

Briefing for a delegation of the Committee on Women's Rights and Gender Equality to Madrid, Spain

20 - 22 February 2023



Spain in the context of its executive and legislative power, justice system and the territorial organisation of the State

The political form of the Spanish State is that of a parliamentary monarchy. It is a decentralised unitary country. The Crown, in his capacity as head of State, symbolises the unity and presence of the State, exerts an arbitration and moderating function of the regular functioning of the institutions, and is the highest representative of Spain in international relations.

[Legislative Power](#)

The Cortes Generales

The exercise of the legislative power of the State falls to the Cortes Generales, representing the Spanish people and controlling the actions of the Government. **The Cortes generales comprise of two Houses: the Congress of Deputies and the Senate.** Although they share legislative power, the Congress holds the power to ultimately override any decision of the Senate by a sufficient majority (usually an [absolute majority](#) or [three-fifths majority](#)). The Cortes Generales are composed of 615 members: 350 Deputies and 265 Senators. Deputies and senators are elected for four years.

The Congress of Deputies

The [Congress of Deputies](#) (the lower House of the Cortes Generales) comprises of 350 members. All bills must be examined in the Congress of Deputies. The Senate has the right of veto or amendment of the text



produced by the Congress, the latter being entitled to make the final decision after a new examination. The Congress executes the investiture of the President of the Government and, therefore, it is this House which may bring about their resignation, either by approving a motion of censure or refusing to concede the confidence required by the Government. After the [2019 general election in April](#), the number of female deputies was up to 168 representing 48% of all members, making Spain the European country with the highest percentage of women in parliament; surpassing Sweden and Finland. The XIV legislature of Spain started on 3 December 2019 when the [Cortes Generales](#) were constituted, once the [2019 general election](#) was held.

The Senate

The composition of the Senate is established in [Part III of the Spanish Constitution](#). The Senate is composed of senators, each of whom represents a [province](#), an [autonomous city](#) or an [autonomous community](#). Each mainland province, regardless of its population size, is equally represented by four senators; in the insular provinces, the big islands are represented by three senators and the minor islands are represented by a single senator. Likewise, the autonomous cities of [Ceuta](#) and [Melilla](#) elect two senators each. This direct election results in the election of 208 senators by the citizens. In addition, the [regional legislatures](#) also designate their own representatives, one senator for each autonomous community and another for every million residents, resulting in a total of 57 additional senators.

Spain is expected to hold parliamentary elections by December 10 2023.¹

[Executive Power](#)

The Government

The Government is responsible for the executive function of the legislative initiative, the possibility of governing by way of emergency legislation (the ratification of which is delegated to Congress) and the drawing up of the draft budget. The Government oversees domestic and foreign policy, civil and military administration and the defence of the State. In Spain the Government is formed in two phases. A first phase in which the presidential candidate submits their mandate of Government to the consideration of the Congress, and a second phase in which the president, once the confidence of the House has been conferred and once appointed by the King, proposes the appointment of ministers to the King.

The collegiate body of the executive is the Council of Ministers (*Consejo de Ministros*), formed by the president, the vice-president(s) and the ministers.

The current prime minister is [Pedro Sánchez](#), the leader of the [Socialist Workers' Party](#).

[Justice system](#)

The Spanish judicial system is composed of courts of general jurisdiction and specialised courts², and is structured in accordance with the territorial organisation of the country. The Supreme Court is the highest judicial body in all areas of law. The General Council for the Judiciary, established by the Spanish Constitution, is the body of judicial self-governance, and ensures the independence of courts and judges. As such, it does not itself form part of the judiciary. It exercises disciplinary action and is competent to appoint, transfer and promote judges, as well as being responsible for the training and recruitment of judges.

The [Constitutional Court](#) (Articles 159-165 of the Constitution) , is the supreme institution regarding the interpretation of the Spanish Constitution with important union and powers such as unconstitutionality and question acts, conflict of powers, the Amparo or Conflicts in defense of local autonomy.

The public prosecution service is integrated in the judiciary with functional autonomy, and pursues the mission of promoting justice in defence of the law, the rights of the citizens and the general interest. The

¹ <https://www.electionguide.org/elections/id/4071/>

² Spain is the only EU country, where specialised courts dealing with violence against women, exist.

Prosecutor General³ is appointed by the Head of State, upon proposal of the Government, consulting the General Council for the Judiciary, as stipulated for by the Article 122 of the Constitution.

The Solicitor General of the State is a senior official of the Ministry of Justice in charge of directing the Legal Service of the Government and its relationship with national and foreign organisms, entities and bodies. The Local Bars are public law organisations of professionals, independent from the public administration and do not depend on the budgets of the public authorities, nor are their assets public. They have competences for the organisation of the profession and professional deontology, and approve their own code of ethics. Within the so called the " *Indirizzo politico* " powers in Spain there are the [Tribunal de Cuentas español](#) - **Spanish Court of Auditors**, article 136 of the Constitution [and the defendent of public rights -the Ombudsman](#)- article 54 of the Constitution.

There are one or more Violence against Women Courts per judicial district, indicating comprehensive coverage across Spain. The Courts can issue protection orders and there is an on-call service to deal with emergencies. The judges, magistrates, prosecutors and court clerks receive specialist training on sexual equality, non-discrimination for reasons of sex, victims' vulnerability and issues of gender violence.

[The territorial organisation of the State](#)

The Autonomous Communities, towns and cities with a Statute of regional autonomy

The Constitution guarantees the right to autonomy of the nationalities and regions forming part of the Spanish nation and the solidarity between them (Article 2 of the Constitution). This has been brought about through the creation of 17 Autonomous Communities and 2 Autonomous Cities of Ceuta and Melilla, with the consequent redistribution of political and administrative powers according to the Articles 137, 140, 148 and 149 of the Constitution.

Each Autonomous Community has its Statute of Regional and Political Autonomy. It is important to mention that the Constitutional Tribunal has stressed since its first resolutions that "autonomy refers to limited power. Autonomy is not sovereignty - and even this power has its limits - and since each territorial organization endowed with autonomy is a part of the whole, in no case can the principle of autonomy be opposed to that of unity, but it is precisely within this that it reaches its true meaning, as expressed in Article 2 of the Constitution. (STC 4/1981). The Constitutional Tribunal has also declared that "the Autonomous Communities enjoy a qualitatively superior autonomy to the administrative one that corresponds to the local entities, since legislative and governmental powers are added that configure it as autonomy of a political nature" (SSTC 4/1981 and 25/1981).

