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# Stalking: Victims' and Professionals' Views of Legal and Institutional Treatment

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**Abstract:** The studies carried out on stalking in Spain have shown victims are unlikely to formally report these experiences but underscore the need to analyse stalking victims' use of protection systems and the treatment they receive. The objectives of this study were to determine victims' protection needs and reasons for not reporting; to analyse the institutional treatment offered to victims; to determine victims' and professionals' assessments of the existing legal mechanisms, and to explore their receptivity to alternatives to criminal proceedings. To achieve the defined objectives, semi-structured interviews with 17 victims from Spain and 27 professionals were conducted. Among the main findings, victims expressed they wanted to stop stalking and would prefer protection instead punishment of the stalker. Also, stalking victims were detected as such only when they were additionally victims of gender-based violence. Finally, neither victims nor professionals have a clear position on the possibility of introducing restorative justice mechanisms.

**Keywords:** Stalking, legal treatment, institutional treatment, victims, professionals.

## 1. Introduction

Stalking was first classified as a crime in Europe in the United Kingdom, under the 1997 Protection from Harassment Act. It was subsequently criminalised by other countries, such as Austria (2006), Germany (2007) and Italy (2009). However, the true paradigm shift came with the conclusion of the Istanbul Convention in 2011. The approval of that provision led to an increase in the number of European countries classifying stalking as a crime, with Spain being one of the last to specifically criminalise such behaviours. The reform of the Spanish Criminal Code taking place in 2015 through Organic Law 1/2015 criminalised stalking (art. 172 ter Criminal Code) as a crime against freedom, defining it as insistently and repeatedly engaging in an extensive list of behaviours such as surveillance, persecuting, establishing or attempting to establish contact with the victim, or attacking the victim's freedom or property, without being lawfully authorised to do so, that seriously interfere with the victim's ability to go about his or her daily life.

Unlike in other European countries (Istituto Nazionale di Statistica, 2007; Hoffmann, 2006; Office for National Statistics, 2016; Scottish Government Social Research, 2016), in Spain the offence was incorporated into the Criminal Code without the empirical data needed to determine the prevalence and characteristics of these behaviours. Indeed, to date, only three studies have focused on this issue in the country, two of which were conducted exclusively with samples of university students. Despite the paucity of data, the prevalence of victimisation detected by these studies – 11% in the general population (FRA, 2015) and between 14% (Bodelón, Igareda and Casas, 2012) and 40% in the university population (in the latter case, with a self-identification rate of 13.1%) (Villacampa and Pujols, 2017) – confirms that stalking exists in Spain, as well.

These studies moreover sought to determine the coping strategies used by the victims. If telling third parties is understood to be a specific coping measure, the findings show that most victims – between 60.5% (Bodelón, Igareda and Casas, 2012) and 93.4% (Villacampa and Pujols, 2019) – do tell someone about what happened, which could indicate a certain propensity on their part to seek informal support and assistance. This high rate of disclosure to third parties stands in stark contrast to the low rate at which stalking is officially reported – 19.1% amongst university students (Villacampa and Pujols, 2019) and 26% in the general population (FRA, 2015). When victims were asked why they had not reported the incident, they said that it was a situation that could be handled without involving the police (45%) or that the situation was not serious enough to be reported (35%). However, in addition to those reasons, some 18% of the victims also claimed that the police could not or, even if they could, would not do anything to help them (FRA, 2015).

Other than these quantitative data, no study in Spain has sought to analyse the treatment that victims receive from victim service providers and the criminal justice system, or any other aspect related with the victims' and professionals' views on the legal and institutional response to stalking. The existing studies at the international level suggest inadequate knowledge on stalking by some professionals from criminal justice system (Farrell, Weisburg and Wyckoff, 2000) and a poor detection of stalking victims (Klein et al., 2009), due to, mainly, a lack of training on the part of professionals and the tendency to associate stalking almost exclusively with domestic violence, which obscures manifestations of the phenomenon occurring in other contexts (Cox and Speziale, 2009; Morris, Anderson and Murray, 2002). Both, the deficient knowledge of stalking and the poor detection of stalking victims have a negative impact in relation to the institutional response to stalking cases because they are not recognisable by the criminal justice system. In relation with the victim's and professionals' assessments of the existing legal mechanisms, one of the common identified problems is the difficulty of obtaining protection measures (Klein et al., 2009; Morris, Anderson and Murray, 2002). In addition, stalking victims report that the services received do not meet their main needs. In particular, they emphasise the inadequacy of the services received from the professionals responsible for delivering them, who trivialise their situation and fail to offer them the information and protection they require (Brewster, 1998; Finch, 2001; Galeazzi et al., 2009; Korkodeilou, 2014 and 2016; Melton, 2005; Nikupeteri, 2017; Purcell, Pathé and Mullen, 2002; Sheridan, Davies and Boom, 2001; Taylor-Dunn, Bowen and Gilchrist, 2018; van der Aa and Groenen, 2011; Worsley et al., 2017). Finally, although there is no research on the views of restorative justice in stalking cases, when it has been carried out in relation to the victims' views of restorative justice in gender-based violence, they seem to agree on its implementation (Pelikan, 2000; Pennell and Burford, 2002; Curtis-Fawley and Daly, 2005; Mills, Maley and Shy, 2009; Lünemann and Wolthuis, 2015).

## **2. Objectives**

In light of the verified lack of studies on this issue and the obstacles posed by the protection systems reported by victims and professionals, a qualitative empirical study was undertaken with both people who had experienced this victimisation process and professionals who might have come into contact with them. The research objectives were fourfold: 1) to determine victims' protection needs and reasons for not reporting the situation; 2) to analyse the institutional treatment offered by assessing certain professional groups' knowledge of this victimisation process and ability to detect the victims; 3) to determine victims' and professionals' assessments of the existing legal mechanisms including both the criminal law response to this reality and legal protection measures; and 4) to explore their receptivity to the incorporation of alternatives to criminal proceedings, whether of a restorative justice or protective nature.

### 3. Methodology

To analyse these issues, an exclusively qualitative method was used, as it was deemed better suited to achieving the research objectives. This is because qualitative methods make it possible to study social phenomena in the environment in which they occur, without distorting the reality, thereby enabling a greater exploration of the studied phenomenon (Denzin and Lincoln, 2002).

