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## **1. SPECIFIC RIGHTS OF WOMEN VICTIMS OF GENDER-BASED VIOLENCE**

Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence (Official State Bulletin No. 313 of 29 December 2004), establishes and guarantees a series of rights to women who are or have been victims of gender-based aimed at helping them to put an end to the violent relationship and resume their life plan.

These rights are universal, in the sense that they are guaranteed to all women who have suffered acts of gender-based violence, regardless of their origin, religion or any other personal or social status or circumstance.

### **1.1. Who is a victim of gender-based violence?**

**(Art. 1 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence)**

Under Organic Law 1/2004, any woman subjected to any act of physical or psychological violence, including crimes against sexual freedom, threats, coercion or arbitrary privation of freedom, perpetrated by her spouse or ex-spouse or by the person with whom she holds or held a similar relationship of affectivity, even without cohabitation, is a victim of gender-based violence.

This type of violence is the most serious manifestation of the discrimination, the position of inequality and the power relationships of men over women.

Furthermore, from the preamble, Organic Law 1/2004 includes the children of the victims in the concept of victim and recognises a whole series of rights to them, established in articles 5, 7, 14, 19.5, 61.2, 63, 65, 66 and the 17th Additional Provision.

## **1.2. How is a situation of gender-based violence accredited?**

(Arts. 23, 26 and 27.3 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence)

Generally, a situation of gender-based violence which gives rise to the recognition of the corresponding rights is accredited with the judgement finding the accused guilty as charged, the court protection order in favour of the victim and, exceptionally, pending the court protection order, the report from the Public Prosecutor's Office pointing to existing evidence that the claimant is a victim of gender-based violence.

However, the specific regulations on certain rights establish the means by which the situation of gender-based violence is accredited.

## **1.3. Right to information**

(Art. 18 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence)

The right to receive information through the following channels is guaranteed:

### **1.3.1. 016 helpline for information and legal advice**

- Free helpline with a short three-digit telephone number: 016.
- Accessible to persons with hearing and/or speech disabilities: through the number 900 116 016 using a mobile phone, a PDA, or a text telephone ( DTS ).
- Available 24 hours a day, 365 days of the year.
- Universality: The service is provided in Spanish, Catalan, Galician and Basque, as well as English, German, Arabic, Bulgarian, Chinese, Portuguese, Romanian and Russian. Another 42 languages are available between 08:00 and 18:00 h. from Monday to Friday, making a total of 53 languages with varying degrees of coverage.

- Confidentiality of users' data.
- Call diversion in the following instances:
  - When calls relate to emergency situations, they are forwarded to the telephone number 112.
  - When calls relate to general information on women, they are forwarded to the Institute for Women's Affairs.
  - When calls require specific information related to an autonomous region.
  - Calls made by minors are forwarded to the ANAR helpline for children and adolescents at risk.

Queries can also be made through the web page of the Ministry of Health, Social Services and Equality.

### **1.3.2. Website for support and prevention resources in gender-based violence cases**

Available through the web page of the Ministry of Health, Social Services and Equality, in the Area of Equality:

<http://wrap.seigualdad.gob.es/recursos/search/SearchForm.action>

With the help of active maps, visitors to the site can locate the different resources (police, legal, information, assistance and advice) made available to the general public and victims of gender-based violence by the public administrations and social institutions.

#### **1.4. Right to comprehensive social assistance**

(Art. 19 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence)

To ensure their right to physical and moral integrity, women victims of gender-based violence and their minor children are entitled to receive the following social services:

- Assistance
- Emergency
- Support and shelter
- Full recovery

The objective of these services is to cover the needs derived from situations of violence, re-establish the situation the victim was in before suffering violence or, at least, mitigate the effects.

Through these services, women can:

- Receive advice on the legal action they can take and on their rights.
- Find out about the services they can turn to receive material, medical, psychological and social assistance.
- Gain access to the different accommodation resources (emergency, temporary shelter, protected centres, etc.) where their safety is ensured and their basic needs covered.
- Recover their physical and/or psychological health.
- Obtain training, achieve insertion or reinsertion in the labour-market, and receive psychosocial support over the entire length of their full recovery itinerary with the aim of avoiding double victimisation.

The right to comprehensive social assistance is also recognised to minors living in family environments with gender-based violence. The social services must have a sufficient number of places available to minors and specifically trained staff in caring for them for the purpose of effectively preventing and avoiding situations that may pose psychological or physical harm to them.

### **1.5. Right to immediate and specialised legal aid**

(Art. 20 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence; Law 1/1996 of 10 January, on Legal Aid; Royal Decree 996/2003 of 25 July, under which the Regulations on Legal Aid are approved)

Women victims of gender-based violence are entitled to legal aid, irrespective of whether or not they have sufficient means to litigate. This legal aid shall be immediately provided in administrative processes and procedures associated with, derived from, or a result of the status of victim.

