



**PROTOCOL OF ACTION AND COORDINATION OF THE SECURITY FORCES AND BODIES OF THE STATE AND LAWYERS CONCERNING THE GENDER VIOLENCE REGULATED IN THE ORGANIC LAW 1/2004, ON COMPREHENSIVE PROTECTION MEASURES AGAINST GENDER VIOLENCE**

The article 20 of the Organic Law 1/2004, of 28 December, on Comprehensive Protection Measures against Gender Violence recognises to women victims of gender violence, within the scope regulated by this law, who prove lack of resources to litigate, the right to free defence by a lawyer in all administrative procedures and proceedings directly or indirectly due to the violence suffered, so that the defence of each victim will be under the same legal direction. Furthermore, the Organic Law takes one more step by securing immediate and specialised legal defence to all the victims of gender violence who request it. If the free legal assistance is not subsequently acknowledged, the victims must pay the lawyer the fees charged his services.

Therefore, the Organic Law 1/2004 provides legal assistance to the victim of gender violence with some special characteristics, which determines certain peculiarities in the organisation of the Legal Guidance Services and in the provision of the free duty lawyer scheme, so that the effectiveness of the right of defence is guaranteed to those women who suffer the consequences of the violence exercised by their partner or ex-partner.

Consequently, two are the essential characteristics of the legal assistance which must be provided to a woman victim of gender violence: immediacy and specialisation.

The provision of the aforementioned Organic Law, according to which legal assistance must be carried out immediately, entails the need for coordination between the Security Forces and Bodies of the State –through the National Police Force Stations and Civil Guard Barracks– and Bar Associations, so that the lawyer can assist the concrete victim as quickly as possible.



In addition, if the philosophy of the Organic Law 1/2004 intends, among many other purposes, to shelter and protect the victims of gender violence within the scope of this law, it seems reasonable to request women to enjoy lawyer intervention in all legal action related to the above-mentioned violence. This is the aim of the current Protection Order application form, which gives preference over any other relevant information the guarantee that the victims of this specific violence are informed that they have the right to legal assistance.

The current Protocol, approved by the Technical Committee of the National Commission of Coordination of the Judicial Police, in its meeting of 3 July 2007, complements –within the sphere of the Security Forces and Bodies of the State– what is stipulated in the “Protocol of Action of the Security Forces and Bodies and of Coordination with the Judicial Bodies for the Protection of the Victims of Domestic and Gender Violence”, and aims to secure and homogenise the service of legal assistance in reporting the matter and requesting the Protection Order; improve the police service to the victim and the police formulation of the report, and establish general guidelines for the information and assistance to the victim, not only regarding the judicial aspects but the possible social measures and benefits, in adherence to the Agreement of the Council of Ministers, of 22 June 2007.

## **I. PROVISION OF IMMEDIATE AND SPECIALISED LEGAL ASSISTANCE BY BAR ASSOCIATIONS**

As previously pointed out, the article 20 of the Organic Law 1/2004 guarantees, in any case, the specialised and immediate legal defence to all the victims of gender violence referred in this regulation, which will be free if the victim lacks resources to litigate, also stipulating that Bar Associations will adopt the necessary measures for the urgent appointment of duty lawyers in the proceedings concerning gender violence.

Consequently, the need established by the aforementioned rules according to which the legal assistance in favour of the woman victim of gender violence is immediate, entails a complex organization of the service by Bar Associations, which requires a



provision of the assistance that can be carried out by the different judicial districts, to propose to the Ministry of Justice the number of lawyers necessary to run the guard duty for immediate attention; it must be taken into account that an duty lawyer and, therefore, available all the time, has an economic cost that has to be covered by the regular budget of the Ministry of Justice for the territorial scope of the eight autonomous communities that have not yet assumed the transfer of personal and material means concerning the Administration of Justice (Castilla y León, Castilla-La Mancha, Murcia, Aragón, Extremadura, Islas Baleares, Cantabria, La Rioja, Ceuta and Melilla), being nine the remaining autonomous communities (País Vasco, Cataluña, Valencia, Galicia, Andalucía, Canarias, Navarra, Madrid and Asturias) which cover this cost against their respective budgets.

At the proposal of the General Council of the Spanish Legal Profession, the Ministry of Justice, taking into account the budget resources, approves a certain number of lawyers in situation of 24 hours guard for the duty lawyer scheme regarding gender violence in the Bar Associations of Spain of the territorial management scope that is responsibility of this Department.

The Organic Law 1/2004 and the Law 1/1996 attribute to Bar Associations the adoption of the measures needed for the urgent appointment –in case of being requested– of a duty lawyer in the proceedings regarding gender violence. Bar Associations and the General Council of the Spanish Legal Profession regulate and organise the free legal assistance services, securing its continual provision, having to comply with efficiency and functionality criteria in the application of the available public funds. Therefore, Bar Associations establish fair and objective distribution systems of the different shifts and means for the appointment of the duty professionals. These distribution systems are public and can be consulted by any requestor of free legal assistance.