#### 3.1. Sample

Two samples were used. The first consisted of a victim sample which was collected through a previous statistical sample obtained from a victimisation survey conducted with a total of 1,162 university students pursuing degrees in law, criminology or private investigation in the Spanish regions of Catalonia and the Valencian Community. Respondents who self-identified as stalking victims could voluntarily leave a telephone number at which they could subsequently be contacted for an in-depth interview. This process was carried out ensuring anonymity and without asking victims for any personal information other than the aforementioned contact number or, where applicable, an e-mail address. As a consequence, a total of 26 victims of stalking left their contact number or e-mail address. After contacting them, a total of 17 (65%) victims finally agreed to be interviewed. Their main characteristics are summarised below (Table 1):

**Table 1: Characteristics of the qualitative sample of victims (n=17)**

Identifier	Gender	Age	Province	Previous relationship with the stalker
V1	Woman	19	Barcelona	Friend
V2	Woman	21	Barcelona	Former partner
V3	Woman	19	Barcelona	Classmate
V4	Man	24	Barcelona	Stranger
V5	Woman	19	Tarragona	Classmate
V6	Woman	19	Barcelona	Family member
V7	Man	54	Tarragona	Former partner
V8	Woman	20	Barcelona	Stranger
V9	Woman	20	Girona	Acquaintance
V10	Woman	21	Valencia	Classmate

V11	Woman	22	Valencia	Classmate
V12	Man	18	Alicante	Friend
V13	Woman	34	Lleida	Acquaintance
V14	Woman	26	Lleida	Stranger
V15	Woman	19	Tarragona	Acquaintance
V16	Woman	36	Alicante	Stranger
V17	Woman	24	Valencia	Former partner

In addition to the victim sample, a purposive sampling process was used to obtain a sample of professionals amongst victim service providers and criminal justice system professionals. In the selection of the institutions, the fact that the professionals could have had contact with stalking victims was taken into account, as well as the fact that different agents were represented within each group of professionals. To this end, several institutions were contacted with the purpose of requesting the participation of professionals who could have dealt with this type of victim and all those contacted accepted to take part in the research. The people in charge of those institutions were spoken to and the necessary authorisations were obtained. The details of those professionals willing to participate in the study were then provided and they were contacted by telephone or e-mail.

This sample ultimately consisted of 27 professionals, 14 from the criminal justice system (51.9%) – specifically, 6 police officers, 3 public prosecutors, 3 judges and 2 lawyers – and 13 victim service providers (48.1%) – including 8 psychologists, 2 social workers, and 1 social educator, amongst others. These latter professionals all worked at one of the Offices of Crime Victim Services (OAVD from the Spanish), Specialised Intervention Services (SIE from the Spanish), Women’s Information and Support Centres (CIADs from the Spanish), Women’s Information and Support Points (PIADs from the Spanish) or a similar service. Their main characteristics are shown in Table 2:

**Table 2: Characteristics of the qualitative sample of professionals (n=27)**

Identifier	Gender	Length of service	CJS/VS*	Occupation*	Position/Institution*	Province	GBV* Specialist
P1	Man	6 years	CJS	Sergeant GU	Director, OAC	Lleida	No
P2	Woman	1 year	CJS	Lawyer	Head of legal aid	Lleida	Yes
P3	Woman	6 years	VS	Psychologist	Youth resource centre	Lleida	No
P4	Woman	8 years	VS	Psychologist	University SAP	Lleida	No
P5	Woman	Not known	CJS	Judge	Provincial Court	Lleida	No
P6	Man	18	VS	Psychologist	Officer, OAVD	Girona	No
P7	Woman	Not known	VS	Psychologist	Officer, OAVD	Lleida	No
P8	Woman	Not known	VS	Psychologist	Officer, CIAD	Lleida	Yes
P9	Woman	Not known	CJS	Lawyer	Officer, SIE	Tarragona	Yes
P10	Woman	Not known	VS	Social educator	Officer, SIE	Tarragona	Yes
P11	Woman	Not known	VS	Psychologist	Officer, SIE	Tarragona	Yes
P12	Woman	Not known	VS	Psychologist	Officer, OAVD	Barcelona	No
P13	Woman	13	CJS	Public prosecutor	Deputy prosecutor for GBV	Lleida	Yes
P14	Woman	11	VS	Psychologist	Coordinator, PIAD	Barcelona	Yes
P15	Woman	12	VS	Philosopher	Officer, PIAD	Barcelona	Yes
P16	Woman	Not known	VS	Not known	Head, SIE	Lleida	Yes
P17	Woman	1 year	VS	Social worker	Officer, SIE	Lleida	Yes
P18	Man	Not known	CJS	Public prosecutor	Deputy prosecutor for GBV	Tarragona	Yes

P19	Woman	9	VS	Social worker	Officer, OAVD	Tarragona	No
P20	Woman	Not known	CJS	Public prosecutor	Deputy prosecutor for GBV	Barcelona	Yes
P21	Man	16	CJS	Assistant superintendent ME	Head, URPAC	Lleida	No
P22	Woman	17	CJS	ME officer	Member, GAV	Lleida	No
P23	Man	10	CJS	ME officer	Head, GAV	Barcelona	No
P24	Man	14	CJS	ME officer	Member, GAV	Tarragona	No
P25	Man	9	CJS	Judge	JVM	Barcelona	Yes
P26	Woman	5	CJS	ME officer	Member, GRAV	Barcelona	No
P27	Woman	Not known	CJS	Judge	JVM	Barcelona	Yes

\*CIAD = Women's Information and Support Centre; GAV = Victim Services Unit; GRAV = Regional Victim Services Unit; GU = Guardia Urbana (local police); JVM = Court for Violence Against Women; ME = Mossos d'Esquadra (Catalan regional police); OAC = Citizen Services Office; OAVD = Office for Crime Victim Services; PIAD = Women's Information and Support Point; University SAP = University Psychological Counselling Service; SIE = Specialised Intervention Service; CJS = Criminal Justice System / VS = Victim Services; URPAC = Regional Citizen Outreach and Services Unit; GBV = Gender-based Violence.

