



GUIDE  
TO THE

# rights OF women

VICTIMS OF  
GENDER  
VIOLENCE

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GOBIERNO  
DE ESPAÑA

MINISTERIO  
DE IGUALDAD

GOVERNMENT'S  
DELEGATION AGAINST  
GENDER VIOLENCE

GUIDE  
TO THE  
**rights**  
OF  
**women**

VICTIMS OF  
GENDER  
VIOLENCE

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Editor:

**Ministry of Labour and Immigration**

c/ Agustín de Bethencourt, 1. 28003 - Madrid

E-mail: [sgpublic@mtin.es](mailto:sgpublic@mtin.es)

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# GUIDE TO THE RIGHTS OF WOMEN VICTIMS OF GENDER VIOLENCE

The effectiveness and full exercise of legal rights is not possible if the holders of the rights in question are unaware of their existence or of how to exercise them.

This becomes all the more evident in the case of female victims of gender violence, where it is essential for them to be made aware of the measures that can be adopted in connection with their protection and safety, the rights and assistance afforded them by Spanish legislation and the resources they can access to obtain care, emergency aid, support

and comprehensive recovery. This is the purpose of the present publication.

The guarantee of the right to information, acknowledged for all women who are victims of this social scourge in the Gender Violence (Comprehensive Protection Measures) Act, is not only a necessity for their complete protection, it is also the basic prerequisite for enforcing their constitutional rights to physical and moral integrity, liberty and safety and to equality and freedom from discrimination by reason of their gender.



SPECIFIC  
RIGHTS  
OF FEMALE  
VICTIMS OF

# gender violence



*The Gender Violence (Comprehensive Protection Measures) Act* (Fundamental Law 1 dated December 28th, 2004, published in the BOE nº 313 on December 29th, 2004) establishes and guarantees a series of rights for women who are or have been the victims of gender violence, so that they are able to bring their violent relationship to an end and recover their life project.

## What is gender violence?

(Art. 1 of the Gender Violence (Comprehensive Protection Measures) Act (Fundamental Law 1 dated December 28th, 2004))

For the purposes of Fundamental Law 1/2004 (hereinafter the Comprehensive Act), the concept of **gender violence** comprises all acts of physical and psychological violence (including attacks against sexual freedom, threats, coercion or the arbitrary privation of freedom) exerted against women by someone who is or has been a spouse or with whom they have been linked by

similar emotional relationships, with or without cohabitation. This kind of violence is the most serious expression of discrimination, a situation of inequality and the power-based relations of men over women.

## What rights do victims of gender violence have?

The *Comprehensive Act* recognizes an entire catalogue of rights for women who are the victims of gender violence:

These rights are **universal**, in the sense that all women who have suffered any act of gender violence are guaranteed these rights, regardless of their origin, religion or any other personal or social condition or circumstance.

The Act itself groups the different rights into four sections:

- Right to information, comprehensive social assistance and free legal aid.
- Employment rights and Social Security benefits.

- Rights for public servants.
- Economic rights.

## What are the significance and contents of the rights acknowledged in fundamental law 1/2004?

### The right to information.

*(Art. 18 of the Gender Violence (Comprehensive Protection Measures) Act (Fundamental Law 1 dated December 28th, 2004))*

This comprises the right to receive **information and advice** on the following matters:

- a)** the **measures** that the Act itself foresees in order to give **protection** to the victims of gender violence
- b)** the **rights and aid** that the Act acknowledges in their favour
- c)** the **resources** for attention, emergencies, support and comprehensive recovery and how to access these

In order to **ensure** that all women have effective access to this information, it must be provided in a way that takes into account the personal and social circumstances of its intended recipients.

Thus, the necessary means must be used to ensure that the **information is accessible and comprehensible** for women with disabilities, immigrants and those who, for whatever reason, may have greater difficulty in accessing the information.

### The right to comprehensive social assistance.

*(Art. 19 of the Gender Violence (Comprehensive Protection Measures) Act (Fundamental Law 1 dated December 28th, 2004))*

In order to ensure the reality of their right to physical and moral integrity, women who are victims of gender violence, and their minor children, are entitled to social services for:

- attention
- emergencies
- support and succour
- comprehensive recovery.

The purpose of these services is to attend to the needs arising out of the situation of violence, restore the situation the victim was in prior to suffering it or, at least, alleviate its effects.

Through these services, it is possible for women:

- to receive **advice** on the actions that they can undertake and their rights,
- to find out about the **services** they can contact to obtain material, medical, psychological and social assistance,
- to access the various **accommodation** resources (emergency housing, temporary shelters, supervised centres, etc.) at which their safety is assured and their basic needs attended to,
- to recover their physical and/or psychological **well-being**,
- to obtain training, achieve their **insertion** or re-insertion in the **employment market**, and receive psycho-social support throughout their recovery itinerary in order to prevent them become a double victim.

