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2 - Reporting a crime and my rights during the investigation or trial

How do I report a crime?

If you are a victim of crime you are entitled, from the first contact with the authorities or officials, to receive information about your right to report the crime and, where appropriate, the procedure for doing so.

You can report the crime to the police and become a witness in the procedure that will be followed. You can also ask the police to refer you to the appropriate Crime Victim Support Office (Oficina de Asistencia a las Víctimas del delito), where you will be provided with information about how to report the crime.

Access to care and support services such as the Crime Victim Support Offices is free and confidential; it is not necessary to report the crime first.

As the person reporting the crime, you have the following rights:

- to obtain a copy of the report, duly certified;
- to free language assistance and a written translation of the copy of the report you file, if you do not understand or speak any of the official languages in the place where the report is filed. If you do not speak or understand Spanish or the official language used in the proceedings in question, you will be entitled to be assisted, free of charge, by an interpreter who speaks a language you understand when you give evidence during the investigation phase before the judge, public prosecutor or police officials;
- if you have asked to be notified of certain decisions such as the decision not to initiate criminal proceedings or the final judgement in the proceedings, you have the right to be informed of the date, time and place of the trial, as well as the content of the accusation against the offender.

You can also bring an action against the offender and become a party to the proceedings as private prosecutor, with rights very similar to the public prosecutor.

Apart from ordinary cases, where the public prosecutor files the charges against the offender, there are two types of crimes where your role is very important to start the proceedings:

- the proceedings for semi-public crimes require you to report the crime or bring an action in order to start; the public prosecutor then assumes responsibility for the charges against the offender. However, for proceedings against private crimes (e.g. slander) it is completely up to you: the public prosecutor does not have any responsibility regarding charges against the offender and you can withdraw the report at any time, ending the proceedings.

You can report the crime in any language and if you do not speak Spanish or any of the respective regional languages you have the right to an interpreter free of charge. In practice, if no one at the police station speaks your language, the police will offer you the following:

- if the crime is not serious, you will be able to report it using a form in your language;
- if the crime is serious, you will be provided with an interpreter via telephone or in person.

There are English, French and German interpreters at some police stations, especially in summer.

There is no time limit for you to report the crime, but there are time limits after which it will not be possible to prosecute the crime: from 10 to 20 years, depending on the seriousness of the crime. No specific way of reporting a crime is required by the authorities. You can report it in writing or orally, in which case the competent authority

will take note of the report. You must give your name, address, ID number, telephone number, etc. and you must sign the report.

At the time of reporting the crime, if you are victim of a crime of gender-based violence or domestic violence, you can request a protection order from the police. You can also request a protection order directly from the judicial authority or public prosecutor, the Crime Victim Support Offices or social services or care institutions attached to the public administrations.

In all cases, you will be provided with forms to request the protection order and you will be given information about this order.

How do I find out what's happening with the case?

When you file a report, you receive a certified copy with a reference number.

As the victim, you can obtain information from the police about the development of the proceedings, unless it could be detrimental to the investigation. In practice, it is better to call the respective police body and ask for information.

Generally speaking, you have the right – if you have made the relevant request – to receive information about the date, time and place of the trial and the content of the accusation against the offender, as well as to be notified of the following decisions:

- the decision not to initiate criminal proceedings;
- the final judgement in the proceedings;
- decisions to imprison or release the offender, as well as the possible escape of the offender from custody and decisions adopting precautionary measures for your protection.

If you have asked to be referred to a Crime Victim Support Office or you are receiving care from one of these Offices, you have the right to receive information on the contact details of the authority responsible for handling the proceedings and the channels for communicating with this authority, as well as information on the date, time and place of the trial and the content of the accusation against the offender.

If you are a victim of a crime of gender-based violence, you have the right to be informed about the procedural situation of the aggressor and the precautionary measures taken, without having to ask for this. You may at any time express your desire not to receive the information.

