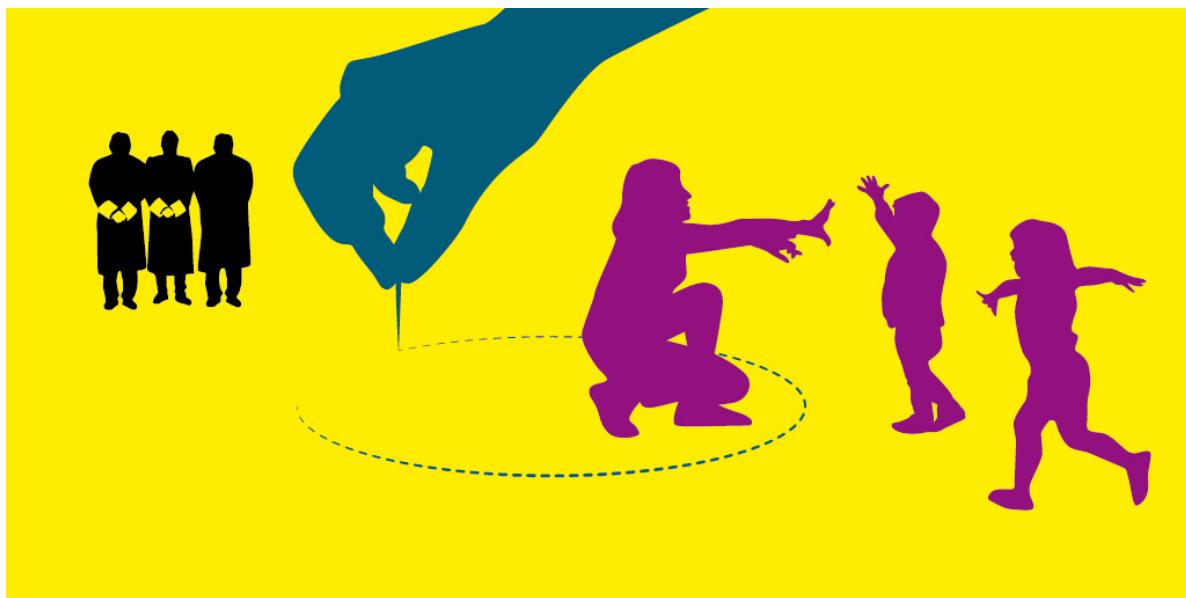


NEW FORMS OF GENDER-BASED VIOLENCE

Vicarious violence and second-order violence

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Illustrator: [Eduardo Luzzatti](#)

Law 17/2020, of 22 December 2020, amending Law 5/2008 on the right of women to eradicate gender-based violence, has updated the conceptual framework by incorporating new forms of gender-based violence, among which are vicarious violence and second-order violence. In both cases, reference is made to the violence perpetrated against the woman's environment: children, family, friends or professional network, as a way to continue causing her harm and suffering, punishing her network of support and isolating her.

The visibility of these two forms of violence were a demand of the feminist movements and their regulatory acknowledgement must strengthen the protection of women, children, adolescents and other people around them who suffer violence, putting a spotlight on their rights and needs.

Vicarious violence

The definition of vicarious violence is included in article 4.2 of Law 5/2008 "[...] Vicarious violence is any type of violence exercised against sons and daughters with the purpose of causing psychological damage to the mother." In addition, in section 3, "It is understood that the various forms of gender-based violence are also violence against women when they

are carried out with the threat or causation of physical or psychological violence against their emotional surroundings, especially against sons and daughters or other family members, with the desire to harm the woman”.

This concept has been used to make visible the instrumentalisation of children to inflict suffering on mothers. Vicarious is associated with an instrument. It would be vicarious violence to turn them into ways to exercise dominance and violence, with behaviours such as pitting them against the mother, exercising the rights inherent to parental authority not to enjoy one's own time with the children but to make the mother suffer, through threats [1], inflicting physical harm on them directly, or even murdering them [2].

In vicarious violence, the final recipient of the violence is the mother. However, it is necessary to also put the focus on these girls, boys and teenagers, and not treat them as objects, which is what violence does, but as subjects of rights and main actors of the interventions. From a non-adult-centric perspective, they should be regarded as active, participative subjects with a voice of their own. Children and adolescents must be heard and informed. They also must participate in the decision-making of what directly affects them, and their needs must be always taken into account. The conditions that can facilitate their future autonomy in a context free of violence must be always be considered, in compliance with the principles of the minor children's best interests and progressive autonomy.

Law 5/2008 emphasises a focus on children and adolescents. Article 2, on the guarantee of women's rights, establishes that all women who find themselves in situations of gender-based violence and also their dependent sons and daughters, who live or work in Catalonia, are guaranteed the rights that this law recognises. Section 2, states that “references to women included in this law are understood to include girls and teenagers, and therefore also transgender women, girls, and teenagers”. In addition, article 3 mentions age when it talks about *intersectionality or the intersection of oppressions* as the concurrence of gender-based violence with other axes of discrimination.

