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SUMARIO

I.- COLLABORATIONS

The judicial police and the reform of criminal procedure · Adriano J. Alfonso Rodríguez

II.- RESEARCH WORK

Death from above: use of attack drones by terrorist organisations · Diego de Lorenzo de Guindos

Montejurra and the Guardia Civil. State of the question and genealogy of some accusations · Juan José Echevarría Pérez-Agua

Mapping criminogenic financial flows: typology, nodes and threats to security · Juan Carlos Fernández Cela

The three pillars of citizen security · Antonio José Leal Bernabeu

The third social sector: citizen science in the field of disappearances in Spain · Pedro Llorens Sellés

The offence of reckless driving with manifest disregard for life (art. 381 CP): frontiers with the eventual intention to commit homicide · Rocío Martín Ríos

The ISKP as a communicative actor: propaganda strategies and the construction of power · Paula M. Núñez-Guerra

Terrorist Propaganda in the Digital Era: Fear, Ideology and Online Recruitment · Rebeca Radío Armindo

Comparison of the TEEXMR programme with professional ballistic comparison microscope programmes · Enrique German Solana Aguilar

The management of human sources by Spanish professionals: a qualitative approach · Juan Tejero

Historical disinformation. Case study: the Castilblanco events · José Manuel Vivas Prada

III.- CASE LAW REVIEWS

Case Law Review 2nd Chamber Supreme Court · Javier Ignacio Reyes López

Case Law Review 5th Chamber Supreme Court · José María López de Celis

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Revista Científica del Centro Universitario de la Guardia Civil
Revista Lógos Guardia Civil

TABLE OF CONTENTS

INTRODUCTION 9

I.- COLLABORATIONS

The judicial police and the reform of criminal procedure 13
Adriano J. Alfonso Rodríguez

II.- RESEARCH WORK

Death from above: use of attack drones by terrorist organisations 53
Diego de Lorenzo de Guindos

Montejurra and the Guardia Civil. State of the question and genealogy of some accusations 83
Juan José Echevarría Pérez-Agua

Mapping criminogenic financial flows: typology, nodes and threats to security........ 105
Juan Carlos Fernández Cela

The three pillars of citizen security 139
Antonio José Leal Bernabeu

The third social sector: citizen science in the field of disappearances in Spain 171
Pedro Llorens Sellés

The offence of reckless driving with manifest disregard for life (art. 381 CP): frontiers with the eventual intention to commit homicide 193
Rocío Martín Ríos

The ISKP as a communicative actor: propaganda strategies and the construction of power 223
Paula M. Núñez-Guerra

Terrorist Propaganda in the Digital Era: Fear, Ideology and Online Recruitment 249
Rebeca Radío Armindo

Comparison of the TEEXMR programme with professional ballistic comparison microscope programmes 277
Enrique Germán Solana Aguilar

The management of human sources by Spanish professionals: a qualitative approach. 301
Juan Tejero

Historical disinformation. Case study: the Castilblanco events. 329
José Manuel Vivas Prada

III.- CASE LAW REVIEWS

Case Law Review 2nd Chamber Supreme Court 355
Javier Ignacio Reyes López

Case Law Review 5th Chamber Supreme Court 383
José María López de Celis

Revista Científica del Centro Universitario de la Guardia Civil

Revista Lógos Guardia Civil

INTRODUCTION

Dear reader,

This issue inaugurates volume 4 of Logos Guardia Civil and is, at the same time, an important milestone in the evolution and maturity of the magazine. The publication consolidates the new numbering system based on volume (year) and number, replacing the ordinal numbering previously used. This change responds to the desire to align with the generally accepted standards in the field of scientific journals, facilitating their identification, citation and academic recognition, and highlighting the trajectory and temporal continuity of the publication.

This decision is part of a broader process of editorial consolidation, endorsed by the recent inclusion of Logos Guardia Civil in the Latindex Catalogue 2.0. This achievement is an important recognition of the work carried out in recent issues to strengthen the scientific quality, editorial transparency and methodological rigour of the journal, and is a stimulus to continue advancing in its positioning within the Ibero-American and international academic ecosystem.

The volume now presented also reaffirms the commitment to an open and plural journal, both in disciplinary and linguistic terms. Along with the publication in Spanish, Logos Guardia Civil consolidates the publication of works in English, French and Portuguese, favouring the international projection of the contents and the exchange of knowledge with academic communities from different countries and research traditions. This multilingual vocation responds to the global nature of many of the phenomena analysed and to the journal's commitment to accessible and shared science.

The impact and circulation data for the year 2025 confirm this positive evolution. During this period, the journal has reached almost 70,000 visits, a figure that is more than three times higher than the previous year. This sustained growth reflects not only an increased reach, but also the growing interest in the published content among researchers, security professionals, legal practitioners and the specialised public.

From the scientific point of view, the issue is structured around one collaborative article, eleven research articles and a case law review, making up a balanced and representative set of the thematic lines that define the journal's identity. The volume opens with a work dedicated to the analysis of the Judicial Police in the face of the reform of criminal procedure, a highly topical issue that invites reflection on the model of criminal investigation and the essential role of specialised police units in any transformation of the system.

The scientific articles address highly relevant issues from historical, legal, criminological, strategic and technological approaches. Some of them revisit past episodes linked to the Guardia Civil, with the aim of critically analysing the construction of certain historical narratives and providing academic clarity in the face of distorted or insufficiently contrasted interpretations. Others focus on contemporary challenges, such as illicit financial flows, Jihadist terrorism and its communicative strategies, extremist propaganda in digital environments or the irruption of new technologies - such as drones - in scenarios of threat and violence.

Citizen security is the subject of a doctrinal analysis that proposes a model structured around prevention, investigation and communication, integrated through mission-oriented leadership. From a complementary perspective, key aspects of professional practice are examined, such as the management of human sources, technological innovation in the field of forensic ballistics or collaboration between public institutions and civil society in dealing with the disappearance of people, highlighting the human and social dimension of security.

The legal-criminal field also includes an outstanding contribution focusing on the crime of driving with manifest disregard for life, analysing its frontiers with the possible intentional homicide and examining the jurisprudential and comparative response to a problem of great social impact.

The issue is completed with the usual review of recent case law from the 2nd Chamber, which addresses issues of notable practical and doctrinal interest, such as searches and searches, the police use of drones, the validity of technological evidence, the actions of undercover agents and the limits between administrative offences and criminal offences. In addition, as a novelty, this time we once again feature a review of the 5th Chamber of the Supreme Court.

With this issue, Logos Guardia Civil reaffirms its commitment to scientific quality, continuous improvement and the dissemination of knowledge applied to security and justice. The evolution of its editorial structure, its growing visibility and its international openness reflect a journal in constant development, faithful to its vocation of public service and to the dialogue between academia and professional practice. On behalf of the entire editorial team, I hope you enjoy it.

Félix Blázquez González
Director of CUGC

Revista Científica del Centro Universitario de la Guardia Civil
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I.- COLLABORATIONS

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Collaboration

THE JUDICIAL POLICE IN THE FACE OF THE REFORM OF CRIMINAL PROCEDURE

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THE JUDICIAL POLICE IN THE FACE OF THE REFORM OF CRIMINAL PROCEEDINGS

Summary: GENERAL CONSIDERATIONS ON THE POLICE MODEL 2. THE INSTRUCTING JUDGE AND HIS COMPLEX "INVESTIGATIVE" ROLE 3. A JUDICIAL POLICE DIRECTED BY THE PROSECUTOR'S OFFICE? 4. THE PROSECUTOR'S AND THE JUDICIAL POLICE'S INVESTIGATIVE STEPS 5. POLICE INVESTIGATION AND FUNDAMENTAL RIGHTS 6. CONCLUSIONS AND BRIEF CONTRIBUTIONS: A NEW JUDICIAL POLICE OR A NEW WAY OF INVESTIGATING? 7.BIBLIOGRAPHY

Abstract: The reform of criminal procedure is a hot topic, raising the question of who should be the governing body: the Examining Magistrate or the Prosecutor in charge of the investigation. However, the current importance of the Criminal Police cannot be overlooked, as it must become one of the essential pillars on which change hinges. Whoever procedurally directs the investigation must be adequately supported by an investigative police unit that fulfills its function of investigating the criminal acts and uncovering those responsible with technical rigor and efficiency. Despite the debate generated, our legal system already provides for a Prosecutor with investigative powers and managerial capacity vis-à-vis the Criminal Police, something that, admittedly, is limited by the presence of the Examining Magistrate. In any case, what is the current situation of the Criminal Police? What is its relationship with the Judge and the Prosecutor? What does comparative law teach us? And, finally, is it possible to establish another form of police investigation?

Resumen: La reforma del procesal penal es un asunto candente donde se plantea la duda de quién debe ser el órgano rector si el Juez de Instrucción o el Fiscal encargado de la investigación. Sin embargo, no puede olvidarse el protagonismo actual de la Policía Judicial que tiene que convertirse en uno de los ejes esenciales sobre el que pivote el cambio. Quien dirija procesalmente la indagación debe verse adecuadamente acompañado de una unidad policial investigadora que cumpla con rigor técnico, y eficacia, su función de averiguar los hechos delictivos y descubrir a los responsables. A pesar del debate generado, nuestro ordenamiento ya prevé un Fiscal con facultades de investigación y capacidad directiva con respecto a la Policía Judicial algo que, es cierto, se ve limitado por la presencia del Juez Instructor. En todo caso, ¿Qué situación tiene la Policía Judicial en la actualidad? ¿Cómo es su relación con el Juez y el Fiscal? ¿Qué nos enseña el Derecho comparado? Y, finalmente, ¿Es posible establecer otra forma de investigación policial?

Keywords: Criminal Police. Prosecutor. Judge. Criminal proceedings

Palabras clave: Policía Judicial. Fiscal. Juez Instructor. Proceso penal

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ABBREVIATIONS

ALECRIM: Preliminary Draft Law on Criminal Proceedings.

BLECRIM: Draft Law on Criminal Proceedings.

EC: Spanish Constitution.

CPPF: French Code of Criminal Procedure.

CPPI: Italian Code of Criminal Procedure.

CPPP: Portuguese Code of Criminal Procedure.

CRI: Constitution of the Italian Republic.

DIA: Anti-Mafia Investigation Directorate.

EOMF: Organic Statute of the Public Prosecutor's Office.

FGE: General State Prosecutor's Office.

FJ: Legal Basis.

LDD: Law on the Right of Defence.

LECRIM: Criminal Procedure Act.

LOPJ: Organic Law of the Judiciary.

LORRPM: Organic Law Regulating the Criminal Responsibility of Minors.

RD: Royal Decree.

RMF: Regulations of the Public Prosecutor's Office.

STC: Constitutional Court Ruling.

STS: Supreme Court Ruling.

ECHR: European Court of Human Rights Ruling.

1. GENERAL CONSIDERATIONS ON THE POLICE MODEL

The role of the Judicial Police in criminal proceedings, elliptically reflected in Article 126 EC, is essential. Firstly, it acts as a receiver of complaints and carries out the first steps to verify the facts presented to it by victims and/or injured parties. Secondly, the police authority can initiate measures with an impact on fundamental rights, which gives it considerable power in the personal sphere of the persons under investigation. Thirdly, the result of the investigation takes the form of a document, the attestation, which sets out a framework of assessment, an initial version of the evidence, which guides the work of judges and prosecutors, which is no small matter, given that it is the material with which they work and which is used to resolve key issues such as the freedom of the person under investigation or the adoption of precautionary measures restricting their rights.

In view of the above, we have witnessed a clear separation between police functions, which are responsible for protecting "public safety", and those of investigating the criminal act. Therefore, there is a task that encompasses the so-called "Governmental Police", proper to Art. 104 CE, where the prevention of crime becomes a core task, that is, to protect people and property by preserving "public tranquillity" (SSTC 104/1989, 8 June, FJ 3º; 55/1990, 28 March, FJ 5º; 175/1999, 30 September, FJ 5º), a function which we differentiate from the task of investigating the crime and its authorship (STC 303/1993, 25 October, FJ 4º). This determines a kind of asymmetry which, necessarily, helps to delimit the former from an operational task which serves to feed the judicial work (or that of the Public Prosecutor's Office) as an investigative police activity of *a preparatory, pre-procedural and administrative nature* where the limitation of fundamental rights, with the exception of detention, is a strictly judicial task. Likewise, as long as it is not reported to the judge or the public prosecutor, it is *autonomous* in nature, in such a way that until the investigated facts emerge in court, the investigating unit develops and carries out the procedures it deems appropriate.

It should be pointed out, returning to initial doubts, that despite speaking of "Judicial Police", what this expression really outlines is the *function itself* (Moreno Catena, 1988, pp.144-145), but not the existence of an independent, autonomous body, completely detached from the governmental function of security. As stated in Instruction 1/2008 of the FGE on the direction of judicial police units by the Public Prosecutor, "The constitutional text does not establish the existence of an independent, autonomous body, completely detached from the governmental function of security:

"The constitutional text does not establish a model for the Judicial Police, but only points out two sole requirements to the legislator: one, the need to create and regulate the Judicial Police and, two, that it should have a functional dependence on Judges, Courts and the Public Prosecutor's Office. In the terms of Consultation 2/1999 of the State Attorney General's Office, the Constitution sets out the task incumbent on the Judicial Police, but does not attribute the function to any body, nor does it make the material and geographical distribution of competence. Strictly speaking, neither does it predetermine whether it is to be constituted as a specific body or as a mere function exercisable by the Security Forces, nor whether its system of dependence on Judges and Prosecutors should be organic or functional, thus leaving the legislator a wide margin of free configuration".

Nor should it be forgotten that our country has a *plurality of bodies with police functions*. State bodies such as the Guardia Civil, the National Police or the Customs Surveillance Service coexist with the police forces of the Autonomous Communities with comprehensive models (Catalonia, Basque Country and Navarre; STC 184/2016, 3 November, FJ 4º). To this scenario we add the Local Police, which depend on the City Councils and which also participate in criminal proceedings (ATS 299/2017, 26 January, Chamber II, Speaker: Soriano Soriano, FJ 1º) or the functions attributed to forestry agents (art. 58.a) of the Ley de Montes 43/2003, 21 November) whose specific training in matters of fires, and their causes, would make them collaborators of the investigating unit in charge of delimiting the identity of the perpetrators for the purposes of integrating the attestation, although they should not strictly speaking be considered a police force (Rodríguez Fernández, 2007, pp. 2452-2453).

All of them, in the exercise of their functions, act or may come to act as "Judicial Police", which, in addition to the lack of definition, leads to a *situation of deconcentration* in the exercise of this function. Likewise, those who act as "Judicial Police" find themselves in a situation of *double dependence*. On the one hand, the functional dependence of the investigative units on judges and prosecutors. On the other hand, there is the organic dependence that translates into a vertical chain of command with their incardination in an administrative body (Ministry, Department of the Interior or City Council), in such a way that a general dependence coexists, due to the insertion of the police forces in the Executive, which is combined with a specific dependence on the judicial bodies and the public prosecution with regard to the specific investigation underway, with the obligation to obey their instructions, particularly in cases of obligatory secrecy (STS 424/2023, of 29 March, Chamber III, FJ 7º; Speaker: Requero Ibáñez).

The lack of a single judicial police force may be due to the lack of historical precedents in our country, together with the evident freedom granted to the legislator to make a decision on this matter. Progress has been made with the creation of the so-called "Organic Units" - specific Judicial Police - which is an affirmation of the investigative activity within the framework of the judicial investigation or the preliminary investigation of the Public Prosecutor's Office, but which is far from the creation of an agency that would serve as the "Police of Justice". In this sense, it should not be forgotten that police investigative activity is part of criminal policy, which can be understood as a set of actions aimed at improving the welfare of citizens, ranging from the definition of the areas that fall within the scope of criminal reproach, through the material organisation of the bodies and means available to the Executive, to the exercise of criminal actions before the courts when an offence has occurred (Moreno Catena, 2007, p. 77), which implies a certain degree of conflation with the criminal justice system.), which implies a certain confluence of objectives that should be clearly delimited, and in a singular manner, in the judicial investigation of the criminal proceedings, as the legitimate political aims of the prosecution of the offence should not be confused with the deduction of liability for its commission.

In any case, in view of art. 126 CE, it is ruled out that bodies other than Judges and Prosecutors with the assistance of the Judicial Police can carry out criminal investigation tasks (STC 85/2018, of 18 July, FJ 6º) with what is an exclusive function of certain actors. Thus, the possible reform of criminal proceedings in which the Judge cedes the role of witness to the Prosecutor in the direction of investigations to the Prosecutor, , raises the question of what role the Judicial Police should play and whether the current scheme should be reformulated in the face of a change of paradigm.

2. THE INVESTIGATING JUDGE AND HIS COMPLEX "INVESTIGATIVE" ROLE

Criminal procedure in our country is the result of a Criminal Procedure Act (LECRIM) approved on 14 September 1882 and which has survived, after countless reforms, to the present day. In this sense, the figure of the Examining Magistrate is the pivot on which all the procedural steps are based, the director of the summary proceedings who decides on the fundamental rights at stake. However, despite his undisputed leading role, he coexists with the Judicial Police and the Public Prosecutor's Office in the task of investigation. In this sense, we must not forget the nature of the investigation, which our SC has clarified in STS 228/2015, of 21 April, of Chamber II (Speaker: Martínez Arrieta) FJ 1º, when it indicates, echoing previous positions, that:

"We said in STS 228/2013, of 22 March, that the judicial investigation of the facts is an administrative and, in part, jurisdictional function, hence the dual inquisitorial and accusatory nature that characterises it. The investigating judge is entrusted with the function of investigating criminal cases. It is therefore a manifestation of the principle of officialdom - or of necessity or legality - that criminal proceedings must begin when the judge becomes aware of conduct that appears to be criminal. In our current legal system, this original jurisdiction over the investigative proceedings is shared with the functions that may act on their own authority, or by delegation of the judge, the Judicial Police, acting under his authority or that of the Public Prosecutor's Office, and the Public Prosecutor's Office itself, with a pre-procedural character. It is not a jurisdictional function, but prior to the judicial investigation".

The mixed nature set out in jurisprudence makes it necessary to differentiate between "investigative activity", which is clearly jurisdictional, which would imply, in guarantee functions (Art. 117.4 EC), judicially adopting measures aimed at limiting fundamental rights and their ordered infringement (entry and search of homes, decision on pre-trial detention, opening of correspondence, interception of telephone and telematic communications, capture and recording of oral communications or the use of technical monitoring devices, among others) of what is "investigative activity", which is administrative and instrumental, and which implies the discovery of the criminal act, the elements of its commission and the perpetrator, which includes various proceedings, with the insurmountable limit of fundamental rights, which can be adopted motu proprio by the police (art. 282 LECRIM), or the Public Prosecutor's Office in the development of its preliminary investigations (art. 5 EOMF and art. 773 LECRIM), but, as is usual, they are carried out within the framework of an investigation directed by the judge (art. 299 LECRIM), which represents the container in which the investigation is introduced as one of its elements.

It must be borne in mind that *what* the judicial investigation *seeks are indications of the commission of a criminal act*, which, if confirmed, would force the subject to be sent back to trial, or to close the investigation in the absence of such indications, without any evidence being carried out, which must be carried out in the trial, except for anticipated or pre-constituted evidence (STS 491/2019, of 19 October, Chamber II FJ 9.2, Speaker: H.E. Mr. Llarena Conde). In such a way that it is necessary to rule out an evidential activity in the investigation, and this, regardless of who the promoter is, a

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question which is not minor in that it must be ruled out, out of respect for the right to defence and the presumption of innocence (art. 24.2 CE), that the guilt or innocence of a person is the result of the investigative or investigative work.

The above necessarily leads us to highlight the delicate position of the judge who directs the investigation due to the development of a dual role which appears to be antagonistic. Thus, the judicial authority has to assume the role of guarantor of the rights of the same subjects that it has to investigate, thus confronting the success of the investigation and its end with the wall of constitutional guarantees that it has to protect. This affects the position of the judicial police, who see the judge as the key to the measures that can make their investigations prosper, as the crossing of certain thresholds depends on his procedural consent, but he is also the brake, a sort of customs guarantor (Alfonso Rodríguez, 2024, p. 23), which can frustrate the advances that are sought. This implies a sort of somewhat dysfunctional relationship, in which procedural guarantees can either be resented if there is full identification between the judicial authority and the police, or there is a permanent tension when investigative measures are denied. In both cases, those who may benefit from such circumstances are the suspects who, depending on the pre-eminence of either of the aforementioned levels, may allege violations of fundamental rights or avoid criminal liability in a situation of judicial restrictions on the investigative unit.

In any case, the functions of the Judicial Police (Organic Unit) by the Examining Magistrate can be seen in the possibility of "commissioning" it (art. 11 RD 769/1987, of 19 June) to carry out the procedures that are entrusted to them (art. 287 LECRIM) together with the possibility of a "direct understanding" (art. 288 LECRIM) between the judicial authority and the Judicial Police itself (its investigators) being able to give them orders (arts. 21 and 29 RD 769/1987, of 19 June). Both possibilities undoubtedly reflect functional dependence. However, certain elements that limit and affect this connection must be taken into account:

Firstly, judicial independence, constitutionally protected, determines that the criteria of action of the Judicial Police can be mutated depending on the issuing authority. In other words, each judge has his or her own way of conceiving the investigation and his or her priorities, which means that the possible unity of operational action is conditioned by each judicial perspective in terms of the specific acts of investigation. This situation clashes with the relatively uniform procedures that shape the actions of the investigative units, who confront their work with the individual criteria of each judge, a criterion that has a decisive impact on the adoption of the most relevant investigative measures and which, ordinarily, clash with fundamental rights.

Secondly, although the examining magistrate could keep a confidential record of the behaviour of civil servants (art. 298 LECRIM), a record whose appearance is strange, the fact is that there are no specific elements of control or capacity for disciplinary sanction and the only thing that can be done is to request it from superiors (art. 35 d) LOFCS 2/1986, of 13 March), which means that there is no capacity to respond to a deficient execution of their orders.

Thirdly, it is necessary to distinguish the work of decision making from the function of execution, which cannot lead to a confusion of roles; on the contrary, police work must be clearly separated from the activity of judges and courts, a situation that cannot be mixed, as expressed in STS 873/2001, of 18 May, of Chamber II in its FJ 4º (Speaker: Mr. Conde-Pumpido Touron). Conde-Pumpido Touron) stating that "The Examining Magistrate is a judge and not a policeman; he impartially carries out a preparatory investigation for the oral trial, both for the prosecution and for the defence, that is, recording and assessing all the circumstances, both adverse and favourable to the present defendant, and to this end he must legally direct and control the police investigation, but it is not legally imperative that he personally carry out police work such as the search for and seizure of material evidence". It is necessary to avoid a situation of contamination (Ferrajoli, 2006, p.582) that could condition the decisions of the investigation, something which, on the other hand, should not prevent the existence of a fluid and coordinated relationship under a principle of mutual trust. In any case, the role of the examining magistrate is not that of an "enemy" of the person under investigation (STS 20716/2009 (Special Case), 9 February, Chamber II (Speaker: Mr Colmenero Menéndez de Luarca) FJ 11), precisely as a result of his status as guarantor.

Fourthly, we can speak of a kind of duplicity of actions which are carried out by the police but which are reiterated judicially as a hearing of the investigated person (arts. 385 and following, LECRIM), whose confession does not prevent him from verifying the facts (art. 405 LECRIM), the victim (art. 109 LECRIM), or the witnesses (art. 410 et seq., LECRIM), which is a sort of filter of the police work previously done (Porres Ortiz de Urbina, 2009, p. 38) but which ends up slowing down the investigation itself. In this sense, there is talk, not without some reason, of judicially "sanctifying" what has been done by the police without changing its nature (De Llera Suarez-Bárcena, 2001, p.100).

Fifthly, it should not be forgotten that the work of judicial direction of the investigators has a decisive impact on the oral trial. In such a way that it cannot be accepted that once the police investigations have concluded, the rest of the procedural events could be irrelevant for the investigating units, something that cannot be accepted. This is because the plenary (oral trial) is the setting for analysing what has been investigated, the police work is subjected to a test of resistance and, above all, to the possibility of a nullity of the proceedings which would allow them to extract the elements of evidence which imply a violation of fundamental rights (art. 11 LOPJ). 11 LOPJ), so that judicial control and correct police practice "ex ante", and during the investigation, are essential, without any possible shortcuts being admissible in the prosecution of the criminal act (STS 875/2021, 15 November, Chamber II, FJ 2.4º (Speaker: Marchena Gómez)), in order to avoid unlawful evidence (SSTC 114/1984, 29 November, FJ 4º and 49/1999, 5 April, FJ 12º) which could lead to impunity for criminal conduct.

In view of the above premises, although there is no discussion of the constitutionality of the current model (SSTC 145/1988, 12 July 1988, FJ 5º 41/1998, 24 February 1998, FJ 14), the delicate role of the judicial authority in charge of the investigation, within the framework of its capacities, must be pointed out, as it plays a paradoxical dual role. Its role as a guarantor (STC 32/1994, 31 January 1994, FJ 3º) conditions its capacity as an investigator and, at the same time, its position as the person responsible for the investigation can weaken its role as guarantor. In this sense, its relationship with the Judicial Police is not free of complexities because it must act as a driving force, , but simultaneously as a brake on any diligence that does not fit in with the procedural scheme that safeguards fundamental rights, which can lead to logical tensions between the intended aim (to determine facts, perpetrators and responsibilities indirectly) and the means employed (particularly those that clash with arts. 17, 18 and 19, not

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forgetting 24 of the EC). This forces us to reflect on the possibility of removing the investigating judge's investigative capacity from the investigating judge and giving it to the Public Prosecutor's Office so that it can maintain its role as guarantor intact, which would ultimately lead to an extraordinary change in the criminal process as we know it.

3. A JUDICIAL POLICE LED BY THE PUBLIC PROSECUTOR'S OFFICE?

A Judicial Police led by the public prosecution is a proposal that has been floating around, in the context of the reform of criminal procedure, for quite some time and above all as a result of the different projects, and attempts at projects, that have been presented in our country (ALECRIM 2011, BLECRIM 2013 or ALECRIM 2020). In any case, we must avoid any interpretation that seeks to place both actors in the same scenario, as already stated in STC 206/2003, of 1 December that "On the other hand, the institutional position of the Public Prosecutor's Office is very different from that of the police. Indeed, it is a body integrated with functional autonomy in the Judiciary..." (FJ 5º). However, there is a clear need for police investigative bodies to assist the Public Prosecutor's Office in the exercise of its functions, a situation which, nevertheless, presents some risks, especially in the way in which their relations are articulated, the framework of autonomy-dependence or the possibility of delegation by the Prosecutors of the practice of proceedings. If we were to limit ourselves to changing the ordering subject, but maintain the same working scheme, it would be a half-reform.

The European reality is clear in attributing to the public prosecutors unique directive powers over police investigations, and this is due to the non-existence of a figure analogous to the Investigating Judge, but with a "Judge of Guarantees" before whom the measures that could affect fundamental rights are requested. The most obvious cases are *Germany, Italy and Portugal*, where the Public Prosecutor's Office assumes the function of investigating criminal offences as a single body in close cooperation with the judicial police. As is the case here, the police forces are dependent on the Executive (Ministry of the Interior and Defence or even Finance) and this allows us to translate it into the following scenario: an auxiliary system, with a certain police autonomy, as in Germany; a system of dual dependence, but with strong links to the Public Prosecutor's Office as far as the Italian criminal process is concerned; and finally, a system of dual dependence with the possibility of delegation of actions by the Public Prosecutor's Office to the Judicial Police in Portugal (Alfonso Rodríguez, 2023, p. 77).

The Italian Public Prosecutor's Office is an *independent magistracy, part of the Judiciary but distinguishable in its functions,* which is obliged to prosecute (art. 112 CRI). This consideration places it outside the common anatomy of most of the systems around us, characterised by a link, to a greater or lesser extent, between the public prosecution and the Executive, something that does not occur in the Italian procedural system. Here, the "autoritá giudiziaria" controls the Judicial Police (art. 109 CRI), therefore, the Public Prosecutor's Office has a directing role in the course of the investigations carried out by the investigative units. Thus, the *Polizia Guidiziaria* is organised into sections, which are constituted together with each of the headquarters of the *Procura della Repubblica (*art. 59.1 CPPI). The importance of these sections allows the Public Prosecutor's Office to have great autonomy in its actions, relying on the police officers of a section, which produces a situation of immediacy in the direction of the Public Prosecutor (Mateos Rodríguez-Arias, 1994, p. 265). This assignment allows effective control of the preliminary investigation (*indagine preliminare)* by the Magistrate of the Public

Prosecutor's Office without there being an autonomous scope of action by the Judicial Police, as the delegations must be specific for the practice of proceedings that he deems appropriate (Martin Pastor, 2005, p.131). In this sense, the delegation can even include interrogations and confrontations in which the person under investigation participates (art. 370.1 CPPI), something unthinkable in our criminal procedural system where it is not possible to open a trial without the judge having taken the appropriate statement from the person under investigation (STC 277/1994, 17 October, FJ 14º), even if it has already been made by the police.

In Italian procedural law, the *Polizia Giudiziaria* plays an essential role as a basic pivot, together with the Public Prosecutor's Office, on which the investigation procedure revolves (Novelli, 1989, p.5). Thus, its competences can be summarised, in view of art. 55 CPPI, as receiving the news of the commission of the criminal act and preventing its subsequent consequences, searching for the perpetrators, and carrying out the necessary acts to secure the sources of evidence, including everything that is useful for the procedure and the application of the Law. During this phase, the police are responsible for carrying out identification tasks, using any means of evidence such as fingerprints, photographs, anthropometric tests, when the person does not present means of identification (art. 349 CPPI), carrying out personal searches or searches of places in case objects or traces of the crime can be found (art. 352.1 CPPI), although a report must be sent to the Public Prosecutor within a maximum period of 48 hours for a decree to validate the search (art. 352.4 CPPI). Likewise, although the general rule is to send closed packages to the Public Prosecutor for opening (art. 353.1 CPPI), he may urgently request the Public Prosecutor's Office to open them immediately (art. 353.2 CPPI).

In all this activity, the counterbalance is represented by the Judge for Preliminary Investigations (*Giudice per la indagini preliminari* or GIP) who is a single-person body, integrated in a special section of the Court in the territorial area where he carries out his function and is the element of a certain restraint against the activity of the Prosecutor's Office and which translates, as far as the investigation is concerned, into the adoption of decisions on telephone interceptions (art. 266, 266 bis and 266 bis and 266 bis). 266, 266 bis and 267 CPPI), the adoption of personal precautionary measures (arts. 272-351 CPPI) or even real precautionary measures (arts. 316-325 CPPI). This means that he or she is kept away from the preliminary investigation, except for the possible adoption of measures aimed at violating fundamental rights that may be of interest to the Public Prosecutor's Office and, by extension, to the Judicial Police.

Finally, in the area of organised crime, the Italians have opted for special bodies both in terms of police and public prosecution. Thus, the *Direzione investigativa antimafia (Anti-mafia Investigation* Directorate or DIA) is the police body in charge of investigating mafia criminal phenomena. It is defined in art. 108 of the *Legislative Decree of 6 September 2011 n.159*, and is designed as a public security subject, therefore integrated in the Ministry of the Interior, which acts as a driving, coordinating and liaison element in relation to the complex of investigations involving crime mafia[1] becoming a specific Judicial Police body (with officers from Carabinieri, State Police and Financial

[1] Art. 108. 1. of the aforementioned Royal Decree states "E' istituita, nell'ambito del Dipartimento della pubblica sicurezza, una Direzione investigativa antimafia (D.I.A.) con il compito di assicurare lo svolgimento, in forma coordinata, delle attivita' di investigazione preventiva attinenti alla criminalita' organizzata, nonche' di effettuare indagini di polizia giudiziaria relative esclusivamente a delitti di associazione di tipo mafioso o comunque ricollegabili all'associazione medesima".

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Guard) for the investigation of the phenomenon of organised crime in the broad sense, This body has a counterpart, from the point of view of public prosecution, with a National Antimafia and Antiterrorist Prosecutor (*Procuratore Nazionale Antimafia e Antiterrorismo)*, who heads the *Direzione Nazionale Antimafia*, and coordinates the District Antimafia Directorates (*Direzione distrettuale antimafia* or DDA*)* in the different territories. The *DDA* is in charge of the investigation of the facts correlated with the crimes (*reato*) of Mafia association (art. 416 bis CPI). This intensifies the direction of the Judicial Police by the Public Prosecutor's Office in relation to a specific criminal phenomenon that requires maximum coordination, cooperation and organisational concentration between the fundamental actors involved in its confrontation, and this without an active judicial presence in its development.

The *German case* shows the enormous importance of the role of the police in the development of the preparatory investigation phase (*Ermittlungsverfahren)* led by the Public Prosecutor's Office, linked to the Executive (Flores Prada, 1999, pp. 173-174) although, in fact, it is considered to be the true investigative body (Gómez Colomer, 2001, p.102). Each *Land* has its own police force, integrated into its Ministry of the Interior, as distinct from the Federal Criminal Police Office (*Bundeskriminalamt*; BKA), together with the Federal Police with border protection functions, among others, incardinated in the Federal Ministry of the Interior. However, the ability of the police to investigate and take urgent measures to prevent concealment, as a duty of first activity (Roxin, 1982 p. 172), results from § 163.1 of the Criminal Procedure *Ordinance* or *Strafprozessordnung* (StPO), which de facto allows the police to control the investigation, something which, on the other hand, is supported by § 161.1 in that the Public Prosecutor's Office can carry out the investigations through the police itself. It is the police forces that have significant technical and material resources at their disposal, which means that there is a situation of significant dependence for the progress of the prosecution's investigations, which makes them auxiliary forces with autonomy and without there being any effective direction by the public prosecution.

In *Portugal*, the Code of Criminal Procedure (CPPP) assigns the direction of the investigation *(inquerito)* to the Public Prosecutor's Office, assisted by the Criminal Police (263.1 CPPP), whose task is to verify the existence of a crime, determine the perpetrators, their responsibilities and the elements that would allow a decision on the indictment (art. 262.1 CPPP). Decree-Law 137/2019, of 13 September, approves the organisational structure of the Judicial Police, which is configured as a superior body of criminal police, dependent on the Ministry of Justice and endowed with administrative autonomy (art. 1 DL 137/2019) whose top is represented by a National Director (art. 22 DL 137/2019). Although the organisational dependence is on the Ministry of Justice, the functional dependence in the development of the *inquiry* is with respect to the Prosecutor's Office, who can authorise certain acts of investigation to the Judicial Police (art. 270 CPPP), entrusting it with any procedure related to the *inquiry* (art. 270.1 CPPP) with specific exceptions such as those which fall under the jurisdiction of the judge (art. 270.2 CPPP), or by generic delegation from the judge, which implies the possibility of carrying out investigative procedures within a specific type of crime or penalty applicable to the crimes under investigation (art. 270.4 CPPP).

As a counterbalance, the examining magistrate authorises certain acts exclusively, such as house searches, interception of correspondence and telephone communications, and any others requiring judicial authorisation (art. 269 CPPP). Likewise, the adoption of personal precautionary measures (periodic presentation, pre-trial detention, suspension from duty, among others (arts. 196 et seq., CPPP) and patrimonial measures (art. 228 CPPP) is also the responsibility of the court. It is also up to the judge to take evidence in advance (*declaraçoes para memoria futura*), respecting the principle of contradiction with the accused (art. 271 CPPP). The Portuguese model contrasts a Judicial Police that acts as a delegate of the Public Prosecutor who directs the investigative phase and a Judge of Guarantees who can also make use of the investigative unit to carry out the *investigation* (*instruçao;* art. 286. 1 CPPP), which is an optional phase aimed at completing the investigation of the public accusation, controlling the accusation itself. In this sense, as mentioned above, it is possible for the judge to make use of the Judicial Police to carry out actions within the framework of this strictly jurisdictional phase (art. 290. 2 CPPP). In short, there is a police dependence at the organic level on the Ministry of Justice and a clear functional subordination to the Prosecutor's Office, with an important role which, as a result of the delegations, can determine the result of the preliminary investigation (Gómez-Escolar Mazuela, 1994 p.81).

In *France,* the scenario is similar, but not identical, to that in Spain, where the Public Prosecutor's Office and the Investigating Judge concur, although it is the Public Prosecutor who directs the Judicial Police (art. 12 CPPF) in the development of preliminary investigations (*enquête préliminaire;* 75 CPPF). In any case, the investigative units are integrated with the National Police and the Gendarmerie, both of which are part of the Executive (Ministry of the Interior, together with the Ministry of the Armed Forces). However, the connection between them and the Public Prosecutor's Office seems to flow naturally due to the strong links between the public prosecution and the Government, specifically with the Ministry of Justice, which can issue general instructions to prosecutors (art. 30 CPPF), with a strong legal-political trust in the institution (Lanzarote Martínez, 2008, p. 315), which dispels doubts regarding its work and without the figure of the State Prosecutor General as the person with ultimate responsibility for the whole territory. Criminal policy is a core element that is present in the development of the functions of the Public Prosecutor's Office (Art. 39-1 CPPF), which justifies the consideration that the public prosecutor himself is considered the head of the Judicial Police, which allows him to give "general and specific instructions" to the investigators, supervising the course of their actions (Art. 39-3 CPPF) and directing the investigative activity (Art. 41).

In the *British system,* the Public Prosecutor's Office did not appear as a real prosecutorial actor until the creation of the *Crown Prosecution Service* (CPS) in 1986, supported by the Prosecution of Offences Act of 1985. The late emergence of a public prosecution system in the UK can be explained for two reasons. Firstly, because of the weight that the public prosecution has always had, which means that any person is entitled to prosecute on behalf of the Crown (Diez-Picazo Giménez, 2000 pp. 37-38). Secondly, because of the prominent role played by the police in investigations with an original autonomy, since the submission of the Chief *Constable* (*Chief Constable*) only to the Law acted as a guarantee against the possibility of deviations, and because of their original consideration as Justices of the Peace, which were more part of the Judicial Power than of the Executive (Aulet Barros, 1998, p. 656). In any case, the existence of territorial forces contrasts with the existence of the Metropolitan Police (Scotland Yard) as a reference point for the central power (Vogler, 2003, p. 36). In this sense, there is no precise relationship of subordination between the Crown Prosecution Service and the police, and this is strongly conditioned by the historical police autonomy in the development of

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investigations in such a way that the preliminary investigative phase is fundamentally police and, therefore, the presentation of charges continues to be, except in serious cases, a matter of their strict competence. We cannot properly speak of a Judicial Police-Prosecutor's Office relationship in the same way as we have analysed above, and this is conditioned by the decentralised police model and a relatively new Public Prosecutor's Office which, perhaps, is still limited by the weight of organisational tradition.

Finally, it is relevant to bear in mind that in our country the figure of the *European Public Prosecutor* has been introduced[2] , with jurisdiction throughout the national territory, which implies a paradoxical coexistence between procedural systems in our legal system (Investigating Judge and national investigating Prosecutor with investigating Prosecutor and Judge of Guarantees in the field of own prosecution referred to the interests of the EU) inserted by Law 9/2021, of 1 July, implementing Council Regulation (EU) 2017/1939 , of 12 October 2017. The scope of the investigation covers offences against the Union's public finances, European subsidy and aid fraud, money laundering, bribery and smuggling against the interests of the Union and "inextricably linked" offences, as well as criminal organisation to commit these offences (art. 4).

Thus, in the performance of the above functions, European Public Prosecutors are allowed to give orders to members of the judicial police (Art. 5.2), who will provide them with the necessary assistance (Art. 5.1)..2), who will provide support (Art. 16.3) and to whom they will report (Art. 18.3) and in which the judicial police can "in urgent cases and under the direction, where appropriate, of the Deputy European Public Prosecutor, take the measures that are essential to guarantee the effectiveness of the investigation", informing him, within a maximum period of 24 hours, of what has been done and the reasons for it and informing him of the initiation of those investigations for which they are competent (Art. 10.2). The judicial police may enter a closed place, other than a home, authorised by the European Public Prosecutor (Art. 46 II), and may be delegated to carry out an investigative measure previously authorised by the European Public Prosecutor (Art. 74.2) and be responsible for bringing before the European Public Prosecutor a person whose arrest has been ordered by him (Art. 78.1 II).

At a glance, and we have only analysed five countries with a different political organisation and also with a different procedural model, we can see how the direction of the Judicial Police by the Public Prosecutor's Office in the countries around us is a reality that is crystal clear and should serve as an element of inspiration for our future reform of criminal procedure, above all to avoid excessive bias in investigations, which would end up turning the Public Prosecutor's Office into a mere validator of actions or a mere "police chief" who limits himself to procedurally channelling the previous investigation carried out[3] . We cannot confuse criminal prosecution as an expression of a specific criminal policy with criminal prosecution as a staging of the punitive capacity of the state, avoiding

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[2] It is a figure regulated in the Treaty on the Functioning of the European Union (TFEU), Regulation 2017/19 (RFE) together with Directive 2017/1371 on the protection of the Union's financial interests (DPIF). To these rules we add Royal Decree 882/2022, of 18 October, on the selection of the European Public Prosecutor in our country.

[3] Circular 1/89, of 8 March 1989, of the FGE on the abbreviated procedure introduced by Organic Law 7/1989, of 28 December, stated that "It is not necessary to emphasise to prosecutors that both the direction of the police investigation and the delegation to it of the practice of specific proceedings cannot mean that the Prosecutor becomes a "Chief" of the Police , nor that this delegation constitutes a free action by the police, in such a way that the Prosecutor becomes a mere approver of police actions".

diluting the Public Prosecutor's Office as an institution in a public policy. It is a question of defending the effective assumption by the Public Prosecutor's Office of its functions of directing the investigation (Miranda Estampres, 2006, p. 6), with the Judicial Police playing an essential role as it is the one who, operationally, and independently of the directing body, compiles most of the elements of investigation and evidence (Campos Navas, 2002, p. 69). The question is how to articulate a relationship that is profitable, efficient and transparent.

4. THE PROSECUTOR'S AND THE JUDICIAL POLICE'S INVESTIGATIVE ACTIONS

The creation of an investigating prosecutor in our system is not necessary. It already exists. The public prosecution can articulate, once the *notitia criminis* is denounced or known*,* its investigative diligences of art. 9.1º Reglamento Ministerio Fiscal 305/22, de 3 de mayo (RMF) in accordance with its Organic Statute (art. 5 EOMF), the LECRIM (art. 773.2) and the body of doctrine available at[4] , particularly the recent Circular 2/2022, of 20 December on the extra-procedural activity of the Public Prosecutor's Office, which contributes to designing a *pre-procedural* activity (STS 871/2022, of 7 November, Chamber II, FJ 2.2, Speaker: Marchena Gómez)*, preliminary and instrumental to the criminal action* (STC 59/2023, of 23 May, FJ 4º), *aimed at the opening of a judicial (investigative) process (*STS 882/2014, of 19 December, of the Chamber II (Speaker: Hon. Ferrer García), FJ 9º) , *without evidentiary value,* despite its presumption of authenticity, an effect that only results from its practice in the plenary in the immediate judicial presence with publicity, orality and contradiction (SSTC 182/1989, of 3 November, FJ 2º; 67/2001, of 17 March, FJ 6º; 195/2002, of 28 October, FJ 2º; 206/2003, of 1 December,

[4] Thus the doctrine of the Public Prosecutor's Office results from the following: FGE Circular No. 1/1989, on the abbreviated procedure introduced by Organic Law 7/1988, of 28 December, FGE Instruction No. 1/1995, on the attributions and competences of special anti-drug prosecutors in the different territories, FGE Consultation No. 2/1995, on two questions regarding the prosecutor's investigative proceedings: their destination and the alleged requirement of exhaustiveness, FGE Consultation No. 1/2005, on the competence of special anti-drug prosecutors in the different territories, FGE Consultation No. 1/2005, on the competence of special anti-drug prosecutors in the different territories. 1/2005, on the competence of Public Prosecutor's Offices to process investigation proceedings affecting persons with aforesaid status, FGE Instruction no. 11/2005, on the effective instrumentalisation of the principle of unity of action established in art. 124 CE, FGE Instruction no. 12/2005, on attributions and competences of the Special Prosecutor's Office for the prevention and repression of illegal drug trafficking and its delegated prosecutors, FGE Instruction no. 4/2006, on attributions and organisation of the Special Prosecutor's Office for the prevention and repression of illegal drug trafficking and its delegated prosecutors, FGE Instruction no. 4/2006, on attributions and organisation of the Special Prosecutor's Office for the prevention and repression of illegal drug trafficking. 4/2006, on attributions and organisation of the Special Prosecutor's Office for the repression of economic crimes related to corruption and on the actions of prosecutors specialised in organised crime, FGE Instruction no. 1/2008, on the direction by the Public Prosecutor's Office of Judicial Police actions, FGE Circular no. 2/2012, on the unification of criteria in proceedings for the abduction of newborn children, FGE Instruction no. 2/2013, on some issues related to the prosecution of the abduction of newborn children, FGE Instruction no. 2/2013, on some issues related to the prosecution of organised crime. 2/2013, on some issues related to associations promoting cannabis consumption, FGE Circular no. 4/2013, on investigation proceedings, FGE Consultation no. 1/2015, on access to the proceedings of the investigation proceedings for those who invoke a legitimate interest, FGE Circular no. 3/2018, on the right to information on the right of access to the proceedings, FGE Circular no. 3/2018, on the right of access to the proceedings, FGE Circular no. 3/2018, on the right of access to the proceedings, FGE Circular no. 3/2018, on the right of access to the proceedings, FGE Circular no. 3/2018, on the right of access to the proceedings. 3/2018, on the right to information of those under investigation in criminal proceedings, FGE Circular no. 1/2021, on the time limits for the judicial investigation of Article 324 of the Criminal Procedure Act.

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FJ 2º; 345/2006, of 11 December, FJ 3º)[5] , and *without the capacity to interrupt the criminal statute of limitations (*STS 228/2013, of 22 March, of Chamber II, Speaker: Berdugo Gómez de la Torre, FJ 2º) *or administrative* (Circular 2/2022 Fiscalía General del Estado).

It cannot be assumed that these proceedings are *exhaustive* in nature (STS 980/2016, of 11 January, Chamber II, Speaker: Marchena Gómez, FJ 2º, stating that "it is a restricted functional space") and in any case it is not sufficient to open oral proceedings against any person as it requires as an indispensable diligence the declaration as a person under investigation before the judicial authority (STC 54/1991, FJ 3º), so they do not serve to present a direct accusation. The limit of the prosecution's diligences is given by those which involve a violation of fundamental rights and which must be authorised by the judicial authority and whose adoption is forbidden to the public prosecution. On the other hand, their practice is subject to a *time limit* (6 months up to a maximum of 12 months, unless extended by decree of the Public Prosecutor General ex. art. 5.2 IV EOMF). Finally, *it cannot be used for prospective purposes* (STC 41/1998, of 24 January, FJ 15º or STS 314/2015, of 4 May, of Chamber II Rapporteur: Mr Sánchez Melgar, FJ 2º).

It should be noted that it is also *a guaranteeing activity* which is evident in the development of its actions when taking *the suspect's statement* (art. 5.2 EOMF), who can exercise the right of defence by being able to take knowledge of the proceedings, particularly of the essential elements (SSTC 83/2019, of 17 June, FFJJ 5º a 7º; 180/2020; of 14 December, FFJJ 2º to 4º, and 80/2021, of 19 April, FJ 4º, 59/2023, of 23 May, FJ 4º) in cases in which his detention has been ordered, and he may be assisted by a lawyer of his confidence with the appropriate proposal of discharge proceedings (STC 59/2023, of 23 May, FJ 4º)[6] . The Public Prosecutor's Office can also take *statements from the victim/defendant*[7] *and witnesses to the facts* (art. 773.2 II LECRIM).

However, for the practice of another series of diligences, it necessarily requires technical assistance and police support, and this in a directive capacity as long as a judicial investigation is not opened, which would result in the cessation of investigations by the

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[5] However, STC 80/1991, of 15 April, stated that ".....although only evidence produced in the oral trial can be considered authentic evidence binding on the criminal justice bodies at the time of sentencing, this rule cannot be understood in such a radical sense that it leads to denying all evidential effectiveness to police or summary proceedings carried out with the formalities established by the Constitution and the procedural system, provided that they are reproduced in the oral trial in conditions that allow the defence of the accused to contradict them (SSTC 80/1986, 82/1988, 201/1989, 217/1989 and 161/1990, among many others). The italics are mine.

[6]As the SC has forcefully pointed out: "In short, whatever the difficulties in correctly classifying these investigative proceedings by the Public Prosecutor - preliminary, pre-procedural, preparatory - the truth is that this label *can never be conceived as an excuse to deprive the citizen of the guarantees and limits that our constitutional system imposes on the investigative activity of the public authorities*, whether it is a suspect called by the Prosecutor or another citizen who, without having been called, becomes aware that he is being investigated by the Public Prosecutor's Office. " (STS 980/2016, of 11 January, Chamber II Rapporteur: Excellency Marchena Gómez, FJ 2º). The italics are mine.

[7]Instruction 8/2005, of 26 July, FGE on the duty of information in the protection of victims in criminal proceedings states that "The victim, in the not always easy path to achieve reparation for the harm done, must feel protected. Protection and attention with respect for their dignity, their right to testify and be informed, to understand and be understood, to be protected at the various stages of the proceedings, in the words of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings".

Public Prosecutor's Office. Doctrinally, in Circular 2/2022, the Public Prosecutor's Office (FGE) recognises that it is responsible for directing its own investigations, with the intention of taking a decision in the light of the evidence presented to it. The Circular points out that this direction is exercised, on the one hand, through the issuing of general instructions by the Chief Prosecutors on "investigation criteria to be followed, methods of action, coordination of investigations and other similar matters" and, on the other hand, through the office of the heads of the investigative units (art. 21 II RD 769/1987)[8] . In this sense, the concept of "general instruction" should be seen as a general framework for action and its application in similar matters (Begué Lezaun, 2006, p. 13) and should be linked to a principle of hierarchy, which means that the State Prosecutor General must approve these instructions at the proposal of the Coordinating and Delegated Prosecutors, the High Prosecutors of the Autonomous Communities or the Provincial Chief Prosecutors in order to preserve the principle of unity of action.

The concept of "particular instruction" refers fundamentally to the specific matter that is the object of investigation, i.e. the working guidelines with respect to preliminary proceedings that are open and in progress "which may be given by the Prosecutors in charge of the specific matters..." (Instruction 1/2008 FGE on the direction by the Public Prosecutor's Office of the actions of the Judicial Police). We are talking about orders regarding the lines of investigation, or indications regarding the practice of certain proceedings, which are relevant to the facts under investigation. The private investigation could include elements that entail certain precautions in the preparation of reports .[9]

However, there is an important issue that lies behind the existence of the power to issue instructions and that is that it must enable a legal system of communication between the Public Prosecutor's Office and the Police from the beginning of the preliminary investigation until its conclusion (De Llera-Suarez Bárcena, 2006, p. 15), an issue that does not seem to be adequately resolved in our legal system, apart from internal impulses in this sense[10] . One tool could be to strengthen the *Provincial Commissions of Judicial Police* (art. 34 RD 769/1987)[11] which would serve to establish working protocols in

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[8]The precept states "... Likewise, the Judicial or Prosecutorial Authority may order that the specific police officer(s) to whom the said Headquarters has entrusted the execution *appear before them*, as many times as it deems appropriate, in order to give the instructions it deems pertinent, indicate the lines of action and control the fulfilment of their duties or the evolution of their investigations". Instruction 2/88 FGE states: "The Chief Prosecutors of the respective Courts *shall, at least on a weekly basis, dispatch* with the Heads of the Provincial Organic Units of the Judicial Police, both of the National Police Force and the Guardia Civil, those matters which the Public Prosecutor's Office must deal with by virtue of the provisions of Article 20 of the aforementioned Royal Decree". The italics are mine.

[9]An example is reflected institutionally by the FGE in its 2023 Report on the orders of the Cáceres Public Prosecutor's Office regarding data referring to victims, stating "This has led to instructions being given by the Public Prosecutor's Office to the judicial police not to include in police proceedings the addresses of victims, witnesses or experts, telephone numbers, mailing addresses or ID numbers, as this data should be collected in a separate file" (Fiscalía General del Estado, 2024, p. 932).

[10]As Circular 2/2022 FGE points out, "Consequently, the provincial and area chief prosecutors will articulate the mechanisms that allow for the individualisation in each case, taking into account the characteristics and peculiarities of the different prosecutor's offices, of the terms in which the Judicial Police are obliged to provide accounts in accordance with Art. 20 of RD 769/1987 (...) The senior prosecutors and the Public Prosecutor's Inspectorate will verify, through their powers of inspection, the mechanisms put in place by the headquarters to articulate agile, effective and efficient channels of communication with the Judicial Police units that allow effective and reasonable compliance with the provisions contained in art. 20 RD 769/1987".

[11]Something which was already preached by the Consulta 1/89 FGE when it stated that "2. General instructions to the Judicial Police Units, similar in tenor to the previous section and especially for the

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matters of investigation aimed at coordinating and making the work more efficient, above all from the perspective of unifying criteria and resolving doubts in the face of the usual legislative changes, facilitating models of action for the investigation units and to resolve questions that could arise, placing, above all, the emphasis on maintaining the balance between the demands of the investigation and the obligatory guarantee of fundamental rights.

In any case, the issuing of instructions determines two important elements. Firstly, the procedures to be carried out by the judicial police. Secondly, the way they are to be carried out, and this is because Circular 2/2022 FGE states that "this power cannot be delegated in a generic way to the Judicial Police". Therefore, a relationship based not only on dependence, but also on the specific nature of the actions to be carried out is necessary.

The investigation by the public prosecution requires the existence of a crime reported to the Public Prosecutor's Office itself, an ex officio action on its own initiative (Del Moral García, 2006, p. 4) or by referral of anonymous reports.) or by referral of anonymous reports (SSTS 318/2013, of 11 April, of Chamber II, FJ 2º (Speaker: Mr. Marchena Gómez); 224/2021, of 11 March, of Chamber II, FJ 3.2º (Speaker: Mr. Hurtado Adrián), among others) so that the appropriate decree of initiation can be issued by the Chief Prosecutor. This decree must detail the following points: *Facts under investigation, identification of the suspect, provisional technical qualification of the facts, proceedings to be carried out, verification that there is no judicial investigation and a reflection of the identity of the Prosecutor in charge of directing the proceedings* (Circular 2/2022 FGE).

In any case, if it considers that the facts brought to its attention do not constitute a crime, it can issue a decree to close the case, which would not prevent the complaint from being reiterated in court. Once the investigation proceedings have been initiated, in addition to taking the appropriate statement from the victim/victim, witness/s or the "suspects", i.e. those under investigation, the Public Prosecutor's Office can commission the Judicial Police to carry out a series of proceedings which are not minor and which are in line with many actions that can be carried out autonomously by the police. Thus, to carry out the identification of persons and facts, can arrange the practice of **photographic recognitions**[12] or the **recognition in a line-up**[13] which do not acquire the status of

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coordination of the investigation of specific facts in the different Corps, *during the procedural phase*, i.e., *when judicial proceedings exist*. They will be carried out through the Provincial Coordination Commissions of the Judicial Police". The italics are mine. Note that it highlights the possibility of using the Commissions, but only for the judicial investigation phase, which does not prevent extending it to the investigation by the Public Prosecutor's Office.

[12]As pointed out by STS 28/2018, of 18 January, of Chamber II (Speaker: Honourable Mrs. Ferrer García) "Although this Chamber has pointed out that photographic recognition must be carried out through the exhibition of as many photographic clichés as possible, made up of faces that, at least some of them, have certain similarities between them in their physical characteristics (sex, approximate age, race, etc.), coinciding with those offered in the photographs.), coinciding with those initially offered, in their first statements, by the person making the identification, the specific circumstances of the case cannot be disregarded" (FJ 9.7º).

[13] The SC points out that "1) It is true that for those cases in which doubt arises as to the identity of the person against whom charges or accusations are brought for the crime, the LECrim, regulates -arts. 368 to 376 - an identification procedure or diligence, by virtue of which the visual recognition of that person by the complainant is sought, with certain guarantees, which tend to preserve the spontaneity and sincerity of the identification, derived from the required method, consisting of placing the person to be recognised among other persons of similar physical characteristics, in order to prevent that recognition from being

evidence until the moment in which the identifications are carried out in the trial (*Cfr.* SSTS 35/2016, of 2 February, of Chamber II, FJ 2º Speaker: Excmo. Mr. Marchena Gómez; 444/2016, of 25 May, of Chamber II, FJ 5º Speaker: Excmo. Mr. Conde-Pumpido Touron; 4/2020, of 16 January, of Chamber II, FJ 2º Ponente: Magro Servet) and **also voice recognition**. It may order **discreet police surveillance and monitoring without interfering with fundamental rights-no beacons or geolocations are allowed- or violating them** (*Vid.* STS 610/2016, of 7 July, Chamber II, FJ 1º Speaker: Mr Granados Pérez). The police may order the **location of assets or rights** in confiscation proceedings (art. 807 ter q) LECRIM).

The public prosecutor in the course of preliminary investigations can carry out or delegate the police to carry out an **ocular inspection** (art. 28 a) RD 769/1987). It is a direct means of investigation, without obstacles, as there is no element of interposition between the person inspecting and the inspected (Moreno Catena, 2017, p.250)[14] . In any case, its value, given its unrepeatability, would allow for pre-constitution of evidence in cases of urgency and necessity (STC 303/1993, 25 October, FJ 4º).

The Public Prosecutor, in the course of the investigation**, can gather information of a patrimonial nature**[15] which is fundamental for the prosecution of certain types of crime (particularly economic or patrimonial crimes) or accessories to others (for example, drug trafficking crimes which allow the inference of unjustified enrichment or in relation to the suspect's working life). On the other hand, , the Public Prosecutor's Office can itself or through the investigative unit obtain information from transparency portals or **access to open digital sources (**STS 197/2021 of 4 March, Chamber II (Speaker: Mr Del Moral) states that "judicial authorisation is not required to obtain what is public and it is the user of the network who has introduced it into the same" (FJ 5º)). **incorporation of sources of evidence obtained by private individuals (recordings)** [16] and **journalistic information** (Circular 1/1989 FGE, of 8 March FGE). Likewise, the Public Prosecutor's Office can order, or delegate to the police, in the development of its investigations, the

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induced to converge on a single person by virtue of mere appearances created by the diligence itself" (STS 428/2013, of 29 May, Chamber II (Speaker: Excmo. Mr. Berdugo de la Torre, FJ 1º).

[14]Thus, STS 231/1996, of 20 January, of the Second Chamber (Speaker: Hon. Martín Pallín) pointed out that "*...Without ruling out the documentary nature that can be derived from a personal inspection carried out by members of the Public Prosecutor's Office*, it is certain that its evidential effectiveness cannot go beyond that which the procedural system attributes to the ocular inspections carried out by the Examining Magistrate with the assistance of the Judicial Secretary who holds judicial public faith (...).) In any case, and despite the presumption of authenticity that the law attributes to the pre-procedural proceedings of the Public Prosecutor's Office, their evidential value is not greater than that of an ocular inspection and therefore does not, in itself, evidence the error of the judge ..." (FJ 7º)...." (FJ 7º). The italics are mine.

[15]Circular 4/2010 of the FGE on asset investigation has indicated the institutions from which data may be requested and thus, the investigating prosecutor may request, by decree, that they be sent from the Spanish Confederation of Savings Banks (CECA) or the Spanish Banking Association (AEB), with respect to banking data. With regard to public entities, data may be requested from the General Treasury of the Social Security, the Mercantile, Movable Goods and Property Register, the General Directorate of Traffic, the Aircraft Registration Register dependent on the Tax Agency and the General Directorate of Cadastre. Finally, data can be obtained from the Single Computerised Notarial Index, which telematically collects data authorised by the different Notaries' Offices.

[16] As pointed out in Circular 2/2019 FGE, on the interception of telephone and telematic communications, "Conversely, conversations recorded or broadcast by one of the interlocutors would not be covered by the constitutional provision (SSTC no. 175/2000, of 26 June and 56/2003, of 24 March and STS no. 421/2014, of 16 May); radio communications (SSTS no. 209/2007, of 9 March; 1397/2011 of 22 December and 695/2013, of 22 July) ...".

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collection of abandoned DNA[17] **and extraction of the DNA consented to by the investigated party** (Alfonso Rodríguez, 2022, pp. 50-51) or **exhumation of corpses** (Circular 2/2012 FGE and the repealed Circular 4/2013 FGE on investigative proceedings).

Within the framework of preliminary proceedings**, the Prosecutor can commission expert reports**[18] from the police forces themselves, such as **fingerprinting, identification, ballistic or chemical analysis**, without forgetting that "encourages the "prima facie" validity of their opinions and reports without the need for their ratification in the oral trial, provided that they have not been expressly challenged in the written conclusions" (STS 115/2015, of 5 March, Chamber II (Rapporteur: Berdugo Gómez de la Torre), FJ 9º). It is worth highlighting the practice of the **alcohol test**, which is an expert report (STC 89/1988, of 9 May, FJ 1º) that can be considered as evidence (STC 303/1993, of 25 October, FJ 5º). The Public Prosecutor's Office can obtain the **IMSI or IMEI of mobile phones**, which can be discovered by means of a scanner used by the Judicial Police without the need for judicial authorisation (*Vid*. and prior to the regulation of the LECRIM, STS 249/2008, of 20 May, of Chamber II, FJ 4, STS 227/2009, of 28 January, of Chamber II FJ 1 and STS 8461/2011, of 16 November, of Chamber II, FJ 6). Likewise, it can order police traces **to obtain the IP address of the computer** (art. 558 k LECRIM; Circular 2/2019, on interception of telephone and telematic communications) and **request or order the police to obtain data on the owners of terminals or connectivity devices** (art. 588 ter m LECRIM) .[19]

Finally, in certain types of crime, during the course of the investigation, the police can decide to appoint an **undercover agent - as** long as he is not a computer scientist, which is a judicial competence - reporting to the judicial authority (art. 282 bis LECRIM) and **the controlled movement and delivery** (art. 263 bis LECRIM), something that is only allowed in certain cases.

With regard to the **undercover agent**, which is the legalisation of an infiltration strategy in order to effectively carry out investigations against organised crime, a series

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[17] In this sense, we should not forget the Agreement of the Plenary of the Second Chamber of 31 January 2006, that "The Judicial Police can collect genetic remains or biological samples abandoned by the suspect without the need for judicial authorisation".

[18]Thus, in much earlier case law, the STS 4934/2007, of 30 May, of the Second Chamber (Rapporteur: Mr Marchena Gómez) states that "It is therefore beyond doubt that SEPRONA has the capacity, with functional subordination to the Judges and Courts or the Public Prosecutor's Office, to *collect samples that serve as a basis for the detection of these levels of contamination in the water discharged by any company that has been denounced. And the possibility of carrying out an initial chemical analysis* of such waste *by duly specialised medical personnel* is also unquestionable. A different matter, of course, would be the evidential value of these initial proceedings" (FJ 1º). The italics are mine. Circular 4/2011 of the FGE establishes that within the framework of the preliminary proceedings, the Public Prosecutor's Office may agree to the examination of the victim by the Forensic Expert. This faculty allows the collection of evidence, as it has been established that there is no need for ratification by the Forensic Doctors in the plenary session, unless the parties have expressed their disagreement with the report or with regard to the experts. In the area of property crimes, Circular 4/2010, on the functions of the Public Prosecutor in the area of property investigation, authorises the Tax Administration to request expert reports.

[19] Circular 2/2019 FGE states that "With regard to the specific data that can be obtained directly by the Public Prosecutor's Office or by the Judicial Police, the provision is not limited simply to obtaining the ownership of a telephone number or, conversely, obtaining the specific telephone number used by a person, but should be understood to include any request for data aimed at identifying the owner or the communication device, provided that it is not data linked to communication processes".

of clarifications must be made. Firstly, the measure can be agreed by the Public Prosecutor at the request of the police or without being requested, insofar as the LECRIM establishes that "he may authorise". Secondly, the Judicial Police can request it from the Judge or the Prosecutor, who can choose one or the other (STS 171/2019, of 28 March, Chamber II, Speaker: Ms. Polo García, FJ 3º)). Thirdly, if there is any type of affectation of fundamental rights, the judicial authority will necessarily have to be asked for those enabling resolutions insofar as its condition does not allow for an authorised infringement (STS 395/2014, of 13 May, of Chamber II, (Speaker: Excellency Mr. Martínez Arrieta), FJ 3º). Fourthly, the adoption of the measure by the Prosecutor will require a decree, adopted under the premises of proportionality, which will reflect the criminal indications and the constituent elements of organised crime, geographical, subjective and objective identification of the organisation ("large-scale criminal organisations" states STS 250/2017, of 5 April, Chamber II, Speaker: Sánchez Melgar, FJ 8º), duration of the investigation, activities authorised to the undercover agent, making reference to the real and supposed identity attributed to the agent. In any case, the immediate reporting to the judge, together with the additional need to have measures that involve the violation of a fundamental right (STS 140/2019, of 13 March, Chamber II, Speaker: Sánchez Melgar, FJ 4º), could make this measure less effective.

With regard to **controlled movement and controlled delivery**, the SC has pointed out that "The basis of this investigative technique is, therefore, according to settled case law, to allow, discover or identify the persons involved, it is an exceptional measure that must be proportional to the criminal offence under investigation, SSTS. 1248/95, 973/2011 of 29.5, "The fact that this means of investigation is ordered to "discover or identify the persons involved", or STS. 2114/2002 of 18.12 "to allow in this way the correct identification of the true addressee of the same and the determination prior to its delivery, of the content of the consignment..." (STS 15/2015, of 5 March, Chamber II (Rapporteur: Berdugo Gómez de la Torre), FJ 7º). The use of this measure is limited to serious criminal acts, particularly drug trafficking, although it is important to highlight the prudent use of this diligence (Circular 4/2010 FGE). Its adoption can be carried out at the initiative of the Judicial Police, which is then submitted to the Prosecutor, by decision of the latter at the request of the Judicial Police, or by the Prosecutor without being requested to do so by anyone , within the framework of preliminary proceedings.

With regard to the capacity of the investigating prosecutor to agree on precautionary measures limiting fundamental rights and in collaboration with the Judicial Police, **detention,** *as a sui generis and auxiliary measure* (Fuentes Soriano, 2005 p. 105) can only be agreed in cases in which there are no open judicial proceedings (Circular 2/2022 FGE). Detention must be carried out with prudence, and being careful, with respect for the dignity of the person (Instruction 3/2009 FGE regarding the mode and manner in the practice of detention). In any case, this circumstance should not be understood as a real advance, as the practice of the detention procedure can be carried out by a private individual or the police, so it is not a strange attribution (arts. 490 and 492 LECRIM).

The above provisions imply the development of an activity without the opening of a judicial investigation[20] as the opening of this would automatically imply, or should

[20]Circular 1/89 of 8 March 1989 states that "(...) The judicial proceedings that should give rise to the cessation of the Prosecutor's investigation should be those of a criminal nature, since it is a criminal investigation and Art. 785 bis is part of such a process. This means that neither the existence of civil lawsuits

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imply, the cessation of the preliminary investigation by the Public Prosecutor's Office as there is a pre-eminence of judicial intervention as long as knowledge is accredited by the public prosecution. Although a judicial investigation and a parallel investigation by the Public Prosecutor's Office should not be admitted (Pedraz Penalva, 2009 p. 850), nevertheless, the Consulta 2/2022 FGE admits the practice of "auxiliary diligences", although "a considered use of this power should be made, prioritising - particularly during the investigation phase - the practice of the diligences by the judicial body", which would lead to particular orders to the Judicial Police, which is considered delicate to say the least, especially in view of a possible contradiction between judicial decisions and those of the public prosecution[21] . In any case, if it is carried out, which is highly debatable, the right of defence must be respected, and the persons under investigation must be informed. A different matter is the existence of an archive resulting from a provisional dismissal (art. 641 LECRIM), which could lead to the practice of "post-procedural" investigation diligences (Circular 2/2022 FGE) by the public prosecution and which would be used to reopen the case.

It should be noted that this scheme, in its case with the competent investigative unit, can be transferred to the Military Legal Prosecutor's Office by virtue of art. 123 of the Military Criminal Procedure Code 2/1989, of 13 April - a homonym of art. 773.2 LECRIM -, and its integration within the Public Prosecutor's Office and its leadership of the State Attorney General (Lozano Ramírez, 2017, p.133) and that neither can it be alien to an eventual reform of criminal proceedings by changing the role of the examining magistrate (Fiscalía General del Estado, 2022, p. 224). And remembering that in the process of Law 5/2000, of 12 January, on Criminal Responsibility of Minors (LORPM), where although there is talk of "instruction by the Prosecutor", the Public Prosecutor's Office acts as the governing body of the investigation, with respect to offenders over 14 to 17 years of age, with a Juvenile Judge who guarantees their rights[22] and is responsible for sentencing, so that the relationship with the police unit in charge of the investigation must necessarily be close, with the Prosecutor's Office being in charge of its direction so that ".... carry out the necessary actions to verify the offences and the participation of the minor in them, promoting the procedure" (art. 6 LORPM).

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on the facts, nor the initiation of indeterminate judicial proceedings, which by their very nature are indeterminate and neither constitute a procedure nor belong to a specific jurisdictional order, should prevent the criminal investigation by the Public Prosecutor...".

[21]As Instruction 1/2008 FGE points out "In short, even during the processing of the judicial proceedings, the Prosecutor can order the Judicial Police to carry out specific proceedings referring to specific aspects of the investigation. However, the necessary respect for the principle of impartiality that must govern the actions of the Public Prosecutor's Office, as well as respect for the principle of contradiction and defence, require that, once these proceedings have been ordered, it is absolutely necessary to contribute their results to the case, whatever the outcome may be. The contrary could be interpreted as a way of circumventing the investigative function that corresponds to the judicial body in our current system".

[22]STC 60/1995, of 17 March 1995, states that "It is clear from the wording of the precept that, unlike the classic model of the examining magistrate, here the precautionary detention of the minor can only be carried out by the judge at the express request of the public prosecutor and never ex officio, that is to say, as an extension of a previously adopted police detention. This circumstance, together with the fact that the appointment of a lawyer, *in such a case, becomes mandatory - which means that the criminal defence can effectively fight this decision limiting the right to liberty - means that the Judge for Minors can no longer be configured as an "investigating Judge" (given that the investigation has been separated from him and conferred on the Public Prosecutor), but rather as a "Judge of liberty" or guarantor* of the free exercise of fundamental rights..." (FJ 6º). The italics are mine.

5. POLICE INVESTIGATION AND FUNDAMENTAL RIGHTS

The activity of the Judicial Police represents, as mentioned above, one of the possible windows for carrying out the investigation of criminal acts. In other words, together with the Public Prosecutor's Office and the examining magistrate, it becomes an essential actor in the criminal prosecution of crime. Its function is not to configure evidence but to develop proceedings that allow the opening and progress of a judicial investigation (or investigation by the Public Prosecutor) and to provoke, by the force of evidence, the opening of a trial, which may even have probative value. Their work is synthesised in a police report that summarises all the activities carried out by the investigators and establishes an initial framework for their work. It is an *objective* document *limited to the reflection of facts and not of purely evaluative and personal elements of the investigator* (STS 78/2021, of 1 February, Chamber II, Speaker: Marchena Gómez, FJ 2.3º) *with a mere value of denunciation (*SSTC 145/1985, of 28 October, FJ 4º, 22/1988, of 18 February, FJ 3º; 217/1989, of 21 December, FJ 2º; 51/1995, of 23 February, FJ 2º; 303/1993, of 25 December, FJ 4º, among others) and, a priori, outside the category of evidence[23] . In any case, the set of measures that the Public Prosecutor's Office can carry out in the course of its intervention, as described in the previous section, can be carried out by the police.

The history of the evolution of procedural law has led to an increase in the role of the police in the investigation. Thus, in the development of the so-called rapid prosecution of certain crimes (arts. 795-801 LECRIM)[24] where, in application of a clear concentration of procedural acts and using only the police report as a basis, conviction by the investigating judge is possible, which is an investigative model of shared management (Marco Cos, 2002, p.7) and the eventual application of a rewarded conformity, the execution of which will be the responsibility of the Criminal Court, or the procedure for the prosecution of minor offences (art. 964 LECRIM), even immediately (art. 962 LECRIM), imply cases of "low intensity criminality" where the police report actually fulfils the real function of an initial indictment, as there is no judicial investigation, but rather a direct trial, except for the application of the principle of opportunity .[25]

Together with the increase of a powerful intervention in criminal proceedings, we

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[23] "As we have pointed out in our jurisprudence, for example STS 724/2002, of 24 April, it is clear that the Judicial Police, a technical police force specialising in the investigation of criminal acts, has its own powers to carry out investigative procedures with the scope and content provided for in the procedural laws. A different issue is the evaluation that should be given to the aforementioned police measures, as these are not evidence, without prejudice to their evaluation as testimonial evidence in the oral trial, subject to the requirements of testimonial evidence. *In short, it is not a pre-constituted expert but rather a police investigation procedure that acquires evidential relevance, as testimonial evidence, when the officers appear in the oral trial* to testify on what they sensorially appreciated" (STS 304/2012, of 24 April, of the Chamber (Speaker: Mr Berdugo Gómez de la Torre), FJ 2º). The italics are mine.

[24] Thus, Circular 1/2003, of 7 April, on the procedure for the rapid and immediate trial of certain crimes and misdemeanours and modification of the abbreviated procedure, considered the fundamental role of the police and above all that the architecture of the system should be based on the police report.

[25] As Circular 1/2015 on guidelines for the exercise of criminal action in relation to minor offences following the criminal reform introduced by LO 1/2015 makes clear, "The succession of acts that the rule seems to establish is as follows: preparation of the police report, in the course of which the police itself must carry out the offer of actions and the information to the complainant and the injured party required in arts. 109, 110 and 967 LECrim; judicial agreement to initiate proceedings for the prosecution of minor offences, after verifying their criminal relevance; then transfer to the Public Prosecutor so that he can decide whether to close the case on the grounds of expediency or hold the trial".

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are witnessing the creation of a "Police Law" with administrative sanctioning capacity through the so-called Organic Law for the Protection and Security of the Citizen 4/2015, of 30 March (LOPSC) - in force at the time of writing this paper - which, although it tries to keep away from a Judicial Police function, intermingles with it at times (Rebollo Puig, 2019, p. 46). In a certain way, we can speak of *two-way measures with varying intensity*[26] depending on whether we are in the presence of an application of the LECRIM for the purpose of investigating the criminal act that may collide with fundamental rights, or whether it is a punitive intervention, with facts bordering on criminal conduct, and with an impact that should be imperceptible on fundamental rights. In any case, it is necessary to rule out the possibility of using the measures of the LOPSC for police investigation purposes by circumventing the scheme of constitutional guarantees (*Vid.* in its entirety STS 6/2021, of 13 January, of Chamber II, Rapporteur: Puente Segura).

Police intervention is activated, and develops its functions, when they become aware of alleged criminal acts known by virtue of a complaint, or due to confidences that lead to police verification actions (STS 159/2020, of 18 May, of Chamber II (Speaker: Honourable Lamela Díaz) FJ 2º) or due to their own knowledge. This first phase is built with an operational activity which, to a large extent, remains distant from the judicial function of guarantee, developing autonomously. It is a phase of investigating the facts and those responsible for verifying the existing elements and incorporating them into a criminal legal classification under a provisional situation which does not oblige immediate reporting to the judge as long as the proceedings are not considered to have been completed. In the course of these proceedings, only when the police activities prove to be insufficient in their autonomy to verify certain elements susceptible of being investigated, and it is necessary to carry out certain measures which imply the violation of fundamental rights (interception of communications, opening of correspondence, searches and searches...), it is necessary for the judge to be informed immediately....), this situation of reasonable police secrecy must be lifted, bringing the information to light and making the judge a participant in the facts under investigation so that, after a factual-legal assessment, he or she can decide on the measures to be submitted for his or her consideration.

The situation in which the suspect finds himself before the police investigation is, in the first place, one of absolute ignorance, and this is because the investigating unit cannot inform him of the development of its actions. The right of defence, therefore, is clearly blurred because during this phase, logically, nothing is communicated to him/her, nor does he/she have access to what has been done, nor to its results, a situation that only occurs a posteriori. Moreover, although the police investigation has already entered the judicial sphere, the situation of secrecy can also be maintained (art. 302 LECRIM; STC 176/1988, 4 October, FJ 3º). Therefore, measures limiting fundamental rights are adopted in a situation of ignorance by the affected party who sees their privacy sacrificed, be it personal, domicile or that referring to their communications (art. 18 EC)[27] but also, at

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[26] This can be clearly seen in the analysis of the Preliminary Draft of the LOPSC. This is what the Council of State pointed out in its opinion 557/2014, of 26 June, differentiating, for example, between retention and detention, stating that it is a "provisional immobilisation that can only be maintained for the time necessary to carry out a specific police procedure, which is why it is excluded from the legal framework of detention. Its legitimacy derives from the existence of an express legal cover".

[27] As pointed out by STS 811/2015, of 9 December, Chamber II (Speaker: Mr. Maza Martin), "But in order to focus on the legal framework of detention, it is necessary to have a legal basis". Maza Martin) "But in order to focus on such a question in its proper terms, we must begin by pointing out how the strict

later ordinary moments, their personal freedom (art. 17 EC) and freedom of movement and movement (art. 19 EC).

Judicial authorisation becomes the essential prerequisite for the intrusion of the investigating unit into the protected sphere of the suspect (SSTC 207/1996, 16 December, FJ 4º; 25/2005, 14 February, FJ 6º; and 233/2005, 26 September, FJ 4º). However, there are cases in which *under the criterion of urgency (gefahr im verzug)* "for the investigation of the crime, the discovery of criminals or the obtaining of incriminating evidence..." (SSTC 115/2013, of 9 May, FJ 6º; 127/2000, of 16 May, FJ 3 a) and 292/2000, of 30 November, FJ 9º), *ex ante* police action is possible, although *ex post* judicial control is also possible (arts. 579.3, 588 ter d), 588 quinquies b) or 588 sexies c) LECRIM) always in accordance with a criterion of proportionality, which suspends, in certain cases, the guarantee of prior judicial authorisation that affects the privacy of the suspect by carrying out a subsequent validation by the judge (STC 70/2002, of 3 April, FJ 5º; STS 864/2015, of 10 December, Chamber II, Speaker: Del Moral García, FJ 7º). In any case, there are various cases that allow police interference in the right to privacy (art. 18.1 CE) such as access to an electronic file or telephone contact list of a mobile phone - without being able to enter into the communication process with incoming and outgoing calls - the opening of a diary on paper or the reading of the papers found in it, or light bodily inspections (STC 207/1996, of 16 December, FJ 4º).

Together with the premise of *urgency*, we have *flagrancy*, especially in cases where it serves to circumvent the *inviolability of the home* (18.2 EC; SSTC 22/1984, 17 February, FJ 5; 50/1995, 23 February, FJ 5; 133/1995, 25 September, FJ 4; 10/2002, 17 January, FJ 5; 189/2004, 2 November, FJ 2) with a specific regulation in art. 553 LECRIM which allows for house searches in specific cases. In this sense, together with the provision of art. 795.1º LECRIM, case law requires three elements: the immediacy of the criminal action, the immediacy of the personal activity, and the need for urgent police intervention due to the risk of the disappearance of the effects of the crime (STS 399/2018, of 12 September, Chamber II, FJ 7º Speaker: Ferrer García)[28] . Thus, entry into another person's home can only be permitted with the consent of the inhabitant or with judicial

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requirements of certain invasions inherent to the investigation should not be confused with such sensitive fundamental rights as the secrecy of communications, *whose practice is logically carried out in a situation of absolute ignorance of the holder of the right and, therefore, in a state of defencelessness that can only be remedied by* judicial *intervention*, authorising and controlling its execution..." (FJ 1º). The italics are mine.

[28] STS 399/2018 itself explains these three features: "The immediacy of the action, i.e. that the crime is being committed (actuality of commission) or has been committed moments before (temporal immediacy), means that the offender is caught at the moment of committing it. However, this requirement has also been considered to be fulfilled when the offender has been caught in the act of committing the offence or at a time subsequent to its commission. Personal immediacy is equivalent to the presence of an offender in relation to the object or instrument of the offence, which implies evidence of the offence and evidence that the caught person has participated in the offence. Such evidence may result from the direct perception of the offender at the scene of the offence or through the perceptions of other persons who alert the police to the fact that the offence is being committed. In any case, evidence can only be asserted when the trial can link the officers' perceptions to the commission of the crime and/or the involvement of a particular subject virtually instantaneously. If a more or less complex deductive process is required to establish the reality of the crime and the involvement of the offender in it, it cannot be considered a case of flagrante delicto. Finally, the urgent need for police intervention means that, due to the circumstances, the police are compelled to intervene immediately in order to prevent the progression of the crime or the spread of the evil that the offence entails, the arrest of the offender and/or the obtaining of evidence that would disappear if judicial authorisation were sought" (FJ 7º).

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authorisation, except in specific cases provided for by law such as "in flagrante delicto, when a criminal, immediately pursued by the agents of the authority, hides or takes refuge in a house or, in cases of exceptional or urgent need, in the case of those allegedly responsible for the actions referred to in Article 384 bis (terrorists), whatever the place or home where they hide or take refuge..." which also allows for a search with subsequent communication to the judge. Likewise, it may enter a home in accordance with the LOPSC to "avoid imminent and serious damage to persons and things, in cases of catastrophe, calamity, imminent ruin or other similar cases of extreme and urgent need" (art. 15.2).

Police custody, as a measure which violates the fundamental right of art. 17.3 CE, is the most restrictive measure to be applied by the investigating unit, and this is its own decision, being a *personal precautionary measure consisting of a temporary deprivation of liberty* which, as it is subordinated to a future criminal process, will determine its availability to the judge, unless a decision is taken on "police liberty" (art. 496 of the LECRIM). The detention of a person is only possible due to the existence of an alleged commission of acts that are crimes or acts that appear to be serious or less serious crimes (arts. 490, 491, 492, 494 LECRIM). Detention is not possible for a minor offence (art. 495 LECRIM), nor for an administrative offence except in the case of detention to identify the subject (art. 16.2 LOPSC). In this sense, the arrest must be motivated and justified in the police report (Varela Castejón, Ramírez Ortiz, 2010, p. 220) and can be carried out immediately after the commission of a criminal act, not only because it is indicatively constitutive of a criminal offence but also because its involvement is clear due to direct police intervention and perception (cases of flagrante delicto and generally to protect public safety). Likewise, the arrest can be carried out once the crime has been committed, but by virtue of the indications that arise after a laborious investigation resulting from the activity of the Judicial Police. In both cases there is a time limit of 72 hours - 24 hours if it is less - for the development of proceedings and subsequent presentation before the judicial authority, without it being possible to artificially exhaust, prolonging, the deprivation of liberty in an unjustified manner, opting for the shortest possible period of time (SSTC 199/1987, of 16 December, FJ 8º; 224/1998, of 24 November, FJ 3º) .[29]

Finally, the development of police proceedings and before the investigating unit requires full respect for the right of defence (art. 24.2 CE), recalling as STC 87/2001, of 2 April 2001, points out, "...the need to allow the accused to enter the proceedings from the preliminary investigation phase is only for the purposes of guaranteeing the full effectiveness of the right to a defence and to prevent material situations of defencelessness from arising against him, even in the investigation phase (SSTC 44/1985, 135/1989 and 273/1993)" (FJ 3) (FJ 3º). In this sense, the legitimacy of the criminal defence against the governmental (or judicial) machinery implies a maximum expression of the Rule of Law incompatible with any arbitrary violation of guarantees or fundamental rights[30]

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[29] Reference should be made to the existence of cases of police detention in the case of terrorism (art. 520 bis LECRIM), characterised by a greater restriction of rights, with the possibility of incommunicado detention of the person under investigation and a greater extension of the detention period, as additional extensions of 48 hours are possible, and the case of police detention in marine areas (art. 520 ter LECRIM), which seeks to combine the particular situation in which the detention takes place with the necessary judicial availability.

[30]In this sense, STS 875/2021, 15 November, Chamber II, FJ 2. 4th Rapporteur: Marchena Gómez in pointing out "The starting point on which to build the jurisprudential treatment of the prohibition of unlawful evidence can be explained as follows: "... *the power of the State to prosecute and try unlawful*

although, legislatively, police interrogation, as such, is not regulated (Nieva Fenoll, 2008, p. 8) and questions such as a possible situation of disability and the mechanisms of facilitation in these cases in the course of police actions are not rigorously addressed, for example (Alfonso Rodríguez, 2023, pp. 68-69).

Once the arrest has been made, the suspect must be provided with accurate and precise information on the facts of the alleged offence (ECHR, Case of Pèllisier and Sassi v. France, 25 March 1999; Case of Dallos v. Hungary, 1 March 2001; Case of Sipavicius v. Lithuania, 21 February 2002; Case of Varela Geis v. Spain, 5 March 2013; Case of Sipavicius v. Lithuania, 21 February 2002; Case of Varela Geis v. Spain, 5 March 2013; Case of Pèllisier and Sassi v. France, 25 March 1999; and Case of Dallos v. Hungary, 1 March 2001. Spain, of 5 March 2013; STC 297/1993, of 18 October, in its FJ 3º) and that substantiates the granting of his status as a police investigator, *which motivates the deployment of the right of defence*[31] with legal assistance, something that clearly results from arts. 118 and 520 LECRIM, *particularly the right of access to essential actions* to challenge the detention (art. 520.2 d) LECRIM) and the reserved interview with the lawyer (art. 520. 6. d) LECRIM) to receive adequate advice (art. 6.2 b) LDD). The lawyer who assists him/her, as a general rule, must be of his/her choice and trust (STS 263/2013, of 3 April, Chamber II, FJ 5º, (Speaker: Excmo. Mr. Conde-Pumpido Tourón). If they do not make their own choice, the Judicial Police will have to take care of facilitating their free legal aid, therefore, *their intervention is not alien to a guaranteeing facet.* Likewise, the necessary assistance of a translator or interpreter is relevant in the event of not understanding the Spanish language (*Cfr.* STS 213/2016, of 26 January, Chamber II, FJ 3º: Speaker: Conde-Pumpido Tourón).

The lawyer must *effectively and actively* assist the person under investigation (Cfr. STS 3183/2015, of 29 June, of Chamber II, FJ 1º Speaker: Mr. Maza Martín) and to whom it is appropriate to provide the police file (art. 6.1 II LDD) scenario where the reserved interview between the two makes sense and without the possibility of knowing their communications which are confidential (arts. 118.4 and 520.7 LECRIM, and already before by STS 414/2012, of 9 February, of Chamber II, FJ 7.3, Speaker: Colmenero Menéndez de Luarca), except for the participation of the lawyer within the criminal dynamics itself. In any case, the suspect's statement to the Judicial Police *does not have evidentiary status* (SSTC 217/1989, of 21 December , FJ 2º 68/2010, of 18 October , FJ 5º)[32] , recalling, likewise, that the self-incriminating statement of an investigated person

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acts cannot use shortcuts. The exercise of the judicial function only conforms to the constitutional model when it is based on the principles that define the right to due process. These principles, which do not lack a genuine ethical dimension, act as a source of limitation of state activity. *The infringement of the rights of the accused, whether by an act of a criminal nature or by the violation of his fundamental rights and freedoms, opens a crack in the very structure of criminal proceedings*. Its contaminating effects reach other procedural acts connected to the original unlawfulness and which may be affected in their apparent validity"...". The italics are mine.

[31] The Law on the Right of Defence (**hereinafter LDD**) 5/2024 of 11 November also states the following in Art. 3.3 "In criminal cases, the right of defence also includes the right to be informed of the accusation, not to testify against oneself, not to confess guilt, the presumption of innocence and the right to a second hearing, in accordance with the Criminal Procedure Act, Organic Law 6/1985, of 1 July, on the Judiciary, Organic Law 2/1989, of 13 April, on Military Procedure, and Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors. These rights shall be applicable to administrative sanctioning and disciplinary proceedings, especially in the penitentiary sphere, in accordance with the laws that regulate them".

[32] It should not be forgotten that the Agreement of the non-jurisdictional Plenary of Chamber II of 28 November 2006 states: "*Statements validly made before the police may be subject to assessment by the*

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without information of rights and without legal assistance will not be admitted as valid prosecution evidence (STS 4622/2014, of 15 October, Chamber II, FJ 4º, 5º and 6º, Speaker: Excellency Mr. Conde-Pumpido Tourón; STSJM 10400/2012 , of 14 February, of the Civil and Criminal Chamber, 2nd and 3rd FJ, Speaker: Fernández Castro, in relation to the nullity of a sentence handed down by the Jury Court). If the police statement does not have evidentiary status, silence cannot be considered a declaration of guilt either (STC 149/2008, of 17 November, in its FJ 6º) .[33]

Detention has its reverse side in the *habeas corpus* procedure aimed at verifying the lawfulness or unlawfulness of this police deprivation of liberty (SSTC 35/2008, 25 February, FJ 2 b); 147/2008, 10 November, FJ 2º b; 42/2015, 2 March, FJ 3º), which motivates the placing under judicial disposition with suspension of the proceedings, paralysing the development of the police investigations until a judicial decision is taken on the detention carried out.

It is easy to see that police action plays an important role which, without a doubt, has an impact on the procedural guarantees connected with the fundamental rights that may be affected (freedom, privacy or defence, among others). For this reason, rigorous technical and procedural intervention becomes a basic requirement for the judicial police, but it should not be overlooked that adequate coordination with the judicial and prosecutorial authority and with a new (and unique) procedural direction of the investigations would contribute to strengthening those guarantees. However, the question of whether the change should take place, which subject should be in charge and whether it is possible to introduce more immediate changes while awaiting a major reform that will revolutionise our procedural system is an immediate question.

6. CONCLUSIONS AND BRIEF CONTRIBUTIONS: NEW JUDICIAL POLICE OR NEW FORM OF INVESTIGATION?

The LECRIM of 1882, currently in force, represented a well-intentioned and advanced text at the time, however, despite the praiseworthiness of its aims, it has been the object of permanent legislative reform, with constant modifications and direct or indirect retouches, which allows us to view the text today with a certain distance, given that it makes provisions designed for an era that does not exist coexist with the realities resulting from social and technological changes. And in this framework, the reform of criminal procedure has become clear, as follows:

"It is unavoidable to tackle the drafting of a new criminal procedure law which, based on the pre-legislative work already existing in recent history, combines efficiency in the application of criminal law with the safeguarding of the rights of the accused; it articulates a modern, agile and balanced investigation system; It places the judicial bodies and the Public Prosecutor's Office in the role that constitutionally corresponds to them in this process; it overcomes the contradictions in the role currently played by the

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Court, after their incorporation into the oral trial in one of the forms accepted by jurisprudence".

[33]In the case of his refusal to testify without legal assistance *with subsequent police* release, it does not annul the procedural acts in which he would have had the assistance of a lawyer, i.e., it *would annul the police statement* but without contaminating the rest of the proceedings (*Cfr.* SAP H 154/2007, 9 March, FJ 1º Ponente: García-Valdecasas García-Valdecasas).

Examining Magistrate; and it brings us into line with the model that, in a generalised manner, already exists in the countries of our cultural, legal and European environment. This necessarily leads to the establishment of a procedural model that, on the one hand, attributes the direction of the investigation to the Public Prosecutor's Office and, at the same time, creates a Judge of Guarantees and another judge for the trial of the accusation to rule on the fundamental rights of those under investigation and review the accusatory claims" (Fiscalía General del Estado, 2019, p. XXV).

There have been three attempts at modification that have not passed the threshold for parliamentary debate. Indeed, there has been an attempt to resituate the role of the examining magistrate to turn him into a judge "for" the investigation, placing the Public Prosecutor's Office at the head of the procedural management of investigations, with the European Public Prosecutor being seen as a kind of trial against the current system (Consejo General del Poder Judicial, 2021, p. 12), and perhaps the first attempt to change the role of the European Public Prosecutor's Office to a judge "for" the investigation. 12), and perhaps the first successful attempt to make a Copernican turn in our criminal procedure system, which leads us to reflect on the extraordinary paradox of having, in addition to a national investigating prosecutor and an investigating judge, a European Public Prosecutor in charge of investigations into certain economic crimes against the EU who, in turn, has a counterweight in a kind of judge of guarantees, as two different realities that imply a sort of heads and tails of the same coin.

In any case, there have so far been three procedural attempts in our country, as mentioned above: Preliminary Draft of the Criminal Procedure Act of 22 July 2011 (ALECRIM 2011; Minister Mr. Caamaño Domínguez), the Articulated Text of the Criminal Procedure Act drafted by the Institutional Commission created by agreement of the Council of Ministers of 2 March 2012 (TALECRIM 2013, Minister Mr. Ruiz-Gallardón Jiménez), also identified as Draft Code of Criminal Procedure, and the Anteproyecto Ley de Enjuiciamiento Criminal de (ALECRIM 2021; Minister Mr Campo Moreno y Llop Cuenca).

For the preliminary drafts and drafts, the Judicial Police becomes a central piece of the reform, however, the organisational elements should be separated in another norm, from the specifically procedural ones and its role as an operative actor in the development of the investigations[34] , which draws attention to the absolutely revolutionary formula intended by the TALECRIM of 2013, which is worth transcribing and which was included in art. 80 by establishing "1.-The Judicial Police is organically integrated in the Public Prosecutor's Office. The Law on the Organisation and Functioning of the Judicial Police shall establish its structure, the status of its personnel and its form of action. 2.- The State Public Prosecutor's Office shall issue the circulars and operating instructions of the Judicial Police that it deems necessary for the proper functioning of the service".

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[34]In this sense, the ALECRIM 2021 states in the Explanatory Memorandum (EM) "A functional model of criminal procedure should not bring all aspects relating to the so-called "Judicial Police" into the scope of the Criminal Procedure Act. This is a multifaceted matter, in which substantial elements of public security and justice policies are intertwined. From the constitutional regulatory framework itself, we can deduce the logical separation of the regulation of organisational matters - which must be contemplated in an Organic Law on the Security Forces and Corps and in its implementing regulations - and material matters, referring fundamentally to the acts of investigation and the relationship of functional dependence that arises with the criminal justice bodies. It is the latter that must be included in the text of the new criminal procedure law.

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The previous regulation changed the consideration of the "Judicial Police" as a function and it became a single body under the responsibility of the State Prosecutor General, who assumed its leadership. The issue was not an easy one. Firstly, the possibility of organically splitting up the Judicial Police bodies within the Ministry of the Interior (National Police and Guardia Civil) or the Treasury (Customs Surveillance Service) in such a way that it would first be necessary to create this "Prosecution Police" and then remove it from its natural setting. Secondly, there are doubts regarding the cases referring to the Autonomous Police with specific bodies (Catalonia, the Basque Country and Navarre), which could lead to a confrontation of powers when integrating non-state bodies into the Public Prosecutor's Office, an issue that could be overcome by maintaining a single functional dependency of the specific autonomous Judicial Police bodies with respect to the public prosecution, but without affecting their organisational situation in relation to the respective Regional Ministry. Thirdly, there is the question of how to trace the relationship between the Public Prosecutor's Office and the Police in such a way that the public prosecution does not end up being diluted in the Police itself (López Ortega, Rodríguez Fernández, 2013, p. 12) and this is because it is necessary to delimit both levels which, although they must be absolutely coordinated, cannot converge to the point of becoming indistinguishable.

What ALECRIM 2011 and 2021 did was to continue to maintain the concept of "Judicial Police" as a function[35] which ruled out the creation of a specific and independent body , preferring to opt for the system that currently governs the current LECRIM with functional dependence on the investigating Prosecutor, preventing it from becoming the "super police" that could result from the TALECRIM 2013 without taking into account the training of the public prosecutors themselves (Rodríguez Sol, 2013, p.3).

[35] As ALECRIM 2021 (EM) points out, "In this sense, *the notion of Judicial Police established in the present law is, in accordance with what was already proposed in the 2011 Preliminary Draft, purely functional*. Hence, it simply refers to its ordinary exercise by the Security Forces and Corps under the functional dependence of the Public Prosecutor's Office. It also refers to the exceptional possibility, by provision of a regulation with the status of law, of certain investigative functions being exercised by law enforcement officers who do not belong to these forces and corps. Thus, *the notion of generic judicial police* is accepted, which has been consolidated in practice and which has allowed the occasional action of specialised units, such as the Customs Surveillance Service, a service which is now joined, with particular vigour, by the Asset Recovery and Management Office, which was already mentioned, before it became effectively operational, in the 2011 Preliminary Draft". The italics are mine.