The right to comprehensive social assistance is also

acknowledged for any **minors** living in family contexts where there is gender violence. The social services must have a sufficient number of places planned for children and personnel with specific training in looking after them in order to prevent and avoid efficiently those situations that might cause them mental or physical harm.

### **The right to immediate legal assistance. The right to free legal aid.**

*(Art. 20 of the Gender Violence (Comprehensive Protection Measures) Act (Fundamental Law 1 dated December 28th, 2004); the Free Legal Aid Act (Law 1 dated January 10th, 1996))*

The Comprehensive Act grants all women who are victims of gender violence **immediate legal assistance** in all judicial and administrative proceedings related with their situation of violence, including advice on reporting the matter.

A solicitor is appointed immediately and it is not necessary to request in advance

the **benefit of free justice**, but if the right to free legal aid is not requested or is eventually turned down, the victim in question must pay the **fees** charged for the actions performed by the solicitor and barrister.

For the **right to free legal aid** to be recognized, applicants must show that their **financial income**, calculated for the whole year and family unit, does not exceed

twice the Multi-Purpose Public Income Indicator (IPREM in its Spanish acronym). Exceptionally, this right may be granted to persons whose income does not exceed four times the value of IPREM in the light of their family circumstances, economic obligations and the cost of the proceedings.

Applications for free legal aid must be made by filling in a **form** and attaching the



documentation indicated on the same; these papers must be presented to the Court or at the Bar Association.

Once the right to free legal aid has been recognized, the defence of the victim's interests will be looked after, in all the proceedings it may be necessary to undertake, by the same solicitor belonging to the Special Duty Corps for Gender Violence.

In addition to the **free defence and representation by a solicitor and a barrister** in all judicial and administrative proceedings, the right to free legal aid includes the following **benefits**:

- Free advice and guidance prior to the proceedings.
- Free insertion of notices or court proclamations in official publications.
- Exemption from the payment of the necessary deposits for the lodging of appeals.
- Free assistance from expert witnesses.
- Documents prepared by notaries public are free of charge or have a reduction of 80% on the tariff of fees.

## **Employment and Social Security Rights.**

*(Art. 21 of the Gender Violence (Comprehensive Protection Measures) Act (Fundamental Law 1 dated December 28th, 2004))*

Acknowledging that gender violence has repercussions on the employment situation of the women who suffer it, the Comprehensive Act grants them certain rights in this terrain in order to ensure the effectiveness of their protection and to make it possible for them to receive the comprehensive social assistance they are entitled to.

In order to exercise these rights, female workers must show that there is a **situation of gender violence**, either by means of the Court Judgement finding against their assailant, a court order providing for protection or, exceptionally and until such time as such a protection order is handed down, through a report by the Office of the Public Prosecutor stating the existence of indications that the woman in question is a victim of gender violence.

## Rights of female employees<sup>1</sup>:

*(Articles 37.7, 40.3.bis, 45.1.n, 48.6, 49.1, 52.d and 55.5.b of the Workers' Statute and articles 124, 210 and 231 of the General Social Security Act.)*

– Right to a **reduction in working hours**, entailing a corresponding reduction of their wages in the same proportion. A special agreement may be signed with the Social Security to maintain the same levels of contribution and reference salary so that future pension, permanent disability or death and survival benefits arising out of ordinary illnesses or an accident unrelated with employment are not adversely affected

– Right to the **re-arrangement of working hours**, that is to say, to organize their working hours in accordance with the worker's needs through an adaptation in the timetable, the application of flexi-time arrangements or other ways of arranging working times used in the company.

– Preferential right to **change workplace, with the option to return to the previous job during the first 6 months.**

If a worker who is a victim of gender violence is forced to give up her job, the company must notify her of the vacancies available, for the same professional group, at its other work centres, so that they can exercise this right.

The company is obliged to hold the job occupied by the worker in question prior to the change available for six months, during which time the person may return to her previous job or choose to continue in the new one and lose her right to the job held in reserve for her.

– Right to the **temporary suspension of the employment relationship with the option to return to the previous job.**

Whenever the worker has to give up her job temporarily in order to ensure her effective protection and safety, the

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<sup>1</sup> Collective bargaining agreements and in-company arrangements may include additional improvements to these rights.

company must hold her job available for six months, which the Judge may extend for additional periods of three months up to a maximum of eighteen.

The period of the suspension of the employment relationship is considered as a period of **effective payment of dues** for Social Security benefits for retirement, permanent disability, death and survival, maternity and unemployment. The worker will be considered to be in a **situation equivalent to registration as employed** in order to access the benefits indicated.

