

I. General Provisions

HEAD OF STATE

15411 *ACT 27/2003 of 31st July on the order of protection for victims of domestic violence.*

JUAN CARLOS I
KING OF SPAIN

To all those who may see, read and understand this act. Know: That Parliament has passed and I hereby sanction the following act.

REASONS FOR THIS ACT

I

Violence in the family environment and, in particular gender-based violence is a serious problem in our society that requires a comprehensive and coordinated response by all public authorities. The situation that gives rise to these forms of violence transcends the merely domestic concern and becomes a scourge that affects and involves all citizens. It is essential, therefore, to devise new and more effective legal instruments, which are technically well-articulated in order to put a stop from the very beginning to any conduct that may lead to future events which finally degenerate into more serious ones. In conclusion, a coordinated and comprehensive action proves necessary in order to bring together both precautionary measures concerning the aggressor designed to prevent any further violent action, as well as protection measures of civil and social nature in order to avoid the distress of victims of domestic violence and in order to respond to their special situation of vulnerability.

Bearing this aim in mind, on 22nd October 2002, the Plenum of the Spanish Congress of Deputies agreed to establish a subcommittee within the Commission for Social Policy and Employment with the purpose of "...formulating legislative measures that provide a comprehensive response to gender violence ...».Among the most important conclusions of this subcommittee, it is to highlight the proposal which was supported by the Ministry of Justice to create and regulate a new instrument called a

protection order for victims of domestic violence.

This initiative responds to a concern that has been manifested in various documents and reports of experts, both national (the Supreme Judicial Council, the Institute for Women, the Public Prosecutors' Office, etc.) as well as supranational bodies (the UN, the European Council, EU institutions). That concern was formulated in the Parliament as "...the need for a comprehensive response, with coordination as a top priority ... " in the recent report of the speech constituted within the Committee on Women's Rights, which has achieved to carry out the Plenary both within the Congress of Deputies and the Senate. This act is therefore to comply with the unanimous mandate of Parliament.

II

The protection order for victims of domestic violence unifies the various instruments for defence and protection to victims of these offences. It intends that, by means of a quick and simple judicial procedure, which takes place before the preliminary investigation court, the victim can get a comprehensive protection status that will focus, in a coordinated way, precautionary measures both of civil and criminal nature. That is, a unique judicial judgement that incorporates both measures restricting freedom of movement of the aggressor in order to avoid further approaching to the victim, as well as those aimed at providing security, stability and legal protection to the abused person and her family, without being necessary to wait for the formalising of the civil marriage process. The judicial order of protection will entail that, in turn, the different public administrations, either of state, regional or local levels, will immediately activate the instruments of social protection which are established in their respective legal systems. It is precisely this point which makes it innovative.

In order to enforce the measures which were incorporated in the order of protection, a particularly simple procedure has been designed, which makes it accessible to all victims of

domestic violence, so that they and their legal representatives or close family relatives may be able to request it without having to go through technical or added costs. Apart from that, it will be possible to quickly obtain the new order of, as there will be no real protection to the victim unless the former is activated as quickly as possible. Bearing this objective in mind and following the line opened by the Act 38/2002 of 24th October which regulated the procedure for rapid prosecution of certain crimes and misdemeanours, this regulation would confer jurisdiction to the Preliminary Investigation Judge on duty to dictate the order of protection. The judicial decision will have to be conducted in a less obtrusive way within the criminal proceedings, whatever their nature and characteristics may be. For this purpose, the court hearing of the alleged aggressor will be likely to match with the judicial appearance under article 504 bis 2 of the Criminal Procedure Act when it was appropriate due to the seriousness of the facts or the circumstances occurred, with a hearing under article 798 if there were cases processed under the quick trial procedure, or the act of trial of offences in that case.

Finally, the new act gives naturalization papers to the Central Registry for the protection of victims of domestic violence, which will become immediately accessible to all protection orders issued by any court or tribunal where, in addition, facts considered relevant as for the protection of victims of these offences must also be recorded.

Article One.

Article 13 of the Criminal Procedure Act is amended to read as follows:

"The following actions will be considered as first proceedings: the fact of recording evidences of the crime which are likely to disappear, collecting and putting in custody everything which may lead to the verification and identification of offenders, arresting, where appropriate, the alleged perpetrators of crime, and protecting the offended person or those who have been harmed by it, their families or others, where precautionary measures referred to in Article 544 bis or order of protection under Article 544 ter of this act may be adopted to that effect."

Article Two.

A new article 544 ter of the Criminal Procedure Act has been added so that it reads as follows:

"1. The examining judge will dictate an order of protection for victims of domestic violence in cases where, there is strong evidence of the commission of a crime or misdemeanour against life, physical integrity or moral or sexual freedom, liberty or security of any of the persons mentioned in article 153 of the Criminal Code, and therefore a situation of risk to the victim that requires the adoption of some of the protection measures mentioned in this article.

2. The order of protection will be granted by the judge *ex officio* or at the request of the victim or person who has some of the relationships described in the preceding above with respect to the victim, or by the Public Prosecution Office. Notwithstanding the general duty of denunciation provided for in article 262 of this act, assistance institutions or agencies, either public or private, which may have knowledge of any of the actions mentioned above, must immediately inform the judge on duty or the Public Prosecution Office so that they can institute proceedings for the protection order.

