

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

SPANISH NATIONAL REPORT

EXECUTIVE REPORT RETREAT

MAIN CONCLUSIONS

- *The Spanish legal system contains numerous and interesting instruments for the protection of the interests of the victim of sexual crime.*
- *In the practice view, proceduralism, and lack of interests and resources lack of awareness of victims' interests and the impact of biases and stereotypes on operators prevent effective compliance.*
- *Victims face numerous serious obstacles to report the crime and to participate constructively in the criminal justice process.*
- *In the immediate phase after the crime, the greatest neglect of victims' interests and the most serious violation of their rights take place, as the system is not adapted to their special situations.*
- *The lack of specialisation of the justice system in this type of gender-based violence exacerbates the situation, since in Spain it is not regulated and included as gender-based violence, as pointed out in the GREVIO report.*
- *Victims' perspectives are completely different to professionals' ones (sharpened in the assessment from the Judiciary, the Prosecutor's Office and the Law Enforcement Agencies).*
- *All the changes needed to change the dynamics and experience of re-victimisation require placing personalised reparation for victims at the core of the criminal process.*
- *Proposals are focused on legislative modifications, improvement of protocols, specialisation and training of professionals, more resources and strengthening and specialisation of restorative mechanisms.*

RE-TREAT PROJECT

RE-TREAT project aims to boost changes in the criminal proceedings within the justice systems in order to improve their responsiveness to particular needs of victims of sexual crimes. This report examines the obstacles that victims of sexual violence in Spain may face when reporting and the eventual criminal proceedings at different stages.

SEXUAL VIOLENCE

According to different institutions, the prevalence of sexual violence is really high in the world. The protection of victims of sexual violence is an objective that has reached 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.

CRIMINAL JUSTICE VERSUS SEXUAL CRIMES IN SPAIN

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 the special interests and protection (art. 22).



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

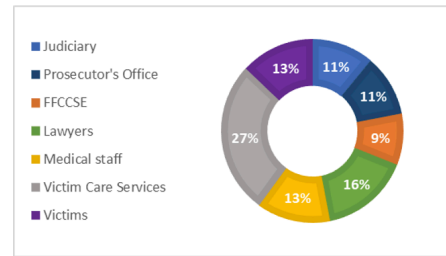


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The Directive refers directly and indirectly to the interests of the victim. Some of these interests, have the status of a right, others are under the protection of a right, and others can be diffusely protected by rights or good practices.

In the analysis of our justice systems regarding the situation of sexual crimes victims, the approach applied is not an assessment of the victims' experience of justice, nor of their justice-related interests, but an evaluation of the situation of the victim's different personal interests related to the justice system. (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).

“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”



Graph 1. Persons interviewed

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

Spanish Criminal Code dedicates its Title VIII, of Book II, to “Felonies against sexual freedom and indemnity”.

Criminal proceedings for sexual offences in Spain can, in general, adopt two types of procedures: The Ordinary Procedure, for the prosecution of those crimes with an abstract penalty of more than 9 years of imprisonment; and the Abbreviated Procedure, for those sexual crimes which entail imprisonment up to 9 years and any other penalty of different nature.

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.

In both national bodies there are relatively specialised groups relatively specialised groups in the field: the Spanish Military Police has had the *Women-Minor Teams* (EMUME) and the Family and Woman Assistance Units (UFAM).

There are recently created Victims’ Support Offices (OAV) which are currently underdeveloped in practice.

In terms of reports of sexual offences, according to the data provided by Eurostat¹, Spain is below the average of the States analysed. In the United Kingdom, 247.81 crimes of sexual violence were reported per 100,000 inhabitants in 2018, in

INTERESTS OF VICTIMS OF SEXUAL CRIME AND THE JUSTICE SYSTEM	
1. Privacy (art. 21)	a. Shame and informative self-determination b. Anonymity (art. 23)
2. Information (art. 6, art. 7)	
3. Participation	a. To be heard (art. 10) b. To ask, to demand, to agree, to get answers (art. 11, when no prosecution, art. 12 restorative justice, art. 13 legal aid)
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)	
10. Validation y vindication	

Table 1. Interests of victims of sexual crimes and the justice system with reference to articles of the 2012 Directive

METHODOLOGY

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

1

<http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>



Sweden 190.45, while in Spain 24.89 reports were registered per 100,000 inhabitants in the same year.

In 2019, 1,698 sexual crimes² were investigated in Spain, representing 0.9% of the total number of recorded crimes. According to data from the National Instituto of Statistics (INE), in 2019, there were 3,296 convictions of adults for sexual offences, a figure that increases year after year³, with sexual abuse crimes predominating⁴.

