



U N A R S

Understanding Agency & Resistance Strategies:
Children in situations of domestic violence & abuse

UNDERSTANDING AGENCY AND RESISTANCE STRATEGIES (UNARS): POLICY ANALYSIS - Spain



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The Policy Situation in relation to Children Living With Domestic Violence

in:

Spain

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1. Introduction

Minors who experience domestic violence are represented in the Spanish legislative and policy framework in two legislative frameworks – those focused on domestic violence and those that address gender-based violence. The term domestic violence or family refers to any type of abuse, physical, psychological or sexual among members of a family (Corsi, 1994) ¹. Regarding gender-based violence, the term refers to violence based on gender; violence that is addressed to a woman just for being a woman. Both terminologies, until the recent legal changes, differentiated between the minor being a direct or indirect victim and made reference to witnesses of violence and passives' subjects of violence.

During the last decades the phenomenon of domestic violence and gender-based violence has become a key issue for institutions and society, in particular because of the high impact and the seriousness of its consequences. Women and children are the main victims of these types of violence.

In 2014 a total of 54 women in Spain died due to gender-based violence, leaving 41 orphans. Until now, in 2015 have occurred 9 mortal cases and 16 children have lost their mothers because of gender-based violence. Regarding minors' figures, the first statistics available were in 2013; year in which 6 children were killed. In 2014, a total of 4 minors were murdered in Spain due to the same problem.

Gender-based violence in the family context has become a priority for all administrations. Moreover, according to the survey on gender-based violence in 2011, promoted by the National Government Delegation on Gender-based Violence and the Center of Sociological Research, 64,9% of the women who had suffered abuse had young children in her care. The children average for each woman is about 2. This suggests that a large number of children are likely to be exposed to gender based violence. 54,7% of women said that their children suffered directly violent situations. This means that 1.530.000 people had suffered abuses when they were minors and that around 6,2% of the children of the country. For this reason the Spanish Government developed the "Childhood and Adolescence Strategic National Plan 2013-2016" with a key objective being to make these young victims visible and to extend their protection.

As a consequence, there has been a proliferation of research on healthcare resources, victims care and intervention, as well as research on the consequences of this kind of violence on children. Historically minors had been always secondary in policy and practice in gender based and domestic violence. However due to the social warning about the lasting negative consequences of children's exposure to violence, this issue has become a primary focus. Consequently, the Fundamental Law bill modifying the Childhood and Adolescence Protection System (February 2015) recognises children as victims. This measure entails a holistic reform and places Spain as the first country in Europe to introduce the minors' high interest defence as a mandatory principle, as UN guidelines on rights and legal procedure have recommended.

¹ *Anales de psicología* 2005, vol. 21, nº 1 (junio), 11-17. "Victims of family violence: Psychological consequences to abused children and women" de Rosa Patró Hernández y Rosa María Limiñana Gras. Universidad de Murcia

The reform aims to prevent and reinforce the policy against violence address to childhood. Regarding the awareness, it goes a step forward and sets the obligation to communicate the Public Prosecutor Office any event known by a citizen.

Likewise, the modification of the Law Holistic Protection Measures against Gender-based violence establish that judges will have to pronounce themselves about precautionary measures address to children and women victims of abuses. Moreover, foresee that children could stay with their mothers. In addition, it reinforces the protection in sexual abuses felonies that entails in 2013 a total of 3.364 minors.

At present a new Childhood Protection System has come into force. For the first time in a National Law a definition of risk situations and abandon have been added; being determined by risk for live, health and physical integrity, as well as the inducement to begging, juvenile delinquency and prostitution. By establishing the abandon, the guardianship goes to the public entity. In Spain almost 35.000 minors are under State guardianship, among them 13.400 live in shelters, waiting for a family.

According to the UNARs' group of experts of the Conselleria de Gobernacion y Justicia, the new legislation will involve a change in how to approach the issue of children's exposure to violence. Consequently, the more and more attention will paid to the minor. Their conclusions are that even if there are resources and professionals in place, much work is needed to improve the network communication and collaboration among different services. Currently, the communication and coordination among the different areas of practice and policy is basic, and there is a need for further specific training for professionals. Training is needed to raise awareness of the problem and to build a more exhaustive knowledge of resources available to support minors.

Experts have agreed on the importance of giving proper attention and protection to minors in situations of domestic violence. This includes standing alongside them and supporting them throughout the legal process and beyond. The new Spanish policy framework guarantees homogenous protection for children in the entire Spanish territory, addressing a need to harmonise the protection of minors who are considered victims of gender based violence, regardless of the historic distinction of being designated a 'direct' or 'indirect' victim.

