

Sentences with gender perspective without a common criterion:

A foreseeable mistake?

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Abstract

Argentina has a vast legal framework guaranteeing legal equality, but realizing this principle requires concrete actions. Integrating a gender perspective into the justice administration system is a fundamental step to avoid perpetuating inequalities. This study aims to analyze the votes of judges from provincial High Courts in gender perspective sentences compiled by the Women's Office of the Supreme Court of Justice of the Nation through the creation of a proprietary database. Given the absence of a Protocol for Judging with a Gender Perspective at both national and subnational levels, the aim is to evaluate, using the Mexican Supreme Court's Protocol as a measurement criterion, how judges rule when they claim to have a gender perspective. It seeks to demonstrate that these rulings result in favorable outcomes for women but lack gender perspective arguments. Through the analysis of 564 votes in 143 sentences, it was found that only half use gender perspective as an argumentative tool. Furthermore, the profile of judges, finding that younger female judges are more likely to incorporate gender perspective into their arguments, is proposed as an explanatory factor for these results. This evidence supports the need to develop a protocol with a gender perspective that maximizes Argentine legislation and addresses the needs and demands of justice operators.

Keywords:

Judging with a Gender Perspective, Protocol, Judiciary, High Courts, Superior Court of Justice, Subnational Justice, Provinces, Argentina.

1. Introduction

In Argentina, we are transitioning from the pursuit of legal equality to true equality. Making this principle a reality requires concrete actions. Integrating a gender perspective into the justice administration system is a fundamental step to avoid perpetuating inequalities.

There are many reasons why the gender perspective is relevant, especially in a region as unequal as Latin America. By 2022, Argentina ranked 33rd out of 146 countries in the World Economic Forum's Gender Gap Index and fifth in the Latin America and Caribbean region. One of the most problematic indicators is economic participation and opportunity, where Argentina ranks 102nd.

The justice system plays a fundamental role in closing existing gender gaps. Considering the interprovincial differences of a diverse country like Argentina, through the creation of a proprietary database, this study aims to analyze the votes of judges from provincial High Courts in gender perspective sentences compiled by the Women's Office of the Supreme Court of Justice of the Nation. Given the absence of a protocol at both national and subnational levels for judging with a gender perspective and taking the Mexican Protocol as a reference framework, do provincial High Courts rule with a gender perspective? What type of gender perspective are judges applying in their rulings? Does this represent a significant advance in defending and protecting women's rights? Additionally, what factors might motivate this behavior, including whether the composition of the Courts influences this matter?

The document is structured as follows: The first section frames the need for this study and reviews the limited literature on gender perspective sentences more systematically.

Secondly, the legal framework is presented, divided into two main areas. On one hand, it reconstructs the legal context of women's rights at the national level. On the other hand, it surveys existing gender perspective protocols in other countries and the limited advances at the local level.

Thirdly, the methodology section focuses on a detailed description of how the database was constructed from the gender perspective sentences compiled by the Women's Office of the Supreme Court of Justice of Argentina for provincial High Courts.

Fourthly, the analysis of the votes of judges from the 143 sentences from 21 provincial High Courts is presented. Given the absence of national and provincial normative frameworks defining common criteria for judging with a gender perspective, the incorporation of this

argumentation in rulings was measured according to the five steps proposed by the Mexican Protocol for Judging with a Gender Perspective. Additionally, the profile of judges was proposed as explanatory variables for their behavior.

This study aims to demonstrate that these types of rulings result in favorable outcomes for women but lack a gender perspective argumentation. It was found that only half of the votes use gender perspective as an argumentative tool, but even more so if we limit ourselves to seeing those sentences that somehow repair the existing damage in the case, this figure drops to almost 30%. It was also found that younger female judges are more likely to incorporate gender perspective into their arguments.

Finally, along with the conclusions of this research, some reflections are presented on the need to develop a Protocol for Judging with a Gender Perspective that provides justice operators with concrete tools while maximizing the broad avant-garde national legislation and having a reach beyond criminal matters.

2. Vulnerability of women

Substantive equality, as a fundamental principle, seeks to address entrenched inequalities in our society and ensure equitable conditions for all people. In this context, the gender perspective emerges as an essential tool to understand and challenge the gender roles and stereotypes that perpetuate these disparities.

The gender perspective, according to Volpe (2022), can be considered a current struggle aimed at recognizing the rights of women and other historically marginalized identities on an equal footing with men's rights. However, as Matas (2019) points out, it is not a new concept. The 4th World Conference on Women of the United Nations in 1995 established the gender perspective as a global strategy to promote gender equality (UN Women, 2020).

The United Nations (UN) defines the gender perspective as one that examines the impact of gender on people's opportunities, social roles, and interactions. The successful implementation of the goals of international and national organizations' policies, programs, and projects is directly affected by the impact of gender, which in turn influences the social development process. It adds that gender is an integral component of all aspects of people's economic, social, daily, and private lives, and of the different roles society attributes to men and women.

According to the European Institute for Gender Equality (2019), the gender perspective focuses particularly on the differences in status and power based on gender and considers

how such discrimination shapes the immediate needs and long-term interests of women and men. Additionally, they suggest that incorporating this perspective makes public interventions more effective and ensures that inequalities are not perpetuated.

There are many reasons why the gender perspective remains very relevant today. Rulli (2020) highlights ten fundamental points: women earn 23% less than men; the labor force participation rate for women aged 25 to 54 is 31% less than that of men; women spend 2.5 times more time on unpaid domestic and caregiving work than men; as of February 2019, only 24% of all national parliamentarians were women; as of June 2019, only 11 women were heads of state and 12 were heads of government; it is estimated that 35% of women have experienced physical and/or sexual violence from an intimate partner or sexual violence from a non-partner at some point in their lives; 49 countries still lack laws protecting women from domestic violence; currently, there are 650 million women and girls worldwide who were married before the age of 18; at least 200 million girls and women have undergone female genital mutilation; between 1990 and 2017, women constituted only 2% of mediators, 8% of negotiators, and 5% of witnesses and signatories in all major peace processes.

Furthermore, according to available data for the Sustainable Development Goals (SDGs), we are not on track to achieve gender equality by 2030, and the COVID-19 pandemic has set back progress in this area (UN Women, 2022). The outlook is not very hopeful.

In our country, as in many others, the phenomenon of poverty is closely linked to gender, commonly referred to as the "feminization of poverty." The Permanent Household Survey shows that more than half of the poor and indigent people are women. This situation is exacerbated when adding the characteristic of being a migrant, as gender inequalities are reproduced with migration processes, and women are more likely to have precarious employment due to their high presence in domestic and caregiving work and to suffer from rights deprivation (Rulli, 2020).

According to the study of unmet legal needs by the Ministry of Justice and Human Rights of the Nation, for 2019, one of the most vulnerable groups was people in extreme poverty, with almost 73% reporting having faced legal problems, almost entirely (68%) resulting in dissatisfaction with the outcome of the process. Another relevant factor is gender, which showed a difference of almost 5 percentage points between women and men. A total of 42.9% of women experienced some legal problem in 2018 and 2019, and 18.2% expressed dissatisfaction with the advice received or the outcome obtained, compared to 39.2% and

13.6%, respectively, for men. These figures suggest a clear gender gap in access to justice. In other words, gender is acting as a barrier.

