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Towards a more responsive victim-centered approach of the criminal justice system (RE-JUST)

NATIONAL REPORT SPAIN

CURRENT PRACTICES IN THE NATIONAL CRIMINAL JUSTICE SYSTEM

**Report elaborated by Dinamia S. Coop
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1. Foreword

The objective of the National Report is to collect information and analyse some practices of the Spanish stakeholders with attributions in the functioning of the justice system and the support of victims of crime. The goal is to ensure a general overview of the approaches, methods used by police, prosecutors, judges, and different supporting services that involve victims of crimes as injured parties / witnesses.

To collect this information we have used three different tools:

- Analysis of information proceeding from secondary sources (documents, webs...)
- Interviews
- Questionnaires

The participant institutions were as follows:

1. Crime Victims Support Offices from Ministry of Justice
2. Prosecutor from Getafe-Leganés (specialized in victims with functional diversity)
3. Special units in assisting victims of the Prosecutor's Offices
4. Local Police of Madrid - Diversity Management Unit
5. The Spanish National Police – Palencia Police Station
6. Victims Support Office from City Council of Fuenlabrada
7. RED JURIDICA (Legal Network): Law Cooperative with specialized lawyers in Criminal Law, Extradition Law and Immigration
8. Free Association of Lawyers, Spanish professional association member of "EUROPEAN DEMOCRATIC LAWYERS" (E.D.L. /A.E.D.)
9. ARCOPOLI: NGO specialized in LGBTIphobia
10. Judge from a Court for Violence Against Women

2. Spanish legislation regarding the protection of victims' rights

Law 4/2015 of 27 April 2015 on the standing of crime victims¹ is the main regulatory framework for victims of crime in Spain. This legislative text responds to the requirements set by the European legislator with the Directive 2012/29/EU, of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of crime. Furthermore, one of the effects of this Law is to provide a unified concept of the victim of crime, which goes beyond the procedural perspective, it is considered appropriate to include in the concept of an indirect victim certain circumstances which are not imposed by the European regulation, but are imposed by other international regulations, such as the United Nations Convention for the Protection of All Persons from Enforced Disappearance. In addition, the Law provide, to certain vulnerable groups of victim, special

¹ <https://rm.coe.int/168070ac7f>



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protection by transposing other European Directives: Directive 2011/93/EU of the European Parliament and of the Council, of 13 December 2011, on combating the sexual abuse and sexual exploitation of children and child pornography, and Directive 2011/36/EU of the European Parliament and of the Council, of 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims.

Royal Decree 1109/2015 of 11 December 2015 implementing Law 4/2015 of 27 April 2015 on the standing of crime victims and regulating the Crime Victim Support Offices. The Royal Decree establishes some clarifications and regulations to ensure the best implementation of any of the rights granted to the victims. It creates the **Advisory Council of Victim Assistance**, on a basis of consultative body with broad representation. This Advisory Council will have different functions to ensure respect for the rights of victims and the proper functioning of the system of assistance. With the advice of this Council, the Ministry of Justice will carry out periodic evaluation of the system of assistance to victims, and propose, through the Council of Ministers, the measures and reforms that may be necessary for the better protection of victims. The Royal Decree regulates the performance of the **Offices of Assistance to Victims (OAV)**, in accordance with the rights enshrined in European legislation and the status of the victim of the crime. These OAVs are constituted as units of the Ministry of Justice or, where appropriate, of the autonomous communities with powers assumed on the subject; OAVs analyze the needs care and protection of victims, and are integrated by staff at the service of the administration of Justice, psychologists or any technician deemed necessary for the provision of the services.

In Spain the victims of terrorist crimes, the victims of gender-based violence and minors, also have the rights recognized by the specific legislation for each type of crime.