If you are victim of a violent crime against sexual freedom, you have the right to receive information about the State compensation to which you are entitled if the aggressor does not pay your compensation or if it is not sufficient.

Am I entitled to legal aid (during the investigation or trial)? Under what conditions?

From the first contact with the authorities or officials, you are entitled to receive information about the procedure to obtain legal advice and defence and, where applicable, the conditions under which you may be able to get this free of charge. The Crime Victim Support Offices will also provide you with this information.

You will be able to submit your request to have your entitlement to legal aid recognised to the official or authority who has given you the information about the procedure for obtaining legal advice and defence and, where applicable, obtaining this for free. The official or authority will forward it, together with the documentation provided, to the relevant bar association.

Your request may also be submitted to the Justice Administration's Crime Victim Support Offices, which will forward it to the relevant bar association.

In general, you can benefit from legal guidance services that offer information about the law to all citizens. These services are organised by bar associations in each judicial area.

You have to complete a form that can be found in courts, at the Ministry of Justice and at other State offices and prove that your means of support are insufficient. You must submit your request to the bar association in the area of the respective court or at the court in the area where you reside, if the criminal proceedings have still not begun.

If you are a victim of a crime of gender-based violence, you do not need to first prove that your means are insufficient in order to obtain legal aid.

If you are a victim of terrorism, you can also obtain legal aid.

You can request legal aid in Spain if you are in one of the following situations, among others:

- if you are a citizen of any EU Member State and you prove that your resources are insufficient;
- if you are a citizen of a third country and legally resident in Spain or with a right recognised in international agreements (e.g. agreements on international child abduction). In this case, you will be able to access legal aid in Spain under the same conditions as EU citizens;
- regardless of the existence of resources to institute legal proceedings, your right to legal aid will be recognised and this aid will be provided to you immediately if you are a victim of gender-based violence, terrorism or human trafficking in any proceedings that are linked to, derived from or a result of your status as a victim, or if you are a minor or have a learning disability or mental illness when you are the victim of situations of abuse or mistreatment.

This right will also apply to successors in the event of the victim's death, provided that they were not involved in the acts.

For the purposes of granting legal aid, you will be considered a victim when a report or action is filed, or when criminal proceedings are initiated, for any of the crimes mentioned, and you will maintain this status as long as the criminal proceedings are in force or where a guilty verdict has been issued following the conclusion of the proceedings.

The right to legal aid will be lost once an acquittal becomes final, or following the temporary stay or dismissal of proceedings because the criminal acts are not proven, without the obligation to pay the cost of the benefits enjoyed free of charge up to that point.

In the different proceedings that may be initiated as a result of your status as victim of the crimes identified and, in particular, in gender-based violence proceedings, it must be the lawyer him or herself who assists you, provided that your right of defence is thus duly guaranteed.

You have the right to legal aid if your yearly income and income per family unit do not exceed:

- twice the public index of income (indicador público de renta de efectos múltiples - IPREM) in force at the time of making the request, where the persons in question are not a part of any family unit. The IPREM is an index that is fixed annually and used to determine the amount of certain benefits or the threshold for accessing certain benefits, entitlements or public services;
- two and a half times the IPREM in force at the time of making the request, where the persons in question are part of any of the types of family unit with fewer than four members;
- three times the IPREM where the family units in question are formed of four or more members.

The annual IPREM for 2016 is €6 390.13.

If you are granted legal aid, you will not have to pay the following costs:

1. preliminary legal advice;
2. lawyer and court representative (procurador) fees;
3. costs arising from the publication of notices in official newspapers;
4. the deposits required to file certain appeals;
5. payments for experts;
6. you will benefit from an 80 % reduction on the amount for notarial deeds and certifications from the land and trade registers.

Can I claim expenses (for taking part in the investigation/trial)? Under what conditions?

In general, if as the victim of a crime you have taken part in the proceedings, you will be entitled to be reimbursed for the expenses needed to exercise your rights and the legal costs that have been incurred in preference to payment of the expenses that have been incurred for the State.

