



Reshaping treatment approaches towards victims of sexual violence within criminal proceedings.

DRAWBACKS FACED BY THE
VICTIMS OF SEXUAL CRIME AT
EACH STAGE OF THE CRIMINAL
PROCEEDING
NATIONAL REPORT
SPAIN

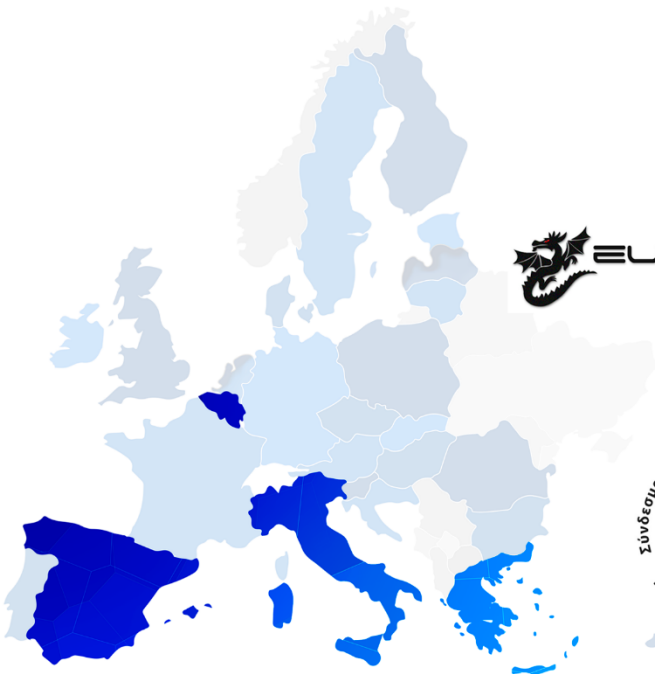


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LIST OF ABBREVIATIONS

AP/AAPP – Provincial Court/ Provincial Courts (Audiencia Provincial/Audiencias Provinciales)
APLOGILS –Freedom Draft Organic Law of Integral Guarantee of Sexual Freedom
APLOLECrim – Draft Organic Law on Criminal Procedure
aprox. – Approximately
art/s. – Article/s
ACs – Autonomous Communities
CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
CENDOJ – Judicial Documentation Center (Centro de Documentación Judicial)
CGPJ – General Council of the Judiciary (Consejo General del Poder Judicial)
CNMC – National Commission on Markets and Competition (Comisión Nacional de los Mercados y la Competencia)
COE – Council of Europe
COVID – Covid-19 disease
CP – Criminal Code (Código Penal)
CSV – Verification Insurance Code (Código de Seguro de Verificación)
ECtHR – European Court of Human Rights
EMUME – Women-Child Teams (Equipos Mujer-Menor)
EUROPOL – European Police Office
EU – European Union
FFCCSE – Law Enforcement Agencies (Fuerzas y Cuerpos de Seguridad del Estado)
GRUME – Child Unit of the Judicial Police Provincial Brigade (Grupo de Menores de la Brigada provincial de Policía Judicial)
HCJ – High Court of Justice
ICAM – Madrid Bar Association (Ilustre Colegio de Abogados de Madrid)
IMLYCCFF- Institute of Forensic Medicine and Forensic Science
INE – National Institute of Statistics (Instituto Nacional de Estadística)
IVP – Intimate Partner Violence
JI – Court of Preliminary Investigations (Juzgado de instrucción)-
JVM – Courts for Violence against Women (Juzgados de Violencia Sobre la Mujer)
RJ – Restorative Justice
LAJ – Justice Administration Official (Letrado/a de la Administración de Justicia)
LECrIm –Rules of Criminal Procedure (Ley de Enjuiciamiento Criminal)



LEVID – Law 4/2015, of 27 April, on the standing of the victims of crime (Ley del Estatuto de la víctima del delito)

LO – Organic Law

LOGP – General Penitentiary Organic Law (Ley Orgánica General Penitenciaria)

LOPJ –Framework Law on the Judiciary (Ley Orgánica del Poder Judicial)

MF – Public Prosecutor’ Office (Ministerio Fiscal)

n. – Number

NGOs – Non-governmental organizations

NHC – National High Court (Audiencia Nacional)

OAV –Victims’ Support Office

OSG – Official State Gazette

p./pp. – Page/s

PAE – Specialized Care Points (Puntos de Atención Especializada)

PCAS – Sexual Aggression Control Program (Programa de Control de la Agresión Sexual)

RD – Royal Decree

SAC – Citizen Attention Service (Servicio de Atención a la Ciudadanía)

SC – Supreme Court

SOJ – Legal Orientation Service (Servicio de Orientación Jurídica)

TOI – Duty lawyers system (Turno de Oficio)

UAVDI – Assistance Unit for Victims with an intellectual disability (Unidad de Atención a Víctimas con Discapacidad Intelectual)

UN – United Nations

UFAM – Family and Woman Assistance Units (Unidades de Atención a la Familia y Mujer)

UNICEF – United Nations Children’s Fund

UNODC – United Nations Office in Drugs and Crime

STS – Supreme Court Decision (Sentencia del Tribunal Supremo)

Drawbacks faced by the victims of sexual offences at each stage of the criminal proceeding:

Spanish National Report

It is a generally accepted reality that the number of existing sexual crimes exceeds those known to the authorities, and that the different reporting rates in different countries may be due to various legal, psychological and sociological factors. This report examines the obstacles that victims of sexual violence in Spain may face in reporting and in the different stages of criminal proceedings.

1. INTRODUCTION

1.1. European and international protection standards for victims of sexual crimes

According to different institutions, the prevalence of sexual violence is very high in the world; it is estimated that between 45% and 55% of women in the European Union have been sexually harassed since the age of 15⁴, that approximately 15 million adolescent women (between the ages of 15 and 19) around the world have suffered forced sex at some point in their lives⁵, and that 4 out of 5 trafficked women are used for sexual exploitation⁶.

The protection of victims of sexual violence is an objective that has reached the international and European agendas in the 21st century. The strategies of the United Nations, the European Union and the Council of Europe therefore include a necessary gender, child, minority and functional diversity perspective to identify the real situation and problems.

In 2015, the United Nations (UN), in its so-called Agenda 2030 for Sustainable Development included as objective 5 the achievement of gender equality and the empowerment of girls and women⁷. In 2016, a Special Coordinator for Improving the United Nations Response to Sexual Exploitation and Abuse was appointed, as well as the first defender of victims' rights. The UN has developed numerous works and recommendations in this field, and in particular in the scope of violence against women, including sexual violence, the CEDAW Committee adopted Recommendation n.35 on violence against women, declaring the responsibility of the State in compliance with the obligation of "*due diligence for the acts or omissions of non-State actors*", urging the adoption of preventive and repressive measures, and obligations of protection and reparation for the women affected.

⁴ Fundamental Rights Agency, *Violence against women: an EU-wide survey. Main results report*, 2014.

⁵ UNICEF, *A Familiar Face: Violence in the lives of children and adolescents*, 2017.

⁶ UNODC, *Global Report on Trafficking in Persons*, 2018.

⁷ See https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E



At the regional level, the Council of Europe has a Gender Equality Strategy 2018-2025⁸, and at a regulatory level, the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is particularly relevant, describing sexual violence as gender violence and establishing the obligation of the States Parties to adopt measures of prevention, awareness, education, training of professionals, create or support preventive intervention programmes for the prevention of these crimes (defined, among others, in legislative measures - Art. 18.1), duty of information or protective measures⁹.

In the EU, the protection of victims and the fight against sexual crimes has been implemented in its strategic, organisational and legislative agenda in the Area of Freedom, Security and Justice¹⁰. In addition to the relevant harmonising instruments which affect the matter¹¹, including the so-called Victims Directive of 2012, three strategies of the utmost relevance have been communicated for the five-year period: the EU strategy on victims' rights, the strategy for gender equality and the strategy for the effective fight against child sexual abuse.

The main objective of the EU strategy for victims is to empower victims, and it has five priorities: effective communication and the establishment of a safe environment for reporting the crime, improving protection and support for the most vulnerable victims, facilitating access to compensation, strengthening cooperation and coordination between relevant actors and reinforcing the international dimension of victims' rights. In this strategy, sexual victimization plays a leading role, and reference is made to the significant unreported figure in these crimes, probably around 200%. This strategy converges with that of gender equality and the more effective fight against child sexual abuse.

⁸ See Gender Equality Strategy 2018-2023: <https://www.coe.int/en/web/genderequality/gender-equality-strategy>
Highlights its Pilot Project to conduct an inventory of assistance and services available to victims of sexual exploitation and abuse in 13 countries and its advocacy work (See Victim Assistance Protocol 2019).

⁹ Spain has not only ratified this international treaty, but also the offences regulated by the Istanbul Convention will fall under Spanish jurisdiction, even if they occur outside our borders if any of the circumstances of Article 24.3.1 of the LOPJ apply. The GREVIO report about Spain remarks the poor activity of the State concerning sexual violence.

¹⁰ Following the European Council's Stockholm Programme entitled "An open and secure Europe serving and protecting citizens" (heading 2.3.4).

¹¹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, Council Directive 2004/80/EC relating to compensation to crime victims, Directive 2011/09/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order and Directive 2014/41/EC of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.



1.2. Methodology based on the victim's perspective

1.2.1. The interests of victims

Directive 2012/29/EU refers to rights of the victims, needs and interests, that have to be assessed in an individual manner, being the situation of the victims of sexual violence one of a special interest and protection (art.22).

The service provided to victims by the criminal justice systems implies the establishment of common criteria for action. These criteria make it possible to give certainty and security to what victims can expect from the actions and actors of the justice system involved in their case. At the same time, however, personalized treatment should take into account different contexts of victimization and personal interpretation. This flexibility and the focus on the victim's perspective in the Directive assumes that victims may have a variety of interests depending on their own characteristics, circumstances and victimisation, which must be assessed on an individual basis. Thus, for example, in cases of human trafficking, the victim is likely to prioritise security measures while a young rape victim might identify privacy as a priority.

The Directive refers directly and indirectly to the interests of the victim. Some of these interests, have the status of a right, others are under the protection of a right, and others can be diffusely protected by rights or good practices. The Directive refers sometimes to "needs", suggesting sometimes "adequacy" (art. 27.7, interpretation), sometimes to "necessity", which we are interpreting here as very important interests of the person (art. 9.3.a, need of a safe place, art. 22 and 23, protection needs), and sometimes to the group of general and specific interests of the victim (art. 4, information depending on the specific needs, art. 25, training of practitioners to increase their awareness of the needs of the victims).

In the context of a victim's relationship with the justice system, it is preferable to avoid referring explicitly to needs. This is because this terminology has been progressively abandoned as it evokes a disadvantageous and welfare-oriented position. Instead, a focus on the victim's interest as part of the evaluation of the criminal justice systems has been developed.

As we analyse our justice systems regarding the situation of sexual crime victims, our focus is not so much as an evaluation of the victim's justice experience, not so much an evaluation of her justice interests, but an evaluation of the situation of the victim's various personal interests, related to the justice system, that could shed light on the motives for the concealment of these crimes.

The possibility of victims' participation in the justice system in an appropriate way, while guaranteeing the protection of their interests, would be an objective of the justice system, that would allow in the future prospective victims to report and to maintain their positions in the investigative stage as well as during the trial, and overcome, as a society, the important problem of under reporting, no prosecution and impunity concerning sex crimes, enabling the system to develop better prevention tools and for better protection of victims.

The interests that serve as a reference for the evaluation of the activity in the different procedural phases in this report are those expressly or abstractly included in Directive 29/2012/EU, in addition to the specific interests relating to justice described by the specialised doctrine¹².

INTERESTS OF VICTIMS OF SEXUAL CRIME AND THE JUSTICE SYSTEM	
1. Privacy (art. 21)	a. <i>Shame and informative self-determination</i> b. <i>Anonymity</i> (art. 23)
2. Information (art. 6, art. 7)	
3. Participation	a. <i>To be heard</i> (art. 10- Voice in Daly model) b. <i>To ask, to demand, to agree, to get answers</i> (art. 11, when no prosecution, art. 12 restorative justice, art. 13 legal aid-Participation in Daly model)
4. Compensation (art. 14, reimbursement of expenses, art. 16, compensation from the offender)	
5. Security (art. 18 protection)	
6. Dignity (art. 18 explicitly; in abstract: art. 23.2.a, interviews in special premises, art. 23.2.b. carried by through professionals trained for that purpose, art. 23.2.c, by the same person, 23.2.d, of the same sex, art. 23.3.c, avoid unnecessary questioning concerning the victim's private life not related to the criminal offence)	
7. Support (art. 8, victim support services, 24.1.b, special representative for the child victim in conflict of interest)	
8. Minimization of stress-mental health (art. 19, avoid contact between victim and offender, art. 23.3.a avoid visual contact with accused, art. 23.3.b testimony without being present, art. 24.1.a recorded interview with child, art. 3 and art. 20, to be accompanied)	
9. Accountability of the offender (art. 12 Restorative Justice, Daly model)	
10. Validation y vindication (Daly model)	

Table 1. *Interests of Sex Crim Victims and the Justice System*

The greatest challenge of the analysis lies in understanding in this evaluation the socio-cultural contexts (religious, cultural, political and social factors in general, among others) that influence the victim's assessment of the situation and their decision to report and prosecute (or the decision of his/her inner circle), and the treatment by justice operators (from the police in the first contact to the magistrates in the last resolution). Thus, for example, despite the existence

¹² Daly, Kathleen. "Conventional and Innovative. Justice Responses to Sexual Violence". *Australian Centre for the Study of Sexual Assault* 12, n.2 (2011):1-35, has constructed a Victimization and Justice Model which allows the evaluation of different justice mechanisms from the victim's perspective. Thus, she argues that in order to evaluate criminal justice systems, consideration must be given to: (i) contexts of victimization, (ii) justice mechanisms available and (iii) victims' interests of justice.

The third element – interests of justice – basically refers to the political relationship between victims – as citizens – and the judicial system, in the sense that by resorting to the judicial system after suffering a crime, victims have the expectation of achieving a certain result (justice). Moreover, if that result is positive, it is to be expected that it may have an effect on their well-being (physical, psychological, etc.).

Daly identifies the following 5 elements:

- Participation: being informed of the options and the development of the case, including the types of mechanisms available; ability to ask questions and receive information about the crime.
- Voice: telling the story of what happened and its impact in a meaningful setting where the victim can receive public recognition.
- Validation: to claim that the victim is believed – about the occurrence of the crime and that was harmed – and that is not blamed for what happened. It reflects the desire to be believed.
- Vindication: public condemnation and censorship of what happened. It can be expressed through symbolic and materials forms of reparation and standards forms of state punishment. It implies censorship of the act as wrong and of the offender, both from a legal and victims' perspectives.
- Accountability of the offender: requiring that the offender be called to account for his actions (why that person did it), in the expectation that the offender will take active responsibility for his wrongful behaviour.

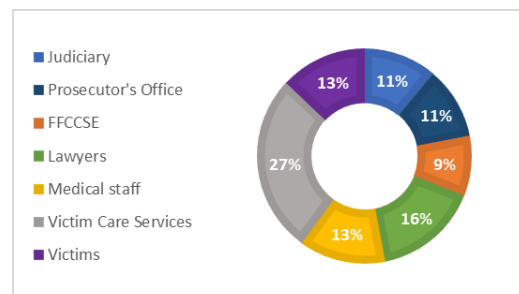
of a clear regulation against sexual crimes, prejudices and beliefs that transcend the social group produce less social support for the victims and more concealment of the criminal act, less interest in the persecution by the investigators or a light punishment, if any.

1.2.2. Methodology

Researchers have reviewed scientific literature on the treatment of victims in criminal proceedings, studied the main related and current regulations, the analysis of the most relevant jurisprudence and carried out in-depth interviews with professionals involved in criminal proceedings and victims of sexual crimes.

The interviews were developed on the basis of a script of open questions about the treatment of victims of sexual crimes in the pre-procedural, procedural and post-procedural stages, delving into the attention or not of the interests previously identified. In addition, for the purpose of exploration, they were also proposed to fill in a questionnaire to evaluate, on a scale of Likert 1 (minimum satisfaction) to 5 (maximum), aspects of the victim's perception of the treatment they receive from the justice system. This questionnaire was provided to a greater number of professionals (n=61).

A non-probabilistic snowball sampling was carried out, contacting professionals who recommended other people from their discipline or area of knowledge. The field work took place between May and October 2020 by 10 RE-TREAT researchers. Forty-five individual interviews were conducted (or with two professionals when they came from the same entity or with close connections). The professional profile of the people interviewed is Judiciary (11%); Public Prosecutor's Office (11%), Police (FFCCSE) (9%), Lawyers (16%), Medical staff (13%) and Victim Assistance Services (27%). In addition, six victims were interviewed (13%). A total of 39 women and 6 men were interviewed, 80% of whom had more than 10 years' experience, in the case of professional interviews.



Graph 1. Persons interviewed

Responses were contrasted with the perspective of interest analysis, maintaining 3 key objectives: (1) understanding of the service or work provided; (2) analysis of interest satisfaction at corresponding stages (pre-processing, procedural and/or post-processing); (3) and detection of obstacles and possible improvements and good practices.



2. PUNISHMENT & GENERAL SITUATION OF CRIMINAL JUSTICE IN RELATION TO SEXUAL CRIMES IN SPAIN

2.1. Criminal Regulation

The Criminal Code dedicates its Title VIII, of Book II, to *“Felonies against sexual freedom and indemnity”*. *“Sexual freedom”* would be assumed as *“the right of every person to self-determination in the field of sexuality, that is, the right to maintain sexual relations or, in general, to carry out or tolerate activities of sexual nature with their express consent”*¹³ while *“sexual indemnity”*¹⁴ refers to persons who are not recognised as having such sexual freedom (mainly children under 16 years old and disabled persons in need of special protection). Therefore, it would imply not approaching certain sexual acts in order to maintain an adequate physical and psychological development (as they are people in whom *“either there is no current sexual freedom or one cannot speak of freedom in legal terms”* although it is clear that *“in our environment there is a kind of unwritten consensus on the ‘intangibility’ or ‘indemnity’ that should be granted to these people in relation to the sexuality of others”*¹⁵). The current text is the result of a wide range of reforms in recent years and can generally be considered to be in a process of *“expansion and hardening”*. This growth has basically *“taken the form of both a general increase in penalties and the creation of new forms of crimes to combat new forms of aggression against protected legal goods”*¹⁶.

The main legally protected right is sexual freedom. Therefore, the lack of consent by the victim is the essential element taken into account by the legislator to establish the punishment of different conducts. Along with sexual freedom, sexual indemnity is also included as legally protected interest. The crimes are aggravated by certain circumstances:

FELONY	LEGAL DEFINITION AND LEGAL CONSEQUENCE	AGGRAVATING CIRCUMSTANCES AND LEGAL CONSEQUENCE
Sexual assault (art.178)	Attacking the sexual freedom of another person ¹⁷ , using violence or intimidation ¹⁸ . Penalty: imprisonment from 1 to 5 years.	For art.178 y 179: Art.180.1

¹³ Ragués I Vallés, Ramón. *“Delitos contra la libertad e indemnidad sexuales”*. In *Lecciones de Derecho penal. Parte Especial* directed by Jesús María Silva Sánchez, 107-125, Barcelona: Atelier, 2018, p. 129.

¹⁴ According to STS 615/2018, of 3 December, ECLI: ES:TS:2018:4077, sexual indemnity should be understood as the right not to be involved in a sexual context, without validly expressed consent, as well as the risk that this may have for the formation and development of the personality and sexuality of the child victim.

¹⁵ Muñoz Conde, Francisco, *Derecho Penal. Parte Especial*, 22ª ed., Tirant lo Blanch, 2019, p. 204.

¹⁶ Ragués I Vallés, Ramón. *“Delitos contra la libertad e indemnidad sexuales”*. In *Lecciones de Derecho penal. Parte Especial, op. cit.*, p. 130.

¹⁷ STS 344/2019, of 4 July (ES:TS:2019:2200) - La Manada case-, based on judgment 953/2016, states that *“the intimidation used must not be of such a degree that it is irresistible, invincible or unusually severe. It is enough that it is sufficient and effective on the specific occasion to achieve the proposed goal, paralyzing or inhibiting the victim’s will to resist and acting in an adequate causal relationship, both by material expiration and by the conviction of the uselessness of prolonging an opposition from which - on not leading to a positive result - greater harm could derive”*.

¹⁸ To assess the seriousness of the conduct, case law differentiates between violence and intimidation. Violence is identified with physical force which sometimes becomes an intimidating element. Thus, STS 344/2019 understands that violence is equivalent to assault, coercion or material imposition, and implies real aggressions, that is, effective and sufficient force to overcome victims’ will (SSTS of 18 October 1993, 28 April, 21 May 1998, and 1145/1998, 7 October). On the other hand, the concept of intimidation has been gradually shaped and is currently being extended to situations in which not only the active behaviour of the aggressor is valued, but also the context in which it takes place (concept of environmental intimidation).



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		1)When the violence or intimidation made are of a particularly degrading or humiliating nature ¹⁹ . 2)When the acts are committed by joint action of two or more persons.
Rape (art.179)	Sexual assault consisting of vaginal, anal or oral penetration, or inserting body parts or objects into either of the former two orifices ²⁰ . Penalty: imprisonment from 6 to 12 years.	3)When the victim is especially vulnerable due to age, illness, disability or circumstances. 4)Prevalence of a relationship of superiority or kinship due to being the ascendant, descendent, brother/sister, biological or adopted or in-law of the victim. 5)Using of weapons or other equally dangerous means which may cause death or any injuries. Penalty: imprisonment from 5 to 10 years and imprisonment from 6 to 10 years (respectively for the aggravated circumstances of art. 178 and 179 CP).
Sexual abuse (art.181)	Acts against sexual freedom or indemnity of another person, without violence or intimidation and without consent, or with consent obtained by taking advantage of a situation of superiority that restricts the freedom of the victim ²¹ . Penalty: imprisonment from 1 to 3 years or a fine from 18 to 24 months ²² .	Art.181.3. Carnal access by vaginal, anal or oral ways, or inserting body parts or objects into either of the former two orifices. Penalty: imprisonment from 4 to 10 years.
Sexual assault in which the victim is over 16 years of age and under 18 years of age (art.182)	Deception or abuse of a recognised position of trust, authority or influence over the victim Penalty: imprisonment from 1 to 3 years.	Carnal access by vaginal, anal or oral ways, or inserting body parts or objects into either of the former two orifices. Penalty: imprisonment from 2 to 6 years.
Sexual abuse and assault on children under the age of 16 (art.183)	Acts of sexual nature with a child under the age of 16 years old ²³ . Penalty: imprisonment from 2 to 6 years.	183.2. Violence or intimidation to participate in acts of sexual nature with a third party or performing them on themselves. Penalty: imprisonment from 5 to 10 years. 183.3. Carnal access by vaginal, anal or oral ways, or inserting body parts or objects into either of the former two orifices. Penalty: imprisonment from 8 to 12 years (from 12 to 15 years if there is violence or intimidation) + possible absolute disqualification from 6 to 12 years when the author has taken advantage of his professional public status as an authority, agent of the authority or civil servant.
Sexual behaviour by children under 16 without	For sexual purposes, forces a child under sixteen years to participate in conduct of sexual nature, or forces him/her to witness acts of sexual nature, even if the offender does not participate in said acts.	183bis.2: If the offender forces the child to witness sexual abuse, even if the offender does not participate in cited abuse. Penalty: imprisonment from 1 to 3 years.