For the purpose of granting the legal aid benefit, the status of victim shall be acquired when the complaint or suit is filed or the criminal proceedings initiated, and shall be maintained whilst the criminal proceedings are in force or when, after their conclusion, a verdict of guilty is given. The legal aid benefit shall be lost when a final verdict of not guilty is given or the criminal proceedings are stayed absolutely, and the victim shall not be required to repay the cost of the benefits so far received on a free basis.

#### **1.5.1. Right to legal aid**

The right to legal aid includes the following benefits:

- Free legal advice prior to the proceedings.
- Free defence and representation by a lawyer and a court solicitor in the court proceedings and administrative procedures.

- Free publication of announcements or notices in official newspapers during the course of the proceedings.
- Exemption from paying the court fees and the necessary deposits to lodge appeals.
- Free expert assistance
- Free or 80% discount on notarial document duties.

The applicant of the right to legal aid must indicate which of these benefits she is asking to be recognised. The recognition of the right to legal aid shall in any event entail exemption from the payment of the above-mentioned court fees and deposits.

Once the right to legal aid is recognised, the defence of the victim's interests, in all the necessary proceedings, is handled by the same legal-aid lawyer from the shift specialising in gender-based violence established by the bar associations in their respective areas.

### **1.6. Labour rights**

(Art. 21 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence)

The aim of recognising labour rights to women victims of gender-based is to prevent them from abandoning the labour market due to the violence they are suffering. To this end, women victims of gender-based violence are recognised rights conducive to reconciling their jobs with the situation of gender-based violence, guaranteeing their protection if they are forced to give up their jobs temporarily or permanently, and, if unemployed, ensuring their insertion in the labour market.

To exercise these rights, female workers must accredit the situation of gender-based violence either with the judgement finding the accused guilty as charged, the court protection order or, exceptionally, pending the court

protection order, with the report from the Prosecutor's Office pointing to existing evidence that the woman is a victim of gender-based violence.

### **1.6.1. Rights of female employees<sup>1</sup>**

(Arts. 37.7, 40.3.bis, 45.1.n, 48.6, 49.1, 52.d, 55.5.b of the Consolidated Text of the Law on the Statute of Rights for Workers, approved under Royal Legislative Decree 1/1995 of 24 March)

- Right to reduce working hours with a proportional salary cut, aimed at enabling women victims of gender-based violence to ensure their protection or their right to comprehensive social assistance.
- Right to reorganise working time by rescheduling the hours, working flexi-time or through other forms of organising the working time used in the respective company.
- Right to geographic mobility with job-secured leave during the first six months.
- Right to suspend the labour relationship with job-secured leave of an initial duration of up to six months.
- Right to extinguish the employment contract at the employee's request, in which case the employee will be considered to be in a legal situation of unemployment. Therefore, if the applicable requirements are met, the employee will be entitled to receive contributory or non-contributory unemployment benefit.
- Work absences or lack of punctuality due to gender-based violence will be considered justified when so determined by the social services or healthcare services.
- Nullity of the dismissal of employee victims of gender-based violence on grounds of wanting to or having exercised their labour rights.

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<sup>1</sup> Collective bargaining agreements and company agreements can include improvements to these rights.



### **1.6.2. Rights of self-employed female workers**

(Art. 21.5 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence; Law 20/2007 of 20 July, which regulates the Statute for Self-employed Workers; Law 32/2010 of 5 August, which establishes a specific protection system for self-employed workers who cease their activity; Royal Decree 1541/2011 of 31 October, which establishes the implementation regulations of Law 32/2010 of 5 August)

- Rights of economically dependent self-employed female workers:
  - Right to adapt the business hours of the activity.
  - Right to extinguish their contractual relationship.
  - The situation of gender-based violence is considered to be a justified reason for the interruption of the activity by the female self-employed worker.
- For purposes of the protection for cessation of the activity, self-employed female workers who temporarily or permanently cease to perform their activity due to gender-based violence shall be in a legal situation of cessation of activity.

### **1.7. Rights in the area of Social Security**

(Art. 21 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence)

#### **1.7.1. Rights in the area of Social Security contributions**

- Female workers victims of gender-based violence who have reduced their working hours and taken a proportional cut in their salaries are entitled to sign the special agreement with the Social Security.

(Order TAS/2865/2003 of 13 October, which regulates the special agreement with the Social Security system)

- Six-month suspension of the contribution obligation of self-employed female workers who have ceased their activity to ensure their protection or their right to comprehensive social assistance. The period of suspension of the labour relationship by female employees and the period of suspension of the contribution obligation of self-employed female workers who have ceased their activity are considered to be effective contribution periods.

