



Revista Científica del Centro Universitario de la Guardia Civil

Revista **Lógos** Guardia Civil

Version
English

Vol. 4 Núm. 2 (2026)

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Published by:

Ministry of the Interior. Technical General Secretariat. Madrid.

Catalogue of Publications of the General State Administration:

<https://cpage.mpr.gob.es>.

Logos Guardia Civil Journal

Scientific Journal of the University Centre of Guardia Civil

Publication date: June 2026

NIPO (print): 126-23-018-2

NIPO (online): 126-23-019-8

Legal Deposit: M-3619-2023

ISSN: 2952-3249

Online ISSN: 2952-394X

Responsible body:

University Centre of Guardia Civil

Institute for Educational Research and Innovation

Paseo de la Princesa, s/n

28300 Aranjuez (Madrid)

Email: investigacion@cugc.es

Design and layout:

Office of the Institute for Educational Research and Innovation

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INTRODUCTION

Dear reader,

It is an honour and a source of deep institutional satisfaction to present Volume 4, Issue 2 of Logos Guardia Civil: the academic journal of the University Centre the Guardia Civil (CUGC). In this June 2026 issue, our publication once again establishes itself as an essential reference point for strategic thinking, empirical research and the transfer of knowledge in the field of public security and police sciences in Spain.

The richness of this issue lies, to a very significant extent, in the wide range of research areas it covers, thereby reinforcing the CUGC's commitment to placing scientific knowledge at the service of all those interested in issues relating to public security.



In this regard, I would first like to highlight the collaborative article entitled 'Security-based leadership in the Guardia Civil: a pilot study in territorial units', an excellent piece of work carried out jointly, on the one hand, by senior officers the Guardia Civil (Commander Santos Gamito, Commander De la Cruz Moreno and Colonel González-Álvarez) and, on the other, by PhDs in psychology from the National University of Distance Education (Dr Guillén Corchado, Dr Moriano León and Dr Laguía González). This symbiosis between the Civil Guard's operational experience and academic methodological rigour perfectly embodies the spirit of our University Centre, providing an excellent contribution to the essential keys for optimising people management and talent management.

Alongside this outstanding study, the reader will find an enriching variety of topics that examine both doctrinal challenges and cutting-edge methodologies. Forensic science and criminology feature prominently through research into the analysis of bloodstain patterns in crime scene reconstruction, institutional lessons from complex historical cases, and the analysis of ballistic traceability. Meanwhile, legal certainty is interwoven with police practice in articles devoted to the criminal law definition of the occupation of premises, the evolution of the concept of driving in road safety, and the systematisation of naval procedures in the fight against the smuggling of migrants. Furthermore, this issue offers undeniable practical value for day-to-day operational work by including a rigorous review of case law from the Second Chamber of the Supreme Court, an indispensable tool for keeping our professionals up to date with the latest regulatory developments.

Aware of the threats posed by the digital environment, this issue also rigorously analyses cybersecurity and cybercrime through a study on money laundering involving crypto-assets in the international context, whilst also assessing strategies for protecting critical infrastructure against terrorism. Finally, the journal remains committed to social issues and institutional history, addressing the impact of online sexual violence and the role of psychopathy in intimate partner violence, concluding with a historical article on the so-called ‘Transformados’ in the Guardia Civil.

An editorial project of this calibre would not be possible without the coming together of individuals committed to excellence. I would therefore like to express my sincere gratitude to the authors, whose dedication to research enhances the prestige of this journal. Likewise, my appreciation extends to the peer reviewers, who, working anonymously, ensure the scientific quality of each article. And, of course, my sincerest congratulations to the journal’s editorial team for their meticulous efforts in coordinating and editing this volume.

To conclude, I invite you to delve into these pages in the certainty that they will help to enrich academic debate and refine the operational practice of public security.

Félix Blázquez González
Director of the CUGC



I.- COLLABORATIONS



Collaboration

GROUNDLED LEADERSHIP IN THE GUARDIA CIVIL: A PILOT STUDY IN TERRITORIAL UNITS

English translation with AI assistance (DeepL)

David Santos Gamito

Commander of Guardia Civil – Master's Degree in People Management and Talent Management in Security dsantosgamito@guardiacivil.es – <https://orcid.org/0009-0000-4512-7847>

Gemma de la Cruz Moreno

Commander of Guardia Civil – BA in Psychology, MSc in Forensic Sciences and currently a PhD candidate in Psychology – gdelacruz@guardiacivil.es – <https://orcid.org/0009-0001-8394-7608>

David Guillén Corchado

National University of Distance Education (UNED) – PhD in Psychology
dguillen@madrid.uned.es – <https://orcid.org/0000-0002-3463-3223>

José Luis González-Álvarez

Colonel in the Guardia Civil - PhD in Psychology
joseluisalvarez@guardiacivil.es – <https://orcid.org/0000-0002-9407-4929>

Ana Laguía González

National University of Distance Education (UNED) – PhD in Psychology
aglaguia@psi.uned.es – <https://orcid.org/0000-0002-4634-3127>

Juan Antonio Moriano León

National University of Distance Education (UNED) - PhD in Psychology
jamoriano@psi.uned.es – <https://orcid.org/0000-0002-8332-1314>

Received 06/04/2026

Accepted 02/06/2026

Published 30/06 2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.9076>

Recommended citation: Santos, D.; de la Cruz, G.; Guillén, D.; González, J.L.; Laguía, A.; Moriano, J.A. (2026). Secure-base leadership in the Guardia Civil: a pilot study in territorial units. *Revista Logos Guardia Civil*, 4(2), pp. 13–36.
<https://doi.org/10.64217/logosguardiacivil.v4i2.9076>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

GROUNDLED LEADERSHIP IN THE GUARDIA CIVIL: A PILOT STUDY IN TERRITORIAL UNITS

Summary: 1. INTRODUCTION. 1.1. Secure-Base Leadership. 1.2. Model of work demands and resources. 1.3. Theoretical model and hypotheses. 2. METHOD. 2.1. Participants and procedure. 2.2. Measures. 2.3. Data analysis. 3. RESULTS. 4. DISCUSSION. 4.1. Limitations and future research directions. 5. CONCLUSIONS. 6. REFERENCES.

Abstract: Leadership is a fundamental element for the effective functioning of police organisations, particularly in contexts characterised by high levels of demand, uncertainty and continuous exposure to stressful situations. In such environments, the ability of leaders to foster trust, cohesion and psychological safety amongst their subordinates is crucial for both professional performance and staff wellbeing. The Secure Base Leadership (SBL) model, grounded in attachment theory, proposes that leaders can act as supportive and guiding figures who foster the personal and professional development of their colleagues. This approach integrates the role of emotional support with the need to meet objectives, creating a leadership style suited to hierarchical organisations operating under high operational pressure. This pilot, cross-sectional and exploratory study, using questionnaires administered to Guardia Civil officers in different units across the Aragón region, analyses the presence of behaviours associated with SLB in territorial units of Guardia Civil and explores their relationship with relevant psychosocial variables such as *work engagement*, *burnout* and perceived job performance. In the sample analysed, the perception of LBS was positively associated with *work engagement* and job performance, and negatively associated with *burnout*. These results suggest that LBS may constitute a relevant organisational resource in contexts of high work demands. The preliminary findings point to the advisability of further exploring the incorporation of the LBS model into the training and development of managers within the institution.

Resumen: El liderazgo constituye un elemento fundamental para el funcionamiento eficaz de las organizaciones policiales, especialmente en contextos con elevados niveles de exigencia, incertidumbre y exposición continuada a situaciones de estrés. En estos entornos la capacidad del mando para generar confianza, cohesión y seguridad psicológica en sus subordinados resulta determinante tanto para el rendimiento profesional como para el bienestar del personal. El modelo de Liderazgo de Base Segura (LBS), fundamentado en la teoría del apego, propone que quienes lideran pueden actuar como figuras de apoyo y referencia que favorecen el desarrollo personal y profesional de sus colaboradores. Este enfoque integra la función de apoyo emocional con la exigencia orientada al cumplimiento de objetivos, configurando un estilo de liderazgo adecuado para organizaciones jerarquizadas y sometidas a elevada presión operativa. El presente estudio piloto, transversal y exploratorio, mediante cuestionarios aplicados a guardias civiles en diferentes unidades de la Zona de Aragón, analiza la presencia de comportamientos asociados al LBS en unidades territoriales de la Guardia Civil y explora su relación con variables psicosociales relevantes como el *work engagement*, el *burnout* y el desempeño laboral percibido. En la muestra analizada, la percepción de LBS se relacionó positivamente con el *work engagement* y el desempeño laboral, y negativamente con el *burnout*. Estos resultados sugieren que el LBS puede constituir un recurso organizacional relevante en contextos de elevada demanda laboral. Los hallazgos, de carácter preliminar, apuntan a la conveniencia de seguir explorando la incorporación del modelo de LBS en la formación y desarrollo de mandos dentro de la institución.

Keywords: Secure Base Leadership, Guardia Civil, *work engagement*, *burnout*, police leadership.

Palabras clave: Liderazgo de Base Segura, Guardia Civil, *work engagement*, *burnout*, liderazgo policial.

ABBREVIATIONS

SBL: Secure Base Leadership.

1. INTRODUCTION

Since its creation in 1844, the Guardia Civil has played a central role in public security in Spain, characterised by its territorial deployment and its proximity to the public, particularly in rural and hard-to-reach areas. This organisational model involves a high degree of reliance on close-knit hierarchical structures and intense relational dynamics, where leadership plays a critical role in both operational effectiveness and the internal cohesion of units (Del Moral, 2023).

Historically, leadership in the Guardia Civil has been underpinned by a strongly codified system of values, with particular emphasis on setting an example, discipline and moral authority. The founding Charter of 1845, drawn up by the Duke of Ahumada, established a model of command based on honour, integrity and exemplary conduct, shaping a form of authority underpinned not only by formal hierarchy but also by moral recognition on the part of subordinates (Martínez-Viqueira, 2019). This approach remains in force today through the Code of Conduct (Royal Decree 176/2022), reinforcing the ethical dimension of leadership as a key element for institutional legitimacy and social trust (Del Moral, 2023; Martínez-Viqueira, 2024).

This regulatory model is implemented within an operational context characterised by frequent exposure to situations of risk, uncertainty and time pressure. The territorial units of Guardia Civil face high demands linked to decision-making under critical conditions, incident management and direct interaction with the public, placing increased demands on leadership skills, emotional regulation and team coordination (De la Cruz, 2024). From the perspective of the Job Demands–Resources (JD-R) model, this type of high-demand environment requires the presence of organisational resources that mitigate burnout and promote optimal team functioning (Bakker and Demerouti, 2017).

In this context, the Secure Base Leadership (SBL) model offers a potentially useful theoretical framework for analysing the relationship between leadership, psychosocial well-being and organisational functioning in policing contexts. This approach, grounded in attachment theory, conceptualises the leader as a figure who simultaneously provides emotional support in situations of stress or uncertainty (a safe haven) and psychological security to explore, learn and face challenges (a secure base) (Molero et al., 2019; Moriano, 2025). From the perspective of the JD-R model, LBS has been conceptualised as an organisational resource associated both with the motivational process—reflected in higher levels of work engagement—and with the process of health deterioration, linked to lower levels of burnout (Laguía et al., 2025; Molero et al., 2019; Moriano et al., 2021).

Despite its explanatory potential, research on LBS in policing contexts remains limited, and is virtually non-existent in the case of Guardia Civil, particularly within territorial units. This gap is particularly significant, given that in these contexts relational proximity, interdependence at work and exposure to critical situations could increase the importance of leadership on key variables such as work engagement, burnout and job performance.

Therefore, the aim of this pilot study is to conduct an exploratory analysis of perceptions of LBS in territorial units of Guardia Civil within the Aragón region, based on subordinates' assessments of their superiors. It also examines the relationship between LBS and key indicators of organisational functioning—specifically work engagement,

burnout and perceived job performance—as well as the direct and indirect mechanisms that mediate these relationships within the framework of the proposed model.

This pioneering research within the Guardia Civil aims to provide a novel approach, exploring the potential applicability of the LBS model in police contexts characterised by high operational demands. It also seeks to contribute to the generation of empirical evidence on the relationship between leadership and relevant psychosocial variables in the field of public safety.

1.1. SECURE BASE LEADERSHIP

The Secure Base Model (SBM) is a positive and ethical leadership model, empirically grounded in scientific psychology, which articulates principles of exemplary behaviour, care for those in one's charge and the building of trust (Moriano, 2025). From this perspective, SL is not a concept alien to the institutional culture of Guardia Civil; rather, it connects naturally with its founding tradition of moral authority, the protection of subordinates and the exercise of leadership based on recognition and legitimacy.

From a theoretical standpoint, LBS stems from attachment theory (Bowlby, 1969), adapted to the organisational context to explain how those in leadership roles influence their teams' emotional regulation, stress coping and behavioural patterns. Within this framework, a leader's psychological availability, capacity for empathy and sensitivity to the needs of those under their charge are not merely ancillary skills, but central mechanisms through which team engagement, stress coping and performance are influenced in demanding situations (Laguía et al., 2025; Molero et al., 2019; Moriano et al., 2021).

In conceptual terms, LBS is defined by the leader's ability to forge secure relational bonds through closeness, whilst simultaneously providing support in situations of stress or uncertainty (a 'safe haven') and facilitating exploration, risk-taking and autonomous development (a 'secure base'). In the context of Guardia Civil, this dual function takes on particular significance due to the combination of operational demands, hierarchical structure and relational proximity that characterises the territorial units, where decision-making under conditions of uncertainty and autonomous action in the field are commonplace.

The specific contribution of the LBS compared to other established leadership models lies in the fact that it focuses not only on behaviours such as inspiration, morality, authenticity or service (Avolio and Gardner, 2005; Bass, 1985; Brown et al., 2005; Greenleaf, 1977), but also on the secure bond that can underpin them. Drawing on attachment theory, LBS makes explicit a basic assumption that has often remained implicit: every leadership relationship generates a bond—whether secure or insecure—which determines how people interpret authority, cope with demands, regulate stress and feel capable of taking on responsibilities. Furthermore, from the perspective of the ethics of care, this bond implies that leadership cannot be reduced to the impartial application of rules, procedures or formal criteria, but must also take into account the specific consequences that decisions have on those in one's care. From this perspective, caring involves addressing their needs in a context-sensitive manner, recognising situations of pressure or vulnerability, acting with empathy, and responding with sensitivity and responsibility when the leader has a genuine capacity to guide, support or protect (Ciulla,

2009; Gilligan, 1982). In this sense, the dynamics of attachment and care proposed by the LBS can be understood as a meta-model or common factor in leadership practices.

The available empirical evidence, in both civilian and military contexts, shows that LBS is consistently associated with higher levels of work engagement, resilience, organisational identification and performance, as well as lower levels of stress, burnout and organisational dehumanisation (Laguía et al., 2024; Lobato et al., 2024; Molero et al., 2019; Moriano et al., 2021; Navas-Jiménez et al., 2024, 2025). These findings suggest that LBS may play a key role as an organisational resource, by simultaneously contributing to the activation of motivational processes and the reduction of emotional exhaustion. This dual function aligns with the JD-R model, which distinguishes between motivational processes and health-compromising processes as explanatory pathways for work performance (Bakker and Demerouti, 2017). From this perspective, LBS could influence variables such as work engagement and burnout, providing a suitable theoretical framework for analysing its direct and indirect impact on work performance.

1.2. THE JOB DEMANDS AND RESOURCES MODEL

The JD-R model (Bakker and Demerouti, 2007, 2017) provides a particularly useful theoretical framework for analysing well-being and performance in work contexts characterised by high levels of demand, such as that of Guardia Civil. This model posits that individuals' functioning at work depends on the dynamic balance between the demands of the job and the resources available to cope with them.

Specifically, the model distinguishes between two fundamental processes. On the one hand, the process of health deterioration, whereby sustained exposure to high demands increases the risk of burnout. On the other hand, the motivational process, through which workplace resources promote work engagement and, ultimately, job performance (Bakker and Demerouti, 2017; Schaufeli and Taris, 2014). This dual pathway helps to explain why, in highly demanding environments, high-performing profiles coexist with others characterised by emotional exhaustion, fatigue and disengagement.

In the context of Guardia Civil, job demands include exposure to risk, time pressure, decision-making under uncertainty and the management of emotionally intense situations. These conditions, when sustained over a prolonged period, may be associated with an increased risk of deterioration in psychological and physical well-being (Violanti et al., 2017).

This study focuses on the posts in the Aragón region, territorial units primarily dedicated to crime prevention and the provision of public safety services, including the receipt and processing of complaints and the investigation of cases (Directorate-General of Guardia Civil, General Order 25, 2023, p. 38). These units form the backbone of the territory and provide a community-based service to the public; as such, they are frequently called upon to respond to a variety of incidents, such as reports of burglary, forest fires, public order disturbances, interpersonal conflicts or humanitarian assistance. These specific work demands help to contextualise the professional environment in which the LBS is analysed. However, given the pilot nature of the research, these demands were not included as empirical variables in the model analysed.

Among organisational resources, leadership occupies a central position, as it influences the way in which individuals interpret, cope with and regulate the demands of the service. In this regard, recent research has begun to conceptualise certain leadership styles as key resources within the JD-R model, insofar as they can contribute both to reducing the impact of demands and to triggering motivational processes. Specifically, it has been found that LBS acts as an organisational resource associated with a reduction in burnout and the promotion of work engagement (Laguía et al., 2025; Molero et al., 2019; Moriano et al., 2021; Navas-Jiménez et al., 2024, 2025).

Consequently, this study adopts the JD-R model as a theoretical framework to examine the role of LBS as an organisational resource within the Guardia Civil. From this perspective, a model is proposed in which LBS is related to burnout and work engagement and, through these, to perceived job performance.

1.3. THEORETICAL MODEL AND HYPOTHESES

This study integrates attachment theory (Bowlby, 1969) as applied to leadership and the JD-R model (Bakker and Demerouti, 2007, 2017) with the aim of conducting a preliminary examination of the mechanisms through which LBS might be related to well-being and performance in territorial units of Guardia Civil. This integration allows leadership to be conceptualised not only as a management style, but as an organisational resource that modulates individuals' responses to the demands of the operational context.

In line with this approach, it is proposed that LBS may help to reduce *burnout* by providing a relational environment that facilitates emotional regulation and the perception of support, and that, at the same time, it may enhance *work engagement* by promoting active involvement, confidence in one's actions and achievement orientation. In this way, leadership does not act solely through a direct effect on perceived performance, but can also do so through its influence on these intermediate psychological states.

In this model, *work engagement* is understood as the central manifestation of the motivational process proposed by the JD-R, emerging when individuals have sufficient resources to cope with the demands of work. It is defined as a positive and satisfying work-related state, characterised by vigour, dedication and absorption (Schaufeli et al., 2002), and reflects an active form of well-being associated with high levels of energy, involvement and persistence in work activities (Salanova et al., 2005). Empirical evidence consistently shows that *work engagement* is positively related to performance and acts as a key mechanism linking work resources to positive organisational outcomes (Bakker, 2011; Bakker et al., 2014; Christian et al., 2011).

Conversely, *burnout* is conceptualised as the central outcome of the health deterioration process within the JD-R model and is defined as a multidimensional syndrome characterised by emotional exhaustion, depersonalisation and a reduced sense of personal efficacy (Maslach and Jackson, 1981; Maslach et al., 2001). Empirical evidence consistently shows that *burnout* not only affects individual well-being but also impairs organisational functioning by interfering with key processes such as concentration, decision-making and work performance (Corbeanu et al., 2023; Edú-Valsania et al., 2022; Lemonaki et al., 2021).

For its part, job performance is conceptualised, within the JD-R framework, as the result of the interaction between job demands and available resources (Sonnentag and Frese, 2003). From a multidimensional perspective, this study distinguishes between task performance—referring to behaviours directly linked to the execution of the job’s core functions—and contextual performance, which includes discretionary behaviours that contribute to the social and psychological functioning of the organisation (Borman and Motowidlo, 1997; Koopmans et al., 2012). Whilst performance can be assessed using objective indicators or through evaluations carried out by supervisors, this study has chosen to analyse self-reported performance.

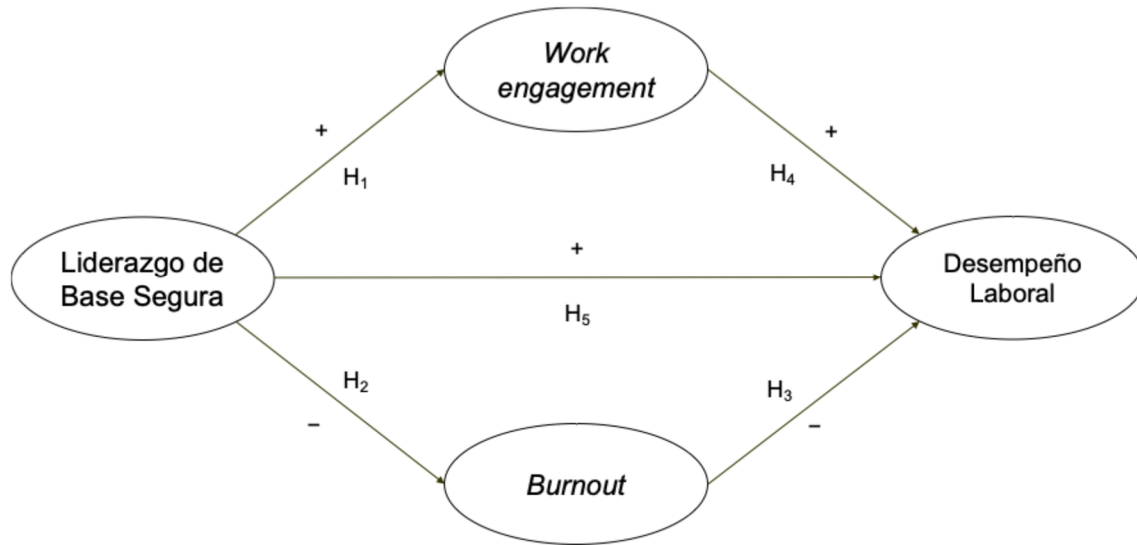
The theoretical model therefore posits that burnout and work engagement may act as relevant explanatory mechanisms in the relationship between LBS and job performance (see Figure 1). Specifically, it is tentatively proposed that burnout could act as a deteriorating mechanism associated with lower levels of performance, whilst work engagement could act as a motivational mechanism associated with higher levels of performance. Furthermore, a possible direct effect of LBS on performance is considered, in line with previous research (Greškovičová and Lisá, 2023; Laguía et al., 2024, 2025; Lisá et al., 2021; Moriano et al., 2021).

Based on this theoretical framework, and given the pilot nature of the study, the following preliminary hypotheses are formulated:

- H1. LBS will be positively related to *work engagement*.
- H2. LBS will be negatively related to *burnout*.
- H3. *Burnout* will be negatively related to job performance.
- H4. *Work engagement* will be positively related to job performance.
- H5. LBS will be positively related to job performance.
- H6. The relationship between LBS and job performance will involve indirect effects via *work engagement* (H6a) and *burnout* (H6b).

Figure 1 shows the theoretical model proposed in this study, as well as the hypothesised relationships between the variables analysed. Specifically, the hypotheses formulated regarding the direct relationships between the constructs under consideration are represented graphically. However, Hypothesis 6, which refers to the indirect effects proposed in the model, is not included in the diagram in order to ensure the clarity and interpretability of the figure.

Figure 1
Proposed theoretical model and hypotheses.



2. METHOD

2.1. PARTICIPANTS AND PROCEDURE

Data collection was carried out in territorial units of Guardia Civil belonging to the Aragón Zone, including posts under the command of the Zaragoza, Huesca and Teruel Command Centres. Prior to this, formal institutional authorisation was obtained from the Regional Headquarters to carry out the study. These units are characterised by their small size and a high degree of operational proximity between commanders and subordinates, making them a particularly suitable context for analysing relational processes associated with leadership.

The study was publicised via an official communication through the relevant organisational structure, providing potential participants with a link to access the online questionnaire administered via the Qualtrics platform. This communication was purely for information purposes and served as an invitation to participate; participation was not part of any professional assessment procedure nor did it have any employment-related or hierarchical consequences for the recipients. The first page of the questionnaire outlined the general objective of the study, its academic nature, the option to contact the principal investigator by email, and the right to withdraw from the study at any time. Only those who gave their express consent to participate were able to access the research scales included in this online questionnaire; those who declined to participate were simply shown a message of thanks and exited the questionnaire.

Participation was entirely voluntary, asynchronous and anonymous, with the confidentiality of responses guaranteed, as no personally identifiable data was collected from participants. No names, professional identification numbers, email addresses or any other data that would allow respondents to be directly identified were requested. Only general socio-demographic and professional data were collected, such as age, gender, educational level, length of service and frequency of contact with the immediate line

manager. The questionnaires could be completed on either work or personal devices within the specified timeframe, and all staff wishing to take part in the research were encouraged to contribute to the pilot study. No posts within the territorial jurisdiction of the Aragon region were selected or excluded.

Participants were selected using non-probabilistic convenience sampling, conditioned by access to the units and voluntary participation, in line with the dissemination procedure employed. This type of sampling is common in research conducted within institutional organisational contexts. In line with this approach, the study is exploratory in nature, aimed at identifying patterns of relationship between variables rather than establishing inferences that can be generalised to the entire organisation.

A total of 95 participants completed the online questionnaire, representing an approximate response rate of 11.2 per cent. As an inclusion criterion, participants were required to be currently employed and to have a direct line manager with whom they interacted regularly, so that they could assess that manager's leadership behaviour. Eighteen questionnaires were excluded from the analyses: two because consent to participate in the study had not been given following the presentation of the information sheet (and so these participants were not shown the study scales), and the remaining 16 because they contained no responses to the items on the scale measuring LBS. This exclusion was applied because the LBS measure constituted the main independent variable in the model; therefore, the absence of responses on that scale prevented the estimation of the relationships hypothesised in the study. The resulting final sample comprised 77 participants.

The sample consisted mainly of men (88.6%). In terms of educational attainment, 44.9% had completed upper secondary education, 24.6% had vocational training and 30.4% had a university education. The mean age of the participants was 38.08 years ($SD = 8.71$). The average length of service in the force was 11.19 years ($SD = 11.14$), indicating a sample with diverse professional experience. The average number of staff per post was 12.12 ($SD = 6.73$), reflecting the small size of the units analysed. With regard to work dynamics, participants reported frequent contact with their direct line manager, averaging 4.64 days per week ($SD = 1.71$), which indicates a high level of closeness in the relationship between managers and subordinates.

2.2. MEASURES

A questionnaire comprising various validated scales was used to collect data, designed to assess LBS, *work engagement*, *burnout* and perceived job performance.

LBS was measured using the *Leader as a Security Provider Scale* (LSPS; Molero et al., 2019), comprising 15 items that assess the perception of the line manager as a supportive figure who inspires trust and facilitates development. The instructions and items were formulated with reference to the direct line manager (e.g., 'When something goes wrong or I feel unwell at work, I turn to my line manager for support'). Responses were collected using a five-point Likert scale (0 = *strongly disagree*; 4 = *strongly agree*).

Work engagement was assessed using the ultra-short, three-item Spanish version of the *Utrecht Work Engagement Scale* (UWES-3; Schaufeli et al., 2019), which measures

vigour, dedication and absorption (e.g., ‘I am enthusiastic about my activities’). Responses were recorded on a five-point frequency scale (0 = *never*; 4 = *always*).

Burnout was measured using the emotional exhaustion subscale of the Spanish version of the *Maslach Burnout Inventory–General Survey* (MBI-GS; Salanova et al., 2000; Schaufeli et al., 1996), which assesses the extent to which individuals feel emotionally drained by their work (e.g., “I feel emotionally drained by my work”). Responses were recorded on a five-point frequency scale (0 = *never*; 4 = *always*).

Perceived work performance was assessed using the Spanish adaptation of the *Individual Work Performance Questionnaire* (IW PQ; Koopmans et al., 2012; Ramos-Villagrasa et al., 2019), which measures two dimensions: task performance and contextual performance. Participants indicated how often they engaged in certain work-related behaviours (e.g., “I have organised my work so that I can finish it on time”), using a five-point scale (0 = *rarely*; 4 = *always*).

Table 1 presents the main indicators of reliability and convergent validity for these scales. Generally speaking, the results indicate that the measures used offer adequate internal consistency; that is, the items on each scale correlate consistently with one another. Furthermore, the *Average Variance Extracted* (AVE) values were above 0.50 for all constructs, indicating that each scale adequately captures the content of the concept it is intended to measure. In the case of *work engagement*, the ultra-short UWES-3 version showed adequate indicators of reliability and convergent validity, which supports its use despite the small number of items. The high internal consistency of the LBS scale reflects a high degree of homogeneity amongst its items, consistent with the specificity of the construct being assessed, although this finding should be interpreted with caution given the pilot nature of this study.

Table 1
Reliability and convergent validity of the scales.

Variable	Cronbach’s α	Composite reliability	AVE
LBS	,97	,98	,71
<i>Work engagement</i>	,84	,90	,76
<i>Burnout</i>	,77	,71	,61
Work performance	,93	,94	,57

Note: LBS: Secure Base Leadership. AVE: average variance extracted.

As a further check, we examined whether the scales adequately distinguished between the various concepts analysed and whether there were problems of excessive overlap between the variables in the model. To this end, the HTMT (*Heterotrait-Monotrait Ratio*) was calculated, which is used to assess discriminant validity between constructs, and VIF (*Variance Inflation Factor*) values were calculated to detect possible

collinearity issues (Hair et al., 2017; Henseler et al., 2015). The HTMT values were below the recommended threshold of 0.85 (range: 0.41–0.75), supporting the differentiation between the constructs. Furthermore, the VIF values for the structural model remained within acceptable ranges (1.00–2.00), with no evidence of significant multicollinearity issues.

2.3. DATA ANALYSIS

The data were analysed using Structural Equation Modelling based on the Partial Least Squares technique (*Partial Least Squares Structural Equation Modelling*, PLS-SEM), using the SmartPLS 4 software (Ringle et al., 2025). PLS-SEM was chosen as it is a variance-based technique suitable for exploratory and prediction-oriented studies, particularly when working with models that include latent variables, indirect relationships and small sample sizes. Furthermore, PLS-SEM does not require strict assumptions of multivariate normality and allows for the simultaneous estimation of the relationships proposed in the theoretical model (Hair et al., 2017; Henseler et al., 2015). The suitability of the measures was verified using the reliability and validity indicators described in the previous section.

The statistical significance of the estimated relationships was assessed using *bootstrapping* with 5,000 resamples, with a significance criterion of $t > 1.96$ ($p < 0.05$). Given the pilot nature of the study and the available sample size, the results should be interpreted with caution, focusing primarily on the direction, magnitude and theoretical plausibility of the estimated relationships. Consequently, the analyses are to be understood as a preliminary exploration of the role of LBS as an organisational resource, rather than as definitive confirmatory evidence of a causal model.

3. RESULTS

Firstly, a descriptive analysis of the study's main variables was carried out with the aim of examining the levels of LBS, *work engagement*, *burnout* and perceived job performance amongst the sample of subordinates from the territorial units in the Aragón region included in this pilot study. The results show that LBS scores are above the theoretical midpoint of the scale ($M = 2.83$; $SD = 0.69$), indicating a favourable perception of leadership style amongst subordinates. Consistent with this, *work engagement* shows high scores ($M = 3.22$; $SD = 0.75$), whilst *burnout* remains at low levels ($M = 0.89$; $SD = 0.61$). Perceived work performance also lies above the midpoint ($M = 3.06$; $SD = 0.45$), reflecting a positive perception of effectiveness at work.

Taken together, these results form a consistent pattern characterised by high levels of LBS, *work engagement* and performance, alongside low levels of *burnout*. This profile suggests favourable organisational functioning in the sample analysed and is consistent with the characteristics of the territorial units, where the relational proximity between managers and subordinates is high.

In order to examine the relationships between the variables, Pearson's correlations were calculated (Table 2). The results show that LBS is positively associated with *work engagement* ($r = 0.44$, $p < 0.01$) and with perceived work performance ($r = 0.48$, $p < 0.01$), and negatively associated with *burnout* ($r = -0.30$, $p < 0.05$). Similarly, *work engagement* is positively related to perceived performance ($r = 0.53$, $p < 0.01$) and

negatively related to *burnout* ($r = -0.64, p < 0.01$). For its part, *burnout* is negatively related to perceived performance ($r = -0.58, p < 0.01$).

Taken together, this pattern of relationships provides initial empirical support for the hypotheses put forward, suggesting that LBS is associated with higher levels of *work engagement* and better performance, as well as lower levels of *burnout*. Furthermore, the results show that *work engagement* is positively related to job performance, whilst *burnout* is negatively related to it, reinforcing the idea that motivational and exhaustion processes are directly linked to perceived efficacy at work in this context.

Table 2
Correlations between LBS, work engagement, burnout and perceived work performance.

Variable	1	2	3	4
1. LBS	—			
2. <i>Work engagement</i>	,44**	—		
3. <i>Burnout</i>	−0.30*	−0.64**	—	
4. Work performance	,48**	,53**	−0.58**	—

Note: * $p < 0.05$, ** $p < 0.01$. SBL: Secure Base Leadership.

In order to test the hypotheses of the proposed theoretical model, a structural equation analysis was carried out using the partial least squares method (PLS-SEM). The estimated model is presented in Figure 2.

The results show that SBL is positively and significantly related to *work engagement* ($\beta = 0.52, p < 0.001$) and negatively and significantly related to *burnout* ($\beta = -0.38, p < 0.001$), confirming hypotheses H1 and H2. These results indicate that the perception of the line manager as a source of support and guidance not only promotes work engagement but also helps to reduce emotional exhaustion.

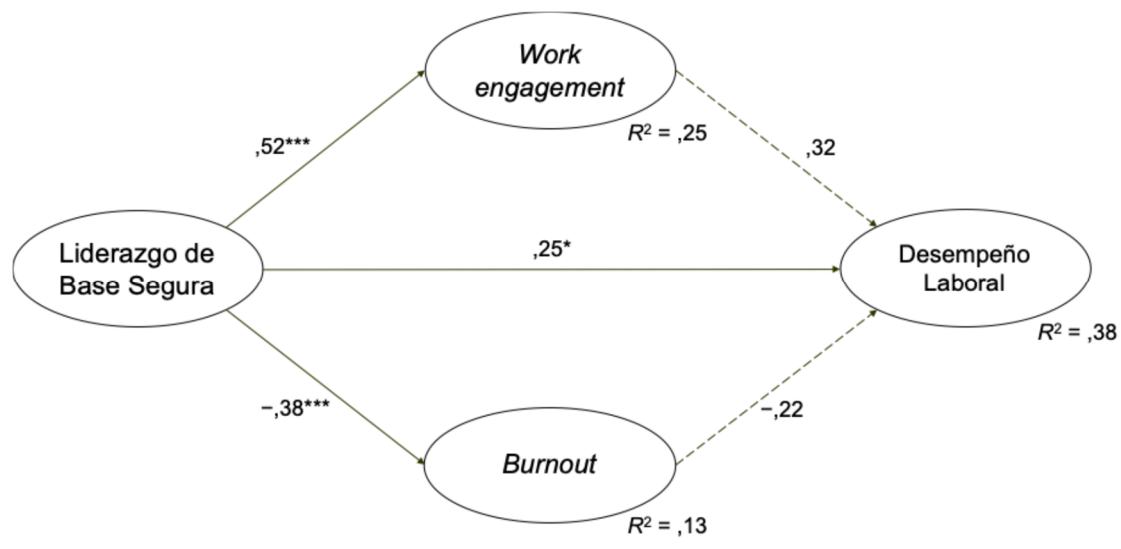
With regard to perceived work performance, LBS shows a positive and significant relationship ($\beta = 0.25, p < 0.05$), which provides empirical support for hypothesis H5. Meanwhile, although *work engagement* is positively associated with performance ($\beta = 0.32, p = 0.07$) and *burnout* shows a negative relationship with performance ($\beta = -0.22, p = 0.17$), neither of these associations reaches statistical significance; therefore, no empirical support is found for hypotheses H3 and H4. This pattern suggests that, in the sample analysed, leadership influences perceived performance primarily through a direct effect, without the psychological states under consideration—*work engagement* and *burnout*—consistently mediating that effect on performance.

