

The importance of the gender perspective in judicial experiences against gender-based violence

Abstract

The expert activity, especially in the criminal field, must be carried out with a gender perspective, so that it is respectful of the rights and guarantees of women by granting them dignified, respectful treatment, which does not imply objectification of the victim and with a vision far from prejudices and preconceptions. In these cases, the professional must adopt a broad vision, anticipating the consequences that the exercise of their expert work may bring about on the victim, always prioritizing the person to avoid their re-victimization and falling into institutional violence. For this, the training of experts in the matter and the preparation of protocols are essential in order to adapt scientific techniques to international standards in the field of human rights and protection of women victims of violence.

Keywords: judicial expertise, gender violence, gender perspective, training of expert, protocols

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Introduction

Importance of the expert evidence

The increasing specialization of the activity of men and the progressive development of science and technology constantly increase the world of facts that escapes the normal knowledge of the judge, to whom it is only given to demand a legal version. Given these circumstances, the magistrate could not comply with the obligation he has to examine the facts without the help of suitable people who possess special knowledge. In effect, in certain proceedings, due to the complexity of the issues being discussed, the judge is not in a position to know or appreciate a fact by his own means, either because they are not within the reach of his senses, or because his The exam requires technical skills that are only provided by certain disciplines, outside of law. In such cases, the help of specialized persons who receive the name of experts must be requested, and the diligence that is practiced with their assistance constitutes the expert evidence.¹ As can be seen, experts can be called to verify the existence of a fact or also to determine the causes or effects of a fact. In the first case, the ideal one will limit himself to carrying out the verification without issuing an opinion on the circumstances that surround him; in the second, he will issue a true opinion or deductive assessment. What we mean by this is that the expert performs a double function: perception and verification, on the one hand, and opinion or assessment, on the other.

In short, this means of proof is required to make up for a technical insufficiency of the magistrate, who, although he has legal knowledge, does not possess -in most cases- scientific, technical, artistic or practical knowledge;² and even in the case that he had them (vgr:

medical judge), he is not allowed to do without the help of the expert. This is so, since the thesis according to which if the judge possesses such scientific or technical knowledge is unacceptable, he could use it to circumvent the taking of evidence.³ In other words, the courts lack the authority to judge the case resorting only to the private, technical or scientific knowledge that its members may possess, since this intimate knowledge, revealed at the time of sentencing, is beyond the control of the parties. And thus violates the principle of the contradictory. Here, then, we note the double function to which Carnelutti refers: on the one hand, the *perito percipiendi*, which is the one who verifies the existence or characteristics of technical, scientific or artistic facts, and on the other, the *perito deducendi*, which is the one that applies the scientific, technical or artistic rules of specialized experience to the facts verified in the process by any means of proof, to deduce from them their causes and consequences. In the first case, the expert is an instrument for the perception of the facts, in the second, an instrument for the deduction of factual material.⁴ For this reason we can affirm that the expert opinion is a statement of science,⁵ because the expert exposes what he knows by perception, deduction or induction of the facts, but it is also an evaluative operation.

In the field of authorial doctrine, it has been held that “*Expert evidence is that provided by third parties who, following a judicial order and based on scientific, literary, artistic or practical knowledge, possess, communicate or present to the judge the verifications, opinions and deductions drawn on facts submitted to its opinion.*”⁶

For its part, Arazi maintains that the expert evidence “...is the means by which people outside the parties, who have special knowledge in some science, art or profession and who have been previously

his science, art, profession or trade. This implies that for the expert evidence to proceed, special knowledge must be necessary. It is that the judge cannot delegate to the expert what he can do by his own means, either as a common man or as a man who knows the law (Arazi Roland. “*The evidence in the Civil process*”. Rubinzal-Culzoni. 3^a updated edition. Bs. As. 2008. p. 269).

³Kielmanovich Jorge L. “*Proof Theory and Probable Means*”. Edit. Rubinzal-Culzoni. Santa Fe, third edition. 2004. p. 565.

⁴Carnelutti, Francesco. “*The Civil Test*,” Depalma, Bs. As., 2nd edition, 2000, p. 71 and ss, paragraphs 17 and.

