

THE INCORPORATION OF WOMEN INTO THE SPANISH ARMY



OPACITY, SEXISM
AND VIOLENCE

CENTRE DELÀS
D'ESTUDIS
PER LA PAU

REPORT

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Centre Delàs d'Estudis per la Pau
Barcelona, November 2016

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EXECUTIVE SUMMARY

The end of the compulsory military service, the professionalization of the Army, and the entry of Spain into NATO at the end of the nineties, provoked an important lack of workforce in the Armed Forces that was necessary to cover, to be able to give response to the commitment of the Government with the international interventions abroad. Along with it, the socialist policy of Felipe González, was lining up with the principle of equality among women and men. A host of circumstances that were taking, inevitably, to the opening of the Armed Forces to women.

Nevertheless, the inherent sexism in military structures does not seem to have disappeared in the almost thirty years women have been part of the army. Their incorporation has uncovered problems that are not still solved, like familiar and labor conciliation or sexual violence, and the mechanisms and regulation deployed are not turning out to be efficient to these effects.

In the last years, the flow of female incorporations has stagnated in a scarce 12,4%. In addition, the professional progression of military women still hits with a glass ceiling that generates a situation of discrimination for gender reasons. And to all of that, it is necessary to add that the Observatory for the Equality between women and men of the Armed Forces is not responding to the expectations of which it was created.

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1. INTRODUCTION

When the 30th anniversary of the incorporation of the first military women in the Spanish Armed Forces is about to take place, it is time to look back at how this process has occurred and at what point it is today.

At the end of the 1980s a series of political changes took place in Spain that required a structural reform of the Armed Forces. The end of military conscription left the Army without a significant part of its troops, whereas the entry into NATO in 1986 and the decision to relocate Spain in the European panorama generated new needs in defense that went through the professionalization of the Armed Forces and an increase in troops and military spending.

On the other hand, the Spanish Army did not enjoy a very good reputation among society, reason why it was necessary to add to the project of reform a clean image of the military institution to turn it into a modern and egalitarian structure.

The incorporation of women into the Armed Forces was considered in this context as the solution to both problems: it would help to increase the number of military personnel at the same time as it would convey a modern army image. Indirectly, the socialist government of Felipe González reaffirmed its progressive image in the fight for the equality of gender.

Successive governments have agreed to value the process of incorporating women into the Spanish Armed Forces as one of the fastest and most effective in the world, but the scandals of cases of sexual violence in the Army and the stagnation in the increase of women in the different bodies during the last years make suspicion that the process of incorporation is probably not being as exemplary as presumed. In this paper we propose to find elements that provide us with a more complete analysis of the current situation of women in the Armed Forces, but also to question whether the incorporation of women in the Army has meant a further step in gender equality.

This report is structured in three main chapters through which we will try to have a picture as reliable as possible of the current situation of equality of women and the gender issue in the Spanish Armed Forces. Another chapter will review the existing legislation and regulations that have some relation with gender and militarism in Spain. Finally, gender and violence against women in the Spanish Army will be assessed. It is worth mentioning, however, the enormous difficulty in accessing data on this subject, due to a still predominant opacity on what happens within the military structures in Spain. Official sources and agencies do not provide timely and relevant information; at least, the data that have been accessed and the opinions of military personnel who have suffered this situation of violence in the Spanish Army make it possible to carry out a sufficient analysis to understand the situation of women and gender in the Spanish Army.

2. CURRENT SITUATION

2.1. The debate on gender in the Spanish Army

When the possibility of opening the doors of the professional Armed Forces to women began in 1987, a debate arose about the adequacy of this change in a historically patriarchal and masculine structure and on the capacity of women to exercise a profession traditionally destined exclusively for men. In this sense, the most popular argument among sectors opposed to the incorporation of women argued that the [supposed] lower physical force incapacitated her to be able to perform certain tasks or occupy combat positions.

There were clearly male chauvinist positions here, such as the one Allí Turrillas still had in 2008 when he wrote that the presence of women in combat positions “has an excessive economic, social and demographic cost, in comparison to its advantages, that is to say, the principle of proportionality is broken,” and argued that women feel more comfortable in administrative, health or educational tasks, which is precisely where they bring more advantages.

Referring to the work of Kingsley Browne, Candil (2007) argued in an article on the exclusion of women from combat positions alleging, apart from biological differences with respect to physical strength and resilience, that women suffer more frequently psychological post-traumatic disorders as well as greater negative sequels when being subjected to physical aggressions. These factors, in addition, would motivate a lack of confidence, according to Browne and Candil, of military men with respect to their female companions that would jeopardize the effectiveness of the combat unit.

Faced with these theories that defended the inefficiency of women in the Armed Forces due to a supposed lower physical force, some authors have rebutted that the modernization and greater *technologization* of the armies have supposed a change in the necessary requirements for the different military bodies, losing value physical strength to the detriment of other abilities that are more present in women than in men.

In Spain, in the official versions, this last speech is the one that gained force, together with the discourse on equality between men and women and the non-discrimination on the grounds of sex announced by the Constitution of 1978. This meant, therefore, renouncing to models of non-mixed units or the exclusion of women in certain risk positions, as they exist in other European countries, and bet on an absolute integration.

In Spanish civil society this debate was also generated. In 1987, a query the whole population, carried out by the Center for Sociological Research (hereinafter CIS in its acronym in Spanish), showed a really complex social panorama: equality in the percentages of individuals of the population for or against the incorporation of women, contemplated in general, to the Armed Forces: 39% and 37%, respectively, and 19% being indifferent. The sectors of the population that were most at odds with the incorporation of women into the army were: people with a lower cultural background, those over 51 years, housewives, people living in towns below 10,000 inhabitants, people of frequent religious practice and those of right wing or extreme right ideology. On the other hand, the most favorable segments of the population were: individuals with a high school education level or similar, those under 40 years of age, students, inhabitants of populations with more than one million individuals, people of low religiosity and of left wing or extreme left ideology.