Consequently, the mediation hypotheses (H6a and H6b) are not supported by the empirical evidence, suggesting that the role of *work engagement* and *burnout* as explanatory mechanisms between leadership and performance is not fully supported in this model. However, this result should be interpreted with caution. In the case of *work engagement*, the relationship with performance is close to the level of significance ($\beta = .32, p = .07$), suggesting that it might reach significance in larger samples. Meanwhile,

the low levels of *burnout* observed in the sample reduce its variability, which limits its explanatory power and may make it difficult to detect significant effects.

Finally, in terms of explained variance, the model has moderate explanatory power, accounting for 25.7% of *work engagement*, 13.2% of *burnout* and 38.6% of work performance. This result suggests that LBS is a relevant predictor of perceived performance, primarily via the motivational pathway; although the relationship between *work engagement* and performance does not reach statistical significance, its magnitude and proximity to the significance threshold point to a potentially relevant role. Conversely, the lower explanatory power of *burnout* appears to be due to its low levels in the sample, which reduces its variability and limits its contribution to the model. Taken together, these findings suggest that, in this organisational context, motivational processes carry greater weight than burnout processes in explaining job performance.

Figure 2
Structural model analysis.



Note: * $p < 0.05$, *** $p < 0.001$. R^2 : coefficient of determination.
The dotted lines represent statistically non-significant relationships ($p > 0.05$).

4. DISCUSSION

The aim of this study was to conduct an exploratory analysis of the role of LBS in territorial units of Guardia Civil and its relationship with key psychosocial variables, specifically *work engagement*, *burnout* and perceived job performance, integrating these relationships into the JD-R model (Bakker and Demerouti, 2007, 2017). In general terms, the results provide partial support for the proposed theoretical model and allow for a better understanding of how the exercise of leadership can influence the well-being and performance of members of Guardia Civil's territorial units in the current environment.

Firstly, the descriptive results show that the participants in this study perceive behaviours in their superiors that are consistent with the LBS. This finding is particularly relevant in the context of Guardia Civil, where superiors serve as a direct point of reference in day-to-day service. In territorial units, the post commander or immediate superior not only organises the work but also continuously influences decision-making, the management of complex situations and the unit's atmosphere. In this regard, the results suggest that leadership is not limited to compliance with rules and procedures, but naturally incorporates relational elements based on trust, closeness and support. This interpretation is consistent both with the Corps' institutional tradition, centred on moral authority and setting an example (Del Moral, 2023; Martínez-Viqueira, 2024), and with the literature on LBS, which defines a leader as a figure capable of providing psychological safety in demanding contexts (Lobato et al., 2024; Navas-Jiménez et al., 2025).

With regard to the hypotheses, the results confirm that LBS is positively associated with *work engagement* (H1) and negatively associated with *burnout* (H2), which supports its role as an organisational resource within the JD-R model. This finding is particularly relevant in demanding operational contexts, as it suggests that the way in which leadership is exercised can influence how individuals cope with the demands of service. When leadership is perceived as a secure base, staff are more likely to experience greater engagement, energy and work orientation, as well as lower levels of emotional exhaustion. This result is consistent with previous research showing that LBS can reduce work-related stress and promote commitment in demanding organisational and operational contexts, including military environments (Lobato et al., 2024; Moriano et al., 2021; Navas-Jiménez et al., 2025).

On the other hand, the results relating to perceived performance require a nuanced interpretation. LBS showed a direct, positive and significant relationship with work performance (H5), reinforcing the idea that management can have a significant influence on staff's perceived effectiveness. However, the relationships between *work engagement* and *burnout* and work performance did not reach statistical significance in the structural model, although both variables were significantly related to work performance in the correlational analysis. Specifically, *work engagement* showed a positive correlation with performance ($r = 0.53, p < 0.01$) and *burnout* a negative correlation ($r = -0.58, p < 0.01$), but these relationships ceased to be significant when estimated simultaneously alongside the direct effect of LBS. This difference between the bivariate results and the structural model should not be interpreted as a contradiction, but rather as a consequence of the different approaches to statistical analysis. Correlations show simple associations between pairs of variables, whilst the PLS-SEM model estimates partial effects, whilst simultaneously controlling for the rest of the relationships included in the model. In this case, the direct effect of LBS on performance remained significant, whilst the pathways from *work engagement* and *burnout* to performance did not reach significance. This pattern suggests that, in the sample analysed, the data provide clearer support for a direct relationship between LBS and perceived performance than for mediation via the two psychological states under consideration.

The lack of empirical support for the mediation hypotheses (H6a and H6b) does not imply that *work engagement* and *burnout* are irrelevant to performance. In fact, both variables were significantly related to performance in the correlational analysis, and the path between *work engagement* and performance approached the conventional level of

significance in the structural model. Rather, the results suggest that, in this pilot study, their role as mediating mechanisms is not sufficiently supported when the relationships are estimated simultaneously. Whilst the high negative association between *work engagement* and *burnout* ($r = -0.64$, $p < 0.01$) suggests an overlap between these two psychological states—which could reduce the specific contribution of each variable within the model—the VIF values in the structural model remained within acceptable ranges (1.00–2.00), indicating the absence of significant multicollinearity issues.

In practical terms, these findings suggest that the LBS may constitute a relevant organisational resource for the territorial units of Guardia Civil. The perception of the commanding officer as an approachable, accessible figure capable of providing security appears to be associated not only with higher levels of commitment and lower levels of burnout, but also with better perceived job performance. In contexts where the work combines operational demands, uncertainty, proximity to the public and the need for coordination, LBS can act as a key resource for sustaining both well-being and professional effectiveness.

4.1. LIMITATIONS AND FUTURE RESEARCH DIRECTIONS

Despite the interest of the findings, this study must be interpreted in light of its pilot, exploratory and cross-sectional nature. Its main aim was not to draw causal conclusions or generalisations applicable to the Guardia Civil as a whole, but rather to offer an initial empirical exploration of the role of LBS as an organisational resource in territorial units.

A first limitation relates to the size and composition of the sample. Although the study was conducted within an institutional context that is difficult to access and involved personnel posted to actual territorial units, the final sample was small ($N = 77$), which limits the statistical power of the model, particularly when it comes to detecting indirect effects or mediations (Hair et al., 2017). Furthermore, the low response rate may introduce self-selection bias, as it is possible that those who chose to participate differ from those who did not respond. Consequently, the results should be understood as preliminary evidence and not as a representative estimate of the Civil Guard's territorial units as a whole.

Secondly, the cross-sectional design prevents the establishment of causal relationships between the variables. Although the theoretical model suggests that LBS may act as an organisational resource associated with higher levels of *work engagement*, lower levels of *burnout* and better performance, the data were collected at a single point in time. Therefore, it cannot be ruled out that reciprocal relationships exist or that certain organisational conditions simultaneously influence perceptions of leadership, well-being and performance. Future research should employ longitudinal designs that allow for an analysis of how these relationships evolve over time, particularly during periods of increased operational workload, changes in leadership or critical situations.

Thirdly, all variables were assessed via self-reports in a single questionnaire, which may increase the risk of common-method bias and social desirability bias. This issue is particularly relevant in hierarchical contexts, where perceived freedom to respond may be constrained, even when participation is formally voluntary. In this study, measures were taken to reduce this risk, such as anonymous, asynchronous and voluntary participation, the absence of direct identifying data, and the use of validated scales.

However, these safeguards do not completely eliminate the possibility of response bias. Future studies should combine self-reports with objective or semi-structured indicators, such as performance appraisals by line management, indicators of target achievement, aggregated activity data, absenteeism, staff turnover, disciplinary incidents or service quality indicators, whilst always respecting the necessary ethical and confidentiality safeguards (Koopmans et al., 2014).

Finally, the study was conducted in territorial units within a specific area; therefore, future research should be extended to other zones, headquarters and types of unit. It would also be particularly valuable to develop multi-level studies that allow for a distinction to be made between individual perceptions and shared effects at the post or unit level. This approach would make it possible to analyse whether the LBS functions solely as an individual perception of leadership or also as a shared relational climate, capable of influencing well-being, cohesion and collective performance. Furthermore, future research could incorporate variables such as resilience, organisational identification or psychological safety climate, which have been shown to be relevant in military contexts (Navas-Jiménez et al., 2024).

Taken together, these limitations do not invalidate the results, but they do limit their scope. The study provides initial empirical evidence on the usefulness of LBS in territorial units of Guardia Civil and opens up a line of applied research that should be consolidated through larger samples, longitudinal designs, multiple sources of information and more objective indicators of performance and well-being.

5. CONCLUSIONS

The results of this preliminary study suggest that, in the sample analysed, LBS is associated with higher levels of *work engagement*, lower levels of *burnout* and better perceived work performance. These findings support the usefulness of LBS as an organisational resource in territorial units of Guardia Civil, although they should be interpreted with caution due to the pilot, cross-sectional and correlational nature of the study.

With regard to perceived performance, the LBS showed a significant direct association. However, it was not empirically confirmed that this relationship was mediated by *work engagement* or *burnout*. Therefore, the JD-R model is useful as an interpretative framework for understanding the relationship between leadership, well-being and performance, but in this study it does not allow us to conclude that the relationship between LBS and performance is explained primarily through motivational mechanisms or by a reduction in health deterioration.

Furthermore, these results should be interpreted as a first step towards the applicability of LBS within the Guardia Civil. Rather than a management-centred style, LBS focuses on the quality of the bond between superiors and subordinates, understood in terms of secure attachment, where care and challenge are combined. This involves exercising leadership by building trust, ensuring consistency in action and providing support, whilst also promoting autonomy and responsibility in the fulfilment of the mission. Furthermore, this relational dynamic is not limited to the internal functioning of

units, but can be reflected in the way service is delivered, fostering a more attentive, responsible approach that is aligned with the institutional values of Guardia Civil.

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II.- RESEARCH WORK



Research Article

THE ANALYSIS OF BLOODSTAIN PATTERNS AS A KEY PIECE OF EVIDENCE IN THE RECONSTRUCTION OF A MURDER

English translation with AI assistance (DeepL)

Joaquín Álvaro Vázquez

Higher Diploma in Criminology

Forensic Laboratory of Guardia Civil Headquarters in Badajoz

ORCID: 0009-0006-4324-8817

joaquinalvaro@hotmail.es

Received 28/03/2026

Accepted 02/06/2026

Published 30/06/2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.9023>

Recommended citation: Álvaro Vázquez, J. (2026). The analysis of bloodstain patterns as a key piece of evidence in the reconstruction of a murder. *Revista Logos Guardia Civil*, 4(2), pp. 39–58. <https://doi.org/10.64217/logosguardiacivil.v4i2.9023>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

THE ANALYSIS OF BLOODSTAIN PATTERNS AS A KEY PIECE OF EVIDENCE IN THE RECONSTRUCTION OF A MURDER

Summary: 1. INTRODUCTION. 2. METHODOLOGY. 3. CASE DESCRIPTION. 4. BLOODSTAIN PATTERNS DOCUMENTED AT THE CRIME SCENE. 4.1. Hallway. 4.2. Master bedroom. 4.3. Living room. 5. DISCUSSION. 5.1. Scientific reliability of bloodstain pattern analysis (BPA) and international validation standards. 5.2. BPA in the Spanish legal system. 5.3. Inherent limitations of the analysis. 6. CONCLUSIONS. ETHICAL STATEMENT. CONFLICT OF INTEREST. BIBLIOGRAPHICAL REFERENCES. REGULATIONS.

Abstract: The analysis of bloodstain patterns (BPA) is a fundamental tool for reconstructing the dynamics of violent incidents at the crime scene. This paper presents the analysis and interpretation of bloodstain evidence documented in a murder case that occurred in the town of Zafra (Badajoz) in 2024, as part of a technical-police visual inspection carried out using a unified approach and a manual methodology supported by trigonometry.

Based on the study of the morphology, distribution and correlation of the bloodstains with the forensic findings, the sequence of events most consistent with the physical evidence is reconstructed, identifying the initial scene, the victim's movements and the subsequent phases of the incident. Evidence consistent with tampering with the scene is also analysed, including patterns of selective cleaning and re-entry into the premises.

The case is of particular evidential interest as it took place in a context characterised by the limited conclusiveness of other expert reports and the coexistence of contradictory hypotheses. In this scenario, the BPA played a central role in the joint assessment of the evidence. The scientific reliability of the discipline, its place within the Spanish procedural framework, the implications of expert testimony before the jury court, and the limitations inherent in the analysis are discussed.

Resumen: El análisis de patrones de manchas de sangre (BPA) constituye una herramienta fundamental para la reconstrucción de la dinámica de los hechos violentos en la escena del crimen. El presente trabajo expone el análisis e interpretación de los rastros hemáticos documentados en un caso de asesinato ocurrido en la localidad de Zafra (Badajoz) en 2024, en el marco de una inspección ocular técnico-policial desarrollada bajo criterio unitario y metodología manual con soporte trigonométrico.

A partir del estudio de la morfología, distribución y correlación de los rastros de sangre con los hallazgos médico-legales, se reconstruye la secuencia dinámica más compatible con la evidencia física, identificando el escenario de inicio, los desplazamientos de la víctima y las fases posteriores del evento. Se analizan, asimismo, indicios consistentes con alteración de la escena, incluyendo patrones de limpieza selectiva y reingreso al inmueble.

El caso presenta especial interés probatorio al haberse desarrollado en un contexto caracterizado por la limitada conclusividad de otras pericias y la coexistencia de hipótesis contradictorias. En este escenario, el BPA adquirió un papel central en la valoración conjunta de la prueba. Se discuten la fiabilidad científica de la disciplina, su encaje en el marco procesal español, las implicaciones de la comunicación pericial ante el Tribunal del Jurado y las limitaciones inherentes al análisis.

Keywords: bloodstain pattern analysis, BPA, forensic reconstruction, expert evidence, jury trial.

Palabras clave: análisis de manchas de sangre, BPA, reconstrucción forense, prueba pericial, Tribunal del Jurado.

ABBREVIATIONS

BPA: Bloodstain Pattern Analysis

ENFSI: European Network of Forensic Science Institutes

IABPA: International Association of Bloodstain Pattern Analysis

LECrim: Code of Criminal Procedure

NAS: National Academy of Sciences (US National Academy of Sciences)

NIST: National Institute of Standards and Technology

OSAC: Organisation of Scientific Area Committees

PCAST: President's Council of Advisors on Science and Technology

SWGSTAIN: Scientific Working Group on Bloodstain Pattern Analysis

TSJ: High Court of Justice

1. INTRODUCTION

Bloodstain pattern analysis (BPA) has, since the pioneering experiments of Eduard Piotrowski (1895) in the late 19th century and the subsequent contributions of Victor Balthazard (1939) in the field of forensic science, been a discipline aimed at reconstructing the sequence of events through the study of bloodstain evidence. Its purpose is not to identify the perpetrator, but rather to interpret the mechanisms that generate the traces, thereby enabling the inference of relative positions, sequences of actions and dynamics of movement (Bevel & Gardner, 2008; James et al., 2005). Following the work of Paul L. Kirk (1955) on the Sam Sheppard case, BPA gained international prominence as an essential tool for analysing crime scenes.

From a methodological perspective, BPA is based on the correlation between the morphology of the bloodstains, their spatial distribution and the physical conditions under which they are generated. The interpretation of these patterns requires consideration of variables such as the viscosity of the blood, the velocity of projection, the angle of impact and the nature of the contact surfaces. Blood, as a non-Newtonian fluid with complex behaviour, generates patterns upon impact with a surface, the morphology of which is determined by physical quantities that are verifiable and experimentally reproducible (Attinger et al., 2013). Among the phenomena relevant to the chronological interpretation of the evidence is what is known as ‘skeletonisation’: a process whereby a bloodstain, as it dries, develops a darker and denser perimeter than the central area, as a result of the differential drying of the blood’s components. The presence of skeletonised stains acts as a qualitative chronological marker, indicating that these stains were produced sufficiently prior to the inspection for the drying process to have begun to a perceptible extent.

The standardisation of terminology and concepts within the discipline has been driven by international bodies such as the Scientific Working Group on Bloodstain Pattern Analysis (SWGSTAIN), whose recommendations have contributed to the establishment of common interpretative criteria. The scientific credibility of BPA, however, has not been without its critics. The report by the US National Academy of Sciences (NAS, 2009) highlighted the lack of rigorous empirical validation studies and the excessive reliance on individual expert judgement. This assessment, reinforced by the report from the President’s Council of Advisors on Science and Technology (PCAST, 2016), led to the creation of the Organisation of Scientific Area Committees (OSAC) under the auspices of the National Institute of Standards and Technology (NIST), with a mandate to establish empirically grounded standards of forensic practice. Subsequent validation work has helped to define ranges of reliability for certain pattern classifications (Attinger et al., 2013; Taylor et al., 2016), although the debate regarding the margins of uncertainty in the interpretation of certain patterns remains open.

From a procedural perspective, it is important to clarify the conceptual distinction between circumstantial evidence and expert evidence as set out in Spanish law. Circumstantial evidence is observable data—the morphology and characteristics of a blood-like stain, for example—from which, through logical-inductive reasoning, an unknown fact is inferred with varying degrees of probability. It is important to emphasise that the very identification of that piece of data is subject to varying levels of certainty: the visual observation of a blood-like stain constitutes nothing more than a preliminary inference based on morphology and context; presumptive tests reinforce this inference but do not confirm it, as they are susceptible to false positives with other oxidising

substances; and analytical confirmation in the laboratory, whilst representing the highest level of accreditation available, does not guarantee absolute certainty either, given that it may produce false negatives depending on the degree of sample degradation. Within the framework of Good Laboratory Practice (GLP), analysis is usually carried out on stains whose nature has been corroborated by presumptive tests, a condition which adds a layer of epistemic conditioning that must be explicitly acknowledged in any reconstructive conclusion. Expert evidence, regulated by Articles 456 to 485 of the Criminal Procedure Act (LECrim), is the formal means through which this inductive reasoning is introduced into the judicial process, subject to cross-examination by the parties and free assessment by the court in accordance with Article 741 of the LECrim. BPA therefore operates at the level of material evidence; it is expert evidence that provides the means by which such evidence acquires procedural relevance. This distinction is not merely terminological: it determines the level of certainty required of the conclusions and the degree of epistemic modulation with which they must be formulated.

At the international level, the practice of BPA frequently relies on specialised computer tools such as ISA Forensic, HemoVision or the Leica Map360 mapping software, which automate trigonometric calculations and enable the three-dimensional visualisation of trajectories. These tools do not alter the underlying mathematical principles, but rather accelerate and automatically document the same procedures that can be carried out manually using trigonometric tables—a method that remains valid and reproducible in operational contexts where such tools are not available.

In Spain, the development of BPA has been more limited than in the leading Anglo-Saxon countries. Although routinely integrated into technical police visual inspections (Guzmán, 2011), it has rarely played a decisive role in underpinning judicial decisions. This situation stems from the lack of specific formal training within police forces, the scarcity of literature in Spanish, and a judicial culture unaccustomed to granting independent probative value to disciplines whose reconstructive nature does not rely on objective laboratory results, but rather on the reasoned interpretation of physical evidence.

This situation is not unique to Spain. Across the countries with a continental European legal tradition, bloodstain pattern analysis (BPA) is significantly less developed than in Anglo-Saxon systems, with the partial exception of some northern European countries—particularly the Netherlands—where investment in forensic science has historically been higher and where significant academic contributions have been made to the international scientific literature (Laan et al., 2014). The absence of a harmonised European system for the accreditation of bloodstain pattern analysis (BPA) experts, comparable to that which exists in the Anglo-Saxon sphere through the International Association of Bloodstain Pattern Analysis (IABPA), partly explains this gap. The European project for the standardisation of forensic science, spearheaded by the European Network of Forensic Science Institutes (ENFSI), has made progress in drawing up best-practice guidelines across various disciplines, although BPA remains among those with the lowest level of regulatory development within the European context. This reality means that national case law, such as that analysed here, takes on additional significance as a reference point for the institutional development of the discipline.

The communicative dimension of BPA is particularly relevant in proceedings before the Jury Court, governed by Organic Law 5/1995 of 22 May. The lay composition of the

jury poses a specific challenge: translating into a verdict the content of a discipline based on physical principles whose intuitive understanding is far from immediate. The expert's clarity of presentation and their ability to link the material evidence to a coherent and verifiable narrative are decisive, not only as a technique of persuasion, but also as a guarantee that the right to effective judicial protection is not compromised by the technical opacity of the evidence.

In this context, the case that took place in Zafra (Badajoz, 2024) constitutes a unique precedent in the Spanish forensic field. In January 2025, a jury found the suspect guilty of murder, and the conviction was upheld in its entirety by the High Court of Justice of Extremadura (TSJ). The regional press explicitly highlighted the role of physical evidence (Reigadas, 2026). As far as this review is concerned, this is one of the few cases in Spain in which the BPA forms the core of the prosecution's case, which justifies its analysis and dissemination within the forensic field.

2. METHODOLOGY

This study follows the design of an observational, descriptive and retrospective case study, the aim of which is the analytical presentation of the bloodstain patterns documented at a crime scene and the assessment of their contribution to the reconstruction of the sequence of events and the evidential process.

The main source of information is the technical police visual inspection carried out at the property where the events took place on 9 July 2024, supplemented by the findings of the post-mortem report and the documentation arising from the court case. The inspection was carried out by a single expert; a circumstance which, in the context of a discipline that is not yet widely established within the forensic units of Spanish police forces, does not constitute a discretionary methodological choice. It should also be noted that the independent verification ideally required by scientific rigour is not satisfied by the mere presence of a second observer at the scene: it requires a second expert with a comparable level of education and training in the discipline, without which the numerical redundancy adds no real analytical value. This circumstance introduces an inherent risk of individual interpretative bias, which is explicitly recognised as a limitation of the analysis.

The visual inspection was carried out in accordance with a protocol of systematic spatial progression, proceeding in a clockwise direction from the main entrance to the property. The evidence was documented using planimetric and elevation metric photography, with a reference scale included in each shot and images taken from multiple angles to preserve the three-dimensional information of the bloodstain patterns.

The documentation of bloodstain patterns followed the terminological and classification criteria established by the SWGSTAIN, taking into account for each stain its morphology, dimensions, orientation, estimated angle of impact and spatial relationship with adjacent evidence. In areas where direct visual inspection proved insufficient due to selective cleaning, chemiluminescent reagents were applied to visualise degraded blood residues.

The trigonometric calculations applied to the projection patterns were carried out manually using trigonometric tables, a procedure equivalent in its mathematical

principles to that employed by the specialised computer systems mentioned in the introduction. The angle of impact of each individual stain was determined using the arcsine of the ratio of its width to its length. The determination of the region of origin was carried out in two phases: firstly, the trajectories of the selected stains were projected onto the vertical plane of the wall, yielding the two-dimensional convergence area (X and Y axes on the surface); secondly, by applying the tangent of the angle of impact for each individual stain, the distance from the wall to the projected origin in space was calculated, thereby obtaining the three-dimensional region of origin. The result is not an exact point, but a region or volume whose extent depends on the quality of the measurements, the selection of stains and the physical conditions of the substrate; in BPA, it is methodologically more accurate to speak of a region of origin rather than an exact coordinate, given that traditional trigonometric methods assume rectilinear trajectories and do not natively incorporate the statistical estimation of uncertainty in all three dimensions.

The interpretation of *cast-off-type* patterns on the wall was based on the elongated morphology of the stains, their directional orientation and a distribution consistent with the spattering of blood from a moving object. This interpretation requires a cautious reading of the geometric calculations: unlike passive drip patterns, in which the source can be considered approximately static, *cast-off* involves a dynamic element subject to variables — arc of projection, speed of movement, specific phase of ejection, energy loss and angular variation of the droplets — which determine the morphology and distribution of the resulting stains and limit the precision with which the spatial origin can be estimated

During the projection phase onto the wall surface, eight spots were used to establish the two-dimensional point of convergence. For the three-dimensional trigonometric calculation, however, not all were used: those located in more peripheral areas or further away from the point of convergence were discarded, as they were more influenced by the dynamics inherent to the projection mechanism — arc, velocity and phase of detachment — and offered less reliability for the geometric estimation of the spatial origin. The calculation was limited to the two spots exhibiting the best conditions in terms of ellipticity, perimeter integrity and orientation towards the previously established point of convergence. Those whose trajectories deviated significantly from that point were discarded; the main cause of deviation was the attribution of certain droplets to more than one unit of action—at least two being identified in the analysis of the arc pattern—although inaccuracies inherent in manual measurement may have contributed in individual cases.

The interpretation of the patterns followed an explicit hypothetical-deductive approach. Hypotheses regarding the dynamics of the events—including the exculpatory version put forward by the defence—were formulated prior to the analysis of each piece of evidence, and the compatibility or incompatibility of each finding with these hypotheses was systematically assessed. Hypotheses incompatible with the physical evidence were ruled out in a reasoned and documented manner. As a measure to control for confirmation bias, the criterion of actively seeking evidence that might contradict the working hypothesis was adopted before considering evidence that supported it.

3. CASE DESCRIPTION

The events took place on 9 July 2024 at a property in the town of Zafra (Badajoz). Upon the arrival of the first responders, the victim, a 42-year-old man, was found dead on the public highway in front of the entrance to the property. The body was lying partly in a pool of blood, with visible injuries to the chest, face and left arm, and signs of profuse bleeding from the latter area.

The only person present inside the property at the time of the incident initially gave an account that was inconsistent with the documented findings. According to his account, a third party had assaulted the victim upon opening the front door, and the victim's subsequent movement through the property had been confined to the hallway, where he claimed to have helped him out onto the street. From the very outset of the analysis, this exculpatory account constituted a falsifiable hypothesis: if it were correct, it would have to be consistent with the spatial distribution and chronology of the bloodstain evidence. If the documented patterns proved incompatible with that account, the hypothesis would be refuted by the physical evidence itself, without the need to resort to other forms of evidence.

To put the analysis of the bloodstain patterns into context, it is necessary to refer to the relevant autopsy findings. The victim had multiple stab wounds. The fatal wound was an inciso-puncture wound that penetrated the aorta through the chest wall, causing haemopericardium with cardiac tamponade. Cardiac tamponade causes a rapidly onset, progressive haemodynamic failure: it allows for a brief terminal window of diminishing motor activity—consistent with the victim's subsequent movement—after which collapse ensues, thereby preventing any further purposeful activity. Furthermore, an incised flap wound was observed on the posteroinferior aspect of the proximal third of the left arm, with an exit wound at a short distance; the profuse external bleeding from this wound constituted the main source of the drip pattern documented in the corridor. The correlation between the nature and location of these injuries and the blood patterns identified at the scene constituted one of the central methodological pillars of the reconstructive analysis (Simonin, 1982).

4. BLOODSTAIN PATTERNS DOCUMENTED AT THE SCENE

The bloodstain evidence documented in the various rooms of the property is described below, following the order of access during the visual inspection and the clockwise progression applied: hallway, master bedroom and living room. The remaining rooms showed no significant bloodstain evidence.

4.1 HALLWAY

A large number of drip marks were observed in the corridor, visible on both the floor and the side walls. The droplets were predominantly circular and striated in shape (with spiny projections around the edges), and one projection was also visible reaching up to the ceiling. In specific areas, the stains showed signs of skeletalisation, indicating that they had formed earlier than the other patterns that did not exhibit this phenomenon. On the walls, elongated drip marks were identified at low height, as well as contact transfer stains on one of the walls and on the inner surface of the exit door. On the floor, drag marks running longitudinally along the axis of the corridor were observed near that door.

Figure 1.

Drip pattern in the corridor with protruding spikes characteristic of active movement of the source.



Note. Source: Technical-police visual inspection. Zafra (Badajoz), 9 July 2024. The distribution and morphology of the pattern make it possible to determine the direction of movement and its correlation with the injuries to the victim's left arm.

Figure 2

Drip pattern in the hallway with a directional orientation in the opposite direction to the building's exit.



Note. Source: Technical-police visual inspection. Zafra (Badajoz), 9 July 2024. The direction of the pattern is inconsistent with a direct trajectory towards the exit and is consistent with an initial movement in the opposite direction.

4.2 MASTER BEDROOM

Contact stains were documented on the outer surface of the entrance door. Inside, the door handle was found detached from its mechanism on the floor, with blood transfer on its surface that produced secondary splatters upon impact with the floor. The rest of the floor showed no further macroscopic evidence.

On the furniture, transfer stains were identified on the bed linen and on the cover of a book. Isolated droplets were found on a cushion, the ceiling and various objects on the bedside table. Following the application of chemiluminescent reagents, a large, diffuse stain was revealed on the floor beneath the bed; its straight-lined outline coincided with the position of the bed's crossbar and footboard, the latter of which was broken. Damage was also documented to the ceiling light fitting, which had partially come loose from its mounting; two drops found on it tested positive with the presumptive reagent.

On the front wall, at the level of the headboard, two low-velocity spatter patterns were identified, consistent with a 'cast-off' projection mechanism, resulting from the inertial ejection of blood previously accumulated on the blade of the weapon during contact with the victim's head region, with the victim's defensive interception of the weapon being the mechanism that triggered the blood ejection and determined both the morphology and extent of each pattern (Bevel & Gardner, 2008; James et al., 2005): the linear pattern is consistent with a downward and anteroposterior trajectory interrupted at the initial phase of the swing; the arched pattern, extending from the ceiling to the floor, with a full arm swing that was likewise interrupted during its course, which explains the projection of blood towards the ceiling and the objects on the bedside table.

To determine the three-dimensional region of origin of the arc-shaped pattern, the procedure described in the methodology section was followed: eight splatter marks projected onto the wall to establish the two-dimensional point of convergence, and two splatter marks selected for the three-dimensional trigonometric calculation. These had impact angles of 23.58° and 14.48° , with distances to the point of convergence of 20 cm and 28 cm respectively. Applying the relationship $Z = \text{distance} \times \tan \alpha$, estimates of 8.72 cm and 7.23 cm from the wall were obtained, with an average value of approximately 8 cm. This result did not constitute a precise localisation of the source, but rather a rough estimate of the spatial area consistent with the ejection of the analysed droplets; its value lies in its consistency with the orientation of the stains, the point of convergence and a projection dynamic occurring in the immediate vicinity of the wall, notwithstanding the margin of uncertainty inherent in the analysis of a *cast-off* pattern. The distance measured from the point of convergence to the surface of the pillow was approximately 34 cm; given that the pillow was approximately 16 cm thick—significantly reduced by the compression exerted by the weight of the head—this set of data was spatially consistent with the victim's head position on the right-hand side of the bed.

Figure 3

General view of the master bedroom during the visual inspection, showing the condition of the room following the events.



Note. Source: Technical-police visual inspection. Zafra (Badajoz), 9 July 2024. The image shows the absence of macroscopic bloodstains on the floor —consistent with subsequent selective cle — the broken footboard of the bed, the cushion placed on top of the pillow, and the general rearrangement of the furniture. Taken together, these elements proved decisive in inferring the possible tampering with the scene and reconstructing the sequence of events that took place in this room.

4.3 LIVING ROOM

In this room, isolated drops were documented on the floor converging towards an area adjacent to a sofa, on which transfer stains were identified near an area of higher droplet density. In the immediate vicinity, a streak of transferred blood was found, the morphology of which matched the stain identified on the room's light switch.

Figure 4
Partial view of the living room during the visual inspection.



Note. Source: Technical-police visual inspection. Zafra (Badajoz), 9 July 2024. The figure documents the bloodstains in the room, the chronology and morphology of which proved relevant to the analysis of the subsequent re-entry into the property.

5. DISCUSSION

The reconstruction of the sequence of events most consistent with the body of documented bloodstain evidence is based on the following inferences. The density and heterogeneity of the bloodstains place the initial scene in the master bedroom. Analysis of the arc-shaped pattern—eight bloodstains used for two-dimensional convergence on the wall, of which two were selected for the three-dimensional trigonometric calculation—determined a distance from the wall of approximately 8 cm, a rough estimate consistent with a projection originating in the vicinity of the headboard. Direct measurement from the point of convergence to the surface of the pillow, taken into account alongside the pillow's reduced thickness due to compression from the weight of the head, reinforces the spatial consistency between the pattern's point of origin and the victim's head position on the right-hand side of the bed. It should be emphasised that this location does not constitute a precise determination, but rather the most plausible hypothesis from the point of view of the convergence of trajectories and the calculations carried out, consistent with the body of corroborating evidence in that area of the room.

The linear pattern—with no defined point of convergence—is situated 10 cm above the cushion, which is interpreted as an element that raised the victim's head region. The two cast-off patterns, described in the section on bloodstain patterns, are consistent with the dynamics of the attack, in which the victim's defensive interception of the weapon determined both the morphology and the extent of each pattern; the full-arc pattern—from the ceiling to the floor—is, in this regard, the most telling indicator of the interaction between the assailant and the victim.

Integrating these patterns with the autopsy findings allows us to determine the dynamics of the fatal injury. Its trajectory—perpendicular and horizontal—is biomechanically incompatible with an attack carried out whilst both parties were standing, and is consistent with the assailant being in a higher position relative to the victim. The distribution of the marks on the wall at the head of the bed, on the ceiling, on the lampshade and the objects on the bedside table, and on the floor on the same side, is consistent with the marks being caused whilst the victim was lying on the bed and the assailant was positioned above her. The hypothesis most consistent with the body of evidence places the fatal chest injury at the moment when the victim, following the initial head injuries, was attempting to sit up to leave the room; this explains both the trajectory described and the possibility of subsequent movement documented by the patterns in the corridor.

The diffuse morphology of the stains revealed on the bedroom floor is consistent with mechanical disturbance caused by cleaning (Raffo, 2006). The blood pattern preserved under the bed, revealed using chemiluminescent reagents, is consistent with the floor having been cleaned whilst the bed was in a position displaced from that observed at the start of the inspection. The chemiluminescent reaction showed a straight boundary corresponding to the position of the bed frame during the cleaning operation: the mop handle, upon coming into contact with the crossbar as it reached that point, determined the limit to which the cleaning extended and recorded the position of the bed at that time. The fact that the bed was moved during the events is corroborated by the broken footboard; the fact that it was repositioned after the cleaning is supported by the discrepancy between its final position and that revealed by the chemiluminescent reaction.

The overall pattern of bloodstains in the bedroom is consistent with the source of the blood being situated above the victim, who would initially have been lying on her back occupying the right-hand half of the bed, demarcated by the book situated in the centre of the bed, the cover of which tested positive for the presumptive reagent. The evidence is also consistent with the victim sitting up and closing the room's door — as inferred from the transfer pattern on the handle and the passive dripping documented beneath the light switch — and with a pulling force being exerted on the door that caused the handle to detach from its mechanism. The eight incisions identified on the inner surface of the door leaf support the hypothesis of a harmful action directed towards the obstacle preventing exit from the room.

Once in the corridor, the documented patterns are consistent with a further injury to the left arm, which produced a drip pattern associated with the active movement of a bleeding source whilst the upper limb was swinging. The absence of this trace in the bedroom allows this injury to be placed chronologically after the door was closed. The direction of the drip—away from the exit— is consistent with an initial movement away from the entrance, and the drag marks near the front door, the contact transfers on the wall and the inner surface of the door, and the vertical sliding pattern, are consistent with a progressive collapse in the vicinity of the threshold. All evidence suggests that the victim managed to reach the public thoroughfare, where death occurred.

The blood patterns in the living room show a chronology consistent with a perimortem or early post-mortem phase, occurring after death on the public thoroughfare. The findings include a small drip at the entrance, a localised pool next to the sofa and a

transfer stain consistent with manual contact on the sofa itself, as well as drips and contact marks on a floor-level power strip. These indications are not consistent with the victim being the source of the blood: once the collapse resulting from the described blockage had occurred and death had taken place on the public highway, any deliberate motor activity—including the handling of a power strip—was ruled out. The sequence of findings is most plausibly explained by a third person re-entering the property to retrieve personal belongings, a circumstance which was admitted by the person under investigation.