³ The Public Prosecutor's Office has issued several instructions for the prosecution of violence against women since 1998. The most important among these are Instruction 7/2005 of the Public Prosecutor against violence against women. Instruction of the Public Prosecutor against violence against women and for the specialised anti-violence units of public prosecution offices (Instrucción 7/2005, sobre el Fiscal contra la Violencia sobre la Mujer y las Secciones contra la violencia de las Fiscalías), 23 June 2005, <https://www.boe.es/buscar/doc.php?id=FIS-I-2005-00007>.

Gender equality policies, in particular in relation to the cases on sexual consent law

Legal context and the applicable law for gender equality

Article 1(1) of [the Spanish Constitution](#) includes equality as a fundamental value and its Article 14 specifically guarantees the right to equality and establishes the prohibition of discrimination on the grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance. Article 9.2, in turn, ratifies public authorities' obligation to further conditions that will ensure that individuals, and the groups of which they form a part, enjoy real and effective equality.

In 2004, [the Organic law 1/2004](#), on Integrated Protection Measures against Gender Violence (GBV) was passed. This Law approaches gender violence from an integrated point of view and modified articles of several Spanish laws such as the Penal Law, the Criminal Law, the Employment Law, the Workers' Statute Law, the Organic Judiciary Act, the Civil Service Reform Act and the General Social Security Act. Gender-based violence is defined in this framework legislation and entails 'all acts of physical and psychological violence, including aggressions against sexual freedom, threats, coercion or arbitrary deprivation of freedom'.

However, the purpose of the law is limited to violence that is exercised over women by those who are or have been their spouses or in similar emotional relationships, including where there was no cohabitation. Thus, besides intimate partner violence, no other form of violence against women falls under the Spanish definition of gender-based violence. In relation to such violence (phrased as gender-neutral offences), gender will be considered as an aggravating circumstance.

At the same time, however, the Law includes numerous provisions on education and training. The sphere of prevention, awareness-raising and detection is given significant attention through a clear focus on education, advertising and healthcare. The law requests actions by educational centres to influence the contents of the curricula in order to offer education that stresses the values of tolerance, respect, peace and equality. The actions are also directed at different professional groups to improve the training of those who handle problems arising from ill-treatment.

[The Organic Law for Effective Equality between Women and Men](#) (3/2007) This pioneering law in Spain that was adopted with the purpose of eradicating direct and indirect workplace discrimination against women, and introduced gender equality as a basic principle for to be used by the public bodies.

On 01 March 2019, the Spanish Government approved, through [Royal Decree \(RD\) 6/2019](#), a package of measures aimed at guaranteeing effective equality between women and men in terms of employment and occupation.

The Royal Decree affected the content of five important pieces of legislation:

- [Organic Law 3/2007](#), of 22 March 2007, for the effective equality between women and men;
- [Royal Legislative Decree 2/2015](#), of 23 October 2015, that approved the Workers' Statute;
- [Royal Legislative Decree 5/2015](#), of 30 October 2015, that approved the Basic Statute of Public Employers;
- [Royal Legislative Decree 8/2015](#), of 30 October 2015, that approved the General Law Of Social Security;
- [Law 2/2008, of 23 December 2009](#); and Law 20/2007, of 11 July 2007, that approved the Self Employed Statute.

The main objective of the [Royal Decree 6/2019](#) is to complement the Organic Law 3/2007, for effective equality between women and men to give it effectiveness in terms of employment and occupation.

The Royal Decree introduces important developments in the following subjects:

- 1) In the area of equality plans
- 2) In the area of fight against pay gap
- 3) In the area of parental permits
- 4) In the area of maternity and paternity leave
- 5) In the area of protection against unfair dismissal of pregnant workers
- 6) In the area of adaptation of the working day of people with care responsibilities
- 7) In the area of assistance to people who are exclusively dedicated to the care of highly dependent people

The Royal Decree aims to be a transversal complement of the [Organic Law 3/2007](#), of effective equality between women and men, but in reality its content is quite narrow because it is limited to establishing ad hoc corrections in labour regulations.

Its most relevant contents are the new parental leave (which replaces the previous maternity and paternity leave) and the care leave for breastfeeding. Also interesting is the new formulation of the right to an adapted working schedule by workers who have dependents in their care. However, more encompassing measures are needed to ensure a more effective protection against gender discrimination in employment and occupation.

Two subsequent decrees ([Royal Decree 901/2020](#) and [Royal Decree 902/2020](#)) were approved in October 2020.

These three decrees together, further develop and detail aspects of the Organic Law for Effective Equality (3/2007). Royal Decree 6/2019 extends the obligation to approve equality plans to all companies and institutions with more than 50 employees (previously >250 employees). It reinforces the rights of equal salary for equal work and work-life balance, and establishes equal (non-transferable) childbirth leave for both parents.

[Royal Decree 901/2020](#), on the regulation and registration of **Gender Equality Plans (GEPs)**, details the minimum content of a GEP, including a detailed gender evaluation as a baseline. It establishes the deadlines for companies and institutions with at least 50 employees to approve and implement their GEPs. It also describes the procedure for negotiation, approval and public registration of GEPs, including participation of employees' and unions' legal representation.

[Royal Decree 902/2020](#), on equal pay for women and men, establishes mechanisms to identify and correct discrimination in remuneration. It obliges all companies to have a salary register for all staff, including management and senior staff. Companies with a GEP must include a salary audit in their gender diagnosis. That audit should analyse whether the company's remuneration system, in a transversal and complete way, complies with the principle of equality between women and men.

In addition it needs to be pointed out that [the Criminal Procedure Law \(Articles 262 and 259\)](#) requires those who learn of an offence in the discharge of their professional duties, including healthcare professionals, to immediately report this to a relevant authority. The professional may incur a fine if they fail to report⁴.

⁴ [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/738126/IPOL_STU\(2022\)738126_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/738126/IPOL_STU(2022)738126_EN.pdf)

Third Strategic Plan for the Effective Equality of Women and Men (PEIEMH) 2022-2025

On 8 March 2022 the Council of Ministers has approved an institutional declaration and the Third Strategic Plan for the Effective Equality of Women and Men (PEIEMH) 2022-2025.

The Third Strategic Plan for the Effective Equality of Women and Men 2022-2025, which the minister for equality Irene Montero has defined as "the government's roadmap to the public administrations to deploy equality policies".

The planned investment amounts to 21.319 billion euros, 4.4% of the State's non-financial budget, compared to 1.1% for the previous plan, which expired in 2016.

The Plan is structured around four main lines of intervention.

1. Good Governance, to move towards a more inclusive and democratic model of government; secondly, Economy for life and the fair distribution of wealth, against the feminisation of poverty and precariousness; thirdly, Lives free of male violence for women, with the aim of eradicating all forms of violence; and finally, a fourth axis that aims to ensure all women can effectively exercise their rights in all areas of life.