To that end, the payment must be imposed in the sentence and, in addition, the accused must have been convicted, at your request as the victim, for crimes for which the public prosecutor has not made an accusation, or have been convicted after the decision to close the case has been revoked due to an appeal you have lodged as victim.

The assistance and support services and, in particular, the Crime Victim Support Offices, will provide you with information on the cases in which you may be reimbursed for legal expenses and, where appropriate, the procedure for claiming them.

Can I appeal if my case is closed before going to court?

If you are a victim who has not appeared in the proceedings and the public prosecutor decides to withdraw the charges against the offender, the judge can inform you of this and invite you to bring an action and become a private prosecutor within 15 days. In the case of a fast-track procedure, the judge is obligated to inform you and invite you.

If the public prosecutor brings charges against the offender, you cannot do anything as victim to end the proceedings, except in private crimes.

If you have already appeared in the proceedings and you are a private prosecutor, you can request the opening of the oral proceedings and bring charges against the offender. If the investigating judge decides to end the proceedings, i.e. dismiss the case, you can appeal.

If the public prosecutor brings charges against the offender, you can ask to have the case dismissed and withdraw from your role as private prosecutor. The public prosecutor may continue, however, if it so decides.

Can I be involved in the trial?

In your first appearance in court, the legal counsel will inform you of the your rights in the criminal proceedings as victim and will offer you the possibility of entering the proceedings as a private party, using clear, simple and understandable language, taking your characteristics and needs into account.

As victim of a crime, in criminal proceedings you are entitled to the following:

- to bring criminal and civil actions according to the provisions of the criminal legislation in force;
- to appear before the authorities in charge of the investigation to provide them with sources of evidence and relevant information to clarify the facts.

Furthermore, at this initial appearance you will be asked if you wish to receive the communications or notifications established by law, in which case you must provide an email address or, failing that, a home or postal address.

Regardless of your role in the criminal proceedings, you can usually be present at the hearings, even if they are not public. You will only be obliged to attend to testify as a witness.

If you are a victim who has not appeared in the criminal proceedings, you will be informed of the date and place of the trial. Your main role will be to testify as a witness. So that you can be notified of the date and time of the trial, you must communicate any change in your address during the proceedings.

You can appear in the proceedings as private prosecutor before the indictment is prepared, i.e. before the start of the oral proceedings, except in the case of criminal proceedings against a minor. The public prosecutor, private prosecutor, if there is one, and defence lawyer prepare the indictment. This document includes these persons'

classification of the offence and recommended penalty. In practice, each party has five days to present its position in writing.

Generally, you will be represented by your lawyer, who will defend your case, and by your court representative, who will represent you formally in the proceedings.

If there are multiple victims, they will be able to appear separately, although the judge may require them to be grouped into one or several defences. Victims' associations will also be able to appear in the criminal proceedings, provided that they have your permission as victim of the crime.

If you are already private prosecutor, your lawyer will have access to the summary and the other case documents, and other rights, similar to those of the public prosecutor, including the following:

- to request the collection of more evidence;
- to propose new witnesses or experts who will support your case;
- to propose confrontations, etc.

In the event the accused is convicted, the court may order him/her to pay you the following costs: the cost of lawyers and court representatives, experts, certificates from public registers and notaries, etc.

As part of the criminal proceedings, you can bring a civil action (civil party) if you claim the restitution of property, the making good of the damage or the compensation for damages, both material and non-material, caused by the crime. In this case, you will be represented by your lawyer, who will defend your case, and by your court representative, who will represent you formally in the proceedings.

In the event it is decided to close the investigation, the decision to dismiss the case will be communicated to the direct victims of the crime who have reported the acts, as well as the other direct victims whose identities and places of residence are known. In cases of death or disappearance of a person as a direct result of a crime, the decision will be communicated to the indirect victims of the crime.

What is my official role in the justice system? For example, am I or can I choose to be a: victim, witness, civil party or private prosecutor?