The presence of skeletalised stains in the corridor (Laan et al., 2014) points to a re-entry into the property prior to the evidence having dried completely. It was during this re-entry that the selective cleaning work, inferred from the chemiluminescent patterns in the bedroom, would have taken place. The correct interpretation of these patterns also requires an adequate understanding of the physical principles governing the behaviour of blood as a fluid, an aspect whose explanation proved decisive for the jury's understanding during the plenary session.

5.1 SCIENTIFIC RELIABILITY OF BPA AND INTERNATIONAL VALIDATION STANDARDS

One of the issues most frequently raised in the procedural debate surrounding BPA is its reliability as a science, understood as its ability to generate reproducible and verifiable conclusions. The NAS report (2009) noted that, although BPA is based on sound physical principles, many inferences in forensic practice lacked the empirical support necessary to be considered scientifically sufficient. The criticism was particularly incisive regarding conclusions on the mechanism of production, a field in which variability among experts showed levels of discordance that compromised the reliability of individual expert reports.

Current debates in the specialist literature address issues such as error rates in pattern classification, inter-observer variability and contextual bias—that is, the analyst's tendency to interpret evidence in light of prior information about the case. These discussions do not invalidate the discipline, but they do require that its conclusions be presented with a degree of certainty justified by the evidence, clearly distinguishing between what the patterns allow us to assert and what can only be formulated as a hypothesis compatible with the available data.

Landmark studies such as that by Taylor et al. (2016) have analysed the reliability of pattern classification on rigid, non-absorbent surfaces, concluding that certain categories exhibit acceptable levels of inter-observer agreement when analysts apply standardised terminological criteria, whilst others—, particularly those linked to combined mechanisms or scenes with deliberate alterations—show higher levels of disagreement. Attinger et al. (2013) have contributed, from the perspective of fluid dynamics, to establishing the physical principles of BPA within a reproducible experimental framework. In response to these shortcomings, the OSAC Bloodstain Pattern Analysis Scientific Area Committee has made progress in defining standardised vocabulary, documentation procedures and interpretation criteria that reduce variability between analysts. It is currently considered that BPA achieves its maximum reliability when its conclusions are presented in terms of compatibility with the observed patterns,

rather than absolute certainty, and when they are integrated into the overall analysis of the crime scene without constituting the sole basis for reconstructive reasoning.

5.2 BPA IN THE SPANISH PROCEDURAL SYSTEM

The role of the BPA in Spanish procedural practice raises considerations that go beyond the technical accuracy of the expert report. The expert acted in the capacity of a civil servant attached to the Forensic Science Unit, which confers on his opinion a presumption of impartiality that cannot be said, to the same extent, of a party-appointed expert. This distinction, whilst procedurally relevant, does not eliminate the need for a conscious and documented methodological approach: objectivity is the result of an explicit procedure, not an automatic consequence of civil servant status.

The strength of the conclusions reached in the plenary session lay not in their rhetorical force, but in the impossibility of formulating an alternative hypothesis that was equally compatible with all the documented evidence. This characteristic — the BPA's ability to act as a means of falsifying the hypotheses under consideration — constitutes its most specific contribution to the judicial process. The procedural impact was further enhanced by a combination of circumstances that placed the BPA in a position of particular significance within the body of evidence: the absence of direct witnesses, the existence of conflicting hypotheses and the limited conclusiveness of other expert reports created a context in which the analysis of bloodstain patterns acted as the main framework for the factual reconstruction.

5.3 INHERENT LIMITATIONS OF THE ANALYSIS

The limitations of the analysis are twofold. The first concerns the physical conditions of the crime scene: the documented evidence is consistent with the scene having been deliberately tampered with prior to the arrival of the investigators, a circumstance which reduced both the quantity and quality of the available information. The methodology applied, including chemiluminescence, enabled the recovery of partial information, but not equivalent to that which an intact crime scene would have provided.

The second limitation is of a disciplinary nature: forensic analysis is an interpretative discipline whose results constitute reasoned inferences based on physical principles and observable measurements, not absolute determinations with a fully quantified margin of error in all cases. The robustness of the conclusions therefore depends on the internal consistency of the analysis and the rigour with which plausible alternative hypotheses have been ruled out, two aspects explicitly addressed in this study.

6. CONCLUSIONS

The analysis of the bloodstain patterns documented in the Zafra case made it possible to reconstruct the sequence of events most consistent with the physical evidence: the location of the initial scene in the master bedroom, the victim's position on the bed determined by trigonometric calculation of the *cast-off* patterns, the sequence of movements through the corridor, the signs of selective cleaning, and the subsequent re-entry into the property. Each of these inferences was tested against the alternative hypotheses put forward during the proceedings, with the exculpatory version proving incompatible with the physical distribution of the evidence as a whole.

The case illustrates the potential of the BPA when it acts as the structural framework for the assessment of evidence in the absence of direct evidence or more conclusive biological evidence. Its most specific contribution did not lie in directly establishing the perpetrator's identity, but in demonstrating the physical incompatibility of the alternative hypothesis, acting as an instrument of epistemological contrast between contradictory accounts. The presentation of the conclusions in terms of compatibility and consistency, rather than categorical certainty, did not weaken the probative value of the analysis: on the contrary, it reinforced its methodological credibility before the jury and demonstrated the rigour with which it was conducted.

The analysis also demonstrates that the BPA can produce results of high reconstructive value using a manual methodology supported by trigonometry, without the need for specialised computer tools, provided that the procedure is systematic, documented and transparent regarding its margins of uncertainty. This does not negate the desirability of equipping forensic units with resources commensurate with the state of the discipline at an international level, but it does demonstrate that a lack of equipment is no obstacle to a scientifically rigorous analysis.

From the perspective of forensic policy, the case highlights the need to advance the institutionalisation of BPA in Spain through formal training and certification standards. The dissemination of cases such as the one analysed here may help to raise awareness of the discipline's potential within the Spanish forensic and judicial spheres, stimulating academic and institutional interest in a specialisation which, to date, has remained too confined to individual initiative.

ETHICAL STATEMENT

The case analysed here was heard before the Provincial Court of Badajoz, resulting in a conviction which was appealed against and upheld in its entirety by the High Court of Justice of Extremadura. The case has passed the stage of ordinary appeal; should a cassation appeal be lodged with the Supreme Court, its scope would not extend to the assessment of the evidence as pre-established evidence nor to the facts found to be proven by the jury. The facts and their circumstances are in the public domain, having been the subject of extensive coverage in the print and broadcast media, with public dissemination of the images of the scene, which also form part of the court case. The photographs included in this paper do not contain images of identifiable individuals. The author acted in this case in his capacity as a civil servant performing his duties as an expert witness. The sole purpose of publishing this paper is the scientific dissemination of the methodology and findings, for the benefit of advancing the discipline within the Spanish forensic field.

CONFLICT OF INTEREST

The author declares that he has no conflict of interest, whether financial or otherwise, in relation to the content of this paper or the process of its publication.

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LEGISLATION

Code of Criminal Procedure. Royal Decree of 14 September 1882. Official State Gazette, 17 September 1882, no. 260. [With the amendments introduced up to the date of publication of this paper.]

Organic Law 5/1995 of 22 May on the Jury Court. Official State Gazette, 23 May 1995, No. 122, pp. 14962–14979.



Research Article

ONLINE SEXUAL VIOLENCE AGAINST WOMEN IN SPAIN: AN ANALYSIS OF THE PSYCHOSOCIAL IMPLICATIONS FROM A GENDER PERSPECTIVE

English translation with AI assistance (DeepL)

María Calvo Lorenzo
University of Granada
mariacalvo1@correo.ugr.es
ORCID: 0009-0001-1078-9557

Received 28/04/2026
Accepted 01/06/ 2026
Published 30/06/ 2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.9051>

Recommended citation: Calvo, M. (2026). Online sexual violence against women in Spain: An analysis of the psychosocial implications from a gender perspective. *Logos Guardia Civil Journal*, 4(2), pp. 59–84
<https://doi.org/10.64217/logosguardiacivil.v4i2.9051>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

ONLINE SEXUAL VIOLENCE AGAINST WOMEN IN SPAIN: AN ANALYSIS OF THE PSYCHOSOCIAL IMPLICATIONS FROM A GENDER PERSPECTIVE

Summary: 1. INTRODUCTION. 2. METHODOLOGY. 2.1. Study design. 2.2. Search strategy. 2.3. Inclusion and exclusion criteria. 2.4. Data extraction and synthesis. 2.5. Methodological quality and validity. 2.6. Replicability. 3. RESULTS AND DISCUSSION. 3.1. Dimensions and typology of cyberviolence. 3.2. Consequences and risk factors for victims. 3.3. Artificial intelligence in perpetration. 3.4. Cybersecurity as a prevention tool. 4. LIMITATIONS AND FUTURE DIRECTIONS. 5. CONCLUSIONS. 6. REFERENCES.

Abstract: In order to analyse sexual cyberviolence against women in Spain from a psychosocial and gender perspective, a narrative review of the literature was conducted, identifying 438 documents, of which 48 met the inclusion criteria. Sexual cyberviolence is a growing phenomenon that disproportionately affects women, highlighting how digital technologies amplify structural gender inequalities; key aspects include digital sexual harassment, sextortion, image-based sexual abuse or ‘revenge porn’, as well as emerging phenomena such as the whitewashing of the sex trade on content platforms. Documented mental health consequences include suicidal ideation and attempts, anxiety, depression, trauma, post-traumatic stress, sleep problems, low self-esteem and self-objectification. Artificial intelligence has emerged as a new tool for perpetrating such acts, facilitating the creation of deepfakes and non-consensual nude imagery. In the area of prevention, cybersecurity offers technological tools, although existing applications have significant limitations and reporting rates do not exceed 7.3 per cent. It is concluded that sexual cyberviolence is an amplified expression of gender inequalities, requiring comprehensive interventions that combine gender-sensitive education, platform regulation, professional training and the ethical design of technologies.

Resumen: Con el fin de analizar las ciberviolencias sexuales contra la población femenina en España desde una perspectiva psicosocial y de género, se realizó una revisión narrativa de la literatura identificando 438 documentos de los cuales 48 cumplieron los criterios de inclusión. Las ciberviolencias sexuales constituyen un fenómeno creciente que afecta desproporcionadamente a las mujeres, evidenciando cómo las tecnologías digitales amplifican las desigualdades estructurales de género; entre sus dimensiones destacan el acoso sexual digital, la sextorsión, el abuso sexual basado en imágenes o «porno de venganza», así como fenómenos emergentes como el blanqueamiento del negocio sexual en plataformas de contenido. Las consecuencias en salud mental documentadas incluyen ideación e intentos suicidas, ansiedad, depresión, trauma, estrés postraumático, problemas de sueño, baja autoestima y autoobjetificación. La inteligencia artificial ha emergido como una nueva herramienta de perpetración, facilitando la creación de deepfakes y aplicaciones de desnudo no consensuado. En el ámbito preventivo, la ciberseguridad ofrece herramientas tecnológicas, aunque las aplicaciones existentes presentan limitaciones significativas y las tasas de denuncia no superan el 7,3%. Se concluye que las ciberviolencias sexuales son una expresión amplificada de desigualdades de género, requiriendo intervenciones integrales que combinen educación con perspectiva de género, regulación de plataformas, formación profesional y diseño ético de tecnologías.

Keywords: cybersecurity, sextortion, digital sexual harassment, digital platforms, gender equality

Palabras clave: ciberseguridad, sextorsión, acoso sexual digital, plataformas digitales, igualdad de género

ABBREVIATIONS

AI: Artificial Intelligence

IBSA: Image-based sexual abuse

NCI: Non-consensual intimate images

NCIID: Non-consensual dissemination of intimate images

OCSEA: Online child sexual exploitation and abuse

TFSV: Technology-facilitated sexual violence

ECHR: European Court of Human Rights

AI Act: European Artificial Intelligence Regulation

DSA: Digital Services Act

1. INTRODUCTION

The digitalisation of human relationships has profoundly transformed spaces for social interaction, creating new contexts in which traditional forms of violence are reproduced, amplified and take on previously unknown forms. Among these, sexual cyberviolence is a growing phenomenon that disproportionately affects women, highlighting how digital technologies are not neutral spaces, but rather a territory where structural gender inequalities are deepened and take on new forms (Mármol et al., 2025). This article analyses sexual cyberviolence against women in Spain from a psychosocial and gender perspective, considering both its scale and its implications for the mental health and well-being of victims.

Technology-facilitated sexual violence (TFSV) is defined as any unwanted sexual behaviour involving the use of digital technologies, encompassing both virtual and in-person sexual harm facilitated by digital means (Champion et al., 2022; Henry and Powell, 2018). This umbrella term encompasses online sexual harassment, harassment based on gender or sexuality, cyberbullying, image-based sexual exploitation, and the use of communication services to coerce a victim into performing unwanted sexual acts (Henry and Powell, 2018). In the Spanish context, the classification used by the Ministry of the Interior includes offences such as sexual abuse, sexual harassment, corruption of minors, grooming, exhibitionism, the dissemination of images of child sexual abuse and sexual provocation, all of which are perpetrated via digital media (Mármol et al., 2025).

Research suggests that TFSV should be understood within conceptual frameworks that draw on gender and actor-network theories to comprehend the causes and consequences of women's experiences of abuse and violence facilitated by digital technologies (Henry et al., 2020). This perspective is essential, as such forms of violence are not isolated incidents, but rather expressions of broader social and structural inequalities that determine who is at risk and how the violence manifests itself (Mármol et al., 2025). Recent studies highlight the role of moral disengagement and sexist ideology—both hostile and benevolent—in perpetuating these behaviours, showing that men, particularly those with more deeply ingrained sexist attitudes and those in positions of power, are more likely to justify sexual cyberviolence (Martínez-Bacaicoa, 2024; Durán and Rodríguez, 2019). Furthermore, it has been documented that men are the main perpetrators, although women and non-binary people may also perpetrate this type of violence, often motivated by self-defence, the management of unpleasant emotions or a lack of reflection (Martínez-Bacaicoa et al., 2023).

The scientific literature reveals significant terminological and conceptual challenges in this field (Henry et al., 2020). The conceptual boundaries of TFSV are broad and dynamic, continually adapting to new emerging technologies and their uses, such as *deepfakes*, generative artificial intelligence systems and encrypted communications, which further complicate detection and the attribution of responsibility (Mármol et al., 2025).

In Spain, the study of online sexual violence has gained increasing prominence, driven by the availability of new, validated measurement tools, such as the Online Sexual Victimization Scale and the Digital Dating Violence Questionnaire (Martínez-Bacaicoa, 2024), as well as by the development of research agendas that address the relationship

between digital technologies and sexual violence from a comprehensive perspective (García Mingo et al., 2025).

Despite these advances, significant challenges remain: the statistical invisibility of certain forms of violence, the difficulty in capturing the continuity between the *offline* and *online* worlds, the scant attention paid to the experiences of adult women beyond adolescence, and the lack of longitudinal research enabling an understanding of how victimisation evolves according to sex and age.

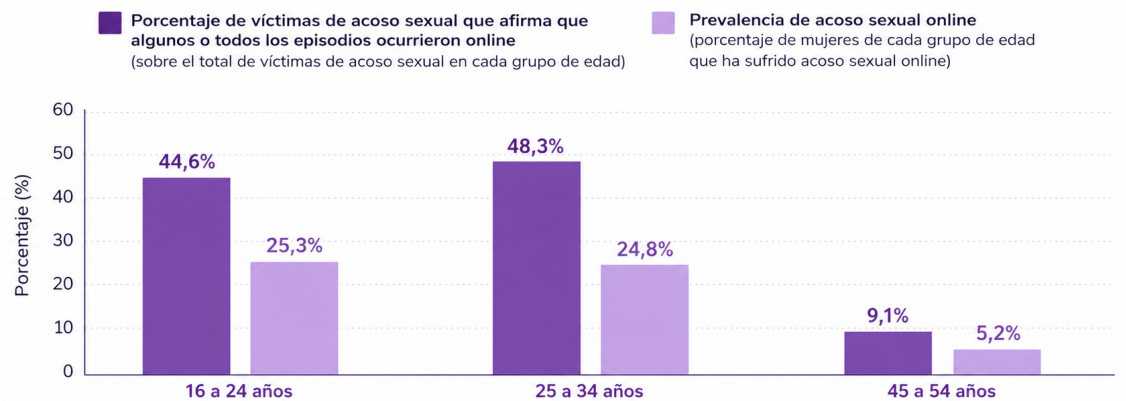
The scale of the phenomenon in Spain is alarming. According to data from the 2019 Macro-survey on Violence against Women, approximately 9.15 per cent of Spanish women have experienced cyber sexual harassment at some point in their lives, with significant impacts on mental health, including high rates of suicidal ideation, depression and anxiety (Benítez-Hidalgo et al., 2024).

The most recent data from the 2024 Macro-survey on Violence against Women provide a more detailed picture of this reality. When considering the location of the incident, 20.7% of women who have experienced sexual harassment at some point state that it occurred *online* (for example, on websites, social media platforms such as Instagram or TikTok, messaging apps such as WhatsApp, dating apps such as Tinder, video conferences, etc.). This means that 7.5% of all women aged 16 or over living in Spain – around 1.6 million – have experienced sexual harassment specifically via digital media (Ministry of Equality, 2025).

However, when asked directly whether any incident of sexual harassment took place via digital technologies – regardless of whether it had also occurred in other settings – the figure rises: 24.8 per cent of victims of sexual harassment, almost one in four, report that all or some of the incidents took place *online*. This represents 9% of Spanish women aged 16 and over, that is, approximately 1.9 million women (Ministry of Equality, 2025).

The problem is particularly serious amongst young women (see *Figure 1*). In the 16–24 age group, 44.6 per cent of victims of sexual harassment state that some or all of the incidents occurred *online*; in the 25–34 age group, the figure is 48.3 per cent. In terms of prevalence relative to the total population in each age group, 25.3 per cent of women aged 16 to 24 and 24.8 per cent of those aged 25 to 34 have experienced *online* sexual harassment. From the age of 45 onwards, these figures drop sharply, to just 5.2% among women aged 45 to 54 (Ministry of Equality, 2025).

Figure 1
Online sexual harassment of women by age group



Note: Prevalence of online sexual harassment among women by age, highlighting that it is much more common amongst younger women (aged 16–34). Taken from the Ministry of Equality.

(2025). 2024 Macro-survey on Violence against Women.
Government Delegation for Combating Gender-Based Violence.

Another important finding is prior *online* interaction with the perpetrator. Among women who have experienced sexual harassment and state that some (but not all) incidents occurred *online*, 59.4 per cent say that these incidents took place after they had previously met or interacted with the perpetrator via the internet. Even amongst those who said that no incident had taken place *online*, 1.7% admit that the harassment occurred following a previous digital interaction (Ministry of Equality, 2025).

Although these figures are significant, they may underestimate the true scale of the problem, as more recent research indicates that 82.6% of women have experienced at least one form of *online* gender-based violence in the last twelve months, with digital sexual harassment being the most common form (66.7%), followed by violence based on physical appearance (60.7%) (Martínez-Bacaicoa et al., 2024). Along the same lines, a cross-sectional study involving 1,177 Spanish women aged between 18 and 59 found that 68.2% had suffered gender-based violence via social media, whilst 62.7% reported having experienced *online* sexual violence (López-Barranco et al., 2025).

The most recent international evidence puts the global prevalence of this violence at 30.6 per cent of adult women (Benítez-Hidalgo et al., 2025), although these figures vary significantly depending on the definitions and measurement tools used. The European Union Agency for Fundamental Rights' survey on violence against women reveals that sexual harassment remains a widespread experience: between 83 and 102 million women (45%–55%) across the 28 Member States have experienced at least one form of sexual harassment since the age of 15 (Latcheva, 2017). This type of violence disproportionately affects young women and is most commonly perceived and experienced by women with a university degree and those in the highest occupational groups (Latcheva, 2017).

The temporal dimension of this phenomenon is equally significant. During the COVID-19 lockdown, harassment via electronic channels increased significantly (32.6% during the lockdown compared with 16.5% before and 17.8% afterwards) (Casanovas et al., 2022), highlighting how the increased use of digital environments can exacerbate the

risks of victimisation. Furthermore, recent research indicates that daily use of social media and the consumption of pornography are associated with higher rates of victimisation (López-Barranco et al., 2025).

This article aims to address these limitations by analysing the psychosocial implications of sexual cyberviolence against women in Spain from a gender perspective. To this end, existing definitions and typologies will be critically examined; prevalence rates and risk factors will be analysed; and the consequences for victims' mental health and psychosocial well-being will be explored, alongside an analysis of the role played by artificial intelligence and cybersecurity in the perpetration of such violence. Adopting a gender-based approach is essential for uncovering the structural mechanisms that underpin this violence, as well as for guiding the design of prevention, detection and intervention strategies that are effective, contextually relevant and sensitive to the gender inequalities that permeate the digital space.

2. METHODOLOGY

2.1. STUDY DESIGN

The methodology employed in this study is based on a narrative synthesis of recent scientific literature, adopting a gender perspective that guides both the selection and analysis of the evidence. This approach enables us to describe and synthesise the multifactorial impact of sexual cyberviolence, as it allows us to integrate findings from studies with diverse designs (quantitative, qualitative and mixed) and contexts, facilitating a holistic understanding of the phenomenon from a psychosocial perspective.

2.2. SEARCH STRATEGY

To gather the evidence, a systematic search was conducted in academic databases and specialised repositories, including PubMed, Scopus, ProQuest, Web of Science and PsycInfo. The search was carried out between March 2025 and February 2026, covering publications mainly from 2015 to 2026, with the aim of capturing the most recent developments in the phenomenon, although earlier foundational works were considered where they were essential for conceptual definition.

The search strategy combined terms in Spanish and English using Boolean operators. The search terms used were: ciberviolencia sexual, violencia de género en línea, technology-facilitated sexual violence, online sexual harassment, image-based sexual abuse, sextortion, grooming, ciberacoso sexual, digital sexual violence, together with terms referring to the population (mujeres, women, femenino, adolescentes) and the geographical context (España, Spain). The operators AND and OR were used to combine the concepts, and filters were applied for language (Spanish and English) and document type.

Search results: 438 articles were identified. After removing duplicates, 360 titles and abstracts were screened, with 204 excluded for failing to meet the inclusion criteria. 156 full-text articles were assessed, of which 48 met all the inclusion criteria.

2.3. INCLUSION AND EXCLUSION CRITERIA

The following criteria were established for selecting sources:

Inclusion criteria:

- a. Empirical articles (quantitative, qualitative or mixed methods), systematic reviews, meta-analyses and institutional reports published by official bodies.
- b. Publications in indexed scientific journals or from recognised institutional sources.
- c. Studies whose research focus addressed some form of sexual cyberviolence or technology-facilitated sexual violence (TFSV).
- d. Samples including a female population (girls, adolescents, adults or both).
- e. Studies carried out in Spain or, failing that, international research providing relevant evidence on prevalence, risk factors or psychosocial consequences.
- f. Publications in Spanish or English.
- g. Publication period between 2015 and 2026 (except for earlier foundational references essential for conceptual definition).

Exclusion criteria:

- a. Studies focusing exclusively on male populations without a breakdown by sex.
- b. Research addressing only *offline* violence without reference to digital media.
- c. Opinion pieces, editorials, letters to the editor or non-peer-reviewed publications (except institutional reports).
- d. Documents whose full text is not available in Spanish or English.
- e. Studies duplicated across different databases.

2.4. DATA EXTRACTION AND SYNTHESIS

From each selected source, information was extracted on: authorship and year, methodological design, sample characteristics, operational definitions of sexual cyberviolence, main findings and limitations. The synthesis was carried out using a narrative approach, grouping the findings into thematic categories: (a) prevalence and magnitude of the phenomenon; (b) risk factors; (c) consequences for mental health and psychosocial well-being; (d) definitions and conceptual frameworks; (e) gender perspective and structural inequalities; (f) perpetration and prevention strategies.

2.5. METHODOLOGICAL QUALITY AND VALIDITY

The validity of the conclusions is underpinned by the selection of studies of high methodological quality, assessed using explicit criteria: (a) origin from peer-reviewed publications or recognised official bodies; (b) alignment of the objectives with the research question; (c) appropriateness of the methodological design; (d) clarity in the definition of variables; (e) representativeness of the samples in quantitative studies; (f) analytical rigour in qualitative studies; and (g) consistency of the results with the international scientific consensus.

2.6. REPLICABILITY

This approach is replicable by applying the same search and selection criteria as described, enabling other researchers to verify or extend the analysis by following the detailed procedure.

3. RESULTS AND DISCUSSION

3.1. DIMENSIONS OF CYBERVIOLENCE AND TYPOLOGY

Sexual cyberviolence constitutes a heterogeneous network of behaviours which, underpinned by digital technologies, violate women's sexual integrity and freedom from a gender-based perspective (Henry and Powell, 2018; Champion et al., 2022). Analysing it requires moving beyond a simple listing of forms of victimisation to understand how structural inequalities are transferred and amplified in the digital space. To avoid terminological overlap, it is necessary to distinguish between three concepts that are often used synonymously: technology-facilitated sexual violence (TFSV) is the umbrella term encompassing all unwanted sexual behaviour mediated by digital technologies (Henry and Powell, 2018); digital sexual violence refers specifically to behaviours that occur entirely in digital environments (Martínez-Bacaicoa, 2024); and online gender-based violence emphasises the structural component of inequality between men and women as an underlying cause (Mármol et al., 2025).

An international systematic review and meta-analysis identified three main dimensions of TFSV against women (Benítez-Hidalgo et al., 2025). The first and most common is digital sexual harassment, with an estimated global prevalence of 28.54 per cent. This includes inappropriate sexual comments, unwanted advances, unsolicited sexual attention and sexist remarks on online platforms. In Spain, 66.7 per cent of women have experienced this in the last twelve months (Martínez-Bacaicoa et al., 2024), and the unsolicited sending of explicit images ('dick pics') affects 48.1 per cent of women aged 18 to 30 (Durán and Rodríguez-Domínguez, 2023). The second dimension is sextortion (16.93% globally), defined as the threat to share sexual images in order to coerce the victim into paying, sending further material or performing unwanted acts. It occurs in various contexts: intimate partner violence, cyberbullying, online dating, human trafficking and organised crime (Ray and Henry, 2025). The third is image-based sexual abuse (IBSA) or 'revenge porn' (6.48% globally), which includes the non-consensual taking, distribution or threat of distribution of intimate images. Perpetrators are usually current or former partners, and in 29% of incidents, victims report a devastating impact on their lives (Colburn et al., 2025).

A distinguishing feature of these forms of violence is the digital footprint: the permanence, reproducibility and potential for the material to go viral in digital environments. Unlike offline violence, where the harm may be confined to a specific time and place, digital violence creates a continuity of victimisation over time. Once an intimate image is shared without consent, the loss of control over its dissemination is practically irreversible, creating a state of permanent hypervigilance (Lorca, 2024). Furthermore, digital technologies act as facilitators for the recruitment of victims into trafficking networks for the purposes of sexual exploitation, often through promises of legitimate employment (Mayuri-Bocanegra and Aliaga-Pacora, 2023).

An emerging phenomenon that has sparked debate is the ‘whitewashing’ of the sex trade through platforms such as OnlyFans or Fansly. Various organisations have warned against what they term ‘digital pimping’, which presents the creation of intimate content as a form of empowerment when, in reality, it reproduces dynamics of objectification and structural inequality (Fuentes and Berger, 2025; Medina-Bravo, 2021). From a critical perspective, this article highlights that the normalisation of offering intimate content as a source of income amongst young people reveals a worrying lack of awareness of the underlying gender-based violence and inequality, whilst acknowledging the complexity of the phenomenon and the diversity of experiences.

From a criminological perspective, applying the theory of routine online activities helps to understand victimisation: it involves a suitable target (young women with an active digital presence), a perpetrator’s motivation (facilitated by digital disinhibition and anonymity) and the absence of a competent guardian (insufficient platform moderation, low reporting rates). Digital disinhibition (Suler) explains that perpetrators engage in behaviour they would not display offline due to anonymity and asynchrony. Furthermore, perpetrators of deepfakes use neutralisation techniques (denial of harm, denial of the victim, condemnation of the accusers) to minimise their responsibility (Flynn et al., 2025). These dynamics are part of a culture of digital rape that normalises non-consensual sexualisation, and of algorithmic governance where platforms’ recommendation systems and ‘dark patterns’ favour the viral spread of abusive content at the expense of users’ privacy (Fagan, 2024).

At the legal level, European legislation has significant shortcomings. The AI Act does not explicitly regulate sexualised deepfakes as an unacceptable risk category, and the Digital Services Act faces challenges regarding detection and scale. The case law of the European Court of Human Rights (ECHR) (Buturugă v. Romania, 2020, and Volodina v. Russia, 2019 and 2021) has established that states have positive obligations to protect women from digital violence, laying the groundwork for future legal reforms.

Taken together, these findings have significant implications for the design of preventive health policies. It is suggested that mental health services routinely ask whether online interactions are causing harm (Iroegbu et al., 2024). During the COVID-19 pandemic, sexual violence decreased in public spaces but increased in digital spaces, and the silence surrounding violent situations deepened (Castellanos-Torres et al., 2023), underscoring the need to develop action protocols and improve the accessibility of resources in crisis contexts.

3.2. CONSEQUENCES AND RISK FACTORS FOR VICTIMS

The consequences of sexual cyberviolence on mental health are serious and well documented. In Spain, women who were victims of this form of violence reported significantly higher rates of suicidal ideation (20% compared with 9.79% among non-victims) and suicide attempts (7.20% compared with 1.74%), according to Benítez-Hidalgo et al. (2024). Furthermore, digital sexual harassment is an independent predictor of anxiety, depression, trauma and body image dissatisfaction (Iroegbu et al., 2024).

This pattern is not unique to Spain. International research confirms that victims of technology-facilitated sexual violence experience anxiety, stress, depression, a loss of control, mistrust, multiple victimisation, academic or occupational dysfunction,

problematic alcohol use, shame and changes in their online behaviour (Champion et al., 2022). In fact, those who suffer image abuse online have higher rates of depression, anxiety and occupational or academic dysfunction than victims of other types of technology-facilitated sexual violence (Champion et al., 2022).

Delving deeper into the mechanisms underlying these effects, a recent study has shown that women who are more likely to accept myths about online sexual violence¹ and who have experienced greater victimisation report higher levels of anxiety, depression and body shame, as well as lower self-esteem and body appreciation. This effect is mediated by self-objectification, suggesting that such myths exacerbate the emotional impacts on those who have experienced this type of violence more frequently (Vizcaíno-Cuenca et al., 2025). Furthermore, victims suffer from post-traumatic stress symptoms and sleep problems, which mediate the relationship between cyber-sexual victimisation and psychological distress (Morgan et al., 2025).

Beyond the consequences, it is necessary to understand the scale of the problem and the profiles of those most at risk. According to the 2019 Macro Survey, risk factors associated with cyber sexual violence in Spain include being under 25 years of age, having a higher education qualification, not being in a relationship, having no religious beliefs, and having a certified disability (Benítez-Hidalgo et al., 2024). Women who have experienced other forms of gender-based violence are also at greater risk of suffering sexual cyberviolence (Benítez-Hidalgo et al., 2024). This differential vulnerability is particularly pronounced during adolescence: women under the age of 18 have victimisation rates for grooming of 2.55 per 100,000 inhabitants, compared with 0.95 for men of the same age; whilst in young adulthood (18–25 years), women experience higher rates of sexual harassment and sexual abuse. Projections for 2035 indicate that these gender gaps will not only persist but will widen, particularly among girls under 18 and in the 26–40 age group (Mármol et al., 2025).

From a criminological perspective, the theory of routine online activities helps to explain why victimisation occurs: it involves a suitable target (young women with an active digital presence), the perpetrator's motivation (facilitated by digital disinhibition and anonymity) and the absence of a capable guardian (insufficient platform moderation and low reporting rates). Digital disinhibition explains why perpetrators engage in behaviour they would not display in the offline world, owing to anonymity, invisibility and asynchrony. Furthermore, perpetrators of deepfakes use neutralisation techniques, such as denial of harm ('it's just a photo'), denial of the victim ('she asked for it') or condemnation of the critics ('everyone does it'), to minimise their responsibility (Flynn et al., 2025).

The importance of social and temporal context became particularly evident during the pandemic. A 2022 study involving 2,515 young Spaniards aged between 18 and 35 found that women were almost twice as likely as men to experience sexual harassment (49 per cent compared with 22.2 per cent) (Casanovas et al., 2022). During lockdown, harassment via electronic channels increased (32.6%, compared with 16.5% and 17.8% before and after the period), whilst it decreased in public spaces (22.9%, compared with

¹ These include the minimisation or denial of violence, victim-blaming, blaming digital platforms, and exonerating the perpetrator (Vizcaíno-Cuenca et al., 2025)

63.4% and 54.4% before and after). These figures show that, during lockdown, sexual harassment shifted from public spaces to social media (Casanovas et al., 2022).

Finally, in the face of this suffering, survivors employ various coping strategies and seek help. The most common are confiding in trusted individuals, taking legal action and reporting the content. At the other end of the spectrum, avoidance strategies include relocating, isolating oneself or trying to act as if nothing had happened. However, victims face significant barriers to seeking help: stigma, a lack of awareness of available resources and previous negative experiences with the authorities make it difficult for many women to access the support they need (Karasavva, 2025).

3.3. ARTIFICIAL INTELLIGENCE IN PERPETRATION

Artificial intelligence (AI) has emerged as a tool that significantly enhances the capabilities of perpetrators of sexual cyberviolence, representing a profound escalation in image-based sexual abuse (Williams, 2025). Since 2017, the proliferation of open-source technologies has made the creation and dissemination of *deepfakes* easier than ever before. This has been accompanied by a parallel rise in cases of online sexual abuse, particularly against women (Flynn et al., 2025). The vast majority of *deepfakes* circulating online are pornographic in nature, and the people featured in them have rarely given their consent. Anyone with an online presence can become a victim (Karasavva and Noorbhai, 2021), with women being the most vulnerable group. A 2025 study analysing 29 apps dedicated to this practice concluded that these platforms not only facilitate but actively encourage the creation of non-consensual intimate images (NCII). In doing so, they normalise the objectification of women and contribute to a culture where their privacy and autonomy are systematically undermined (Williams, 2025).

Even more worrying is the behaviour of the perpetrators themselves. A qualitative study from 2025, conducted with ten perpetrators and fifteen victims of sexualised *deepfake* abuse, revealed some very serious patterns: the ease of use of these tools, the normalisation of sexualisation without consent, and the constant downplaying of the harm caused to victims. All of this, according to the authors, can negatively impact any prevention and response efforts (Flynn et al., 2025). Perpetrators justify and downplay their actions, and whilst there are similarities with other forms of technology-facilitated sexual violence, the key difference lies in the accessibility and ease with which a *deepfake* can be created (Flynn et al., 2025).

Another aspect of this problem is sextortion, which occurs in a wide variety of contexts: intimate partner violence, cyberbullying, dating apps, sex trafficking and organised crime (Ray and Henry, 2025). Whilst traditional sextortion used to rely on the victim voluntarily sharing their own intimate images, AI has removed that barrier (Lazard et al., 2025). Generative AI tools can create hyper-realistic fake nude images from any photo on social media, such as a profile picture. This enables perpetrators to turn anyone with an online presence – particularly women, girls and adolescents – into a potential victim, blackmailing them with fake images that appear real (Lazard et al., 2025). AI acts as a catalyst: it facilitates the creation of fake images, the automation of blackmail and the personalisation of threats on a large scale. Reporting and seeking help remain very low due to shame, fear and negative perceptions of the police and digital platforms (Lazard et al., 2025; Ray and Henry, 2025).

