has clearly been inverted. So, if this is, as we have said, also due largely to rulings for offences in which a settlement was reached with Courts of Violence Against Women, we need to review how this affects rulings in Criminal Courts.

### **Criminal Courts**

Before the reforms in 2003 and 2004, acquittals in Criminal Courts barely made up 13.1% of cases, with 86.9% of rulings being convictions; however, the explanation for this was clear: Only a very small percentage of cases were prosecuted as offences—these were the most serious cases with the clearest evidence. The same occurred in Provincial Courts, when comparing data from these authorities with data from Criminal Courts: 84.4% convictions versus 15.6% acquittals (Calvo-García, 2003; 2004).

The first thing that allows us to understand the data obtained in relation to the period of application of OA 1/2004 which we are analysing is that, after the law came into effect, the percentage of acquittals in Criminal Courts, now specialised in the issues relating to violence against women, increased significantly<sup>11</sup>. In other words, the percentage of convictions reduced considerably.

The first thing to note is that the number of sentences given in the period we are analysing underwent a significant upward trend between 2006 and 2010, reaching a point of inflection from this year and going into a major decline in the number of sentences given by Criminal Courts (see Table 6).

Table 6

#### *Rulings in Criminal Sentencing by Criminal Courts on Matters of Gender Violence (2006-2016)*

	Convictions	Acquittals	Total rulings
2006	10,581	7,009	17,590
	60.2%	39.8%	100%
2008	15,197	14,224	29,421
	51.7%	48.3%	100%
2010	17,441	17,157	34,598
	50.4%	49.6%	100%
2012	15,889	15,596	31,485
	50.5%	49.5%	100%
2013	14,676	14,156	28,832
	50.9%	49.1%	100%
2014	13,877	13,220	27,097
	51.2%	48.8%	100%
2016	15,179	12,473	27,652
	54.9%	45.1%	100%

Source: Preparing by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

<sup>11</sup> Criminal Courts are responsible for prosecuting offences, the punishment for which is a custodial sentence that does not exceed five years, and other offences with different types of punishments, regardless of their duration (Art. 14 LECrim). The proceedings are conducted via a fast-track procedure or quick trial. With regards to what we are concerned with here, we are talking about cases of gender violence that have been escalated by Courts of Violence Against Women to be resolved by the JP specialised in gender violence.

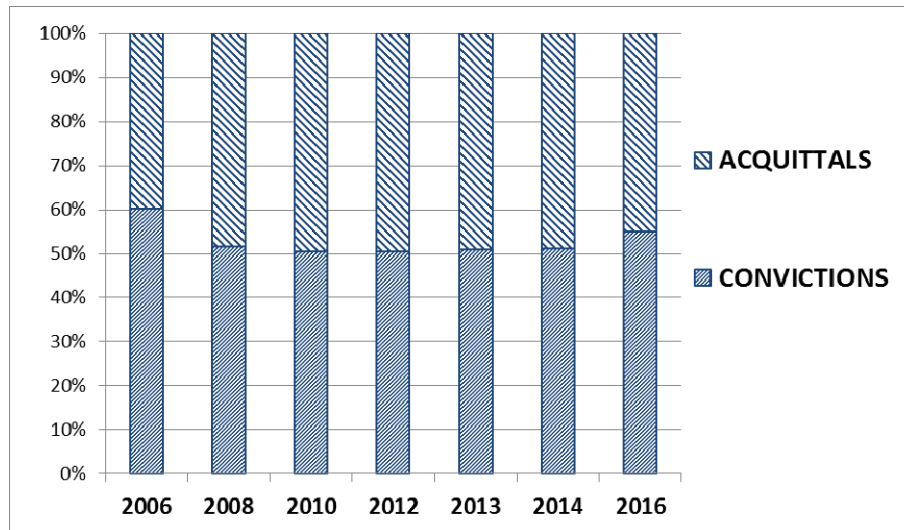


Figure 10. Rulings in criminal sentencing by criminal courts on matters of gender violence (2006-2016).

Source: Own formulation based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

Now, analysing the relationship between convictions and acquittals in Table 6 and Figure 11, it can clearly be seen that in the initial years that the new gender violence legislation was being applied, convictions were at about 60%, with a clearly decreasing trend in the years that followed, down to percentages of around 50%. Figures that are considerably different to the percentages before the reform noted above (86.9%), but taking into account the high number of cases resolved in Courts of Violence Against Women through settlement by the accused party and agreeing the punishment in accordance with the accusations.

Having established all of the above, if we analyse more closely, Table 7 allows us to verify that in reality, the figure which is decreasing is convictions without mediated settlement. This means that the cases which have tended to end in acquittals in recent years are the cases in which there is no mediated settlement. Although this trend has not been alarmingly pronounced, the percentage variation is significant and the decrease in the number of convictions without settlement compared to the number of convictions with settlement forces us to highlight this fact.

