VOCIARE

SPAIN

NATIONAL REPORT

Victims of Crime Implementation Analysis of Rights in Europe

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DISCLAIMER

All views expressed in the present report are those of the authors and not of the European Commission.
Most findings of the report are based on the research conducted by national researchers, between June 2018 and March 2019, and any inaccuracies in the interpretation of national results lays with the authors of the present report only. Additional support research, in particular regarding international experiences, was conducted by the authors of the present report.
The findings compiled in the present report represent, to the best of authors' abilities, the current situation of the practical implementation of the EU Victims' Rights Directive. Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date. However, it was still important to offer the first overall picture, even if incomplete, of the practical implementation of the Directive, to inform future work of Victim Support Europe, its members and the policy initiatives at the EU and national level. Future efforts will be plan to improve the findings and provide a more detailed analysis of key rights defined in the Directive.

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EXECUTIVE SUMMARY

Directive 2012/29/EU, commonly known as the Victims' Directive, establishes minimum rights to all victims of crimes and constitutes the core of the European Union's legislative package aiming to guarantee that all victims of crimes have access to information, support and protection.

Member States were required to transpose the Directive into national legislation but need to guarantee its correct implementation in practice as well. This implementation has proved to be complex and challenging. Hence, the present national report aims to assess the practical implementation of the Victims' Directive in Spain.

After thorough assessment, it was possible to detect gaps and challenges in the practical implementation of the Directive. Among the most important ones are the following.

In-depth interviews with various professionals working directly with victims have revealed a problem with the quality of the **information** provided to the victims by different institutions (police and justice system). Regarding oral **communication**, there are also limitations, since officials tend to express themselves through legal terms difficult to understand that pose a barrier for many victims when exercising their rights.

Language barriers continue to exist, especially for the foreign population. The use of forensic language, which consists of difficult technical terms, not easily understood by victims, constitutes a language barrier as well. Minors and people with disabilities are in fact the most affected.

Moreover, survey results reveal that, although most victims receive a written acknowledgment of their formal **complaint**, the answers reveal a dispersion of opinions regarding the existence of real opportunities for victims to make a complaint in their own language, though they can receive linguistic assistance.

Furthermore, in-depth interviews have revealed deficiencies regarding the communication to the victim of **decisions on the release of the convicted person**.

In practice, **interpreting services** are provided free of charge, but the most part of respondents to the survey identified a lack of availability of interpreters.

Regarding **victim support**, the **Victims Assistance Offices** (VAO) were created through Law 35/1995. This Law adopted a public assistance model. There are differences regarding human resources and the management model among the different communities. Some of them have teams formed by several professionals, such as psychologists, lawyers or social workers, in each

office (for example, in Andalusia, Catalonia or the Basque Country). Accessibility is very limited for several reasons. The number of offices is very small and they are located only in provincial capitals, not in rural areas. The problem is particularly serious as far as we consider the lack of a general non-governmental organization in Spain that provides support to all victims of crime. Private entities existing in Spain provide certain services only to certain groups of victims: women victims of gender violence or sexual violence, victims of child sexual abuse, minors, people with disabilities, and victims of terrorism. Additionally, according to survey results, victims' access to different support services but most of the respondents believe that such support is not provided on a regular basis.

Regarding **legal aid**, it was not extended to all victims who decide to participate as party in the criminal proceedings. Moreover, interviews with professionals have highlighted the differences between victims who have a private lawyer and those who do not. Victims without a private lawyer find more difficulties when they want to express their needs or requests. This is consistent with research findings. Victims who, by their initiative or through the support they receive, contact the Public Prosecutor can obtain more satisfaction for their needs during the criminal proceedings.

Regarding **child victims**, professionals generally value the availability of the judicial system to take into account their age and degree of maturity. One negative aspect is that the system reacts less positively to minors who are close to the age of majority. Some victims between the ages of 14 and 18 are not properly protected when obtaining their statements. With regard to **victims with intellectual or cognitive disabilities**, the system is less prepared to assess their needs and overcome existing communication barriers.

With regard to **restorative justice**, it has had a short development in Spain. Victim-offender mediation is the only restorative practice that has been put into practice, with great limitations. The most consolidated programs are those of mediation in juvenile justice and of adult criminal mediation managed by the Justice Department of the Autonomous Government of Catalonia, as well as mediation programs in the Basque Country.

The particularity of the Spanish system, in admitting the **right of the victims to be party in the proceedings**, has determined that the legislator has focused on the need to ensure that victims who are not party in the criminal proceedings may also appeal from the decision not to prosecute. The Directive has posed an important challenge to the Spanish State and Law 4/2015 on the statute of victims has not offered an adequate response, since it has not introduced any changes with regard to the particular model of accusation nor has it extended legal aid to all victims who decide to participate as part in the process.

As regards **compensation**, the main problem in practice is its effectiveness. In many cases victims do not receive the compensation that the court has imposed in the sentence, because of the insolvency of the convicted person.

Furthermore, in relation to the **rights of victims resident in another Member State**. According to the opinion of professionals who answered the survey, the rights of these victims are not clearly guaranteed in Spain. The problems derive, mainly from the lack of technological means and their improper functioning.

Additionally, interviews have revealed that certain types of victims are especially protected, particularly those who are victims of gender-based violence, when other groups of victims who may have specific protection needs - minors, the elderly or people with mental disabilities - have fewer protection mechanisms.

As for the **right to avoid contact between victim and offender**, besides the technological means that allow victims/witnesses to testify outside the courtroom (videoconference and anticipation of the practice of witness evidence) or within it by avoiding visual confrontation with the accused (through the use of a screen), there are no other mechanisms available to avoid victim-offender contact.

The measures included in the Law 4/2015 (protection of the victim during the criminal investigation) are not too different from those incorporated in the Directive, although Spanish legislation makes their adoption conditional on their not undermining the efficiency of the process.

All victims of crime have the right to protection of their privacy recognized in accordance with article 22 of Law 4/2015. As a result of the approval of that Law, several modifications have been made in the LECrim to overcome the deficit existing in the previous legislation on the issue. The most relevant difference between the protection model established by the Directive and the Spanish domestic legislation is that Spanish Law does not go so far as to presume that **minors** are victims needed for special protection (Article 22(4) of the Directive). According to this norm, the issue of the individual assessment would be for the sole purpose of determining the measures specifically applicable to these victims. On the contrary, in Spanish domestic law, minors must also undergo individual assessment to determine whether or not they are considered as victims with special protection needs.

According to the results of the survey, the most common protective measures adopted during the investigation phase are the following: the declaration of the victim in front of a person with specific training, always in front of the same person and in spaces adapted for this purpose.

Regarding **training of professionals**, to date, there has been no comprehensive assessment of the level of knowledge of victim rights and various victimization processes by different professional groups. However, in some studies carried out in Spain on specific aspects of the regulation of victim rights and specific victimization processes, the lack of sufficient training may be noted.

Finally, the lack of allocation of budgetary resources for the implementation of the Law transposing the Directive has greatly limited its effective application. Mainly, resources to support victims have not been extended, neither through an expansion of the existing public offer nor through transference of resources to non-governmental entities by means of agreements.

The present national report, completed within the context of project VOCIARE, was very useful to assess the practical implementation of the Victims' Directive in Spain. Surveys and interviews with professionals have reflected in general terms a partial and uneven fulfilment of the provisions of the Directive. The victims' information rights are currently largely respected, but the participation of the victim in the criminal proceedings depends on the victim having the initiative and the economic capacity to hire the services of a private attorney. Translation and interpretation services entail important quality deficiencies, which negatively affects foreign victims, especially those with lower social and economic resources. Victim support services have serious limitations, with an unequal offer in the various territories of the State. The same applies to restorative justice services, which have very limited implementation, especially in the area of adult criminal justice.

With regard to protection rights, important limitations have also been revealed. Although in general terms the victims are treated adequately and with respect to their dignity and rights we found insufficiencies in the provision of separate spaces for the victims in the judicial and police units in order to prevent contact with the aggressors, existence of excessive delays in proceedings, restrictions on the right of victims to be accompanied by a person of his/her choice and gaps regarding due respect for their privacy.

Despite the above-mentioned gaps and challenges, researchers were able to identify good practices with respect to the practical implementation of the Victims' Directive in Spain, such as the right of the victims to be part in the criminal proceedings and the actions adopted by the institutions and some Bar Associations to outspread legal aid to some groups of victims. A noteworthy innovation that improves accessibility for victims has been the launch in 2016 of the online assistance service for victims of crime, by the Department of Justice of the Autonomous Government of Catalonia.

INTRODUCTION

The present national report aims at assessing the practical implementation of the Victims' Directive in Spain in the context of project VOCIARE - Victims of Crime Implementation Analysis of Rights in Europe.

For this purpose, an adequate methodology was created and adopted. The first two steps taken in order to begin this report were a legislative analysis and a mapping of competent authorities and organisations. In order to assess how the Victims' Directive has been implemented, it is vital to know more about national legislation, to know how the Directive was transposed into national law in order to further analyse if such legislation is being implemented, how and by whom. Mapping competent authorities and organisations is essential to guarantee that detailed answers will be provided by the competent authorities and organisations which relate to victims.

To support the work presented in this report, three research tools were developed in order to obtain the desired information: a desk research, an online survey, and interviews. The desk research was the first stage of national research. It included a study of the legal framework of the laws in force that safeguard some of the rights present in the Directive, and research of literature and existing studies, opinions, discussions and other sources which are related to victims' rights. It collected and systematized existing quantitative and qualitative information on the research topic, covering, for example, statistics on the situation of victims, academic literature on the topic of victims' rights implementation, media reports on the topic, relevant NGO researches and government reports to Intergovernmental Organisations.

The national online survey was a particularly important tool for the research as it enables a much broader evidence base and allows for statistical analysis. Relevant national institutions and organisations were classified according to their expertise, that is, whether they responded to the field of law, the police, judicial, health, or NGOs that offer support to victims. Once they were listed, persons from each of the areas were contacted so that they could respond in the best possible way to the online survey, also taking into account their representation within the system. It is worth mentioning that the survey was too long for people who are holding high positions within their respective fields and could not complete the survey due to lack of time. Therefore, the contacts map had to be restructured throughout the process and until its completion. Even so, the results were positive in terms of diversity and quality of the respondents.

The third instrument, the interviews, served as an addition to desk research. Any questions to which desk research could not respond, or where findings were inconclusive, the researchers identified a stakeholder/key informant with whom to discuss such specific questions, in addition

to the list of questions which were provided via the research tools. In total, there were five interviews with several of the main actors in the different fields of study (law, judicial, police and welfare). All the interviews were semi-structured so that the interviewee was free to let us know any problems that could have been encountered with regard to the practical implementation of the Directive. Before the completion of each one of the interviews, the most suitable questions were selected according to the degree of expertise.

Regarding its structure, this report first provides a basic overview of the legal framework, an important element to take into account in a first approach in order to understand the transposition status of the Directive into national law. Subsequently, an evaluation of the practical implementation of the Directive will be presented. This document will explain if and how articles and rights provided by the Directive are transposed into Spanish law. Each right will be briefly described and explained, as well as its transposition and practical implementation.

Furthermore, after such thorough analysis, a chapter on good practices will be presented, as well as a chapter identifying gaps, challenges and recommendations. These are very important chapters in this report, since they provide practices which might be good practices to be implemented by other Member States and be maintained in Spain, and they also provide information on what is lacking or failing in the practical implementation and can be improved. This is vital for Portugal itself and for other Member States which might present similar less positive aspects. The final chapter will provide a conclusion of this report.

BASIC OVERVIEW OF THE LEGAL FRAMEWORK

The Victims' Directive was adopted on 25 October 2012 by the European Parliament and the Council, and Member States were required to transpose it into national law until 16 November 2015[1]. In Spain, the Directive was transposed to the Spanish legal framework through the adoption of Law 4/2015, of 27 April, on the legal statute of the victim.

There were many aspects in Spanish law needed for a normative adaptation. The legal reforms that have taken place in recent years, which have addressed the rights of victims of crimes in various orders, had led to a situation characterized by dispersion, which made it advisable to gather some of the various regulations in a single normative text. Law 4/2015 has faithfully transposed, in general terms, the spirit and the letter of the Directive, but the legislator has encountered a series of difficulties derived from the singularities of Spanish law. After comparing this to other legal systems in the European Union and to the text of the Directive, we can highlight the following characteristics of Spanish law:

- The existence of different statutes related to different kinds of victims, what entails very different rights' standards;

- The adoption of legal clauses that provide generalized and automatic responses to the various risk situations for victims;

- An inadequate and outdated support system for victims;

- A very wide possibility of intervention of the victims in the criminal proceedings as procedural party;

- A short coverage of the free legal aid, that does not match the broad right of the victims to participate in the criminal proceedings;

- The need to rethink the concept of vulnerable victims and the protection measures;

- A very limited presence of restorative justice programs, without a legal regulation of their procedural effects.

1 All Member States, with the exception of Denmark, opted into the Directive system.

The Law 4/2015 has not taken significant steps to overcome the diversity of statutes of victims' rights existing in Spain. This diversity is a consequence of the relevant public presence of two sectors with respect to which there has been a wide development of rights in different aspects. On the one hand, the victims of terrorism, through various Laws that have recognized and expanded public rights and benefits, finally culminating in Law 29/2011, of September 22, on recognition and comprehensive protection for victims of terrorism. On the other hand, the victims of gender violence, with Organic Law 1/2004 of December 26. Victims of terrorism enjoy a series of rights to compensation that go far beyond what was foreseen for victims of violent and sexual crimes in Law 35/1995, to the extent that they cover at least the total amount set in the criminal sentence, as well as benefits for material damage, damage to homes, establishments and vehicles, labor rights, preferences in public housing awards and exemptions from fees for studies. Victims of gender-based violence have legally recognized important rights in the labor and social fields, such as access to housing, as well as free legal aid. They are beneficiaries of positive discrimination norms and there are special regimes in procedural Law, such as protection orders or the creation of the Courts of Violence against women, or in Criminal Law, where an aggravation of punishment is provided for crimes of violence, coercion and threats when the offender is a man and the victim is a woman who is or has been his partner. Law 4/2015 does not change the protection model derived from Law 1/2004 on gender violence and even reflects the will to maintain it.

Moreover legislative activity in Spain has been characterized by a tendency to adopt legal clauses that provide for generalized and automatic responses, such as the obligation that judges impose to those convicted or even accused of domestic violence a prohibition of rapprochement and communication with the victims, the prohibition of mediation in cases of gender violence or the presumption that the minor and incapacitated victims are especially vulnerable and the only ones that can benefit from the protection measures against secondary victimization in the criminal process. The principle of individualization established by the Directive required from the Spanish legislator to revise this type of formulas in favor of legal techniques characterized by greater flexibility. This challenge has been assumed only partially through the Law 4/2015.

The criminal proceedings in Spain is regulated by the *Ley de Enjuiciamiento criminal* (Criminal Procedural Law). According to the Law most part of crimes are public, but there are also some semi-public crimes, that can only be prosecuted once they have been reported by the victim or by the Public Prosecutor, such as most sexual crimes. The phases of the criminal proceedings are investigation phase, conducted by an Investigating Judge, trial phase and appeal phase. Victims can be part in the proceedings, bringing charges against the defendant and asking for penalties to be imposed.

The Criminal Procedure Law was subject to various modifications that have expanded the rights of victims, including those who are not party to the process. Thus, the LO 8/2006, of December 4, established that the declaration of the minor witnesses should be taken in such a way as to avoid a visual confrontation with the accused, using any technical means to adequately perform this test (Art. 448-3 LECrim).

