



SPAIN

IMPROVING PROTECTION OF VICTIMS' RIGHTS: ACCESS TO LEGAL AID

Research paper on the present legal framework and best
practices



With financial support from the Criminal Justice Programme of the European Union

TABLE OF CONTENTS

<u>I. Questionnaires methodology</u>	4
<u>II. Spanish regulation on status and legal aid to victims of crime</u>	4
<u>1. Definitions and legislative history</u>	4
<u>Definition of victims; direct and indirect victims</u>	4
<u>1.2. Definition of legal aid</u>	5
<u>1.3. Legal aid to victims of crime – brief legislative history</u>	5
<u>2. Right to information about victims’ legal situation</u>	6
<u>2.1. Information about the procedure for submitting a complaint</u>	6
<u>2.2. Information about status of proceedings</u>	7
<u>2.3. Information about rights throughout the proceedings</u>	7
<u>2.4. Information about opportunities to obtain legal advice/legal aid</u>	9
<u>2.5. Information about opportunities for reimbursement of expenses, related to proceedings</u>	9
<u>2.6. Information about opportunities to participate in restorative justice services</u>	9
<u>2.7. Information about opportunities to obtain state compensation</u>	100
<u>2.8. Information about any special arrangements available to protect victims’ interests, if they are resident in another EU Member State or non-EU residents</u>	10
<u>2.9. Ethical issues in providing information to victims of crime</u>	10
<u>2.10. Sufficiency of information and problems in obtaining it – opinions of stakeholders</u>	11
<u>3. Legal aid to victims of crime – general considerations</u>	13
<u>3.1. Characteristics and selection criteria for a victim to be entitled to legal aid</u>	13
<u>3.2. Special conditions for foreigners – EU and non-EU residents</u>	14
<u>3.3. Assessment of degree of restrictiveness of conditions for granting legal aid to victims – opinions of stakeholders</u>	14
<u>3.4. Legal aid to victims vs legal aid to offenders – is there a balance? – opinions of stakeholders</u>	15
<u>4. Scope and extent of legal aid, granted to victims of crime</u>	116
<u>4.1. First moment when victims can use legal aid</u>	116
<u>4.2. Stages of criminal proceedings, where victim can receive legal aid</u>	17
<u>4.3. Legal aid in obtaining compensation</u>	117
<u>4.4. Legal aid to participating in restorative justice mechanisms</u>	117
<u>4.5. Length of period legal aid covers</u>	117
<u>4.6. Language(s) in which legal aid is provided</u>	18
<u>4.7. Practical elements of legal aid offered to victims of crime – observations of stakeholders</u>	18
<u>4.8. Payments for legal aid</u>	118
<u>4.9. Reimbursement of victims’ legal fees</u>	19
<u>4.10. Sufficiency and accessibility of legal aid for victims – opinions of stakeholders</u>	19
<u>5. Legal aid to particularly vulnerable victims</u>	20
<u>5.1. Children</u>	20
<u>5.2. People with mental or physical disabilities and illnesses</u>	20
<u>5.3. Foreigners</u>	21
<u>5.4. Victims of violence in close relationships and gender based violence</u>	21
<u>5.5. Victims of terrorist offences</u>	22
<u>5.6. Victims of human trafficking</u>	22

5.7.	<u>Extent to which particular vulnerabilities and specific needs are taken into account, needs for further training – opinions of stakeholders</u>	22
6.	<u>Institutional structure and capacity of the system of legal aid for victims of crime</u>	23
6.1.	<u>System structure and place within the overall victim support system</u>	23
6.2.	<u>Public funds for victims’ legal aid – means of allocation</u>	24
6.3.	<u>Regional specifics and problems in providing legal aid – opinions of stakeholders</u>	255
6.4.	<u>General and specialised training, further needs – opinions of stakeholders</u>	25
6.5.	<u>Transparency and effectiveness of the system, responsiveness to victims’ needs – opinions of stakeholders</u>	26
III.	<u>Best practices and recommendations</u>	26
	<u>ANNEX 1. Spanish State authorities involved in providing legal aid to victims of crime</u>	28
	<u>ANNEX 2. Spanish NGOs involved in providing legal aid to victims of crime</u>	28

I.-Questionnaires methodology

In **Spain**, since there is a draft law on criminal procedure that includes most of the norms of the 2012 Directive, some questions regarding the status of the victims according to this draft were added to the questionnaires. The open questionnaire was used to interview representatives of Free Legal Advice and Free Legal Aid services. The closed type questionnaire, sent by email with a cover letter explaining the objectives of the research, was answered by 16 representatives of stakeholders, members of public (Judiciary, Universities, Free Legal Advice and Free Legal Aid Services of Bar associations, Justice Observatory of Bar association, General Councils of the Catalan and the Spanish Advocacy) and non-governmental offices (lawyers, women and children NGOs, etc.). The main difficulty was the respondents' busy schedules.

II.- Spanish regulation on status and legal aid to victims of crime

1. Definitions and legislative history

1.1. Definition of victims; direct and indirect victims

The **Spanish** *Ley de Enjuiciamiento Criminal* (the Code of Criminal Procedure, hereinafter referred to as LECr)¹ does not define the term 'victim', whereas it can be found in other specific or sectorial regulations.² The *LECr* uses the terms '*ofendido*' (article 109) to refer to the passive subject of the crime, the person affected by the act or omission constituting the crime, and '*perjudicado por el delito*' (article 110) to refer to the person who is seeking compensation within the framework of criminal proceedings for the damage incurred. Both can be plaintiffs in a criminal proceeding. The notion of '*perjudicado por el delito*' can include also family members (in a broad sense) or third parties. Article 113 of the Penal Code, as well as article 1 of *Ley de Ayudas y Asistencia a las Víctimas de delitos violentos y contra la libertad sexual* (Law 35/1995 of 11 December, regarding aid and assistance to the victims of violent crimes and crimes against a person's sexual freedom, hereinafter, Law 35/1995), entitle these subjects to reparation and compensation. The Spanish legal system protects also collective interests

¹ **MINISTERIO DE GRACIA Y JUSTICIA** (1882): Real Decreto de 14 de septiembre de 1882, aprobatorio de la Ley de Enjuiciamiento Criminal [Royal Decree of 14 September 1882, approving the Criminal Procedure Code] (Publicado en GACETA de 17 de Septiembre de 1882), available at http://noticias.juridicas.com/base_datos/Penal/lecr.html (29 November 2013).

²Section 114 of the Penal Code, **JEFATURA DEL ESTADO** (1995): Ley 35/1995, de 11 de diciembre, de ayudas y asistencia a las víctimas de delitos violentos y contra la libertad sexual [Law 35/1995 of 11 December, regarding aid and assistance to the victims of violent crimes and against a person's sexual freedom] (Publicado en BOE de 12 de Diciembre de 1995), available at http://noticias.juridicas.com/base_datos/Penal/l35-1995.html (29 November 2013).

through popular action.³ So, the notion of victim in the Spanish legal system is quite broad, while the actual victim protection and scope of victims' rights vary.

The current proposal for a new Criminal Procedure Code to replace the LECr (hereinafter, the *CPC proposal*)⁴ in article 59 defines the victim as 'the party offended or injured by the punishable offence object of the claim', including the person who 'suffered personal or property damage when trying to prevent the crime or to help the victim when the crime was being committed or immediately afterwards'. In contradiction to the *2012 Directive*, it does not include family members. Moreover, article 61 of the *CPC proposal* states that 'the persons who due to their age, health conditions, disabilities or particular situation can suffer detrimental effect related to their intervention in any legal proceedings' are to be considered victims of particular vulnerability.

1.2. Definition of legal aid in domestic legislation

The **Spanish** legal system does not provide any definition of legal aid. Constitutional rights regarding legal aid, defence and technical support, together with the principles of equality of arms and *audi alteram partem* entitle the victims to be assisted by a lawyer during a trial in which they appear as a plaintiff, either to claim compensation or conviction.

Specifically, the Spanish legal system provides free legal aid to persons who do not have the necessary financial means to litigate (art. 119 of the Spanish Constitution and articles 2 and 3 of the Law regarding Free Legal Aid 1/1996, of 10 January)⁵.