In this context, online child sexual exploitation and abuse (OCSEA) is regarded as an urgent and escalating problem, facilitated by the so-called ‘triple-A engine’: accessibility, affordability and anonymity (Fry et al., 2025). Artificial intelligence amplifies each of these three factors: it makes the production of abusive material more accessible, further reduces the costs of production and distribution, and reinforces the anonymity of perpetrators. According to the CyberTipline of the US National Centre for Missing and Exploited Children, over 36.2 million reports of images and videos suspected of containing OCSEA were received in 2023, representing a 13 per cent increase on 2022 and a 23 per cent increase on 2021 (Fry et al., 2025). The rapid development of social media and other virtual environments is enabling new technological methods and types of abuse to emerge, making it extremely difficult to estimate the full extent of these crimes (Fry et al., 2025).

The difficulty in gauging the scale of these offences does not prevent an active conversation from taking place in parallel regarding AI-generated pornography; a quantitative content analysis of 390 Reddit posts on this topic revealed that the experiences discussed range from outrage and concern about its actual and potential harms to curiosity, enjoyment and even economic benefits (Döring et al., 2025). The production (59.5 per cent) and content (60.8 per cent) of AI pornography were the most discussed topics, whilst ethical and legal implications featured in only around a third of the posts (35.1 per cent). This highlights the need for a nuanced response from legislators, technology developers, educators and mental health professionals (Döring et al., 2025). The use of images of people in pornographic contexts without their consent is an increasingly widespread offence, and illegal activities carried out using AI-generated images are a variant of this phenomenon that highlights how ill-suited legal systems are to a changing reality (Mania, 2024).

Online violence against women is a growing global problem, and the use of *deepfakes* in the context of violence against women has attracted considerable attention (Lazard et al., 2025). As the social sciences begin to examine the implications of the creation and dissemination of *deepfakes* in the context of sexual violence, it is also necessary to investigate how these *deepfakes* are used to silence women in digital public spaces; it is essential to empirically recognise the systemic gender discrimination inherent in both *deepfake* technology and its uses (Lazard et al., 2025). Research must go beyond detection techniques and perceived credibility and move towards an analysis of the intersectional power dynamics at play in this form of violence.

3.4. CYBERSECURITY AS A PREVENTION TOOL

Cybersecurity can act as a preventative tool through technological, educational and platform design strategies, although current evidence suggests that technological responses are necessary but not sufficient on their own, requiring them to be complemented by specialised human resources and survivor-centred approaches (Harkin and Merkel, 2023).

A systematic review from 2023 identified 136 apps for the prevention of domestic violence, classified into five categories (Sumra et al., 2023):

Table 1
Categories of apps for the prevention of domestic violence

Category	%	Description and context of use
Emergency assistance	44.9%	Generation of emergency alerts. This is not limited to situations requiring avoidance; it also intervenes in cases of ongoing violence, imminent threats or any high-risk situation requiring immediate intervention (e.g. active assault, harassment, danger to physical safety).
Avoidance	21.3%	Geofences, accelerometer-based alerts, shake-based alerts. Primarily aimed at preventing encounters with the aggressor or detecting sudden movements that may indicate an attack whilst on the move or being stalked.
Informative	21.3%	These provide information on support services, rights, refuges, emergency helplines, etc.
Legal information	7.4%	Basic legal advice, steps to take when reporting an incident, necessary documentation.
Self-assessment	5.1%	Basic legal advice, steps to take when reporting a case, necessary documentation.

Note. Adapted from Sumra, M., Asghar, S., Khan, K. S., Fernández-Luna, J. M., Huete, J. F., and Bueno-Cavanillas, A. (2023).

Smartphone Apps for Domestic Violence Prevention: A Systematic Review.
International Journal of Environmental Research and Public Health, 20(7), 5246.

Despite their usefulness, cybersecurity apps have significant limitations. More than half of the emergency alerts require manual activation by the potential victim, with no automation whatsoever, and none of the apps reviewed incorporated artificial intelligence to assist people at risk. Future apps should prioritise automation and make better use of AI through multimedia features, voice recognition and tone detection, in order to contribute to real-time situation analysis (Sumra et al., 2023).

Furthermore, integrating online safety into established, evidence-based programmes – those that currently address related harms such as general bullying, abuse in intimate relationships or the prevention of sexual abuse – offers significant advantages (Finkelhor et al., 2021). These advantages stem from four factors: the considerable overlap between online and offline harms; the higher prevalence of harms offline; the same underlying risk factors; and the more robust empirical basis of longer-standing programmes, originally developed for offline settings (Finkelhor et al., 2021). Furthermore, prevention interventions should focus on modifying the opportunities, facilities and infrastructure that enable harm to be perpetrated, as well as on addressing problematic attitudes and social norms (Henry and Beard, 2024). This implies that technology platforms must take active responsibility for the design and regulation of their services.

In this context, so-called ‘dark patterns’ – techniques that manipulate users into making decisions contrary to their own interests – are particularly relevant. They are categorised under the acronym FORCES: Frame, Obstruct, Ruse, Compel, Entangle and Seduce. These techniques exploit psychological principles such as negativity bias, the curiosity gap and cognitive fluency to encourage social content to go viral (Fagan, 2024). Furthermore, digital platforms incorporate elements that may facilitate or exacerbate sexual cyberviolence (Fagan, 2024; Munzer et al., 2026

Furthermore, digital platforms frequently incorporate features that can facilitate or exacerbate sexual cyberviolence (Fagan, 2024; Munzer et al., 2026):

Table 2
Elements that may facilitate or exacerbate sexual cyberviolence

Frequent in-game rewards	Notification and ‘like’ systems that generate compulsive behaviour and increase the time spent exposed to potentially abusive content
Embedded distractions	Excessive adverts or interactive elements that hinder safe browsing and privacy settings
Viralisation algorithms	Systems that prioritise sensationalist or provocative content, potentially amplifying the spread of harmful content
Default privacy settings	Settings that prioritise public visibility over user privacy

Note. Adapted from Fagan, P. (2024). Clicks and tricks: The dark art of online persuasion. *Current Opinion in Psychology*, 58, 101844 and Munzer, T., Parga-Belinkie, J., Milkovich, L. M., Tomopoulos, S., Ajumobi, T., Cross, C., Gerwin, R., Madigan, S., Psych, R., and Council on Communications and Media. (2026). *Digital Ecosystems, Children, and Adolescents: Policy Statement*. **Pediatrics**, 157(2), e2025075320.

With the advancement of technologies such as predictive algorithms, generative artificial intelligence and virtual reality, these techniques will become increasingly powerful (Fagan, 2024). It is therefore essential that platforms commit to an ethical design that prioritises user safety, particularly when it comes to vulnerable groups such as women or sexual minorities (Ray and Henry, 2025).

However, the European and Spanish regulatory frameworks have significant shortcomings when it comes to tackling new forms of sexual cyberviolence. The European Artificial Intelligence Regulation (AI Act) classifies AI systems according to their level of risk, but sexualised deepfakes are not explicitly regulated within its categories of unacceptable risk. The Digital Services Act (DSA) imposes content moderation obligations on platforms, but its effective application to non-consensual deepfake pornography faces challenges relating to detection and scale. In Spain, Organic Law 10/2022 on the comprehensive guarantee of sexual freedom (‘the “only yes means yes” law’) incorporates some forms of digital violence, but the regulation of non-consensual deepfakes remains insufficient (Mania, 2024).

The case law of the European Court of Human Rights has established positive obligations on states regarding digital violence. In *Buturugă v. Romania* (2020), the

ECHR ruled against Romania for failing to protect a woman who was being harassed online, holding that Article 8 (right to private life) and Article 3 (prohibition of inhuman or degrading treatment) impose a duty on States to take reasonable measures to prevent digital violence. In *Volodina v. Russia* (2019 and 2021), the Court emphasised that state inaction in the face of repeated cyberbullying constitutes a violation of human rights. These judgments are particularly relevant to cases of sextortion and the non-consensual dissemination of intimate images. Furthermore, the CEDAW Committee has issued specific recommendations on digital gender-based violence (General Recommendation No. 35), urging States to criminalise forms of violence against women facilitated by technology. The European Institute for Gender Equality (EIGE) and Europol have published recent reports warning of the rise in sexualised deepfakes and the need for legislative harmonisation, whilst UN Women has developed guidelines for the prevention of online violence against women.

Despite this framework, victims rarely report such incidents. According to Colburn et al. (2023), only 7.3% of incidents of online violence are reported on websites, and of that percentage, the majority are left dissatisfied: less than half (42.2%) feel that the site took useful action, and only 29.8% rate the police response as useful, in cases where a report was actually made. The risk that technology may end up facilitating abuse is real; therefore, as Shirzad et al. (2025) point out, it is essential to ensure that its use in contexts of sexual violence is safe and ethical.

4. LIMITATIONS AND FUTURE DIRECTIONS

Despite the rigour of the search and analysis, this study has a number of limitations that must be borne in mind when interpreting its conclusions.

Firstly, this is a narrative review rather than a systematic review with a meta-analysis. Although the narrative approach allows findings from highly diverse study designs to be integrated and offers a broad view of the phenomenon, it lacks the level of standardisation and reproducibility that a meta-analysis would guarantee.

Secondly, most of the studies included in the review are cross-sectional in nature, which prevents the establishment of robust causal relationships between victimisation and mental health outcomes. It cannot be determined with certainty whether anxiety and depression are consequences of cyberviolence or whether, on the contrary, certain pre-existing vulnerability profiles increase the risk of experiencing it. Nor are there any Spanish longitudinal studies available that would allow for an analysis of the temporal evolution of victimisation.

Thirdly, unequal attention has been paid to the different forms of sexual cyberviolence. The bulk of the evidence focuses on digital sexual harassment (comments, innuendo, sending unsolicited images), whilst phenomena such as sextortion, image-based abuse or grooming appear less frequently in national studies. This may be due both to the lower visibility of these forms of violence and to the absence of specific instruments validated in the Spanish population for all types.

Fourthly, the study has not been able to systematically address the experiences of women with intersectional identities (migrant women, women with disabilities, Roma women, LGBTIQ+ women). Although it is mentioned at times that disability or age are

risk factors, there is insufficient disaggregated evidence to analyse how different axes of inequality interact in victimisation and its consequences.

Fifthly, the study faces the limitations inherent in secondary sources: prevalence data depend on what victims are willing to report, and it is known that reporting and disclosure rates are very low (barely 7.3% on online platforms (Colburn et al., 2023), and 9.2% for non-partner sexual violence (Pastor-Moreno et al., 2022)). This implies that the figures provided likely underestimate the true scale of the problem, particularly in the case of forms of violence that are more stigmatised or less socially recognised as such.

Finally, with regard to the analysis of artificial intelligence and cybersecurity, the review has drawn on a rapidly evolving body of literature. Given that the search cut-off date was February 2026, it is possible that some studies or reports published after that date may not have been included, particularly those assessing the effectiveness of the most recent prevention measures.

In light of these limitations, the following avenues for future research are suggested. It would be necessary to investigate all the issues highlighted by these limitations, placing particular emphasis on three aspects. Firstly, to study intersectional populations and less visible forms of violence in greater depth. Secondly, the effectiveness of current responses should be investigated, including cybersecurity training with a gender perspective, the development of specific protocols, and the integration of digital technologies into sex education. Finally, given the rapid evolution of AI and cybersecurity, it is recommended that the evidence be periodically updated and that longitudinal studies be designed to assess the actual impact of interventions and the effectiveness of legal reforms. Overall, comprehensive responses are needed that combine technological strategies, legal reforms and compulsory gender-sensitive educational programmes to effectively tackle sexual cyberviolence in Spain.

5. CONCLUSIONS

The findings of this review confirm that sexual cyberviolence is a widespread phenomenon in Spain, disproportionately affecting young women: 25.3 per cent of women aged 16 to 24 have experienced online sexual harassment. The high prevalence, particularly among those aged 16 to 34, indicates that digital sexual harassment is not an exceptional experience, but rather the norm within women's everyday interactions in digital environments. This pattern across age groups is consistent with international studies (Latcheva, 2017) and suggests that early digital socialisation and the pressure to maintain an active presence on social media act as specific vulnerability factors. The documented psychological consequences – suicidal ideation, anxiety, depression, trauma, post-traumatic stress, sleep problems, low self-esteem and self-objectification – are serious and consistent with the international literature (Champion et al., 2022; Iroegbu et al., 2024).

The most significant finding from a theoretical perspective is the exacerbating role of myths about sexual cyberviolence. Women who internalise these beliefs exhibit poorer mental health following victimisation, and this effect is mediated by self-objectification (Vizcaino-Cuenca et al., 2025). This mechanism, which had not previously been explored in the Spanish context, provides empirical evidence for the theory of objectification as

applied to the digital environment and suggests that the culture of digital rape not only justifies violence but also actively amplifies psychological harm.

With regard to artificial intelligence, the results indicate that AI is qualitatively transforming the perpetration of such abuse. The ease with which deepfakes can be created and the automation of sextortion remove barriers that previously limited this type of abuse (Williams, 2025; Lazard et al., 2025). Unlike more traditional forms of online sexual violence, where the victim usually had some degree of prior interaction or voluntarily shared their images, AI makes it possible to turn any woman with an online presence into a potential victim, thereby bypassing current legal and prevention frameworks (Mania, 2024). The novel finding of this review is the observation that public debate on forums such as Reddit continues to prioritise production and content over ethical and legal implications (Döring et al., 2025), indicating a worrying normalisation.

In the field of cybersecurity, the findings confirm that existing applications are insufficient. The lack of automation and the absence of artificial intelligence in current tools (Sumra et al., 2023) contrast with the sophistication of the methods used to commit these offences. Reporting rates do not exceed 7.3 per cent and dissatisfaction with institutional responses is widespread (Colburn et al., 2023), pointing to a structural mistrust that cannot be resolved by technological improvements alone, but requires changes to support protocols and the training of professionals.

When comparing these findings with previous studies, there is continuity with what has been documented regarding offline sexual violence in terms of risk factors and psychological consequences. However, the digital nature of the phenomenon introduces novel elements – the permanence of the digital footprint, instant virality and the ease with which perpetrators can remain anonymous – which explain why offline prevention strategies cannot be directly transferred to the online environment.

The main contribution of this article is to provide an up-to-date synthesis of the evidence available in Spain, integrating, for the first time, a gender perspective, an analysis of myths surrounding cyberviolence, the role of artificial intelligence as a tool for perpetration, criminological approaches (theory of routine online activities, digital disinhibition, neutralisation techniques) and a legal-criminal analysis (case law of the European Court of Human Rights, the AI Act, the DSA, and recommendations from CEDAW, EIGE and UN Women) within a single framework. In contrast to previous literature, which tends to address these forms of violence in a fragmented manner, this review highlights their interconnection and how structural gender inequalities are carried over and amplified in the digital space.

This article has addressed the objectives set out in the introduction. The findings confirm the high prevalence of sexual cyberviolence in Spain, particularly amongst young women; its serious consequences for mental health; the exacerbating role of myths about cyberviolence through self-objectification; the accelerating effect of artificial intelligence in perpetuating such violence; and the shortcomings of current cybersecurity measures, which result in very low reporting rates.

As practical recommendations, we suggest: (a) incorporating questions on sexual cyberviolence into mental health protocols; (b) designing compulsory educational programmes that address myths about cyberviolence and promote a gender-sensitive

approach to digital sexuality; (c) requiring digital platforms to adopt an ethical design that eliminates dark patterns and prioritises women's privacy; (d) training cybersecurity and law enforcement professionals in a gender-sensitive approach and survivor-centred care; and (e) harmonising legislation on non-consensual sexualised deepfakes online with the recommendations of the European Court of Human Rights (ECHR), CEDAW, EIGE and UN Women.

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Research Article

THE CRIMINAL LAW CONCEPT OF DRIVING IN A CONTEXT OF CHANGING MOBILITY

English translation with AI assistance (DeepL)

Teresa Castellet Portolés

PhD candidate in Criminal Law at the UNED and researcher at the
University Institute for Research into Traffic and Road Safety (INTRAS)
at the University of Valencia
tcastelle3@alumno.uned.es / teresa.castellet@uv.es

Received 28/04/2026
Accepted 05/06/2026
Published 30/06/2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.9057>

Recommended citation: Castellet Portolés, T. (2026). The criminal law concept of driving in a context of changing mobility. *Revista Logos Guardia Civil*, 4(2), pp. 85–106. <https://doi.org/10.64217/logosguardiacivil.v4i2.9057>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

THE CRIMINAL LAW CONCEPT OF DRIVING IN A CONTEXT OF CHANGING MOBILITY

Summary: 1. INTRODUCTION. 2. DOGMATIC DELIMITATION OF THE CRIMINAL CONCEPT OF DRIVING. 3. OBJECTIONS TO THE CRIMINAL CONCEPT OF DRIVING FROM VARIOUS PERSPECTIVES. 3.1. The protected legal interest: what is road safety? 3.2. Contemporary mobility versus the criminal concept of driving. 3.3. The impact of automation on the criminal concept of driving. 3.4. Is attempted offence applicable to offences against road safety? 4. KEY POINTS FOR A POSSIBLE NEW CRIMINAL CONCEPT OF DRIVING. 5. BIBLIOGRAPHICAL REFERENCES. 6. LEGISLATION AND CASE LAW. 6.1. Legislation. 6.1.1. European. 6.1.2. National. 6.2. Case law. 6.2.1. Constitutional Court. 6.2.2. Supreme Court. 6.2.3. Provincial Courts.

Abstract: The constant evolution and transformation of mobility, driven largely by technological advances and the spread of artificial intelligence systems, highlight the inadequacy of the criminal law concept of driving, which appears to have been left behind by these changes. Its current definition, centred on mechanical propulsion and travel on public roads, is inadequate to cover certain scenarios which, although they do not fit within this traditional framework, pose significant risks to road safety. This analysis is based on regulatory developments, recent case law and the need to adapt criminal law to the technological and social changes that directly affect road traffic. This paper examines how the concept of driving has been defined under criminal law and why it is necessary to review its current scope from various perspectives: that of the protected legal interest; that of new mobility patterns – particularly personal mobility vehicles; that of progressive automation; and that of attempted offences against road safety. The paper concludes that it is advisable to reformulate the criminal concept of driving on the basis of functional and technological criteria more in line with contemporary reality, such as effective control over movement and the actual potential for harm inherent in the conduct.

Resumen: La constante evolución y transformación de la movilidad, impulsada en gran medida por los avances tecnológicos y la extensión de los sistemas de inteligencia artificial, ponen de manifiesto la insuficiencia del concepto penal de conducción, que parece haber quedado al margen de estos cambios. Su configuración actual, centrada en la tracción mecánica y en el desplazamiento en vía pública, es inadecuada para abarcar ciertos supuestos que, aunque no encajan en ese esquema clásico, generan riesgos significativos para la seguridad vial. Esta reflexión se apoya en la evolución normativa, en la jurisprudencia reciente y en la necesidad de adaptar el Derecho penal a los cambios tecnológicos y sociales que inciden directamente en la circulación viaria. Este trabajo examina cómo se ha configurado penalmente el concepto de conducción y por qué resulta necesario revisar su alcance actual desde distintas perspectivas: la del bien jurídico protegido, la de los nuevos patrones de movilidad -especialmente los vehículos de movilidad personal-, la de la progresiva automatización y la de la tentativa en los delitos contra la seguridad vial. El trabajo concluye que resulta conveniente reformular el concepto penal de conducción a partir de criterios funcionales y tecnológicos más acordes con la realidad contemporánea, como el control efectivo del desplazamiento y la potencialidad real lesiva de la conducta.

Keywords: Driving, road safety, automated vehicles, personal mobility vehicles (PMVs), strict liability, attempted offence.

Palabras clave: Conducción, seguridad vial, vehículos automatizados, vehículos de movilidad personal (VMP), imputación objetiva, tentativa.

ABBREVIATIONS

Art.: Article.

BOE: Official State Gazette.

CP: Criminal Code.

DGT: Directorate-General for Traffic.

DPEJ: Pan-Hispanic Dictionary of Legal Spanish.

DOUE: Official Journal of the European Union.

FJ: Legal basis.

AI: Artificial Intelligence.

LSV: Royal Legislative Decree 6/2015 of 30 October, approving the consolidated text of the Law on Traffic, Vehicle Circulation and Road Safety.

RIA: Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144, and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828.

RGCir: Royal Decree 1428/2003 of 21 November, approving the General Traffic Regulations for the implementation and enforcement of the provisions of the Act on traffic, motor vehicle circulation and road safety, approved by Royal Legislative Decree 339/1990 of 2 March.

RGV: Royal Decree 2822/1998 of 23 December, approving the General Vehicle Regulations.

RJ: Case law index from the Aranzadi database.

ROJ: Registration number of judgements in the Judicial Documentation Centre.

SAE: Society of Automotive Engineers.

SAP: Judgment of the Provincial Court.

STC: Judgment of the Constitutional Court.

STS: Judgment of the Supreme Court.

TC: Constitutional Court.

TOL: Registration number of the judgements in the Tirant Prime database.

TS: Supreme Court.

EU: European Union.

PMV: Personal mobility vehicles.

1. INTRODUCTION

Traffic – understood in the broadest sense, referring to the movement of people and animals, not just vehicles – constitutes a historical social reality whose existence is linked to the very evolution of humanity, insofar as human beings have always had a need to travel. However, traffic has not always been as we conceive it today.

The advent of the engine and the subsequent widespread adoption of motorised vehicles¹, particularly the car, together with the increased risks arising from their use, have transformed traffic into a significant social phenomenon, which has necessitated continuous regulatory adaptation to this changing reality, both technically and functionally. However, in contrast to this regulatory evolution, the criminal law concept of driving has remained virtually unchanged, untouched by the profound changes that both mobility and modes of transport have undergone.

This conceptual stagnation is particularly problematic in the current climate. Against a backdrop of constantly evolving mobility, characterised by the emergence of new forms of travel and technological advances, it is clear that the current criminal law concept of ‘driving’ is insufficient to address all situations arising from road traffic.

The aim of this paper is to analyse the shortcomings of the current formulation of the criminal law concept of ‘driving’ from various perspectives: the legal interest protected by offences against road safety, contemporary mobility, the rise of automated driving, and the issue of attempted offences in this category. On this basis, the paper proposes the development of an updated concept capable of adequately addressing the various situations that arise in road traffic.

2. DOGMATIC DELIMITATION OF THE CRIMINAL CONCEPT OF DRIVING

An analysis of road safety legislation shows how it has adapted to the social reality of each historical period. Risk control has been the determining factor guiding this legislative evolution, from the perspective of both criminal law and administrative law, with the aim of preventing dangerous behaviour and protecting fundamental legal interests, such as life and physical integrity. An illustrative example of this evolution is the concept of speed: whilst in the 18th century risk was linked to the number of draught animals — as shown in the Royal Order of Charles III, dated 11 June 1787² —, today speeding is associated with a greater likelihood of losing control of the vehicle and an increased risk to other road users.

This process of regulatory adaptation contrasts, however, with the absence of a precise definition of the concept of ‘driving’ in criminal law³, a key verb common to most offences against road safety.

¹ For the purposes of this paper, the expression ‘motor vehicle’ will be used as a general term, without prejudice to the use of ‘motor car’ where the applicable legislation expressly provides for this in its wording.

² Law XVI of Title XIV, ‘On the use of chairs, carriages, coaches and litters’, of Book VI of the Novísima Recopilación.

³ This is confirmed by the Supreme Court Judgment (, STS) (Criminal Chamber, Section 1) No. 436/2017, of 15 June (ROJ STS 2421/2017).

The definition of the criminal concept of ‘driving’ has been established primarily through legal doctrine and case law, drawing on the concepts set out in administrative regulations on traffic and vehicle circulation, in particular Royal Legislative Decree 6/2015 of 30 October, which approves the consolidated text of the Law on Traffic, Vehicle Circulation and Road Safety (hereinafter, LSV). Although this legislation does not expressly define ‘driving’ or ‘the act of driving’, it does provide a legal definition of ‘driver’⁴. In addition to these references, it is also advisable to consult the meaning given in Spanish language dictionaries.

However, as case law acknowledges, the common-sense meaning of the term ‘driving’ serves as a reference but is not sufficient to justify the imposition of a criminal penalty⁵, since, as will be seen below, for criminal purposes this requires the combination of a series of elements.

In this regard, the Act of 9 May 1950 on the use and circulation of motor vehicles, marks a turning point by limiting criminal liability exclusively to conduct arising from the driving of motor vehicles. As stated in its preamble, the frequency with which accidents occurred as a result of the – particularly reckless – use of these vehicles constituted a social danger that justified recourse to criminal law. Therefore, risk control has been – and continues to be – the *ratio legis* of offences against road safety.

In this context, offences against road safety are predominantly classified as offences of endangerment, chiefly in their abstract form, meaning that not all driving behaviour is criminally relevant. Only those acts that pose a significant risk to the protected legal interest — road safety, understood as an intermediate legal interest aimed at protecting the life and physical integrity of road users⁶ — warrant criminal censure⁷. This criterion has been consistently adopted by case law, which requires consideration of the specific case and the relevant circumstances to determine the existence of criminally relevant danger.

This danger has been linked to the use of motor vehicles or mopeds, as it is considered that mechanical propulsion is what confers upon them an additional level of danger not present in other means of transport⁸. Consequently, moving a motor vehicle whilst the engine is not running is not included within the typical offence of ‘driving’, thereby excluding scenarios such as so-called ‘coasting’, as the potential for harm derived from mechanical force is absent.

On this basis, the current criminal definition of driving has been established as the concurrence of a series of elements: the operation of the steering and control mechanisms

⁴ The term ‘driver’ is defined as ‘the person who [...] operates the steering mechanism or is in control of a vehicle, or who is in charge of an animal or animals. In vehicles being driven for the purpose of learning to drive, the person in charge of the additional controls is considered to be the driver’.

⁵ SAP GI (4th Chamber) No. 690/2014, of 5 December (ROJ SAP GI 1190/2014), First Legal Ground.

⁶ STS (Criminal Chamber, Section 1) No. 893/2023, of 29 November (ROJ STS 5303/2023), Fourth Legal Ground.

⁷ Provincial Court of Appeal (TF) (Second Section) No. 174/2015, of 20 April (ROJ SAP TF 2253/2015), First Legal Ground.

⁸ By way of example, a vehicle’s kinetic energy is equal to half its mass multiplied by its speed squared, and this is, to a large extent, responsible for the damage (impact) that the vehicle may cause.

of a motor vehicle or moped; its movement by means of mechanical traction; travel on a public road; and the creation of at least an abstract danger to road safety.

This model, however, has significant limitations, insofar as it excludes from the scope of criminal law certain acts which, despite their potential danger, do not meet the technical requirement demanded by the criminal offences, in particular the potential for harm arising from the use of mechanical force⁹.

This technical exclusion also extends to the subjective definition of most offences against road safety, which require the perpetrator to be the driver of a motor vehicle or moped, thereby constituting specific offences in their own right¹⁰. The only relevant exception is the offence under Article 383 of the Criminal Code, which merely requires the status of a driver¹¹, without linking it to a specific type of vehicle, thereby allowing it to be committed by anyone riding a bicycle.

This definition also highlights the need to review the acts that constitute the act of driving, particularly with regard to movement and the use of mechanical propulsion; for motor vehicles or mopeds, movement must be produced by mechanical force, without any requirement to travel a minimum distance, which has allowed mere acts of parking to be included within the concept of driving¹².

The criminal concept of driving therefore raises a number of objections that call into question its suitability for today's reality. These can be analysed from four perspectives: that of the protected legal interest, the sociological perspective of mobility, the technological and automation perspective, and the concept of attempted offences against road safety.

3. OBJECTIONS TO THE CRIMINAL CONCEPT OF DRIVING FROM VARIOUS PERSPECTIVES

3.1. THE LEGAL INTEREST PROTECTED: WHAT IS ROAD SAFETY?

A legal interest constitutes the value or interest that the law seeks to protect at different historical stages (García Arroyo, 2022, p. 12; Muñoz Conde & García Arán, 2022, pp. 56,

⁹ SAP M (Second Chamber) No. 293/2014, of 8 May (ROJ SAP M 7026/2014), Legal Ground 2, and Supreme Court Judgment of 15 December 1961 (TOL 4337578).

¹⁰ SAP GI (4th Chamber) No. 690/2014, of 5 December (ROJ SAP GI 1190/2014), First Legal Ground.

¹¹ Cámara Arroyo & Teijón Alcalá (2022) state that this is a specific offence that can only be committed by the driver of a vehicle. In support of this assertion, they cite two judgements: , SAP M (Section 1), No. 74/1999, of 5 February (ROJ SAP M 1475/1999) and , SAP TF (Section 2), No. 314/2001, of 23 March (ROJ SAP TF 761/2001). The first of these holds that the perpetrator of the offence of refusing to undergo tests to detect alcohol or drugs (Article 383 of the Criminal Code) is the driver of a motor vehicle, even though the provision refers only to a 'driver', without necessarily linking this to the driving of a motor vehicle or moped. However, given that the offence provides for the deprivation of the right to drive motor vehicles and mopeds as a legal consequence, it may be argued that, in effect, the perpetrator in this case is limited to those who drive such vehicles. Conversely, the second of the rulings cited refers only to the driver. In reality, given that the LSV establishes a generic concept of a 'driver', save for the reference to motor vehicles and mopeds in the legal consequences of the offence, the perpetrator of this offence is the driver of any means of transport that meets the LSV's definition of a vehicle.

¹² For example, Supreme Court Judgment (Criminal Chamber, 1st Section) No. 436/2017, of 15 June (ROJ STS 2421/2017), FJ Fifth, and SAP B (10th Section) No. 777/2016, of 15 November (ROJ SAP B 11782/2016), FJ Second.

57), which will vary depending on the social and cultural context of each era; hence, in reality, the legal interest is a social construct (Hormazábal Malarée, 1991, p. 151). The selection of the legal interests to be protected, as well as of the conduct that infringes upon them, is the exclusive prerogative of the legislature¹³. It is therefore a political decision that is not neutral (Hormazábal Malarée, 1991, p. 153), but one in which sociological, historical, economic and political factors play a part. In this sense, the legal interest not only serves to legitimise criminal intervention (García Arroyo, 2022, p. 1; Orts Berenguer & González Cussac, 2023, p. 247; Polaino Navarrete, 2019, p. 38), but also to limit it, insofar as it determines which conduct may be subject to punishment.

However, the exercise of this punitive power is not absolute and is subject to limits derived from the principles inherent to a social and democratic state governed by the rule of law. In particular, the legislator must respect the principles of minimal intervention, proportionality, fragmentary application and subsidiarity, so that recourse to criminal law is reserved for cases in which it is strictly necessary for the protection of socially relevant legal interests¹⁴. From this perspective, the legal interest serves a guaranteeing or politico-criminal function, acting as a limiting criterion for criminal intervention, particularly when it comes to essential legal interests such as life and physical integrity.

When determining which legal interests are eligible for and deserve criminal protection, legal scholarship typically refers to two main approaches: the constitutionalist and the functionalist, whose divergence lies in whether such a selection should be derived exclusively from constitutional values or from the criterion of social harm (García Arroyo, 2022, pp. 14–16; Miró Llinares, 2020, p. 601; Teijón Alcalá, 2024, pp. 308, 309). Neither of these models is entirely satisfactory; it therefore seems more appropriate to take constitutional values as a minimum standard without disregarding the requirements and functions inherent to a social and democratic state governed by the rule of law (Miró Llinares, 2020, p. 604).

In light of the above, it makes sense that, in addition to the legal interests that directly affect the individual, those that transcend the individual—known as supra-individual legal interests¹⁵—should also be protected, since their protection not only promotes personal self-fulfilment (García Arroyo, 2022, p. 32), but also reinforces, in an indirect manner, the safeguarding of individual legal interests. Among these are collective legal interests, which enable the functioning of certain social spheres, as is the case with road safety.

¹³ Constitutional Court (Plenary Session) No. 55/1996, of 28 March (BOE No. 102, of 27 April 1996), Legal Ground 6.

¹⁴ Constitutional Court (Plenary Session) No. 105/1988, of 8 June (BOE No. 152, of 25 June 1988), Legal Ground 2, and Constitutional Court (Plenary Session) No. 24/2004, of 24 February (BOE No. 74, of 26 March 2004), Legal Ground 5.

¹⁵ Generally speaking, one tends to refer to individual or personal legal interests, supra-individual legal interests, and collective or general legal interests. This is the classification used by Luzón Peña (2025, p. 163). Muñoz Conde & García Arán (2022, pp. 57, 58) also hold a similar view. According to García Arroyo (2022, p. 23), in legal scholarship these terms are often used interchangeably, even though, in reality, they correspond to categories with different scopes.

Road safety is a collective legal interest, as is held, almost unanimously, by both legal doctrine¹⁶ and case law¹⁷. However, even if this collective nature is accepted, it must be clarified what role this legal interest plays: whether criminal law directly protects road safety as such (an autonomous collective legal interest), or whether, on the contrary, it acts as a means of safeguarding other individual legal interests such as life or physical integrity (an intermediate legal interest).

To answer this question, it is essential first to define what is meant by the legal interest of road safety. This requires, first and foremost, reference to lexicographical definitions, as these reflect a socially established meaning of the terms and therefore constitute an objective basis for defining the content and function of this legal interest. The Pan-Hispanic Dictionary of Legal Spanish (DPEJ) defines road safety, in its first meaning, as the “state or situation characterised by the absence of any harm or danger to the lives and physical integrity of persons and their property in the context of road traffic or circulation”; and in its second definition, the “activity, primarily carried out by public authorities, aimed at protecting people and property involved in road safety”.

As can be seen, both definitions emphasise that the purpose of road safety is to protect individual legal interests. This supports the view that, in fact, road safety is a collective legal interest of an intermediate nature, aimed at indirectly safeguarding other individual legal interests—such as people’s lives and physical integrity—rather than an autonomous legal interest¹⁸. If the theory of an autonomous legal interest were adopted, the mere commission of conduct that directly affects road safety would suffice to infringe the protected legal interest; this would lead to offences against road safety being classified as offences of injury rather than offences of endangerment, as is generally understood today. Furthermore, this approach would result in an unjustified expansion of the scope of criminal law, by allowing the punishment of conduct of minimal seriousness merely because it affects road safety (Cerezo Mir, 2002, p. 58; Teijón Alcalá, 2024, p. 312).

On some occasions, the legislator refers directly to the legal interest being protected, whilst on others, it penalises certain conduct without a clear link to the protection of that interest. In the field of offences against road safety, not all the offences included under this heading effectively aim to protect road safety, and discrepancies can be observed between their classification within the legal system and the legal interest actually being protected. This is exemplified by the offence of leaving the scene of an accident (Article 382 bis of the Criminal Code), which demonstrates how, despite the initially restrictive nature of the legal interest protected, the offence can be applied expansively to justify criminal intervention (Miró Llinars, 2020, p. 605). Similarly, the offences of refusing to undergo breathalyser tests (Article 383 of the Criminal Code) and

¹⁶ Among others, see Cerezo Mir (2002, p. 57), García Arroyo (2022, p. 33) and Teijón Alcalá (2024, p. 309). Conversely, see Hefendehl (2001, p. 9).

¹⁷ In this regard, Supreme Court Judgment (Criminal Chamber, Section 1) No. 419/2017, of 8 June (ROJ STS 2351/2017), Legal Ground 5.

¹⁸ In Cerezo Mir’s view (2002, p. 58), collective legal interests cannot be considered in their own right; rather, they must be understood in relation to individual legal interests. If they were, offences of danger would become offences of harm. On this point, Rodríguez Mourullo (1966, pp. 147, 148) considers that it is not incompatible to characterise an offence as both a ‘crime of danger’ and a ‘crime of harm’. In his view, when a ‘crime of danger’ is committed, what is actually being protected is ‘the security of another legal interest’; thus, when that security is affected, the legal interest protected by the law is harmed, even though only a danger is created for that other legal interest.

driving without a licence (Article 384 of the Criminal Code) actually serve to protect the principle of authority¹⁹.