Law 4/2015 lists in Art. 3 the victims' rights and declares, above all of them, the right to receive a respectful, professional, individualized and non-discriminatory treatment from the first contact with the authorities and officials, both in the criminal process and out of court, particularly in the context of support services and restorative justice. It also expressly provides for a "post-procedural" phase, in those cases in which victims contact with this kind of services after the conclusion of the process. The second number of art. 3 refers to governmental norms for the detailed development of the rights regulated in the Law, both in the procedural and in the out of court aspects. It also refers to the provisions of the special legislation, which regulate compensation to victims of violent and sexual crimes (Law 35/1995), cases of gender violence (LO 1/2004), victims of terrorism (Law 11/2011) or victims of the civil war and the Franco dictatorship (Law 52/2007). With regard to the procedural rules, the Law itself undertakes a wide modification of various aspects of the current Criminal Procedure Law (LECrim).

In general, institutions have contributed few resources to policies for the development of victims' rights. This situation has worsened in recent years as a result of the budgetary restriction measures adopted in response to the economic crisis. Law 4/2015 has expressly provided that none of its previsions should lead to an increase in public spending. Only recently some public entities have begun to apply resources in order to implement programs based on the previsions contained in the Directive and in the aforementioned Law.

EVALUATION OF PRACTICAL IMPLEMENTATION

ARTICLE 2 - DEFINITIONS

For the purposes of the Directive a 'victim' is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence or a family members (the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim) of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

Article 2 of Law 4/2015 contains a general definition of victim. The concept of "direct victim" reproduces the definition of "victim" provided by the art. 2 of the Directive, which includes any natural person "who has suffered an injury or damage, especially physical or mental injuries, emotional damage or economic damage, directly caused by a criminal offense". The Law introduced also in art. 2 a definition of "indirect victim", consisting of those who suffered damages as a result of the victimization of an intimate person, such as the psychic, emotional or economic impact caused by the homicide or disappearance of a person in his or her children, ascendants, couple or other people. The Directive does not refer to the concept of "indirect victim" in art. 2, but it does in paragraph 19 of the Preamble, referring to family members who may be harmed by the crime and who must be protected by the norm. The Law 4/2015 includes in art. 2-b), in addition to cases of death, the disappearance of a person directly caused by a crime. Moreover, the person who is responsible for the crime is left out of the concept of indirect victim, which should be interpreted as referring to criminal, not civil, responsibility.

The Law makes a delimitation and a hierarchy of persons considered as indirect victims. In the first place, it includes the spouse who is not separated and the children of the victim or the spouse who is not separated and who lived together with the direct victim at the time of death or disappearance. The spouse is assimilated to the person united by analogous relationship of affectivity and their cohabiting children and also includes the parents and relatives in a straight line or collateral within the third degree that are under the custody of the victim and the persons subject to guardianship, curatorship or fostering.

The extension to collaterals goes beyond the minimum content of the Directive. Law 4/2015 relegates other relatives and siblings, provided for in the Directive, who can be recognized as "indirect victim" only in case that the previous ones do not exist. This restriction is covered in the provision of art. 2-2-b) of the Directive, although it is questionable that it occurs in a general manner and is linked to the definition of victim, given that the condition of victim cannot depend on the existence or not of other persons with a better right. It would have been preferable to include the appropriate restrictions only regarding to certain rights, as is done in Law 35/1995 on compensation for victims of violent and sexual crimes, whose art. 2 establishes an order of priority to receive the aid, in the logic of the allocation of scarce resources.

Especially questionable is the best condition that is attributed to the fact of holding the legal representation of the victim. The national Law, instead of responding to the imperative that "someone must obtain a benefit", should be focused on the concept of "indirect victim". This implies that the rights derive from the victimization experience itself.

Otherwise the Law 4/2015 on the statute of crime victims shows a broad conception of the victims by including within its scope all victims of crimes committed in Spain or who may be persecuted in Spain, regardless of their nationality and whether they enjoy residence or not. The protection of victims in Spain thus acquires a dimension that transcends the scope of European Union nationals and includes even people with illegal residence, which is consistent with the sense of rights derived from the fact that the victim is allowed to participate in a criminal proceeding derived from the crime being committed in Spain. The context is different from that of the rights regulated in the before mentioned Law 35/1995 on compensation for victims of violent and sexual crimes, which limits the benefits to those who are Spanish or nationals of another Member State or who, not being so, habitually reside in Spain or are nationals of another State that recognizes analogous aid to Spaniards in its territory (Article 2-1 of the Law 4/2015). The inclusion of foreigners in an irregular situation has a clear victimological sense, given that migrants are recognized as a group with a high risk of victimization.

However the Law 4/2015 on the Statute of the victim of crime does not take into account explicitly the cases of victimization committed by a family member, a person living with the victim or in an intimate relationship. Moreover there is not a general definition of "victims with special protection needs" or a reference to victims of crimes whose perpetrator was not identified, apprehended, prosecuted or convicted.

ARTICLE 3 - RIGHT TO UNDERSTAND AND BE UNDERSTOOD

Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings. Communications with victims should be provided in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including (but not limited to) any disability. Victims should, in principle, be allowed to be accompanied by a person of their choice in the first contact.

Regarding the right of victims to understand and be understood, Law 4/2015 expresses concern about the problem of people who are forced to contact authorities and officials, particularly the criminal justice system, and suffer from linguistic barriers, when receiving a stereotyped and not personalized communication and difficult to understand. Through the official, legal or proper language of forensic jargon, the system transmits to the victims a message of distance incompatible with the support that the Law wants to guarantee. Hence, Art. 4(a) of Law 4/2015 establishes that communications with victims, oral or written, "will be made in a clear, simple and accessible language, taking into account their personal characteristics and, especially, the needs of minors and people with sensory, intellectual or mental disabilities". The Law adds that "if the victim is a minor or has the capacity judicially modified, the communications will be made to his/her representative or to the person who assists him/her". In addition, art. 4(b) provides that the victim, from his/her first contact with the authorities or with the Victim Assistance Offices, "will be provided with the necessary assistance or support, which will include interpretation in the legally recognized sign languages and means of support for oral communication of people with hearing and speech impairments."

Language barriers continue to exist, especially for the foreign population. The most important are, still, those derived from the forensic language. Minors and people with cognitive disabilities are in fact the most affected. The success in the application of this norm and others of similar nature depends to a great extent on the personal abilities of the actors. Therefore training and sensitization is a key issue, as well as elaborating recommendations of good practices.

According to the results of our survey most professionals consider that measures to help them to recognize individual needs of victims are insufficient (14%) or quite insufficient (43%). They believe that there are no regular enquiries to ensure that victims have understood the information: 43% of the respondents consider that such enquiries are not done or rarely done and 36% respond that they are only conducted sometimes, which does not mean regularity. However, most respondents affirm that the information is adapted to be understood by children or by people who do not speak the language in which the proceedings are developed.

A right of great victimological relevance is the **right of the victims to be accompanied by a person of their choice**, included in art. 4(c) of Law 4/2015. This can provide effective support to victims in the face of the helplessness they often experience when contacting the institutions. The choice of the companion is a key element if one takes into account that many victims do not have access to a lawyer and that the victim support organizations can offer an accompaniment service. It should not be forgotten that this right also applies to underage victims, who, if they have sufficient maturity, in cases of interfamily victimization, can defend their rights against their legal representatives, in cases where they have a conflict of interest because they are investigated in the cause or by adopting a position of protection towards the offenders.

Regarding the right of the victim to be accompanied, there is a significant deficit in practice. 36% of professionals state that victims are sometimes accompanied and 32% answer that they rarely benefit from this means of support. In general there is no denial of this right of the victim on the basis of a consideration of its being harmful to their interests, but in a relevant number of cases (46%) it would be denied to avoid prejudice to the proceedings. However, the main problem for victims in order to be able to exercise this important right is that it is unknown by a large part of the professionals or they are little aware of its transcendence. Therefore, it is necessary that this right be the subject of training programs for judges, prosecutors and other professionals.

The **linguistic barriers** with respect to the foreign population are in general the main problem detected by the professionals to make effective the right to understand and to be understood. Interviews[2] have revealed that there is a widespread problem regarding the quality of translation and interpretation services, which prevents many victims from being able to understand and be understood. The professionals evaluate satisfactorily the progress made to satisfy the needs of the victims, but the efforts made by the institutions have an unequal impact on the victims. Their cultural and economic resources determine to a large extent their real understanding of their rights and therefore make it difficult for them to exercise them effectively and to be able to express their needs. The fact that victims can hire a lawyer in practice represents a great advantage. There are also differences regarding the type of crime, since institutional resources

2 "Interviewee 1", "interviewee 2", "interviewee 3" and "interviewee 4".

are largely concentrated on victims of gender violence. This type of victims represents more than half of the victims who receive support from the victim assistance offices and from those who benefit from the special assistance and accompaniment programs applied by the police.

Authorities usually don't assess the communication needs and constraints of each individual victim. This lack of adequacy is evident above all for vulnerable victims, such as persons with intellectual disabilities or minors, that are not provided with easy to read versions of documents. Interactive and social media are not being used by the authorities to inform victims of their rights.

ARTICLE 4 - RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH THE COMPETENT AUTHORITY

Member States shall ensure that victims are offered, without unnecessary delay, from their first contact with a competent authority, information about the type of support the victims can obtain and from whom; the procedures for making a formal complaint; how and under what conditions they can obtain protection, access legal advice and legal aid; access to compensation; entitlement to interpretation and translation; special measures if they are resident in another Member State; contact details for communications about their case; available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

From the legal point of view, art. 5 of Law 4/2015 provides that every victim has the right, from the first contact with the authorities and officials, including the moment prior to the presentation of the complaint, to receive, without unnecessary delays, information adapted to their circumstances and personal conditions and the nature of the crime committed and the damages suffered, on the following points:

a) *Assistance and support measures available, whether medical, psychological or material, and procedure to obtain them. Within the latter will be included, when appropriate, information on the possibilities of obtaining alternative accommodation;*

b) *Right to report the crime and, where appropriate, the procedure to file the complaint and the right to provide evidence to the authorities in charge of the investigation;*

c) *Procedure to obtain legal advice and defense and, where appropriate, conditions in which it can be obtained free of charge;*

d) *Possibility of requesting protection measures and, where appropriate, procedure to do so;*

e) *Compensation to which the victim may be entitled and, where appropriate, procedure to request it;*

f) *Interpretation and translation services available;*

g) *Aids and auxiliary services for communication available;*

h) *Proceedings through which the victim may exercise his/her rights in the event that he/she resides outside Spain;*

i) *Appeals that may be filed against decisions considered contrary to their rights;*

j) *Contact information of the authority in charge of the proceedings and channels to communicate with it;*

k) *Restorative justice services available, in cases where it is legally possible for the victim to resort to such services;*

l) *Situations in which the victim can obtain the reimbursement of judicial expenses and, if applicable, proceedings to request it;*

m) *The right to make application request to be notified of the resolutions referred to in Article 7 of the Law. To this end, the victim should point in his/her request an email address and, failing that, a postal address or address, where communications and notifications by the authority will be sent.*

Thereby the Law has structured the provisions of Art. 4 of the Directive and has supplemented them including references to alternative accommodation, which makes sense especially in cases of domestic violence or human trafficking. It has also foreseen that the information should be offered in an appropriate way, according to the personal circumstances, the nature of the crime and the damage suffered. This is a consequence of the principle of individualization that requires from the authorities an effort to ensure that the information is made available in an understandable way. The Law 4/2015 (article 5(2)) also provides that the information must be updated at each stage of the procedure, in order to guarantee the victim the possibility of exercising his rights.

The survey received a rather scattered response. According to the majority of professionals, victims receive information from the first contact with the authorities, although 28% consider that it is only partial information and 18% affirm that it is very little. They answer that information is mostly provided orally or through leaflets, brochures or similar materials, rarely by the Internet or video, and without the need of request from the victim.

In-depth interviews with various professionals have revealed a problem with the quality of the information. The victims receive written information at the police stations, when they present the complaint. The procedure is bureaucratic and is poorly suited to the individual circumstances of the victims. The progressive recognition of rights to victims has resulted in an increase in the documentation they receive in the police offices, but many of the victims do not have sufficient capacity or are not in the best conditions to assimilate the information. Although the authorities are generally willing to answer their questions through an individualized explanation, many victims choose not to ask questions and actually have difficulties to defend their interests if they do not have the support of a private lawyer or do not go to the specialized support services. Regarding oral communication, there are also limitations, since officials tend to express themselves through legal terms that pose a barrier for many citizens. The police officers monitor some particularly vulnerable victims, after the presentation of the complaint, in order to address their needs and offer support to them. This monitoring is carried out especially with victims of gender violence. Minor victims, people with disabilities or elderly people are taken into account as vulnerable victims less frequently.

ARTICLE 5 - RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

Member States shall ensure that victims receive written acknowledgement of their formal complaint. Where they do not understand or speak the language of the competent authority, they should be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance. The acknowledgement should be translated free of charge where the victim doesn't speak the language.

Art. 4 of the Directive has been transposed by art. 5 of Law 4/2015, providing that "every victim has, at the time of filing his/her complaint, the following rights: a) to obtain a copy of the complaint, duly certified; b) free linguistic assistance and written translation of the copy of the complaint filed, when he or she does not understand or speak any of the languages that have official status in the place where the complaint is filed.

The Spanish State recognizes four official languages: Castilian, Catalan, Galician and Basque, although its status is different. Castilian is the official language throughout the State and the other three languages are co-official, in addition to Castilian, in those autonomous communities in which this is determined by its Statute of Autonomy. Law 4/2015 adopts as a criterion to determine which is the official language the place where the complaint is filed. In practice, the judicial system and the police system in Spain have had difficulties in dealing with the linguistic diversity in the own territory and especially with diversity deriving from the European context.

The results of the survey reveal that most victims receive a written acknowledgment of their formal complaint (76% answer always or often). However, the answers reveal a dispersion of opinions regarding the existence of real opportunities for victims to make a complaint in their own language, though, according to 60% of respondents they can receive linguistic assistance.

Interviews have shown that professionals do not consider, in general terms, that victims find difficult filing complaints and receiving a written copy of the document. The problems usually come later. Victims face problems derived from difficulties in coordination between the institutions. After presenting the complaint, some victims (depending on the case) receive a response from various institutions (police and victim support services), while others do not receive communication from any of them.

In a significant number of cases a problem has been found with regard to language assistance, given that usually there is no guarantee of quality. Police officers request translation and interpreting services when the complainant is unable to understand or express him/herself well in an official language. Usually there are not police officers able to act as interpreters, so they request an external translator or interpreter when the victim is a foreigner and they assess that he or she needs this service, but in many cases the service is not suitable or the victims claim that their words have not been adequately translated. This deficiencies in the translation services have been highlighted by several professionals and even complaints have been made by some consulates. Translator or interpreter are usually not members of the police. Professionals or just persons that know a language understandable by the victim are required by the police officers to provide this service.

ARTICLE 6 - RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE

Member States shall ensure that victims are notified without unnecessary delay of their right to receive information related to criminal proceedings: any decision not to proceed with or to end an investigation or not to prosecute the offender; the time and place of the trial, and the nature of the charges against the offender; of any final judgement in a trial and of information about the state of the criminal proceedings, in accordance with their role in the criminal justice system; about the reason which led to the above mentioned decisions; notification in case the person remanded in custody, prosecuted or sentenced concerning the victim is released from or has escaped detention.

Art. 7 of Law 4/2015 transposes and develops the content of art. 6 of the Directive, as follows:

"1. Any victim who has made the request[3] referred to in subparagraph (m) of article 5.1, will be informed without unnecessary delay about the date, time and place of the trial, as well as the content of the accusation directed against the offender, and the office will notify him/her about the following resolutions:

a) The resolution not to initiate criminal proceedings.

b) The sentence that ends the procedure.

c) The resolution to imprison or the subsequent release of the offender, as well as his or her possible escape.

d) Resolutions that adopt personal precautionary measures or that modify those already agreed upon, when they were intended to guarantee the safety of the victim.

e) The resolutions or decisions of any judicial or penitentiary authority that affect subjects condemned for crimes committed with violence or intimidation and that entail a risk to the safety of the victim. In these cases and for these purposes, the Administration of prisons shall immediately inform the judicial authority of the decision adopted in order to communicate it to the affected victim.

f) The resolutions referred to in article 13.

