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JUSTICE FOR WOMEN – Towards a more effective rights protection and access to judicial procedures for victims of crimes

JOINT LEGAL EXPERTS MEETING

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COMPENSATION TO VICTIMS OF GENDER BASED VIOLENCE IN SPAIN

Madrid, May 2019

INTRODUCTION

In the words of Hannah Arendt, when a crime has been committed: "the person responsible is brought to justice because his action has disturbed and endangered the community in general [...] It is the body's own policy that needs to be repaired and it is the general public order that has been damaged and must be restored [...] In other words, what is a priority is the law and not the plaintiff".

When a person suffers an attack on their human rights, in any of its forms, there is a situation of injustice for them and for society in general.

In these cases it is necessary to speak of compensation, which includes reparation, compensation, restitution, truth and justice.

WHAT ARE WE TALKING ABOUT WHEN WE TALK ABOUT COMPENSATION

- Reimburse
- Restitution
- Reparation
- Justice
- Truth

WHAT DOES THE SPANISH LAW SAY?

The Spanish State in its legislation, instead of conceiving it as a patrimonial responsibility of the State derived from the incorrect operation of its services , opts to start from the principles of social solidarity and equity, noting in the explanatory memorandum of the law that "it is not possible to accept that the economic benefit that the State assumes is compensation, since the latter can not substitute the indemnities owed by the one guilty of the crime [...] ". leaving for granted the assistance nature of these aids.

This means that the compensation due to victims of gender violence and other violence in Spain is reduced to financial assistance, almost reduced to cases in which the victim requests it.

THE LAW 35/1995, OF DECEMBER 11, OF AID AND ASSISTANCE TO VICTIMS OF VIOLENT CRIMES AND AGAINST SEXUAL FREEDOM

This system of state compensation is open exclusively to victims of intentional and violent crimes (direct and indirect), as well as crimes against sexual freedom, even when they are not of a violent nature.

The **compensable damages** will be the serious bodily injuries, the serious damages in the physical or mental health ("the corporal injuries or the damages to the physical or mental health which are sufficient, according to the legislation of the Social Security, that is a declaration of permanent disability in any of its grades or a situation of temporary incapacity exceeding six months"), as well as the death.

BENEFICIARIES

The people who may be **beneficiary** of this law must comply as a requisite to access this state compensation, at the time the crime is committed, must have Spanish or European Union citizenship. Aid may also be granted, however, to those who are not, habitually resident, legally, in Spain or, failing that, are nationals of a State in which similar grants to Spanish citizens are recognized.

In a recent modification (2018), women victims of gender violence * were included, regardless of their administrative status. (They denounce that this requirement excludes, from its scope of application, among others, the vast majority of victims of trafficking in human beings).

QUANTIFICATION AND RECOGNITION PROCEDURES



The procedure for **quantifying the aids** entails carrying out two operations. By means of the first, the maximum amount of the aid is defined. In the case of victims of gender violence * the amount of this aid has increased. In the case of crimes against sexual freedom that cause the victim damages to her mental health, the amount of the aid will be used to meet the expenses of the therapeutic treatment, freely chosen by her, in the maximum amount that is determined by regulation.

The procedures for the **recognition of the aids** will always be initiated at the **request of the person concerned**, subsequently being promoted ex officio in all their procedures.

DATA

With regard, in particular, to **its degree of application**, -relative to October 2015-, the total number of requests made amounted to 10-832, of which only 29.77% were granted.

In 2017, the data we have available is that 190 requests for aid were resolved favorably in files processed in accordance with the provisions of Law 35/1995, of December 11, on aid and assistance to victims of violent crimes and against sexual freedom, which involved a total amount of 3,945,174.87 €.

A SMALL COMPARATIVE WITH THE 29/2011 LAW OF RECOGNITION AND COMPREHENSIVE PROTECTION TO THE VICTIMS OF TERRORISM



From 2000 to 2019 in the Spanish State 268 victims of terrorism have died, and in the same period, 1158 women have been killed as a result of gender violence by her partner (if we include other forms of gender violence, the number would be considerably higher).

Firstly, its founding principle, is that of compensation (so it would be recognizing here its failure in its role as State). On the other hand, another difference is that Law 29/2011 (protection to the victims of terrorism) recognizes that the procedure is initiated through the Ministry of the Interior, while Law 35/1995 must be the survivors themselves who initiate the proceedings.

Another big difference is that the law 29/2011 covers a much wider coverage of damages than the other one covers, including extraordinary aid, labor rights, educational aid, etc.

