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# Domestic violence and family crises: a perspective from Spanish Law\*

**SOMMARIO:** I. Introduction. – 1. Protection orders. – 2. Violence and Family Crisis. – 2.1 General issues. – 2.2 Parental authority. – 2.3 Custody. – 2.4 Visitation rights. – 3. Critical assessment of the application of Organic Act 1/2004.

*This paper provides a brief overview of how Spanish law deals with the measures directly aimed at the prevention of domestic violence and gender-based violence against women, and the connection between criminal law issues and the civil law arrangements in family crises. Special attention is paid to the influence of allegations of gender-based violence on the granting of parental responsibilities and custodial or visitation rights to the alleged perpetrator, and to potential gaps in protection which may entail violations of international human rights obligations as laid down in the Istanbul Convention on preventing and combating violence against women and domestic violence.*

## I. Introduction.

The transition from “domestic violence” to “gender-based violence against women” is visibly illustrated by developments in Spanish criminal law.

Initially, the Spanish Parliament provided for a harsher criminal law response to family violence by creating a new type of crime under the label of “permanent violence in family households”<sup>1</sup>. In 2003, the regulation of domestic violence protection orders was

\* Relazione svolta al Convegno intitolato “Crisi e violenza nelle relazioni familiari secondo la giurisprudenza CEDU”, tenutosi a Roma in data 13 e 14 aprile 2018 ed organizzato dall'Osservatorio Nazionale di diritto di Famiglia in collaborazione con E.F.L. (*European Association for Family and Succession Law*).

<sup>1</sup> See Art 153 Penal Code, as amended by Organic Act 14/1999, of 9 June, modifying the Penal Code and the Criminal Procedure Act as regards the protection of victims of abuse (*BOE* no. 138, 10 June 1999).

expanded to convert them into a comprehensive remedy for victims, including both civil and criminal law measures<sup>2</sup>. The scope of application of these rules is *domestic violence*, which embraces violence against a current or former spouse or partner – but also against children or stepchildren, parents, siblings or any other person living under the same roof, regardless of whether the victim was a woman or a man.

In 2004, however, the new socialist government decided to take new steps in the fight to eliminate violence against women, with the conviction that this is the worst expression of gender inequality. Accordingly, the Spanish Parliament approved a new comprehensive legal instrument: Organic Act 1/2004<sup>3</sup>. From a legal standpoint, the most important changes brought about by this Act were (a) the aggravation of punishment for men's acts of gender-based violence against women<sup>4</sup> and (b) the creation of special courts (*Courts of Violence against the Woman*)<sup>5</sup>, which are responsible for dealing with all criminal issues connected with gender violence against women, but also with civil matters concerning family legal relationships that involve the victim and the alleged perpetrator<sup>6</sup>.

The scope of application of Organic Act 1/2004 is strictly defined by the fact that the victim is a *woman* and the alleged perpetrator of the violent acts is her current or former *male* partner<sup>7</sup>. If a situation of domestic violence does not match this legal description of gender-based violence, none of the above mentioned special protection measures will be applicable. However, in 2015 the Act was amended to consider battered women's children as victims of gender-based violence<sup>8</sup>. Future changes are very likely as a result of the need to accommodate Spanish law to the concepts of the Istanbul Convention, which goes beyond intimate partner violence<sup>9</sup>.

<sup>2</sup> See Art 544 ter 7 Criminal Procedure Act, as laid down by Act 27/2003, of 31 July, on protection orders for domestic violence victims (BOE no. 183, 1 August 2003), and which supplemented Art 544 bis Criminal Procedure Act.

<sup>3</sup> Organic Act 1/2004, of 28 December, on integrated protection measures against gender-based violence (BOE no. 313, 29.12.2004).

<sup>4</sup> See especially Art 153.1 Penal Code with reference to the condition that the victim is or has been "the spouse or the woman bound to him in an analogous relation of affection, even without cohabiting" (see above note 3). This provision was deemed constitutional and not discriminatory against men by a number of judgments of the Constitutional Court, starting with no. 59/2008, of 14 May, and no. 98/2008, of 24 July.