(Sole additional provision of Royal Decree 1335/2005 of 11 November, which regulates Social Security family benefits)

#### **1.7.2. Rights in the area of Social Security benefits**

- For purposes of maternity or paternity benefits, the periods considered to be effective contribution periods are recognised as equivalent to registration periods in the Social Security for female employees and self-employed female workers who are victims of gender-based violence.

(Royal Decree 295/2009 of 6 March, which regulates the economic benefits granted by the Social Security system for maternity, paternity, risk during pregnancy and risk during breastfeeding)

- Right to the early retirement pension for women who terminate their employment contracts as a result of being victims of gender-based violence and meet the necessary requirements.
- Right to the early retirement pension for women who give up their jobs because they are victims of gender-based violence and meet the applicable requirements.

(Article 161 bis.2 of the Consolidated Text of the General Social Security Law, approved by Royal Legislative Decree 1/1994 of 20 June)

- Right to receive a widow's pension in cases of separation and divorce by women victims of gender-based violence who meet the applicable requirements, even if they are not entitled to the corresponding alimony.

(Article 174.2 of the Consolidated Text of the General Social Security Law, approved by Royal Legislative Decree 1/1994 of 20 June)

- Loss of the widower's pension by men found guilty through a final judgement beyond appeal of committing any type of intentional crime of homicide or of causing injuries, when the victim of the crime is his spouse or ex-spouse or common-law partner or ex-partner; and, where appropriate, an increase in the orphan's pension.

(First additional provision of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence; article 38 of Decree 3158/1966 of 23 December, which approves the General Regulations which establish the amount of the economic benefits granted by the General Social Security System and the conditions for entitlement to them)

- For purposes of entitlement to the contributory or non-contributory unemployment benefit, provided that the applicable requirements are met, female workers who voluntarily extinguish or suspend their employment contracts on grounds of being victims of gender-based violence are considered to be in a legal situation of unemployment.

(Article 21.2 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence; arts. 208.1.1.e) and 208.1.2) and the forty-second additional provision of the Consolidated Text of the General Social Security Law, approved by Royal Legislative Decree 1/1994 of 20 June)

## **1.8. Rights in the area of employment and insertion in the labour-market**

### **1.8.1. Specific employment programme**

(Article 22 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence; Royal Decree 1917/2008 of 21 November, which approves the social and labour insertion programme for women victims of gender-based violence)

The social and labour insertion programme for women victims of gender-based violence who are registered in the Public Employment Services as job seekers includes the following measures:

- A personalised social and labour insertion itinerary designed by specialised personnel.
- A specific training programme to facilitate social and labour insertion on an employee-basis.
- Incentives to encourage initiating a new activity on a self-employed basis.
- Incentives to companies hiring women victims of gender-based violence.
- Incentives to facilitate geographic mobility.
- Incentives to compensate for salary differences.
- Agreements with companies to facilitate hiring women victims of gender-based violence and their geographic mobility.

### **1.8.2. Temporary employment contract for substituting female workers victims of gender-based violence**

(Article 21.3 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence)

Companies signing temporary employment contracts to substitute female employees victims of gender-based violence who have suspended their employment contracts or exercised their right to geographic mobility or to changing their work centre are entitled to a discount in the company's contribution to the Social Security.

### **1.8.3. Incentives to encourage initiating an activity on a self-employed basis**

(Order TAS/1622/2007 of 5 June, which regulates the granting of subsidies to the self-employment promotion programme)

Women victims of gender-based violence who are unemployed and registered as jobseekers in the Public Employment Services may receive a subsidy for establishing themselves as self-employed workers, and a financial subsidy aimed at reducing the interest paid on loans taken out to finance the formation and start-up of a company.

### **1.8.4. Incentives to companies hiring women victims of gender-based violence**

(Law 43/2006 of 29 December, on improving economic growth and employment)

Companies hiring women victims of gender-based violence are entitled to receive discounts on the company's Social Security contributions. The amount

of these discounts depends on whether the employment contract in question is permanent or temporary.

### **1.9. Rights of female civil servants**

(Articles 24 to 26 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence; Law 7/2007 of 12 April, on the Basic Statute for Civil Servants; Art. 21 of Order TAS/2865/2003 of 13 October, which regulates the special agreement with the Social Security system)

- Right to reduce or reorganise working hours by rescheduling the hours, working flexi-time or through other forms of organising the working time, in the terms established by the Administration.
- Right to geographic mobility due to gender-based violence.
- Right to voluntary leave. Female civil servants are entitled to have their jobs secured during the first six months of voluntary leave. For purposes of length of service, career and rights in the respective Social Security system, this six-month period is considered as time effectively worked.
- Absences and lack of punctuality by female civil servants victims of gender-based violence are considered to be justified during the period and in the terms determined by the social or healthcare services.
- Signing the special agreement with the Social Security when female civil servants victims of gender based-violence have reduced their working hours and taken a proportional cut in their salaries.