Within this framework, the actions of the lawyer of the shift of assistance to victims of gender violence have to be guided by the following parameters:



1. The duty lawyer must be reachable all the time, in the way and conditions established by each Bar Association, securing the immediate legal assistance to the victim.

For this purpose, it should be bore in mind that, according to the Organic Law 1/2004, of 28 December, the victims of gender violence have the right to immediate 24-hour legal assistance, so the lawyer must assist the woman victim of gender violence as quickly as possible, without delay or lateness. This has repercussion not only on the quality of the legal assistance to the victims, but also on the handling of the police investigation and procedural steps. For this purpose, it will be tried that Bar Associations could increase the number of duty lawyers who provide the legal assistance service to the victims of gender violence, by finding the appropriate mechanisms to solve the difficulties that could occur in some provinces due to the distances between the different Judicial Districts and diverse geographical peculiarities.

2. Consequently, during his guard duty concerning gender violence, the duty lawyer in no case must or can be absent from the territorial scope where he must provide legal assistance to the victims of gender violence who request it, or attend a trial or any other proceedings that could delay or affect his immediate availability, or appearances that require his attendance, except in all those circumstances with justified reason, in which he could excuse himself, subject to compulsory communication to the Bar Association, and be replaced by his substitute.
3. Before starting the guard, the lawyer must be provided with the regulation necessary for the advice and assistance to the victim, have the application form for the right to free legal assistance for the legal representation and defence of the woman victim of gender violence (Annexe I.IV of the Royal Decree 996/2003, of 25 July, approving the Regulation of Fee Legal Assistance, modified by the Royal Decree 1455/2005, of 2 December), as well as the Protection Order application form approved by the Review Committee of the Implementation of the Protection Order of the Victims of Domestic Violence, available at his Bar Association.



4. As soon as the duty lawyer is called from a police station, Duty Court or Court for Violence against Women, in order to legally assist a woman victim of gender violence:

- a) He must report as quickly as possible to the place where the victim who has requested his assistance is, and provide her, in written, with his personal details and the most suitable way to reach him when necessary.
- b) He will inform his defendant of the right to request legal assistance and of the necessary requirements for the acknowledgement of the above-mentioned right, and help her, if necessary, with the filling in of application forms. Also, he will warn her that, if the right to free legal assistance is not subsequently acknowledged, she will have to pay the legal fees. A proof of this warning will have to be put on written record.

Consequently, the request for legal assistance –Annexe I.IV–, must be properly filled in with the information which, at that moment, the victim provides and has to be signed by her, in order to avoid that later the Provincial Commissions of Free Legal Assistance reject the legal assistance and the subsequent compensation due to the lack of signature. The request must be presented to the Bar Association within 48 hours of receiving the first assistance, or to her local Court Registry, not being necessary to enclose economic supporting evidence of economic resources, which will be subsequently proved before the Bar Associations. The lawyer will also inform the victim that the tax and property information can be obtained by the Bar Association if she authorises so. In case the victim wishes to authorise it, she will be provided with the appropriate form.

5. The lawyer, before reporting the matter or requesting a Protection Order, will meet in confidence with the victim to hear about the case and give the appropriate legal advice. For this purpose, in the police station the lawyer will be provided with the means and conditions to perform the aforementioned interview, and will be



informed about the actions carried out before his appearing in the police station and about the content of the report, if already prepared.

The prior legal assistance will include in any case information about the different possibilities of protection, appearance and its consequences, as well as the rights (information, comprehensive social assistance, free legal assistance, labour rights, rights of public servants and economic rights), which can be exercised through the request for the Protection Order or through any other enabling right, current or future, for its exercise.

6. If the victim, after the advice received, decides to report the matter and, where appropriate, request a Protection Order, the appointed lawyer will assist her in reporting the matter and, where appropriate, in the request for concrete criminal and civil protection measures, making sure that there is a detailed report of the facts, including those which occurred immediately as well as the situations of violence suffered previously by her or, where appropriate, by her and her sons and daughters.

Likewise, the lawyer has to be present when the victim makes a statement and in other proceedings that entail his presence or participation.

It must be taken into account to this respect that the information provided by the victim in her statement is essential so that the police, as well as the judicial authority and the Public Prosecutor's Office, could assess the objective risk of new aggressions in each case and adopt the protection measures appropriate for her or her sons and daughters. Moreover, it is essential to take into account that sometimes there is a lack of other evidence different to the statement of the victim, as the facts took place in the intimacy of the home, without competent witnesses. Furthermore, the psychological determinant derived from the affective relationship often leads the victim to delay her reporting the matter, obstructing even more the proof of the facts.