1.3. Legal aid to victims of crime – brief legislative history

In **Spain** since the promulgation of the current LECr in 1882, victims may appear as plaintiffs in criminal trials together with the public prosecutor, establishing a participative system which allows any citizen to take part in a trial for the so called 'public offences' by exercising popular

³ Moreover, in the Spanish legal system, unlike those of other European countries, any citizen, or legal person, may start criminal proceedings for the so called 'public offences' (section 125 of the Spanish Constitution of 1978, and articles 101 and 270 LECr), without the Public Prosecutor's Office having the complete control over the start of such proceedings. Thus citizens, or legal persons, may appear as plaintiffs in the proceedings by filing a complaint or during the pre-trial proceedings, although their claim is limited to prosecution of such public offences and they are subject to some constraints – plaintiffs can only be Spanish citizens (article 270.1 LECr) and they are required to provide bond or guarantee in order for the abuse of the right to be avoided (article 280 and 281.1.1^o *sensu contrario* LECr), the amount being determined according to the principle of proportionality. Victims may also join as private prosecutors in criminal proceedings against juvenile delinquents.

⁴ The proposal was presented in February 2013 and was drafted by a panel of experts. It includes normative solutions from the 2012 Directive.

⁵ **JEFATURA DEL ESTADO** (1996) Ley 1/1996, de 10 de enero, de Asistencia Jurídica Gratuita [Law regarding Free Legal Aid 1/1996] (Publicado en BOE de 12 de Enero de 1996), available at http://noticias.juridicas.com/base_datos/Admin/l1-1996.html (29 November 2013).

action (art. 125 of the Spanish Constitution). Moreover, the Spanish criminal law system has traditionally allowed the joining in criminal trials of civil claims for compensation (art. 100 LECr) to be enforced either through the victim's direct claim or the public prosecutor's request.

The progress in the regulation of rights of victims in Spain, including the right to legal aid, has been illustrated by several important legislative reforms over the last years, among which the one of the LECr, Penal Code, Law regarding the Free Legal Aid, Organic Law 5/2000 of 12 January regarding the criminal responsibility of minors. Moreover, new laws were passed, both at national and autonomous community level, to provide financial aid to victims as well as sectorial regulations, regarding victims of violent crimes and crimes against sexual freedom, victims of terrorist acts, victims of domestic and gender violence, etc.⁶ The CPC proposal should also be taken into account.

2. Right to information about victims' legal situation

The right of the person, harmed by the crime, to information about his/her legal situation is an important pre-requisite for him/her to exercise his/her ensuing procedural rights, including the right to legal aid. Lack of proper information, on the other hand, often discourages victims from pursuing their claims and defending their rights and legitimate interests.

2.1. Information about the procedure for submitting a complaint

In **Spain**, victims of any type of crime may receive information about the procedure for reporting a crime at Counselling Centres for Victims, Legal Advice Services and NGOs, before going to the Police station or Court. For instance, article 18 of Law 1/2004 of 28 December regarding measures to provide complete protection in case of gender based violence, establishes that 'Women victims of gender based violence are entitled to receive thorough

⁶ - Law 35/1995 of 11 December regarding aid and support to victims of violent crimes and crimes against sexual freedom. This Law introduced in Spain a system of public aid, unlike other EU countries in which aid is provided by private bodies, establishing a network of Counseling Centres for Victims of Crimes.

- Royal Decree 739/1997 of 23 May, establishing regulations regarding aid to victims of violent crimes and crimes against sexual freedom.

- Royal Decree 288/2003 of 23 May, establishing regulations regarding aid and compensation to victims of terrorist acts.

- Law 27/2003 of 31 July, regulating the protection orders for victims of domestic violence.

- Organic Law 1/2004 of 28 December regarding the measures to completely protect victims of gender based violence. This regulation introduces in the legal system the Courts for Violence against Women and creates a new professional profile, the Public Prosecutor on violence against women. Moreover, it establishes that Bar Associations should provide specific training to lawyers registered as free of charge duty lawyers for gender based crimes as well as immediately appoint court attorneys in proceedings against gender based violence.

- Royal Decree 355/2004, regulating the record office for the protection of victims of domestic violence.

- Law 29/2011 of 22 September regarding the recognition and complete protection to victims of terrorism acts.

information and advice regarding their personal situation, by Public Administration Services, bodies and centres.

2.2. Information about status of proceedings

In **Spain**, if the victim appears as a plaintiff, he/she shall be informed about the status of proceedings and is entitled to appeal against the measures applied. As established by the current *LECr*, the victim has to be represented by a lawyer and solicitor in order to appear as a plaintiff and bring private prosecution, contrary to what happens with the accused, whose lawyer defends and represents him/her until the oral proceedings (articles 121, 221 and 241 *LECr*). In compliance with article 2, paragraph g of Law 1/1996 regarding Free Legal Aid, indigent victims can apply for free legal aid.

2.3. Information about rights throughout the proceedings

In **Spain**, the legislation establishes that victims are entitled to receive information about their rights by any authority or subject they may enter in contact, especially police constables, court officers, the Public Prosecutor and jurisdictional bodies.

In compliance with article 771, *LECr*, the Criminal Police should provide information to victims, as stipulated by law: information about their rights in written form, in compliance with article 109 and 110, *LECr* (to appear as a plaintiff and renounce or not the restitution of the property, damage reparation and compensation for the harm caused by the offence). The offended party shall be informed about:

- his/her right to appear as a plaintiff without the need to file a complaint;
- his/her right to appoint a defence counsel or to have one appointed by court if he/she is entitled to receive free legal aid; and
- if he/she appears as a plaintiff, about the right to be informed about the proceedings.

In addition, the offended party shall be informed that if he/she does not appear as a plaintiff and does not waive or reserve the right to bring civil actions, it will be done by the Public Prosecutor.

In compliance with article 776 *LECr*, the court officer shall inform victims about their rights, if the Criminal Police did not inform them, as well as about the measures regarding aid to victims: the right to medical and psychological assistance in case of violent crimes and crimes against sexual freedom, the right to receive financial public aid (art. 15 *Law 35/1995*); the right to know the date and place of the trial (art. 785.3 *LECr*), the right to receive a notice of the sentence pronounced (articles 789.4 and 792.4 *LECr*), the right to know the proceedings which may affect their safety (art. 109.4 *LECr*).

Law 35/1995 regarding the provision of aid and advice to victims of violent crimes and crimes against sexual freedom, establishes that the police is obliged to inform victims about the status of the investigations, unless it jeopardises their results. Moreover, victims of an incident which has the features of a crime, when the incident is reported or, in any case, when they appear before the competent body, shall be clearly informed about the possibility to obtain restitution and reparation of the harm suffered with the criminal trial, and the possibility to receive free legal aid. They shall also be informed about the date and place of the trial and shall receive notice of the sentence, even if they do not appear as plaintiffs.

After having received thorough information by the police or Court, the victim may choose to appear as a plaintiff or not. If the victim does not appear as a plaintiff, he/she will be considered as a witness. If the victim does appear as a plaintiff, he/she will be the claimant.

If the victim appears as a plaintiff, he/she will be informed of the rulings which may be applied in the proceedings, as different decisions may be taken (decision to end investigation or not to prosecute the offender, etc.).

The time and place of the trial shall be notified to the victim as plaintiff, or witness if he/she did not appear as plaintiff. In both cases the victim shall receive notice of the sentence. If the victim appears as a plaintiff, he/she has the opportunity to appeal the sentence and other rulings.

The *CPC proposal* presents substantial progress in the area of victims' rights. It enlists in its Article 14 the legal assistance to victims as one of the aims of criminal proceedings, with specific attention to particularly vulnerable victims. In the special provision on rights of victims, Article 60,⁷ the proposal proclaims victims' right to be, inter alia, informed of the development of the proceedings, including the right to know the status of the investigations, if they have not been declared secret, the decisions about the defendant's status and its later modifications, the dismissal rulings and those regarding the beginning of the trial and the sentence pronounced. Notably, this right is accorded regardless of whether victims appear as plaintiffs, which is a

⁷ Victims are given the following rights:

1. right to immediate protection of their lives, integrity, freedom, honour, privacy and any other right violated or threatened by the offence;
2. right to be treated respectfully during the investigations and the proceedings;
3. right not to have their bodies checked without their assent;
4. right to have their personal data protected;
5. right to be heard by the Public Prosecutor during investigations;
6. right to bring criminal and civil action regarding the offence suffered;
7. right to receive free legal aid, in compliance with the requirements and the methods provided by the Law on Free Legal Aid;
8. right to be informed of the development of the proceedings, including the right to know the status of the investigations, if they have not been declared secret, the decisions about the defendant's status and its later modifications, the dismissal rulings and those regarding the beginning of the trial and the sentence pronounced;
9. right to obtain the reimbursement, remedy or compensation for the damage suffered by crime committed by the offender or the State, in the cases provided by law;
10. right to be informed about the above mentioned rights.

substantial step, compared to the current situation. Moreover, the proposal also includes mediation as 'a procedure freely and voluntarily chosen by both the victim and the offender to solve the conflict, in which a third party intervenes to help them to reach an agreement' (art. 143), but it does not include all safeguards offered by Art. 12 of the *2012 Directive*.

