

The Spanish Legal Framework and the Neuropsychological Evaluation of Batters

Pedro V Mateo-Fernández^{1,2,*} and Iria Osa-Subtil^{2,3}

¹Mental Health Research Group (MHeRG). Faculty of Biomedical and Health Sciences, Alfonso X el Sabio University, Madrid Spain

²Legal and Forensic Psychology Research Group. Department of Psychology. Faculty of Biomedical and Health Sciences, Universidad Europea de Madrid Spain

³Department of Medicine. Faculty of Biomedical and Health Sciences, Universidad Europea de Madrid Spain

*Corresponding Author

Pedro V Mateo-Fernández, Mental Health Research Group (MHeRG). Faculty of Biomedical and Health Sciences, Alfonso X el Sabio University, Spain.

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Abstract

This study examines the integration of neuropsychological assessment in the Spanish legal framework in cases of gender violence, analyzing its impact and potential to improve judicial decision-making. A comprehensive review of the evolution of Spanish legislation on gender violence is presented, highlighting the Organic Law 1/2004 as a fundamental milestone in the comprehensive approach to this problem. The paper explores the growing relevance of forensic neuropsychology in the legal field, addressing its potential to improve the assessment of the mental capacity of victims and aggressors, the understanding of the neurobiological mechanisms underlying violence, and the assessment of the risk of recidivism. Standard procedures in forensic neuropsychological assessment, including structured interviews, standardized testing, and neuroimaging techniques, as well as the impact of neuropsychological findings on judicial decisions, are discussed in detail. The study analyzes illustrative cases where neuropsychological assessments were applied in the context of gender-based violence, reflecting on their legal and forensic implications. Current challenges in the integration of neuropsychology and law are identified and examined, such as the lack of standardization in assessment protocols, the complexity of interpretation of results for non-specialized professionals, and the associated ethical considerations. Finally, opportunities for improving interdisciplinary collaboration are proposed and concrete recommendations are offered to optimize the integration of neuropsychology into the Spanish judicial system. These include the development of specialized training programs for legal professionals, the creation of standardized protocols for forensic neuropsychological assessment, and the promotion of applied research in this field. The study concludes by underlining the importance of a multidisciplinary approach in addressing gender-based violence and the potential of forensic neuropsychology to contribute to a more informed and effective judicial system.

Keywords: Forensic Neuropsychology, Gender Violence, Spanish Legal Framework, Neuropsychological Assessment, Judicial Decision Making, Legal Implications, Interdisciplinary Collaboration.

1. Introduction

1.1 Presentation of the Spanish Legal Framework in Relation to Gender Violence

Gender violence represents a serious social problem that has required a forceful legislative response in Spain. The Spanish legal framework in this area has undergone a significant evolution in recent decades, reflecting a growing commitment to the protection

of victims and the prevention of this type of violence.

The cornerstone of this legal framework is Organic Law 1/2004, of December 28, 2004, on Comprehensive Protection Measures against Gender Violence. This law was a milestone in addressing gender violence in a comprehensive manner, recognizing it as a manifestation of discrimination, inequality and power relations

of men over women [1]. The law establishes comprehensive protection measures aimed at preventing, punishing and eradicating this violence, as well as providing assistance to the victims.

Subsequently, Royal Decree-Law 9/2018, of August 3, introduced important modifications to improve assistance to victims and expand the mechanisms for accrediting situations of gender violence [2]. These reforms seek to respond to the reality that a high percentage of fatal victims had not previously reported their situation.

The Spanish legal framework has also been influenced by international commitments, such as the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), ratified by Spain in 2014. This convention broadens the definition of violence against women, including all forms of violence that disproportionately affect them [3].

1.2 Relevance of Neuropsychology in the Legal Field

Neuropsychology, as a discipline that studies the relationship between brain functioning and behavior, has become increasingly relevant in the legal field, particularly in cases of gender violence. Its importance lies in several aspects:

- ✓ **Assessment of mental capacity:** Neuropsychology can provide crucial information on the mental capacity of offenders, which is relevant to determine their imputability and criminal liability [4].
- ✓ **Understanding the mechanisms underlying violence:** Neuropsychological studies can shed light on the cognitive and emotional deficits that may contribute to violent behavior, which is valuable for both prevention and treatment [5].
- ✓ **Risk assessment:** Neuropsychological assessments can help identify risk factors for recidivism, which is crucial for judicial decision-making and the implementation of protective measures [6].
- ✓ **Intervention design:** Neuropsychological knowledge can inform the design of more effective intervention programs for offenders, tailored to their specific deficits [7].
- ✓ **Assessment of testimony:** Neuropsychology can provide information on the reliability of the testimony of both victims and perpetrators, considering aspects such as memory, attention and emotional processing [8].