The first axis aims to ensure that all public policies are gender-sensitive and, for example, to ensure that all public personnel are trained in this matter.

2. Focuses specifically on the deepest gaps and concentrates 91% of the plan's financial resources on measures for decent employment and the reduction of wage and pension gaps, as well as joint responsibility for care: "There should be nursery schools from 0 to 3 years of age, public policies for work-life balance such as the Co-responsibilities Plan that allow women, who mostly take on these care tasks, to free up their time to be able to exercise each and every one of their rights and not only to be able to balance work and family life, but also their personal life".

3. Aims to achieve lives free of male violence, the aim is to strengthen institutional coordination and response systems for early detection and comprehensive care for victims of violence by a partner or former partner, sexual violence, sexual exploitation and trafficking.

4. Aims to introduce various measures to respond to the realities and needs of women who, in addition to gender inequality, are affected by inequalities caused by their sexual orientation, race, disability or origin.

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence

Date of signature by Spain: 11 May 2011

Date of Ratification by Spain: 10 April 2014

Date of entry into force in Spain: 1 August 2014

The Council of Europe's GREVIO's findings in its 2020 [Report on Spain](#)

The Group of Experts on Action against Violence against Women and Domestic Violence ([GREVIO](#)) is an independent human rights monitoring body mandated to monitor the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("the Istanbul Convention") by the parties to the convention. It is composed of 15 independent and impartial experts appointed on the basis of their recognised expertise in the fields of human rights, gender equality, violence against women and/or assistance to and protection of victims. Generally, GREVIO's statutory activities include country-by-country monitoring of the Istanbul Convention (evaluation procedure), the

initiation of inquiries into specific circumstances within a party to the convention (inquiry procedure) and the adoption of general recommendations on themes and concepts of the convention.

Concerning Spain, since 2004, the country has been internationally recognised for its pioneering role in developing a comprehensive approach to intimate partner violence as framed in its landmark law on this form of violence against women, which includes, for example, the introduction of specialist courts to adjudicate on all related legal matters, whether they emanate from the civil or the criminal sphere. The resulting paradigm shift is palpable and any violence that women experience at the hands of their partners is clearly framed as a gendered phenomenon.

Since the entry into force of the Istanbul Convention, a range of targeted efforts have been made to expand Spanish policy and legislation to implement this convention in relation to forms of violence against women apart from intimate partner or domestic violence. It is in particular the Criminal Code that has undergone, and continues to undergo, revision to align it with the requirements of the Istanbul Convention.

According to [the Study](#), following the ratification of the Istanbul Convention, Spain amended the Criminal Code in 2015 and introduced a series of gender-specific offences in order to comply with the requirements of criminalisation of psychological violence: intimidation; coercion, including light coercion and mental damage or other harm inflicted without necessarily causing an injury.⁵

In addition, unprecedented steps have been taken in the form of participatory deliberations culminating in the discussion and adoption by the Spanish parliament of over 400 measures, which together form the State Pact on Gender-based Violence. This five-year road map identifies many shortcomings that, if addressed as planned, will thrust Spain towards fuller compliance with the Istanbul Convention.

GREVIO's review of the existing legislation, policy approaches and discourses around the different forms of violence against women in Spain, however, has revealed that prominence is given to intimate partner violence. Forms of violence such as rape and sexual violence, sexual harassment, forced marriage, female genital mutilation and forced sterilisation are less comprehensively addressed in law and policy. As competences in the area of preventing and combating violence against women are shared between the central and regional governments, stark differences exist in terms of the scope of regional legislation, service provision and the funding allocated. While some of the autonomous regions of Spain specifically seek to ensure a comprehensive approach to all forms of violence against women, others do not, resulting in a very mixed picture of the level of prevention, protection and prosecution of all forms of violence as covered by the Istanbul Convention.

In its [Appendix](#) the GREVIO offered its list of proposals and suggestions reflecting all the Articles of the Convention on Preventing and Combating Violence against Women and Domestic Violence, to the Spanish authorities.

In November 2016, the Congress of Deputies unanimously approved a proposal urging the government to develop a 'state pact' to be agreed by Spain's various layers of government – national, autonomous regions and provincial and municipal governments – to promote policies on violence against women.

Passed in 2017, the [State Pact on Gender Violence](#) envisioned Penal Code reform to eliminate the distinction between sexual abuse and sexual aggression and introduce a key missing element: consent.

⁵ Spanish Supreme Court have required that the couple had reached a certain level of 'seriousness' in their relationship to fall under the category of 'kinship' as aggravating factor; Spanish Supreme Court, judgment 241/2021 of 2 February 2021, ECLI: ES:TS:2021:241. In addition, some of the provisions regarding minor offences of domestic violence modified by the Organic Law 1/2004 refer explicitly to the 'wife' or the 'woman' in a similar relationship of intimacy. The Supreme Court has ruled that these norms cannot be interpreted extensively to the detriment of the accused because it would violate the principle of legality; Spanish Supreme Court, judgment 1068/2009 of 4 November 2009, ECLI: ES:TS:2009:6980.

In 2019, the new government stated it would prioritise the implementation of the Istanbul Convention, and in December 2019 it [announced](#) a bill against sexual violence, centred around the concept of consent.

An [ambitious proposal](#) for what would eventually become the law on sexual freedom, popularly known as the 'Only Yes means Yes Law', was prepared by the Ministry of Equality.

Fighting against Gender Based Violence on the European level

The European Parliament has repeatedly asked the Commission to propose legislation on violence against women and domestic violence, as well as on gender-based cyber-violence. Parliament has also adopted two legislative initiative reports calling on the Commission to (i) bring forward proposals on combating gender-based violence and cyber-violence respectively and (ii) the addition of gender-based violence as a new area of crime listed in Article 83(1) TFEU [(see [2020/2035\(INL\)](#) and [2021/2035 \(INL\)](#)].

In March 2022, the European Commission published its **proposal for a directive on combating violence against women and domestic violence**. [The proposal for a Directive](#) aims to prevent and combat violence against women and domestic violence in order to ensure a high level of safety and full enjoyment of fundamental rights within the Union, including the right to equal treatment and non-discrimination between women and men. At the moment the directive is still in the process of its adoption at the EU level.

The background of "the Wolf pack" which led to the "Only yes means yes law"

According to the reports, Spain's new '[Only Yes means Yes](#)' consent law, which came into effect in October 2022, was [sparked by the acquittal](#) of five men who raped an 18-year-old woman during the 2016 Pamplona bull-running festival. Dubbed 'the wolf pack' case, there was widespread outrage after the court argued footage showing the woman motionless with her eyes closed, was proof of consent.