2.4. Information about opportunities to obtain legal advice/legal aid

In **Spain**, information about opportunities to obtain free legal aid so that victims can have a lawyer/solicitor are provided by Counselling Centres for Victims, Legal Advice Services, NGOs as well as by the police when a report is filed or by a jurisdictional body as soon as possible after the proceedings have begun (articles 771 and 776 *LECr* paragraph 2.3).

2.5. Information about opportunities for reimbursement of expenses, related to proceedings

In **Spain**, in compliance with art. 772 *LECr*, it is possible to obtain reimbursement for appearing before court, if demanded. The court officer shall set the amount, taking into account only travel expenses and the lost profits due to attendance as witness. The Court does not provide any information about the reimbursement, therefore it must be claimed.

2.6. Information about opportunities to participate in restorative justice services

According to current **Spanish** legislation, the types of restorative justice services available are:

- Conciliation prior to the trial, mandatory in private offences - e.g. libel and slander against private subjects. In these cases and as a requirement for accepting the complaint (art. 804 *LECr*), the parties are obliged to seek conciliation;
- The victim's pardon, which drops the charges or cancels the sentence in specific cases (art. 215.3 of the *Penal Code*);
- Juvenile justice system includes mediation (art. 19 of *Organic Law 5/2000 of 12 January*, which regulates the criminal responsibility of minors);
- Compensating the victim in order to obtain legal benefit - it is considered an extenuating circumstance (art. 25 of the *Penal Code*), provided that it is made before the trial and it is possible to apply measures alternative to prison (articles 81 and 88 of the *Penal Code*).

There are no specific regulations regarding information about participating in restorative justice services.

2.7. Information about opportunities to obtain state compensation

In **Spain**, Law 35/1995 regarding aid and support to victims of violent crimes and crimes against sexual freedom establishes that offences for which it is possible to receive public compensation are those causing death, serious injuries or serious physical or mental disorders. A similar regulation exists in Law 32/1999 of 8 October, regarding solidarity with victims of terrorist acts.⁸ Granting compensation is subject to the pronouncement of the final judgement which ends the trial, except for the provisional aid granted when a difficult financial situation is established in the specific case of the victim or his/her heirs. Financial compensation is incompatible with compensation for damage and harm caused by the crime granted by a criminal sentence.⁹

The application for compensation is sent to the Ministry of Finance, which is in charge of the system.

2.8. Information about any special arrangements available to protect victims' interests, if they are resident in another EU Member State or non-EU residents

In **Spain**, a special practice that protects the interests of victims residing in other countries is the possibility to produce evidence before the trial, established by art. 797.2 *LECr*.¹⁰ Foreigners can have an interpreter free of charge, if they do not speak Spanish or the respective regional language.

2.9. Ethical issues in providing information to victims of crime

In **Spain**, there is no specific regulation about ethical issues regarding the provision of information to victims of crimes. The only partly relevant provision, concerning interrogation of

⁸ Art. 15 of Law 35/1995: 'the judges involved in the investigations about the facts shall inform the alleged victims about the possibility and the procedure to request compensation'.

Art. 2 of Law 35/1995: 'the persons entitled to this right are those who at the time of the commission of the crime are Spanish citizens or citizens of any other Member State of the European Union or any other country that provides the same rights to Spanish citizens. In case of death of the victim, the compensation may be received by his/her heirs as indirect victims, regardless of the nationality or regular residence of the deceased'.

⁹ For example, the legal framework for compensating victims of terrorist acts is found here: <http://www.interior.gob.es/ayudas-38/a-victimas-de-actos-terroristas-356/normativa-basica-reguladora-357?locale=es>.

¹⁰ 'If due to the place where a witness or victim resides or any other reason there is the possibility that a piece of evidence may not be produced during the oral proceedings or could cause their suspension, the duty magistrate shall produce it immediately, guaranteeing the parties' right to challenge. This piece of evidence should be provided using a proper device to record and reproduce sounds and images or through an act certified by the Court Officer, with details regarding the parties. In order to be accepted as evidence, the interested party should provide the recording or the literal reading of the piece of evidence'.

victims, is art. 15.3 of Law 35/1995, which stipulates that during each step of the proceedings, the interrogation of the victim should be conducted respecting his/her personal situation, rights and dignity.

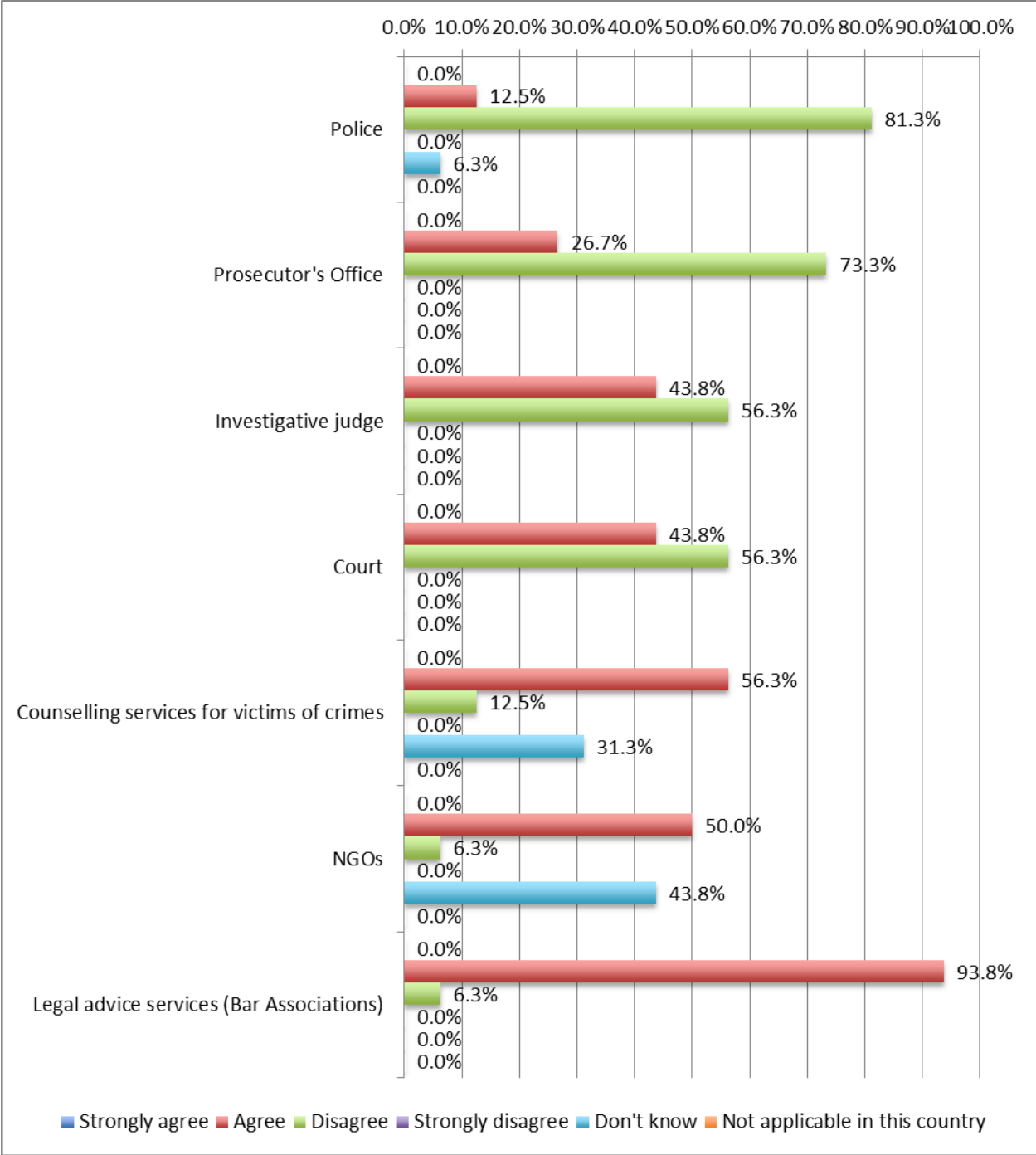
2.10. Sufficiency of information and problems in obtaining it – opinions of stakeholders

In **Spain**, information given to victims about their procedural status is not considered sufficient for the following reasons:

- information is too general, provided through fact sheets or in court orally, so in the vast majority of cases it is not effective as victims do not understand it thoroughly; according to the comments of stakeholders, authorities need to provide information in accordance with the specific circumstances of the different categories of victims, especially particularly vulnerable ones - minors, people with disabilities, foreigners, victims of trafficking of human beings.
- the needs of particularly vulnerable victims (minors, disabled persons, etc.) are not sufficiently taken into account;
- as for gender based violence, despite the specific training programmes provided at institutional level victims complain about the lack of satisfactory information regarding their rights or the proceedings, it is considered necessary to adapt information to the specific situation of victims of gender based violence and to use simpler terminology. Moreover, court officers should take sufficient time to inform effectively victims of violence about their rights.