⁵Devis Echandía Hernando. “*Compendium of the Judicial Evidence*”. annotated and agreed upon by Adolfo Alvarado Velloso, Edit. Rubinzal-Culzoni, Santa Fe, 2007. p. II, p. 103.

⁶Guasp, Jaime. “*Civil Procedural Law*”, 3rd ed. Institute of Political Studies, Madrid. 1968. t. I, p. 381.

¹Alsina Hugo. “*Practical Theoretical Treaty of Civil and Commercial Procedural Law*”, edit. Ediar, Bs. As., year 1957, t. III, p. 472 and 475. The judge usually finds himself in situations in which his knowledge is not enough to properly appreciate the facts submitted to his consideration, for this reason he is forced to request the collaboration of people whose knowledge allows him to obviate that ignorance, providing him with the indispensable illustration (Ramacciotti Hugo. “*Compendium of Civil and Commercial Procedural Law of Córdoba*”, edited by Depalma, Bs. As., year 1981;1:p. 633).

²Bonnier maintained that the expert witness is the lens through which the judge perceives certain facts that his normal vision does not reach (quoted by ALSINA, Hugo, “*Practical Theoretical Treaty of Civil and Commercial Procedural Law*”, edit. Ediar, Bs. As., year 1957;3:472). The expert is the judge's look at the material traces that require some special knowledge of

designated in a specific process, perceive, verify facts and They bring them to the knowledge of the judge, and give their opinion based on the interpretation and appreciation of the same, in order to form the conviction of the magistrate, whenever that knowledge is required for this.⁷ A more complete concept is offered by Kielmanovich, for whom the expert evidence is "... that through which a third party appointed by a court due to their scientific, artistic or practical knowledge, alien to the common and legal knowledge of the magistrate, informs him about of the facts perceived or deduced, their effects and causes, and the judgment that they deserve, so that the latter, on such bases, can form a conviction about them."⁸

Regarding its legal nature, we can say that there is no doubt that expert evidence is a means of proof. The character of auxiliary to justice that the expert is recognized is not an obstacle to such a characterization, since what is decisive is that the ideal one verifies facts and provides the judge with knowledge of them, operating as an intermediary for their interpretation.⁹ It is that it is not accurate to affirm that the expert evidence is limited simply to providing guidelines for assessing the facts; on the contrary, it frequently implies the demonstration or verification of its existence and its externalization for the process, sometimes even as the only and exclusive means for its accreditation or verification.¹⁰

The expert evidence with a gender perspective

The purpose of this work is to demonstrate how the approach to expert activity from a gender perspective is essential to reach a fair resolution, respectful of international standards on human rights, which many countries have internationally committed to observe. The gender approach is a way of observing reality that implies a deeper look, which allows identifying the different roles and tasks that men and women carry out in a society, observing asymmetries, power relations and inequities. It makes it possible to recognize the causes that produce inequalities and formulate mechanisms to overcome these gaps. It contributes to explain and expand aspects of reality previously not taken into account; and it applies to all areas of life: work, education, personal among others. For this, we must start from the premise of the importance of carrying out the different expertise, with an interdisciplinary approach, which deserve vital importance in cases of gender violence precisely because of the sensitivity that they deserve in the situation of vulnerability. Through the victim. In this order, it is necessary that these tasks be carried out with a gender perspective, away from all preconceptions, in order to understand and identify, with the elements and technical foundations, the risk situation in which we find ourselves and achieve better protective measures. To achieve the purposes of gender expertise, the expert does not work

alone because there are personal, social and specific factual conditions that are analyzed and investigated by other experts, in this sense, the participation of a psychologist or psychiatrist is necessary. forensic depending on the particular state of the person whose case is analyzed, social worker to carry out field investigations that help to find out the truth. To this it is necessary to add the necessary psychological expertise to determine profiles, behaviors and existence of syndromes in the person investigated, if he is a victim of violence and, if so, what type of violence he suffered. That is why interdisciplinary work is required for these approaches. In this order, it is important to indicate, regarding the role of the interdisciplinary team, that it is necessary for its members to be aware of gender theory, women's rights and the influence of the patriarchal social structure in particular conditions. Of each person and their environment. Thus, through the work of an interdisciplinary team sensitive to gender gaps, it is possible to reveal how they cause effects on the psychological state of a person, being able to become a victim of some condition derived from situations of violence or discrimination. or influencing their development before their partner and society.