The balance between favorable and unfavorable criteria was manifested in the population as a whole if what was involved was the “professional” incorporation of women, changing the panorama radically if what was considered was the

entry of women into the Armed Forces with obligatory character, performing the military service with forced character; here all groups in which the universe surveyed was divided, by majority, opined contrary to this model (26% in favor and 67% against).

As for the Bodies and Units, the majority of the population (51%) believed that they should create special bodies for women and only 32% believed that women should be integrated into existing ones. Also, the majority (56%) favored that women access exclusively to Forces Support Units.

Finally, if what was involved was the incorporation into the hierarchical structure until the use of general or admiral, both the population in general and all population sectors in which the universe surveyed, except those of extreme right ideology, felt that women should have access to all the existing jobs in the Armies.

Since 1997, the CIS has drawn up a periodic (of irregular cadence) survey of the Spanish population, under the title *National Defense and Armed Forces*, which aims to print a photograph of public opinion on various issues concerning the Ministry of Defense.

During the period studied by the CIS it can be seen how the incorporation of women into the Armed Forces has enjoyed wide acceptance among Spanish society showing a constant evolution from 1997 to 2013, when the last of the surveys was published. At the beginning of this sequence, the population that favored it was around 70%, while in 2013 more than 90% of the respondents claimed to agree or strongly agree that women could occupy combat positions in the Army (See table 1).

Table 1: Spanish society opinion on the occupation of combat positions by military women

| <i>Do you, strongly agree, agree, disagree or strongly disagree with women being able to occupy combat position (such as: driving armoured vehicles, be gunner in a tank...)?</i> | | | | | | | | | | |
|---|-------|---------------|-------|---------------|---------------|---------------|--------------|---------------|---------------|---------------|
| | 2013 | 2011 (P26) | 2009 | 2007 (P24) | 2005 (P24) | 2002 (P23) | 2000 | 1999 (P27) | 1998 (P27) | 1997 (P27) |
| Strongly agree | 52,8 | 46,1 | 46,4 | * | * | * | * | * | * | * |
| Agree | 37,7 | 42,9 | 42,2 | 88,4 (Si) | 84,0 (Si) | 79,9 (Si) | 74,8 (Si) | 75,2 (Si) | 72,0 | 71,8 |
| Disagree | 5,0 | 6,6 | 5,9 | 8,2 (No) | 11,5 (No) | 15,6 (No) | 19,6 (No) | 18,7 (No) | 22,4 | 21,2 |
| Strongly disagree | 1,9 | 1,6 | 2,2 | * | * | * | * | * | * | * |
| Doesn't know | 2,1 | 2,3 | 2,7 | 2,7 | 3,6 | 3,7 | 5,1 | 5,3 | 4,9 | 6,1 |
| Doesn't answer | 0,4 | 0,6 | 0,6 | 0,7 | 0,9 | 0,8 | 0,5 | 0,8 | 0,7 | 0,9 |
| (N) | 2.479 | 2.478 | 2.486 | 2.483 | 2.497 | 2.493 | 2.485 | 2.490 | 2.486 | 2.490 |

Source: Own elaboration based on data published by the CIS between 1997 and 2013

And, when asked only the male population if they would accept a woman as a companion if they were military and were destined for a combat mission, about 90% said, since 1997, yes.

Since 2009, a series of questions for the adult population (29 years or more) regarding their children (if they do not have them, in the supposed case they did) have been included in the survey. The results varied a little depending on whether the children were male or female, with about 45% of respondents saying that they would encourage them to become professional soldiers. The percentages increase slightly if the son or daughter wants to go directly to the officer scale. The motivation they give to encourage their children to become military is, mostly, respect for their ideas, their decision or their vocation. On the contrary, respondents who say they would not recommend it, wield their own convictions (they do not like the Army) or that it is a very risky profession.

In 2007, a survey was also conducted among military personnel, reflecting that both men and women considered that there was some “positive discrimination” in the treatment of women in the Army. In this sense, 96.6% of military men surveyed did not believe that military women were being given the hardest work and 80.5% of military women agreed with them. In fact, 66.2% believed directly that in the Army more attention is paid to women, they are singled out. 74.4% of the men and 60.7% of the women surveyed also claimed they did not perceive [negative] discrimination because they were women. It should be noted that the fact that almost 40% of women surveyed perceived discrimination should be a matter of concern for the Ministry of Defense.

2.2. The actual situation of equality in the Spanish Army

2.2.1 Stagnation of recruitment

As a result of the debate in the late 1980s about the biological physical capabilities of women, and despite the regulation of their entry into the Army on equal terms with men, physical tests of access to the military academy demand different marks depending on the sex of the aspirant. This measure, which has been widely criticized from different sectors of the military, has been accepted on the basis of biological differences between men and women; without the inverse measure being applied to the required levels of training, despite having repeatedly shown that women entering the army do so with a higher level of training than men.

Despite this positive discrimination measure, reality shows figures that show that the percentage of women who fail access tests are always higher than men, suggesting more than “biological differences”:

Herrero Brasas proposed years ago that the solution should not be “to make them even easier or to create special tests for women, but to offer a better preparation to women who wish to appear. The cost of this preparation must be borne by the State, in compensation for the discrimination and exclusion of women in the past.”

Recruitment statistics reflect that in the first open calls for admission to women, very few were presented and only a very low percentage of them were able to access the academies. The Ministry of Defense reacted to this lack of candidates by smoothing the marks and the time required to pass, a measure that evidently increased the percentage of approved but also, of course, the dropout rate during the period of military training, since the demands of physical training had not been softened to the same extent.