The insufficiency of information provided is also reflected by the opinions of stakeholders approached, in which the disapproval over the activity of major criminal justice institutions is prevailing:

Figure 4. Would you agree that the following authorities and entities in Spain inform victims sufficiently about their entitlements in legal proceedings?



Source: COINFO – Spain

3.- Legal aid to victims of crime – general considerations

3.1 Characteristics and selection criteria for a victim to be entitled to legal aid

In **Spain**, free legal aid is granted to persons who do not have or demonstrate not to have sufficient financial resources to litigate (article 119 Spanish Constitution and articles 2 and 3 of Law 1/1996 regarding Free Legal Aid). It is regulated by Law 1/1996, Law regarding Free Legal Aid of 10 January. Article 2 of this Law establishes the scope of persons, covered by the law: Spanish citizens, citizens of the other Member States of the European Union and foreigners who are in Spain when they do not have sufficient financial resources to litigate.

The procedure to obtain free legal aid is the following: Bar Associations begin the filing of the complaint, analyse the sustainability of the requests before the court and the lack of resources to litigate in compliance with the limits set and temporarily appoint or dismiss a lawyer and a solicitor to defend the rights of the applicant for free legal aid. Counsels begin to provide their services as soon as they receive their temporary appointment. These provisional resolutions are reviewed by the Commissions for Free Legal Aid, which are bodies formally responsible for the final decision and consist of representatives of the following institutions: Public Prosecutor Office, Bar Association, Solicitors' Association, Public Administrations. It is possible to lodge an appeal against the Commission's final decision. Lawyers and solicitors are appointed for the entire proceedings, including appeals, and their fees are paid by the State, thus they are free for the beneficiaries.

The recent Royal Decree-law 3/2013 of 22 February added to the scope of the law, regardless of the availability of resources for litigation, the immediate provision of free legal aid to victims of gender based violence, terrorism acts and trafficking in human beings in the relevant proceedings, as well as to minors and persons with psychological disorders if they are abused or ill-treated. This right is granted also to their successors in case the victim passed away, provided they are not the offender. Applications for legal aid submitted by the two groups recently added are accepted immediately notwithstanding the availability of means for litigation.

For the purpose of provision of free legal aid, the victim status is acquired when the crime is reported or the complaint filed, or the criminal proceedings begin, regarding one of the above crimes, and is maintained for the whole duration of the criminal proceedings or when the trial ends with a condemnation sentence. The benefit of free aid is lost in case of a judgement in favour of the defendant or if the criminal proceedings are dismissed, without the obligation to repay for the services received up to then.

Another group to receive free legal aid regardless of the availability of resources for litigation, is persons who due to an accident suffer permanent damages which impede them from working and who need to be aided by other persons to perform the basic tasks of everyday life, if the object of the litigation is the claim for compensation for the personal and non-material damages suffered.

According to art. 6 of the Law, the right to free legal aid in criminal cases includes:

- free advice and guidance before the proceedings to those who claim the legal protection of their rights and interests, when their aim is to avoid the legal conflict, or analyse the feasibility of the claim;
- free defence and representation by a lawyer and solicitor in the legal proceedings;
- free experts' aid - the judge or court, in duly justified cases, may agree to let private expert professionals provide - possibly immediately - their aid when the interested party is a minor or a person with mental disorders who is a victim of abuse or ill-treatment, given the circumstances of the case and the best interest of the minor or the person with mental disorder.

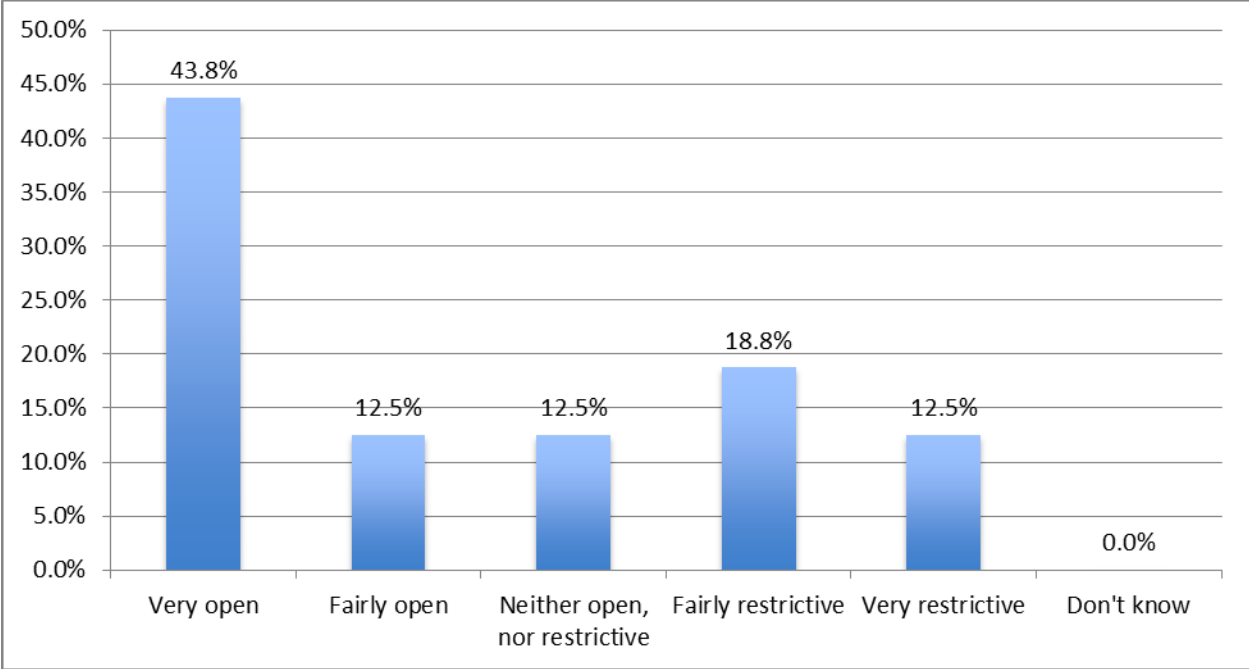
3.2. Special conditions for foreigners – EU and non-EU residents

In **Spain**, according to article 2. a) of *Law 1/1996*, there are no special conditions regarding the right to free legal aid of victims of other EU countries or citizens of non-EU countries.

3.3. Assessment of degree of restrictiveness of conditions for granting legal aid to victims – opinions of stakeholders

In **Spain**, the recent partial reform of the Law regarding free legal aid 1/1996, through Royal Decree-law 3/2013 of 22 February, granted free legal aid immediately, regardless of their financial situation, to victims of gender based violence, trafficking in human beings, terrorist acts as well as minors and persons with mental disorders who suffer abuses and ill-treatment. However, the law does not include victims of domestic violence, which would have concerned also persons who actually suffer the same violence as women, namely elderly people or homosexual couples. Still, the majority of stakeholders approached consider the eligibility conditions for legal aid as very open:

Figure 8. How would you assess the conditions, which a victim in Spain has to meet to qualify for state-provided legal aid in your country?