Remember that "Gender violence creates obligations for States in accordance with international and regional human rights law. Most of the countries in Latin America have accepted international commitments stipulated in various human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the American Convention on Human Rights (ACHR), and the specific treaties on women, among them, the most important are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, ratified on July 15, 1985) and its Protocol Optional (ratified on March 20, 2007), and the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Convention of Belém do Pará of 1994, ratified on September 4, 1996). The treaties are complemented by important jurisprudence, in constant growth, on gender violence from the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHR Court); and with non-binding instruments, such as the Beijing Declaration and Platform for Action and the subsequent follow-up processes of five, ten and fifteen years, resolutions of the General Assembly and the United Nations (UN) Human Rights Council, and Recommendations General principles adopted by United Nations human rights organizations as "authorized interpretation tools" (Chinkin - Access to Justice, Gender and Human Rights).

Within this framework, we must point out that in Argentina, protection against gender violence finds its regulatory framework in the National Constitution, in the Convention for the Elimination of All Forms of Discrimination against Women, the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women or Convention of Belém do Pará, Law 26,485 of "Comprehensive protection to prevent, punish and eradicate violence against women in the areas in which they develop their interpersonal relationships", the Civil and Commercial Code of the Nation, Law 27,452 on economic reparation for children of parents who are victims of family or gender violence, Micaela Law on gender training, and Law 26,061 on "Protection of the rights of children and adolescents," among others.

Law 26,485 in its art. 29 states that "Whenever possible, the intervening judge may request a report made by an interdisciplinary team to determine the physical, psychological, economic or other type of damage suffered by the woman and the dangerous situation in which she finds herself." This report will be sent within a period of forty-eight (48) hours, so that it can apply other measures, interrupt

⁷Arazi Roland. "Evidence in the Civil process". Rubinzal-Culzoni, 3rd ed. updated, Bs. As., 2008. p. 269. In a similar sense: 5th Civil and Commercial Chamber of Córdoba, "Ramos Roberto Sergio et al. c/ Ruwinsky, Ernesto Daniel et al.-Ordinary-Damage-malpractice", Judgment No. 92 of 07.24.07, *News Law of Córdoba* No. 131. p. 8362.

⁸Kielmanovich Jorge L. "Proof Theory and Probable Means", Edit. Rubinzal Culzoni, Santa Fe, third edition. 2004. ps 565 and.

⁹Devis Echandía Hernando. "Compendium of the Judicial Evidence", annotated and agreed upon by Adolfo Alvarado Velloso, Edit. Rubinzal Culzoni, Santa Fe, 2007. t. II, p. 102; Ramacciotti, Hugo. "Compendium of Civil and Commercial Procedural Law of Córdoba", edit. Depalma, Bs. As., 1981. t. I, p. 634.

¹⁰Kielmanovich Jorge L. "Theory of evidence and evidence", Edit. Rubinzal-Culzoni, Santa Fe, third edition, year. 2004. ps. 568. Think of the case of genetic expertise, of which it is difficult to predicate that the experts provide evidence for the assessment of a fact by revealing it. There is no doubt that in such a case it is precisely from his opinion, and with the variable degree of probability that it entails, that the filiation, previously not even glimpsed by the judge due to the physical knowledge of the parties, will appear as indubitable. (op. cit. p. 569).

or stop any of those mentioned in article 26. The intervening judge may also consider the reports prepared by the interdisciplinary teams of the public administration on the physical, psychological, economic or other damage suffered by the woman and the dangerous situation, avoiding producing new reports that re-victimize her. It may also consider reports from professionals of suitable civil society organizations in the treatment of violence against women". Although the regulations optionally express "it may require a report made by an interdisciplinary team", it should be considered that in most cases this approach is considered essential when the woman is a victim of gender violence, in order to determine the types, the risk situation it is going through, and that is where the importance of the expertise with this modality lies.

