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“Love is crazy, love is blind¹” – The slow and fragile recognition of
psychological violence against women in intimate partner relationships in
Europe.

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Abstract

Violence against women seems to be a serious problem only when associated with mass murders and rape in time of armed conflict, femicide, honour crimes and other brutal treatments inflicted to women. Although those forms of violence are significant, we have to bear in mind that in all countries, women are also subject to daily violence just because they are women. In the majority of cases, this violence takes the shape of psychological violence and is inflicted by the closest and more loved person: the partner. Whether he is an ex-husband or a current non-cohabitant partner, all those privileged individuals are inclined, because of patriarchal views and stereotypes, to exert on their partner an invisible violence making the victim lose all self-esteem and live in a climate of constant fear. Psychological violence often portend physical violence, when not used simultaneously. European people are not spared: such violence infiltrates all economic and geographical spheres without any exception.

Taking into account this reality, the Council of Europe considered necessary to harmonise the legislation of the Member-States on the topic, asking for a global criminalisation of acts of violence against women. The Convention on Preventing and Combating Violence against Women and Domestic Violence, not yet into force at the time of this thesis, has the innovative specificity of being legally-binding. Although this Convention contains a provision condemning psychological violence, ratifying States have the possibility to reserve the right to provide for non criminal sanctions. Therefore, after analysing the current legislative developments in Spain, France and Sweden on the matter, I will emphasise the importance of having a criminal offence condemning psychological violence nowadays in Europe.

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Abbreviations

CAHVIO	Ad Hoc multi-disciplinary Committee on Preventing and Combating Violence against Women and Domestic Violence.
CEDAW	Convention on the Elimination of Violence against Women.
CEDAW Committee	Committee on the Elimination of Discrimination against Women.
CoE	Council of Europe.
DEVAW	Declaration on the Elimination of Violence against Women.
ECHR	European Court of Human Rights.
EConvHR Freedoms	Convention for the Protection of Human Rights and Fundamental Freedoms.
GREVIO	Group of Experts on action against Violence against Women and Domestic Violence.
I-A Court	Inter-American Court.
ICCPR	International Covenant on Civil and Political Rights.
UN	United Nations.
VAW	Violence against Women.

1 Introduction.

In all times, the woman has been on the one hand the one from whom the sin arises, the one seducing and tempting the brave and good man, the one taking the man apart from the good path and from his family and friends, while on the other hand also the care-giver, the one who gives man love when he is not self-confident, the mother who offers tenderness. Thus, the woman is simultaneously the sinner and the lover.

As Bourdieu emphasises, masculinity is built in rejection of femininity² that is “a negative entity, only defined by her faults”.³ This opposition between masculine and feminine is reflected in the deeply anchored public and private dichotomy.

The consequence is that the private sphere is allocated to women and the public sphere is men's space. As the private sphere is hidden from view, and men are usually physically stronger than women, this sphere has also become the space where the man is allowed to exert his “power” and wisdom on the women and children of the house. This power was known and recognised in the Roman times as *patria potestas*, the basis of patriarchy, and is still legitimate in most societies today. From this power, the man is entitled to correct children and women, and will always be right in most cultures even nowadays. As Bourdieu states, “*the strength of the masculine order appears in the fact that it does not need justification: the androcentric vision imposes itself as neutral and does not need to be enunciated in discourses aiming at legitimising it. The social order operates as a huge symbolic machine tending to ratify the masculine domination on which it is based.*”⁴ As we will see throughout this thesis, such inequality between men and women too often justifies that men inflict violence on women.

After centuries of passivity regarding this huge problem, at the end of the 20th century international actors started to give it importance, and in 2011 the Council of Europe issued the first legally-binding treaty condemning violence against women: the

² Bourdieu, 1998, pp. 41, 43, 74, 78 and 90.

³ Idem pp. 35, 45 and 52.

⁴ Idem p.22, my own translation.

Convention on Preventing and Combating Violence against Women and Domestic Violence. However, reservations on the criminalisation of psychological violence are allowed by article 78 of the Convention. Thus, this thesis is aimed, after a brief introduction on the Convention and a deep analysis of the nature of psychological violence, at looking at the current legislation and practice in three countries (Spain, France and Sweden) to emphasise the importance of criminalising psychological violence together with other forms of intimate-partner violence.

1.1 General background: the international community and violence against women.

The recognition of violence against women under international law has been slowly put into the international community's agenda. Before the 1990's, violence against women was characterised as being of national matter⁵, despite the fact that the United Nations (UN) Decade for Women (1976-1985) had been put in place and some instruments addressing women's rights were issued. Also special forms of violence against women were identified as human rights violations⁶ such as rape, prostitution and forced marriage.

The global women's conferences held in Mexico (1975), Copenhagen (1980), and Nairobi (1985), as well as the adoption of the CEDAW Convention in 1979 marked the enhancement of women's rights in the international context. However it is noteworthy to recall that although the CEDAW Convention stands as the principal women's right international treaty, it contains no explicit mention of domestic violence. To fill this gap, two general recommendations were issued by the CEDAW Committee in 1989 and 1992. These general recommendations, No. 12 and No. 19, state that since violence against women is a form of sex discrimination, it should be included under violations of women's equality.

The Nairobi Forward-Looking Strategies for the Advancement of Women recognised

⁵ Edwards, 2011, p.7.

⁶ Idem p.8.

explicitly the violence women face everyday, hence particularly domestic forms of violence.

After the 1990's various efforts have been taken to give women's rights wider recognition and protection. The turning point was most likely the 1993 World Conference on Human Rights in Vienna in which women's rights were fully recognised as human rights, as later recalled by Hillary Clinton during the Beijing Conference.

Therefore, this embodiment in the classification of human rights officially granted the following specificities: universality, inalienability, and indivisibility, interrelation and interdependence with the other human rights. The Vienna conference, witnessing the strength of civil society that efficiently gather and lobby for the protection of women's rights, concluded in the drafting of the Vienna Declaration on Human Rights.

Consequently, the UN Declaration on the Elimination of Violence against Women (DEVAW) was adopted, and a Special Rapporteur on Violence against Women was appointed for the first time.

In 1995, at the Fourth World Conference, the Beijing Declaration and Platform for Action were adopted by 189 countries, calling for State accountability in the prevention and elimination of violence against women⁷. In 2000, the Security Council Resolution 1325 on women and peace and security requires the creation and implementation of special measures from States to protect women and girls from gender-based violence in situations of armed conflict.

At the regional level, some treaties specifically address violence against women. Three of them are worth mentioning:⁸ the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)⁹; the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa¹⁰; and the 2011 Convention of the Council of Europe

⁷ UN Secretary General, 2006 (a), p.12.

⁸ Idem, p.17.

⁹ It came into force in 1995, after being ratified by 28 american countries

¹⁰ It came into force in 2005, after being ratified by 15 african countries.

(hereinafter: the Convention), analysed in this thesis.¹¹

1.2 The Council of Europe Convention on preventing and combating violence against women and domestic violence.

1.2.1 The final aim: substantive equality between men and women.

The Convention is built on the idea of promoting substantive equality between men and women (art 1.1b)), which should be understood as providing the same opportunities to both sexes bearing in mind their differences. Effectively, the realisation of the *de jure* and *de facto* equality is a key element of the prevention of violence against women, as pointed out in the Preamble of the Convention.¹² As essential measures, article 4.2 of the Convention thus calls for the adoption of the principle of equality in the national constitution or “appropriate legislation”, in conjunction with national standards as a means of prohibiting discrimination.

In order to reach this equality, an indispensable step is to trigger the evolution of mentalities that grant genders dissociated specific characteristic and roles within the society. Therefore, one widespread way of discriminating women is by abusing their physical and psychological weaknesses, that exist because of biological features and, above all, gender stereotypes.

Gender is defined in the Convention as “*socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men*”

¹¹ Not into force yet. In may 2012, it was signed by 18 european countries.

¹² Preamble.

(art 1.1.c). From this definition we can extract the evolving nature of the notion of gender, which refers to a “given society” and thus differs over time and between cultures.

The Convention together with other instruments, recognises the *structural nature of Violence against Women (VAW) as gender-based violence, and that Violence against Women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.*¹³

1.2.2 Definition of violence against women.

The most accepted definition of **violence against women** was set by the UN in the 1994 DEVAW, and used as such in the Council of Europe Recommendation Rec(2002) 5 of the Committee of Ministers to member states on the protection of women against violence. It is defined as:

any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. (art. 1)

The CEDAW General Recommendation No. 19 (1992) provides the following definition of **gender-based violence**:

violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty (section 6)

¹³ Idem.

The article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa defines **violence against women** as :

all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war;

The Convention gives in its article 3, the following definitions:

Violence Against Women *is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life (art 3a))*

domestic violence *shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim (art 3b))*

gender-based violence against women *shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately (art 3d))*

What we can deduce from a comparison of the definitions, is a decision by the authors to stick with the most universal definition, enhancing its breadth by including a form of violence only referred to in the African Protocol, that is, the economic harm. The explanatory report makes clear that this type of harm can be related to psychological violence¹⁴.

This thesis deals particularly with the kind of violence against women that is intimate-

¹⁴ Explanatory Report, section 40.

partner violence against women in the private sphere. The Explanatory Report put it within the “ domestic violence ” definition and inside it, distinguishes it from inter-generational violence¹⁵ :

Domestic violence as intimate-partner violence includes physical, sexual, psychological or economic violence between current or former spouses as well as current or former partners. It constitutes a form of violence which affects women disproportionately and which is therefore distinctly gendered. (section 42)

This thesis will focus on psychological intimate-partner violence that is the broadest form of violence on women and the most underestimated.

1.2.3 The right for women to live free from violence in the domestic sphere: a gender-biased human right.

Thus, the Convention recalls that the right for women to live free from violence, that is not set up as a new right in article 4.1 but instead re-expressed more clearly, is a human right that States have an obligation to protect and promote. Effectively, the Explanatory Report in its section 47 states that “*The provisions contained in Articles 3 [definitions] and 4 [fundamental rights, equality and non-discrimination] do not create any new rights but clarify existing human rights*”. Regarding this general obligation, States are recalled their responsibility to guarantee human rights not only in the public sphere but also in the private sphere¹⁶. This responsibility is linked with the implementation of a number of international and inter-regional instruments and case-law setting due diligence¹⁷, and positive and negative obligations of States to respect, protect and fulfil human rights. As a negative obligation, the State should refrain from interfering with and committing any positive actions prejudicing the right of women to live free from violence, and should abolish past measures that could adversely affect this right.

¹⁵ Idem, section 41.

¹⁶ As set in the General Recommendation No.12.

¹⁷ See Velasquez Rodriguez v Honduras (I-A Court, 1988), Opuz v Turkey (ECHR, 2009).

The obligation of due diligence must be taken as an obligation of means¹⁸, that is, the State should do its best to use all possible measures at its disposal to “prevent, investigate, punish and provide reparation for” acts of violence against women perpetrated by non-State actors (article 5.2).

1.2.4 The Convention: an innovating tool.

The Convention presents the innovating characteristic of being a regional legally binding instrument for Member States which ratified it. Also it is important to note that even this instrument is directed primarily to Council of Europe Member States; its article 76 allows the accession of non-regional members.

Why was this instrument established? It expands and complements other regional standards protecting victims of gender-based violence. Moreover it is comparatively more comprehensive and, as above-mentioned, its geographical outreach is not limited. Unlike CEDAW the Convention presents the advantage of explicitly prohibiting violence against women and even more specifically in the case of an intimate relationship.¹⁹

Since other treaties already focus on women's rights, would the Convention not be considered the fruit of a dangerous proliferation of treaties creating confusion and putting in danger the rights thus multi-protected?

To answer this legitimate question, it is worth recalling the determined scope of the Convention, as well as its geographical area of application. Regarding the possible repetition with the CEDAW, it is important to understand that the Convention has a more focused approach on violence and is meant to be legally-binding, introducing a specific monitoring mechanism to ensure a good implementation, namely the Group of experts on action against violence against women and domestic violence (hereinafter GREVIO).

¹⁸ Explanatory Report, section 59.

¹⁹ Amnesty International, 2004, p.14.

Therefore, the Convention shows at least three important stakes. First, its mere existence highlights the idea that serious grounds pre-existed in all Member States and needed to be addressed at an upper level, since Member States do not seem to face adequately the problem of gender-based violence. Second, the Convention imposes ratifying States to take legal measures addressing issues of violence against women. Third, the Convention introduces a harmonised framework of measures and definitions, which allow an efficient struggle since the resulting national measures implementing the Convention would be easy to control and monitor.

This Convention adapts some characteristics of the Convention of Belém do Para, the most important being its binding power and the fact that it is a treaty exclusively focused on violence against violence (and was the only one until 2011). However it is worth noticing that neither the US nor Canada have ratified it, that importantly reduces the geographical and numerical application of the Convention, comparing with the original prevision.

As of the prospective implementation of the Convention, it is obvious that a political will of the country to ratify it is the basis of the start up of the drafting of national measures and of the monitoring mechanism designed in the Convention. Effectively, political will is the motor for a practical implementation of instruments. However, the ratification step may also give rise to an insufficient implementation of the right for women to live free from violence, as some countries decide to make reservations. Effectively, art 78 provides that reservations are allowed in specific cases concerning 9 articles of the Convention.

The existence of the GREVIO is a strong tool to ensure the good implementation of the convention as stated the Task Force in its final report: *“It is generally recognised that the effectiveness of international instruments can be measured by the effectiveness of their **monitoring mechanism**. [...]independent human rights monitoring mechanisms are very well known in the framework of the Council of Europe and enjoy high credibility – as a result of the independence and impartiality of their members and due to the quality of their reports and conclusions resulting from the monitoring procedure”*²⁰

²⁰ Final Activity Report, p.80.

As above-mentioned, the Convention took its inspiration from other existing instruments protecting women's rights. Before the drafting up of a Convention for the Council of Europe member-states, those rights were mostly protected on a case-by-case basis by the European Court of Human Rights on the ground of articles 2, 3, 4, 5, 8 and 14 ECHR which promotes the right to life, the prohibition of torture, the prohibition of slavery and forced labour, the right to liberty and security, the right to respect for private and family life and the prohibition of discrimination. Those rights set a basic protection of victims of violence against women, but do not ask for the adoption of specific national policies and measures at the state level. In its recent case law, the Court clarified the nature of positive obligation for the States to protect women from violence exerted by individuals²¹.

To this regard, we can mention the important cases of *M.C. V Bulgaria* (2003), *Kontrova v Slovakia* (2007) and *Opuz v Turkey* (2009). In the latter, The Court found for the first time a violation of article 14 prohibiting discrimination, since the domestic violence faced by the applicants were gender-based and encouraged by discriminatory judicial passivity²². Therefore this case law participated in granting women a wider protection against violence by more strictly defining the obligations upon States. Considering the elaboration of the Convention itself, several data have to be reminded. When the Council of Europe issued Recommendation Rec (2002) 5 on the protection of women against violence, it proposed a brand new comprehensive strategy for the prevention of violence against women and the protection of victims in all Council of Europe member states.²³ In May 2005 in Warsaw, the Council gathered and decided to launch a large-scale campaign to combat violence against women, including domestic violence, carried out by a special Task Force. The campaign was carried out at the intergovernmental, parliamentary and local levels. The Task Force concluded in its final report the need for harmonised standard in that field. In parallel, the Parliamentary Assembly played an active role in the drafting of the Convention, repeatedly calling for legally-binding standards in that field.²⁴

²¹ *Idem*, p. 22.

²² Fact sheet violence against women, Council of Europe, April 2012.

²³ Explanatory Report, section 9.

²⁴ *Idem*, section 9.

Consequently, the Committee of Ministers set up in 2008 an Ad Hoc multi-disciplinary committee (CAHVIO) to write up a legally-binding instrument. The draft was approved by the CAHVIO in December 2010, and in March 2011 the Parliamentary Assembly gave its opinion on the text.