3 Art. 5-1 of the Law provides on that victims are required, at the first phase of the proceedings, to express their consent to be informed about certain resolutions.

The Law develops and specifies in what way this information should be offered to the victims that expressed their consent to be informed. The communications will include, at least, the final part of the decisions and a brief summary of the basis thereof, and will be sent to the victim's email address. Exceptionally, if the victim does not have an e-mail address, the court office should send the document by post to the address provided. In case of citizens' resident outside the EU, if an email or post address is not available in which to make the communication, it will be sent to the Spanish diplomatic or consular office in the country of residence for publication. Consular offices can then publish these notifications according to their national rules.

Given that Spanish law authorizes the victim to be a party in the proceedings, art. 7 of the Law provides that if the victim is a party, the resolutions will be notified to his/her attorney and they will also be communicated to the victim at the email address that he/she provided.

In line with the provisions of the Directive, art. 7-2 of the Law provides that victims may at any time express their wish not to be informed of the resolutions referred to in this article.

Art. 7-3 establishes an exception in cases of gender violence, thus maintaining the paternalistic character of the legislation referring to this type of victims, by stating that the resolutions referred to in c) and d) of section 1 will be notified, without the need for the victim to request it, except in those cases in which he/she expresses his/her wish not to receive such notifications. Art. 7-4 indicates that victims will be provided with information regarding the situation in which the proceedings are conducted, unless this could prejudice the proper conduct of the case.

As stated in the Report of the State Prosecutor's Office of 2017, the Special Prosecutor's Office has issued instructions to the Prosecutors involved in the investigation phase to verify that the information on victims' rights has been correctly carried out. They will check in particular:

a) That the needs assessment of the victim be included in the police file and that the information and contact manner with the corresponding FVO have been provided. They will also verify that the informed consent has been provided by the victim.

b) That an email address, postal address or an address where the notifications provided the Law refers must be sent.

c) Special attention will be given to the statements made by the victim before the police authority when interpretation or translation has not been facilitated.

d) In case of death or disappearance, effective reporting of rights to indirect victims will be ensured, with special attention to minors.

In practice, the respondents to the survey have an optimistic view about how the victims' right to receive information of their criminal proceedings is guaranteed. According to their experience, most victims receive information, particularly when they request it, although it depends, to a large extent, on the role that they play in the criminal case. Most respondents believe that victims are always (22%) or often (30%) informed about their right of the release or escape of the offender and, upon their request, they are always (39%) or often (39%) notified of the release or escape of the offender.

In-depth interviews have revealed that the application of Law 4/2015 has generated effective practices aimed at informing the victims of the rights provided for in art. 6 of the Directive. However, the manner to execute it depends to a large extent on the attitude of the various judicial bodies and officials responsible for complying with these obligations, as well as on the circumstances of each specific case.

Deficiencies have been revealed regarding the communication to the victim of decisions that have the effect of releasing the convicted person. In some cases it lacks due coordination between the police and the specialized services for victims that result in the victim not being informed. Some institutions, such as the Prisons Administration in Catalonia (which has management power over prisons located in this autonomous territory), apply to the convicts a risk assessment protocol (*Riscanvi*). In cases of gender violence, the various police bodies apply risk assessment tools with data collected at the time of the complaint and in cases identified as having a high risk of recidivism, police protection is assigned to the victims. Protection is also offered in case of escape of the detained or imprisoned person, although this sometimes poses problems in order to obtain the collaboration of the victims. Some professionals believe that the attention of the institutions is very oriented towards the victims of gender violence and in the evaluation of the risk for the life of the victims, while leaving aside other serious risks such as those that may occur for minors' victims of sexual abuse. In the cases not related to gender violence, the evaluation of the police action is positive with respect to the cases in which the victim requests help from the police.

ARTICLE 7 - RIGHT TO INTERPRETATION AND TRANSLATION

Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings are provided, upon request, with interpretation at least during any interviews or questioning and with translation of information essential to the exercise of their rights in criminal proceedings in accordance with their role. Victims may challenge a decision not to provide interpretation or translation.

The art. 9 of Law 4/2015 transposes and develops art. 7 of the Directive. It provides that every victim who does not speak or does not understand Spanish or the official language used in the action in question is entitled to:

a) Be assisted free of charge by an interpreter who speaks a language that he/she understands when he/she receives a statement during the investigation phase by the Judge, the Prosecutor or police officers, or when he/she intervenes as a witness in the trial or in any other oral hearing . This right is also applicable to people with hearing or verbal limitations.

b) Receive free translation of the resolutions[4] referred to in section 1 of article 7 and article 12. The translation shall include a brief summary of the basis for the decision adopted, when the victim so requested.

c) Receive a free translation of the information that is essential for the exercise of the rights to participate in the criminal proceeding in terms referred to in the Law. Victims may submit a reasoned request.

d) Be informed, in a language that he/she understands, of the date, time and place of the trial.

4 These resolutions are: a) resolution not no initiate the criminal proceedings; b) final judgement; c) decision to imprison or release the convicted person or his escape from prison; d) decisions to impose or remove precautionary measures, mainly pretrial detention, if they aim to protect de victim; e) judicial or administrative decisions related to persons convicted for violent crimes that entail a risk to the victim.

Law 4/2015 specifies these provisions by stating that interpreter assistance can be provided by videoconference or any other means of telecommunication, unless the Judge or Court, ex officio or at the request of a party, requires the physical presence of the interpreter in order to safeguard the rights of the victim (Article 9-2).

Art. 9-3 of the Law admits that, by way of exception, the written translation of documents can be replaced by an oral summary of its content in a language understandable by the victim, provided that the equity of the process is thereby sufficiently ensured. This exception could be admissible in those cases where is no possibility of having a written version of the list of rights in a language understandable by the victim.

The Law allows for the victim to appeal the decision not to provide interpretation or translation. In case of police actions, the decision may be appealed to the investigating judge. This remedy will be understood tacitly submitted when the person affected by the decision had expressed his/her disagreement at the time of the denial. When the decision not to provide interpretation or translation is adopted by a judge, the victim may file an appeal to the higher judicial body.

In practice, interpreting services are provided free of charge, but there are some problems in order to ensure the full implementation of this right. The main problem is the lack of availability of interpreters, identified by 61% of respondents. Other relevant problems are that interpreting services do not address victims' vulnerability (42%), risk of interpreter bias (35%), and poor quality of interpretation (35%) or that they are available only under limited circumstances (31%).

Regarding translations, they are usually also provided free of charge, but in some cases with certain limitations. Documents considered essential to be translated and made available to the victim in the translated form are mostly the final judgement, decisions not to proceed or not to prosecute, and information's on the status of the criminal proceedings. Main problems identified by the respondents are also lack of availability of translators, poor quality, and availability only in a timely manner and false assumption that victims understand the language of the proceedings well enough. However, such problems are not identified by most part of respondents (only between 23 % and 30%). The figure above reflects the scores given by the respondents in order to identify what are the main problems with ensuring the right to interpreting services.

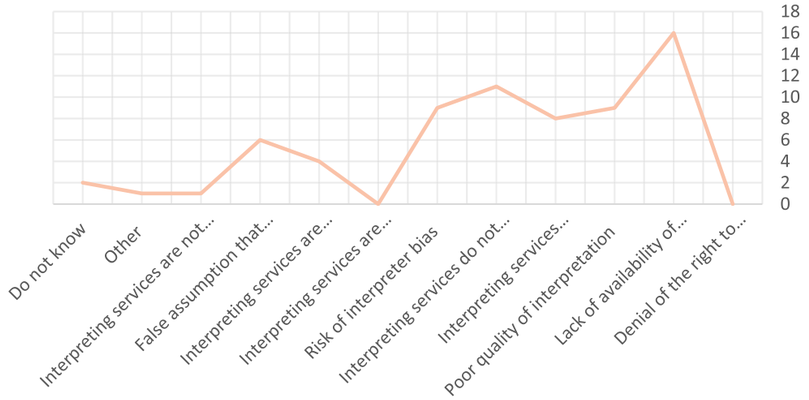
In-depth interviews with professionals have confirmed a broad opinion regarding the poor quality of translation and interpretation services. These services are rendered to the victims in a manner similar to what is done to the accused, but victims are sometimes dissatisfied with the interpreters. The professionals have recorded bad practices, such as summarizing excessively what the victims have explained, omitting details that are important in their story, not translating well the meaning of their words and even, in some cases, distorting them on the basis of cultural or ideological reasons. This happens, for example, when some interpreters try to minimize or detract the credibility of the statements of women victims of gender violence.

A good practice is the recording of all statements, which is an important guarantee that allows the prosecution and the defense to make allegations about the distortions that may have occurred in the oral proceedings or when filing an appeal.

It has not been detected that the denial of the interpretation or translation is a practice that represents a problem in Spain.

Regarding the linguistic question, the situation of marginalization of official languages other than Spanish in the judicial system has been denounced in many cases in various territories with their own co-official languages. Marginalization is evident in that information is offered in many cases only in Spanish. The governments of some autonomous communities have implemented programs to alleviate the problem, but the judicial power in Spain is a power of the State not transferred to those territories, which is manifested in the way of accessing the judiciary and in the appointment of judicial positions. The same happens with regard to the Public Prosecutor. This situation contrasts with the fact that the three languages other than Castilian are not really minority in the territories where they are co-official, although they are relegated in practice in the judicial system.

7.3. In your opinion, what are the main problems you can identify with ensuring the right to interpreting services?



ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES

Member States shall ensure that victims have access to confidential victim support services, free of charge, before, during and for an appropriate time after criminal proceedings. Member States shall facilitate the referral of victims, by the competent authority that received the complaint to victim support services. Member States shall take measures to establish specialist support services in addition to, or as an integrated part of, general victim support services. Member States shall ensure that access to any victim support service is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

The right to access victim support services has been transposed into art. 10 of Law 4/2015. According to this norm every victim has the right to access, free of charge, support services provided by public entities, as well as those provided by the Victim Assistance Offices. This right may be extended to the relatives of the victim in crimes that have caused particularly serious damage.

The Victims Assistance Offices (VAO) were created through Law 35/1995. This Law adopted a public assistance model. According to the Law of 1995, the VAO are located in judicial headquarters and are managed by the Ministry of Justice, except those autonomous communities where the competency has been assumed by the Autonomous Government. Such is the case of Andalusia, Catalonia, Valencia, Basque Country and Navarra. There are differences regarding human resources and the management model among the different communities. Some of them have teams formed by several professionals, such as psychologists, lawyers or social workers, in each office (for example, in Andalusia, Catalonia or the Basque Country). In other communities, the offices are integrated only by an official of the Ministry of Justice, even without a university qualification. Regarding the management model, in some communities it is done through a public concession of the service to a private entity (Andalusia or Valencia). In most of them the management is carried out directly by the Ministry of Justice or the Department of Justice of the Autonomous Government. However, the model is essentially the same throughout the State and is characterized by its official and bureaucratized nature.

Accessibility is very limited for several reasons:

- Regarding time, given that the assistance is generally done only on working days and during the working hours of the staff (8.00 am to 14.00 pm from Monday to Friday).

- In terms of infrastructures, the number of offices is very small: they are located in provincial capitals and only exceptionally in other large cities.

- The assistance is only in person and partly by telephone during office hours, with very limited online resources. As regards phone attention, there is no national hotline, so the victims need to know each office phone number in order to contact the victim services.

- Regarding languages, attention is usually given only in the official language or languages in the territory.

The problem is aggravated because of the lack of a general non-governmental organization in Spain that provides support to all kinds of victims of crime. There are many private and also some public entities[5] that only provide support services to certain classes of victims, such as the following groups:

- Women victims of gender violence or sexual violence;
- Victims of child sexual abuse;
- Minors;
- People with disabilities;
- Victims of terrorism.

A noteworthy innovation that improves accessibility has been the launch in 2016 of the online assistance service for victims of crime, by the Department of Justice of the Autonomous Government of Catalonia. The service is executed by the Red Cross through qualified professionals in criminology and psychology and offers information every day of the week from 8 a.m. to 10 p.m. in six languages: Catalan, Spanish, English, French, Arabic and Russian.

As provided in art. 10 of Law 4/2015, the authorities or officials who come into contact with the victims should refer them to the Victim Assistance Offices when it is necessary in response to the

5 There are lots of private entities and some public institutions, such as municipalities, that provide some support services for some groups of victims, mostly gender violence, child sexual abuse and victims of terrorism, and less frequently victims of hate crimes, bullying or mobbing. A list of public and private resources for victim support available in Catalonia can be found in the webpage of the Catalan Society of Victimology: www.victimologia.cat. There is not a similar list of resources at a national level.

seriousness of the crime or upon request by the victim. Organic Law 1/2004 on gender violence also provides for assistance and protection measures for minor children and minors subject to guardianship, custody and custody of women victims of gender violence or of victims of domestic violence. According to this Law (art. 18), "women victims of gender-based violence have the right to social services of attention, emergency, support and reception and comprehensive recovery. The organization of these services by the Autonomous Communities and Local Corporations will respond to the principles of permanent attention, urgent action, specialization of benefits and professional multidisciplinarity". Moreover the Law establishes that the multidisciplinary attention will involve especially: a) Information to the victims; b) Psychological care; c) Social support; d) Monitoring of women's rights claims; e) Educational support to the family; f) Preventive training in values of equality aimed at their personal development and the acquisition of skills in the non-violent resolution of conflicts, and g) Support for training and job placement. The Law also provides that the services for these kind of victims will act in coordination with the Security Corps, the Judges of Violence against Women, the health services and the institutions in charge of providing legal assistance to the victims.

Law 4/2015 mandates that, by way of governmental rules, the executive power develops the aspects related to the operation of the VAO and the access to them. Decree 1105/2015, of December 11, complies with this mandate. One of the main causes of the deficient development of the victim support system in Spain is the insufficient endowment of resources on the part of the public administrations. Among them it must be emphasized above all the Spanish Ministry of Justice, in charge of most assistance offices. It is especially regrettable that Law 4/2015 includes a final clause according to which none of the provisions of the Law will lead to a budget increase.

Additionally it should be noted a limited involvement on the part of civil society, since entities that provide services to certain classes of victims have difficulties in attracting private resources and, to a large extent, funding through public subsidies to programs is in general terms unstable and very limited.

Notwithstanding respondents to the survey have an optimistic view of victim support services. In their opinion, victims are often or even always referred to those services by the competent authorities (63%). They believe that victim support services meet the needs of the victims of crime often (48%) or sometimes (40%). According to the respondents' view there are some needs that require mostly actions to be conducted by the authorities: more professionals (86%), more training offers (64%) and more funding (53%), although 50% of answers require to improve quality standards for services (50%).

In-depth interviews to professionals confirmed that the victim support offices in Spain devote priority attention to victims of gender-based violence, which represent more than half of the people served. There is an improvement in the information offered by the police regarding the existence of VAO. However, they reveal a problem regarding accessibility, which is limited. Victims must travel to the offices to receive support and those who are not able to do it remain outside the system.

ARTICLE 9 - SUPPORT FROM VICTIM SUPPORT SERVICES

Victim support services shall, as a minimum, provide: a) information, advice and support relevant to the rights of victims; b) information about or direct referral to any relevant specialist support services in place; c) emotional and psychological support; d) advice relating to financial and practical issues arising from the crimes; e) advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation. Specialist support services shall develop and provide: a) shelters or any other appropriate interim accommodation for victims; b) targeted and integrated support for victims with specific needs such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships.