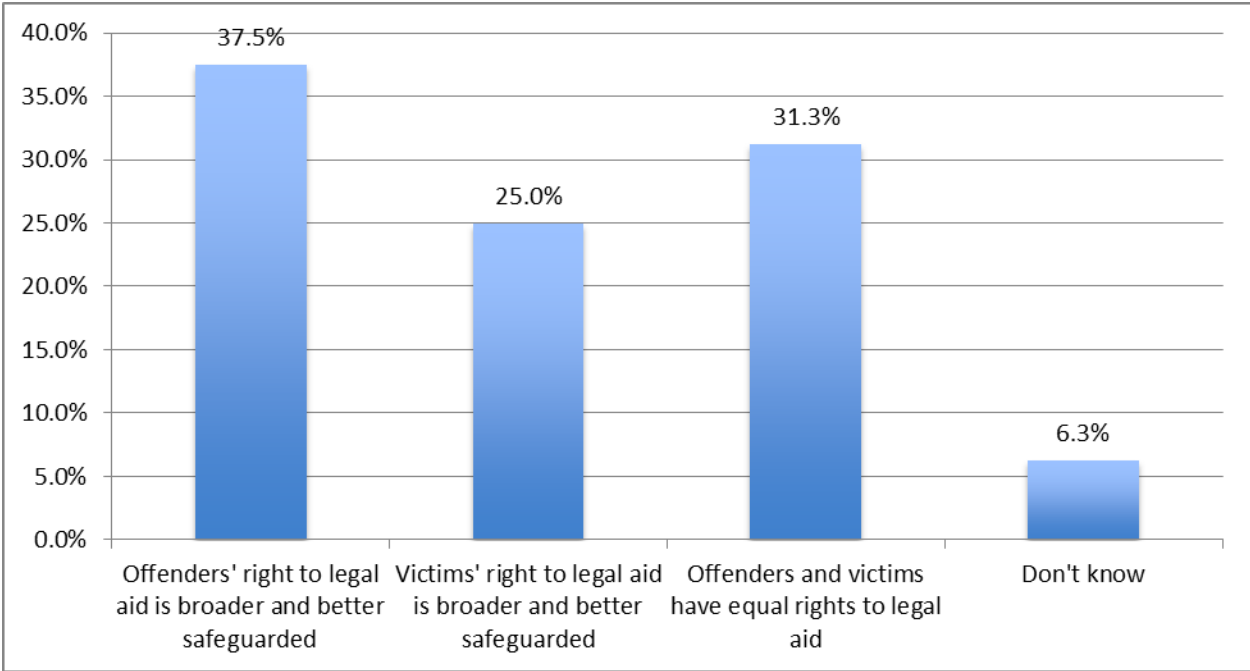
Source: COINFO - Spain

3.4. Legal aid to victims vs legal aid to offenders – is there a balance? – opinions of stakeholders

In **Spain**, the constitutional system of guarantees provides that offenders have immediate legal aid, without applying for free legal aid. On the other hand, victims need to carry out procedural activities (appear as a plaintiff through a lawyer and solicitor) and if they do not have the financial means, they are obliged to apply for free legal aid. The recent partial reform of the Law regarding free legal aid 1/1996, through Royal Decree-law 3/2013 of 22 February, has granted the status of victims who obtain free legal aid immediately, regardless of their financial situation, to victims of gender based violence, trafficking in human beings, terrorist acts as well as minors and persons with mental disorders who suffer abuses and ill-treatment. Thus, this recent reform of the Law establishes a balance for these victims towards the free legal aid provided to the accused.

Among stakeholders approached, a slight majority thinks that offenders’ right to legal aid is broader and better safeguarded than that of victims. Similar is the share of those who consider offenders and victims as having equal rights to legal aid:

Figure 12. How would you assess the balance between the right to legal aid available to victims and to offenders in Spain?



Source: COINFO - Spain

4.- Scope and extent of legal aid, granted to victims of crime

4.1. First moment when victims can use legal aid

In **Spain**, in compliance with paragraph 6.1 of Law 1/1996, the earliest component of free legal aid time wise is free advice and guidance before the proceedings provided to those who claim legal protection of their rights and interests, when their aim is to avoid legal conflict, or analyse the feasibility of the claim. Victims may apply to Counselling Centres for Victims, Legal Advice Services and NGOs to obtain free legal aid.

The first moment, in which the injured party can benefit from legal assistance, is the first procedural activity, in which the party is involved. However, the procedural body is not obliged to allow the participation of an attorney, contrary to the express possibility for the accused to be interrogated in the presence of his/her defender.

4.2 Stages of criminal proceedings, where victim can receive legal aid

In **Spain**, the victims of the crimes listed in the new provisions of Law 1/1996 (gender based violence, trafficking in human beings, terrorist acts as well as minors and persons with mental disorders who suffer abuses and ill-treatment) are entitled to receive free legal aid, provided immediately by an assigned lawyer and solicitor. The status of victim is acquired when the crime is reported, or the complaint is filed, or the criminal proceedings begin.

Victims of other crimes shall apply for free legal aid according to the common procedure, and if it is granted, they are assigned a lawyer and solicitor.

When victims are entitled to free legal aid, they will be defended by the same lawyer and solicitor up to the final sentence, including any other procedure, claim and enforcement, lodging and subsequent proceedings on the appeals against the final decisions which end the trial (art. 7 Law 1/1996).

4.3 Legal aid in obtaining compensation

In **Spain**, obtaining state compensation is an administrative practice, for which the assistance of a lawyer is not required and it does not fall within the right to free legal aid. The Counselling Centres for Victims provide information about the financial aid to which victims may be entitled as compensation for the offence suffered, as well as about the relevant application to the Ministry of Finance.

4.4 Legal aid to participating in restorative justice mechanisms

In **Spain**, the beneficiaries of free legal aid are entitled to a lawyer and solicitor for restorative justice services provided by law.

4.5 Length of period legal aid covers

In **Spain**, in compliance with article 7, *Law 1/1996*, which establishes the duration of free legal aid, it lasts from the granting of the right until the end of the proceedings for which it has been granted, including any other procedure, claim or enforcement. The right to free legal aid is also maintained for lodging and subsequent proceedings on the appeals against the final decisions ending the trial.

4.6 Language(s) in which legal aid is provided

In **Spain**, free legal aid is provided in any of the country's official languages. Moreover, in Counselling Centres for Victims and Legal Advice Services subject to Bar Associations, lawyers speak also English and/or French.

4.7 Practical elements of legal aid offered to victims of crime – observations of stakeholders

In **Spain**, practitioners observe that, considering that victims are not obliged to appear as plaintiffs in criminal proceedings and that they are informed that if they do not appear as plaintiffs and do not waive or reserve the right to bring civil action, it will be done by the Public Prosecutor, many times persons do not appear to defend their interests, convinced that they will be defended by the Prosecutor. If there is a conflict of interests, for instance regarding the amount to be claimed as compensation, the Public Prosecutor defends the public interest and not the interest of victims, who may have claimed a higher amount if they appeared as plaintiffs.

The new CCP proposal is seen to limit victims' right to defence, as it allows the Court of Guarantees to impose the representation and defence of victims in cases where the injured party is composed of several victims and they did not reach an agreement to be represented by the same lawyer - and there is no appeal to this act. Practitioners claim that victims should be entitled to choose freely the professionals to represent and defend them without having them imposed.

4.8 Payments for legal aid

In **Spain**, legal advice for victims is always free at Legal Advice Services and Counselling Centres for Victims.

Regardless of whether victims have the necessary means to litigate, legal aid is free in criminal proceedings for:

- victims of gender based violence, terrorist acts and trafficking in human beings when the proceedings are linked, derived or are a consequence of their status of victims, as well as to minors and persons with psychological disorders if they are abused or ill-treated;
- those that due to an accident suffer permanent damages which impede them to work and need to be aided by other persons to perform the basic tasks of everyday life, if the object of the litigation is the claim for compensation for the personal and non material damages suffered.

Any other victim is entitled to receive free legal aid if their application is accepted by the Commission for Free Legal Aid, provided that the applicant does not have the necessary

financial means in compliance with the provisions of the regulation in force and the claim can be filed to court.

NGOs may provide free legal aid or apply a fee for it.