The importance of the expert task with a gender perspective in cases of violence

The expert activity in general has its problems and defects in general terms, but particularly they are sharpened and magnified in cases of gender violence, in the absence of an adequate perspective, often generating serious consequences. For this reason, non-compliance with the aforementioned indicators reveals a mechanical expert activity, devoid of the required vision and sensitivity, being highly dangerous due to the state of vulnerability of the victims of gender violence and thinking about the re-victimization that it can cause. The specialized doctrine on the subject expresses that defects can be due to multiple reasons such as difficulties in achieving the required level of certainty, the use of common and specific stereotypes, reductionism, the equalization of differential diagnoses and abuse of power, those that diminish credibility, casting serious doubts on and diminishing the value of the expert opinion. The Inter-American Commission on Human Rights (IACHR), in its current report on Access to Justice for Women Victims of Violence in the Americas, in the section "Deficiencies in the judicial response in cases of violence against women: obstacles to comply with the obligation of due diligence and combat impunity", points out that there is a pattern of systematic impunity in judicial proceedings in various countries, including Mexico. Textually it states...: In relation to the gaps and irregularities that affect the investigations of cases of violence against women, the IACHR has verified that during the investigation of the vast majority of these cases, fundamental evidence is not collected for the due clarification of the facts.¹¹

Foyo says:¹² The expertise in gender violence is unique and its process, according to the doctrine consists of: A first stage, where the expert must have a notion and specific knowledge of his role, differentiating the task to be developed from other expertise, must delve into the problem experienced by the victim, making contact with her, and from a thought with a gender perspective, assess vulnerability indicators. In the second stage, the examination and evaluation is carried out, and must necessarily be based on a respectful treatment, using gender-sensitive language that promotes trust, avoiding intrusions into privacy, especially if they escape the reason for expert opinion. The objectives of the expert opinion must be made known so that the victim can consent to the procedure. The time must be adequate, never meager because otherwise elements that could have been obtained are neither dispensed with, nor excessive

because it becomes a burden becoming tortuous, because the victim must relive situations of suffering. Repetition in the story and any intrusion into privacy must be avoided. Likewise, the expert must assert all these principles to the other parties involved. In the third stage, corresponding to the elaboration of the report, from a gender perspective, identity must be respected, the determinants of the findings must be established, because the injuries have a course, additional studies can also be requested and it necessarily results. It is a priority to identify the indicators consistent with gender violence that may arise from injuries, their sequelae, medical records or history of care, self-injurious behaviors, addictions, and correlation of diseases and any situation of physical and mental vulnerability that implies an alteration, worsening or impairment of the overall health of the victim.

The physical examination, in cases of gender violence, has peculiarities that make it unique, it must be directed, the value it has for the Magistracy must always be articulated with the right of the victim, keeping at all times the due respect to their right to the privacy and integrity of the person attacked. In this order, we consider that the analysis and description should be comprehensive, complete on the injured regions, it should not be required to undress but should be segmented, taking photographic records of all injuries, being prudent with gender-sensitive areas. Exposure time should be minimized, especially in the case of being in sensitive areas, and must be essential to observe, document and take samples, which are essential in cases of crimes against sexual integrity. However, regarding the physical evidence, the Inter-American Court has warned of the failures that can occur in its conservation.¹³ Therefore, with regard to this type of evidence, speed in the investigation is key, since the lack of diligence has the consequence that, as time passes, the possibility of obtaining and presenting it is affected.¹⁴ In cases involving femicides, the collection of physical evidence should reach the genital and paragenital areas in search of signs of sexual abuse, as well as preserving oral, vaginal and rectal fluid, and external and pubic hair of the victim.¹⁵

If required by the victim, they must be allowed to be accompanied by the person they have chosen, and they must be informed of their role as a container, which is essential in highly vulnerable situations.¹⁶ In addition, unnecessary invasive procedures should be avoided, avoiding re-victimization and the practice becoming torture. It is even optimal that simultaneously receive care treatment. By way of example, it is worth mentioning that the National Criminal and Correctional Court No. 35 of the City of Buenos Aires resolved to

¹³Cf. I/A Court HR, Velázquez Paíz v. Guatemala, para. 148 and their citations.