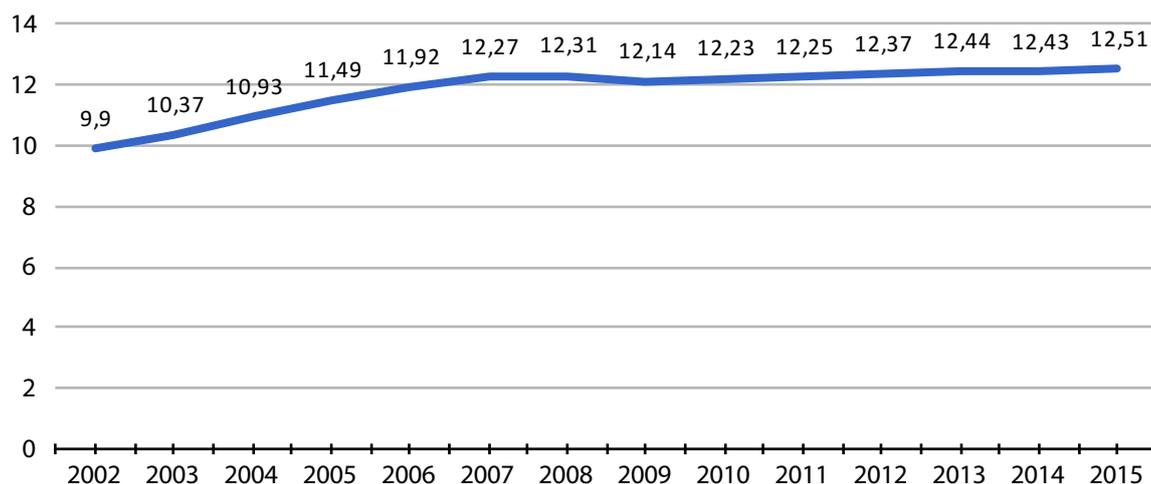
While it is true that during the first 15 years the percentage of military women increased steadily, since 2007 this growth has completely stagnated at around 12%. However, we have not found official sources to make a reading of this stagnation.

Table 2. Women in Spanish Armed Forces

| Year | Absolut no. | % of women |
|-------------------|-------------|------------|
| TOTAL 2002 | 11,668 | 9.9 |
| Earth | 7,000 | 9.82 |
| Army | 2,050 | 9.72 |
| Air | 2,103 | 9.73 |
| Common bodies | 515 | 13.38 |
| TOTAL 2003 | 12,017 | 10.37 |
| Earth | 7,370 | 10.37 |
| Army | 1,958 | 9.74 |
| Air | 2,167 | 10.29 |
| Common bodies | 522 | 14.2 |
| TOTAL 2004 | 12,615 | 10.93 |
| Earth | 7,886 | 12.3 |
| Army | 1,874 | 9.77 |
| Air | 2,316 | 11.16 |
| Common bodies | 539 | 15.64 |
| TOTAL 2005 | 13,457 | 11.49 |
| Earth | 8,549 | 11.52 |
| Army | 1,911 | 10.16 |
| Air | 2,428 | 11.78 |
| Common bodies | 569 | 16.14 |
| TOTAL 2006 | 14,518 | 11.92 |
| Earth | 9,349 | 11.98 |
| Army | 2,065 | 10.66 |
| Air | 2,491 | 11.93 |
| Common bodies | 613 | 17.57 |
| TOTAL 2007 | 14,967 | 12.27 |
| Earth | 9,446 | 12.19 |
| Army | 2,255 | 11.36 |
| Air | 2,650 | 12.47 |
| Common bodies | 616 | 18.05 |
| TOTAL 2008 | 15,289 | 12.31 |
| Earth | 9,594 | 12.11 |
| Army | 2,428 | 11.88 |
| Air | 2,658 | 12.54 |
| Common bodies | 609 | 18.32 |
| TOTAL 2009 | 16,080 | 12.14 |
| Earth | 10,074 | 11.77 |
| Army | 2,633 | 12.01 |
| Air | 2,760 | 12.7 |
| Common bodies | 613 | 18.82 |
| TOTAL 2010 | 15,865 | 12.23 |
| Earth | 9,782 | 11.81 |
| Army | 2,619 | 12.05 |
| Air | 2,839 | 12.96 |
| Common bodies | 625 | 19.37 |
| TOTAL 2011 | 15,551 | 12.25 |
| Earth | 9,514 | 11.74 |
| Army | 2,596 | 12.1 |
| Air | 2,816 | 13.1 |
| Common bodies | 625 | 19.65 |
| TOTAL 2012 | 15,391 | 12.37 |
| Earth | 9,330 | 11.79 |
| Army | 2,568 | 12.17 |
| Air | 2,791 | 13.29 |
| Common bodies | 702 | 22.33 |
| TOTAL 2013 | 15,149 | 12.44 |
| Earth | 8,653 | 11.2 |
| Army | 2,901 | 13.97 |
| Air | 3,125 | 15.15 |
| Common bodies | 470 | 15.12 |
| TOTAL 2014 | 15,154 | 12.43 |
| Earth | 9,138 | 11.8 |
| Army | 2,585 | 12.4 |
| Air | 2,763 | 13.45 |
| Common bodies | 668 | 21.85 |
| TOTAL 2015 | 15,217 | 12.51 |
| Earth | 9,111 | 11.78 |
| Army | 2,585 | 12.4 |
| Air | 2,775 | 13.58 |
| Common bodies | 746 | 24.94 |

Source: own elaboration based on the data from the *Military Statistical Yearbook 2015*

Graph 1: Evolution of the incorporation of women in the Armed Forces 2002-2015



Source: own elaboration

2.2.2 Glass ceiling

Official sources deny the existence of a glass ceiling for women in the Army, based on the alleged equality of treatment in which they are subjected in comparison to men. In this line of argument, Artigas assures that “the exhaustive knowledge that comes to be had of each of its members [of Armed Forces], which begins at the time of joining the Training Center and that will be expanded every year, with their corresponding documentary basis, as well as plural and consolidated evaluation systems sufficiently guarantee equal treatment and opportunities.” But the truth is that there are many studies that show that the invisible barrier that stops or prevents the passage of women when they try to access positions of greater responsibility exists in all professional fields, including the Armed Forces.