Additionally, these existing gaps in society between men and women are replicated in the judicial systems. As Sánchez (2012) points out, the equitable participation of men and women in the power structures of the state is far from a reality, with positions of power historically occupied by men. The gender map of the Women's Office of the Supreme Court of Justice of the Nation highlights this situation. Although the country's justice system was composed mostly of women (57%) in 2022, they only represent 30% of the highest authorities - Ministers, Attorney Generals, and General Defenders - well below gender parity. Women are mainly concentrated in administrative and clerical positions, evidencing a clear "glass ceiling" (Cristallo, 2023).

3. Primeros enfoques sobre sentencias con perspectiva de género

It seems clear that this situation requires measures to reduce these gaps and prevent their reproduction. So, is judging with a gender perspective a tool for protecting women as a vulnerable population? Considering that impunity remains a serious problem in the region, both for crimes of violence against women and other types of crimes (Htun, O'Brien, and Weldon, 2014), incorporating this perspective can be a way to improve responsiveness and reduce it. Precisely because, as Zelaya (2021) states, judging with a gender perspective helps to eradicate violence against women and helps to repair or minimize its damages.

For this, the role of judges is vital because when judging, they not only create law but also decide realities, acting on people, facts, and the legal norm, so incorporating the gender perspective can modify the practices of application and interpretation of the law (Zelaya, 2021; Schaller, 2022). The literature that studies judges' behavior, known as the attitudinal model, emphasizes the importance of judges' attitudes, including their beliefs, values, and political preferences, and how these can affect their decisions and interpretation of the law when deciding and interpreting the law. In other words, this approach recognizes that judges are not completely neutral and objective beings but are also influenced by their personal background. Their attitudes can affect how they interpret the law, which cases they choose, and how they resolve legal disputes (Segal and Spaeth, 2002; Ostberg and Wetstein, 2011). Therefore, for this model, who the judges are and the role they play in rulings are key.

In this way, incorporating the gender perspective allows for finding solutions in line with the constitutional principle of non-discrimination and international human rights instruments,

allowing visibility of the power and inequality relations involved in each case and ensuring access to justice to remedy these asymmetric power situations (Hürst, 2021, MMGyD, 2021). In short, it is a methodological tool to understand and apply national and international human rights standards that, in turn, strengthens access to justice (Beigel, 2021, MMGyD, 2021; Palomo Caudillo, 2021).

The literature shows that there is an increasing concern at the regional level for providing equal justice, but the focus is on how to apply the gender perspective to the judiciary (García Lozano, 2016; Palomo Caudillo, 2021). Palomo Caudillo (2021) analyzes the case of Mexico, whose Supreme Court assumed this task from the training of future judges by issuing a Protocol for Judging with a Gender Perspective, and argues that judicial resolutions assume "an active role in the necessary transformations for the achievement of a society where all people are in conditions to design and execute a dignified life project."

However, the literature is also consistent in identifying some challenges faced by the judicial branches in this matter. For García Lozano (2016), one of the main challenges is the lack of training and specialized education for judges and jurists in the gender perspective. Likewise, he emphasizes the importance of access to education under this perspective being provided at all levels, including law schools responsible for training lawyers who should know, invoke, and apply the gender perspective in their future work (Palomo Caudillo, 2021). Gauché-Marchetti et al. (2022) suggest for the Chilean case that, in addition to the imperative need for training, another challenge facing the implementation of this perspective lies in the resistance of some sectors of society to gender equality, materialized in their regulations on various subjects and presenting gender stereotypes that disproportionately affect women and LGTBQ+ people.

Regarding Argentina, Mesías Ortega (2022) identifies that in recent times, the incorporation of the gender perspective in judicial rulings has highlighted the shortcomings of the judicial system, leaving victims in a place of vulnerability in the events they pursue to remedy the harm caused and restore order through a ruling. Thus, many rulings had to be reviewed by higher courts to address the basic needs of victims, applying in most cases the sound critical judgment that the lower courts did not apply.

In another sense, a large part of the Argentine literature on the gender perspective focuses on the analysis of case law. This is the case of Medina (2018), who argues that judging with a gender perspective involves understanding the influence of socio-cultural patterns on violence against women and conducts an analysis of some cases where the Inter-American

Court of Human Rights and the Argentine Supreme Court judged under this criterion in various areas, including discrimination based on sexual orientation, labor, abortion, and education. We also find Alonso and Adriana (2022) who focus on analyzing gender perspective precedents in the commercial field and suggest that, given that this path is incipient and justice operators are in the process of learning, judging with a gender perspective may require sacrificing the normative text, understanding that it may not be neutral, and being aware that this category of judgment is imposed by international treaties to which the country has adhered. In relation to this, Gastaldi and Pezzano (2021) argue that judging with a gender perspective is mandatory and a necessary consequence of our legal system.

Furthermore, there are many recent final papers in the law degree that focus on meticulously analyzing a particular ruling, commenting on the resulting sentence, and emphasizing the justifications provided by the judges. Most of these studies focus on Supreme Court rulings (Luna, 2022; Anabia, 2021; among others), but there are also cases on lower courts, such as Arechaga (2021), who comments on a ruling by the Civil and Commercial Appeals Chamber, Labor, and Mining of La Pampa, or Zamboni (2021), who studies a ruling by the National Labor Appeals Chamber in 2018. These cases are noteworthy because they also depart from the more frequent field associated with gender violence issues, such as physical, sexual, and psychological violence, as in the cases of Sarrichio (2021) and Montenovio (2021).

In summary, most studies at both international and national levels come from the field of law and are casuistic, meaning they are conducted from a more qualitative and detailed perspective of one or a few sentences. As a result, it is not only a little-explored field, with no studies that have systematically analyzed gender perspective sentences for subsequent analysis, but also at the provincial level.

4. Legal Framework in Argentina

In this section, we will present the legal structure that justice operators in our country will have to effectively interpret, argue, and judge with a gender perspective.

a. Women's Rights

Gender justice generally refers to equality and the autonomy of people constructed by gender institutions (Htun and Weldon, 2018). According to Palomo Caudillo (2021), the phenomenon of the constitutionalization of human rights has led to advances in

recognizing women's rights, and Argentina has a series of laws aimed at achieving this equality. It is important to add that without an international and, above all, national legal framework, judging with a gender perspective would face greater difficulties, mainly in supporting its arguments.

In Argentina, the 1994 constitutional reform gave Human Rights Treaties constitutional status - article 75, section 22 - and allowed the adoption of a set of treaties prohibiting discrimination based on sex. Among them, the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women (the Belém do Pará Convention) was adopted in 1994 and is considered the world's first international human rights treaty addressing women's right to a life free of violence both in the private and public spheres. Argentina ratified this agreement in 1996 through Law No. 24.632.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), whose fundamental premise is equality between men and women, was approved in 1979 by the United Nations General Assembly. Specifically, Argentina ratified it in 1985 through Law No. 23.179, and with the 1994 reform, it was given constitutional status.