As regards the applicability of the Convention, art 1 sets the framework and goals, art 2 explains the scope, art 3 provides definitions, and art 4 inserts the Convention within the broader context of struggle for equality and against discrimination. As of the scope, art 2 mentions that the Convention is applicable to all victims of all forms of violence against women and domestic violence, in times of peace and armed conflict. The article therefore prescribes the applicability of the Convention during armed conflict “as complementary to the principles of international humanitarian law and international criminal law”.²⁵

1.3 Introduction to the countries chosen.

I will focus my study on three different European countries that are: Spain, France and Sweden, all of which I have had the opportunity to live in for a longer period. All these countries have in common to be ruled by the continental legal system, based on written law. Studying them will provide a comparative idea of the progress made on gender-based violence throughout Western Europe, and the way in which these different cultures tackle a same problem, seeing in the near future their systems unified by a regional convention.

I will try to prove that even in the countries recognised in the collective conscience as the most equalitarian, the problem of domestic violence however affects them in a relatively important proportion nowadays, and myths have to be fought.

To begin with, **Spain**, in order to challenge its deep “machismo” culture is conducting a war to violence against women by having set strong judicial and legal measures with the 2004 Organic Law and raised awareness among the population

²⁵ Explanatory Report, section 38.

through large-scale advertising campaign denouncing domestic violence. This effort has been led with panache these last years by the former socialist government of Jose Luis Rodriguez Zapatero, “promising to shed Spain’s reputation as an ultraconservative and male-dominated society”²⁶.

Then, **France** is a country full of contradictions. It is known as the country of human rights and one of the most important places of feminism (we could make some references to Olympe de Gouges, writer of the Declaration of the Rights of woman, and Simone de Beauvoir). However, at the same time of bringing the idea of equality amongst men in the 1789 Déclaration des Droits de l’Homme et du Citoyen, the French revolutionaries excluded women from citizenship in the Constitution, and the political rights enjoyed by women the higher layer of society were removed: “women were represented as anti-citizens, lacking in rationality, sense, individuality, egotism”.²⁷ Olympe de Gouges denounced that “nature provided no model for the distinctions that men invent” and in doing so, she “erased the difference of sex in many ways”²⁸

K. Nousiainen considers the actual dichotomy between genders “is rather to be found in the Enlightenment equality principle than in the genesis of inequality in biological sex”²⁹.

The usual very low rate of presence of women in the political decision-making arena, which gave the country a high gender gap score and the recent scandal in the media linked to Dominique Strauss-Kahn remind us that French women are still far from enjoying real equality.

In May 2012, two events which eloquently illustrate the French contradiction took place: on the one hand, the Conseil Constitutionnel giving rise to a dangerous legal vacuum by deleting the “too broad” definition of sexual harassment³⁰ and, on the other hand, the new socialist government presenting a historical equalitarian distribution of

²⁶ Minder, 2011 (<http://www.nytimes.com/2011/02/24/world/europe/24iht-spain.html?pagewanted=all>).

²⁷ Nousiainen, 2004, p. 200.

²⁸ Idem p.202.

²⁹ Idem p.202.

³⁰ French Conseil Constitutionnel, Press Release, (<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-240-qpc/communiqu-de-presse.105619.html>).

ministerial positions between women (17) and men (17)³¹.

Having said that, it is worth noticing that Spain and France share the common feature of having a figure of women victims of domestic violence that is comparable³².

Finally, **Sweden's** fame as being a Nordic country is to be one of the most equalitarian country all over the world: “The self image of Sweden is that it is the most equal country in the world”, according to Eva-Maria Svensson, professor of legal science and philosophy in Gothenburg University, “the Swedish self-image corresponds to the image that the international community now has of the country” she follows.³³ It is worth noting that “Advanced gender equality and faith in a state-regulated social welfare are two hallmarks of the Nordic countries”³⁴. Their cultural and religious Lutheran heritage brought in everyone's mind the “jantelag” (law of people) forbidding each Scandinavian person to think they can be better, smarter or more exceptional than anyone.³⁵

Nonetheless, although “Nordic women today enjoy unprecedented equality in most areas of life [...] Still, compared to men, even Nordic women are not equal to men in terms of income, power, protection of integrity and value”³⁶. Eva-Maria Svensson goes that far to affirm that “In reality Sweden is one of the most sex-segregated countries in Europe and its legal tradition one of the most dogmatic and closed one”³⁷ and back in the early 1960's, Sweden shared with the remote vision of women as reproductive objects and servants of the human race³⁸.

The key measure to the independence of Swedish women has been the economical one

³¹ Composition of the new French Government available at: http://www.lemonde.fr/politique/infographie/2012/05/16/le-gouvernement-ayrault_1702547_823448.html ; Léchenet, 2012 (http://www.lemonde.fr/election-presidentielle-2012/article/2012/05/16/17-femmes-7-trentenaires-le-gouvernement-ayrault-en-chiffres_1702501_1471069.html).

³² Le Monde, 24 April 2004, *11% des espagnoles sont victimes de violences conjugales*.

³³ Kouvo, 2004, p. 222.

³⁴ Nousiainen et al (a), 2001, Preface, p.ix.

³⁵ In fact, I could testify that it is the country where I lived where less disparities between men and women could be felt in the everyday life and this equality goes that far that women are the one that usually do the first step and that gentleman and swedish man would sometimes even be antinomic.

³⁶ Nousiainen et al (b), 2001, p.11.

³⁷ Svensson, 2001, p.71.

³⁸ Nousiainen et al (a), 2001, p.263, quoting Eva Moberg.

provided by the welfare State through³⁹ the tripartite maintenance system, as part of the ideology of self-sufficiency that arose in the 70's.

To illustrate the disparities between those countries, we can refer to a gender gap index. According to the 2011 World Economic Forum's Global Gender Gap Report, the ranking grants Sweden the 4th position, Spain the 12th and France the 48th. The score is calculated upon the following criteria: economic participation and opportunity, educational attainment, health and survival and political empowerment. This index measures gaps in gender equality based on outcome variables⁴⁰. What we can extract of these scores is that those three countries have room to improve the gender equality, and Sweden is closer than France to reach its best.

The universality of gender-based violence is pointed out by Amnesty International in one of its reports: “Men’s violence against women differs from one country to another as to its prevalence and specific manifestations, but in Amnesty International’s view, this is a question of a difference of degree rather than a difference in nature.”⁴¹ Hence, the priority should be focused on addressing the root causes of violence against women, as highlighted by the Special Rapporteur of the country mission in Sweden.⁴²

Those three countries have signed the Convention at the date of this paper. As member States of the Council of Europe, they have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (EConvHR). In the UN instruments regarding women's rights, they also have ratified the CEDAW and its optional protocol ensuring the recognition and competence of a monitoring body, the Committee on the Elimination of Discrimination against Women (CEDAW Committee), to consider complaints dealing with non-compliance of the provision of the CEDAW, as a monitoring body.

³⁹ Svensson, 2001, p.75.

⁴⁰ Haussman et al, 2011, pp. 3-4.

⁴¹ Amnesty International, 2004, pp.11-12.

⁴² UN, Human Rights Council, 2007.

1.4 Overall purpose and research question.

The purpose of this thesis is to evaluate whether and how the Convention will bring a real contribution to the eradication of psychological violence in the European States. Specifically, this paper is first going to analyse the impact of psychological violence by an intimate partner on women and to highlight the need for States to react in an appropriate way against its occurrence in order to reach equality between men and women. Then, after an analysis of the the laws preventing and criminalising psychological violence in Spain, France and Sweden and their respective results, I am going to show how important it is to insist on such penalisation in the 2011 Council of Europe Convention. By showing such relevance, I will demonstrate that culture is not an obstacle, since three opposite European countries were able to legislate on psychological violence. I will prove that their choice has the double effect of granting psychological well-deserved seriousness and of preventing men from exerting this form of violence and therefore general violence against women.

My research questions would therefore be: Are there too many country-specificities that would prevent from an European harmonisation in the field of domestic violence, and psychological violence in particular? Is the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence bringing adequate and efficient tools to fight psychological intimate partner violence against women in Europe? To what extent is the possibility of reservation an obstacle to the eradication of psychological violence? Why is it important not to allow reservation on the criminalisation of psychological violence in the Convention?

1.5 Methodology.

My thesis is built around psycho-sociological analysis, and traditional legal method. I also widely refer to feminist theories and developments.

I am focusing on the analysis of the Convention, and I also look at other international conventions and national legislation in a comparative purpose. I also analyse some case law, but I would like to raise here the difficulty that I met in finding Swedish case law and Swedish national reports in English.

I am also using UN, Council of Europe and European Union documents as well as country studies from different sources.

In order to make an objective paper, I rely on figures provided by statistics and reports from different authorities and organisations.

2 The concept of psychological violence.

2.1 The concept.

2.1.1 A key part of domestic violence.

Psychological violence is a widespread and prevalent form⁴³ of gender-based violence against women that has the particularity of being at the same time a self-destructive form of violence, the starting point in the cycle of violence and the element that secures and reinforces other forms of domestic violence.

2.1.1.1 An evolving definition.

The **definition** of psychological violence must be clear in order to be recognised as easily as possible and be fought. However, psychological violence can adopt different definitions depending on the given time, country or culture.

The Convention provides a definition of psychological violence as an “intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats is criminalised” (art 33). This definition is intentionally broad, first because psychological violence encompasses a variety of different forms, second to allow more flexibility to the State Parties in setting the detailed offence in their own national legislation. Having too precise a definition of *serious impairment* can have negative consequences on the repression of psychological violence, since the threshold would become too difficult to reach. Thus, this definition seems to fit the requirements of a good legal definition according to the report on psychological violence written by Ms Elvira Kovács: “A good legal definition of psychological violence is one which strikes a balance between being precise enough for the victims to recognise themselves and

⁴³ Amnesty International, 2010 (a), p. 8.

flexible enough to cover such a variety of individual experiences”.⁴⁴

It is worth noting that psychological violence refers to a plurality of acts making the threat genuinely serious, as it is highlighted in the Explanatory Report: *This provision refers to a course of conduct rather than a single event. It is intended to capture the criminal nature of an abusive pattern of behaviour occurring over time* (section 179). Effectively, as commonly pointed out by specialists on this issue, psychological violence must be differentiated from mere conflicts of opinions between partners, in which partners are considered to have equal footing. One of them, Maryse Jaspard, underlines that despite the identical appearances of both phenomena, reciprocity is a proper feature of conflicts, whereas violence shows the peculiarity of being unilateral⁴⁵. The respective aims are also opposite: conflicts occur to express a different opinion and can give rise to change, while violence takes place for no real reason on a regular basis, for the sole purpose of reinforcing male domination upon the woman.

2.1.1.2 Diversity.

Thus, psychological violence can take multiple different **forms** such as verbal abuse, harassment, intimidation, humiliation, repeated critics, insults, threats, isolating the victim from any social life, discouraging the victim of doing any independent activity, threatening to leave the house with the children, organise and maintain the economical dependence of the victim⁴⁶... The long-term repetition of such acts can lead to the weakening and subjugation of the victim who loses day after day her ability to discern truth from lies, as well as landmarks that taught her the limits of what she should accept from her partner or anyone else.

For the purpose of this paper, I will include in the concept of psychological violence the **economically-based** psychological violence, since the explanatory report itself indicates in its section 40 that “economic harm” *can be related to psychological*

⁴⁴ Kovács, 2011, section 32.

⁴⁵ Jaspard, 2005, p. 31.

⁴⁶ Kovács, 2011 (<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12971&Language=EN>)

violence.

I will also consider **stalking** from an intimate partner as a part of psychological violence, in the sense that it affects the victim without letting any physical damage to her body. To this regard, the report of the Council of Europe explains clearly that: “harassment is one of the most frequent demonstrations of psychological violence shown in various behaviour patterns, such as repeatedly following or watching the other person”⁴⁷

2.1.1.3 Impacts.

On its own, psychological violence **deeply hurts** the victim leaving scars in both self-image and self-esteem. As the report states, it results in “the victims’ progressively lowering the threshold of what is acceptable.”⁴⁸

A special feature of psychological violence is that it can also give rise to physical violence as it is always the first step in the cycle of domestic violence: “Psychological violence often precedes or accompanies physical and sexual violence in intimate relationships”⁴⁹ or in other words “psychological violence does not always lead to physical violence, but physical violence, is always preceded by psychological violence”⁵⁰

Effectively, before daring using of physical force, the author of domestic violence must make sure his victim is already in a weak position, and have her under control in the psychological way.

2.1.2 Why it is difficult to eradicate: the specific status of psychological violence.

⁴⁷ Idem, section 23.

⁴⁸ Idem, section 25.

⁴⁹ Section 181, CAHVIO Explanatory Report.

⁵⁰ Kovács, 2011, section 3.

Psychological violence is a form of violence that has been addressed only recently by research⁵¹ and legislation⁵², physical violence being the one form addressed primarily. The reason for silence around such widespread type of violence relies mainly on its essence that is hard to apprehend. Effectively, since it does not leave visible marks, psychological violence presents the difficulty of being hard to prove. It can therefore also being feigned easily, as pointed out by the UN in a 2008 report about good practices, claiming that: “experience has shown that violent offenders may attempt to take advantage of such provisions by applying for protection orders claiming that their partner psychologically abuses them”⁵³. However I believe the probability of this situation is less likely to occur than complaints about real facts, for the reasons detailed below.

In addition, this phenomenon usually happens exclusively indoors, in the private sphere, meaning the author of violence succeeded in isolating his victim from any form of social life or friendship. Thus, it is infrequent that a witness is able to testify and if she/he were, pressure from society reinforcing that this matter is private and the victim might be guilty would prevent her/him to actually do so. The trial would then consist of the victim’s word against the aggressor’s word, unless the latter had left written traces. Therefore, psychological violence is a form of violence that, being invisible, even the most influent and respected men can choose to exercise their “manhood”.

Many reasons are likely to prevent women from seeking judicial help in these circumstances. First, “many women may not expect a strong justice system response to so-called acts of psychological or economic violence against them”.⁵⁴ Second, the difficulty to prove may make them think in a negative perspective that the battle is already lost before it has even begun, or that the difficulty of this struggle for justice is too emotionally painful. Third, stereotypes provoke the belief that she should not need justice to solve a private situation she should handle. Last, the emotional dependence created by psychological violence would prevent her from wanting her partner to be

⁵¹ UN Secretary General, 2006 (a), p.44.

⁵² UN, 2008, p.26.

⁵³ Idem, p.26.

⁵⁴ Idem, p.26.

punished by society. All those reasons put together have good chances to make victims think it is unworthy trying to use the judicial way to get out of this situation. Therefore, awareness-raising, and counsel by experts are essential to the efficiency of legislative measures prohibiting psychological violence.

The consequence is that a certain severity is needed and it can be too late in some cases: a threshold will automatically be set up by the one in charge of proving before being taken into account in order for the judiciary proceedings to be triggered.

Also, another difficulty in dealing with psychological violence is that usually the victim does not realise she is undergoing it, unless it is accompanied by an act of physical violence. The reason is that violence settles slowly and follows a process of normalisation, defined by Eva Lundgren as a “process where boundaries are being shifted and acts of violence gradually take on a new meaning”.⁵⁵ Indeed, the woman little by little takes the repeated critics and violent acts towards her as justified, and believes the situation is occurring because she failed as a woman. In this respect, Marie-France Hirigoyen points out:⁵⁶ “the difficulty in identifying psychological violence is that its boundaries are unclear. A same act can have different meanings depending on the context. If it is possible to assess the physical aspects of violence, it is however much more difficult to measure how a victim of psychological violence feels”. That is why frequently a victim does not detect the first signals of psychological violence, and therefore it may take time before she recognises it. It is usually when the violence is already deeply settled that the victim feels something is wrong, and sometimes it is too late to reverse the effects.

Thus, the difficulty of objectivisation is the cause of the late recognition of this form of violence, and reduces the probability of the good efficiency of the measures in place to remedy to it.⁵⁷

Since this form of violence is poorly known (“poorly known by the general public, by

⁵⁵ Lundgren et al, 2002, p.17-18.

⁵⁶ Hirigoyen, 2005 in <http://www.psychologies.com/Planete/Societe/Articles-et-Dossiers/Comment-peut-on-frapper-une-femme/Couple-avant-la-premiere-gifle> (personal translation).

⁵⁷ Pieters et al., 2010, p.160.

the victims themselves and by law-enforcement officials such as the police and the judiciary”⁵⁸), efforts have to be put in the first place on the publicity and awareness-raising of its worldwide and widespread existence.