[It was reported](#), that again, four years after the rape in Pamplona, a group of men who gang raped a 14-year-old girl in Catalonia were convicted of the lesser charge of sexual abuse, this time because the victim was intoxicated. Both cases highlighted the abject inadequacy of Spanish rape legislation, which previously stated violence or coercion had to be present for it to be considered rape.

Previous rape laws in Spain were steeped in assumptions about consent and so-called 'acceptable' behaviour. Cases so often hinged on the behaviour of the victim, as if this had somehow contributed to or excused rape. What the survivor was wearing, drinking or doing at the time was put under the spotlight, and not the actions of the accused.

The legal changes mean victims will no longer have to provide proof of violence or threat of violence, coercion or resistance against their attacker(s) in court. It reformed the criminal code to define all non-consensual sex as rape.

Plying someone with drugs or alcohol to coerce them into sex is a criminal offence, and digital violence, such as threats or non-consensual sharing of images, has also been criminalised. The new law maintains the presumption that the accused is innocent until proven guilty. But going forward it is the defendant who will have to prove there was consent and the victim will have to prove there was no consent.

According to the reports, the law also aims to avoid secondary victimisation that results when institutions and individuals acting on their behalf, for example lawyers, the judiciary and the public prosecutor's office, seek to discredit the victim by asking unnecessary and intrusive questions about her private life that are rooted in gender stereotypes and prejudices.

An alliance of feminist organisations, which included SEDRA-FPFE, played an integral part in drafting the new law. They ensured the introduction of 50 crisis centres and 24-hour support for victims, as well as

financial support. But the issue now lies in resources. Also, the national law needs to be implemented at the regional level, which means its application will be unequal.

However, [it is reported](#) that shortly after its adoption, the new law started to be heavily criticised. The landmark new Spanish law on sexual violence is reported to be the target of protests after at least 15 convicted offenders used the legislation to secure reductions to their jail terms while others were released. In Spain, a jail term can be retroactively modified if changes to the penal code benefits the convicted offender.

The law has revised the scope of potential minimum and maximum prison sentences, allowing some convicted sex offenders to appeal against their sentences and have them reduced. According to [the press](#), by the end of December, 129 convicted offenders had benefited from the sentencing changes.

Before this, rape convictions could only be secured if prosecutors could prove that violence or intimidation had been used. Often, a lesser charge of sexual abuse was alleged if these factors could not be proved.

However, with the lesser charge of 'sexual abuse' dropped from the criminal code and wider range of offences grouped under 'sexual assault', a broader range of penalties was required to ensure proportionality. This means anyone who was previously convicted of sexual assault who was jailed for the minimum sentence of eight years, can now benefit from the minimum being reduced to six. [It is reported](#) that so far the legislation has led to more than [200 convicted sex offenders](#) having their jail sentences reduced, and many of them being released.

Spain's Equality Minister, Irene Montero of the far-left Unidas Podemos party, which is the junior partner in Spain's coalition government, [accused judges](#) who have cut sentences of "breaking the law" on the grounds of "male chauvinism" - remarks which angered the judges' organizations.

After months of pressure from the opposition, Prime Minister Pedro Sánchez of the Socialist Workers' Party (PSOE) has said the government plans to review the law in a bid to close the loophole. Government spokesperson Isabel Rodríguez, of the PSOE, [said the law](#) needs "technical adjustments".

Violent attacks against women

By 30th of January 2023 [it was reported](#) that the Spanish government has called a second emergency meeting of domestic violence experts in less than a month after the murders of six women and a young girl since the start of January. The crisis committee was last assembled after the murders of 11 women in December 2022.

The [report states](#) that the latest deaths bring the number of women murdered by their partners or ex-partners to 1,188 since 2003, when the government began recording such murders. Over the same period, 49 children have been murdered in domestic violence attacks. In 2022, 49 women were killed by their partner or ex-partner, while 43 women died in such attacks in 2021.

"We think it's important to promote the use of electronic devices, such as bracelets that alert women to the presence of aggressors," the justice minister, [Pilar Llop, said at the end of December](#). "Since 2009, when these bracelets were brought in, no woman wearing one has been murdered." Llop said it was also important to tackle those who denied the "scourge" of gender-based violence.

On 31st January another case [was reported](#) which brings the cases for January 2023 to seven. The Secretary of State for Equality and Against Gender Violence, Ángela Rodríguez Pam, assessed that "January ended with seven fatalities from sexist violence. The last one, a woman murdered days after the Ministry of Equality convened its second crisis committee with the Autonomous Communities".

The fight against trafficking and sexual exploitation

Situation on trafficking in human beings

The strategic location of Spain in Europe makes it the crossroad of trafficking in human beings from two continents: South America and Africa. Besides, Spain continues to be an attractive destination for Asian citizens who try to later access the United Kingdom, United States of America or Canada.

As [reported](#) over the past five years, human traffickers exploit foreign victims in Spain and, to a lesser extent, Spanish victims in Spain and abroad. The COVID 19 pandemic increased worker vulnerabilities and contributed to the rise in labour trafficking in 2020 and 2021, especially in agriculture, domestic work, and cannabis cultivation in Catalonia. In 2022, Ukrainian refugees, predominantly women and children fleeing Russia's war against Ukraine, are vulnerable to trafficking. Labour traffickers continue to exploit men and women from Eastern Europe and South and East Asia, particularly Pakistan, in the textile, construction, industrial, beauty, elder care facilities, and retail sectors. Traffickers from Romania, Spain, Nicaragua, and Honduras often exploit their own family members in labour trafficking. Migrant workers from Morocco are vulnerable to labour exploitation on fruit farms and can sometimes be misled and fraudulently recruited. Women from the People's Republic of China (PRC) are vulnerable to fraudulent recruitment and debt bondage. Criminal groups run by Nigerian and PRC nationals commonly work with a local Spanish collaborator.

Trafficking for sexual exploitation [continues](#) to be the most widespread form of trafficking in Spain. In 2020, preliminary data show that 59% of victims correspond to this category, 37% to labour exploitation and 4% correspond to the remaining forms (forced marriage and commission of criminal activities).

Sex traffickers exploit women from Eastern Europe, South America, Central America, Vietnam, the Dominican Republic, PRC, and Nigeria. Authorities report Colombian, Paraguayan, and Venezuelan women now make up the largest demographic of sexual exploitation trafficking victims. NGOs [estimate](#) there are some 350,000 women in prostitution in Spain and 80% per cent of them are foreigners without legal papers.