2. Methodology

The Conselleria de Governación y Justicia had created on the frame of UNARS European Project a group of experts that had done an exhaustive follow up of the Project. The follow up consisted on meetings, taking part on the activities, as focus group, and on individual contact with the members of the group. The sectorial meetings with all the departments of the public administration have complemented this source of information: social welfare (minors, family and women department), education, health, justice, security forces, and Local Police.

Regarding the identification of articles and documents, a research on the “Web of Science” had been done. This is a well know scientific information system characterised by its multidisciplinary, to which the Universidad of Valencia is subscribed.

Two focus groups, experts and careers with a technical profile had supported the research: two hours each one and with an attendance of 26 experts. The attendance’s profile had been varied as all the public administration departments were represented on the focus groups. In this sense to be mentioned that in the caretakers took part a girl that had been victim of domestic violence, an Association TYRIUS (Association of Housewives); a shelter; and an ONG, “Teléfono de la Esperanza”.

The analysis of the focus group follows the criteria established on the project; moreover the conclusions had been debated among the UNARS Spanish team and the group of experts.

3. Historical overview of children's rights and policy on domestic violence

When talking about the Children's Rights, domestic violence and gender-based violence in Spain is mandatory to bear in mind the Spanish history, political system and costumes. In this sense the starting point will be the Spanish Constitution of 1978 that forbids any type of discrimination.

CHILDREN'S RIGHTS

Children abuses, the maximum expression of children abandonment and deprotection, entail a social and health problem. For this reason Spain enact a law "Fundamental Law 1/1996, of 15th January, Legal Protection of Minors", which modifies the Civil Code and the Law of Civil Lawsuit. The Fundamental Law 1/1996 establishes the public authorities intervention in those situations where minors have been abandoned (article 148.1 20 Constitution). The procedure determines that is the regional level the one in charge to develop the norms and the Children Protection legislative framework.

The interests of the children have been included in the international documentation, as well as in the European, national and regional level. The appealing to this "interest" is based on the children's vulnerability, lack of maturity and responsibility. These precepts are in coherence with international agreements, treaties, and conventions endorsed by the Spanish National State, in particular the article 3 of the Children Rights Convention, since the 6th December 1990.² Talking about the Convention means talking about an international legal instrument adopted and signed the 20th November 1989 by the General Assembly of the United Nations. In early 2012 the Convention had reached nearly the universal confirmation, as had been ratified by 193 states.³

The Convention represents the recognition of a change in the paradigm during the century XX about the children in the legal system: the children stops being a protection object to turn a person assigned to rights that needs to be empowered. In this frame the children's rights had been developed. Since the Declaration of Geneva in 1924, the children's rights had been considered to be restricted to the family frame, so there had been two approaches: first the priority was the father power, and secondly the individual rights.

The legal framework establish the article 92.2 of the Civil Code ("the judge will look after the right of children to be listen") and refers to the obligation to resolve minors problems related to the supervision and as well as adoptions, custody, to the principle of "favor filii", to the "benefit or interest of children as principle", and to "the welfare of the children". However doesn't include more accuracy about it.

² *Education Siglo XXI, Vol. 30 n° 2 · 2012, pp. 89-10. "The children interest: concept and delimitation of the term". Isaac Raveltllat Ballesté.*

³ *Education Siglo XXI, Vol. 30 n° 2 · 2012, pp. 47-68. "The Children Rights Convention: scope and new challenges", Jorge Cardona, Universitat de Valencia, Member of the Committee of Rights of the Children of the United Nations.*

In the last 20 years, some advances had been done in Spain. The Childhood evolution in Spain had been positive: as it prove the low rate of children mortality, being one of the lowest in the World; the increment of the mandatory and free schooling years; the coordination and planning of children strategies; the reform of the national and regional legislation. However it continues to be a dispersal of the minors' competence among the three levels of the public administration.

Since 1999 Spain has the Childhood Observatory, created by a Treaty of the Ministers Council and assigned to the Ministry of Health, Welfare and Equity. It's a platform of social stakeholders who work and try to promote the rights and musts of Childhood and Adolescence.