The Spanish **Office of Information and Assistance to Victims of Terrorism of the special Court** (Audiencia Nacional) provided for in article 51 of Act 29/2011, of September 22, on the Recognition and Integral Protection of Victims of Terrorism, is the subject of regulatory development to strengthen their functions, and ensure the necessary coordination among all institutions involved in the assistance and protection of victims of terrorist offenses. Also, the Spanish Ministry of Interior has established a specific unit: Director General to support victims of terrorism. Its goal is to serve victims of terrorism in a comprehensive way in term of processing, bespoke care of victims and their relatives, material and financial support. This DG gives victims of terrorism information, means and services, for the following:

- Support and grants available to victims of terrorism
- State compensations, and models
- Specialist victim support, in particular medical and trauma support
- Vocational and practical support when victim needs support in changing jobs or changing housing because of the terrorist attacks
- It also refers to associations and foundations of victims of terrorism that can provide more humanitarian and personal assistance.



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The main legal provisions under Spanish law in the issue of **victims of gender-based violence** are the following

- Law 27/2003 of 31 July, regulating the Protection Order for victims of domestic violence.
- Organic Law 1/2004 of 28 December, on Integrated Protection Measures against Gender Violence
- Royal Decree 1452/2005 of 2 December, regulating the financial aid established in article 27 of Organic Law 1/2004 of 28 December, on Integrated Protection Measures against Gender Violence
- Law 23/2014, of 20 November on Mutual Recognition of Criminal Sentencing in the European Union.
- There are also 17 specific laws of the Autonomous Communities, which generally consider a wider definition, referring to the different forms of violence against women.

The victims of offences related to gender-based violence are assisted by a specialized lawyer from the preliminary enquiries onwards. Following the reform of the Organic Law on the Judiciary (LOPJ) with Organic Law 7/2015, the courts with jurisdiction for violence against women also deal with offences against privacy, the right to self-image and honor of women and the offence of contempt of court or disregarding an interim measure.

Regarding **minors**, Organic Law 8/2015 of 22 July, on the reform of the system for the protection of children and adolescents, and Law 26/2015 of 28 July, on the reform of the system for the protection of children and adolescents, improve the attention and protection of the children of women victims of gender violence, as well as that of underage girls who are victims of other forms of violence against women. It must be stressed that, for the first time, the protection of children from all forms of violence, including trafficking in human beings, is provided for among the guiding principles for action by the public authorities with regard to minors.

Moreover there are several Protocols and Plans, at national and regional level, to protect and support different victims of crime. Some of the most relevant are:

The Framework Protocol for the Protection of Victims of Human Trafficking concluded in 2011 by the Ministries of Health, Social Services and Equality, the Interior, Justice, Employment and Social Security, the General State Prosecutor's Office and the General Council of the Judiciary constitutes the National Referral Mechanism in the field of human trafficking. It also established for the first time the formal communication systems between the administrations with authority in the matter, and acknowledged the work of non-profit-making organisations specialised in the care of the victims.

The Protocol Framework on certain actions in relation to Unaccompanied Foreign Minors (MENA): concluded on 22 July 2014

Instruction N. 16/2014 of the Secretary of State for Security, approving the '***Action Protocol for the Security Forces for hate crimes and behaviours breaching legal regulations on discrimination***', and Instruction N. / 2015 updating the Protocol.



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Action Plan to combat Hate Crimes of Ministry of Interior (January 2019)²: it represents a new approach and focuses on the work and response of the Spanish Security Forces in cases of hate crimes and incidents. It encompasses four fundamental pillars: training of the Spanish Security Forces, prevention, assistance to victims and response to this type of crimes. A fundamental goal is sensitive and professional treatment to the victims, guaranteeing their right to protection, information, support, assistance and active participation without any kind of discrimination

3. Legal challenges encountered by victims in accessing the justice system

From the information obtained from the questionnaires and interviews with stakeholders (legal practitioners and specialized NGOs), it can be established that there are common aspects that affect victims in a general way, regardless of the category to which they belong.

These aspects are key elements in victims' access to the justice system and range from the material sphere, i.e. the resources available for victims and the impact on the victim's own resources, to the psychological and social sphere.

Thus, from all areas, it has been stressed that for adequate attention to victims, the resources of the criminal justice system must be sufficient. In this way, the Public Prosecutor's Office points out that it is necessary to strengthen its resources and staff in order to be able to play an active role in the defence of victims; it also points out that specialized training is required, as already foreseen in the law.

