

SPECIALIZED COURTS ADDRESSING VIOLENCE AGAINST WOMEN IN ARGENTINA

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1. Introduction. Description of the general situation

Within the broader framework of violence against women, I was asked to address a specific issue: the role of specialized justice systems in improving access to justice for women and girls. The following reflections remain closely aligned with this guiding question¹.

As a rule, the prevention of acts of violence is the responsibility of the administrative branch, which oversees general security. When the State fails to fulfill this duty, victims most often turn to the judicial system. Yet, despite the existence of numerous international conventions, laws, regulations, and protocols, effective protection is frequently absent in that forum as well².

2. A frequent and specific problem: conflicts of jurisdiction.

Procedural rules on jurisdiction should not impose a narrow view of a complex conflict; even purely patrimonial issues can carry a human dimension that must not be overlooked. Nevertheless, in many cases, victims of violence lose valuable time simply “*looking for the judge.*” At times, this search extends all the way to the provincial high courts or even to the Supreme Courts of Justice, often after a very long delay.³

(a) Jurisdictional conflicts may arise between criminal and civil judges.

For instance, complaints of violence are often heard by the family courts, while claims for breach of the duty of communication are brought before the criminal courts. In

¹ For the problem of family violence in the courts, see my book, *La violencia en las relaciones de familia. Diálogo con la jurisprudencia argentina. Respuestas de la jurisdicción “no penal”*; Rubinzal Culzoni, Santa Fe, 2 vol., 2022.

² See PICCINELLI, Ornela C., *Medidas de protección de víctimas de violencia de género; estándares convencionales para su gestión y decisión*, en Rev. de Derecho Procesal, 2019-2- p. 175/222; MOSMANN, María V., *Violencia de género, proceso judicial y nuevas estructuras procesales*, en Rev. de Derecho Procesal, 2019-2- p.223/252; PIGHIN, Sabrina, *Tutela diferenciada de evidencia legal. Ley 26.485*, en Cita: RC D 789/2021.

³ CSN, 27/12/2012, ED 252-86 and Doc. Jud. Año XXIX, n° 16, abril 2013, 33; AR/JUR/73404/2012

the former, a restraining order may be issued, while at the same time the latter may summon the father, mother, and daughter to appear at a hearing.

In some cases, and reasonably so, the criminal court defers to the family court. It has been held, for example, that *“when a family conflict is already under judicial consideration before the family jurisdiction, any decision regarding how contact between the children and the non-cohabiting parent should be re-established must fall within the jurisdiction of the specialized judge -before whom the matter has already been raised- an area in which rights are also safeguarded through the procedural principles expressly set forth in Article 706 of the Civil and Commercial Code.”*⁴

The court grounded this solution in the doctrinal view that *“the most repressive legal field is not the most appropriate for resolving problems that arise within the family environment.”*⁵

I agree with this position. Except in cases of manifest seriousness, I am convinced that criminal law does not resolve the victim’s problem; it only aggravates it.⁶

Conversely, an appeal brought before the civil courts has been deemed moot when the criminal judge has already issued precautionary measures preventing the defendant from approaching his ex-wife and minor children.⁷

(b) Conflicts may also arise between non-criminal courts. For example, in matters of precautionary measures, it has been held that, provisionally, the Civil Court (and not the Family Court) is competent to hear the preparatory steps required to initiate a later action to reclaim the property where the family resided.⁸

These conflicts are clearly responsible for undue delays in proceedings. They might be reduced if certain basic and flexible rules, already endorsed by the Argentine Supreme Court of Justice, were consistently applied, such as:

⁴ Cámara Nacional Criminal y Correccional, Sala I – 21/02/2017, elDial.com - AA9E33, 12/04/2017.

⁵ HERRERA, Marisa, y BLADILLO, Agustina *Perspectiva contemporánea de una interacción incómoda: familias en plural y derecho penal*, en *El Código Civil y Comercial y su incidencia en el Derecho penal*, Hammurabi, Bs. As., 2016, p. 317.

⁶ The arguments of this position are exposed in my book quoted in note number 1.

⁷ Cámara Civil, Comercial y Laboral de Reconquista, Santa Fe, 13-6-2017 (not published).