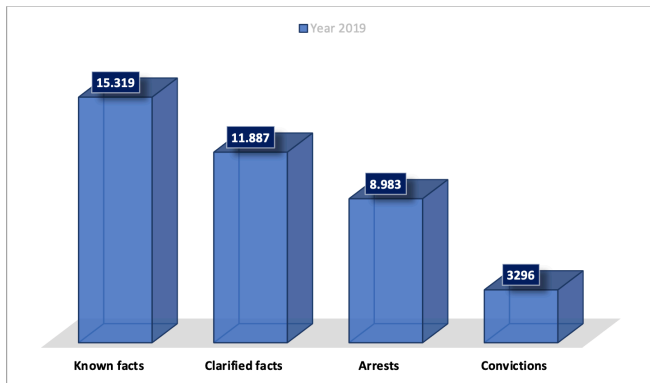
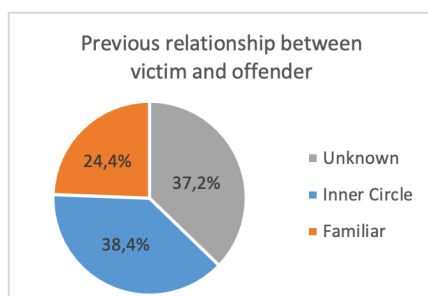


Table 2. Proportion of known facts, clarified facts, arrests and convictions related to sexual crimes. Source: Ministry of the Interior. Year 2019

In accordance with the total sample analysed, 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 Interior.

In adults' sexual crimes cases, 95.2% of the victims are women (779). The average age of the victims is 29.6 (median age: 25 years-old).

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



Graph 3. Previous relationship

² <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>

³ https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176793&menu=ultiDatos&idp=1254735573206

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

REPORTING THE FACTS TO 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.

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 moment 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 gender violence.

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

It seems that the situation of dependency, the desire to forget what happened and the lack of knowledge of their rights and the development of the process may affect this decision. In this respect, the media play an essential role in the reproduction of sexist content and in the treatment of information that violates fundamental rights of victims.

“Unlike what happens in the case of gender violence among couples or ex couples, 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 Convention⁵”

⁴ <https://www.ine.es/jaxiT3/Datos.htm?t=25997#!tabs-tabla>

⁵ 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, noviembre de 2020, accesible en <https://rm.coe.int/grevio-s-first-baseline-report-on-spain/1680a077b6>

The victims interviewed agree that one of the most negative aspects is that they have to “tell it too many times”.

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. For instance, it is generally agreed by interviewees that the information on where to file a complaint given to the victims by the Courts is null, due to its content, its form or its absence. This represents an absolute lack of the so-called “Information Justice”.

The operators interpret the victim’s will to file a complaint as a necessary element to continue the proceedings. Law enables the Prosecutor’s Office to prosecute the alleged offender even in the absence of a complain, given the interests at stake. However, in practice, the victim’s wish still prevails. 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 analysed.

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.

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 her partner or former partner. However, some Bar Associations have signed agreement with the regional governments in order to extend free legal aid to victims of sexual violence, regardless of their financial resources’ availability.

Legal counsel specialization on sexual crimes is strongly driven by personal motivation, especially when working independently. While independent lawyers do not tend to come across this type of crimes often, the Legal Orientation Service indicates that it assists an important number of victims of sexual crimes.

The waiting times for victims at the police stations or care services are usually short (less than 3 hours) or non-existent. 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.

VICTIM ASSISTANCE SERVICES

There is a lack of homogeneity in the supply of Victim Assistance Services within the country. Victim care is thus provided by legal services, physical or mental care units, social services, information services, NGOs, Lawyers, City Councils, Autonomous Communities or Court. 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.

Professional specialization in these entities depends on their approach, it tends to be very specific, and it is common for these entities to have a multidisciplinary.

Regarding the contact with the service, sometimes, the victim contacts the services directly, in other cases, this contact is the result of a referral from an entity.

The victims interviewed in this Project complained indirectly about the fluctuation of the staff working in the centers, the constant changes of specialist when he leaves the center and is replaced by another professional, which implies creating a new therapeutic bond, as well as retelling what happened. Moreover, the victims interviewed also miss the assistance to the family that needs emotional and psychological support to teach them how to help the victims. Also, the victims interviewed 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 interval among sessions.

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 offender.

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

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. Recently, in the judgment STS 389/2020, of the 10 July (ES:TS:2020:2493) denies the right not to declare if the victim acts as private prosecution in a judicial hearing. This right will not be restored if the victim abandons the cited procedural position.