In the Spanish Army it is a fact that motherhood punishes the professional career of women. Although some regulations have been formally established to protect women during pregnancy and facilitate family and work reconciliation, the contradiction that these measures are the ones that make it difficult for the person who exercises them to ascend at work is presented, and for the most part in the army they are exercised by women. This also encourages men to exclude themselves from the enjoyment of conciliation measures for fear of prejudice and bad reputation.

Guarding, the realization of maneuvers and missions abroad, among others, make it difficult to reconcile family and work life and even discourage motherhood. The Observatory of Military Life in its 2015 report stated that “the exigencies of compliance with the conditions required for promotion to operational destinations prevent adequate stability to consider possible maternity.”

Going a little further, former Lieutenant Luis Gonzalo Segura stated recently that “beautiful women ascend faster. The ugly ones always stay with a rifle.”

The situation of women in the Spanish Army, despite the fact that it has been almost three decades since its incorporation, is still very far from the real and effective equality of which the Ministry of Defense speaks. On the one hand, women are a minority in the Army and, in fact, their growth has stagnated in recent years. On the other hand, there is a glass ceiling that prevents military women from progressing in their work in the same way as men and that is closely related to the reconciliation of family and professional life.

3. NORMATIVE AND GENDER REGULATIONS IN THE SPANISH MILITARY FIELD

The existing regulations related to the situation of women in the Spanish Army are very clear when analyzing the process of adapting military structures in the integration of women. That is why we will make an explanation of the main normative on gender followed by a more concrete analysis of those most relevant aspects, as is the case of the Observatory for Equality between men and women in the Armed Forces. The legal treatment of sexual violence will be addressed in Chapter 4.

3.1 Description of the main regulations on gender in the Spanish Army

The formal commitment of the state Administration to the principle of equality between men and women materialized in 1987 with the adoption of the *Action Plan for Equal Opportunities for Women*, a plan aimed at ending discrimination against women in the access to work. As a consequence, the Armed Forces added to the commitment by modifying the current legislation to enable the integration of women into the Army.

The first step in this direction was the approval of **Decree Law 1/1988, of February 22**, by virtue of which regulates the incorporation of women in the Armed Forces. This rule, however, allowed only the incorporation of women into 24 bodies and ladders and the second civil guard. In the places in which the access was regulated, this would be done without distinction of sex, although establishing a table of required physical conditions different for men than for women. The law anticipated that the incorporation to the rest of the bodies would be made progressively as organizational and infrastructure adaptations were made, at the same time as they ensured the proper integration and allowed to maintain the normal development of the functions that the Armed Forces have entrusted. However, there were still some issues that would end up in new forms of discrimination, such as the fact that pregnancy was considered as a cause of exclusion from the admission processes on the same terms as disabling diseases.

Shortly afterwards, **Law 17/1989 of July 19**, regulating the Regime Professional Military Personnel, expanded the spaces for incorporation of women without reaching full equality. This rule regulated non-discrimination on grounds of sex in access to military education, the management of military occupations without distinction between men and women, and recognition of the physiological particularities of women in assessments and classifications for promotion.

A supposed physical condition of women, different from that of men, served as an argument in the **Royal Decree 984/1992 of July 31** of Regulations of Troop and Seamanship, which stated that female personnel of professional troops and seamen could opt to choose all the destinations of his military career, except those of tactical or operative type in units of the Legion, special operations, parachutists and parachute hunters, for this biological reason. Similarly, women were also excluded from disembarking forces and personnel of submarines and smaller vessels in which habitability and structural conditions were considered to be inadequate to accommodate women.

Women's access limitations to combat positions were still maintained for more than ten years after their incorporation. The **Law 17/1999 of May 18 of the Military Personnel Regime** regulated the complete incorporation of women coinciding with the suspension of compulsory military service and the professionalization of the Armed Forces. The norm contemplates some measures directed to equalize the situation of the professional woman and man, conserving only the differences in the physical exigencies of the entrance tests. Among other things, it stipulated that the pregnant woman could perform all the tests of access to the

Armed Forces, except the physical ones, which would perform later; the provision of discriminatory destinations on the basis of the physiological differences of women disappeared; and finally, entry to all destinations, including operative or combat units, was allowed.

Another important breakthrough in the integration of women into the Armed Forces came with the **Order DEF / 524/2005 of March 7**, which provides for the publication of the Agreement of the Council of Ministers of March 4, 2005, by which measures are approved to favor the incorporation and integration of women into the Armed Forces. This norm, which comes when there were military women who had been practicing the military for almost 20 years, established the construction of children's centers to facilitate the reconciliation of family and professional life of the members of the Armed Forces, the development of projects for adaptation the creation of the Women's Observatory in the FAS, guaranteed the presence of women in the assessment bodies for promotion, selection of participants to training courses and assignment of special responsibility or qualification destinations, and provided for the amendment of the law applicable to the Armed Forces incorporating the legal concepts on sexual harassment that are being implemented in the community law.