<sup>5</sup> Art 43-56 Organic Act 1/2004.

<sup>6</sup> Art 87 ter 2 Organic Act 6/1985, of 1 July, on Judicial Power (as amended by Art 44 Organic Act 1/2004).

<sup>7</sup> The victim is a woman abused by a man who is or has been her spouse, or with whom she is or has been engaged in a similar close emotional relationship, even without having lived together (i.e. husband, male cohabitant or boyfriend). See Art 1.1 Organic Act 1/2004.

<sup>8</sup> See now Art 2.1 Organic Act 1/2004 as amended by Organic Act 8/2015, of 22 of July, which modifies the system of child protection (BOE no. 175, 23 July 2015).

<sup>9</sup> See Art 3 a) Istanbul Convention.

## 1. Protection orders.

The main legal instruments to prevent violence against women and to protect victims of domestic violence are protection orders<sup>10</sup>. The most interesting feature of protection orders is that they are independent from criminal proceedings, in the sense that the victim may ask for one irrespective of her willingness to lodge a complaint against the alleged offender.

It must be stressed, however, that criminal courts are the only ones with jurisdiction to issue protection orders. Compared to Italy or Germany, Spanish law does not include a procedural legal framework in which temporary protection orders can also be issued by *civil* courts in cases of domestic or intimate partner violence. In a context of domestic violence, the woman may ask a civil court for the assignment of the right to use the family home. This order may imply the eviction of her husband from the family home. However, this procedure is considered a preliminary step within a divorce or legal separation procedure<sup>11</sup>. Accordingly, the continuation of the order is conditioned upon filing a divorce or separation petition in a very short period of time. In addition, these rules are not available for non-married couples.

Despite their notional independence from criminal proceedings, protection orders are in fact part and parcel of them: in all cases the issuance of a protection order is linked to allegations or indications of criminal acts committed by a spouse or partner. In other words, it is a measure connected with the investigation and prosecution of a crime. Accordingly, if criminal charges are dismissed for whatever reason, or the defendant is acquitted, the protection order must end<sup>12</sup>. Conversely, if he is convicted, the order may remain for some time after the end of the penalty.

A protection order may be issued *ex officio* by the judge, after notice of a crime given by the police, the healthcare services or the social services. In practice, however, it is typically served at the request of the victim herself or, more rarely, of family members living in the same house. The public prosecutor may also ask for a protection order, although this is not so usual.

The petition is examined by the *Court of Violence against the Woman* –or by the criminal court in service, if the petition is filed after office hours – in a fast-track emergency procedure including a judicial hearing with both the victim and the alleged perpetrator that must take place within 72 hours<sup>13</sup>. Note that Spain does not have a so-called emergency restraining order (as it is known in Austria or Germany). As a result, immediate

<sup>10</sup> See Art 544 ter Criminal Procedure Act and Art 62 and 64 Organic Act 1/2004.

<sup>11</sup> Articles 104 Civil Code and 771 Civil Procedure Act.

<sup>12</sup> The judgment of the Constitutional Court no. 16/2012, of 13 of February, declared that continuity of the protection order is exceptional, and must be specially justified.

<sup>13</sup> Art 544 ter 4 II *in fine* Criminal Procedure Act.

short-term protection of the victim must be ensured by an arrest in cases where the victim is under threat and her immediate safety needs to be secured before the protection order is issued. Some studies have found that there may be gaps in protection in those cases in which the police does not arrest the perpetrator, especially if the behaviour of the perpetrator is not considered serious enough to meet the threshold criteria for an arrest<sup>14</sup>. Other sources point to limited judicial resources in rural areas, where protection orders may not be issued on short notice<sup>15</sup>.

Granting the order requires an objective situation of risk, which flows from indications that the accused has committed a crime against life, physical or psychological integrity, sexual freedom, or the freedom or safety of the victim. In practice, the risk is assessed by the police using a brief assessment tool under defined protocols especially designed to deal with violence against women<sup>16</sup>. Statistics show that around two-thirds of the petitions are granted, although specialised courts tend to issue far less (about one-third)<sup>17</sup>.

