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# **RELATÓRIO PENÉLOPE SOBRE VIOLÊNCIA DOMÉSTICA NO SUL DA EUROPA**



**APAV**  
  
Apoio à Vítima

**Penelope**, according to the Greek Mythology, was the queen consort of Ithaca and Duliquius, two small Greek islands, because of being married to Ulysses and mother to Prince Telemachus. She kept on awaiting her husband's return following the Trojan War, not knowing whether he had been killed or was still alive. Being a beautiful woman she was to be disputed by several suitors, to whom she had said she would only be prepared to remarry after finishing a shroud she wove all day long. She undid the shroud every night only to start weaving it back the next morning as an attempt not to finish it. She is therefore the symbol of the Southern European women, as well as of the household work.



## **Organizations taking part on the PENELOPE project – on domestic violence in the Southern part of Europe**

### **Associação Portuguesa de Apoio à Vítima (APAV) – Portugal**

It is a Private Social Solidarity Organization, as well as a Collective Entity of Public Aim and a social volunteered oriented one. Its aim is to protect and support victims of crime and/or their relatives, providing support throughout their supporting processes, namely as far as legal, psychological and social aid is concerned, through a net of fourteen victim support offices. It is a member of the European Forum for Victim Support Services, The European Forum for Restorative Justice and Victim/Offender Mediation, as well as the World Society on Victimology.

### **Comisión para la Investigación de Malos Tratos a Mujeres – Spain**

It is a Non- Governmental Organization of women which has been developing its work in such issues as, domestic violence, trafficking of women with the aim of exploring them sexually, equality of opportunities and sexual violence. It carries out studies and professional training apart from supporting women victims of domestic violence providing them with legal, psychological and social aid, namely by means of a free hotline 24 hours a day.

### **Accueil et Reclassement Féminin – Ouvre des Gares – Centre Baudricourt - France**

It is a Non-Governmental Organization which has been developing a supporting programme for women victims of domestic violence in sheltering and emergency Centres. It works in close cooperation with the French Police, as well as with the Hospital emergency services, apart from having a 24 hour free hotline service. It has been training professionals from other organizations on issues concerning domestic violence.

### **Università del Terzo Settore – Italy**

It is a Non – Governmental Organization, which is training oriented and is connected to the ANPAS, which is a social nationwide volunteered supported organization, aiming at the development of the non lucrative and volunteering sector in Italy. It has been developing several European projects on domestic violence.

### **Research Centre of Women's Affairs – Greece**

It is a Research Centre of women connected to various international networks of women. It mainly carries out theoretical approaches, which aim at promoting the rights of women, such as studies, publications and conferences, amongst others.







### **Universidade Católica Portuguesa (Regional Centre located in Porto) – Portugal**

It is a private University, which has been carrying out research studies and other events related to domestic violence, namely in what concerns Lawful issues, which have been used in the cooperation it has been having with other organizations within this intervening area.

### **Instituto Superior da Polícia Judiciária e Ciências Criminais (ISPJCC) – Portugal**

It is dependent on the Portuguese Ministry of Justice and is responsible for the training of criminal investigation professionals, of the technical and Judicial Police officers. It has been carrying out studies, research and investigation on the criminal and the police reality, namely in what concerns the victims of crime.



## **The Team involved in the PENELOPE Project – on violence in the Southern part of Europe**

### **Manuel António Ferreira Antunes**

Sole Representative for Portugal

Associação Portuguesa de Apoio à Vítima (APAV)

He is a jurist, as well as a jubilee State Attorney, who founded APAV (Portuguese Association for Victim Support), which he is the Head of, together with being the Head of Centro Português de Direito Penal e Financeiro Comunitário (Portuguese Centre for the Community Penal and Financing Law) and the Portuguese scientific sector of the Centre International d'Investigations et d' Études Sociologiques, Penaux et Pénitenciers (International Investigation and Sociological, Penal and Prison Studies Centre). He is a Professor at various Portuguese Universities and has carried out several tasks at Polícia Judiciária (the Portuguese Judicial Police), having been its Head Director, as well as Director of Instituto Superior de Polícia Judiciária e Ciências Criminais (Senior Institute of the Judicial Police and Criminal Science).

### **Milagro Rodriguez Marín and Sara Vicente Collado**

Representing Spain

Comisión para la Investigación de Malos Tratos a Mujeres.

She is a psychologist, as well as the founder of Comisión para la Investigación de Malos Tratos a Mujeres (Commission for the Investigation of Mistreatment perpetrated against Women), of which she has been a member since 1983. She has been the coordinator of several reports, studies and guides on the prevention of violence, as well as on the intervening action together with professionals on violence perpetrated against women. She is a trainer on fundamental notions and those pertaining to violence not only in Spain but also at international level.

She is a jurist and has been the coordinator for the Comisión para la Investigación de Malos Tratos a Mujeres since 1996. She is also a trainer on fundamental notions and those pertaining to violence not only in Spain but also at international level. She has been conceiving, devising and carrying out training actions and programmes on fundamental violence notions, together with the carrying out of reports on fundamental violence notions, having taken part on the carrying out of the report on Trafficking of Women and the Prostitution within the Community of Madrid.

### **Efraim García**

Representing France

Accueil et Reclassement Feminin – Ouvre des Gares – Centre Baudricourt

He holds a University degree on Social Sciences, having a specialization on Social Psychology and Educational Science. He is the Head Director of the Social Centre for





women victims of violence, which ensures the provision of support, information and sheltering.

**Antonella Cardone**

Italian Representative  
Università del Terzo Settore

Head Director of the Università del Terzo Settore

**Fotini Stergiopoulou**

Representing Greece  
Research Centre of Women's Affairs

She is a jurist and has been the president of the Association of Greek women in Legal matters, together with having represented the non-governmental organizations of women in Greece in the European Lobby of Women. She is actually holding the vice presidency of the National Council of Greek Women.

**Consulting Body**

**Teresa Féria**

Associação Portuguesa de Mulheres Juristas (AMJ)

She is a jurist, as well as judge at the Justice court. She is also the head of Associação Portuguesa de Mulheres Juristas (Portuguese Association of Women Jurists) and vice President of the International Federation of women carrying out a career on legal matters.

**Elza Pais**

Universidade Nova de Lisboa

She is a Social Assistant and a Sociologist. She has been an investigator for the SociNova Group of Universidade Nova de Lisboa, namely on issues associated with violence perpetrated against women and domestic violence. She is a Professor at Universidade Nova de Lisboa, Universidade Católica Portuguesa (Lisboa) and Instituto Superior de Serviço Social de Lisboa.

**José Pires Leonardo**

Polícia de Segurança Pública (PSP)

He holds a degree in Criminal Sciences and is master in the Sociology of Crime and Violence. He is also a Public Security Police Commissioner, presently carrying out his tasks at the Division of Criminality and Delinquency Prevention pertaining to the National Administration.



**Maria Clara Sotto-Mayor and Elizabete Ferreira**  
Universidade Católica Portuguesa (Porto)

They are both jurists and professors at the Law faculty pertaining to Universidade Católica Portuguesa (Porto), doing research in Family Law and marital violence issues.

### **Executive secretariat**

**José Félix da Silva**  
Technical Manager for the Penelope Project  
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Adviser for the International Relations  
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### **Evaluator**

**Eduardo Viegas Ferreira**  
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## **Introduction**

The Penelope Project – on domestic violence in the southern part of Europe has been developed by Associação Portuguesa de Apoio à Vítima (APAV) (Portuguese Association for the Victim Support), which is a private social solidarity Institution, whose aim is to assist and protect victims of crime, having the support of the European Commission, through the DAPHNE Programme – Preventive actions to fight violence exerted against children, youngsters and women, from November 2002 through to November 2003.

The objective of the PENELOPE Project was to carry out a report on the domestic violence situation in the southern European countries –Portugal, Spain, France, Italy and Greece, attempting to work out in both quantitative and qualitative terms the intensity, duration and personal consequences concerning the domestic violence in each of these countries; as well as to outline the profile of the intervening action which has been developed in each country at governmental and non-governmental levels, namely as far as, the assistance provided to the victims, the specific on the ground activity projects, the public information and awareness, the policy and legislative measures, the training of professionals, adjacent philosophies and the planning and systematizing of the projects, are concerned. It has also attempted to work out the legislation and procedural steps regarding the victims in each of the involved countries; to work out the prospects taking into account the work which had been developed and bearing in mind the necessity to contextualize the policies and the intervening actions within the European framework.

In what concerns the southern countries pertaining to the European Union, it is clear that there is insufficient centralized information on the social problems connected with the domestic violence, as well as the situation profiles and the intervention carried out at the various levels – political, legal, and social, etc. This insufficient information leads to an inadequate acknowledgement of the phenomenon, which in turn does not allow an exact and efficient intervention to be put in perspective. It also makes it difficult to carry out conjunctive efforts, the coordination of the social and police policy approaches and the legal system to adequately respond to the profile of the situations – at either national level, or namely at the level of the European Union.

The southern countries pertaining to the European Union keep on having quite an underdevelopment in what concerns the understanding mechanisms, the intervening actions and the control of the social problems connected with the domestic violence, which puts them further away from the level of response given to these problems by the northern countries. These latter have historical and cultural contexts which seem more favourable in what concerns the actual facing of these problems. By having had representatives of the various countries involved, who could convey their information and perspectives, Penelope Project aimed at gathering this data in a report – the Penelope Report on Domestic Violence in the southern part of Europe – which will be made available with its inherent perspectives so as to be used by the decision taking Authorities at the proper time, as well as all by all of those who study and/or work on these issues.



The involvement of national groups (institutions, universities, researchers, non-governmental organizations, etc) in each country, as far as the representatives were concerned, made their access to this relevant information easier, aiming at the defined objectives for this project. Each representative has presented interspersed reports and has discussed the amount of varied information on the problematic issue of domestic violence in his/her own countries, which were then used by a main representative so as to write down this report. The representatives all gathered in Lisbon on the European Day for the Victims of Crime -22 February 2003, so as to participate in an international meeting and to initiate the works on the Project. They agreed throughout this meeting that they would focus on the reality of domestic violence, restricting it to the concept which seemed to be domineering in what concerned the ongoing legal reality in each of their countries. Having discussed these issues they ended up agreeing that although not disregarding the broadest concept of domestic violence – which implies a wide variety of potential victims and aggressors: wife, husband, parents, children, grandparents, etc - as suggested by the Portuguese representative, the Penelope report should only focus on a restricted concept and which was common to the other representatives : the one in which the woman stands out as a victim and her husband or companion as the aggressor. The Spanish representatives together with the Greek one seemed to show a closer related approach to this concept. Apart from this aspect, having a restricted concept oriented report could lead to a higher degree of consistency in what concerned the gathered information and material, which was desirable so as to have a short text associated to the concept of this Project.

Following this meeting and not having met again, each representative gathered and/or personally contacted those people and institutions within their countries, which they thought to be the pertinent ones in regard to the gathering of information on domestic violence in their countries. Having been in permanent contact with the Executive Secretariat for the Project in Lisbon, each of the representatives made interspersed reports in accordance with a general structuring, which had been agreed upon during the international meeting. Having these interspersed reports together with further information obtained and discussed over the phone or via electronic mail, the Portuguese representative – being in the position of the main Project representative – made the Penelope Report, having had the support of four known Portuguese people well aware of the Portuguese and international realities on domestic violence, as his consultants.

The Penelope Report is divided into three distinct areas, which correspond to the general structuring as agreed upon by the representatives during the international meeting.

In the first area (Substantial Matter I), entitled *On the concept of domestic violence and the respective ruling and administrative legislation provisions in the southern European countries*, and according to the general structuring there has been an effort to include information, per country, on the concept of domestic violence, which each representative felt as being the domineering one in his/her own country, as well as a detailed list of the ruling and administrative legislation provisions in each of the countries involved, so as to work out the connection between the behaviours/behavioural attitudes and the texts which apply to them, together with the

respective publication references, aiming at defining it. We have also endeavoured to list the incriminations, (with particular incidence on specific incriminations); the indication of the type of Entity/Organization which might influence the characterization of the behavioural attitudes within the framework of domestic violence in each of the countries involved; as well as the indication of the anticipated sanctions for the listed incriminations; the indication of the Entities/Organizations which hold the decision taking so as to enforce these sanctions. It also includes the intent element (indicating whether the intent inference of the presumed perpetrator is a necessary element to substantiate the legal infraction or simply the fact that the criminal offence has been effectively carried out for the presumed perpetrator to be reproached); as well as the facts and the procedural acts; as far as the attempt is concerned (indicating the conditions under which the effective action might be considered an inevitable involvement of its perpetrator in terms of the feasibility of the result), and its repression (indicating whether the attempt has been repressed, and if it has, in which way has it been done). We have also tried to present some indication as to the complicity (indicating the known ways of complicity, as well as whether it might be necessary to have a text, which may specifically incriminate the accomplice or simply have the moral wrongdoer be held as the perpetrator or the accomplice); the indication of the personal responsibility (referring the personal responsibility of the main perpetrator, and the ones of the accomplice and of the co-perpetrator, describing the mechanisms regarding the presumption of guilt or the responsibility); as well as the responsibility of a third party (indicating in which ways it has been envisaged: as subject to punishment or as a full responsibility which will end up in a personal condemnation, referring whether there is a simple or full responsibility presumption in regard to the carrying out of an act perpetrated by a third party).

We have also tried to present some indications in what concerns the undertaking of the burden of proof/evidence, referring whether the public authority in charge of the legal process should define the guilt of the presumed perpetrator, or whether it should be up to the presumed perpetrator to prove his trustworthiness and/or his innocence or if there is an effective presumption against the presumed perpetrator, who may be unable to revert it, prior to the setting up of the effectiveness of his behaviour.

We have also considered the attenuating and aggravation causes (indicating whether they are mandatory), the classification of the penalties (having it described and indicating its legal effects), and the accumulation of penalties (indicating the accumulation and not the penalties, including the ones of a different nature), as well as the penalties *aggressors* are subject to in accordance with the jurisprudence (pointing out the eventual case differences should the aggressors be recidivists or not), and the enforcement of the penalties (indicating the percentage of the penalties which were enforced or partly enforced, stating the reasons as to why they were not fully enforced). We have also focused on whether there is an *official record of the aggressors* in the above mentioned countries.

There has been an attempt to indicate the decision taking the administrative/police or penal authorities have and the relation there is between them as far as that decision taking is concerned; the partaking of entities in regard to the mediation/restoration at

local and national levels, as well as the roles the authorities/services involved play in the ruling processing (indicating who takes the final decision); factors, which may influence the decision on mediation (detailing the national criteria, which are applied so as to determine whether mediation should or not be proposed).

We have also attempted to present information on the legal enquiries (criminal proceedings) and the procedures which are to initiate them (referring in which way a case may go through a legal processing stage), the entities, which are to be involved in every different stage, as well as the roles they are to play in such a process; and the courts, which may be more adequate so as to handle cases on domestic violence.

We have also tried to include information on the field of territorial application, in what concerns the sanctioning carried out in each of the countries, regarding the infraction committed within the territory by an aggressor who happens to be a non native of that same territory; or the sanctioning of an infraction in which the victimized person happens to be a native of that country, irrespective of the nationality of the one who has committed the infraction ( active personality principle), the sanctioning of blameworthy actions, once the detention of the perpetrator of the infraction has taken place within that territory ( passive personality principle); the imparting information on the universal competence system (pointing out eventual agreements); the handing out of the processes; the bilateral and multilateral conventions agreed upon by the Member States (stating whether they have been ratified or if any has already been called forth, specifying the actions which are covered by the referred conventions: the carrying out of a commission / letter rogatory, the access to the evidence/proof and the remittitur of criminal records amongst others).

To finish with and in what concerns the statute of limitation we have tried to include information concerning the limitation period regarding the public action (taking into account the type of infraction and its process declaration time limit); the acts and the facts which discontinue it (the finding of facts or the prosecution, the inquest, death, amnesty); suspensive acts and facts, together with what each country has as far as the protection and restoration procedures, as well as their developing process are concerned (comprising its repairing or protective measures, specifying its voluntary or forced nature, as well as the annexed sanctioning process – naming and annexing the applicable texts); information on the national organizations, which are competent to deal with these processes (describing the role and responsibilities which are played and carried out by these entities); the existence of any intervention process throughout the penal or civil processing together with the eventual intervention of non-governmental victim support organizations throughout the non-penal process.

In the second area (substantial Matter II), entitled *the domestic violence situation in each of the Southern European countries; quantitative and qualitative data concerning the victims and the aggressors' profiles; and the type of support they have been provided with*, we have attempted to include relevant information on the victim in quantitative and qualitative terms (stating the gender, the age, civil status, familiar situation, nationality, level of education, his/her situation concerning the economic activity, the main livelihood earnings/profession, the place of residence, the number of people depending on him/her; information on the aggressor (stating his/her relationship with the victim, the gender, the age, the main livelihood earnings/profession, the criminal record, the number of people depending on him/her , the type of perpetrated

victimization, the perpetrated actions – the type of perpetrated crimes, the place where the crimes were committed, the existence of a formal complaint – where it was formally made, the number of complaints included in the process together with information on where the process stands); the type of support which has been provided to the victims of domestic violence (including the overall support/ the referral and the specialized support which has been provided – legal, psychological, social and economic). As far as qualitative terms are concerned, the main consequences endured by the victims namely at personal, professional and social levels.

In the third area (Substantial Matter III), entitled Aspects concerning the prevention and intervention outline, at governmental and non-governmental levels, regarding the domestic violence in the Southern European countries, we have tried to produce information on the assistance provided to the victims of domestic violence ( with particular incidence on the existence of a national network of victim support cabinets in each of the considered countries, the national network of shelter homes, the national service which provides information/support to the victims of domestic violence, etc.); the absence of governmental and non-governmental intervention and prevention measures, information to the public and public awareness campaigns (stating the nature of those campaigns as well as the geographical coverage, highlighting the source and the main essence of the transmitted messages, the funding source and the role which was played by the social media); the existence of political and legislative measures anticipating an immediate future outcome (stating the existing national/regional fighting measures against domestic violence and which priorities have been determined); as well as the specific intervention and prevention projects concerning domestic violence, at national, regional and/or local levels.

The Penelope Report does not seem to show consistency, mainly because of the different realities of each of the countries involved, particularly in what concerns every aspect which should be focused in every of the main areas, there being significant differences or even inexistence in regard to the overall substantial matters. It does convey a number of pertinent pieces of information, liable to give a minimum acknowledgement of what the southern European reality is about in what concerns these social problematic issues, which in northern European countries are approached in a much more structured intervening way, under the light of national policies defined accordingly; though the search for long term positive outcomes, as far as prevention is concerned, continues to be a goal.

The main representative, who has reported and assorted the information provided throughout the whole report, has also drawn and presented his conclusions and prospects at the end of the report.

Aiming at spreading this gathered information throughout the European Union, several exemplars of the Penelope report are to be sent in both Portuguese and English versions

## **I. On the concept of domestic violence and the respective ruling and administrative legislation provisions in the southern European countries**

### **Portugal<sup>1</sup>**

According to the Portuguese representative<sup>2</sup>, the domineering concept of domestic violence in Portugal is expressed in the definition which implies *any behavioural attitude or absence of it, which repeatedly inflicts physical, sexual and psychological pain and/or economic hardship, in a direct or indirect way (by means of threats, misleading attitudes, coercion and/or any other means); to anyone living in the same domestic household and/or who not living within it, is/has been either the consort or companion, as well as those in ascending line or lineal descendents*. This definition has been referred to because of having been proposed by the Commission of experts working on the report, together with the fact that it is in agreement with what is regulated in the Portuguese Penal Code, when typifying the behavioural attitudes consubstantiating article 152<sup>3</sup> (crime for maltreatment and infraction of safety regulations). In other words, the concept of domestic violence comprises aggressive attitudes against consorts and/or those living under similar situations, children and any old age person.

Following the same line of thought, according to the II National Plan against domestic violence, carried out by the XV Government Body of the Portuguese Republic, domestic violence is any type of violence which occurs within members of the same family group or those who share the same household conditions. It does not exclusively refer to maltreatment, once domestic violence concerns any physical, sexual and/or psychological violence, which occurs within the family household atmosphere and which includes sexual abuse perpetrated against women and children, raping of the consorts, passionate crimes, female sexual mutilation and any other wicked traditional practices, incest, threatening, arbitrary depriving of freedom, as well as sexual and economic exploitation. The II Plan notes that although these are mostly exerted against women, they also affect, directly and/or indirectly, children, old people and vulnerable ones, such as those who are physically deficient.

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<sup>1</sup> Extract from the interspersed reports presented by the Portuguese representative.

<sup>2</sup> Acc. Commission of experts on the follow up of the carrying out of the National Plan against domestic violence, which includes independent parties and has been appointed by the official communication made on the 12<sup>th</sup> of January 2000 by the Minister for the Equality pertaining to the XIV Government Body of the Portuguese Republic, in order to follow up the above referred National Plan, having been the first to be approved in Portugal, as in accordance with the administrative act n° 55/99, dated June the 25<sup>th</sup>, taken by the Cabinet.

<sup>3</sup> Acc. those, who having under their care and/or guardianship, responsibility, upbringing ... minors and/or anyone defenceless dependants, either because of their age, physical deficiency, health debilitation, etc ... a) maltreat them physically or treat them in a cruel way; ... the same is to be applicable to those who inflict physical and/or psychological pain to their consorts or whoever lives with them under similar circumstances. The same punishment is to be applicable to those who inflict physical and psychological pain to the progenitors of direct lineal descendent ones.



All the mentioned texts are of legislative sort, conferring the form of Legislative Act (issued by Constitutional Convention), Decree Law (issued by the Government) and/or Administrative Act (issued by the Government notwithstanding the fact that its legal procedural standard might be questionable). The texts included in paragraphs a), b) and f) are of general sort, though applicable to domestic violence issues. The remaining diplomas have been specially conceived so as to approach the problematic issue of domestic violence, particularly the conjugal and Para-conjugal violence.

Domestic violence has historically started being considered a concerning issue for the Portuguese legislators of the Penal Code dated 1982, because of the consecration of maltreatment perpetrated against minors and/or the overburdening of minors and subordinate ones, as well as the maltreatment between consorts, anticipated and subject to punishment as in accordance with the 153 article. In effect, the intervention carried out by the Portuguese Governing Body in what concerns domestic violence lies almost exclusively on the penal oriented approach, by means of considering certain behavioural attitudes within the household atmosphere as crimes of a violent sort. It turns into either a residual value oriented and/or civil intervening oriented one, once the *vinculum matrimonii* is suspended by the recurring divorce as decided by the judge and legally permitted for these cases since 1997 (based on the guilty transgression of, if no other reason, the duty of respect), or of the infringer having to pay a specific indemnification for losses. In Portugal there is no civil protection mechanism similar to the Anglo-Saxon existing civil protection orders.

As far as the list of recriminations regarding domestic violence is concerned, it is stated that the crime type corresponds to maltreatment of the consort or anyone living under the same conditions to the ones of the consort (Article 152, n° 2 of the Penal Code).

And yet many other infractions are liable to be considered if carried out within the marital household in which one of the consorts is the aggressor as versus the other one who happens to be the victim. Some of the most commonly referred ones are:

- 1) Offences to the physical integrity (article 143 and the following articles)<sup>4</sup>;
- 2) Homicide (article 131 and the following articles);
- 3) Sexual coercion/raping (article 163/164);
- 4) Threatening/coercion (article 153/154);
- 5) Slandering/libelling (article 180/181);
- 6) Breaching of the obligation to pay alimony (article 250);

Regarding the type of incriminations (highlighting the specific incriminations), all of the above referred infractions reflect the type of committed crimes, which is to say they are criminal acts liable to be punished. Depending on the type of Entity/Organization, which might influence the assessment of the wrongful conducts, as far as domestic violence is concerned, we have the Police forces in the frontline: Polícia de Segurança Pública (PSP) – the Public Security Police Forces, Guarda Nacional Republicana (GNR) – the National Republican Guard and Polícia Judiciária (PJ) – the Judicial Police. They accept the official denouncing/complaints concerning the effective practice

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<sup>4</sup> All the above referred articles have been drawn from the Penal Code.

of certain facts, being therefore in the position of consubstantiating them to one or any other legal type of crime. This has particularly got to do with the consubstantiation of certain behavioural attitudes regarding offences to the physical integrity, any crime involving maltreatment, having or not taken into account the occurrence of previous similar acts. The Public Prosecution service, which is responsible for the penal action has therefore under its responsibility the deduction of the indictment, as well as in a last analysis the responsibility of assessing the facts which have been made known to them throughout the inquest phase and the correct consubstantiation of them being one or any other type of crime. This assessment is not to be considered definite, once the judge might alter the legal assessment of the same facts during the court proceedings (article 358 of the Portuguese Penal Code).

The anticipated sanctions for the above referred incriminations are:

- 1) Maltreatment of the consort and/or anyone living under similar conditions to the ones of a consort (article 152, n° 2): one to five years in prison; two to eight years in prison if there have been severe offences to the physical integrity of the victim as a result of the maltreatment and ten years in prison if the victim has passed away as a result of that maltreatment<sup>5</sup>;
- 2) Offences to the physical integrity (article 143 and the following articles): one to three years in prison and/or a contractual penalty; two to ten years in prison, should there have been severe offence to the physical integrity;
- 3) Homicide (article 131 and the following articles): eight to sixteen years in prison and/or a contractual penalty; twelve to twenty five years in prison, in case of murder;
- 4) Sexual coercion/raping (article 163/164): one to eight and three to ten years in prison respectively;
- 5) Threatening/coercion (article 153/154): either up to one year imprisonment and/or a contractual penalty corresponding to a two hundred and twenty days period or up to three years imprisonment and a contractual penalty, respectively;
- 6) Slandering/libelling (article 180/181): imprisonment up to a maximum period of six months and/or a contractual penalty corresponding to a maximum period of two hundred and forty days and imprisonment up to a maximum period of three months and/or a contractual penalty corresponding to a maximum period of one hundred and twenty days, respectively;
- 7) Breaching of the obligation to pay alimony (article 250); imprisonment up to a maximum period of two years and/or a contractual penalty corresponding to a maximum period of two hundred and forty days, respectively.

The decision taking regarding the applicable sanctions for the crimes committed by the infringer is under the jurisdiction of a judge.

In regard to the intentional element and according to the type of maltreatment crime as consecrated in the Penal Code dated 1982, the aggressor was to act motivated by either

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<sup>5</sup> According to what has been previously said

cruelty and/or egoism; nowadays this is to be disregarded once, generally speaking, should the behavioural attitude of the wrongdoer be deliberate, that is intentional, according to the general penal legislation there are three degrees of deliberate action to be considered: direct, necessary and eventual.

The rule according to the Portuguese Penal Code is the punishment of crimes which imply deliberate fraudulent actions, being only liable to be punished at negligent level those foreseen cases as in accordance with the Law. This is not the case of the above mentioned crimes. The intentional element is to be examined in the penal processing.

The incorporate facts vary depending on the type of crime being examined. So, in what concerns:

- 1) Maltreatment of the consort or anyone living under the same conditions as the ones of the consort (article 152, n° 2): the described wrongful conduct within the type of crime is physical and psychic maltreatment <sup>6</sup> ;
- 2) Offences to the physical integrity : comprises any type of crime in which due to the wrongful conduct the wrongdoer offends the victim physically or affects his/her health;
- 3) Homicide: comprises any type of conduct liable to lead to the death of the victim;
- 4) Sexual coercion/raping (article 163 and 164): what is to be taken into account is the constraint the victim has endured because of having been forced to a sexual act such as coitus, oral coitus and anal coitus, by means of violence or any severe threat carried out by the infringer.
- 5) Threatening/coercion (article 153/154): implies threatening the victim with the intent of committing a crime against his/her life, physical integrity, personal freedom, sexual freedom and self-determination and/or against his/her assets of a considerable value, so as to enforce fear and/or any form of disturbance; as far as coercion is concerned, what is to be taken into account is the constraint the victim has to endure by means of violence and/or any important threat in view of having him/her commit a crime or avoid taking action, and/or having to endure the practice of a specific type of activity;
- 6) Slandering/libelling (article 180/181).In regard to the first case, what is to be taken into account is the imputation to the victim (addressing a third party) under the suspicion of a specific fact and/or an impending judgement value on the person in question, which is offensive to his/her reputation and respectfulness, and/or in the propagation of such an imputation or judgement value; in regard to the second case, what is to be taken into account is the pronouncing of offensive words concerning the person's reputation and/or respectfulness and/or the imputation of facts, though it might be done in a questionable way, yet offensive to his/her reputation and respectfulness.
- 7) Breaching of the obligation to pay alimony (article 250); implies not having complied with the obligation to pay alimony, which the infringer has been legally obliged to, putting at risk the satisfaction, without the help of a third

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<sup>6</sup> According to what has been previously said

party, of the fundamental needs of the victim, once the infringer is in the position of being able to comply with it.

Generally speaking, the above referred behavioural conducts represent the actions taken by the infringer; the only circumstance, which has not been expressed and its omission is legally punishable is the one anticipated in article 250 of the Penal Code.

The attempts at domestic violence are to be punishable (articles 22 to 25 of the Penal Code). It is considered an attempt whenever the perpetrator carries out any action having in mind an anticipated crime, irrespective of it not being effectively carried out. The attempt is only liable to be punished if the crime envisaged corresponds to a punishment of more than three years imprisonment; the attempt is liable to be punished the same way the anticipated crime would, especially if there are attenuating circumstances.

In regard to the problem of complicity, article 27 of the Penal code states that anyone who deliberately or in any other way, supports a third party in a material and/or moral way in his/her deliberate fraudulent action, is to be punished as an accomplice. The punishment is to be the same as the one determined for the perpetrator of the crime, especially if there are attenuating circumstances.

In what concerns the evidence, the burden of proof, presumption of the innocence of the defendant is to be considered until adverse evidence has been found; it is up to the Public Prosecution throughout the penal action procedures, and/or eventually up to his/her assistant, acting as an auxiliary, to record the evidence of the fact, to state its illegality, as well as the culpability and the presumption elements regarding the condemnation of the infringer.

As far as the attenuating and aggravating circumstances are concerned, and as in accordance with the article 71 of the Portuguese Penal Code, within the limits legally defined, the determination of the punishment is dependent on the guilt of the acting person and the required prevention measures. In the effective determination of the punishment every circumstance is to be considered, irrespective of having been taken in account as an integrating part of the crime itself, but as long as they testify for or against the defendant, namely: in what concerns the degree of illegality, the way the act was carried out and the seriousness of the consequences, as well as the degree of the violation of the duties imputed to the infringer; the degree of the deliberate fraudulent action and/ or the negligence involved; the feelings which have been expressed towards the carrying out of the criminal act as well as the aims and reasons which have determined the act; his/her personal conditions together with his/her economic situation; his/her behavioural attitude prior to and following the criminal act, namely in regard to the repairing of the consequences of the criminal act; the lack of preparedness regarding the maintenance of a correct behavioural attitude, shown in the sequence of the punishment decision taking.

On the other hand, the article 72 of the same Penal Code also determines that the Court should attenuate the punishment application beyond the cases anticipated by Law, whenever there are circumstances, which having occurred prior to, following and/or throughout the criminal act, might lead to the attenuation of the illegality of the fact, the degree of culpability of the infringer and/or the necessity of punishment. The following circumstances are to be considered, amongst others: having acted under the influence of any serious threat or complied with the decision of anyone in his/her ascending lineage he/she may depend on and/or whom he/she feels a duty of obedience for; having acted because of an honourable motive, because of having felt a strong pressure or allurements on the part of the victim, and/or having been unjustly provoked or unduly offended; having shown sincere repentance, namely by means of doing the utmost to repair the inflicted damages; having shown an irreprehensible attitude following the criminal act and over a long period of time .

The anticipated punishments for the above mentioned criminal acts as in accordance with the Portuguese Penal Code are the punishment by confinement and the payment of a fine, though the court decision should favour the latter whenever it suits the punishing aims in an appropriate and adequate way; in what concerns maltreatment it is anticipated as an additional punishment that the consort or the one living with the victim under similar circumstances to the ones of the consort avoid having any contact with the victim, including having the aggressor move from the residential home shared with the victim.

A number of additional sanctions are to be considered, once the imprisonment is to be applicable as an alternate punishment to the payment of a fine; in what concerns the additional prohibition of having any contact with the victim including moving away from the home previously shared with the victim, this is to be considered cumulative to the application of the main applicable punishment.

Regarding the sanctions applied to the aggressors under the light of the jurisprudence, notwithstanding the fact that not much data is available within this dominion, the practical experience shows the following tendency: whenever a crime contemplates an alternate punishment which might be either the payment of a fine or the imprisonment of the aggressor, the Court ultimately chooses the latter, at least when the defendant is the prime accused; this rule is only to be altered should there be particularly severe circumstance involving the criminal act; in cases of recidivism or accentuated seriousness the Court favours the imprisonment, though whenever possible the stay of execution might be considered, so long as subordinate to the compliance of certain injunctions and behavioural attitudes to be followed by the aggressor. The effective imprisonment of the criminal infringer is to be considered as a last resort, should the facts and the guilt of the infringer be severe enough to justify such a decision.

In regard to the carrying out of the sanctions and whenever the accused has been convicted to paying a fine, its effective payment has to be carried out otherwise the non-voluntary payment, following the frustrated coercive payment implies the automatic



conversion of the lack of payment into a period of imprisonment (reduced to two thirds) which has to be fully served.

In what concerns the serving of a sentence term, the accused may only avoid it if he/she runs away; he/she may at any time be located by the Police forces and forced to serve the sentence term, unless it has prescribed.

Lastly and in regard to the additional punishment of maintaining no contact whatsoever with the victim, including having to move away from the shared home, it seems that the only consequence deriving from not complying with it is the committing of crime of disobedience, which might lead the infringer of such an order to being consequently subject to a new criminal proceeding.

In Portugal there is no specific record of the list of aggressors.

In what concerns the participation of mediation/restorative organizations at national and local level and the roles they are to play, the Portuguese legislators have not yet considered taking advantage of such a mechanism.

Regarding the convenience or the legality of the proceeding, the Institute for the Provisional Stay of Proceedings, anticipated in the article 281 of the Portuguese Penal Code, represents the adherence, within our legal system, to the principle of convenience, though the prevailing one is the principle of legality. The consecration of the solutions based on the mitigated convenience within the Portuguese legal processing system, *maxime*, the provisional stay of proceedings does present some advantages, in political and criminal terms, namely in what concerns the interests of the victim, as well as the ones of the State and the delinquent, not only in regard to the general thesis, but also whenever a domestic violence situation is involved.

The provisional stay of proceedings in what concerns a specific proceeding shall be decided by the Public Prosecution, once the presumptions have been determined: that the crime be liable to be punished with a minimum five year sentence (or any other sanction), that both the accused and the assistant agree on the determined provisional stay of the proceeding, that the accused has no criminal record, that his degree of guilt has been considered minor and that it is predictable the accused complies with the injunctions and behavioural attitudes required for such preventive measures.

Such an option is to be considered within the discretionary scope of the Public prosecution services, and once the presumptions have been determined, the provisional stay of the proceeding shall depend on the agreement of the lower court judge, without which the course of the proceedings shall continue as if the Public Prosecution has not sustained the proceeding, having to therefore follow the normal procedural steps through to the end.