Having reached this point, and having clarified what is meant by the legal interest of road safety, we must address why the criminal concept of ‘driving’ is open to criticism from the perspective of this legal interest. The main reason is that it excludes conduct which, whilst objectively dangerous to road safety, does not fit within the technical-legal concept of driving. Such is the case with pushing a motor vehicle whilst it is stationary, but whilst operating the steering mechanisms²⁰ or moving a broken-down vehicle by taking advantage of the slope of the road²¹, essentially because driving without first starting the engine is not considered a criminal offence²². These exclusions not only create gaps in protection, but also a disconnect between the definition of the offence and the risk involved.

3.2. CONTEMPORARY MOBILITY VS. THE CRIMINAL CONCEPT OF DRIVING

Personal mobility vehicles (PMVs), particularly electric scooters, are now a common form of urban transport and lack specific, uniform administrative regulation at national level²³, despite their regulatory classification as vehicles²⁴, which means they are subject to the general provisions of traffic regulations that do not expressly exclude them.

From a criminal law perspective, VMPs are irrelevant²⁵, insofar as offences against road safety are limited to motor vehicles and mopeds. However, this classification must take into account the actual characteristics of the vehicle at the time of the incident, regardless of those originally declared, so that those exceeding a maximum speed of 25 km/h may not be considered VMPs, but rather mopeds, and may therefore be treated as a typical offence.

In such cases, the driver of the vehicle could be the perpetrator of offences against road safety, including driving without a licence, which is required for mopeds (Article 59 of the Road Safety Act), unlike for VMPs (Article 22 bis of Royal Decree 2822/1998 of 23 December, approving the General Vehicle Regulations [RGV]). Where the use of these

¹⁹ As Miró Llinares (2009, p. 33) points out, invoking the principle of authority is also insufficient to justify the existence of this offence, since it is not comparable to the wrongful act involved in the offence of disobeying authority.

²⁰ Supreme Court Judgment of 4 January 1960 (TOL 4340754) and Supreme Court Judgment (Criminal Chamber, Section 1) No. 893/2023, of 29 November (ROJ STS 5303/2023).

²¹ Supreme Court Judgment of 15 December 1961 (TOL 4337578).

²² Supreme Court Judgment of 15 October 1968 (TOL 4277375).

²³ Personal mobility vehicles (PMVs) are primarily regulated by Royal Decree 2822/1998 of 23 December, which approves the General Vehicle Regulations (RGV), specifically in Article 22 bis and Annexes XX and XXI, as well as in other provisions of the text itself. The recent Royal Decree 52/2026 of 28 January, which amends the General Vehicle Regulations and Royal Decree 2822/1998 of 23 December, which approves them, has updated the content of Article 22 bis of the General Vehicle Regulations, with the aim of maintaining consistency between this and the aforementioned annexes, within the framework of the regulation of the Register of Light Personal Vehicles. Following this latest reform, LCVs must hold a roadworthiness certificate attesting to compliance with technical requirements, be registered in the National Vehicle Register and bear an identification label.

²⁴ Supreme Court Judgment (Criminal Chamber, Section 991) No. 120/2022, of 10 February (ROJ STS 572/2022), Fourth Legal Ground.

²⁵ *Ibid.*

vehicles results in injury, the standard offences of causing bodily harm or reckless homicide shall apply, without the withdrawal of the driving licence being applicable. The main difficulty arises, in any case, in determining which duty of care has been breached, given the absence of a general regulatory framework applicable to PMVs (Andrés Domínguez, 2020, p. 19).

Ultimately, the emergence of new mobility patterns and modes of transport that are not fully integrated into the current regulatory system raises significant challenges in the field of road safety. Their use gives rise to risks²⁶, which are not always adequately addressed by criminal law, due to the limitations of the criminal concept of driving; this highlights the need to establish, at least within the sphere of administrative law, a regulatory framework that is more consistent with the current reality of road traffic.

3.3. THE IMPACT OF AUTOMATION ON THE CRIMINAL CONCEPT OF DRIVING

The progressive automation of driving is a significant manifestation of the transformation of contemporary mobility and poses major challenges for defining the criminal concept of driving.

Regulation (EU) No 2144/2019 of the European Parliament and of the Council of 27 November 2019 defines an automated vehicle as a “motor vehicle designed and constructed to travel autonomously for certain periods of time without continuous supervision by the driver, but in respect of which the driver’s intervention is still expected or required” (Art. 3.21). Furthermore, a fully automated vehicle is defined as “a motor vehicle designed and constructed to travel autonomously without supervision by the driver” (Art. 3.22). The latter is what, in some contexts, is known as a “robotic vehicle” (Montoro González et al., 2017).

As can be seen, these are vehicles in which, once a certain level of automation is reached, the concepts of driver and vehicle merge completely. This, together with the rise of artificial intelligence (AI) systems²⁷, raises important criminal law issues, particularly regarding culpability and the attribution of criminal liability should a harmful outcome occur during their use.

In accordance with the principle of criminal culpability— – the guiding principle of criminal law²⁸— – the commission of a typical and unlawful act is not sufficient in

²⁶ Road accident figures relating to VMPs remain lower than those for motor vehicles, although an increase in these figures is observed for the period 2020 to 2024. For further information on this matter, see ‘*Key Road Accident Figures. Year 2024*’, a document prepared by the Directorate-General for Traffic (DGT) and published on 28 October 2025.

²⁷ According to Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024, laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144, and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Regulation – AIR), artificial intelligence systems are characterised by their ability to operate with varying levels of autonomy, as well as their capacity to generate results and responses through the inference of the information they receive.

²⁸ Constitutional Court (First Chamber) Judgment No. 44/1987, of 9 April (Official State Gazette No. 107, of 5 May 1987), Legal Ground 2, STC (First Chamber) No. 150/1989, of 25 September (BOE No. 250, of 18 October 1989), Legal Ground 3, Constitutional Court Ruling (Plenary Session) No. 150/1991, of 4 July

itself for the imposition of a penalty; rather, culpability must also be present (Binding, 2009, p. 5; Corcoy Bidasolo, 2024, p. 17; Mayer, 2007, p. 285)²⁹. This is required by Articles 5 and 10 of the Criminal Code, which stipulate that only intentional or reckless acts or omissions are relevant under criminal law (Article 10) and, consequently, only those committed intentionally or recklessly are punishable (Article 5).

Under the theory of objective imputation, the attribution of harmful consequences requires the concurrence of human conduct—whether active or by omission—which breaches a duty of care and which has a causal and normative link with the resulting outcome. Therefore, when discussing driving, one must not rely solely on the criterion of operating the vehicle's steering and control mechanisms; rather, an additional criterion of effective control over the vehicle's movement must be included as a minimum requirement for criminal liability. The emergence of this type of vehicle poses a challenge both to that theory and to the typical verb 'to drive', as it not only makes it difficult to identify the specific individual performing the action, but also, in some cases, to determine whether one can even speak of human conduct.

The significant proliferation of vehicles with a certain level of automation contrasts, however, with the limited legal framework governing this type of vehicle. Apart from certain European regulations, such as those cited above and those relating to intelligent transport systems³⁰, there is as yet no specific national legislation fully adapted to autonomous driving. This is despite the fact that the DGT has reported that a draft bill is being prepared to amend Royal Decree 1428/2003 of 21 November, which approves the General Traffic Regulations for the implementation and development of the provisions of the Act on Traffic, Motor Vehicle Circulation and Road Safety, approved by Royal Legislative Decree 339/1990 of 2 March (RGCir), as well as the RGV, in order to adapt them to the emergence of autonomous vehicles³¹.

There are currently six levels of automation, defined by the Society of Automotive Engineers (SAE)³², which have significant implications from a criminal law perspective. Whilst at the initial levels (0 to 2) the driver retains effective control of the vehicle, from level 3 onwards automation is conditional, as the vehicle is capable of performing certain actions without constant supervision by the driver, although the driver must be available

(Official State Gazette No. 180, of 29 July 1991), Legal Grounds 4, Constitutional Court Ruling (First Chamber) No. 246/1991, of 19 December (Official State Gazette No. 13, of 15 January 1992), Legal Grounds 2, and Constitutional Court Ruling (Plenary Session) No. 59/2008, of 14 May (Official State Gazette No. 135, of 4 June 2008), Legal Ground 11.

²⁹ The DPEJ defines 'culpability' as the 'final key element or requirement of the offence as a prerequisite for punishment, which allows the act to be attributed criminally to the perpetrator, principal or accomplice'.

³⁰ This refers to Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010, commonly known as the ITS Directive, which defines intelligent transport systems, including those applied to vehicles.

³¹ Further information on this subject can be found at: <https://www.dgt.es/muevete-conseguridad/vehiculos-seguros/conduccion-automatizada/vehiculos-de-conduccion-automatizada/>

³² See document J3016-202104 – *Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles*.

to intervene³³. This disengagement from human control is more pronounced at levels 4 and 5, where the vehicle operates autonomously with residual or no human control.

In most cases, harmful outcomes arising from the use of this category of vehicles will correspond to injuries or manslaughter. When the autonomous vehicle is used solely as a means of committing a crime, no additional issues of criminal interpretation arise, insofar as the crime is not a consequence of autonomous driving, but of a human decision to use the vehicle as an instrument (Amisano, 2025, p. 36). The truth is that it is unlikely that the vehicle would have been programmed by the manufacturer or the system developer with the aim of causing harm to third parties and, consequently, that the harmful consequences could be attributed to any of them on the grounds of intent, or at least on the grounds of direct intent (Teijón Alcalá & García Cuenca, 2024, p. 400). In any event, if the vehicle were knowingly used as an instrument to commit a crime, with control maintained at all times until the objective was achieved, the offence would be attributed as a direct perpetrator to the person in control of it (Quintero Olivares, 2017, p. 14).

With regard to driving, and following the reforms introduced by Organic Laws 2/2019 of 1 March³⁴ and 11/2022 of 13 September, the circumstances constituting gross and less serious negligence have been defined in Articles 142(2) and 152(2) of the Criminal Code, such that their assessment is now carried out automatically. However, this framework for negligence is difficult to apply in the context of autonomous driving, given that negligence is generally attributed to the harmful outcome. The underlying conduct consisting of a breach of the duty of care (for example, driving under the influence of alcohol) is voluntary, whilst the causing of harm is attributed on a negligent basis (Teijón Alcalá & García Cuenca, 2024, p. 401).

More problematic, however, is the generic dimension of recklessness. Unlike intentional offences, where one of the criteria for attribution is the actual foreseeability of the outcome, reckless offences are characterised by merely potential foreseeability. Furthermore, recklessness requires the breach of an objective duty of care. In this context of automation, just as with VMPs, one of the main difficulties lies in determining which standard of care has been breached, given that there are no general legal rules or criteria derived from common knowledge and experience (*lex artis*), as is the case in certain professional activities. In the absence of established criteria, one possible approach is to refer to the standard behaviour of a responsible person, which, in the context of automated driving, would correspond to that of a reasonable user. However, in such cases, the answer may vary depending both on the party involved (for example, the manufacturer or the system programmer) and on other factors, such as the use of AI (Blanco Cordero, 2025, p. 10).

³³ In this regard, Regulation (EU) 2019/2144 defines the so-called '*driver availability monitoring system*', the purpose of which is to assess whether the driver is fit to take control of the vehicle in specific situations.

³⁴ Specifically, it introduced, amongst other aspects, an objective concept of gross negligence, such that, in any case, conduct falling under any of the circumstances set out in Article 379 of the Criminal Code will be classified as such. Furthermore, a concept of less serious negligence was established. In this regard, less serious negligence is defined as those situations in which the commission of any of the offences classified as serious under the Road Traffic Act (LSV) – that is, those set out in Article 76 of the LSV – was a determining factor in the occurrence of the incident. Nevertheless, provision was made for the judge to exercise discretion in this regard, an element which was removed in the subsequent reform introduced by Organic Law 11/2022 of 13 September.

That said, it is clear that issues of culpability and the attribution of outcomes will increase as the level of vehicle automation rises, particularly from level 3 onwards. At levels 0, 1 and 2, where the driver still retains primary control of the vehicle and the ability to intervene immediately if necessary, the attribution of liability will continue to be governed by the traditional system (Blanco Cordero, 2025, p. 7). However, the situation becomes considerably more complex at higher levels, where the driver gradually loses the ability to control and supervise driving tasks and AI assumes a significant role in decision-making. When this happens, a series of questions arise regarding who is acting, who is liable, and to what extent the system was programmed to anticipate potential harmful consequences.

In this context, the main difficulty from a criminal law perspective lies in the imbalance between the vehicle's technological complexity and the user's actual capabilities. In most cases, the driver lacks effective knowledge of how the automated systems operate and the decisions they make, a lack of knowledge that intensifies as the vehicle's level of automation increases. Under these circumstances, requiring the individual to take alternative action in the event of a potential system failure—or holding them criminally liable for failing to prevent a harmful outcome—may prove disproportionate, as it imposes a duty of anticipation and control that clearly exceeds their actual capacity for action and understanding of the risk.

In addition to the above, autonomous driving involves multiple scenarios involving different actors³⁵, which makes it difficult to determine who carried out each task and, consequently, to attribute criminal liability, as this may become diluted amongst all those involved.

Whilst this matter requires further analysis, the above highlights that the automation of driving goes beyond the traditional assumptions underpinning the criminal concept of driving, in that control over the vehicle's movement, an understanding of risk and the actual capacity to intervene no longer necessarily rest with the driver, which calls for a re-evaluation of this concept.

3.4. IS ATTEMPT A VALID CONCEPT IN OFFENCES AGAINST ROAD SAFETY?

Offences against road safety are characterised by being primarily defined as offences of mere activity, which in itself makes it difficult to recognise attempted offences³⁶, particularly completed attempts, because, in general, the performance of all the constituent acts already entails the commission of the offence (Muñoz Conde & García Arán, 2022, pp. 387, 395). Nevertheless, in principle, there is no obstacle to recognising an uncompleted attempt at the offence (Acale Sánchez, 2002, pp. 37, 38).

To the above issue must be added the fact that, for the typical conduct to be established, most offences against road safety require the act of driving to have commenced. Thus, as long as that act has not actually commenced, the conduct generally

³⁵ In this regard, the works of Quintero Olivares (2017) and Blanco Cordero (2025) are of particular interest.

³⁶ Case law is reluctant to recognise imperfect forms of commission in offences of mere activity. This is the case in Supreme Court Judgements (Criminal Chamber, 1st Section) No. 889/2003, of 13 June (TOL 4926579), Sixth Legal Ground, and Supreme Court Judgment (Criminal Chamber, Section 1) No. 13/2018, of 16 January (RJ 2018\238), Sixth Legal Ground.

remains within the scope of non-punishable preparatory acts, as – in the view of a certain strand of case law – there is no intermediate stage between driving and not driving³⁷. However, in certain cases, attempted offences have been recognised where the perpetrator's intention to commence driving is unequivocal based on the circumstantial context³⁸, or where the conduct displayed is, *ex ante*, already capable of producing the result³⁹.

Furthermore, the fact that some offences against road safety are classified as offences of abstract danger introduces an additional difficulty in recognising attempted offences, as there is a particularly fine line between the legal basis of the two categories⁴⁰. Indeed, both attempted offences (Muñoz Conde & García Arán, 2022, p. 382; Sola Reche, 2000, p. 310) and offences of abstract danger⁴¹ involve moving the protective thresholds forward, by penalising conduct on the basis of its potential danger (Barbero Santos, 1973, p. 489).

Based on the above, it can be said that the viability of attempted offences in crimes against road safety depends on how the defining verb 'to drive' is defined in legal theory, particularly when the act of driving is considered to have commenced—that is, when the executive acts involved in driving begin. The key to determining when a preparatory act becomes an executive act lies in whether the action is directed towards the performance of the verb defining the typical conduct⁴², in this case, 'driving'.

To resolve this issue, the Supreme Court has drawn up a series of criteria aimed at defining the boundary between non-punishable preparatory acts and executive acts⁴³, taking into account the manifestation of criminal intent and the existence of an immediate connection between the conduct carried out and the commission of the offence. From this perspective, it is only when the action taken is unequivocally directed towards the commission of the offence and forms part of a process of execution nearing completion that the commencement of the executive acts can be affirmed.

³⁷ Provincial Court of Appeal GI (Fourth Section) No. 690/2014, of 5 December (ROJ SAP GI 1190/2014).

³⁸ This is the view taken in SAP CA (Fourth Section) No. 245/2018, of 19 July (ROJ SAP CA 1044/2018), which sets out a case in which the individual was already wearing the regulation helmet and was in a position to ride when he was stopped by the police.

³⁹ SAP TF (Second Section) No. 437/2010, of 25 November (ROJ SAP TF 2955/2010), First Legal Ground. This ruling recognises an attempt in a case where driving was impossible due to the vehicle's location, as the engine had been started, which demonstrates an unequivocal intention to begin driving, despite the fact that the vehicle did not ultimately move.

⁴⁰ Supreme Court Judgment (Criminal Chamber, First Section) No. 48/2020, of 11 February (ROJ STS 386/2020) states that the structure of offences involving danger is comparable to that of an unsuitable attempt. Therefore, accepting that an attempt is applicable to this type of offence is akin to punishing 'the attempt at an attempt' or 'the risk of the risk'.

⁴¹ Attempts have been made to justify the punishment of abstract danger offences on the basis of the precautionary principle, which is contrasted with the principle of prevention. Under the precautionary principle, what matters is the suspicion that a particular activity entails serious and irreversible risks, whereas, under the principle of prevention, it is the foreseeability of a risk occurring that is the determining factor (Cerezo Mir, 2002, p. 61). This same author considers, however, that the precautionary principle should not be invoked to justify broadening the scope of criminal liability, because mere suspicion should not serve as a basis for criminal liability (p. 62).

⁴² Supreme Court Judgment (Criminal Chamber, Section 1) No. 428/2016, of 19 May (ROJ STS 2273/2016).

⁴³ *Ibid.*

Applying these criteria to offences against road safety, it is considered that the perpetrator commences the executive acts when they manifest an unequivocal intent to start driving and, furthermore, there is an immediate connection—both spatial and temporal—between that intention and the possible starting of the vehicle, such that, were the action to continue uninterrupted, the typical offence would be committed and the conduct would be sufficient, from a preliminary perspective, to give rise to the typical situation of danger. In such cases, the existence of a punishable attempt could be recognised.

4. KEY POINTS FOR A POSSIBLE NEW CRIMINAL CONCEPT OF DRIVING

From the analysis carried out, it can be concluded, firstly, that the current typical model of driving is insufficient to cover increasingly frequent scenarios which deviate from the classical framework — centred on mechanical propulsion and actual movement on public roads — but which nevertheless constitute situations of risk that must be addressed. For this reason, it would be advisable to redefine the typical act of driving from various perspectives.

The first of these relates to the typical verb ‘to drive’ itself. As has been explained, driving, for criminal law purposes, means operating the steering and control mechanisms of a vehicle propelled by its own mechanical engine on a public road. This definition excludes situations which may nevertheless pose a significant risk to road safety—the protection of which is the very *raison d’être* of offences against road safety—such as the act of pushing a motor vehicle whilst its engine is switched off. However, if the purpose of offences against road safety is precisely to mitigate the risk inherent in the movement of vehicles and, thereby, to protect legal interests such as the life and physical integrity of road users, it is worth reconsidering whether a strictly technical definition adequately fulfils this protective function.

With regard to personal mobility vehicles (PMVs), it is necessary to reconsider their exclusion as typical instruments. As noted above, the classification of this type of vehicle must be based on the characteristics they possess at the time of the offence; therefore, if these characteristics correspond to those of a moped, it must be classified as such and, consequently, may constitute a typical instrument. However, given the heterogeneity of the PMV category—which encompasses vehicles that are very diverse from one another—its prior review and conceptual definition must be considered. Only once this task has been completed can those VMPs that pose a significant risk to road safety be justifiably included as a typical category. This will not only provide legal certainty but also serve as a guarantee of the principle of legality. Thus, the inclusion of certain VMPs as typical instruments, based on previously defined objective criteria, would not constitute an analogical interpretation of the criminal offence incompatible with the principle of legality.

Furthermore, the emergence of automated vehicles or those equipped with autonomous driving systems raises specific issues regarding culpability and the attribution of criminal liability in the event of harmful outcomes arising from their use. In such cases, it is insufficient to restrict the term ‘driving’ solely to the physical operation of steering and control mechanisms, as effective control over the vehicle’s movement takes on particular significance. However, the application of this criterion is hampered by the technological opacity inherent in some AI systems and by the complexity introduced

by higher levels of automation; for these reasons, it is difficult to attribute criminal liability without resorting to broad interpretations, and to provide a definitive and generalisable answer.

Similarly, it is essential to address the issue of attempted offences in crimes against road safety, given that most of these are classified as offences of mere activity and of abstract danger. In the former, the traditional rejection of attempted offences has been justified by the absence of an intermediate phase between the commencement of the act and its completion, whilst in the latter, the difficulty lies in the fine line between the basis for punishing attempted offences and the very basis of offences of abstract danger. However, this position warrants review, given that case law has also highlighted the existence of cases in which the mere attempt to drive already poses an objective danger to road safety, particularly where driving under the influence of alcohol and other substances is concerned.

Hence the need to establish uniform legal criteria to define when a conduct, even if it is merely a preparatory act, acquires criminal significance as an attempt, thereby avoiding broad interpretations contrary to the principle of legality. The incorporation of objective elements — such as starting the engine, the vehicle's position on the road or the driver's readiness to set off — would contribute to greater legal certainty.

Finally, it is suggested that the typical act of driving be harmonised with the administrative concepts set out in road safety legislation, primarily those contained in the LSV, RGCir and RGV, with the aim of avoiding interpretative inconsistencies. This harmonisation would allow for a systematic interpretation of offences against road safety, particularly with regard to perpetrators, the typical instruments of the offence and traffic areas.

In short, the cases raised highlight the need to review and redefine the typical act of driving, taking into account the challenges posed by technological developments and the transformation of modes of transport. The almost automatic exclusion of certain scenarios—such as pushing vehicles with their engines switched off or the un d use of personal mobility vehicles (PMVs)—highlights a regulatory framework which, in many cases, does not correspond to the actual risk, the preventive purpose of criminal law, or even the traditional approach adopted by this branch of the legal system in matters of road safety. For this reason, it is proposed that this concept be rethought so as to incorporate functional and technological criteria based on the effective control of movement and the potential for harm inherent in the conduct, moving beyond the classic model of mechanical propulsion. This reconfiguration will enable offences against road safety to be adapted, in legal theory, to social reality, thereby achieving more effective protection of road safety and, consequently, of other legal interests, such as life and physical integrity.

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6. LEGISLATION AND CASE LAW

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Research Article

THE IMPACT OF SENIOR MANAGERS ON THE MOTIVATION AND LEADERSHIP OF MIDDLE MANAGEMENT

English translation with AI assistance (DeepL)

Gonzalo Cerón Llorente
Lieutenant Colonel, Guardia Civil
gonzaloceron@guardiacivil.es

Received 21/04/2026

Accepted 08/06/2026

Published 30/06/2026

<https://doi.org/10.64217/logosguardiacivil.v4i2.8912>

Recommended citation: Cerón, G. (2026). The impact of senior managers on the motivation and leadership of middle management. *Revista Logos Guardia Civil*, 4(2), pp. 107–130. <https://doi.org/10.64217/logosguardiacivil.v4i2.8912>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

THE IMPACT OF SENIOR MANAGERS ON THE MOTIVATION AND LEADERSHIP OF MIDDLE MANAGEMENT

Summary: 1. INTRODUCTION. 2. THEORETICAL AND CONCEPTUAL FRAMEWORK. 2.1. People in a workplace organisation. 2.2. People's motivation at work. 2.3. People's job satisfaction. 2.4. Leading people. 2.5. Middle management in a workplace organisation. 3. METHODS AND MATERIALS. 4. RESULTS. 5. DISCUSSION AND CONCLUSIONS. 5. REFERENCES

Abstract: In the world of work, motivation is essential for efficient and healthy professional performance. Fortunately, in recent decades, significant progress has been made—through the study of leadership styles—in how to motivate our subordinates. Many studies have been published to raise awareness amongst the line management regarding the best way to 'connect' with their staff. However, little has been written about the factors that contribute to the motivation of those who are called upon to motivate others. The author believes that a large part of any organisation's success lies in the way in which the superiors of team leaders are able to motivate them. This study aims to analyse the behaviours of superiors that may impact the motivation of managers—who constitute the sample—in both positive and negative ways, and what this may entail for the organisation in the medium to long term.

Resumen: En el mundo laboral, la motivación es imprescindible para un desempeño profesional eficiente y saludable. Afortunadamente, en las últimas décadas se ha avanzado mucho, mediante el estudio de los estilos de liderazgo, en la manera de motivar a nuestros subordinados. Se han publicado muchos estudios que sensibilizan a la cadena de mando de la mejor manera de "llegar" a sus colaboradores. Sin embargo, poco se ha escrito acerca de los factores que contribuyen a la motivación del que es llamado a motivar. Este autor considera que buena parte del éxito de cualquier organización radica en la manera en que los superiores de los responsables de equipos sean capaces de motivarlos. En el presente estudio se quiere analizar comportamientos de los superiores que pueden impactar en la motivación de los directivos, que constituyen la muestra, tanto en su forma positiva como negativa y lo que ello puede conllevar a la organización a medio/largo plazo.

Keywords: People, Organisation, Leadership, Job Satisfaction, Organisational Culture.

Palabras clave: Personas, Organización, Liderazgo, Satisfacción Laboral, Cultura Organizacional.

1. INTRODUCTION

In today's workplace, it is evident on a daily basis that, however much prestige and material resources an organisation may possess, if it fails to look after the people who make it up, it will have little future. Extensive research has been carried out into the best way to motivate a company's staff, given that this is essential for efficient and healthy professional performance.

To this end, there has been in-depth research into different leadership styles, recognising their crucial role in the job satisfaction of all those who make up the organisation. Fortunately, in recent decades, significant progress has been made in the study of these styles, which have evolved in the quest to find the best and most conducive environment to help motivate our staff.

In turn, many studies have been published to raise awareness amongst the line management about the best way to 'connect' with their staff. However, little has been written about the factors that contribute to the motivation of those who, in turn, are responsible for motivating others. It is considered that a large part of any organisation's success lies in the way in which the superiors of team leaders are able to motivate them. This article aims to analyse the behaviours of superiors that can impact the motivation of middle managers, both positively and negatively, and, within this context, how the leadership style of the former influences that of the latter, and what consequences this may have for the organisation in the medium to long term.

As mentioned in the preceding paragraphs, society has, quite rightly, devoted considerable attention to how to influence the motivation of front-line staff, whilst also developing numerous protocols to prevent undesirable workplace situations that no rule of law can permit. However, there is a lack of such concern for middle managers who, whilst also being members of the organisation, do not seem to require these protocols in their relationships with their superiors and with the staff under their supervision.

Taking all of the above into account, and focusing on the behaviours that superiors may exhibit to influence the motivation of middle managers – and, specifically, their leadership style – numerous hypotheses could be put forward; however, given the limited scope of this article, the aim is to demonstrate that the following hypothesis holds true: the way in which superiors lead has a significant influence on the development of middle managers' leadership style.

The main objectives, as lines of research, will involve an introduction and theoretical framework covering the role of the individual within the organisation, their motivation, their job satisfaction, and how to lead them; following this, the role of the middle manager will be examined as the organisation's key player and the focus of this article; To this end, after setting out a series of considerations regarding their role, their job satisfaction, motivation and perception of their own leadership style will be analysed via a survey, so that senior management can become aware of the influence their leadership style has on the aforementioned factors. The methods and materials used in the research will be outlined, along with the results, as well as the discussion and conclusions, which will include a proposal for best practices aimed specifically at managing middle managers in any organisation, as well as retaining their talent.

2. THEORETICAL AND CONCEPTUAL FRAMEWORK

2.1. PEOPLE IN A WORKPLACE

The relationship between people and their organisations was already a concern for philosophers in Ancient Greece. However, it was not until 1930 that the focus shifted from a more productive perspective to a more humanistic one, and awareness began to grow that the interests of the worker and the organisation had been at odds from the very start of their relationship, and that the necessary rapprochement would require a change in mindset, one oriented towards human relations.

As Peña (2015) states: “The common denominator of all organisations worldwide is that they are made up of people who, in order to achieve the company’s ultimate goal, pool their efforts” (p. 9); thus, organisations succeed and grow, and the more they do so, the more people they require, who, upon joining the organisation, have their own individual interests. Furthermore, the greater their numbers and the later they join, the further they will be from the organisation’s interests. Thus, whilst the organisation selects people who align with its objectives, individuals pursue their own; a circumstance that the organisation must take into account.

Consequently, in the pursuit of essential synergy, it is considered that there should be a move towards reciprocity between the organisation and its members, giving rise to a formal contract in which the parties have a clear understanding of their regulated relationship, and a psychological contract in which the organisation has expectations of its members, and vice versa. To this end, it is essential to have an organisational culture that enables its members to internalise that culture: a set of unwritten norms created to guide members’ behaviour and direct their actions towards the organisation’s objectives. In the words of Chiavenato (2011), ‘a set of habits and beliefs established through norms, values, attitudes and expectations shared by all members of the organisation’ (p. 72), and as it is so highly regarded, it is desirable that it be passed on to new members.

This is characterised by the consistency of its behaviours, by the existence of norms, by the fact that the organisation upholds prevailing values and expects its employees to do the same, by having a philosophy of treatment, by having rules that its members must accept, and by a specific working atmosphere—a factor emphasised by Guzmán and Olave (2004) because ‘achieving a good organisational climate that encourages employees to develop a high level of commitment to their work and to the organisation to which they belong is the major challenge facing companies today’ (p. 36).

For, as we shall see in the following chapter on motivation, people are constantly undergoing a process of adaptation to the situations life presents them with, in their quest to maintain emotional balance and satisfy their needs—not only physiological and safety needs, but also social needs, the need for esteem and self-actualisation, which depend on other people. The latter highlights the essential nature of adaptation, which in turn varies from person to person, and even at different stages in the life of the same person; and if it is positive, it improves mental health, as one feels at ease with oneself and with others, and perceives oneself as capable of coping with life’s ups and downs.

Finally, it is important not to lose sight of the fact that, as López (2024) points out, ‘people can enhance or diminish an organisation’s strengths and weaknesses depending

on how they are treated; it is therefore essential to regard them as fundamental elements of organisational efficiency' (p. 14), it is essential that the organisation makes an effort to ensure that its internal environment generates sufficient motivation to drive its members towards the fulfilment of their own needs at work, which will ultimately benefit the organisation.

2.2. WORK MOTIVATION

As Peña (2015) states, 'Motivation plays a crucial role in people management. For an individual to carry out a task, three conditions must be met: that the individual is able to do it (resources), that they have the knowledge to do it (skills and aptitudes), and that they want to do it (motivation)' (p. 9).

Motivation is what drives a person to act in a certain way, or at least leads them to favour a particular behaviour. This can be driven by external stimuli or generated internally through a person's reasoning; in turn, depending on their social values, needs and abilities to achieve a goal, this varies from one person to another, giving rise to different patterns of behaviour, and even varies within the same person over time.

Whilst these patterns are variable, their structure is very similar across all people, shaping behaviour that is caused, motivated and directed towards goals, whether implicit or explicit. However, such behaviour will always differ depending on how the stimulus is perceived, on the individual's desires and needs, and on their cognition.

But when we refer to motives, we are not referring to 'snapshots', but to dynamic forces that create tension within us until they provoke behaviours which, through learning and repetition, are reinforced, thereby satisfying needs ever more effectively. Thus, it follows that a satisfied need does not motivate behaviour; therefore, it would be accurate to state that the process of motivation follows this line of action:

Unmet need => Tension => Incentives => Behaviour => Met need => Reduction in tension

The various motivational theories will now be outlined, distinguishing between 'content' theories—which focus on the aspects that motivate a person—and 'process' theories—which examine the thought process that leads people to become motivated. Those most relevant to the workplace will be described in detail, whilst the others will be mentioned briefly:

* Maslow's Hierarchy of Needs (1954), or theory of human motivation, which describes motivational needs that, from least to most complex, are: physiological, aimed at human survival; safety, related to our fear of losing control of our lives and our aversion to the unknown; social needs, connected to our need to surround ourselves with other people, in terms of emotional bonds and social interaction; recognition or esteem needs, linked to our need to feel valued within our social group, as well as to enjoy prestige or stand out within it, and to our self-esteem; self-actualisation needs, through which we can achieve our own ideal of who we are, enabling us to transcend our current state and attain the highest level of development.

It should be borne in mind that the satisfaction of a need leads to a decline in interest in the behaviour that was motivated by that need. It is also important to recognise that the first two are primary needs and that, once they have been met, we seek to fulfil the secondary needs, in the order mentioned above and in a step-by-step manner, as their motivational cycle is slower than that of the primary needs. We must be aware that not all of us will reach the highest level, as achieving it is an individual endeavour.

* Two-Factor Theory, Herzberg (1959), whose perspective—widely adopted in the business world—moves away from the prism of human needs to focus on an external perspective, viewing work as an individual's main activity, which can lead to either satisfaction or dissatisfaction.

To this end, it describes two distinct factors: motivational factors, which contribute to satisfaction, and hygiene factors, which prevent dissatisfaction. Among the former are recognition and responsibility, amongst others, all of which are linked to the nature of the work itself; amongst the latter are the working atmosphere, relationships with colleagues and salary, amongst others, which are more focused on the work context. Thus, individuals feel satisfied with the motivational factors they perceive to be present at that moment and do not express dissatisfaction in their absence; however, the absence of hygiene factors does lead to dissatisfaction.

* Theory X and Y, McGregor (1960): this theory, with a clear focus on the workplace, uses two models of worker behaviour—X and Y—to examine how a manager should lead their staff in order to achieve the highest level of motivation.

In Model X, workers are characterised by the following: they find their work unappealing and must be coerced into performing it; consequently, they do not envisage taking the initiative in their work nor do they consider that they need to meet objectives, and so they prefer to be told what to do, as they also reject any form of responsibility. They tend to be easily manipulated due to their naivety and lack of information, and they value job security above all else. For all these reasons, the organisation must adopt a more controlling and directive approach when dealing with them.

In Model Y, workers are characterised by the following: they find their work appealing, so they are naturally motivated to carry it out with a view to improving themselves; as such, they display great creativity and ingenuity, which enables them to easily solve the problems presented by their daily tasks. Furthermore, they respond well to recognition of their achievements, seeking out responsibilities whilst striving to achieve their objectives. For all these reasons, the organisation will be able to engage with them in a more inspiring and empowering way.

To conclude the discussion of theories based on the factors that motivate individuals, we mention Alderfer's (1969) Existence-Relationship-Growth Model, which reduces the number of levels in Maslow's hierarchy, and McClelland's (1961) theory of Learned Needs, concerning the three dominant drives: achievement, power and affiliation.

With regard to theories based on the thought processes that lead people to become motivated—that is, process-based theories—the Theory of Expectancy by Vroom (1964) stands out. According to this theory, the way motivation influences behaviour depends,

on the one hand, on the individual being convinced that the actions they are about to undertake will lead to a specific outcome, and, on the other hand, on whether they find the resulting reward appealing. Also noteworthy is the Equity and Justice Theory by Adams (1968), which maintains that motivation at work depends on what the worker considers they should receive for their efforts and how they compare this with what others in their organisation receive.

Having examined the various theories, Maldonado and Quevedo (2007) describe their application to the world of work as follows:

“In his theoretical description, Maslow (1954) argues that in the workplace, workers’ primary needs—according to the hierarchy he proposed—would be met by the provision of an adequate wage and the physical environment, such as physiological needs; job security and a non- aggressive environment, treatment by managers and job stability would form part of the safety needs; with regard to social needs, colleagues, the relationship with managers and the group in general, self-esteem, professional reputation, competence, progress and responsibility would form part of the needs relating to the ego; whilst the development of one’s own abilities, personal satisfaction, creativity and self-confidence are related to the need for self-actualisation” (p.16).