⁸ Cámara Civil, Comercial y Contencioso Administrativo, 2ª nominación, Río Cuarto, Córdoba; 08/07/2021; Rubinzal Online; 0009704 RC J 6292/21.

*–“In proceedings concerning children, it is advisable to ensure greater immediacy with their situation. Therefore, in determining jurisdiction, preference should be given to the judge of the place where the children live.”*⁹

As a rule, then, conflicts of jurisdiction should be resolved in favor of the place where the children live -that is, their center of life.¹⁰

*“Requiring potential victims to undergo burdensome personal procedures typical of family violence cases in the aggressor’s forum could lead to revictimization, which the law rejects. Where judges in conflict are equally situated to assume the protective role, the choice must rest on which of them is best positioned to ensure the comprehensive protection of the child’s rights. For this reason, it is ordinarily the judge of the child’s residence, since that judge has direct access to the affected person.”*¹¹

- A victim’s situation of risk does not allow for jurisdictional debates based on a possible connection between the complaint and another case, as this obstructs the urgent intervention required of the magistrate.¹²

Multiple proceedings cannot be allowed to place the victim of violence at risk. Thus, it is appropriate to overturn decisions that cancel protective measures merely because courts of other jurisdictions are also involved, where there is no evidence that those judges have either granted or denied such measures.¹³

(c) Exceptionally, jurisdictional questions still arise in provinces such as Jujuy, where specialized courts on gender violence exist -a circumstance that should, in principle, help to eliminate such conflicts. For example, it was debated whether this court was competent to hear a complaint filed by a man against his female partner (he alleged that she had sprayed him with alcohol, scratched him, threatened him with a machete, burned his belongings, and refused to return the motorcycle he used for work). By majority, the Superior Court of Justice of that province held that *“given the complex*

⁹ CSN 27/11/2014, Doc. Jud. Año XXXI, n° 7, 18/2/2015, p. 23, cita on line AR/JUR/57118/2014.

¹⁰ Juzgado de Paz Letrado Villa Gesell, 25/6/2021, elDial.com - AAC89C, 13/12/2021. See SCAGLIA, Romina, *La violencia familiar en la justicia comunitaria de las pequeñas causas de Santa Fe*, 26-mar-2021, Cita: MJ-DOC-15864-AR | MJD15864.

¹¹ CSN 23/4/2013, Doc. Judicial, año XXIX, n° 29, julio 2013, pág. 7, AR/JUR/11948/2013; ídem CSN 27/11/2014, Doc. Judicial, año XXXI, n° 7, febrero 2015, pág. 23, AR/JUR/11948/2013.

¹² CJ Salta, 16/09/2010, LL Noroeste 2010-1085; AR/JUR/59210/2010.

¹³ Cámara de Apelaciones en lo Civil, Comercial, Familia y Contencioso Administrativo de Villa María, Córdoba, 9-sep-2021, Cita: MJ-JU-M-134972-AR | MJJ134972.

and broad concept of gender violence, preventing the case from being resolved by that specialized magistrate undermines the principles of equality, access to justice, and effective judicial protection.”

The court reasoned that *“gender-based violence has become an umbrella term for any harm committed against a person resulting from power inequalities rooted in gender roles. Worldwide, gender-based violence almost always has a greater negative impact on women and girls. For this reason, the term ‘gender-based violence’ is often used interchangeably with ‘violence against women’ (VAW). That is, gender-based violence primarily affects women in all cultures, but it also refers to violence directed against a person because of his or her gender; therefore, both men and women can be victims of gender-based violence.”*

By contrast, the dissenting opinion argued that *“the jurisdiction of courts specialized in gender violence must be limited to cases where the violence is genuinely based on gender reasons and the victim is a woman, since the purpose of the law is none other than the full and immediate protection of women as a group in special vulnerability to gender violence.”*¹⁴

3. Specialized justice. Specific issues.

The case for specialized justice goes beyond jurisdictional conflicts.

(a) The complexity of gender-based violence requires not only specialized judges but also specialized prosecutorial offices and targeted training for lawyers.¹⁵

In Argentina, only three provinces (Córdoba, Salta, and Jujuy) currently have judges with exclusive jurisdiction over cases of violence. Generally, these judges handle urgent measures, but their effectiveness is not always assured. The system is still recent, and so far its users -victims and lawyers- have not expressed strong approval.