Whenever the cause for the criminal act has involved maltreatment of the consort, the victim may, under his/her own initiative request the provisional stay of the proceedings, if “no similar measure has been applied to the defendant for an infraction of similar

nature”, which may not be envisaged for any other type of crime. Should the provisional stay of the proceedings not subject to an official register, the question to be raised is how to control the requirements for such a proceeding.

The somewhat ambiguous formulation which has been consecrated to the provisional stay of the proceedings as requested by the victim is liable to be criticized, namely in what concerns the following expression “taking into consideration his/her situation” (meaning the situation of the victim). Which then is the effective situation of the victim which may lead towards the suspension, once the provisional stay of the proceedings has been requested?

Notwithstanding the trust one should have on the Institute, as far as the theoretical issues are concerned, several obstacles have been raised in practical terms, bearing in mind the practical impact the provisional stay of the proceedings has had since it has been set up by the Penal code Processing, dated 1987 up to the present moment: from 1989 up to 1995, the provisional stays were of about 1% of the total number of the alleged indictments; from 1996 to 1998 they were something like 0,30% of the total number of accomplished quests carried out throughout the period of a year; in the year 2000 just 1861 processes have adopted the provisional stay of the proceedings approach. These figures are amongst other reasons mostly due to having to obtain the agreement on the part of the various subjects involved in the process, but this also has to do with the unawareness on the part of the juridical magistrates towards an increasing approach to such a proceeding, which entitles the victim him/herself, to take advantage of such a mechanism so as to under his/her own will sustain the proceeding, irrespective of the possibility the Public Prosecution service already has and which is an important step towards an eventual diversion of the resolution approaches of a typical conflict such as the marital violence issues.

Regarding the entities in charge of the application of the sanctions (taking into account the existence of the appeals on the merits of the cases, as well as the nature of those appeals), the application of the legal sanctions is under the competence of the judge who presides the court sessions. They might appeal concerning the verdict in accordance with the applicable legislation process: the Public Prosecution concerning any decision, in the exclusive interest of the accused; the accused and his/her assistant concerning the decisions taken against him/her; the civil parties concerning the part of the decision which has been taken against each of them as well as against those whose verdict implies the payment of a sum of money, and/or may have had his/her own rights affected by a decision taking. One does normally appeal against a decision taken by the one Court addressing his/her appeal to the competent local Court of Appeal; and then from this decision taking on to the Supreme Court of Appeal, once the re-examination of the matter of law substance is required. The Courts of Appeal acknowledge the matter of facts and the ones of Law substance, whilst the Supreme Court only deals with the Law substance. The appeals against condemnatory final decisions generally lead to adjournment effects.

In what concerns the judicial inquests (criminal proceedings), the criminal processing steps go through three distinct phases in Portugal, two of which are mandatory and the other one optional: the inquest; the finding of facts and the trial. The optional phase is

the intermediate phase, designated by the finding of facts. The inquest phase is to be headed by the Public Prosecution, being the following phases presided by a judge.

The criminal proceeding is initiated by the acknowledgement of the crime which may be made known in two ways: by having an official complaint made by the one entitled to the legal protection of his/her assets, in the case of semi-public crimes, and/or the denouncing of the crime made by the person him/herself or any other entity in the case of public crimes; it is mandatory for the police forces and their officers to denounce such crimes, should they have been made known to them in the carrying out and/or sequence of their duties (as in compliance with the article 386 of the Penal Code).

The inquest phase comprises a number of proceeding steps, which aim at thoroughly investigating the existence of the crime, determine who was responsible for it, as well as their degree of responsibility, together with finding out and gathering of the evidence, so as to go forward in terms of the indictment. This latter is to be headed by the Public Prosecution, though the practice of certain criminal acts may imply the intervention, not to mention the presidency of a legal magistrate - a lower court judge.

Once the inquest phase has been finished, it is up to the Public Prosecution magistrate to decide on whether or not to proceed with the indictment: as the representative entity he/she carries out the alleged indictment and/or determines its off record, depending on whether he/she may feel there is sufficient circumstantial evidence to support the practice of the crime on the part of the infringer.

The finding of facts phase is carried out under the direction of the lower court judge assisted by the criminal police entities; it aims at legally confirm the alleged indictment or the determination not to consider it liable to be or not subject to trialling; it is an optional phase.

The trialling is to be presided by a judge; its outcome leads to a verdict (and/or a decision held by the higher court), which may be of an acquitting or condemning nature and which puts an end to the processing either way.

The competent Court as far as the materialization of the facts is concerned is generally speaking any generic oriented Court of Justice competent enough to prepare and judge any processing data concerning court cases which may not have been handed to other Courts of Justice, as in compliance with the article 77, nº 1, paragraph a) of the Law concerning the Organization and Functioning of the Judiciary Courts (Law nº 3/99 dated 13 January), without prejudice to the existence of specialized civil and criminal competency oriented courts and the specific competency oriented ones. It is only when divorce cases and separation of people and property cases are involved, that the competent court has to always be one of specialized competency: The Family court. The setting up courts specialized in domestic violence issues should be envisaged within our juridical system, and/or at least have these be included within the competency of the Family courts, as far as penal and civil proceedings involving domestic violence issues are concerned.

In effect, one of the most common critiques to the judicial intervention within this specific dominion, has to do with the slender sensitivity on the part of the magistrates towards the problematic issues of domestic violence, together with the insufficient training as far as this area is concerned. Various technical and logistic barriers have to be faced: those who have been involved in this type of processes (especially the victims) need to be supported in quite a special way, namely in what concerns the psychological and material support, apart from not having to be publicly exposed and have the processing steps be taken as quickly as possible.

The Portuguese Penal Law, in accordance with the Penal Code applies to facts which have occurred within the Portuguese territory, regardless the nationality of the one who has carried them out, in a clear adherence to the so called principle of territoriality.

The Portuguese juridical-penal system consecrates the principle of the active nationality as a subsidiary principle regarding the application of the Law, which is to say that if the act has been committed outside the national territory by a Portuguese native, the juridical system is competent enough to trial the case and have its penal law applied to it, as long as certain cumulative presumptions have been confirmed: the assumed Portuguese nationality of the wrongdoer; the fact that the act is also liable to be punished by the Penal legislation of the State where it has been committed; the fact that the wrongdoer has been caught within the Portuguese territory; the fact that the crime contemplates extradition and that it cannot be carried out.

It also consecrates the principle of the passive nationality, which is to say that even if an act has been committed against a victim holding Portuguese nationality outside the national territory, our juridical system is competent enough to trial the case and have its penal Law applied, as long as certain cumulative presumptions have been confirmed: the assumed Portuguese nationality of the victim in question; the fact that the act is also liable to be punished by the Penal legislation of the State where it has been committed; the fact that the wrongdoer has been caught within the Portuguese territory; the fact that the crime contemplates extradition and that it cannot be carried out.

The Portuguese Penal Law is not to be immediately applied to the infringers who have been caught within Portuguese territory. Certain presumptions have to be met: either the principle of territoriality has to be taken into account or any subsidiary principle regarding the application of the Portuguese penal Law to acts having been committed outside the Portuguese territorial area.

The Portuguese law is only to be applied to acts having been committed outside the Portuguese territory whenever the principle of protection of the necessary relevant national interests are to be taken into account, as in accordance with the universal principle for the protection of the juridical welfare, as well as the principle of the active and passive nationality. Domestic violence cases are not to be submitted to any of these principles.

Regarding the prescription of the cases, the following general time limits concerning the criminal procedural steps are to be followed:

- a) Crimes liable to be punished with a maximum limit of ten to fifteen years imprisonment;
- b) Crimes liable to be punished with a maximum time limit of either or over five years imprisonment and inferior to a time limit of ten years imprisonment;
- c) Crimes liable to be punished with a maximum time limit of either or more than a year's imprisonment and inferior to a time limit of five years imprisonment.
- d) Two years imprisonment in the remaining cases.

The prescription time limit starts as from the day in which the criminal act has been effectively carried out. The prescription regarding the criminal procedural steps starts as from the day in which the criminal act has been effectively carried out. The prescription is only to be considered in the following cases:

- a) as from the day in which the effective carrying out of permanent crimes has been interrupted;
- b) as from the day in which the last committed act of ongoing crimes and common ones has been carried out;
- c) as from the last attempted act of non perpetrated crimes

In what concerns the complicity, the perpetrator's criminal act is to always be taken into account. Whenever considered relevant, the analysis of the results which have not been considered regarding the type of crime, are to be under time limit prescription as from the day in which it has been taken into account.

The prescription as far as the criminal procedural steps are concerned is to be interrupted: when the defendant has been made constituent; when the indictment has been notified or in case it has not been induced, when the notification of the instructions for the prosecution of the defendant have been pronounced and/or when the notification of the petition so as to apply the sanction in the summary proceedings have been carried out; when the contempt of court declaration has been done; when the notification of the instruction which specifies the preliminary hearing has been done in case the defendant is absent.

Following every interruption a new prescription time limit is to be initiated. The prescription of the criminal proceedings is to be carried out as from the initiation of the excepted suspension time limit, whenever the average prescription time limit added by half of its period time has run. Whenever, due to a special provision the prescription time limit is inferior to two years and the maximum time limit of the prescription corresponds to double the amount of that time limit.

The prescription regarding criminal proceedings is to be suspended apart from the cases anticipated by Law, during the following time periods: in which the criminal proceedings cannot be legally initiated or whenever there is no legal authorization for it or its verdict to be decided by a non-penal court of justice, and/or by means of the re-evaluation of a non-penal prejudicial matter; whenever the criminal proceeding is



dependent on the notification of the indictment and/or when not deduced, as from the notification of the instructions to be pronounced as far as the defendant is concerned or as from the petition so as to apply the sanction in the preliminary hearing; as long as the contempt of court declaration is in force; and/or when the verdict cannot be notified because of the accused having been trialled though being absentee; when the delinquent has been subject to punishment and/or freedom preventive measures abroad.

The prescription is to start being considered as from the day in which the cause for the suspension has been taken into account.

In regard to the protection and repairing procedural steps, as well as their developing measures, it should be stated that Portugal has no such approach, at least in what concerns domestic violence circumstances. The eventual protection and repairing measures owed to the victims are firstly brought up in the penal proceeding, by means of a decision taken as a coercion measure to be applied to its aim (the protective one) and which at this particular stage of the process is to be considered provisional and then because of an hypothetical condemnation of the infringer to be moved away from the victim's residence and/or the determination of having the imprisonment suspended or the prison sentence subordinate to the follow up of certain injunctions and behavioural conduct on the part of the infringer, which having been adequately determined may imply the obligation of having to compensate the victim for the caused damages and/or the obligation of not getting near the victim, amongst other measures.

Lastly, in case the victim needs (and the prerequisites are met), she may be taken into a shelter home, as in accordance with the anticipated resolutions stated in the decree law nº 323/2000, dated 19 December.

In what concerns the repairing measures, these are generally taken into account throughout the penal procedural steps. The principle of adherence is in force amongst us, and this implies that any criminal act which is liable to be held civil responsibility is entitled to a compensation request, which is to be deducted in terms of the determined prison sentence. Another opportunity the victim has of being compensated in terms of the inflicted damages lies in the anticipated mechanism consecrated in the Law nº 129/99, dated 20 August, which envisages the applicable regime of having the State advance the compensation to the victims of domestic violence. The ones being granted this State advancement are the consorts of the victims of maltreatment. Three requisites are to be met prior to the granting of this advancement: having been victims of any form of maltreatment perpetrated by their consorts, anticipated and liable to be punished as in accordance with article 152, nº 2 of the penal Code, having been left in a serious economic situation as a consequence of such a criminal act, there being a strong probability of meeting the prerequisites so as to apply for compensation. The victim may be the one to ask for the advance of the compensation, apart from it being requested by victim support and protection organizations (acting on behalf of the victims) and the Public Prosecution service. The decision regarding the advance of the compensation, together with the one concerning the amount to be granted, is to be determined in accordance with equity oriented value judgements. The State may not

advance a higher amount than the one equivalent to the minimum wage amount. This is to be granted for a period of three months and may be extended to a similar period of time, though under exceptional conditions extended to six month periods.

The Ministry of Justice is the competent entity in charge of granting this advancement, as in accordance with the Law nº 129/99.

Irrespective of the either public or semi-public nature of the crime, the Portuguese Penal proceedings allow the offender – standing as the one person entitled to the rights Law has attempted to protect by means of the indictment – be made assistant party in the proceedings, which according to our system implies collaborating with the Public Prosecutor.

In terms of maltreatment and any other crimes in which the consort stands as the one person entitled to the rights Law has attempted to protect by means of the indictment, he/she may be made Assistant, as in accordance with the penal proceedings and entitled to any other rights contemplated by them. On the other hand, the offender may also, as part of the penal procedural steps deduct a civil compensation request, as based on the breaching of his/her legally protected rights and interests.

The paragraph 24 of the nº A4 – 0250/97 *Resolution* (“Resolution on the European campaign for tolerance zero concerning domestic violence against women”) taken by the European parliament, *States are asked to allow Women’s Organizations and competent institutional organizations to legally intervene on behalf of victims of serious cases, in which they themselves are incapable of acting in their own defence.*

Prior to the enforcement of the law nº 61/91, dated 13 August, this issue did not contemplate any type of intervention. The article 12 of this diploma consecrated the possibility of women’s organizations becoming assistant parties on behalf of the victims aiming at their protection and defence in the penal proceedings, by presenting a declaration subscribed by the victim, whenever sexual crimes, maltreatment of the consort, kidnapping, abduction and physical offences are involved. The I National Plan against domestic violence went even further, by advocating the possibility of assisting these organizations, *unless there is opposition on the part of the victims and/or anyone assigned to defend them.* No legislative alteration has been carried out as far as this issue is concerned.

Under the Law nº 61/91, the women’s organizations may press for the compensation request, on behalf of the victims and as in accordance with the applicable legislation in regard to the compensation advancement to be provided by the State, when the victim is in no physical or psychological condition to carry out the legal mechanisms she is entitled to on her own, so as to be able to get the above mentioned compensation.

It is thought though, that the legislator should have consecrated this right of intervention not only to the women’s organizations, but also to the victim support organizations, in general terms, as in accordance to what happens under the Law nº 129/99 dated 20 August – which approves the application of the legitimacy towards the advancement of the compensation to be provided by the State to the victims of marital violence (and not



to the Women's organizations), whilst on behalf of the victims and having been requested to do so.

## SPAIN<sup>7</sup>

The Spanish representatives have stated that the concept of domestic violence in Spain is necessarily and structurally speaking to be included in the concept of *violence of gender*, which lies within the concept of violence perpetrated against women in general, for the simple fact of being women, having behind it the yielding of the power exerted on them, together with their submission to the control exerted by the male over the ones they consider their property, once being either their spouses or marital companions. They have also referred that this concept of domestic violence in Spain has been spreading and increasingly being expanded to other members of the family unit, such as the children, the parents and grandparents, in the last few years. They have focussed their preliminary reports on the concept of domestic violence involving women and the marital relations, as subject to the thinking of the feminist movements in Spain, yet they have considered the importance of defining the violence of gender, whose concept will lead to the one of domestic violence. Based on the definition stated in article 1 of the Declaration on the Banishment of Violence exerted against Women, proclaimed in the General Assembly of the United Nations in 1993, is any act exerted against the female and which might result in physical, sexual and psychological injuries and/or lead into any form of suffering, by means of threats, coercion and arbitrary depriving of freedom in both public places and private ones.

Within this context, the Spanish representatives, have stated that domestic violence implies a multiplicity of ways and types of approach, causing death, physical, sexual and psychological injuries, economic distress and may lead to coercion, threatening, humiliation, offences, amongst others.

Taking into account what is enforced by the Spanish juridical and penal code, the following acts typified as domestic violence in accordance with the penal Code are:

- a) Psychic and physical maltreatment. These fit in the penal type of offence which includes injuries, commonly exerted maltreatment and subsequent correlated faults.
- b) Psychic maltreatment. It is to be included in the offences against moral integrity, offence, threatening, and coercion and correlated faults.
- c) Sexual maltreatment is to be included in the offences against sexual freedom.
- d) Economic induced distress is to be included in the offences associated with the abandonment of family and non observance of the payment of alimony. No correlated faults are to be associated with these.

The Spanish representatives have called the attention to the necessity of understanding these types of approach, in which case it could be convenient to differentiate offences and faults, as in accordance with the Spanish Penal Code. This differentiation implies that in certain offences, which have a higher degree of seriousness than the faults, the maximum prison sentence may go up to a twenty five year period, whilst the maximum

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<sup>7</sup> Extracted from the interspersed reports presented by the Spanish representatives

one to be attributed to the faults is of a six week period. On the other hand, faults do not imply the existence of criminal records, whilst the criminal offences do. Recidivist acts are to be aggravated as far as the determination of the sentence is concerned, once any recidivist behavioural attitude aggravates the consequences. Until the penal renewal which occurred September last, it was important to distinguish the two types of infractions regarding the illicit acts as far as domestic violence was concerned. Nowadays, bearing in mind the alterations, which were introduced to the various articles of the penal Code, under the Organic Law 11/2003 dated 29 September regarding decisive measures on security, domestic violence and social integration issues, the typification of the behavioural conducts regarding physical and psychic maltreatment has been changed:

- a) Those behavioural conducts which up to this renewal were considered as faults implying offences within the domestic violence dominion are to be considered offences ;
- b) The offence which implied commonly practiced or recidivist maltreatment has seen the scope of its potential victims expanded, having the prohibition of possessing firearms been imposed to the aggressors, as well as the possibility of the court judge determine the depriving of their paternal authority, their guardianship, trusteeship, custody and/or sheltering rights.

The physical and psychic maltreatment is to be considered as an offence, and more specifically as an offence against one's life. The one, which according to the Spanish representatives may occur under extreme circumstances within the domestic violence, is the assassination. Article 138 states that whoever kills someone is liable to be punished as a killer and his prison sentence is to be determined from a ten up to a fifteen year period. A more serious assassination type is murder, which is contemplated in articles 139 and 140 of the Penal Code and in which the circumstances that might aggravate the prison sentence have been determined. Whoever kills someone with the concurring circumstances that follow is liable to be considered a murder and is to be punished with a prison sentence of a fifteen up to a twenty year period:-1.st - In a perfidious way;-2.nd - Having been paid, rewarded to do it or having acted under contract; -3.rd - In a cruel way, having deliberate and inhumanely contributed towards the increasing suffering of the offended party. Whenever more than one of the anticipated circumstances stated in the previous article have been concurrently used, a prison sentence of a twenty up to a twenty five year period is to be determined.

In what concerns the injuries offence, which is to be included in the physical and psychic maltreatment a), contemplated in the article 147 of the Spanish Penal Code, it is stated: *whoever causes injuries to anyone and or affects one's physical integrity, and/or physical and mental health in any particular way or by means of a specific act, is to be accused of having provoked injuries and is to be sentenced to a maximum sentence ranging from a six month to a three year period. Depending on the injuries, the victim is to be provided optional assistance, so as to be able to maintain his/her sanity, as well as medical and chirurgical treatment. The simple vigilance and optional follow-up is not to be considered medical treatment. The same sentence is to be determined to those, who*



*may have carried out the same act, four times within the period of a year, as in accordance with what is stated in the article 617 of the Penal Code. Depending on the seriousness of the act and taking into account the means which have been used and the caused result, the perpetrator is to be punished with a three to six month prison sentence and/or the payment of a fine corresponding to six up to twelve month period.*

The elements concerning this case include the following aspects: the person having suffered an injury: an injury is any damage to the physical integrity and/or affecting the physical and mental health. It implies that the person apart from having been medically assisted needs further medical and/or surgical treatment. This treatment consists of having to be submitted to a remedial methodology or approach. That the minor injuries (not needing medical or surgical treatment and/or not having limited the physical integrity or significantly affected the physical and mental health) may have occurred more than four times over a period of a year. That these may be considered minor taking into account the way they were provoked or the means which have been used to provoke them.

The article 148 of the same text determines an aggravation, which depends on the additional provoked risk, such as the usage of firearms and or the victim being a minor. Articles 149 and 150 also refer cases in which the provoked injuries lead to the inoperativeness and/or loss of an organ.

The Spanish representatives have also referred the existence of threats in what concerned the physical and psychological maltreatment. The renewal of the Penal code dated 29 September 2003 has also introduced a new approach to the way article 153 was interpreted, having the faults contemplated therein been considered now as offences and subject to an aggravation of the prison sentence whenever the physical induced maltreatment and the psychological and psychic affection have been carried out by the same person who has threatened the victim, being the consort or one living under the same circumstances. The text states that *whoever due to his/her actions causes psychic damage to someone and/or any injury which is not defined as offence in this Code, and furthermore, strikes and maltreats another without causing him/her any injury, threatens him/her by using firearms and any other dangerous instruments irrespective of doing it in a light sort of way, whenever the offended party in any of the above cases is one of the ones referred to in article 173.2, shall be sentenced to a three month up to a one year period imprisonment and/or shall have to do community work from 31 up to 80 day periods and in any of the circumstances shall be deprived of the firearms licence for a period of one up to three years, and should the judge or court of justice consider it an adequate decision, be deprived of exercising, on behalf of the minor or the physically disabled party, the paternal rights, guardianship, trusteeship, tutorship and rights of sheltering. Double the amount of the sentences are to be applied whenever the act has been perpetrated in the presence of minors, firearms have been used and/or the act has taken place in the shared household or within the victim's home and/or any of*

*the sentence verdicts contemplated in article 48 of the Penal Code or any cautious or security measure of a similar nature have been breached.*

It can therefore be inferred that: a) maltreatment does not imply the existence of injuries, being sufficient justification the usage of physical and psychological induced violence and the existence of threats; b) that such an offence does not imply a common or recidivist type of behavioural conduct; c) that as far as the Penal Code anticipated punishments, two additional ones of general nature have been considered, such as the inhibition of the use of the firearms licence and the depriving of the exercise of the paternal rights, guardianship, trusteeship, tutorship and rights of sheltering. This last referred punishment, which notwithstanding the fact of being optional for the judge and/or the court of Justice, was reclaimed for years on end by the Spanish feminist movement, through its women's non governmental organizations, according to the information provided by the Spanish representatives.

In regard to the inexistence of injuries, the Spanish representatives have referred that these are contemplated in the article 617 of the Spanish Penal Code. With the renewal of the code carried out 30 September last, maltreatment no longer is considered a fault and a modification has been introduced to the articles 147.1 and 147.2 of the Penal Code, in which the recidivism of four committed faults within a year automatically turns it into an injuries offence. The Spanish representatives have referred, however, the serious difficulties there might be in terms of its effective application, once it will be rather difficult for the victims to prove they have been four times victimized during the year in question.

In what concerns the first paragraph of the article concerning the inexistence of injuries, it is stated that: whoever causes an injury which is not considered as such, as in accordance with this code, by means of his/her conduct, is to be punished with a three to six weekend corresponding period sentence and/or the payment of a fine corresponding to a one or two month period. The inexistence of injuries, together with the offence implies a physical and/or psychic limitation, the difference being that the offence does presuppose any medical or chirurgical treatment for the injury in question. The Spanish representatives have further referred that these generally mean kicking, pushing and other similar actions.

An additional difference implies that the offence is a commonly practised act and/or a recidivist one, the same not to be considered if being a fault.

Maltreatment as a fault had been contemplated in the second paragraph of article 617, though following the renewal of the Code started being considered as a maltreatment offence and contemplated in article 153 of the Penal code, liable to be aggravated as far as the corresponding sentence is concerned.

In what concerns the physical and moral offence, according to the Spanish representatives, it had been introduced in the Penal Code dated 1995 in its article 173, regarding damages against one's moral integrity, having been added by the exercise of

commonly exerted physical and psychic violence, included by the Penal renewal dated 29 September last in paragraph 2 of the same article, which now pertains to the group of offence against physical and moral integrity.

Article 173.1 states that *whoever treats someone in a degrading way, showing contempt for his/her moral integrity shall be punished with a six month up to two year prison sentence*. Paragraph 2 of the same article is repeated with a slight modification. The commonly practiced maltreatment offence contemplated in article 153 and which was introduced with the 1989 renewal of the Penal Code, by the organic Law 3/89, dated 21 June, has been in force with some modifications whose aim has been to consider the *inefficient protection provided to the weakest members of the family group, in physical terms, whenever confronted with systematic aggressive conducts carried out by other members of the same family group*.

The latest renewal to the Code has produced a new change, by having had its number altered (onto article 173.2), pertaining to the Group VII, heartbreaking and other offences to the moral integrity. The Spanish representatives have also referred that this is the result of the insistence carried out by the women's organizations.

Article 173.2 states that *whoever is physically violent against those who have either been consorts or have shared a stable relationship similar to an affective one with them and/or against those in descending lineage or ascending in line, brothers/sisters by nature, adoption and/or affinity, consorts and/or those living within the same household, minors and/or incapable of standing on their own who share the same household, and/or are under their paternal leadership, tutorship, trusteeship, guardianship and sheltering premises, and/or are being supported by them as a result of another type of relationship which is contemplated by the family membership, as well as those who because of their particular vulnerability are subject to the custody and/or guardianship in public and/or private centres, shall be punished with a six month up to a three year prison sentence, inhibited of holding their firearms licence for a two to a five year period and under specific circumstances, whenever the judge or the court of justice may consider it adequate in the interest of the minor or the one incapable of standing on his/her own, have their paternal rights, tutorship, trusteeship, guardianship and sheltering rights withdrawn for a one to a five year period, without prejudice of the sentences, which correspond to the offences and faults associated with the carrying out of the physical and psychic acts. Prison sentences of double the amount of time shall be considered whenever the acts of violence have been perpetrated in the presence of minors, and/or firearms have been used, and/or have occurred within the commonly shared household or within the household of the victim, and/or imply that some of the prison sentences contemplated in article 48 of the same Code and/or any tutelary or security measures or prohibition of the same kind have been breached*.

The characteristic of this precept is the fact that we are in face of an offence which is specifically to be seen within the family relationships. The main aspect consists of a recidivist exercising of physical and psychic violence, irrespective of the material result each case might lead to. It is therefore a concurrence of offences having provoked

injuries and other types of offences irrespective of the material results deriving from the acts.

The concept of common practice is also to be contemplated in a different way than the one it used to in article 153. *To analyse the common practice which is referred above, the number of violent acts which have been effectively confirmed, are to be taken into account, as well as the time gap between them, irrespective of the fact whether the perpetrated violence has or not been exerted against the same victim or different victims referred to in this article, and whether the violent acts have or not been punished in previous processes.*

Besides these aspects the same category of perpetrators already anticipated, are to be taken into consideration – the ones living with the victim, the ones having lived with the victim, having a new category been included: the ones having some sort of relationship with the victim, such as for instance the ones being the victims' sweethearts.

To make it short, the Spanish representatives have referred that the following changes have been introduced by the renewal of the code: a) introduction of a new category of perpetrators (those having a sort of relationship which is liable to be integrated within the scope of the family oriented relationship type);

The explicit introduction of a penal like punishment in the anticipated inhibition types of punishment as far as the exercising of the paternal rights are concerned, as well as those of tutorship, trusteeship, guardianship and sheltering provision rights and the inhibition of holding a firearms licence, lastly c) the aggravated punishment because of a variety of reasons: whenever the acts have been carried out in the presence of minors, firearms have been used, the acts are carried out within the household and/or within the house the victim lives in and as well as any acts which may breach previously defined verdicts as in accordance with the Penal Code, such as tutelary or security measures.

According to the Spanish representatives, this Code renewal has been quite important, above all because it has implied an aggravation of the sentences, taking into account the anticipated circumstances, but also because it can be reclaimed as the result of the historical feminist movement in Spain.

The Spanish representatives went on referring the penal infractions which relate to the consistent psychic maltreatment conducts seen in the perspective of domestic violence.

Offences which involve libelling, threatening and coercion are contemplated in the chapters XI and VI of the Penal Code as being offences against one's honour and freedom. Libelling, typified in article 208 states: *it is any action or expression, which affect one's dignity by belittling one's reputation or going against one's self esteem.*

Only those actions, which due to their nature, results and circumstances are considered serious in terms of a public concept, are liable to become offences.

The Spanish representatives highlighted the fact that in accordance with article 215 of the Spanish Penal Code, an official complaint made by either the offended person or someone legally representing him/her is required. Threatening, typified in article 169 refers to: *whoever threatens someone causing him/her, his/her family and/or anyone he/she is intimately associated with, damages, amongst which homicide, injuries, abortive acts, any acts against freedom of movement, torturing, any acts against one's*

*moral integrity, one's sexual freedom, one's intimacy, one's honour, affecting one's patrimonial assets and/or socio-economic order, is liable to be sanctioned. The sanction aims at avoiding further damages, by imposing conditions and requiring threats to be conditional.*

Coercion, typified in article 172 refers to *whoever not being legitimately authorized to do so, prevents one from acting in accordance with what the law does not prohibit and forces him/her to act against his/her will, using violent ways.* Coercive acts are equally violent acts against one's freedom, once violence has been used: preventing one from doing what is not against the law; forcing one to do what one is not inclined to, irrespective of it being fair or unfair; using physical violence, though psychic violence is also to be taken into account.

The infractions connected with these offences are contemplated in article 620, should the threatening, libelling, coercion and humiliations not be too severe. The distinction as far as the type of offence is concerned is therefore dependant on the degree of effect and seriousness, anticipating that neither the freedom nor the tranquillity of the person in question, have been affected. Regarding this article, the recent modification introduced by the organic Law 14/1999, dated 9 June was referred to by the Spanish representatives. The last paragraph has been added to by a new paragraph, having the following been stated: (...) whenever the offended person is one of the ones referred to in article 153, the prison sentence may be extended from a two to a four weekend period and/or the payment of a fine equivalent to a ten to twenty day fine, bearing in mind the eventual economic repercussion the anticipated punishment may have on the victim him/herself and/or on their family unit. The official complaint may not be required as far as the previous article is concerned, unless the prosecution of libelling is to be further considered.

It should be referred that unless libelling is to be taken into account, the complaint may be made by anyone having acknowledged the sequence of events, not being necessary for the victim to present the official complaint him/herself.

Regarding the above mentioned penal punishments, whether or not they are to be considered faults or offences, it holds particular relevance the fact that:

The complaint expressively refers the words, expressions and phrases which have been used when addressing the victim, once the determination of the type of sentence to be applied is dependant on the degree of intensity and/or seriousness of the infraction in question; reference should also be made to whether firearms, instruments and/or any similar objects have been used when the illicit act was being carried out; whether the aggressor has firearms in his/her possession he/she is likely to use in any further actions involving the victim and whether he/she has got a firearms licence. Should there be threatening and coercive acts involved, the complaint may or may not be made by the victim him/herself.

Regarding behavioural conducts which consist of sexual maltreatment, the following punishments have been referred to by the Spanish representatives. In what concerns



offences against sexual freedom, the penal considerations have been adjusted to the legal protection benefits on the part of the legislator, so as not only to take into account the honesty of the woman in question, as it used to be highlighted in the past, but also her own sexual freedom.

The woman is to be no longer considered the passive party, neither is the pardon to be granted to the offended party terminated with the penal act and/or the penal therewith associated responsibility.

Without having got into a detailed analysis and simply illustrating the issues, the Spanish representatives have mentioned that the Spanish Penal code in actual force is consistent with the renewal which has taken place by means of the Organic Law 11/1999, dated 30 April and which has partly changed its disposition. The sexual aggression offence is therefore described in article 178, which states that: whoever attempts against one's sexual freedom, using violence or intimidation shall be punished as being responsible for sexual aggression with a one to four year prison sentence period.

Article 179 clearly specifies that raping shall be punished with a six to a twelve month imprisonment, if it contemplates vaginal, anal and/or oral penetration. Introduction of objects shall also be taken into account in the assessment of the sentence, irrespective of which way it has been carried out.

Sexual abuse, which is contemplated in article 181 of the Penal Code states that: Whoever, without violence and/or intimidation, as long as there is no consent on the part of the one whose sexual freedom and indemnity have been attempted against, shall be punished as responsible for sexual abuse, with a three year imprisonment and/or the payment of a fine corresponding to an eighteen up to a twenty four month period.

In what concerns the above mentioned, non-consented sexual abuse acts are those perpetrated against minors, less than thirteen years of age, against those who may have fainted and/or having mental disabilities.

The same punishment shall be applied even if the act has had some for of consent, as long as there is a prevailing situation of clear superiority which may restrict the freedom of the victim in question.

The sexual aggression is fundamentally different from the sexual abuse if the consented or attempted act against the freedom or indemnity of the offended party is perpetrated by having used violence and/or intimidation, without which one shall be facing a sexual abuse offence and not a sexual aggression one.

In regard to the sexual abuse offence, it has been highlighted by the representatives the fact that the age has been altered by the Organic Law 11/1999 of the Spanish Penal Code, dated 30 April, once it sets the consent on the part of the thirteen year old teenager, as far as penal legislation regarding sexual abuse is concerned.

In order to further take procedural steps it is necessary that the offended party presents a formal complaint as in accordance with what is stated in article 191 of the Spanish penal Code. It holds particular relevance to follow the prescribed penal models which imply having the victim be taken to a medical service, so as to be submitted to an urgent medical examination, before the evidence may no longer be used as evidential proof; to

gather any effect and/or proof, which may a piece of underwear or even used objects to perpetrate the act; to define the degree of existing relationship with the aggressor, whilst filling out the complaint form; to state whether any violent and/or intimidating act has occurred; to further state if any firearm and/or any similar object has been used .

The Spanish representatives have stated that in what concerns the economic stress, the Spanish Penal Code contemplates the family abandonment issues as part of the discussed issues in the chapter dedicated to the offences against the rights and duties towards the family.

According to article 226, *whoever stops complying with the legal assistance duties inherent to the exercising of the paternal rights, the tutorship, the trusteeship, the guardianship and/or family sheltering duties, and furthermore no longer provides the necessary legal assistance which has been determined as far as the upbringing of those in ascending line, descending lineage and/or consort, should they be required, shall be punished with an eight weekend up to a twenty weekend period of prison sentence.*

The judge or the Court may decide on the incapability of the defendant to continue exercising his paternal rights, tutorship, trusteeship, guardianship and sheltering rights for a four to ten year period.

Article 227 states in regard to the non payment of alimony that: whoever stops the alimony payment to his wife and children as agreed judicially and having been approved by judicial resolution following legal separation, divorce, declaration of matrimonial nullity, affiliation process or alimony, for a period of two consecutive and/or four interspersed months is liable to be punished with a period of an eight to a twenty weekend prison sentence. The same punishment shall be applied to those, who stopped paying the disbursement set up either in a collective or unique in the above referred cases. The repairing of the damage deriving from this offence shall always imply the payment of the amount in debt.

These are default offences, with permanent and semi-public effects, once they require a complaint on the part of the offended and/or the legal representative or the Public prosecutor, whenever the case involves a minor, a disabled and/or an invalid party. These offences do not comprise the granting of pardon to the offender, which had been previously contemplated. These are to be extended to the existing children, within or outside the matrimonial setting, the difference being that whilst in the first case the abandonment of the assistance duties in the widest sense is to be taken into account, as far as the second case is concerned the issue is the non-suit of the disbursement agreed upon by judicial verdict regarding cases of separation, divorce, matrimonial nullity, affiliation and alimony.