¹⁹ Giving that this type of crimes, *per se*, are degrading and vexatious, Spanish Supreme Court requires further unlawful activity to apply art. 180. STS 344/19 states that “the analysed aggravation is present when there is evidence of, (...), violence or intimidation characterised by added brutality, savagery or animality, or conduct by the perpetrator that seeks and achieves a relevant humiliation, degradation or vexation not necessary for the execution of the crime”.

²⁰ The Spanish Supreme Court (in the non-jurisdictional plenary session of 2 May 2005), established that “Carnal access is equivalent to being granted access. This means that non-voluntary introduction of organs from the victim to the aggressor is punishable as rape (...). With regard to carnal access, the Supreme Court has been admitting consummation, without requiring complete penetration, considering the so-called vestibular coitus, which case-law has identified with access or penetration of the external genital sphere prior to the hymen of the woman, as sufficient for consummation of carnal access to be consummated”, STS 9/2018, of 3 December 2019 (ECLI:ES:TS:2018:10).

²¹ In STS 711/2015, of 19 November (ES:TS:2015:4818), it is understood that the disproportion or asymmetry between the abuser and the abused determines a behaviour of moral pressure on the weak party.

²² In Spanish Law, the penalty of a fine is established by the system of days, the duration being fixed according to the circumstances of the act and the author and the quota of the fine will be imposed according to his economic capacity (between 2 and 400 euros). In practice, the amount of the fine is usually set significantly closer to the legal minimum.

²³ In case that the offender is a person close to the child victim by age and degree of development or maturity, the free consent of the child victim under 16 years of age shall exclude criminal liability (art. 183quater).



physical contact (art.183 bis)	Penalty: 6 months to 2 years of imprisonment.	
Child-grooming (art.183ter)	183ter.1. Using of internet, telephone or any other information and communication technology to contact a person under the age of 16 years and proposes to meet that person in order to commit any of the criminal offences describes in arts. 183 and 189, as well as material acts aimed at approaching to the victim. Penalty: imprisonment from 1 to 3 years or fine from 12 to 24 months (upper half when the approach is obtained by coercion, intimidation or deceit (art. 183ter.1). Art.183ter.2. Carry out acts aimed at luring that person sending the offender pornographic material or showing him pornographic images in which a child victim is displayed or appears. Penalty: imprisonment from 6 months to 2 years.	
Sexual harassment (art.184)	To solicit favours of sexual nature, for himself or a third party, within the setting of a continuous or usual work relation, teaching or service provision relation, and by such conduct causes the victim a situation that is objective and seriously intimidating, hostile or humiliating. Penalty: imprisonment from 3 to 5 months or fine from 6 to 10 months.	184.2 Taking advantage of a situation of superiority in work, education or hierarchy, or with the express or tacit announcement of causing the victim harm. 184.3 When the victim is especially vulnerable, due to age, illness or circumstances. Penalty: imprisonment from 5 to 7 months or fine from 10 to 14 months (and imprisonment from 6 months to 1 years for art. 184.2).
Exhibitionism and sexual provocation (art.185-186)	Art.185 To perpetrate or have another perpetrate deeds of obscene exhibitionism before children or persons requiring special protection. Art.186. By any direct means, to sell, distribute or exhibit pornographic material among children or persons requiring special protection. Penalty: imprisonment from 6 months to 1 years or fine from 12 to 24 months.	
Prostitution and sexual exploitation (art.187)	Art.187.1: Whoever using violence, intimidation or deceit, or abusing a situation of superiority or need, or the vulnerability of the victim, forces an adult person to practice prostitution, or to continue doing so. Penalty: imprisonment from 2 to 5 years and fine from 12 to 24 months. 187.2 Whoever profits from exploiting prostitution of another person, even the consent of that person ²⁴ . Penalty: imprisonment from 2 to 4 years and fine from 12 to 24 months.	Half upper of the penalties of art. 187.1 and 2 if: - The offender has availed himself of his/her status as an authority, agent of the authority or civil servant. - The offender belongs to a criminal organisation. - The offender has endangered the life or health of the victim.
Prostitution and corruption of children (art.188)	Art.188.1: Whoever induces, promotes, favours or facilitates the prostitution of a child victim or a person with disabilities requiring special protection, or profits from such activities, or exploits a child victim or a person with disabilities in any other way for this purpose. Penalty: imprisonment from 2 to 5 years and fine from 12 to 24 months. 188.4: Whoever requests, accepts or obtains, in exchange for a payment or promise, a sexual relationship with a child victim or with a person with disabilities requiring special protection. Penalty: imprisonment from 1 to 4 years (from 2 to 6 if the child victim has not reached the age of 16 years).	Art.188.1.II: When the victim is a child victim under the age of 16 years. (Penalty: imprisonment from 4 to 8 years and fine from 12 to 24 months). Art.188.2: Violence or intimidation (Penalty of imprisonment from 5 to 10 years if the victim is under 16 years and from 4 to 6 years in all other cases). Art.188.3 (Penalty in the upper half when): a) Victim is especially vulnerable due to his age, illness, disability or situation. b) The offender has availed himself of a superiority or kinship. c) The offender has availed himself of his status as an authority, agent or civil servant. d) The offender has endangered the life or health of the victim. e) Joint action of two or more persons. f) Criminal organisation.

²⁴ The Criminal Code stated a presumption of exploitation if the victim is personally or economically vulnerable, or if burdensome, disproportionate or abusive conditions are imposed on her.



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<p>Child pornography (art.189)</p>	<p>Art.189.1.a) To recruit or use child victims or persons with disabilities requiring special protection for exhibitionistic or pornographic purposes or shows both public or private or prepare any kind of pornographic material, whatever the medium, who finances or profits from them. b) To produce, sell, distribute, exhibit, offer or facilitate the production, sale, dissemination or exhibition of pornographic material. Penalty: imprisonment from 1 to 5 years.</p> <p>Art.189.4. Whoever knowingly attends exhibitionistic or pornographic shows. Art.189.5: Whoever possesses or acquires child pornography for his/her own use. Penalty: imprisonment from 6 months to 2 years</p> <p>189.6: Whoever has a child victim under his/her care, guardianship... being aware of his state of prostitution or corruption, does not do everything possible to avoid such situation. Penalty: imprisonment from 3 to 6 months or fine from 6 to 12 months.</p>	<p>Art.189.2: a) children under the age of 16 years. b) particularly degrading or vexatious acts. c) victims of physical or sexual violence. d) offender has endangered the life or health of the victim, intentionally or due to gross negligence. e) if the deeds are especially serious. f) the offender belongs to a criminal organisation. g) the offender is an ascendant, tutor, carer, minder, teacher or any other persons in charge, <i>de facto</i>, or in the case of any other member of his/her family living together. h) recidivism. Penalty: imprisonment from 5 to 9 years.</p>
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Table 2. Sexual Crimes in the Spanish Criminal Code. Own elaboration

2.2. Specialisation and competence of legal practitioners

The competence for the reception of reports for sexual crimes corresponds to State Law Enforcement Agencies as well as to Law Enforcement Agencies of some Autonomous Communities. Municipal Police Corps do not have any kind of competence in the area of sexual violence without prejudice to specific collaboration that can be developed through agreements or judicial appointment.

There are specialised groups in both Law Enforcement Agencies: the Spanish Military Police has the *Women-Minor Teams* (EMUME)²⁵ and the Police the Family and Woman Assistance Units (UFAM)²⁶.

There are recently created Victims' Support Offices (OAV) which are currently underdeveloped in practice. They depend on the Autonomous Communities Governments which have already assumed jurisdiction on this issue or on the Ministry of Justice in the rest of the territory²⁷.

²⁵ See: <https://www.guardiacivil.es/es/institucional/Conocenos/especialidades/emumes/index.html>. Its scope of action includes crimes against sexual freedom outside and within the family and it is also competent when the offenders are child victims.

²⁶ Since 2015, the national police has been organised to attend to victims of sexual crime in units for the family and minors, UFAM, replacing the previous FAM units, whose origin is the SAF (Family Attention Service, since 1985). Their competence excludes that of crimes committed by minors, which corresponds to the GRUME (Grupo de Menores, created in 1986), unlike the units of the Guardia Civil. The aim of these units is that any victim who appears at the UFAM leaves the unit with all their doubts and needs resolved, without the need for them to have to go to other institutions. You can visit website in: https://www.policia.es/org_central/judicial/ufam/ufam.html.

²⁷ OAV are made up of civil servants from the Procedural and Administrative Management Body. There are currently 27 Victims' Attention Offices in Spain (OAV) under the Ministry of Justice, as well as the Information and Assistance Office for victims of terrorism of the National High Court. The 1st Report on the Periodic Evaluation of the Victims of Crime Assistance System highlights the difficulties, deficiencies and need for improvement and funding of the OAV. Ministry of Justice, *Informe sobre la evaluación periódica del sistema de atención a las víctimas del delito*, 2017. Further information of the individual functioning of each OAV can be found at: <https://www.mjusticia.gob.es/es/ciudadanos/victimas/oficinas-asistencia-victimas>



With respect to the role of NGOs and associations, there is a significant number of them that carry out activities of supporting this type of victims.

There are not specialised public prosecutors or courts for the prosecution and investigation of sexual crimes. This competence is excluded from Courts for Violence against Women (JVM) which only deal with these crimes if there is a current or past intimate partner relationship between victim and perpetrator. This is precisely what the victims interviewed complained about; they have all encountered at one or more times people who have not been able to attend to them adequately because they are not properly qualified, and they feel a certain comparative disadvantage compared to victims of intimate partner violence.

2.3. The criminal procedure for the prosecution of sexual offences

For the prosecution of sexual crimes in Spain, in accordance with the penalty indicated for each one of them, two main different procedures may be followed: on one hand, the Ordinary Procedure (*“Procedimiento Ordinario”*), for the prosecution of those crimes with an abstract penalty of more than 9 years of imprisonment. On the other hand, the so-called, Abbreviated Procedure (*“Procedimiento Abreviado”*), for those sexual crimes which entail imprisonment up to 9 years and any other penalty of different nature. Exceptionally, if the crime is less serious (penalties of up to 5 years imprisonment) and certain circumstances are met, the process could follow the procedure colloquially known as the Speedy Trial.

2.4. Reports and proceedings for sexual offences

2.4.1. Reports and police pursuit

The Spanish Ministry of Interior’s Crime Statistic Portal contains a total of 13,782 sexual victimizations reported in 2018²⁸. 77.4% of them were solved (10,674). The number of known facts is increasing in every year and this phenomenon is attributed to a greater social support for victims: in 2017 there were 11,692 reports, 10,844 in 2016 and 9,869 in 2015²⁹. In the 2018 Report of Public Prosecutor’s Office, it is stressed that *“the possible increase that may be observed in some variables that are handled must be approached with caution since they are not necessarily due to a real increase in cases, but to a great number of complaints due to the growing awareness of victims to report these facts (...). The media and social repercussions that certain procedures have had may have strengthened the victims by encouraging them to report as they felt supported by public demonstrations of groups repudiating these crimes”*³⁰.

²⁸

<https://estadisticasdecriminalidad.ses.mir.es/publico/portalestadistico/portal/datos.html?type=pcaxis&path=/Datos1/&file=pcaxis>

²⁹ In December 2020, the annual report of the Spanish Ministry of Interior for 2019 has not yet been published. In the first half of 2020, 6,139 such crimes have been reported.

³⁰ https://www.fiscal.es/memorias/memoria2019/FISCALIA_SITE/index.html



Concerning the total known facts, sexual abuse accounts for 44% (6,066) and rape for 12.3% (1,700). The highest rate of clarification is in crimes relating to prostitution (95.5%) and the crime with the lowest rate of clarification is the one related to contact through technology with child victims under 16 years for sexual purposes (47.2%) followed by the crime of sexual harassment with 71.6% of clarification.

The 2018 Report on Crimes against Sexual Freedom and Indemnity in Spain, published by the Ministry of Interior, goes into more detail such as the “seasonality” of the known facts highlighting the months of July and August, the most frequent place for the commission of these crimes (facts) is the home and its annexes (5,552), followed by “open spaces” (3,198), and according to the same source, 95.2% of the 14,026 reported victimizations are women (child victims in 48.1% of the cases³¹).

2.4.2. Criminal proceedings for sexual offences

In 2019, 1,698 sexual crimes³² were investigated in Spain, representing 0.9% of the total number of recorded crimes. According to data from the National Institute of Statistics (INE), in 2019, there were 3,296

SENTENCES 2019-INE	
Against sexual freedom and indemnity (total)	3.296
- Sexual assaults	428
- Sexual abuse	1.218
- BIS Abuse and sexual assault of child victim under 16	529
- Sexual harassment	69
- Exhibitionism and sexual provocation	432
- Child prostitution and corruption	620

Table 3. Sentences for commission of sexual crimes. Year 2019. Source: INE

convictions of adults for sexual offences, a figure that increases year after year³³, with sexual abuse crimes predominating³⁴.

To this classification, the CGPJ in its statistics adds 105 convictions for human trafficking for sexual exploitation (82 men and 23 women)³⁵.

2.4.3. Characteristics of victims and offenders in case-law

Child victimization

³¹ Published in 2019. Available at: <http://www.interior.gob.es/documents/10180/8736571/INFORME+DELITOS+CONTRA+LA+LIBERTAD+E+INDEMNIDAD+SEXUAL+2018.pdf/72779215-38b4-4bb3-bb45-d03029739f5c> (Last access: 16 November 2020).

³² <http://www.poderjudicial.es/cgpj/es/Temas/Violencia-domestica-y-de-genero/Actividad-del-Observatorio/Datos-estadisticos/La-violencia-sobre-la-mujer-en-la-estadistica-judicial---Anual-2019>

³³ https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176793&menu=ultiDatos&idp=1254735573206

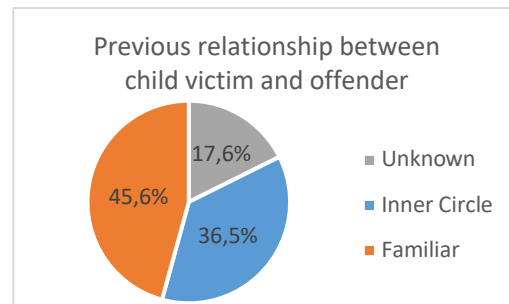
³⁴ <https://www.ine.es/jaxiT3/Datos.htm?t=25997#!tabs-tabla>

³⁵ <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Datos-penales--civiles-y-laborales/Delitos-y-condenas/Delincuentes-Sexuales--explotacion-estadistica-del-Registro-Central-de-Delincuentes-Sexuales-/>

In accordance to the total sample analysed³⁶, 63.3% (1,360) of the criminal proceedings for serious sexual crimes correspond to child victims, of which 85.4% (1,141) are girls, a similar number related to victimizations reported by the Ministry of Interior³⁷.

In 82.1% of the cases analysed, there is a previous relationship between victim and offender (close or family environment).

There is a single offender in 97% of cases in which 98.6% are men. Their average age is 42.5 years (median: 41). When there is data on nationality or if they have a partner, 67.1% are Spanish, 51% are married and 49% have no affective relationship; on the other hand, 86% have children. 23% of those convicted, have criminal record.



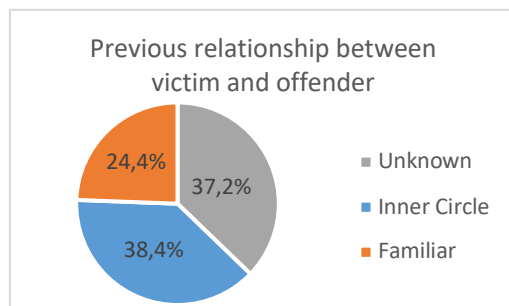
Graph 2. Own elaboration based on case-law research (2014-2018)

Adult victimization

95.2% of the victims are women (779). The average age of victims is 29.6 (median age: 25).

In 62.8% of the analysed cases, there is a previous relationship between victim and offender (close or family environment).

When the information is available, 73.7% of the victims are Spanish. The percentage of foreign victims is higher in adult victims than in child victims (26,3% vs.14.5%). In 16.4% of cases, the victim has some kind of disability; this percentage is more than double that underage victims.



Graph 3. Own elaboration based on case-law research (2014-2018)

Offenders are male in 99.1% of cases, there is only one offender in 93.6%, two in 4.2% of cases and more than two in the remaining 2.2%. The

average of convicted persons is 39.5 years, and the median age is 37. They are 3 years younger on average (and 4 years younger on median) than offenders of child victims. When the information is available, 59% are Spanish, 33% are married and 67% have no affective relationship, 69% of the offenders have children and a criminal record in 30% of the cases.

³⁶ The sample of the analysed case law is made up of 2,265 judgments sentenced between 2014-2018, handed down in proceedings for sexual crimes (abuse and assault) with a sentence of more than 5 years' imprisonment (thus excluding the sentences of the Criminal Courts), by the competent Courts: Supreme Court, High Courts of Justice and Provincial Courts (representing 23.8%, 9.2% and 67.2% of the judgements, respectively). The cases were selected randomly from the Judicial Documentation Centre (CENDOJ), respecting the segmentation by type of crime and Court. The simple quotas were calculated so that with a 95% confidence level, and assuming normality, the sub-samples obtained by the Court were representative with a sampling error of no more than 3% (approx.).

³⁷ Related to this issue, the data provided by the Report on crimes against freedom and sexual indemnity in Spain (2018) of the Ministry of Interior, a total of 14,026 victimizations were registered for sexual crimes of which 85% were women and child victims (11,976, p.16).



3. VICTIMS' TREATMENT: OBSTACLES FACED BY THE VICTIMS DURING THE DIFFERENT PHASES OF THE CRIMINAL PROCEEDINGS

3.1. The violent sexual act: the significance of the crime and the timing of the victims of sexual crimes

The specific characteristics of this type of victimization may entail a greater difficulty for victims to share this process with third parties they trust or with the competent authorities. The meaning of the events for the lives of the victims is more complex than in other types of victimization; Age, cultural and social factors influence the victims' assessment of the event, as does the impact of communicating the event within his/her inner circle and the general public. For example, a child victim who has had a behaviour not initially approved by his/her parents such as going out late at night and drinking alcohol or other substances may consider that it is less burdensome both for her and for her parents to hide the crime, if she believes not to have enough proof of evidence regarding the criminal act itself or the absence of their consent to present to the legal operators or to their inner circle. Probably an older and more independent victim feels more comfortable about communicating the criminal act in an unofficial -to his/her inner circle- or official way, and might consider reporting the criminal offence after calculating the probabilities of being believed by the legal operators or by the legal system in general. Public awareness of the crime in a rural context is more likely to reduce privacy and informative self-determination than in a large population nucleus. As a result, the victim might feel less free to decide to share the event.

The victims interviewed in the context of this project emphasize the importance of modifying the stereotypes that exist about the type of violence, where the woman appears to be guilty or partly responsible for the aggression. That is why they demand to make visible that this type of violence exists, to prevent and to educate in this area just as it has been done with intimate partner violence.

It is generally asserted by specialized scholarly opinion that it often takes some time before the victim decides to report and that, in most cases, the victim will not seek formal help nor issue a formal complaint³⁸.

The victim's decision to report and the moment in which she decides to do so depend on numerous and diverse factors. In some cases, the events are reported immediately or in the following days, which is more common when the offender is an unknown person³⁹, but in

³⁸ According to the data offered by the Macrosurvey on violence against women in Spain, only 1,2% of women who had suffered sexual violence sought psychological help (21,8% in case of rape) and 6,5% sought medical help (14,4% in case of rape). The rest of the services are rarely cited. 84,1% of the victims of sexual violence and 67,2% of the women who have been raped have not sought formal help following the event. (p.170). See Tamarit Sumalla, Josep M., Abad Gil, Judit, Hernández-Hidalgo, Patricia. "Las víctimas de abuso sexual infantil ante el sistema de justicia penal: estudio sobre sus actitudes, necesidades y experiencia". *Revista de Victimología*, n.2 (2015):27-54. DOI 10.12827/RVJV.2.02; Gormley, Lisa. *Women's Access to Justice for Gender-Based Violence. A practitioners' guide*, Switzerland: International Commission of Jurist, 2016, p.234 onwards.

³⁹ Although these do not represent the majority of cases, they do tend to be more violent and they take place in a shorter time. They also have a wider media coverage. The dynamics observed in this type of violence are analysed in the Report on crimes against sexual freedom and indemnity in Spain (2018. Pp. 59-60). On the other hand, complaints of group aggressions are increasingly becoming important although the cited Report reaches the conclusion that cases such "La Manada" have not had a significant impact on the number of complaints for group



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general, reporting may be delayed. The Macro-survey on Violence against Women 2019, Ministry of Equality, carried out on a sample of 9,568 women representative of the female population living in Spain aged 16 or over includes some reasons⁴⁰. Shame, being a child and fear not be believed stand out among the victims of rape. In the case of women who have suffered violence from their current partner, the most cited reason for not reporting is having solved it on their own (49,1%) or not giving importance to the violence suffered (46,4%). In victims of sexual violence outside the couple relationship, most interviewed women replied that “it was minor” or “was of little importance”. It seems that this decision may be affected by the existence of a situation of dependency⁴¹, the will to forget what happened and unawareness of their rights and of the development of the process. Furthermore, according to the interviews carried out in this investigation, possible pressures from within the victim’s environment or the impact that reporting might have in their lives –being this the case of women in an irregular administrative situation- amount to other reasons for non-reporting⁴².

In practice, operators point out that the victims are asked for the reasons of delay in reporting both at the police office and in court, a fact which reflects the persistency of the myth or prejudice linked to this type of crime – “*a real crime is immediately reported*”-. Nevertheless, in line with the UN guidelines⁴³, an evolution aimed at overcoming this prejudice can be observed within judicial decisions. A progressive natural assumption of reporting delay is starting to be observed within the case-law⁴⁴; courts assume that a long-standing situation of domestic

aggressions (p.73). The SC has had several occasions to rule on this type of aggressions when issuing decisions on various cassation appeals. Among the most recent ones, see SSTS 369/2020, of 3 July; 145/2020, of 14 May, 520/2019, of 30 October. See also SAP, Madrid, 150/2020, of 29 May; SAP, Murcia, 223/2019, of 25 June.

⁴⁰ Available here:

<https://violenciagenero.igualdad.gob.es/violenciaEnCifras/macroencuesta2015/Macroencuesta2019/home.htm>

⁴¹ The complexity of this kind of crimes is such that they are often reported when they have already prescribed. In the STS 9/2018, of 15 January (ECLI:ES:TS:2018:10), the Court upheld the cassation appeal lodged by an individual convicted for sexual abuse who is acquitted in application of the statute of limitations. The Court reaches the conclusion that the statute of limitation applicable is that of the Criminal Code in force at the time of the events. This provision did not foresee that the statute of limitation should start running after the victim turns 18, a requirement that was later introduced by LO 11/1999 of 30 April, which established that in the case of minors of people with functional diversity, the statute of limitation period would start to run from the moment the victim turns 18. Nevertheless, the current deadlines continue to be short and inadequate to meet the victims’ special needs. For this reason, the Draft Organic Law on the Comprehensive Protection of Children and Adolescents from Violence foresees the extension of the statute of limitations for these crimes, establishing the *dies a quo* in which the statute of limitation period should start running on the day the victim turns 30. See Final Provision Six, paragraph twelve, which proposes a new wording of article 132.1 CP; to the effect of this work, the last paragraph establishes that: *In crimes (...) against freedom, in crimes against sexual freedom and indemnity (...) when the victim is under eighteen years old, the statute of limitation period will start running when the victim turns 30, and, in case of death before reaching that age, the period will start running from the date of the death.* Available here http://www.congreso.es/public_oficiales/L14/CONG/BOCG/A/BOCG-14-A-22-1.PDF

⁴² The victim in an irregular administrative situation might prioritize his/her stay in the country over obtaining justice for the suffered aggressions administrative (even renouncing to request health care assistance).