We cannot speak of extraordinary powers in any of the preliminary drafts[36] or drafts[37] with regard to the competences that the Judicial Police can assume, although it is in any case positive that there is a complex of articles that distinguish, even if only the function, indicating what their specific competences are. It would be advisable for this new LECRIM to put an end to the unfortunate dispersion, and as far as criminal proceedings are concerned, that we suffer in this area, where various legal texts intervene[38] which do not help to simplify a central issue in criminal proceedings, perhaps this is where one of its main values would lie.

In any case, it is surprising that the question of dependence or the creation of a single body still continues to be a constant issue, even after the promulgation of the Constitution, and at the same time marks the difference between preliminary drafts and drafts. The issue is perhaps not so much the debate on the question of the dependency, and above all the organic insertion, but rather the value of the police proceedings and the need to put an end to the duplicity of actions that have to be repeated in order to have, at

[36] In this sense, the **2011 ALECRIM** contemplates its competences in arts. 443-452, under the sole dependence of the Prosecutor in the development of the preliminary investigative activity with a series of specific attributions of its strict ownership and together with the attributions of inspection, searches, frisks and collection of samples, which are of particular relevance "*To receive a statement from the person under investigation, after having been informed of the rights recognised as such by the Constitution and this law*", "*To make arrests in the cases and with the guarantees provided for in Section 1 of Chapter I, Chapter I of Title II of Book II of this law*" and *"To receive statements from any persons who may provide useful information for the investigation and to this end summon witnesses of the investigated act to appear and testify at the police station*" (art. 446). 446). The **ALECRIM of 2021** regulates police activity in arts. 536-545, with a series of relevant powers, which include, in addition to those seen in accordance with the 2011 text - especially the detention, statement of the investigated person and witnesses - that determined in art. 539 of "*Obtaining photographic, lophoscopic and genetic identification analyses of persons arrested in accordance with the provisions of this law, as well as incorporating the data obtained into the respective police files, in accordance with their regulatory legislation and the rules on personal data protection"* together with the possibility of "*Requesting those responsible for any public or privately owned register to provide any information relating to the entries contained therein, when the authorisation of the prosecutor or the competent judge is not necessary and in any case with the limitations established in the data protection legislation".* To this we can add "*photographic identification of persons by complainants and witnesses in the manner and with the requirements established in this law"* or "*Carry out surveillance or observation of persons, places or things..." in* accordance with the provisions of the law itself.

[37]The **draft LECRIM or BCPP of 2013** contemplates as Judicial Police proceedings the arrest (art. 165), collection of effects of the crime and sources of evidence (arts. 208, 217, 218,), external body searches (art. 281), consented radiological examination (art. 282.1), collecting and obtaining genetic traces and taking samples (arts. 287-288), proceedings to determine drug and alcohol consumption (arts. 291-293), capturing images in public spaces (art. 330) or access to a home or closed place in cases of flagrante delicto (art. 334).

[37]Thus in the LECRIM 1882 (arts. 280- 298), also in the Organic Law of the Judiciary (LOPJ) 6/1985, of 1 July, modified for these purposes by Organic Law 19/2003, of 23 December, whose Title III of Book VII - arts. 547 to 550- is dedicated to the regulation of the Judicial Police together with the Organic Law of Security Forces and Corps (LOFCS) 2/1986, of 13 March, which, in Chapter V of its Title II, configures the so-called Judicial Police Units, as well as in RD 769/1987, of 19 June, on the regulation of the Judicial Police, modified by RD 54/2002, of 18 February, to incorporate those Autonomous Communities with statutory competence in this area into the Judicial Police Coordination Commissions, recalling that the Ertzaintza, the Mossos d'Escuadra and the Policía Foral de Navarra have Organic Judicial Police Units.

[38]Thus in the LECRIM 1882 (arts. 280- 298), as well as in the Organic Law of the Judiciary (LOPJ) 6/1985, of 1 July, modified for these purposes by Organic Law 19/2003, of 23 December, whose Title III of Book VII -arts. 547 to 550- is dedicated to the regulation of the Judicial Police together with the Organic Law of Security Forces and Corps (LOFCS) 2/1986, of 13 March, which, in Chapter V of its Title II, configures the so-called Judicial Police Units, as well as in RD 769/1987, of 19 June, on the regulation of the Judicial Police, modified by RD 54/2002, of 18 February, to incorporate those Autonomous Communities with statutory competence in this area into the Judicial Police Coordination Commissions, recalling that the Ertzaintza, the Mossos d'Escuadra and the Policía Foral de Navarra have Organic Judicial Police Units.

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present, the judicial endorsement and which cause unnecessary delays in reaching the oral trial (Bacigalupo Zapater, 2005, p. 490). However, the debate on the role of the Judicial Police in the criminal process must be rethought in aspects that are not minor, aspects which, on the other hand, would give rise to an individualised scientific study.

In the first place, we must rethink the needs in terms of personnel resources. It must be borne in mind that new forms of criminality, particularly but not only linked to new technologies, require new profiles in the police forces that must be attracted and retained. Secondly, without entering into the debate on organisational dependence or integration, it is necessary to address the simple question of the physical situation of the investigative units of the Judicial Police. If they work with judges or prosecutors, it is logical to think that their place and location should be close to them, and therefore begin to locate the members of the police units in charge of carrying out the investigation in the judicial or prosecutor's offices. Thirdly, we should not forget the possible integration of joint teams with bodies or officials from other administrations (Treasury or Labour Inspectorate) that can contribute more effectively to the clarification of certain crimes[39] and highlight the importance of specialisation depending on the crime for a better investigation, precisely by assigning non-police officials, but with particular knowledge (accounting, scientific or technical), who can contribute to improving police procedures or to guiding the members of the units. Fourthly, the need to unify instructions on transcendental issues such as the infringement of fundamental rights to enable members of the investigative units to know the criteria and elements to be taken into account when carrying out requests for their infringement, whether in a report to the Public Prosecutor or in a direct request to the examining magistrate. And without forgetting the singular role played by the Judicial Police Commissions, which should have a greater role in coordinating the Police-Administrator of Justice with constant contributions.

But we can also consider the need to give greater weight to police investigations. This is not an issue which is already alien to our procedural legal system, where there would only be a judicial investigation when there are insufficient elements derived from the investigation to allow an accusation to be made (STC 186/1990, 15 November, FJ 4º), a path which has been followed by the system of rapid prosecution through the urgent proceedings procedure (arts. 795 and following, LECRIM).

In this sense, except for serious crimes which can lead to a complex investigation or enquiry, the procedural actions should serve to complement the reports drawn up by the investigating unit, which will verify the criminal act and the parties involved (victim/victim, witnesses and suspect), reflecting all the evidence available to it. In this sense, there are two important elements to take into account. On the one hand, the use of new technologies where all the statements made are duly recorded[40] , which is absolutely important, as there is no real authentic witness for the development of police

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[39] This is already a reality and, **institutionally, the FGE states**: "The High Prosecutor of the Autonomous Community of the Balearic Islands celebrates the success that the creation of joint teams with the Judicial Police and AEAT technicians has meant for the investigation of criminal acts" (Fiscalía General del Estado, 2018, p. 805).

[40] As noted in the European Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, "Any questioning of vulnerable persons during the pre-trial investigation phase should be recorded by audiovisual means.

investigations. And, secondly, the right of defence should become absolutely virtual within the police proceedings, with the possibility of providing elements of exoneration that should be recorded in these minutes, including all the exculpatory elements that should be known, at all times, by the defence. At present, the personal situation conditions the possibility of the defence. That is to say, except in cases of police-ordered release (496 LECRIM), the peremptory nature of the presentation in court currently prevents the proper articulation of a defence strategy that would allow for the provision of exculpatory elements within the police investigation itself.

The autonomous police investigation should be concluded when all the essential procedures have been carried out that would allow a subsequent decision to close the case on the grounds that there is no crime or perpetrator, or that the perpetrator is unknown, or could be used for the formulation of a direct accusation due to the sufficiency of the procedures carried out, which could lead to the immediate prosecution of the act. In any case, in the event of the need to carry out measures limiting fundamental rights (telephone tapping, searches and searches, beacons, interception of communications), which would imply the cessation of the police measures as, from that moment onwards, it would become, bearing in mind the authorised violation, a controlled investigation. The cessation of proceedings should also proceed when international cooperation actions are carried out, except for those requests that could be carried out autonomously, or in the event of complex expert opinions or the reconstitution of evidence (think of a key witness who is about to die or move out of the country), which would necessarily require judicial intervention. In any case, the procedural phase before the examining magistrate or the investigating prosecutor would mean that the investigating unit would become a commissioned or delegated body in the exercise of its functions.

We are, in any case, on the eve of a change that has already taken place on a structural level with the so-called *Organic Law 1/2025, of 2 January, on measures for the efficiency of the Public Justice Service* and which, although it has little impact on the actual organisation of the Judicial Police, implies a revolution, reforming the LOPJ, in the way in which the functioning of the judicial bodies will be conceived, in particular, the so-called "Investigation Sections", "Sections for violence against women" or "Sections for Violence against Children and Adolescents" which make up the so-called Court of First Instance in each judicial district, where the titular judge linked to his or her court will no longer make sense, as they will now work integrated within the same body, which will facilitate collegiality in the field of criminal investigation, at least until the enactment of a new LECRIM, which will have an impact on the scope of the relationship with the judicial police, the scope of which only time will determine.

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II.- RESEARCH WORK

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Research Article

DEATH FROM ABOVE: USE OF ATTACK DRONES BY TERRORIST ORGANISATIONS

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DEATH FROM ABOVE: THE USE OF ATTACK DRONES BY TERRORIST ORGANISATIONS

Summary: INTRODUCTION. 2. ATTACK DRONES IN CONVENTIONAL WARS. 2.1. Syrian Civil War. 2.2. 2.2. Ukrainian war. 3. OPERATION SPIDER WEB. 3.1. The attack of 1 June 2025. 3.2. The operation. 3.3 Differences with other similar operations. 3.4. Consequences. 4. ATTACK DRONES COME TO SOUTH AMERICA. 4.1 Mexico. 4.2 Colombia. 4.3 PROPOSED SOLUTIONS. 5. APPLICATION OF LESSONS. 5.1 Lessons learned from previous attacks. 5.2. 5.2. Potential for terrorist attacks using drones. 5.3. Attacking the supply line. 5.4. Sensitive phases in the process of preparing a UAS attack. 6. CONCLUSIONS. 7. BIBLIOGRAPHICAL REFERENCES. 8. REGULATIONS.

Abstract: Small drones have become increasingly present in conflict scenarios. Their versatility, wide availability, and low cost explain this trend. This article examines the possibility that such devices may be incorporated into attempted terrorist attacks, first analyzing their use in armed conflicts, with particular attention to rear-area operations, whose characteristics could inspire the planning of attacks. To assess the operational utility of drones for actors with more limited logistical, economic, and operational capabilities than states, the article also explores their use by criminal organizations in South America. The findings are then related to the vulnerabilities historically exploited by terrorist groups to evade state action and carry out their operations. The article concludes that drones constitute highly attractive tools for these groups and that their proliferation entails the emergence of new vulnerabilities that must be identified and addressed to prevent potential attacks against the state or its citizens.

Resumen: Los drones de pequeñas dimensiones se han convertido en sistemas cada vez más presentes en los escenarios de conflicto. Su versatilidad, amplia disponibilidad y bajo coste explican esta expansión. Este artículo analiza la posibilidad de que estos dispositivos puedan incorporarse a tentativas de atentados terroristas, examinando previamente los usos que han recibido en conflictos bélicos, con especial atención a las acciones en la retaguardia, cuya naturaleza podría resultar inspiradora para la planificación de ataques. Con el fin de valorar la utilidad operativa de los drones para actores con capacidades logísticas, económicas y operativas inferiores a las de los Estados, se estudiará también su empleo por parte de organizaciones criminales en Sudamérica. Las conclusiones obtenidas se pondrán en relación con las vulnerabilidades históricamente explotadas por grupos terroristas para evadir la acción del Estado y materializar sus operaciones. El artículo concluye que los drones constituyen herramientas especialmente atractivas para estos grupos, y que su proliferación implica la aparición de nuevas vulnerabilidades que deberán ser identificadas y corregidas para prevenir atentados contra el Estado o sus ciudadanos.

Keywords: Drones, Artificial Intelligence, Terrorism, Ukraine, Attacks.

Palabras clave: Drones, Inteligencia Artificial, Terrorismo, Ucrania, Atentados.

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ABBREVIATIONS

9/11: 9/11 Attacks

CDS - Sinaloa Cartel

CIA: Central Intelligence Agency

CJNG: Jalisco Cartel - Cartel de Jalisco Nueva Generación (Jalisco Cartel - New Generation)

DEA: U.S. Drug Enforcement Administration

ISIL/ISIS: Islamic State in Iraq and the Levant

USA: UNITED STATES USA: United States

FARC: Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)

FBI: Federal Bureau of Investigation

FPV: First Person View

GPS: Global Positioning System

AI: Artificial Intelligence

TCOs: Transnational Criminal Organisations

RPAS: Remotely Piloted Aircraft System

SBU: Security Service of Ukraine

UAS: Unmanned Aerial Systems

UAV: Unmanned Aerial Vehicles

INTRODUCTION

Humankind has always made use of advances in science to enhance its military capabilities. In some cases, they have adapted existing discoveries to military purposes; in others, it has been precisely the need to obtain more powerful and effective means of destruction than those of their adversaries that has driven real technological revolutions.

One such stage of conflict triggered an unprecedented scientific explosion in all branches: the Second World War. Of all the projects, great ideas and discoveries, we would like to focus on two in particular to analyse their long-term consequences: the German projects that led to the use of the V1 and V2 ballistic missiles, as well as "Project Pigeon".

First, the German projects that led to the use of the V1 and V2 ballistic missiles. They could be launched from the territory of occupied France and reach cities in England, where they wreaked havoc (Reuter, 2000).

Second, a more obscure but no less revolutionary project was American psychologist B.F. Skinner's "Project Pigeon" to develop guided anti-ship missiles using AI technology (although in this case, AI would stand for "animal intelligence"). Based on the findings of Pavlov's Dog, Skinner concluded that pigeons could be trained to continuously peck at a point they saw on a screen. That point would at some point have been an actual enemy ship, and the points at which the pigeon pecked would send signals to the missile's controls to modify its trajectory. The project was discontinued in 1953 because of the advance of electronic guidance measures (Skinner, 1960).

Although these two projects bear little direct relation to the development of drones, they were the first to implement ideas that are now a reality. The first proposed being able to attack enemy targets from a great distance with missiles that did not put any pilot's life at risk, and the second was the first step towards weapon systems that could think for themselves and make their own decisions, without the need for human intervention and without emitting electromagnetic radiation to detect targets, as pigeons did by interpreting images. These experiments laid the conceptual foundations for the automation of weapons, an idea that would evolve decades later into today's combat drones.

Today, as of September 2025, we do not have pigeons guiding gliding projectiles launched from aircraft. Instead, we have small explosive-laden flying devices with the ability to understand where they are, where they need to go, what their mission is and to recognise potential targets and decide which one is the most suitable and crash into it, detonating the explosives in the process.

This phenomenon has come to be seen as a regular part of the contemporary warfare landscape, but perhaps with an overconfident spatial delimitation: it is a phenomenon of the front lines of warfare. However, the continuous Ukrainian and Russian rearguard actions with drones hundreds of kilometres from the front lines, and the news coming from South America regarding their use by organised crime groups , make us suspicious of the possible uses that terrorist groups might make of these devices.

The aim of this article is to analyse, firstly, the potential of unmanned aerial vehicles to be used in targeted attacks against military targets, as well as recent historical examples of their use. It will then proceed to explore the transposition of these systems to organisations operating outside the state that has occurred in South American countries, principally Mexico, Colombia and Brazil. It will then look at past terrorist attacks to highlight the mistakes that made them possible. All of the above sections will support the final thesis, which is that drones are a particularly attractive system for those seeking to carry out attacks against large masses of people, as well as specific targets.

For the purposes of this article, the definition of terrorism will be that contained in a US Department of Defense directive: "calculated use of violence or threat of violence against individuals or property, to instil fear, with the intent to coerce or intimidate government or society to achieve political, ideological or religious objectives" *(Department of Defense,* 2000). However, actions that manifest themselves through the same external conduct, even if they do not pursue a political, ideological or religious purpose, will be considered analogously.

In order to limit the scope of this article, the use of large drones will be omitted. This is in consideration of their limited availability and greater ease of detection. Drones used by the United States Air Force, those belonging to the Ukrainian and Russian forces, as well as any other drone of identical consideration, are therefore excluded from this study.

The object of study is therefore defined as the use of small drones by groups pursuing violent actions against groups of people, high-ranking personalities, important properties for society, and the rest of those that fall within the definition of an attack.

2. ATTACK DRONES IN CONVENTIONAL WARS

2.1. SYRIAN CIVIL WAR

The role of small drones in conflicts has seen a progressive increase towards what we know today. The first significant uses could be detected during the Syrian civil war, where more specifically, the Islamic State in Iraq and the Levant (ISIL/IS) explored the offensive possibilities of Unmanned Aerial Vehicles (UAVs) (Hambling, 2016).

In this context, the first recorded use of drones as attack tools were the drone-car bomb combinations with which ISIS attacked its enemies in the battle for Mosul. The drones were used for target reconnaissance and subsequent guidance of the VBIEDs through the streets of the city (Balkan, 2017).

The use of drones as a weapon of war evolved when explosive charges were added to UAVs and released on enemy positions. This model was exported to the ISIL fighting in Deir ez-Zor and offensives against the Kurds in Syria.

Incidents of First Person View (FPV) kamikaze drone strikes were residual at first, although their frequency would increase over time (Lyle, 2019).

2.2. WAR IN UKRAINE

Another notable scenario was the conflict in the Donbas, which began in 2014. The initial role of UAVs was to reconnoitre targets that artillery would later harass. These drones, sometimes equipped with night vision, became known to the military on both sides because of their night-time buzzes, which were often immediately accompanied by barrages from enemy pieces.

However, the evolution of small drones as weapons of war would enter a spiral of innovation after the start of the foiled Russian attack on Ukraine on 24 February 2022, and the ensuing war, which, in November 2025, seems to have no end in sight.

As seen in Syria, drones were quickly modified with homemade remedies to carry explosives, such as grenades or mortar shells, and drop them on enemy defensive positions. The first difference that emerged in this theatre of operations was the rapid emergence of First Person View (FPV) drone strikes. These were quadcopters carrying an explosive payload with attached impact fuses (Naber, 2025).

This paradigm shift offered both sides the possibility of executing precise actions against specific targets, facilitating successful operations, albeit with the loss of at least one aircraft per action.

The use of drones increased exponentially during the early phases of the war, reaching the current situation where both armies have specialised Unmanned Aerial Systems (UAS) attack units integrated at a very low level. For example, the Ukrainian Army's 12th Special Forces Brigade "Azov" has a drone company in each combat battalion, as well as an additional UAS battalion to support the brigade. Something similar can be observed in other units of both armies (12th Special Forces Brigade "Azov", n.d.).

Both Ukraine and Russia began a technological struggle at that time, trying to find remedies against drones while improving them. For example, anti-drone networks began to be deployed in defensive positions and main logistical routes, which was immediately followed by tandem tactics: a first drone would break the network, and the second would go in for the targets (Méheut, 2025).

In order to protect each side's most important assets, jammers were widely used to thwart attempts to destroy them. This led to a long *stalemate* on the front lines. Drone teams began to have a decreasing rate of effectiveness, as jammers became more widely distributed. Both nations tried to find solutions to this defensive system which, while not foolproof, greatly reduced the operational capability of UAS (Loh, 2025).

During the summer of 2024, the first considerable efforts with drones linked to the controlling terminal by thin fibre-optic cables began to be recorded during the Ukrainian invasion of the Kursk Oblast. The main advantage of the cable connection is its immunity to jammers. It should also be noted that they are undetectable by systems based on the interception of electromagnetic waves, as well as ensuring a better connection with the control terminal, returning higher quality images and facilitating their effectiveness, since as long as the cable length remains, the connection will not be lost (Hambling, 2025).

At present, technological developments seem to be moving towards the increasingly common use of autonomous drones guided by Artificial Intelligence. Ukraine's defence industry is working on large-scale production of drone models that recognise tactical situations on their own, analyse them properly, and make optimal decisions for Ukrainian interests. The Russian military industrial complex is acting in the same way. By the end of August 2025, there were at least 100 such incidents (MacDonald, 2025; Boffey, 2025; Khomenko, 2024).

In addition to frontline actions, since the start of the Ukrainian war there has been a succession of increasingly complex enemy rearguard actions in which UAS from both sides play a crucial role in achieving objectives.

Lessons learned in Ukraine have inspired operations elsewhere in the world. For example, during the 7 October 2023 massacre in southern Israel, the Hamas group attacked IDF border positions with small UAVs (Page, 2025).

3. OPERATION SPIDER WEB

3.1. THE ATTACK ON 1 JUNE 2025

On 1 June 2025, the Russian air bases at Olenya, Ivanovo Severny, Dyagilevo, Ukrainka and Belaya came under attack by Ukrainian special forces. These were not ballistic missiles or long-range drones, as Ukraine had frequently used until then. Swarms of small First Person Vision (FPV) drones attacked Russian air force positions.

The target of the attack was the strategic bomber fleet that Russia had been systematically employing in its campaign of attrition against Ukrainian civilian infrastructure. The end result was the destruction or incapacitation of 34% of the targeted fleet. Moreover, these aircraft models had been out of production since 1993, making it difficult to rebuild strategic long-range capability. Economically, Ukraine claims that the damage incurred would amount to around $7 billion (Gibson et al. 2025).

It should be noted that small FPV drones would have directly attacked enemy air bases extremely far from the front line, such as the Ukrainka base, which is more than 5,800 km from Ukraine's internationally recognised border, and more than 6,000 km from the front line. To put these figures in context, this is more than the distance from the centre of Madrid to Herat (Afghanistan), and about the same distance from Madrid to Baltimore in the United States (US).

The Security Service of Ukraine (SBU) managed to attack military bases more than 6,000 kilometres away using drone models that usually perform tactical missions very close to the front line, and whose main weakness is their difficulty in linking to the control terminal. This was possible because the drones used in this operation took off close to each of the air bases. In the case of the attack on Belaya air base (the largest attack of the operation, with 3 Tu-95 bombers and 4 Tu-22M3 bombers destroyed), the FPV drones took off from a position about 8 kilometres southeast of the base (Dempsey, 2025).

3.2. THE OPERATION

The Ukrainian Security Service (SBU) "Operation Spider's Web" had a planning and preparation phase of more than 18 months, according to Ukrainian President *Volodymyr Zelenskyy (Zelenskyy*, 2025*)*. First Person Vision (FPV) quadcopters "Osa" from the Ukrainian company *First Contact* (First Contact, 2025) were used.

The Osa model drones are distinguished by the location of their electronic components under a particularly thick outer casing and by having the power port in a fixed position, whereas most FPV drone models regularly used by the Ukrainian Armed Forces tend to have a "skeleton" body, in which the electronics and wiring are usually uncovered. After considering the complexity of the mission, the distance between the operation preparation site and the targets, and the varying weather conditions in which the infiltration would take place, the SBU opted for the most robust model.

During the 18 months of preparation, the SBU managed to get 117 Osa drones into the Russian Federation. Once inside enemy territory, a front construction company was set up to build wooden modular housing units to conceal the movements. These housing modules were fitted with a retractable false roof, in which 9 rows of 4 drones each were concealed, for a theoretical total capacity of 36 drones per module. In parallel, drones were also hidden in cargo containers (Bondar, 2025).

A remote control system was also installed in each module, which would act as an intermediary between the 117 drones carrying out the attack and the 117 pilots controlling them from Ukraine. The link between the remote control systems and the positions of the operators could be made via satellite.

Once the "Trojan horses" were assembled, the SBU contacted Russian freight forwarding companies. They took the Osa drones to the cargo "delivery points" , which were eventually the locations arranged by the SBU for the subsequent take-off of the drones.

In the early hours of 1 June 2025, the covers of the already infiltrated "Trojan horses" were lifted, allowing the drones to take off and head for their targets. Numerous videos were released of Russian civilians in these modules and containers with drones flying out of them into the black clouds caused by the explosions of those that preceded them.

Taking the overall balance of the operation, some 117 Osa drones, worth between $600 and $1,000 per unit, caused losses to Russian aviation, and thus to the country's entire armed wing, of $7 billion.

This attack is an unmitigated defeat for Russia, which not only suffered such irreplaceable losses, but did so in a way that exposed the serious shortcomings of both the country's air defence and counter-intelligence efforts. In terms of humiliation, it may be greater than the twin drone strike on the Kremlin on 3 May 2023 (Barnes et al., 2023).

It should be noted that all Ukrainians involved were exfiltrated from Russian territory well in advance of the attack. Thus, not only was the operation carried out without a single Ukrainian casualty, but Ukraine now has personnel with the experience to carry out such actions. If this operation had an 18-month planning and preparation phase, it would not be unreasonable to think that the next large-scale attack against the Russian rearguard could be in the making as we speak.

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3.3. DIFFERENCES WITH OTHER SIMILAR OPERATIONS

Operation Spiderweb is by no means the first small-scale drone strike against infrastructure critical to a state's national defence. Insurgents in Iraq have been attacking the positions of the Iraqi Army and the international coalition armies against the Islamic State with UAVs for years. Syrian rebels also carried out drone strikes against the Russian airbase at Hmeimim in the region loyal to Bashar Al-Assad's government in Latakia. However, what is most remarkable about this action is the depth of the attack inside enemy territory, the technical sophistication of its execution, and the fact that it targeted bases with critical and scarce materiel of the world's second largest army, in a context of warfare in which rearguard attacks were a constant dynamic of the conflict.

Ben Connable argues that the Ukrainian operation, while successful, must be interpreted in its proper context. He notes that previous experience in Syria (Hmeimim), Iraq, Yemen, and elsewhere reveals that airfields can be effectively protected against such attacks by layered air defence. Therefore, we should not be tempted to label as a revolution in warfare what may be no more than a case of isolated security failure (Connable, 2025).

It is possible that it is a failure of Russian air defence planning, as Ben Connable suggests. However, the examples the author mentions must also be put in context.

The case with the most readily available information will be analysed: the multiple drone strikes against the Hmeimim Air Base in Latakia (Syria). The facility was built in 2015 to be used as a strategic hub for the Russian intervention in Syria. This base has suffered a long list of UAV attacks from 2018 until the most recent one in January 2025.

The first of these attacks occurred on 6 January 2018, when 13 fixed-wing UAVs were intercepted by electronic warfare assets present at the base and subsequently captured, although some did have to be shot down by air defence. Remarkable is both the difference in numbers and the means employed by the rebels compared to Operation Spider's Web (BBC, 2018).

From that moment on, the air base began to be attacked continuously until 2021, when the attacks ceased, except for some sporadic cases. The official Russian media, possibly seeking the greatest propaganda gain, tended to give data for long periods of time, and not so much for specific attacks. During August 2018, the base was attacked by 47 Unmanned Aerial Vehicles (UAVs), and between September and October 2018, the base's military personnel shot down 50 UAVs.

Thus, the scale of the attacks by Syrian rebel groups would have been far beyond Russia's defence capabilities. Moreover, it can be understood that, in order to protect the strategic centre of its military intervention in Syria, Russia has significantly increased its air defence assets at the base. Moreover, the Hmeimim base is less than 100 kilometres from Idlib, the Syrian region with the greatest rebel presence and control throughout the civil war.

The experiences in Hmeimim would therefore not be comparable to what happened at the bases attacked by Ukraine on 1 June 2025, given the differences in the geographical context, level of prior alert and complexity of the action.

The effort required for Russia to have adequately protected all air, naval, and land bases on its territory, as well as any critical infrastructure susceptible to military targeting, would be immense. This difficulty is compounded for a country at war with its neighbour to the west, with obvious implications for determining the deployment of units with air defence capabilities.

3.4. IMPLICATIONS

As is theoretically the case in naval warfare, drone strikes are more focused on swarm tactics than on ensuring the impact of individual drones. This is evident both in Ukraine and in Iran's strikes against Israel. We must therefore conclude that drone strikes against targets protected by anti-drone means base their success on the swarm (Price, 2025; Tangredi, 2023).

It is relevant to consider the decisive role that Artificial Intelligence played in the execution of the operation. Although the drones were officially piloted by Ukrainian operators, they could have used autonomous navigation means to anticipate possible link losses. Thus, even if the pilots had lost connection with the drones, they would have continued on their way to the airbases without human control or GPS signal. They would also have distinguished the targets from a distance (De Troullioud, 2025).

During the preparation phase of Operation Spider's Web, the drones were programmed to recognise the air assets they were going to attack, and thus highlight them to the pilot so that he could crash the drone into the most sensitive places for the structural integrity of the aircraft, e.g. fuel tanks. These capabilities would later have been put into practice with decommissioned bomber aircraft that Ukraine had in its depots (Bondar, 2025).

Thus, despite Ukraine's use of human pilots to execute this operation, it is clear that the level of AI involvement in the success of this operation is undeniable. It also begs the question of whether the execution could have been carried out entirely by autonomous UAVs. On this occasion, it could not be used, but given the progress made, it can be concluded that it could be used in the near future. It is even possible that experimentation in this direction is already underway. The immediate benefits would be decisive for the success of future operations: enabling the use of gigantic swarms, several times larger than those that can be seen today, and greatly increasing the security of the operation, avoiding the signals sent from the control centre to the drones.

Operation Spider's Web could be considered one of the most successful infiltration operations of the 21st century. It is an action that has been recognised by the Western community, even if it is now not fully aware of its future implications. The Russian government was quick to condemn the action as a terrorist attack, despite the fact that legitimate military targets were attacked in the context of an armed conflict recognised by both states. Nevertheless, and on the occasion of the images broadcast that day, it is worth reflecting: how would a terrorist attack on Spanish air bases differ visually from what happened inside the territory of the Russian Federation?

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4. ATTACK DRONES ARRIVE IN SOUTH AMERICA

As José Nemesio García Naranjo said: "poor Mexico, so far from God and so close to the United States". This statement could well be extended to several American nations south of the Rio Grande, particularly those where there is a large presence of organised crime groups. Poor economic conditions, coupled with the incessant demand for illicit substances in external markets such as the US or Europe, have for decades led the American continent into confrontation, civil war and social instability. At times, extremes have been reached such as in El Salvador, where 1.7% of the country's total population is incarcerated, mostly for alleged involvement in substance trafficking and membership in organised crime groups (Human Rights Watch, 2024).

The US government calls some of these groups Transnational Criminal Organisations (TCOs) because of their power and influence. Some have arsenals, personnel and capabilities on par with some national armies, such as the Jalisco Cartel - New Generation (CJNG), led by Nemesio Oseguera Cervantes "el Mencho". Other organisations have an operational presence in the criminal markets of more than 40 countries, such as the Sinaloa Cartel (CDS) (Drug Enforcement Administration [DEA], 2025). The case of the latter group is paradigmatic of the control they exert over their territory, as a conflict over the cartel's leadership that began in 2024 has led to the state of Sinaloa being declared a war zone at various times by international journalists, causing at least 1,900 deaths and 2,000 disappearances in one year exclusively because of this conflict (Villegas, October 2025).

These criminal organisations have taken advantage of the technological advances of recent decades for their operations. In line with this, they have joined the drone revolution, using them primarily to perform three tasks: surveillance and security, trafficking of goods, and direct attack.

As has been seen in Ukraine, Latin America has experienced exponential growth in the use of drones, particularly since 2022. Organised crime groups have analysed the experiences in Eastern Europe almost as closely as professional armies, if not more so. The two South American countries with the largest drone presence in the context of organised crime are Mexico and Colombia.

4.1. MEXICO

To analyse the use of drones by organised crime groups in Mexico, we have to go back to the early 2010s. It was in these years that commercial drones began to be discovered and used for surveillance purposes. From then on, the possibility of transporting illicit substances loaded on them began to be explored.

In January 2015, a drone loaded with 2.5 kilograms of methamphetamine crashed in the city of Tijuana, Mexico, on its way to cross the US border. Until then, US border control authorities had not recorded any smuggling attempts using drones (Valencia, 2015).

It was not until 2017 that the first indications emerged that Transnational Criminal Organisations (TCOs) might be experimenting with the concept of explosive drones. Four men travelling in a vehicle that had been reported stolen were arrested by police in

Guanajuato State, in an area that was "hot" (disputed by more than one organised crime group). The Sinaloa, Jalisco Nueva Generación and Zetas cartels had a significant presence in Guanajuato, and were in conflict for control. Upon inspection of the vehicle, they found a drone with a "large quantity" (not describing the exact amount) of explosives attached to the body, and equipped with a radio frequency-activated initiator (AFP, 2017).

The first record of attempted drone attacks occurred on 9 July 2018, when an Unmanned Aerial Vehicle (UAV) struck the home of Gerardo Manuel Sosa, Baja California's Secretary of State for Public Security, in the town of Tecate. This drone was carrying two fragmentation grenades that ultimately failed to detonate. Moreover, the secretary of state was not at home at the time of the attack (CNN Español, 2018).

The use of drones began to gradually increase across the country, albeit without any concrete organisation and through small actions, clearly carried out with *ad hoc* materials, equipment and procedures.

Everything changed in 2021, with the leader of the 'Los Deltas' group, Armando Gómez Núñez, alias 'Delta 1'. The Deltas are an armed wing of the Jalisco Cartel - New Generation that operated in the border area between the states of Jalisco and Michoacán. Armando Gómez created the first specialised attack drone unit, commanded by "El Flaco Drones", and a mysterious member nicknamed "Lady Drones", who was arrested on 13 August 2025 (Secretaría de Defensa Nacional, 2024; Mendoza, 2025).

This new drone unit, along with others in various criminal groups, began to operate in a more technical and sophisticated way. Operators of medium Unmanned Aerial Systems (UAS) began to be called "droneros", and various patches of "drone" units have been seized (Maza, 2025).

The Jalisco Cartel - New Generation (CJNG) drone effort on the Jalisco-Michoacán border responded to a conflict against the "Familia Michoacana", which was quick to respond to the Jalisco group by establishing its own drone operator units.

Today, the use of UAS attack units has spread throughout Mexico, although incidents are concentrated in the states of Michoacán and Guerrero. As far as operators are concerned, the CJNG and the Familia Michoacana are the two most advanced organisations in the use of drones. After these two comes the Sinaloa Cartel, and then the rest of the criminal groups in various stages of evolution in this field (Jaramillo, 2025).

The most common type of drone attack in conflicts in Mexico are *droppers*, i.e., those that release explosive charges on a target, being rare to find actions carried out with drones with First Person Vision (FPV), although they are increasingly common. These *droppers* are also used for surveillance, and even for smuggling or transporting small objects (Villegas, September 2025).

At first, drone attacks were generally directed at other criminal organisations, with some specific cases of attacks against police or Mexican Armed Forces personnel being reported. In 2021, 10 fatalities were recorded, of which seven were members of criminal groups. Casualties decreased in 2022 to 8 (Ziemer, 2025).

Drone attacks increased considerably in 2023. That year, the number rose to 35, almost five times more than the previous year. However, it was not the increase that was most frightening, but the distribution of victims. Of the 35, 27 were civilians. A new era of drones had begun in Mexico. Criminal groups were now using drones, no longer just to attack direct enemies, but to spread panic among the population in the "hot" territories. In this period, there were direct attacks on villages in the states of Michoacán and Guerrero, in one of which villagers captured a Familia Michoacana hitman (Grillo, 2024).

This hitman, Fernando, made a statement to journalists in which he implied that UAS are not only here to stay in Mexico, but that their use will increase from now on: "they have *drone operators*. They have people specialised *in drone operations* (...). They have a lot of (many) drones, so even if a mule (a person dedicated to the trafficking of hidden objects and merchandise) loses one, they don't care (...). As this is just starting' (Grillo, 2024).

The technical capacity of TCOs in the field of UAS has reached such a level that the first signs of a real effort on the part of criminal organisations to invest in anti-drone measures and units are already beginning to be seen. Proof of this is that, in 2024 and in the context of the Sinaloa civil war, a member of one of the factions fighting for control of the Sinaloa Cartel, "los Mayitos" (the faction led by the sons of Ismael "el Mayo" Zambada, arrested in 2024), was photographed carrying a *Skyfend* anti UAS jamming system, valued at $100,000 (Jiménez, 2025).

While a single air defence system is insufficient to counter the destructive potential of attack drones, it does reveal an effort to enter the arms race that can be seen in other scenarios such as the Ukrainian one.

In terms of combating the illicit use of drones, the Mexican government has reacted by issuing provisions to make access to UAVs more difficult. In 2019, NOM-107-SCT3-2019, which regulates Remotely Piloted Aircraft Systems (RPAS), was drafted. In it, any device weighing more than 250 grams must be registered. It is prohibited to modify RPAS to enable the transport of dangerous goods or to drop objects. This measure, in a country where there are entire regions where the de facto government is in the hands of TCOs, has had little impact on addressing the problem of criminal use of drones.

On the humanitarian front, threats against the civilian population have led to a number of refugee displacements. In 2023, around 600 residents of Nuevo Caracol, Guerrero State, were forced to flee their homes because of ongoing drone attacks on the population (Ortiz, 2023).

4.2. COLOMBIA

One Latin American scenario in which the use of drones by organisations in confrontation with the national government is becoming increasingly relevant is Colombia. Colombia recorded its first death attributable to attack drones in July 2024, when a 10-year-old boy was killed and 12 other people were injured when a Unmanned Aerial Vehicle (UAV) attacked a football field in El Platerado with a fragmentation grenade (Torres, 2024).

The main perpetrator of drone use in Colombia is the National Liberation Army, particularly since it launched its offensive over Catatumbo in early 2025. Drone attacks are partly responsible for the displacement crisis in this region, with more than 52,000 people forced to flee their homes (UNHCR, 2025).

One of the dissident factions of the Revolutionary Armed Forces of Colombia People's Army (FARC-EP), the FARC-EP has also carried out drone attacks, such as the attacks in November 2024 and in July and August 2025 on three Colombian Navy Heavy River Support Patrol Boats (Patrulleras de Apoyo Fluvial Pesado), in the San Juan del Micay river, Department of Cauca, or the downing of an anti-narcotics helicopter in Antioquia in August 2025, with the death of the 13 policemen inside (Saumeth, 2025; Torrado, 2025).

On 10 June 2025, the FARC-EP's self-proclaimed Secretariat of the Central General Staff issued a communiqué with 10 recommendations for the civilian population, the press and humanitarian organisations, with the aim of avoiding incidents of attacks on civilians. These include maintaining a minimum distance of 500 metres from military or police convoys, and requiring the armed forces to abandon installations adjacent to residential buildings (W Radio Colombia, 2025).

The number of casualties from drone attacks in Colombia continues to be lower than in Mexico, although Colombia is beginning to see much larger attacks, such as the aforementioned attacks on ships and helicopters, from mid-2025.

Governments facing enemies with Unmanned Aerial Systems UAS in South America have been overwhelmed for the time being. Several countries, including Colombia, Peru and Mexico, have begun to equip their armed forces and security forces with drone defence systems to at least protect their bases and critical infrastructure.

Meanwhile, governments in the Americas are opting to combat organised crime groups with drones. In Haiti, a government drone operation on 1 March 2025 resulted in 80 casualties that day, although it has not been confirmed that all were members of criminal organisations. One of Port-au-Prince's gang leaders, Jimmy Cherizier, condemned the attack, threatening to respond with drones of his own, potentially killing "anyone in the country" (Vyas, 2025).

4.3. PROPOSED SOLUTIONS

The problem facing Latin American states is extremely serious, and three recommendations have been compiled from a variety of perspectives that should form the guiding principles of the anti-UAS policy that these nations develop: attack the supply lines, learn from the experts, and invest in training and tactics (Ziemer, 2025).

It is necessary to recognise that the fight against the supply lines of illegal organisations is inseparable and intrinsic to the fight against the groups themselves. Nonetheless, victory for states, at least in terms of drones, will necessarily come from the approach of attacking supply lines.

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There is therefore an opportunity to perhaps take inspiration from Operation *Grim Beeper*, carried out by Israel's intelligence services, which infiltrated Hezbollah's supply chain of "fighters" with the end result we are all familiar with (Doran, 2024).

For their part, learning from experts and investing in research and tactics means making the most of the information that the countries most involved in this development - Ukraine, Russia and Israel - can offer.

5. APPLYING LESSONS

Many lessons can be drawn from an analysis of the experiences of Syria, Ukraine, Israel, Mexico and Colombia. The ones that we consider most salient are:

A. UAS are particularly effective when compared to their price and destructive capability.
B. The fibre-optic link makes it possible to avoid the incapacitation of drones by radio frequency jamming devices.
C. The strength of a UAV action generally relies on late detection and swarm tactics for its success.
D. Advances in artificial intelligence are leading to the emergence of autonomous drones with the ability to recognise their environment and designate their targets.
E. The use of drones makes it possible to remove the maximum number of personnel from the operation before it begins, reducing own casualties to virtually zero.

These lessons will have to be duly taken into account when dealing with the possible use of UAS as terrorist tools.

Similarly, it should always be borne in mind that groups that have the capability to use drones will use them. This technology and techniques are easy to adapt to different modes of operation and environments, as demonstrated by their recent incorporation into the organised crime scene in Brazil. On 28 October 2025, as part of an operation against the *Red Command* structure in Rio de Janeiro, the Red Command used combat drones against security force agents. The *Red Command* is the largest organised crime organisation in Brazil, and has already incorporated Unmanned Aerial Systems (UAS) into its operations (Braun, 2025).

5.1. LESSONS LEARNED FROM PREVIOUS ATTACKS

5.1.1. 9/11 Attacks

In the report issued by the 9/11 Commission of Inquiry on 22 July 2004 (*National Commission on Terrorist Attacks*, 2004), the eleventh chapter: "Foresight and Hindsight" makes a critical judgement detailing the four main weaknesses in the US counterintelligence and counterterrorism system that made possible the commission of the largest attack by number of casualties in history: lack of imagination, inadequate policy towards Al-Qaeda, misuse of federal government capabilities, and serious errors in the operational management of the attack as such. Inadequate policy and misuse of capabilities are more a matter of dealing with an emerging enemy, so we understand that they are beyond the scope of this article.

Of the two that we are going to analyse, the most critical is the lack of imagination, as the other stems directly or indirectly from this. The first of the errors was the US intelligence community's classification of risk. The head of the counter-terrorism office, Richard A. Clarke, argued in a 4 September 2001 memo that some of the counter-terrorism agencies regarded the attacks as "a nuisance that kills a number of Americans every 18-24 months". Even those who did see the risk as real, such as Clarke, wrote hypothetical scenarios in which "hundreds" of Americans fell victim to terrorism. Virtually no one imagined a possible scenario such as the one that eventually occurred.

The report also mentions that the intelligence community almost completely ignored the possibility of a plane being used as a suicide vehicle, even though suicide attacks had been becoming the most common in the Middle East. If an exercise had been conducted by putting oneself in the shoes of a terrorist who wanted to use a hijacked plane, the security lapses that would become evident in the aftermath of 9/11 might have been detected. Indeed, the issue was even raised on occasion by bodies outside the intelligence community and in all cases dismissed by the intelligence community as extremely unlikely. This was set out in the report of the 9/11 Commission of Inquiry, pages 345-348 (*National Commission on Terrorist Attacks*, 2004).

No less serious were the mistakes made in the operational handling of the actions that made the attack possible. Of particular note was the lack of coordination between federal agencies, mainly the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI). All the preparatory actions were detected by a US institution (the previous meeting in Kuala Lumpur, the entry of the suspects into US territory, the training of the suspects as pilots, and a long etcetera), but there was no good communication of this information, which meant that the FBI did not consider including the presence of the suspects they had located in the report on the risk of imminent attacks.

5.1.2. Barcelona and Cambrils attacks

Something similar may have happened in the attacks that unfortunately shook Spain in 2017 in Barcelona and Cambrils. The competent authorities reportedly decided not to act on the official notice issued by the then Commissioner General of Citizen Security of the National Police, Florentino Villabona Madera, which called for the installation of "large planters or bollards at the entrances (to places with a high number of people)" (Redacción Barcelona La Vanguardia, 2017). In this case, the imagination of the Security Forces and Corps did not fail, although that of those in charge of putting their recommendations into practice did. The same shortcomings were seen in terms of police coordination, and an alleged warning sent by the CIA on 25 May 2017 warning of ISIL's intention to attack La Rambla in Barcelona may have been ignored (El Periódico Barcelona, 2017).

5.1.3. Summary of lessons learned

The lack of imagination and coordination of institutions are two of the cardinal sins in the fight against terrorism. The new age of technology forces us to rethink how potential terrorists will act in the future, with the likely use of drones, artificial intelligence, or the lethal combination of both in the next attempted terrorist attacks, as well as other tools still under development.

5.2. POSSIBILITIES FOR TERRORIST ATTACKS USING DRONES

5.2.1. Attacks against crowds of people

In terms of attacks against large crowds of people, the Las Vegas mass shooting of 1 October 2017 is noteworthy, in which a subject seized an arsenal valued at $95,000 and opened fire from a suite in the Mandalay Bay hotel at an open-air festival adjacent to the hotel, resulting in 60 fatalities and 867 injuries. This incident demonstrated how ineffective facility access control measures can be if the risk comes from above (Las Vegas Metropolitan Police Department, 2018).

It does not require a great stretch of the imagination to think how destructive this same attack could have been, but using Unmanned Aerial Vehicles (UAVs) dropping explosive charges of several kilos on the crowd, especially considering that the attack took place at night, which in reality already had tragic consequences, as a climate of total chaos was imposed on those present.

5.2.2. Attacks on individuals

The possibility of attacks on high-ranking state authorities should not be ruled out either. Venezuelan President Nicolás Maduro suffered an attack with explosive drones during a military parade on 4 August 2018 (El Mundo, 2018). Thus, not only are such attacks possible, but they have already been attempted.

We know that, while difficult, it is not impossible to get dangerously close to high authorities, as the assassination attempt on then US presidential candidate Donald Trump on 13 July 2024 demonstrated. Thomas Crooks managed to get within 150 metres of Trump armed with an AR-15 rifle, and even managed to fire eight rounds before being shot down by Secret Service agents (*Task Force on the Attempted Assassination of Donald J. Trump*, 2024).

A hypothetical drone strike would not have had to get as close as a shooter, and could more easily camouflage itself in the surrounding area before launching a fibre-optic guided drone or a swarm of drones equipped with AI-guided software targeting Donald Trump.

5.2.3. Attacks against aviation and other sectors

The aviation sector can also be the target of this type of attack. Similar to Operation Spiderweb, drones could in the future recognise the engines, fuel tanks or cockpit window of an aircraft and collide with them during take-off or landing. Considering that a Boeing 737-800 or an Airbus A320 (the two most common commercial aviation models) can carry more than 180 passengers, an effective impact against a single aircraft would immediately become the second largest attack in Spain's history.

The options are countless: trains stopped by a first drone and then started to be attacked with secondaries, attacks combining known methods of terrorism and using drones to attack people fleeing through bottlenecks, to name a few examples.

5.3. ATTACKING THE SUPPLY LINE

The advantages for terrorists are also innumerable: they do not have as a *conditio sine qua non* the death of the executor, preparatory actions are not carried out at the site of the attack, making early detection difficult (no one can find a backpack bomb that is not there) and they are widely sold in civilian markets, so they do not arouse as much suspicion as other methods.

Perhaps part of a correct perspective on combating drone attacks is to recognise that stopping them once they are underway is going to be an increasingly complex, if not sometimes impossible, task; just as Russia cannot have large air defence units on every square metre of its territory, neither can we. Drones should not be dealt with when they are already flying towards their target, but when they are in a box being transported from one place to another.

5.4. SENSITIVE STAGES IN THE PROCESS OF PREPARING A UAS ATTACK

We have been able to detect at least 4 delicate processes in the preparation of a terrorist action with drones: the procurement of the drones, the training of the pilots, the programming of the drones and the procurement of the explosives.

Procuring large numbers of Unmanned Aerial Systems (UAS) in the European Union, and more specifically in Spain, would not be the most sensitive part of the operation. Although it is mandatory to be registered and licensed to fly drones weighing more than 250g, these restrictions do not apply to the simple act of buying one. This brings to light a deficiency. Excessive and illogical stockpiling of these products should always be monitored, which is deeply undermined by this freedom to purchase. All the more so when they can be made in any establishment in the European Union, or even in other nations, while no customs permit is required for the import of UAS for personal use. Drones resulting from the work of 3D printers should also be considered.

The training of pilots could provide a good opportunity to disrupt the commission of the attack, particularly if they try to obtain it through legal channels. American intelligence services may have already come close to thwarting 9/11, at least in the way the terrorists had organised it, when the FBI issued a report in July 2001 on the interest suspected jihadists were taking in flight training entitled "Islamic Extremist Learns to Fly" (National Commission on Terrorist Attacks, 2004).

Particular attention will need to be paid to what happens when hostilities in Ukraine end, and Ukrainian and Russian attack drone pilots try to reintegrate into society. So far, studies on the psychological effects of operating attack drones have focused almost exclusively on US unmanned bomber pilots, who by the nature of their actions are subjected to considerably less stress than Ukrainian and Russian operators.

Programming the devices to follow specific instructions using Artificial Intelligence (AI) requires advanced knowledge in several technical areas, such as Python

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and C++ programming, AI training, robotics and electronics. It is not particularly time-consuming, but a sudden interest of a suspicious subject in these areas of knowledge should be an immediate red flag.

As with the previous point, the possibility that veterans of the Ukrainian war, or others similar in terms of massive drone use, might be involved in the preparation of these operations, or even actively participate, should be raised. The drone teams of these conflicts have a technical knowledge of adapting package drones to specific missions that far exceeds that of virtually any other individual.

Finally, the acquisition of explosives is, logically, the most fragile process of the whole *iter criminis*. This is accentuated when we take into consideration that Unmanned Aerial Systems (UAS), due to their technical characteristics, cannot carry excessively heavy charges, forcing potential terrorists to resort to explosive substances with greater detonation potential, which could reduce the search for these attempts to a certain extent.

6. CONCLUSIONS

A. Drones are here to stay. There is no doubt that their use will increase enormously. The experiences of countries that have been involved in conflicts with drones should be added to their own procedures.

B. Operation Cobweb conducted by the Ukrainian Security Service (SBU) against the Russian strategic long-range fleet demonstrated the versatility of drone actions against targets thousands of kilometres behind the front line. These assets have demonstrated their ability to be infiltrated, distributed and operated over long distances. Extrapolating from this experience, one can deduce the destructive capability of a group determined to eliminate infrastructure in a civilian area, given the necessary resources.

C. The use of Artificial Intelligence (AI) in this operation, coupled with the already documented instances of the use of these tools, dramatically changes the future threat scenario. Attack drones will end up as AI-guided explosive devices with the tools required to differentiate allies from enemies and eliminate them.

D. Transnational Criminal Organisations in Latin America have moved steadily into the technological battle for dominance of the skies. Their established networks for trafficking all kinds of materials and substances have allowed them to accumulate large numbers of Unmanned Aerial Systems (UAS), which are performing surveillance, transport and attack tasks. They have had their own specialised units since 2021 and are currently beginning to invest in anti-drone material.

Attacks, although timid and small at first, are becoming increasingly ambitious, even targeting enemy convoys on the move. The civilian population has also suffered as a result of the introduction of these technologies in conflicts between criminal groups, with direct and indiscriminate attacks on populations increasingly frequent in Mexico and Colombia.

In the latter country, the armed forces and security forces are the target of considerable attacks, which could be a precursor to other actions on a scale not yet seen on this continent.

E. Experience in all theatres has shown that the success of a drone action against a defended target lies in the swarm.

F. Attack drones have been shown in Ukraine to be extremely useful assets in the context of war, and in South America they can be used to spread terror among populations and state security units, especially if their operations serve the interests of large organisations with a logistical and military capacity greater than that of some sovereign states.

It seems a reality that sooner or later these forms of violent action will reach the West, as well as Spain. We must be prepared, and remember the mistakes made in the past so as not to repeat them in the future.

G. Imagination and the ability to manage these scenarios are two fundamental requirements for dealing with new threats. Several terrorist attacks in the past have been

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made possible by incorrect risk analysis. The emergence of AI-enabled drones opens the door for terrorists to find opportunities where previously it would have been unthinkable, both for them and for security forces.

Perhaps the most effective way to deal with them might be to intercept attempts during their preparation phase. The stockpiling of drones, training of pilots, programming of UAS and procurement of explosives would all seem to be ideal times to thwart attempted attacks on civilians.

Security should not be neglected either. Small attacks would be more difficult to detect, although, unlike complex attacks, they could be stopped during their execution.

Finally, we must stress the urgent need to take advantage of the experience being acquired in this sector by countries currently involved in conflicts where the presence and use of drones is commonplace. Such information could be decisive in future investigations against terrorist cells determined to perpetrate an attack against our territory.

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MONTEJURRA AND THE GUARDIA CIVIL. STATE OF THE QUESTION AND GENEALOGY OF SOME ACCUSATIONS

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MONTEJURRA AND THE GUARDIA CIVIL. STATE OF THE QUESTION AND GENEALOGY OF SOME ACCUSATIONS.

Summary: INTRODUCTION. 2. THE APATHY OF THE GUARDIA CIVIL 3. THE ACCUSATIONS OF THE MONTEJURRA REPORT 4. THE INCULPATION OF SÁENZ DE SANTA MARÍA 5. EVALUATION OF THE BIBLIOGRAPHY 6. CONCLUSIONS AND PROPOSALS. 8. BIBLIOGRAPHICAL REFERENCES.

Abstract: This article determines the state of play regarding the accusations against the Guardia Civil for the events that occurred at Montejurra in 1976, which resulted in two deaths during the traditional Carlist pilgrimage held since 1939 at the so-called sacred mountain of this political and social movement, which is already nearly two centuries old. It also elaborates on the genealogy of these accusations, analyzing their development over the almost five decades that have passed, with the aim of serving as a reference for the academic studies that will likely be conducted between now and next year, the fiftieth anniversary of the Via Crucis. Beyond the reproaches for the restraint of the policeman present at the time in the face of the violence that occurred, the main accusation stems from the statements made by General Sáenz de Santa María, who was Chief of Staff of the Guardia Civil when the tragic events occurred.

Resumen: Este artículo determina el estado de la cuestión respecto a las acusaciones contra la Guardia Civil por los hechos ocurridos en Montejurra en el año 1976, que se saldaron con dos muertos, en el curso de la tradicional romería carlista que desde 1939 se celebra en la considerada *montaña sagrada* de tal movimiento político y social, que cuenta ya con una antigüedad cercana a los dos siglos. Asimismo, elabora la genealogía de tales inculpaciones, analizando su desarrollo a lo largo de las casi cinco décadas transcurridas, con el objetivo de servir de referencia a los estudios académicos que previsiblemente se harán de aquí al próximo año, cuando se cumpla el quincuagésimo aniversario del viacrucis. Más allá de los reproches por la inhibición de los agentes entonces allí presentes ante la violencia habida, la principal acusación obedece a lo sostenido por el general Sáenz de Santa María, quien fue el jefe del Estado Mayor de la Guardia Civil cuando ocurrieron los trágicos hechos.

Keywords: Carlism, Traditionalism, Guardia Civil.

Palabras clave: Carlismo, Tradicionalismo, Guardia Civil.

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ABBREVIATIONS

CT: Traditionalist Communion

ETA: Euskadi Ta Askatasuna, Basque Country and Freedom

HOAC: Hermandad Obrera de Acción Católica (Catholic Action Workers' Brotherhood)

PC: Carlist Party

PCE: Communist Party of Spain

UNE: Spanish National Union

INTRODUCTION

The lethal consequences of what happened on 9 May 1976 in Montejurra are well known: two people, Aniano Jiménez Santos, a 40-year-old anti-Franco militant and member of the Hermandad Obrera de Acción Católica (HOAC), and Ricardo García Pellejero, a 20-year-old worker with no known political affiliation, were killed by gunshot wounds. From this point on, there is disagreement about everything else, especially about the causes of such violence and about the support received by those fighting, although some even deny the fact that one of the two antagonistic parties fought. The obscurity about what happened even goes so far that it has not been possible to specify other basic details of any report, such as the exact number of wounded, around twenty, three of whom were also shot.

It is not the purpose of this article to attempt to resolve these unknowns. It is only to specify how the media and bibliography have understood the work carried out by the Guardia Civil, deployed days before on the *sacred mountain,* establishing a genealogy about it, in which the statements of the then Colonel José Antonio Sáenz de Santa María occupy a prominent place.

As a preliminary step, it is necessary to introduce Carlism and its three ideological principles: fundamentalism, traditionalism and legitimism, focusing on the divisions within it. If legitimism was born in 1833 with the death of Ferdinand VII, when the dynastic quarrel began between *the* two opposing Bourbon branches, traditionalism originated in *the Manifesto of the Persians* in 1814, the calling card of a moderate reformism, as opposed to the pretensions of the *apostolic* fundamentalists*,* whose most virulent expression would not arrive until 1827 with the revolt against the king of the *Malcontents* (Lluis y Navas, 1827). (Lluis and Navas, 1967) Throughout the 19th and 20th centuries, the followers of these three principles would engage in internal divisions and disputes, often accompanied by violence, especially when defeat once again followed the Carlist fortunes. This was the case at the end of the Seven Years' War (1833-1840), when the traditionalists (*Marotists*) shot six *apostolics* in Estella, (Ferrer, 1957, p. 18) and when the fundamentalists assassinated the legitimist Carlos de España; (Ferrer, 1958, pp. 65-69) and after the Four Years' War (1872-1876), when the fundamentalists split, coming to blows with the legitimists in the Olimpo theatre in Barcelona (Canal, 2000, p. 23). (Canal, 2000, p. 231) After the Civil War (1936-1939), despite being the only occasion on which the Carlist forces won an armed conflict, Carlism was dismantled by the new military regime led by Franco, preventing it from capitalising on this victory and, ultimately, *losing the peace*. (Brioso, 2001) Carlist discouragement led to a violent incident in Pamplona in 1945, with one person shot and wounded in a clash between *Carloctavists* (traditionalists who collaborated with Franco) and the legitimists who were anti-Franco. (Villanueva, 1997) In 1957, in the Hotel Menfis in Madrid, the police had to intervene in a fight between *Javierists* and *Juanist Carl*ists*, the* latter supporters of Juan de Borbón, to whom they attributed legitimate Carlist rights, despite the fact that, as the son of Alfonso XIII, he belonged to the *reviled* rival Bourbon branch that had embraced liberalism, the secular Carlist enemy. The *Juanist* Carlists, two years later, would go to Estoril to recognise him as the legitimate Carlist king, and from then on they would be known as *Estorilos*. (Vázquez de Prada, 2006) In 1957, José María Valiente, head of the Secretariat appointed by Javier de Borbón Parma to lead Carlism, had suffered a serious attack in Madrid at the hands of an intransigent anti-Francoist (*sivattista*), who hit him twice on the head with an iron truncheon, due to his collaborationist policy with

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Francoism, with which the *javierismo* intended to opt in the race that was then beginning to succeed Franco as Head of State. (Martorell, 2014, p. 114) In 1958, in the Monastery of Irache, at the foot of Montejurra, three *Estoril* leaders were shaken and beaten at the hands of *Xavierists*. (Lavardín, 1976, pp. 58 and 68) A year later, in Montejurra, Mauricio de Sivatte, who had just made official his dissidence from *Xavierism*, was beaten. (Vázquez de Prada, 2011) In 1968, Roberto Bayod Payarés, leader of the *Crusaders,* was assaulted in Estella by *Javierist* legitimists*, and* there were also incidents on the esplanade of the Irache Monastery with the display of pistols. (García Riol, 2015, pp. 120-122) All this shows the secular level of violent confrontation within Carlism, with respect to its dissidences.

In 1969, when Franco appointed Juan Carlos de Borbón as his successor, the *Xavierists* began a process of ideological renewal sponsored by the dynastic authority of the Bourbon Parma family and based on the legitimist principle, which led them to embrace a self-managed socialism within a few years, founding the Carlist Party (PC) and abandoning the secular denomination of Traditionalist Communion (CT) (Caspistegui, 1997, pp. 217-227), while at the same time abandoning the traditionalist communion (CT) (Caspistegui, 1997, pp. 217-227). (García Riol, 2015, pp. 94-117) In 1975, Javier abdicated his rights in favour of his first-born son Carlos Hugo. Months earlier, the CP had joined the Democratic Junta in opposition to Franco's regime, together with the Communist Party of Spain (PCE), (Brioso, 2001) taking the disagreement between the regime and the Bourbon Parma family to the highest levels, but such animosity had been palpable since 1968, when the members of the dynasty were expelled from Spain. Franco's animosity towards the Borbón Parma was much earlier, as shown by the banishment of Fal Conde, the deputy head of the TC, in 1937. In 1964, Franco summoned several ministers, among them Manuel Fraga, then head of Information and Tourism, to order them to keep an eye on Carlos Hugo, telling them regarding the succession race: "This gentleman is going nowhere... I beg you to take note, and each one in his own sector to do everything possible to clear it up" (Fraga, 1980, p. 1). (Fraga, 1980, p. 125).

The organisation of the Montejurra event, the most important of all the annual Carlist events, was the responsibility of the Brotherhood of Voluntary Knights of the Cross, formed by requetés from the Civil War, with the usual presence at the pilgrimage *of javieristas, carloctavistas, estorilos, sivattistas* and *cruzadistas; in* other words, of all Carlist sensibilities, whether legitimists, traditionalists or fundamentalists*.* From 1954, the year in which a new Way of the Cross with crosses and stone bases was inaugurated, leaving behind its local component and acquiring a national dimension with pilgrims from all over Spain, (Santa Cruz, 1988, pp. 93-95) and especially from 1958, a year after Carlos Hugo presented himself at the summit as Prince of Asturias, the rally reached enormous levels of attendance, with 98,000 people in the last year mentioned (Vázquez de Prada, 2016, p. 85). In 1964, there were still 70,000 attendees. This number began to fall substantially in the following years, coinciding with the growing *Jacobite* control of the Brotherhood, formally through the Carlist Regional Council of Navarre. In this process, the religious and commemorative act in remembrance of the fallen took on an intensely political hue. In 1976, relegating the Navarrese junta, the event was organised directly by an Organising Commission of Euskadi, controlled exclusively by the *Carlo-Huguenos*, who collected economic funds and designed the service of order, as well as the banners and flags (Caspistegui, 1997, pp. 290-295), inviting all the participants to attend. 290-

295), inviting around ten anti-Francoist political formations, including the politico-military Euskadi Ta Askatasuna (ETA), which was to send its representatives, as Carlos Carnicero, then federal secretary of the CP, revealed in a personal communication with the undersigned in an interview held in Madrid on 10 February 2025.

On 9 May 1976, five months after the death of the dictator and the proclamation of Juan Carlos I as king, the event organised by the *Carlohuguinos* was held, which was attended by only 5,000 people (Caspistegui, 1997, p. 314). Of these, some 600 responded to the call of the most traditionalist and fundamentalist sector of the *Xavierists,* under the leadership of Sixtus Henry of Bourbon Parma, who had proclaimed himself the Standard Bearer of Tradition in the face of the *betrayal* of his older brother Charles Hugo, grouped under a reborn TC (Martorell, 2023). (Martorell, 2023) Here, for numerical purposes only, we should count the *Crusaders, who* were also present, as well as the still existing *Sivattists* (Senent, 2004, p. 172). The *Sistines* had planned their presence as an *Operation Reconquest* of Montejurra, which would wrest the *sacred mountain* from *the Carlo-Huguenots*. Apart from them, there were dozens of *Storilian* traditionalists, including well-known personalities who held important posts in the regime, grouped in the Spanish National Union (UNE), one of the legal political associations created in the late Francoist period, such as Juan María de Araluce, president of the Provincial Council of Guipúzcoa and member of the Council of the Kingdom, who would be assassinated by ETA, who unfoundedly accused him of being a *Sistine*. Also from the UNE and the Council of the Kingdom, but now closer to the standard-bearer Sixto Enrique than to King Juan Carlos, was Antonio María de Oriol, president of the Council of State, a member of a renowned *Estoril* family, who abandoned the cause of the *Juan Carlos* dynasty after the first measures of the new monarch (Echevarría, 2024, pp. 25, 36-37 and 514-515). Also belonging to the UNE was *the Sixtine* Ramón Merino López, also present in the mountains. It was no coincidence that the UNE had been forged in homage to Ramiro de Maeztu, the driving force behind the journal *Acción Española,* conceived in the 1930s as an umbrella organisation for the monarchist followers of the two dynasties and the driving force behind the ideological renewal of the right in a concept of neo-traditionalism (González Cuevas, 1998, p. 67). (González Cuevas, 1998, p. 67).

2. THE APATHY OF GUARDIA CIVIL

The *Carlohuguina* commission that had organised the Montejurra event had requested authorisation for the customary pilgrimage from the Civil Government of Navarre. It was, therefore, an event known to the regime, which also had detailed information on the implications it entailed, as reflected in a note from the General Security Brigade of the police on 8 May, which stated:

> The Carlist Party has planned the appropriate measures to energetically repress any attempt to sabotage events by the supporters of D. Sixto Enrique de Borbón Parma, who according to the Carlists, aided by the authorities, will appear in Montejurra accompanied by a *large number of gunmen and official guerrillas* to prevent or sabotage the said event. (...) In subsequent press conferences, the regime would be held responsible (...) for any bloody events that might take place this year in (...) Montejurra. (Caspistegui, 1997, p. 347).

The newspapers insisted that the Guardia Civil acted that day with "exquisite impartiality", (Zuloaga and Zuloaga, 1976) as the *Voz de España* pointed out, "helping to

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separate the rival groups", (Uranga*,* 1976a) as the *Diario de Navarra* and *Unidad* said. (Zuloaga, 1976) *El Pensamiento Navarro* insisted on the "passive attitude", despite the fact that "the presence of the Guardia Civil was numerous", (Indave, 1976a) with two helicopters to visually control the area, although limited, especially at the summit, because the weather conditions that day were not optimal: fog and chirimiri as recalled by *El Diario Vasco,* who pointed out that "the supporters of Mr. Carlos Hugo and Mr. Sixto clashed". (Peña, 1976) The fact of the existence of two sides and the "confrontation" had even been announced by the journalist Fernando Ónega in *La Voz de España* on 9 May, (Ónega, 1976a) in an article prior to the event, which *Arriba* distributed among the newspapers of the Movement. (Ónega, 1976b) But, once the events had taken place, *El País* was undoubtedly the most explicit newspaper in this regard, stating on the front page: "A hundred years on, history has repeated itself once again. Two Carlist factions confront the brothers Carlos Hugo and Sixto Enrique de Borbón y Parma". (Cebrián, 1976a) The *Diario de Barcelona* also emphasised this: "The multiple splits that Carlism has recorded in its (...) history are polarised today into a (...) socialist and self-managing faction and another that adopts ultramontane and fundamentalist methods. Two irreconcilable ways of understanding an ideology". (Pernau, 1976a) The Minister of the Interior himself, Manuel Fraga, attributed the events in Montejurra to a fight between brothers, (Canal, 2000, p. 385) which was soon repudiated by Jordi Solé Tura in *Mundo diario*: "It is not, then, a question of two factions violently confronting each other, but of a crowd of people who want to peacefully and orderly demonstrate their democratic aspirations and an armed gang that provokes and attacks" (Solé, 1976). (Solé, 1976) It was also *El País* which, in its editorial, demanded accountability:

> How is it possible that the Civil Government of Pamplona (...) allowed (...) the existence of a large armed group at the top of the mountain all weekend? (...) It is incomprehensible that fifty people with machine guns were on the mountain (...) and the Government did not know about it. (...) We request that the Government clarify the circumstances (...): who and how many made up the armed bands that took the summit, whether the supporters of both Carlist groups fired or only those of one (...); the reasons why (...) no arrests were made. (Cebrián, 1976b)

Other newspapers, such as *La Voz de España, (*Zuloaga and Zuloaga, 1976) *El Pensamiento Navarro* (Indave, 1976b) and *Diario de Navarra*, which recalled that it had warned days earlier of the "painful consequences" of "the bloody reconquest of Montejurra", also called for responsibility. (Uranga, 1976b) Also the magazines, such as *Gaceta Ilustrada:* "the reasons why the Guardia Civil failed to respond to the bloody events cannot be explained" (Gómez Mardones, 1976b). (Gómez Mardones, 1976) *Cuadernos para el diálogo* expressed its surprise that the shooters were not arrested, asking "who armed them? (Altares, 1976) Likewise, *Triunfo* (Elordi, 1976a)*,* which recounted what happened at the summit of Montejurra: "Eight or nine pistol shots. A short burst from a machine gun (...) There are four wounded by gunshot, one practically dead [Pellejero], shot in the chest, very close to the heart". (Elordi, 1976b)

Obviously, the CP also demanded responsibility. That same day, after coming down from the unfinished Stations of the Cross, its secretary general, José María de Zavala, belittled the *Sistines*, attacking *the Storilians*, and charged against Juan Carlos I, whom he considered the true rival of Carlos Hugo and the instigator of what happened at

Montejurra: "There has been Carlist blood shed (...) [by] those who say they are defending Tradition, (...) Religion, and it turns out that they are those who are on the side of the capitalist oligarchy that always fought against Carlism, the liberal capitalist monarchy". (Uranga, 1976c)

The *Carlo-Hugueno* strategy was therefore to involve the rival monarchy, either through the Arias government, of which Fraga was vice-president, or through the UNE *stalwarts* present in Montejurra, bypassing *the Sistines*. The CP resorted to the press through the procurator Gabriel de Zubiaga Imaz. In statements to Tele/eXpres, Zubiaga, who had been present at the 1976 Montejurra, claimed that the government "knew that something strange was being prepared" and wondered what various leaders of the UNE were doing in Montejurra, such as Araluce and José Luis Zamanillo (Angulo, 1976), a historic member of the secular TC, national delegate of the Requetés during the war, but who had abandoned the *Javierista* discipline *and* gone over to the *Estorilos*. These statements were the genealogical starting point for the accusations we are analysing. They were collected for the first time historiographically in a book entitled *Montejurra 76*, published that same year, whose authors were Josep Carles Clemente Balaguer and the *Diario de Barcelona* photographer Carles Sánchez Costa, author of the visual snapshots of what happened. The journalist and historian Clemente formed part of the small group of leaders close to Carlos Hugo - the *clique*, as his opponents denounced it - and was responsible for the historiographical renovation of Carlism, which consisted of presenting this movement as socialist from its origins, disregarding its traditionalist and fundamentalist principles; historiography that has been called *neo-Carlist*. This first approach to the events of Montejurra fully admitted the existence of two opposing sides in the events that took place near the Monastery of Irache, where Aniano Jiménez was badly wounded, although it insisted on the fact that the Guardia Civil had not made any arrests that same day. According to Sánchez, "the Carlists raised the famous thick sticks, which are sold for the Stations of the Cross. The *Sistines* took out (...) their truncheons', getting into a fistfight:

> The first blood warmed others, on both sides. (...) From my right I saw the man who turned out to be Don Aniano Giménez [Jiménez] Santos come out, launched. He was carrying a club and was heading for the *Sistine Chapel.* He was cut down on the way by a bullet (...). Almost a minute before the shot, I saw the man *in the trench coat* say something to the *man in the trench coat.* Aniano Giménez [Jiménez] doubled over (...). From the second line, the Carlists attempted a charge with batons that was halted by the pistol still displayed by the *man in the trench coat.* They opted to address the guards, who had already left the *jeep.* I heard a young man say to them: "Why don't you intervene? Can't you see there are guys with guns. The lance corporal made up his mind. At the risk of his life, he stepped into the line of fire, raising his arms, one of which held his regulation submachine gun. *Don't shoot,"* I heard him say. He immediately ordered his numbers to stand in the middle, with their weapons pointing in the direction of where the shot was fired (...) Finally, without any arrest being made , the group of aggressors also fled. (Clemente and Sanchez, 1976, pp. 109-111).

The *jeep* was manned by four guards and *the man in the trench coat* was José Luis Marín García-Verde, who was arrested by the Guardia Civil on 15 May and brought before the judge in Estella, who ordered his imprisonment. (Pernau, 1976b) Marín García-

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Verde was a retired commander, had been a requeté in the Civil War, provincial chief of the Requetés in Huelva until 1965 and was a member of a reputed Carlist family with prominent leaders in the secular TC. (AGUN, *Manuel Fal Conde Fund*).

The CP maintained a triple line of action: on the one hand, the more political, led by the procurator Zubiaga who presented an interpellation to the government in the Cortes on 26 May; (Miralles, 2023, p. 548) on the other, the more judicial, through the filing of a lawsuit by the victims' families on 31 May, (Caspistegui, 1997, p. 348) led by the Carlist lawyers, who were the first to file a complaint against the government in the Cortes on 26 May (Miralles, 2023, p. 548). 348) led by the *Carlo-Huguin* lawyers Juan Francisco Martín de Aguilera and José Ángel Pérez-Nievas; (Clemente, 1992, pp. 983-988) and finally, he commissioned a group of twelve Carlist and other anti-Franco activists present in Montejurra on 9 May to investigate what had happened with the intention of providing information to the other two parties and also to the press. (Purroy, 1976) All of them supervised the actions of the Guardia Civil in Montejurra.

Zubiaga's interpellation was made public on 10 January 1977, after months of delays by the Cortes presided over by Torcuato Fernández-Miranda, the *Juancarlista* mastermind of the transition to democracy. The ombudsman put eleven questions to the Arias Navarro government, vice-presided by Fraga, which were not answered (Montoliú, 1977). Among them, according to the *Official Gazette of the Cortes Generales* of 23 June 1976:

> If since the foundation of the Brotherhood (...) there have always been strong contingents of Guardia Civil, all along the route (...) and at the top of the mountain, what special reasons of government have there been this year, so that, for the first time, no more than the esplanade of Irache [where the monastery] has been covered by the Guardia Civil, when there were more numbers than other years and they were reinforced by a large number of Armed Police.

"Having fired gunshots (...) in the presence of law enforcement officers, what orders, and from whom, did these officers have not to proceed with any arrest". "Who and for what reason were the Guardia Civil ordered to ignore the (...) complaints of persons who, in a defiant attitude (...) and carrying weapons, (...) neither arrested them nor identified them". "Days before the events, the Guardia Civil knew and protected the presence of Mr. Sixto in Irache [in the hotel, one kilometre and three hundred metres from the monastery], who was surrounded by armed people", the prosecutor pointed out, who provided another detail, already handled by the media: "On the night of 8 to 9 May, some young Carlists climbed to the top of Montejurra and were mistreated (...). When they managed to escape and bring the facts to the attention of the Guardia Civil, the latter arrested them and did not release them until the evening of the 9th". "In Irache [in the hotel] there are pistols, machine guns and a machine gun with a tripod; there is [at the top of Montejurra] shooting, wounded and dead [in reality, a dead], and there is not a single detainee, nor does it fall into the hands of (...) the Authority, not a single weapon, not a single weapon (...), not a single weapon (...), not a single weapon (...), not a single weapon (...).) the Authority, not a single weapon", he added, regretting that "the Civil Governor of Navarre was informed (...) days before (...) by prominent members of the Carlist Party of the presence of armed people in Irache [hotel] and at the top of Montejurra, limiting himself to replying that he had no orders to act". And he asked: "If what happened in

Montejurra was a confrontation between Carlists, as a member of the Government has said, tell us what role Mr Juan María Araluce (...) and Mr Antonio María de Oriol played there".

Coinciding with the dissemination in the press of the content of Zubiaga's interpellation, as did *Triunfo* (Salabert, 1977) and *El País* (Montoliú, 1977), journalistic investigations into the events at Montejurra appeared in the media, fed by information provided by the team that had organised the CP. Thus, the weekly *Opinión* focused its attention on the financing of *Operation Reconquista*, pointing the finger at the UNE and mentioning various current accounts of Antonio María de Oriol and Juan María Araluce - assassinated by ETA four months earlier, He accused them of being "politically" behind what had happened, without failing to mention Fraga, whom he claimed "had reached an agreement to protect Operation Reconquista, but withdrew in the end in view of the turn the events were taking due to the low turnout of *reconquistadores*" *in the Sistine Chapel*. The events were attended by Italian fascists, with the weekly citing Augusto Cauchi and Stefano delle Chiaie. With regard to the Guardia Civil, it recalled what happened in the vicinity of the Irache Monastery: "a Guardia Civil checkpoint under the command of a corporal from Azagra [a Navarrese town in the Merindad of Estella] did not intervene in support of the ultra attack, which led publications such as *Brújula* and *Fuerza Nueva* to speak of *treason*". Before the shooting of Aniano Jiménez, the Carlist Etelvina Lamana called on the Guardia Civil to intervene against the *Sixtinos.* A guard replied: "*As long as they don't shoot...*". It also explained the inhibition of the Guardia Civil, a conversation between the civil governor, José Luis Ruiz de Gordoa and Fernández de la Mora, president of the UNE, in which the former reportedly assured the latter: "There will be no problems, the Guardia Civil has orders not to intervene". The weekly newspaper limited the functions of this security force to protecting Sixto Enrique and preventing buses and cars without the *Sistine* emblem from reaching the Ayegui and Irache fields with the aim of reducing the *Carlo-Huguenot* presence at the pilgrimage. However, "the Carlists [Carlo-Huguenos], in the end, were able to pass in their coaches along uncontrolled roads, and the truth is that the Guardia Civil, faced with the massive influx, did not intervene in favour of either side". (Landaburu, 1977)

Cambio 16 devoted two reports, in which it took aim at Antonio María de Oriol and his brother Lucas María, based on "sources close to the Carlist Party": "The Oriols were in charge of preparing Sixto's public presentation in Spain". "The Oriols were ideologically in line *with the Juanist* [*Estoril*] line of Carlism", collaborating "closely with the regime" of Franco, it added. "Years later, in 1972, they felt the desire to connect with Sixto Enrique de Borbón Parma, through the split to the right of the Carlist Party, which took place that same year, led by (...) José Arturo Márquez de Prado, considered Sixto's right-hand man in Spain", the weekly added, explaining why an *Estoril* family from 1959, when such a Carlist current was formed, should now embrace the *Sistine* cause. Furthermore, the accusation against the UNE was extended to another of its members, the *Sistine* Eugenio Mazón Verdejo, Secretary General of the Post Office, whom the weekly reported had gone to Fraga's office on 6 May, assuring him that they would take more than 5,000 troops to Montejurra. According to the journalistic account, Fraga "promised them that he would place the forces of the Guardia Civil on the esplanade, with the order that no one without the corresponding badge would pass" (Oneto, 1977a). (Oneto, 1977a)

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ORCID: https://orcid.org/0000-0003-0910-9953

> The certainty that in Montejurra there would be a powerful mass of Sixto supporters, (...) capable of making fools of the Carlist party militants, was one of the guarantees requested by the Ministry of the Interior to lend its support. The aim was to discredit Carlism and leave the followers of Carlos Hugo in a situation of defeat. (Oneto, 1977b).

Cambio 16 also focused attention on another member of the UNE, the *Sistine* Ramón Merino, in whose name the Civil Government of Navarre reserved 20 rooms in the Hotel Irache. (Oneto, 1977a) For the weekly, "while Merino was in charge of coordinating the high politics of the operation, José Arturo Márquez de Prado (...) prepared the *raw* part of the set-up (recruiting people and organising the shock forces)" (Oneto, 1977b). (Oneto, 1977b)

3. THE ACCUSATIONS IN THE MONTEJURRA REPORT

Coinciding with the press offensive, the Carlist lawyers of the relatives also lodged an appeal against the conclusion of the judicial investigation into the events of Montejurra 76, which had been handed down by the 21st Court of Instruction in Madrid, which had inherited the case from the Public Order Court, which in turn had received it from the judge in Estella (Cebrián, 1977). (Cebrián, 1977) In this appeal, the lawyers Martín de Aguilera and Pérez-Nievas described the violent events that had occurred in the vicinity of the Monastery of Irache and on the summit of Montejurra, explaining the former as an attack by the *Sistines*, accompanied by fascists, against the "pilgrims. The obvious purpose of all of them was to evict the pilgrims (...), in order to then take possession of the Way of the Cross". Regarding the latter, the appeal recalled that the *Sistines* had made themselves strong there since the previous night, firing on the pilgrims (Clemente, 1992, p. 984-985). In both events, José Arturo Márquez de Prado, Sixto Enrique's lieutenant and former national delegate of Requetés *javierista*, had played a prominent role. Pepe Arturo, as he was known, gave an interview on 8 September 2009 to Margarita Suárez de Lezo, of the TC, in which he admitted having been at the summit, leading the *Sistines* present, but denied that he had ordered the shooting of the *Carlohuguinos*. He also acknowledges having met with General Ángel Campano, then director general of the Guardia Civil (Suárez de Lezo, 2009). Pepe Arturo, together with Marín García-Verde, and Francisco Carreras Mouriño, were in prison while the case was being processed, leaving prison before the end of 1976 (Oneto, 1977b). In the new complaint, Oriol and Araluce were no longer linked to the events, although Merino was, although it was noted that "the presumed responsibility of the main leaders of the political association UNE has not been investigated". "Nor (...) [that] of certain authorities, especially the then Minister of the Interior Manuel Fraga, the director general of Guardia Civil, General Campano and the civil governors of Navarre [Ruiz de Gordoa] and Logroño", added the appeal against the closure of the investigation (Cebrián, 1977). Merino, according to Miguel Ayuso Torres, who would become head of Sixto's Political Secretariat, in an interview with the author of this communication, held on 7 July 2025, was a man who trusted Pepe Arturo and, like him, a member of the new TC, as well as the founder of the local Madrid section of the UNE.

With regard to Araluce, ETA had included in its November *Zutik* the denunciation of procurator Zubiaga to *Tele/eXpres* and the accusation that the president of the Diputación de Guipúzcoa had "subsidised Roberto Pallals [sic, Roberto Bayod Payarés], a leading member of the Cristo Rey guerrillas [in reality, a leader of the Carlist Association of Voluntary Crusaders], with a cheque for 6 million', implicating him in a corruption offence with Telefónica, which was proved to be false (Echevarría, 2024). (Echevarría, 2024, pp. 92-95) However, this accusation persisted in the work done by the Carlist investigation team, which had supplied information to the media, and which published its results on the first anniversary of the events of Montejurra, in a bookshop in Bayonne (France). *Informe Montejurra 76,* better known as the *Black Book* because of the colour of its cover, was distributed clandestinely in Spain from May 1977 onwards. The authors were also anonymous (Purroy, 1977).

The *Black Book* again accused UNE leaders Oriol and Araluce, accusing them of having financed *Operation Reconquista*, although Juan María Araluce was systematically referred to as José María (Echevarría, 2024, pp. 92-94). On the other hand, it limited itself to pointing out that the rooms in the Hotel Irache were reserved in his name (Anonymous, 1976, pp. 28 and 41). 28 and 41) Regarding Fraga, *Informe Montejurra 76* considered that the then Minister of the Interior, accompanied by General Campano, had held a traditionalist summit at his official office at Easter Week, in the presence of Sixto Enrique and two members of the UNE (Oriol and Zamanillo), to discuss the tactical aspects of *Operation Reconquista*. And a fortnight before 9 May, another at "the Las Begoñadas estate" [sic, actually in the Soria town of Las Derroñadas, on a property belonging to the García-Verde family; in another error in the *Black Book*], which Pepe Arturo had already attended, but only Zamanillo for the UNE attended. The interest in involving the political association led the *Carlohuguino* pamphlet to highlight the propaganda work of the leader of the UNE, the *Juanista* Fernández de la Mora, who in the previous days had given a rally in Pamplona "creating an *atmosphere* to reconquer Montejurra", describing the operation as a "crusade" (Echevarría, 2024, pp. 96-101).

Regarding the Guardia Civil, *Informe Montejurra 76* claimed that on 4 May a Land Rover arrived at the Hotel Irache, from which an MG-42 machine gun was unloaded in the presence of a group of officers. On 8 May, General Campano visited Estella, meeting with Sixto Enrique. On the 9th, the Guardia Civil prevented passengers on unmarked buses from approaching the monastery. At around 10.00 a.m., the *Sistines,* accompanied by fascists, arrive on the esplanade of the monastery from the Hotel Irache. They pounced on the *Carlo-Huguenian* orderly service*:* "recovered from the first seconds of surprise, the Carlists reacted (...), wielding their mountain batons, looking for a melee. The clash was terrible". Aniano Jiménez, "who had actively participated in the response to the aggression", called Marín García-Verde a "coward", who shot him. The civil guards in the Land Rover "have witnessed all the events unperturbed". The officers "say they can do nothing". "We believe that this unusual attitude is the most irrefutable proof of the orders that the Guardia Civil had received, the clearest proof of the government's complicity in the Sistine manoeuvre", interprets the *Black Book.* "The lance corporal (...) put himself in the middle of the two groups (...), allowing the fascists to leave freely (...) without having identified anyone", it adds. After this, the *Carlohuguinos* went to the Ayegui field, together with those who were there, to begin the ascent to Montejurra. At 11.00 a.m., the head of viacrucis is already at the height of the tenth cross, where the *Sistines* have set up a barrier to prevent access to the nearby summit. At 11.20 a.m., after being met with boos, a proclamation launched from the summit that read: "Attention Carlists, Don Sixto is going to speak to you! Ricardo García Pellejero was mortally wounded and three other people were shot: Bernarda Urra Pagola in the buttock, José Javier Nolasco Echeverría in the foot and Jesús Vera Pardo in the groin.

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ORCID: https://orcid.org/0000-0003-0910-9953

The *Carlohuguinos* with their suitor give up the attempt to reach the summit, while the *Sistines* have fled along another route, the cannon road with their vehicles and weapons. At 2 p.m., Oriol goes to the Hotel Irache and asks for a telephone to speak to General Campano (Anonymous, 1976, pp. 41-73).

The Amnesty Law of 1977 left all those events without criminal responsibility. The case file, which always remained secret, nearly 2,000 pages, was misplaced in the judicial archives and has not yet appeared. On 5 November 2003, the Audiencia Nacional considered Aniano Jiménez and Ricardo García Pellejero to be victims of terrorism (Pérez-Nievas, 2003).

4. THE INDICTMENT OF SÁENZ DE SANTA MARÍA

In 1998, the journalist Santiago Belloch, brother of the man who had been Minister of Justice and Interior until recently, published a book entitled *Interior. Los hechos clave de la seguridad del Estado en el último cuarto de siglo.* In it, he dealt with the events of Montejurra, although he counted three deaths and not two, as in reality they had been. For the author, it was "incredible that such a public gathering", with "ultras groups of all kinds and origins", "could have taken place without the knowledge of the Security Forces and the information services of the Presidency of the Government". The journalist obtained the testimony of the former Chief of Staff of the Guardia Civil, the now General José Antonio Sáenz de Santa María (Belloch, 1998, pp. 44-45). Belloch managed to get him to handwrite his statement, the autograph version of which appears as an appendix in the book itself (pp. 671-681).

These are his contributions: of Sixto he says that he was known "for his fascist positions", going on to cite Pepe Arturo and Oriol, and even General Campano as members of the Carlist faction opposed to Carlos Hugo. He argued that all of them maintained "the generic intention of *reconquering Montejurra* and managed to get "the Arias-Fraga government to take into consideration the proposal to organise the operation aimed at this *reconquest*". Sáenz de Santa María therefore maintained that the government had at least considered such an initiative by the TC.

> To this end, contacts were established between bodies such as the SECED (Central Documentation Service of the Presidency of the Government), the predecessor of the CESID, the Guardia Civil and the aforementioned leaders of the Carlist Party [in reality, the TC] and the Minister of the Interior himself, whose head was Manuel Fraga.

Beyond the general's obvious lack of knowledge that led him to speak of PC instead of CT, his written words revealed that there had been a series of meetings between the government and its intelligence service and Sixto Enrique's group.

The government, the general continued, commissioned SECED to produce propaganda for the event, which also handed out to sympathisers "batons and cachavos [in the original with the letter b] with the aim, they said, of making it easier for them to climb the hill, but in reality to be used in the planned aggression". As for the financing, Sáenz de Santa María held Oriol exclusively responsible for it. As for the enlistment of fascists, the general attributed it neither to SECED nor to the TC itself, but to ultra-right groups such as Fuerza Nueva and Guerrilleros de Cristo Rey. He cited "members of the Italian Fascist International" and the Triple A, such as Chiaie, Cauchi, Jean Pierre Cherid and "Rodoldo Almirón, later escort of Mr. Manuel Fraga". For Sáenz de Santa María, this was the "first step in what during the Transition constituted the core of the appearances of the so-called counter-terrorist *dirty war*". "All this network operated in some way supported (...) by the State apparatus in all the actions of the fight against terrorism during the 1970s and 1980s".

The general also included in his brief a subsection entitled "Involvement of the Guardia Civil", in which he indicated that at the time it was led by Lieutenant General Campano and sub-directed by Major General Salvador Bujanda. "Both were members of the Carlist Party, were brothers-in-law and maintained a close friendship with Arturo Márquez de Prado, the main leader of the Carlist Party". Beyond the mistake of confusing PC with CT, Sáenz de Santa María was implicating military personnel in a political affiliation.

> This led Mr. Márquez de Prado to spend the preceding days (...) at the Directorate General of the Civil Guard (...) even participating in meetings between the Director [Campano] and his General Staff [led by Sáenz de Santa María] and commanders involved in the organisation of the events.

Pepe Arturo requested radiotelephone transmitters and "machine guns". Here, Sáenz de Santa María claimed credit for preventing it. For the rest, the general was wrong to point out that the two dead fell when the *Carlohuguinos* ascending the mountain encountered *the Sistine* barrier in the vicinity of the summit and also when he attributed the death of García Pellejero to Marín García-Verde.

In 2004, a year after Sáenz de Santa María's death, the journalist Diego Carcedo published a biography of him, based on long conversations they had when he was already retired, entitled *Sáenz de Santa María. El general que cambió de bando.* In it, the now lieutenant general limited the funding given by Oriol to "bus hire, the sandwiches and wine they handed out, the banners and a few hundred billy clubs and walking sticks". Regarding the Guardia Civil, Carcedo reproduced what appeared in Belloch's book, although he clarified that Campano and Bujanda "did not belong to the Carlist movement", although "they did act as sympathisers, obviously of the sector headed by Don Sixto". And he offered more revelations:

> Campano told me that the plan had the blessings of Arias, Fraga and, naturally, General Juan Valverde, director of CESED [sic, SECED in reality]. He also informed me that some thugs from the international extreme right would come to to, if necessary, take on the dirtiest part of the plan.

In Carcedo's biography, unlike the autograph testimony in Belloch's book, the Guardia Civil did supply the *Sixtines* with radiotelephones, but "provided that they were operated by guards of the transmission service... disguised as requetés; that is, wearing red berets and with Carlist insignia on their lapels". (Carcedo, 2004, pp. 150-165).

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ORCID: https://orcid.org/0000-0003-0910-9953

5. ASSESSMENT OF THE BIBLIOGRAPHY

Josep Carles Clemente, the initiator of *neo-Carlist* historiography, summarises what happened in Montejurra as follows: "Two commandos made up of Spanish and international fascist gunmen (...) shot dead two Carlists", stressing "the impunity with which the murders were carried out and the passivity of the Public Order Forces", quoting Fraga and Campano (Clemente, 1992, p. 536).

Joaquín Cubero Sánchez, another *neo-Carlist* chronicler, argued that such events were part of a long-term strategy, dating from 1964, to eliminate the CP. For the author, the Guardia Civil participated in this approach with the controls it carried out to reduce the number of *Carlo-Huguinos* present and with the orders it received not to intervene in the clashes (Cubero, 1995).

Francisco Javier Caspistegui historiographically introduced the fact of the "palpable confrontation in the broad Carlist bosom (...) in a violent manner, largely due to the rivalry between the two extreme factions of Carlism, but also (...) due to the Government's apathy in the face of the signs that were appearing" (Caspistegui, 1997). (Caspistegui, 1997, p. 348).

The journalist and doctor of history Mariano Sánchez Soler argued that "the entire state apparatus was set in motion to bury the truth", highlighting the role of Fraga, Campano and Oriol, but also, wrongly, that of Araluce (Sánchez, 2010, pp. 31-33).

Historian Jordi Canal highlighted three aspects, without expressly mentioning the Guardia Civil. First, the process of growing confrontation within Carlism. Second, the impunity of the extreme right during the Arias government. And finally, "the high interests of the State in putting an end to any possible hindrance to the consolidation of the monarchy of Juan Carlos I" (Canal, 2000, pp. 3 and 4). (Canal, 2000, pp. 385-386).

For Josep Miralles Climent, the historian who nowadays most widely disseminates the *neo-Carlist* interpretation, there is a clear culprit: the Arias government, "the instigator and direct author of the manoeuvre". "All the data (...) point to certain sectors of the government and the state at the service of the new monarchy imposed by the dictator', citing Fraga, Campano, Oriol and 'José María [sic, Juan María] Araluce'. (Miralles, 2023, pp. 507-513).

The latest monograph published, authored by Juan Carlos Senent Sansegundo, has stressed that there were "two groups, one of aggressors, the other of the attacked", as well as "the inhibition of the police forces and the Guardia Civil" (Senent, 2024, pp. 182-187). (Senent, 2024, pp. 182-187).

6. NEW DOCUMENTS (FOR THE MOMENT)

From 9 to 12 January 2023, Manuel Martorell, a journalist and doctor of history with a thesis on the ideological continuity of Carlism, published a series of articles in *Diario de Navarra,* based on new documents that had been provided by the CP. These documents were kept in two blue cardboard folders, very common years ago in any office or private home, which were in the possession of the party.

For Martorell, these documents prove "that Montejurra 76 was a State plan against the Carlist Party", "with Manuel Fraga playing a leading role" and with the collaboration of the UNE of the Oriol brothers and Merino. These documents are, according to Martorell, reports, letters and communications from the Civil Government of Navarre, when it was led by Ruiz de Gordoa. (Martorell, 2003a) One of them, which appears with a card from Fraga, reports an "extraordinary order" to the Guardia Civil, warning them of the violence that the CP could cause and urging them to carry out roadblocks two days beforehand (Martorell, 2003b). (Martorell, 2003b) For Ruiz de Gordoa, *Operation Reconquista* failed because the *Sistines* did not have the capacity to call out, with only 600 followers in Montejurra. (Martorell, 2003c).

On 9 May, Martorell also published in the press an alleged telephone call from the *Sistine* Merino to Juan Carlos I, made from the Civil Government in Pamplona, on the eve of the Montejurra events. The source used is a posthumous letter from the governor's son, José Miguel, for whom the king "was aware of the whole plot". The letter, like the two folders now in the possession of the CP, came from the governor's son. (Martorell, 2025).

7. CONCLUSIONS AND PROPOSALS

The audit of the Carlist investigative team, which together with the prosecutor Zubiaga was at the origin of the accusations, produced few investigative achievements against the Guardia Civil, apart from their inhibition, qualified by the fact that when fire was opened, there were some officers who risked their lives. However, to its discredit, the Guardia Civil did not make any arrests that day, in strict compliance with orders received from the Navarre Civil Government, which in turn passed on orders from the Ministry of the Interior. He did intervene in roadblocks to stop the influx of *Carlo-Huguenos* and in the use of radio telephones. General Campano's performance was worse for his collaboration with the *Sistines.* The *Carlo-Huguin* investigators, and consequently the press and the *neo-Carlist* bibliography, put the emphasis on the *storilos* and not on the *Sistines, with the* aim of implicating Juan Carlos I and ignoring Sixto Enrique.

The Guardia Civil was at the service of the Government, which did have a purpose, taking advantage of the division and confrontation within Carlism, to discredit the CP and its pretender to the throne, Carlos Hugo de Borbón Parma, and thus help in the consolidation of the newly-established Monarchy of Juan Carlos I. In fact, Fraga, at least, had listened to the initiative of the TC that triggered that tragic Montejurra.