In trafficking for sexual exploitation, the average percentage of women is more than 90%, while in the case of trafficking for labour exploitation, men represent around 80%. Regarding the age of the victims of trafficking in human beings for sexual exploitation, the victims are mostly between 18 and 32 (70%). In the case of trafficking in human beings for labour exploitation, the age of most victims is between 18 and 42 (80%).

Concerning trafficking for the purposes of sexual exploitation, a growing use of technology has been [observed](#). This use is not exclusively linked to the recruitment of victims, but the traffickers also use technology in other areas associated to exploitation. Among the emerging trends in this regard, one is the control that technologies enable over exploited women (real-time video), the possibility to offer sexual services in chats or mobile apps allowing for higher anonymity, or the use of apps such as Airbnb to facilitate the temporary stay in private apartments where the victims are exploited. All of this has generated a higher invisibility of the victims due to the difficulty to investigate, but especially in the preventive tasks conducted by the national security forces by means of administrative inspections.

Trafficking for the purposes of forced marriage is the less documented case in Spain. The victims are usually children from Eastern European countries or Morocco and they are forced to marry against their will. These girls are part of a business transaction where the family of the bride provides the dowry, mostly low, and the family of the groom pays the counter-dowry in exchange of having control over the victim with the purpose of exploiting her in other activities (sexual or labour exploitation), which enables them to recover the investment and obtain profit illegally.

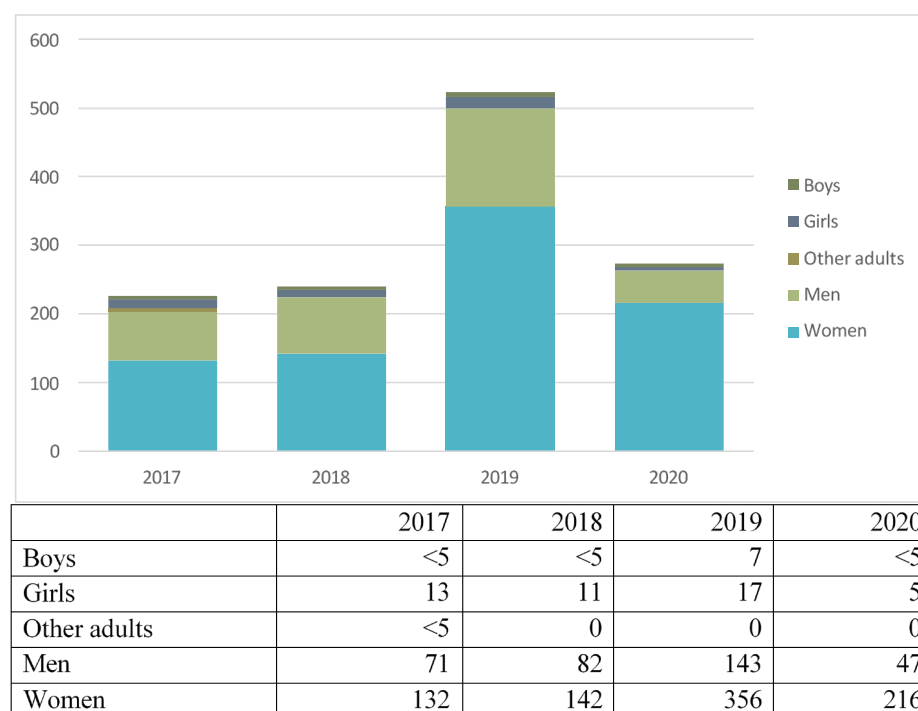
There are some cases of police operations with victims of more than one form of trafficking (combined trafficking). This is [the case](#) of a Bulgarian criminal network that forced women (some of them under age) to sexual exploitation and also forced them to commit criminal activities, such as thefts, in large city centres. Another case was a criminal network that recruited Romanian and Moroccan victims and forced them to beg and also to steal in Murcia. Another significant case involves a criminal network that exploited Paraguayan women sexually in the city of Santiago de Compostela. One of the victims arrived to Spain being pregnant and one of the leaders of the network arranged an illegal adoption when the child was born so this woman continued to be exploited.

The COVID pandemic has [exacerbated vulnerabilities](#) for sex trafficking victims through the increased use of private residences, instead of brothels or clubs, and online recruitment. Sex traffickers are increasingly using online platforms, like social networks, mobile applications, and the dark web, to recruit, exploit victims, and book apartment rentals to make their illicit operations difficult to track.. The rising numbers of newly arrived undocumented migrants, including 22 300 to the Canary Islands in 2021, are vulnerable to trafficking. Unaccompanied migrant children continue to be vulnerable to sex trafficking and forced begging. Roma girls are vulnerable to labour trafficking in Spain.

Between 2017 and 2020, 232 offenders were [convicted](#) in Spain of trafficking in persons for the purpose of sexual exploitation. The remaining 28 were convicted of trafficking in persons for the purpose of forced labour, forced marriage, forced criminality and forced begging.

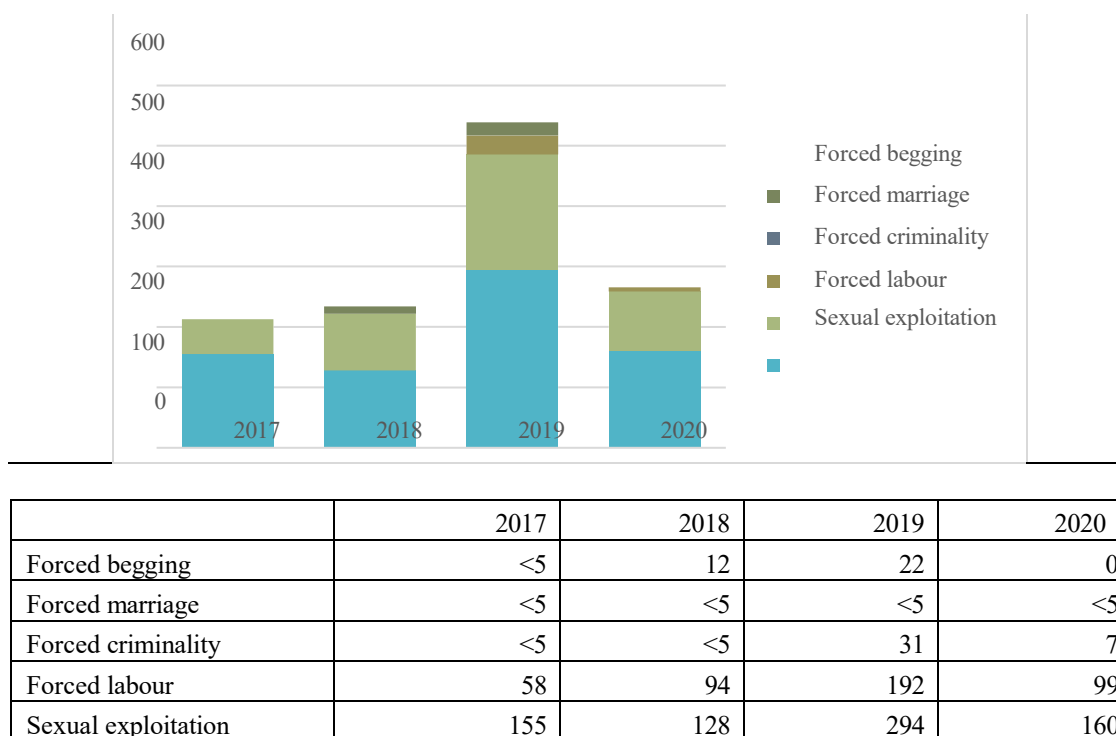
Figures 1, 2 and 3 below present statistics on trafficking in human beings in Spain according to [UN Global Report on Trafficking in Persons 2022](#).