In its 2014 report, UNICEF warns about the crisis negative impact in the Spanish families with children under the age of 18th years old. In this sense point out the need to make an effort about risk situations and poverty or social exclusion in a develop country. Concerning the situation about risk and abuses, the report highlights that 8,7% of the minors between 0 and 17 years old are victims of violence in the family frame for each 10.000 children.⁴ Moreover, the present economic crisis has shed some light on several weakness:

- Spain has a high average of child poverty (27,5%), derivate among others from the unemployment rates and the weak social policy towards children and family protection.
- The inequity among children is rising, even over the population.
- The public investment in social policies for children and families is far away from the European media (1,4% of the GDP to 2,2% of the UE28 or 2,3% of UE15).
- The high levels of schooling failure (23,1% finish primary school ESO without a diploma) and the early education abandon (23,5% do not continue with its studies), questioned the educational system from the integration and equity point of view.
- Even if the children represent the 17,9% of the population, its lack of visibility and their inexistent participation in politics turns them into a set aside social group.⁵

LA VIOLENCIA DOMÉSTICA Y LA VIOLENCIA DE GÉNERO

The date of reference **1989**; the first time that appears on the Criminal Code measures against domestic violence. Those refer to the guard of the welfare and the right to be protected at their own house, without suffering physic violence. In **1995** when constant physyc abuses turns to be a felony, even if there aren't an injury. However it will not be until **1999**, when it appears for the first time in the Criminal Code the psychological welfare.

⁴ "Children's right under the scope of needs". Esperanza Ochaita Alderete y M^a Angeles Espinosa Bayal, Universidad Autónoma de Madrid.

⁵ UNICEF Report figures: "Childhood in Spain 2014".

The reference law and the breaking point it comes with the Law 27/2003, 31 July, ruling the Domestic Violence Protection Order and the Organic Law 1/2004, 28 December, Holistic Measures of Protection against Gender-based Violence. This breaking point had been reinforced by the modification of the Fundamental Law bill modifying the Childhood and Adolescence Protection System (February 2015).

In the last 30 years the adaptation of the legal frame according to the social needs had been huge and involves a big change on the victims protection. For example, before the Law 1/2004 once the complaint was filled they didn't have any protection measures.

Is important to remark, as specific from the Spanish System, that with the new legislative the judge takes both the criminal and civil competences, and gender-based violence courts have been created. Besides the judicial procedure starts when filling a complaint or lawsuit, which anyone can fill if there is enough evidence. In this case, even if the victim doesn't want to continue the process, it will carry on by the Public Prosecutor Office.

This legal modification is based on the society's understanding change: gender-based violence leaves aside the private sphere and become part of the public one. There is no room for a space free of legal supervision. The Rule of Law has the responsibility to take part because gender-based violence combats a worthy belonging; among it the need to protect the children's interest. In this sense the evolution had been from minor deprotection, not being part of the group of victims of gender-based violence, to be considered a victim with all the rights.

This new understanding is based on Moreno thoughts about the possibility that if a child victim of gender-based violence could be at the same time considered abandon (Moreno, 2001). In this case, the State will have to start the procedure to get the safeguard.⁶ Therefore can be deduced that, the legislation have to protect the minor (Pous, 2012) as it is included in the Law 27/2003, 31 July; which standardizes the gender-based violence victims protection order (BOE núm. 183, 1st August 2003).

The Law 27/2003 introduces a new concept in the Law of Criminal Procedure, in its art. 544 ter. The novelty refers the civil measures to be taken, which will have to be requested by the victim, the legal representative or the Public Prosecutor Office in those cases were their exists minors. It is also established that it will be no limits when it comes to protect minors.

Regarding the National Level, Fundamental Law 1/2004, an holistic protection measures on gender-based violence (BOE núm. 313, 29 December 2004) foresees a number of children protection actions for their

⁶ *Revista sobre la infancia y la adolescencia*, 4, 55-77 - Marzo 2013. "Protection Measures minors in gender-based violence cases"

safeguard, warrant the same protection given to the mother and all the measures included in the Law 1/2004 (Libano, 2010).

RECOGNITION OF THE MINOR IN POLITICS AND IN THE LEGISLATION

The terminology used during the last years has considerably changed. It can be considered as a 365°turn, that goes from not being considered to “minors can be affected by that situation”; meaning that situation a gender-based violence happening. Therefore as it takes place in the closer surrounding, the family, it will be considered as “familiar victim” (Villanueva, Górriz y Cuervo, 2009).

However in some occasions “it is said, that, victims, together with the victim, even if is direct or indirect” (Cortada, 2007). However, the believed is that this, being direct or indirect victim, will determine the personality (Querejeta, 1999). Yet, the statement is that still some assumptions that “make the difference concerning the minors being active individuals of domestic violence, in that case there are consequences” (Millán, 2009).