The Observatory of Women in the Armed Forces was regulated by the **Ministerial Order 51/211**, which sought to adapt to the Organic Law of Equality of 2007 establishing as a priority objective to facilitate the integration of women in the Army from consultations, statistics and training.

The functions that the order recognized to the Observatory were:

- Analyze the impact on women of the set of activities that form the processes, referring to military personnel, recruitment, training, management, integration and, where appropriate, reincorporation into civilian life.
- Elaborate studies on the impact of gender in the military labor field.
- Analyze the statistical information provided by the Directorate General of Personnel and the Armies and Navy on women in the Armed Forces.
- Promote, analyze and disseminate, especially in the field of the Armed Forces, information on the integration of women and their regime.
- Analyze the issues related to women that arise in the Advisory Councils of Personnel of the Armed Forces.
- Know when it is deemed necessary, the reports on the gender impact of the measures established in preliminary drafts and normative projects of the Ministry of Defense referred to in articles 22.2 and 24.1.b of the Law 50/1997 of November 27 of the Government, as drafted by the Law 30/2003, of October 13, on measures to incorporate the assessment of the impact of gender in the normative dispositions elaborated by the Government, and any other that is entrusted that relates to the same subject.
- All those questions that may be of similar significance to the previous ones and contribute in some way to favor the incorporation and the integration of the woman in the Armed Forces.

Subsequently, two rules concerning the social rights of the military were approved. The first was the **Royal Decree 1412/2006** of December 1, which approves the Regulation that establishes the procedure for the application of social protection measures for military complement and troop and seamen, regulated that the Military personnel who were pregnant, giving birth or in a postpartum situation at the moment of terminating their service relationship with the Armed Forces, would not cause any medical leaves and would extend their commitment until the end of these situations. And the second was the **Royal Decree 1726/2007** of December 21, which approves the General Regulation of Social Security of the Armed Forces.

The **Law 39/2007** of November 19, of the military career was a new advance for

military women, as it sought to incorporate the gender perspective as a transversal principle of the regulation of the personnel of the Armed Forces. The law contained actions aimed at protecting situations arising from maternity, regulating the reconciliation of professional and family life, and ensuring the representation of military women in evaluation bodies for the selection, promotion and assignment of destinations.

Replacing those of 1978, the **Royal Decrees for the Armed Forces, Royal Decree 96/2009**: provide that it must ensure the application of the criteria and norms regarding the effective equality of women and men and in the prevention of gender violence (Article 13).

In the same year, the **Royal Decree 293/2009**, by which measures to protect maternity in the field of education in the Armed Forces are approved, established the measures to be taken by women students in training and the military professional students when, for reasons derived from their state of pregnancy, childbirth or postpartum, could not develop in equal conditions the courses to which the scope of application of this decree referred.

In accordance with the provisions of the Law 39/2007, the **Royal Decree 35/2010**, of January 15, by which the Regulations on admission and promotion and management of training for the Armed Forces are approved, created the normative framework that guaranteed the selection on the basis of the constitutional principles of equality, merit and ability, as well as the other guiding principles for access to public occupation, picking up the singularities of the military profession itself, setting a standard that adequately responded to the demands of the Armed Forces.

The **Royal Decree 456/2011**, of April 1st, approving the Regulations on the destination of professional military personnel: included measures that contributed to the improvement of the reconciliation of professional, personal and family life, such as those affecting couples of military personnel assigned to international missions; date of publication of vacancies according to family needs, or the possibility of assigning a different place in cases of reduction of the work day due to breastfeeding, with the aim that geographic mobility had less impact on personal and family life.

The express recognition of the principle of equality and non-discrimination on grounds of sex or sexual orientation did not arrive until the adoption of the **Organic Law 9/2011**, of July 27, on the Rights and Duties of FAS members. In addition, Article 4 also recognized equality between men and women in access, service provision, training and military careers.

The Center for the Study of the Status of Women in the Armed Forces (Observatory for Women in the Armed Forces) changed its name with the **Ministerial Order 51/2011**, of July 28, by which it became known as the Military Observatory for the Equality between women and men in the Armed Forces and its structure and functioning were regulated.

The complicated family and professional conciliation of the military personnel was attempted to improve through the Order DEF/253/2015, of February 9, which regulates the regime of vacations, permits, reductions of days and licenses of the members of the Armed forces. This standard included a number of measures, such as permission to attend assisted reproductive or reproduction techniques or the new procedure for the granting of paternity leave, which offered the possibility of enjoying it during the period of maternity, or as a continuation of the latter. It also introduced some criteria in the reduction of the day for conciliation reasons, referring to the possible exoneration of guards, services and maneuvers aimed at achieving a balance between conciliation, training and capacitation of military personnel. These measures were complemented one year later with

Order DEF/1363/2016, of July 28, which regulates the work day and the regime of habitual schedule in the place of destination of the members of the Armed Forces.

In 2015, after a long process and years of criticism, the **Organic Law 14/2015**, of October 14, by which the Military Penal Code was approved, finally incorporated as a serious disciplinary offense and as a criminal offense sexual harassment and on the basis of sex. This new criminal typology, which would replace the previous crime of abuse of authority with which all cases of sexual violence in the Armed Forces were classified, is of such recent application that we do not yet know of its application in any case with a final sentence.

On November 20th, 2015, the Council of Ministers approved the **Protocol of action on Sexual Harassment and on the basis of sex in the Armed Forces**, a document inspired by the homonym that is of general application in the field of public administration and which would apply only to military personnel regardless of the condition of the victim. The Protocol is contemplated as a punitive tool, since it does not foresee among its objectives the prevention of sexual harassment, but is aimed exclusively at avoiding the negative consequences that the victim of harassment may suffer and for that reason contemplates the creation of Protection Units Against Harassment, with sanctioning power. One detail to take into account of this standard is that it does not provide personal or material means for its implementation, which leads to question the real interest of the Ministry of Defense to fight the scourge of sexual violence.