### 3.2.Procedure

To achieve the defined objectives, in-depth, semi-structured interviews were conducted. In the case of the victim interviews, the interviewees were allowed to describe their experience freely and, only when they had finished their account, they were asked questions intended to explore in greater detail topics that had not come up spontaneously during the interview. With regard to the instrument, three different interview models were used: one for victims (appendix A), one for criminal justice system professionals, and one for victim service providers (appendix B). The two models designed for professionals had a common section on their knowledge of the phenomenon and the identification of victims, as well as the coordination between the various bodies and the appropriate response to these behaviours; however, the questions concerning the type of service or protection offered differed. The interview model for victims had three parts. The first sought to characterise their experience, the second to identify the main harmful effects experienced as a result of the victimisation, and the third to determine which coping strategies the victim had used, including any interaction that the victim might have had with the criminal justice system and his or her satisfaction with it.

All the interviews were conducted in Spanish and by the same interviewer in order to be consistent with the dynamics of the interviews. Participant's quotes cited in the results section were also originally in Spanish or Catalan, and were later translated into English by an English native speaker. Victim interviews were carried out through Skype, while interviews with professionals were undertaken in-person. All of them were conducted between May 2015 and July 2016, then recorded and transcribed in full with the explicit permission of both the victims and the professionals. The content of all the interviews was analysed using the thematic analysis methodology, systematising and transforming the original data into more abstract categories, which were then coded (Braun and Clarke, 2006).

## 4. Results

### 4.1. Victims' protection needs and reasons for not reporting the situation

The present study sought to identify stalking victims' main protection needs. As has already been reported elsewhere (Korkodeilou, 2014), when asked about this aspect, victims say that what they most want is to cease to be the target of insistent attention by the offender. Additionally, they say that, should the situation end in criminal proceedings, they would prefer protection to punishment of the stalker:

V1: 'I think that what I would have liked is for him to have understood that I didn't want anything to do with him and for him to have stopped having that attitude towards me (...). I don't think that a punishment would have served any purpose. I think he had to be made to see reason.'<sup>1</sup>

V14: 'I would definitely choose protection. If he were to be punished just for following me, I think he would end up thinking about me more, probably in a negative way, which could lead him to seek revenge.'

V17: 'Measures to protect me from him. I have no particular interest in having him be found guilty. I just don't want to have to worry about him.'

Despite the desire to put an end to the stalking and obtain protection, only 3 of the 17 interviewees had reported the situation to the police. This is consistent with the low percentage of reporting found in victimisation surveys (FRA, 2015; Bodelón, Igareda and Casas, 2012; Villacampa and Pujols, 2019). Indeed, it was because of this low rate of reporting that the victims were asked why they had decided not to report the situation. As has been reported elsewhere (Acquadro and Varetto, 2017), these reasons included a lack of proof, fear of retaliation, unwillingness to punish the offender, the belief that it was a private issue or that it was not serious enough to warrant reporting, and a lack of confidence in the effectiveness of the criminal justice system and even fear of secondary victimisation. To this end, the interviewees explained:

V4: 'My mother found out (...) and she told me that I had to go to the police, but I didn't think it was feasible, because, remember, I'm from [a small city], so we all know each other, including the police. It's a little embarrassing.'

V5: 'It wouldn't have helped at all.'

V7: 'You can say, "I'm going to the police", but I had a feeling that (...) I would go there only to find that, not her, but the people close to her, her brothers, her father, her mother (...) might seek retaliation.'

V9: 'Due to the lack of proof, there was nothing we could do, because when it happened, he and I were alone.'

V11: 'In the end, I decided not to report it. I was afraid to report it because of what they might do, or in case the crime wasn't such a big deal.'

V16: 'I wanted him to leave me alone and forget about me and leave and not to see him ever again, in a court or anywhere else.'

## 4.2. Institutional response to stalking cases

### 4.2.1. Professionals' knowledge of stalking

As the second research objective was to analyse the institutional treatment offered in these cases, beginning by assessing professionals' knowledge of stalking, the aspects initially addressed in the interviews were related to this issue. Specifically, the questions sought to determine, first, the professionals' knowledge of the phenomenon in general; second, their degree of knowledge of the existing legal mechanisms for protecting victims; and, third, the level of training received on this type of victimisation. Finally, the interviewees were asked to assess the sufficiency of their knowledge of this reality.

With regard to the first issue addressed, i.e. knowledge of stalking in general and, more specifically, the conceptualisation of the phenomenon, only one of the interviewed professionals openly acknowledged not knowing what stalking was ( $n=1$ ; 3.7%). However, amongst the interviewees who claimed to be familiar with this reality, not all provided definitions that matched the conceptualisation of the phenomenon found in the literature (Villacampa, 2009). This finding was consistent with those of other studies (Farrell, Weisburg and Wyckoff, 2000). Thus, one group of professionals ( $n=8$ ; 29.6%), consisting solely of people from the criminal justice system, characterised stalking exclusively based on its legal definition, without offering evidence of any conceptualisation process identifying the essence of the phenomenon beyond what is indicated in the Criminal Code. The following excerpt offers a clear example of this:

P20: 'Well, what it says in the Code. (...) I have nothing else to offer, no opinion of what the lawmakers do. For me, stalking is the crime included in the Criminal Code, in the reform that entered into force on 1 July 2015.'

However, a second group of professionals chose to give their own definitions, regardless of how the phenomenon is conceptualised by law ( $n=19$ ; 70.4%). The most common proposal formulated by this second group ( $n=10$ ; 37%) identified stalking exclusively as a manifestation of domestic and/or gender-based violence, in keeping with the findings of earlier studies (Morris, Anderson and Murray, 2002). This trend was clear amongst both victim service providers and criminal justice system professionals:

P6: 'The concept I have is one of persecution and harassment, mainly in the field of gender-based violence. By a man of a woman, usually when there has been a previous relationship, even when they did not live together as a couple.'

P22: 'Well, it's harassment, within the family.'

P26: 'It's another form of imposition, of control over the woman, of gender-based violence or domestic violence, if it is done to a man.'

In addition to the above, many of the interviewees identified the phenomenon as a specific strategy for controlling the victim in a context of inequality between the victim and the perpetrator, usually in the aforementioned contexts of gender-based and/or domestic violence ( $n=8$ ; 29.6%). In this regard, some of these professionals explained:



P8: 'It is exercising control over the other from a certain distance.'

P16: 'This stalking happens because violence feeds on the domination and control the man wants to exercise over the woman.'