Nevertheless, during the research the references found are “direct or indirect victims”, as well as “witness of violence”, o “passive individuals of violence”. At present, thanks to the legislative change the minor is considered “victim”, just victims with no reference to direct or indirect.

4. Key policies and initiatives in relation to children's rights and domestic violence

The national legislation aims to set the bases that regional level will develop, as the competences had been transferred. All the protection actions focus the aid demand: health, economic and social... to avoid a deeply sorrow to the minor.

- At national level:

According to the above legislation, the children's rights recognised⁷:

a) **Fundamental Law 1/2004, gender-based violence**, takes into account all the social care services: emergencies, support, fostering and comprehensive recovery. The services are based on the principles of continue assistance and urgent assistance, given by specialize professionals. Before the modification of the Law, minors were seen as direct or indirect victims, as well as witness of violence.

b) **Fundamental Law 11/2003, domestic violence**, specific actions on civil security, domestic violence and comprehensive social integration to foreigners (BOE núm. 234, 30 September 2003), it also refers to the "Programme on Fighting Delinquency" introduced by the Government in 2002.

This Law has a multidisciplinary sphere and needs preventive, assistance and intervention, research stimulation, and legislatives measures to persuade about committing an offence connected with domestic violence. So the Law guards the offences related to domestic violence and aims the prevention and repression of those felonies.

c) **Victim Statute** includes the European Directive 2012/29&UE and goes beyond as it gives special protection. The protection and support given to the minors' victims is not just legal but also moral.

⁷ *Revista sobre la infancia y la adolescencia*, 4, 55-77 - Marzo 2013. Ramón, F.

- At regional and local level:

The same category can be found at regional: gender-based violence and domestic violence.

a) **Law 7/2012, 23 November, Regional Government, comprehensive law against violence towards women in the Valencian Region.** (BOE núm. 297, 11 December 2012)

The preamble of the Law includes the recommendation of the subcommittee “Equality Research and Performance of the Comprehensive Actions against gender-based violence” of the Parliament, based on the need to consider children as direct victims of gender-based violence. This is one of the laws’ novelties that also incorporate the individuals under the woman’s victim protection.

The Law’s goal is already expressed in article 1; a set of comprehensive actions to eradicate the violence on women. The regional level offers protection and assistance to women, their children and individual under their guard, and accompaniment, as well as prevention, awareness and training measures in order to involve the society.

Among the notion of woman victim of violence, article 5 includes children under the age of 18 that suffers any damage due to the harm caused to their mother. Moreover, there are more reference inside the Law to children’s rights actions and rights to be protected: right to compensation in death situations; guard, schooling and treatment rights; right to a psychological treatment; regarding schooling the facilities to move the register and choose a new center next to the latest home address; economical aid.

The article 20 of the Law 7/2012 establishes the inclusion of subsidies’ regulation for victims with low incomes, which refers to open access to all public services: shelters, child support, protection, support and psychological intervention.

b) **The Law 12/2008, 3 July Valencian Regional Government, Child and Adolescence Comprehensive Protection of the Valencian Region.**

<http://www.boe.es/boe/dias/2008/08/19/pdfs/A34843-34873.pdf>

This Law aims to regulate a minors and adolescence comprehensive protection actions to promote the child’s rights. For this purpose the recognition, promotion and development and protection.

The Valencian Region was one of the first autonomies to have a modern law on minors’ social protection, as it is Ley 7/1994, 5 December, the Childhood. The changes that introduce answer to the adaptation “Los cambios que introduce esta Ley responden a la adaptación of the

Fundamental Law 1/1996”, 15 January, Minor Juridical Protection, Fundamental Law 5/2000, 12 January, to the minors’ criminal responsibility and the Agreement for the Child Protection, as well as the Cooperation for the International Adoption, La Haya 29 May 1993, and to the social reality of the Valencian Region.

The Law said that “The Valencian Government will establish the correct protection actions to prevent, avoid, and all kinds of abuse and violence address to minors”

Likewise in the article 87 “The prevention Policies related to family support”, will have the following objectives: the promotion of the parents’ education, vulnerable families and disadvantages families, families living in violent situations, and single families, or any kind of risk families.