¹⁴Cf. I/A Court HR, Espinoza González v. Peru, para. 286 and their citations.

¹⁵Cf. I/A Court HR, Velázquez Paíz v. Guatemala, para. 148, citing the United Nations Manual on the Prevention and Effective Investigation of Extrajudicial, Arbitrary and Summary Executions (Minnesota Protocol), UN Doc. E/ST/CSDHA/12 1991; "Cotton Field", para. 310; Veliz Franco and others vs. Guatemala, para. 188. In relation to medical examinations, particularly gynecological and anal examinations, they must be carried out as soon as possible—preferably during the first 72 hours from the reported event—by suitable and trained personnel, if possible of the sex of the victim. Indicate and with your prior and informed consent. (I/A Court HR, Espinoza González vs. Peru, para. 256, citing World Health Organization, Guidelines for medical -legal care for victims of sexual violence.) The Inter-American Court states that the following countries in the region have adopted the 72-hour guideline for the collection of forensic evidence in cases of sexual violence: Bolivia, Costa Rica, Paraguay, Peru, and the United States. The Court clarifies that these deadlines are a guide, so nothing prevents the gynecological expert opinion from being carried out after this period, with the consent of the alleged victim, since evidence can be found some time after the act of sexual violence, particularly with the development of technology in forensic investigation.

¹⁶Cf. Inter-American Court of Human Rights, Fernández Ortega v. Mexico, para. 194; Espinoza Gonzalez vs. Peru, para. 252; J vs. Peru, para. 344.

¹¹García Castillo Zoraida. "The urgent need to apply the gender perspective in expert services". Work published in Expert Services with a gender perspective, Gender and Law Enforcement Series, Mexico; 2018.

¹²Foyo Roberto. Material from Module X "Expert activity with a gender perspective" of the Diploma in Gender issued jointly by the Association of Argentine Women Judges (AMJA) and the Women's Office of the Supreme Court of Justice of the Nation (year 2021).

order a medical board and added new expertise points, so that it can be issued regarding the psychological expertise to FL, victim of a crime against sexual integrity, for understanding that there were differences between the report of the Forensic Medical Corps and the one made by the expert witness. The intervening prosecutor and the Specialized Prosecutor Unit for Violence against Women (UFEM) appealed against this decision, understanding that the purpose of the measure was to question the complainant's account. Chamber VI pointed out that "avoiding re-victimization must always be prioritized" (defined in article 3, sub. k) of Decree No. 1011/2010 that regulates Law No. 26,485) and affirmed that the victim testified in three opportunities and that she was subjected to a psychological examination in which the professional proposed by the defense was present, considering that the purpose of the measure that she requested as a new point of expertise: "to determine if the victim's story presents soundness, logic, coherence and credibility" involved a "fabulation test" and that this kind of evaluation "involves per se a considerable interference with the person and their privacy, so there is the possibility that it aggravates their suffering or produces new damage". Likewise, it stressed that the victim was in a condition of vulnerability and affirmed that judges must take "measures that are adequate to moderate the negative effects of the crime (primary victimization) and must also ensure that the damage suffered is not increased as a consequence of the crime." contact with the justice system (secondary victimization) (mutatis mutandis, CSJN G. 1359 XLIII, "Gallo López, J. s/ causa No 2222.", terminated on 6/7/2011, opinion of Dr. Highton de Nolasco -Failures: 334:725 -). Therefore, Room VI resolved to revoke the resolution regarding the participation of FL in the medical board and the incorporation of new expert points.¹⁷

In any expert intervention, it must be borne in mind that violence always produces injuries to the physical and mental health of the victim, for which reason old-fashioned injuries, internal and external injuries, and even in the absence of injuries, must be addressed, as happens, for example, in some cases of hanging, which do not leave any mark, which clearly does not imply a lack of aggression, but on the contrary, they are so serious that they can lead to death, as the apothegm says "the absence of evidence does not mean evidence of absence".