4.9 Reimbursement of victims' legal fees

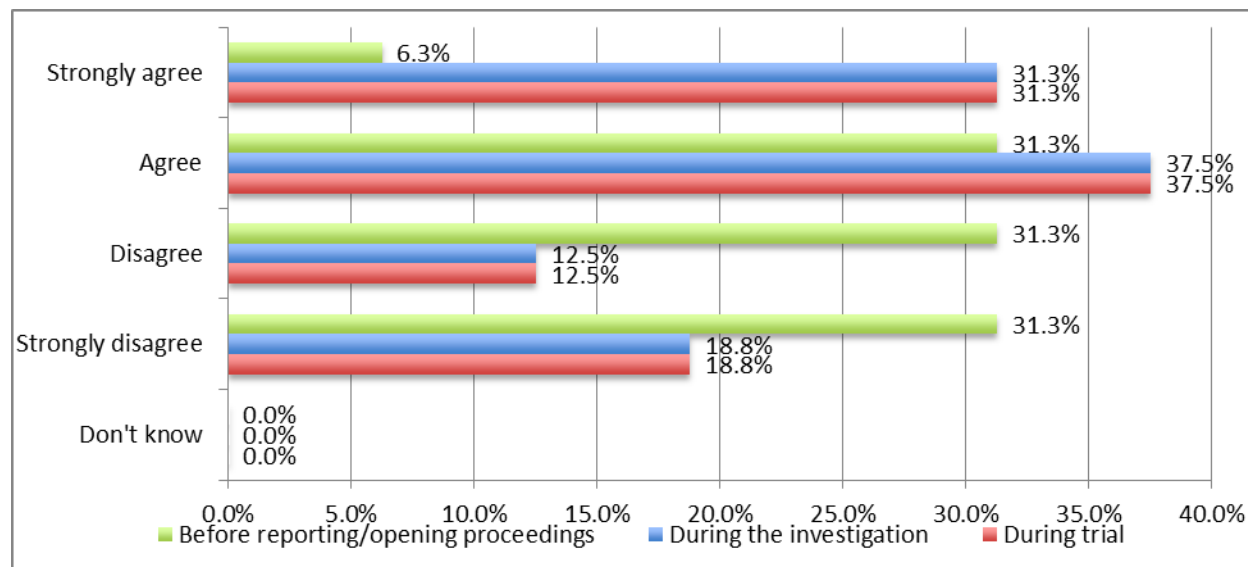
In **Spain**, in case of a judgement in favour of the defendant victims of gender based violence, terrorist acts and trafficking in human beings when the proceedings are linked, derived or are consequence of their status of victims, as well as minors and persons with psychological disorders if they are abused or ill-treated are not obliged to pay for the services received up until that moment.

Other victims should reimburse the legal expenses to the lawyer and solicitor for the work done, if their application for free legal aid is rejected.

4.10 Sufficiency and accessibility of legal aid for victims – opinions of stakeholders

In **Spain**, the opinions of stakeholders approached over legal aid's meeting the existing demand tend towards the negative, as regards the stage before the opening of proceedings, while the investigation and trial phase earn rather respondents' approval than disapproval:

Figure 18. Would you agree that the legal aid and advice, available to victims of crime in Spain, meet the existing demand?



Source: COINFO - Spain

5 Legal aid to particularly vulnerable victims

5.1 Children

In **Spain**, regardless of the availability of financial means to litigate, minors (persons under 18 years of age) are entitled to receive free legal aid which will be provided immediately if they are abused or ill-treated. This right is also granted to the successors if the victim died, provided they are not the offender (art. 2 g) *Law 1/1996*). In compliance with art. 19.6 *Law 5/2000 of 12 January*, which regulates the criminal responsibility of minors, in cases where the victim of the crime or harm is a minor or mentally incapable, the conciliation and reparation agreement should be reached by the legal representative of the victim, upon approval of the Judge of the Juvenile Court.

5.2 People with mental or physical disabilities and illnesses

In **Spain**, in compliance with article 2 h) *Law 1/1996*, regardless of the availability of resources for litigation, the right to free legal aid is granted to those that due to an accident suffer permanent damages which impede them to work and who need to be aided by other persons to perform the basic tasks of everyday life, if the object of the litigation is the claim for compensation for the personal and non material damages suffered. Article 5 of *Law 1/1996* establishes a special granting of the right: the Commission for Free Legal Aid may accept the request to exceptionally concede in duly justified cases to grant the right to those persons whose financial means and income do not satisfy the requirements set for this case, taking into account the health conditions of the applicant and of the persons with disabilities mentioned in article 1 of *Law 51/2003 of 2 December*, for equal opportunities, no discrimination and universal accessibility of persons with disabilities, as well as to those persons who are responsible for them when they appear in criminal proceedings on their behalf and interest, provided that the proceedings concern the health conditions or disabilities which entitled the exceptional granting of the right.¹¹

¹¹ Article 1 of *Law 51/2003 of 2 December* establishes that: 'Disabled persons are those affected by long term physical, mental, intellectual or sensorial disabilities, who are faced with many barriers which impede them to participate thoroughly and effectively in society, on the same basis as the others. This law also considers disabled persons, those with a certified degree of disability higher or equal to 33 per cent. In this case, a disability with a degree higher or equal to 33 per cent is recognised to Social Security pensioners entitled to a disability pension, with a total, absolute or major degree of permanent disability and to retired public servants entitled to a retirement benefit or annuity for permanent disability or inability to work. The certification of the degree of disability is made in accordance with law, and it is valid all over the national territory'.

5.3 Foreigners

Article 22 of *Organic Law 4/2000 of 11 January regarding the Rights and Freedoms of foreigners in Spain and their social integration*, regulates foreigners' right to free legal aid and establishes that foreigners on the Spanish territory are entitled to receive free legal aid in criminal proceedings if they appear as plaintiffs, regardless of the jurisdiction in which they take place, on the same basis as Spanish citizens. In practice, considered that many times they are not able to produce the documents to demonstrate their financial situation, Commissions for Free Legal Aid grant the right to free legal aid to allow foreigners to access the legal system.

In addition, based on Article 31 bis of *Organic Law 4/2000 of 11 January regarding Rights and Freedoms of foreigners in Spain and their social integration*, foreign women victims of gender based violence, regardless of their administrative situation, are entitled to the rights granted by *Organic Law 1/2004 of 28 December regarding measures for complete protection against gender based violence*, as well as measures for safety and protection established by the legislation in force. If a case of gender based violence against a foreign woman is filed and it is established that the victim's legal status is not regular (i.e., she does not have the necessary legal residence permits), the administrative disciplinary proceedings initiated shall be suspended until the criminal proceedings are concluded. The foreign woman falling into that situation may apply for an exceptional residence and work permit from the moment a protection order in her favour is issued or, alternatively, a document issued by the public prosecutor testifying the existence of evidence of gender based violence. This authorisation is valid until the conclusion of the criminal proceedings. The competent authority may issue a provisional residence and work permit in favour of the foreign woman for the exceptional permit to be issued. The provisional permit is valid until the application for an exceptional permit is accepted or rejected. If the criminal trial is concluded with a condemnation sentence, the interested party will receive a temporary residence and work permit. If she did not apply for it, she will be informed about the possibility to obtain a residence and work permit for exceptional circumstances establishing a deadline for the application. If it is not possible to demonstrate the gender based violence act at the end of the criminal procedure, the suspended administrative inquiry will be continued.

5.4 Victims of violence in close relationships and gender based violence

In **Spain**, victims of violence in close relationships do not benefit from a specific regime of free legal aid, but can be subject to a number of protection measures under articles 544 bis and terLECr, like protection and stay away orders.

According to Art. 2 g) of *Law 1/1996*, regardless of the availability of resources for litigation, the right to free legal aid is granted and provided immediately to victims of gender based violence in those proceedings linked, derived or that are a consequence of their status of victims. This right is granted also to their successors in case the victim passed away, provided they are not

the offender. Article 20 of *Law 1/2004* establishes that the victims of gender based violence are entitled to be defended and represented for free by a lawyer and solicitor in any administrative proceedings and procedure directly or indirectly linked to the offence suffered. Under these premises, the same lawyer will defend the victim. In this way, the lawyer and the solicitor assigned to the victim will be the same in any legal or administrative procedure directly or indirectly linked to the offence (criminal procedures for injuries, divorce proceedings, etc.) Article 20 also establishes that the Bar Associations shall adopt all necessary measures to immediately appoint a counsel in gender based violence proceedings.

In criminal proceedings, Articles 62 and 69 of *Law 1/2004* establish legal measures for the protection and safety of victims of gender based violence.¹²

5.5 Victims of terrorist offences

In **Spain**, Art. 2 g) of *Law 1/1996* establishes that, regardless of the availability of resources for litigation, the right to free legal aid is granted and provided immediately to victims of terrorist acts in those proceedings linked, derived or that are a consequence of their status of victims. This right is granted also to their successors in case the victim passed away, provided they are not the offender. No specific regulations exist for those types of victims in the system of criminal procedure.