The Protection Units against Harassment (UPAs in its Spanish abbreviation) were regulated with the **Order DEF/482/2016**, dated March 30, 2016. According to the definition of the standard, it is a unit external to the organic chain of command and integrated to each command or heads of personnel and the central organ, close to the command with sanctioning competence and with the power to make the decisions at the highest level in each of the respective Armies. There is, therefore, a Protection Unit against harassment in the General Directorate of Personnel, in the Prefecture of Human Resources of the General Staff of Defense and in the Command or Prefecture of Personnel of the armies. The Unit guarantees protection against sexual harassment and on the basis of sex and, therefore, carries out both prevention and protection measures, and monitoring and control, facilitating the processing of complaints and thereby enhancing the immediacy of response, the integral support to the victim and the confidentiality. To this end, the Harassment Protection Unit will have representatives from different scales, and the staff of the Military Legal Corps and the Military Corps of Health (doctor and psychologist) to provide immediate response to the victims.

3.2 Assessment of the existing legislation on gender in the Spanish Army

As we have seen, in the last twenty years numerous studies have been published, all of organizations directly or indirectly linked to the Ministry of Defense, about the process of incorporation of women into the Spanish Armed Forces, building a quorum without apparent discrepancies when qualifying the process as "exemplary". All of them coincide in highlighting the speed with which it has occurred and in celebrating the scope of changes on the road to full equality of men and women.

However, speed and scope are relative concepts that depend on the framework of comparison and that, despite having been the Spanish process faster and wider than the rest of the states in our environment, it is also true that there can be counted by thousands the women who have had to survive in an institution that was not adapted to their presence and that even today is not totally adapted.

In this sense, it must be remembered that 11 years have passed since the woman was accepted into the Army until her effectiveness in all bodies was approved. And it was not easy to break the barrier of patriarchy that had initially yielded to the idea of having women in military structures but was more reluctant to accept them in combat positions. In addition, the infrastructure of some units resisted as much as it could to undergo the adaptations that should allow the incorporation of female staff.

In fact, 17 years had passed since the entry into force of the Decree Law 1/1988, of February 22, which regulates the incorporation of women into the Armed Forces, when some of the specific needs of women such as the adaptation of facilities or the creation of the Observatory for Equality between men and women started to be regulated. Even today, a recent study by the Observatory for Military Life notes that some military officials claim that uniforms for women are not adapted to the female morphology.

Measures of family reconciliation and maternity protection had to wait even longer; the recognition of these rights was not effective until the entry into force of law 39/2007 of the military career.

Returning to the relativism surrounding the concept of speed, it is difficult to justify its application in the process of incorporation of women in the Spanish Armed Forces, once analyzed with a little detail.

In the same sense of criticism, we must pay attention to some normative changes regarding the rights recognized to the professional military that have taken place from the incorporation of the woman in ranks. The voices close to the Ministry of Defense have defended the army's effort to adapt to the alleged peculiarities of women, especially in terms of maternity, family reconciliation and sexual harassment. Moving away from the official discourse that has raised without questioning the association of these three issues of women, it must be kept in mind that sexual harassment already existed in the Spanish Army long before the arrival of the first military woman, where the attacked were men. On the other hand, motherhood and family conciliation, in an egalitarian society, need not be recalled that they should be rights recognized to all citizens, women and men, because it is precisely the exclusion of men in the enjoyment of their paternity one of the factors favoring the reproduction of patriarchal values. It is true that some of these rights have been recognized equally by military men and women, but not all of them, nor has it ever been recognized that when the army was strictly masculine, these needs existed. Up to such point that before the incorporation of the woman there were no centers of infantile education in the Units.

Finally, one can not avoid to appreciate the effectiveness of the largest medal that the Ministry of Defense self-awarded, in its task of effective equality between men and women in the Armed Forces: the Observatory for Equality.

In 2012, the *Women's Secretariat* of the Unified Military Association (AUME in its Spanish abbreviation) clearly stated in its report on the first conferences of participation of women in the police and military field in equality bodies that, "the Observatory for Equality doesn't work. In this sense, it does not open any way of work, no attention is paid to people who need effectiveness in Equality rights, included in the Organic Law 3/2007 of effective Equality between men and women. It does not have the effectiveness that has to be derived from its name and function".

In fact, it is difficult for us to carry out an in-depth analysis of the efficacy and efficiency of this body for a variety of reasons, all derived from the usual lack of transparency of the Ministry of Defense: the Observatory's activity memoirs are not published, nor the statistics of requests for advice from military personnel, nor the activity of the various committees that allegedly advise other depart-

ments of the Ministry of Defense are published, which ensure that the Ministry's studies maintain a gender approach; nor gender impact studies in the field of military work entrusted to it by law, among others. In fact, the Observatory's visibility has been reduced to the point where the website that it had on the Ministry of Defense website disappeared in early 2016.

At present, as far as we have been able to find out, the Observatory's publicized activity is reduced to the annual publication of the statistics of troops of the Armed Forces disaggregated by gender and the annual award of the *Soldado Idoia Rodríguez, a woman in the armed forces* prize, the participation in an international course on gender in operations and, for the foreseeable future, plans to hold the first training course for military personnel on the operation UPAs.

4. VIOLENCE AGAINST THE WOMAN IN THE SPANISH ARMY

Sexual violence is not a phenomenon that has appeared in the Spanish Army because of the incorporation of women in its ranks, on the contrary, it has always existed, with the difference that victims and aggressors were men, and with the added that casuistry was completely invisible. The arrival of the woman in the Armed Forces also makes her a new victim of this scourge, but a victim who, without any measure of support or protection, begins to denounce the aggressions, evidencing the existence of this problem.