Therefore, the lawyer will have to take special care in verifying that, on the statement made by the victim, it appears the information included in the Annexe “Minimum Contents of the Report” of the “Protocol of Action of the Security Forces and Bodies and of Coordination with the Judicial Bodies for the Protection of the Victims of Domestic and Gender Violence”, especially, the different elements of proof (visual inspection, statements made by neighbours or relatives, medical assistance records, other reports...), which could corroborate her statement.

7. Regarding her protection, the victim must be informed from the first moment:
  - a) About the possibility of requesting a Protection Order which incorporates civil and criminal protective measures, explaining in an accessible way that it gives the victim a comprehensive protection status which comprises, as well as the aforementioned protective measures, the possibility of accessing to the social protection and assistance measures established in the legal system.

Regarding the civil measures, the victim will be informed that they will have a temporal validity of 30 days, in case a family proceeding is not lodged before the civil jurisdiction within that period.

The request for a Protection Order must be filled in by the victim, with the help and information of the lawyer.

- b) About the civil and criminal protective measures that can be requested, especially the measures established in articles 64, 65, 66 and 67 of the Organic Law 1/2004, of 28 December, on Comprehensive Protection Measures against Gender Violence, warning the victim that the civil protective measures have to be deliberately interested (except the measures concerning minors) if she wishes a decision about them. For this purpose, the witness should try to introduce all the information and evidence that could be relevant for the resolution.



According to what has been stated, if it was convenient to adopt criminal protective measures to protect the woman, it is advisable to request a Protection Order which incorporates them (although civil measures are not requested), since the comprehensive protection status will permit the victim to gain access to rights whose recognition require evidence of the situation of gender violence specifically through a Protection Order.

- c) About the possibility of receiving assistance by the public service of Mobile Teleassistance for the Victims of Gender Violence (information telephone numbers: 900.22.22.92 and 96.369.50.37).
8. The victim will be informed about the content of the article 416 of the Code of Criminal Procedure.
9. When it is necessary to guarantee the protection of the life and physical integrity of the victim and her relatives, it could be requested the confidentiality of her location information. Therefore, it is convenient to take into account that the Organic Law 19/1994, of 23 December, on Protection of Witnesses and Expert Witnesses in Criminal Trials, is enforced when the victim of family violence is threatened and lives in a foster home.

With the same purpose, the victim must be informed about the possibility of requesting the court to exceptionally authorise the protected person to arrange, with a public company or agency –wherever there is one- among whose activities is house rental, exchange of the use of the family housing which she co-owns, for the use of another house, during the time and conditions that are determined. In this case, the measure entailing the compulsory eviction of the accused for gender violence of the domicile will be accompanied by the authorisation of the judge allowing that house, where the victim and her family does not want to live for fear, to be managed by authorised entities in order to rent or exchange it during the time determined by the court in the above-mentioned Protection Order.





10. Assuming that the accuser woman has suffered physical abuse, it is fundamental to verify the existence of the medical report of injuries and present it when reporting the matter. In case of not providing it, the medical centre and date of assistance will have to be indicated.
11. When the victim is a foreign woman in irregular situation, special care must be taken in explaining her that her administrative situation does not affect her right to comprehensive attention recognised by law and that she has the right to regularise her situation on humanitarian grounds, in the terms stipulated in the articles 45.4a) and 46.3 of the Regulation of the Organic Law 4/2000, of 11 January, on Rights and Freedoms of Foreigners in Spain and their Social Integration. In these cases, if the Protection Order is not granted for whatever reason –for example if the accused does not attend the court appearance–, the lawyer will inform, for all pertinent purposes, the report of the Public Prosecutor’s Office indicating the existence of evidence that the applicant is a victim of gender violence.
12. When the victim is a minor, her statement must be taken, in any case, in the presence of the Public Prosecutor’s Office, as stipulated in the article 433 of the Code of Criminal Procedure, modified by the Organic Law 8/2006, of 4 December, which modifies the Organic Law 5/2000, of 12 January, on criminal liability of minors.

In any case, and assuming the necessity to offer legal assistance in the aforementioned way, in order to avoid the possible difficulties of the Bar Associations in efficiently organising the service, it is necessary that the different Administrations and Institutions involved collaborate so that the lawyer can offer his service without delay and as quickly as possible, facilitating the development of his work.