The main reason why the victim takes time to detect this form of violence is because the cycle of violence benefits from her sociological weakness. This weakness is the one imposed by the old and deeply anchored patriarchal society from the beginning of their lives. This society attributes women with predetermined gender roles of subordination and men with roles of power and domination over women.

2.1.3 Importance of the phenomenon contrasting with the lack of studies.

Psychological violence has been lately addressed by the international and national community.

Psychological/emotional/mental violence has usually been integrated as a part of violence against women, henceforth of domestic violence, within the human rights instruments: the 1992 CEDAW General Recommendation No.19 condemns “ mental (...) harm or suffering, threats of such acts, coercion and other deprivations of liberty”. The 1993 DEVAW in turn mentions “ psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty”.

Nonetheless, at the national level, it is rare and new that psychological violence is given adequate importance. Effectively, a first essential step and a clue of the importance given to this form of violence is by having figures related to the phenomenon. As mentioned, few statistical studies exist broadcasting the importance of psychological violence specifically; the studies devoted to violence against women tend to measure either intimate-partner violence as a whole, or sexual violence. Not having any figure would reduce the likelihood of the States building policy-making and law-making processes around the theme.

⁵⁸ Kovács, 2011, section 6.

This low frequency in studies is moreover limited in a broader scale by the fact that definitions and perceptions of the phenomenon vary among countries. Mentalities are deeply influenced by cultures when it comes to defining and assessing violence against women, as well illustrated by this sentence taken from a multi-country study, “All women would probably agree what constitutes a slap, but what constitutes a violent act or what is understood as violence may vary among women and across cultures.”⁵⁹ In parallel, “there is no common understanding of which acts or combination of acts, and with what frequency, constitute emotional violence.”⁶⁰

Thus, having a universal or even regional definition of psychological violence remains a challenge that can be explained “in part because different cultures view and conceptualize the psyche and emotions very differently”.⁶¹ Thus, “anthropological research has demonstrated that different cultures give more weight or credence to certain emotions than to others, and people from different cultures have been found to experience emotions differently depending on whether they have an “in- dependent” or “interdependent” sense of the self”.⁶²

In Europe, however, some specific country studies took specifically into account psychological-emotional violence.⁶³ It is important to mention that the way of measuring differs from one country to another, and no European or worldwide harmonised surveys were done to compare the figures accurately. In Spain⁶⁴, psychological violence represented 7,9% of the sample interviewed. In France, the Enveff⁶⁵ survey found that 35% of women had undergone psychological pressure by an intimate partner over a 12-month period.⁶⁶ Finally, in the study of Sweden, this kind of violence within an intimate partner relationship was not measured. However, the study stated that 18% of the women sampled had experienced threats by a man since her

⁵⁹ Profiling domestic violence, a multi country study, p.6.

⁶⁰ UN Secretary General, 2006 (b), section 117.

⁶¹ Kar et al, 2009, p.66.

⁶² Idem, p.66.

⁶³ Jaspard, 2005, p.90.

⁶⁴ Study of 1999

⁶⁵ National survey on violences against women in France (Enquête nationale sur les violences envers les femmes en France, 2000).

⁶⁶ UN Secretary General, 2006 (b), section 117.

fifteenth birthday.⁶⁷

2.2 The place of psychological violence inside the cycle of violence.

It always starts with a love story... For many men, love in all its forms relate to the idea of possession.⁶⁸ Around such notion evolve the socially constructed concepts of masculinity and femininity, to which I will refer at the end of the section. Therefore, marrying a woman can be understood as the social recognition of the appropriation of a woman by a man, the appropriation of a “social symbol”.⁶⁹ For women love is usually understood as an act of devotion. Also the choices are made upon different characteristics/criteria. Women often use to value power, money and success in business in men older than them, whereas men are usually attracted by naïve beautiful women younger than themselves. Thus, the way love and attraction are perceived is far from being symmetrical between genders, as emphasised in numerous cases when we see that it is socially more accepted that men have extra-marital affairs, rather than women, above all when they enjoy a powerful public position, as the Strauss-Kahn scandal in the media can testify.

This can still happen in modern times because of gender stereotypes that are deeply anchored in the global society. Fighting them will therefore reduce the inequalities faced by women compared to men in the public and private arenas, and will help decreasing men's violence against women.

⁶⁷ Lundgren et al, 2002, p.8.

⁶⁸ Bourdieu, 1998, pp.36 and 65.

De Beauvoir, 1949, p.540

⁶⁹ Bourdieu, 1998, p. 65.

2.2.1 Causes and risks factors of violence against women.

As mentioned, the deep cause of the phenomenon of violence against women is the inequality between men and women. This inequality is, above all, structural. Violence against women is universal but its forms vary according to values belonging to different spheres interacting with each other.

As clearly described by Merry, “the substance of VAW is a universal space of pain and suffering that can be understood across cultural differences, but gender-based violence is embedded in cultural understandings of gender and sexuality as well as the institutions of marriage, community, and state legal regulations of marriage, divorce, inheritance, and child custody”.⁷⁰

Therefore, a common explanation of the root causes of this structural inequality rely on an analysis based on several layers interacting with each other. Effectively, according to several studies, there is no uniform cause of the phenomenon of violence against women. Such violence “arises from the convergence of specific factors within the broad context of power inequalities at the individual, group, national and global levels”⁷¹.

Now, I will provide a brief understanding of those different factors present at each layer.

2.2.1.1 Societal and structural level.

At the structural level, three main components may induce to treat women with violence.

In the first place, **patriarchy**, which is relayed by a mainstream of stereotypes discussed below, stands as the main pillar for violence against women. Patriarchy can be defined as a system of society in which men hold the power. This system establishes and maintains the rule of masculine domination over women at all levels, taking care that the dominated gender participates in its own domination. Patriarchy insinuates itself all

⁷⁰ Merry, 2006, pp.24-25.

⁷¹ UN, Secretary General, 2006 (b), section 67.

over the world, in all countries and at all levels, as states the report of the Secretary General: “Patriarchy has been entrenched in social and cultural norms, institutionalized in the law and political structures and embedded in local and global economies. It has also been ingrained in formal ideologies and in public discourse.”⁷² The private/public dichotomy, described below, is one of the symptoms of patriarchy that allowed for a long time impunity of domestic violence in the private sphere.

Henceforth, State institutions, laws, politics, decision-making positions, and more generally the division of work, as well as obviously intimate violence against women, follow this system, creating more challenges to women occupying relevant positions of power. State inaction is another manifestation of this discriminative system. Such inaction “leaves in place discriminatory laws and policies that undermine women’s human rights and disempowers women”,⁷³ and represents a violation of human rights. In the private sphere, patriarchy usually takes the shape of intimate violence against women, which stands for the cause and the reinforcement of masculine domination. Rhoda Copelon explains the influence of patriarchy on intimate violence against women: “domestic violence against women is systemic and structural, a mechanism of patriarchal control of women that is built upon male superiority and female inferiority, sex-stereotyped roles and expectations, and the economic, social and political predominance of men and dependency of women.”⁷⁴

Economic inequalities are another structural cause of violence against women. Specifically, as a matter of fact, Dr Miriam Estrada pointed out that the more economically developed a country is, the less discriminated women are in this country.⁷⁵ “Women’s economic inequalities and discrimination against women in areas such as employment, income, access to other economic resources and lack of economic independence reduce women’s capacity to act and take decisions, and increase their vulnerability to violence”.⁷⁶ Therefore, a strong economy is essential in the fight against inequality between women and men.

⁷² Idem, section 70.

⁷³ Idem, section 96.

⁷⁴ Copelon, 1993-1994, p.305.

⁷⁵ Course of may 2012.

⁷⁶ UN Secretary General, 2006 (b), section 86.

At the level of the global society and State, interesting **risks factors** pointed out by research⁷⁷ are worth mentioning. Risks factors can be defined as factors, coming from different levels of influence, that “increase the likelihood of someone becoming a victim and/or perpetrator of intimate partner and sexual violence”.⁷⁸ At the level of global society, they consist of traditional gender and social norms supportive of violence, as well as tolerance of violence as a means to solve conflicts. At the level of the State, they are divorce regulations by government, protective marriage law, lack or inadequacy of legislation on intimate-partner violence, limited awareness and sensitivity in the enforcement of laws.

Merry explains why marriage and women's rights are contradictory in the context of domestic violence: “There is an inevitable collision between protecting women and preserving marriages. If the only way to provide security and safety for a woman is to allow her to separate from her violent husband, reducing violence against women will diminish the permanence of marriage”.⁷⁹

2.2.1.2 Cultural level.

The influence of culture: culture as a root of violence against women and an obstacle to fight it. Culture is defined by the customs, arts, social institutions, and achievements of a particular nation, people, or other social group.⁸⁰ It appears as non homogenous and incorporating a wide range of values that can be contradictory.⁸¹ In one given culture, some norms can promote women's rights whereas other are used as a justification to annihilate any possibility of empowerment of women. Of this second category, we can mention female genital mutilation (FGM), femicide, and so-called “honour” crimes as the most harmful discriminatory practices. Polygamy is also a practice objectifying women. It is worth saying than women are also cultural actors, and

⁷⁷ Idem, section 98.

WHO 2010, Table 3, p 27

⁷⁸ WHO, *Intimate ...*, 2010, p.18

⁷⁹ Merry, 2006, p.25.

⁸⁰ New Oxford American Dictionary

⁸¹ UN Secretary General, 2006 (b), section 80.

the less they fight against such values degrading them, the longer those values will remain in place. For instance, women are the ones usually performing FGM. The more a culture maintains the subordination of women, the more susceptible it is of having high proportion of violence against women. Thus, diminishing violence requires cultural transformation. The difficulty relies on the definition of violence according to different culture, as previously mentioned. As Merry states: “Most societies draw a boundary between acceptable forms of violence against women, defined as discipline, and unacceptable forms, defined as abuse. [...] People who cross this boundary and use excessive violence may face penalties from their communities. Redrawing this boundary is at the heart of the human rights project concerning violence against women.”⁸²

Thus, the major international documents concerning violence against women (the 1995 Beijing Platform of Action, CEDAW, General Recommendation No.19, the 2011 Council of Europe Convention) explicitly condemn the use of culture to justify harmful practices.

Community risks factors.

At the level of the community, several risks factors have been found by studies⁸³: acceptance of traditional gender roles, women’s isolation and lack of social support, community attitudes that tolerate and legitimise male violence (weak community sanctions), high levels of social and economic disempowerment (including poverty and unemployment), high proportion of literacy, low proportion of women with high level of autonomy, low proportion of women with higher education, high proportion of households that use corporal punishment.

2.2.1.3 Individual causes and risks factors.

On the one hand, the topic of **individual causes** is a controversial one. Most studies report that every woman can be victim of violence. However, Marie France

⁸² Merry, 2006, p.25.

⁸³ UN Secretary General, 2006 (b), section 98.
WHO 2010, Table 3, p 27

Hirigoyen highlights the existence of a psychological weakness that is nonetheless not sufficient to trigger domestic violence without the influence of social factors.⁸⁴ The most developed opinion is therefore the opposite one, shared for instance by a Spanish Association of Psychologists, which states that “the only condition women have to fulfil to be classified as victims of gender violence is simply their status as women. Similarly, one characteristic distinguishing male batterers from non-batterers is their normality”.⁸⁵ In the case of moral harassment, a pathology is often the cause of the pervert behaviour. This pathology is known as a “narcissistic perversion” and consists in the addition of a pervert behaviour to a narcissistic personality.⁸⁶

On the other hand, a wide array of **risks factors** can be mentioned. It is important to understand that risks factors have to be distinguished from causes. Indeed, those factors cannot be regarded as excusing the violent behaviour but rather as possibly influencing the relationship as a consequence. According to the revised multivariate model explaining men's risk factors for violence against women by Harway and O'Neil⁸⁷, biological, psychological, socialisation and psycho-social factors interact with each other, and together with relational factors, inside macro-societal factors. The In Depth Study distinguishes between risks factors at the level of the **couple and family**, and factors at the level of the individual. The first ones are male control of wealth and decision-making authority within the family, a history of marital conflict, and significant interpersonal disparities in economic, educational or employment status. Inside the relationship, risks factors are educational disparity, multiple partners or infidelity of the perpetrator, number of children of the victim. Concerning the quality of the relationship, factors are marital discords, gender role disputes, and marital duration. At the **individual** level, risks factors of being either perpetrator or victims are: youth; a history of abuse as a child; witnessing marital violence in the home; the frequent use of alcohol and drugs; low educational or economic status; and membership in marginalized and excluded communities.

⁸⁴ Fayner, 2006, p.34.

⁸⁵ Exposito et al, 2009, p.140.

⁸⁶ Hirigoyen, 2003, p. 152.

⁸⁷ Harway, 1999, p. 214.

The WHO study distinguishes risk factors specific to the perpetration by men and victimisation of women:

Factors	Perpetration by men	Victimisation of women
DEMOGRAPHICS	<ul style="list-style-type: none"> • Young age • Low socio-economic status/ income • Low education • Unemployment 	<ul style="list-style-type: none"> • Young age • Low socio-economic status/income • Low education • Separated/divorced marital status • Pregnancy
EXPOSURE TO CHILD MALTREATMENT	<ul style="list-style-type: none"> • Intra-parental violence • Sexual abuse • Physical abuse 	<ul style="list-style-type: none"> • Intra-parental violence • Sexual abuse
MENTAL DISORDER	<ul style="list-style-type: none"> • Antisocial personality 	<ul style="list-style-type: none"> • Depression
SUBSTANCE USE	<ul style="list-style-type: none"> • Harmful use of alcohol • Illicit drug use 	<ul style="list-style-type: none"> • Harmful use of alcohol • Illicit drug use
OTHERS	<ul style="list-style-type: none"> • Acceptance of violence • Past history of being abusive 	<ul style="list-style-type: none"> • Acceptance of violence • Exposure to prior abuse/victimization

To sum up, violence from men against women arises from the different conceptions of what it means to be a man. According to Ferguson et al, those conceptions of masculinity vary following four parameters: from one society to another, within any particular culture over time, among different groups of men within any particular culture at any particular time (meaning on interactive grounds of class, race, ethnicity, age, sexuality, religion and region of the country), and finally over the life-course.⁸⁸

“Then we cannot really speak of masculinity as a constant, universal essence, common to all men (...). We must speak of masculinities”.⁸⁹

In order to gain a more accurate approach of gender-based violence, masculinities must be compared with femininities, since both concept evolve together and are completing

⁸⁸ Ferguson et al, 2004, pp. 26-27.

⁸⁹ Ferguson et al, 2004, p.28.

each other. As Simone de Beauvoir states: “one is not born, but rather becomes, a woman”.⁹⁰ Hence, she points out that a woman's behaviour is also socially conditioned. Therefore, relations between men and women must be taken into account in parallel, and they are also subject to variations: “Gender- based violence seems to be highest when gender equality is lowest, when men are over-valued in relation to women, and where men are taught to feel superior to women. Thus, societies and cultures vary enormously in their support for gender-based violence. While gender-based violence is invariably sustained by social, political, economic and ideological structures, the extent, expression and amount of that violence varies greatly”.⁹¹

2.2.2 Domestic violence against women as a consequence of gender stereotypes and gender-biased laws.

Stereotypes produced by patriarchal modes of thinking are the main cause of gender inequalities in law. A common critique made by feminists theories is that law is gender-biased and promotes ideas shared by men as well as it protects primarily men's fears, and consequently give less importance to women's interests. According to Dr Miriam Estrada⁹², power in the public sphere and in the decision-making process remains all over the world in practice in the hands of men. Thus, they are the ones writing the laws. The consequence is that laws prioritise their own interests and protection of their own fears over women's ones. Besides being written that way, laws “continue to be interpreted and applied to reflect men's experiences”.⁹³ A materialisation of this phenomenon is the relevance that had got until recently the public/private dichotomy. This dichotomy has ruled national and international law for centuries, and has no reason to last in the specific field of human rights regarding the equalitarian values that they promote. Nonetheless, the quasi-vertical system of international human rights law “has

⁹⁰ De Beauvoir, 1949, p.13.

⁹¹ Ferguson et al, 2004, p.28.

⁹² Human Rights and Gender course, Lund, may 2011.