Thus, and based on the conviction that each level has different interests and expectations regarding the fulfilment of its needs—even amongst its own members—it falls to senior management to facilitate the conditions that contribute to the fulfilment of their employees’ needs. To this end, they must rely on middle management—as the group that best knows the front-line staff— but adopting an approach that does not neglect the needs of senior management themselves—key figures in any organisation and the true bearers of organisational culture—who, in conveying this culture from senior management to front-line staff, must be convinced of its merits; the best way to achieve this is for them to recognise how this culture contributes to the fulfilment of their own needs.

2.3. EMPLOYEES’ JOB SATISFACTION

Having examined work motivation, and knowing that two factors influence it: on the one hand, there are the intrinsic factors—also known as satisfaction factors—which are directly related to the job itself, such as recognition, responsibility, growth, promotion or achievement, amongst others; and on the other hand, extrinsic factors—also known as factors of job dissatisfaction—which are closely linked to the working environment in which the individual operates, such as pay, management, supervision, benefits and interpersonal relationships, amongst others.

How do we define job satisfaction? It is something that was not always a consideration for those managing organisations; however, from the last quarter of the last century right up to the present day, there have been various approaches, ranging from the view that it was a positive emotion resulting from a positive assessment and the experience gained by the employee in their work, through a sense of fulfilment derived from meeting needs beyond the purely physiological, to identifying it as the result of the feelings the employee harbours towards their work, distinguishing between factors specific to performance and factors relating to the working environment. In any case, it

is shaped by the individual's values, their needs and the gap they perceive between what they expect to receive and what they feel they actually receive.

However, whilst an organisation must not lose sight of its employees' subjective sense of satisfaction, it must also ensure a certain level of output; consequently, it seeks a directly proportional relationship between the actual satisfaction of its workers and their productivity, aware that, as Pascual, López and Parrilla (2023) point out:

“According to Garton and Mankins (2015), Bain & Company demonstrated in a 2015 study of 300 senior executives worldwide—the results of which were published in the Harvard Business Review (2015), the difference in performance between a dissatisfied person and a committed person is 73 per cent, with the performance of a dissatisfied person being 29 per cent lower than that of a satisfied person and 73 per cent lower than that of a committed person, whose performance is 44 per cent higher than that of a satisfied person.” (p. 177).

For all these reasons, it will be of great interest to any organisation to understand the reasons why its employees feel dissatisfied; a good example of this is provided by Branham (2005), which is based on 19,000 surveys conducted amongst employees of the Saratoga Institute, part of the consultancy firm Pricewaterhouse Coopers, with the aim of analysing the reasons for dissatisfaction, proposing measures to meet employees' needs, and offering them the opportunity to develop and prevent them from leaving:

“Unmet expectations/Mismatch between the individual and the role/insufficient supervision and guidance for the employee/stress due to work overload and an imbalance between work and personal life/ few opportunities for growth and promotion/ feeling undervalued or unrecognised/ loss of confidence in senior leadership.” (n.d.)

All of this will contribute to an appropriate staff turnover rate, thereby preventing the organisation from wasting resources on training staff who, on the one hand, do not make sufficient use of their skills by leaving the company, and who, on the other hand, may apply their knowledge in another organisation.

Next, returning to the positive correlation between productivity and job satisfaction, we present Pushpakumari's comprehensive study conducted in 2008, analysed by Barrera (2015), which reaches the following conclusions:

* Job satisfaction has a significant impact on the productivity of employees in private-sector organisations, where higher-level employees are more satisfied than lower-level ones.

* Employees at higher levels tend to derive greater satisfaction from intrinsic rewards, whilst those at lower levels do so from extrinsic rewards, with the former being more willing to put in extra effort at work.

* Employees in highly competitive industries are more satisfied than those in less competitive industries. Similarly, older employees are more satisfied than younger ones, as are those with more experience than those with less.

* Satisfied employees tend to have lower absenteeism rates than dissatisfied employees, which also affects staff turnover; similarly, financial benefits satisfy, retain and attract staff, resulting in satisfied employees who are more committed to their jobs.

Having outlined the intrinsic and extrinsic factors that contribute to job satisfaction, we cannot conclude without mentioning Dimitrova's (2017) contribution regarding workers' social interaction: 'Work satisfies their need for social interaction. It should therefore come as no surprise that having friendly and supportive colleagues increases employee satisfaction. A manager's behaviour is also a key determinant of satisfaction.' (p. 32).

Elaborating on this last concept, and paraphrasing the well-known assertion that 'people do not leave a job, but rather leave a boss', Döring, Pihl-Thingvad, and Vogel (2025) noted: 'Well-being at work is a multifaceted construct that goes far beyond the limited dimension of staff satisfaction with their work' (p. 2).

2.4. LEADING PEOPLE

Many of us have led and been led at some point, and the latter may have influenced our personal leadership style, in which our temperament, character and personality coexist with the contributions of those who have led us—contributions that are always positive, as they have allowed us to experience first-hand aspects that we may choose to implement ourselves, or that we will never adopt because they are counterproductive to motivating the staff under our charge, or may even demotivate them.

Lescano (2016) stated: "Although we will discuss the leadership role of middle managers later on, it is worth emphasising that this leadership is influenced by the leadership of senior managers" (p. 6).

However, our interaction with the staff we have led also influences our leadership style, and although the staff under our charge differ in each role we have held—due to their own personalities and the working environment in which they find themselves—we are able to recognise patterns which, far from leading us to form prejudices towards future colleagues, should help us identify the best way to connect with the staff under our charge so that we can all achieve our common goal.

For all these reasons, it is necessary at this point to discuss the various leadership styles, highlighting their advantages and disadvantages. We shall begin with the traditional styles, merely listing them, as they are well known to all and their terminology is very intuitive, before moving on to those that are currently regarded as more appropriate.

The traditional leadership styles – namely, autocratic, bureaucratic, charismatic, democratic, passive, people-oriented, task-oriented, natural and transactional – gave way at the end of the last century to others, based on various components of what is known as emotional intelligence, once it became clear that a leader requires not so much technical knowledge as an understanding of human behaviour in order to influence it. Thus, Goleman (2002) argues that, whilst every type of task requires two parts emotional intelligence to one part IQ, in the case of leadership, six parts emotional intelligence are required for every one part IQ.

The good news is that, whilst IQ is largely genetic, emotional intelligence—and the skills that characterise it—can be learnt at any age; one simply needs to practise them and commit to them. This is impossible, however, without positively valuing the change they will bring about, which will contribute decisively to a working environment characterised by the flexibility that allows for innovation without fear of bureaucracy, where employees have a clear understanding of the organisation's values and mission—which will foster a sense of responsibility towards it—and, together with precise feedback on performance appraisals and the awarding of rewards, will determine their level of commitment to the shared purpose. Even so, success is not guaranteed, given that, as Aunin, Lüde, Sander, Vogel and Wiesner (2024) pointed out, 'the idea that effective leaders respond to each follower individually is widespread in public leadership studies.' (p.2).

Finally, before describing these leadership styles, it is important to recognise that to be an effective leader, one must employ one style or another depending on the circumstances; although you may feel more comfortable practising one of them, you must be familiar with all of them so as to apply them when necessary, switching from one to another quickly and naturally.

* Visionary leader: provides staff with the goal without dictating the path to it, so that each employee has scope to innovate – with calculated risks – whilst being able to try something new. This ensures that every team member knows what is expected of them in achieving the common goal, encourages their commitment and initiative, and shares knowledge by training the team and instilling confidence in their abilities, which helps with staff retention. Very useful when facing imminent change, but less so with experienced teams.

* The coaching leader: more people-oriented than task-oriented, they may set aside short-term concerns to focus on what matters to their team on a personal level. They show greater concern for developing their staff than for achieving objectives; by connecting with their personal goals, they find it easy to link these in turn to their professional ones; they seek personal growth through feedback rather than the organisation's interests; and they foster their staff's autonomy and self-confidence. Very useful for developing staff, though less so with those who do not wish to receive feedback or develop themselves.

* Affiliative leader: with a greater focus on interpersonal relationships, they aim to create a close-knit and harmonious working environment, not ruling out the possibility of friendship, thereby securing the loyalty of their staff and fostering a sense of belonging. However, they cannot help but lose sight of the objective; it becomes more difficult to deal with any conflict, which limits performance, and this style cannot be used exclusively, as the team may perceive it as laxity. Very useful for strengthening relationships, but not so much in a crisis or when clear instructions are needed.

* Democratic leader: interested in their staff's views and concerns, they value their opinions, which instils flexibility and a sense of responsibility in them. They manage conflict well by smoothing over differences to foster harmony, acting as one of the team rather than 'playing the boss'. They spend too much time consulting their team, so it is sometimes inadvisable to rely on them so heavily. Very useful for building consensus or encouraging participation, but less so in a crisis, when facing an unpopular decision, or where opinions are divided.

* The Helmsman Leader: more focused on achieving objectives and concerned with performance, they set the pace and direction, whilst being overly preoccupied with the short term. They give the impression of being a coaching leader, but their team feels merely controlled, as they pay little heed to their needs and aspirations, which ultimately undermines the team atmosphere. Despite believing they give clear instructions, their team has to guess what they want, leading them to lose confidence in their own abilities and feel adrift when the leader is absent. Very useful only with motivated and competent teams.

* Coercive leader: with a greater focus on achieving objectives, they are solely concerned with ensuring that their staff obey them blindly, thereby stifling initiative. They do not delegate, explain or train; they only provide negative feedback, assuming that doing things correctly is the starting point. This style is useful only in emergencies, in the face of imminent change or when dealing with problematic staff.

In the last decade of the last century, people began to talk about another style – the transformational style – which is more oriented towards flexibility and participation within the organisation by giving meaning to performance. In this way, staff are transformed, fostering the development of their motivations, values and abilities, without focusing solely on improving their performance. By showing them that their work serves a purpose for each individual, it inspires them whilst conveying the manager's enthusiasm.

It transforms because it takes care of each of its employees, with their different qualities, abilities, characteristics and needs, providing them with challenges tailored to these; it stimulates the team, as innovating and stepping outside the 'comfort zone' promotes their development; it identifies opportunities, strengths, weaknesses and threats to set a scenario that generates high expectations; he influences his team by building trust through his honesty, commitment and tenacity, so that following him comes naturally. To conclude, in the words of Gagné et al (2022), 'Transactional leadership, centred on supervising, rewarding and punishing, could boost self-determined motivation during organisational crises' (p.12).

2.5. MIDDLE MANAGEMENT IN A WORKPLACE ORGANISATION

Returning to the beginning and the way in which an organisation is structured, mention was made of senior management, which bears ultimate responsibility for the company's success and is tasked with communicating its mission, vision and values to the rest of the staff, for which it relies on middle management, as highlighted by Asif, Li, Hussain, Jameel and Hu (2023): "Supervisors facilitate two-way communication with their subordinates by acting as agents of the organisation." (p.9).

Reference was also made to middle management, who, in the words of Barrera (2015), "are those employees within a company who have people under their responsibility (subordinates) and, in turn, report to another person (superiors, heads of department, managers), regardless of the number of subordinates reporting to them, or the area or functions in which they work." (p. 60), who are expected to be so aligned with the organisation that they can convince the rank-and-file staff of this, with senior management assuming that they are highly motivated because, amongst other things, they do not usually put obstacles in the way of their ideas and try to implement them. Aware

of the difficulty of this task, Tyskbo and Styhre (2023) acknowledged: “Navigating this middle ground required a delicate balance: responding to and aligning with senior management’s organisational expectations, whilst at the same time guiding those under their charge and identifying with them through solid, close relationships” (p. 15).

And then there are the rank-and-file staff, who are expected to contribute their efforts towards the common goal—a goal that originates with senior management but is conveyed to them via middle management. These staff members are valued by the organisation, although the organisation takes full account of Pruneda’s (2013) observation that “workers in managerial positions have higher levels of motivation than those in other types of roles” (p. 26).

If we add to this the assertion made by Isasi (2023), referring to the various models of corporate governance, in which he highlighted the existence of common denominators in the most advanced countries with the greatest legal certainty, including: ‘The inappropriateness of the participation of workers’ representatives on the Board of Directors.’ (p. 15), both statements show us that organisations have lower expectations of this group in terms of involvement, motivation and development within the company than they do of middle management.

Indeed, as Ávila (2017) points out, “The role of middle management has undergone significant evolution since the early 1970s, initially being viewed as agents of organisational control, and now being regarded as agents of change” (p. 9). For all these reasons, given that middle management is regarded as a fundamental cog in the organisation’s machinery, it seems essential to understand their expectations, so that senior management—who have the greatest stake in the company’s success—have the opportunity to implement the necessary measures to retain the best talent within this group.

However, we must bear in mind the point raised by Mula (2016): “there are many people who, whilst in their jobs and aligned with their companies’ objectives, wish to create value, yet find themselves held back by the working environment or because they have been assigned an unsuitable task” (p. 53). Consequently, people join the company highly motivated, but this motivation can gradually wane if there are no appropriate incentive policies in place; what begins as an unpleasant situation ends in frustration and personal and professional decline.

To prevent this, or to help eradicate demotivation as soon as it arises, senior management has a vital role to play, based on seven principles: to use all available means to ascertain the cause of the issue, which must then be corroborated with the person concerned; to form a clear picture of what has happened; to thoroughly investigate the reasons behind the situation; to implement measures to address this demotivation; to demonstrate trust and a positive attitude throughout the process; and to identify the goals the employee needs to restart the motivational cycle.

Even so, whilst relying on the goodwill of senior management and middle managers—who are responsible for conveying the sentiments of front-line staff, as well as their own—as Chiavenato (2009) noted: ‘Various problems affect people’s performance. Some manage to deal with such problems on their own, others do not and become problematic employees’ (p. 447).

However, there is no need to go to extremes; it is more common than it seems, for as the author cited in the previous paragraph also noted in his work:

“For conflict to arise, in addition to differences in objectives and interests, there must necessarily be deliberate interference by one of the parties involved... whether active or passive, but deliberate, to block the other party’s attempt to achieve its objectives” (p. 459).

This causes clearly defined harm, as described by Mula (2016): “A poor working atmosphere can facilitate the emergence of interpersonal conflicts which, in turn, worsen the atmosphere... ultimate responsibility for the working atmosphere lies with management” (p. 22).

All levels of the organisation must bear this firmly in mind, although the burden of management falls mainly on middle management, who have more staff under their charge and who may follow advice such as that offered by Cembrero, Díez, Gómez, Hernández and Molinos (2017): “Among the measures to prevent conflicts is not concealing the organisation’s problems or difficulties in order to avoid rumours” (p. 69), and those of Ávila (2017) himself, who pointed out that one of the general objectives of mediation and conflict resolution is “to accept conflict as something inevitable and commonplace, whilst recognising that it can indeed be managed effectively.” (p. 25) – in contrast to senior management’s temptation to avoid ‘noise’ by seeking ‘industrial peace’ with employee representatives.

Chiavenato (2009) had already warned of this: “A successful disciplinary policy requires far more than a simple written procedure. It requires the commitment of the entire organisation, from the top down to the bottom. This is the behaviour that creates an ethical working environment” (p. 453), or, to put it more forcefully, EXE CYL (2012) “We must be fair and show solidarity with one another, but it is vitally important that we are all able to dismiss toxic, individualistic and uncommitted employees (and that this is not solely the responsibility of managers or direct supervisors) because they do neither their colleagues’ well-being nor the company’s future any favours.” (p. 18); the aspect of “dismissal”, whilst difficult for organisations to implement, but which attests to the clarity of thought one must possess if one wishes to be productive and fair to one’s colleagues, should we find ourselves managing staff who, despite every effort made by their managers, have no intention of aligning themselves with the organisational culture and believe they can get away with it.

This is the situation that middle managers frequently find themselves in, and they therefore require as much support as possible from senior management, in recognising their role as being responsible for fostering the best possible working environment – one that ensures their entire team ‘pulls in the same direction’, that no team member is left behind, and that the collective effort yields productivity rather than the comfort of a few of its members, amongst other achievements. And all this because, as Alemany (2025) points out:

“There is a layer within the organisation that does not sign off on the strategy, but puts it into practice. That does not decide the direction, but sets the pace. That does not hold a grand title but does have a decisive influence over what is done—or not done—every day. That layer is that of middle management. And although they

rarely feature in institutional speeches, it is they who determine whether people get involved... or disengage. Whether teams move forward... or grind to a halt. Whether transformation progresses or fizzles out before it begins.” (p. 1).

3. METHODS AND MATERIALS

The method employed involved quantitative research, using the procedure defined below, which seeks to capture the range of information regarding middle managers’ perceptions of how their superiors’ behaviour impacts their motivation.

It is also exploratory, given that research of this kind is uncommon, owing to the usual focus on front-line staff and the best ways to influence them. Furthermore, questions on leadership have been included in order to investigate a possible correlation between middle managers’ motivation and job satisfaction and their superiors’ leadership style, and whether the latter may have influenced the former.

Finally, it is a non-experimental study, as it aims to observe the aforementioned impact within the usual working environment, without any manipulation, simply by recalling past experiences, and always from the perspective of how those experiences made them feel.

To assess middle managers’ perceptions of their job satisfaction and leadership style within organisations, an online survey was published using the ‘Google Docs’ application, seeking their views on the matter; the questions were approved by Dr Josefa Elisa López Gómez, the Director of the research on which this article is based.

It is estimated that the main limitation of this study stems from the fact that, despite the survey having been sent out to numerous groups, the author considers that a significant proportion of the respondents belong to the same organisation as the author. However, according to the literature consulted for the drafting of this article, the results appear to be fairly similar to those of the wider society.

The results, detailed below, are based on a sample of 341 middle managers; although 27 per cent of them are considered senior management, they were previously middle managers and were therefore able to answer the questions as such; the aforementioned survey is reproduced in full in Appendix I of the previously cited work, where readers will find all the responses reflected in the figures, as well as the positive and negative factors affecting motivation, as noted by each respondent. The questions relevant to this article are set out below, with the results for each one presented in the figures.

4. RESULTS

Figure 1

*Results of the second question in the survey compiled
by the author using Google Docs*

2. Looking back on your career, how satisfied are you with your job?

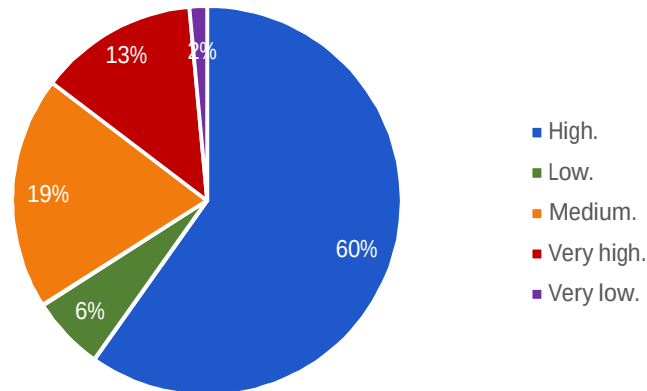


Figure 2

Results of the third question in the survey created by the author using Google Docs

3. Looking back on your career, what leadership style do you tend to recognise in the managers you have worked under?

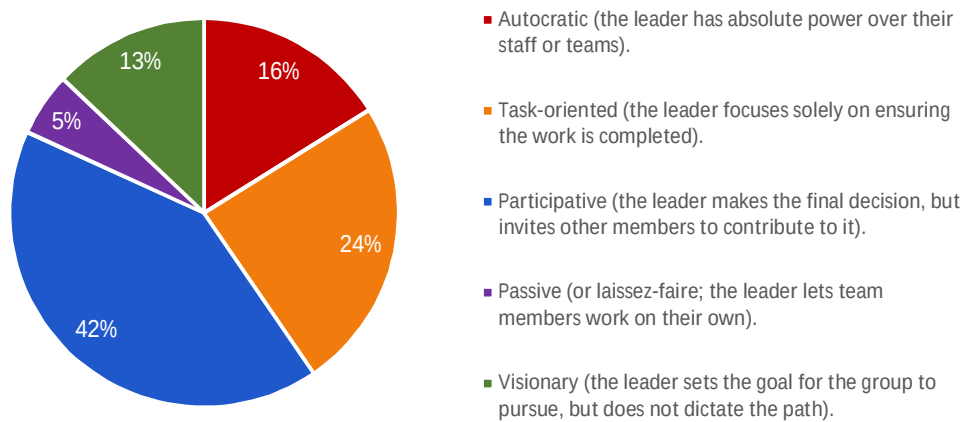


Figure 3

Results of the fourth question in the survey created by the author using Google Docs

4. With regard to your own leadership style, which of the following do you think best describes you?

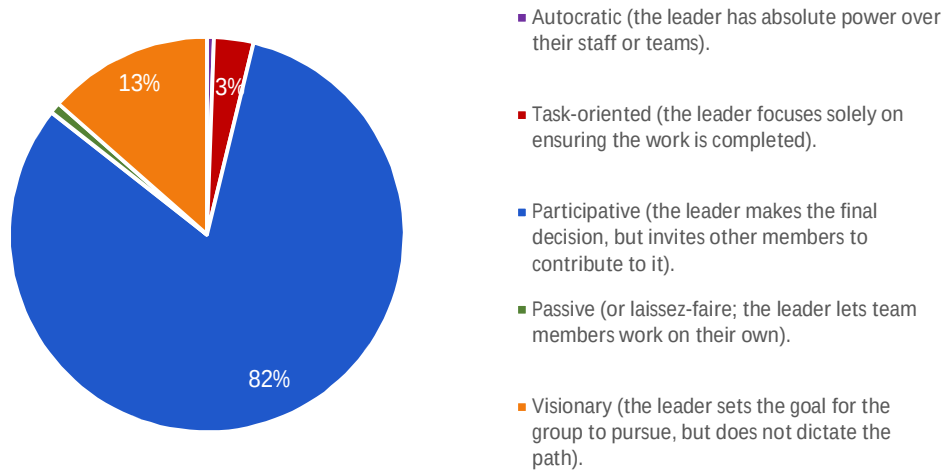


Figure 4

Results of the fifth question in the survey created by the author using Google Docs

5. Have you experienced any changes in your personal leadership style throughout your career?

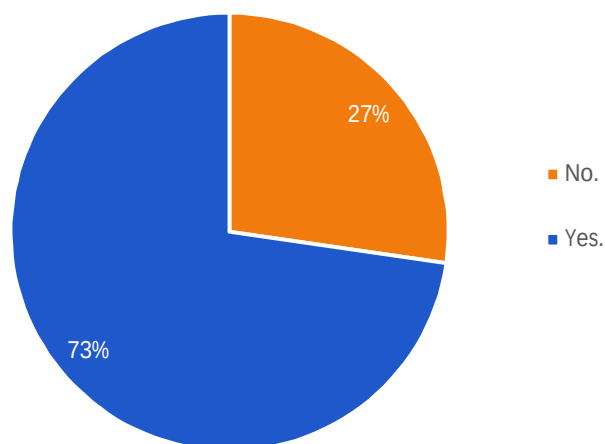
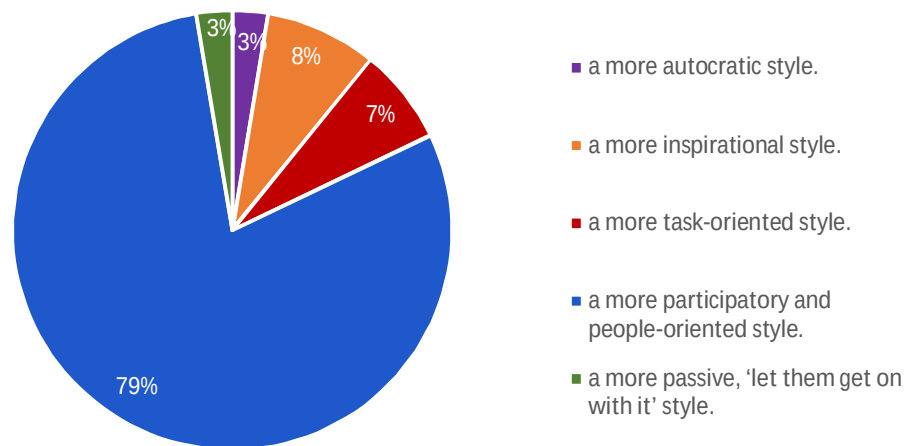


Figure 5
Results of the sixth question in the survey created by the author using Google Docs

6. If your answer is 'yes', do you feel that your style has moved towards:



5. DISCUSSION AND CONCLUSIONS

Firstly, it is essential to verify whether the hypothesis has been confirmed: that the leadership style of senior managers has a significant influence on the development of middle managers' leadership style.

Thus, according to the findings, the hypothesis is confirmed, as it has been shown that the respondents, whilst perceiving their superiors as having varied leadership styles—though predominantly participatory, at 42 per cent— followed by a not inconsiderable proportion who were perceived as task-oriented and autocratic, totalling 40 per cent – the polar opposite of those perceived as participative – they perceive their own leadership style as predominantly participative, with 82 per cent of respondents holding this view, which indicates their desire to move away from the way in which they were led. Furthermore, almost three-quarters of the sample state that their leadership style has evolved over time, which is consistent with what was previously outlined in the theoretical framework, which highlighted this evolution as a result of interaction with managers and subordinates.

Continuing with the structure of the article, it is concluded that, however many material resources an organisation may have, it will not succeed if it fails to meet the needs of its staff, who seek to satisfy their own needs; and, reviewing theories of motivation, it has been established that it must fulfil not only physiological and safety needs, but also social, esteem and self-actualisation needs. Furthermore, the survey—as a source of research, in line with the theoretical framework—indicates that job satisfaction amongst middle managers is in the high range.

In this satisfaction, both those who lead and have led middle managers, and the staff currently under their charge and those who have been under their charge in the past, play a fundamental role; for, through the treatment they have received, they have influenced the way middle managers treat their subordinates both now and in the future.

Therefore, to maintain this level of satisfaction amongst middle managers, the author—apart from compiling the best practices set out below—can think of nothing else, given his conviction that the social and working conditions of front-line staff, fortunately leaves no room for improvement, senior management and middle managers who lead other middle managers must focus not so much on the outcome or on how a working situation inconsistent with ‘industrial peace’ might harm them, but rather on the genuine needs of their middle managers; to do so, they will need to get to know them better, devoting more time to them and ensuring effective communication.

In this way, middle managers such as those surveyed will dispel the notion they often hold—that their superiors care little about the social and labour tensions prevailing within teams— as they consider this to be something middle managers simply have to ‘put up with’ – that it is their job to endure the ‘sour faces’ of front-line staff when they arise, an interaction that is highly detrimental to the occupational well-being of middle managers and which, of course, is not part of their salary.

It is important to be aware of this situation, as senior management and the managers who lead other middle managers are often unaware of it, given that the latter treat them well – whether because they are more deeply immersed in the organisational culture, because they are more understanding towards their boss, or simply because they want to be promoted; but the ‘ ’ type of workplace stressor mentioned above is not usually experienced by either the managers who lead other middle managers or, of course, senior management. Therefore, faced with the temptation senior management may feel to believe that most middle managers lack sufficient leadership ability, they might consider what Alemany (2025) points out: “It is not a question of ability, but of focus. The problem with most middle managers is not that they do not know how to lead, but that the context leaves them no room to do so, and the system does not recognise their efforts.” (p.2).

As best practices to boost the motivation of middle managers—without claiming to be exhaustive, given the limited scope of this article—the following are set out:

Firstly, effective communication between the different levels of the organisation must be more fluid than it has been to date; in other words, middle managers must not have negative expectations ahead of a meeting with their line manager, thinking that they are only being called in to be told what is wrong; nor should front-line staff harbour such expectations towards their middle managers.

Continuing on the subject of communication, middle managers receive training in leadership skills to improve working relationships with their staff, but not the other way round – something considered essential, as new leadership styles can be confusing for front-line staff.

Whilst it is essential that information coming from senior management is clear, it is imperative that it reaches middle managers before it reaches front-line staff; this ensures

they are not undermined, and allows the proper respect between them to be maintained, taking precedence over the pursuit of the desired ‘industrial peace’ with the trade unions.

Similarly, it is essential that senior management and those in charge of other middle managers are aware that many of the measures they wish to implement within the organisation are unpopular, and that it falls to middle management to communicate these to the staff under their charge; they must therefore show them particular understanding, based on an appreciation of the difficulty of their task and on offering them support in the face of any obstacles that front-line staff may raise.

Even so, tensions may arise in the working environment that undermine it when a manager implements the changes required by the organisation; and when this happens, it will be essential for the line management to identify those managers whose subordinates are questioning them, for two reasons: if that manager is treating their staff inappropriately, they will need to set them back on the right track, providing training and, if necessary, assigning them a different role; but if their behaviour is appropriate and in line with the organisational culture, they will need to demonstrate to both the manager and the staff under their charge the trust the organisation places in them.

Obviously, it is very difficult to ascertain what has happened within a team, but given that the team leader should be the person best known to their superior amongst all the staff under their charge, the superior will need to ascertain what is happening within the team in the face of a crisis; it is therefore essential that they have a clear understanding of their direct subordinate’s behaviour. However, if they do not know their direct subordinate, or have not considered it important to get to know them, they still have an opportunity to uncover the truth behind the crisis in their subordinate’s team: by conducting a team tension analysis to understand the dynamics of the conflict and thus be able to ‘get down to work’ to resolve a crisis which, like all such crises, can help the team grow.

The organisation to which the author belongs has a procedure of this kind, known as the tension analysis protocol, which can be initiated at any stage of identifying the tension – preferably before the conflict erupts. It is requested by the head of the provincial administrative unit, and is carried out by a psychologist from the nearest provincial administrative unit and a manager from the original administrative unit who holds a position immediately senior to the head of the team under assessment. The body issues a report, in the form of recommendations, to the head of the administrative unit that requested it; these are non-binding, as ultimate responsibility lies with them, but they cover everything from training and removal from post to the application of disciplinary measures to the team leader or any of its members.

In any case, any measures that superiors may implement to ensure that middle management truly feels part of the organisation, that they have their place within it, and that they are not merely a tool, will always be good practice in terms of their motivation.

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Research Article

THE OCCUPATION OF PROPERTIES AND PARKING SPACES: THE LEGAL DISTINCTION BETWEEN UNLAWFUL OCCUPATION AND TRESPASS

English translation with AI assistance (DeepL)

Rafael Francisco Correa Prada

Retired Guardia Civil

Graduate in Law from the National University of Distance Education (UNED)

rf-cp@outlook.es

ORCID: 0009-0005-1837-8823

Received 18/03/2026

Accepted 28/04/2026

Published 30/06/2026

doi:<https://doi.org/10.64217/logosguardiacivil.v4i2.8962>

Recommended citation: Correa, R.F. (2026). The occupation of properties and parking spaces: the legal distinction between unlawful occupation and trespass. *Logos Guardia Civil Journal*, 4(2), pp. 131–160. <https://doi.org/10.64217/logosguardiacivil.v4i2.8962>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

THE OCCUPATION OF PROPERTIES AND PARKING SPACES: THE LEGAL DISTINCTION BETWEEN UNLAWFUL OCCUPATION AND TRESPASS

Summary: 1. INTRODUCTION. 2. CONCEPTUAL AND LEGAL FRAMEWORK. 2.1. Conceptual framework of the issue of occupation. 2.2. Differences between a dwelling, property and possession. 2.3. The concept of occupation and its legal treatment. 2.4. Parking spaces as dwellings. 3. CONSTITUTIONAL PERSPECTIVE AND CONFLICTING RIGHTS. 4. OFFENCES RELATED TO OCCUPATION. 4.1. Trespassing on a dwelling (section 202 of the Criminal Code). 4.2. The offence of unlawful occupation (Article 245 of the Criminal Code). 4.3. Borderline cases and conflicts of classification. 5. ILLEGAL OCCUPATION: BETWEEN BREACH OF CONTRACT AND CRIMINAL FRAUD. 5.1. Legal nature of the phenomenon. 5.2. Possible criminal classification: unlawful occupation or fraud? 5.3. Relevant case law. 5.4. Doctrinal proposal. 6. CAR PARK SPACES AS POSSIBLE DWELLINGS. 7. DWELLINGS: DWELLING VS UNINHABITED PROPERTY. 8. PROPOSALS FOR LEGISLATIVE AND DOCTRINAL IMPROVEMENTS. 8.1. Clarification of the concept of a dwelling. 8.2. Specific regulation of the occupation of garage spaces. 8.3. Distinction between occupation out of necessity and abusive occupation. 8.4. Improvement of the procedural response. 8.5. Relevant legislative proposals. 9. CONCLUSIONS. 10. BIBLIOGRAPHICAL REFERENCES.

Abstract: This article provides a comprehensive analysis of illegal property occupation in Spain, examining its criminal, constitutional and social dimensions. Through an in-depth review of case law from the Supreme Court and the Constitutional Court, the study explores the distinction between ‘dwelling’ and ‘non-dwelling property’, a key factor in differentiating between the offences of burglary and unlawful occupation. Emerging phenomena such as ‘*inquietokupación*’—fraudulent tenancy used to gain access to a property—are also addressed, highlighting the challenges at the intersection of civil and criminal law. The paper further analyses the constitutional tensions between the inviolability of the home, the right to property, and the right to adequate housing, and proposes legislative reforms aimed at improving legal and social responses. The study concludes that illegal occupation requires a multidisciplinary approach combining legal reform, procedural efficiency and public housing policies.

Resumen: El presente artículo analiza de forma integral el fenómeno de la ocupación ilegal de inmuebles en España, abordando su dimensión penal, constitucional y social. A través del estudio de la jurisprudencia del Tribunal Supremo y del Tribunal Constitucional, se examina la distinción entre morada e inmueble deshabitado, elemento clave para diferenciar entre los delitos de allanamiento y usurpación. Asimismo, se profundiza en figuras emergentes como la *inquietokupación*, que plantea importantes retos en la frontera entre el derecho civil y el penal. El análisis se completa con una revisión de los conflictos constitucionales entre la inviolabilidad del domicilio, el derecho de propiedad y el derecho a la vivienda, así como con propuestas legislativas orientadas a mejorar la respuesta jurídica y social ante este fenómeno. El estudio concluye que la ocupación ilegal requiere una aproximación multidisciplinar que combine reformas normativas, agilización procesal y políticas públicas de vivienda.

Keywords: illegal occupation; home invasion; usurpation; dwelling; *inquietokupación*.

Palabras clave: ocupación ilegal; allanamiento de morada; usurpación; morada; *inquietokupación*.

ABBREVIATIONS

AN: National Court

AP: Provincial Court

Art.: Article

Arts.: Articles

BOE: Official State Gazette

CC: Civil Code

CDFUE: Charter of Fundamental Rights of the European Union

CE: Spanish Constitution of 1978

CP: Criminal Code

DA: Additional Provision

FCSE: State Security Forces and Corps

FGE: State Public Prosecutor's Office

LAU: Urban Tenancy Act

LEC: Civil Procedure Act

LECrim: Criminal Procedure Act

LOTJ: Organic Law on Jury Trials

MF: Public Prosecutor's Office

No./No.: Number

RAE: Royal Spanish Academy

RDL: Royal Legislative Decree

SAP: Provincial Court Judgment

STC: Constitutional Court Judgment

STS: Supreme Court judgement

TI: Court(s) of First Instance

TC: Constitutional Court

TS: Supreme Court

TSJM: High Court of Justice of Madrid

TSJPV: High Court of Justice of the Basque Country

1. INTRODUCTION

The squatting of properties has become a highly complex legal and social phenomenon in Spain, with a proliferation of cases affecting not only homes but also commercial premises and parking spaces, calling into question the limits of criminal protection, the definition of the concept of a dwelling, and the balance between the inviolability of the home, private property and the right to decent housing. This is exacerbated by the absence of an express constitutional recognition of the right to property as a fundamental right in the 1978 Constitution (CE), unlike the inviolability of the home under Article (Art.) 18.2 CE, which contributes to the complexity of the problem and the diversity of judicial responses.