## II. COORDINATION BETWEEN THE SECURITY FORCES AND BODIES OF THE STATE AND BAR ASSOCIATIONS

In accordance with paragraph I.A “Action in the police investigation stage” and in the Annexe “Minimum contents of the report” of the “Protocol of Action of the Security Forces and Bodies and of Coordination with the Judicial Bodies for the Protection of the Victims of Domestic and Gender Violence”, the police officer responsible for assisting the woman victim of gender violence will carry out the actions necessary to enforce the legal right of the victim to immediate legal assistance, in accordance with the following instructions:

1. Communicate immediately to the victim, when the first emergency steps allow so, using the language and form that the victim understands the best, her legal right to be assisted by a specialised lawyer as part of the comprehensive assistance, from that precise moment, in order to offer her legal advice prior to reporting the matter and requesting the Protection Order. Previously, the victim will be informed about the possibility of requesting the above-mentioned Protection Order.
2. Clearly apprise the victim that she can exercise the right to legal assistance, by appointing a lawyer of her choice, or through the lawyer that is already assisting her, or simply by answering in the affirmative the question asked by the police officer who, in this case, will take the necessary steps for getting her legal assistance by the specialised duty lawyer of the Bar Association, prior to reporting the matter and requesting the Protection Order.
3. Inform the victim that, if she decides to be assisted by the specialised duty lawyer, she could have the right to receive free legal assistance assuming that she lacks the resources to litigate, which is not necessary to prove at that moment. In case the free legal assistance is not subsequently acknowledged, the victims must pay the lawyer the fees charged his services. Let the victim know that the same lawyer could assist her in all procedures and proceedings due to gender violence.



4. In case the victim renounces to the right to legal assistance, it will be recorded in the report by means of specific substantiation and the rest of the actions will be continued, including the admonished police advice.
5. If the victim exercises the right to legal assistance, she will be provided with the means to call the lawyer of her choice or, where appropriate, the police officer will communicate the necessity of legal assistance to the local Bar Association, clearly indicating that it is a request for gender violence (Specialised Free Duty Lawyer Scheme). In case the Bar Association had facilitated the list of the duty lawyers and their contact numbers, he will call directly the specialised duty lawyer in accordance with the above-mentioned list. In all cases, the police officer will facilitate the necessary details of affiliation and contact, as well as the police station and competent Duty Court or Court for Violence.
6. In case of not receiving immediate legal assistance due to the lack of communication of the assigned lawyer, the Bar Association will be requested again to make affective the assistance to the victim.
7. In the Book of the Police Station it will be always recorded the call or calls to Bar Associations and all the issues that could take place (impossibility to establish communication with the Bar Association, lack of legal assistance, etc.).
8. The taking of statements, the official report of the matter and all the proceedings which require the signature of the victim, or her presence, participation or consent, among those the request for the Protection Order, will not be carried out until the lawyer arrives to the police station, assuming that the woman had accepted legal assistance.

Without prejudice to this, it will be carried out the first precautionary and securing of the offender proceedings and it will be adopted the measures necessary to preserve the integrity of the victim and evidence of commission of the offence, as well as the collection of effects, instruments and evidence of the offence, to bring



them later before a court. All the police actions and proceedings carried out will be recorded in the police report as proceedings preliminary to the taking of statements from the victim.

When the lawyer goes to the police station, he will be facilitated the possibility and conditions to have a confidential interview with his client prior to reporting the matter and requesting the Protection Order, being also informed about the content of the report and actions carried out so far.

9. If the victim goes to the police station with her lawyer, this circumstance will be recorded by means of specific substantiation, and it will be communicated to the Bar Association and recorded in the Book. Then, the matter will be reported in detail and the actions will be carried out in accordance with the “Protocol of Action of the Security Forces and Bodies and of Coordination with the Judicial Bodies for the Protection of the Victims of Domestic and Gender Violence” and with the complementary provisions of the current Protocol.

### **III: INFORMATION TO THE VICTIMS OF GENDER VIOLENCE BY THE SECURITY FORCES AND BODIES OF THE STATE**

In order to make effective the right to information of the victims, regarding judicial and procedural aspects and social security benefits, it be always followed the guidelines established in the “Protocol of Action of the Security Forces and Bodies and of Coordination with the Judicial Bodies for the Protection of the Victims of Domestic and Gender Violence” and in the current Protocol.

Furthermore, once the proceedings are finished, the police officer will facilitate the contact of the victim with the on-duty social service or –if this service did not exist– with the competent social service (municipal, provincial and autonomic offices, institutions and services). For this purpose, the officer will provide the victim with the location, telephone number and department in charge of the above-mentioned services so that they advise and inform her in detail about the different mechanisms established by law



establishes to protect her, about the rights to information, comprehensive social assistance, free legal assistance, labour rights, rights of public servants and economic rights, and about the established aids of different nature, and provided her with the information concerning the place where the services of assistance, emergency, support and comprehensive recovery will be rendered. All this will be recorded by means of substantiation, whose model is attached as an annexe to this protocol. Once signed by the victim, it will be incorporated to the report and the complainant will always receive a copy.