This scarcity of available resources and the workload has also been pointed out by the security forces as an essential aspect that prevents, in many cases, giving the victim all the time that each case requires. For their part, the Ministry of Justice and the Victims' Assistance Offices also point to the scarcity of resources available to them, but also the fact that many victims are not aware of the existence of these offices or their rights.

Victims of discrimination and hate crimes.

The lack of time and technical training seriously affects victims' access to the judicial system, since, as the authorities in the field of investigating hate crimes indicate, the way in which statements are taken and, therefore, information obtained from victims and witnesses is essential not only for the clarification of the facts, but also for the victim to feel relaxed and be able to narrate his or her experience; without a detailed statement, it is difficult to determine the motivation of the perpetrator of crimes with a discriminatory content, resulting in many cases in a complaint processed like any other and therefore without record of the true motivation of the action.

² <http://www.interior.gob.es/documents/642012/3479677/Plan+de+accion+ingles/222063a3-5505-4a06-b464-a4052c6a9b48>



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This is generating a widespread feeling among the victims that the security forces do not take the necessary action to respond to their reports, creating a distrust in the fact that their action of denouncing has a real effect and their reports get credibility ; it should be noted that in many cases, discrimination is part of the victims' daily lives, to the point that they normalize and take it as something natural in their lives, generating that their experiences and impact on them are undervalued.

It has been stated in the information collected that the lack of training of the actors involved increases prejudices and stereotypes, resulting in the victim of a hate crime not being given the same credibility as other victims of different crimes. It is added that the lack of knowledge of the police or legal operator who is taking the statement about the cultural, social, work or psychological situation of the victims, favours a climate of mistrust that makes it difficult to make concrete, precise and uncontradicted statements: however and paradoxically, any hesitation or contradiction that exists can be interpreted in court against the plausibility of the story and in many cases, is a basis for a dismissal of the case or an acquittal of the perpetrator.

Regarding the importance of the adequate evaluation of the facts, it has been detected that frequently, the Courts do not agree on a precautionary measure of prohibition of approach and communication with the victim, if there are no injuries or a frustrated attempt against his life or health, which supposes the situation of defenselessness of the victim when the reported facts are related to threats, humiliations, coercion or mistreatment without injury, with the frequent consequence that he desists from continuing with the report.

For this reason, the victims perceive difficulties from the beginning of the complaint to which it is added that a large part of these complaints, later subject to judicial proceedings, end up in an unsatisfactory manner for the victim since the judicial body does not appreciate the aggravating factors inherent in the hate crime: thus there is no reparation for the victim in the face of discriminatory actions, so feeling is that it is not worth reporting.

In the case of LGBTBI victims, victims of crimes related to sexual orientation and identity, they face, like the rest, the challenges mentioned in this section of the Report. It is important to note that they deal with a justice system that is not very reparative, because if a trial were to take place, it is very frequent that the seriousness of the crime or the motivation of hate in these crimes is not sufficiently accredited and thus the corresponding aggravating factors of the Criminal Code are not applicable, which is very harmful for the victims, who feel that the system does not protect them and there is the aforementioned underestimation of the real situation.

Gender based crimes

In the case of the victims of gender violence, what has been pointed out with respect to the insufficiency of personal and staff resources has been clearly demonstrated and the public institutions consulted, point out that there is an insufficient or deficient evaluation of the risk of the victims, due to the scarcity



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of available resources and their irregular deployment throughout the Spanish territory, which affects the control of measures such as distance, which is essential for the integrity of the victim, who frequently suffers too long a time to respond to the risk.

The mistrust of the system has already been mentioned in previous paragraphs, as an element common to all victims; in the case of gender violence, this mistrust is added to the set of challenges that women must face, and again the training and specialization of police and judicial personnel is still a challenge.

It has been detected that the victims find it difficult to overcome cultural barriers and that an adequate assessment is made of the situation of vulnerability in which they find themselves, of the threats they suffer in their person or in their relatives, and of their psychological state.