From a criminal law perspective, the issue requires a precise definition of the offences of breaking and entering (Article 202 of the Criminal Code [CP]) and unlawful occupation of immovable property (Article 245 CP), as well as an analysis of the growing view that squatting may constitute the offence of fraud (Article 248 CP). Case law plays a decisive role in interpreting the concept of a dwelling and the effective use of the property by its owner.

New forms of occupation – *such as the use of garages as makeshift living spaces* – necessitate a re-evaluation of the criteria for habitability, privacy and domestic privacy, raising questions about whether such spaces can be classified as dwellings and about the criminal nature of such conduct.

This article systematically examines the criminal treatment of such occupations – of both dwellings and parking spaces – the doctrinal evolution of the concept of a dwelling, and the possible classification of permanent parking in another person's parking space as trespass. Finally, it addresses the constitutional conflicts involved and puts forward legislative proposals aimed at strengthening legal certainty and procedural efficiency.

2. CONCEPTUAL AND LEGAL FRAMEWORK

Squatting is a complex legal phenomenon situated at the intersection of civil, criminal and constitutional law. Its analysis requires a clear definition of the concepts of 'dwelling', 'domicile', 'possession' and 'property', taking into account the evolution of case law that shapes its criminal treatment.

2.1. CONCEPTUAL FRAMEWORK OF THE PROBLEM OF SQUATTING

Article 18.2 of the Spanish Constitution recognises the inviolability of the domicile as a fundamental right, implying that no third party may enter it without the consent of the owner or a court order, thereby protecting not only a physical space but also a sphere of personal and family privacy and intimacy.

To this end, the Constitutional Court (TC), in its Judgment 22/1984 of 17 February¹, ruled that the protection of the home does not depend on the legal ownership

¹ Judgment of the Second Chamber of the Constitutional Court STC 22/1984, of 17 February, HJ System – Decision: JUDGMENT 22/1984

of the property, but on its actual use as a space for private life, since ‘*n inviolable home is a space in which the individual lives without necessarily being subject to social customs and conventions and exercises their most intimate freedom*’. Thus, a dwelling occupied unlawfully may constitute a ‘morada’ if the occupant carries out their daily life there on a stable basis.

2.1.1. The criminal law concept of a ‘dwelling’

According to the dictionary of the Royal Spanish Academy (RAE), a ‘morada’ is ‘*a place of somewhat continuous residence or abode*’, or ‘*the place where one lives*’. However, legal doctrine defines it as ‘*the place where a person lives, or the physical space, enclosed and separated from the outside world and from third parties, which allows its occupant to protect and lead their private life and personal privacy, and to exercise their right to exclude third parties, where the individual lives without necessarily being subject to social customs and conventions, regardless of whether it is their habitual or temporary residence*’. The Supreme Court (TS) interprets this to include ‘*all the rooms of an inhabited dwelling that are connected to it internally*’², which applies regardless of whether it is used as a permanent, temporary or occasional residence.

Thus, it would include, for example, caravans, boats or any enclosed space, provided that it meets the requirements described above. Even a second home may be considered a dwelling if it is used for everyday activities, a key concept in distinguishing between the offence of breaking and entering, as defined in Article 202 of the Criminal Code, and the offence of unlawful occupation under Article 245 of the Criminal Code.

For criminal law purposes, certain spaces are also considered dwellings if, although located outside a dwelling, they are inseparably linked to it. For example, courtyards, garages, storage rooms, etc., extending to ‘*all rooms of an inhabited dwelling that are connected to it* [for example, a rented room in a shared flat, or a hotel room], *regardless of whether it is a permanent, temporary or occasional residence*’. This also includes places that are not dwellings, such as a caravan, a boat, etc., since, for criminal law purposes, what matters is ‘*that the place in question is being inhabited and is the place of residence of the person concerned*’. This extension of the concept of a dwelling was confirmed in Supreme Court Judgment 3620/2020 of 6 November³, which reaffirms this trend, including second homes. Lockers belonging to military personnel whilst on duty at their unit also enjoy special protection. Article 10.2 of Organic Law 9/2011 of 27 July on the rights and duties of members of the Armed Forces, which deals with the right to privacy and personal dignity, stipulates that the search of a person, their lockers, effects and belongings,

² STS 5484/2014, decision number: 852/2014, dated 11 December 2014, handed down by the Criminal Chamber, Presiding Judge Miguel Colmenero Menéndez de Lúcar: STS 5484/2014 - ECLI:ES:TS:2014:5484 - Judiciary

³ Supreme Court Judgment 3620/2020, judgment number: 587/2020, dated 6 November 2020, handed down by the Criminal Chamber, Presiding Judge Vicente Magro **Servet**: Supreme Court Judgment 3620/2020 - ECLI:ES:TS:2020:3620 - Judiciary

‘... shall require the consent of the person concerned or a court order. However, where there are indications that a criminal offence has been committed, or for well-founded reasons of public health or security, the head of the unit may authorise such searches in a proportionate manner and on expressly stated grounds. These searches shall be carried out in the presence of the person concerned and at least two witnesses, or in the presence of the witnesses alone if the person concerned, having been duly notified, fails to attend’.

Another important, and more practical, concept is that of *domicile*, which legal doctrine defines as *‘the premises where a person resides, or the physical space that allows its occupant to protect their private life and exercise their right of exclusion vis-à-vis third parties. It is the person’s legal domicile’*. Its importance stems from its inclusion in Article 18.2 of the Spanish Constitution as ‘inviolable’, a concept extended to other places similar to the habitual residence, such as hotel rooms, since case law establishes that *‘a person’s habitual residence implies not only staying in a place but also the intention to settle there effectively and permanently’*.⁴

Something to bear in mind in relation to the above are the differences between the administrative notion and the case-law perspective of what is considered a dwelling, where Supreme Court Judgment 5271/2013, of 7 October⁵, distinguishes between the concept for criminal purposes and the administrative notion of a dwelling:

‘The concept of a dwelling for criminal law purposes is not identical to the administrative notion of a dwelling. The idea that only those properties duly regularised for tax purposes are eligible for criminal protection lacks any justification. ...//... This highlights the link between the concept of domicile and the protection of an individual’s privacy, which leads to broadening the civil or administrative legal concept of a dwelling to construct that of domicile from a constitutional perspective, as an instrument for the protection of privacy.

...//...

Consequently, compliance with certain administrative requirements, for the purposes of registration, does not add a distinctive feature without which the constitutional protection of the sphere of privacy—which every citizen defines as a boundary of exclusion against public authorities and third parties—must be suspended. ...//... The protected legal interest is not dependent on the size of the dwelling or its administrative status. Hence, administrative certification regarding the existence or absence of a certificate of occupancy would not have added anything to the actual existence of a space in which the activities inherent to Miren’s personal and family life took place’.

⁴ Supreme Court Judgment 4307/2017, of 28 November. Judgment number: 1834/2017, handed down by the Contentious-Administrative Chamber. Presiding Judge: José Antonio Montero Fernández. Supreme Court Judgment 4307/2017 - ECLI:ES:TS:2017:4307 - Judiciary

⁵ Supreme Court Judgment 5271/2013, of 7 October. Judgment number: 731/2013, handed down by the Criminal Chamber, Presiding Judge Manuel Marchena Gómez: Supreme Court Judgment 5271/2013 - ECLI:ES:TS:2013:5271 - Judiciary

Thus, the protection of the home provided for in Article 18.2 of the Spanish Constitution does not depend on compliance with administrative requirements, such as a certificate of habitability or the property's tax compliance. The home is understood as a *'space suitable for the conduct of private life'* and a *'last bastion of personal and family privacy'*, focusing on the protection of the individual's privacy rather than on the administrative compliance of the property. It follows that the right to the inviolability of the home encompasses *'any place where a person carries out activities related to their personal and family life'*.

Thus, the Constitutional Court, through numerous judgments (STC 22/1984, of 17 February, STC 69/1999, of 26 April, STC 283/2000, of 27 November, STC 10/2002, of 17 January, amongst others), has established a distinction between domicile and dwelling, defining the latter as *'any enclosed space in which a person spends the night and keeps their belongings'*. Thus, a dwelling is not limited to a reference to property, but rather to *'the protection of a person's privacy and private life'*, being a very broad and far-reaching concept for the protection of these fundamental rights.

Constitutional Court Ruling 10/2002 of 17 January⁶, in its Legal Grounds 8, held that *'hotel rooms may constitute the domicile of their guests, since, in principle, they are suitable places, by virtue of their very nature, for the private lives of those guests to be conducted therein, given that the usual purpose of hotel rooms is to carry out activities that can generally be classified as falling within the sphere of private life'*, adopting a strict interpretation of the terms relating to the inviolability of the home, ensuring that any ambiguous interpretation is resolved in favour of respect for privacy, and emphasising the connection between the concept of the home and the constitutional right to privacy, protected under Article 18 of the Spanish Constitution.

2.1.2. Trespassing

This consists of *'entering or remaining in another person's home without the consent of the occupier, who would be the person habitually residing there'*. This act is classified as a criminal offence and is regulated in Articles 202, 203 and 204. This offence protects the fundamental right to the inviolability of the home; the key factor is whether entry is made without consent or permission and against the will of the occupier, who may be either the owner or the person in possession of the property. Similarly, the offence would also apply in the event that the occupier withdraws authorisation to remain on the premises.

2.1.3. The unlawful occupation of a property

This refers to situations where a person gains access to, or remains in, a property that does not constitute a dwelling against the owner's will, or where a person occupies another person's property or usurps a real property right through the use of violence or intimidation. In such cases, the properties in question would be vacant, abandoned or under construction; this requires an intention to remain and the absence of a legitimate title, with the protection being directed not at privacy but at possession.

⁶ Constitutional Court Judgment 10/2002, of 17 January, Presiding Judge María Emilia Casas Baamonde: HJ System - Decision: JUDGMENT 10/2002

2.2. DIFFERENCES BETWEEN A DWELLING, OWNERSHIP AND POSSESSION

When dealing with the occupation of properties, it is necessary to distinguish between the legal concepts of dwelling, ownership and possession, as these are often confused, creating problems when addressing the situation arising from the occupation of a property and deciding how to resolve it, thereby complicating the assessment of the facts and the appropriate legal response.

Dwelling, a space of constitutional privacy: this is the space where a person leads their private life, even if they are neither the owner nor the legal possessor. Its legal significance stems from its protection under the right to the inviolability of the home (Article 18.2 of the Spanish Constitution). For example, this would apply to a tenant of a rented flat, which is their habitual residence; although they are not the owner, that place constitutes their home.

Ownership, the full real right: this is the exclusive and full real right over a property, a legal basis for ownership defined by Articles 348 et seq. of the Civil Code (CC). The owner may use, dispose of and transfer the property; their title is evidenced by the deed of sale in their name.

Possession, the protected factual situation: this consists of physically holding an asset and exercising acts of control over it, even if one is not the owner, which does not imply any legal rights over it. The law protects the possessor, who enjoys certain rights, such as the right not to be dispossessed of the property without due process (Article 446 CC). For example, a tenant living in a rented flat is in possession of it, even though the owner is someone else.

Overall, correctly identifying which of these rights is at stake determines whether the conduct should be addressed through criminal or civil proceedings, or by means of measures to protect possession. This distinction is essential in Spanish law, as it is not merely a theoretical exercise, but determines which right is to be protected, which offence has been committed, and which civil or criminal actions are appropriate.

Table 1 –
Distinction between ownership, possession and domicile

Situation	Is it a dwelling?	Is there possession?	Is there ownership?	Is it a criminal offence if this is breached?
Tenant in their flat	Yes	Yes	No	Trespassing if entering without permission
Landlord who does not live there	No	No	Yes	Squatting if occupied without permission
Occupant without legal title	It may be	Yes	No	Trespass if entry is made without consent

Source: own compilation

The key point is that each concept protects a different legal right, and confusing them leads to serious errors in legal classification, particularly in cases involving squatting, trespass and disputes between private individuals, as both the nature of the offence and the legal protection vary depending on who has control of the property. This distinction, in the context of property occupation, is crucial in determining whether a criminal offence has been committed or whether it is simply a civil dispute.

Table 2
Key differences

Concept	Does it imply ownership?	Does it involve use?	Is it legally protected?	Can it be the subject of a criminal offence if infringed?
Dwelling	Not necessarily	Yes	Yes (it is a fundamental right)	Yes (unlawful entry into a dwelling)
Property	Yes	Yes or no	Yes (it is a right in rem)	Yes (trespass, theft, etc.)
Possession	Not necessarily	Yes	Yes (protection of possession)	Yes (dispossession, usurpation)

Source: own work

2.3. THE CONCEPT OF OCCUPANCY AND ITS LEGAL TREATMENT

2.3.1. What is meant by *the* ‘occupation’ of a dwelling?

Occupation can be defined as: *‘the situation that arises when a third party, without title to possession and without the owner’s consent, enters a property and settles there with the intention of remaining permanently, thereby affecting the essential content of the right to property or, where applicable, the constitutionally protected sphere of the home’.*

This definition emphasises the lack of title, the physical occupation, the intention to remain, and the infringement of the relevant legal right.

2.3.2. Legal treatment: Is it a criminal offence or not?

There are two legal avenues to address the problem: the civil and the criminal routes.

With regard to civil proceedings, depending on the specific circumstances of the case, there are two procedures:

- a) Cases where the occupant has gained access to the dwelling without the owner’s consent: the procedure to be followed would be the summary proceedings for the protection of special possession of an occupied dwelling, set out in Article 250(1)(4) of the Civil Procedure Act (LEC): *‘the aim is the immediate recovery of the unlawfully occupied dwelling’.*

One of the specific features of this procedure, introduced by the sole Additional Provision (DA) of Law 5/2018 of 11 June, is the requirement to notify the competent public services responsible for social affairs so that *they may 'determine whether a situation of particular vulnerability exists and whether it is necessary for them to take action'*. Such notification is subject to obtaining the prior consent of the parties concerned. The existence of a situation of vulnerability has become a key factor in preventing the enforcement of evictions in these proceedings.

- b) Cases in which, prior to the occupation, the claimant had consented to the use of the property: a '*claim for eviction on grounds of precarious occupation*' shall be brought, as provided for in Article 250.1.2 of the LEC, enabling the owner of the property to regain possession when a person occupies it without a title justifying their stay or authorising their use of the property.

As regards criminal proceedings, which must always be a *last resort*⁷, the usual course of action is to apply the provision described in point 2 of Article 245 of the Criminal Code⁸, which classifies the occupation of immovable property as a criminal offence. This would constitute a 'minor offence', in accordance with the provisions of Articles 13.4 and 33.3 of the Criminal Code, and the procedure to be followed is that set out in Article 962 et seq. of the Criminal Procedure Act (LECrim). The legal right protected is real estate assets; the offence is prosecuted on the basis of damage to those assets, requiring that harm be caused to the owner of the affected property.

As regards filing a complaint with a reasonable prospect of success, it is necessary to prove ownership of the property by means of the title deed or an equivalent document (for example, a contract of sale), and to demonstrate the lack of consent to the occupation, which can prove to be quite complicated and difficult to establish.

A complaint can be lodged in various ways: the most common is with the State Security Forces (FCSE) responsible for the area where the occupied property is situated. It can also be lodged with the duty court or the court of first instance (TI) corresponding to the judicial district where the property is situated. The main difference is that the police draft the complaint and, before forwarding it to the Court of First Instance, may carry out an investigation into the matter. In the courts of first instance (TI), the complainant drafts the complaint, with the associated drawbacks regarding accuracy and compliance with legal requirements. In both cases, it is advisable to consider whether to request an urgent eviction order where it can be proven that the property in question is the complainant's habitual residence, as this would entail a more complicated procedure, potentially constituting a breach of the peace. In all cases, the TI assesses the occupant's personal circumstances; whilst this does not legalise the occupation, it may influence the type of proceedings (civil or criminal) and the enforcement of the eviction, without removing the unlawful nature of the act.

2.4. CAR PARK SPACES AS RESIDENCES

Recently, a situation has arisen that poses an interpretative challenge: the *use of garage spaces or storage rooms as dwellings*. Given the current housing situation, population

⁷ Definition of the 'ultima ratio' nature of criminal law: Pan-Hispanic Dictionary of Legal Spanish – RAE

⁸ Legal concepts: Article 245 of the Criminal Code

growth and the concentration of people in major cities, there are changes taking place in the use of commercial premises, converting them into dwellings, and situations where storage rooms or similar spaces are being let. Without going into the legality or illegality of such situations, this is of interest when dealing with occupations, or trespasses, of other premises or areas attached to a dwelling.

The illegal occupation of garage spaces is becoming more widespread and usually occurs when someone parks a vehicle in a garage space they do not own, without having the necessary authorisation to do so; in many cases, this is done to prompt the owner to offer a sum of money to vacate the space and avoid lengthy legal proceedings.

However, there are also situations in which the person occupying the parking space uses it as a permanent residence, which could raise the question of whether the parking space should be considered a dwelling. Nevertheless, in order to apply the criminal offence of trespass, case law tends to require objective evidence of habitability and everyday use.

Looking at the issue from the owner's perspective, there are properties that include attached parking spaces and/or storage rooms; therefore, where such a property constitutes the habitual residence of the person living there, those premises that form a single, indivisible registered unit with the dwelling to which they are attached shall also be deemed part of that dwelling, and the occupation of such parking spaces shall be interpreted as trespass.

3. CONSTITUTIONAL PERSPECTIVE AND CONFLICTING RIGHTS

Illegal occupation pits the right to private property against the right to decent housing, and the Constitutional Court, with regard to the conflict between the two, in Constitutional Ruling 32/2019 of 28 February⁹, recognises that both must be weighed up in accordance with the principle of proportionality, particularly in cases of social vulnerability, in the following terms: *The right to choose one's place of residence is not an absolute right that entitles a person to occupy any dwelling, as it must be exercised in accordance with the law and with respect for the rights of others.* Furthermore, evicting occupants from a dwelling without legal title does not infringe the right to decent and adequate housing; consequently, the legislature has a wide margin of discretion to adopt provisions in social and economic matters.

The occupation of properties raises a conflict that transcends the criminal sphere, entering the realm of fundamental rights and bringing into play three constitutional pillars: the inviolability of the home (Article 18.2 of the Spanish Constitution), the right to private property (Article 33 of the Spanish Constitution) and the right to decent and adequate housing (Article 47 of the Spanish Constitution). The Constitutional Court has held that these rights must be weighed against one another, whilst respecting the principle of proportionality and human dignity, and that criminal law cannot be the means of resolving housing disputes; it must be applied proportionately and with due regard for constitutional guarantees.

⁹ Plenary Session. Constitutional Court Judgment 31/2019, of 28 February 2019. Appeal for constitutional protection 1086-2018. https://www.boe.es/diario_boe/txt.php?id=BOE-A-2019-4446

The inviolability of the home: according to Article 18.2 of the Spanish Constitution, the home is inviolable and no entry or search may be carried out without the consent of the occupant or a court order, except in cases of flagrante delicto. This provides direct protection for personal and family privacy against external interference, and any breach of this right may constitute the offence of unlawful entry. The Constitutional Court has interpreted 'home' as '*any space where a person leads their private life, regardless of ownership or physical nature*', including rented accommodation, shared rooms and even spaces occupied on a precarious basis, provided there is stable and personal use of the premises.

The right to private property: Article 33 of the Spanish Constitution recognises the right to private property, adding that its scope is defined by its social function; it is not an absolute right and may be limited for reasons of general interest, with reasonable restrictions being imposed. In the Constitutional Court's view, this social function of property does not legitimise unlawful occupation; consequently, the criminal protection afforded to the owner remains fully valid, being enshrined in the offence of unlawful occupation of immovable property (Article 245 of the Criminal Code), which defines the offence without requiring the property to be a dwelling.

The right to decent and adequate housing: Article 47 of the Spanish Constitution (CE) proclaims the right of citizens to enjoy decent and adequate housing, obliging public authorities to promote the necessary conditions to give effect to this right; it is a guiding principle of social and economic policy and not a fundamental right enforceable before the courts. According to the Constitutional Court, this right does not justify unlawful occupation, but it must be taken into account when balancing interests, particularly where minors or vulnerable persons are affected.

Any conflict between rights requires the establishment of criteria for weighing them up; therefore, resolving conflicts between these rights requires the application of the '*principle of proportionality*', which involves: *assessing the severity of the impact on each right, considering the occupant's personal circumstances* (vulnerability, state of need, etc.), *examining the behaviour of the right-holder* (abandonment of the property, lack of use, etc.) and *ensuring respect for human dignity and the best interests of the child, where applicable*.

Case law tends towards a more flexible interpretation, distinguishing between *abusive occupations* (for profit or involving violence) and *occupations out of necessity*, and proposing differentiated responses under criminal, civil and administrative law.

4. OFFENCES RELATED TO OCCUPATION

The Spanish Criminal Code addresses the unauthorised occupation of properties through two criminal offences: *trespass* (Article 202 of the Criminal Code), which protects domestic privacy, and *the unlawful occupation of immovable property* (Article 245 of the Criminal Code), which protects property and non-domiciliary possession. Furthermore, consideration is currently being given to whether, in certain cases, the offence of fraud, as provided for and punishable under Article 248 of the Criminal Code, may have been committed. The correct criminal classification depends on determining whether the property in question constitutes a dwelling; this is an essential distinction, as unlawful entry () is a more serious offence that does not require intent to

make a profit, whilst usurpation does require the absence of authorisation and the intention to remain there permanently.

4.1. TRESPASSING ON A DWELLING (ART. 202 OF THE CRIMINAL CODE)

Trespassing on a dwelling protects domestic privacy, recognised as a fundamental right in the 1978 Spanish Constitution, and penalises entering or remaining on another person's property without the occupant's consent, even without the use of violence. Case law has extended this concept to non-traditional spaces, provided they are used for personal and private purposes, classifying them as '*spaces of privacy*', regardless of ownership but based on their actual use as a place of residence, thereby extending protection to second homes, hotel rooms, caravans and other spaces used as private refuges. Such conduct may be classified as trespass, in which case the procedure to be followed will be that of the Jury Court, in accordance with the provisions of Article 1.2(d) of the Organic Law on the Jury Court (LOTJ)¹⁰.

According to the general theory of crime, the key elements of a crime are '*the set of essential characteristics and components that constitute every crime*', enabling its study through a structural analysis; these are interdependent factors that are taken into account when passing a criminal judgement on a specific case. From a general perspective, we refer to the parties to the offence (who may be active or passive), the criminal act, its classification as a specific offence, its unlawfulness, culpability (which may arise from recklessness, negligence, incompetence or failure to comply with regulations), or its punishability.

In the case of the offence of breaking and entering, some of these elements might include: *the existence of a dwelling*, understood as the space where a person leads their private life; *unauthorised entry or presence*, for which it is sufficient that the occupant has not authorised access or the person's continued presence—even if the person entered with permission but intends to remain without authorisation; *and the perpetrator's intent*, as they must be aware that they are entering another person's dwelling; the offence is aggravated if committed through the use of violence or intimidation. The standard penalties range from six months to two years' imprisonment where no violence has been used, whereas where the offence is committed with violence or intimidation, the penalty increases to between one and four years' imprisonment plus a fine.

Legal doctrine and case law emphasise that protection centres on the function of privacy afforded by the space, not on its ownership or habitual use; consequently, the classification of the offence will depend on the factual assessment of each case. To cite a few examples of this:

The Supreme Court judgement, STS 7287/2009, of 25 November¹¹, regarding the definition of the offence of unlawful entry, states that this offence protects strictly personal rights, such as the inviolability of the home, which is a fundamental right of

¹⁰ Organic Law 5/1995, of 22 May, on the Jury Court: Organic Law 5/1995, of 22 May, on the Jury Court

¹¹ Supreme Court Judgment 7287/2009, of 25 November. Decision number: 1231/2009, handed down by the Criminal Chamber. Reporting Judge: Alberto Gumersindo Jorge Barreiro: Supreme Court Judgment 7287/2009 - ECLI:ES:TS:2009:7287 - Judiciary

the individual, established to guarantee their privacy within the limited space that the individual themselves chooses and which ‘*must remain exempt or immune from external invasions or attacks by other persons or by the public authorities*’, an exemption or immunity which is justified by the fact that, according to Constitutional Court Ruling 22/1984¹² and Constitutional Court Ruling 181/1999¹³, ‘*the home is a space in which the individual lives without necessarily being subject to social customs and conventions and exercises their most intimate freedom*’.

Furthermore, Constitutional Court Ruling 10/2002 of 17 January¹⁴ states that the fact that a property is *not* habitually occupied does not prevent it from being classified as a domicile, establishing that ‘... *a dwelling is a domicile even if it is unoccupied at the time of registration (Constitutional Court Ruling 94/1999 of 31 May, Legal Ground 5)...*’. It goes on to state that ‘*neither its location, nor its physical configuration, nor whether it is movable or immovable property, nor the existence or type of legal title authorising its use, nor, finally, the intensity or frequency with which private life is conducted therein, are relevant*’. It further provides that, although the conduct of private life is the determining factor in considering the space in which it takes place to be a domicile, such suitability may be inferred from any of these features or others, ‘*in so far as they represent objective characteristics on the basis of which it is possible to define the spaces which, in general terms, can and are usually used for the conduct of private life*’.

More recently, Supreme Court Judgment 3620/2020, of 6 November¹⁵, extends the concept of a dwelling to include second homes, caravans, rented rooms and other non-conventional spaces, provided they are used as a sphere of personal privacy.

4.2. THE OFFENCE OF UNLAWFUL OCCUPATION (ART. 245 CP)

This offence protects property and non-domiciliary possession, penalising the unauthorised and permanent occupation of another person’s property that does not constitute a ‘dwelling’, such as empty homes, abandoned premises or parking spaces. Supreme Court Judgment 5169/2014, of 12 November¹⁶, defines the essential elements of the criminal offence of peaceful occupation of property, which are as follows:

- a) *Peaceful usurpation*: this does not require violence or intimidation; it must involve a dwelling or building that does not currently constitute a residence, and must be carried out with a certain intention of permanence.
- b) *For the associated disturbance of possession to be classified as occupation under criminal law*: the interpretation of the typical offence must be made from the perspective of the protected legal interest and the principle of proportionality underpinning the criminal justice system (Article 49(3) of the

¹² Constitutional Court Judgment STC 22/1984, of 17 February: HJ System - Decision: JUDGMENT 22/1984

¹³ Constitutional Court Judgment STC 181/1999, of 11 October: HJ System - Decision: JUDGMENT 181/1999

¹⁴ STC 10/2002, of 17 January: HJ System – Decision: JUDGMENT 10/2002

¹⁵ Supreme Court Judgment 3620/2020, of 6 November. Decision number: 587/2020, handed down by the Criminal Chamber. Reporting Judge: Vicente Magro Servet. Supreme Court Judgment 3620/2020 – ECLI:ES:TS:2020:3620 – Judiciary

¹⁶ STS 5169/2014, of 12 November, Decision number: 800/2014, handed down by the Criminal Chamber. Presiding Judge: Cándido Conde-Pumpido Tourón: STS 5169/2014 - ECLI:ES:TS:2014:5169 - Judiciary

Charter of Fundamental Rights of the European Union – CFREU). Thus, occupation classified as a criminal offence is *‘that which entails a significant risk to the victim’s possession of the property in question, which is what renders the conduct harmful; occasional or sporadic occupations, without any intention of permanence, fall outside the scope of the criminal offence’*.

That the perpetrator lacks a legal title authorising and legitimising such possession: for, had they been authorised to do so, the act could not be considered a criminal offence and the owner of the property would have to resort to civil proceedings to regain possession.

- c) *That there exists, and is on record, the owner’s opposition to this situation: either before it occurs or afterwards, as such opposition must be expressly stated.*
- d) *Intent on the part of the perpetrator: implying knowledge that the property belongs to another and that there is no authorisation, coupled with the intention to infringe the legal right protected by the offence (the actual disruption of the property owner’s possession).*

Case law, specifically Supreme Court Judgment 1852/2011 of 2 March¹⁷, recognises that occupation may be effected by any means, including the forcing of locks, as *‘this is a type of offence which allows for occupation to be carried out by any means, including forcing locks or padlocks, given that what is relevant for the purposes of protection is that the premises or dwellings in question are unoccupied’*. However, in accordance with the recent Supreme Court judgement, STS 1827/2025¹⁸, of 30 April, the Second Criminal Chamber, in distinguishing between the classification of certain acts as theft or as robbery with force, has pointed out that acts such as breaking locks or windows may constitute violence or force, as it establishes that smashing a window of a parked vehicle constitutes a typical act of force, even without breaking anything visible, and points out that *‘breaking, forcing or rendering a security lock inoperable through physical effort also constitutes breaking, within the terms of Article 238.2 of the Criminal Code’*, therefore, forcing locks or padlocks, or breaking the windows of a dwelling to gain access to it, could fulfil the requirement of violence necessary for the offence to be classified as an aggravated offence, as defined in Article 245.1 of the Criminal Code.

Furthermore, there are judgments by Provincial Courts that are key to distinguishing between a dwelling and an unoccupied property. To cite some very well-known examples: the Judgment of the Provincial Court of Barcelona 7670/2012, dated 4 July¹⁹. Presiding Judge Fernando Jerónimo Valle Esques distinguishes between the occupation of a dwelling and the occupation of an uninhabited property; also, the

¹⁷ Supreme Court Judgment 1852/2011, of 2 March. Judgment number: 143/2011, handed down by the Criminal Chamber. Presiding Judge: José Antonio Martín Pallín: Supreme Court Judgment 1852/2011 - ECLI:ES:TS:2011:1852 - Judiciary

¹⁸ STS 1827/2025, of 30 April. Decision number: 385/2025, handed down by the Second Criminal Chamber. Reporting Judge: Pablo Llarena Conde: STS 1827/2025 - ECLI:ES:TS:2025:1827 - Judiciary

¹⁹ SAP B 7670/2012, of 4 July, Reporting Judge: Fernando Jerónimo Valle Esques: SAP B 7670/2012 - ECLI:ES:APB:2012:7670 - Judiciary

Judgment of the Provincial Court of Madrid 16417/2012, dated 18 January²⁰. Presiding Judge José María Casado Pérez analyses the proportionality of the sentence in light of the context of the occupation.

4.3. BORDERLINE CASES AND CONFLICTS OF CLASSIFICATION

There are numerous cases where the criminal classification is unclear, giving rise to conflicts of classification. For example, the occupation of a property that is not a habitual residence but is used as a second home; the occupation of a garage space converted into makeshift accommodation; or occupation by vulnerable families in need. The classification depends on the actual use of the property, the occupant's intention and the impact on the legitimate owner's privacy. The State Public Prosecutor's Office (FGE), in its Instruction 1/2020 of 15 September²¹, recommends applying swift precautionary measures in cases of breaking and entering and assessing cases of squatting out of necessity with greater flexibility. In situations involving minors or vulnerable individuals, the courts must weigh up the best interests of the child and the existence of alternatives offered by the authorities.

The following are examples of the practical distinction between squatting and trespass:

a) Occupation of an empty property: squatting or trespass? If private use of the property is proven – through utility bills, photographs, witness statements, etc. – it could be considered trespass; otherwise, it would constitute squatting.

The most typical scenario is *where a person occupies a property that is uninhabited but belongs to someone who uses it as a second home*. The debate would centre on whether that property is considered a dwelling, even if it is not the owner's habitual residence. The Supreme Court has recognised that a second home may be considered a dwelling if it is used for private activities, even if only sporadically. In this case, the applicable offence could be trespass (Article 202 of the Criminal Code) if it can be proven that the owner uses it as such, even if only sporadically. If such personal and private use cannot be proven, the offence would be *unlawful occupation of property* (Article 245 of the Criminal Code).

b) Occupation of a parking space during lockdown. In principle, this would not be considered a dwelling, so it would normally constitute unlawful occupation, unless stable residential use could be demonstrated, in which case it might be considered a dwelling.

A real-life case in which, during the state of emergency declared due to the pandemic, a neighbour occupied the parking space of a family who were unable to travel to their second home. When the lockdown ended, the occupant refused to return it. Whilst the Criminal Code does not expressly mention parking spaces, the courts have accepted that their occupation may constitute the offence of unlawful occupation if they

²⁰ SAP M 16417/2012, of 18 January, Presiding Judge: José María Casado Pérez: SAP M 16417/2012 - ECLI:ES:APM:2012:16417 - Judiciary

²¹ State Public Prosecutor's Office. Instruction 1/2020, of 15 September, on criteria for requesting precautionary measures in cases of unlawful entry into a dwelling and unlawful occupation of immovable property: Annexes. Instructions. Instruction 1/2020

do not constitute a dwelling. For this to apply, there must be a disturbance of possession (unauthorised use), an intention to remain, and the existence of mens rea (the intention to occupy without legal title).

c) Occupation of a dwelling by vulnerable minors. Liability may be mitigated where there is a state of serious, current and unavoidable necessity; therefore, poverty must not be criminalised nor should impunity be permitted.

This is a fairly common scenario where families facing social exclusion occupy vacant dwellings on the grounds of extreme need. Whilst the state of need may be considered a partial or complete defence, the International Courts and Tribunals (IT) usually require it to be ‘*serious, current and unavoidable*’. The State Attorney General’s Office (FGE) recommends assessing these cases with particular sensitivity. Cases where the applicable offence might be unlawful occupation, but with mitigating circumstances if a state of necessity is proven. The presence of minors in the property does not necessarily prevent eviction, but it does require social services to take protective measures.

The High Court of Justice of Madrid (TSJM), in its recent judgement of 28 March 2025²², has upheld evictions, even where minors are present, provided that the authorities have offered alternatives or protective measures, whilst requiring that the best interests of the child be taken into account; however, occupation is not justified merely on the grounds of having children.

In summary, the distinction between squatting and trespass requires a detailed factual assessment, as these proposals reflect a tension between the need to protect private property and the urgency of addressing situations of social vulnerability. This is why there is a need for regulations that distinguish between occupations out of necessity and abusive or profit-driven occupations, without criminalising poverty or allowing impunity.

5. INQUIOKUPACIÓN: BETWEEN BREACH OF CONTRACT AND CRIMINAL FRAUD

‘*Inquiokupación*’ — a term coined in legal and media discourse — refers to ‘*cases in which a tenant ceases to pay rent, refuses to vacate the property following the termination of the tenancy agreement, and remains in the dwelling without legitimate title*’. It stems from a valid contractual relationship that becomes illegitimate due to an abuse of rights or breach of contract. In recent years, situations have arisen in which people, who have a property rented under a tenancy agreement, stop paying the rent stipulated therein. The tenant cannot be considered a ‘squatter’, as they hold a valid title enabling them to occupy the property in question, which is regarded as their habitual residence—unlike in the so-called ‘occupation’ of properties.

²² STSJ M 4085/2025, of 28 March, handed down by the Contentious-Administrative Chamber, Reporting Judge: Ana María Jimena Calleja: STSJ M 4085/2025 - ECLI:ES:TSJM:2025:4085 - Judiciary

The presidents of the Provincial Courts, at the 22nd Conference of Presidents of Provincial Courts²³, which took place in May 2024 in the city of Valencia – where issues such as the practical application of the Law on the Right to Housing were discussed – concluded that occupation and *squatting* are two distinct concepts and should therefore be treated differently under the law. In fact, it was stated that the landlord has a legal avenue for redress—the civil eviction procedure—except in cases where the act could be considered a ‘*crime of fraud*’. On this point, it is necessary to define what the current Spanish Criminal Code, in Article 248, considers to be a criminal offence, which reads as follows:

‘A person commits fraud if, with the intention of making a profit, they use deception sufficient to mislead another person, inducing them to carry out an act of disposal to their own detriment or that of another.’

The following section explains in which cases *squatting* may be considered a crime of fraud. According to Supreme Court Judgment 272/2020, of 6 February²⁴, its existence could be recognised in cases where a person signs a tenancy agreement, having fulfilled the entry requirements prior to the formalisation of the contract (for example, payment of a deposit, the current month’s rent, or even payment of several months’ rent in advance) and, once the rent paid in advance has been used up, ceases to pay the subsequent instalments, with such an intention existing at the time of signing, and where the necessary elements of the offence are present to distinguish it from mere civil breach of contract.