Law 4/2015 has foreseen the organization of the VAO and has developed the functions thereof, based on the provisions of art. 9 of the Directive. According to art. 27 of the Law, the Government of the State and the Autonomous Communities that have assumed powers in matters of Justice will organize the aforementioned Offices. For this purpose, they may enter into collaboration agreements with public and private non-profit entities to provide assistance and support services to victims.

The art. 28 of the Law establishes the functions that at least the VAO must provide: Psychological support or assistance.

a) General information about victims' rights and, in particular, about the possibility of accessing a public compensation system.

b) Information on available specialized services that can provide assistance to the victim, in view of their personal circumstances and the nature of the offense that may have been the subject.

c) Emotional support for the victim.

d) Advice on the economic rights related to the process, in particular, the procedure for claiming compensation for the damages suffered and the right to have access to legal aid.

e) Advice on the risk and how to prevent secondary or repeated victimization, or intimidation or reprisals.

f) Coordination of the different bodies, institutions and competent entities for the provision of victim support services.

g) Coordination with Judges, Courts and Public Prosecutor for the provision of victim support services.

The Law requires the VAO to conduct an assessment of the particular circumstances of the victims in order to determine what assistance and support measures should be provided. Art. 28-2 refers to various measures, in a non-exhaustive way:

a) Psychological support or assistance.

b) Accompaniment to trial.

c) Information about available psychosocial and assistance resources and, upon request by the victim, referral to them.

d) Special support measures that may be necessary in cases of victim with special protection needs.

e) Referral to specialized support services.

The art. 28-3 of Law 4/2015 reproduces the principle of Article 9 of the Directive: access to victim support services shall not be conditioned upon the prior filing of a complaint. This constitutes an important step forward in Spain, since for a time great value was given to reporting and sometimes this was a condition required to provide support to the victim. Overcoming this attitude may encounter the difficulty that most crimes according to the law are prosecutable ex officio and therefore public officers and even professionals have a legal duty to report. Most sexual crimes and against intimacy and honor (and few others) escape this rule, as far as they are legally considered as semi-public or private crimes. However, the acceptance that victim support should not be conditioned to the victim's decision to report and that the purpose of providing support is not to press the victim to report has been progressively outspread.

Referral to the VAO is made mainly by the police, but also by the judicial staff. Offices are structures and organized differently, depending on the institution who is in charge of them and

on the population targeted. In most cases they are composed by psychologists, social workers and lawyers, but in some small offices administered by the Spanish Ministry of Justice offices are only attended by a judicial officer, with any academic background. Specialized training is not guaranteed to all staff members of the VAO. Recently many Spanish Universities have implemented a Degree in Criminology, which includes a course of Victimology, but until now, unfortunately, those new professionals are not usually selected by the Public administrations as technical staff of the victim support services.

VAO provide mostly information on legal rights, legal aid to victims of gender violence, compensation to victims of violent and sexual crimes, referring to public medical assistance. They also provide vulnerable victims with accompaniment to trial or other judicial appointments and information on shelters for women victims of gender violence or human trafficking. With regard to psychological assistance there are relevant shortcomings. VAO provide only a first assistance by a psychologist, where there is such a professional, but not long treatment, which must be paid by the victims out of the public sector.

With regard to the coordination of the VAO and the Prosecutor Office, there are Prosecutors mandated for victim's protection in the different territories, whom the Attorney General's Office has recommended to act as a point of contact between their Prosecutor's Office and the VAO. Among other tasks, they must inform the other members of the staff about the resources available to the Office in each territory (FGE 2017 Report).

According to the Survey, respondents say that victims receive different services but most of them believe that those services are not provided on a regular basis. According to their view, victims receive sometimes or often information and advice (sometimes 40%; often 33%), information about direct referral to existing specialist support services (sometimes 48%; often 29%), emotional and psychological support (sometimes 44%; often 37%), advice relating to practical and financial issues (sometimes 37%; often 26%), and advice relating to the risk and prevention of secondary an repeat victimization, intimidation and of retaliation (sometimes 37%; often 26%).

In-depth interviews confirm that the VAO offer general support to victims who come to them regarding the various services provided in the Directive. In general, information is provided on existing resources and referral to other institutions for social assistance, health, protection of minors or shelters for women victims. The cases in which the victims are accompanied to the trial or to judicial proceedings by members of the offices are valued in a particularly positive way. However, there are limitations regarding psychological assistance, which consists of a containment and a first assistance, without further monitoring, and legal assistance, which is limited to offering information about existing resources. It must also be borne in mind that in some territories in Spain the services provided to victims are even more restricted, consisting almost only of information and referral to other resources.

ARTICLE 10 - RIGHT TO BE HEARD

Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

The Spanish procedural system constitutes a singularity within the European Union, which has frequently been highlighted. Since the approval of the Criminal Procedure Act in 1881, the victim can be a party in criminal proceedings, without any kind of restriction. The fact of being a party allows the victim not only to make requests related to civil liability derived from the offense but also to act as a private accusation in equal rights with the Public Prosecutor, to the point that the Court can impose a more serious penalty on the accused than the one requested by the Prosecutor if the private accusation has so requested. Some Spanish jurists have indicated that for this reason Spanish law is the most favorable to the victim of all European legal systems, although this conclusion would only be acceptable, with some nuances, for those cases in which the victim could and wanted to show part in the process, through legal representation, with the costs that normally entails.

In relation to the provisions of Article 10 Directive, Spanish law, for the aforementioned reason, since many years recognizes the right of victims who are party to the criminal process to be heard and to provide evidence. The challenge that the legislator has had to face since the approval of the Directive has been to extend this right to victims who have not been part of the criminal process. Art. 11 of Law 4/2015 has regulated the right of victims to active participation in criminal proceedings. According to this precept, every victim has the right: a) to exercise criminal action and civil action in accordance with the provisions of the Law of Criminal Procedure; b) to appear before the authorities in charge of the investigation to provide them with the sources of evidence and information that they consider relevant for the clarification of the facts. This second right also extends to victims who are not party in the process. These rights can be exercised by the victims during the criminal proceedings and the Law does not allow for restrictions to this possibility.

On the other hand, the pending challenge regarding the victim's right to be heard is the way in which this is carried out. Given the formal rigidity and the conditions of the criminal proceedings, victims in general are dissatisfied because they have not been allowed to express freely and

cannot communicate the emotions experienced during and after the criminal event and in some cases even feel judged themselves.

Interviews with professionals have highlighted the differences between those victims who have a lawyer and those who do not, so that they have more difficulty expressing their needs or requests. This is consistent with some research findings (Tamarit et al. 2017). Victims who, by their initiative or by the support they receive, contact the Public Prosecutor can obtain more satisfaction for their interests in the criminal proceedings.

Regarding minors, professionals generally value the availability of the judicial system in a positive way to take into account their age and degree of maturity, which must be assessed by the judge, that can take into account the opinion of the technical staff. One negative aspect is that the system reacts less positively to minors who are close to the age of majority. Some victims between the ages of 14 and 18 are not properly protected when obtaining their statements, because the judges tend to believe that they are old enough to protect themselves. With regard to victims with mental or cognitive disabilities, the system is less prepared to assess their needs and overcome existing communication barriers to facilitate their participation in proceedings. Sometimes minor victims, particularly those under 14 years old, do not need to declare in the trial, if an anticipated statement has been performed and it has been recorded on video. When child victims have to declare in the courtroom, some special measures can be put into practice, such as video conference.

ARTICLE 11 - RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE

Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to review of a decision not to prosecute. Where the role of the victim will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. Member States also need to ensure that victims are notified of their right to receive, and that they receive sufficient information to decide whether to request a review.

As has been pointed out with respect to the previous article, the particularity of the Spanish system, in admitting the right of any victim to be party in the proceedings, has determined that the legislator has focused on the need to ensure that victims who are not party in criminal proceedings may also exercise a legal remedy against the decision not to prosecute.

Hence, art. 12-1 of Law 4/2015 provides that the dismissal resolutions will be communicated to the direct victims of the crime who had reported the facts, as well as to the rest of the direct victims whose identity and domicile were known. Communication to indirect victims is also envisaged in cases of death or disappearance of a person who has been directly caused by a crime. In addition, the right of the victims to appeal the resolution of dismissal is foreseen, without it being necessary for the victim to previously have been party in the proceedings (Article 12-2). It also provides for communication to the victim of various resolutions adopted in the execution, such as those involving conditional freedom or the concession of the prisoner's semi-liberty regime (Article 13).

ARTICLE 12 - RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Member States shall facilitate the referral of cases, as appropriate to restorative justice services.

Restorative justice has had a short development in Spain. **Victim-offender mediation** is the only restorative practice that has been put into practice, with great limitations. The most consolidated programs are those of mediation in juvenile justice and of adult criminal mediation managed by the Justice Department of the Autonomous Government of Catalonia, as well as mediation programs in the Basque Country. These programs have been evaluated through surveys made to the victims that participated (Tamarit & Luque, 2016; Varona 2014). There have also been and there are more discontinuous experiences in Valencia, Madrid, Andalusia or La Rioja.

One of the main drawbacks that prevents the extension and generalization of these experiences is that until now it lacks a legal recognition of the validity of these programs, which feeds mistrust towards them by judges and other legal actors. The lack of institutional support at the governmental level should also be taken into account. From the theoretical point of view, however, the fact that the effects of mediation or other restorative practices are not legally regulated cannot be considered as an argument to deny their validity.

Regarding the application of mediation, Organic Law 1/2004 on gender violence prohibited the practice of mediation in such cases. Subsequently, Law 4/2015 is the first norm that has referred to restorative justice. Article 15 transposes the content of Article 12 of the Directive, as follows:

1. Victims may access restorative justice services, as determined by the regulations, in order to obtain adequate redress for the material and emotional harm arising from the offence, where the following requirements are met:

a) The offender has acknowledged the relevant acts from which his or her liability arises;

*b) The victim has given his or her **consent**, after receiving exhaustive and impartial information about their content, the possible outcomes and the procedures for enforcing them;*

c) The offender has given his or her consent;

*d) The mediation process does not pose a risk to the **victim's safety** and there is no danger that it could cause new material or emotional harm to the victim; and*

e) It is not prohibited by law for the offence committed.

*2. The discussions which take place during the mediation process shall be **confidential** and may not be divulged without the consent of both parties. The mediators and other professionals who take part in the mediation process shall be subject to the obligation of professional secrecy in relation to the facts and statements they become aware of in performing their function.*

3. The victim and the offender may revoke their consent to participate in the mediation process at any time.

On the other hand, the reform of the Criminal Code carried out by the Organic Law 1/2015 has introduced for the first time a reference to mediation in relation to the suspension of the execution of the sentence. According to the new rule, the judge can impose as a condition for suspending the execution of the prison sentence that the agreement reached by the convicted and the victim in this extrajudicial process is fulfilled. Several experts have claimed the need for a reform of the procedural law to allow the Investigating Magistrate (or Public Prosecutor, in case that in the future this institution would have the power to investigate) to decide the early termination of the criminal proceedings in cases of victim-offender mediation or other restorative processes.

Some programs[6], on victim-offender mediation have been implemented in Spain. The number of victims that actually have the opportunity to participate in a mediation process is very low, except in the juvenile courts. Moreover, since there is not a national program, in some parts of Spain services of penal mediation are not available.

6 The program with a longer experience is managed by the Department of Justice of the Autonomous Government of Catalonia. It must be also highlighted the program in the Basque Country. Both programs, have been evaluated from the victims' perspective and the results of the evaluation are positive in terms of victim satisfaction and reduction of negative emotions caused by crime.

Most part of practitioners that answered to our questionnaire affirm that restorative justice services are available, but we must take into account that most of them operate in territories where those services are implemented, such as Catalonia, Valencia, Andalusia or Basque Country. Those who answered "no" or who didn't answer are probably residents in territories lacking such services. According to their opinion, there are not sufficient safeguards which protect the victims. Most of them believe that victims are not protected from secondary and repeat victimization. A smaller part of respondents say that victims are not protected from retaliation and intimidation.

In-depth interviews with professionals confirm the limitations of restorative justice services in Spain. In general, professionals know the victim-offender mediation programs (in those territories where they exist) and have a positive perception of them, although such assessment must be relativized given their little knowledge of how they are actually developing. The prevailing opinion among professionals is that mediation practices can be valid only with respect to certain types of crimes and little is known about the contribution they can make to the victims and the risks they may have for them. However, one of the main problems is that Spanish Law does not contain any provision about judge's decisions to refer cases to mediation and about the consequences of a restorative practice in the criminal proceedings.

ARTICLE 13 - RIGHT TO LEGAL AID

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings.

The intent of art. 13 is to avoid precisely the inequality generated by the Spanish model, given that victims with the capacity to hire legal counsel have a privileged position in comparison with those who cannot do so.

As indicated above, in the Spanish legal system the defense of the interests of the victims has been channeled through the very broad possibilities provided by the LECrim so that they can act as a party in the process through the private accusation. This has had the effect of less receptivity to proposals or recommendations aimed at improving the position of the victim in the process. The self-serving belief that victims have always been well treated by Spanish law has often prevented us from recognizing the limits inherent in the model of the particular accusation, which does not guarantee adequate satisfaction of the interests and rights of victims who have not opted for this way to take part in the process. The fundamental problem posed by this situation is that the economic barriers that may exist in practice for victims to be able to hire private services of legal assistance entails a violation of the equality and non-discrimination principle, recognized in art. 14 CE, in the Directive and in art.3 of Law 4/2015.

The European Directive adopts a respectful attitude towards the diversity of existing systems in the Member States and establishes a list of minimum rights for all victims, whether they are part of the process or not. However, by regulating the right to free justice, it establishes a link with the fact that the victim has a status as a party to the criminal process. The aim of art. 13 is to avoid the inequality generated by the Spanish model, given that victims with the capacity to hire legal counsel have a privileged position in comparison with those who cannot do it.

The Directive has posed an important challenge to the Spanish State and Law 4/2015 has not offered an adequate response, since it has not introduced any changes with regard to the particular model of accusation nor has it extended legal aid to all victims who act themselves as a party in the process, which would certainly be a very ambitious decision for the public budget. The art. 16 of the Law shun the issue by limiting itself to foreseeing the institutions where applications for recognition of free legal assistance may be submitted, among which mention

is made of VAO: Victims may submit their applications for recognition of the right to free legal aid to the official or authority that provides them with the information referred to in letter c) of article 5.1, which will transfer it, along with the documentation provided, to the Bar Association. The application may also be submitted to the Victims Assistance Offices, which will send it to the appropriate Bar Association. The right of victims to legal aid is recognized for those victims who do not have sufficient economic resources to litigate, by Law 1/1996, of January 10. The quantification of personal incomes and of compensation received from the State by lawyers who provide legal assistance is specified by means of governmental regulations. In addition, the aforementioned Law provides (Article 2-g)), that "regardless of the existence of remedies to litigate," the aforementioned right is recognized as "victims of gender violence, terrorism and trafficking in human beings" in those processes that have links, derive or are a consequence of their status as victims, as well as minors and people with intellectual disabilities or mental illness when they are victims of situations of abuse or abuse. This right is also available to the heirs in case of death of the victim, provided they were not participants in the criminal act. This prevision is also included, with respect to gender-based violence, in Organic Law 1/2004, of December 28, and in relation to victims of terrorism, in Law 29/2011, of September 22. Some institutions, such as town councils, have established programs that guarantee free legal assistance to certain groups of victims, beyond those provided for in the Law, such as victims of hate crimes.

Interviews with professionals have revealed that the victim assistance offices inform them of this right and the procedure to be followed, for which they refer to the Bar Association, which is the competent entity to process the requests. The bureaucratic character of the procedure can entail a barrier for some victims, who can give up asking for legal aid if they are not able to deal with all formal requirements of the process. Some entities that defend minors have criticized the fact that the institutions do not provide minors with the same information and support regarding legal aid, in comparison to assistance and support provided to victims of gender violence, after the presentation of a complaint, which makes it difficult for their legal representatives to benefit of immediate legal assistance immediately after the complaint, despite the fact that the Law provides the same right for both classes of victims.