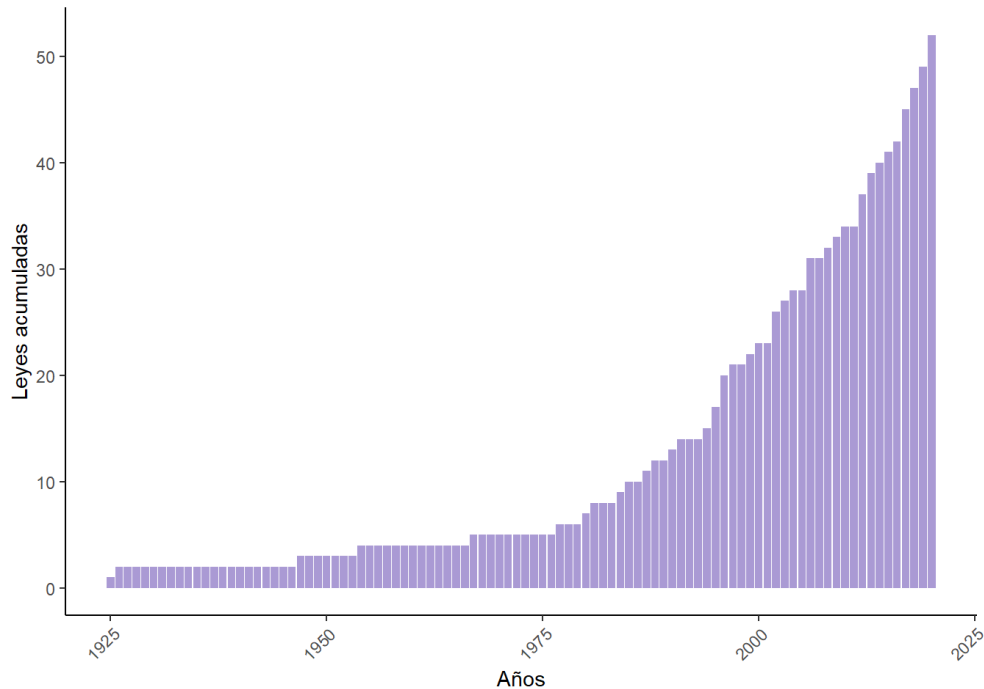
Additionally, the Optional Protocol to the CEDAW, adopted by the UN General Assembly in 1999, was embraced by Argentina in 2006 through Law No. 26.171. According to Spaventa (2017), with the entry into force of this law, the competence of the Committee on the Elimination of Discrimination against Women to receive and consider individual or collective complaints of violations of any of the rights enunciated in the CEDAW was recognized. This Committee also issues General Recommendations aimed at establishing guidelines on the scope of the Convention's obligations. To date, 38 general recommendations have been adopted.

Htun, O'Brien, and Weldon (2014) suggest that these types of treaties provide an advantage in the realm of normativity to national civil society organizations. This allows using treaties as tools to lobby legislatures and achieve changes in discriminatory laws, train public officials, such as judges, and enable true application.

In addition to the international commitments assumed at the national level, Argentina has been a pioneer in enacting gender and women's rights laws. This includes a vast list starting with the enactment of Law No. 11.317 of 1925, which regulated women's and children's work, establishing a maximum daily workday of eight hours, the prohibition of firing pregnant women, the incorporation of breastfeeding leave, and the obligation for

companies to have nurseries. With the turn of the century, the pace of enacting such laws increased (see Graph 1).

Graph 1. Accumulated Number of Gender and Women's Rights Laws by Year



We can highlight among them Law No. 24.828 of 1997, incorporating housewives into the integrated pension and retirement system, a very important recognition regarding domestic work, where, according to INDEC (2022), women participate in unpaid work more than men: 91.7% perform domestic, caregiving, or support work for other households or volunteer work.

We can also mention within the health area the enactment of Law No. 25.673 in 2002, through the national program of sexual health and responsible procreation, as stated in section g of Article 2, incorporating women into a more active role in decision-making related to their sexual health and responsible procreation. Additionally, in 2006, Law No. 26.150 was enacted, establishing the national comprehensive sex education program, commonly known as ESI, aimed at ensuring that children and adolescents access this right. Another major advancement came in 2013 with Law No. 26.862 of medically assisted reproduction, allowing all citizens to have the opportunity to have children through assisted fertilization techniques. It is also essential to mention Law No. 27.610 of access to voluntary termination of pregnancy, enacted in 2020.

Furthermore, in 2009, Law No. 26.485 on comprehensive protection for women was enacted, recognizing the rights protected by the main international conventions in this area. Namely, the Convention on the Elimination of All Forms of Discrimination against Women, the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women, and the Convention on the Rights of the Child.

In 2010, the country enacted a pioneering law in the region, Law No. 26.618, guaranteeing marriage equality. It was the first country in Latin America to recognize this right. Additionally, since 2012, another pioneering law, Law No. 26.743 on gender identity, has been in force, which in Article 3 establishes that "any person may request the rectification of the sex recorded in their birth certificate, and the change of first name and image when they do not match their self-perceived gender identity."

Finally, it is important to mention some laws that largely emerged in response to gender violence. Thus, in 2012, Law No. 26.791 was enacted, incorporating the crime of femicide into the Penal Code. Additionally, since 2018, the Brisa Law (Law No. 27.452) has been in force, seeking to provide economic reparation for the children of femicide victims. That same year, the Micaela Law (Law No. 27.499) was enacted, mandating gender and gender violence training for all people working in public service in the Executive, Legislative, and Judicial branches. In other words, it aims for state officials and agents to be trained in gender perspective.

According to Rulli (2020), Argentina has a robust national legal framework that, in compliance with international commitments, guarantees rights for women and LGBTIQ+ people. In particular, the two previously mentioned conventions constitute the most relevant international norms on women's human rights.

All these normative sources, as Bergallo and Moreno (2017) argue, have allowed the development of both international and national legal foundations for the duty to access justice systems in pursuit of de jure and de facto gender equality. But also, to ensure that justice operators handle cases with a gender perspective. In short, this extensive legal framework suggests that judging with a gender perspective is a legal obligation rather than an optional alternative that can continue to be overlooked.

b. Protocols for Judging with a Gender Perspective

i. International

A Protocol for Judging with a Gender Perspective is an instrument intended for those who administer justice to resolve cases involving people in situations of vulnerability due to their gender, sex, or sexual orientation. As the Supreme Court of Justice of Mexico (2020) points out, they are practical tools that help justice operators understand the implications of the obligation to judge with a gender perspective and, above all, assist them in applying this method of analysis for resolving disputes.

These protocols have become increasingly frequent and relevant in the last decade. Although their absence outside the Latin American region is notable, we can find many noteworthy examples in this area, considering that not all are strictly protocols but also include broader frameworks that provide an approach to the matter. The ones listed in Table 1 include five protocols and seven others that are criteria, guides, or good practices for judging with a gender perspective.

Table 1. International Protocols by Year

Name	Country	Year
Criterios de equidad para una administración de justicia con perspectiva de género	Colombia	2011
Protocolo para juzgar con perspectiva de género	México	2013
Modelo de protocolo latinoamericano de investigación de las muertes violentas de mujeres por razones de género (feminicidio/feminicidio)	ONU Mujeres	2014

Guía para la aplicación sistemática e informática del Modelo de incorporación de la Perspectiva de Género en las Sentencias	Cumbre Judicial Iberoamericana - Comisión Permanente de Género y Acceso a la Justicia	2014
Protocolo para juzgar con perspectiva de género	Bolivia	2016
Cuaderno de buenas prácticas para incorporar la Perspectiva de Género en las sentencias	Chile	2018
Protocolo para juzgar con perspectiva de género	México	2020
Guía para el Poder Judicial sobre estereotipos de género y estándares internacionales sobre derechos de las mujeres	Uruguay	2020
Protocolo de juzgamiento con perspectiva de género interseccional para la jurisdicción constitucional	Bolivia	2021

Herramienta para incorporar el enfoque de derechos humanos, género e interseccionalidad en sentencias sobre violencia de género	Guatemala	2021
Guía para garantizar el acceso a la justicia a todas las personas sin distinción en Paraguay. Apoyo a la transversalización del enfoque de género en la administración de justicia	Paraguay	2022
Protocolo de administración de justicia con enfoque de Género del Poder Judicial	Perú	2022

Source: Own elaboration based on website review.