## **1.10. Economic rights**

### **1.10.1. Specific economic aid to women victims of gender-based violence with special employment difficulties**

(Art. 27 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence and Royal Decree 1452/2005 of 2 December. The specific regulations on the procedure for applying for this economic aid are those approved by the autonomous region or autonomous city where the aid is applied for)

This economic aid is aimed at women victims of gender-based violence who meet the following requirements:

- Receive a monthly income of less than 75 per cent of the national minimum wage in force, excluding the proportional part of two extra pays.
- Have special difficulties in finding employment due to age, lack of general or specialised training or social circumstances. This circumstance must be accredited in a report issued by the respective Public Employment Service.

This economic aid is a one-off payment whose amount, calculated on the basis of a number of monthly pays of the respective non-contributory unemployment benefit, depends on whether the woman has family members under her care, and whether she and/or the family members under her care have a recognised degree of disability.

It is compatible with the aid established in Law 35/1995 of 11 December, on Aid and Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom. However, it is incompatible with other aid sharing the same objective, as well as with the woman's participation in the Active Insertion Income programme.

This aid is not recognised as earnings or income and does not count as income for purposes of receiving a non-contributory pension.

### **1.10.2. Active insertion income**

(Royal Decree 1369/2006 of 24 November, which regulates the Active Insertion Income programme for the unemployed with special economic needs and employment difficulties)

This economic aid is recognised to unemployed persons who are in the so-called “active insertion income programme”, under which initiatives are carried to increase their opportunities of insertion in the labour market.

To be included in the active insertion income programme and receive this economic aid, women victims of gender-based violence must meet the following requirements:

- Accredited the status of victim of gender-based violence.
- Be a registered jobseeker, although jobseeker registration during an uninterrupted period of 12 months is not required.
- Not live with the aggressor.
- Be under 65 years of age, but beneficiaries do not have to be aged 45 or over.
- Not receive a monthly income of any nature of more than 75 per cent of the national minimum wage in force, excluding the proportional part of two extra pays.
- Entitlement to be included in a new active insertion income programme, even if the victim was included in another programme in the 365 days prior to the application date.

The active insertion income amount is 80% of the monthly Public Indicator of Multiple Effects Income (IPREM) in force at each moment in time.



It also includes a one-off supplementary aid payment of an amount equivalent to three months' active insertion income if the woman has been forced to change address due to her circumstances of gender-based violence in the 12 months prior to the programme admission application or during her time on the programme.

### **1.10.3. Advances on unpaid child support**

(Royal Decree 1618/2007 of 7 December, on the Organisation and Functioning of the Child Support Guarantee Fund)

The Child Support Guarantee Fund guarantees the payment, in the form of advances, of recognised and unpaid child support which has been established in court-approved settlements or court decisions in the course of separation, divorce or declarations of nullity of marriage, filiation or child support proceedings.

The beneficiaries of these advances are generally children who are entitled to but are not receiving a child support allowance recognised by a court and are part of a family unit whose economic means and income, calculated on a yearly basis and all inclusive, do not exceed the amount resulting from multiplying the annual Public Indicator of Multiple Effects Income (IPREM) in force at the time of applying for the advance, by the corresponding coefficient based on the number of minor children in the family unit.

The beneficiaries are entitled to receive an advance on the monthly amount of the child support established by a court, with a limit of 100 Euros per month, during a maximum period of eighteen months.

When the legal custodian of the minor (the applicant and receiver of the advance) is a victim of gender-based violence, the situation is considered to be of urgent need and the application is processed urgently by the Fund, which means that the decision is made and notified to the applicant within a period of two months.

#### **1.10.4. Priority access to subsidised housing and public nursing homes for the elderly**

(Art. 28 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence; Law 1/2013 of 14 May, on measures to reinforce the protection of mortgage debtors, restructuring of debt and social housing for rental; Royal Decree 233/2013 of 5 April, which regulates the State Plan for encouraging home rental, restoration of buildings, and urban regeneration and renovation for 2013-2016).

Women victims of gender-based violence are a collective entitled to receive preferential protection in the area of access to housing:

- Possibility of applying for the suspension of eviction orders on their habitual residence, issued in mortgage foreclosure judicial or extrajudicial processes.
- Possibility of gaining access to the Social Pool of Housing for Rental. [http://www.imserso.es/imserso\\_01/fsva/index.htm](http://www.imserso.es/imserso_01/fsva/index.htm)
- They are considered a “preferential sector” for purposes of the aid set out in the State Plan, geared towards giving sectors with financial difficulties access to housing for rental.