The Spanish representatives have referred the existence of a Law regarding the support to be provided to victims of violent offences against sexual freedom. This Law, dated 11 December, which is Law 35/1995, was set up to express the acknowledgement of the existence of victims of offences. The necessity to primarily support victims of terrorist acts arose initially and was soon to be extended to victims of violence and those having been victims of any offence and/or violent offence committed in Spain.

This Law contemplates a system of public support to be provided to those victims who have directly or indirectly been affected by distressing and violent acts committed in

Spanish territory, resulting in death, major physical injuries and/or serious physical and mental damages, as well as to those who have been deprived of their sexual freedom in a violent way.

This Law has only considered the financial support to be provided to the victims. It works out whether they are to be considered direct or indirect victims, the scope of the injuries and damages involved, the amount to be provided, the degree of incompatibility with other support and the way and time period this support should be provided in.

The Spanish representatives have also considered it important to refer the relevance of the so called *Order of protection to be provided to victims of violence in Spain*. It has been approved in 31 July 2003, by consensus of all the parliamentary groups, having an integral law project against violence been rejected by absolute majority of the popular group in every town council, when presented in September 2002. The Order of protection envisages the possibility of the lower court judge following the appeal of the victim or anyone who has a family type of relationship with the victim (for instance, the children, the parents, etc.), and/or the Public Prosecutor request protective measures for the victim either of the civil or penal type.

In what concerns the penal protective measures, caution type of measures may be agreed upon so as to keep the aggressor away from the victim.

The civil type protective measures are valid for a period of thirty day, being extended for another thirty days and consisting of the attribution of the usufruct of the family household, the determination of the custodial regime, the visiting schedule, the communication and permanence periods as far as the children are concerned, the determination of the alimony regime, as well as any other decision considered pertinent so as to keep the minor protected from any anticipated danger and damages.

Besides this, a system of coordination between the organizations together with the centralization of the complaints has been envisaged so as to follow the case in more expedite way as well as avoid the accumulation of complaints in the same court. In spite of having considered this legislative altering as positive, the Spanish representatives feel that the approval of an integral Law against violence would have been more adequate.

In what concerns the juridical processing in Spain and once having analysed the main infractions regarding domestic violence, the Spanish representatives feel certain issues associated with the processing should be taken into account, especially because there seems to be some difficulty in signalling out the number of committed offences in this area, bearing in mind the circumstances in which they occur. Most of them take place in the intimacy of their homes, away from the witnessing eyes of third parties and some of the members of the family unit.

These infractions, with the exception of some offences committed against sexual freedom, may be denounced by anyone who has acknowledged the facts, which in turn implies the necessary gathering of information on the part of the Police forces, the security forces and/or bodies, with the appropriate independence of the ones who have made the complaint.

In these cases and taking into account some of the previously presented reasons, the Spanish representatives feel thorough attentiveness should be carried out in regard to the evidence, once a considerable number of cases are acquitted by inexistence of proof, having women been submitted to the *hard pilgrimage* of having to go through the different judicial phases and stages of the lawsuit.

It is of prime importance to have the police carry out the investigation and the gathering of the evidence.

In face of the difficulties of the present situation, namely in what concerns the evidence, it is consequently necessary to handle the witnessing as well as the gathering of proofs in a much more attentive way.

Amongst the already referred issues, which are of prime importance it is also to be considered the trust on the declaration of the victim or anyone, including neighbours, relatives, etc, who may provide valuable information in order to clarify the facts; the visual inspection of the place where the facts have occurred so as to collect any object and/or work out the causes which led to the occurrence of the offence; to inquire on the existence of previous violence acts and should that be the case to try to find out whether or not any complaints or actions have previously been carried out.

In what concerns the denouncing process, the Spanish representatives have further referred that the existing maltreatment, particularly if specified as having been injuries, commonly maltreating actions, with the exception of offences committed against the sexual freedom and those concerning family abandonment, are to be considered public offences, and if a professional dealing with these issues has been informed of them has the obligation to have them officially denounced, with the exception of the ones envisaged in the camera proceeding as in accordance with the Law of the Criminal Court. It is therefore set up by the article 284 that once the Police have acknowledged a public offence, being in this case maltreatment, shall have it communicated to the judicial authority and/or the Public Prosecution.

This acknowledgement of this information includes telephone warning calls carried out by the person in question or by neighbours, relatives and/or anyone who happens to be aware of the facts.

In what concerns the issues regarding the denouncing or the acceptance of the victim's declaration, the Spanish representatives have referred that certain data should be considered whenever a denouncing is made: identification data regarding both the victim and the aggressor; the degree of kinship and/or relationship between the two parties involved, even if the relationship no longer exists, taking into account that circumstances do occur even when the couple no longer lives together; the existence of violent acts having occurred prior to this situation, and should this be the case to identify the dates in which they have occurred and/or find out if previous denouncing and judicial procedures were effectively carried out; the existence of witnesses; how the identification of the offence was carried out; phrases and expressions which were/have been used by the offender.

Regarding certain issues connected with the investigation of the facts, the Spanish representatives have referred that in order to have consistency in the gathering of the data and the evidence, which may ultimately lead to the clarification of the facts it is fundamental to comply with some pre requisites. Firstly, it is necessary to be handed the declaration of the victim; followed by the handing out of the declaration of anyone, who may have acknowledged or be aware of the facts and who may be amongst neighbours, relatives and/or friends. The visual inspection of the place where the facts have occurred should be the next step, for it may provide the collection of objects and/or proof of the occurrence. The results of these actions should be included in the report.

The latest circular issued by the Secretary of State for the Security pertaining to the Spanish Ministry of Internal Affairs, which is circular 2/1998, gives some indications as to what is expected from the State Security forces or bodies, having some of these been included in previous circulars. Amongst some of these the following issues should be reminded: specific attitudes, which may dissuade women from denouncing every aspect connected with the offence which has victimized them, should be avoided; within the police quarters the same geographical space is not to be shared by the aggressor and the victim; assisting these women is preferably to be carried out by specialized personnel pertaining to the National Police - SAM (Service providing assistance to women), and/or the Civilian Guards – EMUNES (Teams providing assistance to women and minors), and mainly constituted of women holding specific and mostly adequate training to carry out the assistance tasks. In case this is not possible, the assistance is then to be provided by specialized personnel pertaining to the Judicial Police in charge of the investigation.

They should be informed of the possibility of being provided assistance and help as anticipated in Law 35/95, dated 11 December, which contemplates the assistance and necessary help to be provided to victims of violent offences against sexual freedom, as well as the required steps to be able to have access to such assistance.

The intervening action should not exclusively be focussed on the investigation and protection of the victim of such offences or violent conducts, but also on the intervention regarding the detection and prevention of similar situations from occurring. Whenever the denouncing is effectively carried out, it should be investigated whether the eventual aggressor has any firearms authorization and/or licence, as well as seizing any firearm he may have in his possession. In case it is handed out voluntarily, the judicial authority in charge of the case should be informed of the fact, so that they may adopt the necessary measures.

Whenever there is more than one denouncing statement on the part of the victim, the necessary steps are to be taken regarding a new denouncing statement to be carried out, without any prejudice to the existence of the previous statements. A report, in which the carried out steps, as well as the names of the judges in charge are to be included, should be written down. Women, who are either married or living together, are to be protected, if they request it because of being confronted with threats or coercive actions regarding their stay in the common household. Their follow up is to be carried out without having to ask for judicial authorization, once both householders have the same rights, allowing therefore anyone to enter their common household.



A permanent communication is to be maintained between the victim and the person in charge of the assistance or who may have received the denouncing statement, so that information on the suspension or depriving of free movement adopted in regard to the aggressor, as well as the necessity to keep him away from the household may be conveyed, not to mention the prevention measures found to be adequate regarding the situation. The victim is also to be provided information concerning the stage of the investigations.

Coordination with other organizations, such as judicial, social and health authorities is required, with the aim of providing an overall treatment regarding the various issues connected with the case.

Statistical data regarding domestic violence and aggressions perpetrated against women is to be provided, so that a deeper acknowledgement of the reality is conveyed and a consequent better balanced adoption of measures regarding the police approach may be put in force.

Taking into account the intervening actions carried out by the police and State security forces in the last twenty years, it should be pointed out that these have been rather deficient in regard to the required tasks as far as violence is concerned: the investigation of the offence; the protection to be provided to the victim; the gathering of statistical data.

According to the Spanish representatives and in the sequence of a major work started in 1984 which involved the Fiscal Ministry in issues connected with violence against women within the family unit, concrete objectives and guidelines were set up in 1998, in order to more efficiently follow some imperative guidelines associated with the promotion of justice in regard to the defence of legality, the women's rights and the ones of public interest protected by the Law and aiming at satisfying the social interest in the court environment.

As from that year onwards, the concept of habit and recidivism was to be separated, putting aside the previous requisite, which implied that the person had been convicted for offences of the same nature, and now requiring him to carry out three or more consecutive violent acts and/or without too great a time span between them.

The Spanish representatives have referred the obligations the General fiscal department of the State has in regard to the approach to violence within the family unit: a expeditious follow up and procedural approach towards these cases, especially when minors and disabled people are involved; to see to it that the trialling of these cases is carried out with the necessary proceeding guarantees, thus allowing and enforcing the inclusion of pertinent evidence, as well as being attentive to the compliance of the judicial resolutions, whenever the violent acts have been perpetrated by the same person and there are minors involved, appropriate actions should be taken so as to proceed with the offence of family abandonment and request the depriving of paternal rights; to exclude any deficient evidence from the investigation;

To statistically organize the detailed data pertaining to this type of processes on a yearly basis, by having the information processed by offences and infractions which have

implied injuries and maltreatment of women, so as to be able to have a thorough opinion on the social reality of this problem.

The Spanish representatives feel that there is a deficient practice on the part of the Fiscal Department in regard to the intervention timing, when domestic violence is concerned; slow procedural approach; lack of investigation, inadequate assessment of the offence as well as inadequate procedural sequencing, when it comes to family abandonment and/or depriving of paternal rights.

They have also referred the existence of some studies which have been carried out in Spain and which focus on this judicial type of processes. These studies, which were carried out by the Themis Association of Women Jurists and the recently set up Observatory on Domestic Violence pertaining to the General Council for the Judicial Power, show that there have been several shortcomings in the legal processes whose main causes had been associated to domestic violence.

According to these studies 29 women were murdered during 2001 in domestic violence contexts as against 46 murdered throughout 2002 in the same context.

42% of the ones murdered in 2001 had made an official complaint to the authorities the same day they were killed or the day before; 34% had done it during the week of their death; 7% had done it a fortnight before, whilst 10% of them did it in the course of that month. In 2002, 48% of the murdered women had presented a complaint the same day or the day before they were murdered; 24% within the same week of their murder as against 11% who did it a fortnight before; 9% having done it the previous months and 4% just prior to being murdered.

Regarding the number of times they denounced the situation to the authorities, studies point out that in 2001, 27% did it once, 15% denounced it twice similarly to another 15% having done it three times whilst 23% did it more than three times. As far as 2002 is concerned 64, 8% had denounced the situation one as against 11, 7% who did it three times and 23, 5% who presented more than three complaints.

In regard to the evidence, the Spanish representatives pointed out that one of the major difficulties is the effective acknowledging of the domestic violence situations, once they tend to generally occur within the privacy of the domestic environment.

The witnessing is to be considered as evidence. It commonly happens that no other witnesses apart from the victims themselves and/or their children are able to come forward. Some other witnesses fear having to be included as such in the judicial processing, once they consider this to be a strictly private matter.

In most trials of this type of infractions, there is no other evidence apart from the declaration presented by the victim and the one carried out by the aggressor, and in case it can be applied, the existing medical reports which may have been included in the processes. In the very few cases in which there is further evidence, the victim is mostly accompanied by a lawyer. This not being the case, it is normally up to the victim herself to gather and present the evidence in order to demonstrate the culpability of the aggressor. This requisite (apart from the fact that most victimized parties are not in the best of their conditions, apart from not having the necessary legal knowledge) implies a serious limitation in what concerns the constitutional right to the effective judicial

tutorship and further more if one takes into account the fact that for the Public Prosecutor the evidence plays a minor role, once the contact with the victim isn't but an oral contact.

The Spanish representatives have referred the inquest of the witnesses as being quite an effective way of efficiently demonstrating the existence of facts, which is highly taken into account by the judges in assessing the verdict decisions. The percentage of processes in which there have been witnesses is of 12%, normally closely related with the evidence included in the accusation, as in accordance with information provided by the Themis Association of Women Jurists.

Another piece of evidence is the medical report. According to the studies, which have been carried out by the Themis Association of Women Jurists, the medical report provided by the Health centre, where the victim has been assisted, is of extreme importance, particularly to reinforce the existence of injuries. The type of injury/damage should be clearly specified, whether it may be physical or psychological and it should be further specified that it was provoked by some sort of aggression.

The nature of the aggression shall be determined by the report provided by the forensic doctor, and it shall include elements such as the necessity of the victim having one single appointment and/or further treatment/s, whether the need for surgery has been required, the period of time required to heal the injury, as well as the number of days, in which the victim was unable to carry out the daily activities and whether she was physically and/or psychologically affected as a consequence of the inflicted injuries.

In accordance with the Association report, in Castela-a-Mancha, no physical aggressions were denounced and have therefore not been included in the medical reports of the 35% existing cases. In the Community of Madrid, out of the cases which implied physical aggressions and which finally reach the trialling stage, only 59% of them have some reference as to the injuries of the victims in the denouncing presented on the day of the aggressions and/or in the following days. It should be pointed out though that there are certain aggressions, which notwithstanding the fact of not having provoked injuries, are liable to be considered as infractions and subject to penalization.

A medical report is nevertheless a fundamental piece of evidence. It is therefore important for victims to be observed at the nearest medical centres, following any aggression they may have been subject to, so as to confirm the existence of injuries and having a report on those eventual injuries denounce the facts to the local Police. Having such a report annexed to the denouncing may lead to a stronger intervention on the part of the Public prosecutor in the trialling of cases involving physical aggressions.

Of the analysed judicial processes, in which an injury report and an incriminating declaration provided by the victim had been included, the percentage of condemnations was high, having reached 77% just in the Community of Madrid.

Given the importance of the evidence, apart from having the injuries described in detail, the inclusion of psychological damages should be done, and the signature of the one person who issued the official opinion should be legible enough, in case his presence is required in court.

The forensic findings are to be put forward whenever the external evidences of violence are no longer to be seen and/or are not recognisable as such; the information contained in the reports on the extended injuries and/or any other medical reports which may have been written down at a later stage, are then to be considered, as previously stated.

The most important aspect is that the data which has been included in those mentioned forensic reports is the one to be used as the basis so as to determine whether the facts are to be considered offences and/or infractions in order to further determine the compensation amount to be paid for the damages.

As far as the above mentioned analysed cases no other evidence is to be used, except in very few cases, most of which consist of documented evidence, such as tapes, police reports, letters written by the aggressors threatening the victims, receipts testifying the payment for material damages, which were issued in the sequence of the perpetrated aggressions, etc.

In what concerns the application of cautious measures, the Spanish representatives have stated that these are to be used in a very limited way, this being one of the reasons as to why there is a certain pressure on extending the use of having the aggressor be moved or kept away as part of an integrating cautious measure. Following an investigation, which was carried out in 2000 by the Aragon's Institute of Women, containing such data, a thorough analysis of how this measure is being enforced, was to follow. In that particular year many of the cases were still solved as in accordance with the previous legislation, prior to the Spanish Penal code renewal dated 1999 concerning this issues. In just 56% of the cases the new legislation was to be applied. The gap between the old legislation and the enforcement period should have been considered.

According to the obtained data, the measures of keeping the aggressor away from the household were applied in 61% of the cases within the Aragon Community. 33 of the referred cases had to do with domestic violence. This reflects above all the application of such measures as decided by the judges working within the penal area.

The most commonly applied measure is prohibiting the aggressor from getting close to the victim, as determined by either the judge and/or the Court of Justice (31 of the above referred 33 cases). As an isolated type of measure, particularly associated with other measures, prohibiting the aggressors from communicating with the victims, their family members and/or people who had a relationship with them, was also to be determined by the judge or the court of justice, together with being prohibited from getting close to the place where the aggressions took place and/or the places where the victims, and/or their families reside, in case they are in different locations.

In what concerns the measures, which were applied throughout 2001 and still in accordance with the data contained in the study: the adoption of a specific cautious measure was to be requested in just 3 of the 29 reported cases. These measures were to be enforced the same day they were requested. In none of these cases was there any intervention on the part of either the Public prosecutor and/or lawyer. Throughout 2001 no other cautious measure was to be considered in any of the written notices.

In what concerns the year 2002 out of the 46 processes 6 adopted cautious measures, having agreement been reached in three of them. In two of the processes the cautious

measure was decided by written notice issued by the judicial entity. In all, the cautious measures have been put into force in 8 processes, which means 17, 3% of the overall number of processes.

In 5 of them the cautious measure was decided by written notice issued by the judge as against two in which it was requested by the victim herself and one single in which it was dependant on the public prosecutor's decision. In every case the measures are decided upon and communicated to the aggressor the same day.

In one of the cases following the prohibition to communicate with the victim, keeping away from the victim was adopted as a further measure two months later, though this latter decision was enforced by a different judicial entity.

In what concerns the cases in which no cautious measure was taken, information gathering was initiated by the Inspection Service in one the cases. The Public prosecution considered that it did not apply in one of the referred cases. As far as another case is concerned the keeping away from the victim had just been initiated ten days before the victim died as a consequence of the facts which originally led to the decision. This case is still being investigated by the Inspection Service in charge.

As far as judicial decisions are concerned and in accordance with information provided by the Spanish representatives 4.568 verdicts were analysed within the same Aragon investigation, having 3.033 (66, 5%) ended in the acquittals of the defendants as against 1.531 (33,5%) which ended in condemnations of the defendants. This implies that two thirds of the trials ended in the acquittal of the defendant/s whilst in one third the decision of the court ended up in the condemnation of the defendant/s. The total number of referred cases includes cases involving violence exerted against those in ascending line as well as minors, one case involving violence within the couple.

The Spanish representatives called the attention to the high number of acquitted cases which involved infractions, though it seemed to be also true that there have been an increasing number of condemnations as far as offences are concerned. The inexistence of evidence has not only got a bearing in terms of the infractions, but also as far as offences are concerned and yet the number of condemnations involving domestic violence cases seems to be among the highest above average. The referred data lead us to consider that the eventual number of acquitted cases mostly depend on the structuring of the judicial dynamics rather than the attitudes of the judicial agents.

By deeply analysing the infractions one realizes that there is a radically different attitude on the part of the victim as versus the one associated with acquittal and condemnation cases. If one takes into account the number of cases in which the victim is not present during the trial, or is present but forgives the aggressor and/or is present and waives the penal charges, the percentage regarding not being present during the trial stands above the 70%, whilst the number regarding ordinary sentences only reach the 20% mark.

In the greatest majority of cases the number of victims who are either not present during the trial and/or forgive the aggressor and waive the penal charges, is of 53, 5%, being the highest registered number at the finding of facts Court (56, 5%) as versus the one at the Penal courts (30%).



In any case, the inexistence of data which is liable to lead to the actual accusation and consequent condemnations is mainly due to the victim not going forward with the court case proceedings and withdrawing the charges. One should point out that the denouncing in itself is not sufficient enough to hold an accusation or to prove whatever should be proved. The absence from the court case proceedings, together with the inexistence of sufficient evidence to hold the accusations lead to the fundamental of acquittal.

In what concerns the infractions which are to be imposed onto the aggressors, it is commonly felt that the ones considered innocent in domestic violent cases are generally subject to the payment of a fine, which in turn leads to the idea of impunity of the aggressors, once the fine they mostly have to pay is quite meaningless. The data regarding some of these cases ought to be thoroughly analysed though, so that one realizes that generally speaking the Penal courts do condemn and the condemnations may imply being deprived of one's freedom as well as being subject to prison sentences in most cases.

Anyway, the preponderance of being subject to the payment of a fine added to the number of acquitted sentences in the finding of facts courts reinforce the idea that there is an impunity regarding the intra-family aggressors. One may draw a further conclusion, which has got to do with whether the payment of a fine is the most adequate penal reaction towards maltreatment, particularly if perpetrated within the family unit, once the payment of the fine is not only going to punish the aggressor but the subsequent consequences are to be endured by the whole members of the family.

In what concerns the judicial administration prosecutions, the Spanish representatives have stated that in Spain there are preliminary hearings carried out by regional and supreme courts of Justice as well as by the Supreme Court.

The problematic disparity, the type of cases to be considered together with the technical circumstances involved, imply there should be a different analysis regarding the finding of facts prosecutions and the penal trialling and the one regarding the decisions taken by the regional, supreme courts of justice and the Supreme Court.

The registered data, which most of this Aragon's investigation was based upon, was taken from the decisions of the regional hearings, in a total number of 380 case files, which represent 90, 7% of the analysed cases, being 47, 4% appeals and 52, 6% lower court sentences. The decisions taken by the supreme courts of justice and the Supreme Court are appeals, being 85, 8% simple appeals and 14, 2% repeals. What follows is a resume:

The Spanish representatives have highlighted the fact that the regional hearings are the ones which have caused the highest interest in what concerned the investigation in course, once they allowed the analysis of the most serious domestic violence cases and consequently the ones which cause the highest social impact.

The analysis of the infraction sentences of primary decision in the regional hearings have caused a particular interest, once they confirm the registered tendency regarding the penal court sentences, of which 84, 6% were condemnations as versus 73% of acquitted court sentences through the finding of facts proceedings.

The results show quite a similarity in numbers between the acquittals and condemnations which have been carried out in both the regional hearings and the penal court ones. In a total number of 18 analysed decisions, 16, 9% were acquittals as against 83, 1% condemnations. The Spanish representatives have called the attention to the data referring to the sentences decided by the courts of opinion, once there is an acquittal of 24 of the cases put forward, which correspond to a 96% condemnation figure as far as the 1999 domestic violence cases are concerned.

There is only consonance as far as the seriousness of the trialled faults are concerned in the regional hearings. The most commonly applied verdict is the prison sentencing (94% of the total number of cases) followed by the weekend detention (4%) and the payment of a fine (1%).

Special attention was to be paid by the Spanish representatives in regard to the deaths which occur as a result of domestic violence throughout 2001 and 2002 highlighted by the General Council of the Judicial Power.

In the 2001 report, out of the 80 examined cases in which violent deaths occurred, 12 were to be excluded as having been the consequence of domestic violence, so there were 70 cases corresponding to 77 deaths, once four of the above mentioned cases included more than one victim per case. In the 2002 report out of the 72 analysed cases of violent deaths occurring within the family unit, 6 of them clearly typified domestic violence. The 66 remaining cases were to be included in the typical penal type, though in the greatest majority of them (75%) there had been no previous denouncing. The reason behind this lies on the fact that there is still quite a high number of maltreatment episodes, which are not subject to any judicial approach because of the inexistence of any denouncing report presented by the victim.

The Spanish representatives concluded that the judicial entities had had no previous information on the maltreatment situations, being 81% referent to domestic violence throughout 2001 and 75% in 2002.

To be able to have a wider opinion on this problematic issue, the Spanish representatives referred the results of a study which was carried out on *the handling of domestic violence within the Administration of Justice*, by the Laboratory of Judicial Sociology of the University of Saragossa for the General Council for the Judicial Power.

The investigation contemplated 4.684 registered cases in the penal courts, the lower courts of justice and the total number of hearings carried out in the regional hearings, supreme courts of justice and the Supreme Court, which allowed the State to be thoroughly represented in regard to domestic violence, as well as the administration of Justice and the socio-demographic characteristics of the victims and the aggressors.

The obtained results clearly show that most cases put forward to the courts of opinion and the penal courts correspond to cases of domestic violence perpetrated within the couple (78, 3%) and only approximately one fourth corresponds to generalized

maltreatment, being 4, 6% of the violence exerted against minors in descending line versus 17% exerted against those in the ascending lineage and/or any others.

One of the conclusions one may draw is: domestic violence does exist and is above all violence which affects the marital relationship. Domestic violence normally implies, irrespective of the type of perpetrated violence, aggression perpetrated against women. The victims of domestic violence, irrespective of the type of relationship (couple; son/daughter; father/mother) are mostly women (83%). 88% of the cases involving women victims can be considered violence within the couple type of cases. Most victims of domestic violence are independent women, irrespective of their social status or the type perpetrated of violence.

The Spanish representatives have also revealed the interesting findings of the data gathered on the *Annual Criminology Report on Violence within the Family* carried out by the Spanish Civil Guards (GC) and the National Police Corps (CNP).

The typically known injuries/maltreatment cases have been included in the overall national figures, which have reached 185. 516 cases of offences perpetrated against people. 80. 993 penal infractions and offences were acknowledged in 2002 by the GC, 5. 998 of those were offences as against 74. 995 considered infractions. 8. 765 correspond to maltreatment within the family (1. 831 typified as offences and 6. 934 as infractions).

In what concerns the mediation mechanisms, the Spanish representatives stated that Spain follows the indications provided by the United Nations and The European Union, in which mediation under these circumstances is counter indicated, because of the parties not being in an even situation.

Regarding the rehabilitation of the aggressors, the Spanish representatives have referred that this approach has not been particularly developed in their country, though it has been put into practice in Girona (The autonomous Catalan Community) and in the Basque territory. These programmes have been carried out on a private supporting basis with the financial support of Public Institutions. According to their opinion, in most cases the programmes which have been developed in these areas imply a therapy involving the members of the couple, aiming at maintaining a degree of relationship between the aggressor and the victim. In their point of view such an issue should not be handled as if it were any other conflict, once the people involved haven't got an equal to equal type of relationship.

## France<sup>8</sup>

According to the French representative, there is not a definition regarding domestic violence in France, though as far as his understanding goes it is not too far from the generalized concept of violence exerted against women as defined by the United Nations Assembly in November 1993, in the Declaration on Fighting Violence exerted against Women: *Violence exerted against women designates any act of violence based upon the dependency on the part of the female and which may cause women injuries and physical, sexual and/or psychological suffering, including the use of threats, coercion and arbitrary depriving of freedom so as to perpetrate such acts, whether they may occur in a public and/or private place.* In a general sense any act of violence from moral harassment to physical aggression is an attempt against the person's integrity and is liable to be punished and taken to court as in accordance with the French Penal Code. Since the enforcement of the new Penal code dating 1 March 1994, violence perpetrated against the spouse is to be considered an offence, irrespective of the time it will take the person to go back to work; the most serious types of violent acts which shall be considered criminal infractions are: raping, murder, abduction, violence which may involve mutilation and/or any torturing or barbaric acts. The Law dated 22 July 1992, which rules what has been determined by the Penal Code, states that the condition of being either married to or companion of the victim constitutes aggravating circumstances.

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<sup>8</sup> Extract from the French report

## Italy<sup>9</sup>

The Italian representative has stated that although there is no explicit definition of domestic violence in Italy, the domineering concept may be understood by the specification of the criminal and administrative legislation which anticipates behavioural conducts liable to be identified as such.

Such a notion was only to be contemplated in the Italian judicial circuitry in the year 2001 with the introduction of the Law 154 dated 4 April 2001 and which envisages the taking of some measures against violence perpetrated within the family.

Such a Law has created no new type of legal approach, apart from envisaging an alternative by having added to the number of measures which were already being carried out the coercive measure of protection in as much as keeping the aggressor away from the household, together with the inclusion of a protection mechanism against abuse within the family.

The fact that the concept of domestic violence has not been included in the overall Italian juridical system, nor is there any specific mechanism therewith associated has been acknowledged. Within the Penal Code there is no specific norm regarding the various types of domestic violence, this being the reason why one is forced to use the existing norms and use them in the various interconnected ways. It may be easier therefore to refer to the legal physical violence approach, which assumes its traditional way: violation of the household property; maltreatment; offences to the physical integrity and personal damages.

The utmost difficulties have to do with the psychological violence, which is associated with libelling crimes, threatening, abduction and any crime involving maltreatment and other violent acts.

The judge may punish the perpetrator of these acts in a variety of ways, depending on the seriousness of the acts involved. According to the Italian system sexual crimes perpetrated within the family may be punished in various ways: having to pay compensation to the family as a supporting way; having to keep away from the family household, though in some of the most serious cases keeping away from the working place may be envisaged, particularly if the aggressor works in the same place as the victim; being imprisoned for a variable period of time, depending on the seriousness of the perpetrated act.

The main Entities involved in the trialling and enforcement of such sanctions are magistrates working for the Public Prosecution Service, Judicial magistrates including those working for the Courts of Family and Minors; social services; governmental and non-governmental organizations.

Regarding the punishments, as in accordance with the article 154, dated 5 April 2001, *Measures against violence within the family*, such as keeping the aggressor away, it is

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<sup>9</sup> Extract from the interspersed reports presented by the Italian representative



up to the judge to decide for his immediate abandonment of the family household and for him not to return until further judicial authorization.

There being a necessity of safeguarding the physical integrity of the victim, the judge may decide on prohibiting the aggressor from getting close to the family residence and/or any other places the victim commonly goes to, such as her working place, the school attended by the children, the neighbours' and/or her family's residence. In case this judicial order or any other similar type of court order connected with the couple's separation is broken, the aggressor is to be punished, as in accordance with what has been decided from the first to the last paragraph of article 388 of the Italian Penal Code.

The Judge may also define a particular amount to be paid by cheque to the victim on a periodical basis, so that she may overcome the surviving difficulties, should this be requested by a magistrate pertaining to the Public Prosecution service. This is to be decided according to the circumstances and taking into account the income of the aggressor. The formalities to be followed, as well as the way in which the payment should be carried out, are to be defined by the judge. The judge may even determine it shall be directly done through the aggressor's employer.

Reference has been made to article 66, dated 15 February 1996 on *Norms against sexual violence*, which may also be applied to situations involving domestic violence. According to it whoever by means of violence, threatening or abuse of authority forces another to have sexual intercourse or any sexual acts, is liable to be punished with a 5 to 10 year prison sentence in accordance with what is determined in article 609. The same punishment is to be applied to whoever induces another, particularly if incapable of offering any resistance, to have sexual intercourse with him, taking advantage of her physical or psychic incapacity throughout the perpetrated acts and/or taking advantage of a fraudulent lie in what concerns his identity.

Every decision related to the application of the sanctions shall be taken by the courts, as well as the way in which they shall be applied as in accordance with the courts competency as far as the issue is concerned.

Aspects such as the intentional and circumstantial evidence have to be taken into account, not disregarding the material evidence.

Law 154, dated 5 April 2001 regarding *measures against violence perpetrated within the family* focuses on the behavioural conducts of the consort and/or anyone living with the victim as being the cause of injuries inflicted to the victim at physical and psychic level and/or depriving the one he lives with of her freedom.

In what concerns the incriminating *norms associated with sexual crimes*, what has been determined in Law 66, dated 15 February 1996 shall be taken into account. The conducts which consubstantiate the illicit acts are: *Whenever one by means of violence, threats and/or abuse of authority forces another to have sexual intercourse and/or takes advantage of one's physical and/or psychic incapability during the perpetration of the act and/or fraudulently lies about his identity (...)* Whenever such a sexual act is carried

*out in front of a minor, being in this case anyone under the age of fourteen (...) whenever this act is perpetrated in group.*

The Law has also determined under which circumstances these acts are liable to be punished, bearing in mind what has been determined in article 42 of the Italian Penal Code concerning the deliberate fraudulent action and/or the guilt of an unintentional crime and the objectivity of the responsibility behind the act.

The causes for not considering guilt as envisaged by the Italian Law concern the fact that no one shall be convicted because of having perpetrated an action not anticipated by the law or not considered a crime as in accordance with the Law, together with not having had the intention of carrying out an illicit act or being punished for such an act in case it has been carried out unintentionally. The law determines the cases in which the perpetrator shall be punished even if his act or the omission of it has not been contemplated by Law.

The magistrate pertaining to the Public prosecution service shall handle the investigation and later hand out its results to the competent judge, as in accordance with what has been determined by article 291 of the Penal code processing, which will then be told to the suspect.

In what concerns the aggravating and attenuating causes as well as their application, which have been contemplated in article 61 of the Penal Code, concerning the circumstances under which a criminal conduct is liable to either be aggravated or attenuated these are: the fact that the perpetrator may have acted in a futile and repulsing way; the fact that the crime may have been perpetrated so as to disguise another criminal conduct and/or to ensure the impunity either for himself or another party involved; having perpetrated the act without criminal intention and not having envisaged the result of one's conduct; having used torture or any form of cruel type of approach; having taken advantage of both the time and space not having allowed the victim to defend herself in a situation of absolute need; having perpetrated the act under a particular circumstance which may have gone against a judicial court order because of having previously carried out another illicit act; having taken hold of whatever in the sequence of a crime committed against one's patrimony; having become rich illegitimately, in the sequence of having caused the offended person a considerable serious material damage; the prolonged possession having overburdened the consequences of the committed crime; the possession having been carried out with abuse of power and/or violation of duties inherent to his position whilst public service worker and/or minister of a cult; having perpetrated the act against a public service worker and or a minister of a catholic cult and/or anyone recognized by the State as such, and/or having allowed a foreign state to benefit from the perpetrated act either by means of his/her conduct and/or to carry out tasks or obtain service benefits; having carried out the act having taken advantage of the abuse of power and/or hierarchic position so as to obtain a personal benefit out of it.

In what concerns the punishment to be applied, Law 66, dated 15 February 1996 further determines accessory punishment mechanisms, as well as other penal like aspects.

Regarding the accumulation of punishments referred in article 209 of the Penal Code, it is stated that one may be punished for more than one fact, in case he/she may have

committed more than one act at different occasions. Though the coercion measures to be applied might be of similar nature, only one shall be enacted. If they are of a different nature, it is up to the judge to evaluate the risk, bearing in mind the danger associated with the perpetrator of the act and thus applying one or more than one coercive measure, as in accordance with the law.

In what concerns the type of punishments, the Italian representative has stated that they shall be determined as in accordance with the degree of seriousness of the perpetrated act.

The punishments envisaged by the Italian law as far as sexual crimes and those involving domestic violence are concerned, are: having to pay compensation amounts so as to allow the family to get through; having the aggressor be kept away from the family household and in more serious circumstances even away from the working place of the victim and/or having him imprisoned for a period of time, which varies taking into account the seriousness of the perpetrated act.

In what concerns the carrying out of the judicial orders and other sanctions, there is reference to their fraudulent application in article 388 of the Penal code. Those, who will not comply with what has been decided as a civil obligation deriving from a condemnation and/or shall not comply with the injunctions has to either pay a fine or be subject to up to a three year prison sentence. The same punishment shall be applied to those who may go against an order determined by either a judge, a civil Court and/or a Court of minors in the name of defending the minor's interest and patrimony or anyone incapable of doing so.

There is a base providing information on the aggressors at the Italian Ministry of Internal Affairs [www.interno.it](http://www.interno.it), as well as a registered list of the aggressors in flight and those considered amongst the most dangerous. This aims at stimulating the cooperation of the civil society with the police forces in an attempt to capture such criminals. The data base does not contemplate other type of aggressors, though a recent proposal envisages that possibility.

