

**Group of Experts on Action against Violence
against Women and Domestic Violence
(GREVIO)**

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**Comments submitted by Spain
on GREVIO's final report on the implementation
of the Council of Europe Convention
on preventing and combating violence
against women and domestic violence
(Baseline Report)**

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MINISTERIO
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**COMMENTARY BY THE GOVERNMENT OF SPAIN ON THE GREVIO'S FINAL
REPORT ON LEGISLATIVE AND OTHER MEASURES TO IMPLEMENT THE
PROVISIONS OF THE ISTANBUL CONVENTION**

0. INTRODUCTION

In 2014, Spain ratified the "Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence", which is the first binding mechanism on the subject in Europe and the most far-reaching treaty to address this serious human rights violation.

Since 2014, the Spanish Government has shown its firm commitment to the full implementation of the Istanbul Convention, as demonstrated by the regulations, public policies and specific measures approved in recent years by the Spanish State, the Autonomous Communities and Local Authorities, aimed at combating violence against women in all its manifestations.

Likewise, the Government of Spain appreciates the precise and rigorous work carried out by members of the GREVIO in its evaluation of the Spanish State in 2019. The Government takes due note of the recommendations made in the GREVIO report, in full awareness of the work that remains to be done in combating violence against women.

Herewith are the Spanish Government's comments and assessments of the GREVIO's Final Report, to be published alongside it.

I. PURPOSE, DEFINITIONS, EQUALITY AND NON DISCRIMINATION, GENERAL OBLIGATIONS

Spain is grateful for the praise expressed by the members of the GREVIO in recognizing our country's leadership in putting the fight against violence towards women at the centre of the political agenda, and in adopting rules, plans and strategies over the last 15 years to establish a regulatory, political and institutional framework for this purpose.

We agree on the importance of maintaining this legacy of recognizing the gender aspect of the violence that women suffer, and of being vigilant about attempts to reverse the progress made so far.

With regard to the comprehensive approach (paragraphs 10 and 16) in Spain to all forms of violence against women covered by the scope of application of the Convention, we express our commitment that the comprehensive and holistic approach applied in Organic Law 1/2004, on comprehensive protection measures against gender-based violence, should preside over the drafting of the new regulations that are currently being processed in our country for the treatment of all forms of violence against women that are not covered by Organic Law 1/2004.

In this regard, we recall the approval by the Council of Ministers, on 3rd March 2020, of the preliminary draft Organic Law on the Comprehensive Guarantee of Sexual Freedom, which will cover the absence of measures of a global nature, outside criminal law, for all forms of violence against women, as outlined in the Convention, but not included in the area of application of Organic Law 1/2004. Among the guiding principles of the new standard under discussion are: respect, protection and guarantee of human rights; due diligence; gender-focused approach; prohibition of discrimination; attention to intersectional and multiple forms of discrimination; accessibility; empowerment; participation and cooperation.

II. INTEGRATED POLICIES AND DATA COLLECTION

As for the reference to the assistance to victims by the Spanish consular and diplomatic services (paragraph 31), Spain will like to add they are not only encouraged to act in support of Spanish women, but that they have to follow the guidelines of the 2015 Action Protocol for the assistance of Spanish women victims of gender-based violence abroad.

With regard to the recommendations (paragraph 35) made by the GREVIO concerning the guarantee that all legislation, regulations and administrative acts, emanating from all levels of the Administration but especially at regional and autonomous levels, should fully comply with the principles of the Istanbul Convention and ensure their full effectiveness in the State as a whole. We take note of the requirement to carry out an independent comparative analysis of the legislation currently in force in the various autonomous communities regarding violence against women. Although we would like to remind the GREVIO that according to the jurisprudence of the Spanish Constitutional Court, article 149.1.1 of the Spanish Constitution¹ "cannot be an expansive title of competence that obviates the exclusive competences of the Autonomous Regions, such as that of social care". In this regard, article 153 of the Spanish Constitution establishes control mechanisms for the Autonomous Regions, limiting the power that the central government has to exercise control over the powers delegated to the Autonomous Regions.

With regard to the recommendation (paragraph 47 b) to give NGOs greater participation in the drafting of public policies on violence against women, the GREVIO is informed that the amendment of Royal Decree 253/2006, regulating the composition and functions of the State Observatory on Violence against Women, is currently in progress. This will accommodate new civil society organisations representing certain groups such as rural women, young women and Romany women, among others.

With regard to the collection of statistical data (paragraph 57) on all forms of violence against women, the Government Delegation against Gender Violence has begun collecting information on femicides that have occurred outside the sphere of relationships, in order to monitor the statistics. With regard to the population surveys, we thank the GREVIO for their appreciation of the results obtained in the "Macro-survey on violence against women 2019" (paragraph 69). Regarding the recommendation to carry out similar surveys on forced marriages and female genital mutilation, we will take this into consideration for the next macro-survey that is carried out. With reference to the recommendations to support research on all forms of violence against women (paragraph 74), the results of a study promoted and financed by the Government Delegation against Gender Violence on the situation of female genital mutilation in Spain have recently been published.