Table 7

*Convictions With Settlement and Without Settlement in Criminal Courts (2006-2016)*

	Conviction with settlement	Conviction without settlement	Total convictions
2006	4,532 42.4%	6,149 57.6%	10,681 100%
2008	6,063 39.9%	9,134 60.1%	15,197 100%
2010	7,196 43.9%	9,206 56.1%	16,402 100%
2012	7,013 44.1%	8,876 55.9%	15,889 100%
2013	6,916 47.1%	7,760 52.9%	14,676 100%

(Table 7 continued)

2014	6,741	7,136	13,877	2014	6,741	7,136
	48.6%	51.4%	100%		48.6%	51.4%
2016	8,056	7,123	15,179	2016	8,056	7,123
	53.1%	46.9%	100%		53.1%	46.9%

Source: Preparing by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es>).

Table 7 clearly shows the downward trend in convictions without settlement. We can see a decrease from 60.1% in 2008<sup>12</sup> down to 51.4% in 2014 and 46.9% in 2016. One might think that this reduction could be related to the decrease in the number of convictions and correlates with the number of rulings in general, which would also be directly related to the number of proceedings initiated. However, the trends in both types of rulings are clearly contrasting: The number of convictions with settlements has barely decreased at all compared to the prolonged (although slight) decrease in rulings where there was no settlement.

This decrease in convictions without settlement is important and is a fact which will need to be analysed more closely in future research. At the moment, the data we are looking at allow us to see that this trend coincides with the initial application of the 2003 and 2004 reforms (Calvo-García, 2008), where it becomes clear that there is a correlation between the overall picture created once the majority of acts of aggression were treated as an offence, and those punished with much more serious prison sentences.

### Provincial Courts and Trials by Jury

Finally, we are going to analyse the decisions made by Provincial Courts specialised in the issues relating to violence<sup>13</sup>. These authorities judge the most serious cases of gender violence. The number of rulings made by Provincial Courts is recorded in very small registers.

In the specialised AP departments, as can be seen in Table 8, the percentage of convictions in rulings made in a single proceeding stays at around eighty percent (77.0/82.1%) In the equivalent figures from the period of 2000-2002, which we are taking as a reference for comparison purposes regarding the state of things before the reforms, convictions reached a percentage of 84% (Calvo-García, 2004) in Provincial Courts.

These figures include data refer to Proceedings with a Jury, which gave 31 rulings in 2016, 30 or which were convictions. This means that the general trend in Trials by Jury (TJ) is maintained, in which rulings were already generally convictions, even before the reforms being analysed (Calvo-García, 2004).

It is definitive that in the most serious cases, the trends remain unchanging, perhaps because it relates to cases in which the procedural and criminal rationale has not undergone as many changes. The specialisation is clearly not a factor in the convictions and it does not appear to have been.

In addition, offences punished by Provincial Courts and Trials by Jury are punished with sentences of around 20 years in prison for murders, and these are showing an increasing trend (Group of Experts in the

<sup>12</sup> In 2010, the number of conviction without settlement was larger in raw numbers, but not in percentage terms. This data follow the increase of rulings in the year 2010.

<sup>13</sup> The first type of proceeding addressed by Provincial Courts (Provincial Courts) is for offences with a custodial sentence of more than five years. The proceedings are conducted following an ordinary procedure (if the custodial sentence is greater than nine years) or a fast-track procedure (if the custodial sentence is less than nine years but greater than five years). In cases requiring a Provincial Court hearing, if the offence was assigned to Trial by Jury, it is heard by them and the ruling is given by them (LECrIm. Art. 14.4).

Research Committee against Domestic Violence and Gender Violence, 2016)<sup>14</sup>. We can conclude from this that with regards to the most dramatic acts of gender violence, the rigour stipulated in the legislation is being maintained.

Table 8

*Rulings in a Single Proceeding in Specialist Criminal Departments of Provincial Courts (2006-2016)*

	2006	2008	2010	2012	2014	2016
Convictions	133 82.1%	290 82.2%	322 80.9%	248 77.0%	290 81.0%	230 81.6%
Acquittals	29 17.9%	63 17.8%	76 19.1%	74 23.0%	68 19.0%	52 18.4%
Total rulings	162 100%	353 100%	398 100%	322 100%	358 100%	282 100%

Source: Preparing by the author based on data from the Gender Violence Research Committee CGPJ (General Council of the Judiciary, <http://www.poderjudicial.es/>).

With regards to the resolution of appeals made by these authorities, if we analyse the rulings in 2016, the ways in which these were resolved consisted mostly of dismissals (81.1%). A similar trend can be seen in both the type of rulings for resolutions of appeals regarding sentences arising from fast-tracked proceedings (offences prosecuted by Criminal Courts), as well as with regards to rulings for resolutions of appeals against rulings relating to proceedings for misdemeanours and minor offences. Appeals resolved by the Provincial Courts relate to rulings arising from fast-tracked proceedings (89.9%) and only one percent less relates to appeals against rulings from Misdemeanour Proceedings (10.4%) (*Violence Against Women in the Provincial Courts*, 2016).