Within the decisions taken by the authorities in charge of the various cases and in working out partnerships between the entities there is a subsequent better capacity to meet the answers as well as to share information with organizations which are oriented towards local and national mediation.

In what concerns the intervening parties involved in the decision taking and particularly the ones deciding on sexual crimes within the context of domestic violence, it should be pointed out how different their aims are. The magistrate working within the preliminary hearing, due to the constitutional principle of compulsory nature as far as a penal action is concerned, has to individualize the perpetrator of the crime, whenever a crime is committed, and to have him/her be subject to a court sentence; the magistrate working at the court addressing issues associated with minors, being the main judicial protecting body in regard to the infancy, has to confirm whether the parents of the minors have to have their authority reduced or even taken away.

The social services have to overcome the obstacles throughout the supporting process, in order to diminish the suffering of the victim, as well as to denounce situations they

may have acknowledged and try to find the adequate answers to overcome the subsequent problems.

The services connected with the enforcement of the Justice in issues involving minors have to ensure the assistance and follow up of delinquent minors they may be in charge of.

It should be pointed out that the competence of each of these entities has to be respected and the cooperation between them reinforced, when based on professionalism and the use of a common language.

There is a need of being aware of certain factors, which may influence the mediation decision, highlighting the fact that there should be some sort of criteria to be followed, as well as rules and practices which may determine the best criteria to be applied in the mediation processes.

The authorities involved in the enforcement of the sanctions should essentially be police forces. It mostly has to do with the control of keeping the aggressors away from their family household or the victim's working place and/or the prohibition of establishing any contact with the victim.

In what concerns the proceedings at the opening of the criminal trial, it has been pointed out that Law 154 dated 5 April 2001 has determined measures against domestic violence, to be applied by the competent court of justice located within the residential area of the victims.

It is up to the Head of the Court of Justice to designate the judge who shall be in charge of the case. It is then up to the judge to designate the competent authorities, who shall carry out the necessary protective and educational measures including any preparation, it may be found necessary, together with requesting the police and the tax agents to investigate the income, way of life and personal patrimony of the parties involved.

In case it is urgent, once having acknowledged the risk and the necessity to adopt protective measures, the judge may adopt a protection order determining the date for the hearing of the parties involved within the following fifteen days, notifying the request and the decision taking within an 8 day period. Until the hearing of the parties involved, he may still have his/her order of protection changed and/or annulled.

This decision may contemplate an appeal, which does not annul the carrying out of the order for protection.

In accordance with the Law 66, dated 15 February 1996 regarding *the incriminating norms in regard to sexual violence*, crimes of such a nature are liable to be punished following a complaint presented by the offender. The time limit for the presenting of that complaint is of six months. Once the complaint has been presented, one may not give up the subsequent criminal proceeding.

As in accordance with what has been determined by Law 154, dated 5 April 2001 regarding *measures to fight against domestic violence*, the judge may decide on the necessity of the social services and/or family mediation centre intervention, as well as of the associations whose aim is to support and shelter women and children and/or anyone else who has been a victim of crime.

Regarding the conclusion and/or annulment of a criminal proceeding, the article 71 of the penal code determines its annulment based on the incapacity of the defendant. In

case the presented evidence results in the determination of a mental disease on the part of the defendant, the judge may have the criminal proceeding be annulled and have a legal representative be selected. This annulment may contemplate an appeal. The legal representative of the defendant shall be present at every stage of the proceeding, though the judge may determine the limits of his/her intervention

Article 408 determines the requisites for the suspension of the crime notification. The magistrate working for the Public Prosecution, as in accordance with the law, may present the findings, together with the register of the preliminary carried out actions to the judge, and in case evidence has been found invalid, the offended party is to be notified of the intent of having the processing case concluded, should the offended party have previously declared his/her interest of being informed of it. Within the following ten days, the offended party may oppose the decision taking and require the follow suit of the investigation.

In what concerns the process conclusion, article 409 determines the conditions and the requisites based on which the judge may react in regard to its conclusion. Except in those cases envisaged in article 409, when the offended party has opposed the decision. The judge, once having accepted the conclusion of the process has to issue an instruction and have it sent to the Public Prosecution. In case the judge has not accepted it, he shall then set up a date for further inquests to be carried out, notifying the magistrate of the Public Prosecution service, the offended party and the suspect.

During and after the inquest, the judge may order further investigations and set up their deadline. In case the Public Prosecution has not accepted the proposal to conclude the case, it shall within the following ten days issue an indictment instruction, following which the judge has two days in which to set the date for the preliminary inquests.

Although there is no explicit reference to the phase of the trialling and the carrying out of the sentences, *the acceptance of sentences determined abroad* is contemplated in article 12 of the Penal Code.

For a sentence having been determined abroad to be accepted, shall: imply a recidivist behavioural conduct and/or imply the existence of a specific professional profile in the carrying out of the crime and/or to be considered to have a particular tendency to commit crimes and/or have an envisaged additional punishment contemplated in the verdict so as to ensure personal security measures, if according to the Italian law such a convicted person could well be acquitted if found within the territory.

For a sentence carried out abroad to be acknowledged and accepted, the judicial authority of the foreign state has to envisage extradition. If there is no extradition involved, the foreign state in question may equally acknowledge it, in case the Minister of Justice requests it to be done that way.

Whenever obstacles regarding the enforcement of the verdict are considered, the judge may decide upon more adequate provisions to be carried out aiming at its enforcement.





The following multilateral and bilateral conventions signed by Italy have been highlighted: Universal Declaration for the Human Rights (1948); the United Nations Convention for fighting all sorts of discrimination exerted against women (1979).

## Greece<sup>10</sup>

According to the Greek penal system, the term “violence against women” is not acknowledged; there is no such legal term, thus, there is no specific legal regulation - except for rape and only when it occurs outside marriage. According to international and EU standards, a series of resolutions and recommendations towards the Member States are pending, in order for them to adopt an integrated legislations against violence which shall serve not only repression but also provide preventive measures and *substantially protect the victims and their witnesses*.

The existing legislation cannot efficiently protect women victims of violent relationships and proves to be inadequate in most cases, due to the following reasons:

- According to criminal law the basic criteria to substantiate an offence is the proof of physical violence and specifically that the form and intensity of the attack generated physical injury to the woman’s body. *In Greece, violence is acknowledged legally only when proven physical injury is reported.*

However, such a legal evaluation of violence fails to determine the consequences as a whole and therefore *ignores totally one of the basic consequences*, which in the majority of cases is also considered as the most important, *psychological trauma*.

- The lack of specific legislative decrees results to the **reluctance of the prosecuting authorities (the police) to intervene at the time the assault is taking place**, if and when the victim or a neighbour calls for their help or intervention. *The perpetrator is not arrested and the terms for the arrestables are rarely applied.* A great number of complaints filed against the police from abused women reported unacceptable conduct of the police because:

- a) the police didn’t arrive at all or arrived with great delay
- b) the violator was not arrested
- c) the women were not informed about their rights
- d) many officers *encouraged the women not to file a complaint or*
- e) if the woman had decided to file a complaint, the officers persuaded the perpetrators to also file a complaint upon grounds of insult or threat!

The legislative drawbacks related with the mobilization of the legal prosecution and the evidentiary procedure (it’s common enough that the victims themselves carry the burden of proof), in combination with the re- victimization and in addition with the lack of substantial protection for the victims render the women hesitant to put into effect their basic rights such as accusation, filing a complaint and registering it in the incident book of the police stations. Consequently, the manner that the police attend the incidents is extremely questionable and insubstantial, largely due to the lack of training.

- **Only a small number of cases reach the Criminal Courts** due to the following additional reasons: a) usually, a period of two years passes from the day the

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<sup>10</sup> Extract from the Greek report

filing of the complaint until trial. If during this period the victim has not applied according to **the civil law procedure for the removal of the perpetrator from the family home- the less time consuming reaction-** the perpetrator and the victim share the same domicile. Subsequently, under conditions of constant duress, pressure from the family environment, financial dependency on the perpetrator, lack of supporting-consulting infrastructure (shelters or free legal aid) and mainly under the strain of the intense fear they experience, *most victims are forced to withdraw the complaint or to be dragged through a divorce of consent in order to end their ordeal.*

- Criminal Legislation deals with domestic violence based on the General Provisions of the Penal Code, as if it does not take place inside the family. The respective provisions refer to Offences Against Life, provisions on bodily injuries (articles 308 hereinafter of the Penal Code). Therefore, based on these provisions, the perpetrator may escape punishment, provided that: a) the intent of bodily injuries is not proved and b) proof is presented that the perpetrator proceeded to a violent act out of justified indignation and as a result of the victim's earlier behaviour, Art.308 (3), Penal Code. At this point, it is necessary to stress that in Greece there are no Family Courts- Penal or Civil- and no Family Judges. Moreover, there are no entities/organisations that offer any support in the field of social, psychological and health aid cooperating directly with the judicial and prosecuting authorities and moreover police officers have no relevant specializations (apart from limited efforts to organize further training seminars). Juvenile Courts rule cases on crimes committed only by minors, while although the prosecutors and supervisors of these courts are competent for cases that concern minors and their family, it's difficult to interfere and to mobilize penal procedures when the offences are not prosecuted by force of office.
- Greece validated the CEDAW International Treaty with the National Law 1342/1-4-1983, Optional Protocol of the agreement with the Law 2952/2001, but has not yet adopted any infrastructure measures, legislative regulations or policies to deal with the existing discriminations. The body of feminist lawyers believes that male violence constitutes a form of discrimination against women and that the Greek state should proceed with no further delay to a legislative regulation on male violence, adopting the definition given by the 4<sup>th</sup> Women's Convention, in paras 113 and 114 of the Beijing Platform for Action.

Altogether, the reluctance of the Greek state, to this date, to regulate domestic violence as a particularly punishable act and to clearly define the competence of the prosecuting authorities (police-public prosecutors-courts), both in a repressive and a preventive manner, contributes at the end of the day, to the preservation and the exaltation of the phenomenon of male violence, creating additional insecurity to the victims (women, children, elderly) and from the perpetrator's point of view the belief that he is not committing a punishable act.

## **General Provisions of the Penal Code that Cover Incidents of Domestic Violence**

**Art.308 (1) Penal Code (PC).** Bodily injuries. He who causes physical injuries or lesion deliberately shall be punished with 3 years of imprisonment. If the injury or the lesion is light the punishment shall be maximum six months or a pecuniary penalty. If, moreover, it is insignificant, it shall be punished with arrest or a fee.

**Art.308 (3) PC.** The perpetrator of para 1, **may not be punished if he inflicted the injuries out of indignation and as a result of the victim's earlier behaviour, especially if it was particularly cruel.**

**Art.309 PC. Dangerous bodily injuries.** If the act of Art. 308 was executed in a manner that could have resulted to the danger of life of the victim or to heavy and lengthy injuries, the court shall inflict imprisonment for at least 3 months.

**Art.310 PC Grave bodily injuries. 1.** If the act of Art. 308 resulted grave bodily or mental injuries the court shall inflict imprisonment for at least two years.

**Note:** When the law refers to the two years punishment it implies that it cannot be less than two years and not exceed five years, in accordance with Art. 53 of the PC.

**Art.315 PC** In the case of 308 the right to prosecute can **be brought in action only after filling of a complaint. The time of lodging the complaint is limited within three months from the day the punishable act took place. After this period, the punishable act is time barred.**

**Note:** Cases included in 308A of inflicting bodily injuries without a cause, of dangerous and grave bodily injuries are brought in action by force of office, provided that the prosecuting authority is informed and the punishable act is reported according to Art. 36, Principles of Criminal Law.

**Art.333PC** He who inflicts upon another person fear or uneasiness with violent threats or any other unlawful act or negligence shall be punished with **imprisonment of one year or with a pecuniary penalty.**

*The criminal prosecution requires the filing of a complaint.*

**Note:** *when the law refers to imprisonment of at least one year, it implies from the minimum of 10 days to the maximum sanction of one year.*

**Art.361 (1)** He who shall insult another person's honour by words, deeds or in any other way, shall be punished with imprisonment of one year or with a pecuniary penalty. The pecuniary penalty and the imprisonment may be sentenced together.

**Art.361 (2)** if the insult of honour is not particularly grave taking into account the circumstances and the victim's personality, the perpetrator is punished with a lower sanction i.e. pecuniary penalty or detention.

**Note 1. It is common for cases of violence against women to bring up the punishable act of insult. The prosecutor usually files these cases in category (2), which leads to the insignificant sentence of detention.**

**Note 2.** According to Art.55 PC the duration of detention cannot exceed one month but cannot be less than one day. Detention is carried out in the police stations.

Thus, the conclusion derived from the above is that domestic violence does not constitute a serious offence, there is no relevant bibliography and the cases are not distinguished clearly among other civil offences.

As a result, the bodies that resume involvement in the relevant offences do not belong to competent agencies but usually to public services or officers who carry out the responsible actions to prosecute the offences in general i.e. the police, forensic authorities (public servants), public prosecutors- minor judges (public servants), hospitals and medical personnel, courts and possibly custodians of minors (public servants).

### **Sanctions/penalties**

Sanctions imposed to a perpetrator found guilty of the aforementioned offences.

- Sanctions imposed on cases after trial in court are usually the minimum punishment possible to be sentenced according to the law.

- The punishable acts mentioned above in Art. 308 etc are minor criminal offences. Therefore, if the perpetrator is caught in flagrant act, the procedure of flagrant offences is followed, except in the case that the public prosecutor decides that there are no grounds to support it. In practical terms, if the perpetrator is arrested within 48 hours from the time of the assault by a police officer and is presented before the public prosecutor together with the report on the arrest and the confirmation of the offence, the public prosecutor **may** send the perpetrator to trial in court immediately, which shall proceed. In judicial practice, though, due to the lack of sensitivity towards the victims, the trial is postponed to a fixed date, which means that it will be held after one year at least.

Note: as mentioned above, cases of domestic violence are not applicable in flagrant offences because the police avoid arresting the perpetrator mainly out of prejudice towards the victims based on the sexist conviction that domestic violence is not an offence!!

The competent courts of each region order the sanctions.

### **The intentional aspect of an offence**

In order to constitute a criminal offence the necessary element is intention. Negligence for these cases remains unpunished. Art. 308 (1) case 2&3 PC and Art. 361(3) PC.

### **The material aspect of the offence**

- According to Art. 14, the elements of a criminal offence are: a) an act. In order to inflict penal sanctions this act must be attributable to the perpetrator, it must be unlawful, culpable and punishable by law.



- According to Art.20, grounds that negate the unlawful nature of a criminal action, except from cases described in Art.308 (2) &(3) and Art.361 (3), are also the cases in which the perpetrator acted out of necessity and defence.

Moreover, according to Art.34 the perpetrator does not incur liability if he acted in a state of disturbance of conscience.

Note: the defence often uses this provision in order to avoid prosecution.

### Action or omission

- An action is an outgoing human behaviour constituting the external manifestation of the perpetrator's inner world. This human behaviour must address an individual because the case of a person's ideas, thoughts, emotions, desires and dispositions is indifferent to the legislator, for as long the offence is not actually committed, e.g. the husband that records insulting thoughts about his spouse in his diary.

- A crime is committed through omission also, according to para 2 of Art. 14 PC. Necessary prerequisites: the perpetrator had had the ability to act and omitted and the knowledge that he had had to act and omitted. A classic example of omission is the following: According to law 1486 of the Civil Code, parents have the duty bestowed on them to feed their under aged children. If a parent knowingly omitted to fulfill this duty and the child died as a consequence, he is liable for intentional murder, which was executed by omission.

### Attempt

The basic prerequisite for attempt is the decision of the perpetrator to commit the serious offence (e.g. rape) or the minor criminal offence (misdemeanor - e.g. bodily injuries) and his act should have the principal of beginning it and is necessary to be completed. Attempt is filed under the above rule.

If the court decides that the mitigant sanctions are not enough to obstruct the perpetrator in committing other crimes it can charge **the same sanction** for attempt as the one it ordered for the completed action.

**Note:** in cases of domestic violence i.e. bodily injuries, courts are very reluctant as far as sanctioning is concerned; the only exception is the case of rape outside marriage. In such a case, if the court rules that there is a chance of repeating the assaults (by evaluating the perpetrator's personality and the circumstances in general) it may sanction the same penalty for the complete action and the attempt. Unfortunately there is no statistic data for these cases.

According to the Greek Criminal Law, the attempt of overt acts is not punishable. Note: there is an article that refers to overt acts (Art.211 PC) but concerns mainly offences related to currency.

### Complicity

According to Art. 45 of the PC if two or more persons perpetrated an offence together, **each and every person participating shall be punished as principal**. In participation

there are two elements the objective, which is **direct accessory** and the subjective, i.e. **complicity** (agreement on intention/ *dolus*).

An **instigator** is any person who deliberately caused to another the decision to carry out an offence. If the principal exceeded the decision reached so that the crime does not cover the original intention (*dolus*) of the instigator, the latter does not incur liability. For example: if the instigator persuaded the principal to inflict bodily injuries and he proceeded to insult, the instigator will not be liable for the offence of insult.

According to Art. 46 (1) PC, the instigator is punished with the same sentence as the principal. Further clarification: the instigator may incur the same sentence as the principal but they are not identified as notions. Instigation is a form of participation in another person's offence and *the punishment for the act of participation is independent from the punishment of the person who executed the offence (principal)*.

Furthermore, it should be clarified that according to Greek Law there is no provision on liability for another person's deeds, except in the case of parents who take care of their children or to the direct assistant who is not liable.

### **Administration of proves**

The prosecution (Public Prosecutor) has the burden of the evidentiary procedure.

Therefore, in every day court practice, the victims themselves bring proof, especially in cases of domestic violence. The victims have to prove the act of the offence on the base of the testimony of witnesses in court. The burden of providing proof, the lack of evidence (proof in writing) and the hesitation of third parties to testify in court are the most important obstacles that do not allow the women-victims to execute their rights (to file a complaint or to ask for the removal of the perpetrator from the family home).

According to the **criminal process** it is not realistic to transfer the burden of proof on the defendant-violator because it is contradictory to the principal of presumption of innocence.

Therefore, in the **civil process**, the Greek legislation should comply with the EU Council Directive 97/80 and transfer the burden of proof to the defendant-perpetrator.

As aforementioned, all forms of male violence constitute discrimination against women and a violation of human rights. Therefore, Greece must undertake specific legislative measures and set more lenient evidentiary decrees for victims of domestic violence, taking into account first of all the particularities of women and the nature of the offences committed because they take place in the frame of the family-in a particular sphere-and secondly the difficulty to gather evidence due to special conditions i.e. the environment, the lack of adult witnesses, the time of the incident which is usually late at night etc. Finally, Greece must adopt *the general principal of not blaming the victims for the violence of men*.

In addition, special security measures are necessary i.e. the protection of the victims and their witnesses by e.g. establishing private hearings.

### **Attenuation/mitigating circumstances**

- If the perpetrator had a prior honest and honorable life.

- The victim's improper behavior e.g. in some trials impolite behaviour to the relatives of the violator or not preparing lunch on time were considered improper behaviour.
- The sincere remorse (the perpetrator asks for forgiveness, a common practice of the aggressors towards their victims after violent incidents that belong to the so called “circle of domestic violence”, and stand as mitigating or exemption factors in court.
- If the behavior of the perpetrator towards the victim was good for a relatively long period of time following the commission of the offence.
- **Note:** Women aware about the problem of domestic violence know that behaviours like the above are familiar and predictable. Usually after a violent act comes a honeymoon, until the next and more intense incident! Moreover, the defending lawyers suggest this “good behavior” factor as a defence strategy to their clients in order to obtain a more lenient attitude from the court.

When there are more than one mitigating or extenuating factors, the court must take them into consideration in order to sentence the punishment.

### **Grounds that incur aggravation of punishment.**

Recidivism, according to the general provisions of the PC, related to serious offences and minor criminal offences for which the perpetrator has already been convicted with imprisonment of more than six months.

Domestic violence is not an official term of the PC and there is no relevant law so the offence is listed under the punishable acts of bodily injuries, insult, threat etc, which are minor criminal offences.

- If the offence does not exceed one year it can be converted into a pecuniary penalty or a fee
- If the sanction exceeds a year and does not exceed two years it can be converted to a pecuniary penalty, except in the case that the perpetrator is in recidivism.
- The court may convert the imprisonment sanctions to pecuniary penalties, after a special evaluation and if it reaches a judgment that the perpetrator is not suspect to further violent behavior.
- **OBSERVATION:** For acts of domestic violence we know of no sentencing cases that imposed penalties of over one year.

### **Sentencing the penalties**

According to Art. 79 PC, the court takes into account a) the gravity of the committed criminal act and b) the personality of the perpetrator.

**Regarding the notion of “gravity”,** the judge evaluates the damage caused, the nature, the kind and the category of the offence and the degree of *dolus* or negligence of the perpetrator.

**Regarding the evaluation of the personality,** the judge assesses the causation of the offence and its goal, the perpetrator's personality, the individual and social circumstances, his previous life and his behaviour after committing the offence, especially if he has shown remorse.

The Greek Courts tend to be lenient towards the perpetrators in regard to all the above punishable acts exhausting all their sensitivity although, on the contrary, they are very reserved and negative towards the victims that prosecute them.

The Court also takes into consideration the character and the gravity of the crime. Consequently, if the offence imposes a brief sentence up to one year and the perpetrator has no prior convictions, the case falls into mitigating sentences with reasons to decrease the sentence even more.

The Court may suspend the execution of the sentence if the perpetrator has not been previously sentenced to a custodial sentence for committing a serious crime and if the Court announces imprisonment not exceeding 18 months, the sentence is suspended for a period ranging between three or five years. However the suspension can be abrogated if the perpetrator is again sentenced to a custodial sentence during the probationary period.

The court may also impose the probationary conditions under which the suspension is granted.

Greek Criminal Law also incorporates provisions that release the convicts after having served two thirds of their sentence and at least one year of it.

Greek Criminal Courts keep no databases.

### **Decision making on the part of administrative, police and penal authorities.**

The victim lodges a complaint to the police or the public prosecutor.

If she files a complaint to the police, they will announce it to the public prosecutor with no delay.

Consequently there is a strong cooperation between the police and the prosecuting authorities.

**OBSERVATION:** this strong cooperation does not benefit or protect the victim.

### **Participation of mediation/restoration orientated organisations**

The institution of mediation/restoration does not exist in Greece. It has been proposed repeatedly by NGOs as an institution necessary to adopt and to be put in force before the judicial procedure begins in order to meet the objective of finding a solution between the opposing parties with the minimum financial and psychological cost.

**OBSERVATION:** This institution was suggested for civil cases of Family Law and especially due to the necessity of social research on parental custody and marital relationships.

According to the current law there are no mediation procedures. The stages of the preliminary inquiry, the ordinary inquiry and the trial are all in the power of the public administrative agencies and services: the police, the public prosecuting authorities, the forensic services, the courts of the first and second degree and the Supreme Court which is responsible for the final decision.

### **The stages of criminal process**

1. The victim files a complaint to the police or the public prosecutor

2. In the case that the victim is reluctant to file a complaint against her spouse because of threats imposed on her, she is informed that she can at least report the incident to the above authorities and ask for a copy. The criminal process cannot be put in force based only on this report, but it constitutes evidence that can be used in court in the future.
3. As soon as the police acquire the complaint, it is send to the Public Prosecutor who shall order a preliminary or an ordinary inquiry or forward the case to court. Furthermore, before the commencement of the criminal process the Public Prosecutor has the right to order a preliminary investigation in order to concentrate sufficient evidence that a crime was committed. If the complaint is not in conformity with the law or is not justified, the prosecutor places it in the archive.
4. After the preliminary investigation and the drafting of the case file (complaint, gathering all the evidence and the testimonies of all the prosecuting witnesses) the perpetrator is called to court, except in the case that the evidence is not sufficient and then the case is forwarded to the Judicial Council.
5. The case will finally reach the courts after a significant delay, two years after the filing of the complaint. During the above period the victim may be pressed to withdraw charges.
6. The reasons that the women withdraw charges or “pardon” the aggressor vary, but the most common is that they feel unprotected by our criminal system and moreover they feel they will not find justice.
7. The women can not produce the financial resources needed to go to court- a good lawyer is usually an expensive one. The institution of free legal help is inadequate and -of course- is awarded to the defendant and not the person who pressed charges.

There are a few women NGOs that offer free legal aid and psychological support to abused women (Greek League for Women’s Rights, Women’s Union of Greece), but the financial situation of the Greek organisations is very bad and the assistance they can offer, apart from counseling, is very limited.

### **Authorities/Services involved in the decision making process**

The police authorities carry out the preliminary inquiry and the investigators are judges that undertake the inquiry, while the public prosecutor orders the prosecution.

### **Courts competent to rule cases of domestic violence**

The authority of the court depends on the gravity of the offence. The cases overwhelm the One-Member Misdemeanour Courts and only a few reach the Three-Member Misdemeanour Court. There is a right to appeal on decisions of criminal courts (either the prosecutor or the defendant lodges the appeal). If the appeal is heard, a new trial follows in the Court of Appeal. Moreover, in theory at least, there is a right to appeal by way of cassation before the Supreme Court (*Areios Pagos*) against an indicting decision for an error of law.



**OBSERVATION:** Domestic violence cases in Greece appear mostly in the Civil Law Courts. When the husband attacks his wife violently, the quickest and inexpensive procedure is security measures, with which the victims ask for the perpetrator to be removed from the family home and to regulate matters of custody of the children and alimony. This procedure is preferred for one more reason: it's not necessary for the victim to provide evidence, only presumption is adequate for the Court to accept her petition.

Furthermore, violence can independently constitute grounds for divorce, as far as the assault is proven (in this case full evidence is necessary, usually based on witnesses). There must be an element of shock connected with the defendant in order to prove that the continuation of the marriage is unbearable for the complainant.

Today many divorce cases reach court based on grounds of assault. The decisions of the courts are quite satisfactory.

Finally it is important to stress that all aforementioned concerning the aspect of the offences, the involved authorities, the criminal procedure and the execution of sentences derive from the General Provisions of the Penal Code and the Criminal Procedure, due to the fact that domestic violence does not constitute a serious offence according to the Greek law.

### **Territorial scope, competence of national authorities**

According to the General Provision stipulated in Art.5 PC, the Greek criminal statutes are enforced to all offences perpetrated on Greek territory, even if foreigners commit them.

In addition, Greek criminal statutes shall be applied to offences characterized as serious crimes or misdemeanors and which are committed by a Greek national if the offence is punishable under the law of the state where committed (Art. 6 PC).

The above statutes also apply in the case of serious crimes and minor criminal offences committed abroad by a foreign national that were aimed against a Greek national and are punishable according to the law of the state where committed (Art.7 PC).

It is self evident that there are no special provisions about domestic violence.

In theory, if the perpetrator resides in another country, the Greek authorities may request his extradition according to Art. 455, Provisions of Criminal Procedure and moreover according to any existing agreements between countries that refer to extradition. Unfortunately there are no records of such procedures in cases of domestic violence and unilateral or multilateral treaties specializing in domestic violence between Greece and other countries have not been signed.

### **Overruling - Suspension**

As aforementioned, in the pre-trial stages the public prosecutor can dismiss the case if he believes there is no substantial evidence to justify a criminal complaint. After the criminal procedure has begun, it is completed with the ruling of an irrevocable decision and no authority has the jurisdiction to relieve it from criminal court ruling.

### **Protective and restorative proceedings**

The Greek Law does not provide for protective measures or for the reintegration of the perpetrator in cases of domestic violence.

### **Possibility of intervention by non-governmental organisations in the criminal process**

NGOs have no right to intervene in the criminal procedure. Women's organisations have repeatedly requested from the government to grant them the right to intervene and defend the victim and to lodge a civil complaint against the aggressor in trials that rule upon violence against women, but their request was not granted.

## **II. The domestic violence situation in each of the Southern European countries: quantitative and qualitative data concerning the victims and the aggressors' profiles; and the type of support they have been provided with**

### **Portugal<sup>11</sup>**

The Portuguese representative has referred that in Portugal there is no gathering of statistical data and/or any study which may lead to a credible quantitative and qualitative approach concerning the victims, the aggressors and the support both parties have been provided with. He has also referred that the study of this issue is quite recent, having most of the study works within this area been developed as from 1995 onwards. Some of these were carried nationwide though others have more specifically focused certain regions, having been carried out in the perspective of the victim rather than the one of the aggressor.

A study on *Violence exerted against women*<sup>12</sup>, though not being a specific study on domestic violence, has considered this issue and in spite of having an overall perspective, focuses on the violence exerted against Portuguese women older than 18. The physical, psychological and sexual violence, as well as the socio-cultural discrimination, are some of the types of violence which have been covered in this study. In accordance with its results, most Portuguese women (52, 2%) were at least subject to a violent act throughout 1995. This percentage is slightly reduced to 36%, if instead of considering one violent act we take into account two or more acts, which may envisage a degree of continuity.

Psychological violence is the one which shows the highest figures (50, 7%), followed by the sexual one having reached a 28, 1% figure as against the socio-cultural discrimination which has reached the 14, 1% mark. Physical violence shows the lowest percentage figures (6, 7%).

Psychological violence and the physical one mostly occur within the domestic household as against the socio-cultural discrimination, which seems to occur within the working atmosphere, whilst sexual violence seems to be perpetrated in public places.

The domestic household is therefore the place in which the highest number of violent acts take place (43%) followed by the public places (34%) and the working places (16%) leaving a 7% mark for other places.

In what concerns the characterization of the aggressors, it may be said that no social identification can be accurately done, once they may be male characters of no particular age, as well as of no specific social status. Regarding the aggressions which occur within the domestic household, it can be said that most aggressors are either the husbands of the victims and/or are/have been living with them. It can be added that most of them have 24 up to 44 years of age. Those who have socio-culturally discriminate others either hold university degrees or work as senior employees and/or in liberal professions, as against those who have committed some other form of violence,

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<sup>11</sup> Extract from the interspersed reports presented by the Portuguese representative

<sup>12</sup> N. Lourenço, M. Lisboa, E. pais (1997), **Violência contra as Mulheres**, Lisboa: CIDM

because they normally come from lower social classes and have an educational background which goes from a primary school to a secondary school education.

It has also been verified that 11, 7% of cases of aggression are committed by women against other women, though these are to be included in the socio-cultural discrimination and psychological violence types of aggression.

In another study, Marital Homicide in Portugal<sup>13</sup>, it has been concluded that marital homicides represent 15, 1% of the total number of homicides. Most of these are perpetrated by men (83, 2%). Notwithstanding the fact that women do perpetrate less crimes of this nature (16, 8%), whenever they do, they seem to do it within the marital atmosphere than the men who reach higher figures in homicides perpetrated outside this reality (13%).

Most of the men who kill their spouses and/or companions do it after having hit them over a number of years. Women, on the other hand do it mostly as a last resort to defend themselves from the non-stop aggressions they have been enduring in a sort of *it was either him or me*.

There is still a considerable amount of men who kill their wives or the one they were living with because of having been abandoned or rejected. The difficulty to accept rejection in a cultural setting where their masculinity may be menaced, leads them to the ultimate aggression of the loved-hated character.

It has also been concluded that there is another type of homicide, which has to do with the existence of triangular love relationships where both men and women may become the aggressors, and very commonly taking advantage of the lovers as their accomplices/co-perpetrators.

These homicides may occur anywhere in the country and may involve just anyone belonging to any age group, though the older women are normally to be found living in rural areas as against the younger ones who are mostly to be found living in urban areas. As opposed to the male attitude the female aggressor assumes the crime she has committed, acting the prototype role of the woman who has been maltreated in some way.

This study has also shown that the women, who have been subject to aggressions, are also subject to family and social pressure so as to endure the situation with resignation, together with the fact that many have unsuccessfully attempted to denounce their aggressors before.

In another study on *maltreated women within the region of Porto*<sup>14</sup> there is an evident fatalist type of submissive reaction on the part of the women who are subject to aggressions, to which is still added the fact that most of them do not consider themselves guilty of having led to those aggressions.

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<sup>13</sup> Elza Pais 81998), **Homicídio Conjugal em Portugal**, Lisboa: Hugin.

<sup>14</sup> L. Silva (1995), **Entre marido e mulher alguém meta a colher**, Celorico de basto: A Bolina

There has been a recent study on *the social context of violence exerted against women as detected by the forensic hospitals*<sup>15</sup>, according to which 2160 women have been analysed (545 in the Forensic Institute located in Coimbra and 1615 in the one located in Porto) out of a total amount of 11406 women who were observed in these Institutes during the year 2000.

Physical violence which represents 83, 3% of the overall violence includes beating as having been the most commonly perpetrated violent act.

Psychological and physical violence comes next having reached the 14, 2% figure, being followed by sexual violence (1, 6%) and finally other forms of violence (0, 9%). In 95, 3% of the cases children witnessed the aggression, having most women been exposed to a circle of violence. Jealousy seems to be amongst the identified causes (44%) followed by alcoholism (19, 7%).

The victims are mostly married women (59, 1%), whose ages range from 25-34 (28, 5%) and 35-44 (26%) holding a primary educational level (44%), and most of them being housewives (40, 3%). The aggressor is commonly identified as being their husband (49, 6%) with a low educational background and carrying out non-qualified tasks (28, 4%).

The Portuguese representative has also taken into account the criminal statistical data regarding domestic violence as in accordance with the denounced information provided to the Security Police (PSP) and the National Republican Guards (GNR). According to these sources of information from 1 January to 21 of December 2000, they registered a total number of 37.930 domestic violence crime official complaints<sup>16</sup>; 22.565 were registered by PSP whilst 15. 365 complaints were registered by GNR<sup>17</sup>.

The district of Porto was the one which registered the highest number of complaints (22, 1%), irrespective of 25% of them having been made to PSP and 18% to GNR. The district of Lisbon registered a slightly lower percentage (19, 6%), though the number of complaints made to PSP (23, 4%) was higher than the ones made to GNR (14%). The remaining districts have shown significantly lower percentages, though the most populated ones showed higher percentages. As far as PSP is concerned, the number of complaints seems to indicate a closer relationship between the population and this police force which holds the responsibility within particular areas. As far as GNR is concerned, the data does not seem to be coincident, once for example the percentage of complaints in Aveiro seems closer to the one registered in Lisbon as against the one registered in Viseu, which in turn seems higher than the one registered in Santarém.

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<sup>15</sup> M. Lisboa, Z. Barroso, J. Marteleira (2003), **O contexto social da violência contra as mulheres detectada nos institutos de medicina legal**, CIDM: Ditos & Escritos

<sup>16</sup> The fact that PSP and GNR use a common tool, so as to collect their statistical data within this area (although in a slightly different approach), these findings may not be easily put together with the data collected by the Judicial Police (PJ). Bearing in mind the nature of such criminality, the official complaints made to the PJ have not been many and many of those were then referred to the above mentioned entities, particularly when effective or attempted murders were concerned.

<sup>17</sup> Contrary to PSP, GNR does not register complaints of crimes against family members but the ones against the consort and/or companion.