With respect to **protection against unemployment**, the suspension of the employment relationship is considered to be a **situation of involuntary unemployment**, therefore, if she meets the general requirements, the worker is entitled to collect the corresponding unemployment benefit or the general subsidy. In these cases:

- The fact that the period of suspension is considered as a **period of occupation with dues**

**paid** means that it must be taken into account for the recognition of a benefit or subsidy, regardless of whether or not the benefit or subsidy has been received during the period of suspension.

- The **contributions considered** for the recognition of a benefit or subsidy might also be considered for the recognition of a subsequent benefit or subsidy (for example when the contract expires, or if she decides to terminate the employment relationship in order to make her protection more effective), which will be acknowledged as if she had not received the benefit or subsidy.
  - For the calculation of the amount of the benefit, if the reference amounts have been affected in due course by a reduction in working hours derived from the gender violence situation, they will be increased to 100% of their amount.
- Right to have the **employment contract rescinded with entitlement to receive unemployment benefit.**

Where the worker, in order to ensure her protection, is forced to give up her job definitively, she will be considered to be in a **legal situation of involuntary unemployment**, therefore, if the general requirements are met, she will be entitled to collect the corresponding unemployment benefit or the replacement subsidy if her contributions are insufficient.

– **Absence from work is not considered as a breach of contract** providing such absences are caused by the worker's physical or psychological situation as a result of gender violence. This must be accredited by the social services providing care or the health services.

– Any **dismissal** or termination of the employment contract by the employer will be **null and void** if it comes about as a result of the exercise by a victim of gender violence of the right to reduce or re-arrange her working hours, request geographical mobility, change her workplace or temporarily suspend the employment relationship.

**Rights of self-employed women:**  
*(Art. 21.5 of the Gender Violence (Comprehensive Protection Measures) Act (Fundamental Law 1 dated December 28th, 2004))*

Self-employed workers who are the victims of gender violence and who have to **cease being engaged in this activity** in order to make their protection or the right to comprehensive social assistance effective shall not be obliged to pay any dues during a term of six months, which will be considered as a period of **effective payment of dues** for the purposes of Social Security benefits. In addition, the worker's situation will be considered to be **equivalent to registered as employed** for access to Social Security benefits and her right to the benefit of **health-care assistance** under the Social Security will be maintained during this period.

**Rights of public servants.**  
*(Arts. 24-26 of the Gender Violence (Comprehensive Protection Measures) Act (Fundamental Law 1 dated December 28th, 2004); Basic Statute of Public Servants (Law 7 dated April 12th, 2007))*

Public servants who are the victims of gender violence have the following rights:

– **Right to a reduction in working hours**, entailing a corresponding reduction of their wages in the same proportion. A special agreement may be signed with the Social Security to maintain the same levels of contribution and reference salary for which dues were paid prior to the reduction in working hours so that the amount of future Social Security benefits that may be recognized subsequently are not adversely affected.

– **Right to the re-arrangement or organization of working hours**, through an adaptation in the timetable, application of flexi-time working arrangements or other ways of organizing working hours on such terms as the Administration may provide.

– **Right to change workplace, with the option to return to the previous job.**

If the public servant, in order to ensure effective protection or her right to comprehensive social assistance, is obliged to

leave her job in the town where she is currently working, she is entitled to a transfer to another job of similar characteristics in the same corps, category or professional group without the need for the vacancy to be included as one necessarily covered. Even so, in such circumstances the competent Authority shall be obliged to inform her of the vacancies in the same town or in such towns as the person concerned may expressly request. Such a transfer shall be treated as a compulsory transfer.

– **Right to leave of absence.** In order to ensure protection or the exercise of their rights to comprehensive social assistance, public servants are entitled to request leave of absence without having had to render a prior minimum of services and without any requirement of a minimum period of permanence.

During the first six months, the public servant shall be entitled to return to her original position and the period of leave of absence shall be calculated for the purposes of promotions, length of service and rights in

the applicable Social Security regime.

When judicial actions so require, this period may be extended by three months up to a maximum of eighteen, with the same effects as indicated above, in order to ensure the effectiveness of the victim's protection.

During the first two months of this leave of absence, the public servant shall be entitled to receive her full compensation and, where appropriate, the family benefits for dependent children.

– **Absence from work** by public servants who are victims of total or partial gender violence shall be excused for such time and on such conditions as determined by the social or health-care services as appropriate.

As for employees or self-employed individuals, for the said rights to be recognized, public servants workers must **show that there is a situation of gender violence**, either by means of the definitive Court Judgement finding against their assailant, a court order providing for protection or,

exceptionally and until such time as such a protection order is handed down, through a report by the Office of the Public Prosecutor indicating the existence of indications that the woman in question is a victim of gender violence.

### **Economic rights.**

Specific economic assistance for women who are victims of gender violence with particular difficulty in obtaining employment.

