

CURRENT PRACTICES IN THE SPANISH CRIMINAL JUSTICE SYSTEM

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1. Introduction- our investigation sources- and brief overview on Spanish legislation regarding the protection of victims' rights by Cristina Fernandez (Dinamia)
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Our national report is based on:

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

The participant institutions were as follows:

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

National legislation regarding the protection of victims' rights

Law 4/2015 of 27 April 2015 on the standing of crime victims and the **Royal Decree 1109/2015** of 11 December 2015 (it establishes some clarifications and regulations to ensure the best implementation of any of the rights granted to the victims in Spain and it regulates the performance of the ***Offices of Assistance to Victims (OAV)***). 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 rights recognized by the specific legislation for each type of crime.

- ❑ **Law 29/2011, of September 22, on the Recognition and Integral Protection of Victims of Terrorism**

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 and the Royal Decree 1452/2005 regulating the financial aid established in article 27 of the Organic Law
- ❑ Law 23/2014 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.

There are also, some Protocols regarding especial victims:

- ✓ The Framework Protocol for the Protection of Victims of Human Trafficking concluded in 2011
- ✓ The Protocol Framework on certain actions in relation to Unaccompanied Foreign Minors (MENA): concluded on 22 July 2014
- ✓ The Action Protocol for the Security Forces for Hate Crimes and behaviours breaching legal regulations on discrimination' (2014) and the Action Plan to combat Hate Crimes of Ministry of Interior (January 2019)

Legal challenges encountered by victims in accessing the justice system

→ Key points affecting to all victim categories

- ❑ Scarcity of available resources and stakeholders workload preventing victims from the adequate and personalized attention
- ❑ Lack of specialized training for all the operators of the criminal justice system to meet the legal provisions already settled.
- ❑ Frequently, victims are not aware of the public and private resources available, failing communication and coordination channels.

Victims of discrimination and hate crimes

- **Motivation of crimes:** detailed statement is needed, collecting relevant information avoiding hostile environments for victims
- **Disrust of the system:** the lack of knowledge of the police or legal operator about the cultural, social, work or psychological situation of the victims, favours a climate of mistrust resulting in deficient allegations basis for a dismissal of the case or an acquittal of the perpetrator.
- **Underestimation of hate crimes:** defenselessness of the victim when the reported facts are related to threats, humiliations, coercion or mistreatment without injury, with the frequent consequence that they desists from continuing with the report.

- **Underestimation also in Courts:** at judicial proceedings, the judicial body does not appreciate the aggravating factors inherent in the hate crime so no reparation for the victim in the face of discriminatory actions, so feeling it is not worth reporting.
- **crimes related to sexual orientation and identity: clear example of this underestimation of the crime facts so big challenge to prove the motivation and get the aggravating factors applied in court.**

Victims of gender based crimes

- **Evaluating the risk:** an insufficient or deficient evaluation of the risk of the victims, due to the scarcity of available resources and their irregular deployment throughout the Spanish territory resulting in not enough rapid and effective response for the victims lives protection.
- **Lack of comprehensive response:** difficult to overcome cultural barriers and an adequate assessment of the situation of vulnerability together with procedural barriers that do not reduce the elements of trauma which is quite significant in the case of trafficking for sexual exploitation.

Race and Ethnicity based crimes

- **Intense vulnerability:** fear of future reprisals not only in their person but also in their family environment; inherent risk of administrative expulsion; significant prejudices or stereotypes
- **Difficult access to their rights:** proper assistance of interpreter; story faithfully collected

Judicial practices to protect victims' rights:

→ 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 → better position to impel the procedure

→ VICTIM can attend **Crime Victim Support Offices** (Oficinas de Asistencia a las Víctimas del delito) : public instance, confidentiality, free of charge, legal, psychological and social support, before the report, during and after the procedure.

→ VICTIM have the right to **understand and be understood** in any action carried out, interpreting being provided in legally recognised sign languages, support for oral communication in cases where this is needed; right to be assisted free of charge by an interpreter who speaks a language you understand when you give evidence to the judge, public prosecutor or police officials./ **Assistance from an interpreter** may be provided by means of video conference or any telecommunication medium.

→ VICTIM will be informed from the very beginning of all the aspects **regarding legal advice** as well as other protection measures, compensations and restorative justice services.

→ VICTIM can ask 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: ALL ESSENTIAL IN GENDER CRIMES.

Judicial practices to protect victims' rights:

→ LEGAL MEASURES IN PROCEDURE

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.

ROLE OF AUTHORITIES IN GENERAL: 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 adequately protect their privacy and dignity.

ROLE OF PUBLIC PROSECUTOR : will particularly ensure the fulfilment of this entitlement to protection in the case of underage victims and disability ones, taking the appropriate measures: evidence being examined before the trial by experts and your interview with a specially trained team in a special room being recorded.

certain specific crimes: that lead to special protection measures VICTIM have the right to some bans being imposed on the aggressor if it is strictly necessary for your protection.

In court to testify : protection of identity, image, private hearing, transport, family victim

* SPECIAL MENTION to alternative mechanisms: **MEDIATION**

Some practical considerations from the advocacy point of view - RED JURIDICA (Spanish Legal Network)

→ We need more resources, economical and human, our legal and judicial system are both saturated, the procedures are extremely slow. Ombudsman (2019 report, May 13th 2020) has recommended to develop the different laws we already have, the budget that it is already been approved, the money it is not really being destined to the projects.

→ We need every legal operator to have a specialized training, gender and minor based (police agents, judges, lawyers, doctors, psicologists, etc). Victims are tired to see that they are not being beleived and they feel like they are being judged, the roles are twisted. They need an individualized and personalized program to be and feel protected.

→ I strongly recommend victims to take a more active role as a **private prosecutor** (own lawyers, not public prosecutors), and ask for free public lawyers, as is their right too, to ensure their rights as a party in the procedure.

→ The tribunals must apply the International Law, not just the national.

→ According to the Supreme Court, the statement of the victim, can sometimes be enough to reach that the judge condemn the agresor, but this is often difficult, if not impossible, when there are no phisical injuries. We have to pay attention to the evidence in order to provide protection to the victims of psicological misstreat.