As victim of a crime, in criminal proceedings you are entitled to the following:

- to bring criminal and civil actions according to the provisions of the criminal legislation in force;
- to appear before the authorities in charge of the investigation to provide them with sources of evidence and relevant information to clarify the facts.

The different roles you can perform in the justice system are:

- direct or indirect victim: according to the crime reported or, in the case of requesting access to victim assistance and support services, without having previously reported the crime, since access to these services is not dependent on submitting a report;
- witness: if there is a report. Your involvement in the proceedings takes place once you receive the summons;
- private prosecutor: if you decide to appear in the criminal proceedings as private prosecutor, in the event you bring an action against the offender (semi-public crimes and private crimes) and before the indictment is prepared, i.e. before the oral proceeding begins, except in the case of criminal proceedings against a minor;
- civil party: in general, if you decide to bring a civil action as part of the criminal proceedings, i.e. you claim the restitution of property, the making good of the damage or the compensation for damages, both material and non-material, caused by the crime.

In general, you must be present at the hearings, even if they are not public. You will only be obliged to attend to give evidence as a witness.

What are my rights and obligations in this role?

In general, as a victim, from the first contact with the authorities or officials and during the activity of the assistance and support services provided by the public administrations, including prior to reporting the crime, you have the right to receive protection, information, support, assistance and care.

You can ask the authorities or officials you contact initially to refer you to the Crime Victim Support Offices, where they will attend you free of charge and confidentially, even if you have not previously reported the crime.

You may also be accompanied by a person of your choice from the first contact with the authorities and officials.

Furthermore, as a victim you have the right to understand and be understood in any action that has to be carried out once the crime has been reported, including the information prior to lodging the report. Interpretation in legally recognised sign languages will be provided as well as means of support for oral communication in cases where this is needed.

All the communications made, both orally and in writing, will take place in clear, simple and accessible language and will take into account your personal characteristics and needs, especially if you have any sensory, intellectual or mental disability or if you are a minor.

As victim, you have the right to receive information mainly regarding the following:

- the assistance and support measures available, whether these are medical, psychological or material, and the procedure for obtaining them. Where appropriate, these measures will include information about the possibilities of obtaining alternative accommodation;
- the right to report the crime and, where appropriate, the procedure for doing so and the right to provide evidence to the authorities in charge of the investigation;
- the procedure for obtaining advice and legal defence and, where appropriate, the conditions under which it may be obtained free of charge;
- the possibility of requesting protection measures and, where appropriate, the procedure for doing so;
- the compensation to which you may be entitled and, where appropriate, the procedure for claiming it;
- the interpreting and translation services available;
- the auxiliary aid and services for communication available;
- the procedure via which you may be able to exercise your rights in the event you live outside Spain;
- appeals you can lodge against any decisions you consider to be incompatible with your rights;
- the contact details of the authority in charge of handling the procedure and channels to communicate with them;
- the restorative justice services available, in cases where this is legally possible;
- the cases in which you can be reimbursed for legal expenses and, where appropriate, the procedure for claiming them;
- the right to make a request to be notified of certain decisions in the proceedings such as, among others, the decision not to initiate criminal proceedings, the final judgement in the proceedings, etc.

Regardless of your role in the criminal proceedings, you can usually be present at the hearings, even if they are not public. You will only be obliged to attend to testify as a witness.

If you are a victim who has not appeared in the criminal proceedings, you will be informed of the date and place of the trial. Your main role will be to testify as a witness. To be able to notify you of the date and time of the trial, you must communicate any change in your address during the proceedings.

You can appear in the proceedings as private prosecutor before the indictment is prepared, i.e. before the start of the oral trial, except in the case of criminal proceedings against a minor. You will be represented by your lawyer, who will defend your case, and by your court representative, who will represent you formally in the proceedings.

}If you are already a private prosecutor, your lawyer will have access to the summary and the other case documents, and other rights, similar to those of the public prosecutor, including the following:

- to request the collection of more evidence;
- to propose new witnesses or experts who will support your case;

- to propose confrontations, etc.