⁴³ On this issue, the UN’s Handbook for legislation on violence against women, 2012, advises against adverse inference from delay in reporting. Legislation should: i) Prohibit courts from drawing any adverse inference from a delay of any length between the alleged commission of violence and the reporting thereof; ii) Require that the presiding judicial officer in any case of violence against women inform the jury, assessors or herself that a delay in reporting should not be held against the complainant. Available here: <https://www.unwomen.org/es/digital-library/publications/2012/12/handbook-for-legislation-on-violence-against-women#view>

⁴⁴ In this sense, in its STS 184/2019, of 2 April (ECLI: ES:TS:2019:1071), the SC holds that “*the veracity of the victim’s statement cannot be doubted when there have been previous episodes of abuse. The same applies to delay in reporting*



violence makes immediate reporting very difficult⁴⁵, a fact which becomes all the clearer with regard to child and intrafamily victimization. In these cases, the courts are aware of the risk of the perpetrator coercing the victim by blaming her of the possible breakdown of the family structure⁴⁶.

There are numerous factors influencing the decision of the victim of sexual violence not to inform her inner circle and the public services (of the crime), including:

- Fear of future actions by the offender or his inner circle;
- strength of the “secret/pact” in those cases in which the offender has a close relationship with the victim, especially in the case of child victims;
- shame related to the privacy and public knowledge of the event;
- evaluation of the potential reaction of the family and social environment: credibility, anger, rejection;
- in the case of male victims, difficulty in considering themselves a victim, feeling of not complying with the stereotype of “male⁴⁷”, fear of not being believed, difficulty in interpreting certain events as abusive⁴⁸;
- economic or structural dependence on the offender or on the people who support her;
- difficulty in identifying unhealthy affective relationships (mostly child victims and disabled);
- inadequate treatment by the operators (police) concerning respect, credibility or privacy;
- likelihood of confrontation with the offender (in the police station, in society, in court);
- evaluation of the chance of criminal conviction (sufficient evidence);

According to some of the interviewed people, the support received by the victim (regardless of where it comes from, including Victim Assistance Units or Legal Counsels)⁴⁹ stands out as an

due to the special features of this kind of crimes within a couple”. The same has been asserted by the SC in case of child abuse in its STS 1028/2012 of 26 December (ECLI: ES:TS:2012:9042).

⁴⁵ It is not strange for this event to come to light when filing in a complaint for physical violence.

⁴⁶ Tamarit Sumalla, Josep M., Abad Gil, Judit, Hernández-Hidalgo, Patricia. “Las víctimas de abuso sexual infantil ante el sistema de justicia penal: estudio sobre sus actitudes, necesidades y experiencia”, *Revista criminología*, n. 2 (2015):27-54. DOI 10.12827/RVJV.2.02

⁴⁷ The feeling of loss of virility or of non-compliance with gender mandates may even be identified in third parties’ perception of male victims. In this regard, see Mulder, Eva, Pemberton, Antony and Vingerhoets, Ad J. J. M. “The Feminizing Effect of Sexual Violence in Third-Party Perceptions of Male and Female Victims”, *Sex Roles, A Journal of Research* 82, (2020):13-20. Doi.org/10.1007/s11199-019-01036-w

⁴⁸ In the case of male child victims, when the offender is a woman, the caregiver role plays an important part in the victimization, or (in the acceptance of) the role of “mentor” or “sexual instructor”. See Beech, Anthony, Parrett, Natalie, Ward, Tony and Fisher, Dawn. “Assessing female sexual offenders’ motivations and cognitions: An exploratory study”. *Psychology, Crime & Law* 15(2-3), (2009):201-216.

⁴⁹ Very interesting is the concept of Second Order of Sexual Harassment (SOSH) developed especially in the context of sexual offences in the university environment, and the relevance of peer support and its absence. Vidu, Ana, Valls, Rosa, Puigvert, Lidia, Melgar, Patricia and Joanpere, Mar. “Second Order of Sexual Harassment - SOSH.” *Multidisciplinary Journal of Educational Research* 7, n.1 (2017):1-26. DOI: [10.17583/remie.0.2505](https://doi.org/10.17583/remie.0.2505), integrated in the Catalan Law on the right of women to eradicate male violence, art. 4.g) “Second order violence: consists of physical or psychological violence, retaliation, humiliation and persecution exercised against people who support victims of male violence. It includes acts that impede the prevention, detection, care and recovery of women in a situation of gender-based violence.”



element of high positive impact. Once the information about the events arrives to the victim's social circle (friends, family, neighbours), the same factors may influence the decision to issue a formal complaint. The victims interviewed who have received little or no family support report having had suicidal thoughts at some point.

An adequate legal and psychological support could minimize the influence of some of these factors on the victim's decision, thus, access to a quality Victim Assistance Unit that includes immediate legal and psychological support, event after the first contact by the police, is of the utmost importance. However, other factors such as the economic dependence or the adequacy of the treatment given to the victim during the process have a structural character and require the adoption of public policies that encourage the reporting of criminal acts. All the victims interviewed agree that they report to help other women and to prevent what happened to them from happening to them. However, throughout the procedure, almost all the victims, at some point, have regretted having reported the crime.

3.2. Reporting the facts to the relevant authority

3.2.1. Specialized protocols

Unlike what happens in the case of gender violence among couples or ex couples⁵⁰, Spain does not have a common protocol for the treatment of the complaints and prosecution of sexual crimes. This circumstance has been exposed by the GREVIO's report on Spain's compliance with the Istanbul Convention⁵¹.

Protocols on sexual offences may be found within the Autonomous Communities⁵², which coordinate differently the work of the police, courts and medical centres. At the same time, each professional group has specific development protocols⁵³.

⁵⁰ Protocol for common health action against gender violence of 2012, to which an annex on trafficking for sexual exploitation is added in 2017. Available here: <https://violenciagenero.igualdad.gob.es/profesionalesInvestigacion/sanitario/docs/PSanitarioVG2012.pdf> and here https://www.msbs.gob.es/organizacion/sns/planCalidadSNS/pdf/equidad/Anexo_TRATA_al_Protocolo_Comun_V_G_SNS_27Nov2017_entregado_en_papel_Reunion_ComisionVG_28nov2017.pdf respectively.

⁵¹ GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Spain, November 2020, available here: <https://rm.coe.int/grevio-s-first-baseline-report-on-spain/1680a077b6>

⁵² Protocols on sexual aggression have been adopted by the Autonomous Communities, either specifically (Aragon, Balearic Islands, Canary Islands, Cantabria, Madrid, Navarre, Euskadi, La Rioja and Community of Valencia) or integrated within the protocol on gender violence (Andalusia, Principality of Asturias, Castile-La Mancha, Castile and Leon, Extremadura, Melilla) or referred to child sexual abuse or victims of human trafficking for sexual exploitation (Galicia) with the exception of the Autonomous City of Ceuta, a situation which remains at present (November 2020). See the Spanish Istanbul Shadow Platform Report in respect of the Protocols from 2018, available here: https://plataformaestambulombra.files.wordpress.com/2019/02/informeestambulombra_esp.pdf The Protocol on the prevention and the response to sexual and gender violence in Melilla's temporary migrant holding center (CETI) available here: <https://www.defensordelpueblo.es/resoluciones/elaborar-con-caracter-urgente-un-protocolo-para-la-prevencion-y-la-respuesta-a-la-violencia-sexual-y-por-motivos-de-genero-para-su-implantacion-en-el-ceti-de-melilla/>

⁵³ See the Health Protocol of Gran Canaria together with the Interinstitutional Coordination Protocol for the Assistance of Victims of Gender Violence in the Autonomous Community of the Canary Islands



Treatment may differ both due to the specific approach of each protocol, the size of the population covered by the courts, the number of courts, etc. Coordination is easier within judicial districts with smaller population⁵⁴.

Lawyers qualify as “disastrous” the application of the existing police and medical protocols, which are not often updated, noting an absolute lack of coordination between public institutions which results, among other things, from the variety of bodies and units within the police forces. The victim is sent from one place to another a number of times before the competent unit is identified, and waiting time may also be increased. Lawyers points out that sometimes the facts are not adequately collected at the police station, resulting in an incorrect wording of the report which causes inconsistencies and wrong interpretation of the meaning of the sentences. The toughness and the length of the complaint procedure may be highlighted. Furthermore, depending on the Autonomous Community in which the victim finds herself, physical samples taken in a medical center may be required (this may delay between 6 and 12 hours the complaint according to the applicable protocol, such as that of Madrid, currently under review)⁵⁵.

3.2.2. Professional specialization, human resources, adaptation of the physical environment and accompaniment.

Despite the existence of legal provisions (LEVID, LO 1/2004, LOPJ) regarding the training of the personnel working with the victims, and the need to adjust the treatment given to the victim’s characteristics, in practice, the lack of sufficient training on sexual victimization and

(https://violenciagenero.igualdad.gob.es/profesionalesInvestigacion/protocolosAmbitoAutonomico/sanitario/docs/Protocolo_agresiones_sexuales_Gran_Canaria.pdf and <http://www3.gobiernodecanarias.org/medusa/edublog/cprofesnortedetenerife/protocolo-de-coordinacion-interinstitucional-para-la-atencion-de-las-victimas-de-violencia-de-genero-en-la-comunidad-autonoma-canaria/> respectively, or the Health care guide for women victims of domestic violence in Aragon and its interinstitutional Protocol (2018) and regional coordination procedures (https://www.aragon.es/documents/20127/674325/guia_atenci_sanitar_aragon.pdf/ad0a5e15-4b76-6a30-afb4-cc5e392ff793 and https://www.aragon.es/documents/20127/674325/protocolo_v5_def.pdf/faf60b97-c1a7-d760-78dc-ba7dd0326566 respectively). Among the health guides, the Guide for the detection of patients suffering from chemical manipulation from the Clinic Hospital San Carlos de Madrid stands out.

⁵⁴ Forensic reports are submitted to the court by the Autonomous Communities’ Legal Medicine and Forensic Sciences Institutes through a software. Some primary care centres and emergency services send the reports by fax to the court. Health professionals stress the importance of separating reports submitted to the court (which contain a great number of private details, including photographic material, when required) which require the victim’s express consent, from the medical report that contains more comprehensive information and enjoys a healthcare nature.

⁵⁵ When drugs have been used to perpetrate the sexual assault, poor coordination and delay are particularly worrisome given that the drugs (such as scopolamine) only remain in the body for six hours. Several hours may pass before the victim makes the police statement, the case is sent to the court and the court issues the order enabling the collection of the samples. As a result, this scientific evidence may be lost. Furthermore, the request for investigation or evidence collection tends to be tedious and is often denied by the court due to lack of motivation. If the request is refused, it leads to an appeal, thus extending the procedure.



communication techniques, both during the initial and on-going phases of the national operators, is unanimously held⁵⁶.

The need to guarantee sufficient training for initial care, mostly to ensure the correct detection of the need to resort to a specialized professional, especially with regard to children or people with disabilities⁵⁷, is particularly stressed. In fact, following this first contact, the victim may be referred to other services. Some professionals clearly delimit care from legal counselling thus asserting that their job is not to support the victim. In this sense, it is difficult to follow-up because from a medical point of view it is complicated to separate forensic from care aspects, being the latter often unavoidable⁵⁸.

National police forces are organized in special units⁵⁹. However, only some of its members have received the specific training on sexual violence cited in the Victims' Directive⁶⁰, and more specifically, in the EU Guidelines⁶¹: police training on sexual violence tends to be short (between 5 days and 2 months), not being always mandatory, even for those agents working in units

⁵⁶ Lack of specialization when the victim is a child or suffers from an intellectual or development disability may also be highlighted. Pratts also notes that the lack of training in communication techniques results in a lack of empathy and assertiveness when addressing the victim.

⁵⁷ This is especially relevant when the victims suffer from an intellectual or development disability given that a lack of early detection may strongly condition the process affecting directly his/her rights. The UAVDI points out that although in the past these situations were referred from within the victim's inner circle, for 5-6 years and following a great effort through conventions, outreach and word of mouth, there has been a greater number of referrals from other Victim Support entities, the police or the court. Through agreements with the Ministry of Interior, Spanish Military police, National Police and specialized units (EMUME y UFAM) and recently with the CGPJ, they can assist the victims throughout the whole proceeding, issuing also a specialised guideline after the first contact. There are no strict protocols allowing automatic referral but a lot of effort is put into guaranteeing a fluid communication.

⁵⁸ Furthermore, it is possible that the care follow-up may be carried out by another professional (if received by the emergency department, the GP will carry out the follow-up). Although it goes beyond the criminal proceedings, its impact on the victim's daily life and on his/her physical and mental health may be highlighted.

⁵⁹ The central UFAM in Madrid manages the 172 territorial and provincial UFAM which, in turn depend organically on the judicial police brigades or the police headquarters. The units' organization is variegated; for example, in Valencia, the UFAM is a section of the judicial police brigade and in charge of investigation (processing and investigation), protection (gender) and children (victims or offenders). Each province has different criteria, and big cities set up a group specialized in child offenders (GRUME). With regard to child victims, it is observed that in part of the national territory some of the services are provided by the child department or GRUME, which also deals with child victims when the offender belongs to the victim's inner circle or if the offender is a child. This is the case of Valencia. Within the Spanish Military police, the Woman-Child Unit (EMUME) is in charge of the investigation of crimes including those against sexual freedom and is deployed through the Specialized Care Points (PAE) of the Spanish Military Police's Judicial Police Units. They are in charge of giving guidelines to the officials who have a direct contact with the victims.

⁶⁰ Art. 23.2.b) "interviews with the victim being carried out by or through professionals trained for that purpose;"

⁶¹ Art. 3.3. "Member States should ensure that all police officers receive complete and sufficient training in the subject, by setting up and implementing specific training curricula providing the officers with legal expertise and setting standards of professional conduct and procedures for police intervention. Where possible, and in accordance with national structures and requirements, a distinction should be made between two types of training: specialised training for those police officers who are directly involved in fighting and preventing violence against women and more general training, aimed at units for general crime prevention". European Union Handbook of best practices on tackling violence against women. Available here:

<https://data.consilium.europa.eu/doc/document/ST%207488%202010%20REV%202/EN/pdf>



specialized in women. Its format may also vary, taking place sometimes on-site and sometimes *online*⁶².

On the other hand, the workload seems to exceed the human resources available, making adequate treatment and sufficient follow-up difficult⁶³. Agents are usually both male and female. In the case of Madrid, for instance, at the UFAM, victims are assisted, indiscriminately by male and female staff. The victims interviewed who have been attended by UFAM are more satisfied with the police treatment received than those who were not attended by this specialized Unit.

Among the victims interviewed there was no unanimity regarding the gender preference of the person who received the report. While some expressed the opportunity to be assisted by a woman instead of a man, others stressed that what is important is the attitude of active listening, sensitivity and the ability to adapt to the different circumstances of the person who collects the complaint.

Although the right of the victim to be assisted by a person of the same sex is recognized by the FCCSE, some of the interviewed people did not consider this aspect particularly relevant, giving priority to the person's ability to empathize with the victim⁶⁴.

This appreciation on the irrelevance of the gender of the person assisting the victim does not take into account the interest perspective enshrined in the Directive⁶⁵ and applied in this research, which, according to the examined protocols, seems to be more followed within the healthcare environment. The interrogation addresses the experience suffered and it requires verbalizing aggressions that directly affect the victim's privacy. It is for this reason that it is more adequate form women to assist victims, especially if they are children or very young⁶⁶.

⁶² There is generally no training on sexual victimization, nor on communication techniques and skills in relation to this type of victims.

⁶³ In Madrid, there is a high number of gender-based violence, and around 100 sexual crimes to be covered by about 50 investigation officials and 50 protection officials. This requires decentralizing competencies on domestic violence victim's protection to the districts. The local police also assist in this matter. The UFAM is competent for the investigation of sexual crimes and is organized in 3 investigation groups, which cover 24 hours a day. In some small cases can be managed by non-UFAM judicial police unit when the complaint has been filed and the cases are distributed, following the UFAM protocols for the investigation.

⁶⁴ The male empathy is highlighted and it is noted that *"almost no victim has expressly asked to make her statement with a woman. However, when they are expressly consulted on their preferences, they almost always declare to prefer a woman"*.

⁶⁵ Art. 23.2 d) *"All interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced."*

⁶⁶ In relation to the relevance of female police officers and interpreters and to the adequacy of limiting the trusted person's presence in some occasions, some of the conclusions of the European Project (JUST/2014/RDAP/AG/HARM/) "EU FEM Roadmap forced/early marriage" should be highlighted, particularly, its "Forced/Early Marriage (FEM) Roadmap for Frontline Professionals", 2017, http://femroadmap.eu/FEM_roadmap_EN_final8-2018.pdf: "Conducting interviews without the presence of any family or community members as to prevent any possible pressure on the victim; Conducting the police interview with Child Services if the victim is a child; If the victim is



In practice, a civil servant of reference is assigned to the victim, giving the victim his/her contact information, name and phone number. In absence of circumstances of necessity, victims may either be accompanied or on their own, as preferred⁶⁷. The victim's trusted person may not be well accepted by the legal operators in intrafamily crimes, when the victim is a child or has an intellectual or Pervasive Developmental Disorder (PDD). This leads us to the question of whether the right application of the figure of the legal counsel enshrined in article 26.2 of the LEVID, would enable us to distinguish the cases in which the child victim prefers to be on her own from the cases in which the presence of parents or legal tutor does not satisfy the interests included in articles 8 and 24.1 of the Directive⁶⁸.

Legal assistance is not mandatory. If the victim does not have a legal counsel, in order to avoid delays it is generally not requested⁶⁹. If the victim does have a legal counsel, in practice, she does not intervene actively during the statement, making, at most, little clarifications. His/her presence does not have a negative impact on the victim's credibility⁷⁰.

With regard to the adequacy of the physical environment, the Directive refers to "premises designed or adapted for that purpose" (art. 23.2.a) and to need to enable avoidance of contact between victim and offender (art. 19). Agents affirm that they generally try to avoid contact between the victim and the offender, but this ultimately depends on the headquarters' instructions and on the facilities available. Material constraints seem to impede compliance with the Directive guidelines.

The victims interviewed note that not all police and health facilities are adequate. Thus, in certain police stations they receive the complaint in a group room where all the people present (police officers, other complainants, administrative staff, etc.) can hear the victim's story, so their privacy is clearly neglected. This is also sometimes the case when the victim arrives at the

female, female police officers and female interpreters are strongly recommended because many victims often do not tell their whole story to – or even in front of – male police officers/interpreters".

⁶⁷ It is sometimes noted by police officers that children or young victims prefer to be alone in order to avoid describing the events in front of their parents or relatives. Occasionally, if the companion interrupts or corrects the victim, they may be invited to leave the room. The same applies when examinations which require a high level of sincerity on private issues, that may entail complications depending on who the companion is, take place. Some professionals establish the presence of the child victim's trusted person as a necessary requisite to carry out the examination. It should be highlighted that no limitation to the right to be accompanied has been introduced in the draft amended legislation on sexual crimes, thus assigning the management of accompaniment in the judicial context to the Victim Assistance Units (see article 45.3 of the Draft Organic Law of Integral Guarantee of Sexual Freedom, available here: <http://www.igualdad.gob.es/Documents/APLOGarantia%20de%20la%20Libertad%20Sexual.pdf>

⁶⁸ For example, when the person taking care of the victim with an intellectual disorder belongs to his/her inner circle and may be linked to the situation of abuse. In these cases, the professionals of reference for the victim can be of great help. The importance of promoting the figure of the facilitator for the victim with an intellectual or Pervasive Development Disorder, with the ultimate goal of consolidating a national network.

⁶⁹ Both Victim Assistance Units and lawyers point out that the support given to the victim by the professional accompanying her varies depending on the network of support that the victim had previously. This is specially so with regard to the victim's interest in sharing her experience with his/her inner circle, which is usually a very complex matter.

⁷⁰ In any case, there seem to be some obstacles impeding victims to resort to this type of counselling. It is not unusual for the first contact to take place through Court referral, with the order to file and dismiss the case with almost no prior information.



admissions desk of a hospital or information desk of a health centre, where she has to give details of what has happened and her personal details out loud before being referred to the relevant doctor.

Lawyers highlight that the police facilities are in a deplorable situation and that they are not prepared to receive this kind of victims: victims are constrained to wait for hours sitting next to people reporting completely different facts, a situation which has been referred to as “*the victim’s corridor penalty*” (an expression which is used, in the opposite sense, by the judiciary). Some victims are constrained to go through this procedure with their children, without having access to an adapted area. In the police facilities managing the woman and family unit in Madrid, it is not rare for other colleagues to enter the offices, which are often shared. In Valencia, there are four individual offices available, where victims can make their statements. Both privacy and the number of professional assisting the victims depend vary enormously according to the available resources in the territory. Limited resources within the healthcare sector hinders the possibility of offering the victim real privacy, let alone, comfort. Victim Assistance entities stress the importance of having a sufficient level of privacy for the victim to report the events correctly, a situation which is far from being achieved both in the police and healthcare facilities.

3.2.3. Questions and impact of the interview on the victims

The FCCSE’s self-evaluation is positive with regard to the treatment of the victim and to the capacity to overcome prejudices concerning the victim’s behaviour and circumstances; they claim to be aware of the fact that the offender does not seduce the victim but rather carries out the attack to exercise power and control⁷¹. However, they consider that, despite their efforts to be exhaustive in respect of all aspects of the complaint in order to avoid false complaints, they do take place. They usually ascribe these false complaints to teenagers, young people that, in fear of their parents, or women, before their husbands or boyfriends, report a sexual crime.

This factor is part of the social prejudices and it reveals a certain confusion with respect to the roles of the different operators within the justice system. It is certainly not the responsibility of the police to avoid false reports⁷², but to collect them and to present the necessary elements of

⁷¹ They assert that any questions on their clothing are aimed at identifying them on cameras or to collect possible remains. It is not clear whether this is explained to the victim. They generally try not to judge and not to express their opinion before the victim. Any comments with colleagues will be done for the purpose of the investigation. Objective treatment guidelines adopted do not include the officer’s personal opinion, in order to avoid questioning or blaming the victim (“*how do you even think of....*”). They claim to be aware of the victims’ diverse reactions and acknowledge that the myth of rape still exists socially. See, in this regard, the Report, “*Social perception of sexual violence*” drafted by the Government Delegation on Gender Violence, 2018.

⁷² The police have the competence to prosecute false reports in all types of crime. This does not mean that they should not accept them on the grounds that they may be false, but that they should act in accordance with the law by also prosecuting this possible offence. It is interesting to note the permanence of the myth of Joseph and Potiphar’s wife (Genesis 39) in today’s cultures, and that in this regard the 2012 UN Handbook on Legislation on Violence against Women in Recommendation 3.9.8 recommends that provisions criminalising false accusations should not be included, and that general provisions should be sufficient where appropriate.



investigation for the Investigative Judge to examine the case and to decide⁷³. Bar members highlight the victims' mistrust towards their surroundings and towards the person conducting the interview within the police facilities, an issue which hinders a full account. Whereas, in respect of most interviews, lawyers admit the importance of the Victim Statute in changing the mentality of the police agents, some of its members qualify the treatment given as mediocre and re-victimizing since the language used is not appropriate. Furthermore, there is a persistent attitude which continuously questions the victim's narrative. As a result, the police's decisions (to arrest the suspect or to adopt any sort of precautionary measure) may cause a feeling of not having been believed in the victims.