Although the Colombian protocol was the first, the Mexican Protocol was undoubtedly a pioneer in the matter, which is one of the reasons it is consistently identified as a model to follow due to its implementability. As Palomo Caudillo (2021) notes, the Supreme Court of Justice of Mexico assumed the task of incorporating the gender perspective from the training of future judges by issuing the Protocol for Judging with a Gender Perspective, Gender Identity, and Sexual Orientation. Its regional importance reaches the point that many Argentine sentences cite it as a reference, and it has also been considered a source of inspiration for more recent protocols, such as Peru's, and even the guide prepared by the Ibero-American Judicial Commission.

An important point made by the aforementioned author is that judging with a gender perspective does not mean always giving women the benefit of the doubt under any circumstances, nor is it only relevant in cases related to women. Rather, as mentioned earlier, it is a tool to identify structural factors related to gender inequality, including sex, gender, preferences, or sexual orientations, among others.

This protocol, which serves as a reference framework, establishes five central steps for applying the gender perspective in Mexican courts (Palomo Caudillo, 2021). The first step focuses on pre-trial issues, asking whether the victim requires special protection measures to prevent injury or harm. The second step focuses on determining the facts and interpreting the evidence, where it is crucial to shed stereotypes about the parties' behavior. The third step focuses on determining the applicable law, where it is essential not to limit oneself to treaties on women's rights, such as CEDAW or the Belém do Pará Convention, as they are insufficient, but also all human rights treaties. The fourth step refers to argumentation, focusing on the idea that the law is a living instrument and that judges must be interpreters and applicators of it in constant learning. Finally, the fifth step ensures that damage reparations or "remedies" also consider the gender perspective, aiming to establish transformative measures for the context and structures that reproduce inequalities.

ii. National

At the national level, the Supreme Court of Argentina has not yet developed a formal protocol to follow when judging with a gender perspective. Considering that Article 5 of the National Constitution grants each province the autonomy to legislate, and therefore the power to develop a protocol or guide for judging with a gender perspective, we see that no province has done so. However, in some cases, more general regulations are presented.

The most notable case is Córdoba, which, following the implementation of Jury Trials - Provincial Law No. 9.182, the Women's Office of this province, along with the Jury Office of the Superior Court of Justice, developed a guide of basic concepts for judging with a gender perspective.

Additionally, in 2021, this Tribunal of the Province of Buenos Aires¹ issued Agreement No. 004032 establishing the creation of the Permanent Commission on Gender and Equality, with one of its competencies being to "design and promote the adoption of protocols and guidelines related to gender issues" (Art. 3).

¹ After the period analyzed in this study, the Supreme Court of Buenos Aires published the '[Guía de prácticas aconsejables para juzgar con perspectiva de género](#).' This guide represents a significant advancement in providing a standardized framework for incorporating a gender perspective in judicial rulings at the subnational level. However, as with any new tool, its effects, whether positive or negative, will logically be seen with a delay in application. Future research should consider the impact of this guide to fully assess its effectiveness and influence on judicial practices.

Similarly, we find the ruling "V, P. A. s/Tentativa de homicidio calif., desobediencia y violación de domicilio s/Casación" by the Superior Court of Justice of Río Negro, which ordered that "the Gender Office of our Judiciary, together with the Training School, carry out the formation of a commission for the development of the respective protocol for judging cases with a gender perspective." However, to date, there is no formalized protocol.

This absence of a shared framework among provinces translates into a lack of tools for justice operators and is clearly reflected in reality: the Ministry of Women, Genders, and Diversity (MMGyD) identified in 2021 a clear absence of a gender perspective in judicial processes throughout all stages leading to a judicial decision.

So, given this lack of clarity at the provincial level regarding what it means to rule with a gender perspective and the lack of common and shared standards, how do judges rule when they say they adopt a gender perspective?

5. Methodology

a. Database

The Women's Office of the Supreme Court of Argentina compiles a collection of gender perspective sentences through submissions made by all judicial bodies in the country. The only criterion for selecting the jurisprudence sent by the provinces is that they fall within the Guide of International Standards on Women's Rights. Given such a broad criterion, this can be a problem regarding what provinces interpret when determining which sentences to send to the collection. Additionally, the use of this method may present a manifest limitation because a ruling falling within the violation of a woman's right does not necessarily imply that its outcome incorporates a gender perspective.

Despite these potential difficulties, the Women's Office is the only body responsible for compiling such sentences in the country. Thus, we will use this official input but with caution regarding the conclusions reached because we cannot guarantee the comparability of the sentences.

This collection allows us to access a series of descriptive variables of the sentence, including the jurisdiction, date and year of the sentence, the state of the sentence, the rights in which they are framed, the subject matter, the parties involved, and the vote of the judges.

For this study, I will focus on the High Courts of the country, mainly for feasibility in terms of availability of complementary information. Based on this decision, a series of sentences were found that did not need to be considered: duplicates, a total of eight, from Special and

Cassation Courts (4), one clarifying ruling, and one anonymized sentence that does not allow discrimination of judges' votes.

In total, the High Courts of the provinces sent 243 sentences. However, notable differences were evident among provinces regarding the number of sentences sent. For this instance, La Rioja, Santa Fe, and Santiago del Estero had none. CABA and La Pampa only one. This disparity may reflect some limitations of the Women's Office collection regarding the sentences it includes.

Additionally, to avoid the overrepresentation of provinces like Córdoba with 44 sentences or Chaco with 29, the average of all provinces was calculated, being 10 sentences, to improve the initial input.

This cut was established to have a homogeneous sample, and the exclusion criterion for provinces with more than 10 sentences was representativeness of subject matter and type of crime. For example, if a province has 20 criminal cases, of which 8 are homicides, 6 are injuries, and 6 are sexual abuses, it will filter 4 homicide sentences, 3 injuries, and 3 abuses. The sentences that were excluded after this filter were assigned the value of 1 in the "Excluded" variable, while the effectively coded sentences were assigned the value of 0, resulting in a total of 142 sentences, as shown in Table 2.