ARTICLE 14 - RIGHT TO REIMBURSEMENT OF EXPENSES

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.

Art. 14 of Law 4/2015 provides that the victim who has participated in the criminal proceedings has the right to be reimbursed of expenses necessary to exercise his/her rights.

The interviews have not allowed us to detect that the victims have, in general terms, difficulties to receive reimbursement of expenses incurred to participate in criminal proceedings. The reimbursement does not cover the fees of a lawyer, because if the victim is granted the right to free legal aid he/she does not have to pay his/her lawyer. Those who have to pay for a lawyer, without having right to legal aid, are not reimbursed for this expenses. The reimbursement can cover travel expenses to go to trial. It does not cover the expenses incurred for psychological assistance, except in the cases of victims of terrorism, gender violence or victims of violent and sexual crimes (Law 35/1995), in these latter cases very limited.

ARTICLE 15 - RIGHT TO THE RETURN OF PROPERTY

Member States shall ensure that recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings.

Law 4/2015 has transposed the content of this rule in its art. 18. Victims have the right to obtain, in accordance with the provisions of the procedural legislation, the return without delay of the property that is seized during the criminal proceedings.

The same Art. 18 adds that the return may be denied by the judicial authority when the preservation of the goods is essential for the proper development of the criminal proceedings and the imposition to the owner of an obligation to assure that the effects are available to the Judge o Court is not sufficient guarantee. The aforementioned regulation also adds that the reimbursement of the effects may be refused, in accordance with the provisions of the legislation that are applicable, when its conservation is necessary in a technical investigation procedure of an accident.

No information is available regarding the average time and that the return of the assets to the victim is carried out in a sensitive manner.

ARTICLE 16 - RIGHT TO DECISION ON COMPENSATION FROM THE OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS

Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

Spanish law has foreseen since the nineteenth century the possibility of exercising civil action in criminal proceedings. Civil liability includes the restitution and compensation for damages caused by the offender and the accomplices of the crime, in accordance with the provisions of articles 109 and following of the Penal Code. People affected by the crime can choose to exercise civil action in the criminal proceedings itself or do so in a civil proceeding.

The usual practice is that the civil action is raised in the criminal proceedings, which allows a faster decision and with less costs for the injured party. A particularity of Spanish law is that the Public Prosecutor's Office itself has the competence to request civil liability in favor of the injured parties. This may have the advantage for victims of not having to worry about hiring a lawyer or taking other hassles to go to court. However, to get the agreement of the accused and the avoidance of the oral trial, the Prosecutor in many cases does not consult with the victim before asking for compensation or, in a negotiation process, can lower the compensation request without first communicating it to the victim. This poses a disadvantage to the victim. He/she has no control or decision-making capacity on this matter.

In practice, the main problem of compensation is its effectiveness. In many cases the victims do not receive the compensation that the court has imposed in the sentence, because of the insolvency of the convicted person. The justice system has little capacity to force payment. It can only do so if the executable assets of the condemned person are recorded. Failure to comply with the civil compensation sentenced does not have sanctioning consequences, but it may be an obstacle to granting the conditional suspension of the execution of custodial sentences (since it is a requirement that the subject has satisfied civil liability, except for the inability to do so) and for access to the semi-liberty regime and parole.

In accordance with the provisions of the Council of Europe Convention of 1983, Law 35/1995, provides for a system of financial aid provided by the State for victims of violent and sexual crimes. The system is subsidiary with respect to civil liability. To obtain assistance, the victim must prove that he/she has not been able to obtain compensation from the convicted person. This proof is presented through the judgement declaring the insolvency of the accused. The compensation is relatively easy to access, although it depends on a decision of a commission located at the Spanish Ministry of Economy, who is competent for the administrative process.

The second problem is the difficulty for the victim to obtain effective compensation in a reasonable amount of time. The difficulties derive from the delay of the criminal proceedings and the execution process. According to the last report issued by the General Council of the Judicial Branch, referred to 2017, the average duration of a criminal trial is approximately one year: average of 2.3 months for the investigation phase and 9.6 months for the prosecution phase. The possible appeal suited to the collegiate court (Provincial Court) lasts an estimated average time of 2 months. This would be, then, the average time it would take to issue a final criminal sentence that also includes civil conviction[7].

7 This data are available at the Report from the General Council of the Judicial Branch: file:///C:/Users/c4087283/AppData/Local/Temp/Justicia%20Dato%20a%20Dato%202017%20(v3)-1.pdf

ARTICLE 17 - RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE

Member States shall ensure that authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed. The authorities of the Member State where the criminal offence was committed shall be in a position: a) to take a statement immediately after the complaint is made to the competent authority; b) to have recourse to video conferencing and telephone conference calls for the purpose of hearing victims who are resident abroad.

Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.

Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.

Article 17 of Law 4/2015 transposes the content of art. 17 of the Directive, stating that "victims residing in Spain may submit to the Spanish authorities complaints corresponding to criminal acts that have been committed in the territory of other countries of the European Union. In the event that the Spanish authorities decide not to proceed with the investigation due to lack of jurisdiction, they will immediately submit the complaint filed to the competent authorities of

the State in whose territory the facts were committed and will notify the complainant by the procedure that designated in accordance with the provisions of letter m) of article 5.1 of this Law".

The use of videoconferences in criminal proceedings in Spain is legally accepted and regulated by Law 16/1994, of November 8. With regard to international cooperation in criminal matters, account must be taken of the provisions of Convention 94296/2000 of the Council of Europe, which authorizes the declaration by videoconference in cases where it is not appropriate or possible for the person who must be heard appear personally in the territory of the requesting state (Article 10.1).

According to the opinion of professionals who answered the survey, the rights of victims resident in other Member States are not clearly guaranteed in Spain. Respondents disagree regarding the disposition or capacity of competent authorities to take a statement immediately after a victim makes a complaint. 46% of respondents affirm that competent authorities have sufficient or rather sufficient available means, that 43% believe that available means are insufficient or rather insufficient. Most part of respondents (65%) do not appreciate discrimination against victims who are residents in another Member State, but 35% affirm that they are treated differently from Spaniards.

Moreover, in-depth interviews with professionals confirm the existence of difficulties regarding the effectiveness of the rights of art. 17 of the Directive. The problems are not entirely related to the lack of technological means. The main problem is to ensure the proper functioning of these tools. Videoconferences are considered a good resource to facilitate that victims residing in another State can exercise their rights, but in practice there are usually technical connection problems and communication is not carried out in an adequate manner. Moreover, we have to bear in mind the problems related to assistance to foreigners, regarding translation and interpretation, mentioned under Article 7.

ARTICLE 18 - RIGHT TO PROTECTION

Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

Until the adoption of Law 4/2015, the right to protection of victims of crime was not explicitly recognized in Spanish law. Protective measures for victims of certain offences in the context of criminal proceedings and some specialties in the declaration of minors were provided for in the Criminal Procedure Law. In addition, two groups of victims had specific protective status: gender-based violence and terrorism victims. Gender-based violence victims have a specific protective statute articulated through Organic Law 1/2004, a comprehensive law that includes measures not only to protect victims, but also to prevent and punish this type of conduct. In the case of terrorism victims, such a specific protection status is provided for in the Law 29/2011, of 22 December, on the Recognition and Comprehensive Protection of Victims of Terrorism. In addition to these regimes, Law 19/1994, of 23 December 1994, on the protection of witnesses and experts in criminal cases, although not exclusively designed for victims, provided for measures to protect certain witnesses, which made it possible to preserve their anonymity and avoid their visual identification or access to personal means that would prevent them from being located during the investigation phase, even though any party may request that the witness's identity be known once the investigation phase was over.

Subsequently, article 19 of Law 4/2015 recognizes victims' right to protection, stating that the authorities and officials responsible for the investigation, prosecution and trial of crimes shall take the necessary measures to guarantee the life of the victim and his/her family, their physical and psychological integrity, freedom, security, sexual freedom and indemnity, as well as to protect their privacy and dignity, especially in the case of witnesses, and to avoid the risk of secondary or repeated victimization. It adds that in the case of minors it is the Office of the Public Prosecutor that will be particularly responsible for ensuring compliance with this right to protection. The provision indicates the dangers that must be averted with such recognition: those arising from

possible attacks on life, physical and mental integrity, freedom, security and sexual indemnity, those that could lead to secondary victimization and those that could involve an attack on the victim's privacy and dignity.

The generic recognition of this right to protection and the protective measures for victims included in Law 4/2015 are in addition to those already provided for in the criminal procedure before the adoption of this Law. In Spanish law, there are no victim protection measures of a civil nature that can be applied in the context of civil judicial proceedings, except in the case of minors (those contemplated in article 158 of the Spanish Civil Code[8]). The only procedural measures for the protection of the victims envisaged can exclusively be implemented in the context of criminal proceedings and were introduced in the Criminal Procedure Code in 1999. The following measures are foreseen:

- For **all victims of crimes against fundamental rights and against property and the socio-economic order**, article 544 bis LECrim foresees a restraining order, which may be imposed even without hearing the person under investigation if it is strictly necessary for the purpose of protecting the victim. It may be adopted as a first step or as a precautionary measure, as well as a criminal sanction, as one of the possible contents of probation or as a rule of conduct in the case of suspension of the execution of a custodial sentence. It allows for a ban on residence in certain places or a ban on going to certain places or a ban on approaching or communicating with the required graduation to the victims or some of their relatives, although in the latter case the measure cannot be taken on a precautionary basis. In the case of victims who are minors or who have their legal capacity judiciary modified, art. 544 quinquies LECrim provides from 2015 onwards for the possibility of applying interdicted measures to the exercise of activities related to the care of these persons[9]

- With regard to **victims of domestic violence**, article 544 ter LECrim provides for an order of protection in cases where it is an objective risk situation for the victim requiring the adoption of certain measures. It is a judicial decision similar to the Anglo-Saxon protection order, which can be taken ex officio or at the request of a party. It may contain protective measures of a criminal nature - those already mentioned - or protective measures of a civil and social nature in relation to the victim. Civil measures include the attribution of the use and enjoyment of family housing, custody and visits with children or the provision of maintenance.

8 Including, inter alia, measures to prevent the abduction of children by their parents, measures prohibiting the approximation to the child and measures prohibiting communication with the child.

9 Further reference to these will be made below, when reporting on the implementation of art. 24 of Directive 2012/29/EU).

- Finally, the **victims of gender violence**, in addition to being able to be protected through the adoption of the measures indicated so far, benefit from those set out in articles 63 to 67 LO 1/2004: protection of the privacy of victims in proceedings and procedures related to gender violence, measures for leaving home, removal or suspension of communications, suspension of parental authority or custody of minors, suspension of the regime of visits with descendants and suspension of the right to possession, carrying and use of arms.

With regard to the effective recognition of the right to protection, the findings of the survey with professionals reveal that most of them consider that victims are treated with respect by professionals in the criminal justice system. In general, they think that victims are treated with respect when questioned, more clearly by the investigating authorities (always, almost 19%, often: 53%) than by the prosecuting authorities (always: 25%, often: 39%), and the same when testifying (always: 21%, often: 57%). However, respondents are far more critical in answering questions about whether victims and their families are adequately protected. The majority response to the question of whether they receive adequate protection from both intimidation and reprisals and from psychological or emotional harm has been that sometimes, in 46% and 57% of cases respectively, the answer is more negative in the case of avoidance of emotional harm, with 39% of respondents indicating that protection measures are rarely taken to avoid them. Interviews have revealed that certain types of victims are especially protected, particularly those who are victims of gender-based violence, when other groups of victims who may have specific protection needs - minors, the elderly or people with mental disabilities - have fewer protection mechanisms. In addition, some of the interviews criticize the fact that victims - especially minors - do not receive sufficient protection in civil proceedings, and that the measures of protection that can be taken are limited to criminal proceedings.

ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER

(1) Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.
(2) Member States shall ensure that new court premises have separate waiting areas for victims.

The recognition of this right in the context of criminal procedure proceedings has also been legally reflected. Article 20 of Law 4/2015 (right to avoid contact between victim and offender) recognizes this right in judicial premises. It follows from the provision that the right to avoid visual confrontation must be guaranteed regardless of the stage of the criminal proceedings - instruction, intermediate or oral trial - and regardless of the reason why the victim goes to court - to give effect to the contents of his/her right to information, to participate in the criminal proceedings or to give evidence, among others. Notwithstanding the reference in this provision to the stipulations of the LECrim, there is no provision in this law stating that judicial premises must be disposed of in such a way as to avoid direct contact between victims and offenders. Hence, this provision can be considered primarily programmatic. Nor is there any Spanish domestic precept transposing the Directive's requirement that the new courts should have separate waiting areas for victims.

As a result, the normative translation of this right into Spanish law is deficient. In addition, from the point of view of its practical application, it can be indicated that, beyond the precepts of the LECrim that allow victims-witnesses to testify outside the courtroom (by videoconference - art. 325 and 731 bis LECrim - and in anticipating the practice of witness evidence - art. 777.2 and 797.2 LECrim) or within it by avoiding visual confrontation with the accused (through the use of a screen), there are no other mechanisms to avoid victim-offender contact. So much so that according to the report drawn up in 2016 by a group of judges at the initiative of the *Centre d'Estudis Jurídics i Formació Especialitzada* from the Catalan Autonomous Government indicating the criteria to be taken into consideration to implement Law 4/2015, it is stated that the majority of judicial offices do not have differentiated premises in which victims can wait, except for large, recently built premises such as *"la Ciutat de la Justícia"* in Barcelona. However, even in such cases, they indicate that the problem is the management of such rooms, since victims and witnesses are summoned to the courtroom where the accused is present at the same time, so that such contact is not prevented in the common waiting areas. In order to avoid such meetings, the report proposes that, as long as the accused are summoned directly into the courtroom, the victims be summoned to the courthouse and taken from there to the witness rooms.

The absence of these infrastructures in Spain is confirmed by the answers of the professionals to the questionnaire. It reflects how most respondents report that there are no separate entrances from the outside to police or court buildings for victims and offenders (50 per cent say no, compared to 25 per cent who say yes in courthouses and 7 per cent who say yes for both police and court buildings), what has also emerged in some interviews, adding that there are also no separate entries for each within each of these areas (42% say no, compared to 3% who say yes in police units, 14% in judicial offices and 17% in police and judicial offices). In addition, it is confirmed that the toilets reserved for one and the other are not separated (46% said no, compared to 14% said yes in court buildings and 7% said yes in court buildings and police stations). However, although the police and judicial buildings are not designed to avoid a visual confrontation between victim-offenders, it is indicated that there are separate waiting areas for victims and offenders, more so in the judicial offices (where 32% of those surveyed indicate this) than in those next to the police stations (where 28% of those surveyed state it), even though 21% indicate that they do not exist. In addition, it is also confirmed that most of the victims and offenders are summoned to these offices at different times (32% of the interviewees' state that they are held in police and judicial offices; only 10% of them in the police force and only 25% in the courts). In this regard, even in one of the interviews, it has been shown that the waiting room for victims that did exist in a judicial building has recently been used to locate people who carry out administrative tasks, so that this space has ceased to be available to the victims.

ARTICLE 20 - RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS

Member States shall ensure that during criminal investigations: a) interviews of victims are conducted without unjustified delay; b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; c) victims may be accompanied by their legal representative and a person of their choice; d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

In order to transpose Article 20 of the Directive, Article 21 of Law 4/2015 (protection of the victim during the criminal investigation) is aimed at avoiding the risks of secondary victimization and of affecting the victim's dignity that could arise from his/her passage through the criminal justice system. It provides for measures to prevent institutional victimization that could occur during the investigation phase, during acts of investigation conducted under the direction of the Public Prosecutor's Office or during any initial investigations that may be conducted by the police.