Bad practices during the interrogation of the victims are referred, including degrading comments, questioning and even disincentives to filling the complaint⁷⁴.

Two of the victims interviewed were discouraged and questioned by the police from the beginning about the facts they were reporting; even putting obstacles in the way of the victim, such as sending her home, postponing or even avoiding the report and, therefore, the taking of samples and evidence, etc. The operators of the system do not rule out that this type of practices are sometimes taking place, and are confirmed in the Judgment of the Criminal Court of

⁷³ The wording of art. 40 of the Draft Organic Law of Integral Guarantee of Sexual Freedom is highly questionable. By choosing the terms *"verify and certify" the facts that may amount to sexual violence*, it overestimates the role of the police, that should be limited to the investigation of the facts, thus fuelling the myth of false complaints.

⁷⁴ Expressions used by the agents and referred by some of the interviewed people include: *"Let the raped come in"*, *"Can you calm down?"* – snapped in the corridor in front of other people– or *"What were you doing there at that time?"*. Victim Assistance Units have received complaints from victims who, in response to their complaint have been answered that *"your story is not serious enough to require punishment"*, an assertion that can have devastating effects for the victim. See section on the decision to file a complaint.

In Iridia, *Violencia institucional i revictimització en el sistema judicial i de denuncia de violències sexuals*, 2019, they distinguish between revictimisation and institutional violence; the former would be attributable to the structure of the process, while institutional violence would be attributable to the individual behaviour of legal operators (police, health system, prosecution, judiciary, lawyers), often as a result of stereotypes and beliefs, and that this type of violence has a very negative impact on the victims, "as it is considered less expected and completely volitional on the part of the perpetrator, someone who, in theory, is the one who should help them".

The Catalan Law 17/2020, of 22 December, amending Law 5/2008, on the right of women to eradicate male violence, includes an article 76 bis "Responsibility of the administrations derived from re-victimisation and institutional violence", which establishes the obligation of the public administrations of Catalonia to draw up a model of care that aims to establish the framework for their actions to guarantee that secondary victimisation of women does not take place, to evaluate the victimisation and institutional violence exercised against women by the administration itself, as well as the responsibility of the administration and its operators.

Valladolid of 13 October 2020, SJP 41/2020 - ECLI: ES:JP:2020:41⁷⁵ and in NGO reports⁷⁶. The police report that they do not ask about the willingness to report, taking it for granted, although it is observed that there are police practices that tend to avoid reporting⁷⁷, specifically not collecting the report, reporting in insufficient terms, or discouraging victims from filing a report⁷⁸ probably because of attachment to rape myths or the "practicality" of the work. They may consider that the facts referred to are not true, that the victim is at fault, that they are not criminal, or that, even if they were real, there is insufficient evidence to secure a future conviction in criminal proceedings.

Legal counsels and victim care operators generally agree that victims are not adequately assisted and that positive experiences depend largely on the sensitivity of the police officer following them.

Additionally, from this moment onwards, victims must repeat the story at least four times⁷⁹, in broad time intervals⁸⁰: (i) at the police station; (ii) in the interview with the forensic doctor (which enjoys more privacy, although it is sometimes doubled with the interview conducted in the "hospital centre" that provides the first assistance in absence of adequate protocols); (iii)

⁷⁵ "Prior to the examination of the evidence, this judgement must highlight a fact which is extremely detrimental to any social awareness campaign against a type of behaviour extremely harmful for women and that continue to take place in 2018, when the first events reported in this case took place. In the present case, the victim of a sexual crime was demotivated to the point of having to resort to alternative means of support to ensure that her complaint was formally filed. This happened at a National Police Station. As a result of this behaviour, the events (that had a reiterate character) could have avoided prosecution. The complainant tried to present a strong piece of evidence which was not collected. The title of police statement states that on the 27th of June 2018, Nuria requested an appointment with the Family and Woman Unit of the Police Station in order to report the events that had taken place on the 26th in the accused's shop and that «informed of the possibility of filing a complaint, as well as of the course of the complaint, she finally decided not report the events». The victim, whose testimony is fully believed in so far it reports facts that are more serious with respect to the accusation, is equally credible when asserting that the victim was demotivated by the police officers who said that it would be her word against that of the accused. The witness even reported that she had offered the trousers she suspected to be stained with the accused's semen to prove that the facts she was reporting were not a misunderstanding or a misinterpretation due to involuntary rubbing or touching, but that it implied a complete sexual satisfaction from the accused. This police negligence could have avoided a lengthy proceeding given that if a scientific analysis would have determined that there was semen in Nuria's trousers and that it belonged to the accused, any excuse from the accused would be invalid, it would have avoided numerous statements and the questioning of her version and it would have facilitated the events occurred as reported by Nuria. Any other victim, less aware or less belligerent or who felt guilty for what had happened would have abandoned the proceedings. This has not been the case, and a week later, although a very important piece of evidence had already been lost, the police rectified, and hence partially remedied its initial inefficiency."

⁷⁶ Amnesty International's 2018 report includes testimonies from victims describing obstructive practices to collect the complaint (e.g. being urged to come back another day p. 45, p. 58), or inadequate attitude towards victims in their practice (p. 41-48). Amnesty International, *It's time you believed me: a system that questions and fails to protect victims*, 2018, Madrid, Spain.

⁷⁷ Lievore refers to "hidden recording", referring to the fact that victims' reports may be hidden in the official figures, in the sense that allegations of sexual offences are processed by the police in such a way that they are not counted in the statistics. The discussion is framed in the context of under-reporting by the police, undercounting and neglect in the prosecution of cases. Lievore, Denise. *Non-reporting and hidden recording of sexual assault: an international literature review*, Australia: Commonwealth Office of the Status of Women, 2003, p.12.

⁷⁸ Disincentivisation by the police is affirmed in the GREVIO Baseline Evaluation Report Spain, 2020, p. 64, point 249.

⁷⁹ This figure varies as there are differences as to what is understood *stricto sensu* by "statement" or, more broadly, by "narrative" by any judicial operator. This ignores the victim's experience who has actually had to repeat her story before "any professional" more than four times. When the victim is a child, the use of pre-constituted evidence will depend on the sensibility of each operator.

⁸⁰ This implying overexposure of the victim, unless it is resorted to pre-constituted evidence.



during the pre-trial judicial investigation (before the Investigative Judge and parties present);
 (iv) during the trial.

One aspect that enhances revictimization is the poor coordination between the different legal and non-legal professionals. The victims interviewed agree that one of the most negative aspects is that they have to "tell it too many times" because every time they tell it, they relive the aggression. From the victim's point of view, the ideal would be to tell it only once, at most twice. And the best time to tell it, once they are a little calmer, at the beginning of the process, as soon as possible.

Victim Assistance centers such as the "rape crisis center" place the victims and their interests at the core, with professionals move and adapt to their interests and will. In fact, best practices look up to these centers, which have still not crystallized in Spain⁸¹.

The taking of both samples and victim statements are subject to a series of procedural regulations aimed at ensuring their authenticity and reliability respectively. These regulations, which initially considered the victim as one more source of evidence available in the process, are currently undergoing a thorough revision aimed at adapting the intervention of the Security Forces, forensic doctors and legal operators to the situation and needs of the victims of this type of crime⁸². However, as indicated in the previous point, the inertia and ingrained practices in areas such as the police or the justice system make the institutional sphere an unfriendly space for those who have suffered a crime. For this reason, it is increasingly common to find the creation of spaces parallel to the traditional institutional sphere where victims can contribute to the process without suffering re-victimisation.

3.2.4. Information provided to victims

It is generally agreed by the interviewees that the information on where to file a complaint given to the victims by the Courts is null, due to its content, its form⁸³ or its absence. This represents an absolute lack of the so-called "Informational Justice"⁸⁴. In fact, despite noticeable but still

⁸¹ However, some interesting experiences are being developed at local level (see Madrid); however, these projects are complex at the competence and procedural level, so that the forensic samples and the complaint are valid and do not need to be repeated.

⁸² A clear example of this is the provisions reflected in the XIV legislature's regulations on sexual freedom in APLOGILS or APLOLECRim, in relation to the taking of the victim's statement.

⁸³ In court, five pages on the victim's rights are read. They are written in a legal language, hardly accessible to child victims, victims with intellectual disability or illiterate victims. The reading out of the rights and actions available to the victim often takes place in the Judicial Office, in front of other 10 officers and next to another victim – of any other crime –. An information sheet on the compensations regime enshrined in the 1995 law is also provided. Not only is this document written in a way which is difficult to understand for an average person, but it also hides the little practical relevance of the compensations (Soletó, Helena. "La ineficacia del sistema de justicia español para reparar económicamente a las víctimas de violencia sexual: un espacio para la justicia restaurativa", *Teoría y Derecho*, n.26 (2019):320-34. An issue that had been already highlighted by the European Parliament in its Resolution of 30 May 2018 on the implementation of Directive 2012/29/UE, para. 45.

⁸⁴ Although it intends to comply with article 8 of the Directive, it does not seem to respect article 3 (to understand and be understood). The consequences of the failure to comply with the victim's right to be informed have already been evidenced by the ECtHR in the case of *E.B. v. Romania*, Judgement, 19 March 2019, case of E.B. v. Romania, Application no. 49089/10, ECLI:CE:ECHR:2019:0319JUD004908910. In a case of a victim of rape with an intellectual disability, the applicant held that she had not been informed of her procedural rights. Her application was based on



insufficient⁸⁵ improvement on the coordination among certain entities, the complaint is usually filed after contacting legal or medical professionals for advice⁸⁶.

Moreover, this information is not provided at the right time, especially when the complaint is filed immediately after the event. The quantity and complexity of the information is extremely high, and is delivered very quickly.

The assistance of an interpreter to a victim of sexual offences also comes up against some obstacles; firstly, the fact that the interpreter in some languages is mostly a man with the cultural biases that this can sometimes cause, even distorting the story; secondly, there is a lack of specific training in this field, including in the technical terminology that is sometimes used to communicate with the victim (fellatio, carnal contact, etc.). It has been detected that it is very common for the victims not to act in the proceedings as private prosecution as a result of not having being adequately informed of the implications this entails. Sometimes this resource is not used because they do not receive information about the meaning and implications, but also sometimes they lack the means to do so⁸⁷.

All of the interviewed people asserted emphatically that it is very difficult for a victim that does not have a legal counsel to be informed of the development of the proceedings because, except for the judicial documentation provided to the victim and written in a legal language, the Court does not update the victim on the proceedings. The judiciary and prosecutor share this opinion acknowledging that the information is overwhelming and therefore ineffective. Lack of time turns again to be a factor determining the reduction of the victim's rights.

The victims interviewed demand more information throughout the process; sometimes you feel like you don't know anything and the uncertainty is too high. The victims interviewed agree that if they are not represented as the accusing party, the criminal process does not receive updated

the fact that she had not been able to participate in the investigation, causing her a greater suffering (para. 47). The ECtHR found that articles 3 and 8 of the ECHR had been violated (para. 68) and held that Romania was to pay the applicant 12,000€ euros in respect of non-pecuniary damages and 1,400€ for the costs and expenses (although the victim's request amounted to 6.300 €).

⁸⁵ It is generally considered that the police offer social resources to the victims, both institutional and from NGOs. For child victims, the delivery of this information is mandatory. The need to adapt the information to the victim's characteristics is exacerbated in the cases of victims speaking a language other than Spanish, in victims with intellectual disabilities or in illiterate victims.

⁸⁶ It is not unusual for victims to contact a legal counsel or the Bar information services because they have not understood the information provided to them by the court. It is then this professional who presents them the information in a clear and accessible way.

⁸⁷ Soletó y Grané highlight that "Private prosecution is not widespread in the criminal process (around 35% in the Criminal Court and 63% in the AP)" and that "Private accusation does not affect the settlement, suggesting that the private accusation either supports the Prosecutor's strategy or they decide together on the convenience of settlement." According to the authors, this may prejudice the victim given that "When there is private accusation, the quantity of the penalty is higher. This implies that an active participation in the proceedings through private accusation is extremely relevant in order to obtain the best possible outcome for the victim", in Soletó, Helena y Grané, Aurea, *La eficacia de la reparación a la víctima en el proceso penal a través de las indemnizaciones. Un estudio de campo en la Comunidad de Madrid*. Madrid: Dykinson, Madrid, 2018, pp.91-94. Moreover, the impact of becoming a party should also be taken into account. According to the latest case-law of the Spanish Supreme Court, TS, ST 369/2020, of 10 July, ECLI: ES:TS:2020:2493, the right not to declare is not restituted to the victim that has decided to act as private prosecution in a judicial proceeding, and then resigns. Furthermore, as a consequence, the victim will not be updated on the case because the court will not provide her with any information.



information on the progress of the procedure, nor on the accused (whether or not he is in prison), etc. In general, this procedural "misinformation" generates great insecurity, as well as uncertainty.

Legal advice and support significantly improve the opinion of victims on this issue. For example, four of the six victims interviewed received at least legal support from a lawyer from the CAM Center and all are very satisfied with the treatment and the information received.

3.2.5. The will to file a complaint and the management of the *notitia criminis*

The operators interpret the victim's will to file a complaint as a necessary element to continue the proceedings. The law enables the Prosecutor's Office to prosecute the alleged offender even in the absence of a complaint, given the interests at stake. However, in practice, the victim's wish by reporting still prevails⁸⁸.

If the complaint is not filed or if it is modified to indicate the victim's unwillingness to report, the police statement is classified as "no violation" and it can be marked as "clarified" by the statistical tool HIPEST⁸⁹.

In the Spanish system, the police statement amounts to a formal complaint (art.297 LECRim) and every report must be sent immediately to the judicial authority or to the Prosecutor's Office⁹⁰. This "immediacy" in the submission of the statement is specified in art. 295 LECRim which provides that "In no case may the Judicial Police officials allow more than twenty-four hours to elapse without informing the Judicial Authority or the Prosecutor's Office of the practiced proceedings, except in cases of force majeure" and in the case of article 284.2 (offense without known perpetrator), which is not applicable to this type of crimes.

Furthermore, article 6 of the LEVID recognizes "*the victim's right to confirm the complaint before the Prosecutor's Office or the Investigative Court*".

As noted in section 3.2.3, there is a major problem with no reporting practices.

⁸⁸ Art. 191.1 CP provides that, in order to proceed with the crimes of aggression, harassment or sexual abuse, a complaint will be required of the aggrieved person, of his legal representative or complaint of the Public Prosecutor, who will act considering the legitimate interests in the presence. When the victim is a child, a person with a disability in need of special protection or a helpless person, the complaint of the Prosecutor's Office will suffice.

⁸⁹ As indicated in the Ministry of the Interior's Yearbook for 2018, information on criminality collected by the Ministry of the Interior is obtained from the "*relevant police procedures and, they are submitted, once they have been filtered, to the Coordination and Studies Cabinet of the Secretary of State for Security*" who will integrate "*all the data from the National Security Forces and Bodies, regional police and local police*". It follows that the main source of information are the criminal offenses (only presumed before conviction), classified in known facts, verified facts, arrests and investigated and victimizations. Report available here: <http://www.interior.gob.es/documents/642317/1204854/Anuario+Estad%C3%ADstico+del+Ministerio+del+Interior+2018/5a35fad7-5386-44fb-83ae-9b14e678cc4a>.

⁹⁰ The suspension of the submission of the police statement due to lack of known author is not applicable to crimes against sexual freedom and indemnity. Thus, article 284 of the Spanish Rules of Criminal Procedure provides that "*when the perpetrator of the crime is unknown, the Judicial Police will keep the police statement to guarantee its availability to the Prosecutor and to the Judicial Authority, without submitting it to these organs unless one of the following circumstances concur: a) In cases of crimes against life, against physical integrity, against sexual freedom and indemnity or crimes related to corruption; b) That proceedings carried out seventy-two hours after the issuing of the statement have presented some results; or c) That the submission is requested by the Prosecutor or the Judicial Authority*".



3.2.6. Investigation proceedings on DNA remains

As for the remains and analysis of DNA and other types of samples that may be used as evidence in court, the Police indicates that, the results take approximately six months (previously it was over a year), but in particularly serious circumstances they can be obtained within a month.

In places like Valencia, if the victim is not sure about his/her willingness to file the complaint, the Police advise collecting DNA samples in order to facilitate the possible criminal proceeding. However, in most cases, without a formal complaint, DNA remains are not analyzed.

Medical staff consider the failure to collect samples in the absence of a formal complaint to be a bad practice. It is noted that it is very difficult to make a decision on filing a complaint but, if the sample is not collected, the biological evidence may be lost was the complaint to be filed later.

On the contrary, the Prosecutor's Office asserts the adequacy of requiring the victim's prior complaint. However, failing to process the elements that may amount to evidence reduce the possibilities of obtaining a conviction.

In any case, it is unanimously held that the timing of the proceedings do not coincide with that of the victims. This should be mitigated through the adoption of adequate protocols and a special proactivity from police, judicial and health officials to collect possible evidence⁹¹.

3.3. Media

Chapter II of Organic Law 1/2004 contains five provisions on the treatment of gender violence in the media and in advertisement. With respect to the media, it specifically includes soft law guidelines on the Public Administration's duty to protect and guarantee fundamental rights and to eliminate conducts that may favor situations of gender inequality on social media (art.13). In addition to this law, the heading of Organic Law 3/2007 for the effective equality between men and women's⁹² Title III is "Equality and the media". Article 39 refers to self-regulation agreements adopted by the media. Following this provision, several self-regulation mechanisms have been published, including as guidelines⁹³, style books, codes of conduct or decalogues⁹⁴ to report on gender violence (including sexual crimes)⁹⁵. Pursuant to the General

⁹¹ In this sense, see GREVIO Baseline Evaluation Report Spain recommendation, 2020, p. 67, para. 250.

⁹² BOE n. 71, 23 March 2007, available here: <https://www.boe.es/eli/es/lo/2007/03/22/3/con>

⁹³ The creation of the RTVE Equality Observatory in 2017 is of great interest, in application of one of the measures of the State Pact against Gender Violence and its Style Manual (<http://manualdeestilo.rtve.es/el-lenguaje/6-4-el-genero/>), or the 2016 Guidelines for Informative Treatment of Gender Violence to combat bad journalistic practices of the National Commission of Markets and Competition, available here: <https://www.cnmcc.es/presentacion-de-la-guia-para-el-tratamiento-informativo-de-la-violencia-de-genero-para-desterrar>

⁹⁴ See "Decalogue to report on gender violence" published by the newspaper "Público" available here: <https://www.publico.es/sociedad/prensa-autocritica-tratamiento-violencia-machista.html> The latest edition of the El País 2020 style guide stresses the objective of not re-victimising in cases of gender violence and establishes guidelines for this.

⁹⁵ Vidal Beltrán, José. "Contenidos básicos, déficits y necesidades de la regulación y autorregulación de los medios de comunicación de masas españoles en materia de violencia de género". In *Retos de la Comunicación ante la Violencia*



Law of Audiovisual Communication 7/2010, the National Commission for Markets and Competition is responsible for supervising that the audiovisual content respects the legislation in force and the self-regulation codes (art. 9)⁹⁶. The CNMC issues her decisions in application of the sanctioning regime established by the General Law of Audiovisual Communication⁹⁷. There are very few examples of action in this scope but the “manada” case in Pamplona may be highlighted due to its social impact: on one side, the judgement was published with the Verification Insurance Code (CSV) by mistake. As a result, the sentence was available without anonymizing. In the report of the Permanent Commission on this leak, the CGPJ concluded that it was caused by a mistake making a series of recommendations⁹⁸. On the other hand, in its proceeding PS/00139/2019, the Spanish Agency for Data Protection fined the responsible corporation *latribunadecartegena.com* with 50.000€ for publishing the victim’s personal data and thus violating article 6.1 of the former Organic Law on Data Protection 15/1999⁹⁹.

The Observatory on Women’s Image within the Institute for Women receives claims and complaints that report sexist content and non-compliance of the applicable legal provisions¹⁰⁰. With regard to the influence of the so-called “parallel trials”, in the “manada” case, one of the defense’s procedural strategies consisted in holding that the accused had not been impartially judged due to the existence of a parallel trial driven by the Spanish national feminist

de género. Marco Jurídico, discurso mediático y compromiso social, directed by Elena Martínez García, 97-114. Valencia: Tirant lo Blanch, 2009

⁹⁶ BOE n. 79, 1 of April 2010, available here: <https://www.boe.es/eli/es/l/2010/03/31/7>. In this regard, the complaint filed by the Audio-visual Council of Catalonia against “Informativos Telecinco” for the incorrect treatment of a gender violence assassination, and in particular, for violating the prohibition of disseminating information on children that may enable their identification (art.7.1 General Law on Audio-visual Communication), See the order that files the complaint here: <https://www.cnmc.es/sites/default/files/2966329.pdf>

⁹⁷ National Commission of Markets and Competition resolution of 21 June 2018 requiring MEDIASET España y ATRESMEDIA to cease the broadcast of television communications in relation to a case of sexual assault to a child in the province of Jaén is of great interest. Available here: <https://www.cnmc.es/expedientes/reqdtsa01018> y <https://www.cnmc.es/expedientes/reqdtsa00918>.

⁹⁸ Draft Proposal of the technical office on the execution of the agreement adopted in relation to the data protection file 024/2018, regarding the leakage of the victim’s personal data from the judgement issued by the second section of the Provincial Court of Navarre, no. 38/2018, 20 March 2018, of 11 November 2018, available here: <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/El-CGPJ-concluye-que-la-filtracion-de-datos-personales-de-la-victima-en-la-sentencia-de-la-Audiencia-de-Navarra-38-2018-se-debio-a-multiples-causas-que-propiciaron-un-fallo-de-caracter-sistemico>

⁹⁹ Spanish Agency for Data Protection, Procedure PS/00139/2019, available here: https://www.aepd.es/resoluciones/PS-00139-2019_ORI.pdf Following the dissemination of the “manada” victim’s personal data through internet sites such as “forocoche” y “burbuja.info”, Grupo Feminista de Ponent issued a claim. The resolutions detail the actions of the Spanish Military Police’s Central Operative Unit (Telematic Crimes Group) and National Police’s Central Technological Investigation Brigade to establish the facts. It specifically refers to two Twitter posts and to the video uploaded on the PewTube.com portal. It was established that the name and surname of the victim appeared in “forocoche”, although, according to para. 1.1. of the resolution, this information had already been revealed by the victim’s lawyer in the Antena3 program “Espejo público”. The digital newspaper “La Tribuna de Cartagena” was also investigated given that in an article from the 5th of May 2018 entitled “I do not believe you” it published a photograph, the name, surnames, age, university and degree that the victim was studying. The social demonstrations put the spotlight on Spanish penal regulation and the questioning of its gender perspective. See Faraldo Cabana, Patricia. “Hacia una reforma de los delitos sexuales con perspectiva de género”. In *Mujer y Derecho penal. ¿Necesidad de una reforma desde una perspectiva de género?*, directed by Antonia Monge Fernández, 251-27. Barcelona: Bosch, 2019.