Figure 1: Number of victims of trafficking in persons detected, by age and sex, 2017 –2020



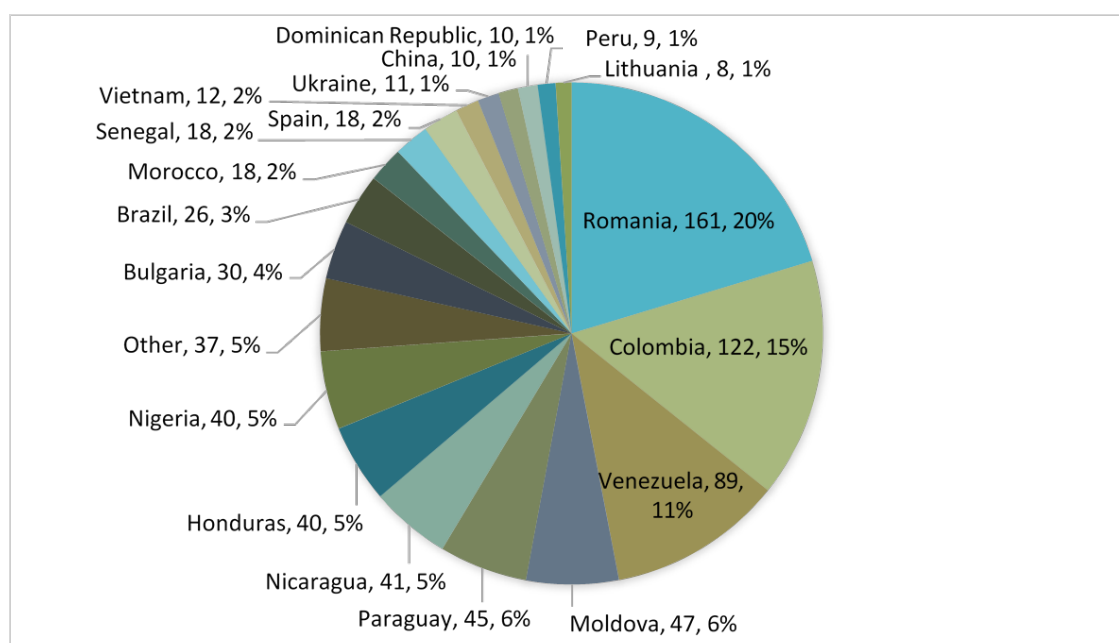
Source: UNODC 2022 report, Base de datos de Trata de Seres Humanos (BDTRATA), Centro de Inteligencia contra el Terrorismo y el Crimen Organizado - CITCO.

Figure 2: Number of victims of trafficking in persons detected, by form of exploitation, 2017 – 2020



Source: UNODC 2022 report, Base de datos de Trata de Seres Humanos (BDTRATA), Centro de Inteligencia contra el Terrorismo y el Crimen Organizado - CITCO.

Figure 3: Citizenships of persons identified as victims of trafficking in persons by state authorities, 2019 – 2020 (tot: 792)



Source: UNODC 2022 report, Base de datos de Trata de Seres Humanos (BDTRATA), Centro de Inteligencia contra el Terrorismo y el Crimen Organizado - CITCO.

Legislation and policies to combat trafficking in human beings

Since 2009, different legislative reforms have been passed that have adapted Spanish legal system to the obligations established in international and EU law. Specifically, the Protocol to prevent, repress and suppress trafficking in persons, especially women and girls, which complements the United Nations Convention against Transnational Organised Crime, the Council of Europe Convention on Action against Trafficking in Human Beings, and the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting victims. The changes have been considerable in all areas, from important legislative reforms to significant improvements in the prevention and fight against trafficking in human beings, protection and assistance to victims and cooperation and coordination among institutions at national and international level.

In the sphere of crime prosecution the government increased law enforcement efforts. The [2010](#) and [2015](#) reforms of the Criminal Code have defined the crime of trafficking in Spain through Article 177. It criminalized sexual trafficking and labour trafficking, prescribing penalties from five to eight years' imprisonment, which became sufficiently more strict and, with respect to sexual trafficking, commensurate with sanctions for other serious crimes, such as kidnapping. Other aspects have also been reinforced, such as the criminal liability of legal entities (Article 31), the confiscation of property arising from the crime (Article 127), and crimes of child sexual exploitation.

[Organic Law 4/2000 on the rights and freedoms of foreigners in Spain](#) and their social integration (amended by [Organic Law 2/2009](#)), as well as the [Royal Decree 557/2011 of 20 April](#), approving the Regulations for the above mentioned Law, established a special administrative status for foreign nationals in an irregular situation who have been identified as victims of human trafficking.

[Law 12/2009 regulating the right to asylum and subsidiary protection](#) recognises persecution on the grounds of gender (Article 7 paragraph 1e) and includes an express reference to the situation of vulnerability of victims of trafficking who apply for international protection and who should be guaranteed different treatment (Article 46). On this legislative basis, and in accordance with international norms, the competent Spanish authorities in matters of asylum have been recognising the special protection that the concept of asylum provides for certain victims of trafficking who meet the requirements of the definition of refugee in the Geneva Convention Relating to the Status of Refugees and who cannot return to their countries of origin in safe conditions.

[Law 4/2015 of 27 April on the Standing of Victims of Crime](#) provides the procedural and extra-procedural rights of all crime victims, providing a legal and social assistance for victims and their relatives, including specific assistance for the most vulnerable victims, such as those of trafficking in people and minors. Specifically, their protection needs will be taken into account in the individual assessment of trafficking victims to determine what special protection needs they require and what measures should be adopted, which translates into access to specific protection measures aimed at preventing secondary victimisation during the investigation and prosecution phases.