Table 2. Number of Coded Sentences by Province

Province	Number
Buenos Aires	10*
CABA	1
Catamarca	10*
Chaco	10*
Chubut	8
Córdoba	10*
Corrientes	5
Entre Ríos	1
Formosa	6
Jujuy	10*
La Pampa	1
La Rioja	0
Mendoza	10*

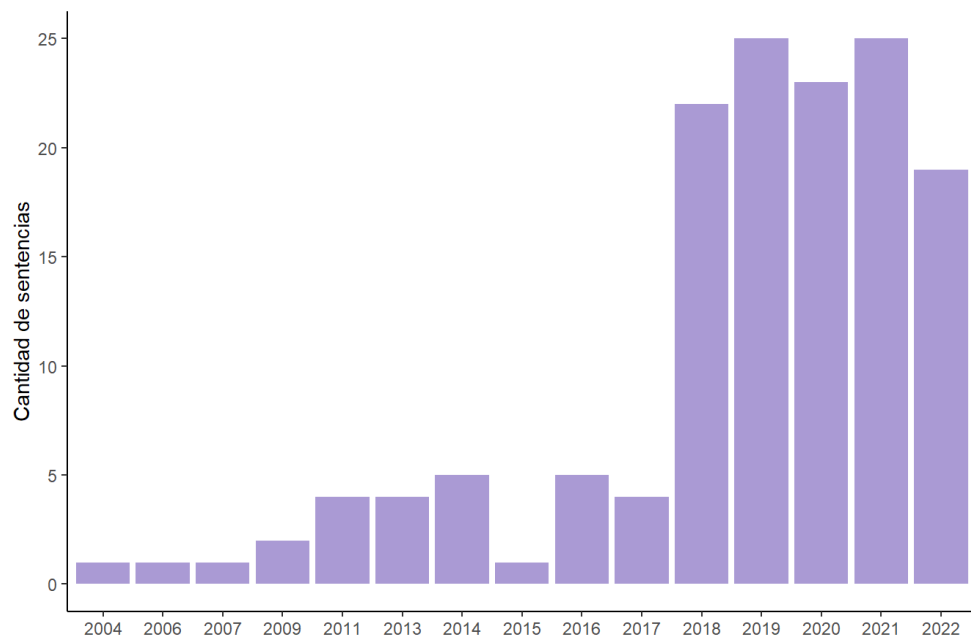
Misiones	10*
Neuquén	7
Río Negro	10*
Salta	3
San Luis	10*
San Juan	3
Santa Cruz	4
Santa Fe	0
Santiago del Estero	0
Tierra del Fuego	10*
Tucumán	3

Source: Prepared by the authors based on the compendium of sentences with a gender perspective of the Women's Office of the Supreme Court of Justice of the Nation.

Note: Provinces that were filtered out for exceeding 10 rulings are marked with an asterisk.

In this way we find a database composed of judgments covering the period from 2004 to 2022 which, as we can see in Figure 2, has a notable jump from 2018. This is a very relevant year for Argentine feminism that, among other things, achieved that for the first time the debate for the right to abortion reaches the parliamentary precinct (Tesoriero, 2019). In addition, we can mention that it was the year of the first national women's strike and the sanction of the Micaela Law, already mentioned in the previous section.

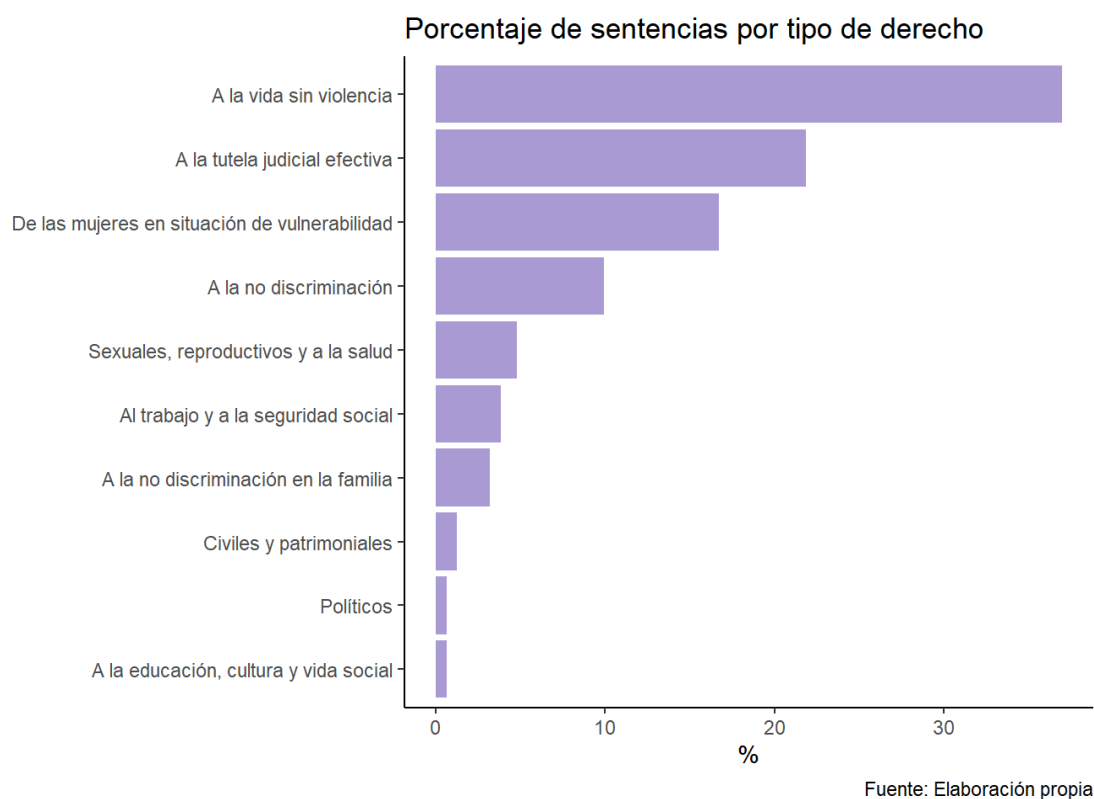
Graph 2. Number of Sentences by Year



Fuente: Elaboración propia

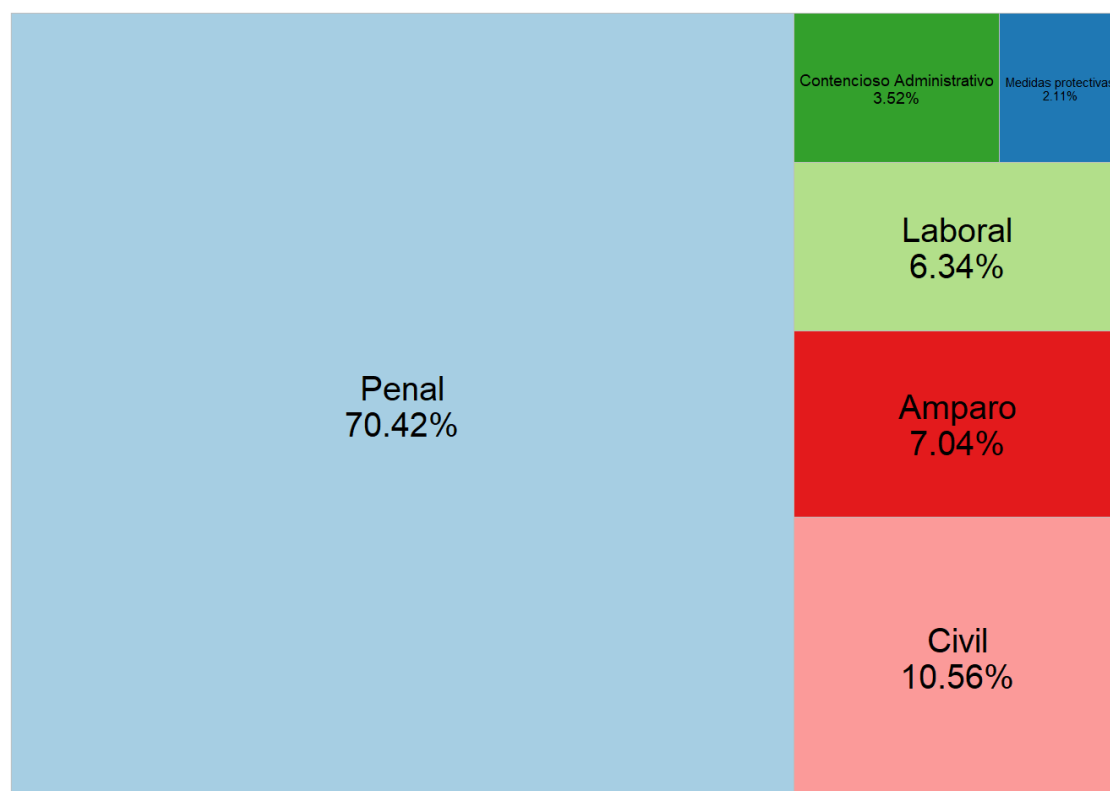
Likewise, we can observe not only that the majority of the sentences sent by the provinces are from recent years, but also that from the classification according to the 10 international rights proposed by the Women's Bureau, the sentences are mainly linked to the right to a life without violence, to effective judicial protection and to women in vulnerable situations (see Graph 3). These three rights account for more than 75% of the sentences.