This data is an example of the various factors which may influence the analysis of the criminality data as in accordance with what has been referred to the Police. Irrespective of the distorted factors associated with the situation and which have already been mentioned in various studies carried out on victimization, there is an additional factor to be further taken into account and which may have to do with the fact that there is a differentiated distribution of the Police forces and having a police service placed far away may become an obstacle towards having a complaint/denouncement made.

This may then lead to having just the serious cases denounced, and consequently having the geographical distance and inconvenience of a police unit placed far away overcome. Added to this there is still the irregular distribution of the type of complaints which are made.

The statistical tool which has been used by the police units does not contemplate the victimizations which occur more than once, thus not allowing one to adequately evaluate the percentage of such cases as against the total number. On the other hand, various crimes may be denounced though having occurred at various times, the same may be applied to different types of crimes which may have occurred at the same time; the system which notes down the crimes, shall only indicate the one which according to the police agent, whose task is to collect the data, may be considered the most serious one.

This tool is therefore more of a quantitative tool. There seems to be necessary to further add another qualitative tool, which may lead to a better understanding of this type of criminality.

This brief statistical analysis shall be analysed under a quantitative perspective with the inherent limitations.

In what concerns the above mentioned period, the number of complaints regarding domestic violence situations has revealed a meaningful percentage increase, which is above the 10% mark and which has been more significant in what concerns the complaints made to GNR.

Violence exerted against the consort and/or companion seems to be the most commonly perpetrated one, reaching 96, 3% of the total number of complaints as against 3, 3% of violence cases perpetrated against minors. This situation seems to reveal a shortcoming in what concerns the complaints regarding the victimization of minors, when there is a strong probability of it occurring in higher numbers, particularly when there is violence within the family.

These percentages are slightly different due to the way the information is gathered, this being the reason why the number of cases concerning situations involving sixteen year olds registered by GNR are higher (4, 1%) than the ones registered by PSP (2,7%).

The most frequent age group as far as aggressors are concerned includes those older than 25 (90, 3%)<sup>18</sup>, representing the intermediate position on the scale is the 16 to 25

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<sup>18</sup> This denotes another shortcoming as far as the assessment tool is concerned, once domestic violence carried out within the family very rarely implies family units made of couples whose ages are below 25 years of age. The actual tendency for family units to be constituted implies an increasingly older age group (with or without marriage).

age group (9, 2%) and the age group at the lowest position within the scale is almost irrelevant.

Considering that the number of complaints is superior to the number of suspects in gender or by age, domestic violence stands out as a predominantly isolated act. There seems to be a different situation in regard to the number of complaints made to PSP, which is higher than the total amount of suspects in gender and by age group as opposed to the results registered by GNR. This fact may derive from the differentiated approach in what concerns the data gathering and/or as far as the circumstances in which the aggressions have occurred. It can be noted that in predominantly rural areas, there is a significant number of aggressions carried out by more than one aggressor.

The number of detentions represent 1, 2% of the total number of denounced situations. This may be eventually due to the legal constraints regarding the presumed act the effective one.

The consort is mostly the perpetrator of the denounced situations (72, 5%), the parents, stepparents and children of the victims represent about 7% of those as against 4, 5% perpetrated by other parties. The former consort and/or former companion is responsible for 6, 5% of the denounced situations<sup>19</sup>.

The victims are mostly female (86%) and predominantly belonging to the above 25 years of age group. The remaining age groups are significantly inferior though the one which presents a higher percentage is the one from 16 up to 24 years of age (12, 1%)<sup>20</sup>.

In 9, 4% of the complaints there has been reference to the usage of firearms, though only in 1, 1% of the cases these were effectively used. The remaining percentage figures point out to the use of various instruments so as to create the same impact firearms would have had.

Regarding the quantitative data there is a certain difficulty on analysing this thoroughly, the same can be said in regard to the district approach.

The data gathered by PSP allows us to conclude that most of the denounced situations are simple physical offences (76, 3%), threats and coercive acts (13, 5%) and defamation, slandering and libelling (5, 9%). Although these might not sound serious, the existing data does not allow us to thoroughly conclude which real consequences they may have led to and/or the circumstances which are associated with the denounced situations and may have contributed to aggravate them. More than describing domestic violence to the authorities in charge the statistical data point out towards the necessity of official assessment tools which may be able to gather the data in a more adequate way to the diverse reality this criminality may assume.

The statistical data provided by the Portuguese Victim Support Association (APAV) has been integrated in the official statistical data of the Ministry of Justice. Regarding this data which was gathered by APAV involving 10.009 victim support cases registered throughout 2002, of a total number of 20. 594 committed crimes, 90% of them (18.597)

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<sup>19</sup> The percentages of complaints involving former husbands and/or companions are of 8, 3% made to PSP and of 3, 9% made to GNR.

<sup>20</sup> The same problems which have been previously referred regarding the age groups of the aggressors may also be pointed out in what concerns the age group of the victims, though PSP has a particular item which contemplates violence exerted against old people.

involved domestic violence ones. It should be pointed out that the apparent disparity of the above referred figures is due to the impossibility of including more than one crime in on single support process.

In what concerns the type of domestic violence crimes, the highest percentage of those registered by APAV corresponded to physical maltreatment (6.043 crimes – 60, 4%) and psychic maltreatment (5. 788 crimes – 57, 8%). The statistical data carried out by APAV allows us also to infer that a high number of these have included threats and coercion (3. 738 crimes – 37, 8%), slandering/libelling (2. 056 crimes – 20, 5%). With quite a lower number of occurrences one may refer to unlawful withholding of minors (96 crimes – 1%), breaching of the obligation to pay alimony (198 crimes – 2%), raping (275 crimes – 2, 7%), sexual abuse (200 crimes – 2%) and other crimes within the domestic environment (193 crimes – 1, 9 %).

In accordance with the data gathered by APAV it has been possible to work out the profile of the victims of domestic violence, particularly the ones who endure physical and psychic maltreatment, once these type of crimes are the most preponderant ones in national statistical data: 5. 683 crimes involving physical maltreatment – 30, 6% and 5. 410 crimes involving psychic maltreatment – 29, 1% of the total number of registered crimes, perpetrated against women whose ages are from 26 to 45 years of age (7. 369 crimes – 39, 7%). Most of the victims of domestic violence are married (11. 164 crimes – 60, 1%), are integrated in family units (11. 298 crimes – 60, 8%) and have a considerable addiction to medical drugs (290 crimes – 33, 6%). There is quite a strong prevalence of domestic violence crimes within the Lisbon area (5. 887 crimes – 31, 7%), being most of the victims Portuguese native (14. 661 crimes – 78, 9%) with an academic background to the level of the first schooling grade (1. 778 crimes – 9, 6%). It has also been concluded that most victims of domestic violence were regular workers at the time of the occurrence of the crimes (7. 792 crimes – 41, 9%) either doing house holding tasks or domestic type of work (2. 302 crimes – 12, 4%). Although most of them may have stated these were their main means of living (in 7. 636 crimes corresponding to a 12, 4 percentage), it should be further stated that 16% of the victims of domestic violence who were assisted by APAV stated being unemployed. In what concerns the support provided by APAV, the emotional one, together with the general information provided, as well as the referral, were the main areas in which this support was carried out (in 12. 193 crimes corresponding to 48, 4%), though quite a high rate of specialized intervention in juridical, psychological, social and financial terms may have to be accounted for).

Taking into account the information gathered by APAV, it was still possible for the Portuguese representative to outline the profile of the perpetrators of such crimes: they are mostly male (17. 556 crimes – 94, 5%), from 36 to 45 years of age (3. 242 crimes – 17, 4%), living a marital type of relationship with the victims (13. 911 crimes – 74, 8%). Data gathered by APAV also allows one to conclude that the predominant working tasks performed by the aggressors are in the areas of industrial extraction and construction sites (1. 733 crimes – 9, 3%) together with the fact that many show an addiction to alcohol (5. 901 crimes – 73, 9%). Although not particularly meaningful in

terms of numbers, it was still possible for one to conclude that 6, 7% of the perpetrators of the domestic violence crimes had criminal records (1. 240 crimes), particularly in issues such as offences to the physical integrity and maltreatment .It should be pointed out that most domestic violence crimes are perpetrated at the residential home of the victim and the perpetrator of the crime (14. 566 crimes – 75, 3%)

Similarly to what is known as the domestic violence cycle, the pattern according to which most of the after violence events occur, was presented by the Portuguese representative, once more as in accordance with the information gathered by APAV. A formal complaint was made in the 6. 164 cases (35, 9%) registered by APAV, with particular incidence in crimes involving physical maltreatment (32, 2%) and the psychic one (27, 9%), having mostly been presented to the Public Security Police (52, 1%). It is quite alarming though to realise that there is quite a high percentage of crimes whose complaint is later withdrawn (61, 5%).

## Spain<sup>21</sup>

The Spanish representatives have stated that a widespread survey was carried out during December 2002, under the responsibility of the Institute of Women and focussing on the formal complaints presented to the units and divisions of the Civil Guardians by women against their husbands and/or companions, together with the gathering of information carried out by the autonomous Basque police in Girona and Lheida. This survey was carried out by making 20. 652 phone call interviews to Spanish women older than 18 years of age and using the CATI system from 29 January to 4 April 2002. The aim was to quantify the violent acts within the domestic environment and to try to work out the social and personal characteristics of the women who had endured such violence, as well as to find out the physical and psychological consequences of such maltreating acts.

In order to reach the above mentioned objectives, the survey focussed on two different types of maltreating acts: the so called *technically considered maltreatment type A*, which corresponded to behavioural attitudes as referred by these women and which were considered by specialist as indicating a certain degree of violence, though they themselves did not consider them as maltreating acts; and the so called *officially declared maltreatment type B*, integrating cases of women who confessed having been maltreated throughout the last year.

In what concerns the incidence of maltreatment in Spain, the obtained results of this survey show that 4% of the Spanish women older than 18 have stated having been victims of maltreatment of the people they live with, are engaged to or have a relationship with even without being married to. It is considered that 11, 1% of the Spanish women older than 18 are not “technically” acknowledged as having been maltreated. In what concerns the age group of the ones *technically or officially considered* as being maltreated it seems that the highest incidence involves women from 30 to 64 years of age, though from 65 onwards the incidence of violent acts is lower.

In the technically considered maltreatment cases, 13, 7% of the women are married as against 12, 2% who are separated and/or divorced. The highest percentage of complaints comes from either separated or divorced women (15, 2%). The incidence of domestic violence seems to be lower in both the single women and the widows group.

The general situation involving women victims of domestic violence is of still having to get along with the perpetrators of those violent acts, particularly if they happen to be their husbands and/or companions (77, 6% in the technically considered maltreatment and 67, 7% in the officially declared maltreatment).

The wider the area covered by the districts where the residential areas of the victims are located, the higher the percentage of those who state having been maltreated. In what concerns the technically considered maltreating acts, it has not been possible to establish the connection between them and the actual size of the districts the women live

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<sup>21</sup> Extract from the interspersed reports presented by the Spanish representatives



in. On the other hand one may say that in the more populated areas, there is a stronger awareness of this problematic issue, which in turns leads to a higher number of women coming forward to officially state they are being maltreated than in small populated villages.

In both of the groups, in percentages of 77, 7% and 78, 1 respectively women have children in an average rate of 2, 5, though in the greatest majority of the situations the women victims consider the husband and/or the companion as the one holding the position of the head of the family. The ones who consider having a shared position within the family unit are not many and the ones holding the position of the head of the family are even fewer.

The gathered data allows us to equally verify that most women victims of domestic violence endure similar situations. In both of the cases, the crimes are perpetrated in a continuous sort of way and in most cases domestic violence has been going on for periods of 5 years.

Some data on such situations involving immigrant women has also been gathered from a report presented by International Amnesty - Spanish section *Invisible women, abuse unlikely to be punished*. The report, which was officially presented in July 2003 focuses on the situation of general violence within the family unit, involving non legalized immigrant women living in Spain. There has been in it an expressed satisfaction towards the fact that of the Spanish ruling body having subscribed to every basic rule on the protection of the human rights in regard to women. It is stated though that there is a necessity to further comply with the special indications referred to by UNO in what concerns the basic rules for the protection of women immigrants, as well as to have, as soon as possible, the Spanish Government ratify the International Convention, dated 1990 on the Protection of every immigrant worker and their families. There is still a lack of commitment on the part of the Government in what concerns the compliance of the observations made by the CEDAW Committee to the report presented by Spain on the importance of enforcing them.

Similarly to what has been previously said, most of the technically considered perpetrators of such acts are the husbands and/or companions of the victims (whether they still happen to be or no longer are the husbands and/or companions). The proportion of cases involving other people does not reach the 2% mark. When assessing the relationship the aggressor has with the victim, it may be important to take into account the incidence of crisis within the relationship of the couple as a factor which may lead to or even aggravate the aggressions perpetrated against the victim. 34% of the aggressions occur in family units in which the relationship is in crisis. This data is particularly important when one considers that separation and/or divorce lead to the suppression of a relationship as a direct consequence, some of the aggressions may therefore occur without there being a close type of relationship and/or daily contact between victim and aggressor. Whenever the parties are going through the first stage of their divorce procedures, that's when most aggressions do occur. 24% of the situations

involve divorced couples as against 15% in which the parties involved in the conflict are either official or effectively separated.

Regarding the collected data, one may conclude that 36% of the aggressions involve couples who no longer get along with and/or whose relationship has long been interrupted. It is therefore mostly evident that crisis within the couple relationship are to be considered a prime factor, notwithstanding the fact that the break of a relationship does not exclude the possibility of aggression. Parallel to this tendency, it was also concluded that 56% of the aggressions occur in situations of non declared crisis within the relationship and that irrespective of the type of aggressions these mostly occur in the common household.

The statistical data carried out by the Spanish representatives also pointed out to the fact that most aggressions within the domestic violence area were perpetrated by people whose age range goes from 21 to 40 years of age and holding a stable working position for the last year running.

## France<sup>22</sup>

A nationwide survey on violence exerted against women has been carried out in France by the Service for the Women's Rights, though having been conceived in the year 200 by the Institute of Demography pertaining to the University of Paris I, covering a sample of 6 .970 French women of a total number of 15. 884. 000 in France, whose ages range from 20 to 59 years of age. It approaches the different types of violence exerted against women within the private life environment (familiar and marital) and the public one (in the street, at work). This was the first survey to be carried out in France and corresponds to the commitment agreed upon during the World Conference of Women held in Peking in 1995 to convey accurate statistical data on such violence issues.

In fact, the previously gathered statistical data was provided by the Police, the Justice and/or non governmental organizations, who sheltered women who had been victimized.

According to the French representative, the statistical data were not impartial, this being the reason why this survey attempted to evaluate the phenomenon of violence, which in many cases had been either hidden or not acknowledged as such by the French population. The nature of the survey, which was carried out by phone and using phone lists, incoherently put aside women being sheltered and those not having a fixed address (14 to 15. 000 in the French metropolitan area) and who may certainly be affected by this problematic issue, thus increasing the current statistical figures.

This survey has particularly focussed marital violence (throughout the last 12 months); violence within the family and involving people who have a close relationship (over the last 12 months); violence at the working place (in the last 2 months); violence in public places (over the period of the last 12 months); sexual violence (exerted along one's life); physical violence (exerted throughout adulthood).

By physical aggression one meant slapping across the face, punching, threatening by using firearms, attempting to strangle or to kill, abandoning one to one's destiny on the road (being in hold of a car), not allowing one to enter one's home, as well as robbing in public places and using violence to perpetrate the action; sexual harassment: seducing, approaching people in a sexually disagreeable way, imposing porno photos onto them; being sexually aggressive, from the simple sexual molesting to forcing sexual practices/sexual intercourse; exerting psychological pressure: threatening to take the children away from their mother, controlling one's movements outside the house and/or one's social relations, having certain behavioural attitudes imposed, humiliating, refusing to talk, not allowing one to have access to any help (within the marital perspective); as well as being violent at the working place by slandering, maltreating, rejecting, putting one to shame and literally ruining one's work.

These were the main situations which were referred by the enquired women, but in order to have them evaluated it would still be necessary to compare them with the rates reached by having analysed how frequently they had occurred. It was felt that the power exerted on someone would be intimately connected with the frequency of the verbal and

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<sup>22</sup> Extract from the interspersed reports presented by the French representative.

psychological aggressions the person was subject to, the same way it was to be considered that physical and sexual aggressions are a serious attempt against one's integrity as from the moment the first aggression takes place.

In what concerns domestic violence it is clearly shown that the youngest women (20-24) are the ones who mostly state having been subject to violence both in public places ( in the street, in the city), at the working place or even within the family, being the private marital environment the one which registers the highest number of occurrences.

One in every ten women has been victim of violence perpetrated by the consort (in the form of moral molestation and/or physical and sexual violence).

By having this data compared with the remaining data which focussed on the type of violence exerted against women in France, it may be concluded that more than one in every five women has been hit either in the street or at the working place. During the year prior to the survey 0, 3% of the women in France were victims of raping, which would contemplate the age group (from 20 to 59 years of age) in a total number of 48.000 women having been raped, though only 3. 490 raping complaints were made (the source of information being the national figures presented by the Headquarters of the Judicial Police).

The French representative has also referred that there is a remarkable unbalance between the number of complaints made to the Police and the effective number: 35% for the violent acts perpetrated in public places and 8% for domestic violence.

It has also been noted that the complaints are quite frequent: the percentage concerning the occurrences in Paris - marital violence being 30, 30% and violent acts in general 47, 46% (based on the statistical studies on marital violence carried out by the Municipal Police in Paris throughout 2002). Every fortnight there is an estimated number of 3 women's homicides, having the perpetrators of their deaths been their husbands as in accordance with the partial statistical data provided by the Ministry of Internal Affairs (statistical figures provided by the Public Security Service excluding Paris and the surrounding departments 92, 93 and 94).

According to the provided data, violence is to be exerted in any of the French social class groups, though one may highlight the high class and the unemployed ones, together with the group of the ones with low academic backgrounds which lead to more common violent types of behavioural attitudes. As far as the academic background of the women is concerned, it does not seem to affect the behavioural attitudes of the men. More than the socio-economic factors the socio-cultural ones and certain representations of the man-woman relationship types together with the role women ought to play within the couple and the society seem to better account for some of the violent acts.

Women immigrants of foreign origin (with the exception of the ones of Italian/ Iberian origin) seem to find themselves in much more frequent situations of marital violence than others. Violence within the couple seems to affect mixed marriages more than it does within couples of the same nationality. The husband's addiction to alcoholism

triplicates the situations involving violence in general, reaching quite serious situations sometimes. There is a clear relationship between the consumption of alcohol and/or drugs and extreme violence. It should somehow be stated that 70% of the aggressions occur without any of the people have taken alcohol. Domestic violence, even when it leads to serious situations is not often denounced – many times because of the fear of reprisals, because of feeling ashamed and to keep up the marriage appearances – and once the statistical assessment is difficult multiple infractions, such as spanking, physically hurting others, torturing, mutilating, secluding, raping and other sexual aggressions, killing and murdering, keep on occurring.

Most of these violent acts are perpetrated by male adult aggressors: 99% of these being sexual aggressions; 93% attempted murders and more than 80% violent acts occurring at working places. The perpetrators of these acts are mostly known by the victims, being the greatest majority husbands or former husbands.

In what concerns insulting, verbal threatening and physical and sexual aggressions, one should consider the main towns as the places where these most commonly occur. It may be interesting to refer that amongst the women who stated having had quite a difficult childhood (having been deprived of material comfort, educational follow up, boarding, having had conflicts with their parents, problems with alcoholism, drugs, having been subject to frequent maltreatment and spankings), more than one quarter (26%) have ended up being victims of marital violence as against 6% of the ones who stated having gone through a childhood period without any problems.

Women victims younger than eighteen years of age seem to get involved in marital violent situations almost three times more than the other ones. The ones having been subject to sexual harassment perpetrated by people who are close to them are five times more commonly involved in serious situations than the number of those involved in general violence ones (12% as against 2, 5%).

Another interesting data was that in more than half of the total number of cases, children are witnesses of these violent scenarios (consequently leading to an aggravated and enduring situation).

The stereotype of women victims of aggression as being seen as the submissive and passive like type should be reviewed. This being because their first reflex is to discuss (60%); also because they threaten and insult (40%), as well as respond to the verbal aggression of the aggressors (57%) together with the fact that throughout the physical aggressions 35% try to avoid them as against 27% who actually endure them.

The most commonly stated consequence is a serious sexual disturbance in 40% of the cases. One in every 5 women has mentioned having changed the living habits, having broken with those people who had been closer to them, having become more isolated and having felt disturbed and in need of psychological and medical assistance.

Pos-traumatic stress (nightmares and anxiety crisis), suicide attempt (involving 10% of the women who have endured physical and sexual violence) and depending on



psychotropic drugs are amongst some of the consequences of having been subject to violence.

The rupture of marriage (separation, divorce), as well as the subsequent compulsory meetings women have to go through (as for instance in sharing the assets or concerning the children's guardianship, etc), turn into very commonly conflicting moments: 17% of the women have stated having been subject to violent acts then.

The above referred survey has shown how depending on someone and co-living with someone may increase the conflicting situations, whilst the presence of the consort may moderate them; the difficulties of the marital daily life do not interfere with the insulting and the aggressions which derive from the family atmosphere. It is also shown that certain behavioural attitudes lead to hostility on the part of the family: feeling attracted by someone of the same sex and/or by a multiplicity of companions.

Generally speaking, the degree of violence on the part of the family and those being close does not depend on the economic conditions, on the contrary, the rate of references of insulting and serious aggressions show to be higher in high class youngsters.

Those of North African and Portuguese origin seem to be more insulted by a member of the family and or anyone closer to them than the other immigrant women. The denouncements of physical aggression are more commonly made by Portuguese, Spanish and Moroccan immigrant women. These have much to do with conflicts between generations and/or familiar patterns.

It should be referred that in France some data concerning the profile of women victims of domestic violence has also been gathered by a non-governmental organization PHARE.

The women who have searched this organization's support, are mostly single (54%). Half of the married ones have referred having been forced to marry or being subject to bigamy and/or having been matched by either family members and/or friends. Due to the preponderant position of the family clan, it seems almost impossible to even try (those who wish to) to get a divorce without any form of external support. For other women the problem was that their husbands had them travel from their homeland and had their documents taken away from them the moment they arrived in France. Separating them was consequently more difficult because apart from the physical and moral violence they had to endure they were still victims of these bureaucratic issues, once they had been deprived of their documentation and could not take any autonomous step apart from being subject to permanent blackmailing from their husbands.

In spite of there being an increasing number of women from the age group of 18 up to 25, most of the victims, who address this organization are 25 to 35 years of age.

Regarding their working situation, about 58% are unemployed and according to the French representative some of the underlying reasons for this are the fact that: they do not speak the language properly; they have a low academic background; their husbands do not allow them to work outside; they have an illegal visa situation; they have lost their jobs because of having been absent from work due to the endured violence and the constant harassment from their husbands at their working places.

In what concerns the ones, who are working, the French representative has stated that their income is low, most of the times below the minimum national income salary.

Most of the women, who have addressed this organization, have stated having endured violence for at least one year, though the increasing number is almost reaching the number of those, who have been enduring such a situation from one to five years.

The ones, who have been enduring such a situation for over five years, find it more difficult to leave their companions. They are dependent on them. The whole situation has led them to loose confidence in themselves, has lowered their self-esteem and has led them to undervalue their capacity to carry out any project on their own.

In most cases, 70% of the women consider alcohol is responsible for the violence exerted on them by their companions, considering this therefore justifiable. Most victims still convinced themselves that their companions show a behavioural dependence on them, and they in turn feel a certain degree of guilt in considering leaving them, bearing in mind they have had a painful experience of life and this may be the reason for such attitudes.

PHARE statistical data have shown that the aggressors do not need to drink to become aggressive, once 30% of them were not under the influence of the alcohol at the time of the aggressions. The minimum adversity arising from any rejection, a setback or a wish on the part of their companion to become autonomous leads to bouts of violence. It is for all too clear that most women cannot explain why such violent acts occur so unexpectedly.

## **Italy**<sup>23</sup>

The Italian representative has referred that the information on the qualitative and quantitative profile regarding the victims and the aggressors is not to be made available, once the Italian Law on private information does not allow its disclosure. It is also not known what type of support they have been provided with.

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<sup>23</sup> Extract from the interspersed reports presented by the Italian representative.

## Greece<sup>24</sup>

Unfortunately, no integrated territorial survey has been carried out until this day in Greece concerning any form of male violence against women in the order to collect data about the profiles of the victims, the perpetrators and the consequences for the victims.

Experience has taught us though, that men execute violence against women in general, regardless of their educational, social or financial level.

A sample survey with statistical evaluation of data carried out by the General Secretariat of Equality on a sample of women that addressed the counseling centers in Athens and Piraeus revealed the following:

The majority of abused women was married unemployed mothers of a medium-low economic situation, of low educational level and lived in the same house with the perpetrator. The perpetrator was also of a low educational level, employed, married to the victim and the violence inflicted was a combination of bodily and psychological injuries. The majority of the perpetrators were not acting under the influence of alcohol or other substances. However, this sample reflects a small group of women (aprox.400) that addressed the counseling centers and must not be generalized, given the fact that women of a higher educational, financial and social level do not address these centers. The document of the survey is attached.

Recently, the Minister of Internal Affairs announced the realization of a national survey executed by the Research Center for Equality Issues in a sample of 1200 women aged 18-60 in all the country's regions, towns and rural areas. The results of this survey will be announced as soon as the data processing is completed.

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<sup>24</sup> Extract from the interspersed reports presented by the Greek representative.

### **III. Aspects concerning the prevention and intervention outline, at governmental and non-governmental levels regarding the domestic violence in the Southern European countries**

#### **Portugal<sup>25</sup>**

According to the Portuguese representative the need to focus on the issue of domestic violence in Portugal emerged following the 25 April 1974, when some groups of women started publicly invoking issues connected with the existence of inequality of opportunities between men and women based on the difference of gender. This was to represent at that time the so called Portuguese feminist group, though it may not be seen in the light of international movements, namely if one takes into account the feminist groups within Europe and the United States, because of not having had social expansion and having lacked theoretical consistency and therefore the necessary subsequent public debate in what concerned such issues.

Portuguese women were not influenced by feminist movements spread in other countries during the sixties and the seventies, where unspoken issues such as the sexual violence exerted against women and children and with them the domestic violence problematic issue started emerging.

Although the important role such movements played in other countries, regarding the denouncing of domestic violence as a social problem has been recognized – Portugal was under a dictatorship period in the sixties and throughout the seventies the building up of a democratic society implied other concerns and the focussing on more outstanding social problematic issues.

Domestic violence was to be gradually called the attention in the eighties although during the nineties such an issue was to be highlighted, having reached one of its most outstanding public events when a Seminar on domestic violence was organized by the Coordinator of the European Commission of Women in Portugal having representatives of the various non-governmental organizations of women from other European countries with the support of the Municipal Council of Lisbon.

In the nineties, due to Portugal having been integrated in the European Communities and the fact that specific guidelines concerning domestic violence were set up by European Entities, namely the European Community, together with provision of supporting programmes to non-governmental organizations as well, some Portuguese entities were then given the opportunity of starting the development of studies with foreign funding, as well as of sharing information with foreign organizations who had more experience in these issues.

**A Comissão para a Igualdade e para os Direitos das Mulheres – CIDM** (Commission for the Equality and the Rights of Women), a public organization dependant on the Ministers Council, was to play an important role in bringing the issue of domestic violence into the Public Opinion Debates, having developed publications providing information and setting up a support service for women in Lisbon and Porto, which throughout the years was to provide support to women victims of violence,

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<sup>25</sup> Extract from the interspersed reports presented by the Portuguese representative.

namely at legal level. CIDM was to become continuity in the expressed concern of the Portuguese State regarding issues involving women, particularly the ones concerning their rights. The setting up of a working group to implement the participation of the woman in the social and economic life a date back to 1970, and is to be continued in 1973 with the setting up of a Commission towards the Social Policy concerning Women. It had a consultant type of structure and its main work implied carrying out a survey on the legal discriminations exerted against women and advancing the first proposals to alter the Family Law and the Labour Legislation.

Following the Revolution of 25 April 1974, the Commission was to continue until it was substituted in 1975 by **Comissão da Condição Feminina** (Commission on the Female Condition) prior to the setting up of the **CIDM**. This last one has been closer to such international movements, namely the ones set up by the United Nations and the European Community and has been contributing towards the spreading of ideas and concepts associated with the overall situation of women.

The known **União de Mulheres Alternativa e Resposta - UMAR** (Union of Women as an Alternative and Answer) having been set up in the period of the Revolution, though being a non-governmental organization of women has been raising the social awareness towards the problems which involve women. In the nineties UMAR struggled against domestic violence by intervening in the support it provided to women victims and nowadays it handles these issues in eight assisting cabinets located in the northern and central part of mainland Portugal as well as handling two public sheltering Centres in the Azorean islands by having signed a protocol with the Government. Another non governmental organization of women, which has been operating since 1990, is **Associação de Mulheres contra a Violência** (Association of Women against Violence). It provides support through a supporting cabinet, groups of mutual assistance and two sheltering centres. Both organizations are connected with the European Lobby of Women. **Associação de Mulheres Juristas** (The Association of Women Jurists) has also been playing an important role in what concerns domestic violent issues, though its intervention is mainly theoretical, that is without providing a direct type of support to the women victims of violence.

One should still refer **Fundação Bissaya Barreto** (Bissaya Barreto Association), located in Coimbra and which has been intervening, namely through its sheltering centre and a support hotline.

Prior to the seventies, many religious institutions of nuns played an important role in providing support to women at risk. Initially in attempting to rehabilitate women, who were prostituting themselves, as well as in the assistance to single mothers. Their support was to be later expanded to women victims of domestic violence, particularly as from the nineties onwards.

Some of the above referred religious institutions are: Congregação das Religiosas do Santíssimo Sacramento e da Caridade (Irmãs Adoradoras) and Congregação de Nossa Senhora da Caridade do Bom Pastor (Irmãs do Bom Pastor).

The debate on issues regarding victims of domestic violence and the support they should be provided with by the States and the civil society, which involved various European countries and was carried out in the eighties, was not exempt from the development it was being made in this area. APAV (Portuguese Association for Victim



Support) was to be founded in the sequence of this event in 1990 with the aim of protecting and supporting victims of crime and since then it has been developing a specialized intervention regarding victims of domestic violence, by providing them with juridical, psychological and social support in the network of national cabinets spread from the northern to the southern part of the country. It will soon open two sheltering centres for women victims and their children, one located in Lisbon and the other one up in the northern part of Portugal. It has been developing various projects, namely in the training of professionals at national and international levels, as well as cooperating with a countless number of international organizations.

The first major step which was to be taken, at least theoretically speaking, by the Portuguese State in what concerns the social problematic issue of domestic violence can be traced back to 1991: the publication of Law 61/9, dated 13 August which ensures appropriate protection to women victims of violence. The Assembly of The Portuguese Republic, as in accordance with the articles 164, paragraph d), 168, n° 1, paragraphs b) and c), and n° 3 of the Portuguese Constitution proclaimed the reinforcement of mechanisms of legal protection to victims of violent crimes, namely in chapter I of the general dispositions, the setting up of a prevention and support system; the setting up of an emergency cabinet to carry out support by phone; the setting up of assisting units within the criminal police services to directly assist women victims; the setting up of an incentive regime so as to organize and associations of women and put them to work in the defence and protection of victims; the setting up of a system to adequately ensure the fight against violence, as well as to repair the damages, which may have been provoked. The system of protection as defined by the Law would apply whenever the motivation of the crime had resulted from a discrimination of the female gender, including sexual perpetrated crimes, maltreatment, kidnapping, seclusion and physical offences.

In the following chapter (Chapter II), concerning prevention and support, the Public Administration envisaged the setting up of awareness campaigns addressing the Public Opinion by taking advantage of the social communication entities, and whose aim was to be able to change people's mentalities in what concerned the role of women within the society, with special relevance to behavioural attitudes normally expressed by ways of violence. It had also envisaged the Government devising and distributing a guide to women victims throughout the territory. This guide, which was to be free of charge, should contain information on the rights such women were entitled to, as well as the procedural steps they had to go through and furthermore who they should refer to. The Government was to support and stimulate the building up of sheltering homes for victims of violence, in which they would be provided with assistance, shelter and referral; together with the setting up of centres of study and investigation on women's private and partaking editorial activities in such domains as the rights women are entitled to. It had also anticipated the setting up of an emergency hotline associated to the Ministry of Justice to provide summary information to the women victims as well as the necessary procedures they should follow in accordance with the described situations and to request the immediate intervention of a criminal police organizations should the situation be considered as an emergency one; this cabinet was expected to

work 24 hours non- stop and the identity of those searching for help was not to be revealed.

The Law envisaged direct assistance to be provided in the various sectors pertaining to the criminal Police organizations. It would be up to them as part of their competencies to listen to the ones participating a crime and/or the victims before having a criminal complaint officially be made; they were also supposed to provide all the necessary cooperation and whenever found necessary to have specialized assistance be provided to them; in case the victims were at risk and/or going through an unstable psychic phase, as in accordance with the decision taken by the psychologist and/or psychiatrist, the victims were to continue being provided with the necessary support from the adequate entities and/or were to be referred to an adequate Institution; the carrying out of a report describing the results of the observation and the steps which had been subsequently taken was to be annexed to the official criminal complaint; to write down any reports which may have been requested by the Court throughout the penal proceedings; to let any association of women dedicating themselves to the defence and protection of rights, know of the statistical data on crimes, whose intent had any bearing on the aim of such associations.

The Law envisaged the assistance to be provided to women victims at hospitals and whenever found necessary request the presence of assisting units pertaining to the criminal police so as to carry out the immediate criminal complaint. These units were to be dependant on the board of employees though in what concerned the criminal procedural steps would functionally depend on the adequate judicial authority. Such a group of employees would mostly be recruited from among those holding degrees in Law, Psychiatry, Psychology, Social Assistance, as well as female police officers pertaining to the Public Security Police, who would then be given adequate training.

The Law envisaged in its III Chapter that the Government was to provide support to associations of women who were assisting women victims. These associations could represent the victims as their assistants throughout the penal proceedings, once requested to do so on behalf of the victims themselves and if they were to present a declaration stating that and having been signed by the victims. During that process they were still entitled to claim for compensation damages and have the State anticipate the payment of the compensation amount, as in accordance with the legislation has defined for such cases, together with requesting the definition of a temporary compensation to be paid by the defendant until the final definition on the definite amount of the compensation to be paid had been reached. Being the victim's assistant should not be subject to the payment of any fee. The Judge would decide in favour of existing associations ..... The CDIM, as well as Comissão para a Igualdade no Trabalho e no Emprego (Commission for the Equality within the Work and Employment) should participate in these actions.

In Chapter IV the Law envisaged the elaboration of a special law, which would regulate the compensation advancement to be paid to the women victims, in accordance with the pre-requisites and conditions as defined in Resolution 31/77, and Recommendations nº 2/80 and 15/84 by the European Council. As far as the envisaged crimes were concerned, the temporary suspension of the penal proceedings as in accordance with the penal legislation could only be decided if both defendant and offended party were to agree upon it. In crimes where the defendant were to be sharing the same household

and whenever found necessary one of the envisaged measures during such a temporary suspension would be to keep him away from the common residence.