Once the complaint has reached the court, civil society organisations have noted that there are still procedural barriers that do not reduce the elements of trauma: among them, on many occasions, the denial of testimony in court via video conference or of the victim's attendance with a friend or family member, citing aspects of data protection regulations.

It is important to mention that in the case of victims of the crime of trafficking for sexual exploitation, where serious consequences are experienced, the report requires a great deal of information and the re-experiencing of many experiences without the victim often having adequate time for recovery before beginning the proceedings, which perpetuates the situation of emotional trauma.

Race and ethnicity crimes

Victims of crimes with cause in their racial or ethnic origin experience intense feelings of vulnerability: in this category as in others, it is necessary to highlight the fear of future reprisals not only in their person but also in people of their family environment; there is very often distrust regarding the action of the police forces, or insecurity derived from the fact that the person is in an irregular situation in our country with the inherent risk of administrative expulsion.

Difficulties have been detected in filing complaints regarding police actions in which, almost systematically, the filing of a complaint leads to a counterclaim for contempt of authority or assault on authority, depending on the case.

Likewise, this is a category of victims where it has been found that little work is done to obtain testimony from witnesses who may have witnessed the events: these are crimes in which the police gathering of these witnesses is often essential to prove the fact itself, given the difficulty of making a successful complaint.

In this category remains the challenge related to the assistance of an interpreter to use the mother tongue in the declaration of the criminal facts, there being very negative effects for the victim by not ensuring that his or her story is faithfully collected; it is very frequent that the victim is not provided with a copy of the complaint, increasing the feeling of vulnerability.



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4. Judicial practices to protect victims' rights

Criminal proceedings in Spain start with investigation of the crime, conducted by the judicial police under the supervision of an examining magistrate. At the end of the investigation the examining magistrate sends the case to the public prosecutor who decides what to do next. If there are not sufficient grounds to bring a case against the offender and the public prosecutor fails to press charges, the examining magistrate will dismiss (end) the proceedings. Otherwise, the case will be referred to the relevant court for trial.

A victim can take part in criminal proceedings as a **witness** or have a more active role as a **private prosecutor** and thus benefit from additional rights derived from being a party to the proceedings; this main role, not very common in the legislation of other European countries, contributes to secure the victim position in order to face the judicial procedures. In any case, pursuant to Article 124 of the Spanish Constitution, the public prosecutor shall safeguard the interests of victim/s throughout the proceedings.

Important to highlight is that the victims of offences related to gender-based violence are assisted by a specialised lawyer from the preliminary enquiries onwards. Following the reform of the Organic Law on the Judiciary (LOPJ) with Organic Law 7/2015, the courts with jurisdiction for violence against women also deal with offences against privacy, the right to self-image and honour of women and the offence of contempt of court or disregarding an interim measure.

In order to have support and assistance, victims can ask or the authorities or officials could recommend them to be attended by the Crime Victim Support Offices, where they will be assisted free of charge and confidentially, even if they have not previously reported the crime.

The Crime Victim Support Offices will provide victims with comprehensive, coordinated and specialist support, meeting their specific legal, psychological and social needs. The right of access continues during the intervention of the assistance and support services and, where appropriate, the restorative justice services, throughout the entire criminal proceedings and for an appropriate period of time after they end, regardless of whether the offender's identity is known and of the outcome of the proceedings, including the time prior to the crime being reported.

The victims have the right to understand and be understood in any action that has to be carried once the crime has been reported, interpreting being provided in legally recognised sign languages, as well as means of support for oral communication in cases where this is needed. The legislation includes that all communication, both oral and written, will take place in clear, simple and accessible language and will take into account the victim's personal characteristics and needs, especially if they have any sensory, intellectual or mental disability or if they are minors. The victim has the right to be assisted free of



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charge by an interpreter she/he gives evidence to the judge, public prosecutor or police officials during the investigation.