P21: 'For me, it is a way of trying to control them, of trying to get something out of them.'

The professionals additionally tended to define stalking based on its phenomenology, especially through the behaviours that make up the stalking pattern ( $n=8$ ; 29.6%):

P7: 'It refers to constant telephone calls, messages, harassment or anything else that might seriously infringe on the victim's freedom even when there is no violence.'

P24: 'It begins by telephone, with calls or texts on WhatsApp. Then it graduates to social media. It can happen at work, at home, in person, with stakeouts from a vehicle...'

In a minority of cases ( $n=2$ ; 7.4%), the phenomenon was characterised in terms of the consequences for the victim:

P9: 'It is a form of harassment that forces the victim to have to change all of their daily habits or causes enough anxiety or agitation to affect them emotionally.'

P25: 'It is a type of harassment that, due to its intensity, interferes with the person's life.'

Finally, 2 of the 27 interviewees (7.4%) equated stalking with an aggravated form of harassment:

P1: 'Stalking, for me, is aggravated harassment.'

P12: 'For me, it is really severe, really exaggerated harassment.'

Second, with regard to knowledge of the legal mechanisms for protecting victims as a final aspect through which to measure the professionals' degree of knowledge of these processes, 20 of the 27 interviewees (74.1%) knew that, as a result of the 2015 reform of the Criminal Code, these behaviours had been specifically criminalised. In particular, all the criminal justice system professionals and nearly half the victim service providers – 6 of the 13 interviewees (46.2%) – had this information. The professional group with the least legal knowledge was that of victim service providers who did not work at victim services offices, perhaps because their interaction with the criminal justice system was more sporadic. Beyond this issue, the professionals were asked whether they were aware of the existence of any action protocols to be followed. In this regard, all 27 interviewees responded that there was no specific protocol for cases of stalking, but they were familiar with the protocols concerning gender-based violence.

The third aspect measured to determine the professionals' degree of knowledge of stalking has to do with the training received on the matter. This issue is of particular interest insofar as increased training can lead to more effective detection of victims, as shown in previous qualitative studies conducted with professionals (Farrell and Pfeffer, 2014; Renzetti et al., 2015; Villacampa and Torres, 2017). When the professionals were asked about the training received, it became clear that none had received any specific training, although most of the interviewees reported having broad training on gender-

based violence ( $n=17$ ; 63%) or on victim services in general ( $n=4$ ; 14.8%). Separately, some of the interviewees, mostly from law enforcement, reported having received training on the changes made to the Spanish Criminal Code in 2015, albeit none that specifically addressed the crime of stalking ( $n=7$ ; 25.9%).

With regard to the assessment of the sufficiency of the professionals' knowledge of this reality, a large disparity was found between the victim service providers and the criminal justice system professionals. Whilst virtually all the professionals from the field of victim services were quite critical of their lack of training ( $n=11$ ; 40.7%) (I6 and I8), the criminal justice system professionals ( $n=9$ ; 33.3%), especially the prosecutors and judges, were much less likely to find fault in this regard (I20 and I25):

P6: 'We do training sessions where we talk about gender-based violence, but nothing specific is said about this problem. These behaviours do come up, as potential behaviours by the offender, but it is not specified. They are not given the importance they deserve.'

P8: 'The city council does its own training on gender-based violence, but nothing specifically on stalking. It would be really important to detect it. Because if you're not trained, you don't see it; and if you don't see it, it doesn't exist, so you can't help that person. Nor will you be able to help them become aware of it.'

P20: 'I mean, we're public prosecutors, so I think we already have the training. The Prosecutor General's Office is always preparing courses on this, but, really, we're assumed to have that training, you know? But, I mean, specific training to address this crime? No. As far as I know, I mean, not in my case, because I don't think it's necessary.'

P25: 'Do you think it would be advisable for you to be offered training on this phenomenon?' 'I don't know if it's... I mean, any kind of training is always a good thing, but I don't think this is our biggest shortcoming as judges.'

#### **4.2.2. Detection of victims by professionals: the exclusive association of stalking with gender-based violence in couples**

In addition to the professionals' knowledge of these processes, a second aspect examined to gain insight into the institutional treatment offered was the ease with which the professionals were able to detect stalking victims, as similar prior studies have shown that professionals have trouble identifying this process (Klein et al., 2009). Based on the interviews conducted for the present study, virtually no victims of stalking who have not previously or simultaneously been subjected to physical or psychological violence by their partner or former partner are detected, even when the focus on domestic violence has been broadened in the definitions of the phenomenon. The interviews point to three factors that may be helping to obscure the stalking pattern when it occurs in relational contexts other than romantic relationships.

The first reason that might explain this failure to detect stalking outside the context of violence in couples is the victims' own lack of awareness that they are being subjected to these behaviours. This finding, which has already been reported elsewhere (Villacampa and Pujols, 2017), was also the conclusion reached by some of the interviewed professionals, as can be seen in the following excerpts:

P8: 'It is a phenomenon that is not identified as violence, so the woman might not go to the service for help. That's not to say that there isn't any, but gender-based violence is already very widespread. Women are very aware of it. I think that society is not yet sufficiently sensitised.'

P9: 'Sometimes the woman does not recognise this as violence.'

P21: 'We get few reports compared to the reality. The vast majority are related to gender-based violence.'

Second, the professionals' aforementioned lack of training on stalking, coupled with their extensive training on gender-based violence in the context of couples, leads them to associate the two phenomena with each other, such that stalking is conceived of as an integral part of gender-based violence. Specifically, 21 of the 27 professionals (77.8%) stated that stalking was exclusively an issue of gender-based violence:

P6: 'I don't think we have ever seen a situation that did not involve a couple.'

P7: 'It is gender-based violence, as friends, so it wouldn't come in as stalking.'

P8: 'It is considered gender-based violence. Stalking other than in the context of the couple, no.'

P26: 'When there is stalking, it is just another small point within other conflicts that come up, whether physical abuse, sexual abuse... It is associated with gender-based violence.'