Ayudas por delitos violentos	Terrorismo, L. 29/2011 (Reglamento en trámite), y normativa sobre pensiones extraordinarias			Otros, Ley 35/1995 (máximo: con 4 o más hijos o personas dependientes e ingresos por debajo del IPREM)	
Daños cubiertos / prestaciones	Ayuda: Importe mínimo	Mínimo con 4 hijos o ps. deptes ²	Resp. civil Sentencia, máximo	Mensualidades IPREM ³	Importe máximo
Fallecimiento	250.000 €	292.600,80 €	500.000 €	120 x IPREM/mes	63.901,20 €
Gran invalidez	500.000 €	542.600,80 €	750.000 €	130 *	69.226,30 €
IP ⁴ absoluta	180.000 €	222.600,80 €	300.000 €	90 *	47.925,90 €
IP total	100.000 €	142.600,80 €	200.000 €	60 *	31.950,60 €
IP parcial	75.000 €	117.600,80 €	125.000 €	40 *	21.300,40 €
Incapacidad Temporal	2 x IPREM/día		18 x IPREM/mes 9.585,18 €	2 x IPREM/día menos 6 x IPREM/mes	12 x IPREM/mes ³ 6.390 €
Secuestro	12.000 + 3 x IPREM/día		Máx.IP Parcial 75.000 €	---	---
Lesiones no invalidantes	Baremo (circulación y laboral: contingencias profesionales)		100.000 €	---	---
Daños materiales (viviendas, vehículos, Establecimientos, mobiliario, sedes...)	Reparación (no elementos suntuarios) Tasación CCS		No cubiertos por otra vía Vivienda no habitual: 50% Vehículos: valor venal Límites: Rto.	---	---
Gastos médicos	Necesarios		No cubiertos por otra vía	Tto. terapéutico delitos c/ L. sexual	5 x IPREM/mes 2.662,55 €
Sepelio	Sin límite, abona el Estado			Sólo menor fallecido	5 x IPREM/mes 2.662,55 €
Adaptación vivienda	(necesidad)			---	---
Alojamiento provisional	contribución			---	---
Educación	Exención tasas Ayudas estudio Atención específica			---	---
Extraordinarias	Paliar necesidad			---	---
Exención IRPF	% que hubiera correspondido a la Base Liquidable			---	---
Pensiones extraordinarias (por LPI ⁵ o fallecimiento)	3 x IPREM/mes (vitalicia, para víctima directa o familiares)		200 por 100 del haber regulador/mes	---	---

WHAT THE VICTIM NEEDS



The victim -from now on survivor- after having lived a situation of injustice that entails physical, emotional, moral and social damages, needs all the components that lead to compensation (reimbursement, restitution, reparations, justice and truth) that we have detailed above.

In relation to traditional justice, survivors can come to understand their own legal battle as a contribution to a larger structure in which their actions, will benefit others.

"The survivor who decides to enter a legal public battle cannot be deceived into thinking that victory is assured. She must be convinced that, simply by facing the perpetrator, she has overcome one of the most terrible consequences of the trauma. She has let him know that he cannot control her using fear, and has exposed his crime to others".
Judith Herman, "Trauma and recovery".

However, since the State lacks the necessary provision to grant compensation in a broad sense, it is essential, **in our intervention with survivors of violence against women**, to take into account the needs of these in order to facilitate better access to compensation, knowing that it will not always be possible to obtain it through the courts and governmental measures.

So, while the soldiers and some victims (victims have official recognition, medals, monuments, parades, celebrations, tributes, public ceremonies and individual compensation for days suffered) victims of gender violence by their partner or ex-partner, victims of rape or other sexual assaults, trafficking , etc., cannot count on it.

In fact, in cases of rape "Waiting for justice often means an increase in trauma because processes are often openly hostile to victims of rape", "If we were to invent a system that would cause intrusive post-traumatic symptoms we would not be able to reach a court of justice.

Women who have tried to seek justice in the legal system often compare this experience with being raped for the second time. "

" Judith Herman "Trauma and recovery".

It is because of all this that women have to seek their own path of **resilience**, seeking meaning in their experience that transcends personal tragedy and as part of the recovery process. Most often, they find it joining others in a social action. We must facilitate this task.

"The women who had recovered the best were those who had been actively involved in an anti-violence movement."

Judith Herman, Trauma y recuperación.

REIMBURSE

As we have pointed out, it is difficult for victims of trafficking and some victims of other crimes in Spain to have access to compensation, since it is necessary for them to be Spanish citizens or legally residing in Spain, an aspect that most of the Survivors of trafficking do not have, and a significant percentage of victims of other gender-based violence may also not comply with this requirement.

REPARATION

As noted above, this can be done not only through traditional forms of civil liability, but also through forms of moral or psychological compensation, such as apology, support or assistance to the victim, etc. and give options to the victim so that she can be resilient.

Reparation has a political and creative dimension, it is necessary that they can discover the way in which they can transform the meaning of their personal trajectory, transforming it into the base of a social action.

There are women, a significant minority, who feel called to be involved with a larger world, to help other people also victimized, bringing those responsible to justice to create a public conscience.

Those who forget the past are condemned to repeat it and for that reason the objective is to tell the truth. As example the case of Amelia Tiganus.

RESTITUTION

In order to advance in the effective collection of compensation by the victims, we recommend the creation of a state fund through the confiscation of property, directly allocated to the payment of said compensation when the traffickers have been convicted and declared insolvent, such as recommended in article 15.4 of the Council of Europe Convention on Combating Trafficking in Human Beings. Without a system for assessing the damages suffered by the victims, restitution is not possible.

JUSTICE

As we have already pointed out, the exposure to the courts does not have the necessary guarantees for the survivors, since there is usually a retraumatization, and this without relying on the fact that there are no guarantees of non-repetition, means ensuring effective protection against reprisals or threats, to avoid many victims being trafficked again.

TRUTH

There is a clear lack of public dissemination of the truth, the determination of the whereabouts of the disappeared people and official statements that restore the dignity and reputation of the victim.

"In Spain, several prevention campaigns have been carried out. One problem is that they are mostly intended for women without reference to the attitudes and behavior of men or to the patriarchal social structure, which can be blameworthy.

In this sense, one recommendation is that government policies should consider legislative, educational and advertising changes to hold men responsible for their role in maintaining inequality, so that they see its effects on women and themselves, and that they assume their duty to be involved in the promotion of equality ". JUSTICE for women. " Guide "VIOLENCE AGAINST WOMEN. KEY FINDINGS AND STRATEGIES TO TACKLE UNREPORTED CASES AND TO ENFORCE THE PROTECTION ORDER" we have drafted within this project, dated March 2019.

"The legal system has been designed to protect men from the superior power of the State but not to protect women and girls and boys from the superior power of men."

Judith Herman, "Trauma and recovery".