In the event the accused is convicted, the court may order him/her to pay you the following costs: the cost of lawyers and court representatives, experts, certificates from public registers and notaries, etc.

As witness, you have the right to an interpreter free of charge, if you do not speak Spanish or the respective regional language, but you do not have the possibility of document translation. Despite the fact that it is generally difficult to avoid eye contact with the accused and court buildings do not usually have different waiting rooms for witnesses, if you have been a victim of sexual assault you can:

- benefit from a screen in the courtroom, or
- testify via video conference.

If you are going to testify and you are in danger, the president of the court can order a private hearing to protect morality, public order and yourself as victim and/or your family. As private prosecutor, you could request a private hearing.

If you are summoned to testify and the judge sees you are at serious risk or your freedom, property or family is at risk, he/she can take one of the following actions:

- protect your identity, address, profession and workplace, not using this information in the proceedings;
- prevent you from being seen in the court and establishing the court as the address for notifications;
- prevent your image from being recorded using any medium;
- order police protection during and after the proceedings;
- provide you with transport to the court in official cars;
- at the court, place you in a waiting room guarded by the police;
- in special circumstances, provide you with a new identity and financial aid to change location, residence and job.

If you are a minor making a statement, eye contact between you and the accused will be prevented using any technical medium possible. Confrontations are also restricted. If you have any conflict of interests with your legal representatives that does not make it possible to be confident that your interests will be adequately managed in the investigation or criminal proceedings, or the conflict is with one of your parents and the other parent is not able to adequately perform his/her duties to represent you or assist you, among other cases, the public prosecutor will ask for the judge or court to designate a guardian ad litem for you, who will have the duty to represent you in the investigation and the criminal proceedings.

If you are a foreigner, you can have an interpreter free of charge, if you do not speak Spanish or the respective regional language. The police can offer you a form in your language for reporting the crime, and access to an interpreter by telephone or in person. The courts have an interpreter service that will be coordinated with the Crime Victim Support Office.

If you wish to bring a civil action in the criminal proceedings (civil party), you must appear with a lawyer and court representative at the time of offering the possibility of entering the proceedings as a private party and always before the offence is classified. In this case, you will be represented by your lawyer, who will defend your case, and by your court representative, who will represent you formally in the proceedings.

If you obtain any subsidy or aid based on your status as victim and you have been the subject of any protection measure provided for by law, you have the obligation to reimburse the subsidy or aid, in the cases of conviction for a false report of a crime or simulation of the crime, as well as the obligation to pay the costs incurred for the administration for its recognition, protection and support actions and for the services provided, without prejudice to any other civil or criminal liabilities that may apply.

Can I make a statement during the trial or give evidence? Under what conditions?

Regardless of your role in the criminal proceedings, you can usually be present at the hearings, even if they are not public. You will only be obliged to attend to testify as a witness.

While you take part in the proceedings you can continue to benefit from the services of the Crime Victim Support Offices.

If you are a victim who has not appeared in the criminal proceedings, you will be informed of the date and place of the trial. Your main role will be to testify as a witness. So that you can be notified of the date and time of the trial, you must communicate any change in your address during the proceedings.

You can appear in the proceedings as private prosecutor before the indictment is prepared, i.e. before the start of the oral proceeding, except in the case of criminal proceedings against a minor. You will be represented by your lawyer, who will defend your case, and by your court representative, who will represent you formally in the proceedings.

If you are already private prosecutor, your lawyer will have access to the summary and the other case documents, and other rights, similar to those of the public prosecutor,:

- to request the collection of more evidence;
- to propose new witnesses or experts who will support your case;
- to propose confrontations, etc.

In the event the accused is convicted, the court may order him/her to pay you the following costs: the cost of lawyers and court representatives, experts, certificates from public registers and notaries, etc.