Whenever preventive imprisonment was to be considered, the defendant should also be told to keep away from the residence as a coercive measure, added to being set free after having paid bail, should the victim reside with him and should there be some danger in regard to the possibility of criminal continuation.

Whenever preventive imprisonment was to be imposed a coercive measure of keeping the defendant away from his residence was to be further applied, added to the fact that he would have the obligation of paying bail, so that in case the victim shared with him a common household there might be no further danger of criminal continuation involved. Once this coercive measure had been applied, the suspension of the penalty to be further applied might only be suspended under the strict condition of the defendant not physically or psychologically maltreating the wife.

The Government agreed upon regulating this Law within a time limit of 90 days, which according to the Portuguese representative he did not, nor even after the time limit had expired.

About seven years later and following some doubts as to the application of article 196 of Law 61/91, dated 13 August an instruction was to be sent forward by the Public Prosecutor on 10 February 1998 so as to remove them. The doubts were based on the fact that for some this Law had not been effectively regulated, whilst according to others the reasons lied on the fact that there was material unconstitutionality. Article 16 of Law 61/91, dated 13 August, which envisaged that whenever a preventive imprisonment were to be applied to the defendant as a coercive measure of keeping him away from the common household and which could be added to him having to pay bail, in case the victim resided with him and there might have been the risk of the continuation of criminal actions involved. Whenever such a coercive measure had been applied, it might only be suspended under the condition of the defendant no physically and psychologically maltreating the wife.

The Public Prosecutor issued an instruction clarifying the doubts. It reinforced the fact that the article was a lawful norm within a penal proceeding which expanded the number of coercive measures as envisaged by the Penal Code processing and was therefore to be enforced at once. On the other hand the differentiated approach adopted by the legislator, aiming at protecting the women victims of crime did not go against the principle of equality consecrated in article 13 of the Constitution of the Portuguese Republic, being an imposed positive discrimination by such a principle within its social scope. According to the instruction in accordance with article 10, nº 2, paragraph b) of Law 47/86, dated 15 October the Public Prosecutor stipulated that the magistrates and the agents of the Public Ministry were to promote the application of such a measure, whenever they felt the legal requisites had been met.

The Portuguese representative has stated though, that according to the non-governmental organizations which have been supporting women victims of violence, these measures as defined by Law are still not applied in many of the cases.

The Portuguese representative has stated that in terms of prevention and intervention, whether these may be carried out by the Government or non-governmental

organizations, Portugal is going through a *state of dispersion*, in which there is no articulation of common strategies and policies, apart from the simplest daily coordination of domestic violent cases whenever they have to be referred by either part. The II National Plan against Domestic Violence in force since 2003, by resolution taken by the Council of Ministers of the XV Government of the Portuguese Republic and handed over to the responsibility of the Commission for the Equality and the Rights of Women (CIDM), a governmental entity though still under the tutorship of the Presidency of the Council of Ministers.

This II National Plan was to follow a I National Plan, which came out as a resolution taken by the Council of Ministers in 15 January 1999 and enforced from that date onto 2002, and which was to provide the first guideline of policies to be used as tools and understood as being the adequate ones to prevent and intervene in domestic violence issues. The I National Plan against domestic violence had contemplated three major areas and/or objectives: to make one aware and to prevent (1<sup>st</sup>. objective); to intervene so as to protect victims of domestic violence (2nd.objective); as well as to investigate and further study the issue (3 rd. objective).

The first objective include eight measures connected with the integration of curricula plans and pedagogical practices on domestic violence in the Portuguese educational system as well as human rights issues, together with making the social communication entities aware of such problems so as to promote debates regarding the conciliation of a professional life with a family one in terms of existing sexual stereotypes; raising public opinion awareness on domestic violence issues, namely in terms of highlighting the concept that it happens to be a crime; devising informative and training oriented material on the prevention of domestic violence, specifically aiming at the professional groups handling these situations and having texts on these issues and which are internationally recognised transcribed.

It finally aimed at a conjunctive multidisciplinary strategic approach among the various services carried out at central, regional and local levels by non-governmental organizations, now seen as *social partners*.

As far as the second objective went, sixteen measures had been contemplated. These included the setting up of a national data base on the legal and social resources provided by the various institutions working with domestic violence situations; having the providing of information regarding victims of domestic violence expanded to a 24 hour service everyday of the week; setting up assistance cabinets to directly handle these situations be located within the adequate criminal police offices; organizing training courses on domestic violence to attended by police officers, people working in health centres and social services; to devise and distribute guides specially designed for victims of domestic violence as well as professionals working in these areas; reinforcing the technical and financial support to be provided to the non-governmental organizations assisting victims of domestic violence; to further analyse the possibility of police and judicial authorities being granted additional legal power to have the aggressor be either immediately or temporarily expelled from the victims' residential home whenever domestic violence is involved; the setting up of an additional penalty within the penal Law not allowing the aggressor to get closer to the victim he has exerted his violence against; the setting up of protective measures regarding the

witnesses; having a specific chapter on domestic violence be included in the annual report of the Public Prosecutor; having a protocol between the Order of Barristers, the Ministry of Justice and the High Commission for the Equality and the Family be proposed so as to have lawyers follow specific training on domestic violence; allowing the non-governmental organizations be assistants in the penal processing, unless there is some opposition on the part of the victim or whoever may be representing her in the legal process; the building up of sheltering homes for victims of domestic violence with the partaking of the central government, the local government and non-governmental organizations supported by specialized professionals in their appropriate management and regulating strategies;

Implementing and setting up multidisciplinary teams to support victims of domestic violence as well as having specialized consultations so as to treat and follow up both aggressors and victims; to increase the development of public and private initiatives aiming at the ultimate change of the aggressors behavioural attitudes and the necessary support required to achieve such an eventual goal.

The third objective included five measures: to carry out studies on the humane, social and material cost involved regarding domestic violence; to implement the gathering, adequate treatment and publication of the statistical data on domestic violence, which would then allow us to compare the level of obtained results with the international one; to develop researching projects which would lead us to the identification of the cultural factors which favour domestic violence, as well as to the characterization of the aggressors' profile; to set an observation group to follow up domestic violence; to look for the support of the Head directions of senior education institutions which carried out courses within areas such as medical, juridical and social sciences, so that they might get involved in the organization of meetings, seminars and conferences on domestic violence.

The I National Plan was not completely achieved, which may have been a reflex of the conceptual organization, as well as the fact that it was not much more than a number of intentions, without explicitly referring the methodology to be followed within each measure, neither was a timetable set for each of these nor the available budget to carry the whole thing out. The greatest number of envisaged measures resulted in a non accomplishment by the end of the set up Plan. One should refer the influence the permanent change over of tutelage appointments within the area of Equality of opportunities had in the whole Plan: from the High Commissariat for the Equality and the Family to the Cabinet of the minister for the Equality, from the Cabinet of the head Minister of the Council of Ministers to the Cabinet of the Prime Minister's Assistant Minister, following the Cabinet of the Secretary of State for the Equality changing over to the Commission for the Equality and the Rights of Women (CIDM), a public organization which was to be further dependant on various tutelage organizations.

From the XIV Government of the Portuguese Republic through to the XV Government, the Plan had to go through various changes at political level, apart from its internal characteristics, which may not have been easy for the anticipated measures to be accomplished.



Throughout the tutelage period of the Cabinet of the Minister for the Equality, in May 2002, the 1st interspersed report on the follow up of the National Plan against Violence was presented to the Minister for the Equality by the Commission of experts working on the carrying out of the plan. This Commission of experts which included independent parties, had been nominated not to evaluate the Plan, but to confer a new orientation to the measures to be applied and to have an opinion on its effective carrying out produced by the Minister.

The Commission of experts, according to what has been included in the report, gathered the information on the carrying out of the 1<sup>st</sup> National Plan directly, being every expert's opinion based on the knowledge each one had on the national reality regarding this issue. According to that information, though most of the measures envisaged for the Plan, were not effectively carried out, several activities were developed by non-governmental organizations, which to a certain extent might have been identified with some of the previously intended ones – notwithstanding the fact of not having been originated by them or even having any direct bearing with them. The only ones, which might be associated with them, were those which were developed by CIDM.

Thus, in accordance with the report presented by the Commission of experts and in what concerns the measure which envisaged the carrying out of public opinion awareness campaigns (Measure 1.5, Objective I), the Commission for the Equality and the Rights of Women (CIDM) had associated itself to the campaign *Zero Tolerance – Violence against Women*, promoted by the European Commission in 1999, having launched an awareness sticker focussed on the problem of domestic violence exerted against women. APAV, the Portuguese Association for the Victim Support had launched the ALCIPE Project, the same year – focussed on the training and information on how to fight violence exerted against women, which had been co-financed by the DAPHNE initiative – how to fight violence exerted against women, children and youngsters, launched by the European Commission in 1998, which aimed at spreading such information in advertisement boards, brochures, newspaper advertisements, magazines, radio shows, as well as in television clips and spots.

The Association of women against Violence (AMCV) launched a television spot as well; the Youth Foundation was then preparing a campaign to be launched in the year 2000 on domestic violence exerted against women, yet designed to address the young population. This was to be launched later than the initial estimated time. It should be said that the previously mention campaign – *Zero Tolerance – Violence against Women*, promoted by the European Commission in 1999, had a very meaningful impact, in the opinion of the Portuguese representative. The Centre of Studies on Social Intervention (CESIS) also stated so during the International Conference *Violence against Women – Zero Tolerance – Closing down of the European Year*, which was held in Lisbon from the 4.th to the 6.th of May 2000, during the Portuguese Presidency of the European Community.

In what concerns the training of professionals (Measure 2.4 – Objective II), CIDM had been developing several training actions in schools and other Institutions, namely within the Health areas, having then set up a protocol with the General Health Directorate to achieve such a purpose, apart from having participated in various events, such as seminars, meetings, congresses, etc. APAV, had also carried out several similar training



actions in its then eleven Victim Support Cabinets, spread from the north down to the south, apart from having taken part in several training oriented events.

As a curricular approach, APAV had also carried out training actions designed for trainees from Escola Prática da Guarda Nacional Republicana - EPGNR (Practical School of the National Republican Guard), Instituto Superior de Ciências Policiais e de Segurança Interna – ISCPSI (Senior Institute of Police Sciences and Internal Security), Instituto Nacional de Polícia e Ciências Criminais – INPCC (National Institute of the Police and Criminal Sciences), as well as training centres pertaining to Guarda Nacional Republicana – (The National Republican Guard), to Polícia de Segurança Pública – PSP (The Public security Police) and to Polícia Judiciária – PJ (The Judicial Police). APAV was also developing the SOPHIA Project - training on how to provide assistance to women, children and young victims of violence, which was co-financed by the DAPHNE Initiative 1999, and therefore carrying out training modules internally (for Victim Support technical staff) and externally (for various other professionals : police officers, nurses, doctors, religious trainers, social assistants, etc). The INOVAR Project (carried out by the Ministry of Internal Affairs) was carrying out training actions for the police officers.

In what concerns the conceiving of the manuals designed for women victims and the professionals who assist them (Measure 2.5 – Objective II), CIDM had published a brochure specifically designed to address women victims of domestic violence; INOVAR Project had published the *Guide for a New Direction. Plan for Personal Security*. APAV published the *Alcipe Manual. How to assist women victims of violence*, conceived for professionals, particularly for police officers and national health professionals, together with a folding brochure designed for women victims of domestic violence, which could easily be considered a guide in as much as it gave them practical advice and brief information on where to get eventual support. The Portuguese representative has stated that this happens to be the only existing manual regarding intervention procedures as far as domestic violence is concerned in Portugal.

In regard to the existence of sheltering centres for women victims of domestic violence in Portugal (Measure 2.13 – Objective II) there were in fact various sheltering centres for women at risk (integrating a wide variety of problematic situations, such as drug addiction, unprotected maternity, prostitution, etc) and four to specifically shelter women victims of domestic violence. All of these sheltering centres pertained to private social solidarity institutions and/or non-governmental organizations. The Soroptimism Club of Portugal was in charge of the project for the Sheltering Centre *Porto de Abrigo*; APAV had the responsibility of three other projects for sheltering centres designed for women and children – one in partnership with the Municipal Council of Lisbon, another one with the Municipal council of Vila real and yet another in partnership with Movimento de Defesa da Vida – MDV (Movement towards Life Defence).

Regarding the carrying out of surveys on domestic violence in Portugal (Objective III), CIDM had asked Universidade Nova de Lisboa to provide them with the survey on *Violence against Women* they had published in 1995. APAV had been publishing at national level and on a yearly basis the gathered statistical data on the supporting cases they had been following since its foundation in 1990, in which they highlighted those concerning the victims of domestic violence. This data had already been included in the

official statistical data of the Cabinet for Studies and Planning, pertaining to the Ministry of Justice provided at national level and available at the Internet. The Ministry of Internal Affairs had also launched a statistical measuring tool within the police headquarters and units, through the INOVAR Project.

Most of these actions were being carried out by non-governmental organizations and/or local community groups.

The 1<sup>st</sup> National Plan was nevertheless subject to an evaluation throughout its effective carrying out. A second report was then presented by a second commission of experts. This evaluation was slightly different from the first one, once its main objective was to evaluate the final outcome of the Plan, by gathering direct information, sending out questionnaires to entities whose objectives had been connected with some of the measures defined by the 1<sup>st</sup> National Plan, whether they were public administrated or non governmental. A total of one hundred and seventeen questionnaires were sent out, having only forty been sent back filled out. The main questions were focussed on the objectives and the measures which had been envisaged by the Plan.

The Portuguese representative by having analysed the report concluded that in effect, most of the envisaged measures had not been fully accomplished. Most of the activities had been developed above all by non-governmental organizations, without strictly following the envisaged measures and consequently not being in accordance with the Plan, having mostly depended on what was agreed upon in the internal structuring of each of their own organizations. The report presented by the second commission of experts was rather shortcoming in what concerned the envisaged measures for each of the underlined objectives together with the very little information it managed to gather in both the central organization and the non-governmental organizations involved. In what concerns the awareness measures, as well as the envisaged prevention ones as in accordance with the Plan (Objective I), the commission only pointed out that the entities pertaining to the central administration together with the various organizations of women had followed the envisaged measures concerning the raising such an awareness by using the social communication organizations. Regarding the practical pedagogical measures, as well as the devising of formative and training material, together with the enforcement of information campaigns, the Commission simply referred that these had had quite reasonable levels of achievement both on the part of the central administration and the non-governmental organizations.

In what concerns the intervening actions, so as to protect the victims of domestic violence (Objective II), which comprised a number of measures, the Commission of Experts simply referred one, stating that the conceiving and distribution of guides specially designed for the victims had been effectively complied with by both the central administration, the non-governmental organizations and the multi disciplinary teams within the national health Centres.

In what concerned the survey envisaged by the 1<sup>st</sup> Plan (Objective III), the Commission vaguely alludes to the gathering of statistical data carried out by both the central administration and the non-governmental organizations.

If one is to consider that the 1<sup>st</sup> National Plan against Domestic Violence lacked conceptual cohesion, together the fact that the various objectives had not deserved a thorough analysis and might therefore to a certain extent be considered ambitious and unrealistic, once there was no budget nor people to be able to carry it out, which under a critical type of perspective implied that it might not be accomplished within the estimated three year period, the II National Plan Against Violence, which is still being enforced, does present an adequate conceptualization and organization of the envisaged measures, together with the responsible entities to carry out each of the measures, including a time schedule and time limits so as to accomplish each of those measures.

It is divided in seven areas: 1) Information, Awareness and Prevention; 2) Training; 3) Legislation and its Application; 4) Protection of the Victim and Social Integration; 5) Investigation; 6) Migrant Women; and 7) Evaluation

In what concerns the Information, Awareness and Prevention, the II Plan incorporates eleven measures: the carrying out of a national campaign on domestic violence to be launched in the second semester of 2003 and to be continued every November; the devising of informative material on human rights and domestic violence, in a variety of different ways, to be distributed throughout the second semester of 2003 in several Administration places where people are assisted, as well as in the autarchies, hospitals and national health centres; making protocol proposals in 2003 to the order of Doctors, Nurses, pharmaceuticals with the aim of regularly conveying information on domestic violence in consultation offices and pharmacies to be effectively carried out throughout 2004 and at a later stage every year and on a regular basis during the enforcement of the Plan;

Carrying out a multidisciplinary seminar on domestic violence during the second semester of 2004, and having those with experiences in public institutions, victims, organizations working within this area, aggressors who might have changed their behavioural attitudes due to the effort of reinsertion institutions, security forces, etc committed to it; progressively integrating issues, such as those connected with themes on human rights and equality of opportunities, domestic violence in the curricula of every academic level; having themes related to equality of opportunities and domestic violence, be introduced in the schools, from pre-schooling educational units through primary and secondary schools, depending on the proposals to be presented in 2003 and their subsequent application in the following years; devising *didactic units* (objectives, programmatic contents and methodologies) so as to be made available to the different school grades. These should lead to a deeper respect and inter-personal relationship, which is expected to start in 2003, aiming at the implementation of pilot experiences in the forthcoming school year; making autarchies aware as well as counting on them for supporting projects associated with domestic violence, the moment the Plan has been approved; setting up an internet page with specific updated information on domestic violence, throughout the whole duration of the Plan; making the European promoters of such European Community initiatives aware of the necessity of having the domestic violence issue included in their sectarian areas within the III Community Support framework, once the Plan has been approved and finally supporting and encouraging the social communication media so as to carry out documentary films, debates and programmes on domestic violence, so as to lead to the achievement of a democratic society which has still some structural setbacks to overcome.

In what concerns the second Area - Training, the Plan has envisaged six measures. It refers to the training of professionals working in domestic violence intervention issues: *basic training*, which will imply the awareness raising of the competent entities, namely universities, towards the importance of having modules on domestic violence be included in senior academic courses, as well as the professional training of eventual professionals working in victim supporting areas;

It also refers to the continuous and multidisciplinary training aimed at groups working in the support and assistance to be provided to victims of domestic violence, such as magistrates, lawyers, jurists, police officers, those working in national health services, etc. It further states that the training courses shall be devised, accredited and proposed by training entities. The contemplated measures are therefore: the carrying out of training courses to be initiated during the second semester of 2003, with the support of Programa Foral, which may cover most of the Portuguese territory and which may allow the familiarization with domestic violence issues by a large number of employees working at the autarchies. These are to be developed in the subsequent years; the compulsory inclusion of domestic violence issues in modules on Equality of opportunities to be carried out as soon as possible in the training of teachers, in agreement with the National Plan on Equality of Opportunities for both men and women and to be developed throughout the following three years; the inclusion of the same thematic issues in the training which is carried out in the Senior Schools of Education, together with collaborating with the availability of trainers in initiatives connected with the training of teachers and other professionals of Education to be developed during the Project, aiming at its implementation from 2004 onwards; to provide schools with orientation towards the detection and follow up of situations involving children in whose families there is domestic violence, as well as to promote programmes related to it, which shall be implemented as a pilot experience in 2003 and in the subsequent years; and finally to elaborate informative material on prevention, identification and detection of domestic violence cases. This is to be devised as soon as possible with the aim of having it be put into practice in 2004.

In what concerns the third area – Legislation and its Application, the Plan envisages nine measures; to make magistrates aware of the coercion measure envisaged by article 200 of the Penal Code Process, which implies having the aggressor be kept away from the residential home and the accessory penalty of prohibiting any contact with the victim in accordance with article 152, number 6 of the same penal code and which shall be enforced as from the second semester of 2003 and the following years; to revise the system of gathering evidence in the context of domestic violence, to be developed without delay and throughout the three year duration of the Plan; to determine the inhibition of a having a firearms licence, as well as using one, whenever the previously referred penalty has been applied to an aggressor and/or there is a criminal record incriminating the aggressor of domestic violence situations. This is to be applied without any delay as from 2004 onwards, once the aggressor has been constituted defendant; to identify and set up the legitimate measures regarding police intervention, as well as the typifying nature of the event, evidence and underlying objectives, bearing in mind the interests of the victims of domestic violence within the anticipated framework of the police, as from 2004, to evaluate the possibility of reinforcing the security to be provided to the victims, who may have taken advantage of the preventive

measure of keeping the aggressor away. This may be carried out through the local community help, irrespective of the intervention of the security forces. It is also envisaged to use electronic means in case of emergency calls whenever there are imminent threats against the victim. This shall also be applied as from 2004 onwards as well; to ensure victims of violence have access to immediate legal advice through the Institute of access to the Law. This advice is to be provided by lawyers, legal law trainees followed by a tutor trainer. It is to be provided without any delay and the necessary concession of support is to be pondered taking into account the economic situation of the victim; to ensure the effective protection of the victims of domestic violence by taking advantage of the available resources envisaged by Law 93/99, dated 14 July – the application of protective measures of those being witnesses in the legal process; to revise Law 129/99, dated 20 August, regarding the advancement of the compensation amount to be paid to victims of marital violence by the State; to devise and to publish a guide on legislation and jurisprudence on domestic violence. This shall be carried out from the end of the second semester of 2003 through to the first semester of 2004.

In what concerns the fourth area – Protection to be provided to the victim as well as the social integration, ten measures have been envisaged: the restructuring of the Information Service to be provided to the Victims of Domestic Violence (SIVVD), the so called green line, thus ensuring an efficient supporting service, everyday of the week and which is expected to be put into practice during the first semester of 2003;

The development of the national network of supporting offices to provide assistance to women victims of domestic violence, as in accordance with what has been set by Law 107/99, dated 3 August and the Decree-Law 323/2000, dated 19 December. This is to be put into practice throughout the whole duration of the Plan; to work out the internal regulation of the sheltering homes, in order to ensure the quality of the provided services, as well as the conditions which may determine their opening, functioning and overall control (which further implies that there should be an internal regulation for the functioning of each sheltering home, as in accordance with what has been envisaged in the Decree-Law 323/2000). It is expected to be put into practice during the first semester of 2003; to set up a data base at national level integrating all of the available public and private resources which may be provided to the victims of domestic violence. This is to be put into the Internet and shall be put in practice during the first semester of 2004 (the data base) and in the second semester of the same year (the Internet service); to set up a network of public and private organizations to deal with domestic violence issues, defining minimum rules so as to provide the assistance, including maintaining a degree of confidentiality, providing proper assistance and referral and thus aiming at providing a better answer to the necessities. This shall be carried out during the first semester of 2004; to elaborate assistance guides to be used by all the professionals who deal with victims. This shall be put into practice in the second semester of 2003; to have women victims of domestic violence access to pre-training programmes and professional training, as well as other ways which anticipate their insertion. This is expected to be put into practice throughout the whole duration of the Plan; to ensure that the victims of domestic violence have access to the health units so as to receive advice, clinic and psychological assistance; to develop the setting up of assistance cabinets and to provide for clinic treatment of dysfunctional families in the



prevention of domestic violence. Both of these are expected to be carried out during the first semester of 2005; and finally to work out rehabilitation means together with clinic treatment to be provided to aggressors, who voluntarily wish to change their behavioural attitudes. This is expected to be carried out during the first semester of 2005.

In what concerns the fifth area – Investigation, there are five measures to be considered: to adapt and standardize the national statistic indicators, as in accordance with what has been approved concerning domestic violence in December 2002 by the Council of Ministers of the European Union. This is to be enforced throughout the whole duration of the Plan

To institutionalize the gathering of the data, based on standardized forms, built up from the above defined indicators, to be carried out by all of the organizations working with victims of domestic violence and which is expected to be done during the first semester of 2003 and enforced as from the second semester of 2004; to carry out nationwide opinion polls on domestic violence in the first semester of 2004, so as to be able to evaluate the evolution of such an issue in Portugal; to promote the development of studies on human, social and material costs connected with domestic violence, together with investigation projects on the identification of cultural factors which perpetuate it, to be carried out throughout the three year duration period of the Project; and finally to make a funding line available by means of a protocol to be made with the Foundation for Science and Technology in 2003, which may also financially fund specific studies within this area, which shall be carried out on a yearly basis.

In what concerns the sixth area – Migrant Women, there are four measures to be accounted for: to promote studies, which may allow one to better understand the specific problems concerning domestic violence perpetrated within the immigrant communities and to subsequently develop awareness actions within these communities. This is expected to be implemented the moment the Plan is in force; to make the immigrant communities aware of the violation of human rights, whenever any form of female genital mutilation is carried out. This is to be enforced as from the initiation of the Plan; to criminalize in an explicit way the female genital mutilation; and finally to provide the national health centres and Hospitals with the necessary means to provide the appropriate aid in situations such as the referred ones. This is expected to be enforced as soon as the Plan is enforced. According to the Portuguese representative this latest is an innovation within domestic violence, as far as Portugal is concerned, but it clearly shows the growing concern the Portuguese Government has been having regarding the incoming foreign immigration, particularly from Eastern European countries, Africa and Brazil.

In what concerns the seventh area – Evaluation, there are three measures to be accounted for: having a domestic violence observing group, which is expected to carry out the follow up and the continuous evaluation of the Plan, as well as having to gather information and data, so as to be able to do the annual report which is to be presented to the Minister of the legal protection in December and which is to be later examined by the Council of Ministers. This group shall include representatives from the CIDM, the Ministry of Justice, The Ministry of Education, the Ministry of Health, The Ministry of the Social Security and Labour, the Ministry of Internal Affairs and the National



Association of the Municipalities, which have been working in the Plan and/or those who may be appointed to substitute them. The CIDM shall be the chair of this group, which is to assemble every three months and to which the various non-governmental organizations dealing with domestic violence issues, shall be invited. This observing group is to also share its findings with the observing group working on Family Matters; the final evaluation shall be carried out by a number of experts to be selected by the Minister holding the presidency and shall integrate entities connected to the scientific investigation field, personalities with an outstanding experience in this area and experts on human rights.

According to the Portuguese representative this II Plan incorporates a number of pertinent measures, which are well structured with an adequate division in areas of action and supported by explicit texts which are articulated with the concepts inherent to the presented thematic issues, as against the I Plan. Apart from the clarity of the text, CIDM had a brochure done on which the position of the Government has been exposed in regard to the measures to be applied within each of the comprising areas, restricting such an application to the victims of domestic violence, though not excluding other family members liable to be victims of domestic violence as well, not from the concept but from the Plan itself. Amongst the family members reference is made to children, old people and/or anyone with a disability. In an introductory note it is clearly stated that this was due to the fact that it is well known that it is women, who are mostly the victims of such a violence; in reality domestic violence exerted against children, old people and/or those with a disability is not well known; that the orientation of the Plan was to be carried out by CIDM, which has no direct competency in other areas which pre-suppose domestic violence issues (involving children, old people and/or anyone holding a disability); that domestic violence exerted against women lies on the persisting inequality of existing conditions between male and female, and that although other forms of violence exerted against women may be accounted for (harassment, trafficking, etc), it is domestic violence which leads to the highest number of deaths amongst women, whose ages range from 16 to 44 years of age. By having excluded other victims and having restricted the devising and application of the Plan to domestic violence exerted against women, should not leave out the necessary articulation of the envisaged measures and any other measures which may still be envisaged, so as to fight this phenomenon, together with other organizations which have been working at a wide spreading range of action, not only in theoretical terms but also at a direct intervening level.

Notwithstanding the fact that this II Plan has included those intervening in the respective areas, as well as the schedule regarding each of those intervening measures, it has not included an overall budget for the carrying out of such measures nor a specific one for each of the measures. This presupposes that in a first instance it may depend on the budget attributed to CIDM for the overall number of activities, and secondly it may cause major constraints and delays in terms of carrying out the Plan in time.

The Portuguese representative considers that having recently appointed a special team to coordinate and carry out the II Plan together with the CIDM has been a positive decision taken by the Government.

The Portuguese representative has noted that there is a deficient participation of non-governmental organizations in the application of the II Plan measures. Throughout the I Plan civil society and non-governmental organizations were frequently referred to in the application of certain measures, and most of the time considered vital in the whole process, namely because of the specialized work they had been developing within the domestic violence, having been requested to follow the devising of the Plan itself. This has not happened in the devising of the II Plan, for which only the representatives of the central administration were assembled, which apparently seems to undervalue the importance of the work such organizations have been carrying out for a long time.

If on one hand the I Plan seemed to consider the organizations capable of adequately carrying out the envisaged measures, even without the direct funding of the State, the II Plan has on the other hand almost exclusively highlighted the intervening action of the State as against the one of the organizations.

The II Plan counts on the non-governmental organizations in the application of just three of the envisaged measures, apart from setting up a limited participation in the fight against domestic violence in Portugal – as if these organizations had not played an important role in previous years or even currently in carrying out this struggle, which at times due to various difficulties, amongst which one may point out the financial ones, they still managed to handle such a situation, which the State seemed to have overlooked or even forget.

The three measures are: measure 4.5 in the area of Protection to be provided to the Victims and their Social Integration; measure 5.2 in the area of Investigation and measure 7.1 in the area of Evaluation.

In what concerns the measure 4.5, which concerns the setting up of a net constituted of public and private organizations dealing with domestic violence issues, so as to establish minimum rules regarding the assistance, the Plan is effectively depending on the non-governmental organizations to carry it out. These should, in fact, not have been excluded, once they have been providing support to victims, right from the beginning and have a profound knowledge of such a matter, not to refer others.

In what concerns measure 5.2, which envisages the institutionalization of the gathering of the data, based on standardized forms devised as from the indicators approved by the Council of Ministers of the European Union, once presented by the organizations dealing with domestic violent issues, it is obvious that the Plan could not ignore the non-governmental organizations, which provide a daily support to victims of domestic violence and may be in a better position to fulfil the pre-requisites. This is the case of APAV (Associação Portuguesa de Apoio à Vítima) which has been effectively doing this and furthermore has been publishing the data, which has been integrated in the official legal statistical data.

In what concerns measure 7.1, which envisages the setting up of an observing group, integrating representatives from the various Ministries and from the National Association of the Portuguese Municipalities, the Plan has also considered inviting people working for non-governmental organizations dealing with these issues on a *rotating system*. The Portuguese representative has raised several doubts concerning the efficiency of such an individual participation, once it will not be allowed for the

organizations to follow the meetings held every three months, right from their beginning and consequently develop a continuous type of work. Apart from this fact, organizations differ in ideology, internal structuring, intervening models and scope of their intervention. Besides this it has not been referred what kind of participation is expected from every of the intervening organizations in the meeting to be held every three months: should they be mere observers or effectively participate in them. The Portuguese representative feels that once CIDM is the chair of this observing group, together with the Consulting Council of the Non-Governmental Organizations, which holds a specific mission within the CIDM, should have nominated another representative, irrespective of having other representatives of such organizations integrating the Consulting Council.

The Portuguese representative has stated that at least two of the envisaged measures of the II Plan have already been implemented. The first being measure 4.1 included in the fourth area – Protection provided to the victims and their Social Integration, referent to the restructuring of the information service to be provided to victims of domestic violence (green line), ensuring an efficient service every day of the week, 24 hours a day and to be implemented in the first semester of 2003. The second being measure 4.2 within the same area, which envisaged the development of the national network of sheltering homes for victims of domestic violence, as in accordance with what was set by Law 107/99, dated 3 August and the Decree-Law 323/2000, dated 19 December and which ought to be implemented throughout the whole three year period of the mentioned Plan.

In fact, these two measures had already been envisaged in the I National Plan against domestic violence. Still under the Cabinet of the Minister for the Equality, both measures were enforced, once the Minister in spite of holding the title for a few months, having developed a strong cooperation between the State and the non-governmental organizations, which were known nationally in terms of territorial scope and quality of services provided to the victims of domestic violence, considered it imperative to carry out what had been envisaged in the measure 2.2 of the I Plan regarding the existing supporting service provided by phone.

This information service providing assistance by phone to the victims of domestic violence (green line), under the responsibility of the CIDM had been operated in accordance with the public service timetable. This measure had envisaged extending the operating hours, apart from restructuring the service itself. In 2000, the Information Service provided to the victims of domestic violence (SIVVD) was set up in collaboration with Associação Portuguesa de Apoio à Vítima (APAV) Such collaboration implied having adjudicated such service to APAV, following the presentation of a project and the public consultation which was carried out by the Cabinet of the Minister for the Equality to the various organizations dealing with domestic violence issues. At a later stage the articulating schemes between APAV and CIDM were set, though the timetable was to remain the same. A Manager was designated to coordinate the provision of the service not only in what concerned the services to be provided by APAV, but also regarding the selection of the technical material, for which the Faculty of Psychology and Educational Sciences pertaining to

the University of Lisbon was requested to carry out the supervision and the external technical and scientific evaluation. A specialization course on supporting techniques to be provided by phone was carried out and attended by victim support professionals, recruited from among the APAV volunteers, who were to later integrate the SIVVD team.

SIVVD intervened from 2000 to 2003 though APAV's collaboration finished 30 September last, once the timetable which had been carried out by APAV (during the week – from 17.30H to 09.00H, as well as during the weekends and public holidays) started being done by the 144 emergency line operators. The Portuguese representative has referred that throughout the month in which measure 4.1 of the II Plan was or started being implemented as a restructuring of the SIVVD, the professionals providing the information over the phone had to inform the victims that due to the structuring that had to phone during the daily timetable, which is in no way compatible with their necessities, particularly the ones which correspond to situations of crisis.

Such a measure has to therefore be implemented as soon as possible, together with the adequate training of the professionals, who will then assure the assistance by phone, so that once the newly restructured service shall be enforced, these people are prepared to carry it out in a professional way.

Another measure which was also developed by the referred Minister for the Equality was the one which envisaged the setting up of a national network of sheltering homes for victims of domestic violence. The first shelter pertaining to this network was opened in Alentejo during 2000. Soon after and because the Cabinet of the above referred Minister was put out, a protocol was signed so as to open a second sheltering home, this time in Lisbon, with the collaboration of UMAR and having an occupational space for 40 women and their children. The protocol between UMAR, CIDM, the Secretary of State for the Social Security and IGAPE was signed on the 26 November 2001.

The obligation the State has to provide a public network of sheltering homes for women victims has been primarily stated in Law 61/91, dated 13 August, which ensures adequate protection to women victims of violence. As it has been previously referred, it is envisaged in its 5<sup>th</sup> article that the State has to have sheltering homes built up for women victims of violent crimes, in which they are to be provided with assistance, shelter and referral. The same obligation was to be reinforced by the measure 2.13 of the I National Plan against Domestic Violence, approved by the resolution 55/99 taken by the Council of Ministers in 27 May, which envisaged the development of a network of sheltering homes for victims of domestic violence in partnership with the local government and non-governmental organizations, as well as with the eventual partaking of specialized professionals on management and regulation appropriate to the context of such organizations.

Two months after the I Plan was set into motion this obligation was once more being referred to in Law 107/99, dated 3 August, which envisaged the building up of a public network of supporting offices to provide assistance to victims of domestic violence.