The order can provide for different types of measures, which are related to the risk assessment made by the judge. On the one hand, preventive measures are linked to criminal proceedings, including an order of indefinite imprisonment. Most frequently, however, courts issue temporary restraining orders prohibiting the accused from communicating with or approaching the applicant directly or through third persons, ordering him to keep a specified distance away from the applicant, her children, her family, her residence, her place of work or any other place she might visit or frequent, and including the obligation to abandon the family home.

Besides that, at the petition of the woman, the court may also order interim civil measures concerning the use of the family home, the exercise of parental responsibilities, custody and visitation rights with minor children and child support. In practice, this provides an advantage to protection order applicants insofar as they do not need to wait for a family court hearing, which in some cities takes from eight months to one year. The measures can be ordered *ex parte* but are limited to 30 days. If no family proceedings ensue, the measures shall end. As a result, if the victim has not yet decided whether or not to seek a divorce, the arrangements made by the *Court of Violence against the Woman* will cease to govern the personal and economic situation of the parties.

<sup>14</sup> See R. LOGAR, J. NIEMI, *Emergency barring orders in situations of domestic violence: Article 52 of the Istanbul Convention, a collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence* (June 2017), 40.

<sup>15</sup> See L. KELLY, C. HAGEMANN-WHITE, T. MEYSEN, R. RÖMKENS, *Realising rights: Case studies on State responses to violence against women and children in Europe*, London: Child and Woman Abuse Unit, London Metropolitan University, 2011, 81.

<sup>16</sup> See Instruction of the State Secretary for Security 7/2016, of 8 of July, approving the protocol for police assessment of gender-violence risk against women according to Organic Act /2004 and the management of the safety measures for victims.

<sup>17</sup> According to data of the *Observatorio contra la Violencia de Género y Doméstica*, a think tank of the General Council of the Judiciary, in 2017 68% of the protection orders requested were issued (see *Datos de denuncias, procedimientos penales y civiles registrados, órdenes de protección y medidas de protección y seguridad solicitadas en los juzgados de violencia sobre la mujer y sentencias dictadas por los órganos jurisdiccionales en esta materia en el año 2017* at p. 10) Annual reports available at <<http://www.poderjudicial.es>>.

The enforcement of protection orders is supported by the fact that intentional non-compliance is a crime. Violation of a protection order may also trigger consequences such as changing arrangements made for parents and children and, if serious risk exists<sup>18</sup>, it justifies the man's arrest. A particular problem is that more often than not the victim agrees to meet her partner after the protection order is issued. By so doing, she faces the risk of being prosecuted as an accomplice or even an instigator of the crime of breaking the order. From the very beginning of the application of Organic Act 1/2004, public prosecutors have abstained from pursuing criminal actions against women for this reason. However, on occasion, this has happened, and courts have approved severe punishment for victims<sup>19</sup>.

## 2. Violence and Family Crisis.

### 2.1 General issues.

As soon as there are indications of an act of gender-based violence, and a protection order has been issued or investigations have been launched, the *Courts of Violence against the Woman* have exclusive jurisdiction to deal with the civil proceedings between the alleged victim and the perpetrator concerning the nullity of marriage or legal separation and divorce. They also handle civil proceedings connected to responsibilities of unmarried parents over their common children<sup>20</sup>. Civil courts must decline their jurisdiction and avoid examining a matrimonial or parental action in favour of the *Court of Violence against the Woman* unless the civil proceedings had reached their final stage (*juicio oral*)<sup>21</sup>. Once the criminal court is considered competent, it holds jurisdiction even if the husband is acquitted<sup>22</sup>. The same court must deal with any further actions that either party may file in the future to amend the arrangements approved by the judge.

The rationale behind these controversial rules on jurisdiction<sup>23</sup> is that the special courts are deemed to have a better understanding of intimate partner violence than courts de-

<sup>18</sup> Objectively assessed and identified: see Constitutional Court no. 62/2005, of 14 of March (in this case the judge ordered temporary arrest and provisional imprisonment of the husband, without assessing the actual risk that he represented for his wife).