As witness, you have the right to an interpreter free of charge, if you do not speak Spanish or the respective regional language, but you do not have the possibility of document translation. Despite the fact that it is generally difficult to avoid eye contact with the accused and court buildings do not usually have different waiting rooms for witnesses, if you have been a victim of sexual assault you can:

- benefit from a screen in the courtroom, or
- testify via video conference.

If you are going to testify and you are in danger, the president of the court can order a private hearing to protect morality, public order and yourself as victim and/or your family. As private prosecutor, you could request a private hearing.

If you are summoned to testify and the judge sees you are at serious risk or your freedom, property or family is at risk, he/she can take one of the following actions:

- protect your identity, address, profession and workplace, not using this information in the proceedings;
- prevent you from being seen in the court, establishing the court as address for notifications;
- prevent your image from being recorded using any medium;
- order police protection during and after the proceedings;
- provide you with transport to the court in official cars;
- at the court, place you in a waiting room guarded by the police;
- in special circumstances, provide you with a new identity and financial aid to change location, residence and job.

If you are a minor making a statement, eye contact between you and the accused will be prevented using any technical medium possible. Confrontations are also restricted. If you have any conflict of interests with your legal representatives that does not make it possible to be confident that your interests will be adequately managed in the investigation or criminal proceedings, or the conflict is with one of your parents and the other parent is not able to adequately perform his/her duties to represent you or assist you, among other cases, the public prosecutor will ask for the judge or court to designate a guardian ad litem for you, who will have the duty to represent you in the investigation and the criminal proceedings.

If you are a foreigner, you can have an interpreter free of charge, if you do not speak Spanish or the respective regional language. The courts have an interpreter service that will be coordinated with the Crime Victim Support Office.

What information will I receive during the trial?

You have the right – if you have made the relevant request – to receive information about the date, time and place of the trial and the content of the accusation against the offender, as well as to be notified of the following decisions:

- the decision not to initiate criminal proceedings;
- the final judgement in the proceedings;
- decisions to imprison or release the offender, as well as the possible escape of the offender from custody;
- decisions adopting personal precautionary measures or amending those already agreed, where they are in place to ensure your safety;
- decisions from any judicial or prison authority affecting subjects convicted for crimes committed using violence or intimidation and that pose a risk to your safety;
- decisions that involve your participation as victim in the enforcement of the sentence and that are handed down in the prison environment, such as those affecting the classification of the convicted prisoner in a grade 3 open prison regime, prison benefits, short-term leave, conditional release, etc.

When requesting to be notified of the above decisions, you must designate an email address or, otherwise, a postal or home address, to which the communications and notifications will be sent by the authority.

Exceptionally, if you do not have an email address, they will be sent by ordinary mail to the address you have provided.

If you are a citizen residing outside the European Union and you do not have an email or postal address that communications can be sent to, they will be sent to the Spanish diplomatic or consular office in your country of residence for publication.

The notifications you may receive will include, at minimum, the operative provisions of the decision and its legal basis.

If as victim you have formally appeared in the proceedings, the decisions will be notified to your court representative and will also be communicated to you at the email address you have provided.

You may at any time express your desire not to be informed of the decisions mentioned above, and the request you made will then become inoperative.

If you have asked to be referred to a Crime Victim Support Office or you are receiving care through one of these Offices, you have the right to receive information on the contact details of the authority responsible for handling the procedure and the channels for communicating with this authority, as well as information on the date, time and place of the trial and the content of the accusation against the offender.

If you are a victim of a crime of gender-based violence, you have the right to be informed about the procedural situation of the aggressor and the precautionary measures taken, without having to ask for this. You may at any time express your desire not to receive the information.

Will I be able to access court files?

If you are already private prosecutor, your lawyer will have access to the summary and the other case documents.

Lawyers' daily activities include accessing the legal information and documentation, particularly in cases where their client is not a party in the proceeding.

Pursuant to Spanish legislation, the parties appearing may be informed of the proceedings and participate in all the procedural formalities.

■ Last update: 24/06/2025

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