The integration of neuropsychology into the legal field of gender-based violence poses significant challenges, however. It is crucial that legal professionals and judicial operators have an adequate understanding of the implications and limitations of neuropsychological assessments. It is also necessary to develop standardized protocols for the application of these assessments in the forensic context, ensuring their validity and reliability.

2. Spanish Legal Framework on Gender Violence

2.1 Current Legislation and Its Evolution

Spanish legislation on gender-based violence has undergone a significant evolution in recent decades, reflecting a growing recognition of the seriousness of the problem and the need for a

comprehensive response. The most important milestones in this evolution are:

- ✓ **Organic Law 10/1995, of November 23, 1995, of the Penal Code:** Introduced for the first time the crime of habitual domestic violence.
- ✓ **Law 27/2003, of July 31, 2003, regulating the Order for the Protection of Victims of Domestic Violence:** Established a rapid protection mechanism for victims.
- ✓ **Organic Law 1/2004, of December 28, 2004, on Comprehensive Protection Measures against Gender Violence:** This law marked a turning point in the approach to gender violence in Spain. It introduced a comprehensive approach covering preventive, educational, social, welfare and aftercare measures for victims. It also created the Courts for Violence against Women and toughened the penalties for aggressors [1].
- ✓ **Organic Law 3/2007, of March 22, 2007, for the effective equality of women and men:** Although it is not specific to gender violence, this law contributes to prevention by promoting real equality between women and men.
- ✓ **Royal Decree-Law 9/2018, of August 3, on urgent measures for the development of the State Pact against gender-based violence:** It introduced important modifications, such as the extension of the mechanisms for accrediting situations of gender-based violence and the reinforcement of legal assistance to victims [2].
- ✓ **Organic Law 8/2021, of June 4, on the comprehensive protection of children and adolescents against violence:** Although not specific to gender violence, this law reinforces the protection of minors who are victims of gender violence.

This legislative evolution reflects a change in the conception of gender violence, from considering it a private matter to recognizing it as a social problem that requires a comprehensive response from the State.

2.2 Role of the Judicial System in Gender Violence Cases

The judicial system plays a crucial role in the response to gender-based violence in Spain. Its main functions include:

- ✓ **Courts for Violence against Women:** Created by Organic Law 1/2004, these specialized courts are responsible for the investigation and, where appropriate, the adjudication of criminal cases involving violence against women, as well as related civil cases. This specialization seeks to provide a more effective and coordinated response [9].
- ✓ **Protection orders:** The judicial system is responsible for issuing and monitoring compliance with protection orders, which may include criminal, civil, and social assistance and protection measures [10].
- ✓ **Risk assessment:** Judges, in collaboration with other professionals, should conduct a risk assessment to determine the necessary protective measures. In this context, neuropsychological assessments can provide valuable information [11].
- ✓ **Prosecution and punishment:** The judicial system is responsible for prosecuting cases of gender-based violence and applying the corresponding sanctions, which have been toughened with successive legislative reforms.

✓ **Inter-institutional coordination:** Courts must coordinate their actions with other services and institutions involved in the care of victims of gender violence, such as social, health and police services.

✓ **Protection of minors:** The judicial system must consider and protect minors who are direct or indirect victims of gender violence, adopting the necessary measures for their protection [12].

✓ **Specialized training:** The law establishes the need for judicial professionals to receive specialized training in gender-based violence to improve their response capacity.

The role of the judicial system in cases of gender violence is, therefore, multifaceted and complex, requiring specialization and effective coordination with other sectors involved in victim care and violence prevention.

3. Neuropsychological Assessment and Legal Relevance

3.1 Standard procedures in Forensic Evaluation

Forensic neuropsychological assessment in cases of gender violence follows a rigorous protocol that combines various techniques and tools. According to Marín Torices, standard procedures include [13]:

✓ **Structured clinical interview:** It allows obtaining information about the victim's medical, psychological and social history, as well as assessing the victim's current mental state.

✓ **Standardized neuropsychological tests:** They assess different cognitive domains such as attention, memory, executive functions and emotional processing. Some of the most commonly used tests are the Wisconsin Card Sorting Test (WCST) and the Stroop Test.

✓ **Personality assessment:** Instruments such as the Minnesota Multiphasic Personality Inventory (MMPI-2-RF) provide information on relevant personality traits.

✓ **Specific simulation tests:** Given the forensic nature of the assessment, it is crucial to include tests designed to detect simulation or exaggeration of symptoms. The Test of Memory Malingering (TOMM) has been shown to be valid for this purpose in victims of gender-based violence [13].