*(Art. 27 of the Gender Violence (Comprehensive Protection Measures) Act (Fundamental Law 1 dated December 28th, 2004) and Royal Decree 1,452 dated December 2nd, 2005. The regulations regarding the procedure for dealing with the matter shall be as published in this respect by the Region or Autonomous City in which the aid is requested.)*

This financial aid is intended for female victims of gender violence who meet the following **requirements**:

**a) Absence of income** amounting, on a monthly basis,

to more than 75 per cent of the minimum inter-professional wage currently in force, excluding the proportional part of two bonus payments per annum.

For 2008, the minimum inter-professional wage is set at 600.00 euros/month, so the income threshold to be entitled to this assistance is 450.00 euros/month.

For the purposes of determining the requirement of absence of income, only the income available or potentially available to the person applying for the aid will be taken into account, without including in the calculation for this purpose the

income from other members of the family unit living with the victim.

If the applicant for this aid has family responsibilities this requirement of an absence of income will be deemed to be met when the monthly income of the family unit as a whole, divided by the number of its members, does not exceed 75 per cent of the minimum inter-professional wage.

For these purposes, family responsibilities will exist when the beneficiary has at least one dependent relative, whether a blood relation or otherwise, to the second degree, inclusive,



living in the same household. Relatives will not be considered as dependent if they have income in excess of the minimum interprofessional wage, excluding the proportional part of two bonus payments.

**b) Special difficulties to obtain employment** in view of their age, lack of general or specialized preparation or social circumstances, as accredited by a report issued by the Public Employment Service.

**c) Accreditation of their status as victims of gender violence** with the definitive judgement finding against their assailant, the court order in their favour providing for protection or, exceptionally, a report by the Office of the Public Prosecutor showing the existence of indications that the woman making the report is a victim of gender violence until such time as a protection order is handed down.

The financial aid, funded by the general state budget, is granted and paid by the Regional Government or Autonomous City. The request for, processing and

payment of this aid will be carried out in accordance with the regional regulations governing it. Depending on the Regional Government or Autonomous City, its processing and payment will correspond either to the social services or to the equality institution.

The economic aid will be paid **as a lump sum**, and its **amount** will, in general, be equivalent to:

1. Six months' unemployment subsidy, if there are no family responsibilities.
2. Twelve months' unemployment subsidy, when the victim has a relative or minor living at her expense.
3. Eighteen months' unemployment subsidy, when the victim has two or more relatives or minors living at her expense, or one relative and one minor.

The amount of the aid for **women with an acknowledged degree of disability equal to or greater than 33 per cent** will be:

1. Twelve months' unemployment subsidy, if the

victim has no family responsibilities.

2. Eighteen months' unemployment subsidy, when the victim has a relative or minor living at her expense.
3. Twenty-four months' unemployment subsidy, when the victim has two or more relatives or minors living at her expense, or one relative and one minor.

If the victim of gender violence has **a relative or minor living at her expense with an acknowledged degree of disability equal to or greater than 33 per cent**, the amount of the aid will be equivalent to:

1. Eighteen months' unemployment subsidy, when the victim has a relative or minor living at her expense.
  2. Twenty-four months' unemployment subsidy, when the victim has two or more relatives or minors living at her expense, or one relative and one minor.
- The amount of the aid will be equivalent to twenty-four

months' unemployment subsidy in the following cases:

1. When the **victim of gender violence** with family responsibilities **or the relative or minor living at her expense** has an acknowledged **degree of disability equal to or greater than 65%**.
2. When the **victim of gender violence and the relative or minor living at her expense** have an acknowledged **degree of disability equal to or greater than 33%**.

This aid is compatible with those foreseen in the Law on Aid and Assistance for Victims of Violent Crime and Sexual Assault (Law 35 dated December 11th, 1995).

On the other hand, it is incompatible with other aid intended for the same purpose as well as with participation in the Active Insertion Income programme (RAI in its Spanish acronym). This is without prejudice to the possibility of participating in the RAI once these circumstances disappear or are altered.

## The active insertion income (RAI).

*(Royal Decree 1,369 dated November 24th, 2006, regulating the Active Insertion Income programme for the unemployed with special economic needs and difficulties for finding employment)*

This economic aid is awarded to unemployed individuals included in the so-called “**ACTIVE INSERTION INCOME PROGRAMME**” (hereinafter, RAI Programme), which carries out actions aimed at increasing their opportunities of entering the labour market.

In order to be included in the RAI Programme and be a recipient of this economic aid, female victims of gender violence must comply with the following **requirements**:

**a) Accreditation of their status as victims of gender violence** through any of the following documents:

- Court order providing for protection or a resolution by a court granting interim penal protection measures in their favour.

- Report by the Office of the Public Prosecutor showing the existence of indications that they are victims of gender violence until such time as the protection order is handed down.
- Judgement finding against their assailants.
- Certificate indicating this situation by the social services of the Regional Government Administration, the Town Council, or the Refuge Centre.