#### **1.11. Right to immediate schooling**

(Art. 5 and 17<sup>th</sup> additional provision of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence)

The children of victims of gender-based violence affected by changes of address due to acts of gender-based violence are entitled to immediate schooling in their new place of residence.

## **2. RIGHTS OF FOREIGN WOMEN VICTIMS OF GENDER-BASED VIOLENCE**

### **2.1. Residence status of foreign women victims of gender-based violence in Spain**

(Art. 17.1 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence; Organic Law 4/2000 of 11 January, on the rights, freedoms and social integration of foreigners in Spain; Regulations of Organic Law 4/2000, approved by Royal Decree 557/2011 of 20 April; Royal Decree 240/2007 of 16 February, on the entry, free movement and residence in Spain of citizens of EU Member States and other States party to the Agreement on the European Economic Area)

The residence status of foreign women victims of gender-based violence in Spain includes the following possibilities:

2.1.1. Foreign women who hold the status of family member of a citizen of an EU Member State or a State party to the Agreement on the European Economic Area.

(Art. 9.4 of Royal Decree 240/2007 of 16 February, on the entry, free movement and residence in Spain of citizens of EU Member States and other States party to the Agreement on the European Economic Area)

To preserve the right of residence in cases of annulment of marriage, divorce or cancellation of the registered couple registration, women who are non-nationals of an EU Member State or a State party to the Agreement on the European Economic Area must accredit that they were victims of gender-based violence during the marriage or the situation of registered couple. This circumstance is considered accredited, on a provisional basis, when there is a court protection order in favour of the woman or a report from the Public Prosecutor's Office pointing to existing evidence of gender-based violence,

and, on a permanent basis, when a court decision has been reached upholding that the alleged circumstances did in fact take place.

2.1.2. Non-Community foreign women: may be entitled to one of the following two specific types of residence and work authorisations on grounds of gender-based violence:

- Residence and work authorisation, irrespective of foreign women reunited with their spouse or partner:

(Art. 19.2 of Organic Law 4/2000 of 11 January, on the rights, freedoms and social integration of foreigners in Spain; Art. 59.2 of the Regulations of Organic Law 4/2000, approved by Royal Decree 557/2011 of 20 April)

- This authorisation is granted once a court protection order is issued in favour of the woman, or otherwise a report from the Public Prosecutor's Office pointing to existing evidence of gender-based violence.
- Length of the authorisation: 5 years.

- Temporary residence and work authorisation to undocumented foreign women on grounds of exceptional circumstances:

(Art. 31 bis of Organic Law 4/2000 of 11 January, on the rights, freedoms and social integration of foreigners in Spain; Arts. 131 to 134 of the Regulations of Organic Law 4/2000, approved by Royal Decree 557/2011 of 20 April)

- The application for this authorisation may be filed as soon as a court protection order is issued in favour of the woman or a report from the Public Prosecutor's Office pointing to existing evidence of gender-based violence.

- The authorisation is granted when the criminal procedure ends with a judgement finding the accused guilty as charged or with a court decision confirming that the woman has been a victim of gender-based violence, including a stay of proceedings due to the defendant's whereabouts being unknown or a temporary stay of proceedings due to the accused's deportation.
- Length of the authorisation: 5 years. However, during those five years, the woman may apply for the status of long-term resident, for whose purpose the time during which she held a provisional temporary residence and work authorisation is taken into account.
- Residence authorisation on grounds of exceptional circumstances to her minor children or disabled children who are objectively unable to provide for themselves, or residence and work authorisation to her children over the age of 16 who were in Spain when the complaint was filed. This application is filed by the foreign woman at the time of applying for her own temporary residence and work authorisation on grounds of exceptional circumstances, or at any other time during the criminal proceedings. The granting and length of this authorisation is the same as for the temporary residence and work authorisation granted on grounds of exceptional circumstances to undocumented foreign women.
- The administrative authority with competence to grant this authorisation on grounds of exceptional circumstances will grant a provisional residence and work authorisation to the foreign woman and, where appropriate, a provisional residence and work authorisation to her minor children or disabled children who are objectively unable to provide for themselves, who were in Spain

when the complaint was filed. These provisional authorisations will expire the moment the authorisation on grounds of exceptional circumstances is either granted or refused.

2.1.3. Temporary residence and employee-basis work authorisations held by foreign women are renewed on expiration in cases where the employment contract is extinguished or the labour relationship suspended due to the woman's situation of gender-based violence.