Graph 3. Women's Rights Invoked by the Sentences



The types of rights at stake give us a first notion that the compendium is very probably overrepresented with cases that correspond to crimes related to gender violence. This situation has a correlation in the matters that these sentences deal with and we can see in Graph 4 that more than 70% of them correspond to criminal cases.

Graph 4. Percentage of Sentences by Subject Matter



Our National Constitution allows the filing of lawsuits both individually and collectively. It is also clear from this that this type of cases mostly involve ordinary citizens, as we can see in Table 3 that almost all of the judgments are initiated on an individual basis. This is because most of the plaintiffs are defense attorneys who seek to improve the situation of their defendant by means of certain remedies.

There is also a predominance of individual defendants. Collective cases are mainly against the State or Social Security (18).

Table 3. Involved Parties

		Defendant	
		Collective	Individual
Plaintiffs	Collective	1	2
	Individual	18	106

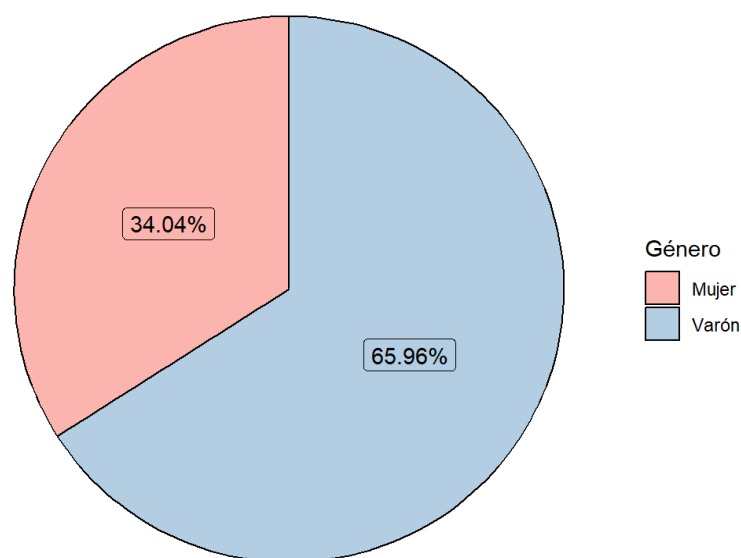
Regarding the way of voting we can see two important things. First, the vote is in favor of women (88.46%) while 10.26% is no and only 1.28% does not apply, i.e. cases where the

situation of a woman is not strictly determined. Thus, it would seem that the vote in favor of women is an implicit selection criterion in this compendium of sentences. Secondly, if they are issued unanimously -understood as the same result, independent of the argumentation-. We see that the percentage of unanimity is high, 88%. However, we have cases where this is not the case and the argumentation differs substantially. It is for this reason that the fact that the unit of analysis is the judge's vote becomes even more relevant, but above all because it allows us to glimpse ways of voting that we would not expect to find in a compendium of judgments with a gender perspective.

Considering our unit of analysis, let us look at the profile of the judges who make up this database. In terms of gender, we see that almost 66% are male (see Figure 5).

Graph 5. Percentage of Judges by Gender

Porcentaje de jueces/zas por género



Fuente: Elaboración propia

Additionally, on average, they are 61 years old at the time of the sentence, with no significant difference in age between men (61.8) and women (60.5). The same applies in terms of their judicial careers, with an average of 18 years of experience for both men and women.

However, a substantial gap arises when analyzing the tenure in the position of magistrate. Men have an average of 12 years in the position, while women have less than 9 years. This data reflects the "glass ceiling" phenomenon, as in Argentina, although women represent

more than half of the judicial population, only 25% reach leadership positions (Cristallo, 2023).

b. Dependent Variables

Using this input, I aimed to create a database that allows us to see if provinces effectively judge with a gender perspective despite not having their own or common criteria, understanding again that judging with a gender perspective does not mean always giving women the benefit of the doubt but identifying structural factors that perpetuate gender inequalities (Palomo Caudillo, 2021).

To measure this, the Mexican Supreme Court's Protocol for Judging with a Gender Perspective was used as a reference framework. The choice of this protocol as a measurement criterion is justified by the existing gap in the subject at the national level and its international recognition and its structuring in steps greatly facilitated the operationalization of the variables.

The variables derived from the five steps proposed by this protocol were considered along with explanatory variables that are relevant citations for assigning value to each step (for more details, see the annex with the codebook).

c. Independent Variables

Now, does the profile of judges have any correlation with the way they develop their decisional arguments? For this reason, variables related to the profile of the judge, including sex, age, and tenure both in the position and in the judicial career, were incorporated.

According to Carbonell Bellolio (2021), the U.S. literature describes a significant correlation between the presence of a female judge on a collegial court and the decision in favor of women in discrimination, gender violence, and workplace harassment cases. Based on this, it is intended to test the hypothesis that women, especially younger ones, are more likely to rule with a gender perspective.

Table 4. Dependent and Independent Variables

Dependent variable	Gender Perspective
Measurement	5 steps of the Mexican Protocol: <ul style="list-style-type: none">• Special protection measures• Facts and interpretation of evidence• Applicable law as an argumentative tool

	<ul style="list-style-type: none"> • Argumentation with a gender perspective • Reparation of harm
Independent variable	Judge profile
Measurement	<ul style="list-style-type: none"> • Sex • Age • Length of judicial career • Seniority in office

6. Analysis of Results of Gender Perspective Sentences

In this section, we will analyze the votes of the judges included in the database in the context of the five steps provided by the Mexican Protocol as a tool for these justice operators to judge with a gender perspective.

The translation of fragments of the sentences included in this section was done by the author. I take full responsibility for any errors or inaccuracies that may have occurred during the translation process.

a. Step 1: Special Protection Measures

The first step addresses pre-trial issues, where the protocol suggests that judges should ask if the victim requires special protection measures to prevent further harm. This variable had to be adapted to the context of the High Courts, which do not have the authority to issue such measures but can refer cases back to the lower courts for appropriate measures. Furthermore, the "Not Applicable" category was necessary, as many cases reaching the High Courts involve situations where the harm has already occurred, such as assessing the situation of the convicted person.