The measures included in article 21 of Law 4/2015 are not too different from those incorporated in the Directive, although Spanish legislation makes their adoption conditional on their not undermining the efficiency of the process -which in theory would allow for a more restricted application of these measures than that provided for in the Directive. The measures referred to in that provision are:

a) Victims must be **heard**, where necessary, **without undue delay**. There is no guideline on the maximum time that should elapse between the judicial opening of the case and the victim's first statement, but there is a request to the judges to be particularly diligent in terms of the time required to call the victims to the case. In practice, as the results of the survey reveal, this measure is only relatively met. However, its enforcement is more evident for victims of violent crime (where 35% of respondents indicate that it is often respected that the statement is taken without undue delay, even though 32% say only sometimes), than non-violent (where 25% say that it is so and 42% that it is done only sometimes and 17% that it happens rarely). However, according to 10 % of respondents, even victims of violent crime are kept waiting to testify. The main causes identified as causing delays were that priority was given to other, more serious cases (15 respondents), delays in collaboration between authorities (12 respondents) or overwork by the police (11 respondents), with procedural requirements being the final result (8 respondents). Among the other possible causes, the respondents indicated that the courts were overloaded with work.

b) Victims should be **inquired as few times as possible** and only when strictly necessary for the purpose of the criminal investigation. Although there is no maximum number of times that the victim can testify, it is recognized in the courts that at least three statements by the victim are essential: the police statement, the statement made in front of the investigating judge or the judge responsible for violence against women, and the statement made before the criminal judge or the provincial court. It is clear that this measure is being observed, judging by the results of the survey of professionals, which indicate that according to 14% of the respondents the measure is always complied with and according to 53% of them it is often observed. In 3 of the 5 interviews conducted, it is also indicated in a critical tone by the interviewee that the minimum number of statements is 3, and even 4 if the victim testifies at the oral hearing.

c) Victims must be able to be **accompanied by a person of their choice**, in addition to their procedural representative and their **legal representative**, during the course of the judicial proceedings in which they are to be involved, unless the competent official or authority decides otherwise in order to ensure that the proceedings are properly conducted. This measure is admissible even if the investigative measures have been declared secret, unless a clear conflict of interests or objective risks to the conduct of the proceedings is revealed; this refusal would require a reasoned decision. In order to incorporate it into criminal proceedings, article 433 LECrim, which regulates the giving of testimony in investigations, was amended to include a second paragraph indicating that victims who are witnesses may be accompanied by their legal representatives or by a person of their choice during the issuing of the statement. This possibility is related to the provision of the victim accompaniment program by the Victim Assistance Offices (VAO) conceived as a function to be accomplished by these entities according to article 28 of Law 4/2015 with respect to accompaniment in court and developed in article 19 of Royal Decree 1109/2015, not only in relation to this, but also with regard to accompaniment throughout the entire process and in any criminal instances.

The aforementioned program of accompaniment to trial in Catalonia consists of 5 phases: in the first phase there is no direct intervention with the victim, the VAO professional analyses the victim's own request or the request of the judicial body or the Public Prosecutor's Office. In the second, a face-to-face and/or telephone interview is conducted; in the third, interviews are conducted in person, between one and three, in advance of the scheduled date of the trial, when possible; otherwise, they are conducted about two hours before the trial. It is also

planned to visit the judicial premises so that the victim can situate him/herself and visualize them. The interviews provide information on the functions of each participant and a simplified explanation of how the process works. The fourth phase consists of accompanying the victim to the hearing itself. The fifth phase consists of a feedback interview and the closure of the program.

Despite these provisions, the survey of professionals has revealed that this is the least observed measure of those indicated in practice, since although 21% of those surveyed indicate that such accompaniment occurs always and 28% that sometimes, precisely 28% of those surveyed indicate that this happens only rarely. Interviews have shown that this measure is generally accepted in practice when the victims are minors, especially when the accompanying person is a professional, although there is more reluctance when the accompanying person is a relative of the victim (father or mother) because it is considered that it may influence the testimony of the victim.

d) Regarding medical examinations of victims, these should only take place when they are essential for the purposes of criminal proceedings and should be kept to a minimum. This is true to a fair degree based on the results of the professional survey, of which 35% say it is always true and 39% say it is often true. Medical examinations are not always carried out with due respect for the victim's privacy[10].

10 As in one of the interviews a lawyer told us that an 8-year-old girl who had been sexually abused by her father had been examined by forensic doctors in the presence of 5 medical students, to whom she had to present what had happened to her.

ARTICLE 21 - RIGHT TO PROTECTION OF PRIVACY

Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy of the victim. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

All the victims of the crime have the right to protection of their privacy recognized in accordance with article 22 of Law 4/2015, in similar terms to the one that was already recognized in Law 35/95. The provision foresees that the Judges, Courts, Prosecutors and other authorities and officials responsible for criminal investigations, as well as all those involved in the proceedings, shall take the necessary measures to protect the right to privacy of all victims and their families and, in particular, to prevent the dissemination of any information that may facilitate the identification of minor victims or victims with disabilities in need of special protection.

As a result of the approval of Law 4/2015, a series of modifications have been made to the LECrim to overcome the deficit existing in the previous legislation on the issue, which did not go beyond a theoretical declaration. The following measures are introduced in this act:

- **Measures to protect the privacy of victims during investigation**: the general principle that pre-trial proceedings are often secret is not changed, but a further reason is added to the need for secrecy when this is necessary to protect the victim's privacy or due respect for the victim or his/her family.

- **Measures to protect the victim's privacy during the trial**: the protection of the victim's privacy is included as an exception to the publicity of the trial sessions. The cases that allow closed sessions to be held now include (art. 681 LECrim): reasons of public order, security and the adequate protection of the fundamental rights of the participants, with particular reference to the right to privacy of the victim and to the respect due to him/her and his/her family, as well as the need for the agreement to avoid relevant harm to the victims. The decision to hold trial sessions in camera may refer to all or some of the sessions or acts of the trial and to the general public, but not to the Public Prosecutor's Office, persons injured by the crime, defendants, private prosecutors, civil plaintiffs and defenders, as well as, if

necessary, to allow access to persons with special interest in the case. There are three types of measures that can be adopted: (1) to agree to hold some or all of the trial sessions in camera; (2) to prohibit the disclosure or publication of information relating to the identity of the victim, which is mandatory for specially protected victims; and (3) to prohibit the obtaining, disclosure or publication of images of the victim or his/her family members.

- **Provisions specifically referring to the audiovisual media**: Article 34 of Law 4/2015 includes a reference that can be considered as a suggestion to self-regulation by the media[11], which has not yet taken place.

In addition to incurring civil liability based on the provisions of Organic Law 1/82, on civil protection of the right to honor, personal and family privacy and self-image, failure to comply with these duties of diligence on the part of judicial officials or media professionals may lead to criminal liability. In this second case, not only for the commission of crimes against the public administration (disobedience of art. 556 of Spanish Criminal Code, for example), but also for crimes against the privacy of the victims (crimes of discovery and disclosure of secrets of art. 197 et seq. of the Spanish Criminal Code or of disclosure of secrets by an official of art. 442 of the Spanish Criminal Code). But despite the leaks to the press of data on the identity of victims in processes with restricted publicity - the recent case of *La Manada* is an example - there is no evidence that these conducts are intensely pursued by the criminal justice system.

Although there has been regulatory progress in the protection of victims' right to privacy, the survey with professionals reveals their partially negative view on the protection of the victims' right to privacy, which is clearly confirmed by all five of the interviews conducted. The answer to the general question on whether the authorities take adequate measures for the protection of the victim's privacy in criminal proceedings is not enthusiastic (42% indicate that often, although 32% indicate that sometimes). It is clear that this protection is highly targeted at victims of certain types of crime (64% of respondents indicate that this is the case), that it is considered that the majority of victims are victims of gender violence (11 respondents indicate this), but also of sexual crimes (7 respondents), violent and serious crimes in general (6 respondents) and minors (3 respondents). Furthermore, the effectiveness of the measures adopted is clearly questioned (32% of those interviewed considered them rather inefficient and 28% considered them neither efficient nor inefficient). This inefficiency is evident when it comes to taking measures to avoid the public dissemination of information that could lead to the identification of the victim, which 42% of those interviewed consider that only sometimes are adopted. Interviews show that legal operators feel that they do not control the fate of the victims' information and that the image of the victims and their identity often transcend the media. This deficient protection of victims' right to privacy by legal operators is complemented by the lack of encouragement of the media to self-regulate, which 42% of those interviewed said does not occur.

11 When it indicates that authorities should encourage self-regulation of publicly and privately owned media.

ARTICLE 22 - INDIVIDUAL ASSESSMENT OF VICTIMS TO IDENTIFY SPECIFIC PROTECTION NEEDS

Member States shall ensure that victims receive a timely and individual assessment to identify specific protection needs due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

The need for individual assessment of victims to determine their special needs for protection is normatively addressed. Article 23 of Law 4/2015 states that the protection measures applicable to victims regulated in the following provisions of the act aimed at preventing the victim from incurring significant harm shall be determined after an assessment of their particular circumstances. The Spanish legislation, as it follows from the Directive, renounces to assume a static concept of vulnerable victim, depending on the type of crime suffered or intrinsic characteristics, assuming, at least theoretically, a dynamic concept of victims with special protection needs derived from the individual assessment. All victims should therefore be subject to this individual assessment process.

As foreseen in the Directive, article 23 of Law 4/2015 indicates the elements on the basis of which this assessment must be carried out, included in similar terms in article 30 of Royal Decree 1109/2015, which implements this law and regulates the issuing of the report from the Victim Assistance Offices. These elements are:

a) The personal characteristics of the victim and, in particular:

   1. If the person concerned has any disability or if there is a dependency relationship between the victim and the alleged offender;

   2. If the victims are minors or in need of special protection or with special vulnerability factors (e.g. the elderly or socially excluded).

b) The nature of the offence and the seriousness of the damage caused to the victim, as well as the risk of recidivism of the offence (the latter criterion is not covered by the Directive). To this end, the protection needs of the victims of certain offences listed in the article in similar terms to those of the Directive[12], to which it adds the offences of enforced disappearance, will be particularly valued.

c) The circumstances of the offence, particularly in the case of violent offences.

The most important difference between the system established by the Directive and Spanish domestic legislation is that the latter does not go so far as to presume that minors are victims in need of special protection - which seems to be the case under Article 22(4) of the Directive. On the contrary, in Spanish domestic law, minors must also undergo individual assessment to determine whether or not they are victims with special protection needs.

As for the procedure for carrying out the individual assessment, which is not developed in detail in the Directive, it is also not detailed in the Spanish national legislation, which has already been the subject of criticism. According to Article 24 of Law 4/2015, the assessment of victims' needs and the determination of protection measures can be carried out at two different times during the proceedings and corresponds to different bodies:

1. During the **investigation phase**, when it is the responsibility of the investigating judge or the judge responsible for violence against women, although it is acknowledged that provisional decisions may be made by representatives of the Public Prosecutor's Office - in their investigation proceedings or in proceedings subject to the Organic Law on Criminal Responsibility of Minors - or by police officers acting in the initial phase of investigations.

   When the individual assessment is made in the initial phase of investigations, it can be done not only by police officers, but mainly by the VAO's, to which this competence is assigned by article 28.2 of Law 4/2015. When one of these two groups makes such an assessment, the procedure for issuing the report is regulated in Royal Decree 1109/2015 (arts. 30 et seq.). This is the only regulation that has so far developed the issuance of the report beyond the provisions of Law 4/2015[13]. After this, the VAO issues an individualized evaluation report, with the prior informed consent of the victim, which will be sent to the judge or prosecutor responsible for taking the measures and proposing their adoption.

2. During the **trial phase**, the individual assessment is made by the judge or court competent to hear the case.

The specific process of issuing the report is referred to regulatory ruling, an aspect that has only been developed in the cases of reports issued by VAOs, which indicates that these are normally the ones that will issue the proposal, although other bodies are competent to issue the evaluation. Apart from the provisions on the procedure laid down in Royal Decree 1109/2015, Law 4/2015 merely indicates some general procedural principles that are not very well developed:

- The resolution in which the measures are adopted must be reasoned and must reflect the circumstances that have been assessed for their adoption.

- The assessment of the victim's need for protection shall always include those expressed by the victim for that purpose, as well as the will he/she expressed. The victim may waive the agreed protective measures.

- Also in the case of child victims or persons with disabilities in need of special protection, the assessment should take into account their views and interests.

- The relevant change in the circumstances on which the individual assessment of the victim's protection needs is based determines an update of the victim's protection needs and may lead to the modification of the agreed protection measures.

- The confidentiality of the information provided by the victim is guaranteed, since victim assistance services can only provide third parties with information they have received from the victim with the victim's prior informed consent. Outside these cases, the information may be transferred only to the authority adopting the protection measure.

Despite the fact that the transposition of the Directive has been complied with in this respect, the results of survey carried out with professionals reveal that the individual assessment of

12 Among them
a) crimes of terrorism,
b) crimes committed through a criminal organisation,
c) Offences committed against the spouse or against persons who are or have been linked to the perpetrator by an analogous relationship of affectivity, even without cohabitation, or against descendants, ascendants or siblings by nature, doption or affinity, either their own or that of the spouse or cohabitant,
d) Crimes against sexual freedom or sexual indemnity
e) Human trafficking
f) Crimes of enforced disappearance
g) Crimes committed on racist, anti-Semitic or other grounds relating to ideology, religion or belief, family status, membership of an ethnic group, race or nation, national origin, gender, sexual orientation or identity, disease or disability.

13 According to this, at the time of the complaint, the police make an initial individual assessment of the victim, indicating that he/she may contact the VAO and forwarding the information collected to it. It is the VAO that carries out the individual assessment on the basis of the victim's manifestations and willingness - even when they are minors or persons with disabilities in need of special protection - to respect their physical, mental and moral integrity, taking particular account of the criteria set out above.

the protection needs of victims generally does not take place in practice and that the aspects surrounding its issue are quite unknown to the professionals. To the direct question of whether individual assessments of protection needs are adopted, most respondents indicated that rarely (35%) or at most sometimes (35%); only 4 respondents recognized that this was done often. However, it is mostly stated that the wishes of the victims are taken into consideration when carrying out these assessments of protection needs (32% of those interviewed said that often and 42% that sometimes). Only one of the interviewees indicated that the individual assessment was universal, stating that the remaining assessments were adopted for certain types of victims: the most vulnerable.

Something more common is the adoption of risk and threat assessments on victims, which 46% of those surveyed said that were sometimes issued and 17% said they were often, although 21% admitted that they were rarely; in fact, this is confirmed in 2 of the interviews, which refer to the application of the *"Riscanvi"* instrument in Catalonia to predict the likelihood of the aggressor adopting violent behavior against the victim. The evolution of these evaluations once they have been issued is also not widely known by professionals, as 50% of respondents did not answer the question whether these evaluations could be adapted at a later stage. Of the ones who answered this question, the number of affirmative and negative responses differs little (8 affirmative versus 6 negative). Among the reasons that may lead to the modification, in the opinion of those who responded it affirmatively, are the subsequent conduct of the investigated person or new facts subsequently known, the seriousness of the damage and the crime committed or the dangerousness manifested by the aggressor. Interviews also confirm that the modification of the measures is an aspect little known to the professionals. Nor is the existence of measures generally applicable to victims to avoid unnecessary interactions with the perpetrator or to facilitate interactions with the authorities generally known to the professionals, since although 7 of them refer to the existence of practical protocols, 8 of the respondents either do not answer the question or indicate that there are other measures without specifying which ones.

ARTICLE 23 - RIGHT TO PROTECTION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS

(1) Member States shall ensure that victims with specific protection needs may benefit from the measures. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

(2) During criminal investigations, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment, may benefit from the following measures: a) interviews with the victim being carried out in premises designed or adapted for that purpose; b) interviews with the victim being carried out by or through professionals trained for that purpose; c) all interviews with the victim being conducted by the same persons; d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships being conducted by a person of the same sex as the victim, if the victim so wishes.