In addition, the FOYO explains that focus should be placed on the time that has elapsed since the aggression, the treatments that the victim may have carried out, the changes in their behavior, their fears, anxieties, anguish, academic or work performance, and everything that related to the impact of violence on their mental health (which in recent times has been aggravated by digital violence). Likewise, it is a priority to identify and describe the elements used in the attacks, in order to correlate them with the statements of the victim and witnesses during the process. For this, we must highlight the usefulness of an adequate, reliable and scientifically endorsed protocol for forensic psychological evaluation in situations of ill-treatment. In this same conceptual line, we must take into account that "The interdisciplinary team must be interdisciplinary first of all and not an occasional meeting of professionals to address a case (...) To do an effective job, the team must design a work plan files are seen daily where reports that are not interrelated accumulate and that make the panorama difficult before clarifying it. There is talk of interdisciplinary work in this type of work, but reports that are isolated and isolated institutionally (I am talking about institutional islands) do not contribute to efficiency of the measures"¹⁸ says the Dr. Castillo that expert proceedings such as

those carried out in the "Campo Algodonero", "Rosendo Cantú" or "Mariana Lima Buendía" cases in Mexico lack not only a gender perspective, but also scientific honesty, leading the victims to the most unfortunate situation of injustice and Mexican society to the most serious sensation of impunity.

The systemic nature of the lack of a gender perspective in ministerial and expert investigations begins from the very moment that the expert services arrive at the place of the facts or discovery. Even from police action. If police, expert personnel and agents of the Public Ministry lack care in the custody and processing of the evidence, and then are omitted or biased in the practice of scientific evidence, these actions have a direct impact on the investigation of the facts and on the process to prove or not the events and criminal responsibilities. The agent of the Public Ministry is also part of systemic errors if their proceedings are biased or partial.¹⁹ It is important to have these standards in violence against adult women and even more so if it is about girls or adolescent women, where the vulnerability of the victim is aggravated, situations that we visualize as hypervulnerability, understood as a sum of vulnerabilities.

The Inter-American Court of Human Rights "highlights the difference between the adult victim of sexual violence and the girl or boy victim, because due to the severity of the traumatic experience that leaves serious physical and psychological sequelae, the impact on minor victims is severely This is especially aggravated when the aggressor has a bond of trust and authority with the victim, such as his parent, which in such cases affects the psyche of such an entity that is very difficult to overcome even with the passage of time, having to the adoption of differentiated care protocols whose objective is to reduce the very serious consequences that bankrupt, sometimes irreparably, the biopsychosocial well-being of the victim must be imposed.²⁰ In addition, it has been considered that "without prejudice to the standards established in cases of violence and rape against adult women, States must adopt, within the framework of compliance with Article 19 of the American Convention, specific and special measures in cases where the victim is a girl, boy or adolescent, especially in the event of an act of sexual violence and, even more so, in cases of rape".²¹

For its part, the Convention of Belem do Para, in its Article 9, expressly establishes that the States Parties must take special account of the situation of vulnerability to violence that women may suffer due to being a person under 18 years of age, Therefore, in cases in which a girl or adolescent is a victim of violence against women, in particular violence or rape, the state authorities must take particular care in the development of investigations and processes at the internal level, as well as when to adopt protection and support measures during the process, and after it, in order to achieve the rehabilitation and reintegration of the victim. Applying the gender perspective in criminal investigation implies broadening and/or focusing the spectrum of inquiry, directing it towards data that are indicators of gender violence, either in the previous history of people (active subjects and passive subjects) or during the causes of damage, injury or death; as well as in the contexts

Argentina, December 27, 2013, <https://aldiaargentina.microjuris.com>. On the analysis of Law 12,569 see also RECAMAN ELFI, Betina L. - DI FELICE, Walter G., "A unifying ruling on family violence", DFyP 2019 (May), 05/10/2019, 58, online citation: AR/D0C/2438/2018).

¹⁹García Castillo Zoraida. "The urgent need to apply the gender perspective in expert services", work published in Expert Services with a gender perspective, Gender and Law Enforcement Series, Mexico; 2018.