⁹³ Edwards, 2011, p.51.

focused almost exclusively on state action directed against individuals, rather than on so called 'private' attacks against women in their homes (...).⁹⁴ This frontier drawn between private and public sphere allows paying less attention to the private sphere and therefore the sphere in which women bear most abuses and violations, sometimes even in the name of the right to privacy promoted in the branch of civil and political rights.⁹⁵ Law and human rights, then, are still dominated by male views. A clear indication can be found in the prevalence of masculine language within international instruments: for instance, only four of the eight core human rights treaties make use of the feminine pronoun.⁹⁶ Also, some feminists critics argued that the abstract language used in the international discourse is proper to male modes of thinking.⁹⁷ Apart from the use of a male-dominated language that remains a small visible sign of a deeper problem, feminists scholars pointed out the adoption by international law of the male gender as a standard, leaving women's problems a deviation from this standard.⁹⁸ This androcentric system leads to the use of double standards in practice, meaning that women's rights are given less importance than others. For example, Rachael Johnstone states that discrimination on the ground of sex is more tolerated than discrimination on the ground of race.⁹⁹

How do gender stereotypes lead to VAW? To answer this question we must understand what we call gender stereotyping. According to Rebecca Cook and Simone Cusack,¹⁰⁰ it is “ the process of ascribing to an individual general attributes, characteristics, or roles by reason only of his or her apparent membership in a particular group”. This process is naturally done with the intent to simplify the environment in which one evolves. However, stereotypes on the ground of sex are so wide they become useless, since it is obviously nonsense to generalise the attributes of half of the population, when it comes to general masculine and feminine attributes.

⁹⁴ Idem, p.65.

⁹⁵ Idem, 2011, p.65-66. See also Article 17 ICCPR.

⁹⁶ Edwards, 2011., p.62

⁹⁷ Cf. Carol Gilligan and MacKinnon.

Edwards, 2011, pp.62-63.

⁹⁸ Edwards, 2011, p.53., quoting C.A. Littleton, N.Naffine, S.L. Bem.

⁹⁹ Johnstone, 2006, p.151.

¹⁰⁰ Cook et al, 2010, p.1.

When applied to women, they tend to assign them to “subservient roles in society, and devalue their attributes and characteristics”,¹⁰¹ they are wrong in the sense that they are perpetuating and legitimising women's legal and social subordination.¹⁰²

An important point made by the authors is that women themselves unconsciously follow the stereotypes attributed to them by society (that is: men) and reinforce gender stereotypes against themselves.¹⁰³ Media, and particularly television, are an efficient relay of those stereotypes and favour that objectification of women: they shape children's brain and emotions. Through them, women learn to see themselves as objects and unconsciously acquire that wrong stereotypes. This phenomenon, also known as “self-objectification”, has been clearly and brilliantly described in the documentary of Jennifer Siebel Newsom, *Miss Representation*.¹⁰⁴

According to some well-known gender stereotypes applied to women, they are inferior to men, they are the primarily care-givers, they are object owned first by their father and then by the husband, they lack capacities to learn, they are emotional and irrational.

The need to eliminate gender stereotypes has to be triggered from now on, and constitutes a state obligation mentioned in CEDAW, and in the Convention, as a matter of example. Also, “achieving the emancipation of women through the elimination of gender stereotyping is based on the thesis that women are socially constructed into subservient roles and as having inferior attributes and characteristics, by gender stereotypes”.¹⁰⁵

Finally, stereotypes together with patriarchal views allows minds of the majority of people to consider violence as a (more or less) accepted way of dealing with private issues. Therefore, in order to reach equality, stereotypes must be fought. To that end, several possibility should be considered. One is encouraging “consciousness- raising”, a mechanism deeply developed by feminist theorists, such as MacKinnon, aiming at making women understand their oppression and possible ways to change it. This is the

¹⁰¹ Idem, p.1.

¹⁰² Idem, p.1.

¹⁰³ Idem, p.1.

¹⁰⁴ 2011.

¹⁰⁵ Cook et al, 2010, p.2.

way Feminist theorists conceived the change in mentalities. Personally, I am convinced of the fact that diversity is needed to have an overall idea and take the most perfect result. That is why women should be on an equal footing with men in all the decision-making process, to get the most complete decisions. Once this step reached, institutional changes can be expected. Another way of reaching equality, is setting legislative equality and criminalise violent acts inflicted to women. However, law is not enough, its implementation and monitoring in practice is what really matters. In this respect, we will see in the third part of the thesis how important are the laws condemning domestic violence, when they are implemented.

The diversity of stereotypes at all levels, thus encourage psychological violence, and paves the way to all the other forms of domestic violence in the private sphere.

2.2.3 The place of psychological violence inside the cycle of domestic violence.

As already mentioned, psychological violence can either be a tool used in addition to physical violence in the cycle of abuse, or be utilised as such from perverse personalities to exert power over the victim's mind.

2.2.3.1 The cycle of abuse.

According to Lenore Walker,¹⁰⁶ the mechanisms of (physical) domestic violence follow always the same steps that are continuously repeated: this violence cycle is known as the “cycle of abuse”, that is based on a tension-reduction theory.

The first tier is a period of tension building “during which the woman does have some minimum control of the frequency and severity of the abusive incidents. She can slow

¹⁰⁶ Walker, 1979.

them down by trying to give the man what he wants or speed them up by refusing to meet his (sometimes unreasonable) demands”.¹⁰⁷ The second tier is known as the explosion phase that starts once the tension-building period reaches a “period of inevitability”. This second phase often entails the involvement of other people (police, doctors) when the violence exerted implies physical assaults/offenses. This phase is the shortest but most physically harmful phase.

The third tier is a period of loving contrition or sometimes only a period of no tension. This last step is the most important one on the side of the perpetrator, since it reinforces the victim's love and affection towards himself, and allows him to restart the whole violence cycle. During this phase, the perpetrator shows his good side and often apologies, making the victim believe he is a good person and that she must be the one provoking the violence through her behaviour. In this step, the perpetrator shows his abilities to manipulate his victim, pretending an apparent stable end of violence. A variation of this model includes four stages, dividing the third phase into two: the “honeymoon” followed by the quiet phase.¹⁰⁸ The honeymoon or reconciliation phase is when the abuser apologises and promises it will never happen again, while the quiet phase marks the period in which he pretends nothing ever happened and make the victim believe the abuse will not reoccur.

Having that said, one can now wonder: at which stages does psychological violence intervene in the cycle of abuse? The alternation of phases tends to weaken the victim little by little and to keep her in the cycle. Thus, psychological violence is the one tool used to influence her, and make her stay in the perverse relationship throughout the whole cycle.

2.2.3.2 Psychological harassment.

Psychological violence can also be an end in such. In that case, it is used to dominate one's mind, and is a part of psychological harassment. In that kind of harassment, the

¹⁰⁷ Walker, 1989, p.697.

¹⁰⁸ <http://www.domesticviolence.org/cycle-of-violence>.

victim lets the mechanism of psychological violence settle because of tolerance or because she feels she has to protect the perpetrator who appears himself as a victim. Also the victim is often convinced that with time, love and tolerance, everything will return to normal. The truth is the perpetrator is manipulating his victim, putting into place little by little a perverse seduction process that consists, according to Marie-France Hirigoyen,¹⁰⁹ of three parts: seduction, influence and control. Once control over the victim's mind is reached, perverse violence characterised by an indirect violence, starts. At the end of the process, the victim is completely under the perpetrator's control. The victim faces multiple consequences¹¹⁰: withdrawal, disarray, doubt, stress, fear, isolation... In the long run, other effects can arise such as shock, decompensation and psychical symptoms close to post traumatic disorder. Often, the situation becomes unbearable and the separation close the process. Nonetheless, this phase does not represent a withdrawal of perpetrator manipulation. On the contrary, he can still use his skills to make his ex-partner's life impossible, when it comes to legal proceedings and parental authority, for instance.

It is worth noting that throughout this process, the victim is seen as an object on which the perpetrator can exert and play with psychological control.

2.2.3.3 Why do women stay?

One question remains: **why does the victim stay in this perverse relationship?** Is it masochism? In my opinion we can distinguish two stages: the first stage before the effective control is born because of the deep tolerance of the victim who loves the perpetrator and thinks that with time and affection his behaviour towards her will improve. The second stage is the period of total control. In that phase, the victim is “psychologically tied”¹¹¹ and feels guilty of the situation, as the perpetrator takes care of making her feel that way.

Numerous psychoanalysts analyse this situation as entailing some masochism from the

¹⁰⁹ Hirigoyen, 2003, p.111-116.

¹¹⁰ Idem, p183-202.

¹¹¹ Idem, p.168.

victim,¹¹² which, according to Marie-France Hirigoyen, each one of us owns in a small dose. However, most of the victims feel relieved when they succeed to escape from the unhealthy relationship, which testifies in favour of a non total masochism¹¹³.

Why do women stay in violent relationships, in general?

Although the following reasons are not that common in European countries, and less in France, Spain and Sweden, they are of high relevance in most of the cases of violence against women that occur around the world. Therefore, they are worth mentioning.

Reasons can be first practical¹¹⁴: the woman has nowhere to go and/or has no money, nor job. Also some societies discriminate against women that are not married, in their rights (for instance, concerning the right to land or property).¹¹⁵

Second, sociological pressure¹¹⁶ remains an important reason in several countries.¹¹⁷ If the woman decides to leave her husband or asks for divorce, in societies where violence is accepted as a form of discipline, pressure from society can result in extreme violence and even murder from the husband or relatives.¹¹⁸ This pressure comes from the shame that divorce would bring (honour killings), in both the families of the husband and the wife. In those societies, marriage is seen as going beyond the sole link between two persons: it represents the union of two families, in their interest. Therefore the actual happiness of the woman does not really matter. She must undergo everything her husband inflict, as she is his property.

A Spanish movie, *Take my eyes (Te doy mis ojos)* from Iciar Bollain,¹¹⁹ shows how the wife's mother, suspecting that her daughter was mistreated by her husband and pretending not to understand, pushes her to stay with him: "Don't be sad. What you should do is to make up with Antonio, and go back home". "A woman is never better alone".¹²⁰ This extract shows how in Europe, stereotypes can still influence women at

¹¹² Idem, p. 169.

¹¹³ Idem, p.170.

¹¹⁴ Westendorp, p. 131.

¹¹⁵ As it is the case in China, where the husband is the one to whom is allocated the housing.

¹¹⁶ Westendorp, pp. 131-132.

¹¹⁷ Latinamerican, Arabic, Asian, and African countries.

¹¹⁸ Cf *Opuz vs Turkey* case.

¹¹⁹ 2003.

¹²⁰ Personal translation.

the time of divorce or separation.

As of emotional reasons¹²¹ that are most common in Europe and developed countries where women are more independent in the way they drive their life, we can recognise the efforts of the wife towards the maintenance of a family when there are children. Also, the fear of reprisals towards her or her children is also a good reason not to leave the house.

Finally we could analyse the reasons and forms of violence against women, and in particular of psychological violence. Now, we are going to look at the way Spain, France and Sweden tackle the problem of intimate-partner violence in their legislation and practice, to assess the potential of such measures on this widespread societal problem.

¹²¹ Westendorp, p. 132.

3 A specific human right on its way to being globally prevented and criminalised in Europe.

As it has been seen in the first chapter, laws are made by men and convey stereotypes. Together with institutions and culture, they place women in a subordinate position in relation to men. They consequently favour the phenomenon of violence against women by transmitting the idea that women do not deserve the same treatment than men since they are not able to act as perfectly as the male model.

The situation has been globally improving over time. Hopefully, some countries, such as the European countries, with the help of economic development and pushed by feminist movements, could progressively put attention on women's rights. Nowadays, the situation is such that the 2011 Convention of Council of Europe asks for a harmonised regulation of violence against women in Member States and establishes a regional control through a specific monitoring mechanism (GREVIO).

We will see that Spain, France and Sweden all adopted laws tending to punish the occurrence of violence against women.

There are many questions rising from a careful analysis: Is the use of law a good means to decrease the phenomenon of violence against women? Is the Convention protecting efficiently women from psychological violence? Is criminalisation an adequate way to deal with violence against women anyway?

Two parts deserve particular attention. Those are the “Prevention” and “Criminalisation” chapters. Effectively, not only it is necessary to punish and prevent perpetrators from using violence, but it is also of high importance to try to avoid such violent physical or verbal acts by spreading the word around the existence of the phenomenon and the methods at reach to help one to deal with the fear felt inside, before it actually comes to be expressed.

What does the convention prescribe to the ratifying countries? Are the existing mechanisms purely culture related? How could they be improved?

3.1 What is set in the Convention.

Before analysing the national norms and practice developed in Spain, France and Sweden, it is useful to have in mind the content of the Convention regarding Prevention and Criminalisation.

3.1.1 Prevention: the awareness-raising mechanisms.

The prevention mechanisms are detailed in Chapter 3, and particularly in articles 13 to 17:

Article 13 – Awareness-raising

1 Parties shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women's organisations, where appropriate, to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the scope of this Convention, their consequences on children and the need to prevent such violence.

2 Parties shall ensure the wide dissemination among the general public of information on measures available to prevent acts of violence covered by the scope of this Convention.

Article 14 – Education

1 Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.

2 Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.

Article 15 – Training of professionals

1 Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.

2 Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.

Article 16 – Preventive intervention and treatment programmes

1 Parties shall take the necessary legislative or other measures to set up or support programmes aimed at teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships with a view to preventing further violence and changing violent behavioural patterns.

2 Parties shall take the necessary legislative or other measures to set up or support treatment programmes aimed at preventing perpetrators, in particular sex offenders, from re-offending.

3 *In taking the measures referred to in paragraphs 1 and 2, Parties shall ensure that the safety of, support for and the human rights of victims are of primary concern and that, where appropriate, these programmes are set up and implemented in close co-ordination with specialist support services for victims.*

Article 17 – Participation of the private sector and the media

1 *Parties shall encourage the private sector, the information and communication technology sector and the media, with due respect for freedom of expression and their independence, to participate in the elaboration and implementation of policies and to set guidelines and self-regulatory standards to prevent violence against women and to enhance respect for their dignity.*

2 *Parties shall develop and promote, in co-operation with private sector actors, skills among children, parents and educators on how to deal with the information and communications environment that provides access to degrading content of a sexual or violent nature which might be harmful.*

3.1.2 Criminalisation: the use of laws.

Concerning the requirement of introducing a normative regulation on violence against women, some articles deserve peculiar attention with regard to the topic of this thesis:

Article 33 – Psychological violence

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised.

Article 34 – Stalking

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.

Article 45 and 46 provide some clarification on the penalty that should be imposed on the perpetrators of such offences:

Article 45 – Sanctions and measures

1. Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.

Article 46 – Aggravating circumstances

Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

a the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;

b the offence, or related offences, were committed repeatedly;

c the offence was committed against a person made vulnerable by particular circumstances; [...]

h the offence resulted in severe physical or psychological harm for the victim; [...]

Regarding psychological violence and stalking, Article 78.3 of the Convention and section 179 of the Explanatory Report provide an interesting piece of information, which calls into question the relevance of the existence of the previous articles :

Article 78 – Reservations

3. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right to **provide for non-criminal sanctions, instead of criminal sanctions, for the behaviours referred to in Articles 33 and 34.**

Explanatory Report

179. This article sets out the offence of psychological violence. The drafters agreed to criminally sanction any intentional conduct that seriously impairs another person's psychological integrity through coercion or threats. The interpretation of the word "intentional" is left to domestic law, but the requirement for intentional conduct relates to all the elements of the offence.

180. The extent of the offence is **limited to intentional conduct which seriously impairs and damages a person's psychological integrity** which can be done by various means and methods. The Convention does not define what is meant by serious impairment. Use must be made of coercion or threats for behaviour to come under this provision.

181. This provision refers to a **course of conduct** rather than a single event. It is intended to capture the criminal nature of an abusive pattern of behaviour occurring over time – within or outside the family. Psychological violence often precedes or accompanies physical and sexual violence in intimate relationships (domestic violence). However, it may also occur in any other type of setting, for example in the work place or school environment. It is important to stress that pursuant to Article 78, paragraph 3, of this Convention, any state or the European Union may declare that it reserves the right to provide for non-criminal sanctions, instead of criminal sanctions in relation to psychological violence. **The intention of the drafters was to preserve the principle of criminalisation of psychological violence in the Convention, while allowing flexibility where the legal system of a Party provides only for non-criminal sanctions in relation to these behaviours. Nevertheless, sanctions should be effective, proportionate and dissuasive, regardless of whether Parties chose to provide for criminal or non-criminal**

sanctions.