The Assembly of the Portuguese Republic as in accordance with paragraph c) of article 161 of the Constitution of the Portuguese Republic had determined that it was up to the

State through its governing body, to ensure such a setting up, including the installing, the functioning and the maintenance. The public network should consider having a sheltering home in each district of mainland Portugal and one in each of its autonomous regions – Madeira and the Azorean Islands. In what concerned the metropolitan areas of Lisbon and Porto, there should be at least two sheltering homes within each of these areas. The supporting offices should comprise one sheltering home and one or more supporting offices, so as to provide assistance, treatment and referral of the women victims of domestic violence. The staff working in these supporting offices should be specialized and in partnership with the counsellors for the equality should promote the objectives as defined by law. In order to complement the intervention of the public network of supporting offices and whenever the geographical incidence justified it, the setting up of assistance units to provide assistance to the women victims of violence should be promoted and set up in articulation with non-governmental organizations in spite of being under the responsibility of the Government. The provided services should be free of any charge, together with the legal assistance whenever the unavailability of financial means of the victims justified it. As far as the funding for such structures was concerned, the necessary amounts should be made available within the State budget up to a period of one year following the approval of such a Law. The Governing body was to commit itself to regulate the Law within a ninety day period after it had been published.

The Portuguese representative stated that such a Law was never to be regulated, nor was its carrying out envisaged in the State's budget. The public network of supporting offices for women victims of domestic violence does not exist as such in Portugal and there are only two sheltering homes to be accounted for, one in Alentejo and the other one in Lisbon. Both of these were built up under the responsibility of the Cabinet of the Minister for the Equality and the Cabinet of the Secretary of State for the Equality in an attempt to accomplish what had been decided as a goal in the I Plan. Neither of these may be considered a public network-oriented one, according to the Portuguese representative, as none of these has a dependent articulation nor develops its intervening actions within a common philosophy.

In its measure 4.2, the II National Plan against Domestic Violence, there is a further reference towards the necessity of setting up such a network, as in accordance with what has been decided in Law 107/99, dated 3 August and the Decree-Law 323/2000, dated 19 December, and which has already been referred to.

There are various sheltering centres spread throughout the whole country, most of which belong to non-governmental organizations, namely religious institutions of nuns, probably not more than the ones accounted for by the I National Plan against Domestic Violence Follow up report presented by a commission of experts in 2001. According to that report there were 10 shelters specifically oriented towards victims of domestic violence, providing assistance to both these women and their children, comprising a lodging capacity for 155 people and being located in the North, south and central part of the country. There were still 21 shelters for women at risk, which in spite of not being specifically designed for women victims of domestic violence were effectively sheltering them. These had a lodging capacity for 431 people and were located within



the same geographical areas as the other ones. Most of them were Christian inspired associations and amongst them there were religious groups of nuns involved in the assistance of children, adolescents and women at risk.

The Portuguese representative has stated that neither the public nor the non-governmental ones are organized within a national network and show a lack of coordination, even in terms of cooperation between them. In spite of belonging to the same organization, some of these institutions do not comply with standardized quality criteria, nor are their intervening actions evaluated by an entity responsible for domestic violence issues and well aware of such a reality.

Because of all of the referred reasons, these centres are isolated poles of intervening actions which if adequately re-directed might be able to comply with the general policies concerning domestic violence issues.

The Portuguese representative has gone to the point of putting in doubt the degree of legitimacy, as well as quality of certain procedures carried out by some of these non-governmental organizations holding the leadership of some of these sheltering homes for women victims; there is a clear abuse of power on the part of some nuns involved in the assistance provided to some of the women victims, particularly in specific cases in which confidentiality can not be broken, led to denouncements made to the competent entities in charge of following up and controlling private social solidarity organizations, as well as some which led to complaints officially made and presented to the Public Prosecution and which had to do with various criminal acts committed throughout the sheltering of these women victims, such as physical and psychological maltreatment, provoked injuries, violation of mail, theft, extortion, abduction, threatening, insulting, defamation and several others. Some of these cases, particularly the very specific confidential ones, are likely to be considered authentic modern slavery situations of child labour and sexual harassment. These situations undoubtedly go against the aims, which should be behind such an intervention and the effective purpose of the existence of such supporting centres; it is as if the degradation of the human dignity these victims are already enduring is to be further continued. It is certainly not because of the inexistence of centres or specialized and competent professionals, who help the nuns in their daily tasks, with their multidisciplinary and scientific approach, though observing the clear separation of competencies and hierarchy inherent to the religious institutions, as well as the autonomous coordination of teams of experts who work in these centres according to intervening models, which have been carefully selected and evaluated.

The II National Plan against domestic violence contemplates this necessity in its measures 3 and 4, in which it the elaboration of an internal regulation for the sheltering homes is envisaged, naturally bearing in mind the quality of the services to be provided, the conditions of their opening up as well as the control to be carried out irrespective of the regulation of each of the sheltering homes. This measure shall be carried out by CIDM and the Ministry for the Social Security and Labour, having excluded the non-governmental organizations from it. These organizations having been developing this type of work and do have quite a valid experience in this field, thus this asymmetry of experiences may not lead to the most adequate outcome.

This is quite a simple example of how the State runs the risk of inadequately develop his policies, by excluding positive synergies. It might be important at this point to



consider alternatives to the excessive dominion of the State over such a social problem, which was, prior to his intervention, cared for by non governmental organizations: rather than having to accept the State norms, these should be asked to conceive policies, whilst holding a theoretical and practical knowledge and experience, apart from being asked to substitute the State's intervention, whenever the practical or valid experience is not there, instead of simply being consulted on these matters. Alternatively, the State should commit himself, by signing protocols, to adequately finance such organizations. In what specifically concerns the Portuguese intervention on domestic violence issues, the Portuguese representative has stated that the Portuguese security forces used to deal with such situations in a very reactive sort of way, limiting their intervening action to responding to the requests whenever there was an occurrence and accepting the complaints made by the victims; this was a similar process to the one used in both criminal and non-criminal situations. The training they had been subject to, together with the culture inherent to the police made them consider such situations rather uninteresting compared to another type of *criminal* occurrences. The fact that domestic situations were to be considered as a rather legally and socially diffused area, between the criminal/familiar and private sort of atmosphere made it that difficult for the officers to act and intervene, once conflicts between them and the victims could easily arise and consequently hinder any type of reaction against the aggressor.

In the beginning of 1998, under the initiative of the INOVAR Project from the Ministry of Internal Affairs, a special working group was set up in order to conceive new ways of intervening, at police level, in regard to the domestic violence situations. Two actions were then carried out within this area. One consisted in making the police officers dealing with the public aware of such a situation, as well as to have them trained so as to be able to better provide a professionally adequate support to victims of domestic violence. Special teams of officers were then designated to handle such cases, which implied accepting the official complaints and later providing assistance throughout the process in what concerned contacts with police and judicial institutions, as well as other public institutions, which provided specialized support. A protocol was signed between the Ministry and the Foundation of Bissaya Barreto located in Coimbra, to which seventeen other institutions adhered. Based on the existing protocol, the police forces referred the victims, whenever it applied, to the above mentioned Foundation, which was to provide support and count on the support of the other institutions involved, if and whenever it was found necessary.

This project, which was to be experimental, was implemented in the districts of Braga and Coimbra. It was later found out that the overall results were better within the district of Braga, under the responsibility of GNR (rural area) whilst in Coimbra the best results were the ones under the responsibility of PSP (urban area). It is thought that any of these forces was indispensable for the adequate protection and support to be provided to victims of domestic violence. What actually happened was that in Braga PSP showed not to be particularly interested in the programme and no specialized officers were made available to be part of the team, whilst GNR has quite a wide social intervening network which made it possible to ensure the police intervention within that geographical area. In the district of Coimbra, the elements who were participating in the group of specialized PSP officers, were not only provided with an adequate support but also

managed to establish quite a good coordination level with the entities which had previously adhered to the protocol, as well as with the other ones.

Within the rural area covered by GNR there does not seem to be a social network, which might have been able to provide support to such a group.

Although there are no clear data references to sustain such a situation, there is nevertheless a necessity of having the security forces involved in the support to the assistance networks providing specialized support to victims as a complementary action. Bearing in mind the necessity to better manage the human resources, the PSP team started handling other police situations in Coimbra. Victims are nowadays welcomed by the graduate on duty at the police headquarters (depending on the degree of confidentiality needed and in accordance with the conditions available at the police headquarters), who then refers the victim to the above mentioned team, if her situation is considered serious or urgent. Victims are therefore only referred to other entities/institutions, whenever the situation applies. In police terms, this seems to be the most adequate proceeding, once it allows victims to have a more personalized assistance and to be referred to other agencies, depending on the effective capacity to have the necessary support provided.

Although the security forces have showed a capacity to get involved and have developed new competencies within this dominion, INOVAR has also showed not to be able to develop and consolidate strategies, which might further develop the quality of the police intervention, as well as the interaction with other partners involved. This was mostly due to the strategy of centralizing the police action as defined by the project INOVAR, according to which the police intervention force was to be the same within the whole country and for both security forces, being the training of the officers and the contacts with any other institutions to be defined and coordinated by the INOVAR project as well. The disagreement showed by one of the elements of the group led to the fact that there were no more working meetings and no further projects envisaged. The fact that Project INOVAR had also a lack of human resources to adequately meet the issues the coordinator of such a project had envisaged led to no further developments within this area.

This project has only been providing the media with the statistical number of situations, which have been denounced to the police forces. Because of there being some Ministerial constraints a predominantly informal coordination with other local agencies and institutions has been carried out overcoming formalities and other insufficiencies at a higher level, bearing in mind the strong will to help the victims.

Notwithstanding all of these factors, the INOVAR Project called the attention of the security forces towards the victimization issues, specially those involving domestic violence situations, having most probably been one of the main causes of the initial awareness towards these issues. In what concerns the support provided to the victims of domestic violence at the level of the security forces, the Portuguese representative has referred that the legislation alterations towards having such violent acts be considered public crimes implies a stronger commitment on the part of the State in the prevention, fight against such a phenomenon and provision of support to the victims. This is to be clearly noticed in the II National Plan against domestic violence, in which the role to be

played by the police forces seems to be more relevant than the one envisaged by the I Plan.

Due to the characteristics of this type of criminality, the prevention and fight against such a phenomenon, together with the support to be provided to its victims shall have to be developed by the State in close cooperation with non public entities/ institutions, and though focussed on the victim should not ignore the aggressor.

This complementary action seems rather difficult, particularly because there are no evaluation mechanisms to adequately measure the quality of the coordination and provided service, as well as their results, having therefore a negative impact on the victims, not to mention the wasted social and economic resources spent which might result from a deficient coordination between the various entities involved.

The police forces are most probably the entities which victims address themselves to in case of domestic violence situations or at least are the ones who get to know of such situations. This being one of the reasons why it is important for them to not only show their will to help the victims, but also characterize their intervention by an adequate approach.

Bearing this in mind it may be important to build up technical oriented tools which will allow police forces to achieve the envisaged objectives.

The first tool should be an assisting guide /police proceedings, which may be used during the training phase as a means to make police officers aware of this type of situations and provide them with the adequate professional knowledge to be able to solve the various problems they may have to face throughout their professional daily life. More than having to have legal knowledge it is important for police officers to know how to handle situations, which are intimately connected with similar issues.

This training should, nevertheless contemplate the involvement of the various hierarchic police forces, so that it may ultimately correspond to the change within the institutional positioning not only a change to be operated by the nature of the training actions exclusively. It should be therefore advisable for the security forces themselves to ensure most of the training; the awareness and the training carried out by external entities shall have a complementary nature irrespective of the role it will play. As far as the PSP is concerned, a technical guide, regarding the assistance and intervention to be carried out, has already been conceived, though it has not been published so far. It is police oriented and is to be the basis of the training actions to be carried out in the PSP instruction schools, though it may be equally adapted to other security forces.

The second tool which is to be a multi disciplinary one, once it has more than a police and juridical nature is to be used as a long term process for it complements the support to be provided to the victim throughout the entire process. This can be generically designated by the victims file process, which would allow one to gather information on the nature of the circumstances of the domestic violence incident(s) in a first phase to be later integrated in the actual file (part of it should constitute the file itself);

This information may still become relevant, if not vital for the police investigation and may be later used as a basis of evaluation of the risk, implying the implementation of immediate preventive measures to be taken by the police forces and/or a decisive piece

of information for the Public Prosecution magistrate in his/her assessment of the measures to be taken regarding the protection of the victims.

In spite of the advantages deriving from the use of such a tool, several difficulties are to be pondered onto regarding its implementation, due to the complexity of the nature of the domestic violence cases and the ones associated with their juridical nature such as the *camera proceeding*. Questions have also been raised concerning the management of information and the process itself, which may be overcome by the setting up of a service of protection and support to be provided to the victims and which could be responsible for the management/coordination of the victim supporting processes.

From the perspective of the police intervention and aiming at providing a better support and protection to the victims of domestic violence, several aspects have to be further taken into account. The first should be the effective training, which ought to alter the social representation of the officers, as well as the institutional police attitude towards domestic violence in order to define standardized intervening behavioural attitudes when addressing both victims and aggressors. The second one should imply having the police intervention adequately complemented by the intervention of other institutions/agencies with appropriate competence and capacity to provide specialized support to victims of domestic violence. Another should be having the police action be continued throughout the legal process, and therefore having it included in an eventual victim support approaching service.

The Portuguese representative has stated that the now extinct INOVAR Project has attempted to promote the building up of physically privileged spaces within the police quarters throughout the country, from 1999 up to 2001, to allow a certain comfort and privacy during the assistance of the crime victims, though these weren't but space oriented, once the direct assistance was not envisaged as being carried out by multidisciplinary teams.

In 2000 when the first interspersed report for the follow up and carrying out of the National Plan against domestic violence was presented, there were only forty five of these rooms specially designed for victims in both GNR and PSP headquarters and offices.

## Spain<sup>26</sup>

According to the Spanish representatives the institutional policies towards the equality of opportunities between male and female were initiated with the setting up of the Institute for Women in October 1983, when simultaneously the problematic of domestic violence started being evoked. Until then, only the Spanish feminist movement had made reference to such a problematic in the sixties. It was up to the Institute for Women to define objectives and policies, namely when conceiving the *Plans for Equality*. It has been expressing concern since 1988 up to the present moment, particularly in defining policies against domestic violence. There have been four such Plans since the beginning. The Spanish representatives have also stated that apart from these and in a sort of more direct approach to the women victims, many women supporting centres, together with centres favouring equality were set throughout the country providing juridical and social support. Nowadays, these are spread through every province capital city, as well as in many of the country municipalities. One of the problems they seem to daily be confronted with is domestic violence.

The first sheltering home for women victims of domestic violence was set up in 1984 and from then on several other sheltering homes, emergency centres and tutelage oriented apartments have been opening, as part of national network and considered as one of the specific means to handle domestic violence in Spain.

In terms of domestic violence prevention in Spain, several awareness and prevention campaigns have been carried out by the Government, either taking advantage of the television or the press and radio as a means. These campaigns are generally requested by the Institute for Women to publicity enterprises, though the organizations of women involved in domestic violence issues are rarely consulted on such an approach. These campaigns are specifically designed for women victims of domestic violence: of all the campaigns, which were carried out in the last years only the one in 2000 was not specifically addressed to them. They have mentioned the 1998 campaign - *It is never late to start again*; the 1999 - *If you omit the truth, no one will ever know that you are in need of help*; and the 2002 one - *If you become speechless, you become lifeless. Rehabilitate your life, speak out*. The main objectives of these campaigns were: to insist on the necessity of denouncing maltreatment; and to let women know of the available means. These were short term campaigns, generally not lasting more than a month and being different every year in terms of conception and image conveyed. They were launched every year on 25 November - the International Day for Violence Exerted against Women.

The evaluation of the campaigns' impact very much depends on the population it addresses and the main defined objective. The Institute for Women has made quite a positive evaluation of the campaigns, which have been carried out so far, noting that the number of victims of violence asking for help has been drastically increasing. At Spanish autonomous government level, there have also been some campaigns, such as the one carried out by the Andalusia one, entitled - *Your wife is not your possession. No one has the right to maltreat any one*, addressed to the population in general but

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<sup>26</sup>Extract from the interspersed reports presented by the Spanish representatives.



focussing on the male population in particular; or the one carried out by the Catalan Institute for women under the theme – *If you are violent, you will have to go away*, clearly underlining the message that if you are an aggressor you will have to be the one to leave home, and not the victim.

The Spanish representatives have also referred some of the measures, which have been developed at educational level in Spain, bearing in mind the role played by the family and the one by the school regarding the building up of sexist stereotypes, which increase the legitimacy of domestic violence in the children's attitudes. The Institute for Women has published several educational materials concerning the prevention against violence such as - *Notebook to prevent Violence*, which according to them was quite pertinent, though it was not widely distributed, irrespective of 10.000 exemplars having been printed, of which only 1.922 were effectively distributed.

Besides this, the Institute has also published a series of didactical units for the education of adults, aiming at increasing their information on the available means regarding violence.

The Spanish representatives have also referred the Relation Project launched in 1999 by the same Institute and within the same area of Education and which was worth mentioning because of its originality. It aimed at developing the concept of education regarding the relation, taking human relations as the basis of preventing violence and having been carried out in coordination with several autonomous communities of Aragon, Canaries, Galiza, Navarre, Castella –Leon and Estremadura. Thirty new primary and secondary schools adhere to this project every year. The main objectives of the project are to promote the debates between teachers and students on domestic violence issues which occur in the educational centres; to ponder on the importance of the role played by the educational board on the altering of the values and models associated with masculinity and femininity; to attribute the desired importance to the relations as an irrefutable way of eliminating violence. What actually implies the importance of this Project is, according to the Spanish representatives, the fact that a profound work has been developed by the teachers of the educational centres, who have adhered to this project, apart from the strong relation which is consequently established between family and school; this particular work implies time and requires qualified trainers. The wish to consolidate and expand such an initiative should imply an increase in the financial resources provided by the Government, as well as a wider spread number of campaigns related to it.

According to the Spanish representatives and in this line of thought, the Institute for Women lacks the necessary financial resources to withstand the importance and depth required by such works within the educational area.

The autonomous communities, apart from having developed actions in coordination with the Institute for Women, have also developed other actions within the educational area. The Spanish representatives have highlighted the ones carried out by the communities of Madrid and Andalusia on non-sexist games; those carried out by the Bask Government within the PAREKO Project – for a co-educational School in 2001 addressing primary and secondary schools and which included conveying stereotypes and values of gender in the cinema.



In what concerns the intervention on domestic violence issues in Madrid, the Council for the Women in the Community of Madrid proposed that minimum criteria regarding quality of provided services to women victims be set up by Law, which may go beyond the voluntary oriented principles and the good will ones provided by public and private entities, but regarded as an obligation.

This way, the II Main Plan against Violence has envisaged the setting up of a national infra-structure to cover for the needs of the victims, by proposing nine measures (out of a total of seventeen) within the police and judicial areas; one measure regarding the rehabilitation of the aggressors; another focussing on the professional capacitating approach and four others connected with the protection of women within institutional sheltering. The envisaged measures aim at providing social, psychological and juridical support and imply three different approaches: a) information on the rights and follow up of the legal issues, as well as the available means; b) temporary sheltering; c) increase of the women's autonomy at personal and professional level.

In what concerns the first approach, the conveying of information on the rights and the follow up of the legal issues as well as the existing available means, are to be carried in three different ways:

- 1) Information centres; 2) guides on the available means and 3) phone services provided 24 hours a day.

In what concerns the information centres, both the Institute for women and the Entities for Equality located in the various autonomous communities have an information service as well as an assisting one for women in general and women victims in particular. These services provide legal support and socio-labour one, apart from information on the available resources they can access to. Some communities, like Galicia and Estremadura, have extended their services to the provision of psychological support as well; these services are free of any charge.

The information services may be private or public. Amongst the public ones the state, provincial and municipal ones should be referred. The ones dependent on the Institute for Women are those located in Cáceres, Madrid, Seville, Palma de Mallorca and Santander. These provide legal and social support, together with professional and labour orientation, as well as access to health care and the setting up of women's associations, though psychological support is not to be included. According to the Spanish representatives, apart from being useful information spaces, fundamental to enforce and help women take full awareness of their decisions, these centres should also be the privileged source of data gathering on the profiles and necessities required by the women victims, and which has not been apparently done so far.

Besides the public network of information centres, there are private ones, which have been set up and are handled by associations generally supported by the State. Amongst these two different types are to be accounted for: one ensuring legal support (and eventual psychological assistance) and the second one developing creative and training oriented activities as well.

In regard to the second measure, these are publications with reference to useful resources and advice concerning domestic violence. The Institute for women, the municipalities and autonomous communities and associations for women have

published such guides. The Institute alone has published 5.000 exemplars in 2001, of which 1.216 were distributed. Some autonomous communities with a lower populated number than the one the State was in charge of published a higher number of exemplars. The Spanish representatives refereed the case of Castella Leon, which in 2001 had 40.000 exemplars of a guide entitled - Do it for yourself, published, out of which 35.000 were effectively distributed; Castella- a –Mancha conceived another guide of which 8.000 exemplars of the total number of 10.000 were distributed.

Bearing in mind this data, the Spanish representatives concluded that The Institute for Women does not produce the required amount to be distributed, particularly if one takes into account the necessity to have the highest possible number of women informed of these issues. Nevertheless they highlighted the fact that the Institute funds other associations in having publications of their own edited.

In what concerns the information provided over the phone 24 hours a day, it is a free of charge service, aiming at providing immediate response to women's requests and the fact that it is effective on a permanent basis covers up for those who look for help in situations of crisis.

In regard to the temporary sheltering homes to provide assistance to the victims of domestic violence, we were told by the Spanish representatives that the first ones were set up in 1985, in order to shelter both women and their children, apart from providing them the necessary legal support. Most of the autonomous communities have one of these centres.

They, who had to evaluate the functioning of the existing shelters in Spain within a study for the Commission of Investigation of Maltreatment perpetrated against women (a Spanish NGO) stated though, that there seems to be an overlapping of competencies between them and other institutions pertaining to the communities and an inexistence of coordination between the various entities involved. They have also pointed out the fact that there are low economic resources, together with the inexistence of space to lodge a higher number of victims in need, not to mention the lack of specialized personnel to ensure a better quality in the services provided.

The centres may be state owned, autonomous or municipal. Three different types may be accounted for: -1) emergency centres; 2) sheltering homes and 3) tutelage oriented apartments.

The ultimate aim of the emergency centres, which are open 24 hours a day, is to provide immediate and temporary shelter, though the general objectives are to ensure a safe refuge for the women and children, who are at imminent risk, to have them supported in an overall perspective and later have them referred to existing entities able to better satisfy their needs. The temporary lodging time limit varies between the autonomous communities. There are centres who may lodge those in need for just a couple of days, such as the Balears and the Andalusia ones, whilst others, like the Cantabrian may have them lodged up to three months.

The Spanish representatives have also stated that the main Spanish Government has no centre under its charge and that thirty nine was the total number of centres in 2001, though the State oriented ones had a capacity to lodge 383 women with their children, as against forty one in 2002.

The sheltering homes ensure not only the safety of the women and the children, who are lodged in them, but also allows them to recover from the endured trauma, together

with helping them develop a new project of life, in most cases autonomous. Women may be provided with legal, psychological and social support, whilst staying in the sheltering homes together with looking for new jobs and carrying out professional training. In 2001 Spain had eighty four centres with a lodging capacity for 1.546 women with their children. Only three of these were state oriented as against 1998 in which only one was under these conditions.

Regarding the tutelage oriented apartments we were told by the Spanish representatives that these are at the disposal of women, who were previously lodged in a sheltering home and need a temporary apartment before becoming autonomous and able to support their own lodging expenses amongst others. Whilst they are lodged in these tutelage oriented apartments, they are entitled to social and psychological support. Four of the one hundred and two existing apartments were owned by the State in 2001 as against thirty eight and twenty six owned by the autonomous communities of the Basque country and Andalusia respectively.

The Spanish representatives have also stated that in 2001 there were a total of two hundred and sixty emergency centres, sheltering homes and tutelage oriented apartments in Spain. From 1997 through to 2001 they sheltered a total number of 4.133 women. Seven of these belonged to the central administration; forty nine to the autonomous community of Andalusia; three to Aragon; six to the Balears; twenty two to the Canaries; three to Cantabria; eleven to Castilla-La Mancha; twenty five to Castilla-Leon; eighteen to Catalunya; six to Extremadura; nineteen to Galicia; thirteen to Madrid; seven to Murcia; two to Navarre; thirty eight located in the Basque country; eighteen in Valencia; two in Ceuta and one in Melilla.

Regarding the governmental and non-governmental intervention policies, it was stated by the Spanish representatives that the beginning of such related concerns date back to 1983, when the definitions of the policies towards equality of opportunities were initiated by the Institute for Women. The Managing Council of the Institute was at the crux of such initiatives. Until then only the feminist movement of the sixties had mentioned the problem of domestic violence perpetrated against women in Spain. Four Plans regarding equality were conceived since 1988, all of which referred domestic violence and defined objectives and sanctions to be applied. Women supporting Centres were set up in which social and legal support provided to women under any circumstance, namely women victims of domestic violence, started being implemented.

There are actually centres in every capital city of the various provinces and municipalities and the population who call into them goes beyond the 50.000 people. Apart from these centres, various other organizations have been showing their concern by intervening in issues connected with women victims.

The first sheltering centre for women victims and their children was set up in 1984, having consequently initiated what was to become a national network of emergency centres, sheltering homes and tutelage oriented apartments throughout the whole of Spanish territory. According to the Spanish representatives some of these need to be restructured and/or a thorough look into the type of intervening work they have been

carrying out, once it is believed they are becoming more of a temporary or short term lodging rather than carrying out an overall intervention in regard to the women in need. They have also mentioned that services to provide support to women victims of crime, namely the ones involving sexual and domestic violence crimes, have been set up within the Police quarters and there are at least one of such services in every province in Spain, yet and according to the opinion of the Spanish representatives the approach should be looked at because in many of such services the police officers who provide the support are exclusively male, which has been considered inadequate.

The I Plan against Domestic Violence carried out by the Spanish Government was conceived and initiated in 1998, having been enforced from 1998 through to 2004. The II Plan (from 2001 to 2004) is now in force. The I Plan of Action had recognized the obligation the Spanish Government had in what concerned assuming the problematic issues of domestic violence as requiring a planned and exigent intervention. It was divided in six intervening parts; awareness and prevention; education and training; social means; health; legislation and legal practice; and investigation. According to the Spanish representatives no budget was presented for such a Plan.

The II Plan of Action came in the sequence of the previous one, though an objective budget was presented.

The Spanish representatives have also referred a polemic situation, which involved the Spanish feminist movement, when the Integral Law of gender envisaged by the II Plan of Action, together with the contemplated measures in it, was refused without the movement's consensus.

This Law has nevertheless been enforced in two autonomous communities – Castilla-a-Mancha and the Canaries. In the first community and still according to the Spanish representatives, one of the measures is liable to be discussed, whilst other issues may have to be thoroughly pondered: the victim/aggressor's mediation, the aggressor's rehabilitation and having the exercising of the paternal power withdrawn.

The I Plan, which was coordinated by the Institute for Women, had the participation of the Ministry of Labour and Social Affairs, the ministerial departments for the Education and Culture, the Internal Affairs, Justice, Health and Public Expenses; together with the ones of the autonomous communities through the entities dealing with Equality issues.

The I Plan was divided in six major areas: 1) Awareness and Prevention; 2) Education and Training; 3) Social Resources; 4) Health; 5) Legislation and Legal Practice; 6) Investigation.

The first area implied the carrying out of the following measures: the conceiving and diffusion of educational materials, including the ones which had already been published on domestic violence perpetrated against women; public events involving the public and private media; to have the social communication services carry out a permanent vigilance on the conveying of sexist oriented images; the setting up of a prize to be awarded to the publicity agencies and the media; to have the 25 November be declared a special day on the fighting of violence exerted against women, as in accordance with the United Nations; to set up awareness campaigns on the seriousness of this problematic issue.

The second area included the following measures: to enforce a broad oriented type of practice within the school – *Education towards the Equality of gender opportunities and Education towards peace*, incorporating broad wise contents in the compulsory education of school children, whose ages range from six to sixteen years; to enforce the setting up of courses for teachers on the equality of gender opportunities and violence against women; to participate in European programmes on the equality of opportunities between men and women;

The setting up of a prevention oriented type of work to identify and support cases of violence perpetrated against women; the inclusion of units addressing issues of violence perpetrated against women; the development of a training module aiming at providing a better assistance to women victims of violence; to set up training courses for the professionals working in the social services with the aim of having them provide a better assistance to the women victims of violence.

In the third Area there were various measures to be enforced : to develop specific units to deal with the assistance to be provided to women victims within Police quarters, integrating female officers as much as possible; to set up an emergency phone line (operational 24 hours a day); to conceive informative manuals setting up rules and recommendations on how to act in violent situations; to implement cabinets within the judicial units, in which the assistance to victims of violence is to be provided; to have a guide on the available resources concerning victims of domestic violence published; to coordinate the health, social, police and judicial services, so as to ensure an overall assistance to be provided to women victims of domestic violence; to attempt to enforce the elaboration of a normative defining criteria and requisites to be complied with at the sheltering centres; to make the mobility amongst the autonomous communities easier for the women victims of violence; to conceive an overall programme to make it easier for women victims and their children to leave the sheltering homes; to enforce the priority of access of women victims and/or mono parental families to social lodging facilities; to ease the access of women victims to training courses bearing in mind their future social and labour integration, as well as to occupational training courses; to develop studies on the labour possibilities for women victims on a temporary lodging basis; to prioritize the concession of public funds for supporting programmes concerning women victims; to initiate psychological programmes for the aggressors as a complement to the penalties.

The I Plan had contemplated the following measures as far as the fourth area was concerned: to have a protocol, which gives an overall answer to issues concerning women victims, approved and disseminated; to have activities on the prevention of violence in Primary health assisting services carried out; to have training and awareness courses for health professionals dealing with violent situations perpetrated against women included in the academic programmes; to ensure that the health services provide the necessary information to the women victims on the available social resources through the assisting service provided to patients.

As far as the fifth area is concerned, the following measures were considered: to insist on the penalization of recidivist psychological violence the same way recidivist physical violence is being penalized; to insist on the inclusion of cautionary measures to ensure the distance to be observed between the aggressor and the victim; to insist on the



adequacy of penalties in case they have been considered faults, so that they may not further affect the victims, in terms of their own protection; to insist on prompt proceedings regarding temporary measures of separation, marriage annulment and divorce; to insist on prompt process decisions regarding maltreatment, whether it may have been caused by penalty or faulty action and/or civil separation proceeding cases; to set continuous training programmes for attorney generals; to insist on the role to be played by the Public Prosecution in what concerns the effective enforcement of article 153 of the Penal Code regarding recidivist faults and official denouncements; to insist on the necessity of having the Auditing Ministry play a more active role on the search for evidence and the subsequent carrying out of the verdict; to insist on the implementation of a protocol of coordination between the various jurisdictions intervening in domestic violence issues; to include a specific chapter on the violence perpetrated against women in the report of the State Public Prosecution; to increase the number of forensic doctors dealing with these issues; to set up a group of officious lawyers specifically trained to deal with domestic violence situations; to make sure that the free legal support is equally prompt; to set up a number of instructions, which will allow the security forces to protect the necessary degree of confidentiality involving the women victims, as well as their protection; to have the Minister of Internal Affairs write a circular letter on the intervention rules to be carried out in situations involving violence.

As far as the sixth area is concerned, the following measures have been contemplated: to set up a universally standardized protocol to ease the gathering of data concerning the social, health, judicial and police areas; to carry out studies and investigation on the causes, the incidence and frequency, as well as the adopted violent ways, together with the consequences of domestic violence perpetrated against women and their victimization; to set up a specific area within the observatory of the women against the perpetration of violence.

The Spanish representatives have stated the greatest mistake was not to have presented a necessary budget so as to accomplish each of the measures. They have also highlighted the fact that not every objective and envisaged activities were carried out: some of the legislative alterations were effectively carried out, together with some of the training programmes particularly those focussing on health issues, though within this particular area and according to the Spanish representatives the measures, which implied the conceiving and spreading of a protocol on the intervention of such professionals in violent situations were not carried out, nor were they taken into account in the training courses as in accordance with information provided by the trainees.

They have also stated that having a standardized normative set up for the sheltering homes providing assistance to women victims and other measures were not carried out and/or not fully accomplished.

The II Plan, which was to follow, included a budget to cover the envisaged measures. It contemplated four major areas: 1) Prevention and Awareness measures; 2) Legislative and Proceeding measures; 3) Assistance and Social Intervention measures; 4) Investigation.



The first area included: to conceive a guide of recommendations for the media professionals to be able to handle information on domestic violence; to organize events so as to make future media professionals aware of such issues; to set up an annual merit prize to be awarded to those working in advertisement and publicity who developed a work worth it, on such a theme; to organize annual tolerance zero campaigns in the media; to develop commemoration events for the 25 November – the International day against violence perpetrated against women; to set up an inter-ministerial Commission to coordinate, evaluate and follow up on such situations, which would include representatives of the institutions dealing with these matters;

To set up a permanent commission with the entities for the equality within the autonomous communities to allow the coordination and exchange of experiences; to develop programmes so as to be able to identify violence within the educational framework; to introduce a subject on equality of opportunities in the schools; to conceive educational material to prevent violence in the perspective of gender; to adapt didactic material focussing on affectivity and sexuality; to conceive didactic units on violence bearing in mind the education of adults; to develop training actions on the equality of opportunities and prevention of violence for teachers; to implement educational meetings, in which violence against women should be debated; to set up a nationwide prize to be awarded to those works on the value of tolerance zero in the school centres; to organize courses on how to provide a better assistance to women victims for professionals working in the security forces, legal and Law experts and those working in social and healthcare centres; to develop activities focussed on the exchange of good practices on the intervention against perpetrated violence, as well as prevention programmes concerning the same issues; to develop programmes of anticipated identification and primary intervention regarding violence; to have material connected with healthcare and violence exerted against women be distributed in the health centres.

In what concerns the second area, the II Plan includes: to devise a guide, which shall include the available legislation and jurisprudence on domestic violence; to study the necessary mechanisms to efficiently suspend the legal possibility of suspending the regime of visits and/or the communication between the aggressor and his children; to analyse the system of penalizations regarding: a) to have them be adequate so that as an alternative they might not exclusively be the payment of a fine, but having to carry out community work; b) incorporating the inhibition of the paternal rights whenever violent cases are involved; c) that whenever the suspension of the court case is considered, the aggressor may be inhibited of attending certain places and be obliged to inform and justify his activities before a judge; d) to rule the consequences deriving from having breached the rules of conduct imposed by the suspension or substitution of the court case as envisaged in the previous points; e) to rule the inhibition of using firearms as compulsory.

The recent Spanish criminal Law in what concerns the II Plan envisages the following measures: a) that temporary measures are adopted in regard to situations of separation and divorce; b) to set up a new cautionary measure regarding the firearm certificate

whenever a domestic violence complaint has been officially made; c) to have the aggressor be presented to the judge or state attorney in order to have the cautionary measures adopted then; d) to have the penal proceedings simplified and followed by prompt court decisions.