5.6 Victims of human trafficking

In **Spain**, Art. 2 g) of *Law 1/1996* establishes that regardless of the availability of resources for litigation, the right to free legal aid is granted and provided immediately to victims of trafficking in human beings in those proceedings linked, derived or that are a consequence of their status of victims. This right is granted also to their successors in case the victim passed away, provided they are not the offender. No specific regulations exist for those types of victims in the system of criminal procedure.

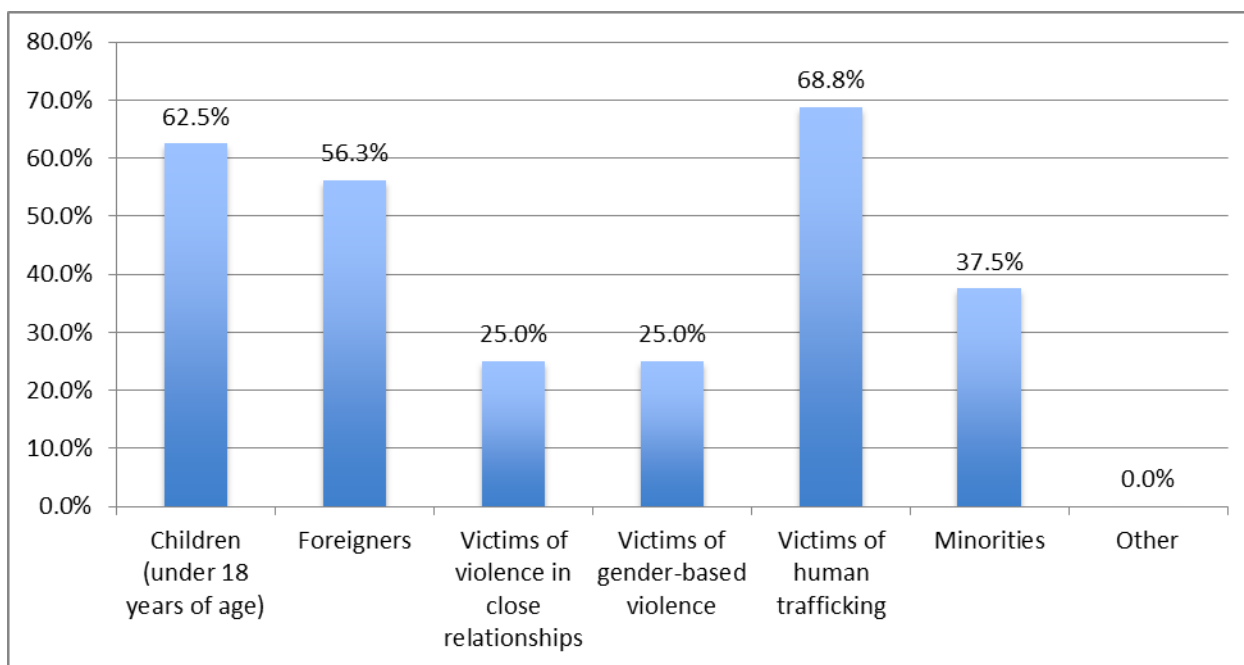
5.7 Extent to which particular vulnerabilities and specific needs are taken into account, needs for further training – opinions of stakeholders

Currently in **Spain**, apart from having implemented some measures such as to avoid visual confrontation between victim and offender, the legal system does not always take into account the specific situation of victims, such as persons who do not understand the language of

¹² Protection order under art. 544 ter *LECr*; protection of victims' privacy through data protection, hearings must be held in camera and actions must be confidential; measures to send the offender away from the domicile; measures to take the victim away or to interrupt any communication with the offender; suspension of the offender's right to own, keep and use weapons.

proceedings, have impaired hearing or disability. The various actors involved are trained by their respective institutions, but in some cases need is observed for greater sensitivity in interacting with, inter alia, victims of gender violence. Apart from purely legal education, it would be useful to focus more on the psychological aspect of the victim's situation which may be helpful to better understand how to act when those harmed report a crime, during the pre-trial proceedings and during the trial. Among stakeholders approached, children and victims of human trafficking are deemed most deprived of access to legal aid, followed by foreigners and minorities:

Figure 23. Are there any specific groups of victims in Spain who fall into a category that is more deprived of access to legal aid?



Source: COINFO - Spain

6 Institutional structure and capacity of the system of legal aid for victims of crime

6.1 System structure and place within the overall victim support system

In **Spain**, not common to other Western countries, specific public bodies provide aid to victims and only exceptionally services are outsourced by tender. The Spanish public administration model is based on *Law 35/1995 of 11 December regarding aid and support to victims of violent crimes and crimes against one's sexual freedom*. Art. 16 of this *Law* establishes a network of Counselling Centres for Victims of Crimes (OAVD), which provide aid and information to victims in order to alleviate the negative effects of the crime and help them exercise their rights. These

centres provide free public service to victims of any crime, although priority is given to those who suffered violent crimes resulting in death, serious injuries, or health or mental problems, as well as the victims of crimes against a person's sexual freedom and the victims of domestic violence and/or gender based violence, regardless of whether they are direct or indirect victims. This is regardless of the fact that the Centres have been established in compliance with a law which allocates public funds only for victims of violent crimes and against one's sexual freedom. In these Centres, victims are helped by court service officers and a psychologist, and in some cities also by social workers who provide information and psychological support. These centres may be subordinate to the Ministry of Justice or the Autonomous Communities. As for the actual influence of the OAVD, they have relatively low influence and, due to the economic depression affecting the country, have been closed in many cities.

On the other hand, *Law 1/1996 regarding Free Legal Aid* tackles the need for free legal aid to victims by establishing services for legal advice (specialised in gender based violence, minors, etc.) and aid in criminal procedures. Free legal aid is conceived as a public service provided by the Bar and the Public Prosecutor's Office, financed with public funds to cover the victims' needs.

Unlike other countries, in Spain there are very few private non-specialised organisations which provide aid and support to victims. The existing organisations have been conceived and established to represent victims of specific crimes, in particular terrorist acts, gender based violence or child abuse, as well as road accidents.

6.2 Public funds for victims' legal aid – means of allocation

In **Spain**, funds for free legal aid to victims are public and comprise costs regarding free legal aid, Counselling Centres for Victims and grants paid to NGOs.

As for free legal aid, in compliance with *Law 1/1996*, it is a public service provided by Bar Associations and solicitors which includes both legal advice services (counselling before the proceedings) and the duty solicitor (the assistance of a lawyer and solicitor during the proceedings). There is no distinction among the costs afforded for supporting victims, as the legal advice centres provide information to anyone, regardless of whether they are the victim or not. A distinction of this kind is not even made during the procedures to grant the right as they do not specify if the applicant is the victim or not. These data are provided only for the proceedings regarding gender based violence, as this category of victims has the highest rate of cases discussed before a court.

In compliance with the provisions of article 149.1 of the *Spanish Constitution*, the vast majority of Autonomous Communities hold the competence in this specific matter, therefore there are

substantial differences among the amounts assigned to free legal aid in the Autonomous Communities.¹³

6.3 Regional specifics and problems in providing legal aid – opinions of stakeholders

In **Spain**, the system of state provided legal aid is basically the same all over the country, specifics being as to whether it is within the competence of autonomous communities and what funds are allocated for it. In fact, autonomous communities assigned with this competence are seen to allocate more funds to the matter. Autonomous communities with more funds for free legal aid usually provide a larger number of services to victims, sometimes even covering social needs which the Law is yet to regulate.