To conclude, when ratifying the Convention, States can use their right to reservation and decide not to impose a criminal sanction on the perpetrators of psychological violence and on the stalkers. Nonetheless they are asked to condemn the perpetrators with effective, proportionate and dissuasive sanctions. The intention of the drafters was certainly strategic, directed to give the Convention the possibility to be ratified by a maximum of States, and therefore be implemented as the reference on the matter in Europe. This choice was made at the expense of a comprehensive regulation, putting aside the type of violence most difficult to prove which is not equally criminalised in every Council of Europe member-states at the time of the publication of Convention.

3.2 National regulations and practice.

3.2.1 Spain.

3.2.1.1 Legislation.

The case of Spain is regularly quoted as an example in the studies analysing good legislations and practices. The reason is that the main law dealing with gender-based violence is a complete instrument with a global perspective. Indeed, the **Organic Act 1/2004 of 28 December on comprehensive protection measures against gender violence** states in its preamble that it is approaching gender violence “from an integrated, multidisciplinary standpoint”. It was unanimously passed by the Spanish Parliament.

However, the major progress of the 2004 Organic Act came after other initiatives paved the way for its reception.

The first relevant Act was the **Organic Act 14/1999** amending the Penal Code. It recognised psychological violence alongside physical violence in the offence of repetitive mistreatment of women, established the prohibition for the perpetrator to be close and communicate with the victim, and widen the temporal scope of violence after the separation. Then, the **Organic Act 38/2002** enabled cases of domestic violence to be judged through fast-track proceedings.

In the year 2003 were introduced various relevant acts. The **Organic Act 13/2003** allowed the adoption of precautionary pre-trial detention measures in cases involving gender violence; the **Organic Act 15/2003** introduced the obligatory imposition of the additional penalty of protection orders in any case of domestic violence and the **Act 27/2003 of 31 July, on regulation of Protection Order of Victims of Domestic Violence** for the first time alluded to the difference between gender violence in the sphere of an intimate relationship and other forms of intra-family violence and issues so called “integral status of protection of the victim” that include civil, criminal and social measures.

The **Organic Act 11/2003 of 29 September on Specific Measures relating to Citizens' Security, Domestic Violence and the Social Integration of Foreign Nationals** granted particular importance to the criminalisation of acts related to domestic violence, by widening the array of actions and perpetrators included and by generally increasing the penalty arising from the commission of such offences. In particular, the Act characterised the relationship between former or current partners as a peculiar circumstance that can aggravate the penalty given to the perpetrator in the case of severe offence.¹²² Through article 7, the Act penalises in article 153 of the Penal Code any act of psychological harm and formerly undefined injury towards a former/current partner as a criminal offence. The penalty can be six months to one year of imprisonment.¹²³

¹²² Article 23 of the Penal Code.

¹²³ After amendment by the 2004 Organic Act.

Article 153.1 states as follows: *Whoever, by any means or procedure, causes another mental damage or an injury not defined as a felony in this Code, or who hits or abuses another by action, without causing such person an injury, when the victim is or has been his wife, or a woman with whom he has been bound by a similar emotional relation, even when not cohabiting, or an especially vulnerable person who lives with the offender, the offender shall be punished with a sentence of imprisonment of six months to one year, or community service from thirty one to eighty days and, in all cases, deprivation of the right to own and carry weapons from a year and a day to three years, as well as, when the Judge or Court of Law deems it appropriate in the interest of the minor or incapacitated person, barring from the exercise parental rights, guardianship, care, safekeeping or fostership for up to five years.*

When this action is directed towards relatives, the minimum prison penalty is lowered to three months. It is worth noting that those acts are not constitutive of criminal offence if they are committed outside the listed relationships.

The Act also establishes the offence of repetitive physical and psychological violence in intimate-partner relationships or in the family environment in article 173.2 of the Penal Code, moving it from the category of “bodily harm” in article 153 to the category of “offence against moral integrity”, thus sentencing the perpetrator to six months to three years of prison. The Act also declares the new offence against moral integrity compatible with other offences.

In turn, Article 173.1, penalises general degrading treatment: *“Whoever inflicts a degrading treatment on another person, seriously damaging his moral integrity, shall be punished with a sentence of imprisonment of six months to two years.”*

In the cases of repetitive harm, as well as in article 173.2, the perpetrator is deprived of the right of owning and using arms. Regarding the nature of repetition, article 173.3 states that the Judge must consider the number of proven acts of violence, *“as well as the nearness of these in time, regardless of whether that violence has been perpetrated*

against the same or different victims described in this Article, and whether the violent acts have or have not been judged in previous proceedings”.¹²⁴

The multidisciplinary approach of the **Organic Act 1/2004** (hereinafter the Act) can be highlighted as we go through the different titles: **Title I** sets out sensitisation, prevention, detection and intervention measures, **Title II** establishes a series of rights for women victims of violence, **Title III** deals with institutional protection, **Title IV** introduces regulations under criminal law, and finally **Title V** establishes the judicial protection of the victims. We are going to focus here on Title I and IV, however mentioning other interesting provisions when appropriate.

Before that, it is important recalling that psychological violence is included in the definition given in article 1.3 of the Act: *The gender violence to which this Act refers encompasses all acts of physical and psychological violence, including offences against sexual liberty, threats, coercion and the arbitrary deprivation of liberty*¹²⁵. Also, the Act defines domestic relationships broadly to include relationships with a spouse or former spouse, non-marital relationships, non-cohabiting relationships, romantic and sexual relationships, as well as relationships between family or household members, such as ascendants, descendants, persons related by blood, persons residing together and minors or disabled individuals under guardianship or custody.

As of preventive measures, the Act sets out sensitisation plans to be launch by the Government (article 3) and provides measures at all levels of education (article 4) for both students and teachers (article 7). In the same title, the second chapter reaffirms the drafters' attachment to the strict compliance with the prohibition of initiatives degrading the image of women in the media (article 10). Chapter III aims to commit the health authorities to the efforts towards the eradication of gender-based violence against women by sensitising and training the professionals to be able to provide adequate support to the victims.

¹²⁴ Article 173.3 of the Penal Code, official translation.

¹²⁵ Official translation.

Concerning changes in the institutions, it is worth mentioning the creation of two administrative bodies: the Special Government Delegation on Violence against Women and the State Observatory on Violence against Women. While the first is granted the role of drafting Government policies and coordinating and promoting all actions taken in this area, the second is designed to be a centre of analysis on the status and evolution of violence against women, and to collaborate in drafting proposals.

Regarding **amendments of the Penal Code**, the Act adds specific provisions on three offences: injury, abuse, threats, coercion and minor abuses. Each offence henceforth includes a special section providing for an aggravated sentence in the case it is directed at someone emotionally linked with the perpetrator. Basically, the sentence is either of imprisonment or of community service, except in the case of minor abuses which penalty consists of a fine.

When the perpetrator is condemned to a custodial sentence, the penitentiary administration has the duty to put into place specific programs to prevent the commission of a new offence of gender-based violence.¹²⁶ Depending on the behavioural response of the detainee to that programs, he can be granted some reduction in the sentence.¹²⁷ Also, article 35 specially mentions the possibility of sentencing the perpetrator to community service instead of prison for offences related to gender violence. However, this possibility is subordinated to the obligation of staying away from the victim and attending re-education and psychological therapy courses.

If the perpetrator, being a current or former partner of the victim, does not comply with the sentence or violates a provisional or security measure, he will be condemned to a prison sentence of six months to one year.¹²⁸

Concerning the offences of abuse, threats and coercion, the Court is specifically allowed to lower the sentence provided for in the respective provisions, if the circumstances justify it.

¹²⁶ Article 42.1 of the 2004 Organic Act.

¹²⁷ Article 42.2 of the 2004 Organic Act.

¹²⁸ Article 40 of the 2004 Organic Act.

The Act also establishes in its article 64.3 the possibility of using “technological means” to alert in case of non-compliance of the protection orders. In 2008 the Spanish Council of Ministers approved the proposal of the Minister of Equality to deploy the utilisation of electronic tags for the next year, either as a preventive measure or as a part of the sentence.

Title V establishing judicial protection, creates specialised **Gender Violence Courts** inside the criminal jurisdiction, in each of the judicial territories. However, those specialised Courts are also competent to look at concrete issues of civil law. Article 47 provides for a special training of public officials evolving in the Courts on the matter of violence against women, while article 20 provides for the training of lawyers in gender violence proceedings within the national Bars.

The Act being of a multidisciplinary global approach, the collaborative dimension between the different sectors of health, social services, justice and police forces is given great importance, and detailed through the Act.¹²⁹ That collaboration is to be applied at all the stages from prevention to prosecution, making the Act a perfect example of good practices quoted by the United Nations.¹³⁰

Similar laws against such violence have been approved at the level of the Spanish Autonomous Communities, nonetheless they are not the focus of the thesis which analyses exclusively national legislation.

The Organic Act 3/2007, of 22 March 2007, for Effective Equality between Men and Women, introduced a first legislative effort towards material equality. It is relevant to the topic of the thesis since it defines the concepts of sexual harassment and harassment on grounds of sex in its article 7 as being discriminatory acts, and organises their prosecution. Mention must be made of the non-existence of the requirement of

¹²⁹ See Article 32 of the 2004 Organic Act.

¹³⁰ UN, 2008, p.15.

repetition, allowing the possibility for a single act to be prosecuted on this basis.¹³¹ The Act also introduces measures to foster equality in the media, and sets the obligation to draw up equality plans in big companies and gender impact reports for public authorities. Following the introduction of the 2007 Act, we can mention the creation of the Interdepartmental Equality Committee and the setting up of Equality Units at each government department.¹³²

3.2.1.2 Governmental initiatives and implementation of the laws.

Numerous **action plans** have been taken by the Spanish Government in the field of gender-based violence throughout the years.

Some are worth mentioning: the first governmental action plan was adopted in 1998 for a two years period. This first Action Plan on violence against women was followed by an Action Plan II on domestic violence (2001-2004) which main aims were promoting education based on respect , improving legislation and legal proceedings, enhancing social resources as well as coordination among agencies and organisations related to domestic violence.

In the frame of the implementation of the 2004 Organic Act, a National Gender Violence Awareness and Prevention Plan was put into place for the years 2007-2008. It operated on three levels: before, during and after the commission of violence. In parallel was established in 2007 the Comprehensive Monitoring System in case of Gender Violence,¹³³ which places women victims of violence in the centre of its activity, triggering specific risk assessment tools in order to provide adequate assistance and protection. We can also mention the free 016 Hotline Service established that same year to provide information and legal assistance for gender-based violence victims on a daily basis.

A specific Plan for Awareness and Prevention of Gender Violence among the Immigrant Population (2009-2012), addressed problems of gender-based violence for all immigrant

¹³¹ Sentence of the Tribunal Superior de Justicia of Asturias No. 1964/2008.

¹³² Ruiz et al, 2010, p. 91.

¹³³ Sistema de Seguimiento Integral Violencia de Género.

women irrespective of their official status.

Following the 2007 Organic Act, a 2008-2011 Strategic Equal Opportunities Plan was approved in 2008. Its aims were to redefine the model of citizenship, prioritise gender equality, facilitate the empowerment of women, and put into place a horizontal gender perspective and scientific and technological innovation at the service of equality.

Concerning justice, the Strategic Plan for Modernisation of the Judicial System is little by little introducing changes since 2009 in the Justice Administration at different levels that are organisational, technological, economic, social and legal.

It is worth recalling that the 2004 Organic Act being quite complete, the Action plans are particularly useful when designed and implemented at the level of the different autonomous communities, where they are numerous and developed.

In the media, various TV sensitisation campaigns have been adopted, demonstrating the efforts put on the will to prevent and denounce violence against women:

In 2006 “Contra los malos tratos, gana la ley”, in 2008 “Ante el maltratador, tolerancia zero”, in 2009 “Ante el maltrato todos y todas a una”, in 2010 “Saca tarjeta roja al maltratador”, in 2011 “No te saltes las señales. Elige vivir”. Also, an Action Plan for equality between men and women in the field of the media was set up for the years 2009 to 2011.

However, in 2012, as an effect of the global economic situation of the country, the budget allocated to the prevention campaign in the media was reduced by 70%, making the Ministry of Equality report its choice on other media than TV to convey the precious message and to reuse previous TV campaigns.¹³⁴

¹³⁴ Agudo, 2012 (http://sociedad.elpais.com/sociedad/2012/06/28/actualidad/1340905679_764191.html).
Sahuquillo, 2012,
(http://sociedad.elpais.com/sociedad/2012/05/21/actualidad/1337604147_896445.html).



In terms of statistics, some results are worth highlighting. The graph¹³⁵ shows the number of deaths due to gender violence in intimate relationships in the past 11 years. For the year 2012 (until end of may), 18 other mortal victims were listed. We can notice an important decrease just after the 2004 Organic Act was passed, but eventually that figure was constantly growing until 2008, and since then seem to decrease in a very irregular way. Therefore we cannot deduce from these figures a strong improvement of the situation when comparing casualties.

Also, within the 18 victims of 2012, according to the monthly statistics report on gender-based violence¹³⁶ published in May by the Ministry of Health, Social Services and Equality, none of them had lodged a complaint. This fact calls into question the efficiency of the sensitisation plans on the matter. However, around 30%¹³⁷ of women victims of violence declared having lodged a complaint in 2011. This shows the

¹³⁵ Spanish National Statistics Institute / Instituto Nacional de Estadísticas : http://www.ine.es/ss/Satellite?L=en_GB&c=INESeccion_C&cid=1259926144037&p=125473511067_2&pagename=ProductosYServicios%2FPYSLayou¶m3=1259924822888

¹³⁶ Spanish Ministry of Health, Social Services and Equality, 2012 (b).

¹³⁷ Spanish Ministry of Health, Social Services and Equality, 2012 (a), p.7.

importance to continue to inform and sensitise the citizens on their possibility to use the judicial system to deal with private forms of violence.

The 2011 general survey¹³⁸ states that in the surveys carried out in the years 1999, 2002, 2006 and 2011, the percentage of women that declared to be victim of gender violence in the last year was respectively 2.2%, 2.3%, 2.1%, 3% showing an important augmentation during the last survey. However, it has to be borne in mind that there are more victims of violence against women than the number of women considering themselves as victims, the figure being more than doubled when it comes to take into account the technical definition.¹³⁹



As of the nature of the criminal offence declared in the field of gender-based violence (including violence in the family), a report of 2008¹⁴⁰ shows that the 8% (in red and mauve in the graph) of them was of psychological violence per se, and another 14% of

¹³⁸ Spanish Ministry of Health, Social Services and Equality, 2012 (b).

¹³⁹ See “Porcentaje de mujeres maltratadas, según grupo de edad” at http://www.inmujer.gob.es/ss/Satellite?c=Page&cid=1264005678228&language=cas_ES&pagename=InstitutoMujer%2FPage%2FIMUJ_Estadisticas

¹⁴⁰ CGPJ Report, 2009, p.31. http://www.observatorioviolencia.org/upload_images/File/DOC1235984750_informe_muertas_2008.pdf

threats (in yellow), growing the total percentage of verbal and psychological violence to 22%, as shown in the graph.

On the judicial aspects, an important fact is the establishment of numerous Courts specialised in Gender Violence introduced by the 2004 Organic Act. At the end of the year 2010, there were 461 courts dealing with the matter, of which 106 exclusively.¹⁴¹

Another interesting figure is the one related to the use of electronic tags for the abuser. The 31 April 2012, 761 tags were in activity.