**b) Be a jobseeker.**

**c) No entitlement to unemployment benefits or subsidies**, or to minimum farmers’ income.

**d) Absence of income** of any type amounting, on a monthly basis, to more than 75 per cent of the minimum inter-professional wage currently in force, excluding the proportional part of two bonus payments per annum.

(For 2008, the minimum inter-professional wage excluding the proportional part of two bonus payments per annum is set at 600.00 euros/month, so the

income threshold to be entitled to this assistance is 450.00 euros/month.)

In addition to the foregoing, the sum of the monthly income for the family unit (comprising the victim and any children under 26 years of age or older if disabled, or fostered minors), divided by the number of members making up the unit do not exceed 75 per cent of the minimum inter-professional wage, excluding the proportional part of two bonus payments per annum.

Inclusion on the RAI programme and the application for economic aid will be effected through the **Employment Office.**

The **amount of the RAI** is **80% of the Multi-Purpose Public Income Indicator** (IPREM in its Spanish acronym) per month in force from time to time, therefore for 2008 it is 413.52 euros/month.

The **maximum duration** of this economic aid in each Programme is **eleven months.** It is not possible to receive more than three RAI Programmes.

This Programme includes special features for victims of gender violence:

- It is not required to be registered as a jobseeker for 12 months, nor to be 45 or more years of age.
- In order to determine the total income of the family unit, any income received by the assailant shall not be taken into account.
- It is possible for applicants to be the beneficiary of a subsequent RAI programme even where they have been included as a beneficiary of another RAI programme within the 365 days prior to the date of the application.
- Supplementary lump-sum payment if the applicant has been forced to change her place of residence due to circumstances of gender violence in the 12 months prior to the application for admission to the programme or while she is included on the same.
- In order to preserve confidentiality regarding the applicant's domicile, an alternative mailing address or PO box number may be provided.

Receipt of the RAI is incompatible with the economic aid regulated in article 27 of the Comprehensive Act, which is foreseen for women who, in view of their circumstances, have special difficulties to find employment and therefore do not take part in programmes arranged for their professional insertion, such as the RAI Programme. This is without prejudice to the possibility of participating in the RAI Programme once these circumstances disappear or are altered.



### **Help for victims of gender violence to move house.**

*(First transitional provision of Royal Decree 1,369 dated November 24th, 2006, regulating the Active Insertion Income programme)*

Women who are victims of gender violence and beneficiaries of the Active Insertion Income and who have been forced to change their place of residence in the 12 months prior to the application for admission to the said programme or while they are included on the same may

receive, as a lump-sum payment, a supplementary assistance equivalent to three months of the Active Insertion Income, without this reducing the duration of the said income. This aid may be received once only for each right to be included on the Active Insertion Income programme.

### **Priority access to protected housing and public residences for the elderly.**

*(Art. 28 of the Gender Violence (Comprehensive Protection Measures) Act (Fundamental Law*

*1 dated December 28th, 2004);  
Royal Decree 801 dated July 1st,  
2005, approving the State Plan  
2005-2008 to foster citizens'  
access to Housing)*

The State Housing Plan 2005-2008 includes female victims of gender violence as a priority group for access to protected housing and financial aid for acquisition of housing.

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which also  
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In addition, status as a victim of gender violence is a circumstance that will be taken into account by the competent public administration for the granting of a place at a Public Residence for the Elderly. In addition to the rights acknowledged in the Comprehensive Act for women suffering or who have suffered gender violence, they are also entitled to the **rights granted in legislation to the victims of crime**, including the following:

**Right to report the situation to the authorities.**

*(Art. 101 of the Criminal Procedure Act)*

Women are entitled to report situations of gender violence they suffer to the appropriate authorities.

By doing so, the judicial authorities are informed of a situation that may constitute a breach of criminal legislation, i.e. behaviour that the Spanish Criminal Code classifies as a crime or an offence, stipulating a punishment or a prison sentence for the perpetrator.

These situations may be reported to a Police Station (whether of the national, regional or local police forces), any Civil Guard Barracks, at the Court of First Instance or the Office of Public Prosecutions.



Such a report gives rise to the initiation of legal proceedings before the **Court for Violence against Women** in order to investigate the facts and, where appropriate, impose criminal penalties on the persons responsible.

**Right to request a Court Order providing for legal protection.**

*(Art. 60 of the Gender Violence (Comprehensive Protection Measures) Act (Fundamental Law 1 dated December 28th, 2004) and art. 544 ter of the Criminal Procedure Act)*

A Court Order for legal protection is a ruling by a Judge acknowledging the existence of an objective situation of risk for the victim and ordering protection for the same during the processing of the lawsuit before the criminal courts. The Order for legal protection also accredits the woman's status as a victim of gender violence thus entitling her to receive the **economic and social rights** acknowledged in the Comprehensive Act.