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Research Article

MAPPING CRIMINOGENIC FINANCIAL FLOWS: TYPOLOGY, NODES AND SECURITY THREATS

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MAPPING CRIMINOGENIC FINANCIAL FLOWS: TYPOLOGY, NODES AND SECURITY THREATS

Summary: SINTRODUCTION AND METHODOLOGY 2. FINANCIAL SPACE AND JURISDICTIONAL RISK 3. TOPOLOGY OF CRIMINOGENIC FINANCIAL FLOWS 3.1. Bi-directional flows 3.2. Multidirectional flows 3.5. CONCLUSIONS AND PROPOSALS 5. BIBLIOGRAPHIC REFERENCES

Abstract: This article proposes an operational cartography of criminogenic financial flows, structured through a topological, multiscalar, and geo-legal framework. The central hypothesis asserts that capital circulation is neither neutral nor random, but rather a strategic architecture assembled through physical infrastructures, legal structures, and digital devices. Based on an expanded taxonomy, the study develops a classification of twelve types of financial flows according to their geometry (binary, triangular, circular, multiple, hybrid) and their impact on national and international security.

The analysis reveals that these flows configure specific morphologies of structural vulnerability. Some follow well-established patterns: binary flows operate as preferred structures in scenarios of interstate financial coercion; triangular flows function as surgical vectors of strategic legalization; and round-trip flows simulate foreign investment through circular capital circuits. Others adopt more disruptive forms: fractal flows act as amplifiers of systemic risk via nested leverage structures, while mirror flows are engineered as algorithms of transnational legal subjugation, designed to shield extraterritorial control under contractual disguise.

Moreover, the study argues that conventional financial monitoring techniques are insufficient when confronted with multi-jurisdictional contractual assemblages, crypto-legal algorithms, and opaque risk nodes.

Methodologically, the research integrates network theory, geographic infrastructure analysis, and contractual engineering. The conclusion advocates for a doctrine of financial sovereignty grounded in strategic traceability, nodal cartography, and adversarial intelligence. Without maps, there is no control; without control, there is no sovereignty. Mastering the trajectory of capital becomes a critical prerequisite for geopolitical survival in the twenty-first century.

Resumen: Este artículo propone una cartografía operativa de los flujos financieros criminógenos, estructurada desde una lógica topológica, multiescalar y geojurídica. La hipótesis central sostiene que la circulación del capital no es neutra ni aleatoria, sino una arquitectura estratégica ensamblada mediante infraestructuras físicas, estructuras jurídicas y dispositivos digitales. A partir de una taxonomía expandida, se propone una clasificación de doce flujos financieros según su geometría (binaria, triangular, circular, múltiple, híbrida) y su impacto sobre la seguridad nacional e internacional.

El análisis revela que estos flujos configuran morfologías específicas de vulnerabilidad estructural. Algunos responden a patrones muy conocidos: los flujos binarios actúan como estructuras preferentes en operaciones de coacción financiera interestatal; los triangulares funcionan como vectores quirúrgicos de legalización estratégica; los *round-trip* simulan inversión extranjera mediante montajes circulares de capital. Otros adoptan formas más disruptivas: los fractales operan como amplificadores

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de riesgo sistémico mediante estructuras de apalancamiento anidado, mientras que los flujos espejo se ensamblan como algoritmos de sometimiento jurídico transnacional, diseñados para blindar el control extraterritorial bajo apariencia contractual. Además, sugiere que las técnicas convencionales de monitorización financiera resultan insuficientes ante ensamblajes contractuales multijurisdiccionales, algoritmos criptojurídicos y nodos opacos de riesgo.

Metodológicamente, el estudio integra teoría de redes, análisis geográfico de infraestructuras e ingeniería contractual. La conclusión aboga por una doctrina de soberanía financiera basada en trazabilidad estratégica, cartografía nodal e inteligencia adversarial. Sin mapas, no hay control; sin control, no hay soberanía. Dominar la trayectoria del capital se convierte en requisito clave para la supervivencia geopolítica en el siglo XXI.

Keywords: financial geography, illicit financial flows, critical financial infrastructure, jurisdictional arbitrage, topological architecture of capital flows.

Palabras clave: geografía de las finanzas, flujos financieros ilícitos, infraestructura crítica financiera, arbitraje jurisdiccional, topología de los flujos de capital.

ABBREVIATIONS

ABS: Asset-Backed Securities

AML: Anti-Money Laundering

AMLD: Anti-Money Laundering Directive

API: Application Programming Interface

ECB: European Central Bank

BEPS: Base Erosion and Profit Shifting

BIS: Bank for International Settlements

FSB: Financial Stability Board

CDB: China Development Bank

CDS: Credit Default Swap

CEX: Centralized Exchange

CIMA: Cayman Islands Monetary Authority

CIPS: Cross-Border Interbank Payment System CLS: Continuous Linked Settlement
CLS: Continuous Linked Settlement

CLS: Continuous Linked Settlement

CMOR: Master Agreements on Financial Transactions

CRM: Customer Relationship Management

CRS: Common Reporting Standard

CFTC Commodity Futures Trading Commission

DTCC: Depository Trust & Clearing Corporation

FATCA: Foreign Account Tax Compliance Act

FATF: Financial Action Task Force

FIX: Financial Information Exchange

FSB: Financial Stability Board

G7: Group of Seven

G20: Group of Twenty

FATF: Financial Action Task Force

AI: Artificial Intelligence

FDI: Foreign Direct Investment

IMF: International Monetary Fund

ISDA: International Swaps and Derivatives Association

OTC: Over The Counter

PSD2: Payment Services Directive 2

RDL: Royal Legislative Decree

SIGINT: Signals Intelligence

SPV: Special Purpose Vehicle

SEC: Securities and Exchange Commission

SWIFT: Society for Worldwide Interbank Financial Telecommunication

TRS: Total Return Swaps

FIU: Financial Intelligence Unit

INTRODUCTION

The exponential expansion of international financial flows in the 21st century has destabilised canonical notions of sovereignty, national security and conflict. Far from constituting simple economic transactions, these flows shape functional power structures that overstep the institutional competences of states and erode their capacities for territorial intervention (Bryan et al., 2017). The circulation of capital does not only follow a productive or fiscal logic: it unfolds through legal trajectories, digital protocols and material supports that transform space into an operational field of geopolitical contestation. Under the guise of abstract fluidity, the architecture of money is anchored to strategic nodes: undersea cables, data centres, extraterritorial legal contracts and enclaves of delegated fiscal sovereignty (Cannon, 2025).

This new regime of financial mobility operates in an environment of structural liberalisation, technical opacity and systemic deregulation, where fiscal engineering, the multiplication of derivative instruments and decentralised technologies have turned the topology of capital into a web of difficult traceability. The apparent dematerialisation of money hides a hyper-localised spatial device, whose morphology responds to the interests of accumulation, evasion and legal shielding. Finance has ceased to be a technical matter for experts and has become a vector of global instability and an instrument of territorial capture by military and civilian means. Indeed, part of national and international security is increasingly at stake in the mastery or loss of these circulation routes.

In this context, capital behaves as a force operating simultaneously on multiple scales. There are differentiated topological patterns of financial circulation that not only optimise fiscal profitability or regulatory arbitrage, but also design corridors of legal immunity, shield strategic actors from state regulation and configure functional territories disconnected from the traditional sovereign framework. These mobile capital architectures generate power asymmetries, regulatory grey zones and structural risk nodes that defy classical supervisory tools.

In the face of this threat, it is imperative to build spatial financial intelligence capable of identifying complex contractual assemblages, mapping critical infrastructures and anticipating asset shifting dynamics. Security in the 21st century requires, more than ever, a doctrine of strategic traceability and adversarial mapping of capital in motion.

Methodologically, the study integrates three complementary approaches: network theory, geographical analysis of infrastructures and contractual engineering. Network theory is used to identify the connection architectures that structure criminogenic financial flows - bidirectional, triangular, circular, multidirectional or hybrid - with each node understood as a financial entity, jurisdiction or intermediation instrument, and each link as a functional flow or hedging relationship. This approach derives from previous work on the spatial morphology of international financial transactions (Fernández Cela, 2015; 2021), where topological typologies of capital circulation applicable to risk scenarios were developed.

The geographical analysis of infrastructures addresses the territorial dimension of capital and its material supports - submarine cables, data centres, clearing houses or tax enclaves - linking patterns of financial mobility with the spaces where they are located. This method, already used in previous studies on tax havens and offshore financial centres

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(Fernández Cela, 2018; 2019), makes it possible to identify critical corridors and jurisdictional discontinuities based on open institutional sources such as SWIFT, the BIS and the CEF.

Contractual engineering is applied to the study of the legal assemblages that underpin transnational flows. By examining international framework contracts and fiduciary structures, we analyse the mechanisms of opacity and the strategies of legal shielding that shape the architecture of global capital. This methodological component extends the line of research developed in recent analyses of financial contagion and legal traceability (Fernández Cela, 2023; 2025), where the notion of "contractual engineering" as a legal infrastructure of power is formalised.

The combination of these three approaches configures an operational methodology oriented towards the detection of critical nodes and the analysis of risk morphologies. More than a descriptive technique, it constitutes a strategic tool for understanding the functional geography of money and its capacity to alter balances of security and sovereignty.

2. FINANCIAL SPATIALITY AND JURISDICTIONAL RISK

For decades, the global economy has been described as a process of increasing integration, where capital flows frictionlessly between spaces. This narrative of "free" capital is a myth. Recent research shows that capital operates within an asymmetric legal, digital and geopolitical infrastructure. It is a contract codified by legal architectures, accelerated by algorithmic infrastructures and shielded by opaque jurisdictions (Zucman, 2015). This logic generates topological patterns of circulation and strategic vulnerabilities.

The spatial structure of financial flows reveals the fragility of operational efficiency. A single transaction (A → B) hides multiple critical layers: undersea cables, satellites, digital platforms. These accelerate transfers, but also concentrate risks, becoming strategic targets (Appert, 2024).

Their genesis stems from asymmetric encryption scenarios. International circulation is not a simple allocation of resources: it is an architecture of power. It obeys principles of legal engineering, invisible technology and geopolitical decisions. As Pistor (2019) has shown, capital does not circulate: it is legally constructed. Its anatomy reveals more about the world order than any sovereignty treaty.

Every flow arises from an asymmetry: regulatory gap, macroeconomic inequality or technological window. The choice of channels (correspondents, *crypto-mixers*, OTC contracts) does not respond to technical neutrality, but to a strategy of sovereignty arbitrage (Sharman, 2010): the path that maximises advantages and reduces state interference is chosen.

Capital traverses simultaneous layers. At the physical layer: MAREA cables, Chicago-NY microwave towers, or cash transport trucks (Tooze, 2021). At the digital layer: *blockchains* like Monero, high-frequency servers like LD4. At the legal layer: *common law* contracts or arbitration in Singapore. These are not just supports, but choke points where control is exercised (Cowen, 2014).

Capital does not just move, it mutates. It changes legal form (from illicit to investment), technology (cash → Monero → *token*), and risk (*subprime* → CDOs). This transmutation is ontological: it turns the illegitimate into legitimate, the opaque into auditable, the speculative into institutional. It is an alchemy operated by technologists, lawyers and algorithms that renders legal language porous. This logic is symbolic and parasitic. It embeds itself as a symbiotic organism in formal structures. When cartels infiltrate logistical networks, off-balance sheet repos are counted in the trillions, or mortgages are repackaged until they become unknowable, capital acts as a self-replicating virus (Christensen, 2011).

And when it anchors, it reconfigures territory. It materialises as assets: flats in Knightsbridge, ports in Angola, debt in Greece. It does not flee space: it shapes it. As Sassen (2015) explains, capital does not deterritorialise, but reconfigures to serve its logics. The resulting topography is a geometry of power: enclaves of accumulation and zones of financial exclusion.

The cycle feeds back on itself. Profits from one circuit feed the next. They are automated by AI that optimises evasion and opacity; they are shielded by the institutional capture of the Big Four; they are legitimised by a discourse that turns complexity into technicality. Although illicit flows represent at least 2.7% of global GDP, less than 0.1% is seized (UNODC and FATF, 2009). This is not a failure: the system is designed to recycle.

Financial circulation must be thought of in terms of hydrodynamics. The pressure comes from asymmetries; the pipes are physical, digital and legal infrastructures; the filters, techno-legal devices; the reservoirs, assets where the flow is anchored as power. As the Bank for International Settlements (2024) warns, without route maps and exposures, states are passive observers.

3. SPATIAL TOPOLOGY OF CRIMINOGENIC FINANCIAL FLOWS

The architecture of illicit financial capital transactions does not respond to a uniform logic, but to a plurality of topological configurations that structure the circulation of capital according to its function, purpose and legality. Each flow is a dynamic assemblage of functional nodes - origin, legalisation, destination, consolidation, custody, arbitration - which act as intermediate stations where capital is transformed, disguised or accelerated. These nodes can materialise as opaque jurisdictions, data centres, algorithmic *trading* infrastructures, fiduciary entities, tolerant exchanges or arbitral tribunals, configuring a mesh of geo-economic and geo-legal vectors.

Its classification cannot be restricted to binary categories such as licit or illicit, nor to static taxonomies of products or jurisdictions. It requires a multidimensional analytical framework that integrates three key capabilities: (i) its spatial geometry, understood as the arrangement of physical (cables, nodes, data centres) and digital (execution platforms, decentralised networks) routes; (ii) its legal architecture, where layers of fiduciary, contractual and regulatory intermediation operate; and (iii) its temporal dynamics, which incorporate factors such as speed of circulation, structural latency and the cyclical recursiveness of capital (Fernández Cela, 2025).

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On this three-dimensional basis, transnational financial flows are articulated through several simultaneous layers of infrastructure that enable and condition their movement: a physical layer, made up of submarine cables, microwave links, geostationary satellites and hyperconnected data centres. A digital layer, where transactions are executed through protocols, and assets circulate in DeFi networks, *stablecoins* without verifiable backing and opaque smart contracts. And a legal layer, underpinned by contractual assemblages, hybrid regimes of law and jurisdictions designed to shield assets from institutional control. This layering creates a complex, opaque and asymmetric financial topology that requires operational approaches beyond simple banking regulation. These infrastructures condition the movement of capital by determining its routes, speed and accessibility between nodes; their influence will be realised in the twelve types of flows discussed below.

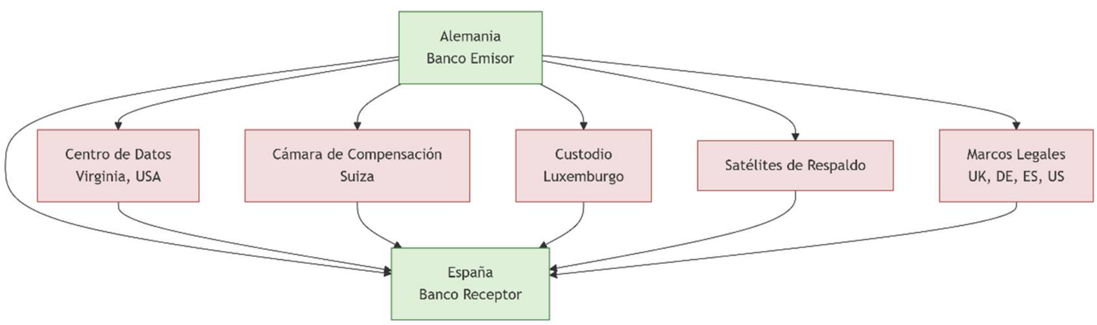
3.1. BIDIRECTIONAL FLOWS

3.1.1. Binary flows: lethal efficiency and strategic simplicity

These are direct transfer structures between two financial nodes that constitute the topological form of minimum entropy in the global financial system: they are fast, efficient and direct. Beneath their apparent operational neutrality (A → B) lies a critical architecture of risk concentration and systemic vulnerability. In such flows, efficiency becomes fragility, and transparency is only a functional illusion.

Far from being secondary channels, binary flows represent the standard circuit of wholesale payments, foreign trade, institutional *clearing* or international transfers in real time. Their hyperlinear nature implies a deliberate reduction of nodes, redundancies and *buffers*, making them vectors of strategic dependence (Clark, 2016). Examples such as the Germany-China payments relationship, where T2 and SWIFT structure a high-volume direct channel, illustrate their operation. However, minimal redundancy makes them highly sabotagable channels: a technical failure, political intervention or legal blockage is enough to collapse the entire flow.

Diagram 1.- Organisational structure of binary flows



Source: own elaboration

From a financial intelligence perspective, this linearity is a structural weakness. A detailed analysis reveals a multi-scale functional trajectory that crosses 5 to 7 different jurisdictions in each binary transaction. Thus, a transfer A → B between a German and a

Chinese bank involves: i) digital infrastructure; ii) physical infrastructure; iii) satellite back-up layers; iv) data centres in transit; and v) fragmented legal frameworks (Scheme 1). Thus, an apparent straight line hides a legal, digital and physical operating framework that makes it a highly vulnerable target (Egmont Group, 2024).

Moreover, low-definition opacity is one of its most lethal characteristics: binary flows condense the entire operation into a single transfer line. This allows geopolitical traceability to be hidden behind technical simplicity. A contract can be domiciled in London, the custodian in Hong Kong, the server in Virginia, and the payment system managed from Switzerland. The result: operational visibility without geo-economic control (Vitali et al., 2011).

In contexts of hybrid warfare or economic coercion, binary flows are the easiest critical infrastructure to exploit. *Ghost injection* techniques, latency manipulation, physical sabotage or capture of intermediate nodes are feasible and modellable scenarios (Govella, 2025). Contemporary financial warfare doctrine, based on flow interdiction, has binary transfers as its most visible target.

3.1.2. High latency flows: geopolitics of microseconds

They constitute the most sophisticated technological dimension of today's financial capitalism. Their logic is not fiscal or accounting, but temporal: controlling the microseconds that separate two financial operations in order to capture value before the market perceives it. In these environments, time is added to space as a critical vector of power (Diagram 2).

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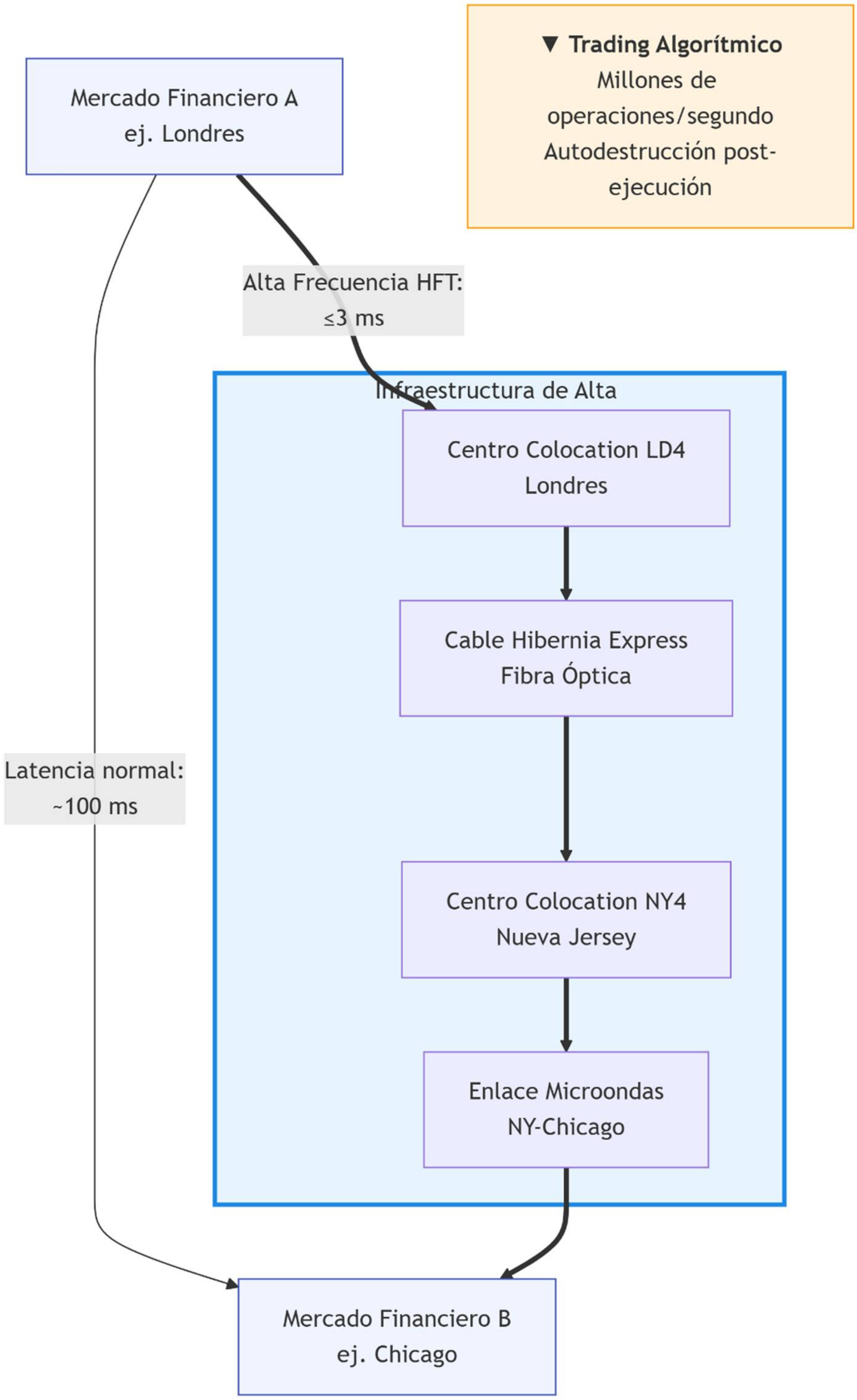
Diagram 2.- Organisational structure of high latency flows



Source: own elaboration

They operate mainly on high-frequency algorithmic *trading* (HFT) platforms, where millions of trades per second are executed from *colocation* centres such as LD4 (London), NY4 (New Jersey) or Equinix ZH4 (Zurich). These infrastructures are physically located next to the exchanges to minimise latency. Dedicated fibre optic cables (C-Lion1, Hibernia Express) and microwave links between New York and Chicago allow latency to be reduced to less than 3 milliseconds (Laughlin et al., 2013).

This time control is not neutral: it shapes an ecosystem where technologically powerful actors capture informational rents invisible to the regulator. The difference between making or losing millions lies in who receives a quote or a regulatory change first.

From a security perspective, high latency flows are extremely difficult to track: there is no identifiable beneficial owner, the duration of exposure is shorter than the audit cycle and contracts are programmatic. Trades self-destruct after execution (Linton and Mahmoodzadeh, 2018). They require real-time algorithmic monitoring systems, correlation of network *logs* and direct access to physical infrastructure (Westermeier, 2023). These flows are not anomalies: they form operational frontiers where financial power is redefined. Time dominance becomes functional sovereignty. Whoever controls latency imposes the rhythm of the market.

3.2. TRIANGULAR FLOWS

3.2.1. Tri-polar financial flows: a magic number of impunity

They represent a deliberate legal architecture designed to fragment responsibilities, dissolve traceability and shield assets of opaque origin. They are not exceptions or anomalies of the global financial system: they are its most perfected functional expression. Their geometry A → B → C is the spatial codification of a structured strategy of capital legalisation, designed to operate outside fiscal control, financial supervision or criminal prosecution. Its utility is not technical, but political: to guarantee the multi-scale impunity of capital in motion.

The basic structure is composed of three functional nodes: (i) the origin or extraction node (A), where capital is generated; (ii) the intermediate or legalisation node (B), a jurisdiction with structural opacity, flexible fiduciary legislation and favourable bilateral treaties; and (iii) the consolidation node (C), a global financial centre where capital is banked, invested or patrimonialised (Garcia-Bernardo et al., 2017). This sequence allows critical functions to be segmented: extracting capital in Madrid or Luanda, reorganising in Luxembourg or Jersey, and consolidating in London or Dubai. Each jurisdiction, separately, formally complies with the law. It is the assembly that produces impunity.

The operational key lies in legal dispersion. Triangular flows employ legal camouflage technologies: chain trusts, *special purpose vehicles* (SPVs), simulated intra-group loans, mirror contracts, *blockchain* double counting, use of hybrid structures and multi-layered evasion (Judijanto et al., 2024). These devices not only reduce the visibility of beneficial ownership, but also allow the creation of redundant structures capable of instant migration in the face of sanctions or blockchain. The case of *mirror loans* between

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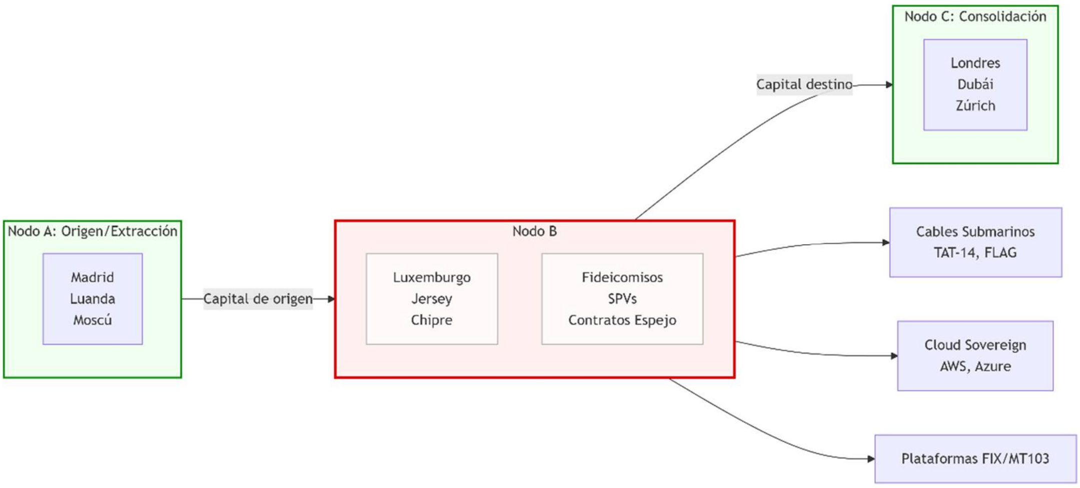
Russia and Cyprus, or Arab funds in Jersey *trusts* during international sanctions, demonstrate this (Diagram 3).

Diagram 3.- Organisational structure of tripolar financial flows



Source: own elaboration

Topologically, triangulation is a vector of jurisdictional capture. Submarine cables, sovereign cloud data centres, geostationary satellites and decentralised banking networks cross over. An operational example: from Moscow, capital travels via TAT-14 to Bude or Marseille, crosses to Cyprus where it is reconfigured via *trusts* or shell foundations, and from there is transferred via FLAG or C-Lion1 to London or Dubai. All recorded via FIX platforms, MT103 or cryptographic APIs, with fragmented copies in AWS GovCloud, Oracle EU Sovereign Cloud or Azure Gibraltar. It is a simultaneous physical, legal and semantic flow.

From an intelligence perspective, the main threat is not just money laundering or tax evasion, but the systematisation of opacity as an operational norm. Each vertex of the triangle represents a layer of institutional shielding (Akartuna et al., 2024). Adversarial analysis requires detection of artificial chronologies, simulation of latencies, correlation of *proxies*, or parsing of trust contracts using legal AI (Surden, 2019). Conventional traceability is useless: discontinuous legal mapping and forensic semantic mining are required.

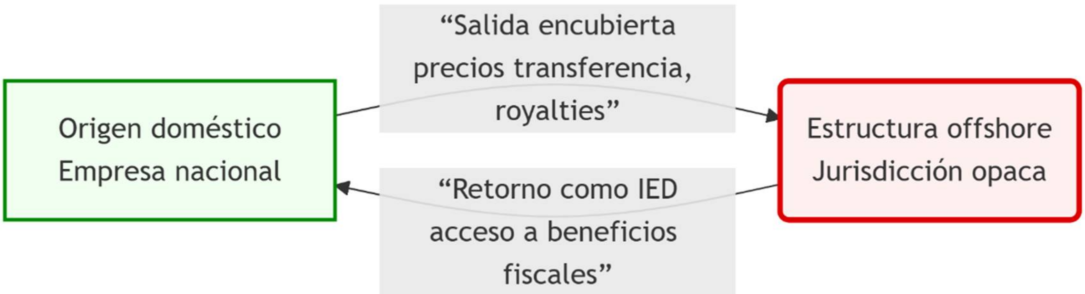
3.2.2. *Round-trip* return flows: simulating internationalisation and wealth re-appropriation

These financial flows are one of the most perverse and effective ways of simulating Foreign Direct Investment (FDI). On the surface, they appear to be a legitimate injection of transnational capital. In practice, they conceal the recycling of national wealth by domestic elites who, using *offshore* architectures, return their own capital disguised as international investment, accessing tax benefits, regulatory incentives or contracts reserved for foreign investors (Aykut et al., 2017).

Their operational architecture is based on a functional path A → B → A′. At the point of origin (A), capital usually flows out through creative accounting techniques: transfer pricing, inflated *royalty*, false invoicing. At the intermediate node (B), the instrumental entity acts as a "structural legalisation": no beneficial owner, no real economic risk, but legal formality. In the return (A′), the State receives the capital as foreign investment without the capacity to verify its traceability. It is an engineering of legalised impunity (Sikka and Willmott, 2010).

Topologically, these flows do not respond to a logic of productive displacement, but of institutional feedback. They are simulated loops that create a fictitious internationalisation, where capital does not change control, only legal form (Garcia-Bernardo et al., 2017). They operate on a highly fragmented digital infrastructure: wired SWIFT networks; storage of corporate and fiduciary documents in encrypted sovereign clouds (Oracle Cloud, AWS GovCloud); and bank custody in entities with low AML integration.

Diagram 4.- Organisational structure of *round-trip* financial return flows



Source: own elaboration

From a financial intelligence perspective, return flows require techniques of reverse traceability of beneficial ownership, semantic analysis of fiduciary clauses, and modelling of patterns of asset recycling. They are mechanisms of private appropriation of public benefits. They simulate globalisation, but institutionalise capture. Behind each "international investor" may hide a local oligarch who has learned to circumvent the democratic control of capital (Diagram 4).

3.3. CIRCULAR FLOWS

3.3.1. flows in a self-destructive loop : geometry of programmed collapse

They represent a pathological form of capital circulation, in which the same transactional economic resource between closed nodes reinforces, at each iteration, the fragility of the system that sustains it. Their topology is not based on efficiency or redistribution, but on the feedback of risk, debt or the illusion of solvency, generating a functional architecture whose purpose is to prolong collapse, not to avoid it (Bardoscia et al., 2017).

These flows manifest themselves in three distinct topological forms. First, concentrated speculative loops: closed loops between high-density financial nodes (Chicago → Cayman → Delaware → Chicago) where capital revolves around itself through derivatives, leverage or share buybacks, with no connection to the real economy

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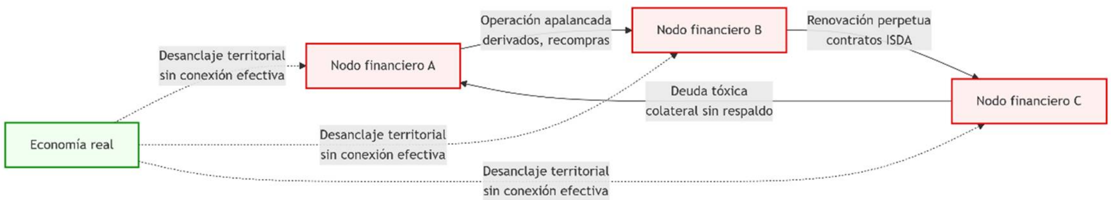
and no value creation (Battiston et al., 2016). Second, peripheral institutional loops, typical of economies in crisis (Athens → Brussels → ECB → Athens), where debt issuance fuels bailout and adjustment cycles that aggravate contraction, generating structural dependence (Brunnermeier et al., 2016). Third, decentralised digital loops, typical of blockchain environments: unbacked tokens are used as collateral to create new assets from the same ecosystem, generating liquidity expansion without real anchoring, exposed to instantaneous collapse, as evidenced by the Terra/Luna case in 2022 (Briola et al., 2022). Each represents an autonomous geometry of risk replication.

The dominant topology is that of the self-referential ring: a cycle A → B → A, where capital returns transformed, more leveraged, more toxic, more dependent on its own continuity. This morphology generates three critical spatial effects. The first is a territorial de-anchoring where flows do not pass through the real economy. They are located in abstract nodes of financial decision-making, and do not translate into improvements in employment, production or investment. The second corresponds to a functional polarisation: the benefits are concentrated in issuing centres, while the social costs (adjustment, debt, unemployment) are borne by the peripheral areas. Finally, operational encapsulation develops: here the system becomes blind to its environment. Financial valorisation is carried out internally, ignoring the material consequences on its territorial environment (diagram 5).

Diagram 5.- Organisational structure of flows in a self-destructive loop



Source: own elaboration

The infrastructure of these loops includes payment networks such as T2, Euroclear or CLS, transatlantic cable transmissions (TGN-Atlantic, AEConnect), ISDA contracts allowing perpetual renewals, and centralised data platforms where memoranda of understanding, redemption agreements and syndicated issues are stored as part of an invisible contractual legitimacy.

From a financial intelligence perspective, the self-destructive loop must be treated not as a conjunctural anomaly but as a structural device. It requires detection of contractual circularities, non-linear simulations of sustainability, and adversarial mapping of toxic collateral (Capozzi et al., 2025). These structures do not seek to generate development: they seek to postpone insolvency without redistributing power or reforming the system. They are technologies of collapse management. Where there is a loop, there is closure; and where there is closure, there is circular domination. The only viable way out is not refinancing: it is the strategic breaking of the loop, the structural audit of collateral and the spatial reconfiguration of flows towards open, productive and sovereign trajectories that use assets for social improvement.

3.4. MULTIDIRECTIONAL FLOWS

3.4.1. Synthetic pentagonal flows: mapping jurisdictional complexity and codified risk

Together with cryptographic networks, they constitute the most sophisticated, opaque and dangerous geometry of the contemporary financial system. Unlike binary or triangular flows, pentagonals not only disperse nodes, jurisdictions and custodians, but actively assemble legal vulnerabilities, regulatory asymmetries and chains of leveraged risk. They are not system failures or gaps in the system: they are the system at its most optimised to evade oversight and maximise returns at the expense of global stability.

A pentagonal flow is a multidirectional financial structure with differentiated tasks (Fernández Cela, 2025): a risk issuer, usually a fund or bank domiciled in Delaware or London; an unconsolidated SPV in Ireland or the Virgin Islands; a collateral guarantor - insurers with *non-recourse* clauses in Guernsey or Bermuda; a custodian such as Euroclear, Clearstream or DTCC; and a hybrid arbitral jurisdiction - Singapore, London, Vienna - that resolves disputes. This architecture decouples risk, ownership and collateral across jurisdictions, making integrated oversight difficult and facilitating opaque structures immune to state intervention or ex ante scrutiny.

Each node fragments risk, dissociates ownership and hinders traceability. This assembly logic seeks to separate operational risk from legal and collateral risk, making the structure immune to state intervention or regulatory oversight. They are built with highly customised OTC derivatives: TRS, CDS, synthetic options, ISDA contracts with mirror clauses or forwards linked to invisible assets (Kiff et al., 2009). Everything is stored in distributed legal clouds, with attachments spread across contradictory jurisdictions. The key is not in the financial content, but in its deliberately unintelligible topological coding.

The impact of pentagonal flows is systemic: they break multiple risk containment mechanisms. A contagious cross-default clause can trigger chain margin calls on a single default, amplifying liquidity pressure (Markose et al., 2010). This dynamic is exacerbated by the lack of harmonisation between regimes such as EMIR, Dodd-Frank or Solvency II, which allows regulatory arbitrage where risk accumulates undetected. In addition, synthetic leverage and the absence of netting mechanisms prevent a clear assessment of net exposure, hiding critical vulnerabilities under misleading gross figures (Scheme 6).

Collateral fragmentation is the last critical link. Re-hypothecation - reuse of the same asset as collateral in multiple transactions - means that when a margin call is triggered, the collateral is no longer available (Luu et al., 2018). This opaque and untraceable network design transforms one-off stresses into systemic collapses. This was the case with Lehman Brothers, which accumulated more than 900,000 OTC contracts without netting (Manzano, 2017); Archegos Capital, which replicated leveraged positions via hidden swaps; and Credit Suisse, whose exposure to cross-jurisdictional swaps without collateral precipitated its collapse in 2023.

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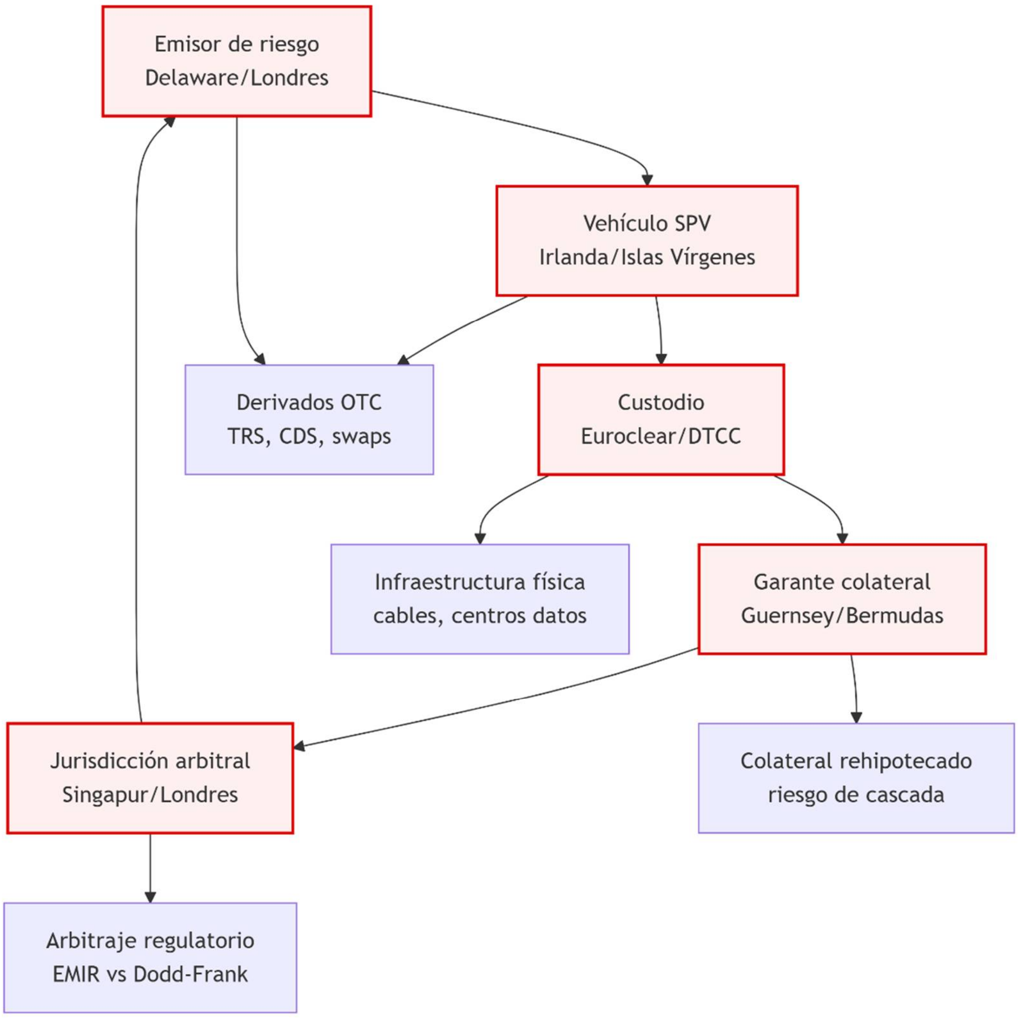
Diagram 6.- Organisational structure of synthetic pentagonal flows



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Spatially, these flows form a global hypergeometric graph that crosses physical infrastructures (LD4, NY4, FLAG), submarine cables, contingency satellites (SES, Kuiper), data centres and low-latency servers (Equinix, AWS, Azure). Nowhere is there a complete overlap between collateral, incumbent, custodian and contract. This radical decoupling is its greatest strength for the system, and its greatest threat to stability.

Neutralising pentagonal flows requires unconventional capabilities. Traditional regulation centred on national entities or registries is insufficient. Strategies such as: contractual mapping using forensic AI to track hidden clauses; adversarial simulation of cascading nodal failures; physical-legal verification of assets at custodian nodes; reverse legal penetration in private arbitration; resilience testing for SWIFT *blackout* or digital outages; structural interception correlating margins, risk and contractual servers; and pre-syntactic analysis of derivatives to detect critical clauses are required. These measures would help to dismantle opaque architectures designed to evade any form of integrated oversight.

Their threat is not only in their volume, but also in their design. They are legal instruments that result in spatial structures with a high criminogenic component. Their function is not to invest, but to dematerialise control, dilute accountability and extract profitability from systemic disinformation. As long as the system allows multi-jurisdictional contractual assemblages without integrated oversight, pentagonal flows will remain a vector of the next crisis.

3.4.2. Fractal flows: nested architecture of systemic opacity

They are the operational core of the 2008 financial crisis and the most perfected expression of the engineering of financial opacity. Their essence lies not in the movement of capital in the classical sense, but in the structural replication of contractual instruments over successive layers of packaged risk. They are flows with no linear path, no single point of origin and no discernible destination: what flows is risk itself, transformed, repackaged and redistributed in the form of "safe" assets through multiple layers of nested securitisation.

In operational terms, a fractal flow starts from a real asset: mortgages, student loans, lines of credit, expected rents. These assets make up Layer 1, which is aggregated and transformed into MBS/ABS securities (Layer 2), structured in turn into CDOs (Layer 3), which can be repackaged as CDOs^2 (Layer 4), and artificially replicated in *Synthetic* CDOs (Layer 5), where there is no longer a real asset, but only contractual references (CDS, options, synthetic index derivations). Each layer adds a greater distance from the real risk, while multiplying its apparent profitability (Barnett-Hart, 2009).

The logic of these flows is not to finance the economy, but to monetise risk. Their architecture is deliberately opaque: contracts are written in hyper-complex legal language, encoded in proprietary formats, midnight clauses, stored in distributed clouds (AWS, Equinix, Azure), with no cross-visibility between custodians (Stenzel, 2021). The key is that no one entity sees the whole map. Regulators, rating agencies and end-holders (pension funds, insurers, sovereign wealth funds) are faced with structures of which they know a part, but not the whole.

From a topological point of view, fractal flows do not move as trajectories A → B → C, but replicate as a layered network, without symmetry or linearity. A *subprime* mortgage default in Nevada can generate contagion effects in German insurers or Norwegian funds that never knew they had exposure. Key nodes include issuers in the US, SPVs in Ireland or Cayman, insurers in Bermuda and holders in Tokyo or Frankfurt. This dispersion generated a total dissociation between ownership, risk and custody, making any coherent oversight of the system difficult (Diagram 7).

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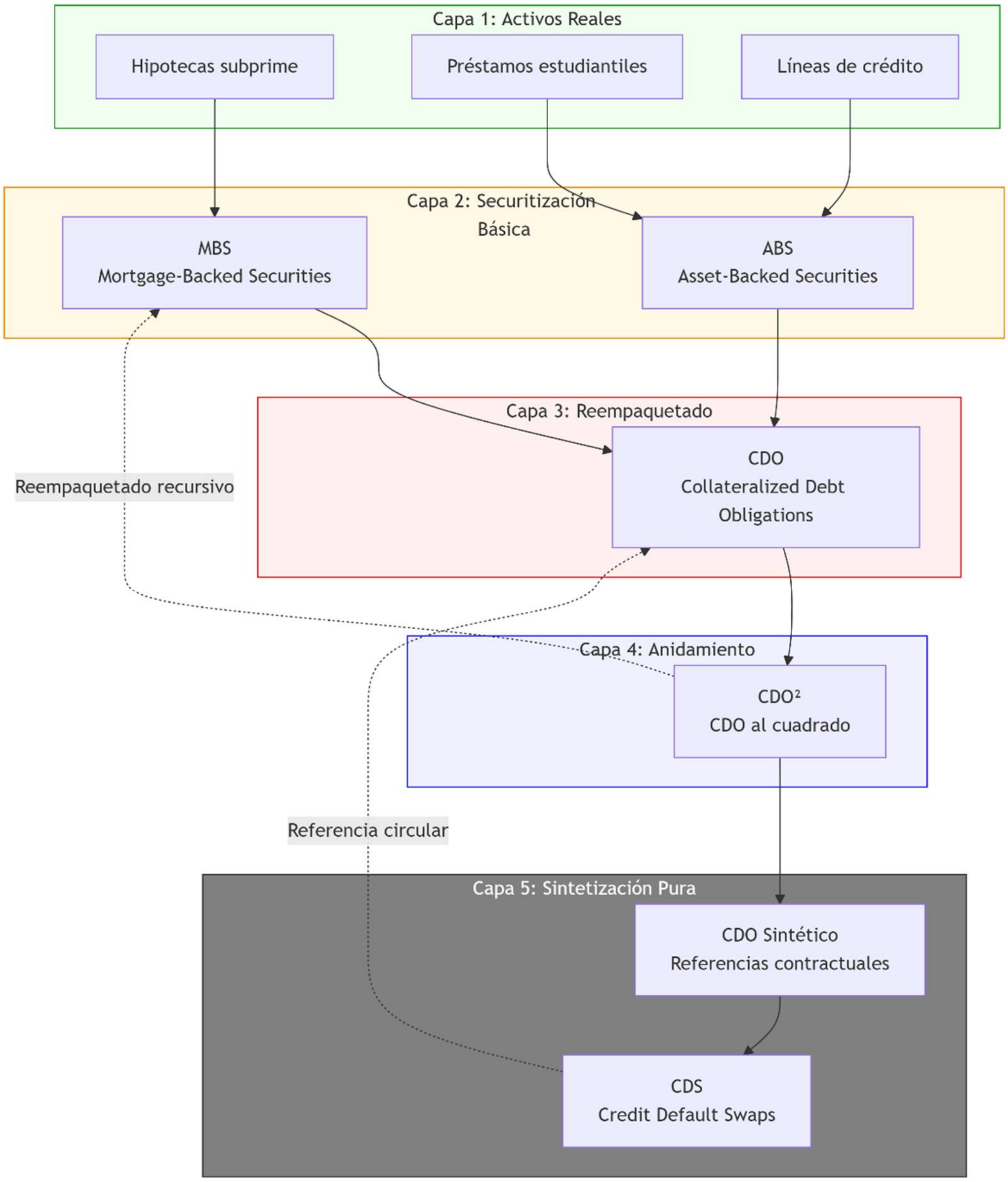
Diagram 7.- Organisational structure of fractal flows



Source: own elaboration

The vulnerabilities are multiple: misalignment of incentives (structurers charge for volume, not sustainability), flawed mathematical models (Gaussian copula with unrealistic assumptions), inefficient audits (unreadable prospectuses), and regulatory fragmentation that prevents any supervisor from having a complete overview. Fractal securitisation transforms a decentralised financial system into a self-referential hierarchical opacity machine (Awrey, 2012; Brigo et al., 2009).

From a financial intelligence perspective, neutralising complex flows requires advanced technological and regulatory tools. First, reverse tracing through legal AI would allow reconstructing hidden fiduciary routes by training neural networks with ISDA contracts, prospectuses and annexes (Capozzi et al., 2025). Second, a regulatory limit should be set to prohibit more than two levels of nesting in structured derivatives, blocking synthetic architectures that impede oversight. This approach aligns with reforms such as SEC Rule 18f-4, which seeks to contain the risk of excessive leverage. Third, there is an urgent need to develop synthetic exposure mapping that identifies nodes where derivatives with no net collateral are concentrated, potential hotspots of systemic risk (Markose, 2012). Fourth, semantic reform is required to standardise the readability of prospectuses and incorporate automated analysis to detect opaque clauses (ESMA, 2022). These combined actions not only address the current opacity, but also redesign the regulatory environment to make it incompatible with opaque financial engineering.

3.4.3. Flows of accounting concealment: a parallel global capital register

Their function is to constitute an invisible accounting network on which part of the global financial system operates. They do not necessarily involve physical transfers of capital, but semantic-accounting movements, where it is ownership, risk or income that is shifted, but not the underlying asset. They are designed to operate outside the regulatory radar without abandoning formal legality.

Their strategic ontology is clear: separate legal form from economic substance. A regulated entity (bank, fund, insurer) registers part of its accounting, profits or risk in an unregulated entity located in an *offshore* jurisdiction. Thus, the risk or income "disappears" from the supervisory perimeter of the primary regulator, without relinquishing effective control of the group (Gorton and Souleles, 2007).

These structures are not marginal. They constitute the operational architecture of the shadow financial system, and their existence is a necessary condition for the viability of the other opaque flows: triangular, pentagonal or fractal. They act as "accounting neutralisation nodes", where capital is relabelled, relocated or temporarily invisible.

In spatial terms, they are supported by a highly fragmented physical and digital infrastructure across multiple jurisdictions. Contracts and records are stored in hybrid clouds with partial encryption, decoupling physical location and legal jurisdiction. Records are updated through banking APIs without AML integration, and flows are channelled through SWIFT or FIX networks without verifiable territorial correspondence.

From a financial security perspective, the risks are serious: structural deconsolidation prevents balance sheets from reflecting real exposures, hiding key links between entities. There is illusory transparency, where firms formally comply with local regulations while operating parallel structures out of audit. In addition, there is accounting capture, shifting risks and outcomes to vehicles without effective oversight, weakening institutional control (Gorton, 2007; IMF, 2014). The response requires forensic semantic penetration, cross-auditing of fiduciary networks and reverse topological analysis of hidden consolidations. Accounting concealment flows are not just mechanisms of circumvention, they constitute a key parallel structure in the architecture of 21st century capital (Figure 8).

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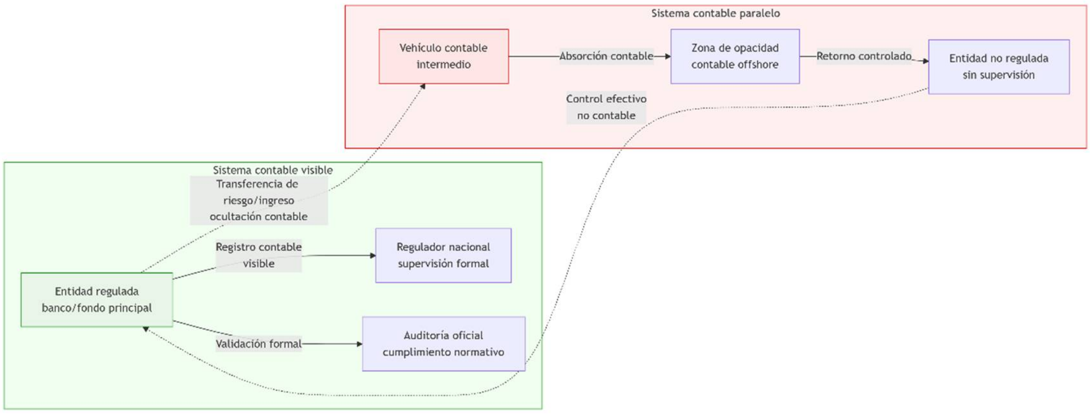
Diagram 8.- Organisational structure of accounting hiding flows



Source: own elaboration

3.4.4. Parasitic flows: the criminal symbiosis of the formal financial system

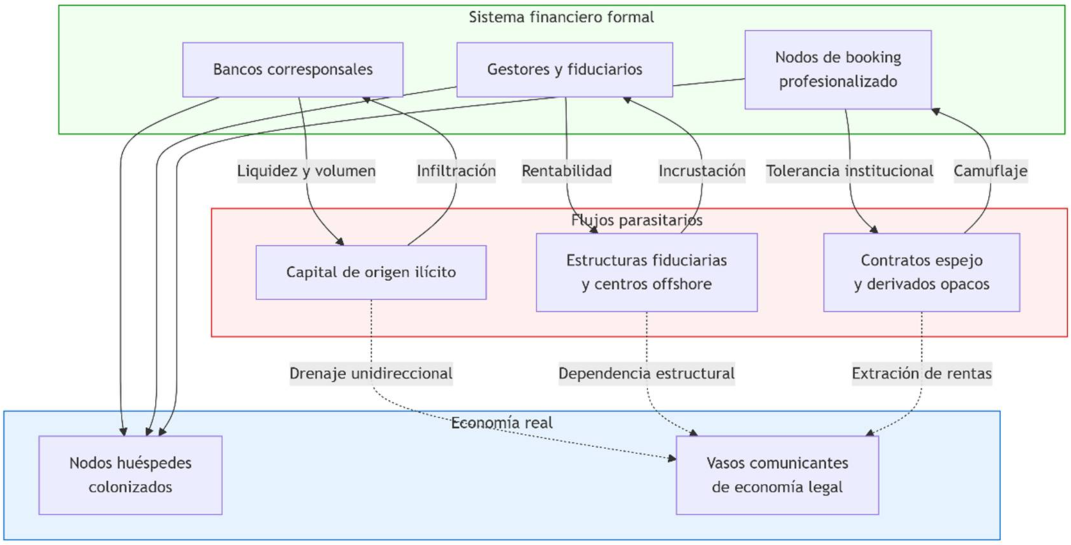
They represent an operational interface between the formal financial system and illicit accumulation networks. Unlike traditional criminal flows, parasitic flows do not exist outside the traditional banking system: they colonise, use and deform it from within. They are a systemic embedding mechanism, in which capital of illicit origin is integrated into the upper layers of the financial system with the functional complicity of managers, trustees, correspondent banks or professionalised booking nodes (Levi, 2012; Sharman, 2010).

Their logic is that of operational symbiosis: criminal capital needs financial structures to circulate and legitimise itself; financial capital tolerates this infiltration in exchange for liquidity, volume and profitability. The boundary between legality and illegality becomes blurred, not so much by direct fraud, but by institutional design. Trust structures, offshore centres, mirror contracts or derivative instruments allow layers of formal legality to be superimposed on capital whose origin is segmented, dissolved or deliberately obscured.

These trajectories exploit structural vulnerabilities: ambiguous fiduciary legislation, banks with low levels of *compliance*, opaque jurisdictions without CRS and stock exchanges that authorise non-transparent vehicles. The fragmentation between economic and legal ownership allows the financial parasite to exist. From a financial intelligence perspective, their detection requires a hybrid approach: mapping of fiduciary genealogies, simulation of dynamic *layering* with forensic AI, and mapping of institutional tolerance vectors to locate banking or judicial nodes that facilitate their operational embedding and permanence.

Parasitic flows are one of the most dangerous forms of capture: the one that is not perceived as criminal, but colonises the communicating vessels of the legal economy from within. Combating them requires maps, not lists; structural intelligence, not just formal compliance (Diagram 9).

Diagram 9.- Organisational structure of parasitic flows



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3.4.5. Mirror debt flows: contractual engineering of geo-financial subjugation

Mirror debt flows are a central tool in the architecture of contemporary financial diplomacy. Although they are presented as development finance or bilateral cooperation agreements, they conceal highly structured mechanisms of strategic subordination. Their contractual design responds to a logic of deliberate asymmetry: the debtor state, generally peripheral and with little bargaining power, is induced to accept opaque conditions under extraterritorial legal frameworks, issued by parastatal creditor entities such as the European Investment Bank or the China Development Bank. These operations not only impose financial dependency, but also reconfigure functional sovereignties by progressively transferring control over key assets and flows without the need for visible military or political intervention (Parker and Chefitz 2018).

The operational structure of these flows is based on an extra-accounting legal set-up: the actual collateral of the loan is not the financed asset, but future state revenues (hydrocarbon royalties, port fees, customs duties), which guarantees a more stable source of repayment for the recipient country's economic infrastructure. These mirror clauses, which are not publicly disclosed, contain contractual *triggers* that make it possible to activate mechanisms of operational cession, forced leasing or the transfer of functional sovereignty in the event of a technical default. The paradigmatic case is the Hambantota port in Sri Lanka, where debt default with China led to the cession of control for 99 years. These schemes represent a sophisticated form of geo-economic domination that combines financial engineering, legal opacity and deferred territorial capture.

The operational scheme starts with a creditor node offering a structured loan under a legal jurisdiction favourable to the creditor. The debtor node, with low bargaining power and critical liquidity or infrastructure needs, accepts opaque contractual terms with asymmetric trigger clauses and disguised guarantees. Unlike standardised multilateral

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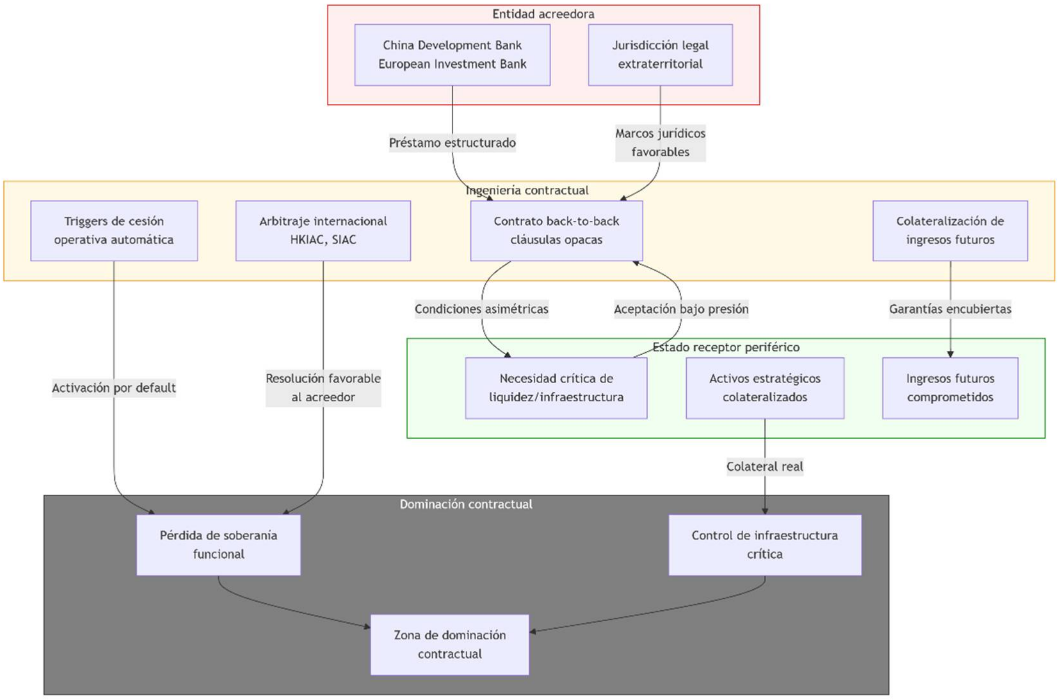
loans, these bilateralised contracts are not subject to parliamentary transparency, international oversight or ex ante auditing (Scheme 10).

Diagram 10.- Organisational structure of mirror debt flows



Source: own elaboration

The technical key to the mirror flow lies in the non-formal collateralisation. Instead of backing the loan with the financed asset, it is linked to future flows of sovereign revenues (hydrocarbon exports, port taxes, customs duties), allowing that, in the event of default, a clause of operational assignment or forced leasing of strategic assets is automatically activated. These contracts often include *non-recourse enforcement* clauses that shield the creditor from any restructuring or public dispute (Mihalyi et al., 2022).

Topologically, the flow is consolidated through distributed legal networks: the contract is signed in one jurisdiction, arbitration is submitted to creditor-friendly international courts (HKIAC, SIAC), enforcement is formalised in supranational courts, and collateralised assets may be fragmented in different national registries or even in legal clouds with delegated functional sovereignty.

From a financial intelligence perspective, this type of flow requires contractual counter-engineering and early intervention. It is essential to identify trigger clauses (*event of default*), map the committed *off-ledger* flows as collateral (*off-ledger mapping*) and map the jurisdictions involved to anticipate transfer of control scenarios. In addition, financial defence doctrines should be deployed that include capabilities for sovereign renegotiation, legal reconfiguration of the contract and operational resistance to offshore takeover (IMF, 2021).

Mirror debt flows do not seek financial return: they seek control. They are legal algorithms of programmed dispossession, assembled to transform debt into domination. This is done through contractual clauses that reconfigure the sovereignty of the debtor, shifting economic decision-making power to the creditor. Its neutralisation does not lie in economic solvency, but in legal sovereignty, tactical anticipation and strategic mapping of contractually codified risk.

3.5. HYBRID FLOWS

3.5.1. Crypto-opaque flows: the new geography of cryptojurisdictional laundering

They represent a post-jurisdictional evolution of money laundering: a set of decentralised, semi-anonymous and structurally evasive capital trajectories, articulated through crypto platforms, mixers, bridges and stablecoins without verifiable backing. They do not respond to traditional fiscal or banking logics: they move on P2P networks, DeFi infrastructures and obfuscated smart contracts (Zola et al., 2025; Elliptic, 2024).

Digital smuggling flows operate through a three-layered functional architecture that ensures their structural resistance to traditional traceability. In the first stage, opaque capital is converted into cryptoassets through permissive entry ramps that minimise institutional control (Gabbiadini et al., 2024). Centralised *exchanges* with weak identity verification, unregulated cryptocurrency ATMs and NFT exchange platforms used as speculative hedging instruments allow the insertion of money into the crypto ecosystem without raising formal alerts. This initial fragmentation of the origin is key to decoupling the digital asset from the illicit wealth that originates it.

In the intermediate phase, digital assets undergo an obfuscated transition through the use of tools specifically designed to destroy the continuity of the transactional trail. *Mixers* such as Tornado Cash, inter-chain exchange protocols (RenBridge) and second-layer networks (Arbitrum, zkSync) allow assets to be recomposed, subdivided and forwarded without the authorities being able to reconstruct a verifiable timeline (Nadler and Schär, 2023). This stage exploits the legal and technical vulnerabilities of *multichain* structures and custodianless smart contracts to dilute attribution.

Finally, the reconfigured funds are reconverted into fiat currency or put into operational circulation through low-control over-the-counter channels. OTC *brokers*, prepaid crypto debit cards or the use of *stablecoins* without transparent backing make it possible to close the cycle in crypto-permissive jurisdictions such as the United Arab Emirates, Georgia, Nigeria or El Salvador (Diagram 11).

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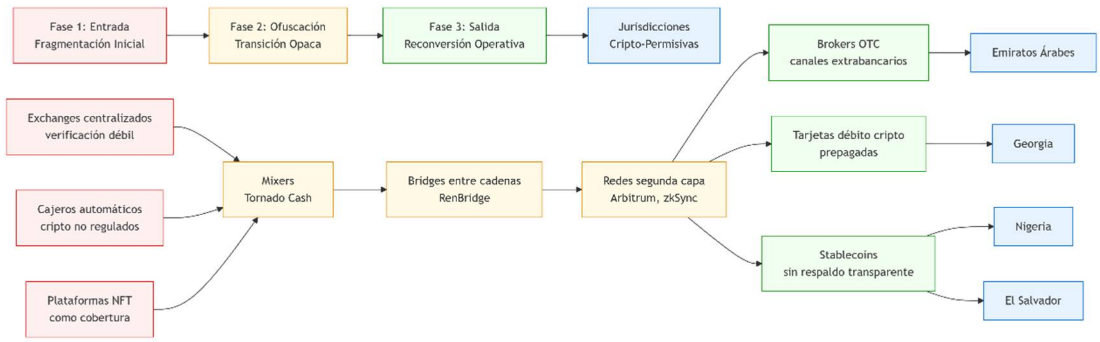
Diagram 11.- Organisational structure of crypto-opaque flows



Source: own elaboration

These trajectories are highly resistant to traditional traceability. AML tools do not cover multichain structures, and state FIUs lack the technical and legal jurisdiction to intervene in decentralised *smart contracts* or non-custodian *wallets*. From a financial intelligence perspective, these flows demand a new approach: *blockchain* forensic AI, analysis of *wallet-to-wallet* behavioural patterns, monitoring of opaque *bridges*, and geographic correlation of nodes and validators. The threat is not just criminal: it is structural. These networks are generating a parallel monetary sovereignty that is difficult to tap and even more difficult to map.

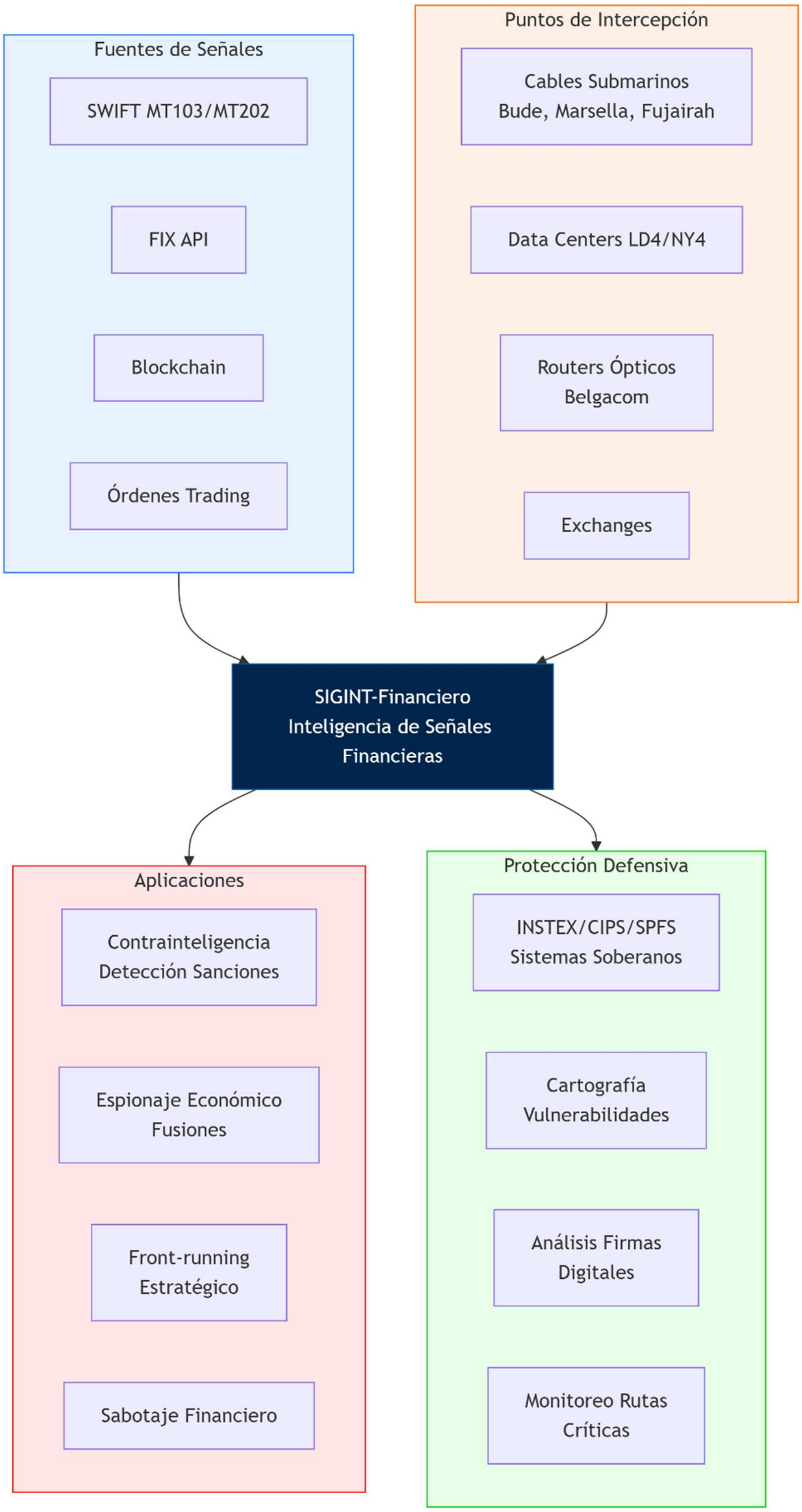
3.5.2. SIGINT-Financial: the strategic capture of capital flows

Signals intelligence applied to financial networks constitutes a new operational field where electronic surveillance, economic espionage and the technical architecture of the global financial system come together. Unlike traditional intelligence based on people (*HUMINT*) or open sources (*OSINT*), financial SIGINT exploits the physical-digital infrastructure through which payment orders, contracts and asset transfers circulate.

As we have seen, its operational logic starts from the premise that every financial flow leaves a digital footprint, be it a SWIFT message (MT103, MT202), a FIX API connection, a blockchain execution, or a margining order between counterparties (Markose, 2012, op. cit.; Weinbaum et al., 2018). These signals can be intercepted, correlated and exploited by state or private actors with privileged access to technical nodes (*data centres*, *landing stations, exchanges*, custody).

Documented cases such as the ECHELON/GCHQ-NSA agreement to intercept SWIFT traffic from Bude in the UK, or the cross access to optical *routers* of Belgacom or Submarine Cable Maps (Marseille, Fujairah), show that the financial system can become a theatre of covert operations (Ball, 2013). Not only for counter-intelligence purposes (detection of sanctions violations, flow to designated entities), but also as a tool for geo-economic advantage such as merger espionage, strategic *front-running* or financial sabotage (Diagram 12).

Diagram 12.- Organisational structure of SIGINT-Financial flows



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From a defensive perspective, states require SIGINT vulnerability mapping capabilities, monitoring of transmission routes (cables, satellites, IXPs), digital signature analysis of flows and deployment of sovereign financial messaging systems.

In the 21st century, he who dominates latency controls the market. But he who dominates the signal, controls the financial power map. Financial SIGINT is not the future: it is already operational.

4. CONCLUSIONS AND PROPOSALS

The main flows of global financial capital have been mapped through a topological and scalar classification. Far from considering transactions as mere accounting transfers, I suggest considering them as functional structures of power, articulated through digital, legal and geo-economic infrastructures that configure the financial system as a field of strategic conflict. Organising the analysis by spatial scales allows us to understand that capital does not flow in a vacuum: it circulates through structured territories, through assembled legal layers and through infrastructural networks designed to favour certain actors and neutralise others.

The twelve flows analysed are not marginal exceptions, but functional expressions of a global architecture that is both decentralised and hierarchical. Each of them materialises a technique of opacity, simulation or domination. Some through speed (HFT), others through silence (accounting concealment), others through legal manipulation (mirror debt), others through contagion (fractals), others through mimicry (parasitic flows).

Faced with this map, financial intelligence cannot be limited to regulatory compliance or statistical analysis. It requires a doctrine of structural financial sovereignty, based on three pillars. First, critical mapping that builds functional maps of capital, focusing on trajectories, nodes and legal assemblages, not abstract national aggregates. Second, improved adversarial modelling, developing tools for systemic risk simulation and nodal exploitation, not only to anticipate collapses, but also to dismantle capture circuits. Third, expanding strategic traceability: establishing regulatory, technological and diplomatic mechanisms to ensure the tracking of each relevant flow, from its origin to its destination, including collateral, contracts, beneficiaries and jurisdictions.

Consistent with proactive action and financial defence doctrines, an IA-ADF (Alert and Detection of Flows) system is proposed that integrates: (i) dynamic mapping of relationships between entities/jurisdictions to identify the 12 morphologies described (including round-trip, mirror and self-destructive loops); (ii) contractual NLP to locate covert dominance clauses (event of default, cross-default, operational assignments, non-recourse); (iii) routing, latency and collateral anomaly detection (rehypothecation, insufficient netting, sovereign jumps); and (iv) adversarial simulation (what-if) to test for contagion and trigger early warnings and pre-emptive blocking. AI does not replace compliance, it precedes it: it transforms reactive supervision into structural prevention of risk scenarios in the twelve proposed flows.

Contemporary sovereignty is not only at stake in the control of territory, but in the mastery of the diagram: of financial graphs, transfer infrastructures, interstate contracts and digital platforms that allow or block the passage of capital. Whoever controls the path conditions the power relations.

High-resolution financial geo-intelligence is proposed, capable of reading the architecture of globalisation not as a diffuse spider's web, but as a set of tunnels, valves, mirrors and channels whose logic is decipherable and therefore governable. It is a complex and onerous challenge, but what is at stake is not just transparency or efficiency: it is the reconstruction of economic sovereignty on geometric, legal and topological foundations.

In times of structural instability and latent financial warfare, mapping is not describing: it is preparing. Financial security in the 21st century will be proportional to the state's ability to read and redesign its own flows. And this requires forward thinking, doctrine and action. This is where that task begins.

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Research Article

THE THREE PILLARS OF CITIZEN SECURITY

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THE THREE PILLARS OF CITIZEN SECURITY

Summary: INTRODUCTION, 2. METHODOLOGY, 3. THEORETICAL FRAMEWORK, GUIDING PRINCIPLES, 3.1. Constitutional limits and legal principles, 3.2. Risk equation and A×V approach, 3.3. Distributed legitimacy and procedural justice, 4. OPERATIONAL TOOLS: THE THREE PILLARS OF CITIZEN SAFETY, 4.1. Prevention, 4.1.1. Crime prevention and proactive risk management, 4.1.2. Administrative policing as structural prevention of coexistence, 4.2. Communication, legitimacy and citizen participation, 5. LEADERSHIP AS THE INTEGRATING AXIS OF THE THREE PILLARS, 5.1. OODA cycle applied to the three pillars, 5.2. EMPIRICAL EXPERIENCE: APPLICATION OF THE MODEL IN THE COMPANY OF TORREVIEJA (2017-2019), 7. CHALLENGES AND PROPOSALS, 8. CONCLUSIONS AND PROPOSALS.

Abstract: Citizen security has become a cornerstone for ensuring the full exercise of rights and freedoms in modern societies. However, the definition and scope of this concept have been subject to academic and legal debate due to the diversity of related terms (public security, public order) and the evolution of security policies across different historical contexts (Freixes y Remotti, 1995). This article proposes a theoretical framework that structures citizen security into three essential pillars –prevention, investigation, and communication– supported by mission-oriented leadership as an integrative axis. Through a doctrinal and normative analysis, we explore the foundations of each pillar and their interrelationship. We highlight the importance of proactive crime prevention by reducing target vulnerabilities and offender motivations (Cohen & Felson, 1979), effective investigation to ensure accountability and deterrence, and strategic communication both to engage citizens in security and to manage the subjective perception of insecurity. Likewise, we examine how participative and adaptive leadership within security forces is crucial to implement these pillars in practice. Finally, the implications of this tripartite approach are discussed in comparison with traditional security models, and improvements are proposed for public policies and policing practices aimed at achieving more effective, legitimate, and sustainable citizen security.

Resumen: La seguridad ciudadana se ha consolidado en las últimas décadas como un elemento fundamental para garantizar el pleno ejercicio de los derechos y libertades. Sin embargo, la definición y alcance de este concepto han sido objeto de debate académico y legal debido a la diversidad de términos afines (seguridad pública, orden público) y a la evolución de las políticas de seguridad en distintos contextos históricos (Freixes y Remotti, 1995). Este artículo propone un marco teórico que estructura la seguridad ciudadana en tres pilares esenciales –prevención, investigación y comunicación– sostenidos por un liderazgo orientado a la misión como eje integrador. A través de un análisis doctrinal y normativo, se exploran los fundamentos de cada pilar y su interrelación. Se destaca la importancia de la prevención proactiva del delito mediante la reducción de vulnerabilidades y motivaciones criminales (Cohen & Felson, 1979), la investigación eficaz para asegurar la rendición de cuentas y la disuasión, y la comunicación estratégica tanto para involucrar a la ciudadanía en la seguridad como para gestionar la percepción subjetiva de inseguridad. Asimismo, se examina cómo un liderazgo participativo y adaptativo dentro de las fuerzas de seguridad resulta crucial para articular estos pilares en la práctica. Finalmente, se discuten las implicaciones de este enfoque tripartito en comparación con los modelos tradicionales de seguridad,

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proponiendo mejoras en las políticas públicas y prácticas policiales orientadas a una seguridad ciudadana más efectiva, legítima y sostenible.

Keywords: citizen security; crime prevention; criminal investigation; communication and security; police leadership; public security policies.

Palabras clave: seguridad ciudadana; prevención del delito; investigación policial; comunicación y seguridad; liderazgo policial; políticas públicas de seguridad.

ABBREVIATIONS

A: Threat.

OHCHR: Office of the High Commissioner for Human Rights.

CDC: Centers for Disease Control and Prevention.

EC: Spanish Constitution.

UNISDR: United Nations International Strategy for Disaster Reduction.

FCS: Security Forces and Corps.

LO: Organic Law.

OODA: Observe-Orient-Decide-Act (Boyd's decision cycle).

UN: United Nations.

POP: Problem-Oriented Policing.

ROE: Rules of Engagement.

SARA: Scan-Analyse-Respond-Assess (Scan-Analyse-Respond-Assess).

STC/SSTC: Judgment(s) of the Constitutional Court.

ECtHR: European Court of Human Rights.

UNDP: United Nations Development Programme.

V: Vulnerability.

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1. INTRODUCTION

In contemporary societies, security - in all its meanings - has become a central concern and a highly valued value for citizens (Beetham, 1991; Garland, 2005). The feeling of peace of mind that comes from living in safety is considered an indispensable condition for the full exercise of fundamental rights and the development of community life. However, the conceptual definition of citizen security and related terms (public safety, public order) has not been peaceful. The legislator has traditionally used these terms imprecisely and interchangeably, which has led to theoretical and practical confusion. This has made it necessary for the Constitutional Court to intervene in order to adapt these concepts to the reality of each moment and to delimit them, especially in relation to the limits derived from Articles 18 and 24 EC and the requirements of legality, proportionality and judicial control in security-related interference (SSTC 33/1982, 117/1984, 123/1984, STC 55/1990, STC 341/1993, STC 66/1995 and STC 172/2020). As Montalvo Abiol (2010) points out, public order is an indeterminate legal principle whose lack of objective definition contrasts with its central role as a guideline for the action of the democratic State. In short, the way we define security conditions the strategies for providing it: a predominantly coercive notion of security will tend towards repressive state responses, while a broader and more inclusive vision will favour preventive and participatory policies (Recasens i Brunet, 2007).

Historically, the primary function of the modern state has been to provide security for its citizens through the monopoly of legitimate violence (Weber, 1919/1946). In the case of Spain, the 1978 Constitution entrusts the Security Forces and Corps with the mission of "protecting the free exercise of rights and liberties and guaranteeing citizen security" (art. 104.1 CE). This mandate reflects the need to balance two public goods: the protection of citizens from threats and the safeguarding of their rights. Traditionally, this balance was articulated under the concept of public order, understood in the classic sense as peace and social tranquillity, frequently maintained through coercive measures. However, with the transition to a democratic rule of law, the paradigm shifted towards conceiving security as a service to citizens (Freixes and Remotti, 1995) rather than a mere instrument of state control. The nineteenth-century liberal state privileged the authority of public power to prevent disorder, while the current social and democratic state conceives of the citizen as a recipient of services (including security in multiple areas: against crime, but also food, labour, environmental security, etc.). Providing public security is based on a social pact whereby individuals cede the private use of force to a common power in exchange for protection (Hobbes, 1651/2008; Weber, 1919/1946). This protection - when it requires police force - is exercised in accordance with the law and under the principles of necessity and proportionality (OHCHR, 1990; Organic Law 2/1986; ECHR, 1995).

As we said, with the rise of the welfare state in the 20th century, the concept of security broadened and diversified: it is no longer limited to the mere containment of crime, but encompasses the prevention of risks of various kinds (social, economic, technological) and the guarantee of conditions for quality of life. In its Preamble, defines citizen security as "the guarantee that the rights and freedoms recognised in democratic constitutions can be freely exercised by citizens" and conceives its protection as a broad activity that includes preventive, coercive and assistance actions by various State bodies. In its explanatory memorandum, the law identifies three essential "mechanisms" of the rule of law to guarantee security: the prevention of offences, the investigation and punishment of criminal acts, and the provision of protection services (assistance to citizens).

At the same time, globalisation and social change have multiplied the spheres of risk and highlighted the limitations of the state in dealing with them alone. Security is no longer the exclusive monopoly of the state through its police: it requires the coordinated participation of other public and private actors, and even of the citizen himself as an active subject with a growing protagonism.

In the words of Francesc Guillén, we are witnessing the transition from governmental policing to plural security (Guillén Lasierra, 2016). This scenario, together with a certain crisis of legitimacy of institutions, has promoted more participatory security models, in which citizen cooperation, transparency and accountability are essential (Requena Hidalgo, 2016). In short, there is a move towards shared security strategies, in which authorities must be more open and responsive to society. Authors such as Guillén Lasierra (2015) stress that the broadening of the concept of security necessarily includes the subjective and community dimension, forcing institutions to be more transparent and closer. Legitimacy becomes another critical axis: drawing on Requena Hidalgo (2016), we understand that greater police legitimacy fosters citizen collaboration and voluntary compliance with the law. A security model structured on three pillars contributes to this legitimacy in several ways: (a) it shows the population a preventive and proactive face of the police (not only reactive or repressive), improving the image of closeness and service; (b) it increases efficiency in results by not neglecting any stage of the crime cycle, which results in greater confidence in police effectiveness; (c) it promotes constant interaction with the community through communication, humanising the institution and making it more accessible. Legitimacy, in turn, feeds back into the model: with greater trust, people participate more in prevention (for example, by joining local security plans, reporting suspicious situations) and collaborate more in investigations (providing evidence, testimonies).

Gledhill (2013), in analysing "the mismanagement of public safety", criticises how the traditional response of increasing police and tightening laws has proved insufficient in the face of persistently high crime rates and an environment of daily insecurity. Our model responds to this critique by integrating not merely quantitative responses (not just more police) but qualitative ones: better use of information, greater involvement of people and innovative leadership in management.

2. METHODOLOGY

In this evolving context, the aim of this research is to propose and substantiate an integrated model of citizen security articulated around three interdependent pillars: prevention, investigation and communication, underpinned by mission-oriented police leadership. The main idea is that a comprehensive security policy should simultaneously rely on preventing crime from occurring (prevention), reacting effectively when it does occur (investigation and punishment) and involving society in the construction and management of its own security (communication), forming a model of three interdependent pillars that generate a virtuous circle between effectiveness and legitimacy. This virtuous circle would respond to the aspiration of modern community policing and procedural justice policies, offering a framework to operationalise this

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integrative vision. On this basis, the central hypothesis guiding this research is that efficiency in the management of citizen security in the 21st century depends on the balanced articulation of these three pillars - prevention, investigation and communication - energised by mission-oriented police leadership.

The study adopts a qualitative approach based on doctrinal, normative and public policy analysis. Starting from the observation that in the Spanish context a de facto model of citizen security is already operating in which communication plays a very relevant role, the work aims to conceptually reconstruct this implicit model, critically evaluate it and provide it with a more consistent theoretical and legal basis.

To this end, firstly, a narrative and selective review of the relevant academic literature on citizen security, police legitimacy and mission-oriented policing models is carried out. Secondly, we analyse the main regulations and jurisprudential developments that shape the framework of citizen security in Spain, as well as strategic documents and guides from national and international organisations linked to security management and risk communication. The geographical scope of reference is fundamentally the Spanish legal system and institutional practice, with comparative support when relevant.

The type of analysis is therefore one of conceptual and legal-political reconstruction, with an evaluative dimension aimed at identifying strengths, weaknesses and potential for improvement of the model currently in place. By way of example, without claiming the systematic rigour of an exhaustive empirical design, nor determining causal inferences, some quantitative data relating to the Torrevieja Company, a unit in which the theoretical model described above was applied during the years 2017 to 2019 through a mission-oriented command and multiple actions aimed at communication with citizens and their participation, are included. These illustrative data show the practical applicability of the model and leave the door open for the proposed framework to serve as a basis for future empirical research and public policy evaluation processes in the area of citizen security.

The COVID-19 pandemic from 2020 onwards introduces an exceptional distortion in the operational context, so to avoid spurious comparisons, the empirical analysis is deliberately limited to the earlier period.

3. THEORETICAL FRAMEWORK. GUIDING PRINCIPLES.

3.1. CONSTITUTIONAL LIMITS AND LEGAL PRINCIPLES

According to the historical evolution of security described by authors such as Recasens (2002) and Gledhill (2013), in Spain, there was a transition from an abstentionist model (liberal state in the 19th century and first decades of the 20th century, where the state had a limited role in general welfare and focused on basic public order), to an interventionist or social model (welfare state in the second half of the 20th century, with greater state presence in social crime prevention, comprehensive policies, etc.), and, more recently, towards an interventionist or social model (welfare state in the second half of the 20th century, with greater state presence in social crime prevention, comprehensive policies, etc.) and, more recently, towards a participatory or pluralistic model (state shared with civil society and the private sector in the provision of security).

The current model of citizen security must be inscribed within the limits imposed by fundamental rights. In the case of Spain, the rights recognised in the Spanish Constitution of 1978 establish clear boundaries: security measures that restrict freedoms must be provided for by law (principle of legal reservation), be applied in a proportionate manner and be subject to effective judicial control.

Furthermore, as we have seen, the progressive delimitation of the concepts of public order and public security through case law has been decisive in the evolution of the security model.

Early constitutional jurisprudence (SSTC 33/1982, 117/1984 and 123/1984) began to outline the distinction between "public order" and "public security" fundamentally in terms of competence (De la Morena, 1987) rather than on the basis of a closed dogmatic delimitation of their material content. On this basis, the subsequent evolution has been decisive: STC 55/1990, in the interpretation made of it by the doctrine, marks a shift from the conception of public order, associated with coercive control, towards a notion of citizen security understood as a state of tranquillity which enables the exercise of rights and freedoms, sustained by both preventive and repressive measures (STC 55/1990, FJ 5). Within the framework of the control of Organic Law 1/1992, of 21 February 1992, on the Protection of Public Safety (repealed), STC 341/1993 contributed to consolidating this idea by examining public safety as a prerequisite for the effective enjoyment of fundamental rights, refining the regime of interference with personal freedom and the inviolability of the home.

In turn, STC 66/1995 pointed out that the alteration of public order can only be invoked to limit rights when there is a certain danger to persons or property "in *the light of the principles of the social and democratic rule of law enshrined in the Constitution*", ruling that it was not legitimate to interpret public order "*as synonymous with respect for the legal and meta-legal principles and values that are at the basis of social coexistence and are the foundation of social, economic and political order*", i.e., that the exercise of rights cannot be subjected to controls of political opportunity or to judgements based on pre-established canons in a predetermined system of values that cohere the social order at a given moment.

On the other hand, in Gillan & Quinton v. United Kingdom (ECtHR, 2010), the Strasbourg Court concluded that police powers to stop and search without suspicion violated the right to privacy because they lacked clear legal limits and adequate safeguards against arbitrariness. In other words, such powers were not in accordance with the law because they lacked sufficient circumscription and controls.

More recent rulings such as STC 172/2020, in line with the ECtHR's orientation, insist that security measures are only constitutionally legitimate when they are strictly subject to legality, to a judgement of necessity and proportionality and to effective judicial control, with sufficient safeguards against arbitrariness.

These examples illustrate that effectiveness in citizen security, in a participatory model, cannot be achieved at the cost of emptying legal guarantees of content: the model must operate within the rule of law. Any police action - be it preventive, investigative or coercive - must scrupulously respect individual rights, so that the rule of law and the

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protection of citizens always go hand in hand, in a way that is transparent to the citizen, who is expected to have a certain degree of participation in his or her own security.

The three pillars fit with the latter model: prevention includes social and community measures (active citizen participation), communication makes explicit the collaboration of various actors, including the citizen himself, and research also draws on external resources (private technology, international cooperation, academic knowledge). In other words, it is an open and multidimensional approach.

In reality, prevention, investigation and communication correspond to classic - but sometimes unbalanced - functions of security forces that have traditionally oscillated between preventive and reactive or repressive models. The proposed model emphasises that all three axes are equally necessary and mutually reinforcing if managed under appropriate leadership.

From the jurisprudential trajectory introduced, the need for an integrated model of security in which prevention, investigation and communication act in a balanced way to protect people without undermining their fundamental rights can be defended in a reconstructive key.

Finally, it is useful to contrast this approach with other current international approaches. Concepts such as human security (UNDP, 1994) promoted by the UN broaden the notion of security to include economic, food, environmental, etc. dimensions, insisting on the centrality of the individual and his or her community in defining what concerns them. In a way, the three pillars encompass this spirit: they are not limited to state coercion, but integrate prevention (which connects with social development), communication (citizen empowerment) and research (institutional and legal strengthening). On the other hand, models such as Problem-Oriented Policing (Goldstein, 1979) complement our vision: such a strategy seeks to identify underlying problems behind repetitive incidents and attack them at their root, which requires prevention (situational solutions), research (analysing patterns and sometimes dismantling networks) and communication (working with the affected community to resolve them). In other words, the prism of the pillars is flexible enough to encompass tried and tested approaches, giving them coherence together.

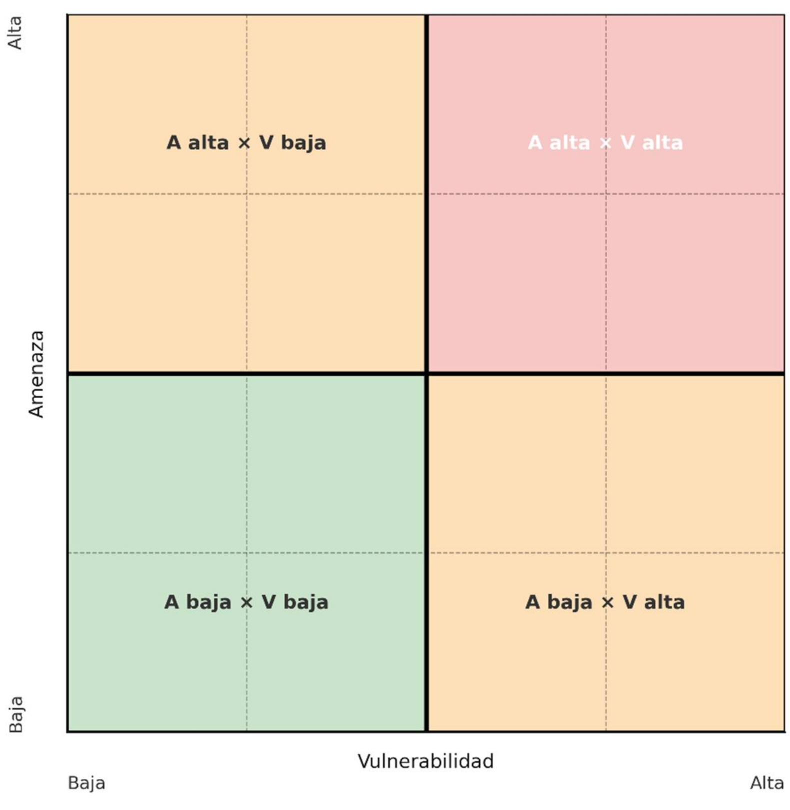
In summary, it can be seen from the above that effective citizen security requires a comprehensive approach, where police and citizens jointly and actively create the conditions for social peace. The three-pillar model - plus the leadership that articulates them - provides a conceptual route to achieve this, but implies organisational and cultural transformations. The potential benefits of moving in this direction (safer and freer communities, more legitimate and effective institutions, capacity to constantly adapt to change) justify the effort.

3.2. RISK EQUATION AND A×V APPROACH

In citizen security, risk can be operationally formulated as the product of the existing threat and the vulnerability of the exposed community (Risk = Threat × Vulnerability) (United Nations, ISDR/UNISDR, 2004, section 2.1, *Risk formulation*). This formulation, widely used in risk analysis, provides a practical guide for decision-making: if one of the two magnitudes is high, the risk skyrockets; if we reduce either, the risk drops multiplicatively. Hazard (A) refers to the likelihood of a damaging event - deliberate, accidental or natural - materialising, together with its probability and capacity to cause harm. Vulnerability (V) refers to the degree to which people, assets and systems can be affected by that hazard, due to lack of self-protection.

This framework guides prevention (reducing vulnerabilities through target hardening, environmental design and education), investigation/dissuasion (degrading or neutralising criminal capabilities to reduce the threat) and strategic communication (correcting information asymmetries, training potential victims and stabilising subjective security). Operational example (cyberfraud of the elderly): stable threat (specialised groups) × high vulnerability (digital literacy gap) = high risk. Interventions: (a) investigation and judicial/technological cooperation to disrupt networks (↓A), (b) workshops and micro-content with practical advice (↓V) and (c) public communication of operations and verified alerts to deter and empower (↓V), and deterrent signal to potential offenders (↓A). This approach is consistent with intelligence-led policing and international risk management standards (ISO 31000), because it integrates anticipation (threat analysis), protection (vulnerability reduction) and response (investigation and organisational learning). In addition, it facilitates prioritisation: heat maps combining A and V indicators help decide where and how to allocate resources, maximising the preventive return.

Figure 1.
Operational risk matrix (Threat × Vulnerability).



Source: own elaboration based on UNISDR (2004) for R = A×V; the concrete parameterisation is by the author (red high risk, orange medium risk and green low risk).

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Table 1.
Security Intervention Matrix according to Levels of Threat (A) and Vulnerability (V)

	V low	V medium	V high
High A	Maintain hardening; selective messaging (sensitive audiences).	Mixed package: capacity building (↓A) + campaigns and redesign (↓V).	Priority 1: comprehensive action (surgical research + intensive communication).
A medium	Intermittent surveillance and inspection; basic self-protection.	Situational hotspot interventions; civic education.	Priority 2: preventive reinforcement and active communication.
At low	Monitor; maintain habits.	Seasonal education and warnings.	Targeted training interventions; neighbourhood networks.

Source: author's proposal based on UNISDR (2004); concrete parameterisation by the author.

3.3. DISTRIBUTED LEGITIMACY AND PROCEDURAL JUSTICE

The legitimacy of security institutions is not an abstract attribute of the "system", but a distributed good that is built or eroded interaction by interaction: each control, each interview, each communiqué and each administrative resolution adds (or subtracts). When citizens perceive that decisions are fair, neutral and respectful, voluntary compliance with the law and co-operation (reporting, testifying, providing information) increases. This is the empirical basis of procedural justice (Tyler, 2006; Skogan, 2006). From a normative perspective, the way in which security institutions exercise their authority is regulated by the principles of necessity, proportionality, legality and accountability (OHCHR, 1990; Organic Law 2/1986; ECHR, 1995; Organic Law 4/2015).

In the field of citizen security, institutional legitimacy depends not only on operational effectiveness, but also on the perception of justice in the daily interactions between authorities and citizens. Procedural justice theory (Sunshine & Tyler, 2003) identifies four fundamental components - voice, neutrality, respect and *trustworthy motives* - which, when applied systematically, increase voluntary cooperation, reduce tension in police contacts and strengthen social trust in institutions.

Table 2
Components of Procedural Justice and their Impact on Cooperation and Legitimacy

Component	In practice	Expected effect
Voice (being heard)	Listen first; open-ended questions; minimum time for narrative.	↑ Cooperation; ↓ Tension.
Neutrality	Clear criteria; understandable reasons; consistent decisions.	↑ Confidence in impartiality.
Respect	Dignified treatment; professional language; consideration of vulnerabilities.	↓ Conflicts; ↑ satisfaction.
Reliable motivations	Explain public purpose; avoid collection or arbitrary purposes.	↑ Legitimacy; ↑ voluntary compliance.

Source: Adapted from Mazerolle et al. (2013) from Sunshine & Tyler's (2003) four components of procedural justice.

4. OPERATIONAL TOOLS: THE THREE PILLARS OF CITIZEN SECURITY

The operational tools of citizen security, structured around three pillars, are built on the above principles. Each pillar corresponds to an essential and complementary function in contemporary policing. The following develops each of them - prevention, investigation and communication - highlighting their specific contribution and their integration into the model.

4.1. PREVENTION

4.1.1. Crime prevention and proactive risk management

Prevention is the first - and perhaps the most decisive - pillar of a modern public safety strategy. It consists of a set of measures designed to prevent crimes or situations that threaten security from occurring by acting on the causes and risk factors before they materialise. This proactive approach is supported by criminological theories such as Cohen and Felson's (1979) Everyday Activities theory, which postulates that for a crime to occur, a motivated offender, a vulnerable victim or target, and the absence of a capable guardian must converge in time and place. Following this theory, effective crime prevention requires influencing at least one of these elements: reducing the vulnerability of potential victims/targets and/or reducing the motivation of potential offenders, given that the constant physical presence of authorities (gatekeepers) is materially unfeasible at all times and places (Clarke, 1995).

Traditionally, public policy has emphasised the increase of police patrols as the main crime prevention strategy. However, this measure shows limitations in contemporary scenarios where crime is more sophisticated, such as cybercrime or transnational organised crime (Garland, 2005; Zedner, 2009). It is therefore crucial to act

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on the other two vertices of the criminological triangle: the victim/target and the offender. In terms of risk management, this means reducing the vulnerability of potential victims/targets and reducing incentives or increasing obstacles for potential offenders. In practice, prevention strategies range from community programmes and educational campaigns to situational interventions in the urban environment (Clarke, 1995; Espasa, 2015). For example, improving lighting and urban design in problem areas makes crime opportunities more difficult (situational prevention), while educating the population in self-protection habits (not exhibiting signs of vulnerability, securing their property, using computer security measures, etc.) decreases the likelihood of victimisation.