<sup>19</sup> See the judgments of appellate courts of Granada (2<sup>nd</sup>) 15 June 2012, 26 November 2010 and 7 February 2014 and Barcelona (20<sup>th</sup>) 7 February 2013; but see also Barcelona (20<sup>th</sup>) 26 March 2013 and 20 November 2015 (holding the contrary view).

<sup>20</sup> Art. 87 ter Organic Act on Judicial Power (as amended by Art 44 Organic Act 1/2004).

<sup>21</sup> See Art 49 bis 1 Civil Procedure Act (as amended by Art 57 Organic Act 1/2004). The resolution of the Supreme Court (Civ.) 30 October 2012 indicated that the jurisdiction of the *Court of Violence against the Woman* in civil matters ends when the parties have been summoned to present their pleadings before a court hearing already scheduled.

<sup>22</sup> I. VITERI ZUBIA, *La trascendencia de la violencia de género en los procesos matrimoniales de separación y divorcio*, in *Revista de Derecho de Familia*, no. 60/2013.

<sup>23</sup> The issue was hotly contested by the Council of Judicial Power during the passing of Organic Act 1/2004. See the references in M<sup>a</sup> PAZ GARCÍA ABURUZA, *La violencia doméstica desde el ámbito civil*, in *Revista Aranzadi Doctrinal*, no.11/2010. See also M. P. GARCÍA RUBIO, *El marco civil en la violencia de género*, in M. de Hoyos (dir.), *Tutela jurisdiccional frente a la violencia de género: aspectos*

ciding family matters. Most importantly, for practical reasons it was necessary to improve the coordination of measures flowing from criminal proceedings with orders concerning the family home, custody arrangements and other matters issued from family courts, and to avoid inconsistent results among different types of court<sup>24</sup>.

Family mediation is prohibited *expressis verbis* by Spanish law in all cases before the *Court of Violence against the Woman*<sup>25</sup>.

## 2.2. Parental authority.

In case of separation or divorce, both parents hold joint parental authority but not the *exercise* of it<sup>26</sup>. However, a number of important decisions about child rearing – medical treatments, education, religion or residence – must be shared by the parents holding parental authority, regardless whether they both exercise that authority.

The removal or deprivation of parental authority from the alleged offender is not feasible in emergency protection orders or during preliminary investigations. Courts consider that this decision, with such serious consequences, cannot be taken at this preliminary stage without a full hearing including substantial evidence supporting the grounds for deprivation. The presumption of innocence must prevail over problems caused by the possible veto of the violent parent<sup>27</sup>. However, even in cases when a guilty verdict for gender-based crimes is reached, criminal courts tend to suspend parental authority only in the most serious incidents<sup>28</sup>.

Suspension of parental authority is possible in all legal proceedings.<sup>29</sup> In practice, however, these measures are seldom ordered by courts. Both courts and prosecutors consider that these measures must only be taken if needed to protect children, and provided that it is in the best interest of the children involved<sup>30</sup>. They are neither automatic nor presumed to be in the children's interest.

On occasion, this restrictive approach has led to problems. In cases where minor children exposed to domestic violence needed psychological treatment, some psycholo-

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*procesales, civiles, penales y laborales*, Lex Nova, Valladolid, 2009, 155.

<sup>24</sup> See also COMISIÓN DE SEGUIMIENTO DE LA IMPLANTACIÓN DE LA ORDEN DE PROTECCIÓN DE LAS VÍCTIMAS DE VIOLENCIA DOMÉSTICA, *Protocolo de coordinación entre los órdenes jurisdiccionales penal y civil para la protección de las víctimas de violencia doméstica* (23 January 2004) <Available at <http://www.poderjudicial.es/cgpj/es/Temas/Violencia-domestica-y-de-genero/Guias-y-Protocolos-de-actuacion/Protocolos/Protocolo-de-coordinacion-entre-los-ordenes-jurisdiccionales-penal-y-civil-para-la-proteccion-de-las-victimas-de-violencia-domestica>>.