(Art. 38.6 of Organic Law 4/2000 of 11 January, on the rights, freedoms and social integration of foreigners in Spain)

## **2.2. Protection to undocumented foreign women victims of gender-based violence**

(Art. 31 bis of Organic Law 4/2000 of 11 January, on the rights, freedoms and social integration of foreigners in Spain; Arts. 131 to 134 of the Regulations of Organic Law 4/2000, approved by Royal Decree 557/2011 of 20 April)

- If when a situation of gender-based violence is reported, the undocumented status of a foreign woman comes to light:
  - The administrative sanctioning procedure for residing in Spain without documentation (a serious offence) is not initiated.
  - If the aforementioned administrative sanctioning procedure was initiated prior to filing the complaint of gender-based violence, the procedure, as well as the enforcement of possible deportation or repatriation orders, will be suspended.
- If the criminal procedure ends:
  - With a judgement finding the accused guilty as charged or a court decision confirming that the woman has been a victim of gender-based violence, including a stay of proceedings due to

the defendant's whereabouts being unknown or a temporary stay of proceedings due to the accused's deportation, a temporary residence and work authorisation is granted to the foreign woman on grounds of exceptional circumstances and, where appropriate, the authorisations requested for her minor children or disabled children who are objectively unable to provide for themselves.

- With a judgement finding the accused not guilty as charged or a court decision which does not confirm the situation of gender-based violence, the foreign woman will be refused the temporary residence and work authorisation on grounds of exceptional circumstances and, where appropriate, the authorisations requested for her minor children or disabled children who are objectively unable to provide for themselves. Furthermore, the provisional residence and work authorisation granted to the foreign woman and, where appropriate, the provisional authorisations granted to her minor children or disabled children who are objectively unable to provide for themselves will cease to be in effect, and the administrative sanctioning procedure for residing in Spain without documentation will be initiated or resumed.

### **2.3. Right of asylum**

(Law 12/2009 of 30 October, which regulates the right of asylum and to subsidiary protection)

The status of refugee is recognised to women victims of gender-based violence who, due to well-founded fears of being persecuted for reasons of belonging to a certain social, gender or sexual orientation group, find themselves outside the country of their nationality and, because of those fears,

cannot or don't want to seek the protection of that country, or to stateless women who, lacking a nationality and finding themselves outside their country of habitual residence, for the same reasons, cannot or, because of those fears, don't want to return to it:

- For the right of asylum to be recognised, the women's founded fears of being subject to persecution must be based on serious acts of persecution in the form of acts of physical or psychological violence, including acts of sexual violence.
- To assess the reasons for persecution, it is considered that, based on the circumstances prevailing in the country of origin, the concept of specific social group includes a group based on a common sexual orientation or sexual identity characteristic. Furthermore, based on the circumstances prevailing in the country of origin, persons who flee their countries due to founded fears of suffering persecution for reasons of gender are also included.

#### **2.4. Voluntary return of immigrants programmes**

The voluntary return programmes of the Ministry of Employment and Social Security offer foreigners (immigrants, asylum seekers, refugees, persons with a subsidiary protection status) who manifest their wish to return and meet the requirements established in one of the programmes the possibility to return to their countries of origin.

The programmes available to foreign women victims of gender-based violence are the following:

- Voluntary assisted return programme with a particular focus on vulnerable persons: available to women asylum seekers, women with a subsidiary protection status, and undocumented immigrant women who can accredit, by means of a report issued by the municipal social



services or the specialised entity managing the return, that they are victims of psychological, physical or sexual violence.

- Social assistance voluntary return programme: available to vulnerable and undocumented immigrant women in a situation of deprivation and social precariousness, accredited by means of a report issued by the municipal social services or the specialised entity managing the return, who are victims of psychological, physical or sexual violence.
- Programme of additional aid to the accumulated and advance payment of contributory unemployment benefit to foreign workers from countries outside the European Community who voluntarily return to their countries of origin (APRE): available to women who have been recognised the right to receive contributory unemployment benefit in advance and accumulated, precisely for the purpose of enabling their return, and are nationals of countries which have signed a bilateral agreement with Spain in the area of Social Security.

### **3. RIGHTS OF VICTIMS OF CRIME ALSO HELD BY VICTIMS OF GENDER-BASED VIOLENCE**

As well as the specific rights recognised in the Integral Law to women who suffer or have suffered gender-based violence, these women also hold the rights recognised in the legislation to victims of crime, among which the following are worth highlighting:

#### **3.1. Right to lodge a complaint**

*(Art. 259 and following of the Code of Criminal Procedure)*

Women have the right to report the situations of gender-based violence suffered.

By lodging the complaint, it is brought to the attention of the competent authorities that an act which may constitute a criminal offence, i.e. a conduct

defined in the Criminal Code as a crime or an offence, carrying a sanction or penalty, has been committed.

After the complaint has been lodged and referred to the court authority, the corresponding criminal procedures are initiated if it is held that there is existing evidence that a criminal act has been committed.