✓ **Neuroimaging techniques:** Although not always accessible, they can provide valuable information on brain structure and function.

It is important to note that the evaluation should be performed by professionals with experience in forensic neuropsychology, capable of integrating neuropsychological information with the relevant legal aspects of the case [4].

3.2 Impact of Neuropsychological Findings on Judicial Decisions

Neuropsychological findings can have a significant impact on judicial decisions in cases of gender violence:

✓ **Determination of imputability:** Neuropsychological assessment can provide crucial information about the mental capacity of the victim or the aggressor, which is relevant to determine their criminal liability [13].

✓ **Evaluation of psychological damage:** The results of the neuropsychological evaluation can help to quantify the psychological damage suffered by the victim, which is important for criminal

classification and the determination of compensation [14].

✓ **Risk assessment:** identified neuropsychological deficits may be indicative of the risk of recidivism in the case of offenders, which is crucial for judicial decision-making and implementation of protective measures [6].

✓ **Treatment planning:** neuropsychological findings can inform the design of more effective intervention programs for both victims and offenders [7].

4. Legal Analysis

4.1 Illustrative Examples Where Neuropsychological Evaluations Have Been Applied

A paradigmatic case in Spain demonstrates the relevance of neuropsychological assessment in the legal context of gender violence. Marín Torices describes a case in which neuropsychological evaluation served to assess the imputability of a woman accused of assaulting her partner, who had been her abuser for years [13]. The neuropsychological report revealed significant alterations as a consequence of prolonged abuse, which led to an acquittal. This case set a precedent as it was the first time in Spain that a neuropsychological expert report determined an acquittal in a case of gender violence.

4.2 Impact of Neuropsychological Findings in the Judicial Process

Neuropsychological findings can have a profound impact on the judicial process:

✓ **Admissibility of evidence:** Courts are increasingly willing to consider neuropsychological evidence, recognizing its scientific value and relevance to understanding the behavior and capabilities of the parties involved.

✓ **Credibility of testimony:** Neuropsychological assessment can provide information about the victim's ability to accurately recall and recount events, which is crucial in assessing the credibility of testimony.

✓ **Sentencing:** In cases where guilt is established, neuropsychological findings may influence sentencing, considering factors such as the offender's ability to control his behavior or understand the consequences of his actions.

4.3 Analysis of the Impact on Legal Decisions

The impact of neuropsychological findings on legal decisions can be analyzed from several perspectives:

✓ **Paradigm shift:** The incorporation of neuropsychological evidence is leading to a change in the way the legal system understands and addresses gender-based violence, recognizing the complexity of the neurobiological factors involved.

✓ **Interpretive challenges:** Judges and lawyers face the challenge of correctly interpreting neuropsychological evidence, underscoring the importance of training in this field for legal professionals.

✓ **Balancing justice and science:** Legal decisions must balance scientific evidence with other legal and ethical factors, which can lead to debates about how to weigh neuropsychological evidence against other forms of evidence.

5. Discussion

5.1 Reflections on the Legal and Forensic Implications

The integration of neuropsychology into the legal field of gender-based violence raises important implications:

- ✓ **Improved accuracy of judicial decisions:** Neuropsychological evidence can provide a stronger basis for judicial decisions, reducing subjectivity and increasing accuracy in the evaluation of complex cases.
- ✓ **Ethical challenges:** Ethical issues arise regarding the use of neuropsychological information, such as the privacy of brain data and the risk of stigmatization based on neuropsychological profiles.
- ✓ **Need for specialized training:** The need for specialized training for judges, lawyers and other professionals in the legal system in the interpretation and application of neuropsychological evidence is evident.
- ✓ **Potential for prevention:** Neuropsychological insights could inform more effective prevention strategies by identifying neurobiological risk factors for gender-based violence.

5.2 Comparison with other Similar Cases and Existing Literature

The application of forensic neuropsychology in cases of gender violence is an emerging field, but parallels already exist in other areas of law. For example, in cases of traumatic brain injury or neurodegenerative diseases, neuropsychological evidence has been used to determine legal capacity and criminal responsibility [4].

Existing literature suggests that the integration of neuropsychology into the legal field of gender-based violence follows a trend similar to that observed in other fields of law. However, the specificity of gender-based violence poses unique challenges, such as the need to understand the neuropsychological effects of prolonged trauma and the complex dynamics of abusive relationships.

Recent studies, such as that of Bueso-Izquierdo et al., have begun to explore the neuropsychological profiles of aggressors, which could have significant implications for prevention and treatment [6]. Likewise, research such as that of Marín Torices is breaking new ground in the application of forensic neuropsychology for the defense of victims of gender-based violence [13].