The 016 hotline received a total of 321.978 calls between september 2007 and may 2012, the daily average being of 186. The use of the toll free number has been decreasing slightly since the hotline was first put at the disposal of the public in 2007.¹⁴²

3.2.2 France.

3.2.2.1 Legislation.

Although **rape** has been punished through an act of 23 December 1980, it was not before 1992 that the first laws dealing with the phenomenon of violence against women appeared in France. The Act n° 92-684 of 22 July 1992 reforming the Penal Code mentions that the marital status is considered an aggravating circumstance of the intentional criminal offences against physical integrity, meaning acts of torture and violence.¹⁴³ Rape, that was sanctioned since the Act of 23 December 1980 was more

¹⁴¹ Observatorio de Violencia sobre la Mujer, 2011, p.6.

¹⁴² Spanish Ministry of Health, Social Services and Equality, 2012 (b),p. 6.

¹⁴³ Act No. 92-684 of 22 July 1992 (<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000540288&fastPos=1&fastReqId=1421796125&categorieLien=id&oldAction=rechTexte>).

deeply punished since 1994.

In the field of **domestic violence** in general, several acts took part in improving the life condition of the victims. The most important is the 2006 Domestic Violence Act. Before this, an act of 26 May 2004 allowed the judge to take restraining measures before the divorce proceedings were actually triggered. The 12 December 2005, an Act made those measures easier at all the stages of the proceedings before the criminal courts. Moreover it provided the possibility of health, social and psychological support for the victim.

The **2006 Domestic Violence Act** represented at that time an innovative tool for victims of domestic violence in France, as it brought several major improvements in terms of reinforcement of prevention and repression of violence against a partner. The most important are:¹⁴⁴

- The broadening of the scope of aggravating circumstances to:
new offences: murder, rape and sexual aggression
new perpetrators¹⁴⁵: PACS¹⁴⁶ partners, and former partners (married, cohabiting or under PACS) ;
- The explicit recognition of rape between spouses, that had been previously recognised by the Supreme Court in a decision of 5 September 1990¹⁴⁷ confirmed in another of 11 June 1992. According to article 11 of the Act, being in a relationship will only give a “simple” presumption of consent to sex that applies only in the absence of evidence to the contrary;
- The extension of restraining orders to PACS and former partners in case of violence;
- As a measure preventing forced marriages, art 1 raises the age for marriage for women from 15 to 18 years old.
- Finally, article 13 requires also, art 13 requests a governmental report on domestic

¹⁴⁴ French Ministry of Social Affairs and Health , 2006.

¹⁴⁵ Penal Code, Art.132-80.

¹⁴⁶ Pacte Civil de Solidarité (PACS) is a pact allowing same-sex civil unions.

¹⁴⁷ Cass, Crim, 5 septembre 1990.

violence policy to be transmitted to the Parliament every two years.

Psychological violence in particular has been taken more seriously in the past decade, in the form of psychological harassment. Effectively, two important acts of 2002 and 2010 criminalised it.

In 2002, the Social Modernisation Act¹⁴⁸ punishes in its chapter four psychological harassment at the workplace, by a penalty of one year of prison and 15.000 euros (article 170). This progress had become possible thanks to Marie-France Hirigoyen and her book on the topic, “Psychological harassment”.¹⁴⁹ Later, an act of 27 May 2008 assimilates and condemns acts of psychological and sexual harassment as being discriminative.

The struggle against violence against women was declared national priority for the year 2010. Pushed by this momentum, a very important and innovative **Act of 9 July 2010 on Violence against Women** granted legal recognition to psychological harassment in the private sphere,¹⁵⁰ making France the first country to have a specific provision on psychological violence against an intimate partner.¹⁵¹ That act was warmly welcomed by women's rights defenders, and highly criticised by others that expressed their regret of witnessing a tendency of litigiousness in private relations and the establishment of a “police of intimacies”.¹⁵²

This act inserted the following article 222-33-2-1 into the French Penal Code,¹⁵³ in the same section than the offence of psychological harassment at the workplace:¹⁵⁴

Harassing a spouse, partner under a PACS or cohabiting partner by repeated

¹⁴⁸ Of 17 January 2002 (<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000408905&dateTexte=&categorieLien=id>).

¹⁴⁹ Fonlupt, 2010 (http://www.lavie.fr/hebdo/2010/3367/violence-psychologique-un-delit-enfin-reconnu-08-03-2010-4008_110.php).

¹⁵⁰ BBC News, 2010: <http://www.bbc.co.uk/news/10459906>.

¹⁵¹ Satara-Bartko, 2011: <http://www.terrafemina.com/vie-pratique/droits/articles/4708-harcelement-agression-sexuelle-que-dit-la-loi-.html>

¹⁵² See Kahn, 2010 (http://www.marianne2.fr/jeanfrancoiskahn/Sur-le-delit-de-violence-psychologique_a64.html).

¹⁵³ Art 3.2 of the Act.

¹⁵⁴ Personal translation.

acts which object or effect are a degradation of living conditions resulting in an alteration of his/her physical or mental health is punishable by three years of imprisonment and a fine of € 45 000 when these acts have caused a total incapacity for work not exceeding eight days or have not resulted in incapacity for work, and five years of imprisonment and a fine of € 75 000 when they have caused a total incapacity to work exceeding eight days.

The same penalty is incurred when the offence is committed by a former spouse or former partner of the victim, a former partner or linked to it by a PACS.

Therefore, the penalty is defined in connection with the medical record, which grants a high responsibility to the doctor's decision. This relevance of the medical record in the penalty had been added in the second reading by the Senate, that is the Chamber at the origin of this offence. At the same time of creating a specific offence between intimate partners, the Act recalls that, according to a well established case law,¹⁵⁵ the broadest violence may be of a psychological nature (art 222-14-3 of the Penal Code).

The Senate gave details in order to make an accurate understanding of this offence.¹⁵⁶ Regarding the moral elements of the offence, It clarified that harassment meant a malicious intention from the part of the perpetrator that could express in different ways such as acts, threats, words or other elements.

Regarding the scope of the offence, the “*degradation of living conditions*” and the “*alteration of [the] physical or mental health*” of the victim have to be understood as two parts of a same logical link. The judge will therefore be the one in charge of establishing the causality between the two, as being the consequence of harassment. Those precisions were made in order to comply with the principle of legality that requires the law to be clear and precise enough with the purpose of facilitating the recognition of the offence and avoiding arbitrary decisions. However, the text of the law itself may still appear quite imprecise in the definition of the acts constituting the offence of harassment. Consequently, the judge bears the burden of defining the

¹⁵⁵ The first case recognising emotional shock: Crim, 19 février 1892. (See also: Crim, 13 juin 1991; 17 juin 1992; 2 septembre 2005).

Laborde, 2010, section II.B.3.

¹⁵⁶ Geoffroy, 2010.

elements of the offence on a case by case basis.

As we notice, the addition of an offence of psychological violence requires the training of doctors, judges and lawyers on this phenomenon to understand and apply it in practice, whenever a case of domestic violence appears.

The result is that today this provision has never been used before a court. Several reasons can be argued. The first one is the difficulty of evidence, that, apart from the medical record, consists mainly of words, and therefore can also be used by the perpetrator against the victim. The second one is the lack of awareness-raising and appropriate training of the professions evolving in the environment of potential victims of psychological violence. Finally, to cope with the lack of details of the text, Yael Mellul proposed to the National Assembly an alternative version¹⁵⁷ that was discarded but, in my view, still deserves some attention:

*Psychological violence occurs when a person inflicts repeatedly to another, a series of acts, attitudes and words, resulting in the deprivation of his free will and the impairment of his judgment. Psychological violence can be characterized by direct or indirect threats towards the family, working and social environment, financial pressures, harassment, blackmail, insults, private or public denigration, social isolation.*¹⁵⁸

The main interest of the definition relies on the level of details and examples given for the jurists to apply accurately and properly this offence every time it should be. What distinguishes the new offence of psychological violence from the broadest offence of violence taken in its psychological form relies on the repetition of several “small” acts that are part of a continuum, and which continuum determines the real seriousness of the offence.

¹⁵⁷ Mellul Yael, 2012 (http://www.lemonde.fr/idees/article/2010/02/23/violences-conjugales-lettre-ouverte-a-mmes-et-mm-les-deputes-par-yael-mellul_1310043_3232.html).

¹⁵⁸ Personal translation.

The 2010 Act also creates a second offence that is the offence of forced marriage (article 33).

In parallel, the Act provides the granting of an **urgent restraining order** from the judge in the case of intimate partner violence that put in danger either the direct victim or the children, or in case of threat of forced marriage. The establishment of an urgent restraining order gives place, when appropriate, to urgent measures relating to the accommodation of the victim or perpetrator. As far as accommodation is concerned, the Act facilitates the eviction of the perpetrator. In the eventuality that the perpetrator does not respect the protective measures, he is exposed to a penalty of 2 years of imprisonment and a €15 000 fine. It also provides for particular measures concerning the children indirectly exposed to that violence. Finally, following the Spanish model, the act sets up a provisory measure introducing **electronic tags** in few cities. This measure aims at a better control of the perpetrator's movement and at making sure he correctly applies the restraining order set by the judge.

The Act also provides the specific formation of professionals evolving the environment of victims of intimate-partner violence and establishes a day of sensitisation. Provisions protecting immigrant victims of intimate partner violence are also set in the Act, granting them the possibility of a temporary residence permit and judicial assistance.

3.2.2.2 Governmental implications.

At the governmental level, several initiatives have been progressively taken to protect women from violence. Three **Action Plans** have been passed since 2005.

The actual one has been set up in 2011 and is in force until 2013. It fixes three main goals, namely protection of direct and indirect victims, prevention and solidarity. 31,6 million euros have been dedicated to that end. The protection policies target the proper reception and advising of victims of violence. The prevention wing provides the programming of studies assessing the efficiency of the public policies and quantifying the phenomenon of violence against women; and the training of professionals in the field of justice, police, medical and social areas and medicine that are the most likely to

be consulted by women victims of violence, as well as the personnel in Ministries. The solidarity measures have the purpose of sensitising all the actors of society, by setting large scale campaigns involving the media and raising awareness especially amongst children in school.

3.2.2.3 Implementation and results.

In 2010, 146 women died from the hand of their current or former partner, whereas 140 died in 2009, and 157 in 2008 and 166 in 2007.¹⁵⁹ Also, the percentage of women victims of physical and sexual violence by their partner on a two-year-period shows a reduction of the occurrence of the phenomenon: 1.4% in 2006-2007, 1.4% in 2007-2008, 1.3% in 2008-2009 and 1.2% in 2009-2010.¹⁶⁰

Therefore, we can notice an important improvement throughout the years.

Unfortunately, no data are yet available after 2010 to compare the effects of the 2010 Act on the statistics.

Concerning the implementation of the 2010 Act, several data are available. The report given to the National Assembly in this respect¹⁶¹ states that the new offence of psychological violence, lacking of clarity in the definition of the constituent elements, it was impossible for the Ministry of Justice to quantify its use. Moreover, medical staff is quite opposed to establish medical certificates stating the likelihood of existence of psychological violence. As mentioned, the wider problem is the difficulty of proving such offence, the only witnesses being often the children.

Several complaints were lodged denouncing both physical and psychological violence, but no sentence was delivered on the basis of psychological violence for the moment. Regarding protecting orders, from October 2010 to May 2011, 584 were granted while 854 were asked. This data was analysed as very encouraging by the report, since it results more used by victims than eviction measures. The main obstacle to the granting

¹⁵⁹ Bauer, 2011, p.28.

¹⁶⁰ Observatoire National de la Délinquance et des Réponses Pénales, 2011, p.108.

¹⁶¹ Geoffroy et al, 2012, p.12.

of protecting orders by courts is the difficulty to convince the judge about serious reasons to consider the person in danger and likely to be victim of violence. No protecting order was reported to be founded on psychological violence, however it is sometimes use to reinforce a claim based principally on physical violence.¹⁶²

It is also worth mentioning that the average time reported between the request and the granting is of 26 days, calling into question the efficiency of such measure in a situation of emergency.¹⁶³

The 2010 Act also gives the possibility to use electronic tags in some specific occasions, that are cases of physical or sexual violence resulting in a sentence of at least 5 years of imprisonment. Those tags are currently being tested in some regions, starting 1 January 2012. It is therefore too soon to have any relevant data on the matter.

The 2011 Report from the National Observatory on Delinquency and Penal Responses¹⁶⁴ (ONDRP) found that in the calls received through the hotline “3919” for women victims of violence during the year 2010, 87% of women that considered themselves victims of violence declared being subject to psychological violence, placing this form of violence as the most common one, before physical violence (79,6%) and sexual violence (5.3%).

3.2.3 Sweden.

3.2.3.1 Legislation.

¹⁶² Idem p. 14.

¹⁶³ Idem p.15.

¹⁶⁴ Bauer, 2011, p.29.

With the adoption of the Swedish Penal Code in 1965, Sweden became the first country in the world to penalise rape within marriage. In 1982 physical abuse of women became a crime for public prosecution. “In spite of this it remained, and still is, difficult to obtain sufficient evidence to convict the man in court without the participation of the woman involved”.¹⁶⁵

The Kvinnofrid reform - In 1993 the Swedish Government appointed a commission, the Commission on Violence Against Women, to conduct an overview of issues concerning violence against women from the perspective of women and to propose legislative and policy measures for counteracting this violence.¹⁶⁶ The Commission’s final report from 1995 entitled “Kvinnofrid” (Women's Peace) (SOU 1995:60) formed the basis of a Government Bill on the Protection of Women’s Integrity (1997/1998:55) that was passed by the Swedish Parliament (Riksdag) in 1998. *The Swedish Reform concerning Gross Violation of a Woman’s Integrity* sets up programme of comprehensive measures protecting women victims of violence of which renewed legislation, preventive measures and “improved demeanour for meeting women subjected to violence.”¹⁶⁷ The government allocated a total of SEK 41 million (around € 4,5 million) to the proposed measures.¹⁶⁸

The final report, specifically written from the women's perspective,¹⁶⁹ emphasised the importance of including sexual and psychological violence in the definition of violence against women.

Effectively, concerning sexual crimes, the report asked for an enlargement of the **definition of rape**, demonstrating that “all acts which are currently encompassed by the concept of sexual intimacy must be covered by the provisions against rape”¹⁷⁰ and not to be only restricted, as it was the case, to sexual acts which are comparable with intercourse, since the writers consider that the different ways of sexually abusing a

¹⁶⁵ Eliasson et al, 2007, p. 25.

¹⁶⁶ Leander, 2005, p.116.

¹⁶⁷ Eliasson et al, 2007, p. 25.

¹⁶⁸ Amnesty International, 2004, p. 19.

¹⁶⁹ SOU Report 1995:60, p.439.

¹⁷⁰ Idem, p.440.

woman are not to be distinguished.¹⁷¹ Also the report took under consideration the need to replace the term of “sexual intimacy” implying mutuality by the concept of “sexual exploitation” implying in turn the use of force. *Therefore, the Commission's attention was on broadening the concept of rape to all kinds of sexual acts in which one person sexually coerces another person for his own sexual purposes.*¹⁷²

As to **intimate-partner violence**, the Commission, taking into account the normalisation process, pointed out how abusive relationships had to be considered as an overall process encompassing stages of violence, each one covering different types of acts. Then, the priority in that field was to allow the Courts to apprehend situations of domestic violence as a whole and not as several acts that could be given small or even no importance if considered one by one.¹⁷³ Following this approach, the report highlighted that such behaviours which are not always subject to criminal sanctions to participate in placing women victims under a state of “mental terrorisation”,¹⁷⁴ that had to be acknowledged as one expression of the overall abusive process. Such acts can also be defined as controlling behaviours underlying the shape of psychological violence.

Therefore, the work of the Commission led to legislative changes. As far as those changes are concerned, the bill introduced a new crime onto the Penal Code (Chapter 4, section 4a), the Law on **Gross violation of a Woman's integrity**:

A person who commits criminal acts as defined in Chapters 3, 4 or 6 against another person having, or have had, a close relationship to the perpetrator shall, if the acts form a part of an element in a repeated violation of that person's integrity and suited to severely damage that person's self-confidence, be sentenced for gross violation of integrity to imprisonment for at least six months and at most six years.

If the acts described in the first paragraph were committed by a man against a woman to whom he is, or has been, married or with whom he is, or has been cohabiting under

¹⁷¹ Idem, p.440.

¹⁷² SOU Report 1995:60, p. 440.

¹⁷³ SOU Report 1995:60, p.444.