The Spanish Constitution allows the safeguarding of citizen security to be achieved through both preventive and repressive techniques, depending on needs (Freixes and Remotti, 1995). Traditionally, situational prevention has focused on making crime physically difficult to commit (e.g. access control, electronic surveillance, safe environmental design) and social prevention, which addresses the root causes of crime (inequality, exclusion, civic education). Both dimensions are necessary and complementary: situational efforts reduce immediate opportunities, while social initiatives aim to reduce the propensity to crime in the long term; however, both focus on the potential perpetrator of crime.

To maintain legitimacy, inspections and preventive controls must be understandable, explainable and respectful (voice/neutrality/respect), so that compliance increases without increasing friction. It is advisable to document the reason for each operation and publish the aggregated results.

A third dimension is added to this traditional formula, with communication as an indirect facilitator of prevention. Firstly, communication reduces the vulnerability of the potential victim by inviting them to become part of the ecosystem of their protection through a conscious, educated and informed attitude. Secondly, it reduces the threat by deterring potential criminals, reducing their appetite for crime through constant communication of police successes and their repercussions (sanctions, remand in custody, convictions, pejorative image of the offender and punishment on the news, etc.). In short, far from conceiving the individual as a passive recipient of security provided by the state, modern policies must promote his or her involvement in self-protection and community security. The aim is to facilitate the armouring of citizens through their own active collaboration, so that they become a fundamental element of prevention where a permanent police presence is unfeasible.

4.1.2. Administrative policing as structural prevention of community safety

In the field of general administrative policing, structural prevention operates through ex ante controls on activities and uses of public space (authorisations, limitations, inspections and sanctions) with express legal authorisation in the regulations on public safety and regional and local government. In Spain, this framework is articulated, among others, by LO 4/2015, on the protection of public safety, and by LO 2/1986, on Security Forces and Corps, whose provisions allow reducing opportunities for uncivic or criminal behaviour and sustaining coexistence through conditions of order, health and safety. From the administrative dogmatic perspective, the police in general fulfil a preventive function that integrates proportionality, suitability and necessity in the limitation of rights, under judicial and legality control.

The administrative function of the police, therefore, constitutes a fundamental instrument in the configuration of safe environments (LO 4/2015), insofar as it regulates everyday conduct that directly affects coexistence and the perception of public order. In its meaning of surveillance, control and promotion of compliance with non-criminal rules, it fulfils a key preventive function on coexistence (LO 4/2015) and, by extension, on crime. It operates in two complementary dimensions. First, it reduces daily social conflict by offering institutional channels to resolve frictions (noise, rubbish, building works, traffic, occupation of public space), preventing individuals from managing their own disputes, which often degenerates into violence. Second, it keeps the environment tidy according to the logic of "broken windows" (Wilson & Kelling, 1982; Clarke, 1995) and related situational prevention approaches, so that the perception of order and control discourages uncivil behaviour and reduces opportunities for crime.

The role of local and regional police forces in monitoring compliance with municipal ordinances and regional provisions issued for the maintenance of coexistence and the preservation of public spaces is therefore equally important.

The administrative police or administrative surveillance functions include, among others, traffic surveillance and regulation, public safety in its administrative dimension, control of weapons and explosives, environmental protection, health regulations, waste and noise management, public shows and establishments, town planning and commercial activity. These are areas governed by authorisations, inspections, administrative sanctions and reinstatement measures, compliance with which shapes civic attitudes and protects common goods, reinforcing the State's legitimate monopoly to manage conflicts (Organic Law 2/1986; Organic Law 4/2015; González Sandoval, 2013; Granados Becerra, 2018).

From the perspective of the three pillars, administrative policing reduces vulnerability (V) by ordering the space and promoting habits of compliance (situational and social prevention); reduces the threat (A) by increasing institutional presence and the perception of control (dissuasive effect); and strengthens legitimacy through communication of rules, sanctioning transparency and neighbourhood service channels. Where the state's administrative presence is weak or fragmented, neighbourhood and family disputes escalate rapidly.

4.2. INVESTIGATION AND PROSECUTION OF CRIME

The second pillar of citizen security is investigation, which corresponds to the reactive function of the system: to clarify the facts after a crime has been committed, identify those responsible and bring them to justice. Although prevention would ideally reduce the incidence of crime, in practice there will always be illegal acts; therefore, a robust investigative capacity is indispensable. Criminal investigation serves several essential purposes. Firstly, it makes it possible to punish offenders through criminal proceedings, giving concrete expression to the rule of law and the idea that crime does not go unpunished, while opening the door to redress for the victim (restoration of the legal good in its social, economic and psychological dimension). Secondly, the prospect of being identified and punished acts as a deterrent to potential offenders, especially if investigative capacity increases the certainty of punishment. Thirdly, the accumulation of

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intelligence not only from solved investigations but also from ongoing investigations feeds into future prevention, identifying modus operandi, criminal networks or hotspots.

In Spain, Organic Law 4/2015 places the prosecution of offences at the same level as prevention within the mechanisms guaranteeing citizen security. Traditionally, the Security Forces and Corps have been organised internally by differentiating units according to these functions: citizen security or prevention units (uniformed patrol police) and investigation units (plainclothes units such as judicial police, investigation and information). This functional division responds to the specialisation required in each area. Police investigation involves specific methodologies and skills: crime scene processing, advanced interview and interrogation techniques, analysis of financial information, cooperation with judicial authorities and other security forces, among others. A successful investigation also generates a preventive effect by taking criminals off the streets (incapacitation) and deterring others, showing that crime does not go unpunished, as long as not only the final result of the investigation is communicated but also that of the prosecution. Hence the importance of conceiving prevention, investigation and communication not as watertight compartments, but as complementary pillars of the same security strategy.

Another aspect to highlight is the importance of citizen reporting and community participation in the success of the investigation. The collaboration of witnesses, victims and the community in general in providing information is often vital to solving cases. Studies on police legitimacy have shown that institutional trust increases citizens' willingness to cooperate with investigations (Tyler, 2006; Skogan, 2006), which is evidence of the connection between the pillars: police perceived as legitimate get more help from society in solving crimes. Furthermore, the systematic exploitation of data and intelligence from past investigations allows resources to be directed towards the highest impact targets (Ratcliffe, 2008).

This approach generates a virtuous circle: through communication, the results of investigations are made visible, which fuels prevention by reducing the vulnerability of potential victims and the threat of potential perpetrators (through deterrence), and also strengthens the legitimacy of the FSC. In turn, this increased legitimacy stimulates citizen collaboration and facilitates further investigations. Taken together, this should lead to a reduction in crime (greater objective security) and a greater sense of security (greater subjective security), creating a positive loop that allows more resources to be reallocated to prevention where needed and reinforces the resilience of the security system.

Finally, legitimacy must not be lost sight of, which is why investigations must take into account procedural justice. Obtaining reliable information requires dignified treatment and reliable motivations; informing rights, explaining decisions and returning basic results to victims elevates cooperation and evidentiary quality.

4.3. COMMUNICATION , LEGITIMACY AND CITIZEN PARTICIPATION

The third pillar of citizen security is communication, an often underestimated but critical component. Unlike prevention and investigation, which operate mainly on objective facts, communication also has an impact on subjective security, i.e. on citizens' perception of trust and peace of mind (Jewkes, 2015). Understood as a strategic, two-way and continuous process of production, validation and transfer of information, communication plays a compensatory role between objective security (actual threat conditions and response capacities) and subjective security (actors' perceptions and expectations).

First, if empirical indicators place objective risk at low levels (in terms of incidence and severity), institutional silence or late/ambiguous messages generate information asymmetries that the public interprets as concealment or disinterest. This communication gap increases distrust, fuels rumours and activates "availability heuristics" (Tversky & Kahneman, 1973), so that isolated events are perceived as a trend. As a side effect, defensive behaviour and demands for controls that are out of proportion to the real danger proliferate, diverting resources and incurring unnecessary "compliance costs". In the logic of risk communication, this configuration - low danger but high social alarm - predisposes to institutional and community overreactions that are difficult to reverse (Covello and Sandman, 2001; Slovic, 1987).

Conversely, when objective risk is high, minimising or triumphalist messages, or even the absence of information, induce a perception of safety that does not correspond to the evidence (Weinstein, 1980; Shepperd, Waters, Weinstein and Klein, 2015). This underestimation of risk, in the face of informational ambiguity and situational uncertainty, delays self-protective behaviours by shifting resources to confirming and seeking information (Lindell & Perry, 2012), discouraging citizen collaboration and favouring decisions aimed at the appearance of control with little real effectiveness, which keeps the population exposed to avoidable harm. In terms of "danger + outrage", this is high danger with low social alarm, a pattern that leads to insufficient response (Covello and Sandman, 2001; Schneier, 2003; Slovic, 1987). Therefore, the operational rule is to calibrate tone, frequency and content to the danger-indignation binomial: explain what is known and what is not, what is being done and what is expected from citizens, accompanying the information with actionable and verifiable guidelines (CDC, 2014).

Communication must therefore align perceptions with data, make uncertainties explicit and modulate expectations to minimise both 'false positives' of alarm and 'false negatives' of complacency (Kahneman, 2011; Sunstein, 2005). In operational terms, this requires perception-reality gap monitoring protocols, audience-segmented messages and feedback loops that adjust intervention in real time (Covello and Sandman, 2001).

Communication also acts as a balancing mechanism between the technical dimension of security and the emotional response of the public. It involves constructing a shared narrative of problems and solutions. By making relevant information transparent (without compromising sensitive operations), it legitimises police action and prevents the proliferation of rumours or biased interpretations of reality. In sum, communicating strategically in security matters strengthens institutional legitimacy and citizen cooperation (Jewkes, 2015; Requena Hidalgo, 2016), while helping to both prevent and solve crimes.

These considerations are linked to a change in the policing model towards proximity and co-management of security. As mentioned by authors such as Guillén Lasierra (2015), broadening the concept of security to include citizen perception forces law enforcement to be more open and responsive. Proactive transparency and accountability become an integral part of policing. Similarly, effective communication can empower citizens as co-responsible actors: informed about threats and how to protect

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themselves, and involved in dialogue with the police, citizens are no longer passive subjects but allies in prevention and even investigation (reporting, providing information).

In practice, this has led to initiatives such as community policing units, specialised spokespersons, early warning systems on social networks and security education programmes. The legitimacy resulting from this approach feeds back into the model: with greater social trust, people become more involved in prevention (integrating themselves into local plans, communicating problems) and collaborate more in investigations (providing evidence and testimonies). This virtuous circle is precisely the aspiration of modern community policing and procedural justice policies, and the three-pillar model provides a framework to make it operational.

Another relevant aspect is the need for indicators and incentives aligned with this pillar. If police effectiveness has historically been measured only by crime rates and cases solved, our approach suggests including communication metrics as well: degree of citizen satisfaction with the information provided, response time to neighbourhood requests, number of preventive campaigns carried out, etc. In this way, commanders will be motivated not to neglect the communicative facet, understanding that it has an impact on objective and subjective security.

Finally, emphasising communication and openness can generate internal resistance in organisations accustomed to hermeticism. Managing this cultural change requires leadership (the fourth element) that convinces that transparency, far from jeopardising operations, enhances them in the long run. Tensions may arise in the short term - for example, an initial increase in alarm or criticism if more crime data is released - but in the long run, well-contextualised transparency produces shared diagnoses and citizen co-responsibility. The key is to complement openness with pedagogy: explaining contexts, historical trends and comparisons, so that the population interprets the data correctly and reacts with cooperation rather than fear.

5. LEADERSHIP AS THE INTEGRATING AXIS OF THE THREE PILLARS

5.1. OODA CYCLE APPLIED TO THE THREE PILLARS

The OODA (Observe-Orient-Decide-Act) cycle, formulated by John Boyd in the military (Osinga, 2007; Boyd, 2018), has established itself as an adaptable framework for police and public safety management. Its value lies in its ability to structure rapid, flexible and evidence-based decision-making processes. Applied to the Security Forces and Corps, this scheme makes it possible to translate the observation of the environment into operational hypotheses, prioritise problems through contextual analysis, select proportional measures and implement interventions accompanied by public communication. The sequence is not linear, but cyclical: each phase generates products that feed back into the process, ensuring institutional learning and adaptability in the face of a changing adversary or the social dynamics of criminality.

It describes an iterative process of decision-making in uncertain and dynamic environments. Its contribution to citizen security is twofold: it accelerates institutional response and improves its quality by emphasising the orientation phase (understanding the context, filtering noise and adjusting mental models) as critical. Whoever goes through the cycle faster and with better orientation displaces the adversary to a reactive tempo, even with fewer material resources.

In the same vein, Newport News Police was the first agency-wide pilot of problem-oriented policing (POP) that crystallised the SARA (Scanning, Analysis, Response, Assessment) cycle and demonstrated significant reductions in specific problems: -39% downtown burglaries, -35% flat burglaries, -53% car park thefts, by applying causal analysis and tailored responses instead of undifferentiated patrolling. Since then, systematic reviews show that POP is effective in reducing crime and disorder, especially when combined with situational and community interventions (Eck & Spelman, 1987).

Connection to the risk equation ($R = A \times V$): The OODA cycle provides operational leverage on V (environmental orderliness, compliance habits, self-protection) and A (degradation of criminal capabilities, deterrence through presence and control). By iterating the cycle with good tempo, small sustained preventive decisions generate multiplicative reductions in risk.

Synthetic example. Seasonal theft spike in tourist area: Observe police data and local signals; Orient with seasonality, crime profile and vulnerability map (poor lighting, double-parked vehicles, influx of tourists); Decide on a combined package of actions (reinforcement of mobile patrols, administrative inspections of hotspots, multilingual advice campaign); Act by implementing these measures and measuring results (rapid perception surveys, incidence indicators). The cycle is repeated until the situation stabilises.

The expected operational outputs in each phase of the OODA cycle are outlined below:

Table 3

Application of the OODA Cycle to Citizen Security: Phases, Actions and Outputs

OODA Phase	Action on citizen security	Operational deliverable
Observe	Collect signals: complaints, calls, neighbourhood warnings, mobility data, "hot spots".	Initial situation report + baseline indicators
Orient	Analyse context (A×V matrix), seasonality, habits, applicable regulations, biases. Prioritise problems.	Hypothesis and A×V map with prioritised problems.
Decide	Choose measures: controls, inspections, environmental redesign, reinforcement of patrols, public messages (ROE).	Proportional and measurable operational plan
Act	Police deployments, administrative interventions, targeted strikes, information campaigns and public communication.	Results report, lessons learnt and next iteration

Source: Own elaboration as an adaptation of Boyd's Cycle theory to citizen security.

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5.2. MISSION-ORIENTED LEADERSHIP

Within the three pillars of public safety - prevention, investigation and communication - leadership serves as the central integrating pillar. While they have been presented as distinct pillars, their effective articulation depends on a fourth underlying element: leadership. Adequate leadership acts as the backbone that aligns preventive, reactive and communicative efforts towards common goals, ensuring coherence and effectiveness in law enforcement action. In the context of police we speak specifically of mission-oriented leadership, a concept inspired by the military command philosophy known as mission command (Auftragstaktik). This style of leadership is characterised by a clear definition of the mission, the desired goals and the rules of engagement, while at the same time allowing ample room for initiative at the lower echelons. Thus, instead of monopolising all operational decisions, the senior leader assumes the role of "leader of leaders": he sets the mission and cedes part of the authority to his middle managers. Command-by-mission doctrine emphasises that the commander delegates execution without abdicating ultimate responsibility, maintaining control of intent and purpose while empowering lower echelons to decide the how (U.S. Army, 2019; UK Ministry of Defence, 2017). In other words, the commander establishes what is to be achieved (aim and purpose) and allows subordinates to decide how to do so within the margins of the command's intent (U.S. Army, 2019; UK Ministry of Defence, 2017). This approach creates more orderly units with greater autonomy, while retaining command accountability. Discipline and mutual trust are strengthened: middle officers feel the backing of the superior and officers have confidence in clear leadership. In this configuration, the entire chain of command collaborates not only in executing, but also in formulating strategy, and is invested in the success of the mission (U.S. Army, 2019; UK Ministry of Defence, 2017).

Keys to decentralised leadership:

Clear mission and delegation. The higher command clearly communicates the what and why of the mission, leaving middle commanders free to decide the how. By "saying what to achieve, not how to do it", agile and creative teams are built that are committed to the common goal (U.S. Army, 2019; UK Ministry of Defence, 2017).

Empowerment with accountability. Delegating operational authority does not dilute accountability: the well-empowered team solves most problems on the spot without escalation to the superior when the commander's intent is well understood (U.S. Army, 2019; UK Ministry of Defence, 2017). At the same time, the leader maintains strategic control and assumes the ultimate consequences of subordinate decisions.

Culture of trust and learning. The commander tolerates reasonable mistakes and integrates them into a cycle of continuous improvement, avoiding 'paralysis by analysis' and encouraging disciplined initiative within clear guidelines (U.S. Army, 2019; UK Ministry of Defence, 2017). A climate of trust creates 'disciplined freedom': scope for action with professional accountability, sufficient training and command support (U.S. Army, 2019; UK Ministry of Defence, 2017).

Continuous leader development. The senior commander invests in training and mentoring subordinates, reinforcing their skills through feedback and example. In effective leadership, the leader acts as a catalyst for change, inspiring others and enabling new leaders to emerge (Goleman, 2004; Kotter, 2012).

Decentralised leadership of this type requires, however, a strong control mechanism of intent: the top management must verify that the execution by subordinate leaders remains aligned with the strategic objectives. To this end, coordination meetings, brief but frequent status reports , and fluid vertical and horizontal communication are established. This "informed discipline" ensures that delegating decisions does not result in organisational chaos, but in flexible but coherent action.

In short, leading leaders - granting autonomy with clear intent and encouraging their development - reinforces the effectiveness of the three-pillar model. The entire chain of command collaborates in executing and designing the strategy, and is involved in the success of the mission. Organisational literature further underlines that participative and adaptive leadership is key to articulating diverse pillars in contexts of change (Heifetz, 1994; Kotter, 2012). This collaborative chain of command favours more orderly and efficient organisations, with greater commitment and shared responsibility at all levels (Ratcliffe, 2008; Goldstein, 1979).

6. EMPIRICAL ILLUSTRATION: APPLICATION OF THE MODEL IN THE TORREVIEJA COMPANY (2017-2019)

As advanced in the methodological approach section, some illustrative empirical data relating to the application of the model in the Torrevieja Company (2017-2019) are presented below.

The Torrevieja Company was, in the period analysed, one of the Guardia Civil units with the highest incidence of crime recorded at national level, although since 2010 it has shown a downward trend. The traditional response to the increase in crime had consisted of progressively increasing the number of personnel and, in times of greater influx of people and increased crime (summer), operational reinforcement by means of reserve units.

However, in 2017, in view of the staffing limitations and the absence of reinforcements that had traditionally been provided by the Company in different key periods, due to the existence of other more pressing needs, it was decided to adapt the security model that had been provided to a more participatory and communicative model, implementing a mission-oriented leadership model based on three pillars: crime prevention, investigation and communication, both externally (citizens and institutional actors) and internally (internal marketing).

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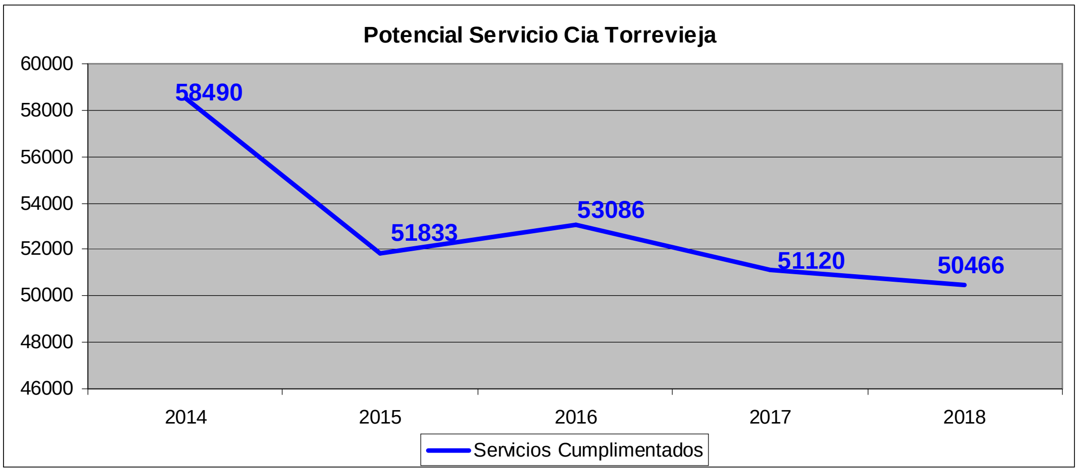

Source: own elaboration (2019). This service potential does not include external support.

In terms of personnel management, the division of labour by areas of specialisation was facilitated, the sphere of command control was reduced through the delegation of tasks (personnel/support, research and operations) and mission-type orders were encouraged at all levels of command to streamline procedures and decision-making cycles through decentralised, low-level decisions under the principle of disciplined initiative.

The implementation of mission-oriented leadership in the unit analysed involved a re-engineering of human resources processes. It moved from a model of exhaustive control to one of delegation by specialisation (personnel/support, research and operations). This approach, aligned with the ADP 6-0 doctrine (U.S. Army, 2019), reduced the cognitive burden on the top command, freeing it for strategic planning, while empowering middle management and the rank and file. The "disciplined initiative" became the unit's engine, enabling faster responses (short OODA cycle) to the roving criminality that characterises the area.

The theory of the 3 pillars was widely disseminated internally in coordination meetings between commanders, magazines and on duty watches, and externally in security meetings, quarterly meetings with traders and farmers' guilds, media interviews, school principals, the judiciary, etc.

Sample of the transparencies presented in meetings with middle management, businessmen, local police, school principals, etc. between 2017 and 2019 in the Company of Torrevieja.

In terms of communication, apart from occasional interviews at command level, there was a programme on television (Comandancia[1] , on TVT) and another on the radio (A tu lado[2] , on Torrevieja Radio) in which talks were given periodically explaining crime trends and providing advice on how to avoid becoming victims of crimes in trend. Talks were also given through these media to raise awareness of harassment, gender violence, etc., as well as publishing the results of operations, investigations and, where appropriate, prosecutions.

Talks on the Master Plan for coexistence and improvement of security in schools, the Major Security Plan and the Safe Commerce Plan were increased.

[1] https://www.tvtweb.es/programas/1-nuestros-programas/100-comandancia

[2] https://torreviejaradio.com/microespacios/a-tu-lado

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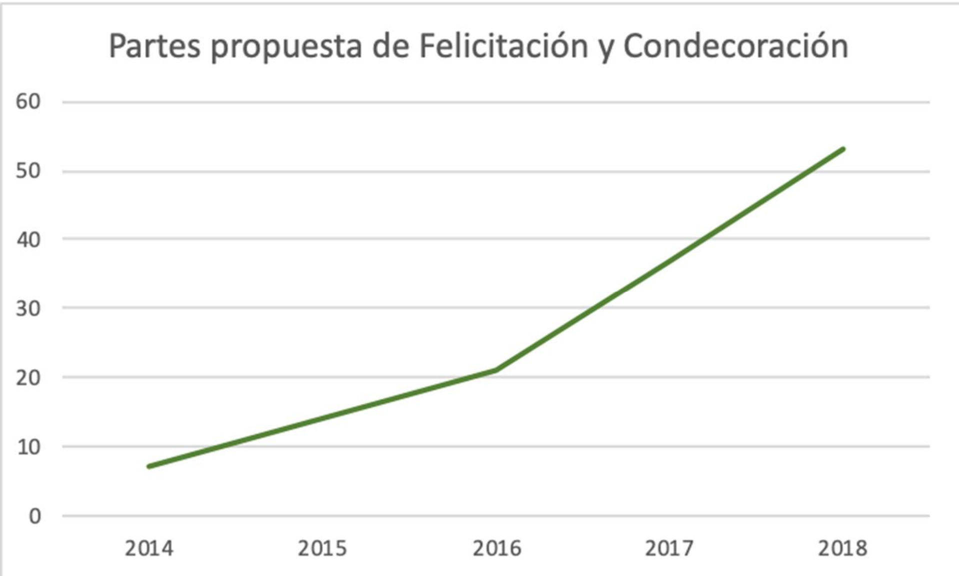
Source: Prepared by the authors.

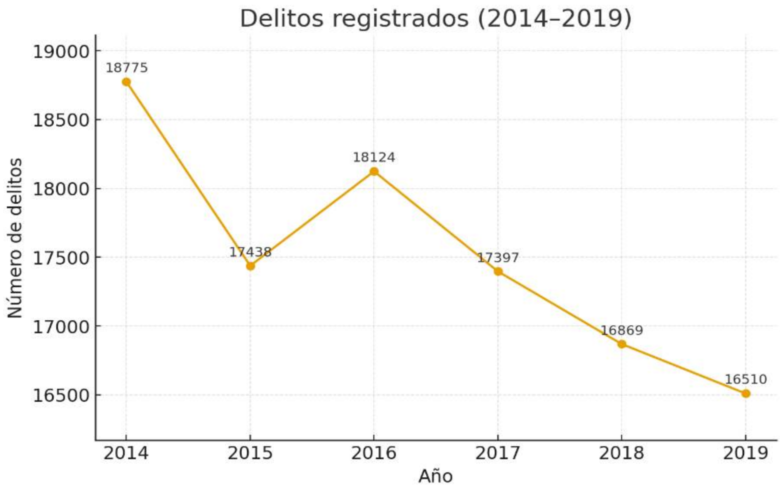
With regard to the research pillar, an indicator of the increase in activity could be the number of congratulatory reports shown in the following graph:



Source: own elaboration based on an internal Company report of September 2019.

For its part, as a sign of the social reaction to such measures, numerous awards were received, with the Guardia Civil of Torrevieja receiving the "Salero" prize awarded by the local press of Torrevieja, the "Escudo de Oro" awarded by the Casino of Torrevieja, the Small and Medium Business Association prize, the prize for the fight against animal abuse, the "woman of the year 2019" prize awarded to a member of the Citizen Security Unit of Torrevieja and a special mention received by the Unit in Rafal, among other distinctions. In addition, several statues were erected in tribute to the Guardia Civil and several public spaces were dedicated in various town halls.

The quantitative results, on the other hand, in terms of objective security were that, despite a notable decrease in operational capacity and the absence of support from other units, there was a significant drop in crime statistics.



Source: Prepared by the authors based on data from the Torrevieja Company.

Without attempting to establish a direct causal relationship, the temporal consistency between the implementation of these measures, the improvement in organisational climate indicators and the sustained reduction in recorded crime suggests that the three-pillar model, articulated through decentralised and mission-based leadership, is a useful operational framework for guiding police action in contexts of high demand and limited resources.

7. CHALLENGES AND PROPOSALS

A clear challenge is that of practical implementation. Conceptually recognising the three pillars is a first step; translating it into day-to-day management requires institutional adjustments. For example, police training should balance training in tactical and investigative aspects with communication and conceptual skills in subjective security management. It would be desirable to train in conflict mediation, public speaking, social network management, etc., from initial education, in line with the comprehensive approach outlined in this paper. Similarly, the performance indicators of citizen security units should be expanded to include prevention metrics (victimisation surveys, number of preventive activities carried out, reduction of risk factors in the environment) and communication metrics (degree of citizen satisfaction with the information provided, response time to neighbourhood requests, etc.), along with traditional crime and clear-up rates. This would encourage commanders not to neglect any area, resulting in security in both objective and subjective dimensions.

Another aspect to consider is the regulatory framework. Adapting regulations would make it easier to institutionalise communication and participation, preventing them from depending only on the goodwill of the commander in charge.

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A model that emphasises communication and openness may face internal resistance. It will be the job of leadership (the "fourth element") to manage this cultural change, demonstrating that transparency does not jeopardise sensitive operations, but rather enhances them in most cases. Conflicts may also arise in the short term: for example, if more crime data is made transparent, this may initially provoke alarm or political criticism; however, in the longer term it will allow for shared diagnoses and greater co-responsibility. The key is to accompany transparency with pedagogy: explaining contexts, historical trends and comparisons, so that citizens interpret the data correctly and become involved in solutions rather than reacting with fear.

8. CONCLUSIONS

Citizen security, understood as a fundamental legal good for the development of a democratic society, must be sustained by a multidimensional approach. Throughout this article it has been argued that such an approach can be articulated around three basic pillars - prevention, investigation and communication - activated and coordinated through mission-oriented strategic leadership. This theoretical construct, supported by doctrinal and normative references, offers several key conclusions and recommendations:

- Proactive prevention is irreplaceable. In line with contemporary criminological theories, it is concluded that acting on the causes and opportunities of crime before it occurs not only reduces the incidence of crime, but also optimises the use of resources and minimises social harm. It is a priority to strengthen public policies that address prevention at multiple levels: situational (safer environments), social (education, community cohesion) and individual (reduction of personal vulnerabilities).
- Effective research ensures the rule of law response. A strong second investigative pillar ensures that those who break the law face consequences, maintaining the credibility and deterrent effect of the legal system. In a complex criminal environment, this means investing in specialised training, state-of-the-art technology and inter-agency cooperation (both national and international).
- Communication with citizens is a strategic, not ancillary, pillar. Informing, educating and dialoguing with the population on security issues is as important as patrolling the streets or solving cases. Active communication increases subjective security when appropriate, but also alerts citizens when necessary, making them participants in their own protection. This helps build legitimacy and activates citizen collaboration, leading to better objective results.
- Mission-oriented leadership is the catalyst for integration. Without clear, empathetic and flexible leadership, the three pillars can operate in a disjointed or even competitive manner. The security leader must evolve into a comprehensive risk and people manager, capable of inspiring subordinates and gaining the trust of the public. Mission-oriented leadership, together with the agile application of the OODA cycle, emerge as fundamental tools for implementing the proposed model.
- Towards a coherent policy and organisational approach. To operationalise this model, institutions need to reflect it in their structure and rules. Laws, regulations and operational doctrines should explicitly recognise the triple mission of preventing, investigating and communicating as equally fundamental functions of the security forces.
- Co-responsibility and a culture of citizen security. A cross-cutting finding of this analysis is that security cannot be conceived of as a product provided unilaterally by the state, but as a common good that is built with the participation of all. This entails a cultural

change both in institutions (from secrecy to collaboration, from reaction to anticipation) and in society (from passive complaint to responsible involvement).

On the other hand, the analysis of the data collected during the period 2017-2019 in Torrevieja shows a consistent temporal coherence between the implementation of the new leadership model and the reduction of crime. While a strict quasi-experimental design would require the control of exogenous variables such as tourist flows or macroeconomic indicators, the magnitude of the decrease in property crime, coinciding with the intensification of preventive campaigns and the operational reorganisation under the principle of "mission-oriented command", points to a plausible relationship between the applied model and the observed results. Moreover, external qualitative indicators, such as the awarding of various prizes and recognitions in the region by almost all municipalities, corroborate that the perception of security and institutional legitimacy improved in parallel with the objective indicators.

In short, the three pillars of citizen security, integrated by mission-oriented leadership, provide a comprehensive and balanced framework for addressing the challenges of security in the 21st century. By preventing crime, investigating it when it occurs, and communicating and involving citizens throughout the process, societies can aspire to greater levels of both objective and perceived peace of mind. This model recognises the complexity of today's world - where crime is globalised, information flows instantaneously and social demands for transparency are inescapable - and provides tools to adapt to this without sacrificing democratic values. The Guardia Civil and the rest of the Security Forces in Spain, with their rich tradition, but also with their openness to modernisation, are in a position to lead this evolution towards a more humane, efficient and legitimate security. The immediate challenge is to turn these guidelines into concrete, measurable and sustainable practices. The fruits of such an endeavour will not only be measured in crimes prevented or cleared up, but in more united and confident communities, where security is no longer perceived solely as the absence of threats, but as the positive presence of cooperation, justice and social peace.

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Research Article

THE THIRD SOCIAL SECTOR: CITIZEN SCIENCE IN THE FIELD OF DISAPPEARANCES IN SPAIN

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THE THIRD SOCIAL SECTOR: CITIZEN SCIENCE IN THE FIELD OF DISAPPEARANCES IN SPAIN

Summary: HISTORICAL AND SOCIAL BACKGROUND: THE CONSTRUCTION OF A COLLECTIVE AWARENESS. 2.1. From legal absence to media impact. 2.2. The 21st century: Catalysts for institutional change and social pressure. 3. THE THIRD SOCIAL SECTOR IN THE FIELD OF DISAPPEARANCES: FROM CONCEPTUALISATION TO CITIZEN SCIENCE. 3.1. What is known as the third social sector in the field of disappearances? 3.2. Citizen science and the third social sector. 4. THE SOCIAL THIRD SECTOR AS A GENERATOR OF CITIZEN SCIENCE IN THE FIELD OF DISAPPEARANCES 4.1. Large-scale data collection and analysis. 4.2. Generation of empirical knowledge (knowledge born out of pain). 4.3. Impact and validation through political and legal advocacy. 4.4. Comparative: Lessons from other contexts and their relevance for Spain. 5. PROGRESS ACHIEVED: THE EVIDENCE OF CITIZEN SCIENCE IN ACTION. 6. CHALLENGES AHEAD: THE EVOLVING CHALLENGES OF CITIZEN SCIENCE. 7. CONCLUSIONS. 7.1. The definitive overcoming of the patrimonial paradigm and the consolidation of a Human Rights approach. 7.2. Citizen Science" as an epistemology of pain: Legitimisation of a new knowledge. 7.3. The institutionalisation of dialogue: towards a model of collaborative management. 7.4. The future horizon: The Statute of the Missing Person as a cornerstone 8. BIBLIOGRAPHICAL REFERENCES.

Abstract: This article analyses the impact and nature of "citizen science" generated by the third social sector in the field of missing persons in Spain. The main objective is to demonstrate how family organisations have transcended the role of support to become producers of applied scientific knowledge, promoting structural reforms. The methodology employed is qualitative, combining a historical-legal analysis of the figure of the disappeared, the study of catalytic media cases, the review of official reports from the National Centre for the Disappeared (CNDES) and the examination of the proposals and documents produced by these organisations.

The most significant results show that the "knowledge born of pain" of these associations constitutes a fundamental source of empirical knowledge. They have achieved concrete advances such as the eradication of the "24-hour myth" for reporting, the reduction of legal deadlines for the declaration of absence and death, and the unification of police protocols. Likewise, its influence was key to the creation of the CNDES and the formalisation of its collaborative role in the 1st National Strategic Plan (2022-2024).

The main conclusion is that the third sector has transformed an initially patrimonial problem into a human rights issue, validating citizen science as an effective tool. A model of collaborative management between civil society and the state has been consolidated, whose main pending challenge is the creation of a "Statute of the Disappeared Person" that provides comprehensive legal security for victims.

Resumen: Este artículo analiza el impacto y la naturaleza de la "ciencia ciudadana" generada por el tercer sector social en el ámbito de las personas desaparecidas en España. El objetivo principal es demostrar cómo las organizaciones de familiares han trascendido el rol de apoyo para convertirse en agentes productores de conocimiento científico aplicado, impulsando reformas estructurales. La metodología empleada es cualitativa,

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combinando un análisis histórico-jurídico de la figura del desaparecido, el estudio de casos mediáticos catalizadores, la revisión de informes oficiales del Centro Nacional de Desaparecidos (CNDES) y el examen de las propuestas y documentos elaborados por dichas organizaciones.

Los resultados más significativos evidencian que el "saber nacido del dolor" de estas asociaciones constituye una fuente de conocimiento empírico fundamental. Han logrado avances concretos como la erradicación del "mito de las 24 horas" para denunciar, la reducción de los plazos legales para la declaración de ausencia y fallecimiento, y la unificación de protocolos policiales. Asimismo, su incidencia fue clave para la creación del CNDES y la formalización de su rol colaborador en el I Plan Estratégico Nacional (2022-2024).

La conclusión principal es que el tercer sector ha transformado un problema inicialmente patrimonial en un asunto de derechos humanos, validando la ciencia ciudadana como una herramienta eficaz. Se ha consolidado un modelo de gestión colaborativa entre la sociedad civil y el Estado, cuyo principal reto pendiente es la creación de un "Estatuto de la Persona Desaparecida" que dote de seguridad jurídica integral a las víctimas.

Keywords: Third Sector, Citizen Science, Disappeared Persons, human rights, Spain

Palabras clave: Tercer sector social, Ciencia Ciudadana, personas desaparecidas, derechos humanos, España

ABBREVIATIONS

Art.: Article

CNDES: National Centre for Missing Persons.

et al.: and others.

INTRODUCTION

The phenomenon of missing persons is one of the most painful and complex social and legal problems facing contemporary society. In Spain, although the legal figure of the "absent" has existed since pre-Roman times, in the sense of being considered for the purposes of duties, inheritance rights or obligations, the missing person being considered as deceased after a certain period of time has elapsed (Coronas González, 1983, p. 294), nevertheless, the human, social and criminal dimension of disappearances is a phenomenon which has emerged strongly in recent decades (Llorens Sellés, 2024, pp. 111-117).

Spain is currently facing a social crisis that generates profound and devastating repercussions, such as the disappearance of persons. Official figures paint a bleak picture: the annual report on missing persons drawn up by the National Centre for Missing Persons (CNDES) puts the number of missing persons reports filed in Spain in 2024 at 26,345 (Muniesa Tomás et al., 2025, p. 36). (Muniesa Tomás et al., 2025, p. 36).

Within this panorama, numerous associations, foundations and organisations of people emerge that either because of their proximity (family members, relatives, etc.), their sensitivity or their empathy with the phenomenon of disappearances, contribute in a remarkable way to promote improvements in the legislative, procedural or operational areas related to the disappearance of persons .[1]

Such groups constitute what has come to be called the third social sector[2] , although their action is not limited to the above-mentioned fields, but their "knowledge born of grief"[3] constitutes what has come to be called "citizen science". This terminology was independently coined in the mid-1990s by the British sociologist Alan Irwin (1995)[4] , who approached it as a tool for civic empowerment, and by the American ornithologist Rick Bonney (1996), to describe citizen participation in scientific research.

Such a statement is not trivial, as the knowledge emanating from these organisations, far from being a testimonial contribution, represents a wealth of applied knowledge that has managed to modify operational protocols[5] and promote legislative reforms .[6]

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[1] This is recognised by the CNDES in its annual report 2022 (Muniesa Tomás *et al*., 2023, p. 15).

[2] The third social sector in the field of disappearances, according to the CNDES in its annual report of 2023, would be "composed of Foundations and Associations that bring together relatives and friends of persons disappeared without apparent cause..." (Muniesa Tomás *et al*., 2024, p. 22).

[3] Term coined by Pereira Benítez *et al*. (2024, p. 107) in an article included in the book *Interpretar la naturaleza: ciencias aplicadas a la detección de inhumaciones clandestinas* (Quezada Esparza, 2024, pp. 107-132).

[4] The term "citizen science" was first coined by Alan Irwin in his 1995 book Citizen Science: A Study of People, Expertise, and Sustainable Development.

[5] During the 1st European Forum of Families with Missing Persons in 2015, one of the associations already called for the need to modify the operational protocols through its document "Charter of Rights and Urgent Demands" (European Foundation for Missing Persons - QSD Global, 2015).

[6] Thus, for example, it is worth mentioning the demand of one of the associations for the shortening of deadlines for the declaration of absence and death, in the "III Charter of Rights and Urgent Demands" drawn up by an association, which was included in the IV European Forum of Families of Missing Persons held in 2019 (European Foundation for Missing Persons - QSD Global, 2019, p. 7).

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The fundamental purpose of this study is to analyse in depth the nature and impact of "citizen science" promoted by the Spanish third social sector in the context of disappearances. It seeks to understand how these organisations not only contribute to the search, investigation and support to families, but also make an essential contribution to the scientific knowledge of the phenomenon of disappearances that has led to great progress in the field.

2. HISTORICAL AND SOCIAL BACKGROUND: BUILDING A COLLECTIVE CONSCIENCE

The phenomenon of disappearances is not new, but its treatment as a specific social and legal problem in Spain is relatively recent. Its visibility has been built through a painful succession of media cases and a slow institutional awakening.

2.1. FROM LEGAL ABSENCE TO MEDIA IMPACT

Legally, the figure of the "absentee" has existed in the Civil Code since 1889, but its focus was purely patrimonial, regulating the management of the assets, rights and obligations of those who disappeared without giving signs of life (Llorens Sellés, 2024, p. 108). The human and criminal dimension would not form part of the collective conscience until the second half of the 20th century. Cases such as the disappearance of a 13-year-old boy in Lanzarote in 1973 (Ortiz, 2023) or a boy of the same age in Málaga in 1987 (Rada, 2016) caused considerable concern in society.

However, it was the arrival of a television programme called "Quien sabe dónde" in 1992 that marked a turning point in public awareness. This programme, which reached massive audiences, not only gave visibility to hundreds of cases, but also demonstrated the importance of citizen collaboration in the field (Llorens Sellés, 2024, pp. 109-110).

The treatment of cases of enormous social impact, such as the disappearance and death of three minors in Alcàsser (Valencia) in 1992 (Migelez, 2019) or the kidnapping of a young girl in Alcobendas (Madrid) in 1993 (Morcillo and Muñoz, 2007), introduced the drama of disappearances into all Spanish homes, generating a national debate on security, police response and the role of the media in these cases (Llorens Sellés, 2024, pp. 109-111).

In this social context, the disappearance of a minor girl in Cornellà (Barcelona) in 1997 (Manzano, 2019), whose father was the driving force behind the Inter-sos association, symbolises the moment when the affected families themselves began to organise, laying the foundations for today's third sector in the field of disappearances.

2.2. THE 21ST CENTURY: CATALYSTS FOR INSTITUTIONAL CHANGE AND SOCIAL PRESSURE

The beginning of the new century continued the tragic path of cases that shocked society and acted as catalysts for change. The disappearance of a young Sevillian woman in 2009 (Pascual Marjanet, 2015, pp. 51-56), with the added anguish caused by the failure to locate her body "marked a before and after in everything related to disappearances" (Llorens Sellés, 2024, p. 112), posing unprecedented judicial and police challenges. Not in vain, this case could be considered the trigger for Instruction 1/2009 of the Secretary of State for Security, which for the first time regulated police action in the face of high-risk disappearances.

Subsequently, cases such as that of the children who disappeared in Córdoba and were murdered by their father in 2011 introduced the concept of "vicarious violence" into the public debate (Ibáñez, 2021), while a disappearance in 2016 in A Pobla do Caramiñal (Quelart, 2019) and another in Almería in 2018 (Escobar, 2020) maintained social and media pressure, accelerating the creation of the institutional architecture in the framework of disappearances, as we know it today.

This chronology demonstrates that normative advances in Spain have been largely reactive, driven by tragedy and tireless pressure from families and civil society.

3. THE THIRD SOCIAL SECTOR IN THE FIELD OF DISAPPEARANCES: FROM CONCEPTUALISATION TO CITIZEN SCIENCE

3.1. WHAT IS KNOWN AS THE THIRD SOCIAL SECTOR IN THE FIELD OF DISAPPEARANCES?

The third social sector, as established in art. 2 of Law 43/2015, of 9 October, is made up of "*those organisations of a private nature, arising from citizen or social initiative, under different modalities, which respond to criteria of solidarity and social participation, with aims of general interest and non-profit making, which promote the recognition and exercise of civil rights, as well as economic, social or cultural rights of persons and groups suffering from conditions of vulnerability or at risk of social exclusion. In any case, the entities of the third social action sector are associations, foundations, as well as the federations or associations that integrate them, as long as they comply with the provisions of this Law*".

Transferring the definition to the field of missing persons, the third social sector would be understood as the different Foundations and Associations, which bring together relatives and friends of missing persons without apparent cause, and those who suffer the absence of a loved one over time (Muniesa Tomás *et al.*, 2023, p. 22).

The National Centre for Missing Persons recognises the following organisations as third sector of social action in the field of missing persons[7] :

- AFADECOR - Asociación de Familiares y Amigos de personas Desaparecidas de Córdoba (Association of Relatives and Friends of Disappeared Persons of Cordoba)
- AFADES - Associació de Familiars de Despareguts i Desaparegudes (Association of Relatives of Disappeared and Disappeared Persons)
- QSDglobal- European Foundation for Missing Persons
- SOSDESAPARECIDOS - Association for help and dissemination of cases of Missing Persons
- Inter-SOS - Association of Relatives of Persons Disappeared without Apparent Cause

[7] https://cndes-web.ses.mir.es/publico/Desaparecidos/Publicaciones.html

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- NON? NORK DAKI NON ELKARTEA- Association for Missing Persons without Apparent Cause
- NUN HAGO ELKARTEA - Association of Relatives of Victims of Disappearance and Violent Crime Abroad
- ANAR - Help for Children and Adolescents at Risk.

The role of these organisations is relevant to such an extent that the National Centre for Missing Persons itself recognises the need for a fluid and constant relationship with them, facilitating the exchange of information and receiving feedback on the needs of the families and relatives of missing persons through them (Muniesa Tomás *et al.*, 2023, p. 22). All of this is in accordance with the Strategic Plan approved by the same body (Ministry of the Interior-Secretariat of State for Security, 2022) which proposes the exchange of knowledge and experiences between the agents involved in the issue and the third social sector (Ministry of the Interior-Secretariat of State for Security, 2022, p. 19), and to increase knowledge on collaboration with the third social sector (Ministry of the Interior-Secretariat of State for Security, 2022, p. 31).

3.2. CITIZEN SCIENCE AND THE THIRD SOCIAL SECTOR

Citizen science, in its most generic conception, refers to scientific activity aimed at generating new knowledge with the voluntary (in the sense of conscious and intentional) participation of citizens, who can become involved at different levels of the scientific process (Oltra Codina *et al.*, 2022, p. 18).

Since the term citizen science was popularised in the mid-1990s by Alan Irwin (1995)[8] and Bonney (1996), the field has undergone remarkable development in both theory and practice. Dedicated scientific journals, collaborative platforms and a growing number of initiatives have emerged around the world that integrate active citizen participation in various scientific disciplines (Bergerot, 2022; Storksdieck, 2016; Vohland et al., 2021). However, the involvement of lay people in the production of scientific knowledge is not a recent phenomenon. Its roots go back more than three centuries, when amateur naturalists, especially in the field of botany, collaborated voluntarily through empirical observations and specimen collection to enrich the scientific studies of the time.

Is the third social sector therefore a generator of citizen science in the field of missing persons?

Undoubtedly yes, although citizen science has been commonly associated with environmental or biological research (Santana Castellón *et al.*, 2024, p. 137), its fundamental principles of public participation, data generation and problem solving (Oltra Codina *et al.*, 2022, p. 18) are robustly manifested in the context of disappearances in Spain. Mass dissemination activities, the collection of information by volunteers and relatives affected by disappearances, and the creation of collaborative platforms by associations that make up the social third sector, although not always formally labelled as "citizen science", are a practical application of its methodologies.

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[8] The term "citizen science" was first coined by Alan Irwin in his 1995 book *Citizen Science: A Study of People, Expertise, and Sustainable Development.*

4. THE THIRD SOCIAL SECTOR AS A GENERATOR OF CITIZEN SCIENCE IN THE FIELD OF DISAPPEARANCES

4.1. LARGE-SCALE DATA COLLECTION AND ANALYSIS

Missing persons associations actively promote citizen solidarity through mass dissemination of cases via the internet and other means of publicity[9] . This dissemination is not just an alert, but a direct form of data collection, as every piece of information provided by a citizen can be crucial. Volunteers are fundamental to these third sector organisations, actively involved in relief and cooperation work, from disseminating posters to participating in search operations .[10]

Associations act as hubs for mass data collection. When the organisations that make up the third sector disseminate an alert through their extensive networks, they not only inform, but also set in motion thousands of "citizen scientists" who observe and report. Every sighting, every clue provided by a citizen is a piece of information. The associations receive, filter, cross-check and analyse this information, turning a massive, unstructured flow of data into actionable intelligence for law enforcement. This process is, in essence, a citizen science project of real-time data collection and analysis.

This operational model works remarkably similar to a distributed sensor network. Individual citizens act as geographically dispersed data collection points, providing real-time observations over a wide area. Associations, in turn, function as the central processing unit, aggregating, filtering, validating and analysing this vast decentralised dataset. This provides a scale and speed of intelligence gathering that traditional police forces, with limited personnel and centralised control, cannot easily replicate. This highlights the unique comparative advantage of citizen science in situations that require widespread observation and real-time data entry , particularly in geographically dispersed or time-sensitive searches. It also implies a pressing need for formal mechanisms and technological interfaces to seamlessly integrate this powerful "sensor network" with official state systems, optimising overall search efficiency.

4.2. GENERATING EMPIRICAL KNOWLEDGE (KNOWLEDGE BORN OF PAIN)

Citizen participation, channelled through the organisations that make up the so-called third social sector, allows for the generation of knowledge that is applied with unquestionable effectiveness in dealing with the disappearances of people in Spain. This knowledge is applied in the creation of protocols, in initiatives for legislative modifications, in the promotion of social and training initiatives, etc. This is what has come to be known as "knowledge born of pain" (Pereira Benítez, *et al.*, 2024, p. 137) and which generates citizen science.

The most profound and unique contribution of the third sector is the creation of a body of knowledge that could not be generated in a laboratory or office. This "knowledge born of pain" is the result of hundreds of hours of research, direct observation and comparison of cases. This knowledge, deeply rooted in the prolonged experience and visceral context of the search for a loved one, represents a form of "embodied

[9] See the website of one of these associations, e.g. https://sosdesaparecidos.es/ or https://www.qsdglobal.com/.

[10] See as an example the following link: https://sosdesaparecidos.es/busqueda-batida/

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epistemology". It is not primarily theoretical or acquired through formal academic training, but is developed through repeated observation in diverse settings and direct interaction with the search process. This tacit knowledge, while difficult to codify, has proven to be incredibly effective in practice.

Through direct contact with hundreds of families, these associations accumulate invaluable knowledge about patterns of disappearance, risk profiles, family dynamics and specific vulnerabilities that often escape official statistics. While official statistics are valuable for identifying general trends, they often lack the granular, qualitative details of individual cases and the complex social factors that contribute to disappearances. Qualitative data, derived from the direct and empathetic interaction of the third sector with families, provides a 'ground truth' that reveals hidden patterns and specific vulnerabilities. This constitutes a form of applied sociology and criminology from the ground up. This approach underlines the inherent limitations of purely statistical or top-down approaches to complex social problems. It advocates for a hybrid model in which qualitative data, derived from the experience of affected communities, informs and enriches official analyses, leading to more targeted, empathetic and ultimately more effective interventions that address the root causes and specific contexts of disappearances.

4.3. IMPACT AND VALIDATION THROUGH POLITICAL AND LEGAL ADVOCACY

Third sector associations and foundations do commendable and tireless work in recognising and exercising the civil rights of disappeared persons and their relatives. These citizens' organisations offer information and comprehensive help to families, addressing not only the search, but also the complex psychological and legal needs arising from the uncertainty . [11]

The third social sector in the field of disappearances in Spain, consisting of organisations made up mainly of relatives and friends of disappeared persons, has managed to influence decision-making and policy-making, contributing its knowledge and experience for improvement, and channelling the demands of relatives affected by this phenomenon to public and private institutions.

Its work is therefore not limited to research, but extends to proposing structural solutions. The elaboration of drafts for a necessary "Statute of the Missing Person"[12] or the "proposal for an official register of voluntary absentees"[13] are clear examples of how they transform lived experience into concrete legislative proposals.

[11] For the services provided by some associations, see:
https://sosdesaparecidos.es/quienes-somos/
https://www.qsdglobal.com/

[12] As an example, the document produced by the QSDglobal Foundation, which can be consulted at the following link: https://www.qsdglobal.com/wp-content/uploads/2020/06/PUNTO-7.-BORRADOR-ESTATUTO-DE-LA-PERSONA-DESAPARECIDA.pdf

[13] As an example, the document produced by the SOSdesaparecidos Association, which can be consulted at the following link: https://sosdesaparecidos.es/wp-content/uploads/Propuesta-Registro-Oficial-de-Ausentes-Voluntarios-ROAV._signed.pdf

The very creation of the National Centre for Missing Persons[14] or the declaration of a day (9 March) as "National Day for people who have disappeared without apparent cause"[15] , are citizen initiatives which have borne fruit in positive measures for the management and visualisation of a worrying social phenomenon.

Collaboration between the third sector and public institutions is increasingly formal and necessary. The National Centre for the Disappeared (hereafter CNDES) recognises a wide network of associations of missing persons which it describes as the third social sector. It actively collaborates with the CNDES in the elaboration of publications, reports and awareness-raising campaigns, as well as in the dissemination of information and prevention of disappearances.

In addition, these organisations channel citizens' demands on disappearances to public and private institutions and bodies with competencies in addressing these needs.

The 1st Strategic Plan on Missing Persons (2022-2024) of the Ministry of Interior (Ministerio del Interior-Secretaría de Estado de Seguridad, 2022, pp. 28-29) marks a turning point by formalising and consolidating the role of the third sector as a fundamental actor in the state response to this phenomenon. Far from being a mere recipient of information, the plan integrates family foundations and associations into the core of the strategy, recognising their trajectory, knowledge and commitment.

Collaboration is articulated in the Plan through four main axes:

Prevention and Awareness Raising: Social organisations will be co-participants in the design and dissemination of awareness-raising campaigns. Their direct involvement will ensure that the messages are effective and reach the public, taking advantage of their capillarity and proximity to the reality of families (Ministry of the Interior-Secretariat of State for Security, 2022, p. 12).

Specialised training: The plan establishes that the third sector will play an active role in the training of the security forces and other bodies. In this sense, foundations and associations will contribute their experience in seminars and round tables, offering the perspective of family members and their practical knowledge, thus guaranteeing a more humane and complete training for professionals (Ministry of the Interior-Secretariat of State for Security, 2022, pp. 15-19).

Research and Operational Coordination: Associations will be a key link in the dissemination of alerts, as in the case of the ANAR Foundation with the 116000 line. In addition, their participation is foreseen in the homogenisation of posters and in permanent

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[14] Professor Lorente Acosta introduced the idea of the creation of a National Centre for the Disappeared more explicitly during his appearance at the Special Commission for the study of the problem of people who have disappeared without apparent cause, held on 17 June 2013, attributing the idea to the journalist Francisco "Paco" Lobatón (Diario de Sesiones del Senado nº183 de 17/06/2013, pp. 34-35). The creation of the National Centre for Missing Persons was formalised in Instruction 2/2018 of the Secretary of State for Security.

[15] Promoted by the Inter-sos Association, it was formalised by official publication in 2010 (BOCG no. 478 of 16/11/2010).

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collaboration procedures, ensuring that information and efforts are coordinated among all actors involved (Ministry of the Interior-Secretariat of State for Security, 2022, p. 25).

Care, Support and Advocacy: Perhaps the area of greatest impact is attention to family members. The plan institutionalises the associations' dialogue with police officials and includes them in crucial working groups, such as those dedicated to "long-term" disappearances and the creation of the future "Statute of the Disappeared Person". Their collaboration is actively promoted to offer psychological support and to study unreported cases, strengthening the network of protection and assistance to victims (Ministry of Interior-Secretariat of State for Security, 2022, pp. 28-31).

Finally, the inclusion of the most representative foundations and associations in the Plan's Monitoring Commission ensures that their voice is not only heard, but also forms an integral part of the evaluation and continuous improvement of the national strategy, consolidating a collaborative management model in the face of one of the most painful social problems (Ministry of the Interior-Secretariat of State for Security, 2022, p. 32).

4.4. COMPARATIVE: LESSONS FROM OTHER CONTEXTS AND THEIR RELEVANCE FOR SPAIN

Although focused on Spain, it is useful to situate these developments in a global context. In Latin America, the incorporation of citizen approaches is remarkable. Mexico, with the highest number of recorded disappearances, has numerous search collectives (more than 230), where the work of the so-called "Search Mothers" has been academically studied as "citizen science" (Santana Castellón, 2024).

The Mexican "madres buscadoras", for example, have developed techniques of field prospecting, identification of clandestine burial indicators and analysis of patterns of disappearance that transcend traditional forensic training. This knowledge, forged in extreme adversity, is shared and systematised within the collectives, creating a collective database of "knowledge" that is validated by direct experience and, on occasions, by the discovery of remains. The relevance for Spain lies in the transfer of this epistemology of searching from the grassroots: the idea that direct experience and pain can be transformed into a legitimate form of forensic investigation. While the tools and resources may differ, the principle that those affected can become experts in searching and advocating for their rights is a fundamental lesson that has resonated in the Spanish context. This suggests that, beyond contextual differences, there is a universality in civil society's capacity to generate applied scientific knowledge when formal institutions are unable or unwilling to meet a critical need.

5. PROGRESS MADE: EVIDENCE OF CITIZEN SCIENCE IN ACTION

Much progress has been made as a result of the knowledge provided and proposals made by associations formed by relatives of missing persons, including the following:

1. Establishment of a specific day as the "day of the missing persons without apparent cause"[16] . In order to recognise missing persons as citizens with the right to be searched for, to not be forgotten and to promote coordination mechanisms that are truly effective in locating them and clarifying each case. Also to make visible the abandonment faced by their families and to demand comprehensive attention in all areas. Ultimately, with the commemoration of this day, the aim is for society as a whole to take ownership of a drama that should not be borne solely by the relatives of the disappeared.
2. Shortening the deadlines for the declaration of absence and death. In order to adapt times to the current situation, where the advance of information technologies, identity control systems and global interconnection make it increasingly difficult for a person to remain hidden indefinitely without leaving a trace. Except in those exceptional cases where there is a tragic end combined with extraordinary means of concealment or the collaboration of third parties, most cases of disappearance tend to be clarified in considerably shorter periods of time than those provided for in current legislation.

Thus, the time periods for declarations of absence and death have gone from 2 years for absence and 30 years for the presumption of death in Articles 184 and 191 of the original Civil Code of 1889, to one year for absence and 10 years for death[17] in the most current version of our Civil Code.

3. Immediate response and eradication of the "24-hour myth"[18] . In order to guarantee immediate reporting, ruling out any waiting period, as the first few hours are crucial for tracing. This is one of the most significant victories of the incidence of the third sector, which is reflected in the official protocol for the search of missing persons (Cereceda Fernández-Oruña and Tourís López, 2019 , pp. 38-40).
4. Single and binding police protocol[19] . Adoption of a unified protocol for all security forces (including regional and local police) to avoid lack of coordination and disparities during the action .[20]
5. Management and unification of alerts[21] . Create a unified alert format and a clear protocol for its dissemination, optimising the visibility and effectiveness of citizen alerts .[22]

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[16] Promoted by the Inter-sos Association, it was formalised by official publication in 2010 (BOCG no. 478 of 16/11/2010).
[17] Including specific circumstances that shorten these deadlines.
[18] Demand contained in the "Charter of Rights and Urgent Demands" within the I European Forum of Families with Missing Persons held in 2015 (European Foundation for Missing Persons - QSD Global -, 2015) and presented by an association at the I Conference of the National Centre for Missing Persons on the action of the FFCCS in cases of missing persons held in Madrid in 2019 (European Foundation for Missing Persons - QSD Global -, 2019, p. 3).
[19] Demand contained in the "Charter of Rights and Urgent Demands" within the I European Forum of Families with Missing Persons held in 2015 (European Foundation for Missing Persons - QSD Global -, 2015) and also in the "Charter of Rights and Urgent Demands" within the II European Forum of Families with Missing Persons held in 2018 (European Foundation for Missing Persons - QSD Global -, 2018, p. 2).
[20] This Protocol will come into force in 2019 (Cereceda Fernández-Oruña and Tourís López, 2019).
[21] Demand put forward by an association at the 1st Conference of the National Centre for Missing Persons on the action of the Security Forces in cases of missing persons held in Madrid in 2019 (European Foundation for Missing Persons - QSD Global -, 2019, p. 4).
[22] Such a demand has been highlighted in the annual report on missing persons for the year 2025 (Muniesa Tomás et al., 2025, pp. 18-19).

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6. Establishment of offices for the professional care and support of families of missing persons[23] . In order to receive adequate treatment in terms of psychological, technical, economic, legal and international assistance .[24]

6. CHALLENGES AHEAD: THE EVOLVING CHALLENGES OF CITIZEN SCIENCE

Much progress has been made, but nevertheless, much remains to be done, and in this regard, associations formed by relatives of missing persons call for further measures to be taken:

1. Creation of a Statute of the Missing Person. This is the central and cross-cutting demand, fundamental for the creation of specific legislation that guarantees legal coverage of disappearances, provides security for families and serves as an effective tool for legal operators [25] . This proposal is the result of the realisation that the absence of a proper legal definition generates a cascade of practical and emotional problems for families, from asset management to access to support.3.
2. Abolition of Fees and Free of Charges[26] . In order to eliminate the economic costs associated with publication in official gazettes for the declaration of absence and death, which are an additional burden for already vulnerable families.
3. Free Legal Aid[27] . The third sector proposes to modify the Law so that the intervention of a lawyer is mandatory in these procedures, thus allowing access to free justice.
4. Revision of the term "Declaration of Death"[28] . In order to replace the term with a less painful one, more in line with the reality of uncertainty, such as "declaration of absence without return". This demand reflects a deep sensitivity to the psychological impact of legal language on families.

[23] Demand contained in the "Charter of Rights and Urgent Demands" within the 1st European Forum of Families of Missing Persons held in 2015 (European Foundation for Missing Persons - QSD Global -, 2015).
[24] Progress has been made in the implementation of legal, psychological and social assistance, aimed at the families of missing persons, within the offices for assistance to victims of crime (Muniesa Tomás et al., 2025, p. 22). To this end, a guide of recommendations for the care of indirect victims of missing persons in crime victims' assistance offices has been approved (Ministry of Justice, 2023).
[25] Demand contained among others in the "Charter of Rights and Urgent Demands" within the II European Forum of Families with Missing Persons held in 2018 (European Foundation for Missing Persons - QSD Global -, 2018, p. 2) and in the "III Charter of Rights and Urgent Demands" within the IV Forum of Families of Missing Persons held in 2019 (European Foundation for Missing Persons - QSD Global -, 2019, p. 7).
[26] Demand contained among others in the "Charter of Rights and Urgent Demands" within the 2nd European Forum of Families of Missing Persons held in 2018 (European Foundation for Missing Persons - QSD Global -, 2018, p. 2) and in a document of proposals and measures submitted to the Ministry of the Interior in 2020 (Asociación SOSDesaparecidos, 2020, pp. 2-3).
[27] Demand contained among others in the document of proposals and measures submitted to the Ministry of Interior in 2020 (SOSDesaparecidos Association, 2020, pp. 2-3).
[28] Demand contained among others in the "Charter of Rights and Urgent Demands" within the II European Forum of Families of Missing Persons held in 2018 (European Foundation for Missing Persons - QSD Global -, 2018, p. 2) and in the "III Charter of Rights and Urgent Demands" within the IV Forum of Families of Missing Persons held in 2019 (European Foundation for Missing Persons - QSD Global -, 2019, p. 7).

5. Creation of an Official Register of Voluntary Absentees[29] . In order to establish a confidential register so that adults who are voluntarily absent can register to avoid unnecessary searches and optimise police resources.
6. Amendments to criminal legislation. With the aim of improving it with changes such as extending the penal type of Art. 224 of the Penal Code to punish not only the inducement to abscond, but also the conscious harbouring of absconding minors .[30]

These have been mentioned by way of example, as they are not the only ones, they are a sample of the countless proposals made by the third social sector and which are progressively having an impact on improvements.

7. CONCLUSIONS

The study of the phenomenon of missing persons in Spain, as dealt with in this paper, confronts us with one of the most significant socio-political and legal-criminological transformations of recent decades. Beyond the human tragedy represented by each individual case, the analysis reveals a process of paradigmatic evolution in the relationship between the citizenry, the state and the production of valid knowledge for the resolution of complex social conflicts. The conclusions drawn from this examination are not merely descriptive, but prescriptive and shed light on the limitations of the traditional state model and the emerging power of organised civil society as an epistemic actor of the first order.

7.1. THE DEFINITIVE OVERCOMING OF THE PATRIMONIAL PARADIGM AND THE CONSOLIDATION OF A HUMAN RIGHTS APPROACH

The first conclusion, of a historical-legal nature, is the observation of an irreversible break with the past. The text has traced an evolutionary line that starts with the figure of the "absent person" in the Civil Code of 1889, a concept designed from the logic of patrimonial legal security, whose main concern was the administration and eventual transfer of assets. In this conception, the missing person was, in essence, a problem of asset management. The human dimension was secondary, subsumed in the need to give certainty to legal relations.

What this work irrefutably demonstrates is that this paradigm was demolished not by an internal reflection of the legislator, but by the force of the facts, by the unbearable social pressure generated by a succession of cases that became embedded in the collective conscience. The work of the media, and in particular programmes such as "Quien sabe dónde", was crucial, but not as an end in itself, but as the vehicle that brought the drama into every home, transforming indifference into empathy and passivity into a demand for action. The state was forced to react. Reforms, such as Instruction 1/2009, were not acts of clairvoyance, but belated responses to human tragedies that put the credibility of the system in check. The inescapable conclusion is that the current approach, focused on the search, criminal investigation and victim support, is a citizen's achievement. We have

[29] Demand contained in the document entitled "Proposal to the National Centre for Missing Persons for the creation of an Official Register of Voluntary Absentees (ROAV)", drafted by an association of relatives of missing persons in 2022 (Asociación SOSDesaparecidos, 2022).
[30] Demand contained in the document "Proposals and Suggestions of the Association SOSDesaparecidos for the First Strategic Plan on Missing Persons" drafted in 2021 (Asociación SOSDesaparecidos, 2021).

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moved from a law that protected "things" to a law that, albeit imperfectly, aspires to protect people and to guarantee their fundamental right to be sought and the right of their families to know.

7.2. CITIZEN SCIENCE" AS AN EPISTEMOLOGY OF PAIN: LEGITIMISING A NEW KNOWLEDGE.

The most transcendental contribution of the analysis is the conceptualisation of the third sector as a generator of citizen science. This is not a metaphor, but a precise description of its function. The text forces us to expand our understanding of what constitutes "science". If we traditionally associate it with laboratories and quantitative methodologies, here we are faced with a form of qualitative, empirical and deeply contextualised knowledge production, which some authors rightly call "knowledge born of pain".

This "knowledge" is superior in some respects to official knowledge for several reasons. First, because of its scale and agility: the analogy of the "distributed sensor network" is perfect for describing how partnerships mobilise the community, creating a system of real-time monitoring and data collection that no state institution could replicate. Second, because of its qualitative depth: while official statistics offer a macro view, the third sector accumulates a wealth of micro knowledge, based on direct interaction with hundreds of families. They understand the dynamics of vulnerability, the patterns of behaviour prior to disappearance and the subtleties of social contexts that are often invisible to a purely formal analysis. They constitute, in practice, an observatory of sociology and applied criminology.

Recognising this "knowledge" as science is an act of epistemic justice. It means validating a form of knowledge that has been historically marginalised as "emotional" or "anecdotal". The text demonstrates that this knowledge is not only valid, but also effective: it has succeeded in modifying operational protocols, such as the eradication of the myth of the 24-hour wait, and has driven legislative reforms. The lesson for criminology is profound: victims and their families are not mere objects of study or recipients of services, but active subjects of knowledge, capable of producing vital intelligence for the prevention and resolution of cases.

7.3. THE INSTITUTIONALISATION OF DIALOGUE: TOWARDS A COLLABORATIVE MANAGEMENT MODEL

If the third sector was born out of necessity and grew in adversity, its maturity is evident in its progressive institutionalisation as an interlocutor with the State. The creation of the CNDES and, culminating in the 1st Strategic Plan on Missing Persons (2022-2024), represent the formalisation of this relationship. This Plan is not a document of good intentions, but an implicit social contract that recognises the inadequacy of the State to address this problem alone.

When analysing the Plan's axes cited in the text, a transfer of roles and a consolidation of collaboration can be observed:

In terms of prevention, it is recognised that the capillarity and credibility of associations are more effective in reaching out to citizens.

In the area of training, it is acknowledged that professionals (police, judges, prosecutors) need not only technical training, but also human training that can only come from those who have experienced the drama first-hand.

With regard to coordination, its capacity for mass dissemination is integrated into the national operational strategy.

And finally, in terms of care and rights, they are given a central role in supporting families and, crucially, in the architecture of future reforms such as the "Statute of the Missing Person".

The conclusion is that we are witnessing the birth of a collaborative management model. There is a shift from a vertical and hierarchical relationship (state-citizen) to a horizontal and networked , where state and non-state actors share information, responsibilities and decision-making. This model, forged in the field of disappearances, is a possible archetype for the management of other complex social problems.

7.4. THE FUTURE HORIZON: THE STATUS OF THE DISAPPEARED PERSON AS A CORNERSTONE

The analysis of progress and remaining challenges allows us to conclude that the road, although remarkable, is unfinished. The victories achieved are the basis on which future demands are built, and among them, one emerges as the cornerstone of the whole system: the creation of a Statute of the Disappeared Person.

This is not just another demand. It is the logical conclusion of the whole process. It is the proposal to create a unified and coherent body of law that gives a charter to the disappeared person and their families, taking them out of the legal limbo in which they often find themselves. Such a statute, as proposed by the associations, would comprehensively address the gaps identified through years of experience: from free procedures and specialised legal assistance to the creation of mechanisms such as the register of voluntary absentees. It would be the definitive materialisation of the paradigm shift, consolidating in a single norm all the rights and protections that have so far been achieved in a fragmented manner.

In short, this work presents us with a story of resilience, social innovation and legal transformation. It shows that pain, channelled through organisation and collective intelligence, can become a powerful force for change, capable of reforming laws, modifying protocols and humanising institutions. The Spanish experience in the field of disappearances is a living laboratory that offers fundamental lessons about the power of citizen science, the need for a more humble and collaborative management by the state, and the unquestionable truth that the most effective justice is that which listens to, respects and integrates the knowledge of those who have suffered most from their absence.

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Research Article

THE CRIME OF RECKLESS DRIVING WITH MANIFEST DISREGARD FOR LIFE (ART. 381 CP): FRONTIERS WITH THE EVENTUAL INTENTION OF HOMICIDE

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THE CRIME OF RECKLESS DRIVING WITH MANIFEST DISREGARD FOR LIFE (ART. 381 CP): FRONTIERS WITH THE EVENTUAL INTENTION TO MURDER.

Summary: INTRODUCTION. 2. - NORMATIVE CONFIGURATION OF ART. 381 PC. 2.1.- Regulatory location and legislative evolution. 2.2.- The protected legal right. 3.- "MANIFEST DISREGARD FOR THE LIFE OF OTHERS". 3.1.- Doctrinal theories. 3.2.- Jurisprudential analysis of the "manifest disregard for the life of others". 3.3.- The paradigmatic case of the suicidal driver. 4.- THE TREATMENT IN BANKRUPTCY IN THE FACE OF THE PRODUCTION OF HARMFUL RESULTS (ART.382 CP). 5.- A LOOK AT COMPARATIVE LAW. 5.1.- The German model. 5.2.- The Italian model. 6.- CRITICISM OF ART. CRITICISM OF ART. 381 CP AS A PRIVILEGED TYPE. 7.

Abstract: The proliferation of "homicidal drivers" or "kamikaze drivers" on Spanish roads concerned the legislator to the point of introducing a specific offense into the Penal Code through the reform implemented in 2007: the crime of driving with manifest disregard for the lives of others. This provided more stringent punishments for the perpetrators of this particular form of road rage.

Through a technical-legal analysis of the offense, this study aims to provide the keys to understanding the legal interests affected and to differentiate it from the basic offense of reckless driving. The main objective of this study will be the complex delimitation of this offense in relation to homicide committed with implied malice. The relative proximity between these two legal concepts has led to disparate judicial solutions that have required jurisprudential unification. An attempt will be made to establish indicators that allow for a more favorable classification towards one offense or the other.

Special attention will be paid to the application of the concurrent offense rule established in Article 382 of the Spanish Penal Code, given the significance of its application when, in addition to the risk, a harmful result occurs.

Finally, *de lege ferenda* proposals will be made to contribute to achieving the legal certainty to which the legal system should aspire.

Resumen: La proliferación de "conductores homicidas" o "conductores kamikazes" en las carreteras españolas preocupó al legislador hasta el punto de introducir un tipo específico en el Código Penal a través de la reforma efectuada en el año 2007: el delito de conducción con manifiesto desprecio por la vida de los demás. Con ello, se castigó con mayor rigor a los autores de esta especial forma de violencia vial.

A través de un análisis técnico-jurídico de la figura se pretenden ofrecer las claves para conocer los bienes jurídicos afectados y diferenciarla del tipo básico de la conducción temeraria. El objetivo principal del presente estudio lo conformará la compleja delimitación de la figura con el homicidio producido a título de dolo eventual. La relativa proximidad entre ambas instituciones ha desembocado en soluciones judiciales dispares que ha precisado de unificación jurisprudencial. Se tratarán de establecer indicadores que permitan inclinar la calificación hacia una u otra figura.

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Se prestará especial atención a la aplicación de la regla concursal establecida en el art. 382 CP, dada la trascendencia de su aplicación cuando, además del riesgo, se produce un resultado lesivo.

Asimismo, el acercamiento al Derecho comparado nos permitirá confrontar la solución española con los modelos adoptados en Italia y Alemania, lo que nos permitirá tener más elementos de juicio para efectuar un análisis crítico del sistema español.

Para concluir, se efectuarán propuestas *de lege ferenda* para contribuir a la consecución de la seguridad jurídica a la que debe aspirar el ordenamiento jurídico.

Key words: Reckless driving, manifest disregard, risk, eventual intent, homicide.

Palabra clave: Conducción temeraria, manifiesto desprecio, riesgo, dolo eventual, homicidio.

ABBREVIATIONS

AP: Provincial Court

BOE: Official State Gazette

CP: Penal Code

FGE: General State Prosecutor's Office

LO: Organic Law

LSV: Road Safety Law

MF: Public Prosecutor's Office

P: Page

SC: Supreme Court

V.g.: E.g.

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1. INTRODUCTION

The boom in motor vehicle traffic in recent decades has led to an increase in road accidents and the production of new forms of crime . [1]

Crimes related to driving at excessive speed, under the influence of intoxicating drugs, with manifest recklessness or with manifest disregard for the lives of others are crimes of mere activity whose limits have been progressively defined by doctrine and jurisprudence. The scenario becomes more complicated when, as a consequence of some of the above conducts, the result is death, serious injury or both. In this study we will deal with what is popularly known as "suicidal driving" or "kamikaze driving", and we will analyse the different legal possibilities to be applied when a harmful result is produced.

The figure is included in the criminal law, specifically in art. 381 of the current Criminal Code (hereinafter, CC), configuring it as an aggravated form of the generic reckless driving of art. 380 CC. The aforementioned precept is based on an abstract concept: "manifest disregard for the life of others", introducing a concept which is empty of content as it does not establish elements which make up the offence and which causes many problems of delimitation with related offences, such as attempted manslaughter by deliberate intent.

In the following lines, we will analyse the differences between the crime of reckless driving with manifest disregard for the lives of others and manslaughter with intent to kill, in which there is no intention to kill, but there is extremely dangerous conduct and a result of death. Likewise, we will assess the need for a specific precept such as art. 381 PC.

In order to reach the pertinent conclusions, we will examine the protected legal interest, the regulatory evolution and the elements of the offence. Likewise, we will delve into the subjective element of the offence ("manifest contempt") and we will learn about the different doctrinal perspectives as well as the evolution of case law on the conceptual conflict. Next, we will study the differences with the eventual intention in homicide, as well as the application of the concursal rule of art. 382 PC. We will learn about the responses that the problem has received in neighbouring countries. To conclude, we will make proposals *de lege ferenda*.

[1] The increase in road accidents led legislators to add or reinforce offences in order to respond to the social reality. Examples of this can be found in the criminalisation of leaving the scene of an accident (art. 382 bis PC), reckless driving with manifest disregard for the lives of others (art. 381 PC) or the qualification of reckless homicide committed by means of a motor vehicle or moped with multiple victims (art. 142 bis PC).

2. REGULATORY CONFIGURATION OF ART. 381 PC .

2.1. NORMATIVE LOCATION AND LEGISLATIVE EVOLUTION

The offence of driving with manifest disregard for the lives of others is regulated in Art. 381 PC, located in Chapter IV ("Crimes against road safety") of Title XVII ("Crimes against collective safety").

LO 3/89 updating the Penal Code penalised driving with conscious disregard for the life of others as an autonomous offence in Art. 340 bis d), in response to the social alarm caused by the proliferation of "suicidal drivers" on fast roads as a result of betting. In this sense, Quintero Olivares (1989) relates the appearance of the precept to the alarm caused by episodes of reckless driving. The Preamble of the aforementioned law justified its incorporation by alluding to the political-criminal need to increase the penalties for the case of "homicidal drivers", which is placed in an "intermediate position between the crime of risk and attempted homicide".

The 1995 Penal Code maintained the offence and kept the terminology "conscious disregard for the life of others", but placed it in Art. 384. Subsequently, the reform of the 1995 Penal Code by LO 15/2007, of 30 November, relocated the offence to Art. 381 PC and modified not only the terminology, but also an essential element of the offence, by replacing the expression "conscious disregard" with "manifest disregard". The lexical substitution obeyed the legislator's intention to externalise the intention of the perpetrator. The aim was to make the offence more objective, as the terminology "conscious contempt" alluded to an element that remained in the subject's inner self and whose proof was truly complicated, making it a sort of *probatio diabolica*. With this change, the focus was placed on the active subject's conduct manifested in a particularly dangerous way of driving.

Thus, the current wording of Article 381 PC punishes anyone who " with manifest disregard for the lives of others, carries out the conduct described in the previous article ", which punished the driving of a motor vehicle or moped with manifest recklessness and specifically endangering the life or integrity of persons. The second paragraph reduces the penal response to "when the life or integrity of persons has not been specifically endangered".

2.2. THE PROTECTED LEGAL INTEREST

Given the location of the offence in the Title relating to offences against collective safety, one sector of doctrine has considered that the legal right to be protected is road safety or traffic safety. This would imply the set of rules that guarantee safe driving, free from situations of risk for other individual legal interests.

A more modern line of doctrine classifies it as a multi-purpose offence, as it not only directly protects the collective good of road safety, but also immediately and directly protects the life and integrity of road users. Muñoz Conde (2019) and Quintero Olivares (2016), among others, are inclined to grant it this character. This theory seems to be more appropriate insofar as art. 381.1 PC, by reference to art. 380 PC, stops alluding to a collective good and focuses on a specific danger, by requiring a "specific danger to the life or integrity of persons". The same conclusion can be drawn from the phrase "manifest disregard for the life of others".

2.3. THE ELEMENTS WHICH MAKE UP THE TYPE OF CRIME

2.3.1. The elements of the offence. Reference to art. 380 PC

Art. 381 PC is based on the manifest recklessness contained in Art. 380 PC, with the addition of manifest disregard. By referring to Art. 381 to Art. 380, imprudence is punished in its grossest form, which must be assessed in each case and taking into account the special rule of the second section ("driving in which the circumstances set out in section 1 and in clause 2 of section 2 of the previous article are present shall be considered to be manifestly reckless").

The reference inevitably leads us to study the content of the manifest recklessness of Article 380 in order to configure the qualified offence that Article 381 represents.

The legislator uses the term "recklessness" to refer to absolute disregard for the elementary rules of the road, to extraordinary imprudence. This gross behaviour would be exemplified, e.g. by driving faster than the statutory speed limit on urban roads, taking roundabouts in the opposite direction or driving in pedestrian areas. The expression "manifest" reveals that it is observable by the average person. And, by requiring that "the life or integrity of persons is specifically endangered", reference is made to the danger of causing damage to other personal legal assets. It is therefore a crime of mere activity and concrete danger, which is consummated with the concurrence of the aforementioned requirements.

For the analysis of the elements of the offence, priority has been given to the decisions of the Supreme Court (hereinafter, SC) as the natural interpreter of the offence in question, taking into account those decisions that have constituted interpretative milestones and have contributed to the definition of the offence. When the analysis required it, judgments handed down by Provincial Courts have also been taken into account for their illustrative value. On the other hand, on the doctrinal level, authors representing the main interpretative trends have been selected.

In the study of recklessness, STS 561/2002, of 1 April, which analyses the case of a novice driver driving at excessive speed and overtaking in prohibited places, causing vehicles on the road to swerve to avoid collision, is essential. On the basis that reckless driving of a motor vehicle constitutes a very serious administrative offence in art. 65.5.2 c) of the Law on Traffic, Circulation of Motor Vehicles and Road Safety (hereinafter, LSV), it considers that, if the recklessness is "patent, clear and with it the life or integrity of persons is specifically endangered", the offence becomes criminal and gives rise to the offence provided for in art. 381 CP.

In the same sense, STS 2251/2001, of 29 November, considers recklessness to be manifest when it can be clearly, notoriously or evidently noticed by the average citizen.

The High Court, in STS 363/2014, 5 May 2014, specifies the elements of the offence on which reckless driving is based: 1) the driving of a moped or motor vehicle with a notorious and abnormal disregard for the traffic regulations, and 2) that it poses a specific danger to the life or integrity of other road users, so that the offence would not be executed if the risk created is abstract.

For a better understanding, the elements of Art. 381 PC and its differences with the eventual intention will be set out schematically:

Aspect	Art. 381 PC (Driving with manifest recklessness and disregard for life)	Possible malice aforethought
Nature	Aggravated offence of concrete danger.	Form of intent, not autonomous type.
Objective element	- Manifestly reckless driving. - Concrete danger to the life or integrity of others.	Risky conduct, does not require extreme recklessness or concrete danger.
Subjective element	Conscious disregard for life.	Mental representation and acceptance of the harmful result.
Internal attitude	Confidence in avoiding the outcome.	Accepts that the result may occur.

2.3.2 Aggravated subtype (art. 381.1 PC)

Art. 381.1 PC punishes "whoever, with manifest disregard for the lives of others, carries out the conduct described in the previous article", which punishes whoever drives a motor vehicle or moped with manifest recklessness and specifically endangers the life or integrity of persons.

Therefore, the elements of the offence are the same as those observed in Art. 380 PC: driving a motor vehicle or moped on a public road, with manifest recklessness and giving rise to a specific risk to the life or integrity of persons. The danger caused does not necessarily have to be to other drivers, but extends to any other road user (pedestrians) and even to the occupants of the perpetrator's vehicle. In any case, it must be direct, imminent and serious. To these requirements is added the "manifest disregard for the lives of others", which requires the driving to be extraordinarily dangerous. As Circular 10/2011, of 17 November, on criteria for the unity of specialised action by the Public Prosecutor's Office in matters of Road Safety (hereinafter, Circular 10/2011) recalls, one type or another will be applied depending on "the greater or lesser unlawfulness of the conduct and the flagrancy, from an objective point of view, of the characteristics of the conduct deployed".

For Suárez-Mira (2023, p.520), manifest contempt becomes an "element of qualification" which differentiates it from the manifest recklessness of Art. 380 PC. This assessment is shared by Muñoz Conde (2017), for whom the intention to endanger with respect to the action is not enough (as was the case in art. 380) but requires the concurrence of manifest disregard for the life or integrity of persons as a subjective element of the offence.

In terms of its nature, it is structured as an intentional crime of concrete danger, of mere activity (even when results are derived from the danger originated) and of permanent effects (Teijón, 2023). As a crime of mere activity, it is consummated even when there is no result of death or injury due to the desistance of the subject, as long as the march has been produced with manifest disregard for the lives of others.

The Public Prosecutor's Office (hereinafter, FGE), in Consultation 1/2006, of 21 April, On the legal-penal qualification of driving motor vehicles at extremely high speed, means that, in this first section, not only is the situation of abstract danger inherent to road safety present, but also a danger against individualised legal assets is necessary, as the concrete endangering of the life or integrity of persons is required.

The main difference between this modality and reckless driving is the subjective element, as Circular 10/2011, of 17 November, points out: "It is the possible intention referring to the harmful result for life and physical integrity of Art. 381, as opposed to that referring to the typical danger to both legal assets that justifies the greater punishment".

Some dogmatic sectors (Olmedo, 2010, p.102) focus the difference on the objective level, as the legislator replaces the word "conscious" contempt with "manifest" contempt in order to dispense with the subjective level and allow for an objective assessment of the greater danger of the conduct in order to place us in one or other precept.

The SAP of the Balearic Islands 486/2018, of 11 December, requires that the perpetrator mentally represents the very high probability that the action will produce an accident resulting in death. It states that "Case law configures it as a crime that punishes the attempt of intentional homicide and as such, if the result is produced, the resulting crime would be that of intentional homicide in article 138 of the CP and never that of reckless homicide".

STS 1209/2009, of 4 December, compiled with expository clarity the three objective requirements and the subjective one that had to be met in the previous art. 384, the predecessor of the current 381:

1st. Driving a motor vehicle or moped.

2º. Driving with manifest recklessness, insofar as accredited. Recklessness is understood to mean "extreme imprudence", as well as "daring, audacity, audacity, thoughtlessness, terms compatible with what is known as "possible malice".

3º. There must be a concrete danger to the life or integrity of certain persons, even if they were not identified.

4. The act must be carried out with conscious disregard for the lives of others.

Circular 10/2011 , in order to facilitate its application, identified a series of cases that could be included in the criminal offence under study:

- Wrong-way driving on motorways and dual carriageways.

- Piquing" between two or more drivers in urban areas with traffic of people who carry out high-speed races with manoeuvres typical of a racetrack.

- Driving at high speed in crowded pedestrian areas, sometimes combined with alcohol or drug use.

- Illegal races carried out in clandestine places or on public roads, at extreme speeds, with bets, etc.

2.3.3 Attenuated subtype (Art. 381.2 PC)

Art. 381.2 PC punishes with a significantly lower penalty than that provided for in Art. 381.1 "When the life or integrity of persons has not been specifically endangered"[2] .

It is considered an intentional crime, of abstract danger, of mere activity and of permanent effects. In the words of Teijón (2023, p.929) it is consummated "when driving with this manifest disregard for the life of others and which is prolonged as long as such driving continues".

In any case, it will not be easy to find cases in which there is a "manifest disregard" for the life of others, but there is no correlative risk to the life or integrity of persons. It is necessary to consider the hypothesis of the person who causes a situation that would have been objectively dangerous if there were third parties on the road, but without the presence of such third parties. Let us imagine driving at an extraordinarily high speed on a road closed to traffic due to road works and with access control. Even if the conduct were reckless, the absence of road users prevents us from speaking of a situation of specific risk for certain persons.

3. THE "MANIFEST DISREGARD FOR THE LIVES OF OTHERS".

The "manifest disregard for the life of others" forms the differentiating element with the reference type of Art. 380 PC. This is a subjective element of the offence, the occurrence of which must be assessed through manifestations in the outside world, through conduct which leaves no doubt as to this contempt.

The examples given in the aforementioned FGE Circular 10/2011 are examples of situations that can be included in this concept.

3.1 DOCTRINAL THEORIES

The subjective qualifying element of "manifest contempt" has been addressed by the doctrine from different approaches:

1.Subjectivist theory. The supporters of this theory, including Muñoz Conde (2022), place contempt for the life of others within the psyche. It would be a feeling of the active subject, who in his inner self would underestimate this legal good.

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[2] Thus, Art. 381.1 PC punishes with "imprisonment of two to five years, a fine of twelve to twenty-four months and deprivation of the right to drive motor vehicles and mopeds for a period of six to ten years", while the privileged type in the second paragraph punishes with "imprisonment of one to two years, a fine of six to twelve months and deprivation of the right to drive motor vehicles and mopeds for the period of time foreseen in the previous paragraph".

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The main criticism it faces is that it is difficult to prove, since the elements that remain in the internal sphere can hardly be accredited if they are not accompanied by external acts that prove it. Even if the accused admits that he acted with a total lack of respect for the legal right to life, this may not be sufficient to qualify the act as reckless driving if it is not accompanied by external acts.

Objectivist theory. This requires an analysis of the circumstances of the driving in order to be able to identify elements which, in the eyes of the average person, allow a situation of risk to be interpreted which exceeds the threshold of reckless driving because the risk created is much greater. It is the action itself (and not the recognition by the perpetrator) which is evidence of the extra danger in the driving of the vehicle. Among the main representatives of this theory is Ruiz Rodríguez (2010).

3. Intermediate theory. This looks at the motives that led the driver to drive in the way he did. Driving motivated by a situation in which it would be rationally understandable for the subject to act as he did (the criminal fleeing during a police chase) could not be assessed in the same way as when it is based solely on disregard for the life of others (illegal racing). The second example supports the existence of the precept. Authors such as Quintero Olivares (2016) stand out in this current.

3.2 JURISPRUDENTIAL ANALYSIS OF "MANIFEST DISREGARD FOR THE LIFE OF OTHERS".

Spanish case law adopts the reasoning of the objectivist and motivational thesis. Although there are not many judgments that analyse the issue due to the small number of cases that have reached the High Court, some of them have contributed effectively to delimit the figure.

In this way, both the Supreme Court and the erroneously called minor jurisprudence have been outlining the indications that contribute to specifying when a conduct reaches the threshold of manifest recklessness and is carried out with manifest disregard for life. The most relevant decisions can be summarised in the following table:

Date	Number of Ruling	Court	Relevant facts	Doctrine applied with respect to art. 381 PC
11 April 2001	**STS 615/2001**	Supreme Court	Prolonged dangerous driving, despite being warned by third parties.	Conscious acceptance of the risk. Contributes to integrating the type of art. 381 PC (manifest recklessness + disregard for life).
01 July 2005	**STS 872/2005**	Supreme Court	Extremely dangerous driving with disregard for the life of others.	Art. 381 CP is a crime of mere activity with contempt for life + a subjective state of contempt for the possible harm of others.
17 November 2005	**STS 1464/2005**	Supreme Court	Driving in the opposite direction on a busy motorway.	Conscious disregard for life, proper to Art. 381 PC.
16 April 2011	**STS 338/2011**	Supreme Court	High speed in a pedestrian area closed to traffic, ramming pedestrians.	Dolo eventual: driver accepts the lethal result.
06 May 2021	**AP Barcelona 259/2021**	Barcelona Provincial Court	Illegal racing of motorbikes on roads near nightclubs and bars open to traffic.	It can be included in articles 380 or 381 of the Criminal Code, as it is a deliberately risky action, which compromises life and integrity.

The table includes a series of court decisions - all of them from the SC - except the last one, which reflects the criteria of the Provincial Court of Barcelona - that analyse the conducts that could place driving within the scope of art. 381 of the Penal Code. From their reading, it can be inferred that driving at excessive speed in urban areas, driving in the wrong direction, continuing to drive dangerously despite warnings from third parties, or illegal racing can act as determining elements in the classification of the conduct as falling under the aforementioned precept.

In this way, in STS 615/2001, of 11 April 2001, the Supreme Court appreciated that continuing to drive dangerously despite warnings from third parties is evidence of a conscious acceptance of the risk, which contributes to integrating the criminal offence of manifest recklessness and disregard for life.

STS 872/2005, of 1 July, reinforces this idea, classifying art. 381 CP as a crime of mere activity, in which the contempt for life is manifested as a subjective state of the perpetrator in the face of possible harm.

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For its part, STS 1464/2005, of 17 November, considers that driving in the opposite direction for more than 5 kilometres on a motorway with heavy traffic implies a serious present danger, which reveals a conscious disregard for the life of others, as "it constitutes, in terms of common experience, for anyone, a focus of serious present danger, given the foreseeable harmful consequences of a collision or even of an emergency evasive manoeuvre that is likely to be easily produced in such conditions".

In STS 338/2011, of 16 April, the Supreme Court understands that driving at high speed in an urban, pedestrian area close to schools and ramming pedestrians passing through it implies acting with malice aforethought, as the driver accepts the possibility of a lethal result.

SAP Barcelona 259/2021, of 6 May, examines participation in illegal motorbike races in areas close to discotheques and night-time bars open to traffic, pointing out that this deliberately risky conduct can be included in articles 380 or 381 of the Penal Code as it seriously compromises the life and integrity of third parties, as it "resulted from the beginning in a deliberate action of high risk to the health and integrity of people".

3.3. THE PARADIGMATIC CASE OF THE SUICIDAL DRIVER

The case of the driver who drives in the opposite direction to the direction of travel, generally on a fast road, and at extremely high speed, was the one that led to the introduction of the type under study. The Supreme Court, followed by the Provincial Courts for the most part, was inclined to appreciate the possibility of malice aforethought in the conduct of the subject .[3]

On the other hand, a minority of Provincial Courts dismissed the idea of malice aforethought in favour of fault. This was the view of the SAP of Girona (3rd Section), for whom, in the crime of reckless driving with conscious disregard for the lives of others, knowledge of the serious risk involved must be required, and it is sufficient that the harmful result is represented as possible. This places the offence in the sphere of conscious guilt, and not of malice aforethought, which would be present when the subject represents the result as certain and, even so, assumes it, which would place the conduct in the sphere of attempted homicide. He defends the impossibility of applying the eventual intent on the basis of the very purpose of the figure foreseen in the former 340 bis d) PC (precedent of Art. 384), which was introduced to punish suicidal drivers with a heavier penalty even when harmful results were produced, which made it difficult to assess the eventual intent inherent to attempted or completed homicide.

3.3.1. The eventual intention in the conduct of the "kamikaze driver".

The aforementioned STS 615/2001, of 11 April 2001, understood that there was no doubt that the accused, who drove in the opposite direction to the direction of travel, on a fast road, for more than 1.5 kilometres, and was warned of his improper behaviour by other vehicles he was passing, acted with the conscious disregard for the lives of others required

[3] Among others, SSTS 717/2014, of 29 January 2015 and 64/2018, of 6 February and the very recent STS 626/2025, of 3 July 2025.

by art. 384.1 PC (now 381.1 PC). He created a source of danger in which it was highly foreseeable that the result would be a collision with harmful consequences.

In the same sense, STS 561/2002, of 1 April, which stresses that malice does not exclusively cover "the infringement of the rule of care, but also the possible result". If a driver creates a situation that clearly endangers legal assets, it must be considered that the possibility of their injury is also represented, which obliges us to attribute to him, at least, a possible intention in his conduct. And, in the event of the harmful result occurring, this should also be imputed to him as malice aforethought.

This criterion was accepted by the majority of the Provincial Courts: SAP Asturias 134/2007, of 11 June; SAP Alicante, First Section, of 2 February 2010 (confirmed in cassation by STS of 8 October 2010; SAP Madrid (7th Section) 109/2003, of 10 March, among others.

The SC has addressed the issue of malice aforethought, understood as the knowledge on the part of the perpetrator both that his actions put the protected legal interest at risk and that there is a high probability that this interest will be harmed, in numerous rulings. Thus, STS 981/2017, of 11 January (citing SSTS 311/2014, of 16 April; and 759/2014, of 25 November; 155/2015, of 16 March; and 191/2016, of 8 March), which states that malice is present in those who know that their actions generate a situation of danger that causes a high risk to the victim and, despite this, initiate the action and maintain it without guarantees of controlling the risk "without it being necessary for them to directly pursue the cause of the homicidal result, as it is sufficient that they know that there is a high probability that their behaviour will produce it". The defence that he had the hope that the result would not be produced is not admitted as unreasonable and unfounded given the magnitude of the risk caused.

STS 71/2019, of 14 January, in the case of a conviction of the author for an offence against road safety under art. 381 CP in conjunction with an offence of manslaughter, although it did not assess (as it had not been raised) the application of one or the other precept, agreed with the court of first instance in the assessment of the possible intention in the conduct of the person who, after consuming large doses of alcohol, drove on a fast road in the wrong direction, despite having been repeatedly warned of this by other drivers. This circumstance made it reasonably likely that a head-on collision with another road user would result in death. The fact that he did not stop despite having been warned reveals the admission of both the action and the probable outcome.

The STS 717/2014, of 29 January, makes an interesting comparison between the crime of reckless driving with manifest disregard for the lives of others and the crime of intentional homicide, differentiating between the objective and subjective elements of the type.

As for the objective elements, he stresses the importance of an act of driving, understood as the movement of the vehicle to "link" two locations, which he excludes in the case analysed when the car plunged into the sea, in order to appreciate art. 381.

Secondly, it looks at the legal good attacked, considering that in offences against road safety, the aim is to compromise road safety. On the other hand, if the attack is

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directed against specific and determined persons, we would be dealing with a crime against life in .

In relation to the subjective element of the offence (citing the ruling in STS 561/2002, of 1 April), he affirms that it is possible to appreciate, at least, the possibility of malice aforethought in those who drive recklessly, creating a specific danger to the life or physical integrity of people with conscious disregard for these legal assets. In this case, he points out, "the result represented and admitted makes him the perpetrator with malice aforethought".