6.4 General and specialised training, further needs – opinions of stakeholders

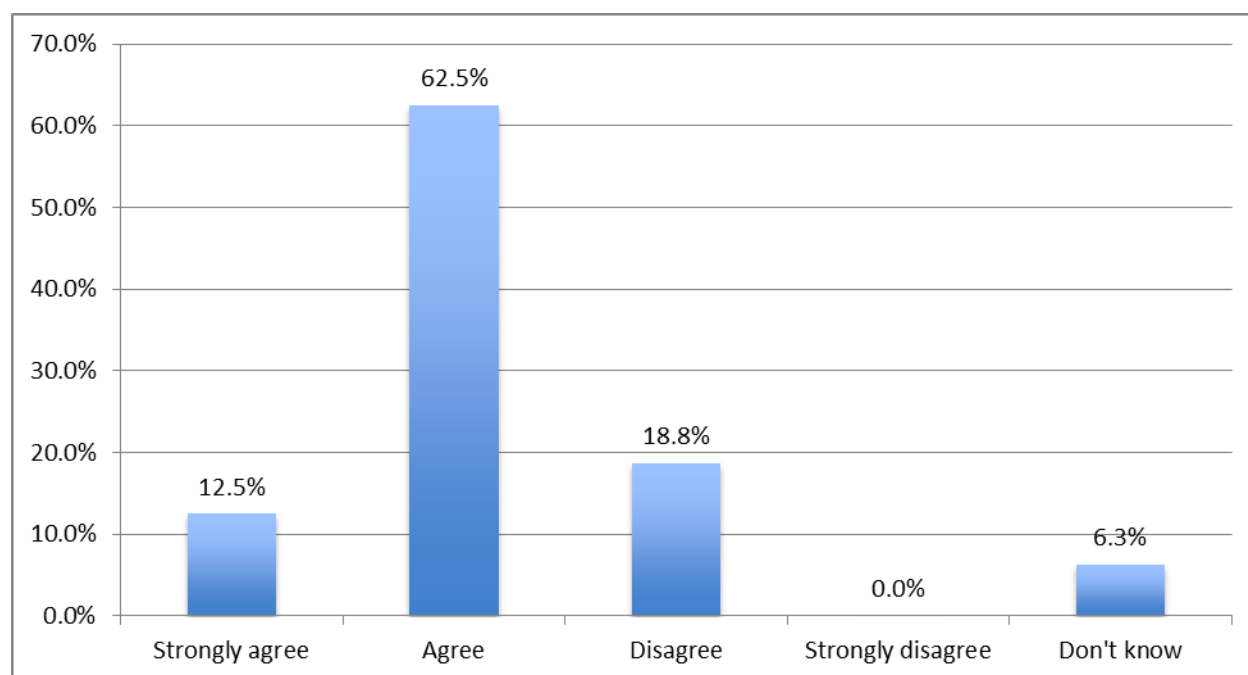
In **Spain**, the persons employed by the competent bodies providing legal advice and aid to victims have generally received the necessary training to perform their tasks. Nonetheless, it is recommended that the personnel employed at the courts who have contacts with the victims during the trial should have better knowledge of victims' rights and should be more sensitive when dealing with them. As for gender based violence, all lawyers providing free legal aid must have specific education and training. Nevertheless, the difficult economic situation of the public administrations in Spain caused the disappearance in 2012 and 2013 of many free legal counselling services working with specific categories of victims (victims of gender based crimes, minors, immigrants, etc.)

¹³ Over the last three years, due to the economic depression, the total amount of the funds assigned to Public Administrations for free legal aid in Spain has been reduced and in 2011 the total amount was € 240.000.000, including compensations for the infrastructure costs paid by Bar associations. This figure represents a reduction of 4 per cent compared to 2010, when the amount was €256.000.000, which was also the first year in which the funds received a 3.8 per cent reduction. Therefore the growing positive trend of the years previous to 2010 was interrupted. In fact, in 2009 they received a 21 per cent increase, while between 2007 and 2008 an 11 per cent increase. In 2011 Catalonia became once again the Autonomous Community with the highest amount invested in free legal aid with about €58.000.000, 26 per cent of the total expense, followed by the Community of Madrid with €42.000.000 (19 per cent of the total amount), Andalusia with €41.000.000 (18 per cent), the Valencian Community with €23.000.000 (10 per cent) and the Canary Islands with €16.000.000 (7 per cent). The four autonomous communities with the highest investments in free legal aid together account for 66 per cent of the total expense at national level.

6.5 Transparency and effectiveness of the system, responsiveness to victims' needs – opinions of stakeholders

In **Spain**, the free legal aid system is considered both efficient and transparent, and responding to victims' needs, as witnessed by the opinion of stakeholders approached:

Figure 28. Would you agree that the practices of the entities, providing legal aid and advice to victims of crime in Spain, respond to victims' needs?



Source: COINFO – Spain

Still, because of the lack of resources due to the current economic depression, the capacity to satisfy the needs of the victims is limited, as the demand is higher than the available counselling services.

III.- Best practices and recommendations on access to justice for victims of crime

In **Spain**, an example of good practice is the Protocol of Action in Cases of Domestic and Gender Based Violence on the Territory of Girona (Autonomous Community of Catalonia) of 2006. Based on this document the institutions of the government of the Generalitat, the Audiencia Provincial, the Public Prosecutor's Office of the Audiencia Provincial, the Health and Social Security branches, the Social Welfare branch, the Justice branch, the Police, the Bar Association of Girona and that of Figueres and the representatives of the coroners coordinated innovatively

their efforts to find a way to tackle victims' issues most efficiently, especially regarding preventive measures, but also the ones concerning the stage when the crime has been committed. The monitoring of the implementation of the Protocol through commissions formed by representatives of the institutions that signed it (regular meetings to discuss the problems that arise in implementation of the Protocol; updated proposals for approval and coordination in accordance with new situations, in order to have flexibility to adapt to needs) is the culmination of lifelong vocation to persevere in the fight against domestic and gender violence. There are local commissions that have direct contact with the people who work with victims and have exact knowledge of the resources and their functioning on each territory.

Another best practice is the gender based violence victim's right to free legal aid, granted and provided immediately in the proceedings linked, derived or that are a consequence of the victim status. Victims of gender based violence are also entitled to be defended and represented for free by a lawyer and solicitor in any administrative proceedings directly or indirectly linked to the offence suffered. In this way, the lawyer and the solicitor assigned to the victim will be the same in any legal or administrative procedure directly or indirectly linked to the offence (criminal procedures for injuries, divorce proceedings, etc.).

The Bar Associations shall adopt all necessary measures to immediately appoint a counsel in gender based violence proceedings. In this way, the victim of gender based violence has the right to receive immediately legal advice by a specialised lawyer in the Police before opening the proceeding, the lawyer assigned to the victim will be the same in any legal or administrative procedure directly or indirectly linked to the offence, and the legal aid will be for free in all these procedures regardless of the availability of resources for litigation.

Bar Associations organised a system to provide specially trained lawyers round the clock to be provided immediately to victims of gender based violence in the related proceedings. The right to have the same lawyer is important in order to avoid the double victimisation and guarantees the best defence, since the lawyer is familiarised with the situation of the victim and the status of proceedings.

In **Spain**, prosecutors (Round Table 2010) insist that it is necessary to strengthen the relationship with the Counselling centres for victims of crimes (OAVD). Lawyers (Round Table of General Council Spanish Advocacy and Bar Associations, Round Table September 2013) are of the opinion that the advice provided by a specialised lawyer to the victims of gender based violence before opening the proceeding should be mandatory, and not just a right of the victim, since the victim can waive the right ignoring the subsequent consequences for not being previously advised.

NGO Save the Children (Report November 2012, Spain) recommends trainings regarding minors' rights and capabilities for the employees of the Justice Administrations that deal with children, Judiciary and Prosecutors.

ANNEX 1. Spanish State authorities involved in providing legal aid to victims of crime

Name of entity	Offices of Assistance to Victims of Violent Crimes
Postal address	
Telephone	
Fax	
E-mail	
Website	http://www.mjusticia.gob.es/BUSCADIR/ServletControlador?apartado=buscadorPorProvinciasForm&tipo=ATV&lang=es_es

ANNEX 2. Spanish NGOs involved in providing legal aid to victims of crime

Name of entity	FAVIDE
Postal address	
Telephone	
Fax	
E-mail	
Website	http://favide.org/

Name of entity	National Association of Victims of Violent Crimes
Postal address	
Telephone	+34 915 513 217
Fax	
E-mail	victimasviolencia@hotmail.com victimas@victimas.org
Website	http://www.victimas.org/

Name of entity	The Association of Women Lawyers Themis
Postal address	C/ Doce de Octubre núm.19, Bajo A 28009 Madrid (España)
Telephone	+34 914 094 184
Fax	+34 914 094 679
E-mail	info@mujeresjuristasthemis.org
Website	http://www.mujeresjuristasthemis.org/

Name of entity	Association of Terrorism Victims
Postal address	Camino Vinateros, 51 - 28030 Madrid
Telephone	+34 91 594 07 99
Fax	
E-mail	
Website	http://www.avt.org/

Name of entity	Esperanza Project
Postal address	
Telephone	+34 607 542 515
Fax	
E-mail	info@proyectoesperanza.org
Website	http://www.proyectoesperanza.org/