### Critical Conclusions

To recap what was covered in the last section, legal decisions regarding gender violence, we have seen how convictions have reached significant percentages in Criminal Courts and Provincial Courts, but that they are diluted in Courts of Violence Against Women with a high percentage of dismissals. This means that barely 20% of accusations result in a conviction. According to the CGPJ's own data, we have taken into consideration, in 2016 only 21.69% of accusations resulted in a conviction. In principle, this data contrast with the campaigns to get women to report instances of violence. Admittedly, accusations are few and far between compared with the percentage of women who experience gender violence in Spain, and in this sense, Spain is not an exception, but it draws attention to the small percentage of these that result in convictions. Without resorting to demagogy, because the reasons for this are varied and complex, it is important to note these figures and examine the reasons surrounding them. From the point of view of the Administration of Justice and its functioning, this data are to a large extent, related to the high percentage of dismissals. This is an issue, as already noted, needs to be examined and solutions need to be put forward to prevent this situation.

With this in mind, it is clear that under the current legislation, the punishments imposed need to be serious. Convictions for gender violence are graded depending on their severity and the type of action that may cause the aggressor to be considered the responsible for homicide, injuries, abuse, coercion, threats, or breaching an

<sup>14</sup> "In 2014, the average prison sentence for murder was approximately 18 years [...]. In 2015, the sentence had increased to 20 years and two days. In 7 cases of convictions for homicide, the custodial sentences varied between 15 years (1 sentence) and 10 years (1 sentence)", see Group of Experts in the Research Committee against Domestic Violence and Gender Violence (2016).

imposed sentence or protective measures. Since the reforms in 2003 and 2004, practically all cases of physical and psychological aggression have been punished with prison sentences, which are graded depending on the severity of the offence. In addition, after the reform to the CP in 2015, as mentioned above, “misdemeanours” were removed and turned into “minor offences” (see Point 10 above).

This forces us to consider that perhaps one of the hypotheses that has been discussed since the 2004 reform, which is that the increase in punishment severity may ultimately be giving rise to more acquittals in legal decisions, or more lenient punishments being given, could potentially be confirmed in part. It is true that the data we have available clearly shows that convictions are being made and that, in many cases, the prison sentences stipulated in the CP are being imposed. However, we have also seen that there is less rigour in imposing protective measures, and that criminal punishments are being diluted by settlements and dismissals. There is also the high number of suspended punishments in cases of prison sentences given for gender violence.

With regards to this last piece of data, few convictions are made and in many cases, the punishment is suspended or substituted. Figure 11 shows data regarding punishment suspensions and substitutions, and draws attention to the significance of this factor with regards to gender violence offences. Around 60% of punishment suspensions and substitutions relate to convictions for gender violence—a figure which is also increasing every year. This data speak for itself, accentuating the impression that we have already noted, i.e., that we have progressed to a situation of less rigour in punishment over the course of recent years.

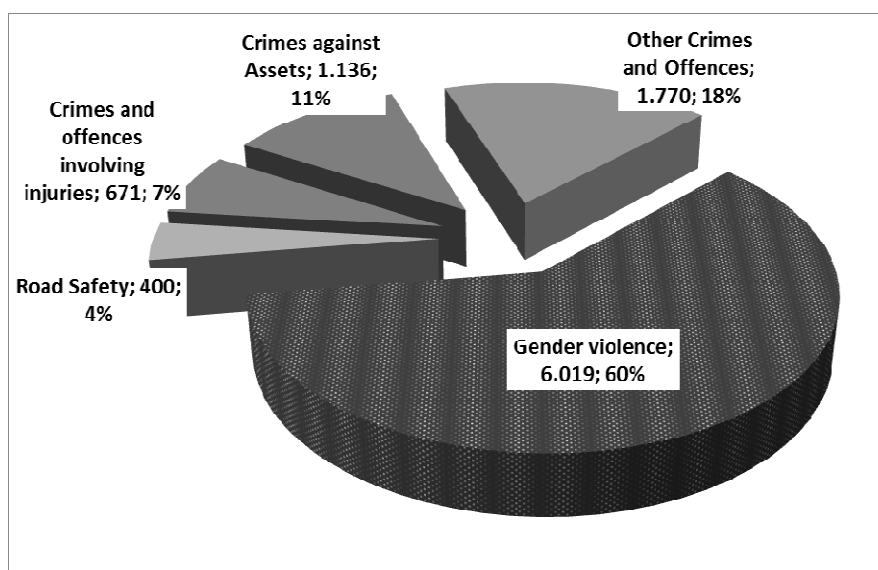


Figure 11. Suspensions and substitutions for convictions (2016).