III. PREVENTION

With regard to awareness campaigns and the recommendation in paragraph 85, new social awareness campaigns will soon be launched by the Government Delegation against Gender Violence. There are three of these campaigns and one is aimed at the general population to alert them to the different behaviours that fall within a broad concept of violence against women, not just violence between couples. Another of the campaigns is aimed at the adolescent population and aims to promote healthy relationships and sex education, contrary to what they receive

¹Art. 149.1 1st of the Spanish Constitution: *The State has exclusive jurisdiction over the following matters: 1.Regulation of the basic conditions that guarantee the equality of all Spaniards in the exercise of their rights and in the fulfilment of constitutional duties.*

through television and the internet. It promotes the normalization of a desired and consensual sexuality, on an equal footing, without being afraid of rejecting certain activities or of withdrawing consent. The third of the campaigns, directed at the male population, aims to involve men in the fight against male violence and to raise their awareness of a range of behaviours that have become normalised. They may not be considered gender violence, but they fall within the broad concept set out under the Istanbul Convention.

In the field of education, Spain appreciates the praise of the GREVIO (paragraph 92) on the efforts undertaken to make equality between women and men one of the objectives and values of our educational system. With regard to some of the deficits detected in this area (paragraphs 88 and 90), there are two draft laws currently in process which will contribute to better compliance with the requirements of the Convention: the draft Organic law amending Organic Law Act No. 2/2006 of 3rd May on Education and the draft Organic Law on the Comprehensive Guarantee of Sexual Freedom. In addition, the Ministry of Health and the Ministry of Education and Vocational Training are working together to prepare the content for the teaching of sex education.

With regard to the training of professionals (paragraphs 99-100 and 104), as far as health professionals are concerned, the Royal Decree 704/2020 of 28th July has been passed. This can lead to the title of Medical Specialist in Legal and Forensic Medicine (MLF) through the residency system. The official programme of the speciality, approved on 9th October 2020, includes the acquisition of specific skills for the assessment of gender violence. There have also been changes to the current training system for national police forces and other professionals who assist victims. Training has been adapted according to the needs of society and to the international commitments that Spain has made with regard to the fight against violence against women

With reference to the recommendation in paragraph 124 to collect data on sexual harassment, the results of the study "Sexual and gender-based harassment in the workplace in Spain", instigated by the Delegation and carried out in collaboration with one of the main trade unions in Spain, will soon be made public.

IV. PROTECTION AND SUPPORT

Spain notes the GREVIO's recommendations to guarantee access for all women to all care services, both general and specialized, throughout all national territory (paragraphs 146, 159, 175, etc.). This is the ethos behind the preliminary draft Organic Law on the Guarantee of Sexual Freedom, as well as the proposal presented by the Ministry of Equality within the framework of the European Union's Recovery and Resilience Mechanism.

With regard to the recommendation made in paragraph 160 concerning a mapping of all existing specialized resources in the country for the care of victims of sexual violence, and of any of the manifestations of violence covered by the Istanbul Convention, there is a plan to extend the current Web of Resources for Support and Prevention in Cases of Gender Violence (WRAP). Going forward, it will extend to include the specialized resources that exist throughout the country to provide care for all victims of any of the forms of violence covered by the Istanbul Convention. It will also implement statistics with data outlining the resources that are available in each Autonomous Region for the care of women victims who have been subjected to violence.

With regard to the 016 telephone information service, the current tender process for awarding the new contract to provide this service already states that the service must include information on all forms of violence against women covered by the Convention.

V. SUBSTANTIVE LAW

We share the GREVIO's concern, expressed in paragraphs 196 to 207, about the civil measures that apply in relation to minors, the sons and daughters of women victims, in cases of gender violence. In this context, the draft Organic Law on the Comprehensive Protection of Children and Adolescents from Violence is currently being processed in the Congress of Deputies, with the aim of making improvements with regard to the protection of minors who are exposed to violence.

With regard to the recommendations concerning the need to amend the Criminal Code (paragraphs 217, 219 and 225), the Preliminary Draft Law on the Guarantee of Sexual Freedom, to which reference has already been made, includes among its specifications a reform of the Criminal Code to clarify situations in which there is a lack of consent on the part of the victim in sexual offences such as rape, to adjust the proportionality of penalties and to include cases in which there are some legislative gaps, such as in the instance of chemical submission. This preliminary draft also includes the modification of *stalking*, which is included in Article 172 ter of the Criminal Code, in line with recommendations 217 to 219.

With regard to paragraph 235, which refers to the criminal offence of genital mutilation (art. 149.2 of the Criminal Code), despite what the report claims, any incitement, coercion or facilitation of genital mutilation is a criminal act under the Spanish Criminal Code. Our penal structure is such that all types of criminal offences regarding genital mutilation are punishable. It covers not only the offence of the person who ordered it but also any offences that involve intermediaries or inducement (using another person), or necessary cooperation (art. 28 of the Criminal Code I) If the facilitation is minimal, responsibility will be attributed by way of complicity (art. 29 of the Criminal Code), in addition to the express provision of article 151 of the Criminal Code for provocation, conspiracy and intention to commit the offence, which are also subject to punishment.