¹⁰⁰ See Annual Report 2019 COE, available here: <https://rm.coe.int/implementation-strategy-in-the-member-states-mise-en-oeuvre-de-la-stra/16809c3c32>.



movement and the media. This led the Supreme Court to rule on the parallel trials and their eventual violation of the right to be presumed innocent, dismissing the appellants' requests¹⁰¹.

3.4. Legal assistance

In Spain, the right to free legal aid is only recognized to victims without financial resources, victims of human trafficking and gender violence perpetrated by his partner or former partner¹⁰². However, some lawyers have signed agreements with the regional governments in order to extend free legal aid to victims of sexual violence, regardless of their financial resources availability¹⁰³.

3.4.1. Specialization

A special attention towards some of the victim's interests has been observed in the legal assistance provided, including actions aimed at preserving the victim's dignity and mental health¹⁰⁴, as well as his/her privacy and security¹⁰⁵.

¹⁰¹The Spanish Supreme Court (TS) points out that parallel trials may affect the presumption of innocence both from a procedural and extra-procedural perspective. As far as the proceedings are concerned, the TS holds that the right to information and the principle of publicity in the judicial proceedings must be individually examined on a case-by-case basis. The TS asserted that "*The presumption of innocence may coexist with the disclosure of some information on the criminal proceeding*". With respect to the specific case, it considered that "*the media impact highlighted by the appellants (...) would eventually affect the presumption of evidence at an extra procedural level. It would not have an impact on the procedural dimension, that regards the independence of the judiciary. The ECtHR case-law refers in fact to the former. See, most recently, ECtHR, Judgement of 31 January 2019 (JUR 2019, 36923), case Maslarova v. Bulgaria (26966/10)*".

¹⁰² Pursuant to article 2.g) of the Free Legal Aid Law 1/1996 of 10 January "*Regardless of the availability of resources to litigate, the right to free legal aid is recognized and shall be immediately provided to victims of gender violence, terrorism and human trafficking in proceedings that are linked to, derive from or are a consequence of their victim status. The same applies to children and people with intellectual disability or mental disease when they have been victims of abuse or mistreatment*". Hence, with regards to sexual crimes, only the victims of human trafficking or sexual violence against (former) partners may enjoy this right without having to justify the lack of financial resources. The rest of the victims must comply with the enshrined in the Law 1/1996.

¹⁰³ See, for instance, the agreement between the Junta de Castilla and Leon and the Castilla and Leon's Bar Council in 2017, or the collaboration agreement between the Institute for Women and Castilla La Mancha's Bar Council in 2018.

¹⁰⁴ Among the Bar activities, the referral to psychological services - private and public- stand out. These services are intended to accompany the victim throughout the whole process, enhancing and widening the support given to the victim (psychological, legal, familiar...). The Citizen Attention Service (SAC) chooses to communicate with the OAV. Some professionals consider that giving the victim support, not limiting their actions to a legal-technical field, falls within their competences. This is not, however, a unanimous position as some of the interviewees believe that the support should be strictly legal in order to clearly differentiate the technical professional work from support network in a broad sense.

The importance of keeping the victim informed, not only on the proceedings' outcome but also on the rights that he/she is legally recognized and on the possibilities of succeeding in his/her claims has been stressed. It is generally agreed that victims are not aware of their rights or the real scope of the proceedings, both essential to properly defend their interests. In this sense, Themis agrees with most interviewees in pointing out that, as part of their job, they address the victims' expectations of the proceedings so that they adjust as much as possible to the reality of their case, in order to guarantee that the development of the proceedings is as less surprising as possible.

¹⁰⁵ Some lawyers manage this issue with special sensitivity. In particular, victims received by the SAC will enter a single building owned by the SAC and the SOJ. These offices have private rooms where the victims can hold the pertinent meetings/interviews with their lawyers available.

The difficulty faced by lawyers or professionals who come into contact with the victim for the first time when trying to create this safe environment may be highlighted. Those victims who are in a situation of emotional, economic or other dependence on a third party will require the activation of special mechanisms to guarantee a



Legal counsel specialization on sexual crimes is strongly driven by personal motivation, especially when working independently¹⁰⁶. Unless the lawyers belong to an Association, Unit or Entity specialized in gender issues or sexual crimes, deficiencies with respect to the content and legal implications of the new approach towards victims enshrined in Directive 2012/29/EU have been noted.

While independent lawyers do not tend to come across this type of crimes often, the Madrid Bar Association Legal Orientation Service (SOJ) indicates that it assists an average number of 300 victims of sexual crimes¹⁰⁷.

3.4.2. Average waiting time and communication

The waiting times for victims at the police stations or care services are usually short (less than 3 hours) or non-existent. Human resources are generally sufficient and referral is possible when needed (on the contrary, psychological assistance services do have a longer waiting time). It is not possible to establish general parameters in respect of the duration of the assistance to the victims, because this depends on the victim's circumstances. It is however noted that professionals invest up to two times more time in these interviews than in other crimes due to the complexity of the account.

Face-to-face communication is unanimously preferred when possible. Nevertheless, it is possible to resort to other types of communication when it is deemed more appropriate (some entities give priority to telephone communication for its immediacy). If the victim's environment is not safe or language barriers are detected, written communication will be used.

3.5. Victim Assistance Services

There is a lack of homogeneity in the supply of Victim Assistance Services within the territory. Victim Care is thus provided by legal services, physical or mental care units, social services, information services, NGOs, Lawyers, City Councils, Autonomous Communities or Courts. Many of them carry out advocacy and awareness campaigns, thus satisfying the victim's interest in the

safe communication with the professionals. This also applies to victims who do not have access to a safe place that preserves his/her privacy and security (this may be the case of victims of human trafficking or prostitutes). This is in fact a common concern among victims during the first interview. The SAC points out that victims often show concern about the development of the proceedings, about the way in which they will be affected, whether their privacy will be respected throughout the proceedings, about what will happen to the offender and what measures may be adopted to avoid a possible confrontation with him in court.

¹⁰⁶ In the case of the TOI of the Madrid Bar Association there is specific shift in charge of offering counsel to victims of crimes. ICAM's training on sexual crimes focuses on training lawyers on how to act throughout the legal proceedings and on how to treat this type of victim. They are also provided with the adequate information on how to contact the Victim's Attention Office (OAV, hereinafter) of the Region of Madrid. In this case, the lawyers belonging to this specific shift must not only comply with their Bar Association statutory requirements, but they must have passed two specific training courses. See here: [https://web.icam.es/bucket/Impreso%20alta%20nuevos%20turnos%20A%20PARTIR%2025-5-18\(1\).pdf](https://web.icam.es/bucket/Impreso%20alta%20nuevos%20turnos%20A%20PARTIR%2025-5-18(1).pdf) (Last accessed on the 27 October 2020). These courses are also required for lawyers who wish to join the SAC and the SOJ.

¹⁰⁷ This number is closer to the figures encountered by many entities and associations that provide specialized care to victims of sexual crimes, providing both legal counsel and assistance all along the legal proceedings (for instance Themis, UAVDI, APRAMP). Child victims amount to 90% of the sexual violence cases encountered.



short and long term. If the victim is a child or has an intellectual or Pervasive developmental disorder, special attention will be required in order to take into account the impact of the event in his/her development and on the proceedings.

Victim Support Offices (OAV) would be responsible of assisting these victims. OAVs were created by Law 4/2015 on the Victim Statute (Title IV) and are regulated by Royal Decree 1109/2015, of 11 December, developing Law 4/2015, of 27 April, of the Victim Statute and regulating the Victim Support Offices (Title III). They are defined as a *“specialized unit and a public service aimed at providing coordinated assistance and care in order to respond to victims from a legal, psychological and social perspective. They also aim to promote the pertinent restorative justice measures”*. Free and confidential access to the OAV’s care and assistance services is considered a right of the victim (art. 14 RD 1109/2015).

In practice, due to lack of sufficient resources and little specialization in many national or regional units, most of the work of support of victims of sexual crimes is carried out by units which depend on other administrations such as Councils, NGOs and entities such as the Bar Associations.

The victims interviewed in this project complained indirectly about the fluctuation of the staff working in the centres, the constant changes of specialist when he leaves the centre and is replaced by another professional, which implies creating a new therapeutic bond, as well as retelling what happened.

On the other hand, the victims interviewed also miss the assistance to the family that needs emotional and psychological support to teach them how to help the victims; an essential aspect, according to the victims, because not only do they suffer the aggression, but their family members also suffer and do not know how to deal with the situation.

3.5.1. Contact and/or referral to the service

Sometimes, the victim contacts the services directly, by phone, through the website or in person, both as a result of a personal search or on recommendation of a third party. Sometimes, the contact is the result of a referral from a specialized entity. Information exchange among public institutions is greater (for instance, ICAM) and a high level of cooperation with OAV’s that have psychologist and social workers has been detected.

3.5.2. Specialization

Professional specialization in these entities depends on their approach and it tends to be very specific (a specific type of sexual crime, in a specific context, in a given age, etc.). However, many of them are part of Federations, which enables communication among them in order to coordinate a more specific attention¹⁰⁸.

¹⁰⁸ In particular, the UAVDI carries out an evaluation of the victim that could fall within the LEVID’s individual assessment (this tool refers to people “in a status of special protection”, which takes up a paternalistic perspective, being “people with specific support need” more adequate). It involves examining all the limitations that will be faced by the victim throughout the proceedings, fully assessing his/her cognitive abilities and the limitations affecting them



It is common for these entities to have a multidisciplinary team that recognizes the need of this approach when assisting the victim (lawyers, social workers, psychologists, criminologists),¹⁰⁹ at no cost to the victim. Some entities report not being able to guarantee support throughout the proceedings given that these are sometimes longer than the contracts they have (they are usually funded through grants and contracts with the public administrations). They have internal protocols that are often applied with flexibility in order to respond adequately to the specific situation. Each entity records the data and the assistance information internally and its publication depends on each one of them. This makes it difficult to collect representative data in order to analyse how many victims require an external support to the judicial proceedings with this multidisciplinary approach.

3.5.3. Average Waiting Time

24-hour support lines which are able to answer urgent cases immediately are common in these entities. In line with the health protocols, priority is given to the more recent aggressions. Although the waiting time varies significantly depending on the entity, it is unanimously held that there is no waiting time for legal assistance (around two weeks; sometimes it only requires logistic organization), whereas the waiting times for psychological and care services are longer (1-6 months). In Madrid, in 2020, there is a serious problem with the waiting times as the “waiting list” for adult victims is of 6 months and of more than a year for child victims¹¹⁰.

Professionals of different profiles (legal and psychological) often intervene in the first contact with the victim in order to assess the services that the victim may require. Sometimes legal counselling is not necessary because the statute of limitations has expired or because the judicial route has been ruled out. Psychological support is considered to be essential when the hearing starts, but this support may be extended on average from 6 months to 2 years.

The victims interviewed in the framework of the project were satisfied with the treatment of the victims' offices, especially in the CAM Center; Except for the waiting time to be treated psychologically and the long interval between sessions.

3.6. Investigation activity

In Spain, the Investigative Judge is responsible for the investigation for adult offenders whereas the Prosecutor's Office is responsible for child offenders, although it also has some investigative capacity in cases of adult offenders. According to the Prosecutor's Office, good practices will include introducing themselves to the victim before his/her statement and explaining her the role of each legal operator in the proceedings. Lawyers highlight an improvement in the

through a structured interview (ex. Regarding memory, the capacity of placing an event in a given space and time, his/her attention, means of expression, his/her way of understanding questions, etc.). Simultaneously, the necessary supports are identified. The aim is to act, in a completely neutral way, as advisors to all legal operators interacting with the victim.

¹⁰⁹ Some entities carrying out forensic interventions have special rooms available (rooms with a one-way mirror or Gesell camera).

¹¹⁰ This situation is supposedly in the process of being solved by the Community of Madrid by increasing the human resources dedicated to it.



treatment provided by the legal operators to the victim (still with clear deficiencies) and criticizes the fact that the Office of the Prosecutor stands as the public representative of the victim despite their absence being common in the investigative proceedings during the investigation phase. preliminary enquiries. The Prosecutor only shows up during the oral hearing. Lawyers thus point out that in most cases, neither the Judiciary or the Prosecutor's Office gets to meet or to have a conversation with the victim throughout the proceedings.

3.6.1. The statement issued during the investigation phase

It is common for this statement to be made through a free account of the events¹¹¹. The format depends only on the Investigative Judge's sensitivity (sometimes a simple ratification of the complaint is required and sometimes the full account is requested again)¹¹². After that, if further clarification is required, the Investigative Judge formulates the relevant questions, adopting an active role in order to define the committed crime and the "victim's credibility". Subsequently, the floor is given to the Prosecutor's Office and to the victim's lawyer for the formulation of questions. The legal sector and victim assistance organisations, as well as, to a lesser extent, the judiciary, stress the importance of the Public Prosecutor's Office paying closer attention to victims in order to be aware of their interests at this stage.

The Judiciary indicates that the way in which the statement is to be carried out is not regulated and that the account is sometimes incomplete (lack of spontaneity, inquisitive interrogation, etc.), often reflecting false assumptions. The Prosecutor's Office stresses the importance of avoiding additions and defining legally the facts¹¹³.

The accused's counsel generally directs his/her questions to question the victim's credibility and honour, as well as his/her consent to have sex. This is unanimously perceived as the common strategy.

Regarding the control of the questions by the JI, the interviewees emphasize that in recent years there has been greater awareness and training on this point, however there is still much to improve. In any case, in general, in these recent years, greater awareness and training can be identified¹¹⁴. The Prosecutor's Office requests the inadmissibility of rude, useless or

¹¹¹ It is noted that the free account does not always work due to the state of the victim, who might be totally blocked. Other victims become more hermetic when asked to recall the events before the court.

¹¹² In the Supreme Court judgement STS 96/2009 of the 10 March (ECLI: ES:TS:2009:1804), it was considered valid for the expert, in this case a psychologist, to formulate the questions. This was deemed compatible with the investigative judge directing the interrogation and the parties presenting the pertinent questions. The Court thus held that "*It is not necessary for the investigating judge to carry out the interrogation in the pre-constituted evidence*".

¹¹³ Equally, they indicate that they tend to ask about the delay in filing the complaint because it is a question that the defence lawyer will usually ask and it is therefore advisable to step forward in order to address it with greater empathy.

¹¹⁴ Organic Law LO 5/2018, of 28 December modified the LOPJ by introducing mandatory training of the judiciary on gender perspective for access to any specialty. The first mandatory online course offered by the CGPJ lasted 50 hours and was requested by 1.134 judges out of a total of the 5.419. See here: <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/El-CGPI-pone-en-marcha-el-primer-curso-de-formacion-obligatoria-en-perspectiva-de-genero-para-los-jueces-que-quieran-acceder-a-cualquier-especialidad>. See, in particular, the criteria to obtain a position within the Gender Violence Court (art. 329. 6 and 7 of the LOPJ).



disrespectful questions on the victim's honour and they are generally dismissed. If the contested question is admitted, some Prosecutors request that its purpose is explained.

The Prosecutor's Office points out a bad practice which occurs within the Duty Court, especially in the cases of sexual crimes that fall within the scope of domestic gender violence, under the JVM's jurisdiction. In these cases, the Investigative Judge on duty does not record the victim's full statement, but only for the purpose of deciding on the accused's personal situation. This is done in the belief that the full statement will be made before the JVM, given that the case falls within its jurisdiction.

Both the Judiciary and the Prosecutor's Office consider that the privilege not to declare against relatives enshrined in the Spanish Rules of Criminal Procedure represents an obstacle for the continuation of the proceedings. As in practically all European procedural systems, in Spain some people may decide not to testify against the accused. Specifically, art. 416 LECrim cites *relatives of the accused in direct ascending and descending lines, his/her spouse or person with whom he/she has a de fact relationship analogous to marriage, his/her consanguineous or uterine siblings and consanguineous collaterals up to the second civil degree*. The victim's decision to exercise this right has a huge negative impact on the investigation and prosecution of crimes where the only probative evidence is the victim's statement. This procedural privilege is in fact intended for the witness. The provision does not seem to be thought for those cases in which the relative/witness is also the victim, i.e. in cases of domestic or intrafamily violence. In these cases, the absence of a statement usually implies the closure of the proceedings. Recently, in its STS 389/2020, of the 10 July (ES:TS:2020:2493), the Supreme Court denies the right not to declare if the victim acts as private prosecution in a judicial proceeding. This right will not be restored if the victim abandons the cited procedural position.

As far as the victim's accompaniment during the statement is concerned, all professional groups agree on the fact that, although it is provided for in the LEVID, in practice the victim is not allowed to make her statement next to the person of her choice, but next to an OAV professional.

With regard to the physical environment where the statement is made, it should be noted that despite being made in the judge's office or other rooms, there is no privacy as they are "transit" rooms for other officials. The situation is different if the pre-constituted evidence is practiced. This is usually carried out in a friendly environment with a Gesell camera. However, these instruments are not abundant and they usually require significant waiting times¹¹⁵. In any case,

¹¹⁵ A space which is adapted to guarantee that there is no visual contact with other people present during the child's statement. These people attend the statement from a room attached to the room where the child is making his/her statement through a one-way glass. This statement is recorded and is carried out in compliance with the constitutional legitimacy standards of incriminating evidence that may destroy the presumption of innocence during the hearing, thereby preventing the child from having to repeat the statement in court.

In absence of these means, which is not rare, the child victim makes his/her statement in a courtroom, ensuring that some "special attention" is given to the situation by enabling the psychologist to formulate the questions, in presence of the judge, the prosecutor, the LAJ and the offender's lawyers (given that the offices are not equipped with recording instruments). Ideally, the statement should be documented both in written and audio-visual form. As



there is a clear lack of human resources and infrastructure¹¹⁶. Many Courts still resort to separating screens (as opposed to videoconferences from other rooms, which are rarely used) arguing that the principle of immediacy requires the victim's statement be in person instead of through telematic means. Some judges allow the statement to be made seated in front of a table to generate a greater sense of protection. Either way, the victim will only have to be present during his/her statement and may wait in a separate room for the trial to finish. She can even leave and be later informed of the outcome by his/her lawyer.

Regarding the evidentiary activity, it indicates that proceedings based uniquely on the victim's statement are common¹¹⁷. In this kind of proceedings the risk of re-victimization increases exponentially compared to proceedings where there is other evidence available, given that the accused's defence will question the victim even more.

The interviewed victims also perceive this questioning, not feeling believed especially by the defence attorney's questions; although all the victims understand that it is their role defending the accused.

3.6.2. Precautionary and protective measures

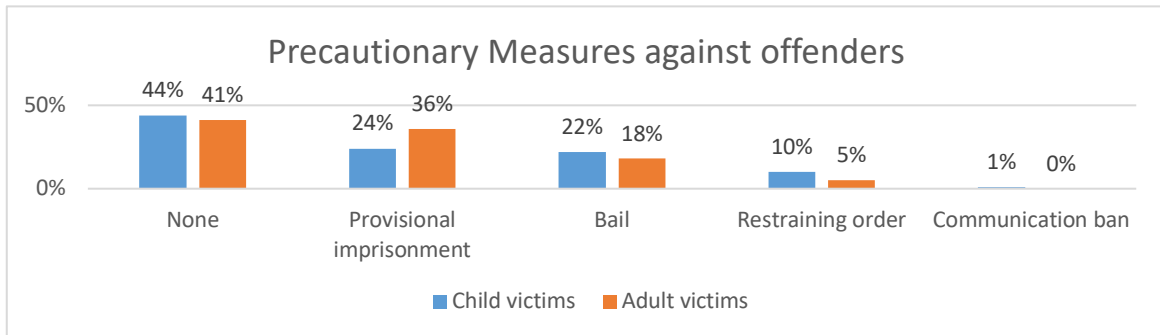
The Judiciary makes a positive assessment of the legislation on precautionary and protective measures, as well as of the victims' privacy and integrity protection. The work overload is considered to prevent an individualized assessment of these measures. Insufficient means to control them and to make them effective are also reported. This results in the adoption of stereotyped precautionary measures.

evidenced, this is not always possible and it entails the aforementioned problems. The State of Emergency declared in Spain in March 2020 as a result of the sanitary crisis caused by COVID-19, seem to have forced the collection of statements through audio-visual means, although with excessive waiting times. En relación con las recogidas de muestras durante la citada pandemia, el uso de los EPIs ha sido uno de los factores de despersonalización añadido, así como la imposibilidad de permitir el acompañamiento de personas de confianza. Vid. González-Fernández, Jorge. "Intervención médico-forense en casos de violencia sexual en la situación sanitaria de pandemia por COVID-19". *Revista española de medicina legal* (2021). <https://doi.org/10.1016/j.reml.2021.01.001>

¹¹⁶ New Cities of Justice such as Barcelona or Malaga have more adequate facilities. According to article 87 ter 6 of the LOPJ, the General Council of the Judiciary will examine the needs or insufficiencies of the facilities that do not prevent the confrontation between the victim and the offender during the proceedings. Promoting, when necessary, its creation, in collaboration with the Ministry of Justice and the Autonomous Communities, falls within its scope. These facilities will also be made available in cases of sexual assault and human trafficking for the purpose of sexual exploitation. In any case, they will be fully accessible, a mandatory requirement applicable to any environment, product or service in order for them to be understandable, usable and available to all women and child victims without exception. See, in this sense, the investments made by the courts to avoid eye contact between gender violence victims and their perpetrators. For instance, the Violence against Women Court of Gijon has invested 25,000 euros in the construction of a Gesell room. Furthermore, videoconference rooms to hold telematic trials have been set up. Available here: <https://www.elcomercio.es/gijon/juzgados-salas-proteccion-20201024001337-ntvo.html>. A 1,500 euros investment in Malaga (from the funds of the State Pact against Gender Violence made available by the Council on Tourism, Regeneration, Justice and Local Administration) has equipped the Torremolinos' judicial headquarters with a waiting room for gender violence victims. Available here: https://www.iustel.com/diario_del_derecho/noticia.asp?ref_iustel=1204493&utm_source=DD&utm_medium=email&nl=1&utm_campaign=10/11/2020.

¹¹⁷ In these circumstances, more conservative positions resort to the filing of the proceedings.

In the Provincial Court resolutions under examination, it is observed that pre-trial detention is ordered in one out of four cases.



Graph 4. Original graph based on the case-law study (years 2014-2018)

3.6.3. Termination of proceedings by closure or settlement

If the perpetrator's identity has not been established after the investigation, the proceedings may be closed. In these cases, the victim is informed of the closure of the proceedings either through the Court's Communication Services or in person, through the victim's appearance in Court¹¹⁸.

With regard to settlement, the objective limit established in the LECrim for the accused to be able to settle is that the requested punishment does not exceed 6 years of imprisonment. Though in theory this is less common with regard to crimes against sexual freedom, it does occur in practice¹¹⁹. Hence, this would mostly take place within abbreviated proceedings or even speedy trials. The common denominator of settlements in those type of proceedings is the search for mitigating factors, more common in less serious sexual crimes. Settlement is also resorted to when there is a very clear and compelling piece of evidence and the accused sees his/her defence possibilities reduced (cameras, DNA, compatible injuries). In the context of intrafamily sexual crimes, settlement takes place sometimes to avoid the family drama, although it could also be justified in the opposite sense, breaking definitely the family relationship once reported.