Third, the victim and offender profiles that the professionals work with are identified with those related to domestic violence. The interviewees' image of the victim – in 20 out of the 27 cases (74%) – was that of a woman who had previously been victimised by her current or former male partner. Likewise, the stereotype created for the offender matched that of an abusive man, and in some cases was even associated with alcohol or drug addictions and a low socio-cultural status ( $n=3$ ; 11.1%). Thus, according to some of the professionals:

P1: 'Most of the reports are usually from broken families (...). So, they are usually uneducated. They are usually people from a certain social class (...). Almost all of them tell you the same thing, that the person drinks or does drugs.'

P16: 'Women are the ones who experience it.'

P22: 'Most of them are women who have been assaulted by men. They were their partners.'

In addition to the cases in which the stalking pattern is not identified, in those cases in which it is, it is often masked by the behaviours that are generated in the situation of violence and is not reported or specifically addressed. Thus, the professionals indicated that they had not recognised stalking as an independent phenomenon even though it appeared in the victims' accounts. In this regard, the interviewees often distinguished

between two types of stalking: that which they called ‘pure stalking’, i.e. those stalking behaviours that do not follow or coexist with other types of violence, and that which they called ‘mixed stalking’, understood as a control strategy framed within a broader context of physical and/or psychological violence. To this end, they stressed that ‘pure stalking’ is uncommon in professional practice:

P7: ‘Mixed stalking is more common. There aren’t many cases of just pure stalking, solely and exclusively.’

IP15: ‘I don’t remember any case in which there had not at least been previous psychological violence, within the couple (...). Usually, it is a continuation.’

P24: ‘Stalking never happens alone. It would be mixed with other types of abuse. I have not seen a single account classified as only stalking since the law was changed.’

P25: ‘I would almost say that we would see it, if there is regular violence, as another sign. But as an independent act? I don’t think the prosecutors... I’d never thought about it that way.’

### **4.3. Assessment of the regulatory response to stalking**

#### **4.3.1. Substantive-criminal treatment of the phenomenon**

With regard to the third research objective, concerning professionals’ and victims’ assessment of the legal response to stalking, all of the professionals regarded the specific criminalisation of these behaviours since the 2015 reform of the Criminal Code as a positive development ( $n=27$ ; 100%), especially insofar as it increases the visibility of the phenomenon:

P7: ‘It sheds light on something that existed before, but now it is visible. I think that is good in this case.’

P9: ‘It was a crime that was hidden and wasn’t seen. Now it is more visible. With the new wording, now it is easier to detect.’

P15: ‘I think it was very necessary because it was largely invisible. Despite being such an important part, it was largely obscured.’

In order to explore the issue in greater depth, the interviewees were asked if they had identified any difficulties in criminalising typical stalking behaviours prior to the Criminal Code’s reform. The professionals indicated that there were few cases in which it had not been possible to provide a criminal response to stalking prior to its specific classification as a crime, given that in most cases these behaviours occurred in conjunction with other behaviours that did merit a criminal law response:

P24: ‘These attitudes did not usually happen alone, but rather were accompanied by insults, threats, coercion or assault. These more specific things were classed as offences.’

P25: ‘Not a lot, because stalking that does not involve any other crime is unlikely. Stalking in which no other crime was committed was rare.’

However, most of the criminal justice system professionals ( $n=12$ ; 44.4% of the interviewed professionals as a whole) acknowledged that stalking cases in which other criminally prosecutable behaviours were not taking place at the same time were hard to fit within the definitions of the crimes of coercion or threats, to which this behavioural pattern had been limited until these behaviours were specifically criminalised:

P2: 'A threat is different from this kind of persecution or harassment and it could only be classified as a threat.'

P18: 'Judges were very reluctant to apply the crime of coercion, because it implies intimidation, it implies violence.'

P25: 'It was my understanding that it was not a crime, that it did not fall under the offence of coercion, because for coercion there has to be violence, and so I ended up shelving the cases, but it made me uneasy because I could see that a response was needed.'

In contrast, one of the interviewed judges thought that, although the inclusion of the new criminal offence was positive insofar as it helps to make the phenomenon more visible, there were already other criminal offences under which these behaviours could be interpreted to fall:

P27: 'In my view, it does not introduce that many changes, because prior to that point, there were already instruments to punish it. Because, well, I think stalking as it is defined under Art. 172 ter CP could be understood to fall under coercion.'

To explore the issue of the criminalisation of these behaviours in greater depth, the legal professionals were asked what problems they thought the new classification might bring. In this regard, one of the most controversial points was the failure to define the typical outcome of the crime. A total of 4 of the 14 interviewed criminal justice system professionals (28.6%) mentioned this:

P2: 'The problem is determining up to what point it is understood to be stalking and at what point it is not.'

P18: 'The crime requires a serious disruption of the victim's ability to go about their everyday life. I think it depends on the behaviours. For example, if all it is is constantly calling someone, I don't think that would fall under the crime.'

P27: 'The wording of the crime is a bit... Of course, serious disruption is a very subjective factor.'

Finally, the interviewees mentioned the article's confusing wording, which they felt made it difficult to apply:

P13: 'Sometimes, it seems like it's a bit of a catch-all. You know what happens? It confuses me. You have to read it very carefully not to get confused.'

#### **4.3.2. Institutional treatment offered to victims, protection measures offered and problems related to achieving them**

As part of the third research objective, consisting in determining the interviewees' assessments of the legal mechanisms, efforts were made to identify the problematic

aspects of the support and protection measures offered to stalking victims, both in the field of victim services and by the criminal justice system. In the professionals' opinion, there are numerous legal mechanisms to protect victims. They explained that victims have access to all the general protection instruments existing in the criminal law system and further stressed that they receive redoubled protection when the stalking takes place in the context of domestic and/or gender-based violence.

However, despite considering these legal mechanisms for protecting stalking victims sufficient, the greatest obstacle they identified in terms of legal protection was the odyssey that victims must undertake to obtain it. The main problems identified in how the services that come into contact with victims are described below.

#### **4.3.2.1. The victim services-criminal justice system relationship: between coordination and mistrust**

First, with regard to the professionals' performance, all the interviewees stated that there is intense coordination between the various services (local police, Catalan police, victim services, primary care centres, schools, etc.), mainly guided by the action protocols for gender-based violence:

P21: 'Let it be clear that our approach is coordinated. We coordinate with other social actors, with whom we meet regularly.'

Nevertheless, one of the most revealing findings was that most of the victim service providers interviewed showed absolute distrust in the judicial system – although not in the police authorities – with some even advising the stalking victims they dealt with not to report the situation:

P12: 'In this case, I recommended not reporting it, because they would never have obtained a court order or judicial measure.'