In the case under analysis, the plaintiff accelerated and threw the vehicle into the sea, using the car as an instrument of the crime to kill specific persons. Therefore, both the element of driving and the endangering of indeterminate persons, which are proper to art. 381 PC, were excluded. In order to attribute the result to him as malicious intent, he assessed the fact that he mentally represented the lethal risk and accepted the consequences of his actions.

STS 64/2018, of 6 February, ratifies the interpretation offered by STS 717/2014, of 29 January 2015), and applies, at the very least, malice aforethought, when it creates a situation of specific danger with disregard for legal assets. When this risk translates into a result of injury that has been represented and admitted, this must be attributed to him as malice aforethought. In the case analysed in the decision, in which the perpetrator drove on a public road in conditions in which it was impossible to control the car, the result was foreseeable and, therefore, there is the malice aforethought inherent to intentional homicide.

Returning to the paradigmatic case of the "kamikaze driver", a person who drives in circumstances in which it is highly probable that an injurious or fatal result will occur shows a disregard for the life of others that leads him to assume the result of death. However, the eventual and not direct malice is attributed to him as he assumes as almost certain the result of death of one or several indeterminate subjects, and does not pursue the death of a specific subject, which was pursued in the case of STS 717/2014, of 29 January.

Requejo (2024) agrees with these considerations, excluding from art. 381 PC those cases in which a direct intention to kill or injure using the vehicle as a weapon can be appreciated, which would constitute the crime of intentional homicide or murder with malice aforethought (in line with what was held in STS 29 January 2015).

Direct malice would be evidenced in conduct in which the intention to attack specific subjects is easily perceptible, such as driving over a pavement to run over a pedestrian (SAP Madrid of 18 April 2005).

4. THE TREATMENT IN BANKRUPTCY IN THE EVENT OF THE PRODUCTION OF HARMFUL RESULTS (ART.382 CP)

Art. 382 CC includes a concursal rule and another of civil liability of great importance in offences against road safety, in the following terms: "When the acts punished in Articles 379, 380 and 381 cause, in addition to the risk prevented, an injurious result constituting a crime, whatever its seriousness, the Judges or Courts will only assess the most seriously punishable offence, applying the sentence in its upper half and sentencing, in any case, to compensation for the civil liability that would have arisen".

The precept offers a rigorous penal result for the guilty party, correcting the criticism made of the previous regulation that it was unjustifiably beneficial. The then article 383 of the Criminal Code established that: "When the acts punished in articles 379, 381 and 382 cause, in addition to the risk foreseen, an injurious result, whatever its seriousness, the judges and courts will only assess the most seriously punishable offence, sentencing in all cases to compensation for the civil liability that has arisen. In the application of the penalties established in the aforementioned articles, the judges and courts shall proceed according to their prudent discretion, without being subject to the rules prescribed in Art. 66". Among the critics of the previous regulation, we find Zulgaldía (2010), for whom the legislator had not considered drivers who, despite not having been killed or injured, had been put in danger due to the driver's drunkenness, because it solved the situation through the competition of rules, to be resolved according to the criterion of alternativity provided for in art. 8. 4 CP.

In contrast to the solution offered by art. 383 PC, the current regulation introduced by the reform of LO 15/2007 in art. 382 includes a concurrence between the crime of danger and the crime of result (homicide, injuries) which will act through the application of the more serious crime in its upper half. Escobar (2012, p.2) summarises the new features introduced by the bankruptcy reform in the area of road safety:

1. It includes conduct relating to reckless driving with reckless disregard for the lives of others (previously provided for in art. 384).
2. The harmful result produced must constitute an offence.
3. It resolves the competition by imposing the more serious penalty in its upper half.
4. The extent of the penalty will be determined in accordance with the rules of Art. 66 PC.

The regulatory provision gave rise to controversy both in doctrine and in minor case law on how to assess the competition due to the different interpretation of the expression "the most seriously punishable offence", which led the Supreme Court to unify its doctrine initiated after STS 1135/2010 in order to ensure legal certainty in the regulatory interpretation. The discussion involved opting between the interpretation that art. 382 PC established a concurrence of rules to be resolved in accordance with the principle of conjunction or absorption established in art. 8 PC or, on the contrary, an ideal concurrence of offences which, in turn, could be real or ideal.

The choice between the application of one or the other type of concurrence in the clause of Art. 382 PC entails important punitive consequences. If it were considered that we were dealing with a concurrence of rules (art. 8 PC), the harmful result would be subsumed (in accordance with the principle of absorption) in art. 381 PC, punishable only by the penalty of that provision. This solution would be more beneficial for the offender than the actual concurrence of offences (art. 73 PC), in which both the penalties for the crime of result and the crime of danger would be applied, being the most burdensome solution.

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If, on the other hand, it is understood that we are dealing with an ideal concurrence (Art. 77 PC), the penalty foreseen for the most serious offence, aggravated, would be applied, but it would give the option of punishing the offences separately. The solution proposed in Art. 382 PC is a special penological rule, as it allows punishment for the most serious, aggravated offence, without offering the possibility of punishing the offences separately. The interpretation of the clause, therefore, is not merely academic; it requires the unification of criteria by the Supreme Court in order to guarantee adequate punitive proportionality and a coherent interpretation of the regulatory set of offences against road safety.

The Provincial Courts approached the issue with an initial disparity of criteria, some considering it a concurrence of rules, others an ideal concurrence, and still others an actual concurrence. STS 1135/2010 marked a turning point by classifying it as a specific competition. For a better analysis of the interpretative evolution, the following comparative table should be developed:

Resolution	Case / Relevant facts	Thesis on insolvency proceedings	Doctrinal contribution
STS 130/2000 and STS 1241/2001	Reckless driving + harmful result	Concurrence of norms (absorption)	The disvalue of danger is absorbed by the crime of result.
SAP Madrid 30 June 2010	Reckless driving + injury	Competition of norms (principle of alternativity)	Only the most serious offence applies (art. 8 PC).
SAP Valladolid 485/2001,5 July 2001	Reckless driving + manslaughter and injuries	Ideal competition + medial competition	Driving is a precondition for several offences of injury; multiplies concurrence. Burdensome option.
SAP Madrid 109/2003,10 March	Reckless driving + death	Ideal concurrence of Art. 77 PC	Each offence is punished separately.
SJP Oviedo nº 2, 12 April 2007	Hit and run with double intention: to injure and create danger.	Real competition	Two autonomous purposes: to injure and to create danger. Maximum seriousness.
STS 1135/2010,29 December	Driving + several harmful results	Concurrent offences with the special rule of art. 382 of the Criminal Code.	First clear pronouncement: art. 382 is a specific ideal concurrence, different from art. 77 PC, which does not allow separate offences to be punished. Turning point in case law.
STS 64/2018, 6 February	Reckless driving + harmful result constituting an offence.	Combination of offences (specific ideal) according to art. 382.	Establishes doctrine: art. 382 combines the criterion of the most serious offence + aggravation to the higher half. It is neither a concurrence of norms nor a common ideal concurrence. Double legal good is attacked, but the penalty is imposed by means of a special rule.
STS 744/2018 (2019), 7 February	Accident with a crime of danger + crime of result.	Competition of offences with a specific penal rule	Reiterates 2018 doctrine: penalty for the more serious offence in its upper half. Recognises plurality of offences, but does not allow separate punishment.
STS 350/2020, 25 June	Dangerous driving + result of death or injury	Competition of offences unless there is direct intent, in which case there is	Rule of concurrence only applies if the result is caused by recklessness or eventual intent; if there is direct intent to kill/injure ⇒ actual concurrence.

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Resolution	Case / Relevant facts	Thesis on insolvency proceedings	Doctrinal contribution
		actual competition.	

The supporters of the concurrence of norms considered that the disvalue of the conduct of reckless driving was subsumed in the disvalue of the harmful result. Therefore, only the most serious offence (that of the result) was punished. Examples of this are the SAP of Madrid of 30 June 2010 (citing SSTS 1241/2001, of 20 June, or 130/2000, of 10 April). This view is shared by a sector of doctrine, for whom, when in addition to the risk there is an injurious result derived from the same, the precept will be applied in the form of a concurrence of laws. Thus, according to Abadías (2021, p.537): "in a concurrence of laws, only the most seriously punishable offence will be assessed (principle of absorption), applying the penalty in its upper half *ex* art. 382 of the Penal Code".

The dogmatic path which considers the application of the concurrence of norms to be more appropriate argues that the crime of danger should give way to the crime of result (that of injury), as the latter was the one which was to be avoided. Accordingly, the offence of injury would be the principal offence, and the offence of endangerment would yield to it.

For other Provincial Courts, the conduct harms two independent legal assets: the collective legal asset "road safety" and the very personal asset "life or physical integrity". Therefore, the plurality of offences was related through the ideal concurrence envisaged in art. 77 PC, with a single act constituting two or more offences. This solution, however, is open to criticism, as it offers a penal result that may be far removed from the solution offered by art. 382 PC. By way of example, we can cite SAP Valladolid (2nd Section) 485/2001, of 5 July, which considered that the proven facts constituted an offence of reckless driving under art. 384 PC (now 381) in medial concurrence under art. 77.1.2 with an ideal concurrence under art. 77.1.1 PC between a crime of homicide under art. 138, a crime of injury under art. 149 and a crime of injury under art. 147, and a misdemeanour of injury under the extinct art. 617.1 PC. It justified this by pointing out that we are faced with a medial concurrence together with an ideal one: "the reckless driving involved the production of other results; it was constituted as an indispensable presupposition (medial concurrence) of the subsequent collision which, in ideal concurrence, produced a fatal result and other injury results".

The High Court addressed the problem of concurrence in STS 1135/2010, of 29 December 2010, in relation to facts that could be included in art. 383 of the Criminal Code (precedent of the current 382). It established that the special concursal rule was not affected when the situation of risk had led to several harmful results, as there would always be absorption in the most seriously punishable offence. He was in favour of considering the rule of Art. 383 PC (now 382) as a specific, individualised ideal concurrence of Art. 77 PC, as "Art. 382C.P. does not provide for separate punishment of the different offences, although this could be more favourable for the offender".

SAP Madrid (7th Section) 109/2003, 10th March, declared the accused responsible for the crime of reckless homicide provided for in art. 142.1 and 2 CP in relation to the ideal concurrence of art. 77.1 CP with arts. 379, 381 and 384.1 CP.

Authors such as Sánchez Melgar and Luzón Cuesta (2011) are in favour of the ideal concurrence of offences.

There were, however, defenders of the real concurrence of offences. Criminal Court No. 2 of Oviedo, in a ruling of 12 April 2007 in a case in which a driver deliberately ran over some people at a pedestrian crossing, ruled that there was actual concurrence between the offences of injury and reckless driving and the misdemeanours of injury, by noting the double intention of the subject: on the one hand, to run over the people and, on the other, to create a specific danger to those who were not hit.

The Supreme Court definitively resolved the issue, underpinning the thesis put forward in STS 1135/2010 in judgments such as STS 64/2018, of 6 February, STS 744/2018, of 7 February 2019 and STS 350/2020, of 25 June 2020, thus creating a consolidated doctrine. In them, he reasons that we are dealing with a concurrence of crime and not of rules, which has a special penological rule. In this sense, although it admits that there are several offences, it does not resort to the concursal rule of art. 77 PC, but rather follows the solution offered by art. 382 PC itself: "to assess only the most seriously punishable offence, applying the penalty in its upper half". This means that there is an attack on both legal interests, the collective and the individual, but the sanction is carried out through the specific formula.

The aforementioned STS 64/2018, of 6 February, unifies the interpretation of the rule of art. 382 as a concurrence of crimes for which the legislator provides a singular penal rule, similar to that of concurrence of rules: "that corresponding to the most serious crime, plus the provision of the ideal concurrence, in its upper half". It is therefore "an exception to the general criterion in the case of the concurrence of a crime of danger and another of result, by virtue of which the crime of result absorbs the crime of danger (STS 122/2002, of 1 February), a criterion which, in this case, is replaced by that of the more serious crime in its upper half, combining the rules of ideal concurrence and the principle of alternativity in the imposition of the sentence".

To explain that the nature of the concurrence is of crimes, the focus is on the fact that the precept states "when with the acts punished in arts. 379, 380 and 381", making it clear through the preposition "with" that the harmful result constituting the crime is produced with the action. In other words, the action not only produces a risk, but also a harmful result. Despite the fact that the action is only one, two different legal assets are attacked and two criminal precepts are infringed, which is punishable in the form of an ideal concurrence. The higher penalty is a consequence of a double disvalue: the danger caused to road safety and the harmful result that derives from it.

STS 744/18, of 7 February 2019, citing the previous STS, recalls that the provision of art. 382 CP is that of the concurrence of offences, but with a penological peculiarity, as it is close to the concurrence of rules by attending to the most serious offence, but it adopts the solution of the ideal concurrence of offences. In this way, the rule of Art. 382 "does not exclude the consideration of a plurality of offences to which an accumulated penalty can be applied".

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STS 350/2020, of 25 June 2020, seeks to describe the contours of art. 382 in order to resolve "the contradictory doctrine of the Courts in this respect". It differentiates between whether the result was directly intended by the perpetrator, in which case the actual concurrence will be applied, or whether it was produced through negligence, in which case the concurrence clause will come into play for the harmful result. He points out that "For the application of the concursal rule, it is required that the perpetrator, in addition to the foreseen risk, causes an injurious result constituting a reckless offence, or possibly with malice aforethought. The direct intent to threaten life or cause injury to the victim pursued by the perpetrator, prevents the application of the concursal clause, because the intention is to bring about such a result. In this case, when road safety is affected, which includes third parties as a legal good, it may give rise to a real concurrence of offences, to be punished separately".

It may seem that the legislator had in mind the possibility of the concurrence of a crime of intentional endangerment (reckless driving) and a crime of homicide or injury due to recklessness derived from the consumption of alcohol or excessive speed, as these are the most frequent cases. However, the fact that the phrase "whatever the seriousness" is introduced raises doubts, because, when we are dealing with a case of Art. 381 PC, as we have seen, it can be argued that the result is produced as a result of malicious intent. In this case, the concurrence would take place with the intentional homicide of art. 138 PC, and the penalty would be applied in its upper half.

Escobar (2012), in cases in which death is the result, does not hesitate in the application of art. 138 PC in its upper half, and is therefore punished with a higher penalty when it is produced by means of a motor vehicle than in the case of an ordinary homicide. The explanation is to be found in the increase in the disvalue of the action and the result due to the use of the vehicle and because it is carried out in the context of an everyday activity such as road traffic, which "is accessed in an atmosphere of confidence in driving". He considers that, if he acted with intent to cause the death of a third party and the only result obtained was injury, attempted intentional homicide will have to be applied. A different solution is reached when the intention was only to cause injury, as the provision of reckless driving with manifest disregard is punishable with more punishment than the basic offence of injury in art. 147 PC and its aggravated form in art. 148 PC. If the result were that of injury under Art. 149 or 150, these would be the types applied in their upper half, as they have a higher penalty in the abstract.

The rule only mentions the offences provided for in Articles 379, 380 and 381. It excludes the types of driving without a licence and causing a serious risk to traffic contemplated in Articles 384 and 385 PC, respectively, to which the general rule of concurrence of offences in Article 77 PC will be applied, as they do not result in a risk to traffic of the same nature as the previous ones. The clause uses the term "harmful" and not "damaging", in such a way that, if as a consequence of an action which fits in with Art. 379, 380 or 381, damage is caused, this will not be demanded in accordance with the special concurrence which it foresees, but can be demanded through civil liability. Hence the phrase: "condemning, in any case, to compensation for the civil liability that may have arisen".

From the study of the special insolvency rule, it is clear that the legislator offers a solution far removed from the competition of rules, despite the use of the expression "shall only assess", inherent in the former. An imperative solution is offered which does not accept either the system of concurrence of norms of Art. 8 or the system of Art. 77, which allows the penalties for the offences to be established separately. According to Vargas (2007) "The Draft in the new Art. 382 formally considers the situation as a concurrence of norms, although it applies a more severe penal regime".

It will therefore be necessary to consider the most serious penalty in the abstract in accordance with the graduation of penalties established in Article 33 of the Criminal Code. The more serious penalty will be the one which carries a custodial sentence as opposed to the one which carries a disqualification sentence.

A divergent doctrinal sector advocates the elimination of the special concursal rule, arguing that the rules of ideal competition in Art. 77 PC are sufficient. In fact, they argue, it is the ideal concurrence which would have to be applied if, as a consequence of the act of driving, a crime of damage had been produced as foreseen in Art. 263 PC. It is worth noting, however, that the solution of Art. 382 is not exclusive to offences against road safety. The same technique can be observed, for example, in relation to offences relating to nuclear energy (Art. 343.2 PC).

What would be the solution in the case of several harmful results as a consequence of the risk (several deaths, several injured, or several deaths and injuries)? The precept only indicates that the rule will act "whatever the seriousness". FGE Circular 10/2011 is in favour of considering as many ideal concurrences as crimes of harmful results: "when applying the rule of art. 382, when there is a plurality of crimes of reckless results, the penalty of the most serious crime in its upper half will be applied and within it - and this is a crime of result - the rules of ideal concurrence of art. 77 PC will be applied". When a plurality of crimes of result concur through eventual malice, this would also be resolved through the ideal concurrence between qualified reckless driving and intentional homicide and, as Escobar (2012, p.8) points out: "this should be made up, on the one hand, of the precept resulting from the application of art. 382; and, on the other, of the rest of the intentional crimes".

As we explained *above*, Art. 382 PC includes a civil liability clause. As Suárez Mira (2023) considers, it is not an exception to the general regime of civil liability established in the Criminal Code, but it avoids interpretative problems.

5. A LOOK AT COMPARATIVE LAW

It has been decided to turn to German and Italian law as a comparative reference in the field of road safety, as opposed to bordering countries, given that the normative and methodological structure is closer to the Spanish system than that offered by the former. Therefore, the criteria of legal coherence, regulatory quality and dogmatic affinity have been taken into account rather than a merely geographical perspective.

5.1. THE GERMAN MODEL

The German Criminal Code (StGB) does not provide for an offence fully comparable to Art. 381.1 PC, although in § 315 c StGB[4] the offence of "endangering road traffic"

[4] StGB stands for Strafgesetzbuch (German Criminal Code) and § indicates the paragraph or section of the Code.

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(*Gefährdung des StraBenverkhrs*) is provided for. The paragraph contains two alternative cases which are punishable under criminal law with a clear objective approach. Thus, the following are punishable:

-Driving under the influence of alcohol or other substances, or because of physical or mental defects.

-Committing one of the "seven deadly traffic sins", which are listed as a *numerus clausus*. These include failure to observe the right of way, improper overtaking, failure to respect pedestrian crossings, excessive speed in inconspicuous areas and driving in the wrong direction on motorways.

In both cases, it is required that the risky situation "endangers the physical integrity or life of another person or other people's property of significant value".

The German system has been criticised[5] for offering a closed list in an event such as driving, in which there can be a multitude of situations that put people's lives or integrity at risk. In its defence, by objectifying the offence and eliminating subjective expressions such as "contempt", the rule provides greater legal certainty, as it will be applied whenever one of the cases occurs, without the need for additional interpretation.

5.2. THE ITALIAN MODEL

The Italian Penal Code also advocates a different solution to the Spanish one, introducing a specific offence in Art.589 bis: road homicide (*omicidio stradale*). In this regard, it is worth adding a reference to the *ratio legis* of this provision, underlining that the 2016 reform was intended to provide a more rigorous regulatory response to the increase in particularly serious road accidents with fatal results, thus reinforcing the effectiveness of the Italian punitive system.

Road homicide acquires a culpable, not intentional, nature. It thus omits the need to ascertain the intention of the driver in order to assess the existence of direct malice or malice aforethought in the result. It compensates for the exclusively culpable nature of the offence, attributing a high penalty to the act, more typical of intentional offences than culpable ones. Together with the basic type (2-7 years' imprisonment), it contemplates qualified types depending on the concurrent circumstances:

- When the death is caused by a driver with a blood alcohol level of more than 1.5 g/l or under the influence of drugs (8-12 years).

- If the death is caused by a driver with an alcohol level of between 0.8-1.5 g/l, or as a consequence of extraordinary speeding, or acts such as running a red traffic light or driving in the wrong direction (5-10 years).

It is clear from the analysis of both models that both Germany and Italy opt for more objective models than Spain, avoiding the use of malice aforethought and subjective

[5] Mir Puig criticises the fact that liability focuses excessively on the creation of an objective risk, without assessing the subjective attitude of the perpetrator.

elements that are difficult to prove. Germany focuses on the objective creation of a danger, while Italy configures road homicide (*omicidio stradale*) as a culpable offence.

6. CRITICISM OF ART. 381 CP AS A PRIVILEGED TYPE

6.1. THE DIFFICULTY IN ITS APPLICATION

The Supreme Court, faced with the most serious cases of reckless driving in which the lethal result must be seen as an almost certain consequence, has opted to consider a crime of consummated or attempted homicide, leaving aside the crime against road safety of Art. 381 CC[6] . This is one of the most controversial issues in the study of the case of the "suicidal driver". If the most serious cases of reckless driving with reckless disregard for the lives of others are absorbed by attempted murder (in the event that the result does not materialise), what are the real possibilities of practical application of the offence, and in which cases would the facts be criminalised in accordance with Art. 381 PC?

The question is not a trivial one, as the choice of one or other possibility gives rise to not inconsiderable differences in terms of penalties. The crime of attempted homicide would range between 5-10 years imprisonment, while the penalty foreseen in art. 381.1 PC for reckless driving is 2-5 years imprisonment. How would it be justified that a subject who has driven with manifest disregard for the lives of others, producing an objective risk to life, could be punished by the more advantageous type of art. 381.1 PC? If the objective and subjective elements of the eventual malice concur in assuming and accepting as highly probable that death is the result of his action, there would be no explanation of criminal policy that would move him away from crimes against life and towards crimes against safety, with the aforementioned penal advantage.

The type of Art. 381 PC would remain residual, applicable to intermediate situations between the intention to endanger provided for in Art. 380 PC and the eventual intention, in the form of qualified intention to endanger or guilt with an added reproach. We would be faced with a situation that is difficult to configure and complex to apply in practice.

Circular 10/2011 indicated in which cases, other than the suicidal driver, art. 381 PC should be applied. To do so, it was necessary to consider "the concurrent circumstances, the greater or lesser danger to third parties and the representations of the perpetrator derived from his conduct". Despite this effort, it is still truly complex to determine the conducts which, being different from the suicidal driver, go beyond Art. 380 and should be punished in accordance with Art. 381 PC.

[6] See, among others, SSTS 717/2014, of 29 January 2015 and 64/2018, of 6 February and the very recent STS 626/2025, of 3 July 2025.

6.2. QUESTIONING THE NEED FOR THE EXISTENCE OF THE QUALIFIED TYPE OF OFFENCE

Among the main criticisms that can be made of Art. 381, the following can be identified:

1. It includes an indeterminate legal concept: "manifest disregard for the life of others" which lacks a universally accepted definition. Subjective, objective and motivational theories have been developed to try to give content to the provision.

2. In order to determine whether there is "reckless disregard", one looks at indications that coincide with those of malice aforethought. Thus, in the most serious manifestations of art. 381 PC, the borderline with the crime of attempted murder is blurred, and the courts have opted to apply the latter, and not the crime against road safety. Although this solution is logical from a criminal-policy point of view, as it protects the most valuable legal asset with a penalty proportionate to the seriousness of the risk, it significantly reduces the scope of practical application of the specific offence.

3. If the same case can be classified according to Art. 138 and 381, there would be no reason to apply the offence in Art. 381 PC, which gives a clear penal advantage to the perpetrator. The fact that the situation of risk had been provoked by means of a motor vehicle or moped is not sufficiently solid for us to opt for 381 PC, as the vehicle can be taken as an instrument of the crime for the purposes of attempted murder.

The majority of doctrine and jurisprudence reserve art. 381 for cases in which the conduct is considered extremely dangerous, so that for an average person, the death of a person is probable, without being so serious as to be considered as an attempt under art. 138. They consider it to be an intermediate type between attempted murder and reckless driving under art. 380 PC.

In Olmedo's opinion (2010), if the driving results in a direct and immediate danger to someone's life, attempted murder should be considered. This circumstance, however, does not necessarily have to occur in the type of art. 381. He understands that this idea is reinforced by art. 381.2, which allows reckless driving in which there is only a situation of abstract danger, without the need for a concrete danger to occur. This possibility would never fit in with attempted murder.

7. CONCLUSIONS

The legislator responded to the social demand to severely punish the conduct of the "homicidal driver" by means of a specific type of offence: the offence of driving with manifest disregard for the life of others.

It is defined as a fraudulent offence of intent, of concrete danger, of mere activity and of permanent effects, whose configuration is based on the offence of manifest recklessness and which differs from it in the subjective element of the offence: the reckless disregard for the life of others. It is precisely this qualifying element that gives rise to many interpretative problems, since, in cases where the risk voluntarily produced for the life of third parties does not lead to harmful results, the line separating the crime against road safety from the crime of attempted homicide is blurred.

The problem regarding the delimitation of the two offences has far-reaching consequences, as the difference in penalties between the two is significant. This gives rise to clear legal uncertainty, as there are no unequivocal criteria and the same case can lead to different solutions, without there being any criminal-policy reasons to defend the application of the most advantageous type. Therefore, the interpretative difficulty goes beyond the theoretical framework to have a direct impact on judicial practice and the predictability of sentences, generating possible significant differences in the application of the penalty between different courts.

In cases in which, as a consequence of the offence of art. 381, an injurious result is produced, the special concursal rule foreseen in art. 382 PC comes into play, a rule of special transcendence in offences against road safety, the application of which has given rise to doctrinal controversy in matters of road crime and disparities in judicial rulings. In contrast to those who argue that we are faced with a concurrence of rules, there are those who classify it as an ideal, medial or real concurrence. The decision to apply one or other type of concurrence goes beyond the mere doctrinal debate, and is of paramount importance in terms of the penal outcome.

The Supreme Court consolidated the interpretative criterion by affirming that Article 382 of the Criminal Code contemplates a concurrence of offences which, although it is close to the solution of the concurrence of norms by attending to the most serious offence, poses a special penological rule which adopts the solution of the ideal concurrence of offences.

Given the problems of application posed by this type of criminal offence, it is necessary to propose new scenarios that contribute to offering security to legal operators, by means *of lege ferenda* proposals. A conservative proposal would involve seeking an interpretative unity of the precept by means of a Circular of the FGE and an Agreement of the non-jurisdictional Plenary of the Second Chamber of the Supreme Court in which it would be indicated which external signs would concur in the offence of Art. 381 and not attempted murder. This would provide a kind of guide for legal operators, similar to the German model, but with an indicative and not closed character.

However, the most practical solution would be to delete the provision. The legal uncertainty that comes with not knowing with certainty whether one is dealing with an offence that has been transferred back to Art. 138 or 381 PC would disappear if the possibilities were reduced to Art. 380 and 138 PC. Article 380 would be limited to driving with manifest recklessness in which the eventual intention in the result is not clearly appreciated due to the limited possibilities of it occurring given the concurrent circumstances, whereas, if it were apparent, the crime of attempted murder would be applied (Article 138 in relation to Article 16 PC). A wider range of penalties in Art. 380 would make it possible to match the penalty with the seriousness of the act.

The current wording causes Art. 381 PC to include cases which imply an acceptance of the risk of killing, as is the case in the hypotheses of driving against the law at high speed or carrying out illegal races in the city without paying attention to the basic rules of the road. The existence of the offence becomes unnecessary as these cases could be covered by Art. 138 of the Penal Code. In addition, the legislator does not offer a definition of what should be understood by "manifest disregard", which leads to legal uncertainty and results in disparate rulings by the courts. The disappearance of the

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definition, as we advocate, would entail the elimination of an indeterminate legal concept. In this way, we would align ourselves on this point with German and Italian law by not recognising an autonomous type of fraudulent endangerment.

In short, the study shows the need to balance the protection of such relevant legal assets as life and road safety with regulatory certainty and coherence in the application of criminal law.

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Research Article

THE ISKP AS A COMMUNICATIVE ACTOR: PROPAGANDA STRATEGIES AND THE CONSTRUCTION OF POWER

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DEDICATION

To CITCO for trusting me and for giving me the opportunity to carry out a research stay at the centre and to all the professionals who work daily in the fight against jihadist terrorism.

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THE ISKP AS A COMMUNICATIVE ACTOR: PROPAGANDA STRATEGIES AND THE CONSTRUCTION OF POWER

Summary: 1. INTRODUCTION. 2.ESTADO DE LA CUESTIÓN. 2.1. Origin and evolution of the ISKP. 2.2. Emerging propaganda by the ISKP: the case of *Al Azaim*. 3. 3. RESULTS. 4. CONCLUSIONS AND PROPOSALS. 5 BIBLIOGRAPHICAL REFERENCES.

Abstract: The Islamic State of Khorasan Province (ISKP) has emerged as a key communications actor within the global jihadist ecosystem, using propaganda as a strategic tool to expand its influence and consolidate its power. Since the Taliban returned to Afghanistan in 2021, the ISKP has intensified, as a Da'esh subsidiary, its regionalization and internationalization strategy, extending its reach beyond Central and South Asia to the West. This expansion has been reflected in a sophisticated media network, which includes its reference platform *Al Azaim*. In this article, and within the framework of a research stay at the Centre for Intelligence against Terrorism and Organised Crime (CITCO), it will analyse one of Da'esh's most important magazines, because it is typically published in English: *Voice of Khurasan* magazine, as well as the recent *Light of Darkness* newsletters that emerged from it. The purpose of all this is to compare the thematic content of the seven issues published so far, as well as to draw parallels with the producer's own broadcasts in those months. Consequently, and under the premise that these media have a different focus, the question will be answered: What communicative strategies does the ISKP use to position itself as a relevant actor within the global jihadist panorama?

Resumen: El Estado Islámico de la Provincia de Jorasán (ISKP) ha emergido como un actor comunicativo clave dentro del ecosistema yihadista global, utilizando la propaganda como herramienta estratégica para expandir su influencia y consolidar su poder. Desde el regreso a de los talibanes a Afganistán en 2021, el ISKP ha intensificado, como filial de Da'esh, su estrategia de regionalización e internacionalización, ampliando su alcance más allá de Asia Central y del Sur hacia Occidente. Esta expansión se ha visto reflejada en una sofisticada red de medios, donde se incluye a su plataforma de referencia *Al Azaim*. En este artículo, y bajo el marco de una estancia de investigación en el Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO), se va a analizar una de las revistas más importante de Da'esh por la particularidad de que suele publicarse en inglés: la revista *Voice of Khurasan*; además de los recientes boletines de *Light of Darkness* que emergieron a partir de esta. Todo ello con el propósito de comparar los contenidos temáticos en los siete números hasta ahora publicados, además, de marcar un paralelismo con las difusiones propias de la productora en esos meses. Por consiguiente, y bajo la premisa de que estos soportes tienen un enfoque diferente, se dará respuesta a la pregunta: ¿Qué estrategias comunicativas utiliza el ISKP para posicionarse como actor relevante dentro del panorama yihadista global?

Keywords: Terrorism, ISKP, Al Azaim, propaganda

Palabras clave: Terrorismo, ISKP, Al Azaim, propaganda

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ABBREVIATIONS AND ACRONYMS

ACLED: *Armed Conflict Location and Event Data (Armed Conflict Location and Event Data*)

CIA: *Central Intelligence Agency* CITCO: Counter Terrorism and Organised

Crime Intelligence Centre DHS: Department of Homeland Security

USA: *United States of America*

EU TE-SAT: *EU Terrorism Situation and Trend Report EU* TE-SAT: *EU Terrorism Situation and Trend Report*

FCSE: State Security Forces HN: Haqqani Network

AI: Artificial Intelligence

IP - *Internet Protocol*

ISAF: *International Security Assistance Force ISAF: International Security Assistance Force*

ISGS: *Islamic State Greater Sahara* (ISGS)

ISKP: *Islamic State of Khorasan Province* (*Islamic State of Khorasan Province*)

ISS: *Islamic State of Somalia* UN: United Nations

NATO: North Atlantic Treaty Organisation

SATP: *South Asia Terrorism Portal* (in English, *South Asia Terrorism Portal*)

TTP: Tahreek e-Taliban Pakistan

UNECI: Unit for the Removal of Illicit Content

USCENTCOM: *United States Central Command*

VPN: *Virtual Private Network.*

1. INTRODUCTION

Jihadist terrorism is a threat to global security today. Despite the complexity of defining this phenomenon from an international perspective, this article will be guided by the characteristics that make it up, according to Calduch (2011, p. 13): "(a) it is a political strategy of political relationship; (b) this strategy is constituted from the combination of violence and threats of violence; (c) it is carried out by an organised group"; in addition to: "(d) it has the immediate purpose of provoking a feeling of terror or extreme insecurity; (e) in a non-belligerent collectivity and (f) the ultimate objective of this strategy is to facilitate the achievement of the demands of the organisation that practices it".

We will also take into consideration the contribution of other authors such as De la Corte (2013, p. 5), who says that terrorism tends to be defined as a phenomenon that makes use of violence and, by extension, also extends to "those individuals, groups and organisations that practice it systematically". In this sense, violence appears historically, according to Fernández (2022), as the vehicle for terrorism. Similarly, other points of view to understand terrorism are, as Cutrale (2019) indicates, the historical and political aspects; and, in particular, the psychological factors of the individual who commits the attack. In the author's words, the latter would make it easier to understand the personality of the terrorist and the reasons why he or she commits the attack. However, Hoffman and Hoffman (1995) (cited in Hodge, 2019, p. 229), reiterate that "terrorism is defined by the nature of the act, not by the identification of the perpetrators or the nature of the cause".

As Montes (2021) and Zelin (2013) explain, jihadist terrorism has moved from the use of simple websites (such as the first founded by Al Qaeda in the 1990s: *Azzam.com*) to increasingly encrypted platforms and social networks with the aim of going unnoticed by state security forces (FCSE). One of the current terrorist groups is the ISKP, which together with the *Islamic State Greater Sahara* (ISGS) and as indicated in DSN (2025), makes Da'esh one of 'the most active and lethal organisations, operating as a global network in multiple regions of the Middle East, Africa, Asia and Europe'. Far from the traditional propaganda of jihadist terrorism to recruit new followers, the ISKP, through the *Al Azaim Foundation* (hereafter simply *Al Azaim*), has disseminated a series of supplements aimed at equipping fighters with tools to deal with the internet revolution and the use of new applications. This production company has been mentioned in the latest *EU Terrorism Situation and Trend Report* (EU TE-SAT) (2025) as one of those commissioned by Da'esh to produce original propaganda and to republish existing propaganda in alternative formats that appeal to users.

For this research, as explained in the previous paragraphs, the starting point has been to consult several authors that allow us to concisely and clearly define the term "terrorism", as well as to understand and differentiate the phases of terrorist groups on the Internet. Likewise, in order to learn about the origin and evolution of the ISKP, the bibliography of experts in the field has been taken into account, such as Calvillo (2023), Setas (2015),

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Beradze (2022), Jadoon et al. (2024), Minniti (2025) and the assessment of the Victims of Terrorism Memorial Centre (2025). In addition, for the number of ISKP attacks and deaths in Afghanistan, the figures provided in the *South Asia Terrorism Portal* (SATP) have been consulted, in addition to those provided in Jadoon et al. (2024). On the other hand, as far as *Al Azaim* is concerned, in addition to noting that the EU TE-SAT (2025) has made reference to the producer, Jadoon et al. (2024), Soliev (2023), Vox-Pol (2025), Weiss and Webber (2024) have been consulted, as well as observing the content published through direct observation. In addition, semi-structured interviews were conducted with Manuel Gazapo [1]and Hamed Wahdat Ahmadzada [2]. The main objective of the study was to analyse the thematic and narrative contents of the supplements of *Light of Darkness*[3]and the magazine *Voice of Khurasan*, as well as the broadcasts on the same dates[4]by *Al Azaim* itself.

To guide this research, the following question is posed: What communicative strategies does the ISKP use to position itself as a relevant actor in the global jihadist landscape? To answer this question, the main hypothesis is that the visual aesthetics and narrative of ISKP propaganda is designed to compete symbolically with that of other jihadist groups through different strategies defined in each medium, appealing mainly to a young and digitised audience. To this end, the specific objective of determining the type of audience in the communicative strategy of both the magazine and the newsletters and broadcasts of the ISKP's production company is also established, considering various factors, such as linguistic, cultural and geographical factors.

In terms of methodology, this study was carried out using a qualitative approach based mainly on the content analysis of propaganda and communication materials attributed to the ISKP. On the one hand, an exhaustive bibliographical review was carried out in order to understand the origin, evolution and threat posed by this terrorist group, as well as to contextualise its propaganda within global jihadism. On the other hand, a documentary compilation and observation of the cases analysed was carried out during a research stay at the Illicit Content Removal Unit (UNECI) of the Centre for Intelligence against Terrorism and Organised Crime (CITCO)[5].

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[2]Said Hamed Wahdat Ahmadzada holds a PhD in Political Science from the UAM and is a former career diplomat in Afghanistan.

[3]The *Light of Darkness* archives appear inside issues of *Voice of Khurasan* magazine. For this reason, and as will be discussed below, they are referred to as 'supplements' in this article.

[4]The dates on which the *Light of Darkness* bulletins were detected in their publications have been taken as reference: July 2023, March 2024, May 2024, September 2024, January 2025, March 2025 and June 2025.
2025 and June 2025.

[5]Permission is granted to use the material under study for the purposes of this analysis. The research stay at the site started on 10 July 2025 and, from that date until 2025, the study will continue until 2025.

Having marked the above, the study ends with an exposition of results and conclusions in order to learn about the thematic differences and similarities between *Voice of Khurasan*[6], *Light of Darkness* and the broadcasts of *Al Azaim* on the same dates. As for the latter, and because it is an emerging series of bulletins, it will be observed that it not only pursues an external objective of recruiting new fighters, but also has an internal objective as a mechanism of ideological cohesion among its members.

2. STATE OF PLAY

2.1. ORIGIN AND EVOLUTION OF THE ISKP

A year after the proclamation of the Caliphate by Da'esh (2014) is the beginning of the presence of its subsidiary in Central and South Asia, the ISKP, in countries such as Afghanistan, where, according to Calvillo (2023), after the return of the Taliban to power in 2021, its violent actions have been growing. Da'esh's presence in the region began, according to Setas (2015), with graffiti in September 2014 by the terrorist group in cities in Khyber-Pakhtunkhwa (a Pakistani city on the border with Afghanistan) and in the areas most affected by terrorism. Later, pamphlets supporting the terrorist group's ideals arrived in Afghan refugee camps, for example, *Fateh*, with twelve pages in black and white (Setas, 2015).

The emergence of the ISKP takes place, as Beradze (2022) explains, from the merger of some fighters of the Tahreek e-Taliban Pakistan (TTP)[7], Al Qaeda and the Taliban in Afghanistan and Pakistan; and begins with Hafiz Saeed Khan as leader under the appointment of Abu Bakr al-Baghadi with the philosophy of Da'esh[8]and with the purpose of creating an international caliphate under Islamic jurisprudence where the main motto, as explained by Beradze (2022), is summarised as persistence and expansion; in addition to calling on all Muslims to join the new Caliphate. The passage through different terrorist organisations in Afghanistan is seen by Ahmadzada (personal communication, 3 September 2025) as "common" because "they change sides according to their interests and the kind of pressure exerted".

The first terrorist attack claimed by the ISKP took place in April 2015, as Setas (2015, p. 7) points out: "A suicide bomber blew himself up in front of a bank in the Afghan city of Jalalabad, killing 35 people. Shahidullah Shahid, himself a former Da'esh spokesman, claimed responsibility for the attack'. It was in that year that, according to Ahmadzada (personal communication, 3

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the closing of this *call for papers*, access to the collection of this content has been made available. It is also reported that the traceability of the material has been omitted for security reasons.

[6]The name, *Khurasan*, refers to the ancient Persian region of Khorasan, which today is drawn from parts of Iran, Afghanistan, Pakistan and parts of southern Central Asia.

[7]They were Saeed Khan from Orakzai, Daulat Khan for Kurram, Fateh Gul Zaman from Khyber, Mufti Hassan from Pashawar and Khalid Mansoor from Hangu; in addition to the leader Maulana Fazlullah and spokesman Shahihullah Shahid. The latter wanted to make it clear that he was not acting on behalf of the TTP, but from a personal position (Setas, 2015).

(8) [In]order to avoid misinformation, it is made clear from the outset that Da'esh and the ISKP are not independent terrorist organisations. One could say that Da'esh is the parent organisation that encompasses a number of *wilayas* (provinces), or, in other words, affiliates; among them, the ISKP.

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September 2025), the ISKP was detected by the security forces of the former Afghan government and by the North Atlantic Treaty Organisation (NATO) as "a potential threat" where it was seen as a "collaborator that complemented the activities of the Taliban in certain areas". In other words, he explains, at the beginning of the attacks it was difficult to identify the perpetrator because "there was close collaboration between groups and the threat to all of them was NATO, the Western presence and the then government of Afghanistan". However, it was not until the attack on Hamid Karzai International Airport (26 August 2021) that, according to Gazapo (personal communication, 2 September 2025), "the world identifies it as a threat, even though it existed before".

Specifically in Afghanistan, ISKP activity is differentiated into two phases as can be seen in Calvillo (2023). The first (2011-2015) due to the announcement of the withdrawal of the *United States* (US) and the end of the *International Security Assistance Force* (ISAF), led since 2003 by NATO; and the second phase (between 2016 and 2021) led by the Doha Agreements between the US and the Taliban with the aim of the permanent withdrawal of international troops from the country, which caused, according to Calvillo (2023, p. 23), "a split in the insurgent movement".

Looking at the latest updated data from 17 September 2025 provided by SATP (2025), the ISKP appears among the active terrorist groups along with the Taliban, the TTP and the Haqqani Network (HN). Also, from SATP (2025) it is seen that the ISKP has committed a total of 23 attacks in Afghanistan since 2021[9]. However, if we follow the data provided by Jadoon et al. (2024), the figures are exponentially different. According to these authors and based on the *Armed Conflict Location and Event Data* (ACLED), attacks claimed by the ISKP in Afghanistan and Khyber Pakhtunkhwa (Pakistan province) have been as follows: 353 attacks in 2021, 217 (2022) and 45 (2023); and the number of deaths at the hands of this terrorist group was in 2022 100 killed and in 2023 74 killed.

The *modus operandi* of the ISKP, as Calvillo (2023) explains, is mainly drawn in the area of the former Persian region of Khorasan (hence the name of the terrorist organisation). It is in areas close to the Pakistan border that the author explains that ISKP cells "are located in remote and difficult to access places" (Calvillo, 2023, p. 30). From its inception until 2022, the attacks perpetrated by the ISKP were mainly located, according to Ahmadzada (personal communication, 3 September 2025), in the area bordering Pakistan. From that year onwards, he notes that the terrorist group began to attack further afield, such as Kandahar (in the south of the country), in addition to carrying out attacks in Pakistan. However, Jadoon et al. (2024, p. 2) mark 2020 as the year in which the terrorist group begins to carry out transnational attacks, and thus assert that this "can be seen as the organisation

[9]It should be noted that this data portal begins to count incidents by the terrorist group from that year onwards and, as can be seen on its website, from 2018 until 2022 there is a section on attacks by Da'esh (ISKP's parent company).

meets the structural thresholds necessary to sustain a foreign operations campaign"[10].

When asked whether the ISKP can carry out attacks in the West alone like its own parent, Ahmadzada (personal communication, 3 September 2025) says that it shares Da'esh's aspirations, but nevertheless, on its own, the group does not have the same impact and logistical support. Thus, he argues that the different Da'esh affiliates, such as the ISKP, pursue the same goal of global jihad and rather than acting individually, they complement each other and avoid imposing themselves on each other: "It could be a threat as long as it collaborates with the others".

This concern is identified, as stated by Jadoon et al. (2024), by the commanding general of the *United States Central Command* (USCENTCOM), Michael Kurilla, who in 2023 stated that the ISKP's ultimate goal is to attack US national territory, but that attacks in Europe were more likely. Regarding the latter, the Victims of Terrorism Memorial Centre (2025), through its 2024 assessment, identifies the group as one of the main threats on European territory with a presence in Spain[11]. This document refers to the attack of 22 March 2024 by the ISKP at Moscow's Crocus City Hall[12]and how, after committing it, the terrorist group orchestrated a threatening propaganda campaign in its magazine *Voice of Khurasan*, which featured Vladimir Putin's face on the cover with the phrase "The Bewildered Bear"[(13)] ,as well as the phrases "Welcome to Europe" and "Last call before leaving"[(14)] (see Figure 1).

According to Calvillo (2023), the ISKP group is mainly made up of militants disappointed with the Taliban, but also of fighters from other countries with a common denominator: they declare themselves to be opponents of the Taliban mainly because of their approach to negotiating with the US, accusing them of abandoning the idea of a global Jihad that fights the West. Currently, Beradze (2022) affirms, with data from June 2021 from the United Nations (UN), that the ISKP has between 1,500 and 2,000 fighters in Afghanistan, who are organised on the basis of a hierarchical structure. According to the author, the head of the ISKP is appointed by the central wing of Da'esh and its leadership structure comprises a council of advisors (the *Shura*); furthermore, "senior positions are held by provincial commanders and leaders responsible for various functions of the ISKP bureaucracy" [(15)] (Beradze, 2022, p. 3). For Ahmadzada

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[10]Author's translation from the original: "may be viewed as the organisation meeting the necessary structural thresholds to sustain a foreign operations compaign".

[11]The balance sheet issued by the Victims of Terrorism Memorial Centre (2025) states that there have been two arrests of suspected links to this terrorist group. The first case was in March 2024 in Barcelona with the arrest of a young man for disseminating explosives material and manuals; and the second arrest took place four months later in three different cities with eight detainees who were being radicalised with ISKP propaganda.

[12]According to Ahmadzada (personal communication, 3 September 2025), the terrorists who orchestrated this attack were of Tajik origin and were trained in Afghanistan.

[13]Author's translation from the original: "The bear bewildered".

[14]These statements appear in issue 34 of *Voice of Khurasan* (published in April 2024) from an audio transcript of Da'esh spokesman Abu Hudaifah al Ansari.

[15]Author's translation from the original: "high positions are held by provincial commanders and leaders responsible for various functions of the ISKP".

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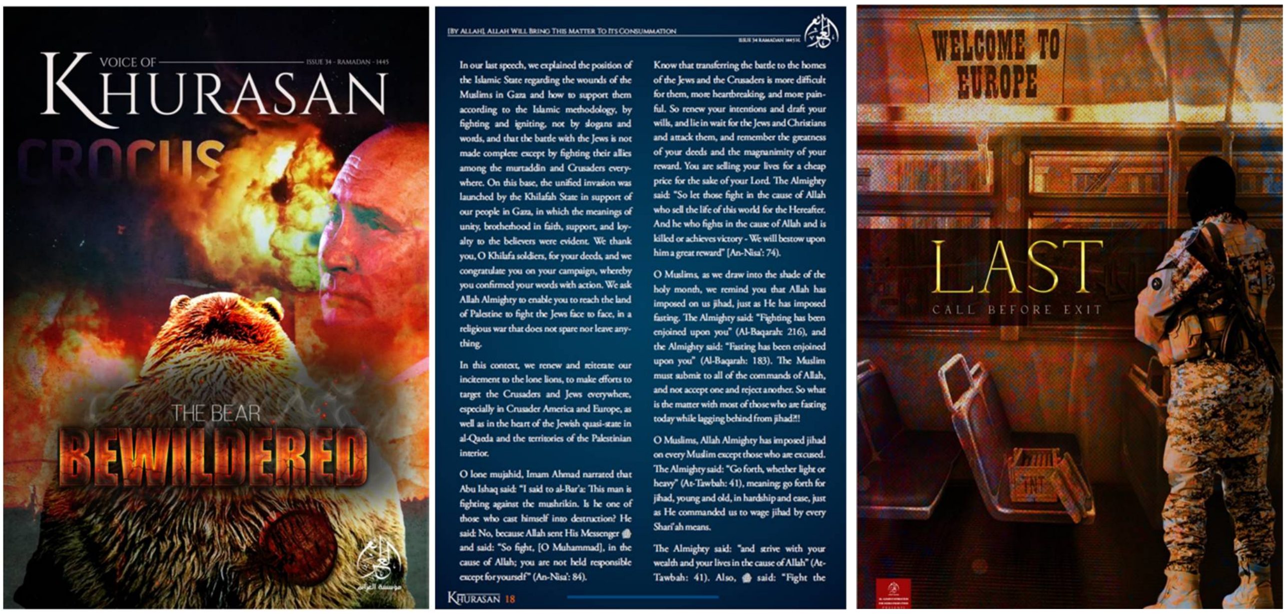
(personal communication, 3 September 2025), the figure of the leader is important "because he dictates the hierarchy" and, in the case of the ISKP, he claims that they are "more fragmented and chaotic" than traditional terrorist groups and are mainly composed of fighters in their 20s and 30s.

Figure 1

Cover of Voice of Khurasan after the attack on Moscow's Crocus City Hall (issue 34, April 2024), page encouraging attacks on European soil (p. 18) and page 18). European soil (p. 18) and page with the phrases 'last call before leaving' and 'welcome to Europe' (p. 83).



Original publications

Regardless of the above, there is a debate about how to differentiate between "mujahedin", "Taliban" and "Da'esh". In Ahmadzada's view (personal communication, 3 September 2025), these are different names, but with a common goal: to be violent and disruptive. However, he explains that today the purpose of the ISKP and the Taliban is not the same: while the former seeks to destabilise Afghanistan and prevent Western presence in the country, the latter seeks international recognition. Similarly, there is a distinction between the ISKP and the Taliban in their communication strategy. For Ahmadzada (personal communication, 3 September 2025), the Taliban use the idea of "We are not Da'esh. The enemy is Da'esh and we can work together to finish him off"; and Da'esh recruits new followers with the notion of "We are the defenders of pure Islam and therefore we are against this government".

On the other hand, as has been made clear above, the ISKP is within Da'esh as an offshoot, and thus its propagandistic and operational goals and techniques do not differ. However, there is a small difference between the two: while Da'esh seeks a global jihad from the outset, the ISKP focuses primarily on the Khorasan region, but without losing sight of the organisation's overall goal: "The approach is expansionist because otherwise it would not be Da'esh" (Gazapo, personal communication, 2 July 2007).

September 2025). For Gazapo (personal communication, 2 September 2025) there are three main points that differentiate the ISKP from the Taliban: while the former has the international aspirations of its parent organisation, has fewer resources and uses a powerful digital technique; the latter has a regional focus, has better military capabilities and its digital technique is based on being able to trade with the world and give a good image.

In terms of propaganda, Gazapo (personal communication, 2 September 2025) states that the ISKP knows its target audience and their trading needs. On this point, according to Ahmadzada (personal communication, 3 September 2025) the terrorist organisation uses two main methods of recruitment: 1) through word of mouth in isolated areas with difficult access to education in order to recruit young people to "give them hope"; and 2) the use of technologies in order to unite its ranks with followers beyond its borders. Regarding the latter, the ISKP has made use of Artificial Intelligence (AI) with two main objectives, according to Minniti (2025): 1) to recruit new fighters with personalised propaganda, automating interactions and evading surveillance, and 2) to simulate human conversations by creating a human conversation by creating a 'human conversation simulator'.
2) to simulate human conversations by creating compelling content through the use of *chatbots* and *deepfakes*.

According to the author, the ISKP's use of AI is currently based on three lines of action: 1) creating animated content for children, 2) propagating messages on social networks with coordinated campaigns, and 3) translating propaganda. As an example of propaganda generated by the ISKP, Minniti (2025) elaborates a table of key moments where there are, for example, the news bulletins generated by the AI after the attack on Moscow's Crocus City Hall (See Figure 2).

Figure 2

News bulletin generated by the AI on behalf of the ISKP after the attack on Moscow's Crocus City Hall (April 2024).

Source: Minniti (2025)

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2.2. EMERGING PROPAGANDA IN THE ISKP: THE CASE OF *AL AZAIM*

2.2.1. *Al Azaim* as an official ISKP producer

From traditional ISKP propaganda, the group began in late 2021, as Jadoon et al. (2024) explain, to translate content into Tajik and Uzbek through channels linked to *Al Azaim* and a year later, the authors claim that the foundation became the ISKP's centralised media outlet and began to diversify the languages in its media products. To these ideas, Soliev (2023) adds that *Al Azaim* started its operation in 2021 in Afghanistan with three main languages: Pashto, Dari and Arabic. Subsequently, the production company, with the aim of expanding its propaganda beyond Afghanistan's borders, added, according to the author, other languages such as English, Hindi, Malabar or Urdu to the content it regularly broadcasts through its Telegram channels.

However, Weiss and Webber (2024) point out that regardless of the fact that 2021 was the year in which *Al Azaim* became the official media outlet of the ISKP, prior to that, the production company was in the hands of sympathisers operating externally. Furthermore, the authors explain that the role of *Al Azaim* goes beyond producing content for the terrorist organisation, and that, according to both, the production company maintains formal relations with other Da'esh media, such as, for example, with *Al Hijrateyn*, the content producer of the affiliate in Somalia (*Islamic State of Somalia*, ISS) and was involved in its admission to the pseudo-group that follows the ideals and objectives of Da'esh and translates propaganda into more than 20 languages: *Fursan al Tarjuma*.

The first detected content published by *Al Azaim* was mainly based on *Voice of Khurasan* broadcasts and translations. These are both new issues of the magazine and rediffusions of them. In 2022 and just months after its launch as the official media of the ISKP, the content disseminated by the production company consisted of issues of *Voice of Khurasan* (18 occasions), translations (7), PDF documents (1), videos (1) and infographics (1). Regarding the latter, it was in September of that year that the publication of an infographic by the ISKP's production company was first reported. It was a design that encouraged attacks on embassies in Afghanistan. A year later, it can be seen that the number of detected content continued to rise: *Voice of Khurasan* issues (14 occasions), translations (11) and videos (7).

In 2022 is the only time that *Al Azaim* is known to publish the magazine *Khurasan Giz*, which is written in Pashto and talks about jihad and the close relationship between the Taliban and the Central *Intelligence Agency* (CIA). On its cover, the organisation decided to include the face of one of its leaders, Mahmoud Shaheen. However, this was not the only publication apart from *Voice of Khurasan*; in January 2023, the latter was found to have its own magazine dedicated to the religious, political, moral, literary and jihadist spheres. It was in July 2023 when, within *Voice of Khurasan*, the ISKP first published *Light of Darkness*, in a month in which it published a statement in Pashto about the burning of the Koran in Sweden.

In 2024, the number of content detected by *Al Azaim* increased considerably and covered other typologies: issues of *Voice of Khurasan* (11 occasions), infographics (46), press releases (2), videos (2) and PDF documents (6). In March, May and September of that year, coinciding with the second, third and fourth publications of *Light of Darkness*, in addition to the dissemination of the *Voice of Khurasan* magazine*, Al Azaim* disseminated[16]a communiqué, a video and 15 infographics[17]. As for the latter, ten of them were about questioning the Islamic Emirate of Afghanistan with messages such as that the Taliban receive aid from countries like the United States, that they accept the principles of democracy in a system of disbelief or infographics based on threats of attacks on the US.

Meanwhile, according to the *briefing* published by Vox-Pol (May 2025), new *Al Azaim* messaging channels were detected in May 2025, such as the pro-Da'esh forum *khurasan.lion.* As reported in the document, this forum is on TechHaven and Telegram in both English and Turkish and all have been inactive since April, with one of the latest messages from a user on TechHaven being: "Brothers, *khurasan.lion* was responsible for the cryptocurrency wallets, and now the funds have disappeared.
What happened to the *zakat*[18]that our trusted brothers donated?"(19) (Vox-Pol, 2025, p. 1). Similarly, the research notes that in this timeframe, Da'esh supporters were concerned about the number of arrests, linking it to the fact that SimpleX, a decentralised messaging network platform, is not as secure as they think it is, as they show the possibility that they can be identified by *Internet Protocol* (IP) address.

For its part, from January to June 2025(20) ,*Al Azaim* has disseminated, in addition to *Voice of Khurasan* publications (4 occasions), infographics (16) and videos (3). In January and March, coinciding with the fifth and sixth editions of *Light of Darkness*, the ISKP's production company released a total of seven infographics. To mention a few examples, one of them focused on targeted European and US events, including the San Fermin festival in Spain; another one criticised Al Jolani and another one encouraged people to donate cryptocurrencies to the cause.

2.2.2. *Voice of Khurasan* magazine

Since February 2022, the ISKP, through the production company *Al Azaim*, has published the magazine *Voice of Khurasan* with an unspecified periodicity and currently has 46 issues, making it the most important magazine in Da'esh because, unlike the weekly *Al Naba*, which is originally published only in Arabic, *Voice of Khurasan* is disseminated mainly in English (although the use of the Arabic language has also been detected in 2023).

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[16]Hereafter, the term 'disseminated' content refers to all the terrorist organisation's material that has been detected.
[17]Ten of these infographics coincided with the second anniversary of the Taliban's return to power and the September 2024 attack in Daikondi province, some 300 kilometres from Kabul.
[18]Obligatory alms in Islam. One of the five pillars of the religion.
[19]Author's translation from the original: 'Brothers, khurasan.lion was responsible for the cryptocurrency wallets, and now the funds have disappereared. What happened to the zakat our trusted brothers donated?"
[20]Data updated on 17 September 2025. Selected until June because the last issue so far of *Light of Darkness* was published in that month.

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Arabic and Pashto) and is the only magazine of the organisation that deals with different topics such as geostrategy and technology. *Voice of Khurasan* is structured as follows: 1) a section dedicated to a point of international geopolitics;
2) an exclusive feature on the topic carried on the cover; and 3) six articles where the topics vary and where *Light of Darkness* appears as a newsletter in the issues analysed.

At first glance it is reminiscent of the then Da'esh-edited *Dabiq*. It uses the same typography, colours and, in fact, a parallel can be seen between the cover of issue 2 of *Dabiq* and page 60 of issue 27 of *Voice of Khurasan* emulating Noah's Ark, although the latter has more elements and more striking tones (see Figure 3). This issue became the first time that this magazine was integrated into a *Light of Darkness* newsletter. Regardless of the theme of the latter, as will be discussed in the next section, the cover of this issue of the magazine bore the title "Why have their tables become so narrow" (Figure 4), criticising the Taliban's rapprochement with other international powers. In addition, this issue covers other topics such as: 1) support for the Sahel *wilaya*; 2) criticism of Israel and pro-Palestinian groups who, according to them, do not act; 3) the notion of putting an end to the idea of "Greater Israel"[21]and that, therefore, Islam and not Palestine alone must be defended; and 4) criticism of Sufism.

The second *Voice of Khurasan* analysed is issue 34 (see Figure 4). On the cover, the magazine features a bear with Vladimir Putin's face and the phrase "Crocus" coupled with fire effects, emulating the bombing of Moscow's Crocus City Hall. In addition to that main theme, the magazine covered others such as: 1) defending Muslims in Bangladesh; 2) what a woman in jihad should look like; 3) going against the International Coalition; and 4) attacking Europe. Two issues later, issue 36 of *Voice of Khurasan* takes on polytheism in India on its cover (see Figure 4) where, inside, it asserts that Muslims in India can only preach the message and claims that measures are being passed against them. Likewise, this issue includes other topics such as: 1) the reason for natural disasters lies in the fact that people make their laws without the *sharia*; 2) performing jihad during the feast of the lamb; 3) praising jihad and the *shahada*[22]; 4) asking for donations to the cause through cryptocurrencies; and 5) praising the figure of a series of women in Islam by asking the reader which one she represents herself with. Among them, this issue notably highlights Umm 'Amarah, who was, they explain, among the first female fighters and presents her as "a brave woman and mother" who encouraged "fighting polytheism" (Voice of Khurasan, no. 36, p. 19).

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[21]As the ISKP explains in this issue, Israel's plans are to attack not only Palestine, but to create "Greater Israel", a territory made up of part of Egypt, parts of Saudi Arabia and Syria; as well as part of Turkey and Iraq, and they affirm this by quoting Theodore Herzl, who is considered the father of political Zionism: "the area of the Jewish State stretches from the Brook of Egypt to the Euphrates" (Voice of Khurasan no. 27, p. 11). 11) (Author's translation from the original: "The territory of the Jewish State stretches from the Brook of Egypt to the Euphrates").
[22]The *shahada* is one of the five pillars of Islam and is the profession of Islamic faith in one God with the phrase "There is no god but Allah and Muhammad is his prophet". Da'esh is the only terrorist group that uses the *shahada* on its banner in this white-on-black manner with the shape of the prophet's ring in the centre. Such is its identification that globally, erroneously, this banner has been extended to the idea of jihadism as a whole.

Figure 3

Cover of issue 2 of Dabiq and page 60 of issue 27 of Voice of Khurasan.

Original publications

The fourth *Voice of Khurasan* analysed is issue 39, which has a throne with spider webs on its cover, making a simile with the Internet (see Figure 4). With the headline "The Spider's Web", this issue of the magazine is mainly about the actions of the International Coalition that, according to them, are taking over the resources of what they call the "Islamic world". All this, asserting that the Taliban are "mercenaries of the infidel global system"[23] (Voice of Khurasan no. 39. 28):

> "The global coalition and international powers that have occupied the Islamic world have plundered all the wealth and resources of the Islamic world (such as the oil and gas of the Arab world, the mines and minerals of South Asia, the gas of Central Asia and the abundant riches of Afghanistan) through these sea routes to Europe and the Western world" (Voice of Khurasan no. 39, 2024, p. 36)[24]

In addition to this main theme, this issue, within the geopolitical focus, calls for the protection of Kashmiri Muslims, especially targeting the youth. The magazine also discusses other topics such as: 1) testimonies of fighters that have been collected from *Al Bayan,* Da'esh's official broadcaster; 2) alliances with other groups that have sworn *Bay'ah,* the religious oath; 3) attacks in Germany (23 August 2024) and in Kabul (2 September 2024); 4) criticism of Qatar; 4) financing with cryptocurrencies; and 5) encouraging lone wolves to carry out attacks. Similarly, this issue of the magazine lists thirteen recommendations to follow to make a house resemble the garden of paradise, including abandoning sarcasm, continuing to recite the Quran, and reducing habits such as eating and sleeping too much.

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[23] Author's translation from the original: "mercenaires of the global infidel system".

[24] Author's translation from the original: 'The global coalition and international powers which have occupied the Islamic world have plundered all the Islamic world (such as the oil and petroleum of the Arab world, the mines and minerals of South Asia, te gas of Central Asia, and the abundance riches of Afganistan) through these maritime routes to Europe and the Western world'.

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The next issue of *Voice of Khurasan* analysed is number 43. In this issue, the cover of the magazine is composed of the burning Statue of Liberty in front of the silhouette of a child together with the phrase "They will see it soon"[25] (see 14). The main theme of the magazine is to point out the US as "complicit" in what is happening in Palestine, in addition to other themes such as: 1) highlighting the importance of the *Sharia*; 2) the testimonies of fighters that have been collected in *Al Bayan*; 3) calling Al Jolani a traitor; 4) identifying the tasks that should be done in winter, such as giving charity; 5) financing with cryptocurrencies; and 6) content dedicated to women, such as the manners that should be taught to children at mealtimes.

Meanwhile, issue 45 of *Voice of Khurasan* (See Figure 4) carries criticism of Iran and the Taliban as its main theme, as well as addressing: 1) the testimony of a jihadist in Australia; 2) identifying types of people "destined for hellfire", such as those who do not pray; 3) the benefits of digital storage and ways to protect digital data; 4) the use of "Monero" to finance; and 5) messages aimed at mothers and women such as the models they must teach their children to enter a house after the end of Ramadan.

Finally, for this research, issue 46 of *Voice of Khurasan* was analysed (see Figure 4). In this issue, the ISKP opted for a cover story pointing out the existence of a "*kuffar* blacklist" where they include the Taliban, in addition to other topics such as: 1) defence of the Caliphate; 2) criticism of Pakistan; 3) encouraging support for other fighters, even if they are in another country; 4) criticism of the TTP; and 5) financing through the Monero system or via Bitcoin. It is also the first time that the magazine includes *Light of Darkness* in the "Exclusive" section, which until now has been located in the "Articles" section.

It is also worth mentioning that in the table of contents of the analysed issues of the magazine, links to Telegram forums appear under various names, such as *khurasan.lion* (explained above). It has also been noted that these are not only forums, but that in issue 34 of *Voice of Khurasan* (second issue analysed) a link to Telegram Bot is included in the table of contents.

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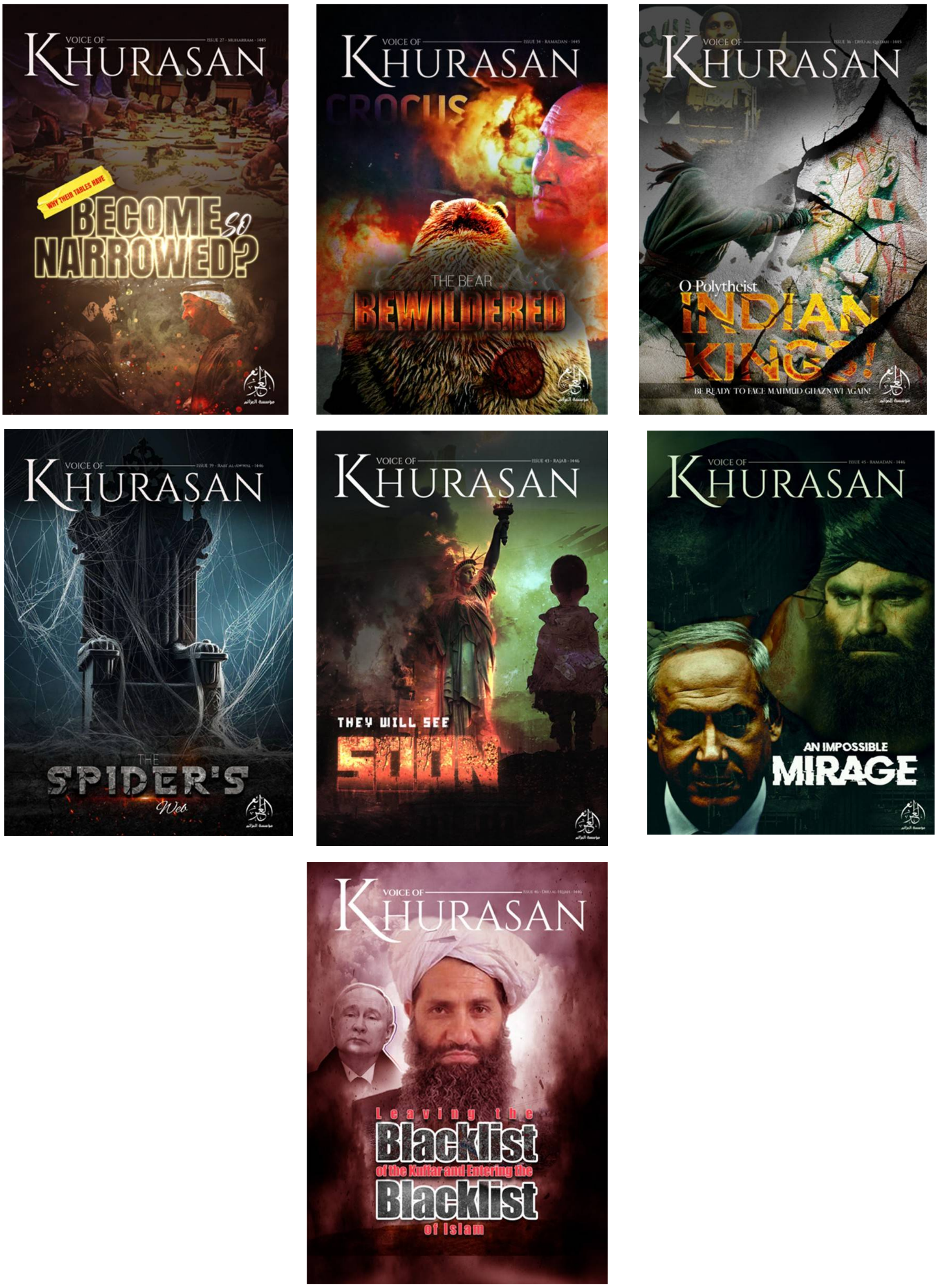
[25] Author's translation from the original: "They will see soon".

Figure 4

Covers Voice of Khurasan (in order, issue 27, issue 34, issue 36, issue 39, issue 43, issue 45 and issue 46)



Original publications

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2.2.3. The case of *Light of Darkness* as an example of internal ISKP jihadist propaganda

The publication *Light of Darkness* first appeared in July 2023 in issue 27 of *Voice of Khurasan* magazine. In this first issue, the newsletter was not numbered, unlike later issues, which incorporated sequential numbering starting with issue 2. To date, the ISKP has published a total of seven issues of *Light of Darkness* and six of its covers feature a hooded individual pretending to be a hacker. In addition, it makes use of three main colours - in different shades - along with the inclusion of different infographic elements that make up the covers: red, blue and green (see Figure 5).

The first issue, included in *Voice of Khurasan* No. 27 (July 2023), addresses the need for precaution in the face of potential cyber-attacks. Throughout the text, the organisation urges mujahideen not to fear the use of technology and highlights three main themes: 1) the safe use of the internet; 2) the identification of best practices in online browsing; and 3) the protection of personal data and digital footprints. This initial issue therefore aims to provide practical recommendations for the protection of personal information in digital environments.

The second issue, already numbered and included in *Voice of Khurasan* no. 34 (March 2024), delves into the concept of the digital footprint, differentiating it into active - derived from the generation of content - and passive - the result of merely surfing the web -, warning of its permanent and difficult-to-remove nature. In response to this risk, the organisation proposes measures such as the use of *virtual private networks* (VPNs) and the verification of links before accessing them. It also identifies six categories of actors that collect digital data, including governments, to whom it attributes the intention to monitor online activities. The publication frames these warnings in a logic of individual responsibility versus a collective goal, urging the organisation's followers to think before sharing personal information.

The third issue, published in *Voice of Khurasan* No. 36 (May 2024), maintains the emphasis on digital security, appealing to the need to avoid detection: "Therefore, brothers and sisters, be careful when sharing any data on social media" (p. 4)[26]. In this instalment, the focus is on the Facebook platform, explaining the mechanisms by which social networking companies collect data from their users and offering protection guidelines, such as the use of two-factor authentication and strong passwords.

Issues four, five and six, published between September 2024 and March 2025, focus on the role of social networks. The fourth bulletin, included in *Voice of Khurasan* No 39 (September 2024), analyses the reasons why certain content is removed from the internet, attributing this phenomenon to factors such as non-compliance with EU policies. The text draws parallels with the early days of Islam, comparing the restrictions on digital platforms with the restrictions on the Internet.

[26]Author's translation from the original: "So, my brother and sister, please be aware when sharing any of your data on social media platform".

sanctions imposed by the *Quraysh* to silence Muslim messages. In this context, seventeen recommendations are offered to avoid content censorship, including avoiding symbols, *hashtags* and keywords, as well as using encrypted messaging apps such as Telegram or Signal.

The fifth issue, published in *Voice of Khurasan* no. 43 (January 2025), focuses on privacy and security on Telegram, comparing it to other platforms such as Signal, Threema, WhatsApp, Rocket.Chat and Facebook Messenger. The comparison evaluates aspects such as encryption, data policies, self-destruction of messages, group capability, file sharing and the existence of messaging channels. In addition, the reasons why a Telegram account may be deleted are detailed and solutions are offered for each case.

The sixth issue, included in *Voice of Khurasan* no. 45 (March 2025), advises against the use of Gem Space, arguing that the platform lacks transparency regarding data management and sharing. The bulletin emphasises that the lack of clarity about how user information is collected, stored and shared poses a risk to the group's operations and to the security of its members. Based on this reflection, the ISKP reiterates the importance of conducting regular reviews of the digital tools used, fostering a culture of cybersecurity that is not limited to individual use, but extends throughout the organisation.

Finally, the seventh issue, published in *Voice of Khurasan* no. 46 (June 2025), introduces the topic of artificial intelligence, presenting it as a *fard al-ayn* (individual obligation) for the mujahideen. While highlighting the advantages of its use, it warns about the risks of interacting with *chatbots*, such as the lack of history deletion or the generation of content deemed inappropriate from their ideological perspective. The bulletin compares different AI tools - ChatGPT, Bing AI, Brave Leo and DeepSeek - and concludes that Brave Leo is the only service that, according to its assessment, offers sufficient guarantees of security and reliability for the handling of highly sensitive issues. This selection not only implies a technological preference, but also reinforces the idea that the mujahedin must be selective and strategic in its choice of digital media. In doing so, this seventh issue articulates a narrative in which AI is presented not as a mere tool, but as an instrument that must be consciously integrated into militant praxis, thus establishing a continuum between faith, technology and insurgent action.

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Figure 5

Covers of the Light of Darkness newsletters so far published in order of publication

Original publications

3. CONCLUSIONS AND PROPOSALS

The ISKP has established itself as a prominent player in the field of jihadist terrorism, especially in terms of communication and propaganda. As Ahmadzada (personal communication, 3 September 2025) points out, as part of its recruitment and ideological consolidation strategy, the Da'esh affiliate has used its official production company, *Al Azaim*, to deploy a carefully segmented propaganda machine both thematically and in relation to its target audience. This strategy reflects a sophisticated approach that goes beyond the mere dissemination of violent messages and aims to consolidate a political, religious and technological narrative that reinforces its image as a defender of 'pure Islam' and a relevant player in the global terrorist landscape.

In the last two years, the ISKP has developed its propaganda through three main channels: *Al Azaim*, *Voice of Khurasan* and *Light of Darkness*, each with specific functions and differentiated objectives:

- *Al Azaim* acts as the main channel for denunciation, mobilisation and symbolic or direct attack. Throughout the period analysed, it is observed that this medium has disseminated messages that include criticism of local and international actors, calls for action, direct threats and the identification of targets for attack in Europe and the US. In addition, it has issued geopolitical communiqués criticising the Taliban and other groups it considers rivals, consolidating its narrative of authority and leadership within the jihadist space. This line of propaganda is evidence of a direct and frontal communication approach, aimed at provoking response and generating alarm among both supporters and opponents.

- *Voice of Khurasan* focuses on the geopolitical and regional support dimension. Content published through this channel includes advocacy for specific *wilayas*, denunciation of international interventions and protection of Muslim communities in different countries, such as Bangladesh, India and Kashmir. Political analysis criticising state and international actors, promoting solidarity among fighters and legitimising ISKP operations within its area of influence are also featured. This channel functions as a vehicle to consolidate the group's regional legitimacy narrative, reinforcing the perception that the ISKP is a local actor with a global conscience.

- *Light of Darkness*, although linked to *Voice of Khurasan*, is clearly differentiated by its focus on cybersecurity and digital privacy. Its newsletters focus on educating fighters on how to protect their communications, how to browse the internet safely and how to avoid detection when sharing content. Topics covered include privacy in applications such as Telegram or Facebook and understanding new digital tools such as artificial intelligence. In this way, this approach demonstrates a level of technological sophistication that not only seeks to protect its followers, but also to consolidate the group's information control and improve the effectiveness of its propaganda operations.

The analysis of these three channels allows us to identify clear trends in the ISKP's communication strategy. First, there is an explicit segmentation by theme and type of audience: while *Al Azaim* focuses on mobilisation and attack,

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Voice of Khurasan consolidates the geopolitical narrative and *Light of Darkness* digitally instructs and protects fighters. This segmentation reflects an advanced understanding of strategic communication, but with a particular emphasis on the training and technical preparation of its followers.

Second, there is a generational shift in the target audience. Throughout the years analysed, messages include explicit references to digitised youth, suggesting that the ISKP is not only seeking to recruit new fighters, but to build a fan base adapted to the dynamics of contemporary digital communication. Minniti (2025) corroborates this trend, noting the use of AI to generate propaganda images and videos, which reinforces the group's ability to attract and hold the attention of a young, technologically competent audience.

Third, despite being a subordinate *wilaya* to Da'esh, the ISKP maintains a certain autonomy in terms of regional objectives. While the parent organisation promotes global jihad, the ISKP focuses its propaganda on issues directly related to its religion, including local conflicts, alliances with neighbouring *wilayas* and the protection of Muslim communities. This duality reflects a strategy that combines adherence to Da'esh's global narrative with the promotion of regional self-interest, a factor that differentiates the ISKP from other affiliates and reinforces its communicative identity from the jihadist terrorism framework.

Through the methodological analysis outlined at the outset, this study confirms the hypothesis put forward: the ISKP has developed a tripartite communicative strategy combining direct propaganda, geopolitical analysis and technological training, aimed at an increasingly young and digitised audience. The integration of the personal communications of experts (Ahmadzada and Gazapo) allows for a deeper understanding of the group's strategic segmentation, while documentary analysis of the three channels provides tangible evidence of the propaganda practices employed.

Based on these findings, several proposals and lines of future research are put forward. Firstly, it is essential to continue monitoring the evolution of the ISKP's propaganda machine, especially in relation to the incorporation of new technologies such as AI, image and video editing, and the use of emerging digital platforms. Secondly, it is proposed to analyse whether the group will maintain its traditional propaganda channels or adopt a diversification strategy that includes social networks and alternative media in order to increase its reach and effectiveness. Finally, it is suggested to investigate how thematic and generational segmentation affects the recruitment and retention of followers, as well as the group's resilience in the face of censorship and international monitoring.

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Research Article

TERRORIST PROPAGANDA IN THE DIGITAL AGE: FEAR, IDEOLOGY AND ONLINE RECRUITMENT

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TERRORIST PROPAGANDA IN THE DIGITAL AGE: FEAR, IDEOLOGY AND ONLINE RECRUITMENT

Summary: INTRODUCTION. 2. YIHADIST PROPAGANDA ONLINE. 2.1. Propaganda as the dissemination of fear. 2.2. 2.3. Propaganda as a means of recruitment. 2.3.1. Target profile. 2.3.2. Gendered strategies for online recruitment. 3.CONCLUSION 4. BIBLIOGRAPHICAL REFERENCES.

Abstract: The internet has transformed jihadist terrorism, becoming a key channel for propaganda, recruitment, and radicalization. Repeated exposure to violent content and ideological narratives normalizes violence and strengthens the commitment of vulnerable individuals, especially minors and young people, who seek identity, belonging, and purpose. Extremist groups exploit these emotional needs, adapting their strategies to less-regulated digital platforms and video games. Therefore, prevention requires a comprehensive approach combining technological monitoring, digital education, and the strengthening of individual and social protective factors, addressing both external agents and the internal vulnerabilities of individuals. In this way, Internet emerges as a strategic domain of conflict, where cybersecurity and digital behavior analysis are essential to counter violent extremism.

Resumen: Internet ha transformado el terrorismo yihadista, convirtiéndose en un canal clave para la propaganda ideológica, el reclutamiento y el miedo. La exposición repetida a contenidos violentos y a narrativas ideológicas normaliza la violencia y refuerza la adhesión de individuos vulnerables, especialmente menores y jóvenes, quienes buscan identidad, pertenencia y propósito. Los grupos extremistas explotan estas necesidades emocionales, adaptando sus estrategias a plataformas digitales y videojuegos menos regulados. Por ello, la prevención requiere un enfoque integral que combine vigilancia tecnológica, educación digital y fortalecimiento de factores de protección individuales y sociales, abordando tanto los agentes externos como la vulnerabilidad interna de los individuos. Así, Internet se perfila como un territorio estratégico de conflicto, donde la ciberseguridad y el análisis del comportamiento digital son esenciales para contrarrestar el extremismo violento.

Keywords: Propaganda, cyberspace, cyberpsychology, online recruitment, radicalization, dissemination of fear, extremist ideology, terrorism.

Palabras clave: Propaganda, ciberespacio, ciberpsicología, reclutamiento online, radicalización, difusión de miedo, ideología extremista, terrorismo.

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ABBREVIATIONS

ARPANET: Advanced Research Agency Network

BOE: Official State Gazette

BMC: BioMed Central

CP: Penal Code

CITCO: Centre for Intelligence against Terrorism and Organised Crime

CTED: Counter-Terrorism Committee Executive Directorate

CTC: Combating Terrorism Center

DGT: Dirección General de Tráfico

DHS: Department of Homeland Security

USA: United States

ECTC: European Counter Terrorism Centre

IS: Islamic State

FBI: Federal Bureau of Investigation

FCSE: State Security Forces and Corps

ISIS: Islamic State of Iraq and Syria ISIS: Islamic State in Iraq and Syria

ICCT: International Centre for Counter-Terrorism

NCP: Network Control Protocol

OIET: International Observatory for the Study of Terrorism

UN: United Nations

NATO: North Atlantic Treaty Organisation

RAE: Royal Spanish Academy

RAN: Radicalisation Awareness Network

RDL: Royal Legislative Decree

TCC: The Carter Center

TCP/IP: Transmission Control Protocol/Internet Protocol

ICT: Information and Communication Technologies

TOWs: Terrorist Operated Websites

EU: European Union

UNIR: Universidad Internacional de la Rioja

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INTRODUCTION

The origin of the Internet dates back to the 1960s, in the context of the Cold War, when the US Department of Defence promoted the development of a communications network capable of resisting nuclear attacks and guaranteeing the transmission of information between different computers, even in the event of the partial destruction of the network. As Cristina Martín Jiménez (2025) points out in *La tiranía de la mentira*: "this is how ARPANET (*Advanced Research Projects Agency Network*) was born, which initially connected four universities in California and Utah using the NCP (*Network Control Protocol*). Over time, the network evolved and, in 1983, adopted the TCP/IP protocol (*Transmission Control Protocol/Internet Protocol*), which allowed the interconnection of multiple networks and laid the foundations of what is known today as the Internet" (Martín Jiménez, 2025, p. 89).

However, what initially emerged as a strategic military project was gradually transformed into a tool of global reach, capable of profoundly modifying society and everyday life. A globalised, open and dynamic ecosystem emerged that has transformed communication, economy and culture on a global scale. However, cyberspace, while an instrument of progress, has become a breeding ground for new forms of conflict, including terrorism. In line with this, the North Atlantic Treaty Organisation (NATO), the European Union (EU) and various states, including the United States, Spain, France, the United Kingdom, Germany and Canada, officially recognise cyberspace as a domain of operations that requires strategic protection on a par with the traditional domains of land, sea, air and space. This recognition, reflected by Artillery Colonel Fuente Cobo (2022) in his article *NATO and Cyberspace: A New Domain for Operations,* was formalised at the 2016 Warsaw Summit and thus reflects the growing strategic relevance of cyberspace in contemporary conflicts.

Likewise, in relation to the aforementioned concept of cyberspace, Major General Argumosa Pila (2022), in his article *Impacto del Ciberespacio en las Guerras del Siglo XXI*, defines it as a global domain made up of Information and Communication Technologies (ICTs), as well as other electronic systems. Furthermore, from this perspective, the General highlights that one of the most relevant characteristics of cyberspace is that "it is a virtual environment without geographical limits in which vital activities for society take place and where crime, terrorism and espionage appear" (Argumosa Pila, 2022, p. 69).

In this new context, and in line with the General's statements (2022), terrorism - especially in its jihadist aspect - has found in the Internet a medium that allows it to operate without the traditional physical limitations. Thus, as early as 2006, the United Nations (UN) General Assembly report entitled *Uniting against terrorism* noted that 'the Internet is an excellent example of how terrorists can act in a truly transnational manner [...]'. Furthermore, the report mentions that "those who wish to use cyberspace for terrorist purposes can do so from virtually anywhere in the world" (General Assembly, 2006, p.14). Thus, the Assembly explicitly refers not only to the adaptation of this type of groups to the responses of states, but also to the need to develop security strategies adapted to this new scenario. Furthermore, the report mentions Security Council Resolution 1624 (2005), which provides the basis for criminalising incitement to acts of terrorism and proselytising for such purposes, including through the Internet (General Assembly, 2006, p.14).

Analysing the relationship between Islamist terrorism and the Internet is therefore a fundamental task today. However, in order to address this issue, it is relevant to start from the intersection between psychology and new technologies, i.e. digital psychology or "cyberpsychology". This discipline is the study of the interaction between technology and human behaviour, focusing on the influence of ICTs on the way society thinks, relates, communicates and behaves. Based on this, several studies have demonstrated the influence of digital stimuli on human perception and behaviour. In particular, Robert Boleslaw Zajonc, a social psychologist renowned for his research on emotions, cognition and social perception, showed in his paper *Attitudinal Effects of Mere Exposure*, published in the *Journal of Personality and Social Psychology*, that the repetition of a stimulus - even if initially disturbing - increases its familiarity and reduces the negative reaction, facilitating its acceptance (Zajonc, 1968, p. 1-27). This principle helps to understand why the dissemination of extremist content - or harmful content in general - via the Internet is so efficient for criminal groups, reaching an increasing number of users every day.

Based on this premise, the jihadist activities in the digital sphere that most take advantage of the effects of cyber-psychology are mainly concentrated on two axes: propaganda and online recruitment. The two are closely linked, given that, in the framework of global terrorism, propaganda has become consolidated as a tool as powerful as physical weapons, and whose function is not only limited to generating fear or legitimising ideologies, but also extends to recruiting and recruiting new members. In this way, as discussed in subsequent chapters, propaganda becomes a central instrument for the expansion and sustainability of this type of criminal organisation.

Thus, based on an analysis of cyberspace as a new domain of conflict and the study of its use as a means of disseminating violent content and jihadist radicalisation, this article explores how online propaganda and recruitment reconfigure traditional patterns of terrorism. It also aims to highlight the relevance of combining technological surveillance with the analysis of digital behaviour based on psychological and even gender aspects in order to optimise the work of the State Security Forces and Corps (FCSE) and Intelligence Services.

2. ONLINE JIHADIST PROPAGANDA

According to the UN General Assembly (2006), the propagandistic use of the Internet by jihadist groups has grown exponentially over the last decade. While in 1998 these groups had fewer than 20 websites, by the end of 2005 there were approximately one million active digital platforms dedicated to the dissemination of combat information and terrorist propaganda. The report also mentions that "some of the major recent attacks [such as 9/11 or 11M at the time] relied on information obtained from the Internet" (General Assembly, 2006, p.14). Torres Soriano (2014) even underlines that "the main members of the 11-M cell spent a great deal of time surfing the web, consuming content downloaded from the Internet and maintaining virtual communications with other key elements of the organisation" (Torres Soriano, 2014, p. 98).

In this sense, recent evidence of the evolution in the dynamics of jihadist propaganda in the digital environment can be found in the *Jihadist Terrorism Yearbook 2024*, published by the International Observatory for Terrorism Studies (IOTS). The report highlights *Operation Almuasasa*, an international intervention that represents the largest action in recent years against the online propaganda infrastructure linked to the Islamic State (IS), especially with regard to the so-called *Terrorist Operated Websites* (TOWs). The operation, which culminated on 11 June 2024 with a joint *takedown* action - a term that refers to the disruption, disabling or removal of illegal or harmful content on the internet - brought down the main servers used to disseminate propaganda aligned with ISIS. In this regard, the operation involved the participation of agencies such as the FBI and Europol, and in Spain it was led by the Special Central Unit No. 2 of the Guardia Civil's Information Headquarters. As a result, nine individuals were arrested in Spain in the towns of Algeciras (Cádiz), Almería, Tenerife and Girona. The detainees, originally from Morocco, Jordan and Palestine, were part of a network of media entities - which made up the structure known as "*Sarh al Khilafa*" - including the pro-Daesh website "*Fundación I'lam*", characterised by the publication of jihadist propaganda content translated into Spanish (OIET, 2024, p. 114).

In more concrete terms, the Royal Spanish Academy (RAE) offers several meanings of the term propaganda. However, in the context of this study, it is particularly relevant to understand it in two ways. Firstly, as the "action and effect of making something known in order to attract followers or buyers" and, secondly, as the "association whose purpose is to propagate doctrines, opinions, behaviour, etc.". In this sense, there is a direct link between the first meaning and the recruitment dimension, while the second meaning highlights the function of propaganda as an ideological instrument, reflecting the extent to which these organisations can operate as structures dedicated to spreading an extremist view of Islam, legitimising violence and consolidating a transnational community of radicalised believers.

Based on these definitions, three main motives behind the dissemination of propaganda by these groups can be observed: dissemination of fear, dissemination of extremist ideological narratives and, finally, recruitment. In this way, terrorist propaganda can be understood as the set of messages, images, symbols and narratives distributed with the purpose of intimidating societies, demoralising adversaries and amplifying the psychological impact of violent actions. Thus, through social networks such as Twitter (now X), Telegram or Facebook, terrorist groups constantly disseminate content specifically designed to capture the attention of users.

As has been announced, while these three main objectives in the dissemination of terrorist propaganda - the generation of fear, the propagation of ideological narratives and the recruitment of new members - can be distinguished, they do not occur in isolation, but are closely interconnected and often operate in a complementary manner within the communicative strategy of jihadist groups. In this framework, recruitment is understood as "the process of attracting people to join a group that adopts a radical ideology aimed at promoting fear, inter-group conflict and the use of violence" (Moyano Pacheco & Trujillo Mendoza, 2013, p.35), thus constituting, as mentioned in the previous chapter, another of the key elements to ensure the expansion and sustainability of these organisations.

Likewise, it is particularly relevant to understand the concept of recommendation algorithms, given the importance they play in the propagandistic process of this type of groups, and in the digital experience of users in general. These algorithms, designed to maximise time spent on a platform, continuously analyse interaction history - searches, clicks, viewing time and browsing patterns - in order to predict and prioritise the content most likely to capture the user's attention. This means that the greater the consumption of a certain type of content, the greater the amount of material of the same nature that the algorithm itself prioritises and teaches, with the aim of keeping the user connected for longer. This feedback mechanism, based on pattern detection and *machine learning* models, reinforces initial preferences and favours the creation of increasingly homogeneous information environments, in which exposure to similar messages progressively intensifies. In the context of extremist propaganda, this process is particularly worrying and dangerous, as each viewing or interaction contributes to increasing the visibility of radical content, providing environments with a lower percentage of different content and increasingly facilitating access to emotionally charged or sensationalist material.

2.1. PROPAGANDA AS THE DISSEMINATION OF FEAR

As previously noted, one of the essential functions of terrorist propaganda is the dissemination of fear as a strategic tool. Far from being a secondary consequence of violent acts, fear is their main objective. Terrorist groups carefully plan their propaganda campaigns to provoke large-scale psychological terror, generate social upheaval and condition political and civic behaviour. In this scenario, the hyper-connectivity provided by the Internet and the logic of digital viralisation act as multipliers of impact, allowing propaganda content to cross borders in a matter of minutes or even seconds.

Fear-based propaganda operates through a combination of explicit violence, emotional symbolism, theatricalisation of suffering and highly sophisticated audiovisual techniques. These resources maximise the reach of the message by leveraging digital platforms, and the aforementioned recommendation algorithms, for immediate and massive dissemination. As discussed above, repeated exposure to this type of content generates an effect of normalisation of violence and extremist narratives, reducing initial resistance and facilitating the ground for radicalisation. In this context, research on *online* extremism confirms that this dynamic is systematically exploited by jihadist groups. Specifically, the study *Terrorism in Cyberspace: The Next Generation* highlights that "constant repetition of violent content accustoms users to violence and extremist language" (Weiman, 2015, p. 47-50), coinciding with the aforementioned studies by Zajonc (1968) on the effects of repeated exposure to content on the perception and acceptance of stimuli.

To understand the magnitude and sophistication of this practice, it is illustrative to analyse paradigmatic cases of propaganda disseminated by jihadist groups. A representative example, described by Andrés Ortiz Moyano (2023) in his book *#Jihad: How the Islamic State has conquered the Internet and the media*, is the video starring Abu Suhayb al-Faransi, a French citizen and former businessman who in 2015 appeared on social networks carrying an *AK-47* rifle and displaying the typical image of the converted Jihadist: long beard, austere clothing and religious language. In the video, Abu Suhayb describes his new life in the caliphate as 'full and spiritually enriching', in contrast to his previous existence in France (Moyano, 2023, p. 43).

This is an example of how this type of narrative attempts to reinforce the emotional appeal of the jihadist project and, at the same time, conveys an implicit message of threat. With regard to the latter, by showing how a Western citizen can be 'transformed' into an extremist fighter, the Islamic State (IS) warns of its ability to influence and radicalise individuals beyond its borders. The figure of the convert thus becomes a propagandistic symbol of ideological success and personal transformation, appealing to young Westerners, while generating fear and uncertainty in host societies. Thus, this case illustrates how jihadist propaganda combines the dissemination of fear with emotional and identity appeal, using digital viralisation to amplify its impact and reach global audiences.

Another paradigmatic case, also documented by Ortiz Moyano (2014), is the video released by the Islamic State (IS) in August 2014, showing the beheading of the American journalist James Foley, kidnapped in Syria. Prior to his murder, the group demanded a million-dollar ransom from his family and agency, but these demands were not met. In retaliation and as a message to the Western world, IS published the video on the Internet, generating a global media impact thanks, once again, to the logic of viralisation. In the footage, Foley is shown kneeling, dressed in an orange jumpsuit that deliberately mimics the uniform of Guantánamo prisoners, while he delivers a message blaming the US government for his fate. The staging - submissive posture, political message and on-camera execution - was subsequently replicated in numerous videos, establishing itself as an Islamic State (IS) propaganda template aimed at maximising emotional and media impact (Moyano, 2023, p. 43). Even as of May 2025, the video is still available on the Internet, which shows that the permanence and viralisation capacity of this content as a tool of terror is very revealing.

Thus, both cases exemplify how fear-based propaganda not only seeks to terrorise audiences, but also to undermine collective morale and generate media impact.

2.2. IDEOLOGICAL PROPAGANDA

In addition to fear-based propaganda and media impact, jihadist groups use propaganda as an extremist ideological narrative to justify their actions and strengthen their support base. This type of propaganda is not limited to depicting violent images, but builds a doctrinal framework that legitimises violence as a necessary tool to achieve political or religious goals. Violence is presented as a moral duty or a form of divine justice through speeches, manifestos, online forums and audio-visual material. In this way, groups project a dual worldview that divides humanity into *'faithful believers'* and *'enemies of Islam'*, reinforcing polarisation and fuelling radicalisation processes.

Unlike fear-based propaganda, which seeks to intimidate and destabilise society, ideological propaganda aims to convince and manipulate. In this sense, this type of propaganda is much more closely linked to recruitment than the type explained above, by providing a narrative that explains the world, justifies violence and offers a transcendent motive and sense of identity to individuals. These narratives generate role models - exemplary fighters, martyrs or successful converts - that function as aspirational symbols for new recruits. Jihadist militancy is presented as a path of heroism, purpose and self-fulfilment. At the same time, they foster internal cohesion by building a sense of belonging and transnational community among sympathisers, reinforcing, in turn, loyalty to the group and ensuring continuity of the extremist message even in fragmented digital environments.

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A number of official studies also support the importance of ideology in this process. Dr. Donald Holbrook, through the report *Sacred Violence: The Enduring Role of Ideology in Terrorism and Radicalisation*, published by the UK's *Commission for Countering Extremism*, concludes that "ideology is indispensable to understanding why terrorists fight, what they hope to achieve and what they consider permissible" (Holbrook, 2025, p.5). Holbrook argues that this is because ideology plays an irreplaceable role in the field of terrorism, as it creates a framework for how to behave and what to think and then defines the rewards for carrying out certain actions (Holbrook, 2025, p.5). Complementarily, the United Nations Security Council *Counter-Terrorism Committee Executive Directorate*'s (CTED) *Analytical Brief*, *Countering Terrorist Narratives Online and Offline* (2020), identifies extremist narratives as one of the key drivers of radicalisation, highlighting that messages of shared grievance, promises of common goals and calls for collective action act as catalysts to mobilise individuals.