As for the Prosecutor's Office role in the settlement, it must be noted that if the victim is acting as private prosecution, it will be his/her lawyer who informs her of the meaning of the settlement. Otherwise, the Prosecutor's Office stresses the importance of communicating this information to the victim. The reality is far from these good intentions and often no operator –

¹¹⁸ If the victim is not acting as private prosecution she will not be informed of the closure of the proceedings nor on the reasons motivating it. Given the complexity of the situation, if the victim has a legal counsel, personal communication of this decision by his/her lawyer using a clear language is preferable. The closure of the proceedings may provoke in the victim the feeling of not having been believed. It is therefore of the utmost importance that the lawyer makes the effort of explaining the legal aspect of this sort of decisions and of defining the victim's expectations.

¹¹⁹ The objective limit of settlement makes it exceptional and/or impossible for settlement to take place in ordinary proceedings. Nevertheless, sometimes, the accused admits the facts and a lower penalty is negotiated by the Prosecutor.



judge, prosecutor, justice administration official or procedural manager- explains the victim adequately the reason justifying the absence of an oral hearing. Regarding the frequency of settlements, opinions are very diverse and sometimes contradictory¹²⁰.

3.7. Oral Hearing

It is common for the justice administration to delay the termination of this type of proceedings¹²¹. A trial for a sexual crime will have a minimum duration of 3 years, but it could extend up to 4-6 years¹²². This would, in any case, depend on the specific judicial district. In the judgements under examination, the average time lapse between the criminal event and the first judicial answer is of 3,6 years in cases of child victims and of 2,9 years when the victims are adults.

The victims interviewed demand that the process be expedited because the procedures are very long, something that increases their uncertainty and the risk and episodes of revictimization.

There is an important time elapse between the victim's statement in the investigative phase and the forensic medical examination (between one and a half years or two) depending on various factors including the investigation, the number of procedures to be carried out, the Courts' workload...¹²³.

Likewise, inhibitions are another cause of delays. Sometimes, it may take up to a year for a Court to finally assert its jurisdiction over a given matter.

Generally, the criminal and civil claims formulated by the Prosecutor's Office are not very different to those presented by the victim. In this sense, in application of art. 109 bis LECrim, the Prosecutor's Office generally exercises the civil action in the criminal proceeding, unless the victim has renounced it or has decided to exercise it later in a civil proceeding. The Prosecutor's Office highlights that a situation in which a victim acting as private prosecution does not

¹²⁰ Lawyers highlight that given the characteristics of sexual assaults and the high penalties; it is difficult to reach a settlement because the accused aims to be acquitted. In other interviews, it was asserted that settlements were very common -especially in cases of sexual abuse- because the victim tends to prefer a lower penalty and a commitment from the accused to follow a resocialization and/or psychological-educational treatment (in Madrid, these treatments are carried out in the open penitentiary facility Victoria Kent), to a long proceeding that extends his/her suffering. The judiciary points out that settlements rarely occur in this sort of crimes because they entail serious penalties and therefore do not fall within the scope of settlement. When they do take place, if the victim is not present in the proceedings, she is not informed.

¹²¹ It is thus common for the victim to be forgot until she is summoned into court for the trial, usually after three years. This is especially burdensome for the victim in the case of intrafamily violence because during this time, the victim might have re-established a relationship with the offender. These situations occur exponentially when, in addition to the crime against sexual freedom, other crimes related to gender violence are perpetrated.

¹²² The length of the proceedings varies and they may range from one year long agile proceedings to proceedings taking up to three years, if DNA testing is required. Its duration also depends on whether provisional detention is ordered because in those cases, it will be given preferential treatment.

¹²³ The Prosecutor's Office points out that the funnel effect is taking place mostly during the trial phase, especially in the abbreviated proceedings before the Criminal Courts. They consider that the legislator puts a lot of pressure on the investigation, disregarding the cause when it reaches the trial organ.



expressly exercise the civil action or decides to join the Prosecutor's Office in its action is increasingly frequent¹²⁴.

With regard to the *quantum*, expert opinions examining the psychological consequences for victims are lacking¹²⁵. On the other hand, significant variations between private prosecution's request and what is requested by the Office of the Prosecutor for the same concept, being generally lower in the latter case, have been noted¹²⁶. In case of conviction, the judicial organ tends to opt for a halfway point. The origin of the problem regarding the adequacy of the amounts draws back to the fact that the compensation scale applied (also in sexual crimes) is the 2004 traffic accidents compensation scale¹²⁷.

The main and more frequent evidence is the victim's statement, the DNA test, especially if the perpetrator is a stranger, the forensic-medical expert evidence on scars that prove the use of force, the toxicological expert test, the technological expert test, the recording of the event¹²⁸, photographs in case of abuse-aggression to child victims and paedophilia, and telematics communications¹²⁹.

During the hearing, the victim will make his/her statement in a very similar way to the statement made during the investigative phase, starting from the Prosecutor's Office, followed by the private accusations and finally the defence. The accused's lawyer strategy is usually directed to questioning the victim's version, attempting to attack his/her honour, questioning his/her consent to have sex or the victim's *modus vivendi*, despite the fact that the guidelines enshrined in the European regulations assert the irrelevance of this information and the convenience of avoiding questioning concerning the victim's private life (art.23.3.c Victim's Directive)¹³⁰. Once again, the Prosecutor's Office tries to anticipate these questions by formulating them in a gentler way. According to the Judiciary, the court's control of the defence's questions is usually more intense as there are three magistrates who tend to safeguard the formalities and the effective compliance of the law. Some female magistrates warn in advance on the line and tone of the

¹²⁴ In order to avoid that neither the accused's lawyer or other people attribute the victim the shadow of the spurious motive, which is not only wrong but re-victimizing.

¹²⁵ The expert model of social intervention developed by the IMLYCCFF of Alava appears as a good practice. This is being extended to other areas, to coordinate the needs of the victim and the judicial organ in the development of the process and that coordinate with social services.

¹²⁶ It is a common belief that lawyers lack expertise with regard to criminal punishments within the scope of crimes against sexual freedom, and are therefore guided by the Prosecutor's request. Nevertheless, the amount requested by the private accusation as civil liability has to be slightly smaller than the one requested by the Prosecutor's.

¹²⁷ Royal Legislative Decree 8/2004 of 29 October, adopting the revised Law on Civil Liability and insurance for motor vehicles. There is a symbolic annual update of the compensation scale.

¹²⁸ Recording is more common when the offender is young and especially in group attacks.

¹²⁹ Forensic medical evidence on revealing marks (beyond the genital areas) that prove the force-lack of consent may also corroborate the aggression: these include bruises, signs of grabbing or fighting, etc. Indirect or reference witnesses may also be presented as a peripheral corroborating element.

¹³⁰ In the "Manada case" in Pamplona, the defence hired two female detectives to report on the victim's private life after the crime. The report stated that the victim "Smokes, parties and drinks coffee with friends". In October 2020, Madrid's Provincial Court (Section 15) issued an order on re-opening investigations on these detectives.

questions that will not be allowed¹³¹. This position is also held by the Prosecutor's Office, which, conscious of the risk of having the interrogatory declared null, exercises control over the questions in a less forceful way.

The essential and most relevant evidence supporting conviction continues to be the victim's statement¹³², and, despite the difficulties that it may cause for the victim, it may be sufficient to produce a conviction¹³³. In evaluating this evidence, immediacy and principles of the psychology of testimony recently reflected in a Supreme Court Judgement, should be taken into account¹³⁴. Obviously, the concurrence of a series of peripheral corroborating elements supporting or adding to the cited statement is of great relevance. Among them, expert opinion when there is objective injury, WhatsApp or messages immediately before and immediately after the

¹³¹ With regard to this issue, in 2015, in line with the adopted Directive, article 709 of the Spanish Rules of Criminal Procedure was modified: *"The President will not allow the testimony to answer tricky, leading or impertinent questions. The President may adopt measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence, unless the Judge or the Court exceptionally considers that these (questions) must be answered in order to guarantee an adequate assessment of the facts or the credibility of the victim's statement. (...)"*.

¹³² In its STS 349/2019 of 4th July (ECLI:ES:TS:2019:2228), the Supreme Court offers up to 11 guidelines to assess whether the victim is lying or not, widening the classical credibility parameters established in its case-law (incrimination persistency, subjective and objective credibility): *"1. Confidence. 2. Concretion. 3. Clearness in the exposition. 4. Convincing gesture language. 5. Seriousness in the exposition. 6. Descriptive expressiveness. 7. Lack of contradictions and consistency. 8. Absence of gaps. 9. No fragmentation. 10. Integrity. 11. What entails an advantage and what does not"*. The importance of this principle of immediacy had a special impact in the alleged case of *"stealth"* (removing the condom during the sexual intercourse without the victim's consent) before the Provincial Court of Barcelona (27 October 2020). The accused was acquitted because it was not possible to adequately examine the victim's statement (she was a foreigner and the statement was made by videoconference).

¹³³ The hearing's hostile environment represents an obstacle for these statements. With regard to intrafamily victimization, there are often important tensions within the family nucleus, causing a significant pressure on the victim. When recalling some of the victims' statements, the interviewed female Prosecutors use expressions such as: *"it makes you want to applaud"*; *"wow, that was a good narration"*; *"great detail"*; conversely, others include: *"Oh my God, she doesn't stop crying, she does not articulate a single answer"*.

Making the statement during the hearing is the most invasive event for the victim given that this kind of trial is usually public and the victim is not granted the adequate protection. Notwithstanding the above, article 681 of the Spanish Rules of Criminal Procedure allows the trial to be held behind closed doors. This was agreed in the well-known case of Arandina. In this case, the Provincial Court of Burgos issued an order on the 14th of October 2019 adopting the following measures: *"Prohibiting the disclosure or publication of information on the victim's identity, prohibiting the collection, disclosure or publication of images of the victim or his/her relatives, avoid direct contact between the victim (and his/her relatives) and the accused"*, holding also that *"unnecessary questioning concerning the victim's private life not related to the criminal offence will be avoided, unless the Judge or the Court exceptionally considers that these (questions) must be answered in order to guarantee an adequate assessment of the facts or the credibility of the victim's statement"*. These prohibitions are of great importance because, as the Prosecutor's Office highlights, the accused has access to everything. Hence, they acquire a special relevance in aggressions by a stranger, outside the victim's inner circle. Some lawyers point out that in some occasions the accompanying person has been asked to leave the room because, especially in crimes committed within the family, the legal guardian tends to downplay the events with sentences such as: *"but no... nothing really happened"*, *"no, don't worry... it was not like that, it was a loving gesture ..."*, among others.

¹³⁴ Regarding the assessment of the descriptive expressivity—convincing gesture language, in its STS 119/2019, of 6 March (ECLI: ES:TS:2019:678), the Supreme Court holds that the judicial organ does examine, sometimes, these aspects (descriptive expressivity and gesture language, cited in the aforementioned decision) when assessing the victim's credibility-credulity. The interviewees recall that the psychology of testimony asserts that the extent to which a testimony is convincing does not depend exclusively on what the witness verbalizes but on how she does it and how she accompanies it. This is not only applicable to the victim's statement, but to other witnesses and to experts. However, it is noted that, when assessing the victim's statement, gender perspective is still lacking within the judicial organ.

aggression, the DNA test or friends' statements stand out (the relevance of the training of the Police officers who usually tap phones and carry out a very good investigation is highlighted).

A victim's credibility expert testimony is requested when the victim is a child¹³⁵. This testimony is virtually binding in respect of children up to 10 years old. With regard to children between 10 and 15 years old, this testimony will be less binding (the age varies in the different responses) and it is usually not relevant after 16. An expert report on the victim's credibility is not considered at all necessary neither by the Judiciary nor by the Prosecutor's Office¹³⁶. A minority within the Prosecutor's Office refer to their need in some cases, pointing out the possibility of false complaints or inconsistencies in some investigation procedures. The mere existence of these reports constitutes an unfair treatment with regard to victims of other crimes¹³⁷. In our opinion, it may also contribute to the prejudice or false belief that the victims of sexual crimes lie. Furthermore, as held by the doctrine on the psychology of the testimony, this type of reports do not provide the judge with any element of credibility¹³⁸.

Conversely, some of the interviewees consider the expert report requested to a psychologist to have a different purpose and a higher value: an expert opinion on the victim's vulnerability or emotional state, which does have an impact on the assessment of the damage caused.

Scientific evidence presented during the proceedings does not usually encounter legal problems given that once the protocol for sexual violence is activated, the forensic doctors collect biological samples from all of the attacked areas of the victim. Likewise, consent for the voluntary DNA extraction will be requested to the accused. If the consent is not granted, in application of the action protocols, a request for a judicial order for the compulsory DNA extraction is filed.

It is not common for popular prosecutions to concur in sexual crime proceedings, except in cases of great social and public relevance; see, for instance, the so-called "manadas" or group sexual assaults. According to the female prosecutors interviewed, neither the victim or the offender are interested in the publicity that criminal proceedings with popular prosecutions usually generate. Furthermore, this participation might actually threaten their privacy interests.

3.8. Termination of proceedings

3.8.1. Penalties and compensation amounts

In the examined case law from Provincial Courts, Superior Courts of Justice and the Supreme Court between 2014 and 2018, the average duration of the prison sentences dictated is of 7,4 years when the victim is a child and of 6,5 years when the victim is an adult.

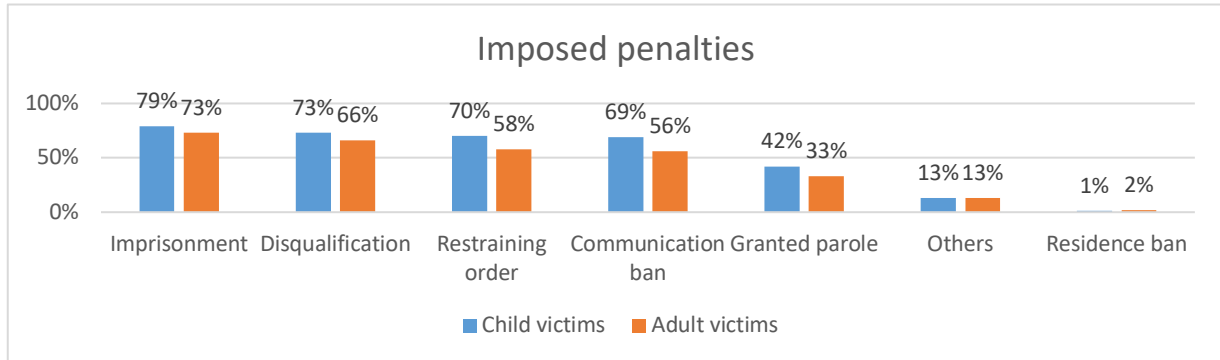
¹³⁵ In its STS 1033/2013 of 26 December (ECLI:ES:TS:2013:6516), the Supreme Court held that an expert report "confirms the Court's assessment of the (child) victim's statement *but it does not replace it*".

¹³⁶ In this sense, see the Judgement of the Provincial Court of Vizcaya (Section 6) no. 4/2018 of 11 January.

¹³⁷ An interviewed professional admits resorting to it, arguing that, although she disagreed on its adequacy, being aware of the nature of the proceedings, she considered it a mechanism to protect victims from the system.

¹³⁸ See the work of Loftus, Diges or Alonso Quelcuty, among others.

Compensation is granted to the child victim in 70% of the cases, with an average amount of 16.506,91€. When the victim is an adult, compensation is granted in 64% of the cases, with an average amount of 16.329,85€.



Graph 5. Original graph based on the case-law study (years 2014-2018)

3.8.2. Time elapsed

Operators perceive justice to be slow, with long waiting times before the hearing. The data obtained through the case-law study of reference show that when the victim is a child, the average time elapsed between the offense and the first instance judgement is of 3,6 years (for half of the cases, this time is greater than 2,9 years and for 25% of them it is over de 5,5 years); when the victim is an adult, the average time elapsed is of 2,9 years (for half of the cases, this time is greater than 2,1 years and for 25% of them it is over de 3,6 years). A longer time is observed when the victim is a child, which inevitably entails serious damage to his/her interests.

3.8.3. Decision on guilt

First instance judgements usually depend on the type of crime and the evidence available. From the Prosecutor's Office, it is perceived that criminal proceedings for violent sexual crimes committed by a stranger end in conviction due to the existence of complementary evidence to the testimony (medical-forensic expert evidence, DNA tests, technological evidence in case of group sexual assaults by young people, etc). On the contrary, when the sexual crime is committed within a broader situation of gender violence IVP, most of the judgements handed down are of acquittal. Differences have been found according to whether we are in front of a long-lasting relationship¹³⁹ among adults, or whether these sexual crimes are perpetrated within a young couple. In addition, in the case of victims of sexual crimes in the context of gender violence, the duration of the proceedings also has an impact on the statement made by these victims during the hearing, which they can decide to modify or benefit from the waiver enshrined in art. 416 LECrim.

If the sexual crime is perpetrated within a young couple, the acquittal rate is also very high. In this case, adding to the existing evidence problems, the possible disproportionate use of the clause contained in art. 183quater of the Criminal Code of some Provincial Courts in favor of the

¹³⁹ The Prosecutor's Office notes a high rate of acquittals in respect of sexual crimes committed within a long-lasting relationship. Convictions for regular violence or abuse are more common in these cases.



accused should be underlined. We refer at this point to what has previously been indicated. It thus suffices to recall that Organic Law 1/2015, of 30 March, introduced art. 183quater¹⁴⁰ in the CP providing that *The free consent of the child under sixteen shall exclude criminal responsibility for the crimes provided for in this Chapter, when the author is a person close to the child by age and degree of development or maturity.*

In the study on the Provincial Courts, Superior Courts of Justice and the Supreme Court judgements it was observed that when the victims were children, the accused was convicted in 80% of the examined cases, not guilty in 13% of the cases and the crime is non-admitted for the remaining 7%. When the victims are adults, the respective data are 62% (guilty), 14% (not guilty) and 25% (non-admitted).

3.8.4. The account

For the victim, the recognition of his/her version of the events as proven facts represents the judicial recognition of his/her credibility. Nevertheless, it is very painful for some victims to see such a detailed description of the abuse or aggression. The inclusion of the victim's private life in the judgement or a wording that is not considerate of the victim might not be respectful of his/her dignity.

3.9. Enforcement of the judgement

The operators note that the execution of the victim's compensation is a pressing problem. Different professional groups highlight that the compensation payment terms granted (usually with monthly payments of 10€) entail a re-victimization. Furthermore, in these cases of payments by instalments, the victim is periodically required to go to Court and to the bank to withdraw a very small amount.

Conscious of the difficulty to request compensation for moral damage, all the more so in the case of effective physical and moral compensation, some operators propose that the State makes an advance payment, and that the victim public aid system is improved. At the moment, its virtual inexistence amounts to an important institutional abuse. In this regard, the need to modify Law 35/1995 and to establish an adequate system guaranteeing the effectiveness of compensation and aid is underlined¹⁴¹.

With regard to the execution of prison sentences, on the 31st of December 2019, according to the data from the General Classified Statistics of Penitentiary Population, provided by

¹⁴⁰ See, on this matter, Circular 1/2017, of 6th June, on the interpretation of article 183 quater CP

¹⁴¹ See Soleto, Helena, "La ineficacia del sistema de justicia español para reparar económicamente a las víctimas de violencia sexual: un espacio para la justicia restaurativa", *Teoría y Derecho*, n.26 (2019): 320-341.

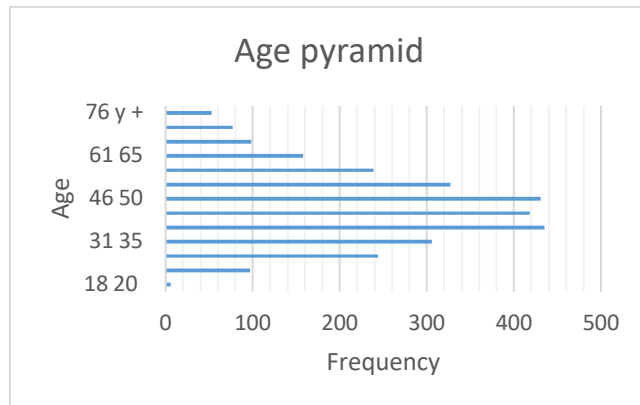


Reshaping treatment approaches towards victims of sexual violence within criminal proceedings.

Penitentiary Institutions, 2.889 convicted adults were imprisoned or serving a sentence in our country for crimes against sexual freedom and indemnity (of which 10 preventively).

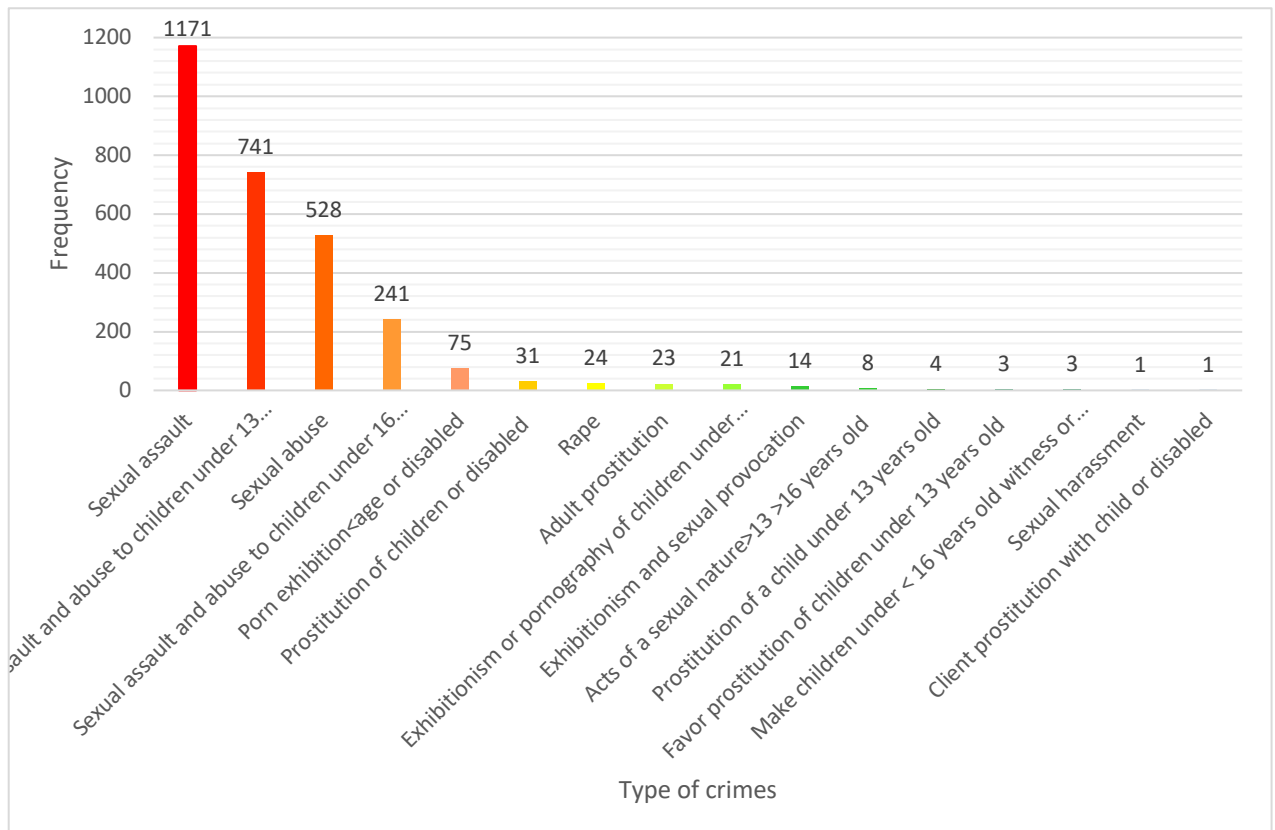
Of these, 98,4% are men compared to 1,6% women, with the vast majority of inmates being in the 30- 55 age range.