P19: 'If only we got more cases of people who had not reported the situation so we could advise them. Because they come here with certain hopes and those hopes are dashed here.'

#### **4.3.2.2. Secondary victimisation**

According to the professionals, the most problematic aspect of the judicial journey that victims must undertake to obtain protection is the secondary victimisation to which they can be subjected, often influenced by the lack of training of the legal professionals whom they deal with. This can be deduced from the following passages:

P9: 'The women are questioned a lot. Even the court professionals are not sensitised or lack training.'

P12: 'You find lawyers, public prosecutors, judges who ask very impertinent questions, and in favour of the offender, who harp on the victim much more.'

However, one interviewee was sceptical about entirely eliminating the harm done to the victim, considering it intrinsic to the operation of the judicial system:

P25: 'I can't just walk in and expect to be able to report something without anyone casting any doubts. It is the main source of evidence. There is a right of defence. Of course there is secondary victimisation, but I do not think there is any alternative.'

### **4.3.2.3. Difficulty of providing proof**

As reported elsewhere (Morris, Anderson and Murray, 2002; Logan, 2010), the second obstacle identified by the professionals to the adoption of protective measures is the difficulty involved in proving the facts, which often leads to the shelving of the proceedings or the acquittal of the defendant. As a result, the victim protection measures either directly cannot be obtained or they cease to have effect as soon as the acquittal is granted. In relation to this problem, some of the interviewees indicated:

P12: 'A lot of acquittals occur due to a lack of evidence.'

P14: 'A lot of times, the complaint is shelved; it does not go forward. And then there is the proof of the stalking... It is hard to prove.'

P27: 'The admission by the person being investigated of having sent e-mails or made calls would not be enough to open oral proceedings. It is much easier, from an evidentiary perspective, to go for a crime of coercion than a crime of harassment.'

### **4.3.2.4 Victims' dissatisfaction with the criminal justice system**

In order to determine the assessment of the institutional treatment offered to victims, the people who had actually reported a situation were also asked. Based on the interviews conducted with the victims, a complete dissatisfaction with the criminal justice system could be deduced, due both to the poor functioning of the administration of justice and the system's slowness. This finding is consistent with those of previous studies (Korkodeilou, 2016; Maclean et al., 2013; Morris, Anderson and Murray, 2002; Taylor-Dunn, Bowen and Gilchrist, 2018; Van der Aa and Groenen, 2010). Thus, the interviewees stated:

V3: 'Above all, I would ask for them to be much faster [the interviewee is referring to the criminal proceedings], because they are very slow. The police can't really do anything either. They did nothing.'

V6: 'There was no response because the only response was to shelve the case, according to the judge, for lack of evidence. So, basically, they don't do anything until you've been killed.'

V15: 'The response that I got was very slow. When the trial was held, the prosecutor had misdescribed it, so it was just a scare for him.'

## **4.4. Possibility of alternatives to traditional criminal proceedings: protection and restorative justice measures**

Once the inadequacy of criminal proceedings for satisfactorily obtaining protection measures had been verified, the fourth and final research objective was to determine what the interviewees thought about the possibility of organising alternatives to these traditional proceedings, whether in the form of restorative justice mechanisms or

through civil protection orders or administrative warnings, as in other countries in Spain's legal environment. In order to obtain this information, interviewees had been previously informed about the existing alternatives to criminal proceedings and restorative justice programmes. In this regard, none of the professionals was aware of the existence of any civil or administrative protection mechanisms, making it unlikely for their points of view on the issue to come up in the interviews. In those cases, in which this aspect was stressed, several professionals were dubious about ( $n=10$ ; 37%) or openly against the application of such mechanisms ( $n=5$ ; 18.5%), even when they failed to provide any reasons for this view other than compliance with the law:

P1: 'It is a criminal law response because it falls within the scope of criminal law. You have to follow the steps.'

P27: 'Civil proceedings are not feasible because if we have a classified, unlawful behaviour happening right now, it requires a criminal law response.'

In contrast, a minority of the interviewees ( $n=5$ ; 18.5%) thought that traditional criminal proceedings and alternative mechanisms should be able to co-exist:

P4: 'These two options need not be mutually exclusive. Both should be possible.'

P24: 'In my opinion, the solution lies not in the sphere of criminal law, talking about trials, judgments, sentences, but rather in requiring this person to undergo awareness training.'

P27: 'As a criminal lawyer (...) I would eliminate a lot of behaviours from the Criminal Code and I would effectively seek other types of solutions for them, other than those of proceedings. Might stalking be one of them? Well, it might.'

The interviewees were more likely to talk about their opinion of the possibility of introducing restorative justice mechanisms in the context of criminal proceedings, even though most of them focused this possibility only on criminal mediation. Actually, in Spain the only restorative justice mechanism which is legally recognised is mediation and it is specifically prohibited in cases of gender-based violence since the approval of the Integral Gender-based Violence Act 2004, which considers as such only the cases in which female victims are subjected to physical, psychological or sexual violence by their current or former male partner. In this regard, several professionals said that they disagreed with the application of such mechanisms ( $n=13$ ; 48.1%):

P8: 'In my view, in cases of stalking, as in cases of active gender-based violence, I do not think mediation is possible, because for mediation you need equality.'

P13: 'I think that for these types of crimes, specifically, for stalking, the best path is the judicial one. Because, I mean, this type of crime has to persist over time. We're not talking about one-off situations.'

P15: 'Replacing it with mediation would be doing something that has already been done, and you'd be putting two people on an equal footing that they are not on. It is not a conflict; it is violence. There is a desire to impose oneself on the other person.'



However, a minority of the interviewees, despite being aware of the legal prohibition on mediation in cases of gender-based violence in Spain, were in favour of applying instruments of restorative justice ( $n=7$ ; 25.9%):

P4: 'I think that mediation is possible. The thing is, not everyone is available for it. There will be cases where they will be, and cases where they will not.'

P7: 'There are cases and cases. As a general rule, not always, but there may be cases.'

P9: 'I don't think that mediation would be a bad thing, provided that consideration is given to when the woman can do it. The woman would have to be strong to be able to and that is not always the case. I would do criminal rather than family mediation.'