Moreover, some more:

- DECRETO 62/2012, 13 April, Government, that regulates the minors’ protection at the Valencian Region

http://www.docv.gva.es/portal/ficha_disposicion.jsp?id=24&sig=003693/2012&L=1&url_lista=

- ORDEN 25/2013, 23 December, Welfare Ministry, Aid programmes address to prevention, protection, minors integration or protection legal for 2014.

http://www.docv.gva.es/datos/2013/12/30/pdf/2013_12424.pdf

- Regulation of Juridical Protections Measures for Minors, approved by Decree-law 93/2001, 22 May, of the Regional Government, establish the competences of local entities according the competences mention on the social action and protection legislation.

http://www.docv.gva.es/rlqv/fileadmin/datos/pdfs_notas/2001/MA Decreto_93-2001.pdf

- Protocols and social resources distributed among prevention and intervention areas:
 - o The importance of the police sphere in the detection and child abuses approach. Conselleria de Bienestar Social, Generalitat Valenciana. Valencia (2007).

<Http://www.bsocial.gva.es/portal/portal?docid=4421>

- o Short Manual to detection and intervention on vulnerability and child abuses in the social sphere.

http://www.bsocial.gva.es/documents/610740/703749/Guía%20Breve%20de%20detección%20y%20actuación%20en%20situaciones%20de%20desprotección%20y_o%20maltrato%20infantil%20de_sde%20el%20ÁMBITO%20POLICIAL/b886299b-0940-4b44-890d-ebdf2b18d80a

- The importance of the health sphere in the detection and child abuses approach.
<http://www.bsocial.gva.es/documents/610740/703749/EI%20paper%20del%20ÁMBITO%20SANITARIO%20en%20la%20detección%20y%20abordaje%20de%20situaciones%20de%20desprotección%20o%20maltrato%20infantil/86b211db-37c6-4e06-8e5b-5ff56f9d999d>
- Short Manual to detection and intervention on vulnerability and child abuses in the health sphere.

http://www.bsocial.gva.es/documents/610740/703749/Guía%20Breve%20de%20detección%20y%20actuación%20en%20situaciones%20de%20desprotección%20y_o%20maltrato%20infantil%20de%20el%20ÁMBITO%20SANITARIO/bc6056eb-c614-41da-8ded-58a77387838f
- The “Public specialized services of family and child assistance” (SEAFI’s) are multidisciplinary local services
- Regional phone number at the Valencian Region 900 10 00 33 y 116111.
- Shelter Centers, ORDEN 17 January 2008, of the Welfare Regional Ministry that controls the organization and management of the shelters and day centers

http://www.docv.gva.es/portal/ficha_disposicion_pc.jsp?sig=001202/2008&L=1
- The importance of the educational sphere in the detection and child abuses approach.

<http://www.bsocial.gva.es/documents/610740/703749/EI%20paper%20del%20ÁMBITO%20EDUCATIVO%20en%20la%20detección%20y%20abordaje%20de%20situaciones%20de%20desprotección%20o%20maltrato%20infantil/07586242-6552-4521-bf3a-146cb421c640>
- Short Manual to detection and intervention on vulnerability and child abuses in the educational sphere.

http://www.bsocial.gva.es/documents/610740/703749/Guía%20Breve%20de%20detección%20y%20actuación%20en%20situaciones%20de%20desprotección%20y_o%20maltrato%20infantil%20de%20el%20ÁMBITO%20EDUCATIVO/e738b77d-28a1-4637-8dd7-e4d146ca5520

- Focus group: experts regards about the legislation:

The overall of professionals believed that the legislative frame and the already existing policies are enough to develop the work with minors. For this reason, they don't want more legislation or protocols but yes about procedures to improve coordination multidisciplinary and a network collaboration and work.

Experts support a bigger specialization and professionalism to promote resilience and agency. Moreover they are aware of the resources lack and the communication among different departments⁸

5. Discussion

According to the analysis undertaken, could be stated that the Spanish Legislation is pioneer in Europe about the children's rights on gender-based violence and domestic violence, setting the bases for the correct approach on gender-based violence and domestic, in particular to allow resilience and agency. Moreover, the analysis sheds some light on the needs: more economic resources, as well as a better coordination among social agents and professionals. The networking and the communication are essentials to support minors as well as to prevent vulnerability situations. For this purpose, experts claim for a more professionalisation and specialisation training. The motto is to break barriers.

The new normative has allow a change of tendency and a different approach on the problematic. In this sense, the UNARS Project has let the collaboration between public institutions and social entities in the development on new intervention strategies.

⁸ *Revista sobre la infancia y la adolescencia*, 4, 55-77 – marzo 2013. “Medidas De Protección Del Menor En Los Casos De Violencia De Género”. Francisca Ramón Fernández, Profesora Titular de Derecho civil Universitat Politècnica de València