In June 2015, the National Public Prosecutor’s Office created the Specialized Prosecutorial Unit on Violence against Women (UFEM). Its mandate is to collaborate in the design and implementation of criminal prosecution strategies addressing the

¹⁴ Superior Tribunal de Justicia de Jujuy, 14/12/2017, JA 2018-II-399, LA LEY 2018-B, 351, con nota de MENDELEWICZ José D., *Los juzgados especializados en violencia de género. La justicia terapéutica en el siglo XXI*, cita on line AR/DOC/617/2018; LA LEY 2018-B, 540, con nota de YUBA, Gabriela, *Violencia de género y violencia contra las mujeres. Reflexiones a partir de un fallo* y en DPyC 2018 (junio), 76, con igual nota y en Derecho de Familia, 2018-V-22.

¹⁵BONGIORNO, Antonella y otra, *El rol del abogado litigante en el asesoramiento por violencia de género y violencia intrafamiliar*, en Rev. Derecho de Familia, n° 75, julio 2016, pág. 135.

different manifestations of violence against women and against individuals targeted because of their gender and/or sexual orientation (LGBTI population). One year later, UFEM's mission was more clearly defined as strengthening the Public Prosecutor's actions in the prevention, investigation, punishment, and eradication of gender-based violence through the design of specific criminal policies, the development of prosecutorial tools, and strategic litigation.

(b) A critically important issue concerns the production and evaluation of evidence. Outdated myths such as "*the woman lies*" must be completely eradicated from the system.

For instance, in the criminal sphere, the Specialized Prosecutorial Unit on Violence against Women (UFEM) developed the Protocol for the Investigation and Litigation of Cases of Violent Deaths of Women (femicides). This protocol adapts the *Latin American Model Protocol for the Investigation of Violent Deaths of Women for Reasons of Gender (femicide/feminicide)* -a UN model prepared by the Office of the High Commissioner for Human Rights (OHCHR) and UN Women- to the Argentine context and legislation. The tool is intended for all national and federal prosecutorial offices in the country to enhance prosecutorial intervention in femicide investigations and litigation, and to ensure that the Public Prosecutor's Office acts in line with applicable international standards.

(c) The starting point of specialized justice raises further questions, such as:

(i) Should a specialized judge deal exclusively with domestic violence, or should jurisdiction extend to all forms of gender-based violence (including, for example, violence in the workplace, in sports, etc.¹⁶)?

Domestic abuse is one of the most serious and widespread forms of violence against women and girls. Separation from the aggressor can be the most dangerous period for the victim. A significant body of research has shown that perpetrators of domestic abuse often use family law procedures as tools to continue abuse and coercion.¹⁷

¹⁶ Juzgado de Paz, Luis Beltrán, Río Negro; 26/05/2025; Rubinzal Online; RC J 5017/25. In the case, the referee who directed the match had threatening, contemptuous and humiliating attitudes towards a woman who was a member of the technical group of a soccer team.

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extension://efaidnbmnnnibpcajpcgltclefindmkaj/https://www.law.ox.ac.uk/sites/default/files/inlin
e-files/Family_Justice_Response_Domestic_Abuse_Portrait_A4_spanish-Digital.pdf, CHOUDHRY,
Shazia y RODRÍGUEZ GUTIERREZ, Daniela, *La respuesta de la justicia familiar al maltrato doméstico*

(ii) Should a single judge decide both the civil and criminal aspects of the matter, or should the criminal component remain under the jurisdiction of the criminal courts? The first approach resembles the Salvadoran Code, where all matters related to domestic violence fall within the family jurisdiction; however, even under that Code, if a criminal offense is involved, criminal courts also assume jurisdiction.¹⁸

(iii) Should the specialized judge be limited to urgent measures that put an end to immediate violence (a kind of firefighter who puts out the flames), or should the judge address the broader problem as well?