Through [Royal Decree 1109/2015 of 11 December, which implements Law 4/2015 of 27 April on the Standing of the Victims of Crime](#), the Offices for Aid to Victims of Crime were regulated.

[Organic Law 8/2015 of 22 July, modifying the protection system for children and adolescents](#) and [Law 26/2015 of 28 July, also modifying the protection system for children and adolescents](#), improved the care and protection of the children of women victims of gender violence, as well as of minors who are victims of other forms of violence against women, emphasising for the first time among the guiding principles for public powers' action in relation to minor the inclusion of their protection against all forms of violence, including trafficking in human beings.

Organic Law 8/2021, of 4 June, on comprehensive protection of children and adolescents against violence provides guarantee the fundamental rights of children and adolescents to their physical, mental, psychological and moral integrity against any form of violence, ensuring the free development of their personality and establishing comprehensive protection measures, which include raising awareness, prevention, early detection, protection and redress of damage in all spheres in which their life develops. The Law establishes trafficking in human beings for any purpose, prostitution, child pornography and forced marriage as forms of violence, among many others.

National Strategic Plan against trafficking and exploitation of human beings 2021-2023. The document sets out priority objectives and lines of action that affect both public institutions and the third sector and whose aim is to enable a multidisciplinary and comprehensive approach against trafficking and exploitation of human beings. Five core priorities have been established for effective action against trafficking in human beings and to defend the victims:

1. Detection and prevention of trafficking in human beings
2. Identification, referral, protection, aid and recovery of victims of human trafficking
3. Prosecution of the crime
4. Cooperation and coordination
5. Improvement in knowledge

For each of these priorities, sixteen lines of action and measures have been established that require fundamental work on legislative reform beforehand, as well as determined, coordinated commitment from all the parties involved. This plan is also the reference framework for the drafting of other sectoral or specific comprehensive or action plans for specific purposes of trafficking in human beings and its exploitation, especially in the sexual and forced labour areas.

This plan echoes different recommendations made to Spain, including the one from the Council of Europe's Group of Experts on Action against Trafficking in Persons - [GRETA](#), which in its last evaluation report for Spain urged authorities to adopt a comprehensive plan as a priority to tackle human trafficking whatever the type of exploitation being tackled, improving the identification of victims and aid given to them.

Care and Dependency law, including the related social issues

The organisation of care for elderly people or persons with functional diversity is one of the main challenges faced by western societies. The "crisis of care" has intensified as women have progressively moved into the paid labour force and as fertility rates decrease and life expectancy increased in many countries. These ageing societies have resulted in heavy pressures on families and also on welfare state regimes.

The provision of care varies across Europe according to labour markets and welfare state regimes. Mediterranean countries form a distinctive cluster where the management of care is delegated almost entirely to the family, mostly to women in the private sphere.

Spain has one of the highest proportions of elderly people of all OECD countries. The law on Personal Autonomy and Dependent Care (Ley de Apoyo Para el Cuidado de Personas Dependientes), known as the Dependency Law, which passed in 2006 (Ley 39/2006), was an important turning point because it introduced the notion that all citizens have a right to be cared, and that the State is obliged to provide care

for people in situations of dependence. The law provides for social benefits in the form of services and economic compensation when a person is cared for by family members⁶.

The Personal Autonomy and Dependent Care Law (39/2006)

Up until 2007, care services for dependent persons were imbalanced. On the public side, such care depended on social security, public health services and many dispersed social services. However, it also depended on the private activities of families and charities. Above all, the domestic care of dependants has been the responsibility of families, particularly of women, and sometimes through domestic workers.

The vast majority of the carers of dependent persons are women – with an average age of 52 years – who are related to the dependant: generally, mothers, daughters or wives. They are not remunerated and are not included in labour statistics. The proportion of immigrant female carers has also increased significantly.

The main actors in the application of Law 39/2006 are people in need of care, due to illness, disability or age. However, a second large group is also involved: those providing the assistance to the dependants as non-professional or professional carers. The primary objective of the [Dependency Law](#), which came into force on 1 January 2007, is to offer services to people who need support, due to illness, disability or old age.

Spain ranks in the top of the Organisation for Economic Co-operation and Development's (OECD) list of countries in terms of the frequency and intensity of informal care. This is partly due to a lack of supportive policies and cultural and social attitudes. In Spain, caregiving is undervalued socially and economically and is generally understood to belong to women⁷.

Law 39/2006 is a legislative package inspired by long-term care policies of European Nordic countries which has become the fourth pillar of the Spanish Welfare State, together with the health system, the education system, and the pension system. Its main goal is "equality in the exercise of the subjective right of citizens to the promotion of personal autonomy and care of dependent persons". Therefore, this law implies the recognition of a citizen's right which guarantees dependent persons access to adequate resources to meet their care needs in an appropriate way.

The law defines dependency as "the permanent state in which people find themselves, for reasons derived from age, illness or disability and linked to the lack or loss of physical, mental, intellectual or sensorial autonomy, thus requiring the care of another person or other persons or significant assistance in performing the basic activities of daily living, or, in the case of people with intellectual disabilities or mental illnesses, other support for their personal autonomy"⁸.

The implementation of Law 39/2006 has not been without certain problems. Spain is a quasi-federal State, but the implementation of Law 39/2006 took place on a regional level, with disparate results which provided different protection to citizens with dependency needs. Also, the implementation of the law required State funding, which has been affected by austerity cuts⁹.

⁶ From: *Time trends in health inequalities due to care in the context of the Spanish Dependency Law*; Maria Salvador-Piedrafita, Davide Malmusi, Carme Borrell; Agència de Salut Pública de Barcelona, Barcelona, Spain; 2017; <https://www.scielosp.org/article/gs/2017.v31n1/11-17/>.

⁷ From: *Health-related quality of life in Spanish informal caregivers: gender differences and support received*; María del Río Lozano, María del Mar García-Calvente, Jesús Calle-Romero, Mónica Machón-Sobrado & Isabel Larrañaga-Padilla; Quality of Life Research; 2017.

⁸ From: *Dependency and Care: Perspectives from the Point of View of Professionals Assessing Situations of Dependency in Spain*; Pablo A. Cantero-Garlito, Juan Antonio Flores-Martos and Pedro Moruno-Miralles; International Journal of Environmental Research and Public Health; 2020.

⁹ From: *The Production of 'Dependent Individuals' Within the Application of Spanish Law 39/2006 on Personal Autonomy and Dependent Care in Andalusia, Basque Country and Madrid*; Melania Moscoso Perez and R Lucas Platero in: "The Legacies of Institutionalisation"; 2020.