(3) During court proceedings, victims with special protection needs shall also have the following measures available: a) measures to avoid visual contact between victims and offenders; b) measures to ensure that the victim may be heard in the courtroom without being present; c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; d) measures allowing a hearing to take place without the presence of the public.

The outcome of the individual assessment determines the level of protection measures that can be taken with victims. Victims with no special protection may be attributed with protection measures mentioned under section of Article s 18 and 19. Victims with special protection needs may be attributed with the same measures and extra special protection measures.

The measures that can be agreed upon in the case of victims where the individual assessment concludes that they have special protection needs are established in very faithful terms with the provisions of the Directive in article 25 of Law 4/2015. The measures provided for in the provision must be taking into account the will and wishes of the victims, even if they are minors or disabled persons, so that the victim may renounce their adoption. The measures need not necessarily be taken as a whole. Only some of them may be applied, depending on the specific needs of each victim.

With regard to the **investigation phase** (which corresponds to the pre-trial investigation phase and could also be understood to include the investigative phase of the Public Prosecutor's Office and even, more broadly, the police investigative phase) these measures can be taken:

- Victims have to testify in specially designed or adapted facilities, which the majority of judicial offices do not have.

- They have to testify before professionals who have received special training to reduce or limit harm to the victim, or with his/her help. This is related to the above-mentioned victim accompaniment program, but beyond the testimony of minors, the LECrim does not provide for any special rules in the provision of testimony by victims.

- All statements made by the same victim should be made in front of the same professional, except where this could materially prejudice the conduct of the proceedings or where a statement should be taken directly by a judge or a prosecutor. In practice, the declaration in police stations and in the investigating court is usually received by different professionals.

- The victim's statement, in the case of victims of crimes related to family violence, sexual freedom and sexual indemnity and trafficking in human beings for the purpose of sexual exploitation, should be made to a professional of the same sex as the victim when the victim so requests, unless this could significantly prejudice the course of the proceedings or a statement should be made directly to a Judge or Prosecutor.

The following measures may be taken at the **trial stage**:

- Measures to prevent visual contact between the victim and the suspected perpetrator, including for the purpose of taking evidence, which may include the use of communication technologies[14].

- Measures to ensure that the victim can be heard without being present in the courtroom, using appropriate communication technologies. It refers to the possibility for the victim to testify outside the courtroom, in an appropriate space, and for his/her testimony to be transmitted by videoconference, which may be agreed for the practice of adult witness testimony, as recognized in the new version of article 707 LECrim. However, the amendment of this provision to avoid visual confrontation between the offender and the victim when the victim is an adult has also been identified as a clear step backwards in the case of statements made by minors, since before the 2015 reform in the case of minors, the avoidance of visual confrontation was mandatory, whereas now, also in the case of witnesses-victims who are minors, this possibility must also be authorized by the judge. It is surprising that this measure can only be taken at the oral trial stage and cannot be adopted in the investigation phase, as is the case with other measures included in the same provision. In addition, the use of videoconferencing -avoidance of visual confrontation- is the general measure that is contemplated for adult victims in need of special protection, but not the anticipation of the practice of witness evidence in preliminary investigations, as is being done in Spain with victims of trafficking in human beings, even if they are of legal age, so that the automatism in the anticipation of evidence in such cases must be reviewed.

- Measures to prevent questions relating to the victim's private life with no relevance to the criminal act under prosecution from being asked, unless the judge or court exceptionally considers that they should be answered in order to properly assess the facts or the credibility of the victim's statement[15].

- Holding the oral hearing without the presence of the public, although even in these cases the judge or court may accredit the presence of persons with a special interest in the case.

14 This measure may also be adopted at the investigation stage. The most commonly accepted way for courts to avoid such visual confrontation is through the use of a victim-offender bulkhead or screen. The adoption of this measure has been made more flexible in the jurisprudence, which first required that it had to be agreed by means of a specific reasoned decision and after the issuance of the corresponding forensic report, but since the agreement of the Supreme Court plenary session of 6 October 2000 it has admitted that the decision should be taken at the time of the oral trial. In addition, this measure refers to the use of videoconferencing, the adoption of which may be agreed upon either at the trial or during the investigation phase. The use of videoconferencing for the practice of testimony and other proceedings is covered by articles 325 and 731 bis LECrim and, although it is fully applicable to statements by adult victims/witnesses, it is specifically provided that they are used in statements given by minors in the course of the oral proceedings under article 731 bis LECrim.

15 This measure may also be adopted at the investigation stage. Art. 709, paragraph 2, LECrim has been amended, so that the president of the tribunal may adopt measures to prevent this type of questions of being asked indicating that, if they are asked, they will not be answered.

- Finally, some of the protection measures of article 2 of Law 19/1994, on the protection of witnesses and experts in criminal cases, may also be adopted for the protection of victims. These measures consist of: (a) using any procedure that makes normal visual identification impossible; (b) ensuring that no information identifying the victim is included in the proceedings; and (c) establishing the address of the competent judicial body for the purposes of summonses and notifications.

In addition to the above-mentioned victims, there are special types of victims in the Spanish legal system that enjoy additional protection mechanisms even without being considered by the corresponding individual assessment as victims with special protection needs: those of domestic violence - to which the protection order of article 544 ter LECrim may be applied - and, above all, victims of gender violence - who may benefit from the measures included in LO 1/2004 - and victims of terrorism - for the application of Law 29/2011.

According to the results of the survey carried out with professionals, the most common protective measures adopted during the investigation phase are the following: the declaration of the victim in front of a person with specific training (39% of those interviewed said it was often and 39% said it was sometimes), always in front of the same person (35% of those interviewed said it was often and 28% said it was sometimes, although 28% said it was rarely) and in spaces adapted for this purpose (35% of those interviewed said it was often and 42% said it was sometimes). Less conclusive are the results regarding the fact that victims of certain crimes have their statements taken by persons of the same sex (they say that this is often done only by 25% of the respondents and sometimes by 57%), nor have interviews confirmed that this is the case. As for the expert (psychologist) being the one through whom statements are taken, the interviewees indicate that this is usually the case for young children, but it is no longer so clear whether this is the case for older children or adults.

With regard to the measures to be adopted during the trial phase, the results of the survey reveal that the most widely adopted are those consisting of avoiding victim-offender eye contact (28% of those interviewed said to be so always, often 46% and sometimes 25%, and no one affirms that such a measure is adopted rarely). This measure of avoiding visual confrontation can be interpreted as using physical rather than technological means, since the answer to the question of whether technological means are used to prevent victims from testifying in the courtroom is less positive (35% of respondents say it is done often and 39% sometimes, although 10% say it is done rarely). In fact, this is confirmed by one of the interviews, which found that judges are much more likely to agree to take physical measures to avoid visual confrontation than to use videoconferencing for witness practice. Less common is taking measures to avoid unnecessary issues to the victim (although 32% of respondents say it is done often, 35% say it is done sometimes, and for 17% this is done rarely) and even less taking measures to avoid the presence of the public (it is indicated that this happens often only in 21% of cases).

ARTICLE 24 - RIGHT TO PROTECTION OF CHILD VICTIMS DURING CRIMINAL PROCEEDINGS

Member States shall ensure that where the victim is a child: a) in criminal investigations, all interviews with the child victim may be audio visually recorded; b) in criminal investigations, and proceedings, competent authorities appoint a special representative for child victims where the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family; c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

Minors have been recognized in Spanish law, as well as in the Directive, as having a specially reinforced protective status, according to article 26 of Law 4/2015. Unlike in EU law, this reinforced protective status concerns not only minor victims, but also victims with disabilities who have special protection needs. That is to say, disabled persons who, whether or not having a judicially modified capacity to act, require assistance and support for the exercise of their legal capacity and for the taking of decisions regarding their person, their rights or interests due to their permanent intellectual or mental deficiencies. Moreover, also contrary to what is deduced from the Directive, in Spanish national law minors do not enjoy an irrefutable presumption as victims with special protection needs, which means that the adoption of any reinforced protective status for them also depends on the outcome of the corresponding individual assessment, making their consideration as victims with special protection needs less certain under Spanish law than under EU law.

Once this condition has been recognized, as a first group of measures, minors and victims on the same level enjoy the following additional measures -in addition to those already provided for in article 25 of Law 4/2015- for protection when they act as witnesses:

- The declaration in such cases may be received by experts[16], a measure that is not specifically provided for in Directive 2012/29/EU but which has been provided for in Spanish law since 2006[17]. It has already been indicated in the commentary to the previous section that 39% of the professionals interviewed indicate that this protective measure is often applied to all victims in general.

- Statements received during the investigation phase will be recorded by audiovisual means and may be reproduced in the trial in the cases and under the conditions determined by the LECrim. It implies the institutionalization of the practice of the anticipation of witness evidence with minors that has been accepted with greater or lesser limitations in Spain by the jurisprudence of the Supreme Court. In recent years, there has been a jurisprudence in favor of admitting such a possibility on the basis of a psychological expert report confirming that the assistance at trial could cause serious harm to the minor and provided that the statement has been given with all the guarantees and has made it possible to contradict it. However, although the transposition of the Directive's provisions in this regard through art. 26 of Law 4/2015 and the amendment of the provisions of the LECrim regulating witness statements with minors (art. 433 LECrim), the provision of advance declarations (art. 448 LECrim) and the incorporation of summary declarations into the plenary session (art. 730 LECrim) in order to ensure that statements by minors are made in advance, recorded on video and reproduced at the trial, seems to favor the generalization of this practice, there is still room for interpretation so that the admission of this possibility depends in fact on the sensitivity of the specific court. This reform should have been used as an opportunity to adequately regulate the anticipation of the taking of witness evidence with child victims and disabled persons with special protection needs so that there could be no doubt as to when and under what terms it is possible to pre-constitute such witnesses. Despite this, the results of the survey with professionals reveal that this measure is usually adopted by Spanish courts in the presence of minor witnesses (42% of the respondents indicate that this is often the case and 25% sometimes, although only one respondent has indicated that this always happens), although the interviews indicate that in some cases these tests have to be re-practiced because the first statement was not made with all the guarantees (without the defense being present, for example) or because the minor has reached the age of majority before the oral trial and makes him/her testify at the hearing.

16 The law does not specify who such "experts" are.

17 Following the adoption of Law 4/2015, article 433 LECrim has been amended to clarify that it is precisely these experts who can pass on questions to the minor, even if they limit or directly exclude the presence of the parties in the place where the victim is testifying, provided that they are guaranteed the possibility of passing on questions or seeking clarification from the victims.

Secondly, these victims may be represented by a legal representative in the investigation and criminal proceedings, and the Public Prosecutor's Office should seek their designation in cases similar to those provided for in the Directive: 1) when the Public Prosecutor's Office considers that the legal representatives of the minor victim or the victim's legally incapacitated representative have a conflict of interest with the child, whether or not arising from the fact under investigation, which does not allow the victim to rely on the proper management of his/her interests in the investigation or criminal proceedings; (2) where the conflict of interest referred to above exists with one parent and the other parent is not in a position to properly exercise his/her functions of representation and assistance of the minor victim in a judicially modified capacity; (3) where the minor victim in a judicially modified capacity is not accompanied or is separated from those exercising parental authority or guardianship. The results of the survey of professionals show that this is the most clearly enforced protective measure in relation to those especially designed for children, since 50% of respondents indicate that a special representative of the child is always or often appointed in these cases, even though 21% of the sample did not answer this question, probably because they did not know the answer. In addition, 35% of the respondents indicated that in such cases the right to legal advice and representation is guaranteed to minors in such circumstances, even though the high percentage of respondents who did not respond to this question (28%) should again be highlighted.

Thirdly, specific measures are envisaged for these victims in relation to the protection of their right to privacy in Article 22 of Law 4/2015. It provides that necessary measures should be taken to prevent the dissemination of any information that may facilitate the identification of these victims. This prohibition could be agreed for victims who have no special protection needs. However, it is mandatory to apply such measures in relation to minors, such as the prohibition of disclosure or publication of information relating to their identity, of data that may facilitate their direct/indirect identification or of those personal circumstances that have been assessed in order to resolve their protection needs. In addition, there is a radical ban on obtaining, disseminating or publishing images of the child or his/her family members. However, measures to protect the image of minors have not been included, neither to prevent their domicile or other data from being made available to the parties, as requested by some sectors.

Finally, article 544 quinquies LECrim provides for a series of protective measures in the context of criminal proceedings for minors or persons with judicially modified capacity with suspensive effect on the powers exercised by those who perform care functions for them in a manner that may be detrimental to the child. While it was clear that any victim, including minors or disabled persons in need of special protection, could be protected by the precautionary measures of art. 544 bis LECrim when they were victims of the crimes included in it[18], it was not clear that these people were adequately protected in a criminal judicial context against the improper exercise of guardianship functions except in cases of gender violence. However, the law has been changed in order to increase protection on this regard[19].

18 Crimes of homicide, abortion, injury, against freedom, torture and moral integrity, trafficking in human beings, sexual freedom and sexual indemnity, privacy, the right to one's own image and the inviolability of one's home, honour, property and socio-economic order.

19 Following the introduction of this section in 2015, measures such as the suspension of institutions such as parental authority, guardianship, conservatorship, guardianship or fostering, the establishment of a system of supervision of these institutions or measures such as the suspension of communication or visitation with a non-live-in partner or an adult who is not a guardian may be imposed. Once the criminal proceedings have been completed, the judge or court must decide on the ratification or lifting of these measures, but it may also end up imposing a special penalty of disqualification for the exercise of parental authority, guardianship, conservatorship, guardianship or fostering, or even a penalty of deprivation of parental authority, in which case the fate of the precautionary measure once it has been imposed would not be relevant.

ARTICLE 25 - TRAINING OF PRACTITIONERS

Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to enable them to deal with victims in an impartial, respectful and professional manner.
Member States shall request that those responsible for the training of lawyers, judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase awareness of the needs of victims.
Member States shall encourage initiatives enabling those providing victim support and restorative justice to receive adequate training and observe quality standards to ensure such services are provided in an impartial, respectful, and non-discriminatory manner.
Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.
Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

The necessary training of professionals is also legally recognized in Law 4/2015. Art. 30 of this law (training in the principles of victim protection) provides that the Ministry of Justice, the General Council of the Judiciary, the Attorney General's Office and the Autonomous Communities, within the scope of their respective competences, shall provide general and specific training on the protection of victims in criminal proceedings, included in training courses for judges and magistrates, prosecutors, court staff, police officers, forensic doctors, personnel in the service of the administration of justice, victim support officers and, where appropriate, civil servants from the General State Administration or the Autonomous Communities performing functions in this field.

The provision adds that in these training courses particular attention will be paid to victims with special protection needs, to those who are particularly vulnerable and to child victims and disabled people. This duty to promote training for professionals is extended to lawyers and public prosecutors through their professional associations, such as the Bar Association, which must promote the training and awareness of their members on victims' rights and needs.

Regarding awareness raising, in Spain, one of the long-term effects of the approval of LO 1/2004 on comprehensive protection measures against gender-based violence has been the raising of awareness and training of professionals in the forensic and healthcare fields about this reality. Nonetheless, it cannot be said that this level of awareness has been extended to other situations of victimization or knowledge on victims' rights and needs in general.

In practice, in relation to aspects related to gender violence, in addition to the existence of a specialist Prosecutor's Office under the Office of the State Prosecutor, specialized prosecutors at each Provincial Court and a specific jurisdiction, there are expert bodies in the General Council of the Judiciary and attached to the Ministry of Health, Social Services and Equality that have promoted many training courses for professionals in the forensic field since the law came into force. Similarly, Bar Associations provide for training on rights and needs of victims of gender and domestic violence, and, consequently, have an in-court representation of lawyers specialized in gender and domestic violence. Regarding the training of victim support officers, the VAOs are largely dedicated to assisting women victims of family and gender violence and have professionals highly trained to identify and assist in such cases, but they hardly engage in identifying or assisting victims presenting other situations of victimization[20].