However, it is impossible to speak of sexual violence in the Armed Forces with a minimum of rigor, given the lack of transparency that reigns regarding the matter in the Ministry of Defense. The Military Courts do not publish their sentences either, nor is there any public database that registers the complaints filed for this crime. Nor has the Observatory for Equality between Women and Men in the Armed Forces published any study on the incidence of sexual violence, nor statistics that collect the number of assessments that military women have been able to request. Obviously, the Protection Units against harassment, due to their short trajectory of only a few months, have not yet issued any report regarding their interventions.

In contrast, the Army and Government have recognized on numerous occasions that they are aware of this serious problem. On April 28, 2015, Congress urged the Military Life Observatory to carry out a specific study on the situation of prevention, training and support measures for victims of repression of sexual, labor and professional harassment of the Armed Forces, requiring an analysis of comparative law and the elaboration of recommendations. A year and a half later this study has not yet seen the light, although from the own observatory have assured us that it is pending to be sent to the Congress.

All this makes it impossible to estimate the victims of sexual violence in the Armed Forces, but the fact that the incidence of the problem cannot be quantified does not make it disappear. Violence against women exists in all spheres of our society, so it seems deductible that a patriarchal, sexist and hierarchical institution like the Army should not be the exception. The hierarchy favors the abuse of power in any of its expressions, also in the form of sexual assaults, as well as its impunity due to the subordinates' dependence on the qualification reports produced by their superiors.

The lack of measures to prevent sexual violence, the defenselessness caused to victims by having to continue working under the orders of their aggressor once they have denounced him, the stigmas built around the image of military values and gender roles in the Armed Forces are factors that facilitate the invisibility of the aggressions by putting pressure on the person attacked to bear the abuse in silence.

The opacity of the Ministry of Defense in this issue not only conceals the official figures of sexual violence in the Army, also puts more obstacles in the path of women who suffer it. In 2015 the Observatory of Military Life warned that cases had been detected in which the victim of the aggression or sexual harassment had delayed its denunciation, understood because of the lack of resources of support to the victims, which gave rise to the persistence of criminal conduct. According to this advisory body, "174 complaints about harassment were received in the period 2004-2015, and 128 preliminary procedures of such crimes were made. Of these 128 preliminary procedures, 110 filed, 7 were referred to the Disciplinary Authority and 11 were inhibited to other organs. Out of the 46 criminal proceedings followed, 22 convictions occurred (12 for sexual harassment, 1 for sexual or gender harassment and 9 for professional harassment).

At the end of 2012 the case of a military woman who had won a sentence for abuse of authority against a superior who would have exercised sexual violence against her appeared in the media. It was not at all the first of the cases that took place in the Spanish Army, nor the first favorable sentence, but it was the first time that a similar case went through the walls of the Armed Forces and reached civil society. The case of the captain Zaida Cantero served to give voice to some other military women who had never dared to speak of the aggressions they had undergone. And, above all, it opened a public debate on the issue of sexual violence in the Armed Forces.

The Ministry of Defense had to react publicly and initiate itself in the regulation of measures of prevention and support to the victims, although still today it cannot be said that none of these measures are fulfilling the expectations that were generated.

The reform of the Military Penal Code of 2015 included for the first time sexual and gender harassment as a crime, since up to that time actions that could have been classified as such had to be codified as crimes of abuse of authority, a dead end that did not differentiate the aggressions with gender content of the rest.

But the inclusion of this crime in military justice is still far from equating the rights of military to civilian women. A simple comparison of the penalties imposed on the two areas, civil and military, show a clear picture of this discrimination. In the civil penal code, the offense against sexual freedom, using violence or intimidation, will be punished with imprisonment of 1 to 5 years (article 178), whereas if the aggression consists of carnal access via vaginal, anal or oral way, or introduction of body members or objects by any of the first two ways, the penalty of imprisonment will be from 6 to 12 years (article 179). In addition, in certain circumstances such as the use of weapons or the use of a relationship of superiority with respect to the victim, the punishment will be 5 to 10 years for the aggressions of article 178 and 12 to 15 years for those of article 179 (Article 180).

In contrast, the military penal code punishes acts of aggression or sexual abuse with imprisonment from six months to five years (art. 47), and those of harassment with sentences of six months to four years (article 48), provided that there is concurrence of authority abuse. Without this aggravation, the sentences are reduced to sentences of six months to three years, for acts of aggression or sexual abuse (article 49), and from six months to two years for acts of harassment (article 50).

Leaving aside that the new military penal code does not even contemplate rape as a crime of greater gravity, it is at least remarkable that the penalties are so low compared to those of civil law. However, by the end of 2016 we are not aware that any of these new forms of crime have been applied in any case.

Also at the end of 2015, the Council of Ministers approved the Protocol on Sexual Assault and Sexual Harassment in the Armed Forces, a document that provides for measures aimed at avoiding the negative consequences that the victim of harassment may suffer, without considering preventive measures of the facts.

Surely, the most relevant of the Protocol is the creation of the Unit of Protection against Harassment, which has sanctioning power, carries out prevention, protection, control and monitoring measures and has a doctor and psychologist. But the truth is that we do not have any information about the activity that the UPA have been carrying out since its inception in June 2016, beyond what is regulated by the ministerial order that created them, since neither the Ministry of Defense nor the Observatory for Equality have published anything in this respect, nor do they respond to external requests for information.

In March 2016, the socialist parliamentary group called for the appearance of the Defense Department's sub-secretariat to report on the degree of implementation of measures, material means, personnel and the creation of units provided for in the protocol, but the Government, at that time in office, declined the appearance and in early November of this same year has not yet been celebrated.