Access to the assistance and support services provided by the public administrations, as well as those provided by the Crime Victim Support Offices, will in all cases be confidential. The information the victim provides to police officials or any authority or official who assists her/him from the first moment may only be passed on to other assistance and support services, such as the Crime Victim Support Offices, with her/his prior and informed consent

With respect to the judicial sphere, the judges, courts, public prosecutors and other authorities and officials in charge of the criminal investigation, may prohibit the obtaining, disclosure or publication of images of the victim or her/his family members, especially if the victim is an underage victim or a person with a disability in need of special protection.

Assistance from an interpreter may be provided by means of video conference or any telecommunication medium, unless the judge or court, ex officio or at the request of one of the parties, agrees to have the interpreter physically present to safeguard the rights of victims.

The information to which the victim are entitled and which will be provided to she/him from the first contact with the authorities or officials and during the intervention of the assistance and support services mainly concerns (not exhaustively):

- the procedure for reporting the crime and obtaining advice and the assistance of a lawyer and, where appropriate, the conditions under which this may be obtained free of charge;
- the assistance and support measures available, whether these are medical, psychological or material, and the procedure for obtaining them;
- the possibility of requesting protection measures and, where appropriate, the procedure for doing so;
- the compensation to which the victim may be entitled and, where appropriate, the procedure for claiming it;
- the restorative justice services available, in cases where this is legally possible;
- the right to make a general request to be notified of certain decisions in the proceedings such as, among others, the decision not to initiate criminal proceedings,
- the final judgment in the proceedings, decisions to imprison or subsequently release the offender, as well as the possible escape of the offender from custody. This right is of vital importance in the case of victims of gender-based violence.

Legal Measures in procedure

The authorities and officials in charge of the investigation, prosecution and trial of the crimes will take the necessary measures established by law to safeguard the life of the victim and their family members, their mental and physical wellbeing, freedom, safety, sexual freedom and integrity, as well as to



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adequately protect their privacy and dignity, particularly when they are making statements or have to testify in court.

The public prosecutor will particularly ensure the fulfilment of this entitlement to protection in the case of underage victims, taking the appropriate measures in their best interest where necessary to prevent or reduce the damage that may arise for them from the conduct of the proceedings. If the victim is an underage one or victim with a disability (victims in need of special protection), there is the possibility of evidence being examined before the trial by experts and the interview with a specially trained team in a special room being recorded.

The State police officials will carry out an initial individual assessment of the victim's situation when report the crime, to determine the protection needs and to identify him/her if applicable, as a vulnerable victim. During this initial assessment, the victim will receive information on the possibility of going to a Crime Victim Support Office, where especially it is taken the following into consideration:

- victims personal characteristics, situation, immediate needs, gender, disability and level of maturity, and will assess, in particular, whether the victim is a person with a disability or she has a relationship of dependence with the alleged perpetrator of the crime, whether she/he is an underage victim or whether she/he needs special protection or there are other factors of particular vulnerability present;
- The nature of the crime and the seriousness of the damage caused, as well as the risk of the crime reoccurring. Protection needs will be especially assessed for victims of crimes of terrorism, crimes committed by a criminal organisation, gender-based and domestic violence, crimes against sexual freedom and integrity, human trafficking, enforced disappearance and crimes committed for racist, anti-Semitic or other reasons concerning ideology, religion or beliefs, family situation, membership of an ethnicity, race or nation, national origin, gender, sexual orientation or identity, or for reasons of gender, illness or disability;

If the victim is underage or has any disability and need special protection, her/his opinions and interests will also be taken into account, as well as their personal circumstances For the victims of certain specific crimes that lead to special protection measures being granted such as gender-based violence, domestic violence, human trafficking for the purposes of sexual and labour exploitation, injury, crimes against freedom, torture, crimes against the individual, against sexual freedom, privacy, the right to self-image, the inviolability of the home, honour and socio-economic order, you have the right to one of the following bans being imposed on the aggressor if it is strictly necessary for your protection: ban on residing in with certain people.