### **3.2. Right to request a court protection order**

(Art. 62 of Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender-based Violence; Art. 544 third of the Code of Criminal Procedure)

The court protection order is a court decision issued by the competent court in cases where, with founded evidence that a crime or an offence has been committed, it considers that there is an objective situation of risk to the victim which requires adopting protection measures during the course of the criminal proceedings.

The court protection order is a document that establishes precautionary measures of a criminal or civil nature in favour of the woman victim of gender-based violence and, where appropriate, her children. At the same time, it sets in motion the social protection mechanisms in favour of the victim established by the different Public Administrations. The court protection order accredits the status of victim of gender-based violence which gives rise to the recognition of the rights established in Organic Law 1/2004.

The protection measures which the court authority may agree in favour of the woman victim of gender-based violence and, where appropriate, her children, may be of a criminal or civil nature. Among the former, one or more of the following may be agreed:

1. The aggressor's eviction from the family home.
2. The aggressor's prohibition from living in a certain town/city.

3. The aggressor's prohibition from coming within a certain distance of the victim and/or her family members or other persons.
4. The aggressor's prohibition from contacting the victim and/or her family members or other persons by any means: letter, telephone, etc.
5. The aggressor's prohibition from going to certain places: the victim's place of work, children's schools, etc.
6. The omission of data relating to the victim's address.
7. The court protection of the victim in court liaison offices.
8. The confiscation of weapons and prohibition to hold them.

The measures of a civil nature that may be adopted are the following:

1. The use and enjoyment of the family home, furniture and goods.
2. The granting of the custody of minor children.
3. The suspension of the exercise of parental authority.
4. The suspension of the communication, visiting and stays arrangement established for the father and children or the establishment of the way it should be carried out, for example, through a Meeting Point.
5. The establishment of child support.
6. Any other necessary measures to remove minors from danger or save them from harm.

The application may be filed by the victim, her close relatives, her lawyer or the Public Prosecutor's Office. Regardless of the duty to lodge the complaint, the social services which are aware of the situation are required to make it known to the court authority or to the Public Prosecutor's Office so that the court protection order procedure can be initiated.

The civil measures must be expressly requested by the victim or her legal representative, or the Public Prosecutor's Office when there are minor or incapacitated children involved.

It is advisable to apply for the court protection order at the time of lodging the complaint, although it can also be done afterwards.

If a complaint has not been lodged, the actual application for the court protection order is considered the same as the complaint with respect to the events and situations of violence described in the court protection order.

The court must issue the court protection order within 72 hours of filing the application, and following the victim's and the aggressor's appearance in court. The Law establishes that this appearance must be made separately so as to avoid a confrontation between victim and aggressor.

### **3.3. Right to be a party to the criminal procedure: informing the victim of her rights and legal options**

(Art. 109 of the Code of Criminal Procedure)

After lodging the complaint, in her first court appearance the victim will be informed by the court clerk of her right to be a party to the criminal proceedings.

The exercise of this right, which involves the active intervention of the victim of gender-based violence in the court procedure which follows the lodging of the complaint, and the exercise of criminal action and, where appropriate, civil action, entails the victim's presence in the criminal procedures as "private prosecutor", for which she needs to appoint a lawyer to defend her interests and a court solicitor to represent her.

These professionals may be appointed by the victim herself or through the legal-aid shift specialising in gender-based violence. In the latter case, the legal assistance and representation are free if the woman has been granted legal aid.

The victim's presence and consequent status of "party" to the criminal process means that the woman, through her lawyer, can propose procedural devices to obtain preliminary evidence and information for use in the trial, intervene in the examination of evidence, and be informed of all the decisions issued in the course of the proceedings, as well as lodge the pertinent appeals if she so wishes.

Furthermore, as private prosecutor, the victim can request the sentence for the aggressor and an indemnity for the injuries, damage and harm that she has suffered.

The Public Prosecutor's Office is responsible for defending the interests of victims and injured parties in criminal proceedings. If it comes to the conclusion that a crime has been committed, it will lead the prosecution against whoever it considers to be responsible, regardless of whether or not the victim has appeared in the criminal procedure. If it does not come to that conclusion, it will not prefer the charge or may request a stay of proceedings if, for example, it considers that there is insufficient evidence of the events.

#### **3.4. Right to restitution of property, reparation of the loss and compensation for damages**

(Art. 100 of the Code of Criminal Procedure)

When a crime or an offence is committed, the person responsible is required to repair the damage and the harm caused. This civil liability includes the restitution of property, the reparation of the loss and compensation for material and moral damage.

If the victim has taken civil action in the criminal proceedings (to demand this civil liability) and the judgement finds the accused guilty as charged, apart from the punishment imposed, the judgement will also establish the civil liability to be paid to the victim for the physical, psychological or moral damage caused.

However, the victim may reserve the right to take civil action in different proceedings in a civil court, in which case civil action will not be taken in the criminal proceedings. The victim may also waive her right to any claim which, in this context, she may be entitled to make.