Coinciding with the implementation of the UPA, the Ministry of Defense has also published a *Practical Guide for victims of sexual harassment* directed at victims of sexual and gender harassment to inform them of how to act when denouncing and about the rights that protect them, providing a complaint form and telephone numbers where they can find support.

At the same time, the Ministry of Defense has also published the *Handbook of Best Practices for the Command*, a document that aims to guide the upper ranks to differentiate harassment situations and make them aware of their responsibility in prevention. We will have to see in the long run what is the impact that this set of measures and good words ends up having on the lives of military women.

Table 3: Judgments of the Supreme Court (Military Room) of cases of violence against women

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| Judgment n.º. 73/2016 of June 15. JUR 2016 \ 134092: Lieutenant sentenced to 2 years, 7 months and 15 days in prison for abuse of authority in the modality of degrading treatment of a seaman. |
| Judgment n.º. 65/2016 of 31 May. RJ 2016 \ 3685: Two lieutenant colonels sentenced to 1 year and 10 months of imprisonment respectively, for a crime of overreaching in the exercise of command in the form of commission of serious abuse by taking advantage of the employment or destiny of a second lieutenant and a civil servant. |
| Judgment of April 8, 2014. RJ 2014 \ 2592: Brigade sentenced to one year and 3 months in prison for an offense of abuse of authority in the modality of degrading treatment of a soldier and 9 months in prison for an offense of abuse of authority in the modality of degrading treatment to another soldier. |
| Sentence of July 16, 2013. RJ 2013 \ 8054: Naval sentenced to 7 years in prison for rape of a forewoman. |
| Sentence of 28 May 2013. RJ 2013 \ 5811: 1 st Sergeant of artillery sentenced to 4 months in prison for abuse of authority to an artillery. |
| Sentence of January 21, 2013. RJ 2013 \ 1811: 1 st Sergeant sentenced to one year in prison and eight months in prison for two crimes of abuse of authority in the modality of degrading treatment to a lower rank position, to two soldiers. |
| Sentence of December 17, 2012. RJ 2013 \ 689: Lieutenant colonel sentenced to 2 years in prison for an offense of abuse of authority in the modality of degrading treatment to a lower rank soldier and ten months imprisonment for an offense of abuse of authority in the modality of mistreatment of work to a captain. |
| Sentence of March 13, 2012. RJ 2012 \ 7203: Subtenant sentenced to 2 years and 6 months in prison for an offense of abuse of authority in the modality of degrading treatment of a soldier. |
| Sentence of November 18, 2011. RJ 2012 \ 740: 1 st foreman sentenced to 4 months in prison for abuse of authority in the modality of denigrating a forewoman. |

Sentence of September 23, 2011. RJ 2011 \ 7291: Brigadier sentenced to 7 months in prison for abuse of authority in the modality of denigrating a soldier.

Sentence of June 1, 2010. RJ 2010 \ 4308: Forewoman sentenced to 4 months of prison for abuse of authority in the modality of denigrating treatment to a naval.

Judgment of October 21, 2009. RJ 2009 \ 6267: Infantry colonel sentenced to one year in prison for abuse of authority in the modality of denigrating a medical lieutenant.

Judgment of December 9, 2008. RJ 2008 \ 7992: 1st foreman sentenced to one year and 4 months in prison for abuse of authority in the modality of degrading treatment of a soldier.

Judgment of November 18, 2008. RJ 2008 \ 7987: Brigade sentenced to two sentences of 6 months imprisonment each for abuse of authority in the modality of degrading treatment of a soldier.

Source: own elaboration based on the *Aranzadi Westlaw* database

5. CONCLUSIONS

The incorporation of women in the Armed Forces has been formally raised as part of the modernization process of the Spanish Army. Since the beginning the official sources referring to this process have always spoken of “equality” in the Armed Forces, but the reality is that the fact that the Army has in its ranks female personnel does not imply breaking with the patriarchal structure that the institution has historically maintained.

The Ministry of Defense has endeavored to maintain the full equality of rights between men and women as well as the shared responsibility of national defense. However, it is a fact that at the time when the Spanish legislature approved the incorporation of women in the Armed Forces, they suffered a very important lack of staff, as a result of the professionalization of the Army, the end of compulsory military service and new interventionist policies deployed from the entry of Spain into NATO. It would be difficult, therefore, to refute that the need for personnel had not been one of the main conditioning factors for the approval of the incorporation of women in the Armed Forces.

On the other hand, from the analysis that we have presented in this work on the development of the regulations concerning the adaptation of the Armed Forces to the presence of women, it follows that the process has not at all been as rapid as defended by The Ministry of Defense. When there are women who have been working as military personnel for almost thirty years and have not yet seen the rules that protect them from sexual violence in the Army, it is difficult to describe the process as “quick.” When family and work conciliation is not possible for these women and there is still a glass ceiling that limits their professional aspirations compared to the possibilities of men, when sexual harassment is a daily occurrence between the military and the Observatory for the Equality has not fulfilled the functions for which it was created, it is even more complicated to describe the process as “exemplary.”

There is still much work to be done from the public institutions so that equality between women and men in the Armed Forces is real and effective. The current stagnation in the recruitment of new women who wish to join the ranks does not suggest that the Army has become a professional outlet well received by Spanish society. If the pattern evolves in the same way in the coming years, the Ministry of Defense must rethink what are the reasons why women do not want to be part of the military institution. It would also be appropriate to rethink the origins of sexual violence in the Army and the mechanisms that it has endowed to combat it. Perhaps one could conclude that an institution that engages in violence generates violence among its members. And, finally, this could lead to questioning whether to really open the doors of the Army to women equates them in rights to men or if it simply makes them into one more piece of the militaristic gear.

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