The gender imbalance in caregiving

Caregiving is still too often seen as “women’s work”. At the same time, during the last four decades labour force participation has increased incessantly among successive generations of Spanish women, even during economic crises. While this trend forms part of a social change towards a more gender-equal society, it also challenges the traditional and feminised system of care. In reality many women encounter difficulties in reconciling productive work with care duties.

In 2008 there were more than one million informal caregivers of people aged 65 or older, with women providing 75% of the hours of informal care. Moreover, one in five stated that the demands of care work prevented them from working outside the home. Legal obligations to provide care for parents further strengthen this gender inequality in intergenerational support due to the greater involvement of daughters in intensive assistance.

Conversely, expanded social services in central and northern European countries relieve the care burden of daughters and, consequently, contribute to reducing the gender gap. However, this is at the household level, not the societal level, as female family carers tend to be substituted by domestic workers who are also women.

In addition, due to higher female survival rates and age difference at marriage, women tend to grow old alone, while men are more likely to do so in companionship with their spouses, who are also their primary caregivers in case of dependency. Accordingly, older women are more vulnerable and require support from others outside the conjugal nucleus, including descendants, siblings, other family members, friends or professionals. Furthermore, resulting from a strong division of gender roles among past cohorts, today’s older women have fewer economic resources than men as they had either no or short labour careers. This reverberates in the lack of economic independence, as they tend to rely on their husband’s pension while he is alive and on a widow’s pension thereafter.

In making decisions on care provision, having sufficient economic resources can facilitate the acquisition of formal care when there is a lack of alternative options. Besides wealth, recent studies have shown that the likelihood of elderly care being outsourced in Spain also increases with age, the fact of having LTC (Long Time Care) insurance, and preference for formal care.

Moreover, preferences for formal and combined formal and informal care increased between 1997 and 2009, especially among women and the middle-aged - i.e. those who mostly take on the role of caregivers - as well as the higher educated. A study found that among 35–64 year-old men and women, higher educated or economically active women aged 45–54 were least likely to agree that the family should essentially be responsible for caring for elders who require help in their daily life¹⁰.

Caregivers are mostly working-class women, who are close relatives of the dependent individuals and, when they are not available, migrants of both genders provide care. Therefore, Law 39/2006 reinforces the tradition of a female caregiving role. The law enabled the incorporation into the workforce of women and migrants who had precarious jobs. However, many of them were laid off as soon as austerity measures came into force. The National Statistics Institute’s Survey on the Use of Time in 2018–19 estimated that the annual hours of caregiving in Spain amounted to 28 million full-time jobs¹¹.

Family care is assumed according to a social hierarchy that is related to gender and socioeconomic level. Informal care is distributed in families according to gender, age, relationship, and cohabitation status. Thus,

¹⁰ From: *Old-Age Care Provision in Spain in the Context of a New System of Long-Term Care and a Lingering Economic Crisis*; Jeroen Spijker & Pilar Zueras; Journal of Population Ageing; 2018.

¹¹ From: *The Production of ‘Dependent Individuals’ Within the Application of Spanish Law 39/2006 on Personal Autonomy and Dependent Care in Andalusia, Basque Country and Madrid*; Melania Moscoso Perez and R Lucas Platero; in “The Legacies of Institutionalisation”; 2020.

caregivers are usually women aged ≥ 50 years who are the mother, daughter or wife of the care-receiver, who live in the same home as the care-receiver, and who are not in paid employment. Due to its unequal social distribution, caregiving is a determinant of health inequalities.

There is evidence that family care negatively affects the caregiver's quality of life, with an impact on both physical and psychological health. The stress produced by caregiving can lead to physical and emotional problems, and even death. The responsibility of care is also linked to a deterioration in self-perceived health, pain and depression. Caring for others also affects other aspects of life, undermining personal development and opportunities to enjoy leisure time and a social life. These health effects are due to the conditions under which care is given, rather the care itself, and are likely modulated by the amount of time devoted to caregiving, the type of activities carried out, social support, and formal and informal networks to complement care activities. In addition, cultural norms and motivation to provide care could also influence the burden.¹²

There are voices claiming that the Dependency Law is institutionalising a pseudo-professional relationship between the State and caregivers in which they receive much lower incomes than those that could be earned in the market through similar jobs. This delegates women to the social provision of care without having a great economic impact on the public treasury. Furthermore, the social policy in relation to long-term care is not oriented towards parity in the provision of care or the facilitation of access of dependent persons to local services.

The management of the right based on the granting of cash-for-care leaves the traditional roles of domination/subordination between women and men intact. In addition, this situation leads to future precariousness because if women do not contribute to the formal market, they will not be able to get a retirement pension and will depend on others, usually husbands, to cover basic needs.

The low level of occupation of caregivers as well as the type of contract they usually access (mainly partial) does not help them escape from poverty. Low levels of educational attainment also have an impact on the chances to get a job beyond care. Somehow, caring is a job that requires low qualifications and has always been based on the willingness of mothers and daughters. As a consequence, the idea that care is a matter of women is strengthened, especially of those with scarce training, greater difficulties in accessing the labour market and less income or greater economic difficulties. This leads to a situation in which the most qualified women access the formal market and improve their social position; women who provide care within the informal setting without sufficient compensation; and men who still do not face care in the private setting.

Alternatives to restructure the Dependency Law and avoid adverse effects have been proposed. In the first place, greater legislative development, which would give a boost to the social and health sector, increase jobs linked to dependency and produce a higher revenue for the State; secondly, a greater development of care policies, favouring the ability to combine care work and work in the paid labour market, as well as a greater participation of men in care; thirdly, a common element in all social policies: political consensus; fourth, an increase in the financing of the law and especially in economic benefits; fifth, a greater compatibility between benefits and services, especially cash-for-care with services such as day-care centres or home services, in order to offer comprehensive care to dependent people; finally, to introduce complementary benefits such as technical aids to improve the quality of life of dependent people.¹³

¹² From: *Time trends in health inequalities due to care in the context of the Spanish Dependency Law*; Maria Salvador-Piedrafito, Davide Malmusi, Carme Borrell; Agència de Salut Pública de Barcelona, Barcelona, Spain; 2017; <https://www.scielosp.org/article/gs/2017.v31n1/11-17/>.

¹³ From: *Women Caregivers Under the Spanish Autonomy and Dependence System: A New Social Underclass?*; José Ángel Martínez-López, Juan Carlos Solano Lucas and Marcos Bote Díaz; Journal of Family Issues; 2021.

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