The other envisaged measures are: to carry out and impose cautionary measures regarding the aggressor's abandonment of the family home. These are to be decided by the attorney general offices; to insist on the cautionary measures to be carried out and the course of action followed by the Public Prosecution Service; to work out the possibility of having the instructions based on criminal offences and domestic violence be concentrated in the same jurisdiction, so that there may be a thorough coordination of both the civil and penal proceedings. This is to be analysed together with the General Council pertaining to the Judicial power; to have the free legal assistance provided to domestic violence offences and faults extended to 24 hours a day; to ensure the existence of officious support in every attorney panel in Spain; to propose the collaboration of the General Council pertaining to the Judicial Power in the follow up of every process involving domestic violence, as well as the subsequent court case decisions; to finalize the inclusion of the compiled files on domestic violence in the Public Prosecution services; to optimize and further develop the human resources and necessary material of the judicial entities within the jurisdictions, the public prosecution and forensic clinical services, so as to have the domestic violence related offences and faults be promptly resolved, as well as the civil processes regarding separation and divorce as well; and finally to have the study of psychological violence included in the training programmes on domestic violence for professionals working in justice and law related issues, in order to have this matter contemplated in the penal proceedings.

As far as the third area, the II Plan envisages the following measures: to set up meeting points, where the visits of either fathers or mothers of children of separated or divorced couples in which domestic violence has occurred should gather, in order to be supported by qualified professionals, who in turn should have their reports sent to the competent courts of justice; to carry out studies towards the implementation of a surveying police system to be carried out by means of an electronic device, which allows one to promptly locate the aggressors and have the victims supported immediately; to conceive a website to specifically provide information regarding domestic violence; to enable the denouncing of domestic violence to be made by electronic mail to the Civil Guards; to set up a counselling phone line on domestic violence issues to be provided by the Civil Guards services.

A special surveying service was set up in every jurisdiction in Spain during 1999, which was headed by a professional in this area, though it didn't exclusively focus on domestic violence issues.

A protocol has been signed between various public administrations and the panel of attorneys, so as to ensure that *legal services* are provided for free to victims of domestic violence. This naturally implies the provision of legal support without any payment involved. Notwithstanding this fact, the Spanish representatives have stated the seriousness of not having contemplated a form of coordination between the civil and

penal approach, not to mention not having provided specific training to the lawyers involved in this protocol.

The representatives have also stated that at governmental intervening level, the adopted measures have been enforced as in accordance with a sequence of continuous alterations the penal legislation has gone through over the last years. These have implied an aggravation of the penalties, the inclusion of the psychological violence notion in the maltreatment offence, once it considers the former husband and/or companion of the victim as the active party involved in the offence, taking into account that many of the situations were further continued after the marital rupture. There is an actual order of protection involving victims of domestic violence, so according to the Spanish representatives this may be adapted to the resolution of such situations, particularly in regard to the need of coordination between the civil and penal courts of justice.

The need to set up a centralized data centre providing information on the legal actions taken against the aggressors, as well as the necessity to provide the promptest possible support to the victims. These aspects are not taken into thorough account in the courts of justice. During the first month in which the mentioned order was enforced 23% of the requests presented by the victims were made by organizations on their behalf. In Andalusia, out of the presented 237 requests 32 (14%) were refused; in Catalunya out of the total requested 231, 57 (25%) were to be refused; in the community of Madrid 48 (24%) of the 198 requests; in the community of Valencia out of the 108 requests, 16 (15%) were to be refused; in the Canary islands 25 (26%) were refused out of a total number of 97 requests; in the Basque country there were 86 requests, of which 30 (35%) were refused; in Castille-Leon there were 83 requests, having 15 (18%) been turned down; in Castile- a Mancha out of the 66, 9 (14%) were turned down; in the Balearics there was a total number of 64 request, out of which 29 (45%) were refused; in Galicia 62 requests were made, having 13 (21%) been turned down whilst in Aragon 39 requests were presented though 14 (36%) were refused; in the Murcia region there were 29 requests, out of which 7 (24%) were turned down; in Cantabria 4 (19%) of the total number of 21 were turned down having the same numbers been considered in Rioja; in Extremadura 199 requests were made, out of which only 3 (16%) were turned down; in Asturias 10 requests were made, having 5 of them (50%) been turned down; in Navarre 10 requests were made and none was to be turned down, the same having happened in Ceuta though the total number of requests was 9. In Melilla no requests were filed.

The Spanish representatives have further mentioned another aspect which is intimately connected with the gathering of statistical data concerning domestic violence. The Ministry of Internal Affairs has been gathering such information, since 1983 up to the present moment, including the denouncements presented to the Civil Guards. At the beginning this gathering of data seemed to be inadequate, because it did not even mention the total number of denouncements. As from 1999, the statistical data started including the number of deaths provoked by domestic violence, though it seemed not to coincide with the statistical data as presented by non governmental organizations of women in accordance with the information conveyed by the media: in 1999 the organizations had registered 55 cases whilst the Ministry referred only 31;

In 2000 the organizations referred to 65 cases as against the Ministry which mentioned only 27, the same having happened in 2001 having the organizations registered a total number of 73 cases, whilst the total number according to the Ministry was 32, not to mention the total number of 77 cases registered by the organizations in 2002 against 52 referred to by the Ministry.

The recently set up Observation Centre of domestic violence pertaining to the General Council of the Legal Power is now responsible for such a data gathering. The aim is to collect data on the legal proceedings which have been initiated, as well as the resolutions which have been taken by the jurisdictions and the courts of justice on domestic violence issues. It aims at providing an efficient view of the law and the way justice acts in accordance with it. The gathered information is to be compiled in a report, which is to be later published.

The Spanish representatives have pointed out a governmental intervention shortcoming which has been occurring throughout the years and which has to do with an apparent lack of coordination between the public opinion and the one provided by both the Police and the judicial one. They consider there should be a higher incidence on the prevention of domestic violence in the educational programmes since an early age, as well as a higher importance on the investigation of this problematic with deeper and extended collection of statistical data together with the setting of an *Observatory of violence of gender*.

The Spanish representatives have mentioned the determining role played by non governmental organizations of female inspiration. The feminist movement in Spain had right from the seventies onwards the violence exerted against women, namely the sexual and the domestic one as an issue in their agenda. Since then, several organizations have been publicly denouncing the violence exerted against women in the domestic context, by carrying out awareness campaigns addressing women in general, as well as letting them know of their rights and possibilities of developing new life projects once the situation has been denounced. Training programmes for various professional groups, such as police officers, lawyers, judges, those working in healthcare, psychologists, social workers, etc, have been developed, so as to focus on the necessity of there being an adequate intervention to avoid the perpetuation of domestic violence and allow the adherence of victims to such an intervention.

Non governmental organizations of women in Spain have shown from quite an early stage on their concern I regard to the opening up of sheltering homes for victims, most of which are still nowadays under their leadership.

In the nineties, other women victim support services started being developed, which include the support provided by phone at emotional and legal levels. These services started essentially focussing on the legal support to be provided, once most of the women did not have the financial capability of paying lawyers to provide for it for them, nor did they have the necessary knowledge on the lawful issues as well as the legal proceedings thereto.

The non governmental organizations carry out a work of continuity and/or complement to the one carried by the governmental intervention nowadays, above all because of being closer to the population. Some of them have a wider specialization within this



area, namely in what concerns the legal approach, carrying out analysis and studies on the application of the law and the consequences of its use.



## France<sup>27</sup>

The French representative has referred the relevance of the work carried out in France by the non governmental organization PHARE, which has been intervening in the problematic of domestic violence since 1993. It holds a sheltering centre to provide assistance to women victims for a period of 48 hours, having a lodging capacity of 10 beds. According to the representative, this short sheltering limit allows the regular movement of those lodged in it.

The victims are mostly referred to them by the police services, emergency phone lines, the Medical-Juridical Unit or urgencies and/or the various PHARE partners. Victims can be sheltered anytime during the night in urgent circumstances.

Under the care of the social workers, the sheltered women are to be provided a regular assistance, which very often implies a long term responsibility on the part of the social partners.

The intervening way of the PHARE acting parties is to be articulated in various steps: the sheltering, the immediate assistance and support, the regular support to be provided, the evaluation and the orientation. Firstly the aim lies on sheltering them and by talking to them head towards the assistance, the support and the follow up. The evaluation of a particular situation allows one to consider and carry out orientations provided by the partners in the position of being able to provide long term assistance.

After having been welcome by the PHARE team, the women are sheltered. A period of rest may often be necessary before having their first conversation with a social expert. This is the main reason why it is very often suggested *the interview* should take place the following morning. This first approach is a stimulus for the support and assistance service, once it allows the victim to verbalize her suffering, together with analysing in an attempt to understand the course of her life so far and consider a project for the future.

This active project mainly implies a continuity in the lodging facilities at PHARE's as well as an overall responsibility of the situation. Most of this times, this organization is where these women victims have their first opportunity to talk about the endured suffering without the fear of being judged. They may be able to pull themselves back, once they are away from the violent dominion of their companions. It happens to be the ideal moment to ponder on the situation, which also allows them to free themselves from the guilt, to recover their self-esteem and consequently act so as to make their rights prevail. PHARE is a neutral place where anonymity and protection are ensured.

This intervention is a first step whose aim is to dynamically show the victims a way out of a violent situation. Notwithstanding this fact, going back home would not be considered an irreversible failure. The intervening work, which is carried out with these women represents the beginning of an awareness process, which proves to be essential in what concerns women victims of marital violence. They are able to evaluate their capacity to be autonomous and to take a firm stand regarding their violent companions, as well as to get to know of their rights, therefore feeling less unprotected and isolated, should they or not go back home.

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<sup>27</sup> Extract from the interspersed reports presented by the French representative.

The duration of the interview varies according to the needs of the victims. There may be situations, in which victims may sometimes need to be listened to and get some sort of support for various hours. The whole team is therefore compelled to work in shifts. Depending on the project of life, several interviews may be needed.

Parallel to this assistance, support and evaluation of the situation, PHARE also provides a specific and regular type of assistance, whether it may be being with them throughout the proceedings or a material/financial type of assistance.

This type of work may be seen at three different levels, one being the duration of the provided assistance to the women victims, and the others in what concerns their *personal appraisal* and *the help* provided. This assistance, in fact, allows them to take a decisive step and make decisions regarding the violence, which has been perpetrated against them, so as to cut off the violence cycle. Assistance may be provided at various levels, such as going with them to medical appointments, police stations, court hearings or the UMJ.

Most of the women sheltered at PHARE left their homes in a quite abrupt way. This organization allows them to have an equipped lodging, which in a very specific way allows them to have a cosy and functional space. Apart from the furniture, earthenware and the bed linen they may also use every basic kitchen product available in the room they have been allocated to, not to mention some clothes for both adults and children, which they may find in the wardrobes of the rooms, should it be necessary.

For those, who are in a rather difficult financial situation, some sort of regular financing assistance may be provided, so as to ensure their survival until there is a definite answer on the part of those responsible to provide that assistance for them. In terms of partnership, the French representative has stated that the cooperation with the French police has been indispensable, apart from them being the one partaking element, which mostly requests support for them to be taken into PHARE. It is only up to some of the partners to have them referred to the Centre, particularly those prepared to handle situations involving victims in critical circumstances and/or without a definite heading.

Working in partnership with various intervening parties is particularly important, so as to carry out the adequate referrals to those organizations, which are in the position of providing long term assistance. Each situation requires the team to get in touch with the appropriate organization regarding the problematic issue and/or the project of life the victim may have envisaged. Sometimes a multiple number of contacts have to be carried out, which is due to the fact that some of the problems these victims have to face might not exclusively be the violence, but also other side problems associated with it.

## Italy<sup>28</sup>

The Italian representative has highlighted the fact that the only possibility of non governmental organizations intervening in the support of victims in regard to the intervention and prevention of domestic violence in Italy is at the legal oriented level. The victim support services may be provided by either specialized organizations, from governmental to non governmental ones, including the social services. In every emergency case, juridical, psychological support and sheltering are to be provided.

The psychological diagnose is fundamental, so as to be able to understand the personality of the victim and evaluate the truthfulness of the allegations. Because of this coordination of the investigation is required in what concerns the psychological evaluation being carried out by the services, having in mind to diminish the suffering of the victim. Under such circumstances, the judge may nominate a technical consultant to work together with the services involved in the case. The consultant is to be informed of it, so as to carry out the subsequent evaluation of the victim.

The Italian representative has also stated that as far as the profile of the victim support services in Italy is concerned, those which mostly deal with such situations work on a voluntary basis establishing local partnerships with local institutions, so as to optimize the existing resources. They are highly qualified to deal with the consequences of violence as well.

The victim support services provide specialized legal and psychological assistance to the victims of violence and often have sheltering homes of their own to provide for emergency situations, apart from being in permanent contact with local social services.

The Italian representative has considered the existence of a network of well structured centres of extreme importance, once it is in them that that these women end up facing their problems and getting the support of specialized professionals, who very often work on a volunteering basis. Prevention is also a consistent aim of the State oriented organizations. These services are generally provided by small organizations founded in the nineties and which have small teams of quite young people and quite a high number of volunteers (the average number is twenty per organization). It seems to her that there is a strong coordination between the various organizations: many of which belong to the national network and many of their internet sites are interconnected.

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<sup>28</sup> Extract from the interspersed reports presented by the Italian representative.

## Greece<sup>29</sup>

Given the fact that the term “violence against women” is not included in the provisions of law and there is no respective offence and no corresponding legislative framework, judicial and police intervention is impossible. When the victim asks for the intervention of the police for her protection, most of the times instead of helping the victim to file a complaint the police does not arrest the perpetrator and moreover dissuades the victim on grounds of saving the marriage.

There are no codes of moral behaviour and no guidelines for good practices. There is no data for the complaints that were filed because there is no respective offence and courts do not keep databases.

However, some seminars for police officers were held in the framework of the programme **DAPHNE** and the Minister of Internal Affairs announced just recently the realization of 39 more seminars by the National Center of Public Administration during the three-year period of 2003-2006.

Moreover, in the framework of the EU campaign of sensitizing the public about combating male violence against women realized by the European Committee during 1999 and 2000, the following actions took place in Greece:

- The **DAPHNE** Programme, carried out by the Committee and the Democratic Movement of Women (NGO), resumed to confront violence of men opposed against women.

The programme included specific actions in order to acknowledge the issue of male violence against women. In the field of further education there was a provision to train 10 police officers and ten judges. Furthermore, the conference “Zero Tolerance” was organized in Athens (January 1999) and resulted to the foundation of a network with the objective to tackle male violence against women.

Another initiative of the programme was a **publicity campaign** undertaken by the General Secretariat of Equality aiming to inform the public about the problem of male violence against women in the family. The agency that carried out the realization of the campaign was the Center for Research on Equality Issues.

Duration: 15/9/1999- 15/6/2000

Objectives of the Programme: To inform the public about the existence of this immense social issue and further more to incite women who suffer the abuse to file complaints.

### Principal actions

1. To display billboards in 150 spots in five cities (Athens, Thessaloniki, Patra, Volos and Irakleion). Period of advertisement: between the 1<sup>st</sup> and 15<sup>th</sup> of January 2000.

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<sup>29</sup> Extract from the interspersed reports presented by the Greek representative.

2. Press Conference held in the offices of the European Committee Delegation, on the 24<sup>th</sup> of January 2000.
3. The production and presentation of a TV commercial and a radio spot on national and regional broadcasting channels.
4. Production of printed informative material, specifically:
  - One –page leaflets in 6,000,000 copies that were sent inside electricity bills
  - Leaflets addressed both to the women victims and the public in general that informed/sensitized and offered practical advice for the way he/she could react (production of 10,000 copies)
  - Series of six billboards with the message “Break the barrier of silence”
  - Production of stickers with the message “Break the barrier of silence”
5. To set-up Info-kiosks in the four cities were annexes of the Center for Research on Equality Issues operates. (Duration from the 22<sup>nd</sup> until the 27<sup>th</sup> of May 2000.
6. The organization of a conference held in Athens between June 15 and 16, 2000 with the subject “ Breaking the barrier of silence- Domestic violence, a crime committed behind closed doors”- Photography Exhibition.

We have to stress that although the campaign was accepted by the media- TV and radio- exactly the way it was designed, their attitude towards women in general and towards violence has not changed. They continue to reproduce the stereotypes of the woman sex-object and to present almost every single form of violence as a means of entertainment.

### **Political and legislative measures**

In January 2000 the **Inter-Ministerial Committee** for combating all forms of male violence against women was formed.

The task of the Committee is to process and promote proposals, as well as to coordinate and realize actions against male violence inflicted on women in the following fields:

- Preventive measures, sensitization, awareness, education and training of the victims, the perpetrators, the public opinion and all the involved professionals (police officers, judges, social workers etc)
- Assistance and protection of the victims (reception and hospitality services in combination with psychological, medical, social, and legal support towards the objective of re-enforcement and social re-integration
- Confrontation of the authors/perpetrators (psychological, social, criminal etc)
- Legal protection (proposals to legislate, supplement and amend the existing legal framework that regulates and tackles male violence against women, through defining the criminal act, the sanctions and the procedures).



The Committee proceeded to draft a bill on prevention, repression, assistance and protection of the victims of domestic violence that has not been submitted to parliament by the competent minister and the text has not been announced yet.

Therefore we should expect no specific actions or interventions in the scope of domestic violence until this bill will be passed, published and materialized.

Recently, (30/05/2003), the Greek EU Presidency and the General Secretariat of Equality organized a meeting of **experts on domestic violence and illegal trafficking in women**. The participants of the meeting were experts from Greece and the other EU Member States.

During the proceedings of the meeting and in the framework of the DAPHNE programme the **Greek National Observatory** was founded, in order to materialize the project of the European Women's Lobby to establish a National Observatory in all 15 countries of the EU to monitor progress in combating violence against women. The Observatory can operate autonomously, with no dependency from the state and the agency responsible for its operation is the Network Combating Violence Against Women, with the participation of NGOs who meet the same objective in their goals.

The duties of the N.O. are to draft an annual report on violence against women as well as to press the competent state agencies to realize the announced measures adopted to tackle the phenomenon and its consequences. It is self evident that this national report shall include the omissions that may take place during the manifestation of the National Platform for Action.

### **Vision of the future**

### **Recommendations for each Member State and for the EU**

The following recommendations concern mainly Greece for the reason that there is a satisfactory supporting framework for women victims of violence in the other Member States, especially in the countries of the North. A good example of tackling domestic violence is given by Austria, which proceeded recently to legislative amendments (1994), according to which women-victims are released from the burden of proof.

### **Legislation-Justice**

- **Specific legislative regulation**, i.e. a spherical law that shall define on the one hand the term violence in all its forms, physical, psychological, sexual, oral, financial and on the other hand clarify the liability and competence of the prosecuting and judicial authorities, so that the prosecution of the offence and the intervention of the competent authorities shall be direct and effective.
- **The criminal prosecution for domestic violence should be put in force ex officio**
- **The foundation of a Family Court**, which shall have two departments (the department of civil procedure and that of the criminal procedure). The suggestion consists of this 'unification' and for the cases to be heard in a unified Family Court because: the cases of connected interests are heard from the same body, resulting to the economy of time, psychological and financial cost.

- **Family counseling**, (by psychologists, social workers, lawyers) with extensive competencies and responsibilities who shall realize a social survey and carry out a mediation role for the settlement of the dispute with a compromising solution and moreover offer material assistance to women financially dependent on their husbands.
- **Protection measures for victims of violence and their witnesses.** In Greece, a common situation is for victims and witnesses to be threatened with their life, their integrity or other duress. Especially those that testified as witnesses in domestic violence trials may be suited by the perpetrators for perjury or for defamation and for compensations of thousands of euros.
- To support the right for further **interventions in favour of the women-victims from governmental or not- governmental organisations.**
- **A model of good legislative practice is the legislation of Austria, which has established the immediate removal of the perpetrator from the family home.** Actually, the Greek Law includes a provision on the procedure of issuing a temporary injunction order as a security measure, but the judges barely apply it in cases of domestic violence.
- **Development of programmes like: “Home-Assistance”, “Health-care at home”** composed by health specialists and social workers, which will intervene during a crisis.
- In long-lasting marriages and **when the wife depends on the husband financially, the husband should deposit a life long alimony** and not only for three years according to the law that is now in force.
- The wife should have the right for a pension based on the years of the relationship.
- **Social security and welfare funds** which shall undertake the financial cost of the execution of the court decisions and the judgment alimony debts, in the case that the liable to pay is unemployed or indigent.

Accordingly, the social service shall represent the beneficiary and her rights and shall endeavour to collect the payables of the liable by means of the state provisions of collecting debts.

Note: In Greece, the phenomenon of women and their children that do not collect the monthly judgment alimony debts often takes place, especially if the liable has no assets or is not working in the public services sector. Usually they transfer their assets to others or ask for a false dismissal from their employers in order not to satisfy the claims of the beneficiaries (women and children). The present elaboration is justified due to the fact that the majority of women do not proceed to judge alimony, apart from other reasons (threats, guilt, ignorance) because they feel that their claims will not be met. Although the denial of alimony consists a criminal offence (Art. 358 PC), only a small percentage of women file a complaint against their ex husbands for the well acknowledged reasons.

- **Provision of free legal counseling** offered to women that lack the appropriate financial means. The cost of court expenses is unfortunately too high for a large percentage of women.

### **Counseling structures and support schemes**

- Foundation of shelters, refuges and apartments, in order to receive abused women and children. Greece has only a few shelters, while Northern Greece and Thessaloniki has none.
- Help-lines operating on a 24 hour basis
- Counseling Centers, composed by specialized and sensitized personnel on matters of violence.
- Emergency Services
- Constant on-line information services about violence against women
- Constant training and re-evaluation of all involved bodies (police officers, judges, medical personnel). As far as judges and public prosecutors are involved, special vocational courses should be incorporated in their curriculum, which should be taught by feminist lawyers, psychologists and sociologists. Unfortunately, there is a significant void of sensitization on matters of violence from the aforementioned professionals, despite the fact of a significant percentage of women professionals (almost 75%) in the body of judges.

## Conclusions

Having analysed the various reports, which have been presented by the representatives of the PENELOPE Project, one may notice that Portugal, Spain, France, Italy and Greece, being southern European countries, share a common worry in what concerns domestic violence, particularly in regard to the insufficient information on this problematic issue, together with the profiles and varying intervention ways at political, legal and social levels, aiming at minimizing its effects. This lack of information has immediate repercussions in the Southern part of Europe, which leads to a difficulty or even impossibility of envisaging an accurate and efficient intervention concerning domestic violence. The inexistence of accurate and detailed information on domestic violence issues is an obstruction towards not only the coordination of social and police oriented policies, but also in setting up a legal system, which may adequately respond to the needs of the victims of these perpetrated crimes at national, beyond national frontiers and European levels.

The development of understanding, intervening and control mechanisms regarding domestic violence is outstandingly insufficient in Portugal, Spain, France, Italy and Greece, which apart from a relative geographical, historical and cultural similarity, is reflected in the actual distance of approach between the northern and southern parts of Europe. Notwithstanding this fact it was possible to detect some differences of approach in what concerns the three major areas covered by this survey, in the five countries, which take part in the PENELOPE Project. These were - the legislative, ruling and administrative resolutions, the acknowledgement of the quantitative and qualitative profile of both victims and their aggressors, together with the type of support they were provided, as well as the specific prevention and intervention measures and strategies, which have been carried out regarding this issue. It should also be mentioned that some differences were noted in the above mentioned areas, which naturally affect the public information and awareness for such a problematic situation.

As in accordance with the information gathered in the various reports made by the representatives for the Project, we were able to identify a varying concept of domestic violence, which is mostly circumscribed to the existing legislative, ruling and administrative resolutions of every country involved. In Spain, Greece and France the concept of violence of gender exerted by men against women stands as the domineering definition of domestic violence. On the other hand, the concept of domestic violence in Portugal and Italy is understood as a wider sort of concept, once it is associated to violence perpetrated within the family unit, including therefore spouses and/or companions, children and old people. There has been a generalized evolution of the concept of domestic violence, so as not to consider it just a violence of gender and have it extensive to groups of particularly vulnerable victims, such as children, old people and/or anyone holding some sort of deficiency. There has been an increasing concern in France, Spain and Portugal regarding the migrant population and the domestic violence problematic, once it has been acknowledged this group is rather vulnerable. The recent changes which have occurred at legislative level in Spain with the reform of 29

September last, have also extended the range of predictable situations and victims, bringing them closer to the Portuguese and Italian conceptual approach.

The reports, which have been presented by the various representatives of the project, have also allowed us to remark that there is an enormous disparity in the legislative, ruling and administrative resolutions taken by each of the countries involved, not to mention the existing neglect as far as the Greek Law is concerned. Although the National Plans to fight domestic violence in Spain and Portugal have considered the direct intervention of various parties in such a problematic issue, the representatives of both countries have referred the numerous difficulties regarding the application and enforcement of the existing legislative, ruling and administrative resolutions in their own countries.

The recent Spanish legislative reform deserves being mentioned, as it necessarily brings about new and exigent challenges within the judicial system in Spain, as well as for the governmental and non governmental organizations involved in the victim support.

Domestic violence, particularly the one perpetrated against women is an extensive and meaningful phenomenon, whose dimension should be thoroughly analysed by means of adequate tools in statistical terms and field surveys. In Italy there is no data on the profile of the victim and the aggressor, nor any reference to the type of support they were provided with, because of a Law regarding the secrecy of the information. In Greece there is no data gathering as well, though the Greek representative has mentioned the existence of some local piloting attempts. All of the other countries involved in the PENELOPE Project stated the existence of statistical data gathering, either carried out by police authorities and/or non governmental organizations, particularly those dedicated to the problematic issues affecting women and/or women victims of crime. Surveys and opinion polls have therefore been carried out, aiming at defining the profile of both victims and aggressors within the domestic violence context.

The fact that the gathered statistical data in France, Spain and Portugal differs according to the organizations, which have assembled the information at national level, has been highlighted, which mostly has to do with quantitative figures, depending on the different approaches, ways in which the information was collected, whom the informative questionnaires were addressed to (for instance, either women, who officially complained to the police or those who requested the assistance of some supporting services). Despite the differences provided by the various sources of information, the representatives of these countries stated that an increasing number of domestic violence cases have been registered, though it may be the consequence of a wider spread information and/or higher degree of awareness on the part of the victims of domestic violence, together with a change on the attitudes of people towards the social acceptance of the behavioural attitudes of the aggressors, and not necessarily mean there has been an effective increase of domestic violence in the above mentioned countries.

One of the questions which were raised by the representatives of the project was the fact that none of these countries seem to have carried out any studies on the repeated

victimization and/or recidivism in what concerns domestic violence, irrespective of it being an essential variable, so as to be able to further understand this social phenomenon. Attention was called towards the lack of information concerning personal, professional and social consequences of domestic violence, though the French representative has made a slight reference to it.

The importance of the surveys and opinion polls covering the population in general has also been highlighted, namely to identify the so called outstanding numbers, that is those figures, which refer to non disclosed or denied cases of domestic violence. Bearing in mind the inexistence of the above mentioned figures, the possibility of devising an accurate profile of both victims and aggressors in the Southern part of Europe has been found invalid, the same applying to the type of support they have/not have been provided with.

In what concerns the existing prevention and intervention measures as far as domestic violence is concerned, the representatives of the countries involved in the PENELOPE project have made known that domestic violence being a social phenomenon requires the State, autarchies and society in general to provide the answer through the local communities, social solidarity institutions, non governmental organizations and/or of public utility, which have the social aim of providing assistance to women and/or namely women victims of crime.

The intervening actions of the non governmental organizations has been praised, whether they are involved in feminist movements or in the protection of victims, particularly because having little direct or indirect funding from the State and having a limited decision taking at policy level. Although the intervention of these organizations is mostly to occur at local or regional level, Portugal and Italy have also highlighted the efforts made by a small number of them in the development of activities covering a wider geographical area, particularly at national, beyond national and even European level. Particular attention was called to the setting up of an understanding between the various types of organizations in Italy, namely regarding the development of national cooperation mechanisms. It assumes particular importance the fact that Portugal and France, being the only two countries, which have national services to provide support for victims of crime, have been carrying out studies on the implementation practicability of such national structuring to be set up in the short term, with the financing of the European Forum of Victim Support services.

Reference to the existence of National Plans to fight domestic violence has been made by the representatives of Spain and Portugal. The existence of a coherent policy orientation so as to approach such a phenomenon was highlighted as being particularly positive, bearing in mind the fact that it gives consistency to the reinforcement of the project and implies coordination among the relevant entities involved. Some difficulties were mentioned in regard to the practical application of the referred plans, though these were felt in a stronger way in Portugal than in Spain. The representatives of these two countries have also both referred the existence of observatories regarding domestic violence in their countries.



In spite of the existence of National Plans to fight domestic violence and observatories focussed on this social phenomenon in Portugal and Spain, it has become notorious that all the southern European countries are confronted with common difficulties, particularly in what concerns the financial and material resources, namely lacking specific supporting centres to deal with such a social problematic, as well as and not having the necessary number of specialized professionals to ensure the best quality of services to be provided to the victims of domestic violence and furthermore the inexistence of training and good practice guides to be used by the various direct and/or indirect operating parties involved in this problematic.

The different representatives have also referred the carrying out of numerous interventions as well as information and awareness campaigns on domestic violence, covering a wide geographical area and conveying messages such as *come forward*, *break the silence* and/or *not to talk implies to conform*, or still *your wife is not your possession, if you use violence who shall be the one to leave home* and/or *no one has the right to maltreat anyone*. These were aimed at different targeting groups, such as victims or potential domestic violence victims, those directly or indirectly intervening in the problematic issues amongst others. Some of the representatives have mentioned the inclusion of some of this domestic violence informative and awareness campaigns in the overall European campaign *Tolerance zero: Violence against Women*, though it has also been referred that this did not have the expected impact in all the countries, which have adhered to this initiative. As far as those who are directly or indirectly involved in this problematic issue, countries like Spain and Portugal have mentioned the carrying out of initial and continuous training with the aim of improving the services provided to the victims of these crimes.

It should be mentioned that some representatives like the Greek one have highlighted the fact that the intervention within this area is set within legislative, ruling and administrative schemes in every of the involving countries, and this may very often limit the intervening level of those involved in cases of domestic violence. It has also been mentioned that there has been a significant development on the part of the intervention carried out by the police authorities in the last years, in what concerns a higher qualified approach to this social phenomenon.

After having presented a brief view of the ongoing situation regarding domestic violence in Southern Europe, it is pertinent enough to point out the main recommendations which have been made by the PENELOPE project.

The first point raised by the representatives of the countries involved has to do with the reduction of the asymmetries shown to exist amongst the various countries at local, regional, national and even beyond national level, so as to ensure the safety of the victims of violence on one hand and to reinforce the control mechanisms of the aggressors on the other. To achieve this, the setting up of a synergy at different levels may be required; to set up and/or activate partnerships between the formal and the non formal systems which socially deal with this phenomenon; to coordinate the various types of approaches aimed at supporting, protecting and reinforcing the security provided to the women victims and the control of the aggressors. The optimization of this

synergy may be obtained with the implementation of a European plan to fight domestic violence, within the context of the European Commission, probably under the leadership of the General Directorate of Justice and Internal Affairs (DGJAI). This step would reinforce the idea of the European Union as a space of freedom, safety and justice, as in accordance with the Treaty of Amsterdam (May 1999) and the conclusions drawn at the Tampere European Council (October 1999), as an answer to the needs of setting up minimum standards to guarantee the protection of victims of domestic violence, namely in what concerns their access to justice and rights to be compensated for any damages, not disregarding the payment of the legal fees and the setting up of national programmes to finance such measures, whether they may be public or governmental. A common plan to fight this social phenomenon could in a way be understood as an additional guiding tool to further reinforce the efforts to find out solutions towards the fighting against domestic violence and therefore be later adopted and reinforced as codes of good practice, the best actuating protocols and procedures of high quality and efficiency.

An European Plan to fight domestic violence could eventually lead to the setting up of National Plans in every member state, particularly the states located in the southern part of Europe, as well as the new member states, whose entrance has already been approved by the recent proposal of extending the number of European Union members, together with contributing towards the minimization or significant reduction of the existing differences of the 15 actual Member States, at the development level (as from May 2004).

The European plan could, with particular relevance to the domestic violence issues, contribute in an unprecedented way towards a wider implementation within the frame of decision taken by the Council on 15 March 2001, regarding the standing of the crime victims in Criminal Proceedings. In accordance with what has been said, it should be further added that the adoption of intervening programmes may in itself not be sufficient to guarantee the capability to suppress domestic violence all together, so a strong and coordinated support sustained by a criminal justice system is to be envisaged. At this particular level, it should be emphasized that actions aiming at preserving the rights of the victims must be set within a legal framework, namely in what concerns the criminal proceeding, focussing on: a) ensuring an adequate protection of one's private life as well as safety; b) having the police and criminal justice systems ensure the assistance, support, counselling, participation, mediation and protection (namely when confrontation with the aggressor or defendant, and/or retaliation threats are involved) to the victims throughout their case proceedings, not with the strict understanding of the notion, but in a much wider sense of what every intervening jurisdiction has to do, so that a better articulation may be carried out by the intervening parties regarding the support to be provided to the victims of crime.

A European plan to fight domestic violence may also lead to the setting up of community oriented programmes, which may alter the concept of violence and imply the development of actions towards much more harmonious and less violent focussed communities, aiming at overcoming fragmentation and the dynamics of the power. This

was the idea behind coming forward with the promotion of the setting up a group of the southern European countries, and following what has been happening in other countries pertaining to the European Union, to set up a network of domestic violence victim supporting Commissions or domestic violence victim supporting Force, understood as local and regional platforms for the various community entities towards the resolution of the domestic violence problem and aiming at congregating all of those entities within a local community, so as to have a sole intervening strategy to fight domestic violence.

The main objectives would therefore be the development not only of the knowledge on the domestic violence problematic, but also a better articulation among the intervening entities, together with the definition of domestic violence prevention strategies in the local/regional communities.

Together with the development and the implementation of the above referred measures, another mechanism to eliminate and/or at least reduce the identified asymmetries in the various European Union member states, namely those located in the southern part of Europe should be devised, with for instance the setting up of domestic violence observatories at both European and national level, corresponding to the need to evaluate the actual guidance, practices and proceedings and simultaneously aiming at identifying mistakes, which may have been made and setting up objectives concerning the future action.

Another of the recommendations put forward so as to fight this social phenomenon was to carry out a thorough and consistent analysis, as well as to understand the evolution of domestic violence in the European union, based on three approaches: a) to study the nature, extent and intensity of the apparent criminality (the evolution of the global criminality; the major category tendencies; the origin of facts liable to being penalized: delinquency age groups; criminality as a potential and predominantly urban phenomenon; the apparent causes of criminality); b) to study the aggravation of the insecurity feeling (the identification of fear; the explanation of feeling uneasy; the reactions to fear); c) to study the conditions so as to attenuate the feeling of insecurity (dissuasive means; protection measures; informative actions). It has also been considered fundamental to gather and note down statistical elements on domestic violence in accordance with a standardized national criterion, complying with standardized patterns as approved by the European Union Council of Ministers in December 2002, articulated with the institutionalization of the data gathering, based on standardized forms as devised from the above mentioned indicators to be followed by every entity working with victims of domestic violence. The need to promote the carrying out of studies on costs at the human, social and material level has also been highlighted, together with the carrying out of investigation projects so as to identify the cultural factors which have been perpetuating it.