<sup>25</sup> Art 87ter (5) Organic Act on Judicial Power, as amended by Article 44 Organic Act 1/2004. See the more nuanced approach of Article 48 Istanbul Convention. Concerning the use of *voluntary* mediation see § 32(b) CEDAW 35/2017.

<sup>26</sup> See Article 156 V Civil Code.

<sup>27</sup> See Supreme Court (Civ.) 25 November 2016.

<sup>28</sup> See Supreme Court (Crim.) 30 September 2015 (attempted murder of the mother).

<sup>29</sup> See Article 65 Organic Act 1/2004.

<sup>30</sup> Guidelines issued by the State General Prosecutor no. 4/2005, of 18 of July. <<https://www.fiscal.es>>.

gists refused to intervene without the consent of the alleged violent parent. They feared being accused by their professional bodies of not honouring deontological obligations<sup>31</sup>.

### 2.3 Custody.

In cases in which the custody of children is an issue and the father is involved in gender-based or domestic violence, the judge must consider suspending the father's custodial rights *ex officio* or at the request of any interested party at any moment of the criminal proceedings<sup>32</sup>. However, suspension of custody is neither automatic nor mandatory. Here again, decisions are taken by courts case by case, applying the standard of the best interest of the child. According to available data, this measure is very rarely used in practice<sup>33</sup>.

Article 61 Organic Act 1/2004 as amended in 2015 stresses that, in all legal proceedings related to gender-based violence, the judges *must make a declaration*. But positive law still leaves much leeway for judicial discretion. Articles 65 and 66 Organic Act 1/2004 allow courts to refuse petitions to suspend custody provided that the judge sets up arrangements for the safe exercise of parental responsibilities, custody or visitation rights. The order must also organise periodical monitoring of the evolution of the measures.

The only legal presumption against custodial rights of the father accused of domestic or gender-based violence is connected with the award of shared physical custody (Art 92(7) CC). On occasion, this rule has justified changing the shared physical custody previously agreed to by the parents after the conviction of the father for minor threats<sup>34</sup>. But the practice of lower courts seems to be less uncompromising<sup>35</sup>. Until conviction is final, mere involvement in criminal proceedings or even well-founded indications of minor violent incidents are not sufficient to suspend shared physical custody. On the contrary, psycho-social teams providing advice and support for courts tend to focus on the continuation of father-children relationships and therefore to recommend physical shared custody.

In the case of a father's acquittal, courts must remove prior suspensions of custodial rights and modify any restriction to his relationship with the child<sup>36</sup>. This is even mandatory in the Basque Country (Article 11(4) Regional Basque Act 7/2015)<sup>37</sup>.

<sup>31</sup> See *Informe de la Subcomisión para un Pacto de Estado en materia de Violencia de Género (BOCG-Congreso, XII Legislatura*, no. 199, 03 August 2017). In particular, evidence provided during hearings held in Spanish Parliament by Teresa San Segundo Manuel (p. 37), Yolanda Besteiro de la Fuente (p. 49) and Blanca Estrella Ruiz Ungo (p. 50). Eventually, Royal Decree Act 9/2018, of 3 August introduced an amendment to Art 156 Civil Code to avoid the need of the consent to psychological treatment of the children by the parent convicted for domestic violence (Boe no. 188, 4.08.2018).

<sup>32</sup> Article 65 Organic Act 1/2004. See also Article 544 *quinquies* Criminal Procedural Act.

<sup>33</sup> 4.8% of protection orders/precautionary measures in criminal proceedings.

<sup>34</sup> Supreme Court (Civ.) 4 February 2016.

<sup>35</sup> See for instance Court of Appeal, Barcelona (18<sup>th</sup>) 10 December 2015 (concerning a conviction of verbal abuse).

<sup>36</sup> Supreme Court (Civ.) 13 April 2016.