We must be very aware that the simple fact of living in a context of gender-based violence and being a witness to it has serious consequences for the health of children and adolescents and can seriously alter their development. These experiences have a similar impact, and sometimes even more serious, to the result of abuse that directly affects them (physical and/or psychological and sexual abuse).

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Gender-based violence is based on patriarchal ideology (still dominant in our culture) which transmits and legitimises, through discourse and non-verbal messages, the supremacy of what is considered masculine over what is considered feminine. This implies the risk that children and adolescents normalise what they are observing or suffering, and integrate and repeat these relationship models in their adult lives. The contexts of gender-based violence cause suffering and damage to children who have been exposed to it, due to the climate of deprivation, insecurity and permanent stress they generate.

Such exposure has consequences in the behavioural, social, emotional, learning, and academic areas, as well as in the physical, biological, sexual or economic performance, or in basic subsistence and beliefs and values. The consequences are highly variable: not all children and adolescents subjected to this exposure will have the same consequences or experience them to the same degree of intensity, since there are also possible mediating factors that reduce or exacerbate the damage. There are elements that strengthen resilience, such as contact with the mother, self-esteem, contact with the social network and others, but at the same time, the violent actions of the fathers can also affect and diminish these protective factors.

The violence carried out by the aggressor does not disappear after the separation, it continues when he visits their children. The children and adolescents continue to experience the traumatic situation, which in turn causes the mother a lot of anxiety, as she feels unable to protect them.

Vicarious violence has had powerful allies: the patriarchal interpretation and application of law. In a few cases, the judicial system has limited the parent-child relationship and even grants shared guardianship and custody. In response to this situation, Decree-law 26/2021, of 30 November, amending the second book of the Catalan Civil Code in relation to vicarious violence [3] states: "The application of the current regulation by the courts often prioritises that the personal relationships between parents and children not be broken. The model they start from is that, based on the principle of the best interest of the minor, it is necessary to maintain personal relations with the father even in cases of gender-based violence. This is a criterion based on stereotypes, as the CEDAW Committee pointed out in its decision on the case Ángela González Carreño vs. Spain, which presumes the goodness of the filial bond without valuing the suitability of the person to fulfil their parental responsibilities, which eludes their violent behaviour, psychologically and physically, towards the mother and which does not take into account their behaviour. Such aspects cannot be accepted in any case and, in particular, in cases of gender-based violence.

It is necessary to undertake an urgent legal reform that adapts and revises the Civil Code of Catalonia to introduce a new model in which the safety of the minor prevails and overcomes the shortcomings of the current system, under the principle of the best interests of the minor. The amendments to the precepts of the Civil Code of Catalonia that are made in this decree-law are aimed at prohibiting the attribution of custody, stays, relationships and communications between children and the father in cases of vicarious gender-based violence.

In the name of parental authority, abominations have also occurred such as the application of the false parental alienation syndrome (PAS) to mothers who were trying to protect their children from violence, with devastating consequences. The new article of the law tries to correct this and in article 5 explicitly prohibits the use of PAS: "the use of parental alienation syndrome is also institutional violence". Article 7.e) states that "the consideration of the comprehensive nature of the measures, which must take into account all the damage that women and their children suffer as a result of gender-based violence, has also been modified. These damages, which include the use of parental alienation syndrome, affect the physical, emotional, digital, economic, labour, community-related and social spheres".

To avoid stereotypes and myths such as false allegations, the law also establishes mandatory training for professionals. In the definition of institutional violence, article 5 states that "institutional violence includes legislative production and the interpretation and application of law that has as its object or provokes the same outcome".

One of the protective factors that can reduce the consequences of gender-based violence in children and adolescents is the response and coordination of services and protocols. The reform of Law 5/2008 has established that the right to attention, recovery, and reparation of children and adolescents must be effective as soon as possible. This obligation for public administrations is part of the guarantee of rights with due diligence [4].

One of the difficulties for professional intervention in children and adolescents has been the requirement of parental consent for psychotherapeutic care. To solve this issue, the final provision of the Law establishes that "the Government must present, within nine months, a bill to adapt the legal system to the necessary guarantee of care for the children of women victims of gender-based violence without the need for open judicial proceedings, and also in the case of minors between 14 and 16 years of age, with regard to the consent of the parents or legal guardians. During this period the Government must guarantee such attention". In its compliance, Decree Law 26/2021 amends several articles of the Catalan Civil Code, including article 236-8.2.d): "For the psychological attention and assistance of minor children, the consent of the parent against whom criminal proceedings are being pursued for having attempted against the life, physical integrity, freedom, moral integrity, or sexual freedom and indemnity of the other parent or the shared minor sons and daughters, or against whom a sentence of conviction has been handed down, as long as criminal liability is not extinguished, is not required. Even if no previous complaint has been made, consent is also not necessary when the mother receives documented assistance from comprehensive care and recovery services for women who suffer gender-based violence established by law. Psychological assistance to children over the age of sixteen requires their consent".