²⁰Iachr VRP, VPC and Others v. "Nicaragua S/ Preliminary Objections, Merits, Reparations and Costs".

²¹Iachr, VPCy Others v. Nicaragua Official Summary issued by the Inter-American Court of the judgment of March 8, 2018.

¹⁷AJJ s/medidas, 08/18/21, National Court of Criminal and Correctional Appeals, Room VI (Laino , Lucini), File CCC 86765/2019/CAZ.

¹⁸Ortiz Diego. "The effectiveness of precautionary measures in situations of family violence in the province of Buenos Aires", Ed. Microjuris.com,

and scenarios. These indicators must be defined in action protocols that in turn are supported by evidence-based scientific models.²² In this way, applying the gender perspective in criminal investigation is not only possible and compatible, but also consistent with scientific methodology, since it involves having prior knowledge and the analytical capacity to identify, recognize and, where appropriate, study the physical evidence that proves the existence of a context of gender violence.²³ Within this framework, it is of vital importance that the experts are trained in the gender perspective and that they broaden their horizons in the matter, in order to be able to make an opinion in accordance with the needs that the magistrate must cover in this type of cause.

Finally, it is worth noting the Protocol to Judge with a Gender Perspective issued by the Supreme Court of Justice of the Nation of Mexico (2015), which establishes that for the determination of the facts and the interpretation of the evidence, who judges should: locate the context, determine if any of the people involved is in a situation of vulnerability due to discrimination, if there is an underlying asymmetrical power relationship, if the people involved have traditionally been discriminated against or belong to a historically disadvantaged group, and observe How does this influence the request and evaluation of the tests? This means that it must be judged considering the sociological context, not biasedly or based on evidence that is omitted from it. Undoubtedly, the protocols will help judicial operators -experts- to be able to carry out the assessment complying with the necessary parameters without discriminatory bias.

Conclusion

The gender perspective is legally imposed by current positive law, through a normative body made up of the core of constitutionality and conventionality, where specific treaties acquire importance. Its application and observation is not optional but mandatory and therefore all acts committed in the context of gender violence must be investigated with a gender perspective and failure to comply with constitutional mandates generates responsibility for all intervening operators. In this context, public policies are necessary to promote

²²Garcia Castillo, Zoraida ob. Cit. p. 19.

²³Romero Guerra Ana Pamela Romero Guerra "Criminal Investigation with a Gender Perspective", work published in Los Servicios Periciales con perspectiva de género, Género y Procuración de Justicia Series, Mexico; 2018.

transformations towards higher levels of justice, in addition to expressing the political decision of governments to advance in solving the problems of inequality that affect women. The different degrees of progress in relation to gender equality in the countries of the region show that there is still a long way to go, especially in terms of strengthening state capacities for the effective implementation of public policies aimed at reducing the gender gaps.

The effective protection of the victims and having information to act in the re-education of the aggressors, for which I consider the training of the intervening professional experts to be of the utmost importance, who have in theory and a gender perspective, which will be reflected in the respective reports, and therefore in the sentences guaranteeing effective judicial protection. For the magistracy, the expert activity must contain a vision with a gender perspective, ensuring human rights, with an ethical and professional commitment, both when assisting the victim and when carrying out the expertise. I believe that both the experts and other assistants should make up an interdisciplinary team at the time of the preparation of the report prior to resolving, who must have knowledge about the conduct of expertise with a gender perspective in cases of gender violence. For this, it is necessary that the experts have the updated and specialized knowledge necessary to carry out their actions, incorporating a gender perspective that allows them to identify, consider and analyze the determinants of this nature, which may affect the matter on which they must pronounce. Likewise, raising awareness in this area is a necessary tool to make visible and prevent the exercise of discrimination and gender violence in the procedures that fall into the hands of expert personnel. We consider that the application of gender in forensic sciences and expert evidence needs further development, in order to guarantee that true scientific evidence is carried out without any bias. For this we must urge the formulation of protocols that set clear rules for the experts in carrying out their task and their report.

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Conflicts of interest

The author declares there is no conflict of interest.