A particularly illustrative example of this strategy is the recurrent allusion to *Al-Andalus* in this type of propaganda. According to Torres Soriano (2015), the first explicit mention of Spain by Osama Bin Laden took place on 7 October 2001 in a video broadcast by the *Al Jazeera* channel, in which the leader of Al Qaeda declared: 'Let the world know that we will not allow the tragedy of Al-Andalus to be repeated in Palestine' (Torres Soriano, 2015, p. 27). With this reference, Bin Laden was evoking the loss of the territory that the Muslims ruled in the Iberian Peninsula between 711 and 1492, whose definitive fall came with the Christian Reconquest. In this case - and in almost all Jihadist imagery - *al-Andalus* functions as a symbol of lost Islamic glory, rather than as a specific territorial objective. Its recovery operates as a mobilising myth, as an emotionally charged historical claim that seeks to reinforce the sense of grievance, legitimise the armed struggle and connect the current aspirations of global jihadism with an idealised past. This use of history as a discursive weapon is fully in line with CTED (2020), which identifies historical grievance narratives as one of the most effective elements to radicalise, cohere and mobilise sympathisers both in digital and offline environments. Indeed, journalist Loretta Napoleoni (2015) also addresses this logic in her book *The Islamist Phoenix: The Islamic State and the Redesign of the Middle East*, where she explains the ability of Islamic terrorism to 'rise from the ashes once it has been destroyed' (Napoleoni, 2015, p. 18) by reinforcing the idea of a permanent conflict between Islam and the West.

Another paradigmatic example can be found in the digital magazine *Dabiq*, the official propaganda organ of the terrorist group Islamic State. According to Moreno Valle and Veres (2025), in their article *Jihad, the crossroads between violence and terrorism*, issue 6 of the aforementioned magazine stated the following: "They fabricate lies against us and describe us in the harshest way: apostates, deviants, madmen [...] and warn people that we are murderers and that we will massacre them" (Moreno Valle & Veres, 2025, p. 62). This victimhood discourse seeks to convince followers that there is a war against Islam, reinforcing the perception of an external threat. Likewise, in issue 10 of the same magazine, it was insisted that 'dozens of nations have joined in a war against the Islamic State', presenting the fight as a necessary defence, according to the group, against superior and oppressive enemies [the West]. Similarly, Talal Asad (2008), in his work *On Suicide Terrorism*, interprets such messages as not being disseminated as a 'clash of civilisations', but rather as these groups referring to a 'struggle of civilisation against the uncivilised', justifying violence as a moral response (Asad, 2008, p. 35-40).

Finally, *Dabiq*'s rhetoric culminates in an explicit call to action: 'Mujahideen, we call you to defend the Islamic State [...] they started their war against us at all levels. So stand up, mujahideen. Rise up and defend your state from wherever you are [...] to raise high the word of Allah and trample on democracy and nationalism" (Moreno Valle & Veres, 2025, p. 62). This message evidences the direct relationship between recruitment and the dissemination of ideological propaganda. Thus, a religious duty can be observed in the invocation of the defence of the "Islamic State" and the "word of Allah", as well as the presentation of the conflict as a sacred obligation and not as a political option. The rejection of Western values is also evident in the use of the expression "trampling on democracy and nationalism", which denotes a frontal opposition to different political systems. The idea of "war at all levels", on the other hand, communicates that the struggle is not only military, but also cultural, social and ideological. Finally, by addressing the mujahideen directly, it strengthens the sense of belonging and the idea that all believers are part of the same *umma* (Islamic community) that must, and needs, according to the group, to defend itself.

Thus, it is evident that the above messages clearly and forcefully reflect how jihadist propaganda articulates an extremist ideology, exalts terrorism and justifies its violent actions. Moreover, it shows the radicalisation component and the explicit call for the incorporation of new followers into their cells with the use of imperatives such as "stand up" or "defend yourselves". Likewise, by saying "from wherever you are", geographical and logistical barriers are eliminated, in line with the words of General Argumosa Pila (2022) mentioned at the beginning of this analysis, inviting both to travel to the caliphate and to act in the countries of origin (*homegrown terrorism*) and broadening the spectrum of potential recruits. The discourse, therefore, is designed to emotionally impact, polarise and attract people susceptible to radicalisation, thus consolidating the strategic function of propaganda in contemporary terrorism.

2.3. PROPAGANDA AS A MEANS OF RECRUITMENT

Although the importance of radicalisation as a central objective of jihadist propaganda has been discussed in the previous chapter, it is necessary to explore this issue further. In contrast to campaigns aimed at instilling fear or extremist and violent ideology, there is a type of propaganda whose purpose is, in a much more direct and specific way, to attract new followers and initiate their radicalisation process.

Several studies confirm the magnitude of this phenomenon in the digital environment. *The ISIS Twitter Census* report by Berger and Morgan (2016) estimated that between 2014 and 2015 there were approximately 460,000 Twitter accounts (now X) showing explicit support for the ideas of the self-styled Islamic State. Complementarily, an analysis by Ceron, Curini and Iacus, cited by Francesco Marone (2019) in his study *Digital Jihad: online communication and violent extremism*, revealed that, in the same period of time, the daily average number of *tweets* in favour of the Islamic State reached 160,000 (Marone, 2019, p. 74). These figures reflect the reach of recruitment propaganda, as well as the ability of jihadist groups to exploit social media as a recruitment ecosystem.

In some cases, however, terrorist organisations even develop their own media and apps to amplify their message. The Islamic State, for example, launched the *Dawn of Glad Tidings* app, designed to automatically publish propaganda *tweets* on the accounts of users who have it, thus multiplying the dissemination of pro-jihadist messages

(Marone, 2019, p. 6). Also, within the wide range of strategies of these groups, the use of *hashtags* plays a crucial role. By facilitating the search for content and the viralisation of messages, *hashtags* make it possible to reach a wide and segmented audience, connecting potential sympathisers with ideologically related material. For example, campaigns such as #HijrahToISIS ('emigrate to the Islamic State') urged young Muslims from Europe and other regions to travel to Syria and Iraq to join the ranks of the IS group. Other initiatives, such as #TheFridayOfSupportingISIS, #KhilafahNews or the dynamic '*Jihadist Follow Friday*', encouraged the creation of new accounts and the expansion of networks on a regular basis, replicating popular social media practices to reinforce their appeal.

However, terrorist propaganda is not launched arbitrarily or indiscriminately. On the contrary, it responds to a carefully designed strategy. Groups analyse the socio-political context, digital consumption trends and the psychological profiles of potential recruits. With regard to the latter, it is relevant to highlight that the selection of potential recruits is not random, but responds to sociological, psychological and political criteria , in order to optimise the chances of recruitment and radicalisation.

2.3.1. Target profile

The study entitled *The Devoted Actor* provides a fundamental theoretical framework for understanding why some people are willing to make extreme sacrifices - including risking or even giving their lives - for a cause or group, beyond any rational calculation of risks and rewards. In this work, Atram argues that "contemporary wars, revolutions and global terrorism are driven by devoted actors who fight and risk their lives not because they have to, but out of a deep moral commitment to a sacred or unassailable cause" (Atram, 2016, p. 3), reflecting the sense of belonging and identity of members of terrorist groups. For these individuals, violence is perceived as morally justified in defence of a supreme and common goal, thus rejecting state authority and subordinating personal life to a higher allegiance. Moreover, according to Atram, "the commitment of these devoted actors is total to what they consider morally right and does not attend to the risks and rewards involved in their actions" (Atram, 2016, p. 2). Identity fusion theory complements this idea by pointing out that an individual's actions can be seen as inseparable from those of the group, reinforcing the emotional bond and willingness to sacrifice.

In this context, violent radicalisation is defined, according to *Article 1 of the Framework Decision on Combating Terrorism*, as "the phenomenon whereby individuals subscribe to opinions, views and ideas which may lead them to commit terrorist acts" (European Commission, 2002, Art. 1). As various studies on persuasive communication and radicalisation have shown, jihadist propaganda adapts its content, format and dissemination channels according to the profile of the recipient, with the explicit aim of carrying out such violent radicalisation (CTED, 2020B, p. 9). For example, messages aimed at Western youth often employ modern aesthetics, global cultural references and emotional language that appeals to a search for identity, belonging and purpose in life. In contrast, for audiences in Muslim-majority countries, the narrative emphasises religious duty, defence of the *ummah* and denunciation of foreign oppression. Also, propaganda is adjusted to international events, intensifying in times of crisis, conflict or military campaigns to increase social and political pressure and evidencing the triple objective of jihadist propaganda defined in this article.

Moreover, in the context of this study, authors such as Coolsaet (2005), Kirby (2007) and Sageman (2008), in their study *The evolution of terrorism in 2005,* stress that so-called self-recruitment is becoming increasingly common, especially thanks to the role of the internet. On this basis, it is worth highlighting the difference in meaning between recruitment, as defined in previous chapters, and radicalisation. The latter can occur independently, without a formal recruitment process, as a person can adopt extremist ideas on their own and even act as a "lone wolf". On the other hand, recruitment is often more effective when the individual is already radicalised to a certain degree, as at that stage he or she is more likely to accept the influence of an organisation and to join in its activities.

For his part, Gabriel Weinmann (2004) carried out a study in his work *Terror on Internet* on the use that terrorists make of the internet, concluding that this tool plays an important role in the selection of new recruits (Weinmann, 2004, p. 55). However, despite the growing importance of the internet in the process of recruiting potential recruits, the organisations themselves continue to play the central role in the recruitment and search for sympathisers. In this way, recruiting profiles do not adopt a passive stance, but actively seek out potential recruits who, generally speaking, tend to have vulnerability as a common characteristic.

According to Manuel Moyano Pacheco, PhD in psychology from the University of Granada, and Humberto M. Trujillo Mendoza, professor of psychology at the same university, in the book *Radicalización islamista y terrorismo*, the reality is that "whether or not there is an external figure (active recruiter or leader) who acts as a link between the recruit and the organisation, it must be assumed that, from a psychological point of view, vulnerabilities (what we could call risk factors) are personal [...]". Thus, when analysing the functional relationships of the person with their environment, recruitment will always be "external" and the vulnerabilities will be carried by the person, thus being at greater or lesser risk of recruitment, radicalisation and subsequent recruitment" (Moyano Pacheco & Trujillo Mendoza, 2013, p. 37-42). This statement explains that it is not only the existence of a recruiter that determines the risk of radicalisation, but also the personal characteristics and circumstances of the individual victim. Prevention should therefore focus both on reducing the influence of external agents and on strengthening individual and social protective factors.

In this sense, people considered as "vulnerable" often share certain characteristics or circumstances that make them more likely to be influenced by extremist discourses. People who feel marginalised or discriminated against on ethnic, religious, economic or cultural grounds may seek belonging in radical groups that offer them identity and purpose. In addition, victims of violence, abuse, war or major losses may develop resentment or seek revenge, which can be exploited by extremist groups. On the other hand, the absence of support figures, broken families or lack of positive role models may lead them to look to radical leaders for role models. Even poverty, unemployment or lack of opportunities can make the promises of a radical group (money, status, "justice", etc.) attractive.

A particularly relevant aspect in this context is the volume and age of users accessing the Internet and this type of content. The number of Internet users is growing significantly every day, while the average age is decreasing significantly. According to the *Digital Report 2025* published by *We Are Social*, at the beginning of 2025, there will be 5.56 billion Internet users in the world, equivalent to 67.9% of the global population

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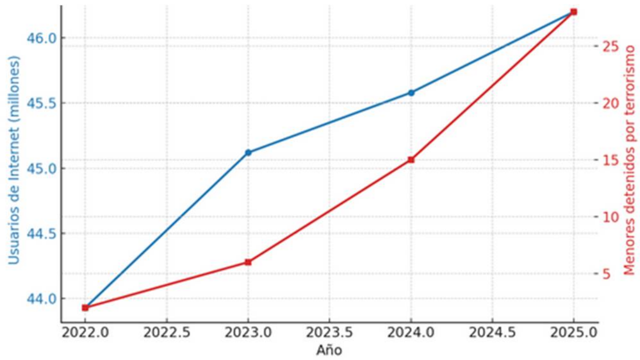
(We Are Social, 2025). In 2024 alone, the number of users increased by 266 million, i.e. 5.6% more than the previous year (We Are Social, 2024), and over the last 25 years the number of internet users has grown by 1,301%. In practical terms, this means that Internet access among children and adolescents is practically universal. In Spain, for example, as reflected in the study by Rideout and Roob (2020) cited in the report *Uso de los dispositivos móviles en la infancia* published by the University of La Coruña, 97% of children between 0 and 8 years old have access from home and connect at increasingly younger ages, and most of them even start to use social networks before the minimum age allowed (González-Sanmamed, Losada-Puente & Rebollo-Quintela, 2023, p. 3).

Thus, platforms such as YouTube, WhatsApp, Instagram and TikTok are part of young people's daily lives from a very early age, and many spend several hours a day online, which increases the risks of their exposure to content of various kinds, including those potentially dangerous for their emotional, psychological and social development. These risks include misinformation, manipulation, hate speech, violence, misogyny, xenophobia and, of course, extremist propaganda and messages that encourage radicalisation.

In terms of figures in Spain, over the last decade Spain has experienced a profound digital transformation that has had a direct impact on children and adolescents. According to the Save the Children report, *almost 9 out of 10 adolescents go online several times a day or are permanently on the internet*, and almost 30% of minors regularly access the internet before the age of 10. This trend has intensified over time, with the average age of access to the internet standing at around 7.5 years in 2025 (Save the Children, 2024). In parallel, the report *Digital 2025: Spain*, published by *We Are Social & Meltwater*, points out that the number of Internet users has grown steadily, reaching 46.2 million in 2025, equivalent to 96.4% of the Spanish population. This high rate of digital penetration has facilitated the access of minors to social networks and content platforms, often without adequate supervision, which increases their exposure to risks such as misinformation, cyberbullying and, in the most serious cases, violent radicalisation.

In this context, official records on arrests of minors for jihadist terrorism in Spain between 2015 and 2025, based on data from the Ministry of the Interior and the Centre for Intelligence against Terrorism and Organised Crime (CITCO), reflect a worrying evolution. The number of minors arrested for activities linked to jihadism has increased significantly, from isolated figures (2-4 cases per year between 2015 and 2020) to 28 arrests in 2025, evidencing the direct relationship between the growing early digital exposure and the intensification of online recruitment and radicalisation strategies.

Figure 1
Evolution of the number of arrests and % female in Spain (2020-2025).



Own elaboration.

At the same time, several studies show that cyberbullying has increased in parallel to the growth of Internet access, especially among minors and adolescents. Specifically, a study by the International University of La Rioja (UNIR) carried out in 2023 and involving 1,142 adolescents between 11 and 18 years of age, showed that more than 4 out of 10 adolescents had suffered cyberbullying at some point during the 13 months the study lasted, and an incidence (new cases) of 25%, which means that a quarter of minors were added to the problem in that period. Similarly, the scientific publisher BioMed Central (BMC) published a study entitled *Longer hours on social media may increase teens' risk of cyberbullying* highlighting that adolescents aged 14-17 are more likely to be cyberbullied if they use social networks more than 2 hours a day on school days. Also, a 2010 study entitled *Cyberbullying: adolescent victimization through mobile phone and internet*, based on a sample of 2,000 adolescents aged 11-17, concluded that 24.6% had been victims of bullying via mobile phone during the same year and 29% had experienced some form of aggression via the internet.

This phenomenon has profound consequences: many victims of cyberbullying tend to isolate themselves further in digital environments, seeking refuge in online video games, chat rooms, forums and other platforms, creating a vicious cycle of isolation and vulnerability. This tendency not only aggravates mental health problems such as anxiety, depression or low self-esteem, but also increases susceptibility to falling into extremist networks, as they look to *online* communities for a sense of belonging, identity and validation that they do not find in their everyday environment.

Radical and extremist groups exploit precisely these emotional needs, offering acceptance, purpose and a sense of mission to those who feel marginalised. A recent example is provided by the study *Policing extremism on gaming-adjacent platforms: Awful but lawful?* by researchers William Allchorn and Elisa Orofino, which notes that the use of the internet as a primary channel of radicalisation among young people under 30 increased by 413 % in the last decade (Allchorn & Orofino, 2025, p. 2). This shows how extremist groups adapt their strategies and migrate to less regulated platforms, such as video games, where they can interact directly with young and vulnerable users, thus reinforcing the recruitment and radicalisation mechanisms already analysed.

2.3.2. Gendered strategies for online recruitment

On 26 May 2025, according to information published by López-Fonseca (2025) in the newspaper *El País*, two sisters were arrested in Spain accused of having created a so-called 'Jihad Academy', whose purpose was to attract young women into the ranks of the self-styled Islamic State in Iraq and Syria (ISIS). Both had hundreds of followers and managed more than twenty profiles on social networks, from which they disseminated propaganda messages, audiovisual materials and proclamations related to jihadist ideology.

This case illustrates how contemporary jihadist recruitment and propaganda campaigns have deliberately incorporated gender strategies, adapting their narrative to specifically target women and present them as essential actors in the Caliphate's ideological project. In this sense, Paul Cruickshank, in his report *A View from the CT Foxhole*, published by the *Combating Terrorism Center (CTC)*, reports on an interview conducted in 2019 with the former executive director of Europol, Catherine De Bolle, who pointed out that 'the Islamic State (IS), of course, needs women to build a state [...]. While IS claims that offensive jihad is not obligatory for women, it also argues that a woman's honour lies in being a producer of jihadists' (Cruickshank, 2019, p. 17).

In this context, a more detailed analysis of the quantitative evolution of female participation in jihadist terrorism in Spain during the period between 2020 and 2025 shows a progressive increase in both the total number of arrests for jihadist-related activities and the percentage of women involved in them. This trend reflects not only the increasing involvement of women in radicalisation processes, but also the effectiveness of recruitment strategies specifically targeting women. Below is a table showing the annual evolution of arrests for jihadist terrorism in Spain, together with the corresponding percentage of women arrested, with the aim of highlighting the correlation between both variables.

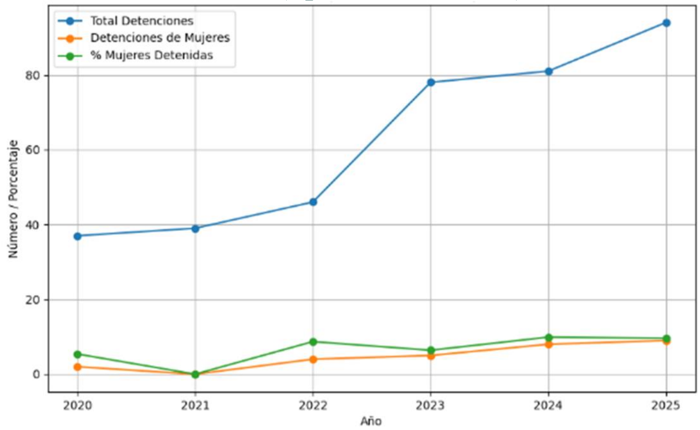
Table 1
Study between arrests for terrorism and % female detainees in Spain between 2020 and 2025

Year	No. of arrests	Approximate % of female detainees
2020	37	6%
2021	39	0%
2022	46	8,7%
2023	78	7%
2024	81	8%
2025	94	10%

Own elaboration.

The Department of Homeland Security (DHS) (2025), in one of its most recent publications, points out that five years ago, in 2020, a total of 37 arrests related to jihadist terrorism were recorded in Spain, of which only two corresponded to women, representing 6% of the total. A year later, in 2021, there were 39 arrests, although on this occasion no female cases were recorded, an exception to the general trend. In 2022, there were 46 arrests, of which four were women, thus reaching 8.7%, the highest percentage up to that time. Subsequently, in 2023, 78 arrests were recorded, with an estimated female participation of 6-7%. In 2024, both the total number of arrests and the rate of women involved increased again, closing the year with 81 arrests and 10% women. Finally, in 2025, and according to the data available up to 3 October, 94 arrests were recorded, maintaining a similar proportion to the previous year, with a percentage of female participation ranging between 8 and 10%.

Figure 2
Relationship between the number of Internet users and juvenile arrests (Spain, 2022-2025).



Prepared by the authors.

However, in light of the above data, it is relevant to highlight not only the directly proportional correlation between the increase in the number of arrests for terrorism and the increase in the percentage of women involved in Spain, but also the role played by the COVID-19 pandemic in this evolution. In this sense, the health crisis acted as a catalyst, moving from marginal figures in 2020 and 2021 to percentages close to 10% in 2024 and 2025. Prolonged confinement and the consequent reduction of face-to-face social interactions favoured greater exposure to digital environments, spaces where jihadist organisations significantly intensified their propaganda and recruitment activities.

In this context, and in line with the aforementioned assertions of former director De Bolle, the narratives used to attract women through social networks tend to focus on values such as a sense of belonging, social status - materialised in the promise of becoming a wife or 'mother of the community' - and even personal fulfilment through the assumption of reproductive and family roles. Based on this premise, it is important to point out that in many cases, it is the women themselves who become agents of recruitment of other women, replicating and reinforcing these discourses from a perspective of proximity and trust. However, there are also situations in which this dynamic is partially present, with male figures intervening as influences or facilitators in the radicalisation process.

In relation to direct *online* radicalisation among women, this dynamic responds to the fact that, once integrated into the group, many of them take an active role in disseminating propaganda and recruiting new followers. In this sense, Al Khazraji, in her article *Turning to Terrorism: Why Shamima Begum and Other Women Joined ISIS*, highlights that approximately 80 per cent of the women recruited spend most of their day interacting on social networks with the aim of attracting new members to the cause (Al Khazraji, 2023, p. 1). Complementarily, the *European Counter Terrorism Centre* (ECTC), in the article *Suffering and Hardship as Stepping-Stones to Paradise:*

Radicalisation of Women in IS, notes that between 30% and 40% of women who travelled to Syria and Iraq between 2013 and 2018 were directly recruited by other women (ECTC, 2019, p. 25). These figures coincide with those provided by Arianna Braga in her report *ISIS Brides and Their Children*, which highlights that 'between 664 and 746 Western women travelled to Syria and Iraq to join IS between 2013 and 2019' (Braga, 2025, p. 1). Furthermore, according to sources such as *Infobae*, as of March 2025, more than 200 women remained imprisoned in Iraq for their links to IS, while nearly 500 children had been repatriated from Iraq, although their current situation is unknown (Newsroom Infobae, 2024).

In this regard, and according to the report *Women in Islamic State Propaganda*, the use of female recruiters is a particularly effective tool to increase the recruitment of Western teenagers and young adults, mainly in the 15-25 age range (Europol, 2019). This is because jihadist groups, such as Daesh or Al-Qaeda, perceive women as more effective agents to attract and retain other women by offering a discourse of empathy, legitimacy and emotional proximity. These recruiters address issues related to marriage, family life, modesty or the role of women in Islam from a perspective that is more credible and persuasive. In this way, jihadists operate as digital 'big sisters', generating bonds of trust and belonging among their followers.

An illustrative example of this dynamic dates back to 2014, when a Canadian woman known as Aisha travelled to Syria after participating in an online Quran study course taught by an Edmonton-based woman who offered classes in small groups of fifteen students. Subsequently, Aisha's sister stated that the same instructor also recruited her to join the Islamic State and facilitated her travel to Syria, where she lived for a time with another woman from Quebec (Margolin & Cook, 2024, p. 23).

However, as noted above, in some cases women do not act in isolation in recruitment processes. Various studies, such as the United Nations (UN) *CTED Trends Report*, published in 2019 and updated in 2021, as well as reports by the *Radicalisation Awareness Network* (RAN), show that, in certain contexts, male recruiters play an initial role as 'fishermen', identifying potential candidates and subsequently referring them to female networks responsible for ideological or logistical consolidation. In these cases, men often appeal to emotional components of a romantic or protective nature through expressions such as "I will take care of you", "you are special" or "your role will be important", with the aim of generating a bond of affection and dependency. Subsequently, female recruiters reinforce this bond through a discourse that legitimises subordination within the jihadist ideology, using appeals such as "you will be a good wife" or "mother of martyrs".

Based on the above, two main schemes of female *online* radicalisation can be distinguished. On the one hand, the female-female model, in which radicalised women directly recruit other women - often teenagers - and on the other hand, the male-female model, where a man initiates the contact and, once the emotional bond is established, transfers it to a woman in charge of consolidating the radicalisation process.

With respect to the latter scheme, the case of a woman resident in Ceuta, whose two children -a boy and a girl- were recruited by Daesh and completed their radicalisation process by migrating to Syrian territory between 2014 and 2015, clearly illustrates the sequence in which men act as initial agents in the recruitment process before the female intervention. In this case, the son was first recruited by a group of young men he met in a vocational training programme. Contact with his family only occurred when the young man was already in Turkey on his way to Syria.

Subsequently, her sister - refusing to disown her brother - began to spend entire nights in her room surfing social networks such as Facebook, WhatsApp and Telegram in search of news about him. In this context, she made contact with a young man who claimed to know her brother and who was also planning to travel to Syria. The relationship evolved quickly: first a friendship, then a romance, and finally a marriage. It should be stressed, however, that all this interaction took place entirely online, reflecting the relevance of the digital environment and cyberspace in contemporary recruitment and radicalisation processes. The two young men did not meet in person until she travelled to Syria to join the ranks of Daesh.

Aisha - the name by which the young woman identified herself - subsequently contacted her mother after her husband's death, sending her photographs of her newborn son and refusing pleas to return to Spain. In her communications, she claimed that Da'esh had provided her with housing, a stipend and an opportunity to contribute to the construction of a project of global historical significance. As a result of the feeling of empowerment she experienced within the Caliphate, Aisha began to mentor other migrant women in Syria (The Carter Center, 2019, p. 4), which highlights the recruiting role described in this chapter, as well as the influence of doctrinal factors linked to a sense of belonging, family and the notion of a higher cause.

This case, therefore, is a representative example of the male-female schema and how it combines emotional seduction and ideological indoctrination, taking advantage of the initial affective influence of the male and the doctrinal reinforcement provided by other women already integrated into the group structure.

Finally, with regard to the techniques used by female recruiters, the report *Daesh Online Recruitment and Women*, published in 2020 by the *International Centre for Counter-Terrorism* (ICCT), documents the existence of various closed groups on platforms such as Telegram, Facebook and WhatsApp, managed exclusively by women. In these spaces - to which only other women are allowed access - religious instructions, manuals of conduct, propaganda materials and links to logistical information linked to travel to conflict zones are shared (ICCT, 2020). For example, the report *The Agency and Roles of Foreign Women in Islamic State* reports the case of the British woman Aqsa Mahmood, who ran a blog in which she was dedicated to dismantling the 'myths' about life in the Caliphate, offering an idealised and apparently normalised vision of daily life in territory controlled by Daesh. Through this digital space, she invited her readers to contact her if they wished to travel to Syria, thus acting as a direct link in the group's recruitment and facilitation chains (Margolin & Cook, 2024, p. 23).

3. CONCLUSION

The Internet has profoundly transformed the patterns of action of jihadist terrorism, becoming a strategic tool for the expansion and consolidation of its objectives. Jihadist propaganda online combines three fundamental purposes in a structured way: the dissemination of fear, the legitimisation and consolidation of extremist ideologies, and the recruitment of new members. In this context, the particular vulnerability of minors and young people has been highlighted, who, due to their early, continuous and massive

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exposure to the digital environment, become priority targets for virtual propaganda and recruitment. Factors such as social isolation, experiences of marginalisation or discrimination, and even cyber-bullying, are systematically exploited by extremist groups to generate feelings of belonging and offer false promises of purpose and recognition.

Similarly, contemporary jihadist recruitment and propaganda campaigns have consciously incorporated gendered strategies, adapting their discourse to specifically target women and present them as key players in the Caliphate's ideological project. In this sense, two main schemes of female radicalisation in the digital environment can be distinguished: the male-female model, in which a male initiates the contact and a woman consolidates the process, and the female-female model, in which radicalised women directly recruit other women, generally teenagers or young adults.

Consequently, the fight against Jihadist radicalisation in cyberspace requires a comprehensive and multidisciplinary approach that acts both on external agents - the groups and structures that generate and disseminate propaganda - and on the internal factors of individual vulnerability. Understanding the phenomenon from a psychological, sociological and gender perspective, together with a continuous analysis of digital dynamics, is essential for the design of effective prevention policies and intervention strategies, capable of counteracting the capacity for attraction, persuasion and global expansion of these extremist groups.

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Research Article

COMPARISON OF THE TEEXMR SOFTWARE WITH PROFESSIONAL BALLISTIC COMPARISON MICROSCOPE SOFTWARE

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COMPARISON OF THE TEEX^{MR}SOFTWARE WITH PROFESSIONAL BALLISTIC COMPARISON MICROSCOPE SOFTWARE

Summary: INTRODUCTION. 2. BACKGROUND AND ARGUMENTATION. 3. THE FORENSIC SCIENCE STUDY PROCESS. 4. COLLATION TECHNIQUES. 5. THEORIES FOR THE COLLATION OF BALLISTIC ELEMENTS. 6. 6. MATCHING OF BALLISTIC ELEMENTS USING DIFFERENT EQUIPMENT AND SOFTWARE. 7. STUDY METHODOLOGY. 8. COMPARISON OF BALLISTIC ELEMENT MATCHING USING DIFFERENT PROGRAMS. 9. DISCUSSION. 10. CONCLUSION. 11. ACKNOWLEDGEMENTS. 12. BIBLIOGRAPHICAL REFERENCES.

Abstract: Currently its search solutions easier and more accessible to problem's every time, the innovation had allowed that the technology permeate into various areas, and what technology´s utility could able to makes in different lands of human´s knowledge. And Technological innovation has significantly influenced forensic sciences, introducing tools that enhance efficiency and accessibility in evidence comparison. Traditionally, ballistic comparison relies on high-cost professional microscopes integrated with specialized software, limiting their availability to well-funded laboratories. This study evaluates the functionality and practicality of Teex^{TM}, an affordable digital comparison program originally designed for educational purposes, contrasting it with professional ballistic comparison systems such as Leica^{TM}, Leeds^{TM}, and VisionX^{TM}. Through systematic tests using cartridge cases of common calibers (9×19 mm and .38 Special), the research analyzes core features including image alignment, overlay, contrast adjustment, and real-time visualization. Results indicate that Teex^{TM} successfully replicates essential comparison functions, offering a viable alternative for forensic professionals and students lacking access to expensive equipment. While not a substitute for advanced optical systems, Teex^{TM} demonstrates potential as a complementary tool for training and preliminary forensic analysis, promoting greater accessibility in forensic practice.

Resumen: Actualmente se buscan soluciones más sencillas y accesibles a problemas de todo tiempo, la innovación ha permitido que la tecnología permee en diversas áreas, y que utilidades tecnológicas sean capaces de ser usadas en diversos campos del conocimiento humano. Y la innovación tecnológica ha influido significativamente en las ciencias forenses, introduciendo herramientas que mejoran la eficiencia y accesibilidad en la comparación de evidencias. Tradicionalmente, la comparación balística depende de microscopios profesionales de alto costo integrados con programas especializados, lo que limita su disponibilidad a laboratorios con recursos limitados. Este estudio evalúa la funcionalidad y practicidad de Teex^{MR}, un programa digital económico diseñado originalmente con fines educativos, contrastándolo con sistemas profesionales de comparación balística de equipos como Leica^{MR}, Leeds^{MR} y VisionX^{MR}. Mediante pruebas sistemáticas con casquillos de calibres comunes (9×19 mm y .38 Special), la investigación analiza funciones esenciales como alineación de imágenes, superposición, ajuste de contraste y visualización en tiempo real. Los resultados indican que Teex^{MR} replica con éxito las funciones básicas de comparación, ofreciendo una alternativa viable para profesionales forenses y estudiantes que carecen de acceso a equipos costosos. Aunque no sustituye a los sistemas ópticos avanzados, Teex^{MR} demuestra potencial como herramienta complementaria para la formación y el análisis forense preliminar, promoviendo una mayor accesibilidad en la práctica pericial.

Keywords: Forensic, Comparision, Tool Marks, Microscopy

Palabras clave: Forense, Cotejo, Marcas de herramienta, Microscopia

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ABBREVIATIONS

AFTE: Association of Firearm and Tool Mark Examiners (Association of Firearm and Tool Mark Examiners)

CPEUM: Constitución Política de los Estados Unidos Mexicanos (Political Constitution of the United Mexican States)

CMS: Consecutive Matching Striae (Consecutive Matching Striae is a theory of tool mark identification)

F.G.R.: Fiscalía General de la República (the institution in charge of prosecuting justice at the federal level in Mexico).

AI: Artificial Intelligence

INEGI: Instituto Nacional de Estadística y Geografía (National Institute of Statistics and Geography)

LED: Light-emitting diode (Light-emitting diode for its translation into Spanish)

INTRODUCTION

Technology is one of the main elements that help innovation in processes and, together with it, new paradigms arise that have to be corrected or perfected. Progress in this century has been accelerated, which makes obsolescence an issue to be taken into account, not only in industrial development but also in intellectuality.

Forensic science has not escaped the technological revolution, triggering innovations and developments to streamline work, doing things that were previously impossible. Processes have been improved, resulting in new ways of thinking about forensic examination.

Nowadays, toolmark comparisons are carried out with microscopic equipment, most of which is digital and linked to software with various functions that aid in the demonstration of what is being compared. The equipment used in forensic laboratories is mostly fixed and expensive, and the programs that are attached to it are specific to the equipment and do not allow it to work on other equipment. The equipment used for comparison is useful, since the main need is that the elements to be compared can be observed in real time, that the comfort or ergonomics allow for its comfortable use, as well as the characteristics that allow, in the same equipment, the use of contrast ranges that facilitate the visualisation of elements necessary for identification or discarding (marks).

Knowledge, in conjunction with equipment that was once very large and unaffordable, has now moved towards options that are cheaper and almost as reliable as the high-cost ones.

Information on equipment and technological strategies in the forensic field is crucial to optimise the work of experts, which is why the use of expert witness software (Teex$^{MR)}$ supports training on the subject of matching, but can also be a useful tool for forensic professional development and is intended to be represented in this research.

Sometimes, in forensic science, you have to use your ingenuity to achieve what you want, this is based on trial and error, and to become familiar with multiple tools and applications that were not necessarily created for the area, but that can be techniques that greatly support the process of examination and obtaining results.

Therefore, the objective of this research is the comparison and usefulness of the Teex^{MR}program for the comparison of tool marks, specifically of ballistic elements, in order to be useful for an investigation and expert opinion.

2. RATIONALE AND ARGUMENTATION

Science, as a process of understanding and developing thought, needs to be open to society as a whole. However, this knowledge is often restricted by economic interests. Justice as a science that is supported by other sciences has tried to achieve fairness in the game of scientific development, but this has not been enough to reach everyone and everything.

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In the criminal field, sciences such as forensic science are regularly used to assist in the field of evidence, because it has been thought that the best evidence is that which is rigorous in its thinking, and if this is subordinated to sciences of the natural and exact branch, even more so. This is partly a fallacy, and yet it is given inordinate confidence. On the contrary, one of the best justifications for thinking is that which is referred to as scientific.

With regard to forensic science in Mexico, one can start with official laboratories, understood as those that are regulated by the government. In the Mexican Republic, "at the end of 2022, 32 coordinations were reported in the Attorney General's Office (FGR) and 397 units of forensic services and/or forensic medical service in the states" (INEGI, 2023, p.12).

In 2022, the total number of staff in the coordinations and units of the forensic and/or medical forensic services was 13,827. By area, 12.6% (1,737) belonged to the FGR, while 87.4% (12,090) to the state units. Compared to 2021, the number of FGR staff decreased by 5.8%, while it increased by 1.4% in state units (INEGI, 2023, p.17).

During 2022, the FGR received 325,196 requests for expert intervention, all of which were admitted; this figure represented an increase of 17.6% compared to 2021. The state units received 4,505,448 requests, of which 99.97% were admitted and 0.03% rejected; the number of requests received decreased by 1.7% compared to 2021 (INEGI, 2023, p.25).

If we make an imaginary exercise, an average of 188 requests per expert per year would be dealt with at the federal level (FGR), which represents almost one request every two days. For the state level, that would be 373 requests per year, a little more than one per day.

This is without taking into account holiday time, holidays, the working week and disregarding the load by subject matter and by state, speculating that all the personnel contemplated perform expert work. Nevertheless, it serves as an insight into the official expert environment in the Mexican Republic. It demonstrates, at first glance, a lack of human resources. It should be taken into consideration that forensic activity is not similar to an industrial production process, because the examinations depend on many variables to ensure response times, such as the condition of the evidence, the amount of evidence to be examined, the processing time of the evidence, the response time of the equipment, among other things. This involves a large number of experts in various forensic areas.

On the other hand, this is not the case in the area of official or private defence. Although there are already organisations with forensic experts, they do not have the same training or the same financial resources as the organisations dedicated to the judicial investigation. However, the Political Constitution of the United Mexican States (CPEUM) establishes in Article 17 the following:

> The Federation and the federative entities shall guarantee the existence of a quality public defence service for the population and shall ensure the conditions for a professional career service for public defenders. **The salaries of public**

> **defenders shall not be lower than those of public prosecutors** (CPEUM, 2024, Art.17, Para. 8).

While it is true that there are already public entities for the defence and some of them are staffed with experts in different areas and/or forensic disciplines, it is also true that in many cases they do not receive the same emoluments as public prosecutors or official experts. This is noteworthy, all the more so because it is a guarantee established in the constitution and not just an isolated precept.

It is also noted in Article 20 of the CPEUM that: "V. The burden of proof to demonstrate guilt corresponds to the accusing party, as established by the criminal definition. The parties shall have procedural equality to sustain the accusation or the defence, respectively;" (CPEUM, 2024, Art.20 This implies equality of circumstances in the nature of evidence, including expert evidence, which is not balanced, either because of the tools or the access that some places have to the evidence, as it is often not allowed to be taken to a special laboratory for analysis, and is delivered to the offices of the prosecutor's office, which is an inequity in the development of this type of evidence.

At the same time, the CPEUM establishes the following:

> Eighth. The Congress of the Union, the state legislatures and the legislative body of the Federal District shall allocate the necessary resources for the reform of the criminal justice system. The budget allocations shall be indicated in the budget immediately following the entry into force of this decree and in subsequent budgets. This budget should be earmarked for the design of legal reforms, organisational changes, construction and operation of infrastructure, and the necessary training for judges, prosecutors, police, defenders, experts and lawyers (CPEUM, 2024, Art. Eighth transitory article of the 2008 reform).

This is still not what was established, despite the fact that it is a 2008 provision, not only in terms of the expert areas of the public defenders' offices, but also because there is still a budgetary problem and therefore a problem of equipment and training in the expert institutions of the prosecutors' offices and judicial powers in various states of the Mexican Republic.

There is currently no comparison study between the Teex^{MR}programme and programmes coupled to ballistics comparison microscopes, perhaps because the programme was created as a tool for students, but not as a professional comparison tool associated with the work of an expert. It is worth mentioning that, when asking official experts from laboratories in Mexico and Spain, there was no knowledge of this programme and even less of its scope (Juanamaria66, 2020).

3. THE STUDY PROCESS IN FORENSIC SCIENCES

García, Z. and Luises E. (2022), define opinion as: "the issuance of an opinion on a specific problem that has been raised by an expert person, reaching specific points based on the investigations carried out, procedures and technical-scientific foundations" (United States Department of Justice et al., p.216).

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In Mexico, there is a division between what should be understood as an opinion, a report and an expert report, as these three concepts differ not only semantically but also in practice.

In this sense, Romero, Ana (2022) defines report as, "that which results from an intervention that for some reason could not be carried out" (Department of Justice of the United States of America et al., p.277).

It can be understood that an expert opinion is an activity that, after being carried out, requires an opinion or possible hypothesis, while an expert report is one that, after the activity has been carried out and following the ideal process for the case in question, it is not possible to issue an opinion or hypothesis due to some external circumstance, as would be the case in a lofoscopic comparison, due to the lack of ridges to issue a conclusion of identification with any person contained in the database. And a report is simply understood as a report when the request is received, but the activity cannot be carried out, either due to errors in the request, lack of evidence for study, or because it is not within the scope of the laboratory, among other circumstances.

It is also possible to distinguish between two expert or expert processes, one that has the purpose of issuing hypotheses regarding very precise questions and the other that is aimed at distinguishing or identifying.

Cross-checking is one of the key processes to arrive at an identification or elimination, which consists of comparing one by one (side by side) two or more pieces of evidence, which leads to distinctive results that in turn trigger a conclusion supported by the process, the technique, the method and the results.

This type of activity is commonly observed in forensic disciplines such as ballistics, lofoscopy, document microscopy, graphoscopy, tool marks, among others.

The conclusions that can be reached after matching could be: identification, elimination, inconclusive and unfit for study. These variables may be more or called differently, but their essence is the same.

4. COLLATION TECHNIQUES

Optics has been an invaluable resource for investigation, and has been no exception in the forensic sciences, which, today, such a technique is used in almost all processes and in most of the equipment used in the laboratory. Photography is one such technique that uses optics to obtain reliable images of what is observed.

One of the techniques that assists in comparison is therefore optics, coupled with digital imaging. This technique helps to see smaller objects that cannot be seen with the naked eye. Caution should be exercised, as it is often believed that the image from a device such as a mobile phone is not sufficient to obtain a good resolution and is therefore not good for matching. It is not totally useless, as technological advances have helped to make smaller objects have good characteristics. It should be noted that the ideal for forensic photography, in terms of pixels, is the use of cameras with a resolution above 5 megapixels. Many modern cameras, even in mobile phones, have a higher resolution than this, but this should not be confused, because although it is important, sharpness and colour are also important. So the sensor is the key to having these two good quality features.

Another important ingredient is the optics, so a close-up (zoom) lens is better than a digital (zoom) lens. Transposition can be a good tool when taking photographs for collating purposes, meaning the use of tools used interposed between the camera or lens, which can be a good remedy to achieve better close-ups, such as the use of a magnifying glass.

For photography, either manually or by means of a microscope, at least five photographs per section are recommended. That is, take one photograph with direct light, and four with grazing light, illuminating from the four zones, top, bottom, left and right. It will depend very much on the study, as more photographs can be taken according to the circumstances. For example, in graphoscopy it is recommended to take a photograph with backlighting (light placed on the opposite side of the surface where the graph lies). Various light sources are also recommended, such as white or cold light, yellow or warm light, ultraviolet light, infrared light, among others. First of all, the study must take into account the principle of exchange established by Edmond Locard (Mummery, 2021, p. 512), consequent to this principle, the principle of correspondence of characteristics must be considered, in which the comparison of objects in similar circumstances must be considered, that is to say, if white or cold lighting is used, both indications and/or evidence must be under the same circumstances.

White LED light is a good option, not only for the matching of evidence, but also for eye care, as it is comfortable and gentle on the eyes. "Cold artificial light is the best alternative to natural light, because it is the closest to it. It is less tiring for the eyes" (Optica & Hispania, 2024, para.18).

Other advantages of LED light are:

> They are much more energy efficient, which results in lower energy consumption. In addition, they are characterised by a much longer lifetime than light bulbs. Finally, LEDs emit virtually no heat and this is much more practical both for working comfortably with the microscope and for keeping the sample in good condition (Microscope World, 2024, para.20).

In forensic ballistics or the study of firearms and tool marks, tools such as a magnifying glass, stereoscope and comparison microscope are used for comparison. These tools are used according to the stage of study, being recommended first to observe the object with the naked eye under different angles of light, then under a magnifying glass, and then using a stereoscope to locate smaller and more specific marks, in order to classify the evidence in some group (these steps can also be applied for some other discipline that performs matching), then mounted on the comparison microscope, to perform the matching one by one, that is, side by side, with similar lighting conditions and with the same magnification.

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5. THEORIES FOR MATCHING BALLISTIC ELEMENTS

For the matching of ballistic elements, there are several techniques such as those mentioned above, but they are also accompanied by methodologies, composed of continuous studies that have shown effectiveness in the field of tool marks.

These include AFTE and CMS theory.

Jack Dillon (2008), regarding the history of CMS, points out that:

> CMS was initially proposed in 1959 by Al Biasotti, focused on the need to establish specific criteria for the identification of tool impressions, focusing on the idea that an identification is made on the basis of individual characteristics based on an objective perspective. This theory is based on a study carried out with samples being an analysis of 720 known, non-concordant comparisons of field and groove impressions, and failed to find cases where the CMS exceeded four continuous lines in the matches. In 1997, Biasotti and John Murdock jointly published their paper entitled "Conservative Quantitative Criteria for Identification", using the CMS criteria (Dillon, p.375).

To better understand this theory, it must first be known that there are two-dimensional and three-dimensional markings in the markings to be analysed on ballistic elements.

Two-dimensional markings. These marks are those that are also known as compression marks or stamped marks, produced when a tool applies sufficient force to any object, leaving an impression, which varies by its contour, depth, dimension, etc.

Three-dimensional marks. These marks are also known as friction marks, drag marks, abrasion marks, grooves or scratches, and are produced when a tool is dragged with a certain force over an object to generate grooves or linear marks, these marks or under reliefs have diversity in their contour and depth, sometimes producing micro-scratches within their contour.

The identification of tool marks, normally make a distinction of levels, in the case of tool marks, these levels are classified in three, and are indispensable for the identification of the marks, these are:

Class features, which are those in which marks characteristic of a specific type of mark are observed, which may include a group of tools and exclude others, but only in a general way.

Subclass features, these marks are more specific than class marks, but are not individual, as they may distinguish between a small group of tool types, but in a general way; care must be taken, as these marks may only be due to a specific group of tools, but not to a particular one.

Individual characteristics are the smallest marks that serve to rule out a large group of marks and make them specific to a particular tool.

Finally, this theory states that for three-dimensional marks, one group of five consecutive matching lines or two groups of three consecutive matching lines should be found in each mark, and for two-dimensional marks, one group of eight consecutive matching lines or two groups of five consecutive matching lines (Dillon, 2008). This applies only to comparison of individual features, so attention must be paid to these features.

The Association of Firearms and Toolmarks Examiners (AFTE) theory states that the distinction of these characteristics should be specific and discernible in appearance (discernible and concordant), without giving rise to a quantitative sense of these, as stated in the CMS theory.

Non-consecutive (two-dimensional) individual shapes or features are also subject to comparison, but they must have the same shape and arrangement in location, and if possible the size of the mark must also be taken into account.

Currently there are new techniques that help identification by means of photogrammetry, or images with low and high relief, in some cases combined with programmes or platforms that help in the observation of the marks, although the techniques vary, the principles of identification remain the same. Based mainly on markings ranging from the general (class markings) to the specific (individual markings), thus allowing the exclusion of candidates for identification.

6. THE MATCHING OF BALLISTIC ELEMENTS USING DIFFERENT EQUIPMENT AND PROGRAMMES

Microscopy is one of the devices that have made use of optics and photography, nowadays, it is the best device that has been demonstrated for matching, however, in the past, ingenious devices were used such as the case of the system or photo-comparator Belaunde (Gamarra, G. Skopein, p. 43), alluded to the researcher Ernesto Manuel Belaunde, which took a series of photographs of a bullet, and then matched them and used them to make comparisons by superimpositions or by side-by-side comparison in a more comfortable way, as the images were more extensive.

Philipp O. Gravelle, an expert in microphotography, came up with the idea of inventing the ballistic comparison microscope, joining two microscopes by means of an optical device (Jiménez, J. 2011, para. 8).

Nowadays, all equipment comes with various programmes associated with it, which, depending on their functions, allow different actions to be carried out, such as superimposing images, scanning them, changing colours, among other functions.

There are various programs such as Photoshop® or similar, which help to improve images, but can also be used for forensic comparison, which allows tools that facilitate the visualisation of small details and at the same time, a graphic form for exemplification before a court (Solana E, 2020).

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But there are also programs that facilitate the work of comparison with less budget, which is not always contrasted in price or accessibility with its reliability, one of these programs with functions designed for the forensic area is the expert witness name or Teex ^{MR}.

There are also cameras and microscopes coupled to specific programmes and functions depending on the application, for example, for lophoscopic fingerprints, there is equipment for their improvement and the acquisition of direct images of objects, i.e. the work of transplanting the fingerprint is done by photographic means. As for graphoscopy, there are functions to see the traces in the third dimension, this function is useful for cases of ink cross-linking. As well as these, there are different functions, according to how you want and what you want to check.

7. STUDY METHODOLOGY

Systematic comparisons were developed with the microscopic comparison programs for ballistic elements, with main interest in the programs of equipment usually used for comparison, such as the Leica, Leeds, Vision X^{MR}and the proposed program for analysis with respect to its functionality Teex^{MR}.

Two different samples of 9x19 mm and 38" special calibre cartridge cases were examined, due to the fact that at the time of the study these were the most common calibres used for comparison in the laboratory where the study was conducted, as well as due to the type of weapon (pistol and revolver). The matches were carried out on samples of witness cartridge cases (cartridge cases obtained from a known weapon), and the studies were repeated on the microscopes and their platforms. Microphotographs were taken with the camera attached to the VixionX^{MR}microscope, as well as with a Canon EOS Rebel T7i camera, using a zoom lens with a focal length of 18-55 mm (this is the one commonly used, as the camera is normally sold with this lens).

The samples were placed on each stage side by side of the microscopes under study, image viewing tests were carried out with the tools that each microscope had in its factory program, as well as the Teex^{MR}program, such as the lights, tonalities, the placement of the division between the samples, the functions of pointers and text. The platforms were also matched with a pair of each of the shells (9x19 mm and .38" special), using the tools of each platform, checking the functions: Side-to-side and top-to-bottom, overlapping, highlights, colour ranges, contrasts, close-ups and special image markers.

Mainly attention was paid to the functions of zoom, overlay and side-by-side view of the sample, with the aim of checking this function, which is considered to be the main one when making a collation.

Screenshots of the casing matches were taken in order to exemplify the comparison of casings in the study.

The following steps were followed:

1. Selection of 9mm and 38 SPL calibre centre fire casings.

2. Cleaning of cartridge cases

3. Choice of three most commonly used systems with different light sources, tungsten light (Leica$^{MR)}$, fluorescent light (Leeds^{MR}) and led light (Vision X^{MR}).

4. Loading of photographs obtained from the microscopes and loaded into the Teex^{MR}program.

5. Comparison of basic functions in each programme, the main ones being:

   - Zoom in
   - Image dividers for collating
   - Image overlay
   - Pointer and text functions
   - Contrast range functions

6. Comparison of the results obtained in each programme.

A study was not carried out on the resolution of the image, but only on the improvement of the image with the programmes and the functionalities of each programme, making a comparison between all of them, to find out what each one includes and how easy it is to use.

8. COMPARISON OF THE COMPARISON OF BALLISTIC ELEMENTS USING DIFFERENT PROGRAMMES

The study was done under the assumption of the Teex^{MR}comparison program and its functions, having three references of professional laboratory microscopes and their coupled professional microscopy programs, such as the Leica^{MR}, the LEEDS^{MR}and the Vision X^{MR,}the latter from the company Forensic Technology^{MR}, all of these in contrast with the Teex^{MR}comparison program. Samples of standard casings were taken into account, and the optics were not directly evaluated, but the platform as a whole, because the optics depend directly on the capture tool and not on the programme that generates the visualisation and comparison processes.

In the following, the different functions on the main collation screen of the software coupled to the Leeds^{MR}, Vision X^{MR}and Leica^{MR}microscopes are shown, in that order.

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Figure 1

Comparison photograph of the Leeds[MR]microscope system bushing assortment showing the general functions at the top and right-hand side.

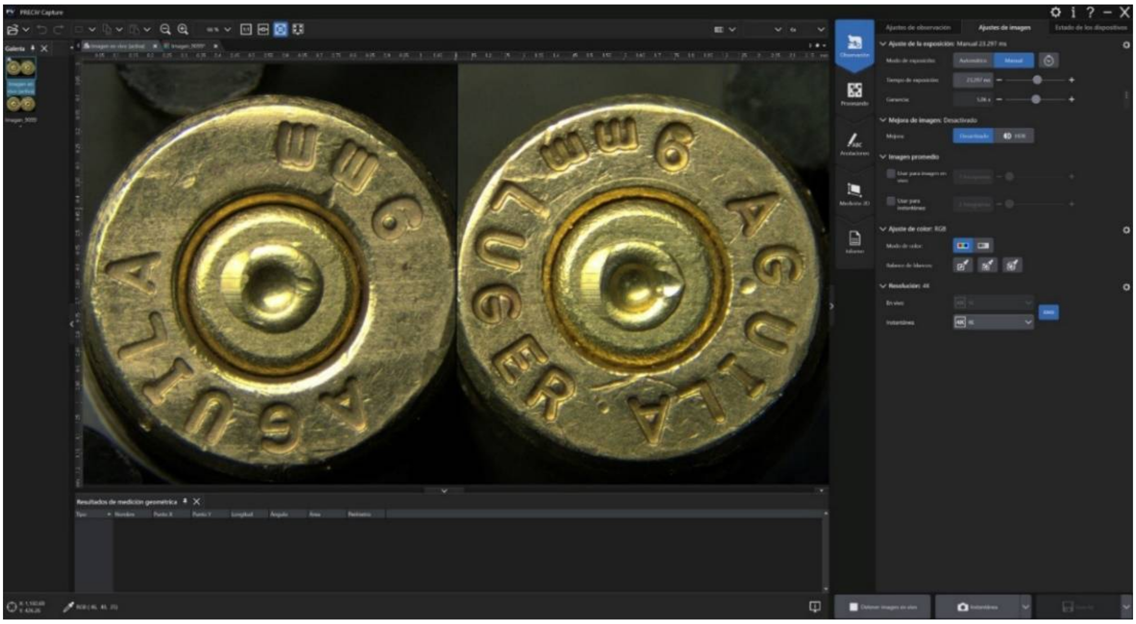


Figure 2

Photograph of a comparison of the bushing comparison of the Vision X[MR]microscope system showing the general functions at the top and on the right-hand side.

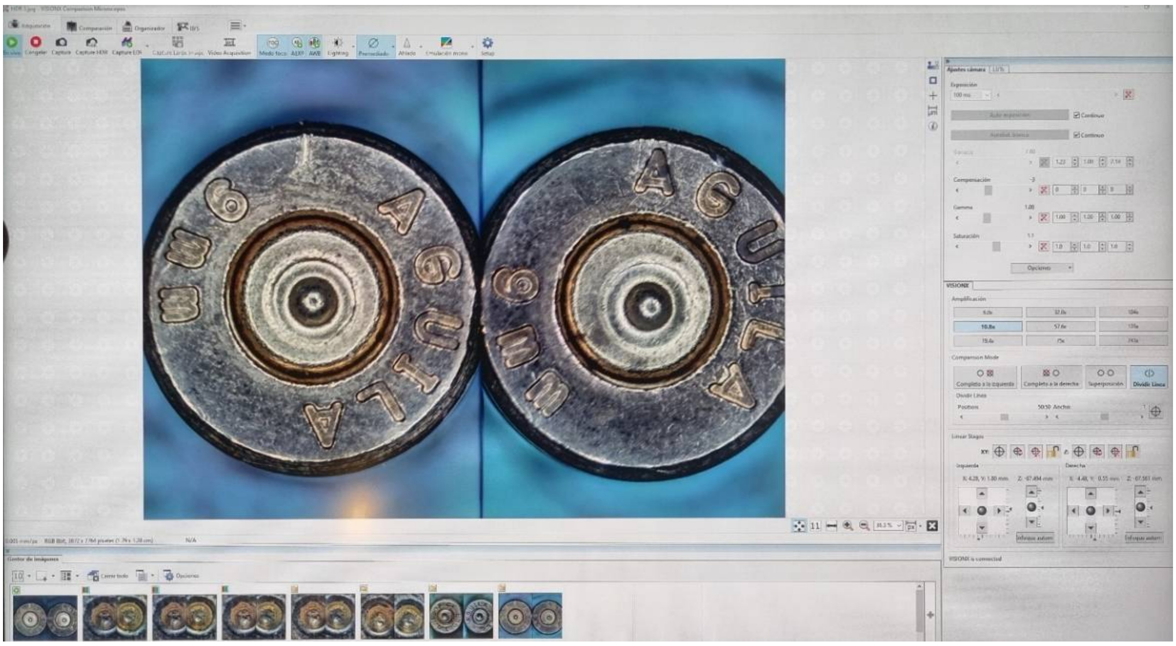
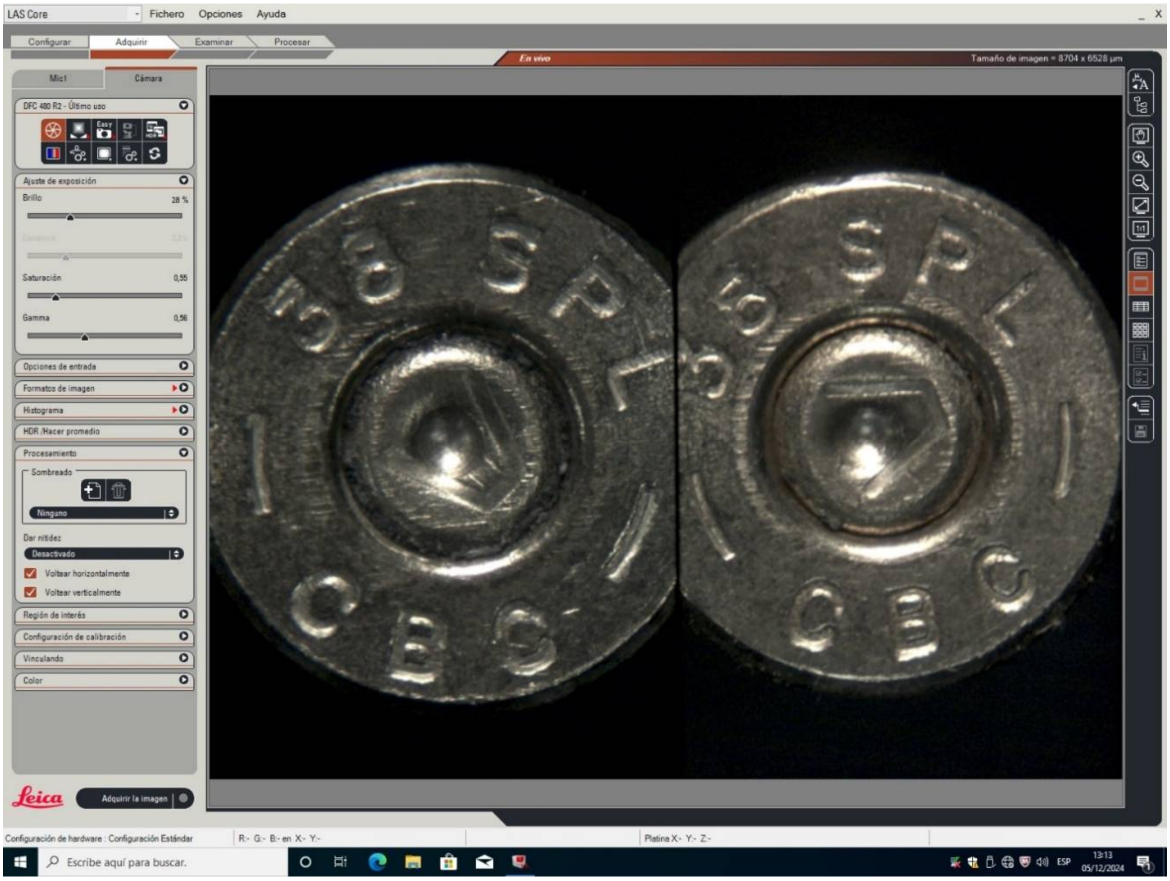


Figure 3

Comparison photograph of the Leica^{MR}microscope system's cap assortment, showing its general functions on the top tabs and on the right and left side of the screen.



It should be noted that the Teex^{MR}expert witness application is a resource to assist in the collation, but it is not a microscope platform, so it is necessary to have microscopes or simply cameras to capture evidence. The interesting thing is that the cameras or microscopes can be mounted to a computer with the software, which allows you to see in real time what is being recorded on the attached devices. As far as resolution is concerned, this will depend largely on the peripheral devices that are attached. The design of the platform is intended for the collation of various pieces of evidence, not only for ballistic elements. Figure 4 shows a computer with two microscopes attached.

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Picture 4

Teex^{MR}program with hand-held microscopes attached on each side

Note: Image provided by forensic ballistics supplier and author Cibrián, O. 2024, [11].

If it is not possible to attach a device, there is also the option of loading previously captured images from a file, which allows for practicality in handling the images when it is not in real time.

The company Arfus^{MR}, supplier of this system, describes it as a:

> Digital comparator oriented to develop skills in comparison techniques in students and future professionals of criminalistics, criminology and forensic sciences, such as the identification of firearms and tool marks, as well as other subjects related to specialised knowledge that provide informed opinions to the courts of justice on litigious points that are the subject of expert opinions (Delgadillo, 2020).

Although it is a programme or application mainly oriented to education, it is also really practical in the professional field, especially for those cases where there is no comparator equipment or where it is not possible to move the evidence to the place where the special equipment could be available.

The uses depend mainly on the user, but everything that requires a comparison can be used through this platform, for example, the comparison of documents, handwriting, fingerprints, tool marks, injuries, among others.

The minimum specifications to run this system are, a PC, Mobile, Surface hub, HoloLens, Windows 10 or later device, minimum memory of 2 Gb and 4Gb as a recommendation, a camera attached and recommended video memory of 1 Gb (Delgadillo, 2020). Image 5 shows a side-by-side comparison of two shells and various functions of the programme on the left side.

Figure 5

Ecosystem of the Teex^{MR}programme in a comparison of two shells, where its functions can be seen on the left side and bottom.

Note: Image provided by forensic ballistics supplier and author Cibrián, O. 2024 [15].

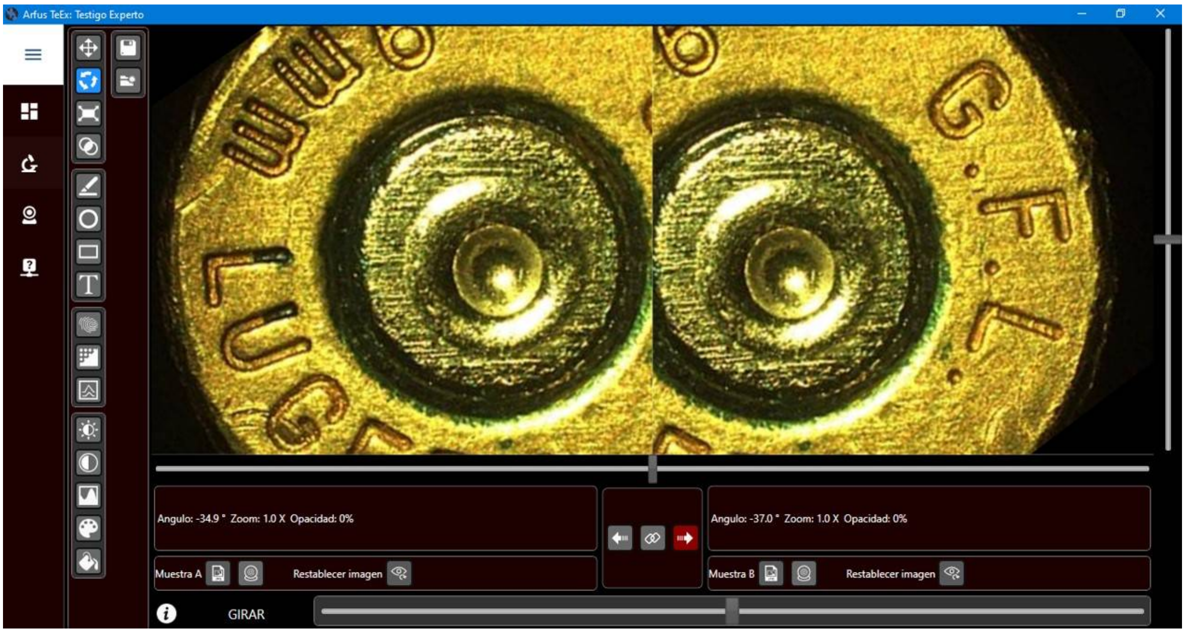
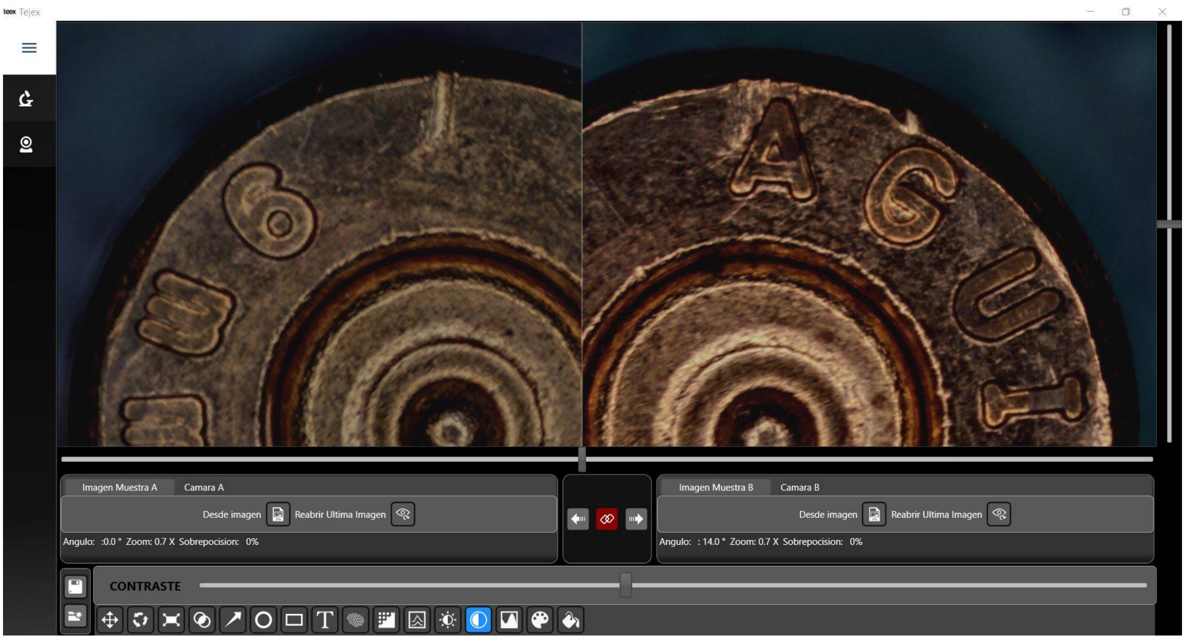


Figure 6

Comparison of extractor marks on the upper margin of two casings with Teex^{MR}software.



Note: Image taken directly from the program with a comparison with photographs taken by microscopy.

After testing the visual environment of various professional equipment and the Teex^{MR}program, a general comparison of the qualities of the programs of each microscope and the Teex^{MR}program was made, which can be seen summarised in Table 1, where the main functionalities of each system and their main characteristics are shown,

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with the main purpose of outlining the functionality of the Teex^{MR}system with respect to those of professional microscopes.

Table 1
Comparison of the features of the software for collation of various brands of microscopes and the TeeX^{MR}software

CHARACTERISTICS ASSOCIATED WITH THE SOFTWARE	**NAME OF EQUIPMENT AND/OR SOFTWARE**			
	VISION X^{MR}	LEICA FS C^{MR}	LEEDS LCF3^{MR}	TeeX^{MR}
Image	Vertically and laterally correct	Vertical and laterally correct	Vertical and laterally correct	Vertical and laterally correct
Comparison	side to side, left or right side complete, overlapping	side to side, left or right side complete, overlapping	side to side, left or right side complete, overlapping	side to side, left or right side complete, overlapping
Split line	Full motorised and memorised position and width settings in the controller	Manual configuration for position and width	Manual setting for position and width	Digital with manual setting for position and width
Live image from digital cameras*.	HDMI camera with image. memory on SD card, 1920x1080 pixel resolution, including basic Software functions	Various digital live cameras available	Various digital live cameras available	Depends on the attachment of photographic equipment, which can be attached to the system.
Program functions	VisionX SW includes its camera control, image capture, image annotation, image analysis, image archiving, measuring and comparison capabilities. Remote control function	LAS software package, controls the camera, captures and manages images, and supports measurements	LAS software package, controls the camera, captures and manages images and supports measurements.	

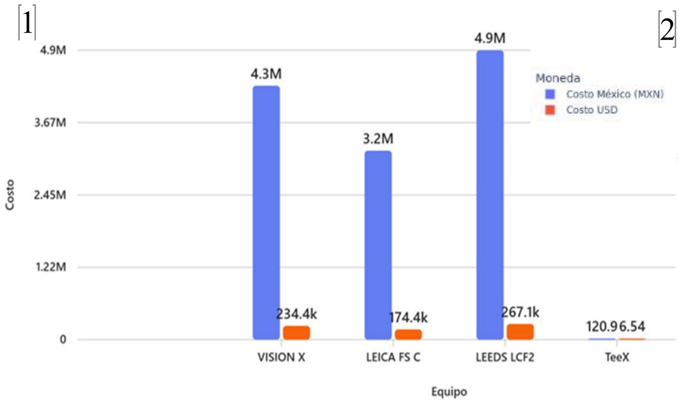
Note . The table represents the features of the software and only some of the hardware. Information extracted from the VISION X^{MR}, LEICA FS C^{MR}and LEEDS LCF3^{MR}devices *were extracted from the Projectina^{MR}comparative catalogue (*Visionx & Comac, 2017).

Figures 1 and 2

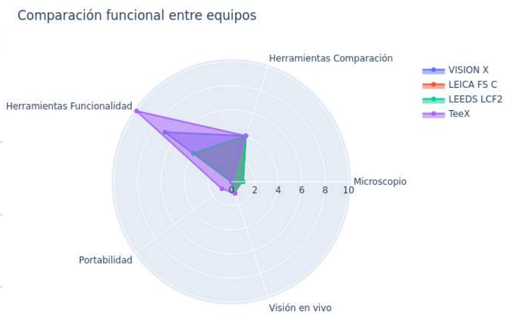
Comparison of the advantages and disadvantages of the comparison hardware and software of various brands of microscopes and TeeX^{MR}software.

Note: The prices are estimates obtained from the suppliers in the year 2025, the only one with

[1]



[2]



portability is the TeeX^{MR}programme as shown in graph 2.

9. DISCUSSION

The resolution of the images will depend on the camera with which they are taken. The purpose of this study, as mentioned, was never to compare the sharpness of the image but the efficiency of the services offered in their system or platform. The functions with which the vision X, Leica^{MR}and Leeds^{MR}devices are presented contain functions that aid in matching, coupled with their multiple lenses and the efficiency of their platform. However, the functions of matching, one-to-one comparison in real time, superimposition, rotation, change of illumination and contrast, are functions that are also available in the Teex^{MR}programme, so in this sense, it meets the conditions of any of the platforms examined.

The analysis shows that technology has substantially transformed the processes in forensic sciences, offering more accessible tools that reduce the gap between laboratories with limited resources and those with high-end equipment. The Teex^{MR}software, although initially conceived for educational purposes, proved to be a functional alternative for ballistic evidence matching, replicating the main features of professional systems such as side-by-side comparison, overlay and contrast adjustment. While it does not replace the optical precision of specialised microscopes, its low cost and ease of use make it a viable option for academic training and for scenarios where access to advanced equipment is limited.

This finding reinforces the importance of technological innovation aimed at the democratisation of knowledge and forensic practice, without losing sight of the fact that professional expertise and methodological rigour remain essential elements to ensure the validity of the results.

Integration with artificial intelligence: Explore the incorporation of AI algorithms for the automatic detection of individual characteristics in ballistic marks, optimising the matching process and reducing analysis time. 2. Evidence in judicial environments: Analyse the feasibility of using Teex^{MR}in hearings and courts, evaluating its acceptance

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as an auxiliary tool in the presentation of expert evidence. 3. Expansion to other forensic disciplines: Investigate the application of the programme in areas such as document microscopy, lophoscopy and injury analysis, to determine its versatility in different forensic scenarios. 4. Economic and social impact study: Measure the impact that the adoption of accessible tools such as Teex^{MR}would have on laboratories with limited resources, considering the reduction of costs and the democratisation of technological access. 5. Development of validation standards: Propose protocols and regulations that guarantee the reliability of the results obtained with digital platforms, aligned with international standards in forensic sciences.

10. CONCLUSION

The use of technology has evolved rapidly since the year 2000, allowing sciences, arts, disciplines, professions and others to benefit from new techniques. The forensic area has become more technical, improving studies and making them more efficient. Advances in microscopy combined with computer technology mean that things that were not possible before are no longer possible.

Although it is true that technology has helped forensic sciences, it is also true that many of the advances have not been in the hands of everyone, there are laboratories with technology that is still old, but not for that reason not functional, but which do not help with the efficiency of the processes. Given the above, alternatives have been implemented to make these benefits more and more accessible.

In this research, it was possible to show the use of accessible technology for collation, in contrast to the technology currently used by some official laboratories. This programme (Teex^{MR}) allows the user to make a comparison either directly with the evidence or indirectly with the photographs provided of the evidence. Although this program is designed for education and the most realistic approach to teaching the comparison of evidence such as shell casings, bullets, fingerprints, documents, among others, it can be concluded that it is also practical and useful for the established laboratory. Not only does it allow for real-time comparison, but it can also be used anywhere, even in a court of law.

It should not be forgotten that science has always tended towards communication and accessibility of its knowledge and more and more, this idea can be achieved with the help of technological advances, which allow the accessibility of tools that were previously impossible to have.

It is worth mentioning that the use of a piece of equipment or software does not in itself provide the knowledge and experience, so it must always be combined with knowledge of the subject matter and internationally accepted methodologies, the latter of which can be found in the publications of various organisations dedicated to forensic specialities on an international level, which publish advances and standards for the study of specific cases in each science or discipline. The theories expressed in this research are an example of standards for firearms and toolmarks.

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Research Article

THE MANAGEMENT OF HUMAN RESOURCES BY SPANISH PROFESSIONALS: A QUALITATIVE APPROACH

English translation with AI assistance (DeepL)

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THE MANAGEMENT OF HUMAN RESOURCES BY SPANISH PROFESSIONALS: A QUALITATIVE APPROACH

Summary: INTRODUCTION. 2.THEORETICAL FRAMEWORK. 2.1. Motivations. 2.2. 3.QUALITATIVE METHODOLOGY. 3.1. Choice of sample and data. 4. RESULTS OF THE ANALYSIS. 5. CONCLUSIONS. 6 BIBLIOGRAPHICAL REFERENCES.

Abstract: This research examines some of the key factors that impact human source management performance drawing from the practical experience of Spanish professionals. Given the scarcity of Spanish studies on variables involved in human source management through expert analysis, a qualitative expert reflexive thematic analysis employed as an analytical technique to systematize the operational knowledge they provide. The study objectives seek to identify psychological factors that increase success in source management such as motivations that either facilitate or hinder information acquisition, effective techniques for building trust-based relationship, and quality indicators of these operational relationships, thereby addressing the proposed hypotheses. The results, including the finding that ideological or moral motivations are highly reliable factors, following effective operational protocols and eliminating ineffective ones, or being guided by a systematic approach, among others, provide an empirical basis for refining engagement strategies and developing HUMINT training doctrine.

Resumen: En esta investigación se analizan cuáles son algunos de los elementos que impactan en el desempeño de la gestión de Fuentes Humanas desde la experiencia práctica de profesionales españoles. Ante la escasez de estudios españoles publicados sobre el estudio de factores implicados en la gestión de dichas Fuentes a través de expertos, se emplea el método de análisis temático reflexivo cualitativo de expertos para sistematizar los conocimientos operativos que aportan. Los objetivos del estudio buscan identificar factores psicológicos que incrementan el éxito en la gestión de Fuentes: motivaciones que facilitan u obstaculizan la obtención de información, técnicas efectivas para establecer relaciones de confianza, e indicadores de calidad de estas relaciones operativas; y así responder las hipótesis planteadas. Los resultados, como el que las motivaciones ideológicas o morales son factores de alta confiabilidad, el seguir unas pautas de actuación efectiva y eliminar las ineficaces o estar guiado por un sistema de actuación, entre otros; proporcionan base empírica para refinar estrategias de aproximación y desarrollar doctrina de entrenamiento en HUMINT.

Keywords: HUMINT, human sources, applied psychology, motivations, experts.

Palabras clave: HUMINT, fuentes humanas, psicología aplicada, motivaciones, expertos.

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ABBREVIATIONS

APA: American Psychological Association

CIFAS: Centre of Intelligence of the Armed Forces

CNI: National Intelligence Centre

CNP: National Police Force

CNV: Non-Verbal Communication

CV: Verbal Communication

FH: Human Source

FsHs: Human Sources

CG: Guardia Civil

HUMINT: Human Intelligence

INTRODUCTION

Practical experience is a source of knowledge in the field of human intelligence (hereafter HUMINT), particularly in the field of Human Sources management. The complex nature of the interactions between agents and sources demands a deep understanding, no longer only through conventional theoretical frameworks, but requiring the systematic incorporation of the accumulated knowledge of practitioners with real operational experience.

This methodological approach is not new in the international arena. Allison D. Redlich and colleagues (2014) focused on determining which methods interrogators perceived to be effective by systematically surveying 152 US military and federal subject matter experts. Similarly, Nunan (2020) interviewed a variety of practitioners to learn about the relevance of the relationship for acquiring intelligence. However, having information on the psychological elements and variables that influence the management of FsHs is currently fundamental for strategic decision-making, as it allows for anticipating behaviour, identifying vulnerabilities and designing more effective security policies adapted to emerging threats. Despite this relevance, few studies have been published in Spain on this subject, leaving a significant gap for obtaining excellent intelligence analysis.

Reflective thematic analysis (RTA) of information provided by experts has been considered a suitable methodology for capturing, systematising and validating knowledge (Naeem et al., 2023) developed through years of operational practice. This qualitative approach allows for the identification of patterns, techniques and strategies that have proven effective in real-world contexts, providing a solid basis for the development of doctrine and training methodologies.

Thus, the importance of qualitative analysis in applied research is rooted in its ability to explore complex phenomena from the perspective of those who have directly experienced them (Lim, 2025). Consider for a moment how, in the context of HUMINT, where each interaction could be understood as unique and contextual variables may be multiple, the experiences and perspectives of experts provide insights that would be difficult to obtain through other methods. It is not uncommon to hear from experienced practitioners that they have developed insights and skills in this area that, if systematically analysed, can reveal principles for effective source management.

In this research, the specific objectives of the content analysis are oriented towards the identification of some psychological elements that provide a greater likelihood of success in human resource management. The motivations that facilitate obtaining relevant information and those that impede it are sought, as well as establishing some of the most effective techniques for establishing and maintaining trusting relationships with sources. Finally, we aim to delimit the indicators that allow us to evaluate the quality and effectiveness of these operational relationships, following the studies of Moffett et al. (2021), where they conducted a review of the literature that identified six categories likely to impact the management of a covert human intelligence source (CHIS) or informant.

This study continues the line of research opened by Moffett et al. (2021), analysing three of these fundamental categories: informant motivation, rapport building and information gathering, given that they constitute the fundamental pillars for the development of effective operational relationships in the HUMINT context.

In terms of hypotheses, this analysis is based on the premise that not all sources' motivations are equally conducive to fostering sustainable trusting relationships. In this regard, the following hypotheses were put forward:

"Ideological motivation can foster a trusting relationship, while coercion can complicate it (H1)".

"Within the approach techniques, to establish a trusting relationship, the most important elements are to generate positive emotions, to adapt the communicative style of the Source with active listening and the least will be to present oneself in an excessively formal way (H2)".

These are the ones that were contemplated and we tried to respond to them, thus allowing us to refine the understanding of the factors that influence the effectiveness of the approach strategies and the sustainability of the link with the Source.

2. THEORETICAL FRAMEWORK

Psychology applied to source management is the theoretical foundation on which the effective practice of HUMINT is based. This discipline integrates principles of operational psychology with the specific needs of intelligence operations, providing a scientific framework for understanding and optimising interactions between agents and Sources.

Operational psychology, as defined by the American Psychological Association (APA, 2023), is the application of the principles of psychological science to operations conducted in support of national security, homeland defence and public safety (Staal and DeVries, 2020). This approach is presented as the area best suited to meet the functions and needs of human intelligence operations, providing psychological principles and skills that contribute significantly to more effective decision making.

The application of operational psychological science can be highly beneficial to intelligence in offensive and defensive operations, ranging from gathering information, conducting interrogations or identifying cognitive biases in the performance of intelligence members (Heuer, 1999). In addition, it can be crucial in identifying vulnerabilities, opportunities and/or risk factors associated with FsHs.

Some other contributions of psychology to the field of intelligence materialise through the formulation of personality profiles and the study of behaviour, supported by scientific methodology. These profiles seek not only to decipher the psychological predisposition of a Source and the strategy to address it, but also to analyse how certain personality traits, together with motivation, can influence the performance of the Source and the agents.

2.1. MOTIVATIONS

Understanding motivation strengthens relationships. Some previous observation-based research has highlighted the relevance of understanding Source motivations on the part of Source handlers (Dabney and Tewksbury, 2016; as cited in Moffett et al., 2022). For this reason, the accurate identification of an informant's motivations to collaborate allows handlers to treat them in a way that allows them to more effectively influence their behaviour and decrease the associated risks.

Recruiting new potential informants and managing established relationships relies heavily on understanding the informant's motivations, interests and lifestyle traits. To this end, there are various models that facilitate the identification of the typology of motivations.

For Ian Stanier and Jordan Nunan (2021), the "FIREPLACES" model serves as a mnemonic tool designed to facilitate the structuring of a Source's motivational analysis and thus ease the cognitive burden on the handler, being one of the most widely used frameworks in the context of HUMINT. This model emerges as a response to the limitations of the traditional "MICE" (Money, Ideology, Coercion, Ego) framework that has been widely challenged as lacking solid foundations in actual scientific research, resulting in limited predictive capacity and notably simplified motivations (Charney and Irvin, 2016).

The motivations for the FIREPLACES model were derived from extensive research into autobiographies and biographies of real informants that were submitted to dedicated Source units for exploitation in the UK (Stanier and Nunan, 2021). From this analysis, Stanier and Nunan significantly expanded the MICE model, adding new motivational dimensions: revenge, excitement, protection, lifestyle, access and sentence, thus providing greater depth and enabling better identification of the informant's underlying motivations.

Thus, the acronym FIREPLACES, encompasses and structures the main motivations that can drive a Source to collaborate, which can be "Financial" (monetary rewards), "Ideological" (political or moral convictions), "Recognition" (search for prestige or status), "**Ego**' (satisfaction of personal narcissism), 'Personal' (revenge or individual grievances), 'Lifestyle' (lifestyle enhancement), 'Affection' (emotional bonding), 'Coercion' (pressure or threat), 'Excitement' (seeking strong emotions) and 'Sentence' (avoiding convictions or reducing penalties). It is important to highlight that, in order to understand why a Source decides to provide information, it is essential to analyse these specific motivations in depth, as they allow the manager to build more effective and personalised strategies for recruiting and maintaining the relationship with the informant.

However, we must not lose sight of the fact that, in addition to the early and accurate identification of the dominant type of motivation in a Source, which is a determining factor for the success of the operation, the manager must assess its nature or reasons, such as the magnitude or degree of commitment to the action, . In that sense, each motivational category has specific characteristics in terms of reliability, temporal stability and susceptibility to external manipulation.

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Therefore, it could be concluded that motivation is a central element in Human Resource management, as it determines an individual's predisposition to collaborate and maintain an ongoing relationship with the manager. Understanding what drives a source to provide information allows the agent to adapt his or her relational strategy and anticipate behaviour.

In this respect, Vroom's Expectancy theory (Vroom, 1964), widely used in the organisational field, provides a framework also applicable to the relationship with sources. According to this model, a person's motivation to act depends on three factors: expectancy, which is the belief that his or her effort will produce the desired result, instrumentality, or the conviction that this result will lead to a reward, and valence, which is the value that the person attaches to this reward. However, it has been argued that this theory has the limitation of not considering social expectations and group conformity, so it is important to consider and include social impact as a fourth element (Fang, 2023).

Applied to the HUMINT context, taking this into account, a source will collaborate if they believe that their information will be valued, that their collaboration will have positive consequences (protection, recognition, economic benefit, personal satisfaction) and that these consequences are meaningful to them. Thus, identifying what the source really values - security, status, ideology, affection or material resources - can enable the manager to build a solid and lasting relationship, tailored to the informant's specific expectations.

Techniques for establishing and maintaining trust are based on well-established psychological principles, particularly the concepts of rapport, emotional synchronisation and social reciprocity. Rapport, understood as the psychological connection between the Source and the agent that facilitates collaboration, which helps to establish a solid basis for cooperation (Goodman-Delahunty and Howes, 2016), not only fosters mutual trust, but also enables smooth communication, creating optimal conditions for information gathering.

Indicators of effectiveness in the agent-source relationship encompass both verbal and non-verbal elements. From a behavioural perspective, they include aspects such as maintaining eye contact, gestural synchrony, use of inclusive pronouns and willingness to share personal information. From an operational perspective, effectiveness is assessed by the accuracy and relevance of the information provided, the temporal stability of the relationship, and the fulfilment of the information goals set.

This is important because the integration of these conceptual elements provides a comprehensive framework for understanding the complexity inherent in the management of Human Sources, enabling the development of systematic and evidence-based approaches to optimise these interactions in the intelligence domain.

3. QUALITATIVE METHODOLOGY

This study adopted reflexive thematic analysis (RTA) as the main analytical technique for processing the information collected from the experts. This methodology, originally developed by Braun and Clarke (2006) as Thematic Analysis (TA), has evolved in recent years explicitly incorporating the active and reflexive role of the researcher as a fundamental part of the analytical process, as pointed out by the authors themselves

(Braun and Clarke; 2021) and suggested by Pérez-Mena and Sánchez (2021). RTA was selected, for the purposes of this research, for its ability to identify, analyse and report thematic patterns within qualitative data, providing a systematic and rigorous framework that recognises interpretation as an interactive process where the researcher actively participates in the construction of knowledge from the experiences and perspectives of the practitioners consulted".

The implementation of the thematic analysis followed the six phases outlined in Braun and Clarke's methodological guide, specifically adapted to the characteristics of expert content in human resource management. The first phase began during the transcription of the recorded interviews, a process that allowed an initial familiarisation with the data and the identification of relevant elements for the subsequent analysis, with the researcher exercising an active reflective role on the content and its interpretation.

The first-order coding process constituted the second phase of the analysis, characterised by a systematic examination of the data to identify and code meaningful expressions and phrases. During this stage, first-order codes were extracted and organised into a structured document and reviewed to avoid redundancy. An example of this systematisation was the merging of expressions such as "who analyses well" and "analytical skills" to create the unified code "analytical". The reflexive process allowed the researcher to question and justify these coding decisions, ensuring methodological coherence and transparency.

The third phase involved the amalgamation of related first-order codes to form second-order codes, a process that culminated in the creation of general categories. This stage required a deeper interpretative analysis, looking for conceptual connections between the identified elements and grouping them according to their thematic relevance and conceptual coherence, thus maintaining a reflective stance on the interpretations made.

Phase 4 developed the categorisation into main themes, where potential emerging themes were reviewed and compared both to specific data extracts and to the full set of information collected. This process ensured that the themes identified were representative of the data corpus and maintained internal consistency.

The criteria for theoretical saturation were applied during the fifth stage, which involved defining and naming the themes, ensuring that they were interrelated without conceptual overlap. Saturation was considered achieved when no new codes or relevant themes emerged during the analysis of the last interviews processed, indicating that the corpus of data had been exhaustively explored.

The final phase consisted of the production of the analysis, integrating both the specialised literature and the extracted data to generate a comprehensive synthesis. The reflexive approach applied throughout the process allowed for a deeper and more conscious interpretation of the data, recognising the researcher's influence on the construction of knowledge. This methodology allowed the individual experiences of the experts to be transformed into systematic and transferable knowledge, providing a solid basis for the development of practical recommendations and doctrinal guidance.

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3.1. SAMPLE AND DATA SELECTION

In order to gather specialised information, a purposive sample of 17 experts was drawn from different institutions in the field of intelligence and security in Spain. This sample included six professionals from the National Intelligence Centre (hereinafter, CNI), two from the Armed Forces Intelligence Centre (hereinafter, CIFAS), four from the Guardia Civil (hereinafter, GC) and four from the National Police Force (hereinafter, CNP). All of them voluntarily agreed to participate in the study and, as a whole, the participants had an extensive professional career, accumulating between 20 and 30 years of experience in their respective organisations, with age ranges between 31 and 65 years, mainly in the field of Intelligence, and within this, in the management of FsHs. The sample consisted mostly of men (70.59%; n=12), while women accounted for 29.41% (n=5).

In particular, the majority of the CNI experts (n=6) had the highest level of experience, 30 years, and an upper age range of up to 65 years. Participants from CIFAS and the Guardia Civil, with 20 years of experience, were in the 31-50 age range, while those from the National Police, with 25 years of experience, were between 51 and 65 years of age.

The initial selection process was supplemented by a chain or "snowball" sampling strategy, asking the first participants to contact other experts who met the study's criteria. Following researchers Kitchenham and Pfleeger (2002) this snowball technique is widely used when the population is difficult for researchers to identify.

Depending on the availability of each subject, different modes of data collection were applied: semi-structured face-to-face interviews (n=4), recorded semi-structured telephone interviews (n=4) and written questionnaires sent by email or Google Forms (n=9). The interviews had been designed in advance with clear and measurable objectives, using a flexible script that allowed for a deepening of relevant emerging aspects during the conversation, thus maintaining a certain balance in the conversation. The oral interviews ranged in length from 30 to 90 minutes.

The questionnaire used was designed specifically for this research by the researcher himself, based on the literature review and specialised knowledge of the HUMINT field. The instrument was reviewed by two psychologists, who made corrections aimed at improving the clarity, relevance and appropriateness of the questions to the context. In order to minimise response bias, open-ended questions were used in , which avoided leading the participant to be suggestive, and the absolute anonymity of the participants was guaranteed, thus reducing social desirability bias. In addition, active listening and rephrasing techniques were applied during the interviews to ensure the correct interpretation of the answers without influencing the content of the responses.

Given the sensitivity of the subject matter, the confidentiality of all participants was guaranteed and they gave their verbal consent for the exclusive use of their contributions in the framework of this research.

4. RESULTS OF THE ANALYSIS

The thematic analysis of the interviews with FsH management experts revealed six main themes related to aspects of professional practice in HUMINT:

I. Adaptation to the Source and preparation of the agent as key elements.

Participants were asked to share their views on the essential attitudes and skills that a sourcing technician must possess to achieve his or her goal of acquiring accurate information to enrich the analysis. Complete adaptation to the Source was identified (n=15) as an essential element to take into account:

> *"From my point of view you must be reflective, patient, able to adapt to the profile of the interlocutor and above all know perfectly well the objective you want to achieve and establish a strategy to reach it"* (Participant 10).

> *"For me the most important thing is that the technician adapts, adapts in all senses to the person, both in actions, thoughts and emotions. To the virtues and defects of the person you have in front of you. If you have to interview a terrorist, a paedophile or a rapist, which is unpleasant for the technician, then the technician has to adapt to the source and thus acquire the information"* (Participant 6).

When an officer is faced with an interview with a Source, he/she has the obligation to suspend his/her ego, to plan and prepare the topic to be addressed in the interview, as well as to get to know the Source himself/herself. This involves seeking prior information through open sources about the person and acquiring in-depth knowledge about the Source. Thus, this process should reveal personal interests, aspects of life and motivations that can be used as key points for making connections. This is aptly explained by the following participants:

> *"A humint operator has to put aside his ego, suspend it and, above all, plan meticulously. The manipulator has his goal clear in his mind. If it is necessary for him to act like a fool, he will act like a fool. If he has to do x, he will do x and if he has to put up with being corrected by the Source, he will. For the person in front of him is neither friend nor foe; he is a receptacle full of information. My pride is not in whether he corrects me or not, but in getting the required information"* (Participant 13).

> *"Talking about the management of human resources, it is key to have the analytical capacity to evaluate the source objectively. This includes considering aspects such as education, language proficiency, possible biases, accessibility of information, different types of data, motivations and vulnerabilities, as well as the availability of the source"* (Participant 6).

> *"In terms of interaction, the handler must be able to exploit the Source strategically at any given moment, making effective use of encounter planning. Exploitation should be planned based on the assessment made earlier"* (Participant 2).

> *"A Source handler must have a deep knowledge of the topic that the Source provides information on. It is advisable to speak the language of the Source. The main attitude is to be empathetic"* (Participant 1).

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With regard to the attitudes that a sourcing manager should have, several participants stressed the importance of being sociable, reflective, empathetic and observant, with attention to detail:

> *"An ideal sourcing technician has to be sociable, empathetic, conciliatory"* (Participant 3).

> *"An ideal technician has to be characterised by observation"* (Participant 4).

> *"Emotional intelligence, attention to detail and observation, empathy"* (Participant 8).

Some highlighted the importance of having a background in psychology to understand the mental processes involved in obtaining information, ranging from how information is received to how it is stored and can be evoked and facilitated later:

> *"If we consider that the information to be obtained from a Source lies in their brain, we must have training in psychology to know how the processes involved work from the reception of information, through its storage, to those affecting evocation and facilitation"* (Participant 2).

It is essential that the practitioner is guided by a system marked by each phase of their interaction with the Source. This not only promotes effectiveness, but the importance of not undertaking this task alone, but as part of a collaborative team. One participant emphasised that the team enhances analysis and allows the evolution of relationships to be tracked and possible adjustments to be detected:

> *"You must follow a doctrine of action that allows you to be methodical in all phases of the relationship with a Source and it is always advisable that the person does not act alone, but as part of a team, with that team analysing the evolution of the relationship to detect aspects that need to be corrected. In information relationships, links can be established that affect the information objective and often the relationship officer is not aware of this"* (Participant 14).

Table 1: First coding of the thematic analysis.
First coding of the thematic analysis.

General category	
Adaptation of the source and preparation of the officer as key elements	
Second order codes	
Necessary traits of the agent	Resources and preparation of the agent
First order codes	
Social skills; Adequate listening; Suspension of ego and empathy; Broadly cultured and intellectually awake; Observant, analytical, attention to detail; Foresighted and adaptable; Flexible and reflective; Patient;	Organisation, method and doctrine of action; In-depth knowledge of the subject; Psychological training; Team with support and verification; Adequate knowledge of the subject matter; A team with support and verification

Note. Own elaboration

II. Understanding the mix of motivations and having resources available strengthens relationships.

Initiating the process of influencing a source involves, indispensably, understanding the motivations that drive them to collaborate, which are often varied and susceptible to manipulation by the manipulator. According to participants, each motivation has advantages and disadvantages, and in reality is an amalgam of incentives where individual motivations intertwine, shaping the responses and actions of the FsHs:

"To start manipulating a Source it is essential to know their motivations to collaborate which are generally several" (Participant 10).

"The underlying motivation, once identified, can be addressed to get the information we want" (Participant 11).

"They all have their pros and cons. In a way, it is a combination of motivations and within these there are their motivations, if you are a person who is going through financial difficulties, maybe you are interested in getting money, but maybe you prefer to get a job and be grateful to be paid that way" (Participant 10).

However, one of the experts stated that the responsibility lies with the information gatherer and the importance of having adequate means to address the Source's motivations:

"It is the job of the information gatherer to have the necessary resources to be able to satisfy the Source's motivation. If these resources are not available, I consider that there is no motivation that is more or less "facilitating". You have to know and be able to provide what the Source needs in order to establish a good connection and gain their trust" (Participant 11).

In turn, participants discerned between different motivations, assessing them according to their suitability for providing information and determining, in some cases, a preference for the short or long term. A general consensus was reached (n=15) highlighting the high reliability of motivations such as ideological, while those linked to coercion, financial or emotions were considered less reliable:

"Coercion doesn't work, it can be used to give you false information" (Participant 1).

"Someone who collaborates because of ideology is, in principle, the most reliable because it is logical that these principles are maintained over time. Someone who collaborates for a payment of any kind is easier, but more unstable because they can always be offered a higher amount unless they can only get the payment they want from the manipulator" (Participant 11).

"The ideological one I think is the best, the financial motivation is not, nor the emotional one because they are very fluctuating, you have to be pushing from one side to the other to get it on the right track. It is true that it can give you good results in the short term, the high of emotion is good for once and the next one has

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> *to be a bit more, that is to say, in the long term it can give you problems. Like money, they can go to the highest bidder, and the same goes for emotion, if someone else gives them more emotion, they can leave"* (Participant 13).
>
> *"The economic consideration is important and often necessary in an informational relationship, but we have to be careful in the long term and avoid it becoming a habit or a routine, so that the quality of the information decreases and the consideration becomes an obligation. It is always better to arrive at an economic consideration depending on the quality of the information received"* (Participant 14).
>
> *"On the one hand, the moral/ideological part is very important, if you have it eh, careful, if you have it. Secondly, money is money. Most things are driven by money, getting some kind of reward is fundamental in many cases, but in this world, there are people who go to the highest bidder and you have to discard that source. Experiencing emotion for the sake of being a Source is not advisable, it is usually set aside as well. When a person needs protection, it becomes a priority" (Participant 16).*
>
> *"Regarding ideology, revenge or protection, the information obtained is supposed to be quite reliable, they can help a lot when ideology is an important part, but you have to be very careful and always and systematically contrast it and complete it with other sources to prevent it from leading to exaggeration or manipulation"* (Participant 14).
>
> *"The worst is coercion and financial, and the best is ideological. For example, some years ago, a pro-Spanish Moroccan citizen was offered a holiday in a Spanish military residence. His experience of coming to Spain was extraordinary and coming to Spain was already a great experience for him, but on top of that, the fact that it was such a residence made him feel important"* (Participant 12).
>
> *"If you are going to have a long-term relationship with a source, they can become complicated over time and you have to be very careful, because it can happen that the source becomes dependent among other things" (Participant 15).*

However, one of the participants pointed out that at the beginning of relationships, prior knowledge of motivations is not so much prioritised as the application of rapprochement techniques:

> *"In principle, none of the above, since, if the manipulator is in the early stages of the relationship, the best tool is always through active listening, empathy and rapport building. The better we use these approach techniques, the more detailed the identification of motivations to be exploited will be"* (Participant 2).