The **protection measures** that the Court Authority may order in favour of female victims of gender violence and their



children, where appropriate, may be **criminal or civil** in nature. Criminal protection measures include:

1. Eviction of the assailant from the family home.
2. Ban on living in a particular town.
3. Ban on assailants to prevent them from coming within a distance determined by the Judge in the vicinity of victims and/or their relatives or other individuals.
4. Ban on assailants to prevent them from communicating with the victims and/or their relatives or other individuals by any means: letter,

telephone, etc.

5. Ban on assailants to prevent them from approaching certain locations: the victims' workplace, their children's schools, etc.
6. Omission of information regarding the address of the victim.
7. Legal protection for victims at court offices.
8. Confiscation of weapons and bans on holding the same.

The **measures of a civil nature** that may be contained in the Court Order providing protection are as follows:

1. The use and enjoyment of the family home, furnishings and fitments.
2. The award of custody over minor children.
3. The suspension of the exercise of parental rights.
4. The suspension of the regime for fathers to communicate, visit and stay with their children or the way in which these activities are to be carried out, for example through an official Meeting Point.
5. The establishment of alimony for food.
6. Any other measure that may be necessary to protect minors from danger or to avoid harm to them.

Civil measures may be ordered both in the case of married couples and for *de facto* life partners. The duration of these measures is 30 days, therefore it is necessary to initiate the corresponding proceedings under family law before this period elapses, i.e. separation, divorce, nullity, or actions in connection with any children born out of wedlock. If this is done, the interim measures will remain in force for the 30 days following the presentation of the lawsuit and the civil judge must decide within this time frame whether or not to maintain them.

With regard to **foreign women**, the Court Order providing for their protection allows them to request and obtain an **independent resident's permit** if the one they had previously was for "family re-grouping" linked to the assailant's resident permit. In the case of foreign women who are in **irregularly** in Spain, the Court Order providing for their protection allows them to request a temporary residence permit on humanitarian grounds and any proceedings under way to impose a penalty in connection with the said irregular status will be suspended, as detailed in the corresponding section of this Guide.

A Court Order providing for legal protection can be requested not only by victim but also by close relatives, their lawyers or social services who are aware of the situation. To do so, it is necessary to complete a simple form and present it at the Police Station, Civil Guard Barracks, Court, Office of the Public Prosecutor, Centres for Victim Care, social and care centres and at the Legal Advice Services of the Bar Associations.

It is important for the application to reflect clearly the acts of physical and psychological violence, threats or other acts of intimidation suffered, and to indicate the reasons why the women is afraid of suffering further aggressions or harm.

It is advisable to request the Court Order providing legal protection at the same time as the facts are reported to the competent authorities, although it may also be requested later.

When no formal report of a crime is presented, the simple request for the Court Order providing legal protection is considered to be sufficient, with regard to the facts and situations of violence contained in the same.

The Court must issue the protection order within the maximum term of 72 hours following submission of the request, after hearing the victim and the assailant. The Act establishes that this hearing must take place separately, thus avoiding any confrontation between the parties.

### **Right to be a party to the criminal proceedings: the offer of legal action.**

*(Art. 109 of the Criminal Procedure Act)*

At the moment when the report of the facts is presented and during the first hearing before the Court, victims must be informed of their right to be a party in the criminal proceedings.

The exercise of this right, which implies the active participation of the victim of gender violence during the judicial proceedings held following the report and the exercise of criminal actions as well as in the civil lawsuit, if any; this is done through formal participation in the criminal proceedings as a “private prosecutor” and to this end, it is necessary to appoint a solicitor to defend the victims’ interests and a barrister to represent them before the Court.

The designation of appropriate professionals may be at the free choice of the victim or through the Special Corps of Gender Violence Duty Lawyers. In this latter case, legal assistance and representation shall be provided free of charge if the victim is granted the benefit of free justice.

Putting in an appearance before the Court and subsequently participating as a “party” to the criminal proceedings mean that the victim, through her lawyers, is able to propose evidence for consideration, be present when this evidence is collected, and be informed of all the orders issued by the Court in the course of the proceedings, with the possibility, if she does not agree, to present the corresponding appeals.

Furthermore, as a private prosecutor, victims may request that the Court declare their assailants guilty and order them to pay compensation for any injuries, harm and damages suffered.

The Office of the Public Prosecutor is charged with the defence of the interests of victims and of anyone negatively affected by the events during the criminal proceedings. If the Public

Prosecutor comes to the opinion that a crime has been committed, charges will be brought against whomever is considered legally liable, regardless of whether or not the victim has chosen to be a party to the criminal proceedings. If the Public Prosecutor is not convinced a crime can be proved, it is possible no charges will be brought or there may be a request for the proceedings to be stayed, for instance if it is felt that there is not enough evidence to prove the facts alleged.