As such, 84% of the cases fall into the category where protection measures do not apply. This bias is largely explained by the fact that protective measures are typically requested at the lower court level. Indeed, most cases reaching the High Courts are appeals, cassation, unconstitutionality or inapplicability of the law, and extraordinary remedies.

b. Step 2: Facts and Interpretation of Evidence

In the second step proposed by the protocol, the focus is on determining whether the facts and interpretation of the evidence are influenced by biased assessments or gender

stereotypes² concerning the behavior of the involved parties, as well as consideration of the context in which the act or legal event occurred.

Of the sentences in the database, there are 30 votes where facts are not described, making it impossible to determine if they contain stereotypical expressions. Excluding these cases, only 1% of those that do describe facts express biased assessments. Among these eight votes, one example is a ruling about the amount of child support where a judge stated, *“In that context, the exact amount requested by the plaintiff was granted plus the health insurance, but the housing allowance was dismissed because it was considered that the plaintiff could afford it given her status as a homeowner of a property affected by the family regime.”*

Another case involves the need to induce labor for an anencephalic fetus, logically prior to the enactment of the Voluntary Termination of Pregnancy Law, where a judge noted, *“It is observed that this is about altering a natural process solely for the benefit of the mother, without adequately weighing the superior interest of the unborn child.”*

In a sentence where the court had to rule on an appeal presented by the defense of a woman who was a victim of gender violence and had been sentenced to life imprisonment as a co-author of a homicide committed by her aggressor, one judge suggested, *“Without disregarding the conflicting circumstances of the couple or the characteristics of Y.P.F.’s personality, I find no basis for neutralizing my conviction that she could have, as she had decided on many other occasions, acted differently and sought the intervention of some authority to protect her from the threat posed by A.A.L.”*

Another stereotypical expression appears in a judge’s vote concerning a case of aggravated sexual abuse, stating, “The complainant’s clothes are intact, being a pair of jeans that are not easy to remove,” implying that this indicated consent. This same judge, in another sentence involving aggravated homicide by the bond and gender violence, noted, “In these

² Types of gender stereotypes (Gherardi, 2018)

Sex stereotypes: those focused on the physical and biological attributes and differences between men and women.

Sexual stereotypes: these are based on the sexual characteristics or qualities that are, or should be, possessed by men and women respectively, as well as the sexual interaction between the two.

Sex role stereotypes: these are based on the roles or behavior that are attributed to and expected of men and women based on cultural and social constructs, or on their physique.

Compound stereotype: one that interacts with another gender stereotype. They attribute characteristics and roles to different subgroups of women.

times of technology and astronauts, it seems almost impossible, but it is typical of our population in that social stratum, so these events must be approached not only from a legal perspective but also considering the individuals, whether victims or perpetrators, and their experience in a particular society,” attempting to naturalize the incident.

It is interesting to highlight that all these cases appear in the collection of sentences where the vote is not unanimous. However, it is also noteworthy that, although there are few cases with these types of stereotypical interpretations, they are all committed by men.

c. Step 3: Applicable Law as an Argumentative Tool

Regarding the third step proposed by the protocol, along with the following step, they refer to the argumentation. This step determines the applicable law for the specific case. The question that allowed coding this variable was whether the relevant laws on gender and women’s rights, both international and national, are used as argumentative tools. Thus, 65% of the cases use the applicable law for the case.

However, it is important to clarify that jurisprudence was not considered for this step, although it emerged from reading the rulings as a strongly utilized tool.

d. Step 4: Argumentation with a Gender Perspective

In the fourth step, the fundamental question is whether the argumentation has a gender perspective, meaning whether the decision and solution reached are achieved through this notion and not, for example, through the simple application of legal norms or exclusively based on procedural arguments. This variable was coded into three values, exemplified by a vote:

A value of 1 corresponds to an argumentation with perspective, for example:

“In summary, it is possible to assert that the accused B. and the victim B. had a sentimental relationship that the woman unilaterally terminated due to the excessive jealousy of her partner, and he refused to accept her decision. With such a probative basis, it can be concluded that the psychic commotion alleged by the defendant at the time of the incident was not caused by a situation that took him by surprise and to which he was completely alien; rather, the circumstances indicate a deliberate conduct compatible with the disturbance caused by the end of the sentimental relationship. Even if the relationship had ended because the victim had started another relationship or resumed a previous one, which was not proven, it is irrelevant and, evidently, cannot be considered a provocation or

a situation with the entity to produce a sudden and violent alteration of the spirit capable of attenuating the defendant's homicidal decision, i.e., seriously affecting his ability to control himself. (...) The emotion that moved the defendant developed internally from his feelings based on the characteristics of his temperament, which prevented him from coping with the ups and downs and changes to which relationships are generally exposed, note that it was a relationship of about one year, unilaterally terminated by the victim. This cannot be considered a circumstance that makes his violent act excusable and capable of mitigating his homicidal decision. (...) Through these normative instruments, concrete measures are sought to protect women's right to a life free of aggression and violence, both inside and outside their home and family nucleus. It aims to make visible the systematic and widespread violence suffered by women simply because they are women, to combat its cultural acceptance and naturalization." (B., N. G. on charges of simple homicide - Appeal for Cassation - Superior Court of Justice of Córdoba).

A value of 0.5 is assigned when some components are not entirely clear, for example:

"Child sexual abuse constitutes one of the most extreme forms of violence, as it attacks the helplessness and vulnerability of the child. The younger the child at the time of the abuse, the greater the harm caused and the trauma left. Here, the minor V. was 3 years old. (...) Before concluding, I must highlight the double condition of the girls, both as minors and as women, which makes them particularly vulnerable to violence (cf. Inter-American Court of Human Rights, 'Case of González et al. - Cotton Field - vs. Mexico,' judgment of November 16, 2009, paragraph 408; similarly, 'Case of Veliz Franco et al. vs. Guatemala,' judgment of May 19, 2014, paragraph 134). The sexual abuse suffered by V.C.C. and G.S. represents a clear violation of the rights of the girls and also reiterates that it occurs within a context of gender violence. (...) It is evident from reading the grounds of the judgment that the Court had sufficient evidence to reach the necessary conviction regarding the materiality of the reported acts and the responsible authorship of the defendant, so -in sum- the defense's criticism only reveals dissatisfaction with the evidence evaluation made by the Judges. (...) I conclude by affirming that the documentary evidence, testimonies, and medical and psychological psychiatric reports added, the facts have been sufficiently proven, congruent with the evidence admitted and valued in the case and the oral debate, considering that the appealed judgment is founded and motivated, and the mere disagreement of the appellant, without a justification that contradicts those grounds, cannot succeed, so the Appeal for Cassation must be rejected, all according to what was considered in the answer view on June 26, 2019, by the Prosecutor of the Chamber, who stated: 'The alleged arbitrariness of

the Tribunal only considering the statements of the minor victims, in this specific case, only shows that the nullifier questions the effect of a different and not adverse assessment; ergo, the harm caused by its interpretation of the probative elements leads only to a mere disagreement with the judgment's outcome' and to what was stated by the Attorney General on October 29, 2019. Consequently, I must highlight that no vices of lack of foundation on the occurred facts appear in the judgment text; on the contrary, sufficient reasons for the conclusions expressed are consigned, so the articulated appeal is unfounded and must be rejected." (INCIDENT OF CASSATION G. A. S. J. (IMP) - C. F. (DEN) - AND OTHERS "SIMPLE SEXUAL ABUSE AGGRAVATED BY THE CONDITION OF GUARDIANSHIP OF THE SUBJECT ACT -2 FACTS- IN C.R- ART. 119 1ST PAR. IN REL. TO INC. B) AND 55 OF THE C.P." - Superior Court of Justice of San Luis).