(iv) Even when competence goes beyond urgent measures, should it remain free of other claims that, although involving the same parties, are not directly related to violence?¹⁹

This position rests on the view that, to be truly effective, the violence court judge must be fully committed to ending violence; fulfilling that role requires that it has no other issues to resolve. As stated: *“The purpose of laws protecting against violence is not to displace other courts, but to operate as a useful and effective tool, providing the possibility of an urgent response when there is a situation of danger.”*²⁰

In any event, some degree of concentration must exist within judicial organization. It is not viable for the same family dispute to be addressed by different judges, with the inevitable risk of contradictory, overlapping, or delayed decisions.

(v) A final point: the existence of specialized courts does not preclude intervention by other courts if the victim is located far from where those specialized courts sit. Thus, in Argentina, it is common for so-called “judges of the peace” or “community judges” to adopt urgent measures to prevent acts of violence or to mitigate the harm already caused.²¹

Un estudio empírico de seis países sobre las experiencias de las supervivientes, jueces, abogados y peritos designados,

¹⁸ GARCÍA ALBERTO, Ramón, *Disposiciones fundamentales de la ley contra la violencia intrafamiliar de El Salvador*, en GARCÍA ALBERO, R., y MARROQUIN MARTÍNEZ, Alex D., *Ley contra la violencia intrafamiliar comentada de El Salvador y delitos conexos*, San Salvador, ed. Consejo de la Judicatura de El Salvador y otros, 2008, p. 68.

¹⁹ Cámara Nacional Civil sala E, 10/7/2008, Rev. Derecho de Familia y de las personas, año I n° 1, setiembre 2009, pág. 258, entre otros.

²⁰ Juzgado Civil, Comercial, Laboral, Familia, Menores y de Paz de Santa Lucia, 18-sep-2021, Cita: MJ-JU-M-134674-AR | MJJ134674. Prohibition of approach of a 29-year-old man, partner of a teenager.

²¹ VITANTONIO, Marina *Competencia de los juzgados comunitarios de pequeñas causas de Santa Fe para intervenir en asuntos de violencia familiar y género*, Cita: TR LALEY AR/DOC/1433/2025; RAGGIO, Guido, *Competencia en violencia familiar en la Provincia de Buenos Aires. Derecho de Opción*, TR LALEY AR/DOC/208/2025.

4. Access to Justice

4.1. Introduction

It is not enough to appoint specialized judges; the system must also guarantee effective access to them.²²

Many state agencies have adopted facilitative instruments such as protocols and manuals.

In this regard, there is broad consensus on the application of the *Brasilia Regulations on Access to Justice for Vulnerable People*.²³

However, the emergence of new forms of violence -such as digital violence, or the violence experienced by women, girls, and adolescents in the context of migration- can quickly render some protocols obsolete.

For example, in Argentina, Law 27.736 (the *Olimpia Law*), enacted in 2023 to address digital violence, has already given rise to noteworthy decisions. In one case, repeated violent expressions led to the father of two children being excluded from parents' WhatsApp groups, and the school was prohibited from including him in any group or social network where information about the children was exchanged.²⁴

More recently, it has been observed that irregular migration status is sometimes used as a mechanism of manipulation to keep abuse hidden within the private sphere. It is common for the perpetrator to threaten to report the migrant victim to immigration authorities, using this threat as a control strategy to perpetuate mistreatment.²⁵

4.2. Access to justice and, exceptionally, rejection *in limine* of the claim

Access to justice does not mean that every petition must necessarily be processed. Although rare, there are cases that from the outset are destined to be rejected. It

²²GONZÁLEZ DE VICEL, Mariela A, *Violencia de género: acceso a justicia de las mujeres*, Cita: RC D 1126/2019.

²³Juzgado de familia de primera instancia de Córdoba, 20-2-2020 (not published). See GONZALEZ, Manuela y BARCAGLIONI, Gabriela, *Violencia contra las mujeres y acceso a la justicia*, *Revista Via Iuris*, (N.º 25), pp. 1-26. ISSN 1909-5759, ISSN digital 2500-803x, número 25, julio- diciembre, 2018.

²⁴ Commented by CARBALLIDO, Julia, *Ley Olimpia: indicadores de violencia digital para proteger también en grupos de WhatsApp*, 9-dic-2024, Cita: MJ-DOC-18092-AR | MJD18092.