Furthermore, the situation caused by the health crisis resulting from the SARS-cov-2 coronavirus and the COVID-19 disease has led to an increased use of audiovisual means for the collection of statements, increasing waiting times to an excessive extent.

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

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 appeared in Court.

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. If she is not represented by a lawyer, the Prosecutor's Office stressed the importance of communicating this information to the victim.

ORAL HEARING

A trial for a sexual crime will have generally a minimum duration of 3 years, with a normal length of 4-6 years.

In the judgments of the Provincial Court, 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.

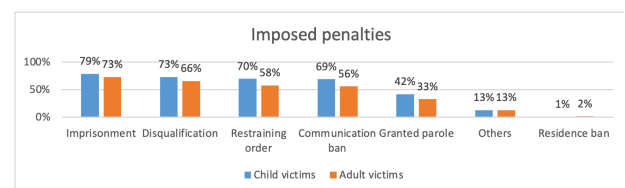
The essential and most relevant evidence supporting conviction continues to be the victim's statement, and, despite the difficulties that it may cause for the victim, it may be sufficient to produce a conviction.

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 secondary victimization and revictimization.

TERMINATION OF THE PROCEEDING

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

When the victims were children, the accused was convicted (totally or partially) in 80% of the cases. When the victims are adults, the accused was convicted in 62% of the cases (guilty).



Graph 4. Imposed penalties

ENFORCEMENT OF THE JUDGMENT

The operators note that the execution of the victim's compensation is a pressing problem. Different professional groups highlight that 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 proposed that the State makes an advance payment, and that the victim public aid system is improved.

The conducted follow-up studies of convicted offenders stated that offenders tend to re-offend less than other types of crimes. When they do re-offend, the crime committed is usually unrelated to sexual crimes.

RESTORATIVE JUSTICE

All the victims interviewed in the Project emphasize that they feel socially sanctioned. The victim of a crime of sexual assault feels that she carries a very important social esteem.

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.

Given the risks of victimisation, referral operators and restorative justice services need to be specialised in sexual victimisation in order to make appropriate use of the tool.

VICTIMS' AND OPERATORS' PERCEPTIONS OF THE JUSTICE EXPERIENCE

From the interviews conducted, it can be concluded that there is a great difference in the perception of the satisfaction of victims' interests. These differences are intensified when comparing the assessment of the victims and that of the professional groups formed by the Judiciary, the Public Prosecutor's Office and the Law Enforcement Agencies. One of the interests most highly valued by these professionals is the *safety* of victims (3.41), being one of the least satisfied interests according to

the perception of the victims (0.83), together with *obtaining answers*.

INTEREST	VICTIMS	JUDICIARY, PROSECUTORS AND FCCSE	PROFFESIONALS
GET ANSWERS	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 2. 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)

PROPOSALS

All the necessary changes revolve around the need to place the interest of the victims at the core of the criminal proceedings, and more specifically:

1. Improve the protocols for a comprehensive approach, giving priority to immediate medical attention, and focusing the service on the interests of the victim, such as rape crisis centres.
2. Provide the victim care offices with adequate and sufficient personnel resources.
3. Reinforce the specialisation of police units.
4. Regulation of the procedural treatment of sexual crime analogous to that of gender violence.
5. Regulatory revision of art. 416.1 of the Rules of Criminal Procedure.
6. Legal aid for victims of sexual crimes.
7. Public nature of sexual crimes.
8. Training of justice system operators in sexual victimisation.
9. Establishment of a system of advance compensation and/or state compensation fund.
10. Inclusion in the victim care services of care for victims of unreported and even prescribed cases.
11. Development of adequate procedures by the prosecution, including in cases that have already been prescribed, including restorative justice.
12. Specialisation of restorative justice services in sexual and child victimisation.



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

<https://sexualviolencejustice.eu/re-treat-project>



Helena Soletó¹, Sabela Oubiña Barbolla², Jessica Jullien de Asís¹, Aurea Grané Chávez¹, Margarita Diges Junco², Candela Galán González², Nieves Pérez-Mata², Anna Fiodorova¹, Federico González Barrera¹, Iván Navarro Papic¹, Rosa Gómez de Liaño¹, Raquel López Jiménez¹, Daniel Rodríguez Horcajo², Soledad Torrecuadrada García-Lozano², Ignacio de Torres Guajardo², Belén Hernández Moura¹, Emiliano Carretero Morales¹, Irene de Lamo Velado¹, Rocío Zafra Espinosa de los Monteros¹, Cristina Ruiz López³, Miriam Peláez Devesa².

¹University Carlos III of Madrid (UC3M)-Spain

²Autonomous University of Madrid (UAM)-Spain

³University of Burgos (UBU)-Spain