<sup>37</sup> Act 7/2015, of 30 June, of family relations in case of parents' separation or break up (BOPV no. 129, 10.07.2015).

## 2.4. Visitation rights.

As with parental authority and custody, suspension of visitation and communication rights is possible and can be included in a protection order or during criminal prosecutions for domestic or gender-based violence<sup>38</sup>. However, these orders have been limited to very few cases and spouses or partners are *not* automatically prohibited from having contact with children. Moreover, according to Article 94 I Civil Code, the restriction or suspension of visitation and communication rights requires proof of “serious circumstances or evidence of significant or recurring infringement of duties imposed by the order”<sup>39</sup>. In practice, therefore, contact between the violent parent and the child is treated as a matter of parental rights.

As a result, the “coordination points for visiting rights” – which depend on the justice system – are essential to making these rights effective in cases involving criminal proceedings or allegations of domestic violence<sup>40</sup>. Depending on the circumstances of the case, this service allows mothers and fathers to avoid contact when “picking-up/bringing back” the child, or provides supervision during meetings in case unsupervised contact is forbidden. In practice, however, the capacity of these “coordination points” is limited<sup>41</sup>. Long waiting lists apply, most personnel working in them have no specialised training to deal with cases of gender-based violence and the service can be provided for one year only<sup>42</sup>.

On the other hand, according to Art 57(2) Penal Code, the husband-father’s conviction for mistreatment of mother and daughter leads automatically to suspension of his visitation rights until the end of the penalty term, and they cannot be reinstated contingent on his enrolment in a treatment programme<sup>43</sup>.

## 3. Critical assessment of the application of Organic Act 1/2004.

In 2004 Spain pioneered the legal treatment of domestic violence as something that would no longer be treated as a private matter of interest only to the members of the couple or the family, but rather as a public issue that demands gender understanding.

<sup>38</sup> See Art 66 Organic Act 1/2004 (as amended by Organic Act 8/2015).

<sup>39</sup> As stressed by Constitutional Court judgment no. 176/2008, 22 December.

<sup>40</sup> See Supreme Court (Civ.) 13 February 2015 and 26 November 2015. See also I. VITERI ZUBIA, *La trascendencia de la violencia de género*, cit.

<sup>41</sup> See KELLY *et alii*, *Realising rights*, cit., 94.

<sup>42</sup> According to Catalan regulations laid down by Decree 357/2011, of 21 of June (DOGC no. 5906, 23 June 2011), a maximum time of 12 months, or up to 18 months if special grounds are proven (see Art 25).

<sup>43</sup> In this sense, Supreme Court (Civ.) 13 May 2016.

According to international human rights standards, to meet their obligations, states need to develop integrated and comprehensive approaches to address interpersonal violence. It is the so-called *three-P approach* (protection, prevention and punishment). Integrated approaches aim for a coherent and consistent balance between three obligations: strengthening fundamental rights (notably the right to life and to health) by effectively preventing violence; protecting and supporting victims; and providing justice by penalising and prosecuting violations<sup>44</sup>.

This aim was also apparent in Organic Act 1/2004, yet it is doubtful that this coherent and consistent balance has been achieved by Spanish law.

On the one hand, prevention tools like protection orders are easily available and if breached, their enforcement is supported by additional punitive measures. However, most killings involve victims who never requested an order or filed a complaint against their partner. In addition, the number of protection order petitions is disproportionately lower than the number that would be needed by the dimension of the problem of gender-based violence against women.

In practice, processing most of the victim's complaints in fast-track criminal proceedings also limits the availability of evidence of spousal violence or abuse. Convictions depend exclusively on victims' assertions, and for a number of reasons, including lack of evidence, this leads to the repeated acquittal of offenders. This may happen in early stages of the proceedings, particularly concerning psychological violence or emotional abuse cases. A criminal law focus obviously undermines the capacity of the legal system to deal with the first stages of abusive behaviour in intimate relationships.