Of the 2.889 inmates, 2.072(71,7%) are Spanish and 817 (28,3%) are foreigners.



Graph 6. Original graph based on the results of the General Classified Statistics of Penitentiary Population (2019)

Regarding the types of crimes, those of sexual assault stand out above the rest, accounting for 40,5% of the total, followed by those of sexual abuse and sexual assault on children under 13 (25,6%) y and sexual abuse (18,3%).



Graph 7. Original graph based on the result of the General Classified Statistics of Penitentiary Population (2019)



3.9.1. Treatment

In compliance with art. 25.2 of the Spanish Constitution that provides that “*punishments entailing imprisonment and security measures shall be aimed at rehabilitation and social reintegration*”, penitentiary treatment is regulated in Title III of Organic Law 1/1979, of 26 September, General Penitentiary (LOGP), arts. 50 to 72, and in Title V of the Royal Decree 190/1996, of 9 February, adopting the Penitentiary Regulations. As provided by art. 59 LOGP, treatment consists in a set of activities aimed at re-education and social reintegration of the convicted and is intended to transform the inmate into a person with the will and capacity to live respecting the criminal law while fulfilling his/her needs¹⁴².

With regard to those convicted of crimes of sexual nature, the Sexual Assault Control Program (PCAS)¹⁴³ may be highlighted. It is directed to inmates who have committed sexual crimes against women or children. They last two years and include around 80 sessions (in groups of between 10 or 15 inmates with members of the technical team: social educators, social workers, psychologists and lawyers). Admission of the crimes is a pre-requisite for participation.

The program addresses the analysis of the personal history, cognitive distortions, emotional awareness, violent behaviours, defence mechanisms, empathy towards the victim, relapse prevention, sexual education, sexual impulse modification and positive lifestyle¹⁴⁴. Once completed, it is recommended to follow a risk assessment protocol to estimate possible recidivism and design a risk management plan, especially when they are about to return to society (permit, conditional release or permanent release).

3.9.2. Recidivism

The sexual offender is usually seen as a high-risk recidivist offender and few rehabilitation or re-socialization possibilities. However, the follow-up studies conducted show that they tend to re-offend less than other types of crimes. When they do re-offend, the crime committed is usually unrelated to sexual crimes¹⁴⁵. According to information of the General Secretariat of the Penitentiary Institutions (data from June 2020), of the treatment groups initiated in the period

¹⁴² In recent years, the General Secretary of Penitentiary Institutions has developed diverse programmes with a cognitive-behavioural psychological perspective (variable duration –from six months to two years-). All programmes are voluntary and the inmates have a right to participate in them. It is the duty of the Penitentiary Administration to design dynamic and individualizes programmes, clearly informing that participation does not necessary entail prison benefits.

¹⁴³ “Manual El control de la agresión sexual: Programa de intervención en el medio penitenciario. Un programa de tratamiento para delinquentes sexuales en prisión. Manual del terapeuta” Available at: http://www.interior.gob.es/documents/642317/1201664/El_control_de_la_agresion+sexual_Programa_de_intervenci%C3%B3n_en_el_medio_penitenciario_126100334.pdf/ca7a2673-5ce8-4c8d-a2ef-2360fb75b05b). In 2019, 203 inmates started the program, adding to the 137 who had already started it the year before, reaching a total of 340 inmates, from 33 different penitentiary facilities.

¹⁴⁴ The program is structured in “Awareness” (taking responsibility and becoming aware of the feelings and conducts that lead them to a violent behaviour) and “Control” (analysis of one’s own criminal conduct and learning aimed at the prevention of potential inadequate and violent sexual behaviours).

¹⁴⁵ According to different follow-up studies (in different countries) recording the recidivism rate of a given number of sexual offenders in a given time (no less than 4 years and reaching up to 20 years), it is more likely for a sexual offender to commit any other type of crime than a crime of sexual nature. A finding which is associated to a strong antisocial tendency.



that includes the years 2005-2009, on a sample of 520 inmates who were released at some point, general recidivism (any crime) reached 12,1% while sexual recidivism amounted to 4,6%. Of the inmates that were permanently released (441), the percentage of general recidivism (any crime) represents the 11,1%, whereas the cases of sexual recidivism amount to a 5%. Differences between inmates that completed the programs and those who did not were also noticed. With regard to the inmates that were permanently released (441), there was a group of 303 inmates who completed the program. In this case, the percentage of general recidivism (any crime) is of 10,6%, whereas sexual recidivism only represents 4,3% (6 inmates); among the inmates who did not complete the program due to abandonment, expulsion, release, transfer or other causes (138), the percentage of general recidivism (any crime) amounts to 12,3% and sexual recidivism to 6,5% (9 inmates). It should be noted, in any case, that sexual offenders are not a homogeneous population and the existence of a general antisocial tendency may have an impact on recidivism. Sexual violence responds to multiple factors and it manifests itself diversely within the different human groups. This leads us to the question of whether, as pointed out by Herrero¹⁴⁶, it would be advisable to resort to different interventions according to risk levels.

3.10. Restorative Justice

In 2015, following the adoption of the Victim's Directive, restorative justice is explicitly included in the Spanish legislation beyond generic references found in the Organic Law on Juvenile Criminal Responsibility or the generic prohibition to mediate in gender violence cases¹⁴⁷. In Juvenile Justice, criminal mediation is a fully consolidated instrument all across the territory. With regard to adults, in 2015, art. 84.1 of the CP is modified to include compliance with the agreement reached by the parties under mediation as a condition for the suspension of the execution of the sentence. The LEVID (art. 15), which reflects the Victim's Directive (art. 12), regulates the access to RJ services, with the aim of "*obtaining an adequate material and moral compensation for the damages that derive from the crime*" for the victim¹⁴⁸. At a domestic level, restorative processes are excluded when they are prohibited by the specific crime, as in the case of gender violence. In practice, for the participants' consents to intertwine, an assessment of the adequacy of the case carried out by different agents is strongly recommended. Applicable criteria will rely on the parties' attitude and capacity, as defined in the Spanish Statute and in

¹⁴⁶ Herrero, Óscar. "¿Por qué no reincide la mayoría de los agresores sexuales?", *Anuario de Psicología Jurídica* 23, (2013):71-77, p.76.

¹⁴⁷ The absence of normative references did not avoid, in practice, criminal mediation programmes.

¹⁴⁸ Furthermore, the Statute refers to the RJ in other three occasions: article 3 establishes the victim's right to "*protection, information, support, assistance and attention, and to actively participate in the criminal proceedings and to receive a respectful, professional, individualised and non-discriminatory treatment from the first contact with the authorities or officials, while providing support, assistance and Restorative Justice services to the victims*"; article 5 (k) establishes the victim's right to receive information on all the services available; article 29 establishes that the OAV are in charge of providing, "*support to the Restorative Justice services and other extra-procedural solution proceedings that are legally established*".



addition to guaranteeing the victim's protection (art. 15.1. D) and that communication will take place in a context of security, competence and professionalism¹⁴⁹.

RJ, in any of its manifestations, may take place in different procedural moments, even after the execution of the sentence. In this sense, some of reasons justifying a restorative intervention in sexual crimes would be the absence of a formal complaint or a lack of clarification of the cases that do fall within the traditional circuit of justice, the RJ's capacity to manage the victim's shame and guilt¹⁵⁰ without questioning the credibility of his/her version, an integrated configuration of the restorative approach as opposed to the proceedings' formal requisites and the possibility of addressing imbalance in the broad sense of democratization of power relations.

All the victims interviewed in the project emphasize that they feel socially sanctioned. The victim of a crime of sexual assault feels that he carries a very important social esteem; they know that they are not objectively guilty of what has happened to them, yet they cannot avoid that feeling. For this reason, they hide what has happened to them and, when they decide or have to tell it, they justify why it happened to them so that they do not attribute responsibility to them for what has happened to them. Along these lines, they complain of a certain invisibility compared to victims of gender violence in the strict sense, of little education and awareness at the social level.

Currently, there is a general lack of connection between the legal operators and Restorative Justice. Information is only provided by the legal counsel when specifically requested by the victim. In any case, lawyers are more prone to this mechanism either during the execution of the sentence or in order to grant suspension of the sentence if it is carried out for the benefit of the victim.

Legal scholars have extensively reflected on the adequacy of managing victimizations such as the ones deriving from gender violence within the framework of restorative justice; it is generally asserted that it may be adequate in some cases but not in others¹⁵¹. The question regarding the sexual victimization is analogous in its asymmetry¹⁵². Among others, the risks to be assessed at the time of referral are: risk of new victimization derived from power imbalance, possible victim manipulation, feeling of pressure on the part of the victim due to the possibility of avoiding the trial, adequate expectation management, the victim's instrumentalisation or the small or inexistent economic compensation. Another potential threat is the reiteration of ideal

¹⁴⁹ The Spanish Judiciary suggests observing the following criteria: the nature and seriousness of the crime, the intensity of the damage caused, or the existence of a psychophysical or sexual domination. It holds that neutralizing the re-victimization risks is of the utmost importance to conclude that the communicative space is in the victim's best interest.

¹⁵⁰ Almost all the victims interviewed mention the guilt they feel, even though they objectively know and tell themselves that the fault is not theirs.

¹⁵¹ Villacampa, Carolina. "Justicia restaurativa aplicada a supuestos de violencia de género". *Revista penal*, n.30 (2012):177-216. Doi.org/10.4067/S0718-33992020000100047

¹⁵² Soletto, Helena. "La ineficacia del sistema de justicia español para reparar económicamente a las víctimas de violencia sexual: un espacio para la justicia restaurativa", *Teoría y Derecho*, n.6 (2019):320-341.



victimization features, as a result of maintaining certain expectations about the proceedings or as a result of pressures to meet certain demands.

The instrumentalisation of restorative procedures and non-adjudicative procedures in this context may represent a risk; in this sense, in its art. 48 on the “Prohibition of mandatory alternative dispute resolution processes or sentencing” the Istanbul Convention provides that “Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention”, which excludes automatism in mediation and conciliation management.

In Spain, mediation in gender violence between partners or former partners is excluded by law, while there is no regulation with respect to crimes against sexual freedom.

It seems that only when the restorative justice services are specialized in sexual victimization and its convenience is established, the use of these methods will be appropriate, including mediation. Restorative activity is probably more adequate when it is safer in terms of victimization and less risky for the victim. That is, probably when the victim is an adult and sufficient time has passed after the aggression. In short, when the restorative procedure is freely desired by the victim and it serves to satisfy specific interests of recognition, self-management or reinterpretation of the criminal act.

The use of restorative procedures for sexual crimes committed within the family must be carefully considered because the particular dynamics of family and sexual violence, including the imbalances inherent to this type of crime, may entail significant risks for the victim’s physical and emotional health; this type of violence tends to be cyclical and it reveals deeply rooted attitudes and beliefs; offenders tend to be manipulative and will have committed the crime seriously and repeatedly, hence an isolated intervention is neither safe or effective¹⁵³.

The serious practical situation in the scope of sexual violence, the important concealment of victimization, the serious violations of the rights of children and of other especially vulnerable people, the seriousness of the impact of victimization on the victim’s physical and mental health, the chronification of the abuse, the tendency towards repeated victimization are, among others, circumstances requiring a special treatment. When adequate, this treatment shall be provided by specialized services¹⁵⁴ that may offer restorative services to be used by the victim in a positive

¹⁵³ “Restorative justice standards for sexual offending cases”, 2013, Ministry of Justice, New Zealand.

¹⁵⁴ It is generally agreed by the doctrine that there is a need for specialization on sexual violence and on child victimization of the RJ services .See the Second Edition of the UN Handbook on Restorative Justice Programmes available here; https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf as well as Varona, Gema. “Adecuación de los procesos restaurativos en delitos de carácter sexual”. In *Justicia restaurativa y terapéutica: Hacia innovadores modelos de justicia*, directed by José Luis De la Cuesta and Ignacio José Subijana, 368-389, Valencia:Tirant lo Blanch, 2017; Stubbs, Jule. “Relations of Domination and Subordination: Challenges for Restorative Justice in Responding to Domestic Violence”. *UNSW Law Journal* 33, n.3 (2010):970-986; Soletto, Helena. “La ineficacia del sistema de justicia español para reparar económicamente a las víctimas de violencia sexual: un espacio para la justicia restaurativa”, *Teoría y Derecho*, n.26 (2019): 320-341.



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and safe environment and at the right time, which in the case of serious crimes, is probably in a post sentence or execution phase.

Conclusions

The Spanish legal system contains numerous and interesting instruments for the protection of the interests of the victim of sexual crime. In practice, however, compliance seems to be more problematic. Lack of interest, limited resources and proceduralism reflect a still not effective victims interest-centred activity.

It is observed that the stage of greatest vulnerability and damage to the interests of the victims is the one closer to the criminal act, in which most cases are not reported or are finally dismissed. When analyzing the results through the assessment (from 1 to 5) of the satisfaction of perception on the protection of the interests of the victims, a clearly differentiated perception of the protection of the interests of the victims of sexual crimes is observed, highlighting in a significant way the Police that reflect a very high perception of protection, followed by the Public Prosecutor's Office and Medical staff. Drastically lower are the assessments made by Victim's Assistance Services, Lawyers and from the Judiciary. These results could be due, among others, to the closeness of the first two professional groups to the victims both throughout the process and also in the pre and post-procedural phases.

In a general way, without differentiation by professional groups consulted, the interests that seem to be better satisfied, would be respect and security as well as listening, although the latter to a lesser extent (with an average of 3,19; 3,10 and 2,94 respectively).

The least satisfied interests would be compensation, restoration, and the protection of mental health

(with a mean of 2,29; 2,31 and 2,41 respectively). In any case, even the interests that appear to be best satisfied are undervalued. Likewise, a better satisfaction of those interests can be observed that, if not satisfied, could have a direct effect on the development or continuity of the process itself, and not only on the victims (respect, listening, security). Legal professionals rate the lower the effective protection of victims' interests, and only rating protection of privacy the highest. This could be due to a deeper knowledge of what the law establishes and what happens in practice in the different procedural stages, from the aggression until years after the final resolution.

GENERAL PROFESSIONALS PERCEPTIONS	
COMPENSATED	2,29
RESTORED	2,31
ABOUT PROTECTING HER MENTAL HEALTH	2,41
GET ANSWERS	2,61
ACCOMPANIED	2,66
SUPPORTED	2,69
ACCOUNTABILITY OF THE OFFENDER	2,70
ABOUT HER PARTICIPATION	2,70
INFORMED	2,71
ABOUT HER PRIVACY	2,83
BELIEVED	2,84
TO BE HEARD	2,94
ABOUT HER SECURITY	3,10
RESPECTED	3,19

Table 4. General 'professional's perceptions on the protection of the interests of the victims. Own elaboration based on the surveys carried out (2020)

When we analyze the mean scores of the victims who have participated in the Project, we observe that these are really low (between 0.83 and 2.50). In this case, the interests corresponding to the *responsibility of the offender*, *compensation* and *restoration* are not recorded because in none of the cases of the interviewed victims had the oral hearing been held, except in one of the cases, pending sentence, so it was not appropriate to ask about it. However, it should be noted that, with respect to *restoration*, all the participants indicated the absence of this since they only perceive that sexual assaults against women do not have visibility and, when they do, stigmatize the female victim, therefore they are the first to hide that they have been victims of a crime of sexual violence.

GENERAL VICTIMS PERCEPTIONS	
GET ANSWERS	0,83
ABOUT HER SECURITY	0,83
ABOUT HER PARTICIPATION	1,00
ABOUT HER PRIVACY	1,50
ININFORMED	2,00
BELIEVED	2,00
RESPECTED	2,00
ABOUT PROTECTING HER MENTAL HEALTH	2,00
TO BE HEARD	2,17
ACCOMPANIED	2,50
SUPPORTED	2,50

Table 5. General perception of the victims about the protection of their interests. Own elaboration based on the surveys carried out (2020)

Regarding the data collected, although the sample is small, what does deserve to be noted is that the response pattern is very uniform and denotes the high degree of dissatisfaction that the participants experience in relation to the different aspects evaluated, and that they are involved in different moments of the police, health, forensic and judicial process. Going into greater detail, only 50% of the participants felt that they were being listened to (score = 4), but not by the institutions, but by family or friends; therefore, in reality, the system is not providing that listening; only 33% of them feel believed (score = 4), by the social worker and the psychologist of the CAM Center, but not by the police, judicial or health institutions; and 75% feel supported (score = 4), by family or friends, but again not by institutions. In addition, it is necessary to underline the low degree of security they perceive and the practical absence of responses they receive from the institutions. In fact, the only information that reaches them about the process (what is the next step, how it evolves, waiting times and foreseeable demands at all times, etc.) comes from the lawyer at the CAM Center.

Therefore, the perception that victims have of the institutions and official agents directly involved in the process is very negative, either due to omission of care or the inadequate care they have received.

When we compare the perception of the satisfaction of the interests of the legal operators, against the results obtained by the victims, we obtain the following results:



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COMPARARISON GENERAL PERCEPTION			
INTEREST	VICTIMS	JUDICIARY, PROSECUTORS AND FCCSE	PROFFESIONALS
GET ANWSERS	0,83	2,82	2,61
ABOUT HER SECURITY	0,83	3,41	3,10
ABOUT HER PARTICIPATION	1,00	3,17	2,70
ABOUT HER PRIVACY	1,50	2,94	2,83
INFORMED	2,00	3,00	2,71
BELIEVED	2,00	2,93	2,84
RESPECTED	2,00	3,61	3,19
ABOUT PROTECTING HER MENTAL HEALTH	2,00	2,53	2,41
TO BE HEARD	2,17	3,18	2,94
ACCOMPANIED	2,50	2,94	2,66
SUPPORTED	2,50	2,78	2,69

Table 6. Comparison of general perception of protection of interests between the assessment made by professionals and that made by victims. Own elaboration based on the interviews carried out (2020)

Start by highlighting that while the average of evaluations made by professionals (general evaluation of all the professional groups interviewed) finds its lowest average in the interests valued in the protection of the mental health of the victims with an average of 2.41 (surpassed in all the interests consulted for the compensation with an average of 2.29), by the victims all the means are below the score of 2.50 reached in the support and accompaniment (remembering that this does not even it generally comes from the legal operators or the structure of the process, but is satisfied by the environment of the victims). This reflects the great difference in perception that exists in the satisfaction of their interests.

However, these differences are clearly intensified when a comparison is made between the assessment of the victims and that carried out by the group of professional groups formed by the Judiciary and Magistracy, Prosecutor's Office and FCCSE. It is worth noting that one of the interests best valued by these professionals is the safety of the victims (3.41), being one of the worst satisfied interests according to the perception of the victims (0.83), along with obtaining answers. In the same way, we found opposite results regarding participation, being valued with a score of 3.17 by the legal operators and only reaching an average of 1.00 by the victims. The same happen with the *privacy*, with averages of 2.94 and 1, 50 respectively, and the *respect* with an average of 3.18 and 2.00 respectively.

Even if legislation, protocols and guides protecting victims interest exist, reality does not arrive to pass the interest protection evaluation from many practitioners' and the own victims point of view.

Las víctimas enfrentan numerosos y graves obstáculos, en muchos casos invisibles a la visión jurídica tradicional, para comunicar el hecho delictivo y participar en el proceso penal de forma constructiva. Los operadores en general pueden ser ajenos a esta situación, puesto que aunque en general desarrollen su actividad de buena fe, en muchas ocasiones son víctimas de sus



propias creencias y desconocimiento de los intereses de las víctimas, distanciamiento emocional, desempeño literalmente respetuoso con la norma y presión por la carga de trabajo. All the necessary changes revolve around the need to place the interest of the victims at the core of the criminal proceedings, offering a broader and more flexible range of tools for each victim, paying specific attention to full support. For this reason, a special effort is necessary in the crime investigation stage, and more specifically:

1. Improve comprehensive approach protocols, prioritizing immediate medical care, and focusing on comprehensive service on the interests of victims:
 - a. Promotion of comprehensive care in centres for victims of sexual crimes (rape crisis centres).
 - b. Prioritization of medical care in easily accessible medical services.
 - c. Adequacy of the police response to the victim's decision (taking a statement when the victim is ready to do so).
 - d. Adequacy of forensic activity around the needs of victims (development of protocols for joint action or coordination between health and social care services and forensic doctors to ensure the validity and chain of custody of the samples taken).
 - e. Improved communication and interaction between professionals.
2. Provide adequate and sufficient human resources for the Victim's Attention Offices.
 - a. Stable investment in services with social participation (specialised NGOs).
 - b. Sufficient personnel resources to adequately attend to victims, eliminating waiting lists.
 - c. Adequate and private spaces to host the process of denunciation and samples.
3. Strengthen police units:
 - a. Develop specialized training focused on the interests of the victims, with a special effort to understand gender perspective, eliminate prejudices, improve communication techniques and agile case management.
 - b. Police specialization and adequate space for taking statements from underage victims.
 - c. Increase in female staff.
 - d. Reduction in the number of cases by police or police binomial.
 - e. Integration of adequate offices that guarantee privacy for the victim.
 - f. Temporarily prioritize investigations for sexual crimes and especially those in which the victims are more vulnerable (child victims, person with physical or intellectual disabilities, migrants ...).



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4. Regulation of the procedural treatment of sexual crimes analogous to that of gender-based violence between partners or ex-partners: arrest and bringing to justice, specialized police and prosecutorial jurisdiction, etc.
5. Regulatory review of art. 416.1 LECrim in the field of sexual violence and also intra-family sexual crimes.
6. Reform of the Free Legal Aid Law so that victims of sexual crimes (whether children or adults) can have a free lawyer throughout the entire proceedings, and establishment of the obligation of a lawyer appointed by the specialized shift underage victims.
7. Modification of criminal regulations establishing the public nature of crimes against sexual freedom.
8. Training of the professionals of the justice system, in addition to the aforementioned police, in sexual victimization, Judges, Prosecutors, Victim support Services, lawyers and prison authorities.
 - a. Gender perspective on victimisation
 - b. Understanding myths related to sexual violence
 - c. Variability of interests of victims of sexual violence
 - d. Strategies for communicating with victims of sexual violence and those close to them.
 - e. Forensic language respectful of the victim's perspective
 - f. In-depth study of evidentiary exclusion and control of questions in victim interrogation
9. Establishment of a compensation advance system and or State compensation fund.
10. Inclusion in Victim Support Services for victims of unreported cases and even for when the statute of limitation has expired.
11. Development of procedures by the prosecution in cases in which the statute of limitations has expired, which may lead to restorative practices.
12. Specialization of restorative justice services in sexual victimization and children victimization.