²⁵ PADULA, Pablo Federico, *Personas migrantes y violencia familiar. Prohibición de no innovar migratoria como tutela judicial efectiva*, elDial.com - DC3687, 20-8-2025.

would run counter to the principle of procedural economy to conduct a lengthy process when it is evident from the beginning that the claim will be dismissed.

Naturally, the judicial power to reject a claim *in limine* must be exercised with the utmost caution, as it restricts the right of action, which is tied to the constitutional right to petition. For this reason, it must be limited to cases of manifest inadmissibility, where the minimum seriousness required of any judicial action cannot be met. In other words, where inadmissibility is evident or the claim is patently unfounded.

For example, in the province of Mendoza, a first-instance judge rejected *in limine* a request for an injunction prohibiting contact by two people in a dating relationship against a woman who had been the girlfriend of one of them more than four years earlier and who, according to them, was harassing them via social networks. The judge held that the relationship had ended more than four years ago and that there had been no violence during its course, leading to the conclusion that the alleged conduct might amount to a misdemeanor but did not fall within the scope of family-court protection.²⁶

In essence, the judge raised a question of jurisdiction: he did not deny that the alleged facts might have occurred, but characterized them as misdemeanors falling within the competence of other courts.

5. Recommendations

The complexity of the problem does not mean that we should surrender to the evidence. As President Roosevelt said, *“Something has to be done.”*

The following are, in my view, minimum recommendations, without which no real progress can be made:

(a) With or without specialized courts, the judiciary must play an active role.²⁷

*“The role of the judge is obviously neutral, but he is not indifferent to the outcomes of jurisdiction.”*²⁸

²⁶ Juzgado de Paz letrado de La Paz, Tercera circunscripción judicial de Mendoza, 17/9/2020, expediente n° 8.640 (not published).

²⁷ MONFERRER, Analía S. *Violencia doméstica: derechos humanos y actividad judicial*, RDF: 79, 16/05/2017, 33, AR/DOC/3548/2017.

²⁸ MORELLO, Augusto, *Armonización y unificación de sistemas procesales civiles*, LL 2000-B-1231.

(b) Protective measures must be ensured through procedures that are both swift and concentrated.²⁹

(c) Interpretative criteria are not static; they evolve over time. Judges must remain alert to new realities (for example, digital violence) in order to raise the level of preventive protection.³⁰

(d) Where harm has already occurred, judicial proceedings should assist in the victim's recovery, prevent further harm, and avoid aggravating the consequences. In general, criminal law does not serve these ends; it is preferable that such matters be addressed comprehensively by a non-criminal judge.

(e) Action protocols, while useful, must be applied with flexibility and be subject to periodic review.³¹

(f) Judges, prosecutors, and lawyers must be highly trained. Continuous training and emotional balance are indispensable requirements.

(g) Personnel working in courts that handle only cases of violence are often under significant pressure.³² Their situation must be taken into account, and it is advisable that they not remain in these positions for too long.

(h) Courts must be equipped with the material and human resources necessary to perform their role. Specialized courts are ineffective if they lack interdisciplinary teams.

(i) Where specialized courts do not exist, jurisdictional conflicts must be avoided by applying reasonable guidelines developed through case law over the years.

(j) The existence of specialized courts does not preclude the intervention of other judges where the victim resides far from the centers in which those specialized courts operate.

²⁹ MENDELEWICZ, José D. *Prevención y reparación de los daños cuando la mujer es víctima de violencia*, DFyP 2015 (agosto), 20/08/2015, 22, Cita Online: AR/DOC/2054/2015.

³⁰ ORTIZ, Diego O, *Una oportunidad para interpretar criterios sobre medidas en el procedimiento de violencia*, 9-jun-2021, Cita: MJ-DOC-15991-AR | MJD15991.

³¹ See *Manual de procedimiento de violencia intrafamiliar para el poder judicial de la provincia de Formosa. Aprobado por Resolución N° 221/21 de 23/08/2021*.

³² MENDELEWICZ, José D. *La contención emocional de los operadores judiciales especializados en violencia de género. La justicia terapéutica*, DFyP 2017 (mayo), 10/05/2017, 17, Cita Online: AR/DOC/981/2017.