The following measures may be taken during the investigation for the victim's protection:

- victims may give of evidence in specially designed or adapted facilities to specially trained professionals;



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- if he/she has to give evidence several times, the evidence will be taken by the same person, unless this could significantly jeopardise the conduct of the proceedings or their evidence must be taken directly by a judge or public prosecutor;
- Victims of gender-based violence, domestic violence, a crime against sexual freedom or integrity, the evidence may be given by someone of the same sex where requested, unless this could significantly jeopardise the conduct of the proceedings or your evidence must be taken directly by a judge or public prosecutor.

If victims are summoned to testify and the judge sees that are at serious risk or their freedom, property or family is at risk, he/she can take the following action (not exhaustively):

- protect their identity, address, profession and workplace, not using this information in the proceedings;
- prevent them from being seen in court and establishing the court as address for notifications;
- prevent their image from being recorded in any way;
- provide them with transport to the court in official cars; in the courts, place them in waiting rooms guarded by the police;
- **During the judicial proceedings**, the judge may order a private hearing (restricting the presence of audio visual media in the trial sessions and prohibiting the recording of all or some of the hearings) to protect morality, public order and the victim and/or his/her family.
- In the case of indirect victims, they will have confidential access free of charge to the assistance and support services provided by the public administrations, as well as those provided by the Victim Support Offices, provided that it has been considered appropriate to extend this right to the family members of the direct victim given that the crimes have caused particularly serious damage. To that end, family members will be defined only as the people linked to the direct victim by marriage or similar relationship, and relatives up to the second degree (grandparents, siblings and grandchildren).
- As an indirect victim, he/she may receive information about the assistance and support measures available, whether medical, psychological or material, and the procedure for obtaining them, as well as the compensation to which he/she may be entitled and, where appropriate, the procedure for claiming it.
- In terms of **the financial aid to which the victim are entitled as an indirect victim of crime**, in Spain there is a system of public aid for the benefit of indirect victims of intentional and violent crimes committed in Spain resulting in death or serious damage to your mental health.
- As a general rule, the granting of aid is conditional on a final judicial decision ending the criminal proceedings having been taken.

Victims are entitled to receive information about alternative dispute resolution with the use, where appropriate, of mediation and other restorative justice measures, and about the available restorative justice services, in the cases in which this is legally possible. The Crime Victim Support Offices will provide with this information.



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In addition, the Crime Victim Support Offices will be able to propose to the judicial body that criminal mediation be used where this is considered beneficial for the victim, and they will provide support to the restorative justice services and other out-of-court settlement procedures established by law. This is an alternative that is possible when the perpetrator has admitted committing the acts and therefore occurs in cases of less serious crimes

5. Final conclusions

1. Criminal Justice in Spain needs **more human and economic resources**. Our legal and judicial systems are both saturated, and the procedures are extremely slow. Ombudsman (2019 report, from May 13th 2020)³ has recommended to develop the different laws we already have; also the budget that has already been approved should be implemented, because the money is not really being allocated to the projects.
2. **The full enjoyment of victim's rights needs of suitable resources**: trial courts with separated spaces, audio visual equipment, means for witnesses' protection, available specialized victim assistants, translators.... At the moment there is not a real availability of the resources procedures, conditions and safeguards laid down by the Law 4/2015 and the Royal Decree 1109/2015 implementing the law.
3. **Specialized training** is an urgent matter for legal practitioners in Spain. We need every legal operator (police, judges, lawyers, prosecutors, doctors, psychologists...) to have specialized training in Human Rights, Victims assistance, non-discrimination issues, gender, minor rights... Victims are tired to see that they are not being believed and they feel like they are being judged... the roles are twisted. Victims need personalized programs and procedures to be and feel protected. Also awareness and training about differences between violence against women, gender-based violence, domestic violence, sex-based harassment... should be implemented⁴.
4. It is strongly recommended for **victims to take a more active role as a private prosecutor** (own lawyers, not public prosecutors) and ask for free public lawyers to ensure their rights as a party in the procedure.
5. **The tribunals in Spain should apply more the International Law** and not just the national one.

³ <https://www.defensordelpueblo.es/informe-anual/informe-anual-2019/>

⁴ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en