Some of the professionals ( $n=4$ ; 14.8%) who disagreed with the application of these instruments in cases of stalking taking place in a context of gender-based violence within a couple did support using them when there were no clear inequalities between the victim and the perpetrator, e.g. in the case of domestic violence, acquaintances, etc. To this end, some of the interviewees explained:

P10: 'It might be good, but, of course, it would have to be caught very early on. When relationships are unequal, it is difficult.'

P12: 'If it is domestic violence, where possible, you have to mediate, because there are mother-child bonds that have to be saved.'

P19: 'Here, there could be an equal mediation. Maybe in cases of child-to-parent violence or other types of violence in the family sphere.'

When the victims were asked about the possibility of using these types of processes, there was a great disparity of opinions: 8 of the 17 interviewees (47.1%) were against the application of restorative justice mechanisms, whereas the remainder (52.9%) were in favour. Those most opposed argued:

V3: 'I don't believe much in mediation because, I'm telling you, they tried it at school... but it didn't go anywhere.'

V7: 'No, there was no criminal mediation in this case... this was already a criminal situation, a criminal situation including insults, threats. The crime had already been committed.'

V14: 'A face-to-face encounter is traumatic, and the existence of a mediator means acknowledging that there is an uncontrolled situation.'

In contrast, the victims who did come out in favour of the use of restorative justice mechanisms indicated:

V5: 'Well, look, that is something that I would have tried [the victim is referring to restorative justice]. Because they might have understood how I felt and I would have understood what they were like.'

V4: 'Maybe. Mainly for one specific aspect. I mean, I would like to know who (...) gave them my phone number. And just to know whether it was a joke or if the guy really had a few screws loose.'

V6: 'Yes, I would have agreed to mediation. If there had been someone impartial, I guess it could have worked and we could have talked things over.'

## **5. Discussion and conclusions**

Regarding the first research objective, this investigation has shown that victims rarely report stalking cases, which is consistent with the low percentage of reporting found in victimisation surveys (FRA, 2015; Bodelón, Igareda and Casas, 2012; Villacampa and Pujols, 2018), because they have little confidence in the criminal justice system (Baum et al., 2009; Bjerregaard, 2000; Feltes et al., 2012; FRA, 2015; Acquadro and Varetto, 2017). In fact, as others investigations have shown, victims demand above all protection, not necessarily punishment, in order to put an end to this unwanted persecution (Korkodeilou, 2014).

The victims' lack of confidence in the criminal justice system can be understandable analysing the findings of the second research objective about institutional treatment offered to stalking. Professionals did not have a single standard concept of stalking. Furthermore, although they were familiar with the standard characteristics of the phenomenon, none of the definitions provided included the three essential elements of stalking according to the literature (Villacampa, 2009). That is, the pattern of unwanted or harassing behaviour, the unwillingness of the victim and the victim's negative consequences as a result of the offender conduct. Moreover, professionals have shown how they tend to exclusively identify the phenomenon as a manifestation of gender-based violence limited to the context of couples, in keeping with the findings of earlier studies (Cox and Speziale, 2009; Morris, Anderson and Murray, 2002). Also, although knowing the available legal mechanisms to protect victims, they are only familiar with those protocols to protect victims of gender violence. Finally, they receive training only to handle cases of stalking that are manifestations of domestic or gender-based violence.

As a consequence of this narrow conception of the phenomenon and tight training to deal with it, stalking that takes place outside domestic and gender-based violence processes remain obscured. The professional capacity to detect stalking victims out of these contexts is clearly diminished and, as a result, stalking episodes taking place outside these contexts go unnoticed or are included in other categorisations.

In order to enhance the detection of and the support provided to victims, professionals should be given information and training on stalking broad enough to allow them to identify its traits regardless of the context in which it occurs. An in-depth training that will go beyond the concept of stalking as a gender-based violence limited to the context of couples will allow a more effective identification of stalking cases, since those related to gender-based violence only account for up to 25-30% of them (Villacampa and

Pujols, 2017; Björklund, Häkkänen-Nyholm, Sheridan, and Roberts, 2010; Fisher et al., 2000; FRA, 2014; Matos et al., 2011; Tjadenn and Thoennes, 1998). In addition, an improved training of professionals may lead to a better institutional treatment as well as an increase in victims' confidence in the criminal justice system.

The third research objective was to assess the existing legal mechanisms for dealing with stalking, including both those which are part of substantive criminal law and those provided for in criminal proceedings. In this regard, the introduction of a specific crime to tackle stalking behaviours is regarded as positive and necessary, in terms of both the increased visibility that criminal law can give to this phenomenon and the legal vacuum existing with regard to this matter prior to the specific criminalisation of these conducts (Tjadenn and Thoennes, 1998; Morris, Anderson and Murray, 2002). However, the introduction of this new specific crime has led to some unease amongst legal professionals, due to the lack of clarity in the stalking Spanish criminal code article's wording; that is, insistently and repeatedly engaging in an extensive list of behaviours, without being lawfully authorised to do so, that seriously interfere with the victim's ability to go about his or her daily life. Specifically, the failure to determine the typical outcome of the stalking crime has been highlighted. In other words, it is said that the typical requirement of the stalker's conduct having to seriously interfere with the victim's life allows for subjective interpretations and creates an area of uncertainty that the professionals find concerning. This is why it would not be inappropriate to think of a crime reform to clarify the meaning of this typical outcome, making it less subjective.

With regard to the legal protection measures for victims, although these measures are deemed sufficient, the proceedings required to achieve them are considered excessively burdensome. The main problems identified were secondary victimisation and the ineffectiveness of the process itself in terms of achieving the protection measures. This is because the cases are often shelved (Logan, 2010) or the offenders acquitted due to a lack of evidence (Morris, Anderson and Murray, 2002). Such difficulties cause victim service professionals and private citizens alike to distrust the judicial system, resulting in a low rate of reporting of this type of crime. However, the arguments cited by these victim service professionals for advising victims not to report the situation refer to the two problematic aspects, also acknowledged by the criminal justice system professionals, already noted above. The interviews conducted with the victims revealed an utter dissatisfaction on the part of those people who have reported the situation. In addition to the reasons adduced by the professionals, the victims cited other reasons, such as the system's slowness, the misdescription of the situation, and the passivity and misunderstandings of the legal professionals, which make the system ineffective for putting an end to the stalking.