Source: Prepared by the author based on data from Secretary General of Penitentiary Institutions (General Report 2016 [2017], <http://www.institucionpenitenciaria.es/>).

This may be in the context of a substitution or a directly imposed punishment. The top punishment is beginning to be Community Service (TBC, Spanish: *Trabajos en Beneficio de la Comunidad*), whether this is as a substitution for imprisonment or directly imposed as a punishment in itself. Community Services has become a punishment mechanism that is playing a progressively more important role in criminal punishment for gender violence. Figure 12 shows, above all, how community service is being applied as a punishment, whether directly or as a suspension of the imposed sentence, for road traffic offences and gender violence offences. In 2016, more than 20,000 offenders completed community service as a punishment.

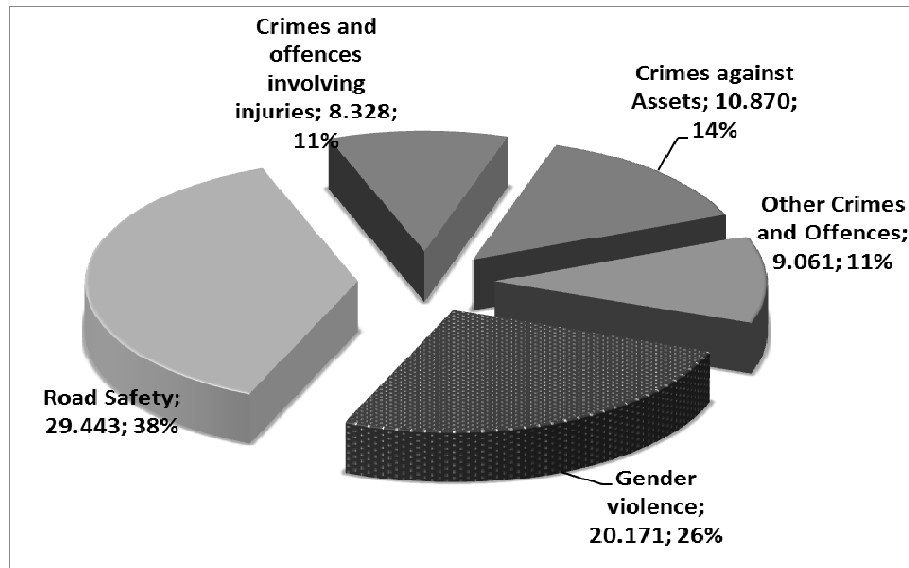


Figure 12. Community services (2016).

Source: Preparing by the author based on data from Secretary General of Penitentiary Institutions (General Report 2016 [2017], <http://www.institucionpenitenciaria.es/>).

The above statement should not be misinterpreted. This is not a rejection of alternative punishments to prison. In many cases, there is sound justification for this which should not be brushed aside. Due to the limits of this paper, we cannot go into this issue in greater depth. It is sufficient to note that in some cases, community service may be a suitable punishment, but its steady increase also raises the issue that it could be representing an option for offenders to elude prison sentences. If we combine this with the fact that punishments are not being carried out optimally, and in many cases the agreements are not sufficient or are not fulfilled, then the sense of impunity may begin to be re-imposed with regards to certain gender violence offences<sup>15</sup>.

Our position should also not be misinterpreted with regards to this point. We do not believe that police intervention and criminal proceedings are enough to eradicate gender violence. It is clear that this is not reasonable, but we should also ask ourselves whether we should dispense with it. Perhaps the response here should also be negative. It is true that reformism in criminal proceedings and progress in punishment will not definitively resolve the objectives aimed at eradicating gender violence. However, criminal law has a symbolic power that we should not underestimate. The moral condemnation that inherently comes with progress in criminalisation and toughening punishments for gender violence is crucial in the campaign to eradicate it. Of course, preventive action must be comprehensive and not just focused on tertiary prevention. Secondary prevention is also important to advance the protection of victims of gender violence and, if we really want to eradicate gender violence, primary prevention is fundamental as it involves breaking away from practices and ways of life associated with a patriarchal society that masks and/or justifies gender violence. However, including for the purposes of primary and secondary prevention, it is essential to end the sense of impunity that can give rise to a less rigorous application of preventative measures and criminal punishments.

<sup>15</sup> This impression has even gone beyond national media. See, for example, headlines from El Mundo: “Misogynist violence goes unpunished. Only 14% of those convicted are actually imprisoned; 22,487 do ‘Community Service’—14,000 committed offences worthy of up to five years in prison, but the majority do not go—After Road Safety, Gender Violence is the category with the most alternative punishments”, <http://www.elmundo.es/espana/2015/05/05/5547d5c5ca4741121b8b459e.html>.

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