¹⁷⁴ Idem p. 444.

circumstances comparable to marriage, he shall be sentenced for gross violation of a woman's integrity to the same punishment. (Law 1998:393)

It is worth noting that the first paragraph is gender neutral, giving the possibility of applying it to other relationships such as same sex or against men, children, or other relatives. However the second paragraph apply specifically to intimate partner violence against women, as a result of having taken into account the women's perspective recommended in the report.

The offences mentioned, that are criminalised in Chapter 3, 4 and 6 include assault, violation of the privacy of the home, sexual coercion, threatening behaviour, sexual assault and sexual exploitation.

One condition to meet to be defined as an offence of gross violation of a woman's integrity is that the acts altogether form a continuum of repeated violations that are to be considered jointly, and has had the aim of seriously damaging the victim's self-esteem. When deciding on the length of sentence, the judge shall give special consideration to the repetition of acts in the man's behaviour. Including those different acts intended to hurt a woman's self-esteem in one serious offence lead to a stronger sentence than it would be to consider each act separately. Alternatively the perpetrator can be sentenced in parallel with rape or aggravated assault or other crimes strongly penalised.¹⁷⁵ As the initial version of the offence resulted in few prosecution in practice, a clarification on how to interpret the concept of gross violation of a woman's integrity was introduced in the legal text in 2000.¹⁷⁶

Concerning further developments in the criminalisation of **rape**, an important step has been reached in 2005 with the **Sexual Offences Act**. In that reform, the Government "decided not to replace coercion with consent as the main criminal element" in rape¹⁷⁷ and at the same time it set up a less strict criterion for unlawful coercion, making the most serious cases of sexual exploitation fall under the provision condemning rape.

¹⁷⁵ Leander, 2005, p.118.

¹⁷⁶ Amnesty International, 2004, p.20.

¹⁷⁷ Burman (b), p.198.

Sweden also provides for **protecting orders**,¹⁷⁸ intended to prevent and protect women from threats and violence from a current or former intimate partner. The **Restraining Orders Act** was introduced in 1988. It set up two kinds of orders: the *basic restraining order* is conceived to protect a person when an individual is actively seeking contact with her/him with the aim of harassing or threatening her/him. It can only be issued if there is a risk of harassment or criminal actions. Violation of a restraining order carries the penalty of a fine or imprisonment for a maximum of one year. This basic restraining order can be made into an *extended restraining order* in which the individual is ordered to stay away from a geographical area of particular importance to the victim. On 1 September 2003, the Act was amended to specifically address cases occurring in intimate relationships. Therefore, the law was extended by the inclusion of two new forms of restraining order: the *specially extended restraining order* and the *domestic exclusion order*. Under the first kind, the individual can be ordered to stay away from an even wider geographical area than the extended restraining order. Under the second kind, the victim's partner can be ordered to stay away from the couple's shared residence for a maximum of one month. Also, the law tackles issues linked to situations in need of a fast decision concerning the safety of the possible victim of violence or harassment. In this case, the police is allowed to issue a temporary order until the prosecutor takes a decision that have to be as fast as possible.

3.2.3.2 Implementation of the legislation.

Concerning the **occurrence of men's assaults on women** (including rape and other sexual offences), the 2010 Brå report states that since 1990, the number of reported cases has increased by an average 400 per year. This is in part due to the increase of people's propensity to report assaults but also probably to the number of cases involving violence against women in close relationships. Also, reported cases of sexual crime

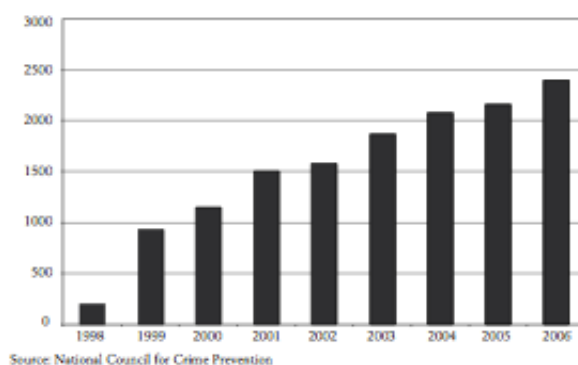
178

<http://www.coe.int/t/dghl/standardsetting/violence/PM%20ES%20initiativ%20om%20besöksförbud%20eng.pdf>.

have more than doubled since 1990. Concerning rapes, the number of cases reported also increased significantly in recent years, due in part to the fact that the definition in the Swedish Penal Code was broadened in 2005.

As of the **crime of gross violation of a woman's integrity**, the 2010 Brå report shows in a figure how the number of reported cases has increased year after year. We can see that it strongly increased over the years since the introduction of the offence in the Swedish Penal Code in 1998. According to the report, such augmentation is partly due to the fact that police and prosecutors have improved their skills in the investigation of a previous existence of violence and threats in the relationship.

Number of reported cases of gross violation of a woman's integrity, 1998–2006



It is important to contextualise this offence by saying that women exposed to violence are often subjected to repeated acts, and almost a third of the women who report that they have been assaulted by someone close to them lodge a further complaint with the police within 12 months.

Regarding the **use of restraining orders**, the Brå report No 2007:2 gave its analysis of the situation.¹⁷⁹ While in the first three years after the 1988 Restraining Order Act came into force, the number of applications per year was of 300, that number reached 5761

¹⁷⁹ Brå, 2007, p.6.

applications in 2000 and exceeded 10 000 in 2006. The report pointed out that within the 2000-2006 period, the number of applications doubled but the proportion of applications granted gradually declined. On the one hand, what explains the increase in applications is at the same time the awareness-raising about the restraining orders, and the efforts developed by the police to inform the citizens in this respect. On the other hand, the decrease in orders effectively granted seems due to the difficulty to meet the criteria, according to the police and public prosecutors.

Also it is worth noting that only a few extended restraining orders have been issued since 2003, the main reason being the strictness of the required criteria.

The report found out that the principal factor determining whether or not an application was granted depends on the adjudged ability/potentiality of a reported crime to proven.¹⁸⁰ That is, having evidence or testimony giving substance to the alleged offence from anyone else apart from the one reporting the crime.¹⁸¹

3.2.3.3 Governmental initiatives.

Besides changes in legislation, the *Kvinnofrid* reform provided for the setting up of measures directed to the Government and the different public authorities at the national and local level, in particular preventive measures and improved treatment of abused women.¹⁸²

Seven year after the ***Kvinnofrid* reform**, an inquiry¹⁸³ was mandated by the Swedish Government to evaluate the measures taken in accordance with the Bill and to identify the obstacles met in practice in the elimination of men's violence against women. That inquiry, which title Karen Leander translated as “Vain endeavours”,¹⁸⁴ while acknowledging that the “gender power perspective” had been consciously applied by the Commission on Violence against Women in its report, points out that the

¹⁸⁰ Idem p.8.

¹⁸¹ Idem p.9.

¹⁸² Amnesty International, 2004 p.19.

¹⁸³ A summary in English can be found at: <http://www.regeringen.se/sb/d/108/a/35431> .

¹⁸⁴ Leander, 2005, p.119.

Government Bill simultaneously applies conflicting interpretations of men's violence against women, called "deviation-based interpretations".¹⁸⁵ According to the authors, the combination of those two contradictory interpretations resulted to be the main difficulty while trying to tackle the problem "in a consistent and effective manner".¹⁸⁶ When analysing the measures that were to be performed¹⁸⁷ by public governmental agencies, it was underlined that they were only partially fulfilled. Effectively, in the area of men's violence against women, the inquiry noticed "the lack of action plans or broad policy documents on the conduct of work" by central government agencies, "the lack of crime prevention work, the lack of outreach activities in form of dissemination of information or opinion formation, and the lack of the improvement of knowledge and skills".¹⁸⁸ This lack of activity can be explained by a "resistance at several levels of society, from local to national authorities"¹⁸⁹ as identified in the 2003 report submitted to the Government by the National Group of Authorities for the Protection of Women against Violence.¹⁹⁰ Also, different views on the phenomenon of violence against women impede the development of coherent educational measures¹⁹¹ and an effective collaboration between agencies.

Concerning training programmes of the employees, being rarely mandatory, their impact was clearly diminished.

However, the **Captured Queen study**¹⁹² of 2001, can be mentioned as an useful and impactful measure of the Crime Victim Compensation and Support Authority. The inquiry acknowledged the consistent application of the gender power interpretation in the agency's publication.¹⁹³

Finally, the "Vain Endeavours" inquiry states that resources prioritisation, institutionalisation and politicisation, non cohesive interpretations, as well as trivialisation of the problem of men's violence against women are the most important

¹⁸⁵ SOU 2004:121, p. 22.

¹⁸⁶ Idem, p.22.

¹⁸⁷ Leander, 2005, pp.120-121

¹⁸⁸ Idem, pp.120-121

¹⁸⁹ Idem, p.121.

¹⁹⁰ This National Group, chaired by the Minister for Gender Equality, was established in the spirit of the Women's Peace reform.

¹⁹¹ SOU 2004:121, p.24.

¹⁹² Lundgren et al, 2002.

¹⁹³ SOU 2004:121, p. 25.

obstacles to the good implementation of the Kvinnofrid reform.

In 2007, the Swedish Government put into place an **Action plan to combat men's violence against women, violence and oppression in the name of honour, and violence in same-sex relations**¹⁹⁴, investing around SEK 1 billion (around € 115 million) in 56 different measures. The action plan focused on 6 areas, namely: increased protection and support to victims of violence; enhanced preventive work; higher standards and greater efficiency in the judicial system; better measures targeting violent offenders; increased cooperation and coordination; and enhance knowledge and competence.¹⁹⁵

The Brå report No 2010:18, concluded that the 2007 Action plan had, on the one hand, contributed to increased knowledge in the work with women victim of violence; new and easily accessible sources of knowledge; a high number of projects with renewed and local operations; new and valuable operational models; and more structured threat and risk assessments within the police.

On the other hand it stated that some aspects were more uncertain, mostly relating to the extent in which training courses will continue to be provided; the survival of local projects with new operations; and the questionable improvement of the protective measures by the police's threat and risk assessments.

Recently, the implementation of the Action Plan led to set up **measures** directed to the public agencies for the **2011- 2014** period.¹⁹⁶ The final objective of those measures is to integrate in a complete way new working methods and perspectives when dealing with the problem of violence against women. Are also of importance the knowledge and research dimensions, as well as the follow-up of the agencies' activities.

The measures are structured following six focal areas that are: “national mobilisation and coordination of the work; measures against sexual violence; improved preventive work and protection of, and support to, women subjected to violence and children who

¹⁹⁴ Govt. Communication 2007/08:39

¹⁹⁵ Idem.

¹⁹⁶ <http://www.sweden.gov.se/sb/d/14974/a/171721>.

witness violence; preventing and combating violence and oppression in the name of honour, including marriage against the will of one of the parties; preventive measures targeting men; and measures against prostitution and human trafficking for sexual purposes”.¹⁹⁷

Therefore, the balance seems quite positive in Sweden if we take into account that the level of exigence is high compared to the rest of Europe. It is always possible to do better, and the different actors concerned are on their way to improve their results. Effectively, the publication of several reports analysis the implementation of the legislation are a clear indication that the problem of men's violence against women is regarded as a serious issue. The level of advancement is also witnessed by the intellectual involvement of the academia on that matter, and particularly the critique of the use of concepts in criminal law and by courts. Monica Burman's article is an example.¹⁹⁸ The progress made and the consequent level reached in Sweden allows her, in applying feminist views, to question deep patriarchal and stereotypical concepts in judicial discourses that probably very few are aware of. Effectively, she points out what kind of stereotypes entails being a victim of domestic violence, and demonstrates/shows that in most cases where women are victims of a male perpetrator, not fitting in the mould of an “innocent victim” meaning not reacting and defending herself against the partner attacks of all kinds, would diminish the kindness of justice towards her. Therefore, she criticises the use of the term “victim” and is in favour of replacing it by a more adapted term translating the reality faced by most women (at least nowadays in Sweden) : “survivor”.

¹⁹⁷ Idem.

¹⁹⁸ Burman, 2010 (a).

3.2.4 Comparison between the three countries.

In this chapter we analysed the measures taken by Spain, France and Sweden in the field of domestic violence.

What we can first highlight, is the the different years where the relevant bills where passed. Therefore, we can see that Sweden in 1998 is pioneer in taking into account psychological violence, and includes it in a continuum of acts constituting domestic violence (the Gross Violation of a Woman's Integrity) and does not grant it higher or lower relevance. Then comes Spain, with the 2004 Organic Act that sets a comprehensive framework of measures, making the institutions evolving together with the law, and thus giving the maximum chance to eradicate domestic violence.

Eventually, France in 2006 and 2010, following the example of Spain, introduces specific measures to cope with domestic violence and even criminalises psychological violence. However, this last Act of 2010 has not given any positive result for the moment, due to the lack of precision in the definition of the offence and the lack of training of the doctors.

4 Concluding remarks.

This paper reveals several interesting facts.

First, to eradicate domestic violence, it is necessary to fight against stereotypes in the daily life and change mentalities of both women and men. Such measures should be put into practice simultaneously, if not previously to the legislative and institutional shifts, in order to get a long-lasting change.

Second, laws are able to help with such eradication, only if there is a political will to do so and to develop efforts towards their implementation. The 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, as a regional treaty, is likely to raise awareness on the topic and provoke a global political acknowledgement of the seriousness of the situation. This Convention is most likely going to lead to a regional will of combating domestic violence and hopefully the legislation will eventually be harmonised with the help of the monitoring body, the GREVIO.

Nonetheless, article 78 of the Convention allows for reservations on the criminalisation of psychological violence and stalking, thus lowering the importance of this widespread phenomenon. It has however being proved by the national practices analysed in this thesis, that the best way to fight domestic violence is to grant the same criminal importance to all its forms, including the ones considered not to be serious. Actually, what seems to be forgotten by the drafters of the Convention is that psychological violence is the most common form of intimate-partner violence. The main consideration of the drafters was certainly the technical difficulty to prove it, while forgetting the preventing aspect of criminal law. In my opinion it could also be the thought of the Convention not being ratified by enough Member-States, but I believe that if the States accept the other articles, it is not going to add much difficulty to ratify the criminal sanctions for psychological violence (article 33) and stalking (article 34). Consequently I would recommend that the Member-States do not make use of their right to

reservation.

Concerning the future of the Convention, a relevant issue has to be borne in mind. As we could see in Spain, the economic crisis affects the budget reserved to the prevention campaigns. The crisis is slowly gaining France and will possibly reach more European countries. The issue is to interfere with the quality of the fight against violence against women, which implementation requires quite a heavy economic support to put in place all the parallel structures, campaigns and trainings. The challenge nowadays is therefore to make sure the European Governments sign and ratify the Convention even in a disadvantageous economic climate.

Bibliography

Articles

Journals

Burman M., (a)“The ability of criminal law to produce gender equality: judicial discourses in the Swedish criminal legal system”, in *Violence against Women* 16: 173, 2010 (a). Available at: <http://vaw.sagepub.com/content/16/2/173> (Last access 12 April 2012).

Copelon Rhoda, “Recognizing the Egregious in the Everyday: Domestic Violence as Torture” pp.291-368 in *Columbia Human Rights Law Review* 25, 1993-1994.

Expósito F. and Herrera M.C, “Social perception of Violence against Women: Individual and Psychosocial characteristics of victims and abusers” pp.123-145 in the Official Journal of the *Sociedad Española de Psicología Jurídica y Forense*, Vol.1, No 1., 2009.

Johnstone R.L, “Feminist Influences on the United Nations Human Rights Treaty Bodies” pp. 148-185 in *Human Rights Quarterly*, Vol.28, No.1, February 2006.

Leander K., “Reflections on Sweden’s Measures against Men’s Violence against Women” pp. 115–125 in *Social Policy & Society* 5:1, 2005.

Walker Lenore, “Psychology and Violence against Women” pp. 695-702 in *American Psychologist* Vol. 44, No. 4, April 1989.

Newspapers

Agudo Alejandra, “La crisis y la falta de campañas desaniman a denunciar los malos tratos”, *El País*, Madrid, 28 June 2012. Available at: http://sociedad.elpais.com/sociedad/2012/06/28/actualidad/1340905679_764191.html (In Spanish. Last access: 15 June 2012).