Therefore, in cases where a woman is being cared for in a comprehensive care and recovery network service, only the documentary accreditation of this care will be needed to be able to provide care for her children, without the father's consent being necessary, but the information remains on the part of the abusive parent who does not have restricted parental authority. It is advisable, in this case, to be cautious in the indications and to consider the degree of exposure it entails for women, children and adolescents.

Vicarious violence has had powerful allies: the patriarchal interpretation and application of law gives priority to parent-child relationship even in cases of gender-based violence

It will also be a challenge to see how to guarantee the rights of children and adolescents in cases of sexual violence to avoid revictimisation, as well as to ensure the judicial application of restrictions on parental authority in cases of violence against women in order to prevent the repetition of such situations. It is also necessary to highlight the violence suffered by children and adolescents who are not linked to the gender-based violence relationship of their parents.

Second-order violence

Second-order violence aims to eliminate support for women, children and adolescents in situations of gender-based violence, and is mainly committed through acts to affect the personal and professional reputation of people in their surroundings, friendships, relatives and professionals. Law 5/2018 is the first law in the world that incorporates second-order harassment, in article 4, and defines it as “[...] physical or psychological violence, reprisals, humiliations and persecution exercised against people who support victims of gender-based violence. It includes the acts that prevent the prevention, detection, care and recovery of women in situations of gender-based violence [...].”

Identifying and analysing the actions of the solidarity network is the object of the research project SOL.NET, *Xarxes de solidaritat amb impacte en els processos de recuperació de dones víctimes de violència de gènere* (solidarity networks with impact on the recovery processes of women in situation of gender-based violence), led by the University of Girona and coordinated by the researcher Patrícia Melgar [5]. The research shows that the people in the environment play a key role in the recovery process and can help to break the silence towards violence and for women to stop being isolated and feeling alone. However, at the same time, people who give support expose themselves to the risk of being victims of violence as well. As a result, an article has been published in the *International and Multidisciplinary Journal of Social Science* (RIMCIS) which shows quantitative data on this form of violence: it finds that second-order violence is one of the main barriers that hinder the intervention of citizens when they become aware of or witness a situation of gender-based violence, for fear of possible reprisals. It concludes that it will be necessary to activate mechanisms that prevent second-order violence in order to extend and strengthen support networks for people who suffer gender-based violence.

As for professionals, the *Framework protocol for an intervention with due diligence in situations of gender-based violence* (2022) [6], driven by the Ministry of Equality and Feminism of the Government of Catalonia, establishes, in chapter seven (dedicated to the care and rights of professional people) preventive measures and comprehensive reparation in relation to second-order violence.

In both forms (vicarious violence and second-order violence), it will be necessary to see how the provisions of the law develop, since this regulatory recognition also implies the obligation of public administrations to guarantee compliance with due diligence, and assumes the institutional and patrimonial responsibility of public authorities, and the disciplinary and professional responsibility of public administration staff.

REFERENCES AND FOOTNOTES

- 1 — For instance, the case of Rocío Carrasco, who reported repeated threats towards her children: “I will take them away, I will make them hate you”. Source: [Telecinco](#).
- 2 — As happened in the case of Angela González Carreño, in which the Committee of the Convention on the Elimination of All Forms of Discrimination Against Women condemned Spain for breaching international conventions for the murder of her daughter during the visiting arrangements, despite the mother’s numerous complaints and requests for help to the authorities.
- 3 — «Decret llei 26/2021, de 30 de novembre, de modificació del llibre segon del Codi civil de Catalunya en relació amb la violència vicària» (Legislative Decree 26/2021, of November 30, amending Book Two of the Catalan Civil Code in relation to vicarious violence). Official Gazette of the Government of Catalonia (DOGC, *Diari Oficial de la Generalitat de Catalunya*), no. 8556, December 2, 2021.
- 4 — Article 3.h) of Law 5/2008 defines due diligence as “the obligation of public authorities to adopt legislative measures and any other measure to act with the necessary agility and efficiency to ensure that the authorities, staff, agents, public entities and other stakeholders acting on behalf of these public powers will behave in accordance with this obligation, in order to prevent, investigate, prosecute, punish and adequately repair acts of gender-based violence, protecting its victims”. This article also defines secondary victimisation or revictimisation as “the additional mistreatment carried out against women and their children who find themselves in situations of gender-based violence, as a direct or indirect consequence of the quantitative and qualitative deficits of the interventions carried out by responsible bodies, and also for the misguided or negligent actions of other agents involved” (art. 3.i). See also the principles of article 7.m) and 7.t) of the aforementioned law.
- 5 — Melgar, Patricia [et al.] (2012). «Fear to Retaliation: The Most Frequent Reason for Not Helping Victims of Gender Violence». *International and Multidisciplinary Journal of Social Sciences*, no. 10 (2), pp. 31-50.
- 6 — Government of Catalonia. Ministry of Equality and Feminism (2022). *Protocol marc per una intervenció amb la diligència deguda en situacions de violència masclista* (Framework protocol for an intervention with due diligence in situations of gender-based violence) Barcelona.

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