As we have seen, the integration of forensic neuropsychology into the legal field of gender-based violence represents a significant advance in the search for justice and protection for victims. However, it also poses significant challenges that require careful consideration and an interdisciplinary approach to address effectively.

6. Challenges and Opportunities

6.1 Current Limitations in The Integration of Neuropsychology and Law

The integration of neuropsychology in the legal field, especially in cases of gender-based violence, faces several significant challenges [4,13]:

- ✓ **Lack of standardization:** There is a lack of standardized practices in forensic neuropsychological assessment, which can lead to inconsistencies in results and their interpretation.
- ✓ **Complexity of interpretation:** Legal professionals often lack the training necessary to properly interpret the results of neuropsychological evaluations, which can lead to misunderstandings or inappropriate use of evidence.
- ✓ **Ecological validity:** There are limitations in the relationship between neuropsychological test performance and real-life competence, which may hinder the direct application of the results in legal contexts.
- ✓ **Detection of simulation:** Identifying cases of simulation or symptom exaggeration remains a challenge in the forensic setting.
- ✓ **Ethical issues:** Ethical concerns arise about the use of neuropsychological information in the legal setting, especially in terms of privacy and possible stigmatization.

6.2 Opportunities for Enhanced Interdisciplinary Collaboration

Despite these challenges, there are significant opportunities to improve collaboration between neuropsychology and law:

- ✓ **Specialized training:** Developing interdisciplinary training programs for legal professionals and neuropsychologists can improve mutual understanding and effective application of neuropsychological knowledge in legal contexts [4].
- ✓ **Development of standardized protocols:** The creation of standardized protocols for neuropsychological assessment in forensic contexts can increase the reliability and validity of the results [13].
- ✓ **Collaborative research:** Encouraging joint research between neuropsychologists and legal professionals can lead to advances in understanding how best to apply neuropsychological knowledge in legal cases [4].
- ✓ **Improvement of assessment techniques:** The development of new neuropsychological assessment techniques more specific to forensic contexts may improve the ecological validity of the results [13].
- ✓ **Technological integration:** The incorporation of advanced technologies, such as functional neuroimaging, can provide more robust evidence in complex legal cases [4].

7. Conclusions

7.1 Final Reflections on the Integration of Neuropsychological Knowledge into the Legal Framework

The integration of neuropsychological knowledge into the legal framework of gender-based violence represents a significant advance in the pursuit of justice and protection for victims. This integration offers a deeper understanding of the mechanisms underlying violence and provides valuable tools for assessment and decision-making in legal contexts. Forensic neuropsychology has demonstrated its potential for:

- ✓ Improve accuracy in the assessment of psychological damage in victims of gender violence [4].
- ✓ Provide crucial information about the mental capacity and impulse control of offenders [13].
- ✓ Inform the design of more effective intervention programs for

both victims and offenders [4].

However, it is important to recognize that neuropsychology should not be seen as a panacea, but as a complementary tool in the legal system. Its application must be careful and always in conjunction with other forms of evidence and legal and ethical considerations.

7.2 Proposals to Improve the Judicial System from A Forensic Perspective

To optimize the integration of neuropsychology into the judicial system, the following measures are proposed:

✓ **Specialized training:** Implement continuous training programs for judges, lawyers and other professionals in the judicial system on the interpretation and application of neuropsychological evidence [4].

✓ **Standardized protocols:** Develop and adopt standardized protocols for neuropsychological assessment in forensic contexts, especially in cases of gender-based violence [13].

✓ **Multidisciplinary teams:** Encourage the creation of multidisciplinary teams that include neuropsychologists, forensic psychologists and legal professionals to address complex cases of gender-based violence [4].

✓ **Applied research:** Promote applied research on the effectiveness of neuropsychological evaluations in improving judicial decisions in cases of gender violence [4].

✓ **Legislative update:** Review and update legislation to explicitly incorporate the role of neuropsychological evidence in cases of gender violence, establishing clear criteria for its admissibility and use [1].

✓ **Ethics and privacy:** Develop clear ethical guidelines for the use of neuropsychological information in legal contexts, ensuring the protection of privacy and avoiding stigmatization [4].

✓ **Accessibility:** Ensure that neuropsychological evaluations are accessible to all victims of gender-based violence who require them, regardless of their economic or geographic situation [1].

✓ **Monitoring and evaluation:** Implement monitoring and evaluation systems to measure the impact of the integration of neuropsychology in the judicial system, allowing for continuous adjustments and improvements [4].

The implementation of these proposals can significantly contribute to a more informed, equitable and effective justice system in addressing gender-based violence. Interdisciplinary collaboration between neuropsychology and law has the potential to improve the protection of victims, the rehabilitation of perpetrators and, ultimately, the prevention of gender-based violence.

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