**Right to restitution of objects, reparation for harm caused and compensation for damages suffered.**

*(Art. 100 of the Criminal Procedure Act)*

In the Judgement handed down in the criminal proceedings and providing that the same finds against the party accused, the Judge will specify, apart from the penalty imposed on the guilty party, if any, the civil compensation that must be paid to the victim for physical, psychological or moral damages caused by the actions.

If the victim so wishes, it is possible to reserve the right to take action for civil compensation

in a different case before the civil courts, so the criminal proceedings will not deal with the civil consequences. It is also possible to waive any claim that may lie in this sense.

### **Right to receive information on the actions of the Court.**

Even where the victims are not exercising their rights to take part in the criminal proceedings, they must be informed of their role in the same and the scope and progress of the proceedings, thus:

– They are entitled to be given information on the status of the Court's actions, to examine these, and to request copies and certificates. (Art. 234 of the Fundamental Law on the Judiciary)

– They must be notified of any resolution that may affect their safety, as well as the Court Order providing for their protection, the adoption or alteration of any other interim measures, rulings ordering the imprisonment or provisional release of the accused and the assailant's status in prison. (Arts. 109, 506.3, 544 bis and ter of the Criminal Procedure Act)

– They must be informed of the place and date on which hearings will be held. (Arts. 785.3, 962 and 966 of the Criminal Procedure Act)

– They must be notified of the Judgement, both in the first instance and, where appropriate, the results of any Appeal. (Article 270 of the Fundamental Law on the Judiciary; Articles 789.4, 792.2, 973.2 and 976.3 of the Criminal Procedure Act).

### **Right to protection of the victim's dignity and privacy within the framework of proceedings related to gender violence.**

*(Article 63 of the Gender Violence (Comprehensive Protection Measures) Act, (Fundamental Law 1 dated December 28th, 2004); article 232.2 of the Fundamental Law on the Judiciary; article 15.5 of the Law on Aid and Assistance for Victims of Violent Crime and Sexual Assault (Law 35 dated December 11th, 1995); articles 2.a) and 3.1 of Fundamental Law 19/1994 on the Protection of Witnesses and Expert Appraisers in Criminal Cases)*

The Comprehensive Act foresees specific measures for the protection of victims' dignity and privacy.

On the one hand, it stipulates that the victims' **personal details**, those of their offspring and any persons for whom they are responsible are considered confidential.

The confidentiality of information on victims' new addresses, work places or the schools of their children will not only protect the **privacy of the victims**, but is also an important tool for their **safety**, as it prevents this information from becoming known to the accused.

With this same aim in mind, the form for requesting a Court Order providing legal protection stipulates that the victim is allowed to indicate the **address or telephone number of a third**

**party** to whom the police forces or the Court may send any communication or notification.

Furthermore, the Court may decide, either *ex officio* or at the request of the victim or the Office of the Public Prosecutor, that the actions taken by the Court shall not be public and that the **hearings will be held behind closed doors.**

### **Right to access the financial aid foreseen for victims of violent crime and sexual assault.**

(Law on Aid and Assistance for Victims of Violent Crime and Sexual Assault (Law 35 dated December 11th, 1995))

Whenever the requirements stipulated in the legislation are met, female victims of gender violence who have suffered injuries entailing a situation of disability lasting for more than 6 months or which have given rise to a declaration of permanent partial or total disability, or those who have been victims of a crime of sexual assault and have received psychological counselling, may access the financial and economic aid foreseen in the Law on Aid and Assistance for Victims of Violent Crime and Sexual Assault (Law 35 dated December 11th, 1995).



### **Right to authorization of temporary residence on humanitarian grounds.**

*(Articles 45, 46 and 47 of Royal Decree 2,393 dated December 30th, 2004, approving the Regulations for Fundamental Law 4 dated January 11th, 2000, on the rights and freedoms of foreigners in Spain and their social integration)*

Foreign women who are victims of crimes related with gender violence and in an irregular situation in Spain with regard to their visas may obtain a temporary resident's permit on humanitarian grounds providing that there has been a judgement handed down decreeing the commission of a crime of gender violence and accrediting their status as victims.

In addition, they may submit an application for such a residence authorization as soon as a Court Order providing for their protection has been issued in their favour, in which case any administrative proceedings under way to impose a penalty in connection with the said irregular status will be suspended.

This temporary residence permit shall be valid for one year and does not entail any authorization for them to work. Work permits

may be requested simultaneously with the application for a resident's permit in exceptional circumstances or else during its period of currency.