### **3.5. Right to receive information on the court procedures**

Even if she does not exercise her right to intervene in the criminal proceedings, the victim must receive information about her role in the proceedings, as well as on the scope, development and progress of the procedure.

The responsibility of informing the victim of her rights lies with the law enforcement agencies, the court and the Assistance to Victims Offices.

This information must include:

- Her right to be a party to the criminal proceedings and to waive or not her right of restitution of property, reparation of the loss and compensation for the damages caused by the voluntary and wrongful act.
- The possibility of and the procedure for applying for the aid that she may be entitled to under the legislation in force.
- Information on the status of the court procedures, her right to examine them and to be issued copies and trial statements (Art. 234 of Organic Law on the Judiciary).
- She must be informed of any court decision that may affect her safety, the court protection order, the adoption or amendment of other precautionary measures, court orders agreeing the imprisonment or release on remand of the accused and of the details of the prison sentence handed down to the aggressor (Arts. 109, 506.3, 544 bis and third of the Code of Criminal Procedure).

- She must be informed of the place and date of the oral proceedings (Arts. 785.3, 962 and 966 of the Code of Criminal Procedure).
- She must be notified of the judgements handed down in all proceedings, including, where appropriate, in the appeal. (Arts. 270 of the Organic Law on the Judiciary; 789.4, 792.2, 973.2 and 976.3 of the Code of Criminal Procedure).
- She must be notified of the stay of proceedings.

### **3.6. Right to protection of the dignity and privacy of the victim in the framework of proceedings related to gender-based violence**

(Art. 63 of Organic Law 1/2204 of 28 December, on Comprehensive Protection Measures against Gender-based Violence; art. 232.2 of Organic Law on the Judiciary; art. 15.5 of Law 35/1995, on Aid and Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom; arts. 2.a) and 3.1 of Organic Law 19/1994, on the Protection of Witnesses and Experts in Criminal Cases)

The Comprehensive Law establishes specific measures to protect the dignity and privacy of the victim.

On the one hand, it establishes the confidential nature of the personal details of the victim, her descendants and the persons in her custody.

The confidential nature of her new address, her workplace or the schools of her children not only protects the privacy of the victim, but it is also an important instrument for ensuring her safety, as it prevents the disclosure of the information to the accused.

To this end, the application form for the court protection order indicates that the victim may give the address or telephone number of a third party to whom the law enforcement agencies or the judicial bodies may send the communications and notifications.

Furthermore, the court may decide, on its own initiative or on request of the victim or the Public Prosecutor's Office, that the court procedures should not be made public and that the trial should be held behind closed doors.

### **3.7. Aid to crime victims**

(Law 35/1995 of 11 December, on Aid and Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom: Regulations on aid to victims of violent crimes and crimes against sexual freedom, approved by Royal Decree 738/1997 of 23 May)

This public aid is granted to direct or indirect victims of intentional and violent crimes committed in Spain and resulting in death, serious body injuries or serious damage to physical or mental health, and to victims of crimes against sexual freedom, even if they were committed without violence. In addition, provisional aid may be granted before the final judgement beyond appeal which puts an end to the criminal proceedings is handed down, provided that the precarious economic situation of the victim or the beneficiaries is accredited.

Women victims of gender-based violence may be entitled to this aid as crime victims.

The beneficiaries of this aid may be entitled to it as direct victims, when they have suffered serious body injuries or serious damage to their physical or mental health as a direct result of the crime; and as indirect victims, in the event of death, as children of the deceased.

The application period for this aid is one year, commencing on the date of the voluntary and wrongful act. However, this period is interrupted when the criminal proceedings commence and is resumed on the date the final judgement beyond appeal is handed down.



## INFORMATION TELEPHONE NUMBERS

At State-level	016 Persons with hearing disabilities: 900 116 016
Andalusia	900 200 999
Aragon	900 504 405
Canary Islands	112
Cantabria	942 214 141
Castile-La Mancha	900 100 114
Castile and Leon	012
Catalonia	900 900 120
Extremadura	112
Galicia	900 400 273
Balearic Islands	112/971 178 989
La Rioja	900 711 010
Madrid	012
Navarre	012
Basque Country	900 840 111
Principality of Asturias	900 209 629
Region of Murcia	112
Community of Valencia	900 580 888
Ceuta	900 700 099
Melilla	952 699 214

**Further information** can be obtained from Equality Bodies of the autonomous regions, local and autonomous region Women's Centres, Assistance to Crime Victims Offices, central offices of the courts, Legal Advice Services of the Bar Associations and the different women's and foreigners' organisations.

**Web page of the Government Office for Gender-based Violence:**  
<http://www.seigualdad.gob.es/violenciaGenero/portada/home.htm>