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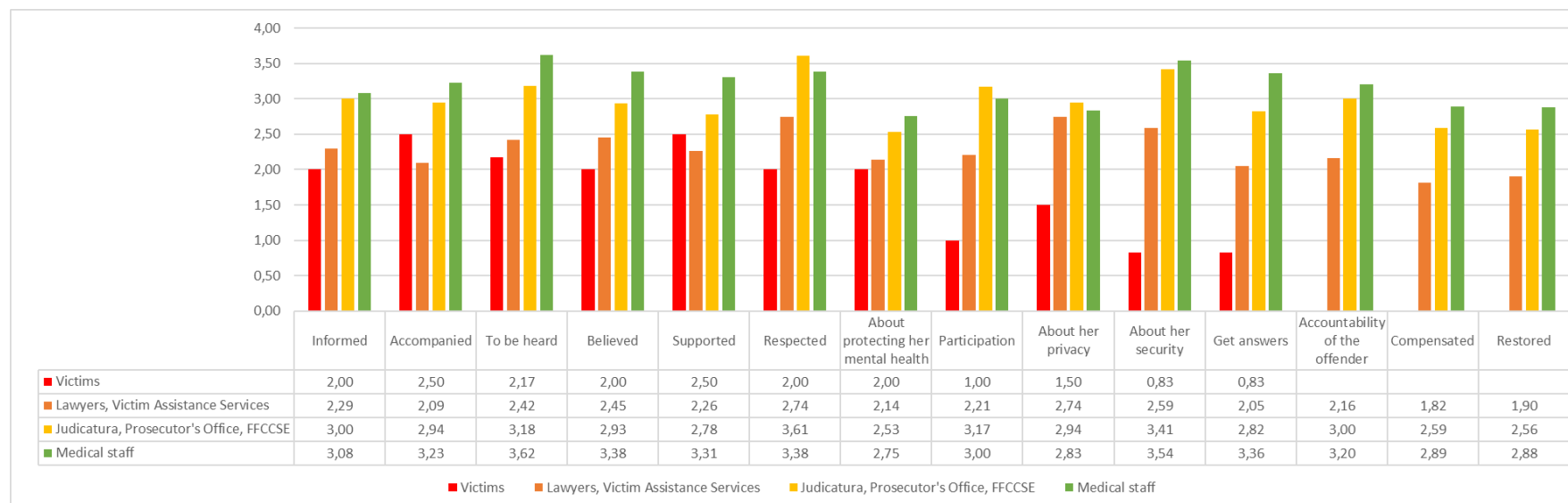
ANNEXES

ANEXO I. COMPARATIVE AVERAGE ASSESSMENT OF INTEREST PROTECTION BASED ON TRAINING OF OPERATORS

TRAINING	INFORMED	ACCOMPANIED	TO BE HEARD	BELIEVED	SUPPORTED	RESPECTED	ABOUT PROTECTING HER MENTAL HEALTH	PARTICIPATION	ABOUT HER PRIVACY	ABOUT HER SECURITY	GET ANSWERS	ACCOUNTABILITY OF THE OFFENDER	COMPENSAED	RESTORED
LAW	2,56	2,41	2,79	2,78	2,45	3,21	2,29	2,56	2,82	2,97	2,23	2,54	2,03	2,81
OTHER	2,95	3,05	3,19	2,95	3,05	3,14	2,60	2,95	2,85	3,29	3,21	2,94	2,76	2,81
TOTAL	2,71	2,66	2,94	2,84	2,69	3,19	2,41	2,70	2,83	3,10	2,61	2,70	2,29	2,31

Table 7. Average assessment of protection of interests based on training, Likert 1 to 5. Own elaboration based on the surveys carried out (2020)

ANEXO II. COMPARISON AVERAGE VALUATION OF INTEREST PROTECTION (PROFFESIONAL GROUP AND VICTIMS)



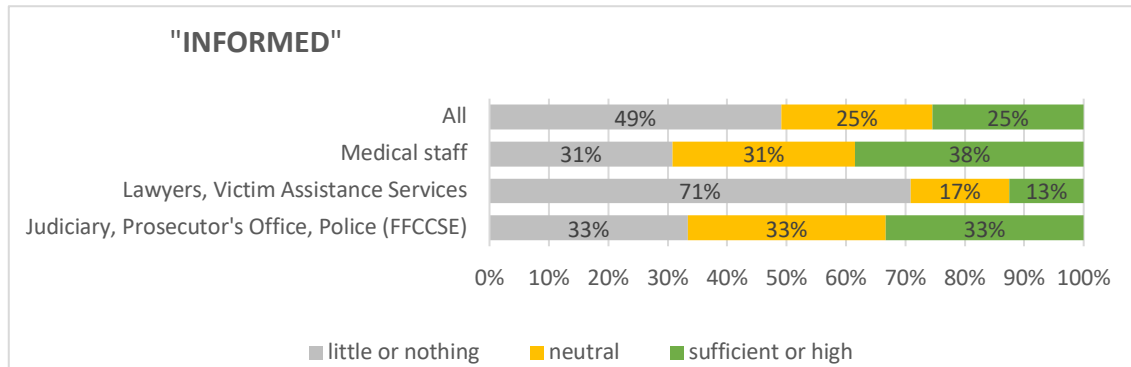
Graph 8. Average assessment of each interest based on the professional group surveyed. Own elaboration based on the surveys carried out (2020)



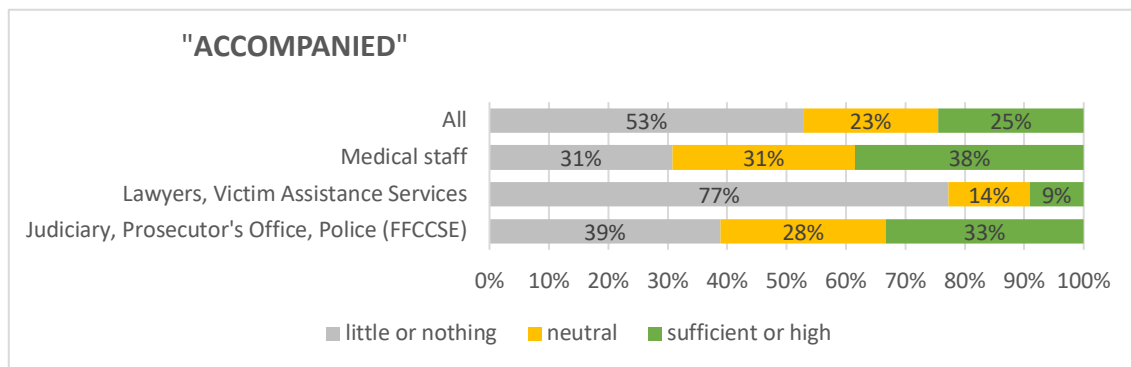
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ANEXO III. ASSESMENT BY INTEREST (GROUPING PROFESSIONALS)

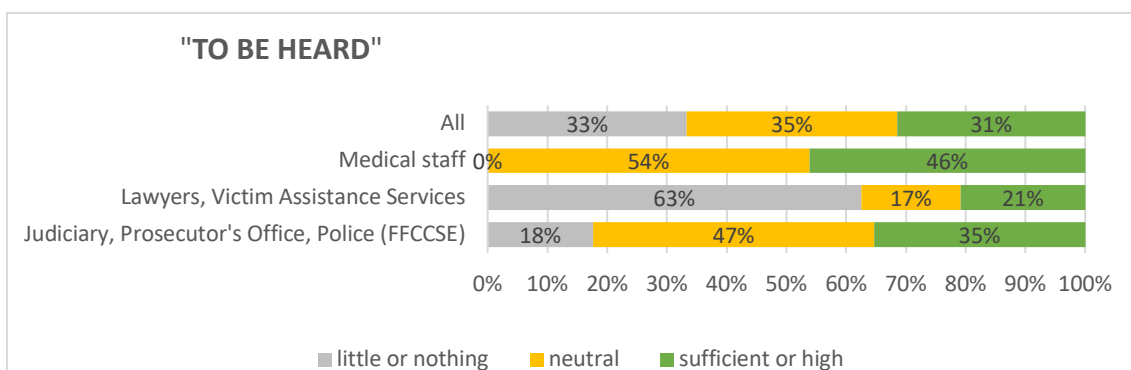
Perception grouping professionals pertaining to the public system (Judiciary, Prosecutors, Police), victim assistance in a wide sense (Lawyers, Victim assistance) and Medical staff:



Graph 9. Informed. Own elaboration based on the surveys carried out. (2020)



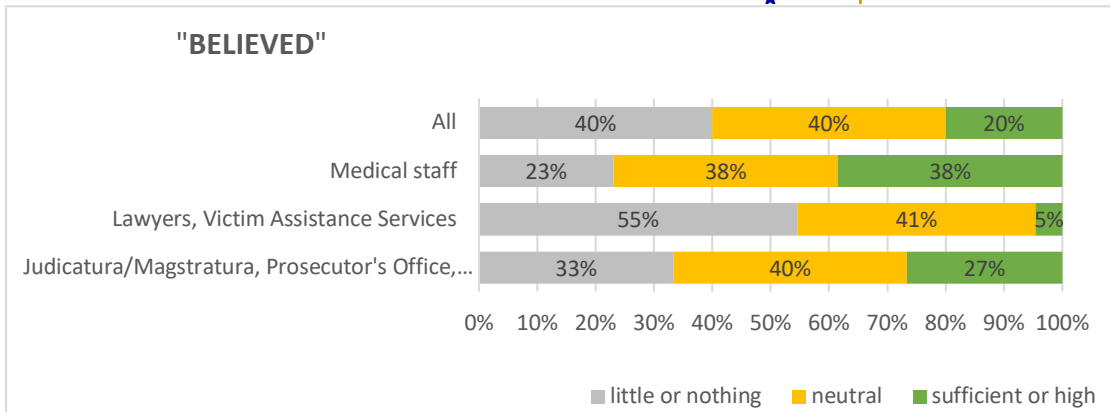
Graph 10. Accompanied. Own elaboration based on the surveys carried out. (2020)



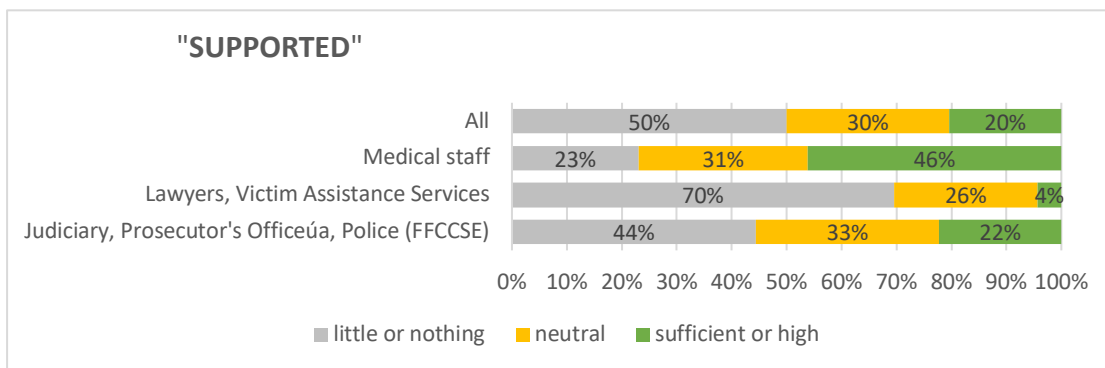
Graph 11. To be heard. Own elaboration based on the surveys carried out. (2020)



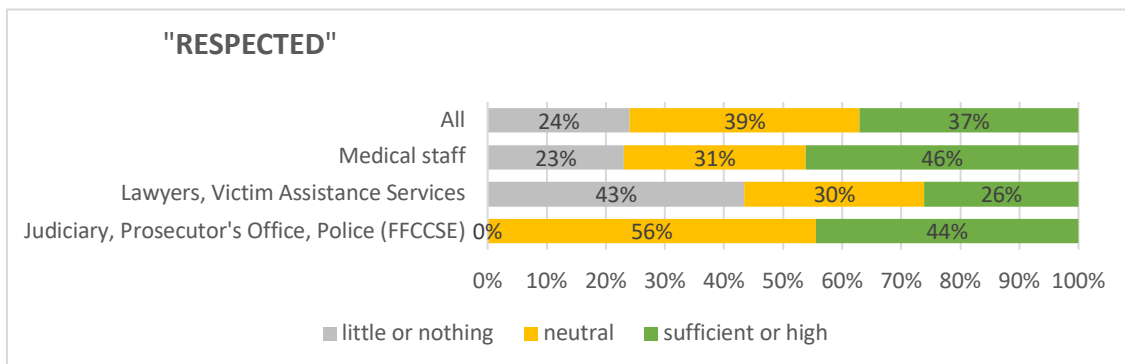
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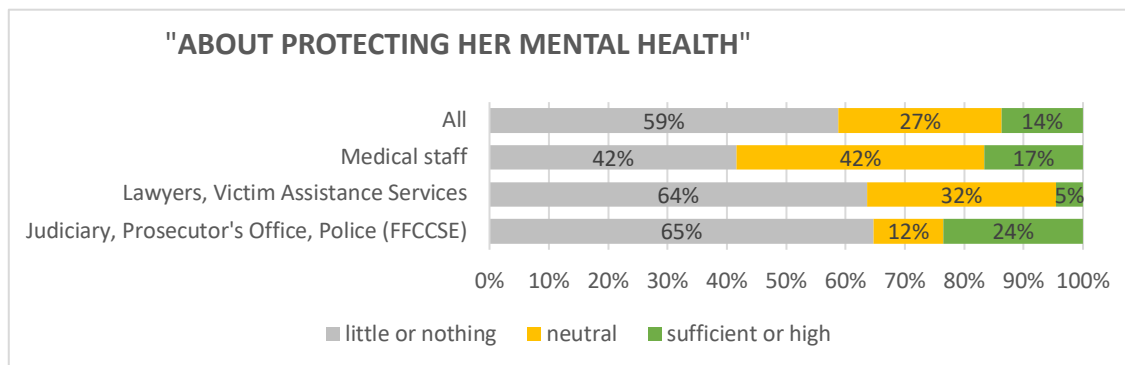
Graph 12. Believed. Own elaboration based on the surveys carried out. (2020)



Graph 13. Supported. Own elaboration based on the surveys carried out. (2020)



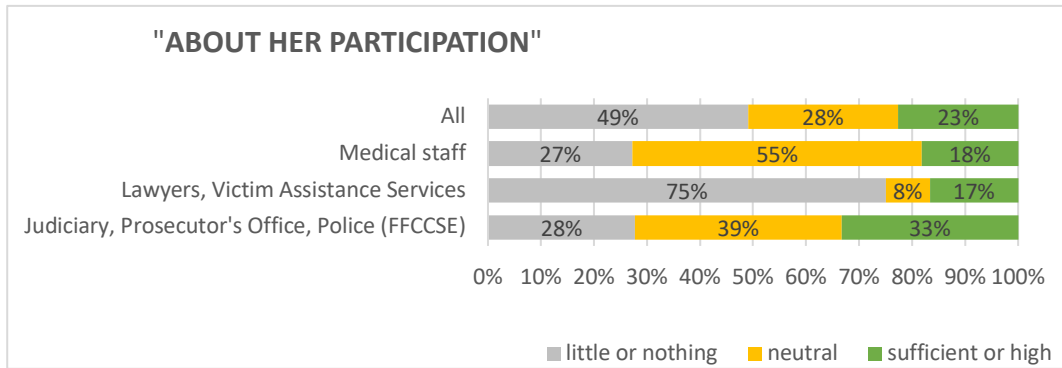
Graph 14. Respected. Own elaboration based on the surveys carried out. (2020)



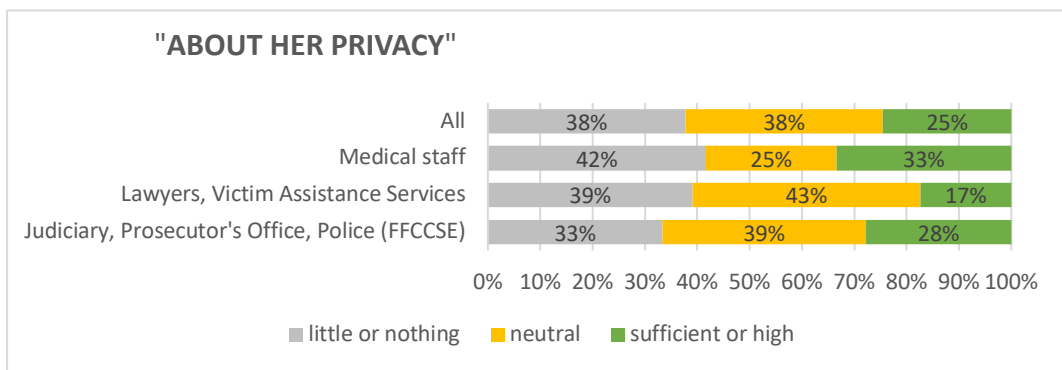
Graph 15. About protecting her mental health. Own elaboration based on the surveys carried out. (2020)



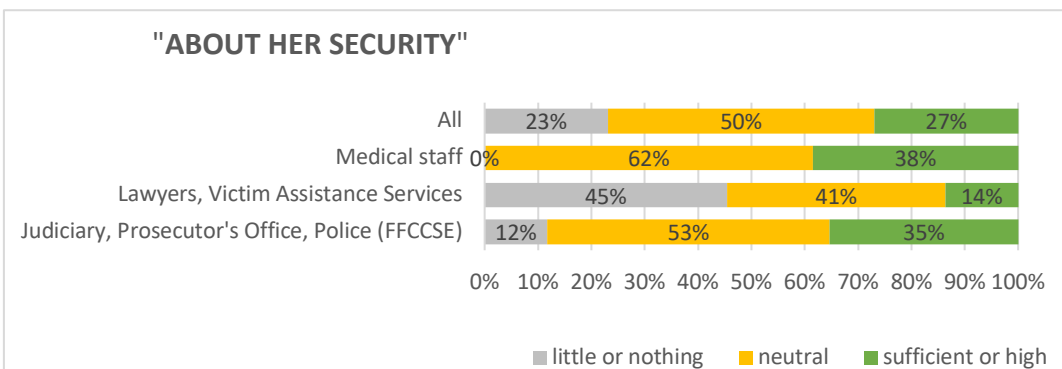
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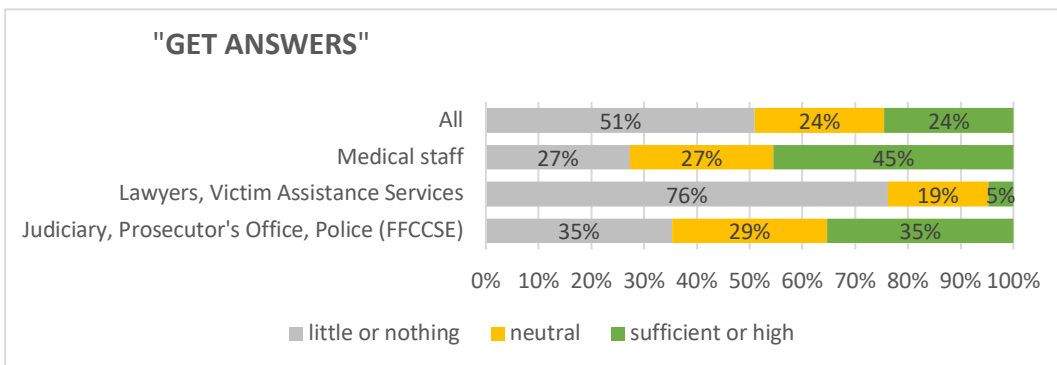
Graph 16. About her participation. Own elaboration based on the surveys carried out. (2020)



Graph 17.. About her privacy. Own elaboration based on the surveys carried out. (2020)



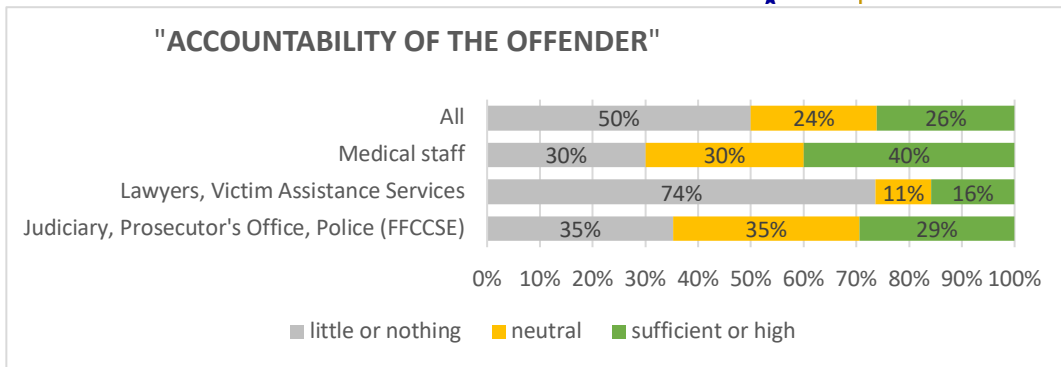
Graph 18.. About her security. Own elaboration based on the surveys carried out. (2020)



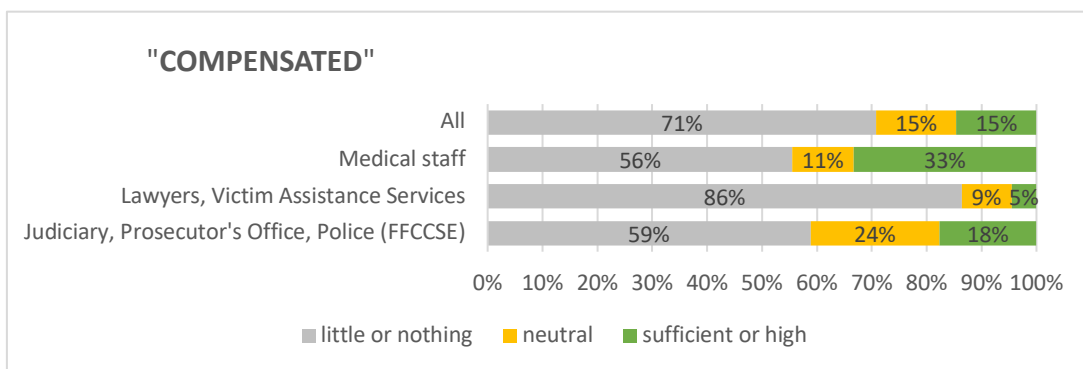
Graph 19. Get answers. Own elaboration based on the surveys carried out. (2020)



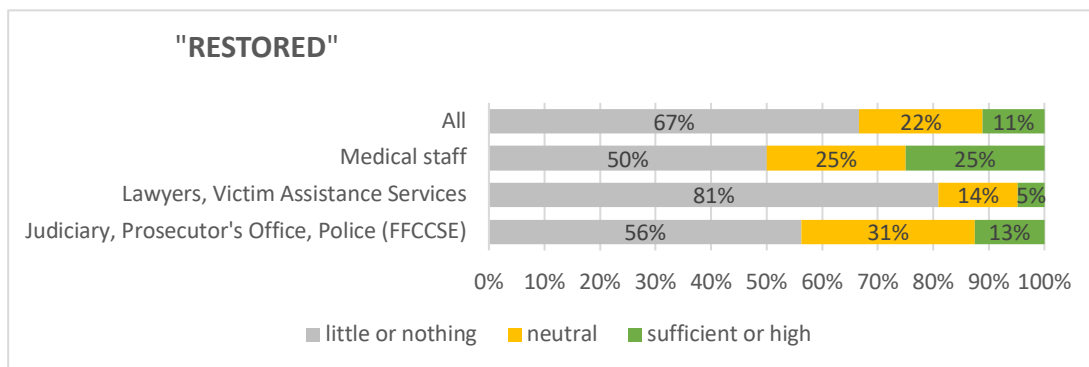
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Graph 20. Accountability of the offender. Own elaboration based on the surveys carried out. (2020)



Graph 21. Compensated. Own elaboration based on the surveys carried out. (2020)



Graph 22. Restored. Own elaboration based on the surveys carried out. (2020)



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