### **Right to independent residence permits for members of re-grouped families.**

*(Art. 41 of Royal Decree 2,393 dated December 30th, 2004, approving the Regulations for Fundamental Law 4 dated January 11th, 2000, on the rights and freedoms of foreigners in Spain and their social integration)*

If the victim of gender violence holds a temporary resident's permit as a member of a re-grouped family associated with the assailant spouse's resident's permit, then she may apply for and obtain an independent temporary resident's permit, once a Court Order has been issued in her favour providing for legal protection.

### **Registration of foreign women as jobseekers**

*(Social Security order TAS/3698 dated December 22nd, 2006, regulating the registration of foreign workers from outside the EU on the public employment*

*services and at placement agencies)*

Foreign women legally present in Spain who are victims of gender violence and do not have a work permit can obtain information at the Employment Office of the Public Employment Service corresponding to their location on their rights to be registered as jobseekers and to have access to the training and employment mediation actions, as well as the Active Insertion Income.

**Right to immediate access to schooling for children where a change of residence is required because of gender violence.**

*(Article 5 of the Gender Violence (Comprehensive Protection Measures) Act (Fundamental Law 1 dated December 28th, 2004))*

The children of victims of gender violence affected by a change of residence resulting from acts of gender violence are entitled to immediate access to schooling at their new place of residence.

**Granting of refugee status**

*(Third Additional Provision of the Right of Asylum and Refugee Status Act (Law 5 dated March 26th, 1984))*

Foreign women who have fled their country of origin due to well-founded fears of suffering persecution on gender grounds may obtain the status of refugee.

**Urgent processing of the procedure for recognition of advances from the Alimony Payment Guarantee Fund**

*(Royal Decree 1,618 dated December 7th, 2007, on the Organization and Operation of the Alimony Payment Guarantee Fund)*

The persons who are beneficiaries of the advances from the Alimony Payment Guarantee Fund managed by the Directorate-General for Personnel Costs and Public Pensions at the Ministry of Economy and the Exchequer are the minor children entitled to receive an alimony payment acknowledged by a court of law and unpaid, when they form part of a family unit with economic resources and income, calculated on an annual basis and for all concepts, that does not exceed the amount resulting from multiplying the annual amount of the Multi-Purpose Public Income Indicator (IPREM in its Spanish acronym) in force at the time of the request of the advance by the corresponding coefficient depending on the number of

minor children included in the family unit.

The persons who are beneficiaries are entitled to the advance of the monthly sum

determined by a court of law as payment for alimony, with a limit of 100 euros per month, and this may be received for a maximum of eighteen months.

The procedure for recognition of the advance will be expedited as an urgent matter when the person holding the custody of the minor(s) is a victim of gender violence. For these purposes, this status as a victim of gender violence must be accredited by any of the following means: through the judgement finding

against their assailant; through a court order making an interim providing for the protection of the victim through the provisional imprisonment of the assailant or a ban on his approaching the victim; through the protection order in favour of the victim and, exceptionally, through the report by the Office of the Public Prosecutor showing the existence of indications that the woman making the report is a victim of gender violence until such time as a protection order is handed down.

In the case of urgent proceedings, the maximum term for resolving and notifying the person making the request of the resolution of her application shall be two months.

# TELEPHONE NUMBERS FOR INFORMATION

State-wide service  
**016**  
People with hearing impairment:  
**900 116 016**

- Andalusia  
**900.200.999**
- Aragon  
**900.504.405**
- Principality of Asturias  
**985.962.010**
- Balearic Islands  
**971.775.116**
- Canary Islands  
**900.506.968**
- Cantabria  
**942.214.141**
- Castilla y León  
**900.333.888**
- Castilla- La Mancha  
**900.100.114**
- Catalonia  
**900.900.120**
- Ceuta  
**900.700.099**
- Extremadura  
**112**
- Galicia  
**900.400.273**
- La Rioja  
**900.711.010**
- Madrid  
**012**
- Melilla  
**952.699.214**
- Region of Murcia  
**968.357.244/620**
- Navarre  
**948.206.604**
- Basque Country  
**900.840.111**
- Valencian Community  
**900.580.888**

Further information: at the Regional Government Equality Organizations, at Regional and Local Government Women's Service Centres, at Offices for Helping the Victims of Crime in court buildings, at the Legal Advice Departments of the Bar Associations and at the various associations for women and foreigners.

Web site of the Government Delegation against Gender Violence:  
**[www.migualdad.es/violencia-mujer](http://www.migualdad.es/violencia-mujer)**

GUIDE  
TO THE  
**rights**  
OF  
**women**  
VICTIMS OF  
GENDER  
VIOLENCE



### Contact the Delegation

Government's Delegation  
Against Gender Violence  
Calle Alcalá, 37 (4<sup>a</sup> planta).

Tfno: 915 243 550

Fax: 915 243 598

e-mail: [violencia-genero@migualdad.es](mailto:violencia-genero@migualdad.es)