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CRIMINAL POLICY AGAINST GENDER-BASED VIOLENCE

ITS EFFECTIVENESS, EFFICACY AND EFFICIENCY

Executive summary

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CRIMINAL POLICY AGAINST GENDER-BASED VIOLENCE

EXECUTIVE SUMMARY

The Spanish Organic Law 1/2004 of December 28th on Integrated Protection Measures Against Gender-Based Violence, providing extensive protection against gender-based violence, has been a significant legislative measure in the fight against this phenomenon. A research team from the Institute of Criminology at the University of Malaga has conducted an external evaluation of the law ten years after its implementation. Three dimensions have been measured: its effectiveness (if resources provided by law have been effectively developed), its efficacy (the objectives achieved) and its efficiency (an economic analysis in terms of cost/benefits).

Evaluations of public policies are essential in order to measure the impact and effects of any implemented policy. Nevertheless, many evaluations are conducted by agencies belonging to the same administration that developed the policies. Additionally, many of these evaluations are restricted to only one dimension: offender's treatment or victims' protection. Yet another problem is that often the criminal justice system doesn't take the victims' needs into account and only focuses on punitive measures, which many researchers have attributed the lack of efficacy of these restrictive existing policies.

Evaluations implemented by external bodies have an added value in terms of transparency and objectivity. Such scientific external evaluations could provide invaluable data regarding policy execution problems or counterproductive effects of the implemented policy and could recommend reorientations and changes of the previous objectives or intervention measures. Furthermore, long term evaluations are more effective than

short term ones as they are not subjected to temporary circumstances that could skew the results.

Benefits of objective scientific evaluations of public policies is especially important for the intervention programs against gender-based violence. Many expert opinions are that the last legal reforms regarding penal and procedural treatment of violence against intimate female partners have been inspired by extreme and tough penal approaches such as zero tolerance policies and expansive use of prison penalties, ignoring a deep understanding of the complexity of the issue. Many criminologists and penal law experts claimed that recent policies against intimate partner violence against women have been ideologically orientated and have forgotten the real victims' prosecution and protection needs. For these reasons, the study presented in this report is sensitive to those demands and aims to evaluate those policies measuring the effectiveness and efficiency of criminal policies against women violence.

Before presenting the main findings of the study, the research team would like to state some general considerations:

- 1 Public policies against intimate partner violence against women deal with a social phenomenon linked to a patriarchal structure that is rooted in the vast majority of human societies. These kind of societies tolerate the use of violence to maintain the sexual hierarchical roles. Therefore approaching this reality with such a limited policy dealing with this type of violence will never produce desired societal outcomes. A more encompassing social intervention should be implemented to mobilize the entire society transforming values and behaviour patterns in order to change that reality.
- 2 There is no doubt that violence against intimate partner women represents one of the most significant problems of female inequality and requires priority action. Nevertheless, effective solutions cannot be based exclusively on legal interventions. The reduction of this complex and deep-rooted behaviour requires the implementation of diverse measures, including legal and non-legal resources.
- 3 The Law 1/2004 named Measures of Extensive Protection for Gender Violence provides a multidisciplinary and general approach to the phenomenon providing a wide range of measures of different natures. Nevertheless, after a 10-year period of implementation, there is a general conviction that criminal justice measures are far more prevalent than others. As a matter of fact, 72 articles and 20 additional dispositions include a criminal law intervention.

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KEY FINDINGS

1. EFFECTIVENESS

The general evaluation of effectiveness of resources implemented by Organic Law 1/2004 is positive.

- A decrease in the initiated protection orders has been observed from 2009. Penal measures represent the highest decrease (custodial measures) and civil measures the lowest decrease.
- Regarding economic and labour aids, we must state that economic measures have been implemented successfully, but there is a big failure concerning resources helping abused women find employment.
- Treatment programs offered to sentenced perpetrators (prison and community) have increased and they currently cover the entire population. Nevertheless, the number of inmates in treatment is still low.
- There has been a remarkable increase in specialized courts, exclusive or specialized in violence against women.
- There has been a wide implementation of diverse resources aiming to prevent and prosecute intimate partner violence against women (police prosecutors, trial defense, and forensic and social assistance). The general evaluation is positive but the variety of resources could present problems in terms of objectives coherence, overlapping functions and lack of coordination.

2. EFFICACY

A general evaluation of the efficacy of the fight against intimate partner violence is less positive. From a general point of view, we can state the phenomenon is under institutional control.

- Even though the measurement of the issue has some technical limitations, we can say that figures are low in comparison with the general public perception. From 1999 to 2006 we have seen a steady decrease in serious crimes, however there has been an increase in less severe behaviours and psychological violence.
- Homicides against women decreased during the period under study. In addition, Spain is one of the countries with the lowest rates of violence against women.
- A third of abused women report the crime. There has been an increase of the number of acts reported to the police after the Law 1/2004. Nevertheless, after 2009 we have seen a deceleration but with positive levels of reporting rates.
- 2/3 of the judicial procedures ended with convictions.
- The conviction index in violence against women intimate partner is lower than other crime convictions.

- There has been an increase in prison sentences regarding violence against intimate partner women. That has increased representation of these criminals among the prison population in a context of a prison population decrease.
- Treatment programs in and out of prison are having positive effects and a general reduction in recidivism.
- The women homicides are less linked than before to previous restraining order violations.
- Telematic means to monitor penalties and restraining orders have a limited implementation even the positive effects demonstrated by those that have been implemented.

3. EFFICIENCY

Regarding efficiency, there is a general victim attitude characterized by lack of confidence and dissatisfaction with the criminal justice system. This may indicate some process of secondary victimization.

- The prioritization of women victims of intimate partner violence has taken the attention from other domestic violence victims.
- Penal intervention to fight against intimate partner violence women is mainly oriented to vulnerable populations: poor and foreigners.
- There is a high index of suicides among homicides (completed or non completed).
- Police and judicial data show that occasional abuse (art. 153.1 Penal Code) is more frequently recognized than regular abuse (173.2 Penal Code).
- There has been an increase in absolute and relative figures among inmates convicted for crimes against life and personal integrity, that in 2016 represented a bigger population than for drug crimes.
- Almost half of the inmates convicted for crimes against life and personal integrity are in prison for gender violence crimes.
- The majority of gender violence crimes initiate the criminal procedure with a police report. Police reports increased until 2010 and there has been a decrease since then.
- The three jurisdictional institutions with gender violence capabilities have increased their activity in relation to the general penal jurisdiction.
- The new crime concerning occasional abuse has produced a perturbant effect: judges have progressively abandoned the application of the most severe crime related to regular abuse (art. 173.2).



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