That, however, is not the only issue. In practice, the main problem is widespread lack of trust in the police and the justice system on the part of the victims. There are good reasons for this: the few who dare to file complaints against abusive or violent partners find that the protection tools available to them are insufficient and ill-conceived. During the hearings of a parliamentary commission set up to evaluate Organic Act 1/2004, a number of experts mentioned that in most parts of the country immediate free legal assistance for victims is almost non-existent. Very few courts have legal aid services readily available to victims of gender-based violence. In police stations, delays and further practical complications can even lead victims to waive their rights to free legal aid<sup>45</sup>. With some exceptions, specialised victim support services that contact victims to offer support and advice do not exist.

Protection of victims' fundamental rights, notably their right to life and health, as well as that of their children, should be paramount. However, the Spanish legal system still grapples with the issue of protecting mothers and children from abusive or violent partners/

<sup>44</sup> See GENDER EQUALITY COMMISSION, *Analytical study of the results of the 4th round of monitoring the implementation of Recommendation (2002)5 on the protection of women against violence in Council of Europe member states* (prepared by Prof. Carol Hagemann-White).

<sup>45</sup> Interventions of experts Filomena Peláez Solís (p. 28) and Elisabeth González Laurés (p. 82).

parents while avoiding unfair alienation of children from their fathers. As mentioned earlier, Spanish courts are reluctant to suspend alleged perpetrators' parental responsibilities and/or visitation rights. Pursuant to Article 31 Istanbul Convention, "States shall ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children". The Explanatory Report to the Istanbul Convention reminds that complying with contact orders can present a serious safety risk for many victims and their children, because it often means meeting the perpetrator face-to-face<sup>46</sup>.

Spanish courts handle this complex issue on a case by case basis, and refrain from making *prima facie* value judgments based on allegations of incidents of violence. Judges tend to follow the view held in reports from psychosocial teams that keeping contact with the father is in the children's best interest. But the risk assessment tools used by the police and the courts are not fit for purpose<sup>47</sup>. In fact, one of the many measures approved by Parliament in the so-called "State Agreement against Gender-based Violence" is approving Criminal Procedural Law criteria applicable to the risk assessment prior to the issuance of the protective measures currently available<sup>48</sup>.

Finally, the case of Angela González Carreño and her deceased daughter, Andrea Rascón González, should be pointed up. At the age of 7, Andrea was shot dead while on an unsupervised visit with her father, who then committed suicide. Angela sued the Spanish authorities seeking wrongful death damages. The murder took place in a context of domestic violence that had been going on for several years. The UN Committee on the Elimination of Discrimination against Women decided that Spain had violated its obligations by not properly investigating the case and denying any kind of compensation.<sup>49</sup> The Spanish Government replied that it would not review Andrea's case or pay a single euro to her mother. It argued that the conclusions of the UN Committee are not binding. At the same time, it very happily announced the new "State Agreement against Gender-based Violence". It is hoped that the amendments made to Organic Act 1/2004 to implement this "State Agreement" help avoid more tragic cases like Andrea's, and that a more coherent approach to prevention, protection and punishment can result therefrom. By the way, the Supreme Court eventually said that UN CEDAW Committee conclusions are deemed binding insofar as they provide grounds for a failure in the operation of public services<sup>50</sup>.

<sup>46</sup> *Explanatory Report – CETS 210 – Violence against women and domestic violence*, p. 31, no. 176.

<sup>47</sup> According to expert witnesses deposing in the Parliamentary Commission (see *supra* note 38), specialised risk-assessment units mentioned in Art 37 Organic Act 1/2004 have been implemented in one region only, and even the risk assessment reports by medical doctors assigned to the court (*forenses*) have a delay of 6 to 8 months. Intervention of Fernando Chacón Fuertes (p. 87).

<sup>48</sup> Conclusion no. 101.

<sup>49</sup> Committee on the Elimination of Discrimination against Women, Communication No. 47/2012 *González Carreño v. Spain* (16 July 2014) § 9.4 at p. 16

<sup>50</sup> Supreme Court (Adm) 17 July 2018 (holding the Spanish State liable to pay € 600,000 in damages to Angela and that the denial of any compensation had been illegal and unfair).