In short, even though the criminal-law system has sufficient protection mechanisms, the way in which they must be obtained is not suitable. The identified problems, intrinsic to the very functioning of the administration of justice, result in a distrust that leads many stalking victims not to report the situation (FRA, 2015). The consequence is the necessary relinquishment of the entire body of available legal measures, since they can only be obtained through judicial proceedings. Hence the need

to consider introducing other solely –civil- protective mechanisms (e.g., restraining or non-molestation orders or conditional cautions) in order to prevent victims’ victimisation by the institutions and afford access to protection measures outside the scope of criminal law. These types of protective processes should be designed for victims that do not want a criminal conviction for the offender and could consist of administrative warnings or protective measures taken by the civil courts, as provided for in the legal systems of neighbouring countries, such as the United Kingdom (Ashworth and Redmayne, 2010), Germany (Schöch, 2015), The Netherlands (Van der Aa et al., 2015) or Italy (Baldry and Geus, 2015; Salsi, 2012). The introduction of these alternatives may also facilitate the protection needs of victims that have been highlighted through the first of the objectives of this article. Moreover, to reduce the victims’ victimisation in cases where they wish to resort to the criminal courts, it is necessary to implement joint working patterns between the different agencies (police, criminal courts, social workers, etc.) which deal with stalking cases in order to handle these cases in more effectively and comprehensive manner.

The final research objective consisted in exploring the receptivity to the incorporation of new processes of restorative justice or of a protective nature as alternatives to criminal proceedings. The professionals were somewhat reluctant to make changes, especially with regard to the introduction of civil mechanisms that could be used *ad hoc* to achieve protection measures outside of criminal law. However, this reluctance may have been due to a lack of knowledge on their part of how such mechanisms work and of their effectiveness. Nor was the notion of recourse to restorative justice particularly popular amongst the professionals, especially in cases of stalking linked to gender-based violence in romantic relationships. However, in cases of stalking that take place in other contexts, the number of professionals who would consider the possibility of offering restorative justice mechanisms increased. Therefore, it cannot be ruled out that this reluctance is at least partially due to the prohibition on the use of mediation - the only type of restorative justice programme regulated in Spain - incorporated by the 2004 Spanish Integral Gender-based Violence Act. Amongst victims, opinions regarding restorative justice were divided. Half of them opposed it, on the grounds that it would be ineffective and for fear of having to deal with the offender in person, as well as the belief that it should only be used in mild cases. The professionals’ adverse opinion about the possibility to mediate in stalking cases could be related with their narrow conception of stalking. Moreover, if they were able to detect stalking cases outside gender-based violence processes, they probably would be less reluctant to offer mediation processes to stalking victims. In fact, it has been demonstrated how the implementation of mediation processes or other kind of restorative justice programmes has become a satisfactory experience for victims even when the crime occurs in a context of intimate partner violence (Pelikan, 2000; Pennell and Burford, 2002; Curtis-Fawley and Daly, 2005; Mills, Maley and Shy, 2009; Lünemann and Wolthuis, 2015), so the legal prohibition to mediate in gender violence cases in Spain should be reconsidered.

With regard to the limitations of the study, it has to be stressed that one of its major limits is that the victims’ sample is only formed by university students of law, criminology and private investigation, so the conclusions presented here should be viewed with caution because of their deeper knowledge of legal and criminological issues. In addition, the victims sample size was only referred to self-identified victims. Also, the professionals’ sample was non-randomly selected, so the results should be taken with

caution and should not be generalized. Furthermore, in future studies on this subject it would be interesting to explore in greater depth the possibility of establishing alternative mechanisms to the criminal jurisdiction in Spain, similar to those existing in other European countries. Undeniably, stalking is a social problem that must be addressed, so it is necessary to find a legislative formula that would allow a satisfactory response to these behaviours, especially taking into account the interests of the victims.

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## **Appendix A – Victims interview guide**

1. Did you report the facts?

Report:

- Satisfaction with the Criminal Justice System
- Possibility of restorative justice

Not Report:

- In case you had reported the facts, what would you prefer? Stalker would have been sentenced or other measures was taken to protect to you from stalker? Both?
- In the case of a criminal trial, what would you prefer? A traditional criminal trial, with a hearing before a judge or a restorative justice process in which the stalker agrees to respect a restraining order?



2. The response that you received from the Justice Administration was what you expected?

## **Appendix B- Professionals interview guide**

### **Phenomenon's knowledge**

1. Could you explain to me what stalking is for you and what mechanisms do you know to protect victims?

- Concept: How would you define stalking?
- Existing legal mechanisms: Do you know the legal measures that exist to protect stalking victims?
- Protocols: Do you follow any specific protocol in these cases?
- Training and information: Have you received any kind of training and/or information about stalking?
- Sufficiency of training: Do you think you have received enough training and/or information about stalking?

### **Victims' identification**

2. Are you aware to have assisted a stalking victim?

- Signs: Based in which signs could you detect that the assisted person was a stalking victim?
- Victim-offender relationship: Do you know what relationship the victims had with their aggressors?
- Motivation: Do you know what incited the offender to engage in this behavior?
- Other victimizations: Have these people been previously victimized by this or another person?
- Relationship to gender-based violence: Do you think this behavior is related to gender-based violence?

### **Assistance (mainly to assistance services)**

3. What kind of assistance is offered to victims from your institution?

- Type of assistance: Has the victim been offered psychological, legal, health, financial assistance ...? Has it been referred to another agency/institution?
- Adequacy of assistance: Do you think there are enough resources to assist stalking victims?

### **Protection (mainly to CJS agents)**

1. What kind of protection is offered at police stations or police stations?

- Are victims referred to another agency/institution?
- Do you believe there are sufficient mechanisms to protect stalking victims?

### **Coordination**

6. Is there coordination between institutions (criminal justice system and victim assistance services)?

- Existence of coordination
- Do you think there is enough coordination among professionals? How would you encourage it (specific protocols, multidisciplinary teams, shared electronic files)?

### **Consequences for the stalker**

7. What kind of legal consequence do you think would be appropriate for the offender if stalking were committed?

- Criminal sanction (imposition of a penalty and/or protective measures for the victim)
- Other solutions: civil or administrative protective measures and restorative justice