BBC News, “Psychological violence a criminal offence in France”, 30 June 2010. Available at: <http://www.bbc.co.uk/news/10459906> (Last access: 5 June 2012).

Composition of the French Government “Le gouvernement Ayrault”, *Le Monde.fr*, 16 May 2012. Available at: http://www.lemonde.fr/politique/infographie/2012/05/16/le-gouvernement-ayrault_1702547_823448.html (In French. Last access: 17 May 2012).

Fonlupt Dominique, “Violence psychologique: un délit enfin reconnu” in *LaVie.fr*, 11 March 2010. Available at: http://www.lavie.fr/hebdo/2010/3367/violence-psychologique-un-delit-enfin-reconnu-08-03-2010-4008_110.php (In French. Last access: 7 June 2012).

Léchenet Alexandre, “17 femmes, 7 trentenaires... le gouvernement Ayrault en chiffres” in *Le Monde.fr*, 16 May 2012. Available at: http://www.lemonde.fr/election-presidentielle-2012/article/2012/05/16/17-femmes-7-trentenaires-le-gouvernement-ayrault-en-chiffres_1702501_1471069.html (In French. Last access: 17 May 2012).

Le Monde, “11% des espagnoles sont victimes de violences conjugales”, Paris, 24 April 2004.

Mellul Yael, “Violences conjugales : lettre ouverte à Mmes et MM. les députés, par Yael Mellul” in *Le Monde.fr*, 23 February 2010. Available at: http://www.lemonde.fr/idees/article/2010/02/23/violences-conjugales-lettre-ouverte-a-mmes-et-mm-les-deputes-par-yael-mellul_1310043_3232.html (In French. Last access: 8 June 2012).

Minder Raphael, “Spain Struggles to Tackle Domestic Violence” in *NYTimes*, 23 February 2011. Available at: http://www.nytimes.com/2011/02/24/world/europe/24iht-spain.html?_r=1&pagewanted=all (Last access: 21 June 2012).

Psychologies.com, “Couple: avant la première gifle”, May 2005. Available at: <http://www.psychologies.com/Planete/Societe/Articles-et-Dossiers/Comment-peut-on-frapper-une-femme/Couple-avant-la-premiere-gifle> (In French. Last access :1 July 2012).

Sahuquillo Maria, “El Gobierno reutilizará antiguas campañas contra la violencia machista”, *El País*, Madrid, 21 May 2012. Available at: http://sociedad.elpais.com/sociedad/2012/05/21/actualidad/1337604147_896445.html (In Spanish. Last access: 15 June 2012).

Satara-Bartko Candice, Harcèlement, agression sexuelle... Que dit la loi ?, *TerraFemina.com*, 3 June 2011. Available at: <http://www.terrafemina.com/vie-pratique/droits/articles/4708-harcelement-agression-sexuelle-que-dit-la-loi-.html> (In French. Last access: 5 June 2012).

Blogs

Kahn Jean-Francois, “Sur le délit de violence psychologique” in *Turner la page - Le blog de Jean-Francois Kahn*, 26 February 2010. Available at: http://www.marianne2.fr/jeanfrancoiskahn/Sur-le-delit-de-violence-psychologique_a64.html (In French. Last access: 5 June 2012).

Books

Bourdieu, Pierre, *La domination masculine*, Seuil, Paris, 1998.

Cook R.J. & Cusack S., *Gender stereotyping: transnational legal perspectives*, University of Pennsylvania Press, Philadelphia, 2010.

De Beauvoir, Simone, *Le deuxième sexe II*, Gallimard, 1949/1976, Paris.

Edwards, Alice, *Violence against Women under international Human rights law*, Cambridge University Press, Cambridge, UK, 2011.

Ferguson, Harry, *Ending gender-based violence: a call for global action to involve men : a summary of research*, Sida, Stockholm, 2004.

Fayner, Elsa, *Violences, féminin pluriel*, E.J.L, Paris, 2006.

Giro, Joaquin & Giro, Joaquin, *El género quebrantado: sobre la violencia, la libertad y los derechos de la mujer en el nuevo milenio*, Catarata, Madrid, 2005.

Harway M. and O'Neil J.M. (Eds.), *What causes men's violence against women?*, Sage Publications, London, 1999.

- Harway M. and O'Neil J.M. "Revised multivariate model explaining men's risk factors for violence against women", pp.207-241.

Hirigoyen, Marie-France, *Le harcèlement moral*, La Découverte, Paris, 2003.

Hirigoyen, Marie-France, *Femmes sous emprise*, Oh ! Editions, Paris, 2005.

Jaspard, Maryse, *Les violences contre les femmes*, La Découverte, Paris, 2005.

Merry, Sally Engle, *Human rights and gender violence: translating international law into local justice*, The University of Chicago Press, Chicago, 2006.

Munro, Vanessa & McGlynn, Clare (Eds.), *Rethinking rape law: international and comparative perspectives*, Routledge, Abingdon, UK, 2010.

- Burman M.,(b) "Rethinking Rape Law in Sweden: Coercion, Consent or Non voluntariness? "

Nousiainen K., Gunnarsson A., Lundstrom K., Niemi-Kiesilainen J. (Eds.), (a), *Responsible Selves: Women in the Nordic legal culture*, Ashgate, Aldershot, 2001.

- Nousiainen K. and Niemi-Kiesilainen J., (b), "Introductory remarks on Nordic Law and Gender identities", pp.1-24.

- Svensson, Eva-Maria, "Sex Equality: Changes in Politics, Jurisprudence and Feminist Legal Studies", pp.71-104.

O'Leary K. D. and Woodin E. M., *Psychological and physical aggression in couples : causes and interventions*, American Psychological Association, Washington DC, 2009.

- Kar H.L., Garcia-Moreno C., "Partner Aggression Across Cultures", pp.59-75.

Svensson E-M, Pylkkänen A., Niemi-Kiesiläinen J. (eds.), *Nordic Equality At A Crossroads. Feminist Legal Studies Coping With Difference*, Ashgate, Burlington, 2004.

- Nousiainen K., "On the limits of the concept of equality: arguments for a dynamic reading", pp. 195-218.

- Kouvo Sari, "Equality through Human Rights: Nordic and International Feminist Perspectives on Rights", pp. 219-234.

Walker Lenore, *The battered woman*, Harper and Row, New York, 1979.

Westendorp I., Wolleswinkel R. (Eds.), *Violence in the domestic sphere*, Intersentia, Antwerpen, 2005.

Case law

European Court of Human Rights, *Opuz v Turkey*, 2009.

European Court of Human Rights, *M.C. V Bulgaria*, 2003.

European Court of Human Rights, *Kontrova v Slovakia*, 2007.

French Court of Cassation, Criminal matters, 19 February 1892.

French Court of Cassation, Criminal matters, 5 Septembre 1990.

French Court of Cassation, Criminal matters, 13 June 1991.

French Court of Cassation, Criminal matters, 17 June 1992.

French Court of Cassation, Criminal matters, 2 Septembre 2005.

Inter-American Court, *Velasquez Rodriguez v Honduras*, 1998.

Spanish Tribunal Superior de Justicia of Asturias, Sentence No. 1964/2008, 2008.

Convention and related documents

Council of Europe Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV), *Final Activity Report*, Council of Europe, Strasbourg, 2008.

Available at:

http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/final_Activity_report.pdf (Last access: 23 April 2012).

Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence. Available at:

<http://www.conventions.coe.int/Treaty/EN/Reports/Html/210.htm> .

Kovács Elvira, Report on *Psychological Violence* (Doc. 12787), Parliamentary Assembly, Council of Europe, Strasbourg, 2011. Available at:

<http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDOC12787.pdf> (Last access: 9 July 2012).

Official Documents

France

Act No. 92-684 of 22 July 1992 / Loi No. 92-684 du 22 juillet 1992 portant réforme des dispositions du Code Pénal relatives à la répression des crimes et délits contre les personnes. Available at:

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000540288&fastPos=1&fastReqId=1421796125&categorieLien=id&oldAction=rechTexte> (In French. Last access 4 June 2012).

French Conseil Constitutionnel, Press Release of 2012: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-240-qpc/communiquede-presse.105619.html> (Last access: 4 June 2012).

Geoffroy Guy, Report to the National Assembly No. 2684 of 28 June 2010 <http://www.assemblee-nationale.fr/13/rapports/r2684.asp> (In French. Last access: 25 June 2012).

Geoffroy G. and Bousquet D., Informative Report No. 4169 to the National Assembly on the implementation of the Act of 9 July 2012, 17 January 2012. Available at: http://www.prevention-delinquance.interieur.gouv.fr/fileadmin/user_upload/03-Champs_d_action/Aide_aux_victimes/RapportEvaluation17-01-2012.pdf (In French. Last access: 5 July 2012).

Laborde Françoise on behalf of the Women's Rights Delegation, *Information Report No. n° 553 (2009-2010)*, 10 juin 2010. Available at: <http://www.senat.fr/rap/r09-553/r09-5537.html> (In French. Last access: 9 June 2012).

French Ministry of Social Affairs and Health, Department of Women's Rights and Equality / Service des droits des femmes et de l'égalité, *Fiche repère DPS 13 A sur la loi du 4 avril 2006*, Paris, Juillet 2006. Available at: <http://sgdatabse.unwomen.org/uploads/Fiche%20-%20Loi%204%20avril%202006%20-%20violence%20domestique%20-%20Service%20des%20droits%20des%20femmes%20et%20de%20l'egalite.pdf> (In French. Last access: 4 June 2012).

The Social Modernisation Act of 17 January 2002. Available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000408905&dateTexte=&categorieLien=id> (in French. Last access: 4 June 2012).

Spain

Consejo General del Poder Judicial (CGPJ), *Report of deaths from domestic violence and gender violence in 2008 /Informe de víctimas mortales por violencia domestica y violencia de genero en el año 2008*, Madrid, 2009. Available at: http://www.observatorioviolencia.org/upload_images/File/DOC1235984750_informe_muertas_2008.pdf.

Spanish Ministry of Health, Social Services and Equality (a) / Ministerio De Sanidad, Servicios Sociales e Igualdad, *Macroencuesta de Violencia de Género 2011: Principales Resultados*, Madrid, 8 February 2012. Available at: <http://www.observatorioviolencia.org/documentos.php?id=299> (In Spanish. Last access: 12 June 2012).

Spanish Ministry of Health, Social Services and Equality (b) / Ministerio De Sanidad, Servicios Sociales e Igualdad, *Información estadística de violencia de género. Informe Mensual - Mayo de 2012*, Madrid, May 2012. Available at: http://www.msssi.gob.es/ssi/violenciaGenero/portalEstadistico/informes/docs/Boletin_Estadistico_Mayo_2012.pdf (In Spanish. Last access: 8 July 2012)

Spanish Penal Code, in English. Available at: <http://www.mjusticia.gob.es/cs/Satellite/es/1215198252168/DetalleInformacion.html>. (Last access: 27 June 2012).

Sweden

Government communication 2007/08:39, *Action plan for combating men's violence*

against women, violence and oppression in the name of honour and violence in same-sex relationships, 2008. Available at: <http://www.sweden.gov.se/sb/d/574/a/98769> (Last access: 30 June 2012).

SOU (Swedish Government Official Reports) Report 1995:60, English Summary of the *Proposals of the Commission on Violence Against Women*, pp. 433-450, Stockholm, 1995.

SOU (Swedish Government Official Reports) Report 2004:121, *Slag i luften*, Summary in English pp 21-30, Stockholm, 2004. Available at: <http://www.regeringen.se/content/1/c6/03/54/31/93c7f12d.pdf> (Last access: 3 July 2012)

Studies and Reports

Amnesty International, *Men's Violence against Women in Intimate Relationships: An account of the situation in Sweden*, 2004. Available at: [http://www2.amnesty.se/svaw.nsf/mvaw/\\$File/mvaw.pdf](http://www2.amnesty.se/svaw.nsf/mvaw/$File/mvaw.pdf) (Last access: 20 June 2012).

Amnesty International (a), *Council of Europe Don't Waste this Opportunity: Make the Right Decisions on the Convention on Violence Against Women*, 2010. Available at: <http://www.unhcr.org/refworld/docid/4c7f63f32.html>. (Last access: 27 June 2012).

Bauer Alain, *La criminalité en France*, Synthèse du Rapport 2011 de l'Observatoire National de la Délinquance et des Réponses Pénales (ONDRP), 2011. Available at: http://nanojv.files.wordpress.com/2011/11/synthese-du-rapport-2011-de-londrp_cybercriminalitc3a9-en-france.pdf (In French. Last access: 1 July 2012).

Brå (Brottsförebyggande rådet) report No 2007:2 on *Restraining orders in Sweden* (English summary), 2007. Available at: <http://www.bra.se/bra/bra-in-english/home/publications/archive/publications/2007-07-25-restraining-orders-in-sweden.html> (Last access: 20 June 2012).

Eliasson M., Ellgrim B., *Men's violence to Women: A Swedish perspective*, Swedish Association of Local Authorities and Regions, 2007. Available at: http://english.skl.se/publications_and_reports (Last access: 15 April 2012).

Hausmann R., Tyson L.D., Zahidi S. *The Global Gender Gap Report 2011: Rankings and Scores*, World Economic Forum Geneva, Switzerland 2011. Available at: <http://reports.weforum.org/global-gender-gap-2011/> (consulted in April 2012).

Lundgren E., Heimer G., Westerstrand J., Kalliokoski A-M, *Captured Queen: men's violence against women in "equal" Sweden : a prevalence study*, Brottsoffermyndigheten, Umeå, 2002. Available at:

<http://sgdatabase.unwomen.org/uploads/Sweden%20-%20Captured%20Queen%20-%20Mens%20violence%20against%20women.pdf> (Last access: 11 April 2012).

Observatoire National de la Délinquance et des Réponses Pénales (ONDRP), Dossier “Victimation personnelle et opinions sur la sécurité mesurées lors des enquêtes «cadre de vie et sécurité» de 2007 à 2011” in *Rapport Annuel 2011*, 2011. Available at: http://www.inhesj.fr/fichiers/ondrp/rapport_annuel/ra2011/Dossier%20I%20-%20Victimation/006%20D%20I%20-%20I%20Victimation.pdf (In French. Last access: 8 June 2012).

Observatorio de Violencia sobre la Mujer, *IV Anual Report*, Madrid, 2011. Available at: <http://www.observatoriovioencia.org/documentos.php?id=297> (In Spanish. Last access: 6 July 2012).

Pieters J., Italiano P., Offermans A-M., Hellemans S., *Les expériences des femmes et des hommes en matière de violence psychologique, physique et sexuelle*, Institut pour l'égalité des femmes et des hommes (Editor), Brussels, 2010. Available at: http://igvm-iefh.belgium.be/nl/binaries/41%20-%20Dark%20number_FR_tcm336-102289.pdf (in French. Last access: 20 April 2012).

Ruiz Seguí S., Plaza M., “Gender equality policies in Spain: The commitment of social democracy” pp. 80-100 in *Queries* No. 2/2010, Foundation for European Progressive Studies (FEPS), Brussels, 2010. Available at: http://www.feps-europe.eu/uploads/queries/2010_07/2010_07.pdf (Last access: 23 May 2012).

United Nations (by year)

UN, Study of the Secretary General, *Ending violence against women*, 2006 (a).

UN, Report of the Secretary General, *In-depth study on all forms of violence against women* A/61/122/Add.1, 2006 (b).

UN, Human Rights Council, *Country mission Report on Sweden* by Yakin Ertürk, A/HRC/4/34/Add.3, 2007. Available at: http://www2.ohchr.org/english/bodies/chr/special/sp_reports/hrc_4th.htm (Last access: 15 April 2012).

UN, Division for the Advancement of Women United Nations Office on Drugs and Crime, Report of the expert group meeting on *Good Practices in legislation on Violence against Women*, Vienna, 2008. Available at: [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLYAW%20\(final%2011.11.08\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLYAW%20(final%2011.11.08).pdf) (Last access: 3 July 2012).

UN, Special Rapporteur on Violence against Women, Its Causes and Consequences, *15 years of the United Nations Special Rapporteur on Violence against Women, Its Causes*

and Consequences, 2009. Available at:

<http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

(Last access: 23 May 2012).