Training of forensic and support professional groups in the all victims' rights and needs is not generalized. To date, there has been no comprehensive assessment of the level of knowledge of victims' rights by different professional groups. However, in some studies carried out in Spain on specific aspects of the regulation of victims' rights, the lack of sufficient training may be noted[21].

Knowledge of rights and needs of victims with special protection needs, such as victims of human trafficking, is also lacking. The results of a study carried out in Spain with a sample of 37 professionals in the forensic and assistance field show that professionals have little knowledge

20 Vid. Tamarit, J; Villacampa, C. y Filella, G., "Secondary victimization and victim assistance", European Journal of Crime, Criminal Law and Criminal Justice 18 (2010) 281–298.

21 For example, the Centre for Legal Studies depending on the Spanish Ministry of Justice organized a training course for judges and prosecutors on the status of victims in 2017 or, within the General Council of the Judiciary (CGPJ) and the Centre for Legal Studies and Specialized Training of the Catalan Government, working groups have been set up consisting of judges and magistrates who have prepared guides to apply the Law 4/2015 by professionals in the forensic field. However, the concrete training of judges and magistrates on some of the issues covered by this law, such as the necessary implementation of restorative justice mechanisms, has hardly been disseminated among professionals in the criminal justice system. In this regard, in 2015 the CGPJ conducted a qualitative study with 48 judges to identify the issues that should be addressed in a training course on mediation, in which the majority of participants referred to the need for professional training. These initiatives reveal how basic training on victims' rights and needs has been delivered in recent years.

of this reality[22].

In addition to the challenges regarding training, there is a legal vacuum with regard to private entities that provide care services. If training is supposed to be provided to VAOs' victim support officers, which depends on various public administrations, no training standard is set for non-governmental entities that provide victim support services.

The described situation is reflected in the results of the survey with professionals. Although no specific professional group was evaluated in a particularly negative way, the group that professionals considered to be the best trained, perhaps due to their specialization in this field, was that of victim support workers (46% of those surveyed considered their training sufficient or rather sufficient). As far as the forensic professions are concerned, the valuations are mostly negative. Those considered to have the least training in this field are, in descending order, lawyers (whose training is considered insufficient or rather insufficient in 57% of cases), judges (53% of those interviewed consider their training to be insufficient or rather insufficient) and, to a lesser extent, prosecutors (with rather insufficient or insufficient training in 46% of cases, even though 38% of the members of the sample value their training positively). More neutral are the opinions on the training of other professional groups such as police officers (49% of those interviewed consider sufficient, although 42% think the opposite is true). Besides, 49% of those interviewed also considered the training of other professionals to be deficient. Finally, with regard to the 5 interviews carried out, the answers given by the professionals working in the criminal justice system (representative of the Public Prosecutor's Office and police officer) are more self-satisfied than those given by victim support professionals or by lawyers. In any case, it should be noted that there is more training on issues related to gender-based violence than there is on other victimization processes, and it is noteworthy that one of the professionals indicates that more psychologic, rather than legal, training is needed to help forensic professionals understand the impacts of different crimes on victims.

22 Apart from cases of trafficking for sexual exploitation, which are more easily detected and identified with prostitution, other forms of trafficking are treated as more invisible and serious difficulties are found in the identification of victims of these crimes due to the lack of training and awareness of professionals. As a result, when victims of trafficking have committed crimes as a consequence of the exploitation process they are treated by the system as if they were criminals See, Villacampa, C and Torres, N. "Human trafficking for criminal exploitation: the failure to identify victims", *European Journal on Criminal Policy and Research 23 (3), 2017, pp. 393-408.*

ARTICLE 26 - COOPERATION AND COORDINATION OF SERVICES

Member States shall take appropriate action to facilitate cooperation between Member States to improve victims' access to the rights set in the Directive and such cooperation shall at least aim at: a) exchange of best practices; b) consultation in individual cases; c) assistance to European networks working on matters directly relevant to victims' rights.
Member States shall take appropriate action aimed at raising awareness of the rights set out in the directive, reducing the risk of victimisation, and minimizing the negative impact of crime and the risk of secondary and repeat victimisation, of intimidation and retaliation, in particular targeting groups at risk such as children, victims of gender-based violence and violence in close relationships.

Articles 32 and 33 of Law 4/2015 transpose the requirements of Directive 2012/29/EU relating to both internal and international cooperation quite faithfully. Article 32 (cooperation with professionals and evaluation of the care of victims) indicates that the public authorities shall promote cooperation with professional groups specializing in the treatment, protection and victim support. It adds that the participation of these groups in the systems for evaluating the functioning of the rules, measures and other instruments for the protection of and assistance to victims will also be encouraged.

With regard to international cooperation, Article 33 of Law 4/2015 provides that the public authorities shall promote cooperation with other States and especially with the members of the EU in the field of victims' rights, in particular by exchanging experiences, promoting information, referring information to facilitate assistance to specific victims by the authorities of their place of residence, raising awareness, research and education, cooperation with civil society, assistance to networks on victims' rights and other related activities.

Beyond the introduction of this provision in Law 4/2015, little else is known to have been done in relation to cooperation in this field. In fact, Royal Decree 1109/2015, which develops this regulation, creates a consultative body called the Advisory Council for Victim Assistance (art.

10), whose functions, in addition to assisting the Ministry of Justice in the preparation of the annual report on the system of care for victims of crime, include supporting technical studies on the activities of the assistance offices and on the coordination network. It is only noted that this body was set up in June 2017, but not that any report whatsoever has been issued on the system of care for victims of crime or that it has been involved in national or international cooperation activities. In addition, Royal Decree 1109/2015 provides for the creation of a coordination network with all the services responsible for victim assistance, comprising both VAOs and other specialized services to which victims are referred, which does not yet appear to have been set up.

With regard to international cooperation to give effect to the cross-border recognition of victims' rights, only the possibility for Spanish victims to obtain compensation from another EU Member State in accordance with the provisions of Directive 2004/80/EC has been regulated. Royal Decree 1009/2015 designates VAOs' as the assisting authorities for this purpose, except in the case of terrorist offences, where this authority is the Spanish Ministry of the Interior.

Secondly, with regard to awareness-raising, Article 34 of Law 4/2015 states that the public authorities shall promote social awareness campaigns in favor of victims, as well as self-regulation by the public and private media in order to preserve the privacy, dignity and other rights of victims.

With regard to widely disseminated campaigns - using the audiovisual media - the initiatives of the public authorities in Spain have mainly focused on the processes of victimization related to domestic violence and to forms of violence against young women or adolescents in abusive relationships. Although other victimization situations, such as the dangers that children and adolescents face when using information and communication technologies or crimes such as exploitation via prostitution in the context of trafficking in human beings, are areas in which awareness-raising campaigns have been undertaken, they are not so much oriented towards society in general as towards groups at higher risk of victimization.

The results of the survey with professionals reveal how they negatively value the awareness campaigns undertaken by political actors. While most respondents acknowledge that such campaigns have been undertaken (57 %), most consider them to have been inefficient or rather inefficient (56 %). With this being the majority option, the affirmative answer to the question of whether the government has sponsored or promoted research or education programs in this field is not as positive as in the previous case (39% of those surveyed indicated this, although 32% of them did not answer this question and 28% indicated that this was not the case). Also in the latter case, those who admit that such measures have been taken indicate that they have been inefficient or rather inefficient (63%).

GOOD PRACTICES

Throughout the development of this report, good practices have been identified regarding the practical implementation of the Victims' Directive in Spain. All of them seem transferable and possible to implement in other Member States.

Right to access victim support services

A noteworthy innovation that improves accessibility for victims has been the launch in 2016 of the online assistance service for victims of crime, by the Department of Justice of the Autonomous Government of Catalonia. The service is executed by the Red Cross through qualified professionals in criminology and psychology and offers assistance every day of the week from 8 a.m. to 10 p.m. in six languages: Catalan, Spanish, English, French, Arabic and Russian. This is very positive since victim support had so far been provided only in person, from Monday to Friday.

Moreover, improvements have been made to allow victims to access support services regardless of whether they have made a complaint. Before the European Directive some institutions require from victims to report the crime to the police as a condition to take care of them.

Right to legal aid

Victims' right to be part in the criminal proceedings increases their possibilities of participation and of having a sense of control, as some research has confirmed. That is why those programs that provide free legal assistance, as in cases of gender violence, can be identified as good practices. Some institutions have adopted measures that support victims who receive legal assistance:

- The Bar Association of Barcelona has implemented a legal shift for providing legal aid to victims of sexist violence since 2000.

- The Bar Association of Malaga since 2015 has made available to victims of hate a free legal assistance service[23].

23 This institution, although it has its headquarters in Malaga, accepts denunciations throughout the national territory. In addition, it collaborates with the NGOs in charge of supporting victims of hate crimes.

Child victims

Regarding child victims, it has been detected that prosecutors put more emphasis in protecting them from secondary victimization since the entry into force of the Law 4/2015. The anticipated statement is one of the best practices in this area, although it is not made in a regular basis and in some cases the judges decide to request the statement again in court. Some Bar Associations promote measures to provide support to minors or vulnerable victims, such as those with disabilities, when they come into contact with the justice system.

Victims of terrorism

As regards the victims of terrorism there are a lot of rules, protocols and guides on the best attention to victims. There is a large number of associations devoted to this kind of victims. Some examples are: Association victims of terrorism (AVT), Andalusian Association Victims of Terrorism (AVVT), Riojan Association of Victims of Terrorism (ARVT), Catalan association of victims of terrorism (ACVOT), among many others.

In general, the interviews allowed us to detect an increased interest of some professionals to do things in a proper way to protect and guarantee victims' rights. According to their opinion, things are changing because the practitioners are more aware of victims' vulnerabilities[24].

24 We list below a set of documents edited by some institutions that identify good practices in supporting victims:
http://www.mitramiss.gob.es/oberaxe/ficheros/ejes/delitosodio/04_BuenasPracticas.pdf
http://www.euskadi.eus/contenidos/proyecto/victimas_proyecto006/es_def/adjuntos/Guia_general_buenas_practicas.pdf
http://www.icab.es/files/242-498497-DOCUMENTO/Guia-Buenas-PracticasVIGE-CAS.pdf
http://www.euskadi.eus/contenidos/proyecto/victimas_proyecto006/es_def/adjuntos/Guia_general_buenas_practicas.pdf

GAPS, CHALLENGES, AND RECOMMENDATIONS

Throughout the present research, some gaps and challenges regarding the practical implementation of the Victims' Directive in Spain have been identified.

Restorative justice

There is an insufficient legal recognition of restorative justice proceedings and, in particular, of their effects in criminal proceedings. The main deficiencies occur in their practical application, partly due to pre-existing problems with the Directive and partly due to the lack of budgetary development on the part of the competent institutions, which are a consequence of an economic crisis and policies to reduce public deficit.

Bureaucracy

The inertia of the judicial system is a big problem for the protection of victims' rights and victims' ability to exercise them. An official, bureaucratic and restrictive conception has prevailed in relation to supporting victims. Moreover, there is fragmentation of private entities supporting victims and the existence of territorial inequalities, derived from the existence of various competent administrations regarding victim support and the differences in the capacity to apply resources provided by the General State Administration and by various autonomous administrations with powers in the field.

Lack of budget

The lack of allocation of budgetary resources for the implementation of the Law 4/2015 has greatly limited its effective application. There has not been the necessary extension of resources to support victims, or to an expansion of the existing public office offer nor through transfers of resources or agreements with non-governmental entities. Neither have been made by all competent administrations the necessary efforts for training and awareness of the various professional groups or for the development of new programs of restorative justice. In addition,

shortcomings have been detected in the accessibility of public victim assistance offices and in the quality of some key services for adequate care for foreign victims who do not know the official languages in the various territories, such as interpretation services. The ease of the victims of having the services of a lawyer has been revealed, as some studies have pointed out, as an important resource so that they can effectively exercise their rights, which in practice constitutes a source of inequality. There have also been shortcomings in the possibility that victims may have psychological assistance, which is so necessary in certain forms of victimization.

To overcome the existing limitations, the following recommendations are proposed:

1. Improve the accessibility to victim support offices and extend the existing offer through new resources, such as, for example, the telematics attention program for victims of crimes implemented by the Government of Catalonia in 2016.

2. Promote a non-governmental organization to support victims and seek the contribution of public resources to it by the competent administrations.

3. Develop at a legal level referral rules of restorative justice proceedings in criminal proceedings in a sensitive manner to the rights of crime victims.

4. Establish restorative justice programs and provide more resources to develop existing ones.

5. Establish a quality assurance system for translation and interpretation services.

6. Extending free legal aid.

CONCLUSION

The present national report, completed within the context of project VOCIARE, aimed at assessing the practical implementation of the Victims' Directive in Spain, through a desk research complemented by the collection of surveys and the conduction of interviews with different groups of stakeholders working in the criminal justice system – police officers, prosecutors, lawyers and victim support officers. The present report analysed both the transposition of the Victims' Directive into national law as well as the practical implementation of each of the rights established in the same Directive, identifying good practices and shortcomings.

As the research reveals, the transposition of the Victims' Directive into Spanish law has been carried out in general in a sufficient way, since Law 4/2015 on the statute of the victim of crime has shaped and developed the substantial content of the European standards. This has been done, however, without calling into question the existing legal model regarding the criminal proceedings and the model based on public assistance to victims. Nor has the disparity of legal statutes of the various types of victims changed substantially. Most existing public resources are allocated to victims of gender violence, with the rest of the victims receiving less attention.

The practical implementation of this Law is made with significant difficulties, derived from the insufficient contribution of public resources, from a fragmented and economically weak private initiative and from a limited awareness and implication of the various stakeholders working directly with victims of crimes.

Surveys and interviews with professionals have reflected in general terms a partial and uneven fulfilment of the provisions of the Directive. The victims' information rights are currently largely respected, but the participation of the victim in the criminal proceedings depends on the victim having the initiative and the economic capacity to hire the services of a private attorney. Translation and interpretation services entail important quality deficiencies, which negatively affects foreign victims, especially those with lower social and economic resources. Victim assistance services have serious limitations, with an unequal offer in the various territories of the State. The same applies to restorative justice services, which have very limited implementation, especially in the area of adult criminal justice.

With regard to protection rights, important limitations have also been revealed. Professionals surveyed and interviewed maintain that in general terms the victims are treated adequately and with respect to their dignity and rights. However, they also reveal insufficiencies in the provision of separate spaces for the victims in the judicial and police units in order to prevent contact with the aggressors, existence of excessive delays in proceedings, restrictions on the right of victims

to be accompanied by a person of his/her choice and gaps regarding due respect for their privacy. Moreover, in many courts there are situations of risk of violation of victims' right to protection, when there is not an effective guarantee that their data is protected, since some mass media do not comply with self-regulation practices committed to the victim's privacy.

In recent years there has been an advance in the adoption of measures to protect victims in the criminal process, especially of minors, through the application of mechanisms that avoid visual confrontation with the accused in the oral proceedings. Regarding child victims, the advanced declaration has been progressively accepted by the judiciary, although not in all the cases and without this having represented in all cases a guarantee of non-reproduction of the statement in the trial.

Relevant challenges have also been detected with regard to the training of professionals and in awareness campaigns. In both aspects, the actions of State institutions are basically focused on the victims of gender violence.

To overcome these limitations, it is necessary first and foremost the raising of awareness of political actors, competent authorities and professionals, regarding the need for a global conception of the rights of the victims, the disclosure of the results of the victimological investigation, the public funding of the existing institutions and coordination between public and private entities. A key point is also the extension of training and awareness activities, with an adequate scientific and legal basis.

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