Table 2
Second coding of the thematic analysis

General category	
Understanding the combination of motivations and having resources available strengthens relationships.	
Second order codes	
Those that are most reliable	Those that work worst
First-order codes	
Ideology; Protection	Coercion; Financial; Revenge; Emotion; Emotional

Note. Own elaboration

III. How to proceed in order to effectively establish a trust relationship

The most and least efficient techniques for building a trusting relationship between an agent and an FH were explored. Three themes emerged from the responses: establishing a baseline, following effective guidelines and avoiding ineffective strategies.

In this context, the process starts with the objective of establishing a baseline that allows to draw an initial profile of the Source's personality and to pick up patterns, seeking to create a calm environment:

> *"In the first instance, the aim is to create a baseline and thus establish the target's personality profile. First we want to create a calm situation, talking about topics that are not complex or emotionally relevant for the Source, for example, asking open questions or dealing with topics that we have researched and know well, so that we can see the way in which the Source expresses and behaves, adapt to it and observe elements to create that personality profile"* (Participant 5).

In order to establish a trusting relationship, it is important to follow effective guidelines. Various cognitive biases are used, because human beings tend to make judgements on a regular basis. We use pre-existing information as a mental shortcut, seek familiarity with our environment and fill in information gaps (Brod et al., 2013), among other cognitive processes. In the context of interactions, the halo effect[1] plays a significant role: if initially good performance patterns are applied, the first impression will be positive and the overall evaluation will also be positive.

For this, the building of rapport, understood as the psychological connection between the Source and the agent that facilitates collaboration, emerges as a relevant element. This relationship fosters mutual trust and allows for fluid communication, i.e. synchronisation with the Source. Several participants agreed on the importance of listening, empathising, using first names, making the Source feel comfortable, adjusting our tone of voice to theirs, sharing personal experiences:

[1] This effect manifests itself when we erroneously generalise from a single characteristic, attributing positive or negative qualities based solely on one aspect (Solano-Gómez and Smith-Castro, 2017, as cited in Rodríguez-Fandiño, 2022).

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> *"Active listening and empathy. In general, the techniques and strategies that encompass Rapport should be applied"* (Participant 2).

> *"It is always good to approach in a friendly way, making jokes, you can use specific references..." (Participant 5).*

> *"Having good guidelines for action, always taking the initiative, taking into account the informative interest to be achieved, but without this meaning that the Source should be left in the background. You have to give him his space, listen to him, motivate him and pay attention to everything that makes the relationship climate appropriate"* (Participant 14).

> *"Of the ones that I think may be most important are empathy, closeness, the existence of bridges, ties. You always have to weave as many links as possible between the two parties, whether it be language, history, knowledge of the country, interests of some kind"* (Participant 6).

> *"Establish a good rapport, i.e. listen, empathise, use their first name, make them feel involved and valued"* (Participant 8).

> *"The more natural and assertive the attitude of the acquirer, the more trust he/she will generate. You have to let the Source speak and listen to him, tell personal experiences that do not necessarily have to be real"* (Participant 10).

> *"You should try to find common ground, talk about the issues of interest to the source, that is why it is important to study the source thoroughly" (Participant 12).*

> *"It is important to apply the techniques associated with generating rapport and to try to be in tune with the source because a person tends to trust people who are similar to them. We can establish trust by smiling, using the name of the Source, physical contact at specific moments, looking for connections, commonalities, eye contact, copying body posture"* (Participant 13).

There are ineffective elements and strategies to avoid. Not confronting ideas, not maintaining a dominant position, being authoritarian, not listening or being cold are aspects to avoid:

> *"Entering too soon into volatile motivations, such as economic, entering into ideological issues, tending towards arguments or leading the meeting towards issues that the Source shows not to want to deal with"* (Participant 2).

> *"We must avoid entering into confrontation of ideas with the other person, be it religion, politics, etc. We cannot maintain a dominant position over the other person. We cannot hold a position of dominance over the Source, this should never happen"* (Participant 6).

> *"Authoritarianism and superiority"* (Participants 8 and 9).

"Talking too much, not listening, trying to show how much you know about the subject, being impatient..." (Participant 10).

"Those that go against the personality of the Source. Strategies have to be adapted to the personality and motivation of the Source" (Participant 11).

Table 3 Third coding of the thematic analysis
Third coding of the thematic analysis

General category		
How to proceed in order to effectively establish a trusting relationship		
Second order codes		
Create baseline	Having good guidelines for action	Undesirable patterns
First order codes		
Generate calm situation; Talk about non-complex issues; Ask open-ended questions; Observe CNV and CV of FH; Psychological profile of the Source;	Applying Rapport techniques; Weaving maximum binding links; Natural and assertive attitude; Empathy and listening; Preparing perfectly for the interview; Paying attention to everything; Motivating him/her and giving space	Entering ideological issues too soon; Authoritarianism; Superiority; Not keeping promises; Coercion; Confronting ideas; Being impatient; Distant and cold; Not taking into account the character and disposition of FH.

Note. Own elaboration.

IV. How to proceed in order to effectively maintain a relationship of trust: weaving as many links as possible.

Overall, Source handlers (n=12) were found to perceive trust-building behaviours, focusing on reciprocity and accommodation between agent and Source, as effective strategies for maintaining strong relationships. This effectiveness is reflected in actions ranging from regulating contact to progressively meeting the needs and motivations of the Source:

"Reciprocity, that is, responding in an appropriate way to the actions of the Source, generating exchanges, strengthening the relationship, its needs, etc., is something that must be done categorically" (Participant 15).

"Everything that generates trust in the Source, and this will influence the personality of the Source. Security and tranquillity tend to generate trust" (Participant 10).

"Keep communication brief and not always for the purpose of obtaining information. Be interested in their personal status and situations. Involve them in the objective, make them see the importance of their collaboration" (Participant 8).

> *"I would say that Maslow's pyramid should be applied here, i.e. satisfying the steps of the Source's needs"* (Participant 6).

> *"In a relationship of trust, we cannot only aim to "get", we must also "give". We have to generate a kind of symbiotic relationship, always within limits"* (Participant 3).

Participants recognised the importance of properly exploiting motivations once they have been identified during the first contacts:

> *"Appropriate exploitation of the motivations of the Source, without going into complex promises. For example, exploiting idealism towards one's own country, exploiting coherence on the basis of a job, or helping a loved one who is ill, without ever losing sight of what the Source can bring us"* (Participant 2).

Most argued that it was imperative to avoid behaviours that create insecurity at the Source. Coercion, pressure, authoritarianism and forgetting the Source were seen as ineffective strategies:

> *"Coercion, failure to keep promises is an ineffective strategy to maintain that relationship of trust"* (Participant 1).

> *"Getting carried away by the needs of the Source, making promises that we are not able to keep or resorting too soon to financial remuneration"* (Participant 2).

> *"Forgetting about him except when you are looking for something, making him feel that he is used and that his involvement is not valued"* (Participant 8).

> *"The arrogance, authoritarianism, superiority..." (Participants 9 and 17).*

Table 4
Fourth coding of the thematic analysis

General category	
How to proceed in order to maintain a trusting relationship effectively: weaving as many links as possible	
Second order codes	
Anything that builds trust in the source: Reciprocity	Avoid insecurity of the source
First order codes	
Regulating contact; Exploiting motivations of the source; Satisfying steps of needs; Generating security and reassurance; Giving and not just taking	Coercion or pressure; Failure to keep promises; Being dragged by the source; Forgetting about the source; Authoritarianism and superiority

Note. Own elaboration

V. Effective behaviours to obtain information.

The majority of participants (n=13) perceived that questions are key and play a fundamental role in allowing the Source to express itself and feel listened to. Specifically, they highlighted the importance of open-ended questions. Examples include:

> *"Asking open questions"* (Participant 1).

> *"With open questions and asking you to describe the situation and your feelings"* (Participant 8).

> *"Open questions create a climate in which the Source feels she can give her point of view, she feels listened to"* (Participant 15).

Likewise, one of the participants pointed out that the key is to manage the typology of existing questions appropriately:

> *"Solvent handling of questioning techniques. Knowing when to use each style of questions (...) there are also closed questions in case you need to obtain a specific piece of information. Hypothetical questions, which are good to ask at the beginning, so that the source opens up. And then there are the argumentative ones, with a trusted source. It is also good, as they do in psychological tests, to ask the same question in different ways and so cross-check the information. It's always good to go through the questions in outline"* (Participant 13).

In eliciting information, several participants (n=7) felt that the strategies are varied and adaptable to the specific nature of the Source:

> *"Talking about information gathering techniques is very variable. Strategies are variable, they are changeable" (Participant 16).*

> *"With a neurotic extrovert profile you can play with silence and in the end he will talk out of necessity" (Participant 13).*

> *"For example, it is known that mood predisposes to cognitive ease or that physical contact triggers the release of oxytocin and this not only boosts trust, but predisposes a subject to go into a low elaboration pathway" (Participant 6).*

However, some participants pointed to a number of strategies whose use, in general terms, from adopting a naïve attitude and appearing clumsy, to boosting the ego of your interlocutor, helps to provoke the flow of information with a Source:

> *"One can use a number of basic behaviours that help you, from playing naïve and looking a bit silly, to inflating their ego by telling them they are the smartest guy in the room. There is also the option of provoking a bit or pretending you made a mistake so that the other person corrects you, complaining about something that you know that the Source is also bothered by, keeping quiet in certain cases, cracking jokes to create a good atmosphere"* (Participant 12).

> *"Probe and see what the source thinks" (Participant* 15).

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> *"Empower him, make him see that the information he gives us is important and gets results"* (Participant 3).

Finally, one emphasised that it is important to avoid behaviours that do not favour the creation of a free environment:

> *"I consider that directed, captious, closed, closed, suggestive, manipulative questions are not effective because they deprive the Source of freedom to inform. It is necessary to create an environment of freedom in which the source feels that he/she can reveal the information available to him/her without being bound by any pre-established criteria"* (Participant 11).

Table 5

Fifth coding of the thematic analysis

General category	
Effective behaviours to obtain information	
Second-order codes	
Sound handling of questioning techniques	Simple but effective strategies
First order codes	
Open-ended questions; Closed questions; Clarifying and/or argumentative; Hypothetical or conditional	Playing naïve; Inflating the ego; Provoking; Pretending to have a bad memory; Complaining about common ground; Creating silences; Humour; Not letting the source speak; Physical contact; Using probes; Using probes.

Note. Own elaboration.

VI. Indicators of the materialisation of the trust relationship

From the participants' responses and the information provided, a number of indicators, both verbal and non-verbal, were identified to determine whether a bond of trust has indeed been established with a Source. Participants highlighted that the assessment could be based on the daily interaction with the Source and the accuracy and reliability of the information provided:

> *"The assessment can come from the accuracy of the information it gives, which can be verified with other Sources. Daily work with the Source will give you an indication of that trustworthiness, which will always be progressive. In the manipulation of human sources it is very difficult to speak clearly in black and white, there are always many shades and greys"* (Participant 1).

> *"The results obtained from the relationship: the information it provides, if it is good and reliable; if it fulfils the objective we had set at the beginning"* (Participant 10).

In addition, some of the participants indicated that the analyst plays a very important role as he/she has a global vision:

"Actually the analyst helps a lot because he is the one who has the whole picture and can guide you and clarify whether the information that a Source is giving you is correct or not. In the end they are like our orchestra conductors" (Participant 15).

As another clarified:

"You can very well ask something that you already know the real answer to and so you know if he trusts or if he is trying to "sneak" it to you" (Participant 4).

Several participants agreed that certain aspects of the interaction can indicate whether a trusting relationship has been established:

"By the number of encounters established. Doing it in different environments provokes moods that can help to assess that relationship" (Participant 9).

"Imagine you are with a person and you are asking him to betray his organisation, the country or the idea he believes in, you are asking him to go against himself. If he is willing to do that, you can conclude that you have achieved a relationship of trust' (Participant 6).

From a non-verbal perspective, they noted that observing specific behavioural elements is key to assessing this connection, such as avoiding constantly looking at the clock, maintaining normal eye contact, exhibiting a genuine smile, positioning oneself in front of us and demonstrating gestural synchrony. Verbally, the use of the pronoun "we" when referring to the agent and the Source, the willingness to share personal aspects and adopting a calm tone of voice are indicators that confirm this relationship:

"By the degree of warmth in manner, relaxation and naturalness in the relationship and communication. Ease of changing the subject without implying distrust or tension" (Participant 8).

"(...) trust is perceived in the Source's willingness to share experiences, experiences, emotions, information, feelings, ideas, thoughts, real, true, certain. When the Source "opens up", with the information obtained it is important to develop a verification process to detect if this "openness" is sincere" (Participant 11).

"When the Source, for example, does not look at the clock continuously, looks into the eyes, smiles, but with a genuine smile, uses concepts like us and them, us as him and me, (...) the silences are no longer awkward, he stands in front of us and the feet are not looking away, there are no gestures of reactance or distancing" (Participant 13).

"To verify this relationship, I can start making gestures at a moment to observe if he repeats them back to me, and if he repeats them back to me consecutively, that is, there is a gestural synchronisation, it is highly probable that there is this relationship of trust" (Participant 6).

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Table 6
Sixth coding of the thematic analysis

General category	
Indicators of the materialisation of the trust relationship	
Second order codes	
Accuracy of information	Aspects of treatment
First order codes	
Daily work with the Source; Analytical check; Questions with known answers; Doesn't look at watch; Looks at eyes; Genuine smile; Stands in front of the source	Does not look at watch; Looks into eyes; Genuine smile; Stands in front of us and feet in our direction; Gestural synchrony; "We"; Naturalness, relaxation in communication; Availability d; Silences not uncomfortable; "The Source opens up".

Note. Own elaboration.

5. CONCLUSIONS

Despite unstoppable technological progress, the human factor remains the cornerstone of any conflict or operation. The true test of intelligence effectiveness, in many cases, lies in HUMINT. Intelligence is not only shaped by technology, which admittedly contributes the most information, but by people who can be the primary source of high-value information.

Direct contact with reality, in a VUCA environment, is a litmus test for intelligence. Information acquired "in situ", in contact with the FsHs, is an essential element for analysis, providing precise clues that can prevent potential threats. Thus, psychology applied to intelligence not only helps to understand individual behaviour, but also becomes a valuable instrument or tool that contributes to success in obtaining strategic information in sometimes critical situations.

The conclusions, along with the above, of the present work are the following:

1. **Precisely the adaptation of the technician to the personality of the FH is perceived as essential and of utmost importance to achieve optimal performance**. The feeling of uncertainty causes discomfort, but not certainty. Any factor of unpredictability significantly increases people's discomfort, but not security, reassurance and predictability. That is, there is a tendency to fear what is unknown and to trust what seems known or similar. Consequently, there is a considerable part of this that is due to interpretation, and that interpretation can be positive if one adapts oneself to the Source in question. Everything that generates that similarity, security, trust, serenity, should be applied, because it brings the Source closer to the agent, because it enhances the feeling of closeness and because it will ultimately be an indispensable aspect of security in the relationship.
2. **There is a consensus among experts that ideological or moral, protective motivations are highly reliable factors in obtaining information, while those linked to coercion, financial or emotional motivations are considered less reliable in the long run.** Mistrust of the latter is due to their constant variability or fear of the Source itself, requiring great efforts to correct

and guide the Source in the right direction, and thus being considered less reliable over time. Initiating the process of influencing a Source involves a proper understanding and appreciation of the underlying motivations, which are often varied, to create sustainability of the collaboration.

3. **The agent must be part of a whole and be guided by a system of action, marked by each phase of his or her interaction with the Source.** This not only promotes effectiveness, but also the importance of being part of a collaborative team, which can and should be able to detect changes in the relationship and enable their correction. The agent, as a person and the Relationship Officer that he or she is, can be influenced by the bonding bridge with the Source and be affected by emotional biases that he or she does not consciously detect. Therefore, being part of a whole is essential to make the consensual contribution more valuable than the individual one.

4. **Following effective guidelines and eliminating ineffective ones when it comes to establishing a relationship of trust will bring us closer to the success of the information objectives to be achieved.** Building rapport, listening, empathising, using first names, making the Source feel comfortable, adjusting our tone of voice to theirs, telling personal experiences, not confronting ideas, not maintaining a position of dominance, being authoritarian, not listening or being cold, among others, as we have seen in the analysis, are factors that will help to generate this initial ground of trust.

5. **Weaving as many links as possible, either by doing everything that generates trust in the source or by avoiding insecurity in the source, will be an effective way to maintain the trusting relationship.** What is incompatible with maintaining a relationship of trust is not only creating insecurity in the Source, but also putting pressure on the Source, failing to keep promises, being dragged along by the Source, forgetting about the Source except when it is in our interest, not valuing the Source and showing oneself to be superior. Therefore, everything that revolves around reciprocity, such as generating that symbiotic relationship without always expecting to get without giving, regulating contact, generating greater security or satisfying the steps of their needs, should be valued by the one who has the responsibility to initiate and materialise that informative relationship.

6. **Based on the experience of experts, there are both effective behaviours for obtaining information and a series of indicators that facilitate the determination of the bond of trust.** Appropriate handling of the typology of existing questions is essential because they act as keys, unlocking a different understanding and revealing deeper information and layers. Experts are knowledgeable and recognise that, in order to obtain "complete" answers, it is essential to tailor the interrogative approach to the unique nature of each situation and character of the Source. In addition, various strategies, such as adopting a naïve attitude and appearing somewhat awkward, even boosting the ego of your interlocutor, help to provoke the flow of information with a Source. On the other hand, participants stressed that the assessment of the effectiveness of the bond could be based on the daily interaction with the Source and the accuracy and reliability of the information provided, as well as whether the intended goal is achieved or other elements of verbal and non-verbal interaction.

7. **"Failure to prepare is preparing for failure".** The handler's responsibility for planning, organisation and foresight is seen as key. These are indispensable tools, and it is the meticulous preparation of each step that

> strengthens the effectiveness of information gathering. The right training and experiences act as a solid foundation, providing the necessary skills to navigate the complexities of human interactions. In psychology, there is a cognitive bias called the Dunning-Kruger effect which dictates that there is a tendency for individuals with limited knowledge or skills in a specific area to significantly exaggerate them. To avoid falling into this, it is essential to plan and work with firmness and confidence, but with humility; and to try to maintain a perspective that values personal strengths and weaknesses. In some ways, setbacks are acceptable, but relationship action in the absence of planning is unacceptable. Taken together, this not only defines the competent professional, but is also key to achieving success in procurement.

Likewise, the hypotheses posed at the beginning of this research were answered as follows:

"Ideological motivation can foster a trusting relationship, while coercion can complicate it (H1)."

It was accepted. The results reflect a consensus among experts that ideological or moral motivations, especially those related to the protection of people, values or institutions, are the most reliable for establishing sustained, information-oriented relationships over time. In contrast, motivations based on coercion, economic interest or the emotional component - such as revenge or resentment - are seen as less stable and therefore less reliable in the long term.

"Within the approach techniques, to establish a trusting relationship, the most important elements are to generate positive emotions, to adapt the communication style of the Source with active listening and the least will be to present oneself in an excessively formal way (H2)".

This was accepted, being broadly supported and complemented by multiple observations. Experts highlighted concrete practices such as using first names, making the Source feel comfortable, modulating the tone of voice to align with the other person's, sharing personal experiences, avoiding direct confrontation of ideas, not adopting postures of superiority or dominance, and avoiding authoritarian, cold or disinterested attitudes. These elements are considered essential to build a genuine bond of trust during the initial phases of the source-operator relationship.

In terms of the research contribution, the main contribution of the research lies in the systematisation of the tacit knowledge of experts in human resource management, identifying seven critical dimensions based on actual operational experience. This study provides a conceptual framework that integrates psychological principles applied to HUMINT, providing practical guidelines based on qualitative evidence that can serve as a basis for the development of training and action protocols in the field of intelligence. It also contributes to reducing the existing gap in the scientific literature in Spanish on psychological factors in the management of human sources.

On the other hand, among the limitations identified is the sample size, although it may be adequate for an exploratory qualitative study, it limits the generalisability of the findings. The sensitive nature of the HUMINT domain may have conditioned the depth of some of the participants' disclosures. In addition, the reliance on self-reported testimonies and the absence of formal psychometric validation of the data collection instrument are methodological limitations that must be considered in the interpretation of the results. Variability in operational contexts and participants' experiences also represent a factor to be taken into account.

This is why this research opens up several lines of investigation that can and deserve to be explored in depth. It would be valuable, for example, to develop longitudinal research that analyses the evolution of operational agent-source relationships over the long term and the factors that determine their sustainability. Comparative studies on the effectiveness of management techniques in different cultural and operational contexts would also be relevant, as would research on the integration of emerging technologies as complementary evaluation tools. Finally, it is necessary to make progress in the development, albeit complex, of validated measurement instruments that allow us to evaluate with a certain degree of objectivity the quality of the relationships established and the effectiveness of training programmes in psychological competencies for human resources managers.

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Research Article

HISTORICAL DISINFORMATION. CASE STUDY: THE EVENTS OF CASTILBLANCO

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HISTORICAL DISINFORMATION. CASE STUDY: THE EVENTS OF CASTILBLANCO

Summary: INTRODUCTION. 2. CASTILBLANCO: THE EVENTS. 3. THE STORY; DIFFERENT VERSIONS. 4. THE SUPPOSED ANTECEDENTS. 5. OTHER CONSIDERATIONS. 6. 5. OTHER CONSIDERATIONS. 6. BIBLIOGRAPHICAL REFERENCES.

Abstract: Unfortunately, on more occasions than desired, when one turns to historical texts to learn more about a fact of interest, one usually finds elements that disconcert the reader, since the new information distorts his or her first references on the subject. After carrying out the pertinent checks and comparing the data with other more reliable sources, it is found that the story found, even if it has been signed by authors with adequate knowledge and the backing of a high degree, does not correspond to the reality of the fact. Although there is never a single truth and the narrative can suffer involuntary variations, in most cases the references and sources of all kinds allow them to be adjusted, to a large extent, to past reality. There are many occasions in which, when this reality affects events in which the Guardia Civil turns out, for better or worse, to be the protagonist, the stories differ, and a lot, from how the events happened. As a reference example, we have chosen a memory from the history of the Corps which, due to the exceptional circumstances that occurred in it, has generated abundant literature, among which, unfortunately, the negative literature generally predominates. We propose, therefore, with the limitations imposed by a research article, to study the historiography of what were called "Castilblanco events".

Resumen: Desgraciadamente, en más ocasiones de las deseadas, cuando se acude a textos de carácter histórico para conocer más sobre un hecho de interés, se suelen encontrar elementos que desconciertan al lector, pues la nueva información distorsiona sus primeras referencias sobre el asunto. Realizadas las comprobaciones pertinentes y contrastados los datos con otras fuentes más fidedignas, se llega a comprobar que el relato encontrado, aunque haya sido firmado por autores con los conocimientos adecuados y el respaldo de una elevada titulación, no responde a la realidad del hecho. Aunque nunca hay una sola verdad y la narrativa puede sufrir variaciones involuntarias, en la mayoría de las ocasiones las referencias y fuentes de todo tipo permiten ajustarlas, en gran medida, a la realidad pasada. No son pocas las ocasiones en las que, cuando esa realidad afecta a sucesos en los que la Guardia Civil resulta, para bien o para mal, ser la protagonista, los relatos difieren, y mucho, de cómo sucedieron los hechos. Como un ejemplo de referencia, hemos escogido un recuerdo de la historia del Cuerpo que, por las excepcionales circunstancias que concurrieron en él, ha generado abundante literatura de entre la que predomina, generalmente y por desgracia, la negativa. Nos proponemos pues, con las limitaciones que impone un artículo de investigación, analizar diferentes referencias publicadas sobre los que se dieron en llamar "sucesos de Castilblanco".

Keywords: Guardia Civil, Castilblanco, 1931, Second Republic, demonstration.

Palabras clave: Guardia Civil, Castilblanco, 1931, Segunda República, manifestación.

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ABBREVIATIONS

DS: Journal of Sessions

FNTT: Federación Nacional de Trabajadores de la Tierra (National Federation of Land Workers)

GM: Gaceta de Madrid

INE: National Statistical Institute

ORGA: Autonomous Galician Republican Autonomous Organisation

REHGC: Journal of Historical Studies of the Guardia Civil

RTGC: Technical Review of the Guardia Civil.

INTRODUCTION

In the tourist office in Brihuega, or at least it used to be, there was a newspaper article with a headline referring to the creation of one of the most important brands in Spanish commerce: El Corte Inglés. The article reported that it had been founded by Julián Gordo Centenera, a native of that town in the province of Alhuega. This reference clashed with those provided by the brand itself, acknowledging Ramón Areces Rodríguez and César Rodríguez González as founders of the chain. In this case, depending on how you look at it, both pieces of information are true, since Mr. Gordo, just at the beginning of the 20th century, opened a tailor's shop at the junction of Preciados, Rompelanzas and El Carmen streets in Madrid, which he called "El Corte Inglés". In December 1935, César and Ramón, uncle and nephew, bought the establishment and, keeping the name, began a successful economic adventure that would culminate in what today represents "El Corte Inglés" and the different activities associated with the chain.

The point is that, without being able to say that the article in the local press of Guadalajara falsifies reality, the way of presenting the facts is misleading for those who do not know the real history of the commercial group.

On the other hand, the Guardia Civil anthem itself contains a misinforming element in its lyrics, because when the then Lieutenant Colonel Osuna writes "to glorify the name that the great Ahumada gave you", he alters the reality of the historical fact: the name already appeared in the Royal Decree of 28 March, months before Girón took over the organisation, not the foundation (another misinforming element that is often repeated), of the Corps.

Perhaps we could assess the intentionality behind each of the two cases. And so, while the first, without being untruthful, manipulates the historical fact to attribute merit to someone to whom it does not correspond, in the second it does not seem that we can attribute a false spirit to Osuna, but rather to general ignorance, in the context of which he limited himself to reproducing what tradition had been taking for granted.

Any historian who claims to be rigorous in his work must always respect the most essential deontological principles. Although some facts may be subject to the free interpretation of the scholar, those who act as notaries of history cannot commit the greatest crime of the profession: the manipulation of facts. At most, we can agree that they may perhaps be subject to interpretation, at least in the gaps that historical references (or, rather, the absence of such references) may provide. In any case, a distinction must be made between the event and its consequences. Thus, in the battle of Qadesh, we can engage in a corresponding debate as to whether the victory was Ramses II's, as has traditionally been assumed, or Muwatalli II's, as more recent research seems to concede. We can even come to a consensus and sign a table between the Egyptians and the Hittites. What no expert doubts, however, is that the event, the confrontation, took place.

Despite this overwhelming logic, we often find, sometimes recurrently, cases in which the reporter is carried away by his emotions, his personal state or, what is worse, his ideological tendency, to deny a specific event or, faced with certain evidence that prevents him from doing so, to present it in a way that bears no resemblance to the reality

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of what happened. The examples given, far from being mere anecdotes for to bring this work closer to the analysis of the references to the events of Castilblanco, constitute a starting point, a basis for understanding that disinformation, as a concept, may be new, but as a self-interested action it has existed since time immemorial.

Evidently, when the protagonist of the events corresponds to a person or institution of special significance, whatever the rank of such significance, the story can go beyond the mere interpretations of the narrator, to the point of becoming a full-fledged attack. On such occasions, because of the nature of what happened, the repercussions achieved or the background of the issue, different versions tend to appear, each one more distorting, although, curiously, with some negative element that unites them. And in these cases there is bound to be some variant which, using an apparently objective tone, contains subliminal messages with a clear negativity, as if we wanted to appear to be passionate fruit eaters and, as proof of this, we declared that we are just as happy to eat delicious strawberries as we are to eat astringent sloes.

Of course, if, for example, we were dealing with a tragic event, we could not miss the usual reference to the testimony of witnesses, which obviously dismantles any official version, although, curiously, such a version is duly documented and, on the other hand, these witnesses are never identified.

The Guardia Civil could not escape the value judgements that, from various sectors, including academia, question some of its actions. And it is here that we consider the analysis of one of the most significant cases in the history of the Corps: the events of Castilblanco. We would have liked to avoid making the same mistakes which, in our opinion, have been made by the different authors we will refer to, but, given our professional status, it will be impossible to achieve such an objective; in fact, we know that we are not free from the possibility that later studies may see in our expositions the same value judgements alluded to above.

The different sources dealt with (documentaries, press, manuals, ...) cover different points of view and interpretations of the facts, the reader having to judge the greater or lesser proximity of the postulates with respect to them, for which we will describe them according to the official account, providing all the information that, adjusted to the established limitations of space, allows us to have sufficient data.

2. CASTILBLANCO: THE FACTS

The town of Castilblanco is located in the *Siberia* of Extremadura, a region in the north-east of Badajoz that borders the provinces of Ciudad Real, Toledo and Cáceres. Today, with a clearly declining population, the census records 844 inhabitants[1] but, at the time of the Second Republic, the village was home to some 3,100 .[2]

[1] INE. Annual Population Census 2021-2024. https://www.ine.es/

[2] INE. Alterations of the municipalities in the Population Censuses since 1842.

https://www.ine.es/intercensal/

The new regime, that is, the republican period that followed the resignation of Alfonso XIII, was received by the poorer classes as a hopeful land of promise in which everyone would have access to a plot of land to farm; a plot of land from which, of course, they would obtain their livelihood without having to answer to any landowner. However, reality, which is usually very stubborn, imposed itself at all costs, and those initial hopes were diluted as time went by: the longed-for agrarian reform was resisted. In this context, the peasant population, increasingly disgruntled, was raising the tone of its protests, demanding the prompt delivery of land on which to harvest.

The first Republican months were passing and the 1931 calendar was about to come to an end to make way for the new year; in fact, we had already reached the last day, when the trade union Federación Nacional de Trabajadores de la Tierra (FNTT), the agricultural branch of the UGT, called a demonstration. It was not the first, but, although the previous day's demonstration had not been authorised, it had taken place quite normally and the authorities had done nothing to prevent it. However, the demonstration on 31 December would have a very different ending.

For the time being, the local mayor, Felipe Mangano López, decided that these illegal marches could not be allowed to take place. He wrote to the post commander. José Blanco Fernández, Corporal 1 of the Corps, ordered the corresponding service and was accompanied by his three guards: Agripino Simón Martín, Francisco González Borrego and José Matos González. The four of them left the barracks to meet the demonstration which, at that hour close to midday, was in Calle del Calvario, very close by. For the sake of completeness, we reproduce below some paragraphs from the report drawn up by the Chief of Command :[3]

> *"The corporal advanced alone and, with his rifle slung over his shoulder* (a detail of great importance, as we shall see later)*, went to the President of the Casa del Pueblo, Justo Fernández López, whom he found on the right-hand side of the street in the midst of a large number of members. With the calmness of one who believes he is talking to good friends, he approached him, leaving his strength further back, between the groups, and with a kind word begged him to stop the rioting and to stop the group from circulating the streets.*
>
> *Unexpectedly, and as if responding to a proposed purpose, the corporal's pleas were answered by his interlocutor holding his arms at the same time as others tried to disarm him; Corporal Blanco, a serene, young and Herculean man, pulled away from his adversaries and tried to retreat to prepare himself for defence; Hilario Bermejo Corral (a) "Retuerto", with a dagger and from behind, stabbed him, entering through the back of the neck, piercing the whole of his neck, the tip coming out from under his beard, ..." (Rodríguez Castaños)....*" (Rodríguez Castaños, 1970: 156).

As we shall see in the following section, there are more than a few versions which, in clear opposition to what we read in the first paragraph of the lieutenant colonel's account, present the guards as aggressive characters who "with clean shots" were trying

[3] Lieutenant Colonel Pedro de Pereda Sanz.

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to break up the demonstration. However, it is not only in the proceedings that these assertions are disproved, but in different media, a totally different scenario is depicted, , in which the guardsmen chat with those present. Of this friendly relationship with the neighbourhood, we find good proof in the following text:

> *"At the demonstration of strikers, the guards, without suspicion, mingled with the groups, advising them to be cautious. They took no precautions. In their opinion, they were among friends, who would heed their advice to disband*" .[4]

And this is where we return to the previous mention of the detail that the corporal, like the guards, carried his rifle on his shoulder. This is precisely a sign of confidence that all would be peaceful. At no time did they even consider placing their weapons in prevengan. And, as we can see in Figure 1, the disposition in which the guards found themselves among the peasants confirms the idea that they were acting with complete confidence, calm in the face of a routine service that would have no further significance:

> "*Again and again I heard from the lips of the perpetrators of the unspeakable murder, that the four victims of their fury, were very good men, who had never received from them the least offence, not even discourteous admonitions*" (Santiago Hodsson, 1932: 56).

Figure 1.

Calle del Calvario in Castilblanco. The blades indicate where the corpses were left: next to the Casa del Pueblo, in white, that of the Post Commander; the three in black, those of his comrades.

[4] *New World*, of 8/01/1932.

Another example of this sense of calm is provided by a different media outlet, in this case *Mundo Gráfico*:

> *"The Guardia Civil moved among the groups recommending order. The guards, without concern, mingled with the demonstrators, neighbours, friends and acquaintances*" .[5]

To close this section, we would like to draw attention to the fact that, despite the large number of works on the subject, the incomprehensible unity of action in the response of the Castilblanco residents has scarcely been studied. In the face of the fact that, practically simultaneously, all responded aggressively against the guards, no acceptable explanation has been articulated so far. Without claiming to be a lecturer on the subject, as the culmination of this discreet investigation, we will provide another point of view on what happened which, at the very least, should be assessed in the same terms as other contributions.

Up to now, the different versions tend to agree that the attack was a response by the peasants to the plight in which they found themselves. On this aspect, assumed as absolute truth by a good number of authors, we find different opinions, since, although this discourse that the members of the FNTT of Castilblanco had spent the whole winter without work (Preston, 2020) is the easiest to accept, we cannot disregard the accounts collected in the media of the time, as we will see below, taking as an example an article in *Mundo Gráfico*, or the speech of the Minister of the Interior himself:

> "*... I do have to say that clichéd phrases are being uttered, which have no reality when it comes to Castilblanco, and that it is not appropriate to speak of caciquismo.*
>
> *[...] And in Castilblanco that has not happened. That is to say, there was no hatred of the people of the town against caciquismo, nor was there a nucleus of poor elements that could be unleashed at a time of need or indignation of the people, given that most of the people who took part in the events, I won't say that they were wealthy, but they were relatively well off. And it so happens that some of those arrested are individuals who had a few thousand pesetas that they lent at 20 percent. (Rumours.) I mean that this is not the cause that determined the* Castilblanco *movement*"[6] .

Another formula used to justify the violent response of the Castilblanco people relates the aggressions to the shooting by the guard Agripino. Although it has not yet been possible to prove whether this was prior to the attack on the corporal, or whether it occurred afterwards, what is clear is that, even if it was prior, it does not seem logical that those surrounding the post commander would attack him as a reaction to the detonation: given that there was no visual contact between the two positions, nor was it possible to know at the time the reason for the shot, or that it had hit anyone.

[5] *Mundo Gráfico*, 5/01/1932.

[6] Debate on the events of Castilblanco, held on 5 January 1932 (*DS* no. 93, of 05/01/1932: p 2998).

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This raises the question of whether these coordinated actions could have been planned in advance. As we have already noted, we refer to the end of this article.

3. THE STORY: DIFFERENT VERSIONS

The brutality of the events shocked the whole of Spain and, beyond the details of the victims' status as civil guardsmen, caused a real social earthquake. All the media echoed the news, especially the most renowned ones, which immediately sent reporters to the town. Perhaps the most prominent was *Mundo Gráfico*, which carried out an extensive photographic report, reproduced ad nauseam in other publications of the time and in most subsequent articles and studies. At the risk of being redundant, here are two of the most widely published: the one taken at the scene of the events (shown above, Figure 1) and the façade of the barracks house (Figure 2). The second is intended to draw the reader's attention to the extent to which the Guardia Civil, as part of society itself, from which it comes and which it must protect, shared the same miseries suffered by the simple people, as on few occasions could a barracks be as humble as the one depicted here.

Figure 2.

Castilblanco barracks.

Over the more than eighty years that have passed since then, much has been written about what happened in that remote village in Badajoz. Of most of the articles or references, unfortunately, we can hardly say that the content of any of them respects the reality of the events and, much less, the dignity of the murdered guardsmen.

We do not know to what extent the discordance with what happened derives from shortcomings in the investigation or, what would be worse, from a specific intention on the part of the authors.

Sometimes they are small details that some people tend to play down because they do not understand that they are decisive for the overall facts narrated. However, in our humble opinion, they should be given due importance, since they allow us to appreciate to what extent the researcher has been diligent in his work, or not. We find several examples of this, such as "at the end of the demonstration" (Chaput, 2004: 191) or, in the same sense, but situating the action "at the end of the strike on the 31st" (Rodríguez Serrano, 2015: 159). The question that immediately arises, after reading both statements, is: if the demonstration was already over ... what were the guardsmen going to break up? or, to put it another way, what was the point of handing out a notification prohibiting the demonstration when it had already ended? It is clear that the information on something so obvious and simple is not good, and we personally doubt whether the sources used for the rest of his account are equally reliable.

Also very significant, as we pointed out in the Introduction, is the choice of terms used to refer to the demonstrators, in clear contrast to those used to refer to the Guardia Civils. The most significant example is that of Preston, insofar as the prestige he is supposed to enjoy should give greater value to his writings:

> *"On 31 December, while they were holding a peaceful and orderly demonstration, the Guardia Civil burst into the midst of the crowd and, after a scuffle, burst into gunfire, killing one man and wounding two others. The hungry villagers, in a fit of fear, anguish and panic, pounced on the four guards and stoned and hacked them to death*' (Preston, 2020: 69-70).

Clearly, the wording induces the reader to empathise with the villagers ('peaceful and orderly demonstration' or 'starving, in a fit of fear, anguish and panic') and to feel contempt for the Guardia Civil ('burst into the crowd' and 'burst into gunfire'). Of the various thought-provoking aspects of the paragraph, we are left with just one: what qualities would these four Civil Guards not have to be capable of "bursting in" on a demonstration of 500 people? It only takes a few seconds to understand, in view of Figure 1, that it would be impossible for the guards to take any offensive action when completely surrounded by half a thousand souls: in any case, they could only defend themselves, but, as the sentence states, they could not even do that. However, if we analyse the chronology of Preston's account, we see that it suggests a sequence in which the demonstration goes on peacefully until the uniformed men appear and, after the logical clash (he speaks of a "scuffle" of which there is no record), begin to shoot, resulting in one dead and several wounded; in the face of *such an outrage*, the frightened peasants only try to defend themselves, which will result in the death of the four civil guards.

A similar line is found in the following text:

> "*On 31 December of that same year, in the village of Castilblanco in Badajoz, after having tried to dissolve a peasant demonstration with clean shots, four civil guards died at the hands of the strikers in the midst of unusual acts of barbarism*" (Íñigo Fernández, 2010: 185-186).

Although in this case, at least, he seems to compensate for the expression "a tiro limpio" (it could be literal, because it is not clear whether there was time for them to do it in the air, or only one, which caused one death) with the recognition that the mass, so repeatedly described by various authors as "peaceful", actually committed "acts of barbarism".

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Rodríguez Serrano is not far behind when he refers to the guard Agripino Simón and says that he was a "Guardia Civil with a cocky air [who] shot and killed Hipólito Corral" (Rodríguez Serrano, 2015: 159).

On another note, and without questioning the harsh conditions of the residents of Castilblanco, we draw attention to the text of the aforementioned article that appeared in *Mundo Gráfico*:

> *"Castilblanco was not a rebellious town. Rough people, but peaceful, attached to work, which was not lacking. An exception in the Siberia of Extremadura: Castilblanco had no problem of agrarian misery. There was plenty of work. The land was good for everyone: the olive trees, good harvests; the mountains, abundant pastures. The poorest neighbour had a piece of olive grove and made his slaughter. So there was no resentment of misery in the face of social injustice. Work and bread for all*" .[7]

As we can see, this description clearly breaks with the repeated discourse of the starving peasant which, stubbornly, almost all the authors included in this study have taken up.

It will always be easy to find those who insist on presenting the Guardia Civil as those tools of the powerful to oppress the working class, as Rodríguez Serrano does:

> "*The Guardia Civil was in Castilblanco a force of protection and blind obedience at the service of the cacique to execute his outrages and injustices, despising the people, like unredeemed rabble*" (Rodríguez Serrano, 2015: 159, alluding to Jiménez de Asúa et al. 2011: 121).

But this view clashes head-on with references from the period. In *Nuevo Mundo*, another publication with a large circulation at the time, we can read the following assessment of the uniformed men:

> "*The case of Castilblanco is characteristic in this sense. The civil guards in that town, according to later reports, got on well with the neighbourhood. Apparently, the guards, young men, had made good friends with the general population, one of whom was going to marry a girl with a long line of relatives in the village. The guard was friendly and generous, and he was on good terms with the young men...*" .[8]

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[7] *Mundo Gráfico*, of 5/01/1932. The reporter Juan Ferragut, accompanied by the photographer José Campúa, travelled expressly from Madrid to Castilblanco to gather as much information as possible. Campúa sold his work to the different media of the time, which is why the same images were reproduced repeatedly.

[8] *Nuevo Mundo*, 8/01/1932.

It is not that we intend to impose our criteria on those of other authors, possibly more documented, but we believe that, at the very least, these contributions should have the same credit that they can claim for their texts.

4. THE ALLEGED ANTECEDENTS

Over the years, different authors have dealt with the subject with different approaches. Some, while taking the official version as a reference, have enriched the narrative with details, sometimes providing possible sources, but on other occasions do not even refer to them. The most striking, however, are those variants which, ignoring the correlation of the facts that were considered proven in the sentence of the court martial, create a new story or, rather, new stories, as they do not even agree on a common line.

For example, it is interesting to note the reasons behind the call for the demonstration, of which we will hear or read different versions. For Hinojosa Durán, the ultimate cause of the wave of demonstrations throughout Extremadura,[9] , can be found in the events that had taken place a few days earlier in Almendralejo, when the Guardia Civil attacked the mayor of the town, who had offered to mediate in an agricultural conflict. However, we can also read that the demonstration was called "against the provincial governor and the Guardia Civil to denounce their collusion with landowners and caciques who did not comply with the new legislation" (Chaput, 2004: 192). Whichever option is true, what is clear is that the background to the demonstrations in Castilblanco, at least according to these criteria, had little or nothing to do with alleged agrarian demands, which leads us to consider the quotations from *Mundo Gráfico* and *Nuevo Mundo* reproduced above as more reliable.

Returning to Hinojosa Durán, in the documentary he explains that: "... the Guardia Civil is going to beat up the mayor himself ..."[10] . Given that he does not provide any clear reference, we carried out a search for further information, which led us to find some news items in the press at the time. Thus, in *El Socialista* we read:

> "*... on returning to Almendralejo, the mayor, together with other prominent members of the town, was arrested and led through the town in handcuffs, before being taken like a criminal to the prison in* Badajoz"[11] .

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[9] https://www.canalextremadura.es/video/los-sucesos-de-castilblanco (Footage: 20" to 48").

[10] This affirmation is made categorically as a fact that needs no explanation or evidential support, assuming as dogma of faith the declaration of the mayor himself. As we shall see in the development of this section, the facts took a somewhat different course to the one described above.

[11] Article by Margarita Nelken, Member of Parliament for the province of Badajoz, in *El Socialista* of 26/12/1931. In the form of an open letter, it was addressed to the Minister of the Interior, Casares Quiroga.

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Margarita Nelken's article was echoed by other general media, although with very different approaches, from simply mentioning the fact to accompanying it with comments against it .[12]

For the moment, everything points to the fact that we are dealing with the typical story that presents the Guardia Civil as a repressive force, especially when its actions are directed against the oppressed lower classes and those who represent them.

For his part, the mayor, Ignacio Pavón, gave his own version of what had happened with regard to the attacks he had suffered at the hands of the Guardia Civil, who, according to him, had even tried to assassinate him. After the relevant proceedings were opened, he was arrested, along with the deputy mayor, José Morán, and one of the councillors, Francisco Machado.

Nelken also said in her open letter to Casares Quiroga, in relation to the public exhibition of the handcuffed mayor, that "The mere fact that order was not seriously disturbed at the time attests to the high spirit of civility prevailing among the workers of Almendralejo", or that "Thanks to the truly exemplary spirit of civility of the workers' organisations, it has not yet been necessary to deplore these mournful events in Almendralejo". Logically, the deputy did not mention the events that preceded the arrest, which was motivated by previous acts by the mayor, such as, for example, the insults made against the Corps.

To find out about these events, we have to go back to the end of November, when the olive harvest was due to begin and, as the local day labourers went on strike, workers were hired from other parts of Extremadura. Determined to prevent this, the Almendralejo workers organised groups on the outskirts of the town to attack anyone who tried to go out to do the work they refused to do.

The Guardia Civil, in application of the regulations in force, proceeded to break up the groups which, as is easy to imagine, confronted the couples with everything they had at their disposal. However, given the scenario drawn by Nelken, based on the mayor's own account, it is interesting to note the information we have obtained thanks to the investigation carried out, which, to a large extent, contradicts the idea that the Guardia Civil acted against him gratuitously.

As we have seen, at the end of November, mobilisations took place to prevent other workers from picking olives. Some of the media, critical of the attitude of the local day labourers, headed their headlines with headlines such as "AGAINST FREEDOM OF WORK"[13] . In fact, in an attempt to restore public order, the Guardia Civil injured a woman and arrested several of those involved[14] . It was then that the mayor, playing the role of peacemaker, mediated for the release of the detainees, to which Lieutenant Moreno

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[12] The headline of the insert in the *Heraldo Alavés* of 16/12/1931 was striking: "A socialist mayor who had the town in fear".

[13] *El Noticiero Gaditano*, 1/12/1931.

[14] *La Opinión*, 2/12/1931.

agreed. The mayor was not quite right in his predictions, for if the argument used to ask for their release was that this would reassure the workers, the truth is that the result was exactly the opposite. Emboldened by the demonstrators, the released prisoners were paraded on the shoulders of the protesters, in a peculiar return to the bullring (or, rather, to the town), as if they had performed an afternoon of glory in the local bullring, triumphing in the bullfight against the fifth in the bullfight; and this, after having insulted and stoned the guards who were outside the barracks once again.

In view of these facts, we can agree that there was no animosity whatsoever against the mayor and that, in fact, his proposals were taken into consideration to the point of releasing those who, only a few hours earlier, had assaulted the uniformed officers. There were many comments against the intervention of the municipal authority:

> "*Almendralejo, as a result of the mayor's conciliatory agreement, has been at the mercy of the* strikers"[15] .

However, from this point onwards, and despite having listened to the mayor more than could be expected, it seems that the mayor's attitude had a negative component. This can be deduced from the following reference in the press:

> "*At the mayor's behest, the peasants repeated the pedrea over and over again and injured a lieutenant and three* guards"[16] .

Indeed, Lieutenant Miguel Moreno Menéndez, Sergeant Millán, a corporal and a guard were injured to varying degrees. Given that there were several occasions on which the demonstrators at least stoned the guards, we have to consider that, to a large extent, the fact that only four people were injured can be considered good news.

To close this section, we cannot ignore the fact that Margarita's letter gave rise to conflicting positions among the political class. On the one hand, the president of the Republican Centre in Almendralejo praised in the press the behaviour of the Guardia Civil, which he said had acted with excessive prudence, limiting itself to defending itself[17] . On the other hand, a national MP complained in Congress about the Guardia Civil's treatment of the mayor and councillors[18] ; the curious thing in this case is that the MP in question[19] was a colleague of the Minister of the Interior.

What most of the media did agree on, perhaps because they were directly affected, was the attitude shown by the mayor in the plenary session on the 16th, when he uttered

[15] *Diario de la Marina*, of 2/12/1931.

[16] *La Voz de Menorca*, of 2/12/1931.

[17] *Heraldo de Almería*, of 29/12/1931.

[18] *La Voz de Navarra*, of 19/12/1931.

[19] Daniel Vázquez Campo, of ORGA.

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various insults against the press and the Guardia Civil, accusing them of having mistreated him and trying to assassinate him . [20]

On the other hand, even recognising that it is not possible to establish proportional comparisons between the alleged reasons behind the reactions attributed to the peasant population and the Guardia Civil, it is striking how, once again, in the case of the former it is always a question of justification while, in the case of the latter, there is only room for reproach.

And so, as an example of the first case according to Hinojosa Durán's theory, we find Rodríguez Serrano:

> "*The second day at nine o'clock in the morning was attended by around 500, the people of Castilblanco peacefully demonstrated their solidarity with the other peasants of the province of Badajoz, with no intention of committing crime*" (Rodríguez Serrano, 2015: 159).

Incidentally, we should bear this quote in mind when pointing to the contradictions about the living conditions of the Castilblanco people. Rodríguez Serrano does not relate the demonstration to their miserable life, but rather as a show of solidarity with their fellow countrymen.

Of the recriminations against the Corps, we can see only a couple of examples, but they are particularly worrying because of the relevance of the author of one of them and the institution sponsoring the second.

In the first case we find a well-known American historian, Gerald Blaney, who is supposed to have special knowledge of the Guardia Civil, not in vain his doctoral thesis was entitled "The Guardia Civil and the Spanish Second Republic, 1931- 1936"[21] , which, in relation to the immediate consequences of the events of Castilblanco, states:

> "*The potential threat to the Republic was the tensions that arose within the regime itself. It was no mere coincidence that the first signs of rebellion within the Guardia Civil came after the murder of four civil guardsmen in Castilblanco on 31 December 1931. This event was seen by many Civil Guards as orchestrated by the PSOE, whose participation in the left-wing Republican government was perceived as a threat by many military and conservative circles' (Blaney, 2003: 49).* (Blaney, 2003: 49-52).

To analyse the second, we shall begin by referring to a book, perhaps one of the most widely recognised in relation to the subject of our study, which is called, quite simply, "Castilblanco". The original was published in 1933 by Editorial España and

[20] *El Debate*, 17/12/1931.

[21] However, the study of the same, carried out by the author of this article, has detected a multitude of relevant errors, such as, for example, attributing actions to people who, at that time, were not even in the supposed location indicated by Blaney.

signed by Jiménez de Asúa, Vidarte, Rodríguez Sastre and Trejo. In just under 300 pages, the text included the interventions of the prosecutor and the lawyers during the sessions of the War Council that tried the accused.

It was republished in 2011 by Professor Sánchez Recio, who supplemented it with a small study of the case and included some annotations, to complete the 330 pages of the current edition.

Among those who have studied the facts, Jiménez de Asúa has become a kind of historical reference point, as the possessor of a supposed absolute truth. However, in order to provide the reader with all the necessary data, we must clarify that we are talking about the lawyer who was at the head of the team of lawyers[22] who defended the accused. It is striking that the work has become a source of truth for many, if we take into account that, however much objectivity we may grant to the authors, their writings were written with the aim of making the defence effective, denying the participation of their clients in the events and, in any case, justifying the little that could be recognised. The synopsis of the 2011 edition states:

> "*From the reading of these texts, despite the judicial rhetoric, one can extract, in addition to the description of the facts, the testimony of the conditions of life in rural Extremadura in the 1920s and 1930s, which can be extended to the whole of the plateau and Andalusia. Its historiographical value is therefore unquestionable*".

From this we can draw some simple conclusions:

- If they recognise their involvement, they acted in this way forced by the conditions in which they lived (we have already seen that other sources oppose this criterion).
- It seems that the events could only have occurred as they are recorded in the authors' account. So much so that, according to the author, the "*historiographical value is unquestionable* ", which seems somewhat excessive, as it gives a dogmatic value to his own contributions, which can in no way be considered definitive, insofar as in this same work we have been able to learn of opposing opinions.

However, it is precisely this synopsis that connects us with the second sample that we wanted to comment on regarding the references, almost always in a negative tone, applied to the actions of the Guardia Civil. This synopsis is the one that can be found in many of the book's sales promotions, such as, to cite two examples, on some online sales platforms and on the publisher's own website. And this publisher, as we pointed out above, corresponds to an academic institution, specifically the University of Alicante. Well, in the text that illustrates the content of the work, we can read:

> "*<<Castilblanco>>.contains the texts of the military prosecutor's report and the defence speeches that four prestigious socialist lawyers, headed by Luis Jiménez de Asúa,*

[22] Luis Jiménez de Asúa, Juan Salmerón Vidarte, Antonio Rodríguez Sastre and Anselmo Trejo Gallardo

> *gave at the court martial held in Badajoz in July 1933 against twenty-two day labourers affiliated to the UGT and the Casa del Pueblo, accused of the death of the four local civil guards, This occurred on 31 December 1931, at the end of a peaceful demonstration which the excessive intervention of the forces of law and order, at the instigation of the mayor of the town who was also the manager of one of the large landowners in the municipality, turned into a multiple lynching after killing one and injuring another of the demonstrators. ...* ".

In this case, what strikes us is the statement that "*at the end of a peaceful demonstration than the disproportionate intervention of the forces of law and order*". At this point in the study, we are not going to discuss the dogmatic truth that the promotion of the book seeks to establish. The reader can judge the contrast between "peaceful demonstration" and the "disproportionate intervention" of those four civil guards, surrounded by five hundred neighbours.

Perhaps the wording of the synopsis could not be otherwise, if we follow what can be read in the book and which we have already reproduced above, about the attitude of the civil guards of Castilblanco "*despising the people, like an unredeemed rabble*". Perhaps he is referring to the irredeemable rabble with whom these same guards were alternating, and one of them was even going to marry a young woman from the village in the near future. Incidentally, Asúa's reference is undoubtedly taken from a speech by Ortega y Gasset (Eduardo, the philosopher's elder brother):

> "*... in most villages, in some, there are Civil Guards who, for fourteen years, have been accustomed to obeying the cacique, who has an already formed mentality, by virtue of which the people are contemptible rabble*,"[23] .

5. OTHER CONSIDERATIONS

If, as a general rule, knowledge of terms and the use made of them is usually of great importance, we can agree that, in this area of "disinformation", the relevance is even greater. The RAE dictionary defines it with two meanings *(Action and effect of disinforming*; *Lack of information, ignorance*), of which we shall take the first. This leads us to look in the same glossary for the meaning of "disinform", finding, once again, two meanings (*To give information intentionally manipulated to serve certain ends*; *To give insufficient information or to omit it*), both of which are perfectly valid for understanding our approaches.

In the previous sections we have dealt with examples that could be considered to be affected by the first of the meanings: intentionally manipulated information. We will spend just a few more paragraphs to include a couple of examples related to the second one: insufficient or omitted information.

The first example refers to the connotations of the activity that motivated the intervention of the Guardia Civil, i.e. the demonstration. When researching, the terms "demonstration" and "strike" can be used interchangeably, either because the author in

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[23] Speech in the Cortes Generales, 5 January 1932 (*DS* no. 93, 05/01/1932: p 2994).

question is unaware of the scope of one or the other, or because the difference is not relevant. In this case, we will use the second possibility, since the demonstration (which is what took place in Castilblanco that day) was related to the general strike which had been called in the province of Badajoz for 30 and 31 December.

The strike, and therefore the demonstrations linked to it, had been declared illegal by the Civil Governor, Álvarez-Ugena[24] . Despite the recurrent excuse that this was an abuse of power, the governor had limited himself to applying Article 1.IX of the Law for the Defence of the Republic[25] , which considered, among other actions, aggression against the Republic:

> "*Strikes not announced eight days in advance, if they do not have another deadline marked in the special law, those declared for reasons that are not related to working conditions and those that are not submitted to an arbitration or conciliation procedure*."

The problem now arises of discerning between the variety of causes to which the call is attributed; if we are allowed to recover the example of the battle of Qadesh, we can affirm that the fact of the confrontation is unappealable, but we have doubts as to which army was the winner. Among the different options that motivated the strike, we can find everything from disappointment at the lack of progress in the agrarian revolution, , to, as we have already seen, a show of discontent against the Governor's mandate, to the response to the events of Almendralejo already mentioned.

Whatever the real reason, it is certain that none of them fitted into the precept of the Law and, therefore, the protest actions envisaged could be legally prohibited. No reference is usually made to this in the different chronicles. It seems that we can consider that this situation of "insufficient information" exists.

In the second case, i.e. omitting any type of reference that the author of the study does not consider appropriate, we can start by looking at the genesis of the Law for the Defence of the Republic itself.

In the various articles, memoirs, books, etc., which attempt to contextualise the events of Castilblanco, there are recurrent references to the situation in which the peasantry found itself, expectant of the promised agrarian reform with which we almost began this work. They even point out, as we have just seen, that the attitude of the Civil Governor was reminiscent of pre-Republican times. However, perhaps it would be appropriate to consider that the first provincial authority had been appointed by the Minister of the Interior, Casares Quiroga, the same man who had signed the Law for the

[24] Manuel Álvarez-Ugena y Sánchez-Tembleque. It is interesting to note that the mobilisations of the FNNT (the agrarian branch of the UGT) were aimed at the Governor's dismissal for his alleged conniving manoeuvres with the power of the caciques. Álvarez-Ugena was a member of the UGT (https://fpabloiglesias.es/entrada-db/alvarez-ugena-y-sanchez-tembleque-manuel/).

[25] L of 21 October 1931 (*GM* No. 295, 22/10/1931).

Defence of the Republic and who, in turn, had been appointed to the post by the man who had sanctioned it: Manuel Azaña.

With regard to what had happened in Castilblanco, Azaña intervened in the debate[26] that had arisen among the deputies of almost all the parties represented in the Chamber, a debate that at times became quite heated. From the extensive pronouncement, we select a few paragraphs that may be particularly significant, both for the praise shown towards the Corps, and when he rejects the accusations of cacique followers:

> *"The Guardia Civil has, by tradition, the pride of being blindly obedient to the constituted Power, and the Government of the Republic has lost no occasion to state for the record that the Guardia Civil has never, not for one minute, detracted from its tradition in this respect. Let this be stated once again. And when, in an institute dedicated to such serious, dangerous and exposed functions, an excess, a legal infraction, an abuse of power and authority occurs, the responsibility, which is the other pillar of the Institute of the Guardia Civil, falls personally on the person who commits it, but never on the entire Institute.*
>
> *[...]*
>
> *And now allow me to express my astonishment, ladies and gentlemen, that on the occasion of an event, in which no one can say that there has been an abuse on the part of the Guardia civil, the very prestige of the Institute has been called into question, or has been called into question; not in the Cortes, certainly, but outside of here.*
>
> *Anyone would say that in Castilblanco it was the Guardia Civil who exceeded their duty, and it never ceases to amaze me that when four unfortunate guardsmen have perished in the line of duty, the prestige of the Institute should be called into question, as if it were these guardsmen, not the dead, but the killers. (Applause.) This is a little paradoxical, ladies and gentlemen, and it makes me think, it makes me suspect that perhaps there are some twisted passions at work out there that take advantage of any moment and any pretext to find a difficult situation, not only for the Guardia Civil, but for the Government; that is, not only for the Government, but for the* Republic"[27] .

A careful reading of that debate sheds much light on a multitude of questions surrounding those events, so many that there is no room for them in the limited space of this article. However, in order to clarify these comments, we reproduce a few paragraphs from the speech by Mr. Hidalgo :[28]

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[26] Debate ... (*SD* No. 93 of 05/01/1932).

[27] Debate ... (DS No. 93, of 05/01/1932: p 3004).

[28] Diego Hidalgo Durán, Member of Parliament for Badajoz (Partido Republicano Radical).

"In these rallies and in these preparatory meetings for the strike, as the aim of the strike was to go against the actions and procedures of the Guardia civil, with the aim of removing the lieutenant colonel and the governor, the masses were frankly and clearly encouraged to go against the Guardia civil, not understanding that there are unconscious masses who take the idea of going against the Guardia civil in the sense of, in effect, attacking them.

[...]

That is why it is so strange throughout the province that the strike was not stopped, that it was not prevented, because the preaching was of such a nature, the workers had been told so clearly and precisely that they outnumbered the Guardia Civil, that it was a tacit indication that they should go against them"[29] .

In our opinion, the statements made by Deputy Hidalgo are particularly relevant. First of all, it should be made clear that he had won his seat for Badajoz because, unlike other politicians who adjusted their candidacy to the province where their pretensions could best be accommodated, he was from Badajoz, from Los Santos de Maimona to be precise. Therefore, his statements had a very well-founded basis, as a good connoisseur of what was happening in his homeland; what's more, after the events, he had travelled around part of the province, listening to the feelings of his fellow countrymen about what had happened.

There is one more curious reference point. Minister Casares himself, on the supposed relationship between the Guardia Civil and the *caciquismo*, wondered:

"*But, besides, what contact could there be when the head of the Guardia Civil had been there for seven months and had no other friendly contact than with the president of the Casa del Pueblo*?"[30] .

It is paradoxical that the only person with whom he had a certain relationship was the one who held him down to be stabbed to death.

In any case, if we give some credibility to the statements of Deputy Hidalgo, perhaps we can now understand how the events could have occurred. We believe that this may be the appropriate point at which to close our investigation, but not before including one last reference from Mr Hidalgo's many speeches in that debate:

"I can only reply to the Minister by saying that all the background to this strike suggested, in a fatal way, that it was going to degenerate into bloody events. It is enough to read the collection of the daily newspapers of Badajoz from the days prior to the strike to be convinced of the great danger that the declaration of the strike *posed*"[31] .

[29] Debate ... (DS no. 93, of 05/01/1932: p 2993).

[30] *Ibidem*.

[31] Debate ... (DS no. 93, of 05/01/1932: p 2993).

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III.- CASE LAW REVIEWS

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Case law review

CASE LAW REVIEW 2ND CHAMBER OF THE SUPREME COURT

English translation with AI assistance (DeepL)

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REVIEW OF JURISPRUDENCE, SECOND CHAMBER OF THE SUPREME COURT

Summary: STS 621/2025, 2 July. Determination of the moment of police custody in a judicially authorised entry and search. 2. STS 814/2025, 8 October. Requirements of unlawfulness in environmental matters, in order to distinguish between sanctioning regulations of an administrative nature and criminal types. 3. STS 837/2025, 15 October. Validity of the police inspection of warehouses and other places that do not constitute a home, even when there were areas for private life that were not subject to search. 4. STS 797/2025, 2 October. Occasional capture by the police of images in a semi-private area, through the use of a drone, as an adjuvant element to the request for a home search. 5. STS 854/2025, 16 October. Analysis of the validity of the evidence obtained in France through the Encrochat application, a closed network of communication through encrypted messages. 6. STS 861/2025, 22 October. Undercover agents. Provision in their entirety of the recorded conversations. 7. STS 849/2025, 16 October. Disclosure of secrets by a public official. Fraudulently obtaining access codes to a computer. 8. STS 866/2025, 22 October. Self-consumption or trafficking of GBL. Questionable minimum doses.

1.- STS 621/2025, 2 July. Determination of the moment of police arrest in a judicially authorised search and seizure .[1]

Factual background.

In this STS, we study the cassation appeal lodged against the judgement handed down by the TSJ of Catalonia on 21 May 2024. Dismissal.

Juzgado de Instrucción n.º 5 de Barcelona, instructed preliminary proceedings n.º 682/2021, for a continuous offence of burglary of an inhabited house by a criminal group and the offence of receiving stolen goods, against Edemiro, Jaime, Ezequiel and Florian. The case was sent for trial to the 21st Section of the Barcelona Provincial Court, , and sentence 325/2023, 30 November, was handed down, containing, among others, the following proven facts, "...On 14 July 2021, at around 00:06 hours, the defendants entered the house of the accused on 14 July 2021, at around 00:00.06 hours the accused gained access to the flat located at address XX in Barcelona, manipulating the lock and causing damage to the door, in the absence of its inhabitant Luciano, who had left the flat on 12 July 2021 leaving the door properly locked, and seized the following items: a Hamilton watch, a gold Dupont lighter, two gold chains, a gold plate with the telephone number and blood group, a gold wedding ring, a gold Longines watch, a pearl necklace..." and so on up to thirty thefts which he details chronologically.

And he ends this account of proven facts by saying, "...in the entries and searches carried out in the homes of the accused, a Hamilton watch, two Breitling watches, two bracelets, a chain and a Panerai watch were found, property of Paulina and which came

[1] STS 621/2025, of 02 July 2025, published on the website of the Judicial Documentation Centre, CENDOJ, ROJ: STS 3347/2025 - ECLI:ES:TS:2025:3347), appeal: 10529/2024. Speaker: Mr Andrés Martínez Arrieta.

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from the robbery which took place in her home at XX between the 18th of March and 20th of June 2021; and also found...".

Legal grounds

Sole plea in law. In the second of the grounds of appeal, he alleges violation of the fundamental right to a defence, to legal counsel and to a trial with all the guarantees enshrined in Article 24 of the Constitution, referring, as grounds for nullity, to the following, all evidence directly or indirectly obtained from the entry and search carried out on 30 February 2017 at the home attributed to the appellant, urging the nullity of the entry and search warrant ordered by Barcelona Examining Court number 5 on 27 August 2021 due to the non-attendance of the accused's lawyer. The issue raised in the appeal was questioned at the beginning of the oral trial and resolved by the Provincial Court, as a preliminary issue, in the first ground of the judgment and also on appeal, arguing in both judgments that legal assistance is not mandatory in the practice of the entry and search procedure.

The appellant argues that in the present case, the detention of Mr. Ezequiel was deliberately postponed until the end of the search and entry procedure, thereby unjustifiably delaying the provision of information and the exercise of his fundamental rights to a defence and to legal assistance.

The dismissal is appropriate. The timing of the arrest of a person who is accused of acts with criminal relevance by the police is a matter for the police officers themselves, observing the requirements of the concurrence of the precise indications of the commission of a serious criminal act that allows it, and the opportunity for its practice in suitable conditions to ensure its implementation and in the manner that least damages the honour of the person against whom it is adopted. Under the terms of art. 17 of the Constitution, no one may be detained except in the cases and in the manner provided for by law, which, in this case, has been observed. There is no objection to the choice of the moment of arrest by the police and if it was carried out after the judicially authorised entry and search, it was a consequence of the intervention of effects that made it possible to establish the suspicions that led to the house search.

In any case, not even if the accused had been arrested when the appellant suggests it should have been carried out, prior to the house search, his presence at the search does not require the presence of a lawyer, except to give authorisation when required, as the search and entry procedure is not a personal procedure that requires the assistance of a lawyer, (art. 520 of the Criminal Procedure Act, 6, section b) and it was ordered by judicial decision of the competent court.

Conclusions

The determination of the moment of arrest is a police competence, always weighing up the concurrent circumstances. In any case, the purpose of the search and entry procedure is to obtain material evidence of the crime, so it is very difficult to begin the procedure with the immediate arrest of the person under investigation, so the most logical and prudent thing to do is to proceed with the arrest at the end of the search, with the new evidence and material evidence that has been gathered in the framework of this action.

A different question, which has been raised in minor case law, is what happens in those cases in which the search lasts for several hours and when the 72-hour period begins to run out. Generally, the proportionality of the measure will require that even if the search lasts longer than normal, let us imagine a search lasting more than 12 hours, the most cautious and prudent thing to do will be not to use up the 72 hours of detention for bringing the person before a judge.

Once again, it is indisputable that the presence of the person under investigation in the search does not imply the presence of a lawyer, as the entry and search procedure is not a personal procedure that requires the assistance of a lawyer.

2.- STS 814/2025, 8th October. Requirements of unlawfulness in environmental matters, in order to distinguish between sanctioning regulations of an administrative nature and criminal offences .[2]

Factual background

Appeal brought against the judgment of the Lugo Provincial Court of 22 November 2022. Upheld

The Juzgado de Instrucción núm. 2 of Viveiro opened preliminary proceedings 174/2020 for an offence against the protection of fauna, poaching in shellfishing against Juan Manuel and once concluded referred it to Criminal Court no. 2 of Lugo, which issued a judgement on 6 April 2022 containing, among others, the following proven facts: "...it is accredited that Juan Manuel, without criminal record, as well as Ángel Jesús, without criminal record, and a third unknown person, put in common agreement in the distribution of papers and knowing of their illegality and unlawfulness, contravening the proper exploitation of the different species of living maritime resources, on 18/05/2020 around 22:30 hours, illegally extracted 12 of the kilos of barnacles, which they illegally collected that same day, in Punta Socastro Fuciño Do Porco in the locality of O Vicedo.

Agents of the Guardia Civil were deployed to the scene of the incident and observed two people walking with loads, one with a dark backpack and the other with a white sack, both dressed in neoprene, proceeding to stop them, both fled, starting their pursuit, they caught up first..." and adds, "...those mentioned did not respect the calendar of action of the perishers in the area that usually covers some days of the months of April to August and December. During these months, the barnacles are rotated in the sub-areas of exploitation, so as not to exhaust the resource in the area. During the month of May, specifically on the 18th, the area where the events occurred was closed to shellfishing. No work was carried out in that area during the previous year 2019. None of those mentioned is in possession of any exploitation permit for the extraction of goose barnacles, in any of its modalities in that area, nor are they included in or any type of management plan for the resource in the area of competence. The barnacles seized were handed over to the Inmaculada Niña charity centre...".

[2] STS 814/2025, 8 October 2025, published on the website of the Judicial Documentation Centre, CENDOJ, ROJ: STS 4234/2025 - ECLI:ES:TS:2025:4234, appeal 1636/2023. Speaker: Mr Javier Hernández García.

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Legal basis

Sole - By means of a solid argument, the appellant, Juan Manuel, contests the judgement of the Provincial Court which upheld that handed down by the Criminal Court which convicted him as the author of an aggravated offence of poaching shellfish under article 335.2 and 4 of the Criminal Code.

In essence, the appellant questions the subsumption judgement because, in the appellant's opinion, it is not possible to identify the element of relevance required by the offence and on which the criminal incrimination of the conduct of poaching is based, allowing, at the same time, the necessary borderline to be drawn with the administrative sanctioning rule.

The appellant insists that neither the quantity of barnacles seized, twelve kilos in total, nor the damage caused, as mentioned in the judgment, which does not even specify the size of the specimens extracted, makes it possible to classify the appellant's conduct as criminally relevant. The shortcomings of the rule in terms of its taxonomy cannot favour an expansive interpretation in its application.

The interesting objection of criminality raised by the appellant is in line with the requirements of strict interpretation of criminal offences.

In particular, those such as offences against flora and fauna, in respect of which tangential and sometimes secant relationships can be drawn with the administrative rules on penalties. These neighbouring relationships between criminal and administrative rules require, as we are reminded by the very important STC101/2012 which declared the unconstitutionality of article 335 CP - 1995 text - for violation of the principle of criminal legality, to always identify "the plus of material antijurisdiction which helps to specify the corresponding typical criminal conduct", precisely in order to be able to delimit the specific scope of application of the criminal rule from the administrative sanctioning rule, hence the criminal rule must satisfy demanding conditions of clarity and precision in the typical formulation of the normative and descriptive concepts to ensure the identification of the essential nucleus of the wrongful act. As stated in STC 105/1988, criminal offences cannot be formulated in such an open form that their application or non-application depends on a practically free and arbitrary decision in the strict sense of the word by judges and courts.

In this case, the relevance of the conduct is precisely what makes it possible to cross the boundary from administrative to criminal punishability. It intensifies the unlawfulness of conduct that infringes the legal regime for shellfishing provided for in sectoral laws, in this case, the Ley 11/2008, de 3 de diciembre, de pesca de Galicia. The greater unlawfulness of the conduct justifies, from the point of view of the need to protect legal assets, also intensifying the reproach through the imposition of penalties.

But having said this, the decisive question that arises is to determine the meaning to be attributed to the concept of "relevant shellfishing activities" contained in article 335.2 PC.

And the answer is far from simple, as the rule does not specify any specific parameter that would allow it to be measured in reasonably foreseeable terms, neutralising any risk of excess and arbitrariness.

The notable indeterminacy of the meaning of the expression "relevant" in the rule of article 335.2 PC, contrasts with the greater level of precision of the other criminal offences in which this expression is also used in the configuration of their typical structure. Therefore, if a relevant result in quantitative and qualitative terms is required for the punishment of some destructive conducts of protected species of flora, it also seems to be in line with the requirements of restrictive interpretation and exclusive protection of legal assets that a similar rate of harm is also required for the criminal punishment of poaching. Obtaining a small quantity of shellfish that has not significantly endangered the legal good to be protected cannot be criminally punished as an aggravated offence.

Conclusions

Once again, in the field of offences against flora and fauna, the SC ends up complaining about the lack of legislative rigour to integrate and interpret criminal offences without any room for doubt, when the unlawfulness of the action can sometimes be satisfied with an administrative sanction.

In this case, the basic offence is applied but not the aggravated offence, which would require a more precise definition of the relevant nature of the poaching activity. The legislator has left the term "relevant" devoid of evaluative elements, which makes it difficult to apply.

3.- STS 837/2025, 15 October. Validity of the police inspection of warehouses and other places that do not constitute a home, even when there were areas destined for private life that were not subject to search .[3]

Factual background

Appeal brought against the judgment of the Supreme Court of Castilla y León of 6 March 2023. Dismissal.

The Juzgado de Instrucción no. 1 de León opened preliminary proceedings 364/2017, for money laundering and robbery against Saturnino, Mr José Carlos, Ms Trinidad, Mr Tomás and Mr Victoriano, and once concluded, referred the case for trial to the Audiencia Provincial de León, whose 3rd Section issued, in the abbreviated proceedings no. 31/2021, a conviction and sentence. 31/2021, conviction on 7 November of 2022, which contains, among others, the following proven facts: "...That in the development of the investigations that the UOPJ of the Command of Guardia Civil of León, carried out in relation to various crimes of theft of vehicles in various parts of the

[3] STS 837/2025, of 15 October 2925, published on the website of the Judicial Documentation Centre, Cendoj, ROJ: STS 4648/2025 - ECLI:ES:TS:2025:4648, appeal 2577/2023. Speaker Honourable Carmen Lamela Díaz.

provincial geography, during the years 2016 and early 2017, on 13 February 2017, agents of these organic units, carried out three inspections in the following farms or warehouses:

A) In a meadow or farm located in paraje XX in the locality of XX (León). In said place and at the time of the inspection, the accused, Saturnino, together with two of his children and also accused, José Carlos and Trinidad, were present. The following items were seized at the aforementioned farm: 1°) A light grey trailer of the Núñez brand, ...; 2°) A Yamaha moped chassis, model Aerox, with registration plate XX ...; 3°) A Husqvarna brand chainsaw, model 455, with serial number XX,,,; 4°) A Polaris brand quad, model Sportsman 500 E...; 5°) A Kawasaki brand quad ....

B) The second inspection took place on the same day 13 February 2017 in two warehouses, one covered and the other uncovered, located at kilometre point XX, on the XX, in the municipality of XX (León), which warehouses were occupied by the accused Victoriano and his son Tomás. In one of the sheds (the covered one), there were three caravans used by the persons occupying the shed, among them the two accused Victoriano and his son Tomás. In the other shed, the uncovered one, the following objects were seized: 1°) Scania truck rear wings with Portuguese registration plates...; 2°) Sthill cutting tool...; 3°) The Nissan Patrol GR vehicle, which was inside the shed, "under repair", and bearing registration plate XX.

C) The third of the inspections took place in the urban property located in the area "XX" -polígono XX, parcela XX, with specific location at kilometre point 9.500 of the LE-311 road, León.

In this property occupied by the accused Victoriano and his son Tomás, the following objects were seized...".

Legal grounds

The first ground of appeal is for infringement of constitutional precepts, under articles 5.4 LOPJ and 852 Lecrim, for violation of the fundamental rights and freedoms enshrined in articles 18.2 and 24.2 CE, in relation to articles 545, 546 and 554 LECrim.

They argue that two of the four places where the searches were carried out and where the effects that led to their conviction were seized constituted a home, and therefore constitutionally protected spaces.

The first is the property located at number XX, León. It is an enclosed area with a fence which houses, among other facilities, the two caravans in which the five people, members of the same family, spent the night. It also houses all the facilities that serve the family, such as the kitchen, the washing machine, the chests, the tables, the chairs, the toilet and the other household items for common family use, all located within the fenced enclosure but around and as facilities clearly differentiated from the caravans, the use of which is therefore limited to the strict night's rest of the five members of the family unit. This place is also recorded in the affidavit as the domicile of the whole family.

The second is the covered shed located at kilometre point XX in León, which housed, with a closed door, three caravans used by the persons occupying the shed, plus another room, with its bed, in which Mr Victoriano and his two sons, Mr Tomás and the then minor, Mr Higinio, slept, as well as the kitchens, with their kitchenware, cupboards, toilet, armchair, tables and chairs, shelves, toilet and other facilities. This shed, which was completely enclosed, included both the physical place where the occupants spent the night and the services and facilities used by all of them, located outside the caravans but inside the shed itself, whose access has a door and lock, even though the rest of the free space of the shed was also used as a place for parking vehicles and storing the belongings of the occupants.

Therefore, they consider that, having carried out the searches without an authorising judicial resolution, criminal flagrancy or consent of the owner, ex art. 18.2 CE and case law interpreting it, they should be declared null and void and without evidential effects, as well as any other evidence which, having been obtained legally, is based on, supported by or derived from them, in accordance with the provisions of art. 11.1 LOPJ, and which are all those in evidence in the proceedings.

The appellants start from the false premise that the property and the registered building constitute a domicile.

As described both in the judgment handed down by the Audiencia and in that handed down by the Tribunal Superior de Justicia, the searches took place in a meadow or farm located in paraje XX in the locality of XX, where a light trailer, a Yamaha moped chassis, a chainsaw and two quads were seized; and in two warehouses, one covered and the other uncovered, located at kilometre point XX, in XX in the municipality of XX (León). In the uncovered warehouse, the following were seized: front and rear wings of a Scania lorry with Portuguese number plates and rear mudguards of the tractor unit, a STI-111 model TS 400 cutting tool, a Nissan Patrol GR vehicle, which was inside the warehouse, under repair, and in which the engine was being fitted with parts from other vehicles that had been stolen.

For this reason, the protection provided by art. 18.2 CE did not apply to them.

Reiterated case law of this Chamber excludes this type of construction from the consideration of domicile. Such is the case of garages, garages and warehouses (SSTS 399/2015, of 18 June, or 912/2016, of 1 December); private garages without internal communication to the dwelling (STS 468/2015, of 16 July); industrial warehouses (STS 560/2010, of 7 June); or even dwellings that do not constitute the dwelling of any person (SSTS 157/2015, of 9 March, or 122/2018, of 14 March).

In the same sense, we expressed in judgement no. 1219/2005, of 17 October that the registration of these properties (warehouse or warehouse) does not have to be subject to the provisions of art. 569 Lecrim does not constitute a domicile (SSTS. 6.10.94 and 11.11.93) and therefore a warehouse, office or commercial premises lack the protection granted by sections 1 and 2 of art. 18 CE, as they do not constitute a domicile (SSTS. 6.10.94 and 11.11.93). 18 CE as they do not clearly constitute a space of privacy necessary for the free development of the personality, hence they cannot be considered to be included within the scope of protection of the inviolability of the home (SSTS. 27.7.2001, 3.10.95, 27.10.93), being particularly explicit the SSTS. 8.7.94, stating that they do not fall within the scope of protection of the inviolability of the home. 8.7.94, stating that not every entry and search in a closed place requires judicial authorisation, nor do commercial premises or warehouses that do not constitute a person's home enjoy

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the constitutional protection of the aforementioned art. 18.2, without requiring, consequently, the same procedural formalities for entry and search as are imposed on home searches.

Likewise, in judgement no. 85/2021, of 3 February, we stated that garages and workshops do not have the constitutional protection afforded to homes by art. 18.2 CE....

And specifying this concept, this Court has pointed out that the term "domicile" includes, grammatically and administratively, the place where people normally carry out their social activities and where their home or dwelling is located, or as art. 554.2 Lecrim states "the building or enclosed place or part of it destined principally for the habitation of any Spaniard or foreigner resident in Spain or their family".

In the present case, the searches were carried out by the UOPJ of León in a farm or meadow and in two warehouses, one of them uncovered, which due to their characteristics could not constitute the domicile of any person.

Even if in some of the premises there could have been a reserved room where the private life of the accused was carried out, there is no record that this was the object of a search, which is also confirmed by the characteristics of the objects seized, which were not found inside any home or space intended for a home, but in a meadow and in an uncovered premises. Likewise, it does not appear that the interior of the caravans used by some of the accused were searched.

On the other hand, the practice of the searches was legitimised by the appellants, since, as highlighted in the contested judgement, the Guardia Civil acted with the consent of those under investigation, to which they have raised no objection, neither throughout the proceedings nor in the oral proceedings, having also been present during the searches, which is one of the legally recognised means of access to another person's home, in accordance with art. 18.2 CE.

Conclusions

Not every enclosed space deserves to be considered a home for constitutional purposes, and we must exclude from this concept and its corresponding constitutional guarantee, those enclosed places which, due to their use, have a purpose or are used for purposes incompatible with the idea of privacy - such as warehouses, factories, offices and commercial premises.

It is not a trivial fact, and we cannot ignore it, the expertise with which the intervention of the Guardia Civil is described, inspection and not search, and furthermore, how well documented this police action had to be, possibly with a very descriptive graphic testimony in the attestation, so that there would be no doubt as to what the premises were like, their size, structure, what was the private area that constituted the dwellings, motorhomes, and the type of object seized, which due to its size and nature could not be kept inside the houses.

4.- STS 797/2025, 2 October. Occasional capture by the police of images in a semi-private area, through the use of a drone, as an aid to the request for a house search.[4]

Factual background

Appeal against the judgement handed down by the Supreme Court of the Autonomous Community of Valencia on 10 December 2024. Dismissal.

The Juzgado de Instrucción nº 4 of Alicante opened abbreviated proceedings 1670/2023 against Cornelio and others, and, once concluded, referred it to the Provincial Court of Alicante, 10th Section, which on 27 September 2024 handed down a guilty verdict, which contains, in part, the following proven facts: "...By agents of the National Police Force, a series of surveillance operations were carried out and by order of 8.8.2023 an entry and search was ordered at XX, in Alicante, of Cornelio; and at XX in Playa de San Juan, of Higinio and Eugenia. In the search of XX in Alicante, the following were seized: 5 packages, with weights of 520, 293, 109, 108, 18 gr. of white rocky substance that tested positive for cocaine in a cocaine test; a Samsung computer screen, another LG, a CPU unit, an HP printer, a Sony camera, 7 notes of 20 euros, 3 of 10 euros, 2 of 5 euros, a precision scale, a vacuum packing machine. The substance seized in Ocean Street was found to be 979.0 grams of cocaine, with a purity of 87.9%. The substance was valued at 64,514 euros. The substance was intended for trafficking by Cornelio...".

Legal grounds

Firstly, the first of the grounds of challenge is the inadequacy of the judicial decision, which is based on fragile evidence provided in the police reports, which the SC denies by saying that, "...the analysis of the inadequacy of this evidence is carried out by the defence counsel by means of a meticulous examination of the police reports. However, this methodological strategy is as legitimate as it is unfeasible. We have said in previous precedents that the criticism of the inadequacy of the police file cannot be made by fragmenting the evidence offered for the consideration of the investigating judge. This information forms part of a single, global, indicative picture. It must be analysed as such. The self-interested decomposition of each of these indications, to then proceed to a partial gloss, in which its incriminating suitability is concluded without connection with the rest, leads to an assessment outcome that will always be weighed down by an erroneous method, which has obtained its conclusions by decontextualising the information made available to the jurisdictional body (cfr. SSTS 718/2020,28 December; 143/2020, 13 May; 698/2014,28 October; 250/2014,14 March).

Secondly, this is where the nullity requested by the defence for the use of a drone without judicial authorisation to capture images in a semi-public area is answered.

Art. 588 quinquies a) of the Lecrim, is the provision that provides regulatory coverage for the use of drones for criminal investigation. The administrative aspects are regulated in Royal Decree 517/2024, of 4 June, which develops the legal regime for the

[4] STS 797/2025, of 2 October 2025, published on the website of the Judicial Documentation Centre, Cendoj, ROJ: STS 4225/2025 - ECLI:ES:TS:2025:4225, appeal 10005/2025. Speaker, Mr. Manuel Marchena Gómez.

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civilian use of unmanned aerial vehicles (UAS), which includes the use of these devices when carrying out police activities or services.

Focusing on what is the subject of the present plea, what we are dealing with now is the legal regime for the capture of images when they are obtained in a public space. According to art. 588 quinquies a), the capacity of the Judicial Police to capture, on its own initiative, these images is exclusively restricted to what the text itself calls "public places or spaces". The determination of the scope of this locution has to be obtained by contrasting it with the "home or closed place" referred to in art. 588 quater a), in which, always and in any case, judicial authorisation will be indispensable for the taking of images.

Some sectors of the doctrine have been particularly critical of the idea that art. 588 quinquies a) of the Lecrim endorses the idea that privacy is never compromised in public spaces, so that outside the home there is no expectation of privacy and, consequently, police officers lack any constitutional limitation to obtain images. Privacy can be affected, it is argued, when the investigator obtains personal information from a third party. This is the negative dimension of privacy. But it can also be compromised when the recording of images of someone who knows that they may be under surveillance conditions their free capacity to develop the ordinary facets of their lives. Be that as it may, the Spanish legislator has not considered the taking of images by police officers in public spaces to be worthy of the enhanced protection granted by judicial authorisation. It is therefore a question of a local concept of privacy which, in order to define the content of the constitutional right guaranteed by Art. 18.1 and 2 of the EC, requires a priority analysis of the domestic or public space in which the interference has taken place.

The taking of images of the person under investigation in public places or spaces - including here, in general, all those outside the constitutional protection afforded by Art. 18.2 of the EC to inviolability of the home or by Art. 18.1 to privacy - may be decided on the police officers' own initiative.

It is not easy to obtain precise rules, with a vocation for generality and susceptible to rigid application, which would take into account the singularities of each specific case. Judicial authorisation has been deemed unnecessary for the incorporation into the process of images obtained by the security cameras of El Corte Inglés (STS 124/2014, 3 February) or installed in an industrial building, close to the road (STS 129/2014, 26 February); nor has judicial authorisation been considered indispensable when it comes to sequences recorded by the cameras installed in the home of the residents themselves (STS 67/2014, 28 January).

The jurisprudential doctrine of this Chamber, (judgments of 6 May 1993, 7 February, 6 April and 21 May 1994, 18 December 1995, 27 February 1996, 5 May 1997, 968/1998 of 17 July, 188/1999, of 15 February, 1207/1999, of 23 July, 387/2001 of 13 March 2001, 27 September 2002, and 180/2012 of 14 March 2012, among many others) has considered the filming of allegedly criminal scenes taking place in public spaces or on public roads to be legitimate and not an infringement of fundamental rights, considering that the recording of images of activities that may constitute criminal acts is authorised by law in the course of a criminal investigation, provided that they are limited to the recording of what occurs in public spaces outside the inviolable precincts of the home or specific places where the exercise of privacy takes place.

Therefore, when the installation of filming or listening devices invades the restricted space reserved for the privacy of persons (the home), it can only be authorised by virtue of a court order, which constitutes an authorising instrument for the intrusion into a fundamental right. Those means of image or sound recording that film scenes inside the home, taking advantage of the technical advances and possibilities of these recording devices, would not be authorised without the appropriate judicial authorisation, even if the recording took place from locations far away from the home.

Let us now come down to the specific case, which is that in the case at hand, there was no clandestine installation of television cameras over a prolonged period of time.

The images captured by the drone were not even essential to know the appellant's address because this information was already known beforehand by the police. What the drone did allow was to know exactly, in order to make the entry and search operation possible, the location of bungalow number XX in Alicante, in the urbanisation of which it formed part.

This is explained in detail in FJ 3 of the judgment under appeal: "... the surveillance carried out with a drone on 28 July was not one of those used by the investigator to agree the agreed measure, because it is not among those listed in the resolution. The appellant was already identified from the beginning of the investigation by virtue of anonymous information from neighbours, which, by way of example, in the surveillance of 22 July, the police officers already saw him contacting the other accused Higinio at the convicted person's home, observing that when he left he was keeping an object, a person related to previous investigations into drug trafficking; In the surveillance of 2 July, Higinio is again seen coming to the appellant's house and then driving to the point opposite the XX point, where numerous people with a drug addict's appearance are observed; in the surveillance of 3 August, the police see Higinio entering the appellant's house with his own keys.

In the first surveillance, without the use of the drone, the house is already marked. It is clear that the order was not based on this surveillance with the drone and therefore it was not essential for the investigations, i.e. without it, the investigations could not have been continued with . In short, the investigator did not take them into account for the authorisation to enter the home. There had been surveillance before and after that, with the appellant and his home being identified.

On the day of the oral trial, the police officers appeared as witnesses, whose witness statements were correctly assessed by the court, they described that the drone only captured images of the exterior, never of the interior of the home, as stated in the statement; they described the place, ratifying the statement where the images appear, there is a street common to all the bungalows, the urbanisation has a low fence with railings that allow visibility of the interior from the outside, and that there was only one area that they could not see. And one thing is that the use of the drone is convenient to determine physically where bungalow number XX was located, as it is not visible from the street, they stated that there was a long corridor and then there was a bend that they could no longer see, and another is that as a result of the surveillance with the drone their address was found, which did not happen because it turns out that from the beginning of the investigation they were identified".

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Conclusions

Important dissertation on the use of technological tools for capturing images or sounds, in public, private or semi-public or semi-private spaces, which takes as its starting point the first STS on the use of drones to capture images inside a home, no. 329/2016 of 20 April and ends in STCO 92/2023 of 11 September, which analyses the use of police cameras to capture images in a semi-private space, a community garage.

The description of the factual situation is extremely important in order to avoid theoretical pronouncements that are out of touch with reality. A declaration of nullity of this measure and the domino effect on the remaining investigative measures could not be ruled out.

The expectation of privacy is reinforced even in the case of a gated community with common areas for the meeting or transit of neighbours. However, in this case, the limits imposed by the principles of proportionality and necessity, art. 588 bis a.1 of the Lecrim, were respected by the police. As the ruling of the court of first instance makes clear, the drone and image capture only took place on a single occasion, specifically on the afternoon of 28 July 2023, when other previous surveillance had already been carried out. Consequently, there was no interference of significant intensity. It was not a static surveillance, prolonged in time and capable of undermining the privacy of any of the neighbours. Furthermore, the use of the drone was necessary - and its contribution to the proceedings was limited to this - in order to know the precise and exact location of the bungalow, already fully identified, which days later was to be the object of a judicially authorised entry and search.

The urbanisation, as explained in the lower court ruling, was delimited by a small wall and a trellis that allowed a view from the outside. What the drone allowed was only to photograph the section of the corridor of the housing estate that could not be seen from the outside, with the sole purpose of making the subsequent access of the agents, duly authorised by the examining magistrate, to the home being searched viable.

In short, even though the specific capture of this image was valid, the examining magistrate did not incorporate it into the judicial decision authorising the entry and search, possibly due to the suspicion of a possible nullity, but used the remaining police actions as an independent line of investigation.

5.- STS 854/2025, 16 October. Analysis of the validity of the evidence obtained in France through the Encrochat application, a closed network of communication through encrypted messages .[5]

Factual background

We analyse the cassation appeal lodged against the judgement handed down by the

[5] STS 854/2025 of 16 October 2025, published on the website of the Judicial Documentation Centre, CENDOJ, Roj: STS 4526/2025 - ECLI:ES:TS:2025:4526, appeal 10025/2025, Speaker, Honourable Ana María Ferrer García.

Appeal Chamber of the National High Court on 11 December 2024. Dismissal.

The Central Investigating Court no. 1 of the National High Court opened an appeal against the judgment of the Appeal Chamber of the National High Court on 11 December 2024. 1 of the Audiencia Nacional opened summary proceedings 5/22 and once concluded, referred it to the Criminal Division, Section 2 of the Audiencia Nacional (Rollo PO 9/22), which on 9 May 2024, handed down a conviction containing, among others, the following proven facts: "...As a result of neighbourhood information received by the EDOA-Barcelona unit about a single-family house located in the town of Sigues i Riells (Barcelona), owned by Artemio and Elsa, about the presence of vehicles outside the house and the presence of people at different times and unknown to the neighbourhood, a series of surveillance operations were carried out on the house, on different dates and times, detecting the entry and exit of people at unusual times, with a very short stay....surveillance which was followed by surveillance of people and vehicles, telephone tapping, arrests and requests for house searches and entries...

And it continues, "...The subsequent contribution of the Encrochat messages (April-June 2020) reaffirmed their dedication to the activity described, as the force acting identified the users of the nicknames investigated, Palillo, Rubia, Flaca, Pelirojo and Perico corresponding to Carlos Daniel, Antonieta, Maite, Juan Alberto and Luis Alberto...". The conviction for the accused reaches, in some cases, prison sentences of ten years for crimes against public health in the modality of substances that cause serious damage to health in the framework of a criminal organisation.

Legal basis

Previous: We will try to summarise the almost one hundred pages of this extremely important STS 854/2025, in the most didactic way possible, focusing on the subject of the appeal, the investigation in France, the transfer of data to Spain and the repercussions on other criminal proceedings in progress or to be initiated.

First, the purpose of the appeal in cassation.

The purpose of the cassation appeal is to expressly challenge before the SC the evidential value of the conversations that the French judicial authorities obtained from the EncroChat platform, which reached Spain through the European Investigation Order (EIO) issued by the Anti-Drugs Prosecutor's Office in order to transfer it to Spain, The appellants' complaints focused on the infringement of the right to secrecy of communications because the seized material came from a prospective action, not judicially authorised in Spain, and they also questioned the process of assigning identities to the platform's users.

The appeal in cassation lodged by the Public Prosecutor's Office before the SC provides some illustrative details about this type of encrypted communication system and its proliferation, which are important for framing the transcendence of the issue under our consideration.

And he points out that, "...although information is available on the current use by criminal organisations of more than 50 new encrypted messaging platforms, at the moment EncroChat, SKY-ECC, ANOM and EXCLU are the ones which, already tapped,

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are the source of the communications being used as evidence in the different proceedings. These are systems that allow private communication of written messages, photos, videos, audios, which seek to avoid interception by the judicial authorities. Once the app for encrypting communications has been installed, the rest of the mobile phone's functions are closed. Each one has different technical characteristics from which some particularities will surely also derive in their procedural treatment. As a common feature, the terminals lack SIM user identification, in EncroChat, user identification was done by nicknames and in SKY-ECC through an alphanumeric code..." and adds, "...about 90% of the intercepted communications refer to drug trafficking, mainly cocaine; the rest have to do with some cases of murder or kidnappings related in general to drug trafficking. Users of these systems have not been found to have made use of them to deal with legal matters. The prices of the encrypted system are high, with EncroChat talking about €1,000 per terminal and about €1,500 per quarter. The distribution channels of the application were restricted, through private internet circuits in most cases. Security and privacy is conceived as paramount and EncroChat allowed for self-destruction of messages, deletion of passwords and panic deletion which was used when they became aware of EncroChat's intervention. At the time of EncroChat's exploitation, users who received a message alerting them of the tapping were switched to SKY but, in any case, access to the data was not prevented as the conversations were already tapped...".

Second - Characteristics of Encrochat.

With regard to the particular characteristics, operation and vicissitudes of EncroChat, as an introduction, we would like to take up the information contained in the STJUE (Grand Chamber) of 30 April 2024, case M.N. (C-670/22) - paragraphs 19 and 20.

In the context of an investigation carried out by the French authorities, it emerged that certain persons under investigation were using encrypted mobile telephones, operating under a licence called EncroChat, to commit offences relating mainly to drug trafficking.