With regard to the recommendations made, amongst others, in paragraph 239, concerning the regulation of the sterilization of legally incapacitated persons, currently included in article 156 of the Criminal Code, a Proposed Organic Law to amend the Criminal Code was recently adopted on 15th October 2020. This will eradicate the forced or non-consensual sterilization of legally incapacitated persons with disabilities. This proposal takes as its point of reference the stipulations of the United Nations Convention on the Rights of Persons with Disabilities and will result in the elimination of the second paragraph of article 156 of the Criminal Code.

With regard to paragraphs 240 to 242, on the punishment of sexual harassment, it should be pointed out that this is not limited to harassment that occurs in the workplace or in the classroom. What the Criminal Code does in such cases is to provide greater protection as it is included as a specific crime in Article 184 of the Criminal Code. Any other conduct is also defined as criminal, and is referred to in Title VIII of Book II, Crimes Against Sexual Freedom. It does not necessarily have to entail special intimidation, hostility or humiliation, since any behaviour that infringes on the victim's sexual freedom where these elements are not present would revert to the current regime of sexual abuse (art. 181 et seq. CP). We can confirm that these offences, as already indicated, are under review.

Lastly, and in relation to paragraph 244, we do not agree that there is a risk involved in mediation being resumed where there has been no prior evidence of violence. It is precisely to avoid this risk that the Civil Procedure Act establishes, in its Article 49 bis, a "bridging" procedure. Within this, the presence of any indication, however slight, of a situation that in civil proceedings may give rise to a suspicion of underlying gender violence, the procedure is expressly referred to the Courts of Violence against Women and any possibility of mediation is thereby ruled out.

VI. INVESTIGATION, PROSECUTION AND PROCEDURAL LAW AND PROTECTIVE MEASURES

With regard to the need to adapt investigation techniques to the specific needs of the most vulnerable victims, such as women with disabilities or those in rural areas, referred to in paragraph

249, there is a new National Police Strategic Plan for 2020-2024. This communicates the needs of minors, foreign people, elderly people, the disabled and other particularly vulnerable victims. It includes a new objective that calls for better police treatment of the most disadvantaged groups who are victims of crime through the removal of the barriers that prevent them from accessing police services on conditions of equal opportunity.

With regard to the concern expressed by the GREVIO, in paragraphs 250, 251 and 255, about the requirement to file a complaint in cases of rape or sexual abuse in order for victims to have access to a forensic examination, there is a provision in the Preliminary Draft of the Organic Law on the Comprehensive Guarantee of Sexual Freedom for the collection of biological samples and other evidence from the victim which may contribute to the validation of sexual violence. These samples can be used for subsequent genetic and toxicological analysis and will no longer be on condition of the prior filing of a complaint or the undertaking of criminal action.

Spain appreciates the assessment made by the GREVIO in paragraph 261 of the functioning of the system of police risk assessment, and reports that important technical developments have been carried out in recent years in all matters relating to risk assessment. This is part of the framework for a comprehensive risk management model that seeks to extend the capacity of protection for victims by incorporating several important institutions that, as necessary parties, will make it possible to improve the real and effective knowledge of the circumstances throughout the progress of each case. This type of multi-centred approach allows progress to be made in both the assessment and, crucially, in the risk management of victims who are liable for institutional protection.

VII. MIGRATION AND ASYLUM

Current Spanish legislation on aliens and immigration is characterized by the reinforcing of the ownership and exercise of the fundamental rights of individuals and it is active in the fight against all forms of discrimination that foreign women may be subjected to.

With regard to granting international protection to female asylum seekers who are victims of violence, the GREVIO is informed that, as of 31st October 2020, provisional data indicates that, of the 4,575 favourable resolutions signed, 1,058 (23.1%) have been on the basis of gender. In 2019, of the 3,228 favorable resolutions signed, 448 (13.9%) were gender-based.

The Asylum and Refugee Office (OAR) is working on the investigation of cases, trying to provide appropriate treatment for women and girls with specific needs who request international protection and adopting a gender perspective when resolving them. Trained civil servants follow confidentiality guidelines so that the appropriate steps are taken when international protection is applied for and in cases where women suffer violence in different contexts, as well as victims of human trafficking

VIII. FINAL CONSIDERATIONS

The Government of Spain appreciates and notes all the comments, observations and recommendations made by the GREVIO. It also wants to assure the GREVIO of the firm commitment it has to continue making progress in the eradication of gender violence.

We hope that the forthcoming regulations and public policies highlighted in this report, aimed at making progress in the fight against all forms of gender violence, offer practicable evidence of

this Government's commitment to guaranteeing that women and children can fulfil their right to a life free from violence.