A value of 0 is assigned when this perspective is not used, for example:

"In this regard, this Tribunal clarified that the judgment is valid if, as in this case, in its grounds, a complete evaluation of the evidence has been fulfilled and, in addition, it has a reasoned analysis of the case's records, precisely delimiting the significance assigned to the facts, their circumstances, and their authorship. In conclusion, the questioned pronouncement is sufficiently founded, and the criticisms only demonstrate disagreement with the outcome reached, so the appeal filed by the technical assistance of R. M. L. must be dismissed." (L. R. M. on aggravated injuries - Appeal for Unconstitutionality - Superior Court of Justice of Salta).

On average, the votes score 0.6, indicating that the sentences of the provincial High Courts in the collection tend to argue partially with a gender perspective.

In percentage terms, only half of the votes, 52%, use a gender perspective. Additionally, there is a significant percentage, 32%, of votes that do not argue with the perspective they claim to have (see Table 5).

Table 5. Percentage of Gender Perspective Argumentations

Now, it is interesting to see the relationship between a favorable vote for the woman and whether there is a gender perspective argumentation in the sentence. Since the percentage of votes not favorable to the woman or not referring to situations where her rights are violated is very low, the trend is similar to the previous results. This implies that even in

29.32% of the cases where the sentence's resolution favors the woman, it is not necessarily through a gender perspective argumentation (see Table 6).

Table 6. Percentage of Gender Perspective Argumentations with Favorable Votes for Women

Let's see if there is any relationship between argumentation and the judge's profile. On average, women judge with more gender perspective - 0.67 vs. 0.56 for men. However, it is important to note that this figure shows that although men, in percentage terms, judge more with a gender perspective, there is also a large volume of votes lacking this perspective. In other words, the average is penalizing the argumentation that does not include women's rights.

The profile of these officials may be an explanatory variable for their behavior in judging (or not) with a gender perspective.

In terms of age, people between 40 and 64 years old issued more than double the sentences with gender perspective arguments compared to those between 65 and 90 years old (see Table 7). This suggests a relationship between youth and the propensity to argue in this way.

Table 7. Number of Gender Perspective Sentences by Age Range

Note: Only values of 1 are considered.

Do young women judge more with a gender perspective than young men? Given the wide disparity between the number of men and women in the database, the average gender perspective argumentation was calculated for those whose age information was available. Table 8 summarizes several findings simultaneously. First, women, regardless of age, argue more with a gender perspective than men. Second, people between 40 and 64 years old, on average, argue more with a gender perspective than those between 65 and 90 years old. Finally, the trend appears to confirm that younger women judge more with a gender perspective.

Table 8. Average Gender Perspective Argumentation by Age and Gender

e. **Step 5: Damage Reparation Measures**

The final step seeks to identify whether there is a damage reparation measure³. As shown in Graph 8, 94% of the votes include a reparation, of which 80.75% are measures of satisfaction that involve recognizing and restoring the victim's dignity.

Graph 8. Percentage of Reparations by Type

In this regard, we also see that the High Courts correct errors or absurdities from lower instances, to the point of often overturning the sentences pronounced by these tribunals. This could explain why the most frequent form of reparation is satisfaction.

However, we can expect that even when there is damage reparation, meaning a conclusion favorable to the victim is reached, it may not be done with a gender perspective argumentation. Very much in line with the findings linking favorable votes for women with gender argumentation, we see that nearly 30% of the votes with damage reparation lack gender argumentation. In these cases, the solution is reached through votes of a more procedural nature.

7. Conclusions and Future Reflections

The study demonstrates that incorporating a gender perspective in the rulings of provincial High Courts in Argentina is still an emerging practice with significant room for improvement. The analysis reveals that although there is a general tendency to issue decisions favorable to women, this does not necessarily translate into a consistent application of a gender perspective in the argumentation.

a. Key Findings:

- I. **Inconsistent Application of Gender Perspective:** Only about half of the votes analyzed utilized gender perspective as an argumentative tool. This indicates a lack of consistent application of gender perspective in judicial reasoning.

³ List of types of reparations for harm with a gender perspective prepared by [Mexico in collaboration with the USAID program](#).

- Restitution: This can be restoration of her liberty, return to her place of residence, reinstatement in her job, return of her property, etc.
- Indemnification or compensation: Amount, usually financial, to compensate for the economic damages incurred as a consequence of the violations.
- Rehabilitation: Measures of direct attention, whether medical, psychological, legal or social, that the State must provide free of charge and in a specialized manner for the harm that is being repaired.
- Satisfaction: Recognition and reestablishment of dignity.
- Non-repetition. Specific actions and measures of the State to avoid the repetition of human rights violations.

- II. **Influence of Judges' Profile:** The profile of judges, particularly their gender and age, significantly influences the likelihood of incorporating a gender perspective. Younger judges and female judges are more likely to argue with a gender perspective.
- III. **Lack of Common Protocols:** The absence of a national or provincial protocol for judging with a gender perspective leads to varied interpretations and applications across different jurisdictions. This highlights the need for standardized guidelines to ensure consistent and effective incorporation of gender perspective in judicial rulings.
- IV. **Impact of Training and Awareness:** The study underscores the importance of training and awareness programs for judges and other judicial operators. Increasing understanding and sensitivity towards gender issues can enhance the application of a gender perspective in judicial decisions.

b. Future Reflections:

- I. **Development of a National Protocol:** There is a pressing need for the development and implementation of a national protocol for judging with a gender perspective. Such a protocol would provide clear guidelines and standards for all judicial operators across the country, ensuring consistency and effectiveness in the application of gender perspective.
- II. **Enhanced Training Programs:** Judicial training programs should be enhanced to include comprehensive modules on gender perspective and its importance in judicial reasoning. Continuous education and training for judges and judicial staff can bridge the existing gaps in understanding and application.
- III. **Monitoring and Evaluation:** Establishing mechanisms for monitoring and evaluating the application of gender perspective in judicial rulings is crucial. Regular assessments can help identify areas of improvement and ensure that the protocols and training programs are effectively implemented.
- IV. **Further Research:** Future research should focus on the long-term impacts of incorporating a gender perspective in judicial rulings. This includes studying the effects of recently introduced protocols and guidelines, such as the "Guía de prácticas aconsejables para juzgar con perspectiva de género" by the Supreme Court of Buenos Aires, to assess their effectiveness in improving judicial outcomes for women.

In conclusion, while there are positive steps towards integrating a gender perspective in judicial rulings in Argentina, significant challenges remain. Addressing these challenges requires a concerted effort to develop standardized protocols, enhance training programs, and continuously monitor and evaluate the application of gender perspective in the judiciary. By doing so, Argentina can ensure that its legal system not only upholds the principle of gender equality but also actively works to eliminate gender-based disparities in judicial outcomes.

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