Thanks to special software and modified equipment, these mobile phones made it possible to establish, via a server installed in Roubaix (France), an end-to-end encrypted communication, which could not be intercepted by traditional investigative methods. Communication was only possible between EncroChat customers. These phones were not available through official sales channels, but were offered by the sellers on the eBay platform. It was not possible to identify who was responsible for EncroChat, nor the official headquarters of the company.

The French police managed, with the authorisation of a judge, to retain data from this server in 2018 and 2019. This data allowed a joint investigation team, including Dutch experts, to develop a "Trojan horse" type software application. This application was installed in the spring of 2020, with the authorisation of the Tribunal Correctionnel de Lille (Lille Criminal Court, France), on the aforementioned server and, from there, on the aforementioned mobile phones by means of a simulated update.

Regarding the information obtained, some sources speak of more than 100 million messages, Eurojust informed those countries whose nationals operated through EncroChat of their existence.

In the case of Spain, following the processing of a European Investigation Order, the information was received in November 2020 and incorporated into various judicial proceedings.

Third: The transmission of the data to Spain.

The Prosecutor's Office explains that the Lille Prosecutor's Office transmitted spontaneous information to the Computer Crime Unit of the State Attorney General's Office, which forwarded this general information on the operation in which data on Spanish users involved in drug trafficking offences in Spain had been seized to the Special Anti-Drug Prosecutor's Office (FEAD) which, at first, incorporated it into the investigation proceedings, DI 16/20, followed for a laundering offence against the resellers of EncroChat terminals.

They were incorporated by the mere mention of EncroChat, but once the French document was translated, the Chief Prosecutor of the FEAD broke down this report from the 16/20 and opened DI 20/20, on 23 July 2020, issuing the OEI on the same day to obtain the information that the French offered in the spontaneous information and the OEI stated, ".....the French Judicial Authority is requested to provide the data stored on the EncroChat servers intercepted by virtue of the judicial measure authorised in its ongoing proceedings for the investigation of the EncroChat Organisation, due to the fact that they may contain relevant information on different aspects related to the money laundering activity investigated by the Spanish authority, allegedly carried out by the aforementioned Organisation in Spain, as well as by the network of distributors and resellers of said technology in that territory.

Specifically, all data associated with the users of this EncroChat encrypted communication system registered in the national territory of Spain are requested, from the date of the beginning of the intervention of the EncroChat server until the date of completion of said measure..." and most importantly, "...authorisation is requested for the use of this data as valid evidence in a Spanish judicial procedure...".

With this background, we must now move on to the issue at the centre of our attention, which is the possibility of using the data extracted from the communications obtained by the French authorities from the EncroChat server, which were finally incorporated into the case in Spain.

It seems clear that there is no irregularity whatsoever in the fact that the Public Prosecutor's Office obtained through an OEI the data obtained by the French authorities in the EncroChat investigation and furthermore, it is not an OEI to proceed with an interception, but a request to acquire the documentary results of investigative activities that the foreign authority has already carried out, with full autonomy, in compliance with its legislation, because the Spanish issuing authority should not make the issuing of the OEI subject to compliance with the provisions of arts. 588 ter a and subsequent articles. Lecrim, for the interception of telephone and telematic communications, or in art. 588 septies a and ff. for the remote search of a mass information storage device; rather, the canon of the examination should be extracted from the provisions of art. 588 bis i) Lecrim, which in turn refers to art. 579 bis Lecrim, which refers to the use of information obtained in a different procedure and casual discoveries.

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The aforementioned 588 bis i) Lecrim expressly permits the incorporation as a means of investigation or evidence of information obtained through telephone tapping in a different procedure.

The OEI was issued for the investigation of a drug trafficking offence, laundering of drug trafficking proceeds, committed by an international criminal organisation, all of which are typified in articles 301, 302 and 303, laundering, 368, 369, 369 bis drug trafficking, 570 bis, criminal organisation, all of them of the Spanish Penal Code.

The Public Prosecutor's Office included special precautions in the delivery of the data, since by Decree of 10 November 2020 it authorised a Lieutenant from the Central Operational Unit (UCO) of Guardia Civil to travel to France for the effective transmission of the data subject to the aforementioned OEI, under the following terms: 1) The hard disk shall be securely deposited in the premises of the Central Operational Unit of the Guardia Civil, or wherever determined by the Judicial Police Headquarters of the Guardia Civil; 2) Authorise the Technical Unit of the Judicial Police, in conjunction with the Computer Forensics Group of the Information Headquarters of the Guardia Civil, to make a forensic copy of the original evidence, maintaining its unalterability, with the aim of processing the data to allow its correct visualisation; 3) Authorise the units with Judicial Police functions of the Guardia Civil to analyse the information contained on the aforementioned hard disk, in order to determine: i) if they contain sufficient elements to initiate an investigation; and ii) if they are related to an investigation already initiated and, if so, if the evidence analysed provides any relevant data; and 4) Authorise the units with Judicial Police functions of the Guardia Civil, either to initiate an investigation, in the first case; or to provide the process with the complementary information obtained, in the second case, so that it can be assessed by the Examining Magistrate and the Public Prosecutor's Office. In both cases, in order for the information to be included in criminal proceedings, it must be accompanied by an official letter of referral issued by the UTPJ of the Guardia Civil, providing the specific data extracted from the forensic copy, with the guarantee of its unalterability.

Specifically on how they accessed the procedure that is the subject of this appeal, the data relating to the communications of the users "Palillo", "Rubia", "Flaca", "Pelirojo" and "Perico" was provided by means of a police official letter from the Guardia Civil dated 27 May 2022.

Fourth: Lack of notification established in art. 31 of Directive 2014/41.

Another of the controversial issues, which was introduced by the appellants, is the effect on the possibilities of using the EncroChat material from the EIO issued by the FEAD, projected by the omission by the French authorities of the notification mechanism established by art. 31 of Directive 2014/41.

The Directive distinguishes between two types of 'interception of telecommunications': 1) Interception of telecommunications with the technical assistance of another Member State (art. 30). For the execution of this intervention, an EIO must be issued for the telecommunications intervention in the Member State whose technical assistance is required and 2) Telecommunications intervention which does not require the technical assistance of the Member State in whose territory the target of the intervention is located.

The CJEU (Grand Chamber) of 30 April 2024, case M.N. (C-670/22) expressly states that this measure "is not the subject of a European Investigation Order" (para. 121), because it is not required for its execution. However, as this is a case in which a State "intrudes" into the territory of another State, albeit in its "telecommunications area", Article 31 of the Directive states that the first of the Member States, known as the "intercepting State", must notify the competent authority of the second of these Member States, known as the "notified State", of the interception.

The CJEU, in relation to Article 31 of the Directive, rules on the nature of the agreed measure, stating that it is a "telecommunications interception", affirms that it must be notified and indicates to which authority, and adds that the purpose of this provision is to protect the rights of the users affected by the measure.

However, we must not forget that, in this case, the State carrying out the interception does not know, beforehand, that the person affected by the measure is in the territory of another State, but that, during its execution, this circumstance occurs and comes to its knowledge (notification during the interception) or, even, this knowledge may be reached after obtaining and assessing the corresponding information, (notification after the interception).

France did not formally comply with the notification mechanism provided for in Article 31 of the Directive (notification using the appropriate form), either before, during or after the interception of the EncroChat server, and this requirement was not complied with, despite the fact that it was an interception of communications without technical assistance from another country. However, even if we consider this lack of notification of the interception to be valid, it does not seem to be a substantial requirement when the directive itself allows the corresponding Annex C to be made before, during or after the interception.

Even before this spontaneous exchange of information, the French authorities also notified the authorities of all the states concerned of this interception via Europol.

We did not detect any indication of possible defencelessness or other fundamental rights associated with the lack of communication that could undermine the evidentiary validity of the EncroChat server material, nor any compromise of our sovereignty as a State. The French authorities reliably communicated the intervention to the Spanish authorities as soon as they were able to know the geolocation of the persons affected by their measure.

Conclusions.

With the extensive legal grounds developed in this long STS 854/2025, of almost one hundred pages, no reasons can be detected that prevent the use in this specific procedure of the data from EncroChat introduced in the process by way of the OEI issued by the Anti-Drugs Prosecutor's Office, given the seriousness of the facts, drug trafficking that causes serious damage to health through a criminal organisation, which exceeds the proportionality canon.

This decision is essentially a decision, that is, regarding the possibility of using the material obtained from EncroChat, with different nuances that is shared by the courts in

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other countries around us.

The data from the EncroChat server may raise questions of a procedural nature in each individual criminal proceeding, such as, among others: the way in which it was obtained from France, the fact that the technique specifically used for this data capture has not been disclosed because it is subject to national defence secrecy in accordance with French legislation (arts. 4139 and 413-10 of the French Criminal Code); the chain of custody of the material provided; the making of copies; the extraction of data relating to specific persons, facts and offences; their incorporation into each criminal procedure; or the police reports on the correspondence between nicknames and identities of specific persons.

Many of these issues must be looked at from the perspective of each proceeding and the evidence in each one of them, without prejudice to the fact that, in general, it can be stated, as already indicated, that:

- The data was obtained through the issuance of an EIO, by the Public Prosecutor's Office, in Investigation Diligences 20/2020. Formal request with the correct international cooperation tool.

- They were collected by the Spanish police force in police premises in France, on a hard disk, which was deposited in the possession of the Guardia Civil. It guarantees the chain of custody.

- The Public Prosecutor's Office authorised the Judicial Police to: i) make a copy of the original evidence, ii) analyse the information contained on the hard disk, and iii) initiate an investigation or contribute the information obtained to the ongoing process. Purpose of the IEO to incorporate it into the Spanish procedure.

As can be seen, the data provided by France are not the original data from the server, as they were obtained, but data that were analysed and selected by the French authorities in order to identify those that might be of interest to the Spanish authorities. In addition, the data that, where appropriate, are incorporated into each criminal procedure in Spain, are not the data received from France either, but, once again, are data that are subject to analysis and selection, in this case by the Judicial Police, in order to discriminate which could be of interest for each criminal procedure, depending on the persons, facts and crimes under investigation.

This "cascade" selection raises the problem of the possibilities for the defence to challenge the integrity and reliability of the data, because it has never been able to have the "raw data" at its disposal, although the SC, echoing the case law of the ECtHR, has considered the limited provision of such data valid, taking into account, "....the technical difficulties in accessing the data, in particular when they are encrypted, or the logistical disadvantages for their handling and analysis when they are very voluminous or of great importance both at the investigation and trial stages -vid. STEDH, Rook v. Germany, 25 October 2019; STSS 507/2020, 14 October; 86/2022, 31 January; 106/2023, 16 February, hence the need to activate specific safeguards in terms of collection and processing -vid. STS 425/2016, 4 February, Circular of the State Prosecutor General's Office 5/2019, but also to the proper assessment of their reliability. In particular, in those cases in which the digital data have been obtained without subsequent judicial control or are not accompanied by other evidentiary information with corroborative potential -vid. on the evidentiary use of content sent via messaging services, STEDH Yüksel Yalçinkaya v. Turkey, 26 September 2023.

As a corollary, a general analysis of the probative value of data from EncroChat is not possible, far from the details of each specific case. Rejected as it has been, with extrapolable effect to similar cases, the nullity of the data obtained as a result of the OEI issued by the Special Anti-Drug Prosecutor's Office, the scope of the informative contribution provided by the same will vary in each case in accordance with the particular circumstances and the patterns we have pointed out.

6.- STS 861/2025, 22 October. Undercover agents. Provision in their entirety of the recorded conversations.[6]

Factual background

Appeal against the judgement handed down by the Appeals Chamber of the Audiencia Nacional on 22 January 2025. Dismissed.

The Central Examining Court no. 4 of the Audiencia Nacional, instructed the summary procedure no. 3/2023, for the crime of drug trafficking in quantity of notorious importance and criminal organisation, once concluded, it was sent to the 4th Section of the Criminal Chamber of the Audiencia Nacional, which issued sentence no. 18/2024, dated 15 July 2024, which contains, among others, the following proven facts:"...In a letter dated 30 September 2022 from Mr. Hayes, United States Attorney in Illinois (Chicago), addressed to the Chief Prosecutor of the Special Anti-Drug Prosecutor's Office of the Audiencia Nacional, a request was made for the opening of a judicial procedure for the ongoing investigation in a joint manner with the Chief Prosecutor of the Special Anti-Drug Prosecutor's Office of the Audiencia Nacional. Hayes, United States Attorney in Illinois (Chicago) addressed to the Chief Prosecutor of the Special Anti-Drug Prosecutor's Office of the Audiencia Nacional, a request was made to open judicial proceedings for the investigation underway jointly with the Spanish National Police (UDYCO CENTRAL-Section IV), informing of the investigation underway in coordination with the office of HSI (Homeland Security Investigations) in Bogotá and Madrid, and said Spanish police group, having given rise to case XX and dealing with the object of this, the drugs and money laundering organisation of Conrado.

It was illustrated in that letter that in the month of February 2022, as a result of the steps taken in Colombia, Conrado was identified as the head of a drug trafficking organisation established in Bogotá (Colombia), with an undercover agent being introduced in the course of the undercover investigation by the American authority, when Conrado requested assistance with the transport of approximately two tonnes of cocaine from Colombia to Spain, The Colombian organisation intended to send it using a boat that would pick up the drugs in international waters, after which they would be transferred to this country where they would be delivered to the final recipients and distributors. It

[6] STS 861/2025 of 22 October 2025, published on the website of the Judicial Documentation Centre, Cendoj, ROJ: STS 4652/2025 - ECLI:ES:TS:2025:4652, appeal 10142/2025. Speaker Excma. Ms. Susana Polo García.

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was detected that in mid-September 2022 Conrado had travelled to Spain to coordinate the reception and entry of the drugs with other members of a criminal organisation made up of Spaniards and Mexicans with whom he had previously met in this country.

Once the opening of the judicial proceedings in Spain had been authorised, with authorisation also for Spanish undercover agents to act, the drugs would be transported by cargo in the hold on a commercial flight (IBERIA airline) to Spain, from Luís Muñoz Marín International Airport in San Juan de Puerto Rico to Madrid-Barajas International Airport (Spain), the drugs being guarded at all times from the time they entered the airport until they were loaded into the hold of the plane by United States federal agents, which would be duly accredited in the chain of custody document of the drugs...."

Legal grounds

Sole legal basis. Regarding the reproach of the appellants relating to the non-compliance with the obligation to provide full details of the communications between the undercover agent Pelosblancos and those identified as "Eugenio" and "Felipe", given that article 282 bis 1. of the Lecrim in its third paragraph warns that the information obtained by the undercover agent must be made known as soon as possible to the person who authorised the investigation and, likewise, this information must be brought to the trial in its entirety and will be evaluated in conscience by the competent judicial body, the truth is that the legal mandate has not been faithfully complied with, Moreover, at the request of the appellant, the Aranjuez investigating court agreed to send a summons to the police to provide all of the conversations held between the undercover agents and the under investigation, but there is no evidence that this order has been complied with, as the telephones used had been cleaned for use in other activities.

However, as the Chamber rightly reasons, not every irregularity determines the nullity of the proceedings or the impossibility of assessing the evidence obtained and affected by this flaw, if, as in the present case, the data available to us allows us to arrive at a knowledge of objectively produced facts, with a logical and rational concatenation between them, especially if, in addition, the data included have been the object of the corresponding witness evidence, and the agents involved, especially the undercover agent Pelosblancos and the national police officer XX, Head of Group 50 and instructor of the police report, subjected to the contradictory debate, have ratified what is contained in the reports.

In this sense, STS 503/2021 of 10 June states that "with regard to the messages provided by the undercover agent and the accusation that they were not sent in their entirety, it is clear that they cannot be given constitutional relevance, or even ordinary legality, and will only have significance in terms of their evidential value. What is important is that the agent will hand over all the information obtained in the exercise of his function, insofar as it is relevant to the investigation of the crime. It is clear from the reading of the regulation contemplated in art. 282 bis Lecrim that it is not a question of transferring all the communications held, conversations, messages, calls - as if it were a kind of telephone tapping - but rather that which is transcendent for the investigation, which justifies the measure and can serve to clarify the facts and prevent the crime. It is not a question of the official "choosing" what is incriminating, but what is relevant to the investigation. This is what makes the difference, as it does not make sense to provide everything, as it is not a wiretapping measure, but a face-to-face action over a prolonged period of time".

The officers had no personal interest in the outcome of the investigation, they were questioned about their conversations with the persons under investigation, and their testimony led to the court's conviction about the operation, and they could be questioned by the defence. It is not so much a question of the virtuality of the written content of a conversation or its contribution, but rather the reality of the conversations held and the statement of the agents about these conversations with the authorisation of the public prosecutor and the subsequent reporting to the judge. The court's conviction was reached by the statement of the police officers about the result of the investigation and the inexistence of any spurious interest on the part of the officers who acted with professional zeal, carrying out conversations with those under investigation about the operation.

What was important for the investigation was transcribed and, furthermore, what is reflected in the sentence is that the operative group made what they talked about cost when it was of interest for the investigation and they wrote it up directly in their reports to their superiors with the content of what they talked about. The characteristic feature of this figure is the duty of information required of the undercover agent, who must make the information he or she discovers available to the person who authorised the investigation as soon as possible. As can be seen, no specific deadline is set for the fulfilment of this duty, but the legislator limits himself to stipulating that "it must be made available as soon as possible". Nor is the specific form of the notification established, nor is the personal appearance of the officer required. All of this means that it is left to the competent jurisdiction to resolve these aspects and to determine the way in which this information will be made known, depending on each specific investigation, given that the officer may encounter serious difficulties on certain occasions in sending the information personally and immediately. (STS140/2019, of 13 March).

Conclusions

This STS, like so many others, fully endorses the intervention of undercover agents and gives total legality and credibility to their actions. The battery of arguments put forward by the defence lawyers is extremely varied, sometimes repetitive of many other criminal proceedings with the same result, ranging from the absence of content informing or documenting the infiltration process, as well as the operations carried out once the undercover agents had infiltrated, ending with the necessary argument of the crime provoked. There are pre-procedural activities that should not be revealed, on pain of compromising tools as useful as the one analysed and with future prospects for combating organised crime.

In this case, the information to be provided by the undercover agent is relevant to the case, as it could not be otherwise, ruling out doubts about possible police incitement and showing a totally passive attitude, diluting the suspicion of the existence of a provoked crime.

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7.- STS 849/2025, 16 October. Disclosure of secrets by a public official. Fraudulently obtaining access codes to a computer.[7]

Factual background

Appeal brought against the judgement handed down by the Supreme Court of Extremadura on 21 February 2022, which partially upheld the appeal against the judgement handed down by the Provincial Court of Cáceres. Partial upholding.

The Examining Magistrate's Court no. 1 of Valencia de Alcántara opened preliminary proceedings no. 147/2018 for a crime of intrusion, against Mr. Constancio, with Ms. Soledad and the Cáceres College of Nursing as Private Prosecutor, which, once concluded, referred for trial to Section no. 2 of the Provincial Court of Cáceres, ruling, among others, the following proven facts, ".The complainant, Ms Soledad, worked as a qualified nursing technician from April 2012 until October 2018 at the "Buenos Aires" retirement home in Valencia de Alcántara. In said geriatric centre, which is publicly owned and managed by the Town Council of that town on a date not determined but close to the date initially indicated, two personal computers were installed, one in the nurses' office, Dell model XX, and the other in the office of the director of the aforementioned centre. From that moment on, the nurse Dña. Soledad, who worked there continuously, from Monday to Friday and from eight in the morning to three in the afternoon, began to use the computer alone and on a regular basis without the express prohibition of her hierarchical superiors, the mayor and the director, and the knowledge of the other workers, giving it a personal password (Dakota 76) and using it on a daily basis, both to draw up his own personal and individual models of "templates or spreadsheets" for users of the residence, and as his own personal computer with a personal password and not accessible to third parties without his permission, given the reserved content and sensitive data from his private life contained therein, as well as his personal e-mail.

In these circumstances and in this particular context, the accused Mr. Constancio, of legal age, with no criminal record and with the profession of "auxiliary nurse" (although he was released from the trade union) and at the same time a public employee of the Valencia de Alcántara Town Council in the role of director-manager of the "Buenos Aires" residence and consequently acting in all the absences (sick leave, leave, travel, illness, holidays, etc.) of the director of the residence, Mr. Raúl. In this capacity and with the aim of discovering general private information and sensitive personal data that he could use to the detriment of Ms. Soledad, he accessed the private content of the same without her knowledge and without her having at any time authorised him or given him or provided him with her personal password. Specifically, on 11/10/2018, Mr. Constancio, knowing perfectly well from his position that Ms. Soledad was not working that day at the residence, that he did not have her authorisation and with the aim of obtaining some kind of information in order to use it to her detriment, first entered the nursing office - the place where the computer was physically located - and then, using the password that he had previously obtained in June with the help of a pendrive that he inserted in the computer, managed to access all its contents...".

[7] STS 849/2025, of 16 October 2025, (ROJ: STS 4646/2025 - ECLI:ES:TS:2025:4646, appeal 2467/2022. Rapporteur: D. Eduardo de Porres Ortiz de Urbina.

Legal grounds

The fraudulent obtaining of the password to the computer is in itself a non-consensual access to the complainant's confidential personal data.

This password, which is an identifier of its owner, allows access to all the information that may exist on the computer, and therefore constitutes per se a confidential personal data protected by article 197.2 of the Criminal Code.

The password of a personal computer is the key, the access door to all the contents of that computer in which the owner's private information is usually stored, and in the same way that we have said that the improper obtaining of "an online identifier constitutes personal data susceptible of protection" because it allows the identification of its owner, it is also protectable and punishable under Article 197.2 of the Criminal Code, obtaining the password of another person's personal computer is also protectable and punishable under criminal law insofar as it gives access to all the personal information stored on the device, without the need for a detailed description of its content once it is established that the perpetrator did not limit himself to obtaining the password but accessed its different folders and content and that this generalised access to all the information on the computer.constitutes the damage required by the provision applied.

Indeed, according to the wording of article 197.2 PC, the seizure, use or modification of personal data of a personal nature requires it to be carried out "to the detriment of the owner or a third party" and we have declared, by means of an integrating interpretation, that this damage is also required in the conduct of simple access (SSTS 1328/2009, of 30 December and 40/2016, of 3 February).

To determine the existence of harm, we have been using two parameters. In the case of access to particularly sensitive data, which has an aggravated penalty (art. 197.5 CP), the relevance of the data itself determines the existence of the harm. Particularly sensitive data, according to the Data Protection Regulation, Art. 9 and Art. 195.5 cited, personal data revealing ethnic or racial origin, political opinions, religious or philosophical convictions, or trade union membership, and the processing of genetic data, biometric data aimed at uniquely identifying a natural person, data relating to health or data relating to the sex life or sexual orientations of a natural person, as well as data referring to underage victims or persons with disabilities in need of special protection.

In other cases, where the data are not particularly sensitive, the existence of a detriment must be proven.

In this case, there is no evidence that the personal data accessed was particularly sensitive, but we understand that indiscriminate access to the entire contents of a personal computer, which can and ordinarily does include very broad and varied personal information, constitutes the typical harm required by article 197.2 PC.

Therefore, the proven facts can be subsumed under article 197.2 PC, which determines the partial acceptance of the appeal and the imposition of the sentence established in the first instance ruling, without the need to reply to the third and last ground of appeal.

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Conclusions

Once again, we see the rise of this criminal offence of discovery and revelation of secrets, which has so many and varied modalities in art. 197 of the Criminal Code.

This case involves the fraudulent obtaining by a public official of the password to a computer used by another public official with the intention of causing personal harm. There is no justification for this deliberate and unconscious access to the personal data of another, being a criminal modality that fits in with the basic type of section 2 of Article 197.

8.- STS 866/2025, 22nd October. Self-consumption or sale of GBL. Questionable minimum doses .[8]

Factual background

Appeal brought against the judgement of the TSJ of Madrid of 15 December 2022, which upheld the conviction handed down by the AP. Upheld.

The Madrid Examining Magistrate's Court no. 30, initiated abbreviated proceedings no. 1507/2021 against Federico for a crime against public health and once concluded, referred it to the 7th Section of the Provincial Court of Madrid, which handed down a sentence on 26 April 2022, which includes, among others, the following proven facts, "... It is declared proven that the accused Federico, of French nationality and without criminal record, at around 8.30 p.m. on 12 March 2021, was inside the establishment "El Ring" located at 78 Amparo Street in Madrid when National Police officers arrived, alerted by neighbours who alerted them to the fact that he was inside the establishment "El Ring" located in 78 Amparo Street in Madrid:30 hours on 12 March 2021, he was inside the establishment "El Ring" located at 78 Amparo Street in Madrid when National Police officers arrived, alerted by neighbours who alerted them that a large group of people were inside the establishment, without keeping a safe distance and without wearing masks. On entering the establishment and finding narcotic substances in many of the rooms, they proceeded to search the belongings of the customers, including the accused, who was found in one of the pockets of his jacket, which was inside one of the lockers that the establishment had available for customers to leave their clothes and belongings in: (a) a dropper bottle containing 30 millilitres of gamma butyrolactone (GBL), known as liquid ecstasy, which he intended to distribute to third parties; and (b) a blister pack containing 12 tablets of Cenforce 100, which contained the drug Sildenafil, a product not authorised as a medicine in Spain, which means that its marketing is clandestine, and which he also intended to distribute to third parties...".

[8] STS 866/2025, 22 October 2025, published on the website of the Judicial Documentation Centre, Cendoj, (ROJ: STS 4799/2025 - ECLI:ES:TS:2025:4799, appeal: 551/2023. Speaker: Mr. Antonio del Moral García.

Legal grounds

The Court of First Instance justifies its evidential conclusion on the finding, during a police control, of a bottle containing 30 millilitres of GBL, liquid ecstasy, in addition to 2 tablets of Cenforce 100. It had been declared proven that there were 12 and not 2.

Possession of the substance is established: it is a fact acknowledged by the accused.

Gamma butyrolactone (GBL) is a controlled substance that causes serious damage to Health, Agreement of the Non-jurisdictional Plenary of the SC held on 13 December 2004, and SSTS 197/2004, 16 February, 1224/2004, 15 December and 870/2008, 16 December: even though the substance GBL is not included in the Schedules, when it is introduced into the body it becomes GHB which is controlled - see STS 352/2019, 10 July).

As for its destination, the volume of the substance seized is the only evidence on which the Provincial Court based its conviction regarding the purpose of sale. It has been endorsed by the High Court of Justice in dismissing the appeal. That quantity, it is argued, could not be intended exclusively for the appellant's own consumption.

The appellant seeks to introduce doubt and to justify that, despite the volume of the liquid, a purpose other than self-consumption cannot be conclusively and indisputably deduced. He stresses the defendant's profession, which suggests that he does not need additional income to satisfy his consumption, and the way in which the drug is usually marketed (containers with such a capacity). The fact that all the liquid was in a single container makes the hypothesis of further distribution to third parties less plausible.

The Prosecutor in his documented report explains that these 30 millilitres exceed the amount of stockpiling that, according to case law, built on maxims of experience, would represent consumption between three and five days (vid STS 870/2008, of 16 February and ATS 890/2019, of 10 October).

This being true, the criterion of quantity cannot be automated.

We are dealing with an evidentiary issue: not with setting boundaries between permitted and non-permitted quantities. What is not permitted is distribution and what is punishable is possession for distribution to third parties.

Only if this element is conclusively proven can a conviction be legitimised.

Here it is true that the quantity could suggest a dedication that would go beyond self-consumption itself, but in view of the circumstances put forward by the appellant - his status as a consumer, the form in which the substance is presented and others - the opposite hypothesis cannot be ruled out outright, which must lead to the appeal being upheld. The alternative argument put forward by the appellant - that the total amount seized was intended for his own use - is sufficiently well suited to the standards of reasonableness for the doubt raised as to the reality of the charge to preclude a conviction.

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Conclusions

This à la carte variation of the criteria established since the non-jurisdictional agreement of 13 December 2004 is, to say the least, delicate. It is true that it is not clear from the proven facts that it was a quantity pre-ordered for trafficking, possibly some ancillary or peripheral information is missing in the seizure, but this exculpatory argument that seeks a basis in the fact that the bottles in which they are sold are 30 ml, seems perverse. And if they were 35 ml, would we reach the same conclusion? I honestly believe that this should not be the case and we could open an interpretative window that trivialises the protected legal right in crimes against public health.

Case law review

CASE LAW REVIEW 5TH CHAMBER SUPREME COURT

English translation with AI assistance (DeepL)

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JURISPRUDENCE REVIEW 5TH CHAMBER OF THE SUPREME COURT

Summary: 1.- Sentence: 20/11/2025. Upholding. 2.- Sentence: 30/10/2025. Upholding. 3.- Judgment: 02/10/2025. Dismissal. 4.- Sentence: 18/09/2025. Dismissal. 5.- Sentence: 14/07/2025. Partially upheld. 6.- Sentence: 02/06/2025. Second Sentence of the Chamber after the Special Chamber of Article 61 of the LOPJ upheld the appeal for review lodged by the appellant against the Sentence of this Fifth Chamber which ruled on this military disciplinary appeal. - Replacement of the very serious disciplinary offence for which he had initially been punished with a serious offence. Partially upheld. 7.- Judgment: 22/05/2025. Dismissed. 8.- Judgment: 09/04/2025. Dismissed. 9.- Sentence: 02/04/2025. Dismissed. 10.- Sentence: 12/03/2025. Rejected 11.- Sentence: 22/01/2025. Rejection

Scope of analysis: Disciplinary rulings in the year 2025.

1.- Sentence: 20/11/2025. Upholding

Subject matter:

Very serious offence of final conviction for a crime causing serious harm to the Administration and citizens, as defined in article 7.13 of Organic Law 12/2007, of 22 October, on the disciplinary regime of Guardia Civil.

Facts:

The ordinary military contentious-disciplinary appeal focuses on the decision of the Minister of Defence, which imposed on the appellant the sanction of dismissal from service for committing a very serious offence, specifically a fraudulent offence that caused serious harm to the Administration and citizens. That fact gave rise to the current proceedings, since the appellant claims that that decision is null and void on the ground that the disciplinary proceedings have lapsed.

Pleas in law:

Lapse of the disciplinary file and closure of the disciplinary file.

In the alternative, he seeks the penalty of suspension from employment or loss of his post in the career bracket for three years.

Grounds of law:

FOURTH.With regard to the allegation concerning the expiry of the disciplinary proceedings, it should be noted that Article 55 of Organic Law 12/2007, on the Disciplinary Regime of Guardia Civil, under the heading "Periods of investigation", establishes that the procedure for serious and very serious offences "will respect the established time limits, without the investigation of the case being able to exceed six months", and in Article 65.1 under the heading of "expiry" states that "The resolution referred to in Article 63 of this Law ("The resolution that ends the procedure...") and its notification to the interested party must be made within a period that shall not exceed six months from the date of the agreement to initiate the proceedings. Once this period has elapsed, the proceedings shall lapse".

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However, regarding the provision that the notification of the sanctioning resolution, which ends the sanctioning procedure, must be made within a period not exceeding six months from the date of the agreement to initiate the proceedings, it must be taken into account that the aforementioned Article 65 establishes that this period may be suspended for a maximum period of six months, by agreement of the Director General of the Police and the Guardia Civil, at the proposal of the instructor, in the cases specified therein, and that, likewise, in Article 43.4 of the aforementioned LORDGC, states that: "The computation of the time limits shall be suspended by the instructor, by means of a reasoned agreement, for the essential time, when, for reasons attributable to the interested party, it is not possible to carry out within the time limits any diligence necessary for the resolution of the proceedings or the notification of any procedure. No appeal may be lodged against such a decision separately from the appeal that may be lodged against the resolution of the proceedings".

And so, in the present case, having examined the proceedings, it appears that, as stated in the preceding legal grounds, the disciplinary proceedings instructor, in accordance with the provisions of the aforementioned article 43.4 of the LORDGC, on 5 March 2025, agreed the suspension of said maximum period of processing of the file, as it was necessary to notify, in legal form, the proposal of the sanctioning resolution, remaining suspended until by agreement of 18 March 2025, agreed its resumption, and, therefore, from the calculation of the aforementioned maximum period of six months for processing the disciplinary proceedings, the aforementioned days of suspension must be deducted, for reasons attributable to the appellant, which this Chamber considers to be in accordance with the law and which, in no case, has been questioned.

And so, in the present case, if we take as the starting date for calculating the six-month limitation period the date on which the proceedings were opened, 11 October 2024, and we add the thirteen days which, by agreement of the instructor, its processing was legally suspended - from 5 March 2025 to 18 March 2025 - we would find that the limitation period would end on 24 April 2025, and, therefore, since the notification of the sanctioning decision to the appellant was carried out in person on 25 April 2025, as it appears from folio 218 of the proceedings, although the appellant defers it to 6 May 2025, the date on which it is stated on folio 218 of the proceedings, although the appellant postpones it to 6 May 2025, to the appellant, was carried out in person on 25 April 2025 - as stated on page 218 of the proceedings, although the appellant defers it to 6 May 2025, the date on which the edicts were published in order to be notified of the sanctioning decision -, there is no doubt that the expiry of the file would have come into play and what would proceed would be its filing, without prejudice to the fact that, in accordance with the provisions of Article 95.3 of Law 39/2015, 1.1.3 of Law 39/2015 of 1 October, on the Common Administrative Procedure of the Public Administrations, a new one may be initiated if the statute of limitations of the alleged offence pursued has not elapsed and without the time invested in processing the expired procedure having interrupted the time limit.

Conclusions:

In the periods indicated by days, as in the case in question - two attempts to notify the sanctioning decision within three days - it is understood that these are working days, excluding Sundays and declared public holidays.

Therefore, as the two attempts to notify the sanctioning decision were made on public holidays, they cannot be considered to be in accordance with the law, as, having been made on days that are not working days, they lack effectiveness and, therefore, cannot be considered valid for carrying out an administrative activity, such as that which was carried out in the case in question, to be able to consider the sanctioning decision to have been notified, within the legal deadline, given that, in accordance with the provisions of Article 43 of the aforementioned Organic Law 12/2007, of 22 October on the Disciplinary Regime of Guardia Civil, in the periods indicated by days - to make two attempts to notify the sanctioning resolution within a period of three days - these are understood to be working days, excluding Sundays and those declared public holidays.

2.- Sentence: 30/10/2025. Upholding

Matter:

Very serious misdemeanour of final conviction for a crime causing serious harm to the Administration and citizens, typified in article 7.13 of Organic Law 12/2007, of 22 October, on the disciplinary regime of Guardia Civil.

Facts:

The Director General of Guardia Civil agreed, in accordance with the prior report of Guardia Civil's Legal Adviser and "on his own grounds of fact and law", which were given as reproduced, to return the proceedings to his Instructing Officer, "in order that:

a) - Proceed to annul the Statement of Charges as well as the proceedings subsequently carried out...".

- The report of the Legal Department of Guardia Civil, which serves as grounds for the aforementioned resolution of the Director General of Guardia Civil, states in its First Ground of Law that "there are elements that can be assessed for the purposes of determining proportionality that would not justify the imposition of a sanction in its minimum extension, but that, on the contrary, there are abundant reasons that lead to the imposition of a sanction in its minimum extension, There are abundant reasons that lead us to consider the suitability of proposing the sanction of dismissal from the service", and it goes on to state that "[this] conclusion is reached because the accused has been sentenced to the high penalties of 23 months in prison, as well as the prohibition to possess and carry weapons until February 2030, among others", and its proposal is to "RETURN the file to its instructor, in accordance with the provisions of article 62 of L. O. 12/2007, of 22 December 2007, of 22 December 2007, of the Spanish Criminal Code.O. 12/2007, of 22 October, of the Disciplinary Regime, so that the statement of charges may be annulled and a new one may be formulated with a proposed sanction of separation from service in the terms expressed in the first legal basis, and continue with the processing of the case".

- In compliance with the mandate received, on 22 July 2024, the Instructing Officer issued a new statement of charges (folios 133 to 138) in which she stated that "taking into account the seriousness and circumstances, as well as the vicissitudes that concurred in the author, it would be appropriate to impose the sanction of SEPARATION FROM SERVICE". Resolution of the Minister of Defence dated 24 February 2025, which

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partially modifies, without modifying the sanction, the resolution by virtue of which the sanction of dismissal from service was imposed on the appellant for committing a fraudulent offence that caused serious harm to the Administration and citizens.

The main dispute revolves around the proportionality of the sanction imposed, and whether it was appropriate to the facts and circumstances of the case, given that the appellant argues that the original sanction of three months and one day's suspension was more appropriate.

Grounds of challenge:

The appellant articulates his claim around the lack of proportionality of the sanction imposed, an allegation which he substantiates on various facts and legal grounds.

Grounds of law:

THIRD... Special attention should be paid to the annulment of both the indictment and the subsequent acquiescence given by the accused, annulments ordered to be carried out by the Director General of Guardia Civil in a resolution dated 9 July 2024, following a report from his Legal Department, the content of which we have described in the fourth factual background of this judgment.

While the plaintiff refers, among the facts on which his claim was based, to the statement of charges proposing the imposition of the sanction of three months and one day of suspension from employment, to the agreement given to this statement by the accused and to the annulment of both by the Director General of Guardia Civil, in his written conclusions he highlights as a relevant fact the "Change of the statement of charges to the maximum sanction without new facts"; issues which, however, are not referred to by the State Attorney's Office, nor by the Court of Appeals in its ruling. However, the State Attorney's Office does not refer to these issues either in its defence or in its written pleadings.

In the Chamber's view, the aforementioned annulments of both the statement of objections issued on 27 June 2024 by Ms. In the Chamber's view, the annulment of both the statement of charges issued on 27 June 2024 by the investigator of the disciplinary proceedings and the acquiescence of the accused on the same date are not covered by our legal system, since the aforementioned statement of charges, issued on the initiative of the investigator in the light of the evidence adduced up to that time, and also the subsequent acquiescence of the accused on the same date, are not covered by our legal system, and also the subsequent acquiescence of the accused were in accordance with the provisions contained in Article 57 of Organic Law 12/2007, of 22 October, on the disciplinary regime of Guardia Civil, in its sections 1 -Once the proceedings and proceedings referred to in section one of the previous article have been carried out, the instructor will formulate, if necessary, the corresponding statement of charges, the corresponding statement of charges, which shall include all the alleged facts, the legal qualification and the sanction deemed appropriate-, 4 -When the case is opened for disciplinary offences arising from a criminal conviction, the statement of charges shall be accompanied by the conviction-, and 6 -When the interested party, in writing or by appearance before a court or tribunal, submits a statement of charges, the statement of charges shall be accompanied by the conviction, in writing or by appearance before the instructor and secretary, shows his or her agreement with the statement of charges, the case shall be referred to the competent authority to decide - of article 57 of Organic Law 12/2007, of 22 October, on the disciplinary system of Guardia Civil, without, on the other hand, the aforementioned statement having been the subject of any challenge.

In accordance with the provisions of Articles 47 and 48 of Law 39/2015, of 1 October, on the Common Administrative Procedure of the Public Administrations - of supplementary application with respect to what is not provided for in Organic Law 12/2007, as established in the First Additional Provision of the latter law -, the annulment of the aforementioned investigatory proceedings would only be possible, either if any of the grounds for nullity determined in the first aforementioned article had been present in them or if these proceedings had incurred in any infringement of the legal system. And in any event by means of a duly and sufficiently reasoned decision in law.

Having analysed the case before us in the light of the above doctrine, we find that the annulment decision of the Director General of Guardia Civil lacked the necessary legal grounds. Director General of Guardia Civil lacks both legal coverage and sufficient reasoning to explain the reasons why it deprives the defendant's agreement to the charge sheet of validity and effectiveness, and it is also evident to the Chamber the negative impact that said decision had on the fundamental rights of the accused to a trial with all the guarantees and to a defence, since, in addition to predetermining at such an early stage of the proceedings the penalty to be imposed - regardless of the evidence already taken or which could still be taken - it seriously limited the defendant's possibilities of defence, since he had already acknowledged his guilt and the classification of the offence committed as a very serious offence.

As we have already pointed out, in the opinion of the Chamber, both the initial statement of charges formulated by the investigating judge and the acquiescence given by the accused were in line with the provisions contained in article 57 of Guardia Civil disciplinary law, including the proposed sanction, which, although certainly lenient, is among those provided for in article 11.1 of the same law to punish very serious offences, without us therefore finding any cause to justify the annulment of those proceedings.

The rights and freedoms recognised in Chapter Two of Title I of the Constitution are binding, in their entirety, on all Judges and Courts and are guaranteed under their effective guardianship;2. In particular, the rights set out in Article 53.2 of the Constitution shall be recognised, in all cases, in accordance with their constitutionally declared content, without judicial decisions being able to restrict, undermine or inapply this content; 3. Judges shall protect legitimate rights and interests, both individual and collective, without in any case being able to cause defencelessness [...].the Chamber considers that the re-establishment of the legal order disturbed by the serious defects that we have noted in our previous Ground of Law, entails, together with the upholding of the appeal, the annulment of all the actions carried out by the Administration subsequent to the consent given by the accused to the statement of charges issued on 27 June 2024, and the imposition on the Guardia Civil, Mr. Carlos Alberto, in accordance with the provisions of the previous Ground of Law, of a penalty imposed by the Court of First Instance. Carlos Alberto, in accordance with what is proposed in said statement of charges with his agreement, the disciplinary sanction of three months and one day of suspension from employment, as the author of the very serious misdemeanour foreseen in article 7.13 of Organic Law 12/2007, of 22 October, on the disciplinary regime of Guardia Civil,

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consisting of "committing any offence that causes serious harm to the Administration and citizens"; with the legal, administrative, economic and any other effects that are derived in in favour of the appellant as a consequence of the substitution of the sanction of separation from service annulled by that of three months and one day of suspension from employment.

For all of the above reasons, it is understood that the disciplinary sanction of dismissal from service, reasonably proposed by the Instructing Officer and favourably reported by the Director General of Guardia Civil, the Minister of the Interior and the General Legal Advisor of the Ministry of Defence, is fully in accordance with and appropriate to the principles of proportionality and individualisation, as the seriousness of the accused's conduct and the discrediting judgement that the facts entail - due to the degree of impact projected on the service, the image, prestige and good name, the image and good name of Guardia Civil, the reputation, the prestige and good name of Guardia Civil and the good name of the Ministry of Defence, the image, prestige and good name of the Meritorious Institute and the intensity of the breach of the inexcusable duties inherent to his status as a Guardia Civil and military officer and of the most elementary and primordial principles and rules of conduct that govern the behaviour of members of the Armed Institute - demonstrate the incompatibility of the accused to continue belonging to the Guardia Civil Corps".

From Ground IX of the decision rejecting the appeal for reconsideration:

"And as regards the choice of the sanction imposed on the offender, there are no reasons to suggest that it should be replaced. Case law has reiterated that the raison d'être of the sanctioned offence derives from the need to protect the legitimate interest of the Administration, and from the need for members of Guardia Civil to be irreproachable, since "the exercise of legal coercion by public administrations through police officers requires them to behave in an exemplary manner in their dealings with citizens [...] which requires that those who carry it out must be exemplary in their dealings with them [...] and that those who carry it out must be exemplary in their dealings with citizens [...]....] which requires that those who carry it out do not engage in conduct which they themselves must prevent or whose punishment they must facilitate when it is carried out by others" (Constitutional Court Judgement 234/1991, 10 December), and the dignity, the good name of the Institute and its effectiveness as a State Security Corps "are harmed if those in charge of carrying it out could be accused of those very acts which, in the interest of society as a whole, have to be punished by the police, in the interests of society as a whole, their mission is to prevent, since the Law cannot be totally dissociated from the people who have to coercively impose its compliance" (Constitutional Court Judgement 180/2004, of 2 November), there can be no doubt as to the serious impact on the credit that the institution of Guardia Civil should deserve from citizens if one of its members is convicted of crimes with similar characteristics to those detailed above.

[...Moreover, factors such as the assessment in the judgment of the Court of the mitigating circumstances of reparation of the damage and undue delay, and his meritorious professional record, cannot determine the substitution of the sanction imposed, in view of the seriousness of the offences for which he was convicted, the appreciation of the offences, of particular sensitivity and social repudiation, in contravention of the powers attributed to the Institute - repression of the criminal offence

-, the damage caused to the Administration and to the victim, and the damage to the image of the Institute in the terms set out above".

In the function of reviewing and controlling the legality of the actions of the sanctioning Administration, which is the responsibility of this Chamber, we consider that a careful reading of the above reasoning, correctly framed within the criteria for grading sanctions established in article 19 of the current Organic Law on the disciplinary regime of Guardia Civil - especially taking into account the provisions of section g) of the aforementioned article - and in accordance with the case law of the Constitutional Court and this Chamber, which they cite, disproves the accusation of the criminal offence, they refute the appellant's allegation that there was a lack of reasoning in the determination of the sanction imposed, and at the same time comply with the canon of reinforced reasoning that we have been demanding when the sanction imposed is the maximum sanction provided for by law.

None of the other arguments put forward by the appellant tarnish the arguments of the sanctioning Administration for imposing the penalty of dismissal, since, as the Disciplinary Authority points out, the mitigating circumstances of reparation of damage and undue delay, as assessed by the criminal courts, although they are circumstances specifically provided for in the Criminal Code which, for reasons of criminal policy, are to be taken into account in the case of a dismissal from service, for reasons of criminal policy, are endowed with certain favourable effects for the accused when determining the sentence to be imposed, they do not diminish the seriousness of the conduct for which he was convicted or the gravity of the harm caused to the victim and to the Administration, nor do they mitigate the good professional record of the defendant.

As for the judgment of this Chamber of 8 July 2002 (no.: Roj. No. STS 5046/2002), which STS 5046/2002) which the plaintiff cites in support of his claim, we do not consider that it can be used as a valid point of comparison with the case under examination, firstly because it was handed down in application of a Guardia Civil disciplinary law different from the one currently in force, and the elements of the disciplinary type applied do not coincide, and, secondly, because, contrary to what the appellant claims, the facts which were the subject of the conviction in that case bear no resemblance to those referred to in the present proceedings, even though one of the two offences which are the subject of the conviction in the present proceedings shares the legal classification of threats with the single offence found in that judgment.

Consequently, the final allegations in the application alleging infringement of the principles of proportionality and individualisation of penalties must also be dismissed and, with that, the appeal must be dismissed in its entirety.

Conclusions:

Once the defendant had signed the acquiescence, the subsequent annulment decision lacked both a legal basis and a sufficient statement of reasons explaining why it deprived the defendant's acquiescence to the statement of objections of its validity and effectiveness.

3. Judgment: 02/10/2025. Dismissal.

Subject matter:

Very serious misdemeanour of final conviction for a crime causing serious harm to the Administration and citizens, typified in article 7.13 of Organic Law 12/2007, of 22 October, on the disciplinary regime of Guardia Civil.

Facts:

Resolution of the Minister of Defence dismissing the appeal for reconsideration lodged by the appellant against the resolution, which imposed on the Guardia Civil the sanction of separation from service for committing a fraudulent offence convicted by final judgement, generating serious damage to the Administration and citizens. This situation arose following the criminal conviction of the appellant, which led to the opening of disciplinary proceedings.

Pleas in law

- Infringement of Article 65 of Organic Law 12/2007 by reason of the expiry of the administrative file, which renders the sanction null and void.

- Infringement of the administrative disciplinary procedure.

- Infringement of the principle that the administration is prohibited from acting against its own acts.

- infringement of the principle of proportionality.

Infringement of the principle of proportionality.

"Certainly, according to the provisions of the Law (Article 27 LORDGC), the person in charge of the Ministry of Defence is the only authority vested with competence for the imposition of the most severe disciplinary sanctions, and this is the case here. However, this does not mean that the then Director General of Guardia Civil was not competent to order the initiation of the disciplinary proceedings against the appellant.

"In relation to this allegation, we have recently said in two similar cases (judgments numbers 72 and 80/2018, of 18 July and 25 September), that the First Additional Provision of Organic Law 12/2007, of 22 October, on the Disciplinary Regime of Guardia Civil, which, under the heading "Rules of supplementary application", provides: "In all matters not provided for in this Law, Law 30/1992, of 26 November, on the Legal Regime of the Public Administrations and Common Administrative Procedure, shall be of supplementary application....", a reference that nowadays, as the latter law has been repealed, must be understood to refer to Law 39/2015, of 1 October, on Common Administrative Procedure for Public Administrations, as it is a supplementary regime of the first degree that would only apply in the event of a lack of provision or gap in the Organic Law on the Disciplinary Regime of Guardia Civil itself, which in matters of calculation of deadlines does not occur, as it contains a clear and specific rule in this regard, as is contemplated in art. 43 of the same.

Therefore, since Organic Law 12/2007 itself contains a complete specific regulation of disciplinary proceedings, the claim to resort to the general law on administrative procedure by invoking it in a supplementary capacity [...]".

[...] descending to the case at hand, it is considered that the proposed sanction of dismissal from service is proportionate to the seriousness and circumstances of the conduct that motivates it and, acting under this principle of proportionality, makes an appropriate weighing of the criteria referred to in Article 19 of the LORDGC.

Thus, the intentionality of the conduct must necessarily be assessed, and especially the intentionality of the conduct, which is undoubtedly appreciable as the accused has been convicted for the commission of two fraudulent offences, and which is easily established without any difficulty, without the need for further explanation , To this is added, with aggravating effects, that the criminal conduct that is the object of criminal reproach was not punctual but prolonged in time, the sentencing body appreciating the existence of a continuous crime of threats and a crime of habitual violence.

On the other hand, it cannot be overlooked that underlying the conduct reproached in criminal proceedings is a very serious violation of essential professional duties, as set out in the basic professional statute applicable to members of the Benemérito institute, with the result that conduct such as that set out in the criminal conviction, totally contrary to the values and principles of integrity, dignity and respect for the law that are the hallmarks of Guardia Civil and govern the professional life of the members of the Corps in all its facets, irremediably break the bond of trust that its members maintain, by tarnishing the image of exemplary behaviour that they should project.

Finally, it should be particularly taken into account that section g) of article 19 of the LORDGC expressly provides that in the very serious misdemeanour in question "the amount or nature of the sentence imposed by virtue of a final judgement shall be specifically assessed [...]", with the result that in this case "the amount or nature of the sentence imposed by virtue of a final judgement shall be specifically assessed [...]".]", with the result in this case that, not being a requirement of the disciplinary type that the penalty be a custodial sentence (for all, judgement of the Fifth Chamber of the Supreme Court of 29 November 2016), the accused has been sentenced to two prison sentences - of 5 months and 5 months and 15 days, respectively-.

Conclusions

- As the two attempts at home notification of the proposed decision were unsuccessful, it was essential to carry out the notification by means of edicts on the notice board of his unit of posting or framing and in the Official Gazette of Guardia Civil, as determined by article 44.3 of the Organic Law on the disciplinary regime of Guardia Civil, and it was fully justified for the Instructing Officer to suspend, by means of a reasoned agreement and for the period necessary to do so - in this case ten days - the calculation of the time limits for processing the case.

- The head of the Ministry of Defence is the only authority vested with the power to impose the most severe of disciplinary sanctions, and this is the case here. However, this does not mean that the then Director General of Guardia Civil was not competent to order the initiation of the disciplinary proceedings against the appellant.

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- The Organic Law on the Disciplinary Regime of Guardia Civil, which regulates the time limits applicable to disciplinary proceedings, provides for a specific calculation that is different from that established in the Law on Administrative Procedure 39/2015. Thus, article 43.1 of the L.O.R.G.C. excludes from the calculation of time limits only Sundays and public holidays, in such a way that Saturdays continue to be working days for the purposes of the application of the disciplinary law itself.

4.- Sentence: 18/09/2025. Dismissal

Matter:

Minor offence of inaccuracy in compliance with safety and internal rules, specifically in relation to uniformity during driver service.

Facts:

By resolution dated 20 November 2023 the Illustrious Captain, Commander-Director of the Naval Military School, imposed on the Seaman of the General Corps of the Navy Mr. Basilio the sanction of one day's arrest, as the perpetrator responsible for the minor offence provided for in article 6.12 of Organic Law 8/2014, of 4 December, on the Disciplinary Regime of the Armed Forces, consisting of "[i]naccuracy in compliance with the rules of security and internal regime, as well as in matters of obligatory reserve, in relation to the IRI of ENM no. 22150 in its point 4. RULES FOR DRIVERS, as well as in the Daily Order of the day of the facts (the same as successive days) in its section 2. UNIFORMITY".

Pleas in law:

- Infringement of the principle of legality, in its aspect of typicality (art. 25.1 C.E.), due to improper application of the disciplinary type contained in Article 6, section 12, of Organic Law 8/2014, of 4 December, on the Disciplinary Regime of the Armed Forces.

- Infringement of the right to the presumption of innocence recognised in Article 24.2 of the Spanish Constitution, in relation to error in the assessment of evidence, and infringement of Article 24 of the Spanish Constitution, with regard to the rights to effective judicial protection, to defence and to the use of the relevant means of evidence in law. Finally,

- "Substantiation of the concurrence of an objective interest in the case and of the appropriateness of a pronouncement by the Administrative Chamber of the Supreme Court" [sic].

Grounds of law:

In other words, there is homogeneity between the acts actually committed and the normative elements that support the material content of the wrongful act, as the appellant's conduct was incardinated in art. 6.12 LORDFAS, in relation to inaccuracy in compliance with the rules of the internal regime, rules that were specified in the sanctioning resolution, by relating the disciplinary type to "the lRl of the ENM no. 22150 in its point

4. RULES FOR DRIVERS, as well as in the Daily Order of the day of the facts (the same as successive days) in its section 2.UNIFORMITY."[sic].

Conclusions:

- The right to sanctioning legality in its aspect of the typicity of the conducts does not require that the disciplinary types exhaustively provide for each and every one of the conducts that deserve sanctioning reproach, provided that, as in the present case, the sanctioning rule contains the essential core of the prohibition, thus producing a referral to the rules of internal regime.

- The right to evidence is not absolute in nature, nor does it entitle to demand the admission of all evidence that may be proposed by the parties in the process, but only attributes the right to the reception and practice of that which is pertinent, pertinence being understood as the relationship between the proven facts and the thema decidendi, with the judicial bodies being responsible for examining the legality and pertinence of the evidence requested.

5.- Sentence: 14/07/2025. Partially upheld.

Matter:

Very serious offence under article 8.14 of the Disciplinary Regime of the Armed Forces. Requirements demanded by this type of discipline.

Facts:

Disciplinary sanction consisting of dismissal from service for a very serious offence, as defined in Article 8.14 of Organic Law 8/2014, after having been convicted of a criminal offence.

Allegations.

The appellant argues that the elements required by the disciplinary type are not met and that, if so, the sanction is disproportionate.

Law.

In the light of the appellant's statement that 'we must focus on the conviction and not on the specific offence', it should be recalled that, as stated in the decision imposing the penalty, 'In accordance with what the High Court has repeatedly held since its judgment of 7 November 2003, followed by the judgments of 7 February 2003, the Court of First Instance has held that the penalty is disproportionate, - followed by those of 27 February 2004, 7 April 2006, 11 December 2009, 4 February 2010, 31 May 2011, 30 May 2012, 5 December 2013, 6 November 2014 and 21 December 2016, and revalidated in subsequent rulings of 12 February 2019 (rec. 78/2018), 9 June (rec. 89/2019) and 16 December 2020 (rec. 13/2020), and 20 May 2021 (rec. 65/2020), which teach that in order to know the seriousness of the conduct, in the case of the very serious misconduct we are considering, it is essential to assess the criminal conviction, which in turn means taking into consideration the facts that make up the offence charged and the penalty imposed, which

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are decisive not only for the purposes of inclusion in the disciplinary type used but also with regard to the sanctioning results, since the disciplinary reproach is ultimately based on such essential data and its consideration is essential as the first and fundamental criterion for individualisation.

On the other hand, it is also necessary to remember that, as has been pointed out by this Chamber, conviction for an intentional offence by means of a final judgement will constitute a very serious offence under article 8.14 of Organic Law 8/2014 of 4 December, on the Disciplinary Regime of the Armed Forces, when the convicted intentional offence "Affects the service, the public image of the Armed Forces, military dignity or causes damage to the Administration", It is sufficient for only one of these results to occur for the disciplinary offence to be perfected, as they are alternative and not cumulative, nor, therefore, as the appellant maintains, "simultaneous" (see, among others, judgments of May 2012, 17 October 2013, 11 May 2015).

Therefore, it is considered that the conviction of a member of the military to a prison sentence for an intentional crime, with the consequent criminal record - unless the conviction itself, taking into account both the facts and the sentence imposed, entails a social repudiation which, in the opinion of anyone, clearly implies that a person who commits acts of this nature cannot continue to perform duties in the Armed Forces - cannot be sufficient reason to automatically impose the most serious penalty provided for very serious misconduct, i.e. dismissal from service, cannot be sufficient grounds for automatically imposing, without further ado, the most serious sanction foreseen for very serious misconduct, i.e. dismissal from service, i.e. expulsion from the Armed Forces, as it would be necessary for the legislator to expressly determine that this is the case.

The judgments of conviction which are the subject of the aforementioned judgments of this Chamber, invoked by the sanctioning decision, in order to consider that, in the case in question, the imposition of the most serious sanction, dismissal from service, imposed on the appellant, should also be upheld, as we are faced with "similar convictions to confirm the appropriateness of dismissal from service", it transpires that, unlike the conviction at issue in the present case, those convictions were not only for convictions for different, more serious offences, but also that, in all the cases resolved by the judgments referred to in the decision imposing the penalty, the convictions were not for a single act - they were for habitual abuse within the family, as provided for and punishable under Article 173.2 of the Criminal Code,

Therefore, in the case at hand, not only is there a great and substantial difference with the cases resolved by this Chamber in the sentences invoked in the sanctioning decision, in relation to both the offence or offences convicted and the sentence or sentences imposed, but also, in the case at hand, apart from being a one-off event, the now appellant was assessed and applied the mitigating circumstance of reparation of harm in Article 21.5 of the Criminal Code.

Consequently, this Chamber considers that we are not dealing with a conviction for an intentional offence similar to the "similar convictions" for the offences which were the subject of the judgments of this Chamber, referred to in the decision to impose the sanctions of separation from service imposed therein, and, therefore, taking into account both the facts which were the subject of the conviction and, in addition, the existence of the mitigating circumstance of attenuating circumstance of attenuating circumstances, and the sentence imposed, nine months' imprisonment, -applied to the upper half of the sentence for the offence committed, as the act occurred in the marital home, although they were in the process of divorce (divorce proceedings contentious no. 84/20) and shared the same home, as no provisional measure had been adopted in this regard, we consider that the conviction for very serious misconduct, from which this ordinary military disciplinary appeal arises, although not sufficiently serious for the appellant to be dismissed from the Armed Forces, is nevertheless reprehensible, and taking into account both the nature and circumstances of the facts that led to the conviction of the appellant and the other penalties of deprivation of liberty, as well as the other disqualifications which, together with the sentence of nine months and one day's imprisonment, were imposed on him, and the fact that his military records show another sentence imposed for committing an offence against road safety, we consider it appropriate and proportionate to impose on the appellant the sanction of suspension from employment for a period of one year.

Conclusions:

- The conviction for an intentional offence by means of a final judgement, will conform to the very serious misdemeanour of Article 8.14 of Organic Law 8/2014 of 4 December, on the Disciplinary Regime of the Armed Forces, when the convicted intentional offence "Affects the service, the public image of the Armed Forces, military dignity or causes damage to the Administration", it being sufficient for only one of these results to occur for the disciplinary offence to be completed, as they are alternative and not cumulative, nor, therefore, as the appellant maintains, "simultaneous" (see, among others, judgments of 30 May 2012, 17 October 2013, 11 May 2015).

- Although any conviction of a member of the military to a prison sentence for an intentional crime, in application of laws other than the Military Criminal Code, entails behaviour that is not in keeping with military dignity, with the decorum that must govern his actions, and could be reproachable under the Disciplinary Regime of the Armed Forces, in the context of which the appellant has been punished, nevertheless, when determining the sanction to be imposed, of those foreseen for very serious offences, it will be necessary to carry out an individualised treatment of each case, taking into account, among other circumstances, the seriousness of the fact or facts declared proven in the conviction, the sentence imposed and the circumstances of the convicted person.

6.- Sentence: 02/06/2025. Second Sentence of the Chamber after the Special Chamber of Article 61 of the LOPJ upheld the appeal for review lodged by the appellant against the Sentence of this Fifth Chamber which ruled on this military disciplinary appeal. - Replacement of the very serious disciplinary offence for which he had initially been punished with a serious offence. Partially upheld.

Subject matter:

Very serious misconduct consisting of "committing serious misconduct, having noted, without cancelling, a serious and a very serious misconduct", provided for in Article 7 paragraph 26 of Organic Law 12/2007, of 22 October, on the Disciplinary Regime of Guardia Civil.

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Facts:

The main issue in dispute is the review of the sanction imposed on a Guardia Civil, who was initially sanctioned with a one-year suspension from employment for a very serious misdemeanour. The first procedural action stems from the decision of the Minister of Defence of 14 February 2022, which reduced the sanction to nine months after partially considering the appeal lodged. However, the annulment of one of the offences taken into account for the sanction led to a review of the case by the Special Chamber of Article 61 of the Organic Law of the Judiciary, which determined that the very serious offence was not applicable, which made it necessary to re-examine the sanction imposed.

Law grounds:

Specifically, the sanction of eight months' suspension from employment imposed on the appellant as the perpetrator of a very serious offence under Article 7.22 of Organic Law 12/2007, of 22 October (offence consisting of "using the technical means regulated in the legal rules on video cameras for purposes other than those provided for therein"), taken into account to integrate the type of very serious offence under Article 7.26 of the said Organic Law, which is challenged in the present appeal 35/2022, was finally annulled by the Central Military Court by Judgment of 8 May 2023, this annulment having been confirmed by this same Fifth Chamber in its Judgment 1/2024, of 24 January.

3.As we have been explaining, in the present case the possibility of sanctioning for the offence provided for in section 26 of article 7 of the Organic Law of the Disciplinary Regime of Guardia Civil consisting of "Committing a serious offence having noted down, without cancelling, a serious and a very serious offence" has disappeared, but there is no doubt that the appellant committed the serious offence provided for in art. 8.29 of the Organic Law of the Disciplinary Regime of Guardia Civil, but there is no doubt that he committed the serious offence provided for in art. 8.29 of the Organic Law of the Disciplinary Regime of Guardia Civil. 12/2007, of 22 October 2007, consisting of "Conviction by virtue of a final judgment for an intentional crime, provided that it does not constitute a very serious offence, or for an intentional misdemeanour when the criminal offence committed is related to the service, or causes damage to the Administration or to the public", which has not yet received the corresponding disciplinary reproach, it being clear that the elements of the type of the latter serious misconduct emerge by themselves from the proven facts of the resolution of the Minister of Defence of 14 February 2022 , here contested, as we have reflected in the Second Precedent of Fact of this Judgment.

Conclusions:

- The annulment of an offence taken into account for sanctioning under Article 8.26 prevents the very serious offence from being considered to have been committed.

- Notwithstanding the above, the last serious misconduct committed would not go unpunished, since it can be corrected independently, in the corresponding disciplinary procedure, without relating it to the other serious misconduct that the accused may have committed.

7.- Sentence: 22/05/2025. Dismissed.

Matter:

Minor offence, typified in section 35 of article 6 of Organic Law 8/2014, of 4 December, on the Disciplinary Regime of the Armed Forces, of non-observance of the seventh, eighth, ninth, eleventh and sixteenth rules of military behaviour of art. 6.1 of Organic Law 9/2011, of 27 July, on the rights and duties of the members of the Armed Forces (LODDFAS); as well as those defined in articles 5, 7, 8, 14, 16, 17, 19 and 20 of the Royal Ordinances, approved by Royal Decree 96/2009, of 6 February.

Facts:

The main issue in dispute is the non-compliance by sailor driver of the order to transfer to hospital, in official vehicle, a student of the Naval Military School, interested by the Infirmary of said educational centre, alleging illegality of the order.

Allegations.

- Unlawfulness of the order.

- Principle of legality (typical nature).

-Effective judicial protection.

- Presumption of innocence.

- Right of defence.

Fundamentals of law.

In relation to the first "plea" of the appeal, it is appropriate to recall here, once again, that, as we have repeatedly pointed out - for example, SSTS, 5th, nos. 43/2022, of 19 May and 91/2022, of 19 October - "sustaining the violation of the principle of legality in facts other than those declared proven in the judgment under appeal "is contrary to the rules governing appeals, in particular Article 87 bis of Law 29/1998, of 13 July, regulating Contentious-Administrative Jurisdiction, according to which the appeal in cassation shall be limited to questions of law, "to the exclusion of questions of fact", without prejudice to the power conferred on the Supreme Court by Article 93.3 of the same law. It also clashes head-on with the case law of this Court -SSTS, 5th , nos. 77/2020, of 10 November, 15/2021, of 1 March, and 17/2022, of 14 February, among the most recent-, which has repeatedly considered that the examination of a claim based on an infringement of the principle of legality, in its criminalisation aspect, must start from the most scrupulous respect for the facts declared proven by the judgement under appeal".

From what has been said so far, it is easy to deduce the character of an official service that any act related to the guardianship that the Training Centre exercises over its students has, and therefore, obviously, that of their transfer in an official vehicle to a hospital when, as occurred in the present case, the health unit of the Centre - specifically

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the Infirmary of the Naval Military School - so assessed and requested the Captain of the Detachment of the School itself to do so.

This being the case, we must point out that, as is clear from the provisions of Articles 45 ("He shall obey orders, which are commands relating to the service that a soldier gives to a subordinate, in an appropriate manner and within the powers that correspond to him, to carry out or omit to carry out a specific action. He must also comply with the requirements he receives from a military officer of higher rank concerning the provisions and general rules of order and behaviour");48 ("If the orders involve the execution of acts constituting offences, in particular against the Constitution and against persons and property protected in the event of armed conflict, the military officer shall not be obliged to obey them. In any case, he shall assume the grave responsibility for his action or omission"),and 49 ("If he considers it his duty to object to the order received, he shall raise it with the person who gave it. If his failure to do so would prejudice the mission entrusted to him, he shall reserve his objection until it has been carried out"),of the Royal Ordinances for the Armed Forces, orders must always be obeyed and carried out, unless they constitute a crime, in which case they would not give rise to any kind of liability.

In the exercise of his rights of defence, the appellant may disagree with the reasoning of the Court of First Instance and even criticise the content of the articles of the Royal Ordinances for the Armed Forces on which that reasoning is based, but this disagreement does not lead to the conclusion either that the contested decision lacks a statement of reasons or that the appellant's right to effective judicial protection, in relation to the right of defence, has been infringed by this non-existent lack, since, as the case law of the Constitutional Court and of this Chamber, set out in our judgment no. 91/2022, of 19 October 2003, states, the appellant's right to effective judicial protection, in relation to the right of defence, has been infringed. 91/2022, of 19 October, cited by the plaintiff himself:

"What does form part of the basic content of the fundamental right to effective judicial protection common to both procedural parties are the rights of access to jurisdiction, to obtain a decision founded in law and for that decision to be reasoned, that is, for it to contain sufficient explanation to arrive at the decision it adopts. In the words of the Constitutional Court - STC 308/2006 - "the right to effective judicial protection, guaranteed in art. 24.1 EC, includes the right of litigants to obtain from the Judges and Courts a reasoned and well-founded decision in law on the merits of the claims made by the parties in the process, which, nevertheless, may also be inadmissible if there is legal cause for this and the judicial body considers it reasonable (SSTC 63/1999, of 26 April, FJ 2; 206/1999, of 8 November, FJ 4; 198/2000, of 24 July, FJ 2; 116/2001, of 21 May, FJ 4, among others). This Court has also said that the rights and guarantees provided for in Article 24 EC do not guarantee the legal correctness of the action or interpretation carried out by the common judicial bodies, as there is no right to correctness (among many others, SSTC 151/2001, of 2 July, FJ 5; and 162/2001, of 5 July, FJ 4), and neither do they ensure the satisfaction of the claim of any of the parties.

Conclusions:

- In order to assess the existence or not of an order, we must start from the concept set out in Article 8 of the Military Criminal Code, which defines orders as "orders relating to the service which a soldier gives to a subordinate, in an appropriate manner and within the powers corresponding to him, to carry out or omit to carry out a specific action".

- As is clear from the provisions of Articles 45 ("He shall obey orders, which are commands relating to the service which a soldier gives to a subordinate, in an appropriate manner and within his powers, to carry out or omit to carry out a specific action. He must also comply with the requests he receives from a military officer of higher rank concerning the provisions and general rules of order and behaviour");48 ("If the orders involve the execution of acts constituting an offence, in particular against the Constitution and against persons and property protected in the event of armed conflict, the military officer shall not be obliged to obey them. In any case, he shall assume the grave responsibility for his action or omission"),and 49 ("If he considers it his duty to object to the order received, he shall raise it with the person who gave it. If his failure to do so would be prejudicial to the mission entrusted to him, he shall reserve his objection until it has been carried out"), of the Royal Ordinances for the Armed Forces, orders must always be obeyed and carried out, unless they constitute a crime, in which case they would not give rise to any kind of liability.

- In the present case, it is clear that the order given to the appellant, consisting of the transfer of a student to a hospital, was not a criminal offence, and therefore, Seaman Baldomero was obliged to carry it out, and his refusal to do so gave rise to the corresponding disciplinary reproach.

On the other hand, the order given to the seaman was related to the service, it was within the powers of the officer who gave it, it was transmitted in an appropriate and personal manner, and its content was clear and known to the seaman, so that the order can be classified as legitimate, and consequently, the seaman was obliged to obey it. Moreover, it should be specified that, even if the order given to the seaman had been illegitimate, as the order did not constitute a crime, he would still be obliged to obey it.

8.- Sentence: 09/04/2025. Dismissed.

Subject matter:

Very serious offence of "carrying out acts that affect the sexual freedom of persons. or involve sexual harassment", provided for in article 8. 12º of the L.O. 8/2014, on the Disciplinary Regime of the Armed Forces.

Facts:

"FIRST.- From the investigation carried out, it has been accredited that on the 3rd of June 2023 at around 8:15 in the morning, the soldier Eugenia received a message on her phone via the social network Instagram sent by the 1st sergeant Casimiro, the content of which was a pornographic video, which led the soldier to think that he was a slut, although she did not give it more importance. After replying with a question mark, as she did not understand the 1st sergeant's behaviour, he sent her two photos showing him accompanied by 1st sergeant Serafín and his girlfriend, from which the soldier deduced that they had gone out and had been drinking excessively and that they were joking at that time of day.

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Even so, Eugenia contacted Sergeant Jesús María and told him what had happened, who advised her to delete the video, as Sergeant Casimiro, when he drank, "was a bit out of control". The latter followed this advice and proceeded to delete the video.

During the rest of the day, Sergeant Casimiro continued to bother the soldier by sending her another pornographic video, a photo of a dog and finally a video on in which he masturbated. She proceeded to block him as he ignored the messages in which the soldier asked him to stop sending her content.

These events provoked great indignation in the soldier Eugenia, who considered that what he had done was not right, so she proceeded to bring it to the attention of her superiors.

Sergeant Casimiro and Eugenia had no previous relationship, nor have they had one since.

SECOND.- There are various medical documents in the proceedings which refer to Sergeant Casimiro's dependence on toxic substances such as cocaine and alcohol which caused him episodes of intoxication with amnesia of what happened during them and led to a recommendation to admit him to a centre for detoxification.

After what happened, the sergeant contacted the specialised addiction rehabilitation centre (CEDA), based in Cullera (Valencia), where he has been since 1 September 2023.

A report from CEDA was requested and issued on 9 October 2023, stating that "Cocaine affects the PSD-95 protein, which is directly related to the ability to remember or learn about people, places or things. Alcohol, based on a history of use, causes the person to lose control, balance and memory.

These substances mixed together potentiate each other and can cause impulsive behaviour and amnesia situations".

Allegations.

- Infringement of his right to the presumption of innocence.

- Infringement of the principle of legality, in relation to the nature of the offence.

- Infringement of the principle of proportionality in the imposition of the penalty.

Legal grounds.

This Chamber fully agrees with the aforementioned reasoning, which it considers to be appropriate and which more than justifies the choice of the sanction of dismissal from service, despite being the most serious of the legally possible sanctions, as it is the one that adequately responds to behaviour that is unworthy and dishonourable both for the appellant and for the Armed Forces (as stated in the contested decision), considering, in fact, that such conduct is totally incompatible with the principles of probity, rectitude, integrity and respect for the law required of members of the Armed Forces.

Following these considerations, which the Chamber shares, the contested decision states that the appellant's conduct "affected military dignity, defined as an indeterminate legal concept that represents the gravity and decorum of the military in the way they behave in all areas of their actions, and incorporates into the general concept of dignity that extra standard of morality required of all members of the military", and adds that behaviour such as that of the appellant, in addition to being "dishonourable for the person engaging in it, undermines the dignity of any professional in the Armed Forces and, consequently, of the institution of which he is a member".

This assessment of the appellant's own military dignity is not excluded in this case by the provisions of the aforementioned Article 22.1º in fine, of Organic Law 8/2014, of 4 December, on the Disciplinary Regime of the Armed Forces, since in the disciplinary subtype applied ("carrying out acts involving sexual harassment") this affectation is not a factor taken into account by the law when describing any of the offences provided for in section 12 of article 8 of said Law, nor is it so inherent to it that without its concurrence the offence could not be committed.

On the other hand, in Law 29/2014, of 28 November, on the Regime of Guardia Civil personnel, after stipulating in article 6 "Code of conduct", that "Civil guards shall carry out their duties with absolute respect for the Constitution and the rest of the legal system. They shall act in accordance with the principles established in article 5 of Organic Law 2/1986, of 13 March, on Security Forces and Corps, and in Title III of Organic Law 11/2007, of 22 October, regulating the rights and duties of members of Guardia Civil, as well as the rules of behaviour established in the following article, which form the basic rules of their code of conduct", then in article 7 "Rules of behaviour of the Guardia Civil" it establishes, among others, that: "2. He shall make every effort to preserve the safety and well-being of citizens, without any discrimination on grounds of sex, racial or ethnic origin, religion or ideology, sexual orientation or identity, age, disability, or any other personal or social condition or circumstance, always acting with dignity, prudence and honesty", and that "3. He shall carry out his duties and obligations accurately, driven by a sense of honour, the true hallmark of Guardia Civil", and in section 13, that "He shall avoid any behaviour that could compromise the prestige of the Corps or the effectiveness of the service it provides to society".

Rules, which have been expressly collected and compiled in Royal Decree 176/2022, of 4 March, which in compliance with the provisions of the aforementioned Law 29/2014, of 28 November, approves the Code of Conduct for Guardia Civil personnel, and, in which after establishing in Chapter I, in relation to the Fundamental Values and Institutional Principles, that "Honour must be the main motto of the men and women of Guardia Civil, a true sign of identity and a guide to accurately fulfil their duties and obligations" (Article 1), it goes on to state that "They shall always act with rectitude and honesty. For this reason, they shall resolutely oppose any form of corruption and under no circumstances shall they accept offers, favours or gifts which, directly or indirectly, may compromise their honesty and professional performance" (Article 2. Integrity); "they shall guarantee public safety, respect and ensure respect at all times for fundamental rights and public liberties and protect their free exercise; they shall always bear in mind in their actions the utmost respect for the life, dignity and physical and moral

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integrity of persons". (Article 11. Respect for fundamental rights and public freedoms); "They shall ensure that the prestige of the Corps is maintained and enhanced, acting in an exemplary and exemplary manner in order to earn the trust of citizens and institutions" (Article 20. Prestige), and that "the actions of the men and women of Guardia Civil shall be subject to compliance with the duties of reserve and secrecy. To the duty of reserve, understood as secrecy or discretion over everything that personnel may learn on the occasion of, or by reason of, the performance of their duties, must be added the duty of secrecy over all matters, acts, documents, information, data, objects and materials whose knowledge by unauthorised persons could damage or jeopardise the performance of police work, to any citizen or, ultimately, to the security and defence of the State, paying special attention to the protection of the image of citizens, as well as other data known to them that may serve to individualise and identify them to third parties outside the police function" (Article 27. Confidentiality with regard to the service). Finally, the appellant states that the process which led to the aforementioned conviction began almost eighteen years ago, that he has not re-offended or committed any other reprehensible act, that his conduct has been exemplary and that, consequently, no account has been taken of anything that might have favoured him when determining and individualising the sanction imposed, and that he should be given a second chance.

Taking into account that the conduct of the appellant, as is set out in detail in the sanctioning decision, was in total contravention of the essential duties of members of Guardia Civil at all times and under all circumstances, it is considered that the sentence imposed and the particular nature and seriousness of the facts that gave rise to it, justifies, on its own, and more than enough, the appropriate proportionality and individualisation of the disciplinary sanction of dismissal from service, without the favourable data alleged or the good professional behaviour of the accused being able to compensate or temper the seriousness of the conduct and lessen the importance of the reproach and the sanction, nor do they serve to undermine the judgement of unworthiness and discredit that the facts entail and that demonstrate the appellant's incompatibility to continue serving in the Guardia Civil (for example, judgments of 5 July 2011, 6 March 2014 and 3 April 2024), since it is clear that, once he has been convicted - until then he enjoyed the fundamental right to the presumption of innocence - it is difficult to assume that the appellant, as a member of Guardia Civil Corps, will continue to serve in the Guardia Civil, due to the absolute lack of dignity, honesty and discredit that the facts that led to the conviction entail both for the Guardia Civil Corps and for the interested party.

Conclusions:

- The legal right that is violated with this type of conduct of violence against women in any of its forms, both physical and psychological, constitutes - in the words of the explanatory memorandum of Organic Law 1/2004, of 28 December, on Comprehensive Protection Measures against Gender Violence - "one of the most flagrant attacks on fundamental rights such as freedom, equality, life, safety and non-discrimination proclaimed in our Constitution", and is therefore considered a scourge that affects and involves all citizens and requires a global and coordinated response from all public authorities.

- The choice of the sanction of dismissal from service, despite being the most serious of the legally possible sanctions, is the one that adequately responds to behaviour that is unworthy and dishonourable both for the appellant and for the Armed Forces (as stated in the contested decision), considering, in effect, that such conduct is totally incompatible with the principles of probity, rectitude, integrity and respect for the law required of members of the Armed Forces.

9.- Sentence: 02/04/2025. Dismissed.

Matter:

Very serious offence provided for in article 7.13 of Organic Law 12/2007, of 22 October, on the Disciplinary Regime of Guardia Civil, consisting of "committing a fraudulent offence convicted by final judgement, which causes serious harm to the Administration and citizens."

Facts:

The ordinary military disciplinary contentious appeal focuses on the decision of the Minister of Defence imposing the sanction of dismissal from service on the Guardia Civil Mr Salvador for having committed a fraudulent offence causing serious harm to the Administration and citizens.

Grounds of challenge:

- Proportionality and individualisation of the penalty imposed;

- Serious harm to the public is not present.

- Being the object of "persecution and animosity".

Legal grounds:

Well, starting from the proven facts in the aforementioned sanctioning decision, transcribed in the second factual background, what is appropriate is to examine and determine whether, in the case at hand, all the elements required by the aforementioned disciplinary type, for which the appellant has been sanctioned, concur, namely: a) the status of Guardia Civil, b) committing an intentional offence convicted by final judgment, and c) that the intentional offence for which he has been convicted is related to the service or causes serious harm to the Administration, to citizens or to entities with legal personality.

Conclusions:

- The elements required by the disciplinary type are:

a) the status of Guardia Civil, b) committing an intentional offence convicted by final judgement, and c) that the intentional offence for which he/she has been convicted is related to the service or causes serious damage to the Administration, citizens or entities with legal personality.

- The rationale behind the classification of the disciplinary offence in question stems from the need to protect the Administration's legitimate interest in the irreproachable criminal

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conduct of members of Guardia Civil, since "the exercise of legal coercion by public administrations through police officers demands exemplary behaviour in their dealings with citizens [----], which requires that those who carry out this task, and the dignity, the good name of the Institute and its effectiveness as a State Security Corps "are harmed if those in charge of carrying out those acts which, in the interest of society as a whole, they are charged with preventing, since the Law cannot be totally dissociated from the people who have to coercively impose compliance with it".

- The measure of cessation of the offender's duties for a period not exceeding three months has no other effect than the cessation of the accused in the exercise of his or her usual duties.

- The suspension from duty for a maximum of three months is not considered a disciplinary sanction but a precautionary measure legally established in the Disciplinary Regime of Guardia Civil.

10.- Sentence: 12/03/2025. Dismissal

Subject matter:

Sanction for the commission of four fraudulent offences.

Facts:

"By conformity judgement of 1 April 2024, final on the same date, issued within the Abbreviated Proceeding 42/2023 of the Criminal Court No. 1 of Badajoz, the Guardia Civil Mr. Adrián was convicted as criminally responsible for four offences, according to the following proven facts:

a) A crime of habitual mistreatment in the context of gender violence, provided for and punishable under Article 173.2 of the Criminal Code, without the concurrence of circumstances modifying criminal liability, to a sentence of twenty-one months' imprisonment, with special disqualification from exercising the right to passive suffrage during the time of the sentence, deprivation of the right to possess and carry weapons for a period of four years and a ban on approaching the victims, their homes, places of work or any other places where they are located, at a distance of less than 500 metres, as well as from communicating with them by any means whatsoever, for a period of two years for both prohibitions.

b) Two offences of ill-treatment in the context of gender-based violence, provided for and punishable under Article 153.1 of the Criminal Code, without the concurrence of circumstances modifying criminal liability, with the following penalties for each of them: sixty days of community service, in maximum working hours of eight hours a day, deprivation of the right to possess and carry weapons for a period of one year and one day and prohibition of approaching the victim, their home, workplace or any other place where they are located, at a distance of less than 500 metres, as well as of communicating with them by any means whatsoever, for a period of one year for both prohibitions.

c) An offence of mistreatment in the area of domestic violence, provided for and punishable under Article 153.2 and 3 of the Penal Code, without the concurrence of circumstances modifying criminal liability, to sixty days of community service, in maximum shifts of eight hours a day, deprivation of the right to possess and carry weapons for a period of two years and a ban on approaching the victim, his or her home, place of work or any other place of work, for a period of one year, and from communicating with him by any means whatsoever, for a period of one year and six months for both prohibitions, and a civil liability of six thousand euros for the non-material damage caused to the victim.

Pleas in law:

- On the one hand, he considers that the principle of typicality-legality has been infringed and, on the other hand, because the principle of proportionality has been breached as regards the penalty imposed.

Law:

The appellant's first plea focuses on the lack of criminality, since neither the objective nor the subjective elements of the offence have been established, 'in particular the need for the conduct to cause serious damage to the administration or to the person concerned'. It considers that a penalty should be imposed on the appellant for the commission of a serious misdemeanour (art. 8 par. 29 L.O. 12/2007).

The complaint must be rejected.

The appellant was punished in accordance with Article 7.13 of Organic Law 12/2007 of 22 October 2007 on the Disciplinary Regime of Guardia Civil, which contains the very serious offence of "committing a fraudulent offence convicted by final judgment, related to the service, or any other offence causing serious harm to the Administration, citizens or entities with legal personality".

This disciplinary offence contains two types of disciplinary offence: a) committing an intentional offence convicted by final judgement, related to the service; and, b) committing any other offence convicted by final judgement, when such offence, although not related to the service, nevertheless causes serious damage to the Administration, to citizens or to entities with legal personality.

In the case we are examining, we are dealing with the type of sanction in the aforementioned section b), which requires two elements: on the one hand, the existence of a final conviction for the commission of an offence not related to the service; and, on the other hand, that such offence causes serious harm to the Administration, to citizens or to entities with legal personality.

There is no doubt that the first element is present, since the appellant was convicted by Criminal Court No. 1 of Badajoz, in a judgment dated 1 April 2024 (in accordance with and final on the date of the judgment), handed down in summary proceedings No. 42/2023, for the intentional commission of four offences: one offence of habitual abuse in the context of gender violence, provided for and punishable under Article 173.2 of the Criminal Code; two offences of ill-treatment in the context of gender violence, provided for and punishable under Article 153.1 of the Criminal Code, and one

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offence of ill-treatment in the context of domestic violence, provided for and punishable under Article 153.2 and 3 of the Criminal Code.

As for the second element, this Court has already repeatedly stated that in order to determine whether "serious harm" has been done, we must look to the sentence to take into account the specific offence for which the defendant was convicted at the time. In the present case, he was convicted of the offences of habitual abuse in the context of gender violence; of ill-treatment in the same context and of ill-treatment in the context of domestic violence. As we said, it is necessary to examine the offence in question and the proven fact, which means that the concreteness of this element is not necessarily linked to the sentence imposed, so that it is not a typical requirement that the sentence be deprivation of liberty. In other words, the offence does not have to be punishable by imprisonment, nor does it have to be a so-called serious offence. The seriousness of the damage referred to in the type of sanction is linked to the importance that the sanction for this offence may have for the Administration, citizens or entities with legal personality, when the perpetrator is a member of Guardia Civil Corps; only in this way can it be understood that this (very serious) disciplinary offence also covers, where appropriate, cases of offences committed through imprudence. There is no doubt as to the importance of the aforementioned offences and their impact on citizens, but neither is there any doubt as to the serious impact on the credit that the institution of Guardia Civil should have with citizens if one of its members is convicted of such offences, as it is undoubtedly in the legitimate interest of the Administration that those who belong to it - and even more so if as agents of the Authority they must investigate and prosecute offences - have not been convicted of this type of conduct.

The disciplinary type applied is aimed at the offence committed and, where appropriate, the consequences expressed in the sanctioning type must be drawn from this. Therefore, it is not an offence of result, but of mere activity, which is centred on the commission of the offence. Therefore, causing serious damage to the administration, citizens or legal entities is an adjective of the offence committed, and for this only the criminal judgment (proven fact, the sanction imposed and the reasoning, if applicable) must be examined.

This second element, for the reasons indicated, is therefore also present. Consequently, the classification of the offence is correct, which means that the facts cannot be subsumed under the serious misdemeanour established in art. 8 no. 29 of Organic Law 12/2007, of 22 October.

THIRD: Finally, the appellant considers that the principle of proportionality has been infringed. The plea cannot succeed, since, as the Constitutional Court pointed out in its judgement 180/2004 of 2 November, the "task of Guardia Civil is, among others, to investigate crimes and prosecute criminals in order to bring them before the courts. We said then with regard to the police, and we must now reiterate, that the effectiveness of this service would be undermined if those responsible for carrying it out could be accused of committing the very acts which, in the interests of society as a whole, they are charged with preventing, since the Law cannot be totally dissociated from the People who must coercively enforce it. It is not, as has sometimes been said, that members of the security forces and corps are permanently on duty, but that this requires that those on duty do not engage in conduct which they themselves have to prevent or whose punishment they have to facilitate when it is carried out by others. The irreproachable criminal liability of those who perform police functions is a legitimate interest of the Administration, as distinct from the dignity of members of the security forces and bodies , and therefore, when disciplinary sanctions are imposed on those who have been subject to criminal convictions, the ne bis in idem principle is not infringed".Thus, given the nature of the facts that gave rise to the criminal conviction, it is proportional to the facts that the Administration decides that the perpetrator should be punished with dismissal from the service, since taking into account the importance of the criminal irreproachability of public officials in general, and even more so for those whose mission is to investigate and prosecute crimes, it is proportionate that when a member of Guardia Civil commits a criminal offence, the response of the administration should be dismissal from the service. There is a full and proportionate correlation between the motivating event and the sanctioning response produced.

In short, the antecedents are proportional to the consequences when there is an equality of reason. Therefore, proportionality implies equality in a series of reasons, and in the case at hand there is such equality between the reason for the commission of the intentional offence and the reason for the separation from service. In effect, proportionality requires compliance with three controls: a) the control of appropriateness (or suitability, which sometimes leads to reasonableness); b) necessity (which, in reality, can mainly appear as a problem of legislative options); and, c) weighting (which constitutes proportionality in a strict sense). Thus, proportionality implies that there is a correlation and adequacy of the sanction with the fact that motivates it (its seriousness) and with the purpose that justifies it. In this respect, the need for an appropriate balance is often affirmed. In its examination, on the one hand, the legal good protected by the rule is usually examined, in this case the criminal irreproachability of the persons whose tasks include the investigation of crimes and the pursuit of criminals in order to bring them to justice; a legal good which is an end worthy of protection given the implications it has for confidence in the system of social coexistence. And, on the other hand, with the perpetrator of the act, which is carried out through the analysis of guilt, i.e. the concrete imputation to the person in question.

Thus, as we have indicated, proportionality has not been breached in the present case and the sanction imposed meets the requirements of the test or the controls to which we have referred.

The arguments put forward by the appellant that it is a less serious penalty and that his service record has not been taken into account cannot be accepted. To the first argument, it has already been answered above that the disciplinary type does not require serious offences and that it even covers offences committed through recklessness. As for the second argument, the Service Record would provide us with his record, but there is no doubt that he committed the acts for which he was convicted, so he cannot be considered to be of unimpeachable conduct.

Conclusions:

- The sanctioning type requires two elements: on the one hand, the existence of the final conviction for the commission of an offence not related to the service; and, on the other hand, that such an offence causes serious damage to the Administration, citizens or entities with legal personality.

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- It is not an offence of result, but of mere activity, which is centred on the commission of the offence. Therefore, the fact that it causes serious damage to the administration, citizens or legal entities is an adjective of the offence committed, and for this only the criminal judgment (proven fact, the penalty imposed and the grounds, if applicable) must be examined.

- Given the nature of the facts that gave rise to the criminal conviction, it is proportional to them that the Administration decides that the perpetrator should be punished with dismissal from the service, since taking into account the importance of the criminal irreproachability of public officials in general, and even more so for those whose mission is to investigate and prosecute crimes, it is proportionate that when a member of Guardia Civil commits a fraudulent offence, the response of the administration should be dismissal from the service. There is a full and proportionate correlation between the motivating event and the sanctioning response produced.

11.- Sentence: 22/01/2025. Dismissal

Matter:

Refusal of precautionary measure; dismissal from service, as a consequence of very serious misconduct, art. 7.13 LORDGC, of 22 October.

Facts:

Suspension of disciplinary sanction in the military sphere and requirements for its concession.

Fundamentals of law:

FIRST.- In accordance with the provisions of article 513 of Organic Law 2/1989, of 13 April, on Military Procedure, the lodging of a contentious appeal will not prevent the sanctioning Administration from executing the act which is the object of said appeal, unless the Court, at the request of the plaintiff, agrees to suspend it.

This provision establishes that: "Suspension of sanctions for serious misconduct and extraordinary penalties may be agreed:

a) When the contestation of the contested act is based on any of the grounds for nullity as provided for in Article 47(1) of the Law on Administrative Procedure and the Court considers this to be the case.

b) If, during the processing of the disciplinary appeal, the suspension of the contested act has already been agreed under the provisions of Article 54 of the Disciplinary Law.

c) If the sanction appealed against is that of loss of post and entails the forced transfer of the person sanctioned outside the locality where he/she has been residing up to that time.

d) If the execution of the sanction would cause damage or harm that would be impossible or difficult to repair.

In this regard, it is necessary to point out that this Court has repeatedly established, inter alia, by order of 22 July 2016, that: "Even if any of these cases occur, the suspension is not automatic and the Court must carry out a reasoned weighing of all the interests in conflict, and it should be remembered, as the Constitutional Court points out (STC 148/1993, among many others), that the precautionary incident involves a limited cognition trial in which the judicial body must not pronounce on the issues that must be resolved in the main proceedings, but it must verify the concurrence of a danger of legal damage to the right whose protection is sought as a result of the pendency of the proceedings, the delay in issuing the final ruling and the appearance that the plaintiff holds the right invoked with the consequent, probable or plausible illegality of the administrative action, assessing, on the other hand, the damage to the general interest that the adoption of the requested precautionary measure would entail". The orders of 7 March 2017 and 20 June 2019, among others, further support this criterion.

SECOND - In support of his claim for suspension of the penalty of separation from service, the appellant, after stating that he is seeking suspension of the contested measure 'on the grounds that the conditions necessary for the adoption of the interim measure sought are met:

a) "Fumus boni iuris" or appearance of good law, inasmuch as the presumption of legality of the contested act (LPAC art. 38 and 39.1) is weakened in the present case by the following causes, which augur a foreseeable success of the appeal that is now lodged against it:

b) "Periculum in mora", since the execution of the act could cause the appeal to lose its legitimate purpose. This would result in the deprivation of the appellant's active service from the notification of the sanction until the Court reaches a decision", then, without further consideration, it simply alleges that "In accordance with article 513 LO 2/1989, in accordance with the wording of LO 8/2014, the filing of the contentious-disciplinary appeal will not prevent the sanctioning Administration from executing the act that is the object of the appeal, unless the Court agrees, at the request of the plaintiff, to suspend it. However, the suspension of sanctions for disciplinary offences may be agreed: a) When the contested act is based on any of the grounds of full nullity provided for in the LPAC and this ground is appreciated by the Court. b) If, during the processing of the disciplinary appeal, the suspension of the contested act has already been agreed. c) If the execution would cause damage or harm that would be impossible or difficult to repair".

THIRD.- As stated in the unfavourable report issued by the sanctioning authority, none of the reasons invoked by the appellant that allow the suspension of sanctions derived from very serious offences and which are expressly provided for in article 513 of the aforementioned Organic Law 2/89, of 13 April, on Military Proceedings, are present, nor are they applicable in the present case.

Indeed, in relation to the pleas in law, on the one hand, as stated in the unfavourable report issued by the sanctioning authority, "the appellant does not invoke or give any minimal reasoning, in support of his claim, as to the existence of any cause

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of radical and absolute nullity of the kind referred to in Article 47.1 of the current Law on Common Administrative Procedure, or express violation of any of his constitutional rights, and therefore, as it is presented without due legal or argumentative reasoning and lacks the obvious, evident and manifest nature required by the doctrine of the appearance of good law to understand it to be affected by the charge of nullity, the disputed issue must necessarily be dismissed".

And, in relation to the allegation regarding the possible irreparability of the damage that the dismissal could cause the appellant, it should be recalled that it is constant case law of this Court (orders of 23-2-2004, 9-5-2005, 1-9-2005, 25-7-2006, 1-10-2008, 23-12-2008, 7-5-2009, 21-10-2009, 21-10-2009, 30-11-2009, 26-5-2010, 27-7-2013, 10-3-2014 and 8-4-2015), according to which the execution of the disciplinary sanction of dismissal from service, even in its maximum seriousness in congruence with its nature as a sanction corresponding to the commission of a very serious misdemeanour, does not in itself cause damage which cannot be remedied if the legal claim is successful and the penalty is annulled, since the possible upholding of the appeal would result in the appellant being restored to the legal position affected by the disciplinary proceedings and the annulment of the penalty already imposed, with full restoration of his professional and financial rights and with the guarantee of the corresponding compensation for the damage caused.

On the other hand, it should not be forgotten that, as has been established by this Chamber, the analysis of a request for suspension of the sanction imposed, as in this case, requires weighing up to what extent the alleged private interest must prevail over the general interest protected by the sanctioning rule, and so, in the case in question, in view of the factual assumption determining the sanction imposed, for the commission of a very serious offence provided for in article 7.13 of Organic Law 12/2007 of 22 October 2007 on the Disciplinary Regime of Guardia Civil, consisting of "committing a fraudulent offence convicted by final judgement, which causes serious harm to the Administration and citizens", as established in the aforementioned unfavourable report, the general interest, given the nature of the facts that led to the imposition of the sanction and which are reproduced in order to avoid further repetition, is specified in the discipline, protection and reserve of the service, as well as the dignity of the Institution of Guardia Civil, without this entailing a pronouncement on the substantive issues raised in the appeal lodged against the sanction imposed.

Conclusions:

- Suspension of penalties for serious misconduct and extraordinary penalties may be agreed:

a) When the contestation of the appealed act is based on any of the grounds of nullity of full nullity provided for in Article 47(1) of the Law on Administrative Procedure and the Court so finds.

b) If, during the processing of the disciplinary appeal, the suspension of the contested act has already been agreed under the provisions of Article 54 of the Disciplinary Law.

c) If the sanction appealed against is that of loss of post and entails the forced transfer of the person sanctioned outside the locality where he/she has been residing up to that time.

d) If the enforcement of the sanction would cause damage or harm that would be impossible or difficult to repair.

- Even if any of these circumstances apply, the suspension is not automatic and the Court must carry out a reasoned weighing of all the conflicting interests.

- The analysis of a request for suspension of the sanction imposed, as in this case, requires weighing up the extent to which the alleged private interest must prevail over the general interest protected by the sanctioning rule.

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