3. The protection order may be requested directly to the judicial authority or the Public Prosecution Office, or to the Security Forces, or the offices of attention to the victim, as well as to social services or assistance institutions which are dependent on public authorities. Such application form must be sent immediately to the judge with jurisdiction on the matter. If there were doubts concerning the territorial jurisdiction of the court, it will be the judge to whom the application form has been addressed the one who will initiate and resolve the proceedings to adopt the protection order, notwithstanding further remission of the case to the judge who has actual jurisdiction for the matter.

Social services and institutions referred to above will provide the victims of domestic violence to whom they had had to assist, the application form of the order of protection, by making it available for this purpose the suitable information, forms and, where appropriate, telematic communication channels with the Judiciary and the Public Prosecution Office.

4. Once the application form for the order of protection has been received, the judge on duty in cases referred to in section 1 of this article, will summon to an urgent hearing the victim or her legal representative, the applicant and the aggressor, assisted, where appropriate, by a lawyer. Furthermore, the Public Prosecutor will also be summoned.

This hearing may proceed simultaneously with that provided in article 504 bis 2 when the summon was deemed appropriate, with the hearing governed by article 798 in those cases that are processed in the manner provided in Title III of Book IV of this act or, where appropriate, with the trial of misdemeanours. In exceptional cases where it was not possible to hold the hearing during the guard duty, the judge to whom the application had been delivered shall convene that hearing within the shortest possible time. In any case, the hearing will have to be held within a maximum of 72 hours after the application has been submitted.

During the hearing, the judge on duty shall take the appropriate steps to avoid confrontation between the perpetrator and the victim, her children and other family members. For this purpose, their corresponding statements will be conducted separately. Once the hearing has been held, the judge on duty shall decide by means of judicial order, what he or she considers appropriate as for the application of the order of protection as well as for the content and validity of the measures to be taken. Notwithstanding the foregoing, the examining judge may take at any time

during the proceedings, any measure under article 544 bis.

5. The order of protection gives the victim of the events referred to in section 1 a comprehensive protection status comprising the measures of civil and criminal nature referred to in this article, as well as those other measures of social and assistance nature established in the Spanish legal system.

The order of protection may be enforced before any authority and public administration.

6. The precautionary measures may include criminal sanctions in any of those contained in the criminal procedural legislation. Their requirements, content and validity are those set out in general terms in this act. They will be taken by the examining judge by taking into account the need for immediate and comprehensive protection of the victim.

7. The measures of civil nature shall be requested by the victim or her legal representative or by the Public Prosecution Office, when there are minor or disqualified children, provided that they had not been previously taken by a court of civil jurisdiction, and without prejudice to the measures under article 158 of the Civil Code. These measures may include the allocation of the use and enjoyment of the family home, the regime of custody, visitation, communication and stay with the children, the arrangements for the provision of food, and any provision considered appropriate so as to remove the child from danger or so as to avoid any type of damage.

The civil measures contained in the order of protection shall be in force for 30 days. If within that period family proceedings were initiated at the request of the victim or her legal representative before a civil court, those measures which had been taken will remain in effect for thirty days following the filing of the application. In this term, those measures should be ratified, modified or

terminated by the Judge of First Instance who has jurisdiction in that case.

8. The order of protection shall be served upon the parties, and immediately communicated by the judge by using the full testimony, to the victim and the public authorities which are in charge of taking the corresponding protection measures, whether these apply to security, social assistance, legal, health, psychological or otherwise. For this purpose, the regulations will establish an integrated system of administrative coordination in order to ensure the agility of these communications.

9. The order of protection will entail the duty to inform the victim permanently on the procedural status of the accused person and on the scope and application of the precautionary measures which have been taken. In particular, the victim will be informed at all times of the aggressor's penitentiary state. With this aim, the order of protection will be notified to the corresponding prison administrations.

10. The order of protection shall be registered in the Central Registry for the Protection of Victims of Domestic Violence.

11. In cases which during the course of the criminal proceedings emerges a situation of risk concerning any of the persons who are linked to the accused by any of the relationships indicated in section 1 of this article, the Judge of Court dealing with the case may dictate the order of protection for the victim under the provisions of the preceding sections."

First additional provision.

The Government, at the proposal of the Ministry of Justice, after hearing the General

Council of the Judiciary and the Data Protection Agency, shall promulgate appropriate regulations concerning the organization of the Central Registry for the Protection of Victims of Domestic Violence and the system of registration and cancellation of their entries and access to the information contained, ensuring confidentiality at all events.

Second additional provision.

Monitoring the implementation of this act shall be conducted by a commission composed of representatives of the General Council of the Judiciary, the Director of Public Prosecutions, the legal professions and the Ministries of Justice, Interior and Labour and Social Affairs as well as a representation of the autonomous communities and local authorities. This commission will be in charge of developing general protocols for the implementation of the order of protection regulated by this act as well as of adopting adequate coordination instruments that ensure the effectiveness of the protection and security measures adopted by judges, courts and the competent public administrations.

Unique final provision.

This act shall take effect the day following its publication in the "Official State Gazette".

Therefore,

I order all Spanish citizens, individuals and authorities, to observe and enforce this act.

Palma de Mallorca, 31st July 2003.

JUAN CARLOS R.

The Prime Minister (President of the Government),

JOSÉ MARÍA AZNAR LÓPEZ