5.1. LEGAL NATURE OF THE PHENOMENON

From a civil law perspective, unlawful *occupation* constitutes a breach of the tenancy agreement governed by the Urban Tenancies Act (LAU). The landlord may seek eviction on the grounds of non-payment or the expiry of the contractual term. However, when the tenant refuses to vacate the property and employs tactics to prolong their stay, the question arises as to whether their conduct may constitute a criminal offence.

To distinguish between a criminal offence and a civil breach of contract, the decisive factor is ‘*the existence of intent at the time the tenancy agreement was signed*’, as failing to pay the monthly rent immediately after signing the agreement demonstrates that the intention to breach it already existed at the time of signing. However, certain subsequent circumstances may also be taken into account (for example, loss of employment due to redundancy after the contract was signed). For the purposes of proving the existence of that intention not to pay or to breach the terms of the contract at the time it was entered into, Supreme Court Judgment 3148/2022 of 20 July²⁵ provides significant clarification:

²³ Conclusions of the 22nd Conference of Presidents of Provincial Courts. May 2024: PD0000396414(1).pdf

²⁴ Supreme Court Judgment 272/2020, of 6 February, handed down by the Criminal Chamber, Presiding Judge Vicente Magro Servet: STS 272/2020 - ECLI:ES:TS:2020:272 - Judiciary

²⁵ Supreme Court Judgment 3148/2022, of 20 July, handed down by the Criminal Chamber, Presiding Judge Andrés Palomo del Arco: Supreme Court Judgment 3148/2022 - ECLI:ES:TS:2022:3148 - Judiciary

In Supreme Court Judgment No. 51/2017 of 3 February, we stated that fraud may exist whether the criminal intent represented by the deceit arises prior to the conclusion of the contract or subsequently, during the performance of the contract. There has been a shift in case law based on the view that it is not always necessary to require that criminal intent be prior to the conclusion of the contract as an absolute condition for the offence of fraud to be punishable. Maintaining this position would prevent certain types of conduct from being classified as fraud where the contract is initially lawful and no criminal intent is apparent on the part of the perpetrator. The perpetrator acts in reliance on the contract, just as the victim of the offence does. It is only subsequently that the criminal activity arises. Indeed, the perpetrator devises a plan to obtain an unlawful profit by taking advantage of the circumstances that have unfolded up to that point, and by arranging the relevant factors to bring about the deception.

Thus, failure to pay rent due to an inability to meet the payment for unforeseen reasons is not the same as those cases in which, at the time of signing the contract, there is a clear and evident intention not to pay the rent in order to live rent-free for a certain period of time – a period which will depend on the caseload of the court to which the matter is ‘assigned’.

5.2. POSSIBLE CRIMINAL CLASSIFICATION: UNLAWFUL OCCUPANCY OR FRAUD?

Legal scholars and case law have debated whether *squatting* may fall under any of the criminal offences, as it may constitute *fraud* (section 248 of the Criminal Code) if there is contemporaneous intent – the intention not to pay at the time of signing the tenancy agreement – in which case the tenant would gain access to the property through deception, by concealing their intention not to pay or by feigning solvency, which raises the possibility of applying the offence of contractual fraud; or as *unlawful occupation of property* (Article 245 of the Criminal Code) where the tenant continues to occupy the property without authorisation after the lease has expired; consequently, some courts consider that, once the lease has expired, continued occupation without valid authorisation may constitute unlawful occupation, particularly where there is an intention to remain and resistance to eviction; or it may constitute a *minor offence of coercion* (Article 172(3) of the Criminal Code) in cases where the tenant prevents the owner from using the property through acts of pressure or intimidation.

The decisive criterion in this regard is the distinction between non-payment due to unforeseen circumstances (which is not a criminal offence) and non-payment with fraudulent intent from the outset. Case law recognises that fraudulent intent may arise either before or after the contract is signed, depending on the proven circumstances.

5.3. RELEVANT CASE LAW

There are judgements that refer the matter to the civil courts where there is no violence or deception; others convict the defendant of fraud where initial deception or fraudulent intent is proven. As examples of judgements relating to cases of *squatting*, we cite the following:

- *Judgement of the Madrid Provincial Court 20266/2023, Section 3, dated 22/12*²⁶ : which holds that remaining in the property after the termination of the tenancy agreement does not constitute a criminal offence if there is no violence or deception, referring the matter to the civil courts on the grounds that it is a dispute over possession and not criminally reprehensible conduct.
- *Judgment of the High Court of Justice of the Basque Country 1125/2024, dated 17 April*²⁷ : a woman who rented various commercial premises with no intention of paying was convicted of fraud. The Court confirmed that there had been deception from the outset, and that the offence therefore met the criteria for fraud.
- *Judgment of the Supreme Court 4247/2019, dated 19 December*²⁸ : rejects the application of the offence of unlawful occupation where a prior contractual relationship exists, unless there is subsequent occupation without title and with the intention of remaining.
- *Supreme Court Judgment 3620/2020, dated 6 November*²⁹ : reinforces the idea that use as a dwelling is not negated by non-payment, but may lose its legal legitimacy if the contract is terminated.
- *Supreme Court Judgment 5619/2024, of 15 November*³⁰ : a conviction for property fraud, addressing key elements such as ‘the application of mitigating circumstances, the assessment of evidence, the calculation of the limitation period and civil liability arising from the offence’, reaffirming the principles of effective judicial protection and consistency in the assessment of evidence in complex proceedings.

5.4. DOCTRINAL PROPOSAL

The following are some of the doctrinal proposals^{31,32} on the issue of *unlawful occupation*: to create a specific criminal offence for abusive unlawful occupation, penalising unlawful continued occupation after the end of the tenancy agreement, where this is accompanied by active resistance or fraud; To introduce preventative contractual clauses into tenancy agreements, stipulating that ‘the landlord reserves the right to bring the appropriate criminal proceedings for the commission of the offence of fraud under Article 248 of the Criminal Code, seeking a custodial sentence and requesting the investigating judge to order immediate eviction and arrange for the tenant’s arrest in such cases’; Increase the penalties for procedural fraud in cases where there was intent

²⁶ SAP M 20266/2023, of 22 December 2023, handed down by the 3rd Section, Presiding Judge: Rosa Esperanza Rebollo Hidalgo: SAP M 20266/2023 - ECLI:ES:APM:2023:20266 - Judiciary

²⁷ STSJ PV 1105/2024, of 17 April, handed down by the Criminal and Civil Chamber, Presiding Judge: Ignacio José Subijana Zunzunegui: STSJ PV 1105/2024 - ECLI:ES:TSJPV:2024:1105 - Judiciary

²⁸ Supreme Court Judgment 4247/2019, of 19 December 2019, handed down by the Criminal Chamber, Reporting Judge: Vicente Magro Servet: Supreme Court Judgment 4247/2019 - ECLI:ES:TS:2019:4247 - Judiciary

²⁹ Supreme Court Judgment 3620/2020, of 6 November, handed down by the Criminal Chamber, Presiding Judge: Vicente Magro Servet: Supreme Court Judgment 3620/2020 - ECLI:ES:TS:2020:3620 - Judiciary

³⁰ Supreme Court Judgment 5619/2024, of 15 November, delivered by the Criminal Chamber, Reporting Judge: Pablo Llarrea Conde: Supreme Court Judgment 5619/2024 - ECLI:ES:TS:2024:5619 - Judiciary

³¹ Bracho-Fuenmayor, P. L. (2025). ‘Sufficient deception in fraud: a proposal based on Spanish case law and objective imputation’. *Juridicas CUC*, 21(1), 44–69. <https://doi.org/10.17981/juriduc.21.1.2025.03>

³² López Sainz-Cantero, F. J. (2025). ‘Criminal protection of the right to housing amidst fast-track trials, express evictions and justified property-related violence’. *El Criminalista Digital. Papeles De Criminología*, (13), 41–60. Retrieved from <https://revistaseug.ugr.es/index.php/cridi/article/view/34220>

at the time the contract was entered into, thereby constituting a criminal offence of fraud rather than a civil breach³³ ; *Establish swift procedural mechanisms for eviction*, without the need to resort to ordinary civil proceedings; *Coordinate criminal proceedings with the Labour Courts (TI)*, in order to avoid duplication of proceedings; and, finally, *treat the offence of unlawful occupation as equivalent to that of breaking and entering*.

- *In conclusion, the line between a civil breach of contract and the commission of a criminal offence depends on the existence of intent and the available evidence (advance payments, deception, manoeuvres to remain on the premises, intent to make a profit, etc.).*

6. CAR PARK SPACES AS POTENTIAL RESIDENCES

The occupation of garage spaces presents a highly novel legal challenge, as cases have recently emerged in which people in vulnerable situations use garage spaces as places of refuge or even as makeshift accommodation. This raises the question of whether a space designed for parking can be considered a dwelling for criminal law purposes and, therefore, whether its occupation would constitute trespass (Article 202 of the Criminal Code) or, conversely, unlawful occupation (Article 245 of the Criminal Code). The key lies not in the site's town planning classification but in its actual function: when a parking space is used as a private living space – with elements of habitability such as a bed, a portable kitchen, lighting and an intention to remain there – it may come close to the concept of a dwelling, as the decisive factor is that the space fulfils a function of personal privacy.

Legal doctrine and judicial practice, for example in judgments such as Supreme Court Judgment 3620/2020 of 6 November³⁴ , have progressively broadened the notion of a dwelling to include non-conventional spaces provided they are used as a residence:

‘...a dwelling is not defined by its usual use or by its architectural configuration, but by its function as a sphere of personal privacy, allowing caravans, rented rooms or commercial premises to be considered as such, provided they are used as a residence’.

Similarly, the FGE, in its Instruction 1/2020 of 15 September³⁵ , emphasises that what matters is the actual use as a place of private life and not the town planning classification. Whilst there is no general rule that converts a parking space into a dwelling, some Provincial Courts (for example, those of Madrid and Barcelona) have considered this possibility in exceptional cases where the conditions of habitability (presence of a bed, electricity and a portable kitchen), intimacy and privacy are met through stable and prolonged use of the space, as well as a demonstrable intention on the part of the occupant to remain there, raising the possibility of the offence of trespass.

³³ CUENA CASAS, M. (2025). *The problem of illegal occupation in Spain*. Treatise on Housing Law. Vol. II, Edited by Cuena Casas, M., and Tejedor Bielsa, J. 2025, ISBN 9788434030909. pp. 1321–1341.

³⁴ Supreme Court Judgment 3620 of 6 November, issued by the Criminal Chamber, Presiding Judge Vicente Magro Servet: Supreme Court Judgment 3620/2020 – ECLI:ES:TS:2020:3620 – Judiciary

³⁵ Instruction No. 1/2020 of the State Public Prosecutor's Office, dated 15 September: Annexes. Instructions. Instruction No. 1/2020

From a criminal law perspective, if it is established that the garage functions as a habitual residence or a private living space, its occupation without consent could be classified as unlawful entry (Article 202 of the Criminal Code) and carry a prison sentence of between six months and two years; if there is no residential use, the conduct would constitute the unlawful occupation of immovable property (Article 245 of the Criminal Code), with penalties of a fine or imprisonment, as the case may be.

There is a special case involving garage spaces attached to a dwelling; whilst the occupation of a garage space is usually regarded as unlawful occupation of property, which is punishable under both criminal and civil law, there are circumstances in which such occupation could be considered a criminal offence of trespass. Thus, a distinction should be made between two types of garage spaces:

1°. *Independent parking spaces*, of which there are two types:

- Those acquired in the same transaction as the dwelling in which the owner resides, and which are situated in the same building or attached to it. In this case, it would be possible to regard their illegal occupation as ‘*trespass to premises*’ since, although they have their own registration entry distinct from that of the dwelling, the title deed is a single document, for the sake of procedural efficiency.
- Independent parking spaces, with a land registry entry separate from that of the dwelling, situated in a location other than the dwelling where the owner resides. In this case, it would be regarded as ‘unlawful occupation of property’, which is punishable under both civil and criminal law.

2°. *Parking spaces that form a single registered unit with the dwelling to which they are attached, having a single cadastral reference.* In this scenario, proceedings could indeed be brought for the offence of trespass, since occupying such a garage space—which is inextricably linked to the dwelling that serves as the domicile of the owner or a tenant of the dwelling—constitutes the same situation as if a dwelling serving as the residence of a person or family were being occupied.

In summary, the classification depends on the actual function of the space, the presence of elements of habitability, the intention to remain there, and the link in the land registry to the dwelling; each case requires a specific factual and legal assessment to determine which criminal offence should be applied.

7. PROPERTIES: RESIDENCE VS UNINHABITED PROPERTY

The occupation of dwellings raises a central and contentious issue in criminal law, particularly when determining whether the occupied property constitutes a dwelling or is simply an unoccupied property, as this determines whether the conduct constitutes trespass on a dwelling (Article 202 of the Criminal Code) or unlawful occupation of immovable property (Article 245 of the Criminal Code). This legal classification is based on factors such as ‘*the actual use of the property, the intention of the lawful owner and the infringement of their privacy*’.

A dwelling ceases to be regarded as a home when the owner has abandoned it, there is no actual use of it nor any intention to return, and there are no elements indicating a personal connection, such as furniture, active utilities or regular visits. These are cases in which the occupation does not infringe upon the owner's privacy, but only their possession, and therefore falls under the offence of unlawful occupation.

Another decisive factor in the legal classification of the occupation is the occupant's intention to remain, as this helps to distinguish between the criminal offences applicable to the case, as well as to assess the seriousness of the conduct; for if the occupation is merely temporary or accidental, it may not constitute a criminal offence; however, where there is an intention to settle in the property, the corresponding criminal offence would be established. Recent case law – such as various judgements from the Provincial Courts, including SAP IB 3/2026 of 9 January³⁶, SAP M 1855/2026 of 23 February³⁷, SAP PO 2863/2025, dated 3 November³⁸, amongst others – concludes that prolonged occupation without a legitimate title constitutes trespass, even when the owner's privacy is not directly affected.

Furthermore, the Supreme Court has broadened the concept of 'dwelling' by recognising that secondary dwellings, such as second homes, country houses or flats used sporadically, may also be considered dwellings if they are used for private activities, even if there is no continuous use. It is for this reason that occupying them without consent may constitute trespass. Supreme Court Judgment 3620/2020 of 6 November³⁹ reinforces this interpretation by including within the concept of a 'dwelling' those spaces which, although not permanently inhabited, are used privately and personally by their owner, such as second homes, thereby opening the door to considering other spaces as such if they fulfil similar functions.

'There is no legal provision whatsoever that obliges a person to choose which is their place of residence, given that they may have several that fulfil this function.'

8. PROPOSALS FOR LEGISLATIVE AND DOCTRINAL IMPROVEMENTS

The unlawful occupation of properties highlights significant regulatory gaps and procedural inconsistencies, hindering an effective and balanced response that clearly defines the applicable criminal offences. The lack of clarity regarding the concept of a 'dwelling' and the tension between fundamental rights call for legislative reform that provides legal certainty, procedural efficiency and social sensitivity. This is why various academic and professional circles agree on the need for comprehensive reform, aimed at:

³⁶ SAP IB 3/2026, dated 9 January, Presiding Judge Jorge Manuel Pastor Panadero: SAP IB 3/2026 - ECLI:ES:APIB:2026:3 - Judiciary

³⁷ SAP M 1855/2026, dated 23 February, Presiding Judge David Suarez Leoz: SAP M 1855/2026 - ECLI:ES:APM:2026:1855 - Judiciary

³⁸ SAP PO 2863/2025, of 3 November, Presiding Judge Belén María Fernández Lago: SAP PO 2863/2025 - ECLI:ES:APPO:2025:2863 - Judiciary

³⁹ Supreme Court Judgment 3620/2020, of 6 November, handed down by the Criminal Chamber, Presiding Judge: Vicente Magro Servet: STS 3620/2020 - ECLI:ES:TS:2020:3620 - Judiciary

8.1. CLARIFICATION OF THE CONCEPT OF ‘MORADA’

The legal definition of this concept is fundamental because, although case law has gradually adopted a functional approach, it is necessary for the legislator to determine clearly and objectively the cases in which a property constitutes a dwelling, as well as to include in the Criminal Code those special cases, such as second homes, shared accommodation or non-conventional spaces (caravans, converted garages, storage rooms), thereby enabling a uniform application of the offence of breaking and entering and avoiding erroneous classifications in borderline cases.

8.2. SPECIFIC REGULATION OF THE OCCUPATION OF CAR PARK SPACES

This occupation poses problems, both due to its use as a dwelling in contexts of social exclusion and due to its use for criminal purposes (storage, drug trafficking, etc.). It is proposed that they be included as protected property under Article 245 of the Criminal Code, alongside the establishment of an aggravated criminal offence for occupying them for unlawful purposes or in a manner that seriously disrupts neighbourly coexistence, and that they be exceptionally recognised as a dwelling where conditions of habitability and private use are demonstrated.

8.3. DISTINCTION BETWEEN OCCUPATIONS OUT OF NECESSITY AND ABUSIVE OCCUPATIONS

Another proposal would be to make a legal distinction between occupations arising out of necessity—which occur in situations of vulnerability, a lack of housing alternatives or the presence of minors—and abusive occupations, which are carried out for profit, through violence or intimidation, or by members of organised groups, as well as fraudulent occupations (known as ‘*inquietokupación*’), involving the use of contracts as instruments of deception or deliberate non-payment from the outset.

Similarly, specific mitigating factors should be introduced into Article 245 of the Criminal Code for occupations out of necessity, upon proof of exceptional circumstances, and a separate criminal offence should be created for profit-driven or repeat occupations, establishing more severe penalties and strengthened precautionary measures.

8.4. IMPROVING THE PROCEDURAL RESPONSE

The slowness of legal proceedings and the lack of effective interim measures exacerbate the problem of squatting, leading to situations in which victims are required to pay each and every one of the costs and taxes attributable to the squatted property throughout the legal proceedings, with no subsequent possibility of reimbursement due to the common declaration of insolvency. It is therefore recommended that the Criminal Procedure Act (LECrim) be amended to allow for precautionary eviction in flagrant cases of unlawful entry into a dwelling and to reduce procedural time limits, the establishment of rapid response protocols between the Public Prosecutor’s Office and the Law Enforcement Forces, and the coordination of criminal proceedings with social services, guaranteeing alternative accommodation in cases of vulnerability; it is necessary to adopt a comprehensive approach that combines public policies on affordable housing with early

social intervention in contexts of exclusion, and to promote legal education on rights and duties relating to property and coexistence.

8.5. RELEVANT LEGISLATIVE PROPOSALS

8.5.1. Draft Organic Act against Illegal Occupation (2024)⁴⁰

Tabled in the Senate on 9 February 2027 and referred to the Congress of Deputies on 23 February, its main objectives were *‘to strengthen the protection of private property, to expedite the eviction of illegal squatters and to improve neighbourly relations and security within owners’ associations’*. The main measures it entailed were *‘to allow for immediate eviction in flagrant cases, to recognise the owner’s right to recover their property without delay, and to strengthen police and judicial action against squatting for profit or by organised crime groups’*.

8.5.2. Legislative proposal by the Barcelona Bar Association (ICAB)

Submitted in March 2024 to the Government Delegate in Catalonia, its main objectives were *‘to reform the Criminal Code and the Criminal Procedure Act, to clearly criminalise squatting for profit, and to distinguish between squatting out of necessity and organised squatting’*.

The main measures were *‘to create a specific criminal offence for occupation for profit, to establish harsher penalties in cases of repeat offences or membership of organised groups, and to strengthen precautionary measures to protect the owner from the outset of the proceedings, consisting of ordering the immediate eviction from the occupied property’*.

8.5.3. Proposal on the occupation of garages

This is a doctrinal analysis of the need to regulate the occupation of garages as an emerging phenomenon, which is becoming a new problem affecting property rights. Although they are not dwellings, their occupation is generating insecurity and neighbourhood conflicts, in which the main problems or motivations encountered include their use as emergency accommodation—as a place to sleep or live temporarily—logistical and criminal purposes (such as storage, concealment and drug trafficking), and the lack of control and slow response, which is creating a ‘pull factor’. The current legal framework does not protect these spaces in the same way as it does residential properties, which is creating difficulties when it comes to evicting the occupants.

That is why we propose calling for a reform of the law to enable a swifter and clearer response to all such situations. This proposal involves including parking spaces in the Civil Code as property protected against unlawful occupation, whilst establishing criteria for considering a parking space as a dwelling in exceptional cases.

⁴⁰ Draft Organic Act against illegal occupation: Draft Organic Act against illegal occupation and for neighbourly coexistence and the protection of the safety of persons and property in owners’ associations.

9. CONCLUSIONS

An analysis of property occupation in Spain reveals a complex legal landscape, where criminal and civil law, as well as constitutional principles, intersect. Distinguishing between trespass and unlawful occupation is at the heart of the discussion, although social realities are giving rise to new scenarios that demand clearer and more tailored responses. Therefore, the proposals for improvement put forward are as follows:

- 1°. *Extending the concept of a 'dwelling' beyond the habitual residence*, recognising second homes or non-conventional spaces, provided they are used as a private living space. An effective functional interpretation of the ' ' (private life), though this creates uncertainty in borderline cases, such as the occupation of garage spaces converted into dwellings.
- 2°. *Consolidation of 'usurpation' as the criminal offence applicable to the occupation of uninhabited properties, garages not used for residential purposes or vacant premises*. However, the lack of specific regulation regarding certain scenarios creates legal loopholes that hinder judicial and police action.
- 3°. *Rethinking the regulatory framework in light of emerging phenomena such as 'inquietud'*. Remaining in a dwelling after the termination of a tenancy agreement presents a dilemma between civil breach of contract and criminal fraud. It is suggested that a specific criminal offence be created to penalise such abusive conduct, particularly where there is initial intent or active resistance.
- 4°. *Balancing conflicting rights — private property* (Article 33 of the Spanish Constitution), *the inviolability of the home* (Article 18.2 of the Spanish Constitution) *and the right to decent housing* (Article 47 of the Spanish Constitution) — *based on occupation driven by social necessity* — vulnerable families, minors, housing exclusion. Criminal law should not be the primary tool for resolving structural housing problems, but it should offer proportionate and differentiated responses, whilst avoiding impunity and the criminalisation of poverty.

Consequently, a comprehensive legislative reform is essential which: clarifies the concept of a dwelling and regulates cases such as garages and second homes; distinguishes between abusive occupation and occupation out of necessity, with differentiated criminal and social responses; introduces a specific criminal offence for *abusive occupation*; and, finally, strengthens the procedural mechanisms for rapid eviction in flagrant cases, whilst guaranteeing the protection of vulnerable groups.

Only through a multidisciplinary approach will it be possible to tackle this phenomenon effectively, fairly and in a manner consistent with constitutional principles.

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Research Article

THE NAVAL POLICE REPORT: STANDARDISATION OF INITIAL PROCEDURES REGARDING THE SMUGGLING OF MIGRANTS BY SEA

English translation with AI assistance (DeepL)

Daniel Cortes Villanueva

First Sergeant of Guardia Civil

Master's Degree in Legal Practice

Researcher in training and PhD candidate at the UNED's

Doctoral School of the UNED

dcortes124@alumnos.uned.es

ORCID: <https://orcid.org/0009-0007-3135-1849>

Received 25/03/2026

Accepted 05/06/2026

Published 30/06/2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.8986>

Recommended citation: Cortes, D. (2026). The naval police report: standardisation of initial procedures regarding the smuggling of migrants by sea. *Revista Logos Guardia Civil*, 4(2), pp. 161–186.

<https://doi.org/10.64217/logosguardiacivil.v4i2.8986>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

THE NAVAL POLICE REPORT: STANDARDISATION OF INITIAL PROCEDURES REGARDING THE SMUGGLING OF MIGRANTS BY SEA

Summary: 1. INTRODUCTION. 2. METHODOLOGY AND SCOPE. 3. CONTEXTUALISATION OF THE NAVAL POLICE REPORT IN RELATION TO OFFENCES AGAINST THE RIGHTS OF FOREIGN NATIONALS. 4. INITIAL PROCEDURES AT SEA. 4.1. Detection and monitoring of suspicious vessels. 4.2. Close-range reconnaissance. 4.3. Relevant evidence for identifying possible perpetrators. 4.4. Procedures during the direct police intervention phase. 4.5. The discovery of human remains and their handling. 4.6. The final status of the vessel as an instrument of the offence. 4.7. The procedural status of the alleged perpetrators. 4.8. Transfer to port and disembarkation. 4.9. Completion of the Naval Police Report. 5. TRANSFER OF PROCEEDINGS. 6. CONCLUSIONS. 7. BIBLIOGRAPHICAL REFERENCES.

Abstract: This article examines the systematisation of the initial procedures carried out during maritime interventions in response to the smuggling of migrants, based on the technical and operational framework of the so-called Naval Police Report. The study analyses the regulatory, doctrinal and case-law framework governing the actions of the Judicial Police in the maritime environment, within a context characterised by a lack of specific doctrinal development and the predominance of operational procedures focused on rescue; factors which have limited the development of a technical and procedural framework adapted to this environment. Attention is paid to the collection, organisation and preservation of evidence in an environment characterised by mobility, urgency and the irreproducibility of certain actions during the procedural phase, as well as to the initial procedures of detection, monitoring, close-range reconnaissance, identification of those responsible, police intervention and disembarkation. It is noted that the report drawn up on board a naval vessel does not constitute a separate legal category, but rather a functional organisational framework useful for reinforcing the operational and procedural coherence of police actions at sea against these criminal phenomena.

Resumen: Este artículo examina la sistematización de las primeras diligencias practicadas en intervenciones marítimas frente al tráfico ilícito de migrantes, a partir de la propuesta técnico-operativa del denominado Atestado Policial Naval. El estudio analiza el marco normativo, doctrinal y jurisprudencial que condiciona la actuación de la Policía Judicial en el medio marino, en un contexto marcado por la escasa elaboración doctrinal específica y por el predominio de dispositivos operativos orientados al rescate, factores que han limitado una sistematización técnico-procedimental adaptada a este entorno. Se presta atención a la obtención, organización y preservación de indicios en un espacio caracterizado por la movilidad, la urgencia y la irrepitibilidad de determinadas actuaciones en fase procesal, así como a las diligencias iniciales de detección, monitorización, reconocimiento de proximidad, identificación de responsables, intervención policial y desembarco. Se observa que el atestado instruido a bordo de un medio naval no constituye una categoría jurídica autónoma, sino una fórmula de ordenación funcional útil para reforzar la coherencia operativa y procesal de las actuaciones policiales en la mar contra estos fenómenos delictivos.

Keywords: Naval Police Report, Maritime Interdiction, Judicial Police, Smuggling of Migrants, Evidential Value.

Palabras clave: Atestado Policial Naval, Interdicción Marítima, Policía Judicial, Tráfico Ilícito de Migrantes, Valor Probatorio.

ABBREVIATIONS

APN: Naval Police Report

Art.: Article

BOE: Official State Gazette

CE: Spanish Constitution

CP: Criminal Code

LECrim: Criminal Procedure Act

LOFCS: Organic Law on Security Forces and Corps

LOPJ: Organic Law on the Judiciary

FFCCSE: State Security Forces and Corps

SEMAR: Maritime Service of Guardia Civil

SIVE: Integrated External Surveillance System

CNP: National Police Force

UOPJ: Judicial Police Unit

NGOs: Non-Governmental Organisations

AEMET: State Meteorological Agency

NIE: Foreigner's Identification Number

LO: Organic Law

LORPM: Organic Law on the Criminal Responsibility of Minors

SASEMAR: State Maritime Rescue and Safety Agency

STC: Constitutional Court ruling

STS: Supreme Court ruling

SOLAS: International Convention for the Safety of Life at Sea

1. INTRODUCTION.

The Judicial Police's operations in the marine environment in relation to the smuggling of migrants present specific challenges that affect the collection and preservation of evidence, the immediate protection of those on board, and the coordination between rescue operations, the securing of evidence and criminal investigations. In this context, the police report takes on particular significance as a tool for documenting initial proceedings and for the procedural framework of police action, within the framework of the provisions of Article 126 of the Spanish Constitution, Organic Law 2/1986 and the Criminal Procedure Act (LECrim).

On this basis, this paper proposes the technical-operational designation 'Naval Police Report' (APN) as a means of functionally organising the report in maritime interventions relating to the offence under Article 318 bis of the Criminal Code (CP), without seeking to establish a separate legal institution distinct from that already provided for in the legal system. The value of this proposal lies in systematising the initial investigative procedures that can be carried out in the marine environment, determining their evidential purpose, and specifying the operational precautions that should be observed in a setting characterised by the fluid nature of the scene, the urgency of the response, and the fact that certain procedural actions in court are often unrepeatable.

The significance of the issue is heightened by the fact that maritime interdictions relating to the smuggling of migrants typically take place in a context where the requirements of humanitarian assistance, the securing of evidence and the identification of potential perpetrators converge, often in connection with criminal organisations and other concurrent offences. Although case law has recognised the procedural importance of non-reproducible proceedings and legal doctrine has acknowledged the concept of *flagrante delicto* in cases of interception by competent officials, operational practice appears to prioritise rescue operations and the administrative management of migration, which apparently hinders the pre-trial phase of the criminal investigation¹.

Added to this is the fact that, at the operational level, the absence of sufficiently specific doctrinal elaboration on the practice of police procedures at sea, combined with the functional prominence of operational mechanisms primarily geared towards the rescue of migrants, appears to have limited the development of a procedural framework adapted to this environment. From this perspective, the aim is to provide a clearer and more useful framework for understanding the relationship between police action at sea and its subsequent procedural implementation, based on an analysis of legislation, case law and legal doctrine, supplemented by the author's professional experience.

2. METHODOLOGY AND SCOPE.

The aim of this study is to systematise the initial investigative steps carried out in maritime interventions relating to the smuggling of migrants, with a view to proposing technical and operational criteria that facilitate their proper integration into the criminal justice process. The study is based on an analysis of Spanish legislation and international maritime law, as well as legal doctrine, relevant case law and technical tools related to

¹ See the General Operating Procedure for Cooperation between the Directorate-General of the Civil Guard and the Maritime Safety and Rescue Society (SASEMAR), signed on 30 September 2022, which is primarily focused on maritime rescue and salvage.

maritime policing practice, together with the author's professional experience. Its scope is limited to the Spanish context and adopts a legal-doctrinal and technical-procedural perspective, without any statistical claims. As a key limitation, it should be noted that this is not a field study; consequently, the conclusions are formulated as policy proposals rather than as results derived from a sample. The method employed consists of classifying each procedure according to its legal basis, its evidential purpose and the recommended operational precautions in the marine environment in the fight against the smuggling of migrants.

3. CONTEXTUALISATION OF THE NAVAL POLICE REPORT IN CRIMES AGAINST THE RIGHTS OF FOREIGN NATIONALS.

Reactive investigations into offences under Article 318 bis of the Criminal Code committed by sea present particular characteristics inherent to the environment in which the initial proceedings take place, frequently on board official vessels or craft carrying out surveillance, rescue and interdiction duties. This practical distinction does not alter the nature of the report as a procedural document addressed to the judicial authority, but it does call for a specific systematisation of its initial procedures due to the environment in which they take place.

At the international level, with regard to the Protocol against the Smuggling of Migrants by Land, Sea and Air (Palermo Protocol), supplementing the United Nations Convention against Transnational Organised Crime, and in accordance with offences against the rights of foreign nationals, the extraordinary power of extraterritorial prosecution is recognised. Mere knowledge of these criminal acts, even outside territorial waters, in accordance with the provisions of Article 23 of the Organic Law on the Judiciary (LOPJ) and the Criminal Procedure Act (LECrim), empowers the judicial authorities to prosecute them. Consequently, police officers may carry out the necessary investigative procedures in accordance with the relevant legal and procedural provisions applicable to this matter, recording the outcome in the police report or statement on the facts under investigation, as provided for in Articles 287, 295 and 297 of the LECrim.

At present, most of these offences are committed using traditional small-scale fishing vessels or recreational craft, the main common characteristics of which are the lack of a deck, that is to say, migrants travel exposed to the elements, and technical deficiencies in shipbuilding, equipment and safety features for navigation in certain maritime areas, such as offshore shipping lanes², which serve as routes for illegal immigration from the African continent to Spain.

The discovery at sea of this type of vessel by officers of the Judicial Police on duty requires a humanitarian response, whilst not overlooking the possible presence on board, and in common, of both the passengers who are victims and the crew members who, whilst the latter may also be migrants, could bear criminal responsibility for this illicit trafficking, as determined, amongst others, by Supreme Court Judgements 405/2015 of 12 March and 673/2014 of 15 October.

² With reference to the areas and types of navigation set out in Article 8.2 of Royal Legislative Decree 2/2011 of 5 September, approving the Consolidated Text of the Law on State Ports and the Merchant Navy. 'BOE' No. 253, of 20 October 2011.

On this point, and in accordance with Ancín and Rodríguez (2021), the police report documents the *notitia criminis* and has the legal status of a criminal complaint, as recognised by Article 297 of the Criminal Procedure Act (LECrim). However, beyond the mere notification to the court, certain actions carried out in that context may introduce into the proceedings objective elements that are difficult or impossible to reproduce at a later stage. Depending on their nature, their proper documentation and their inclusion in the proceedings in accordance with the principles of adversarial proceedings, immediacy and oral proceedings, such actions may acquire evidential relevance as acts of verification or as supporting evidence for subsequent expert or qualified witness testimony and, ultimately, attain the status of pre-established expert evidence, in the terms set out by Gimeno Sendra (2015, p. 255). Furthermore, given the nature of certain procedures contained in the police report, their evidential value is not diminished merely because they lack judicial oversight, as has been repeatedly confirmed by constitutional case law, in particular in Constitutional Court Judgements 182/1989 of 3 November and 217/1989 of 21 December.

On the basis of the aforementioned case-law, for the proceedings to be regarded as technical expert evidence that cannot be reproduced in court, in addition to being free from subjective assessment by the officers involved, they must be introduced at the procedural stage in accordance with the principles of immediacy, oral proceedings and adversarial proceedings, and may be treated as documentary evidence rather than mere witness evidence, therefore, to paraphrase Tomé (2016, p. 386), the report partially regains its individual evidential value when it contains objective and verifiable data, such as fingerprints, marks, traces, photographs or plans, thereby functioning as a record of findings.

Similarly, the part of the report containing the officers' testimony is also attributed evidential value as witness evidence; although this must be confirmed during the oral hearing by the officers involved, this is a common occurrence in reports drawn up in relation to offences under Article 318 bis of the Criminal Code committed by sea, where the officers are direct witnesses to the commission of a flagrant offence. Consequently, when the officers responsible for drawing up the report delegate the conduct of investigative procedures to other officials, it is advisable to record the identity of the latter; otherwise, the evidence could be regarded as circumstantial witness evidence, in accordance with the doctrine of the Constitutional Court³.

4. INITIAL INVESTIGATIVE PROCEDURES IN THE MARINE ENVIRONMENT.

Any criminal investigation aimed at clarifying facts that appear to be criminal in nature requires the collection, recording and preservation of objective evidence of procedural relevance, in accordance with Articles 282 et seq. of the Criminal Procedure Act. In the maritime context, this requirement is heightened by the dynamic and transient nature of the environment, which necessitates immediate action aimed at documenting the facts, identifying those responsible, protecting victims and preserving evidence that is liable to disappear, in accordance with case-law on irreproducible investigative measures and pre-established evidence.

³ SSTC 110/1985, of 3 October; 145/1985, of 28 December; 173/1985, of 16 December; 19/1986, of 23 April; 145/1987, of 23 September; and 5/1989, of 19 January, amongst others.

Knowledge of events potentially falling within the scope of Article 318 bis of the Criminal Code (CP) generally arises through early-warning systems such as the SIVE, as well as through aerial and naval resources of public bodies or third parties (e.g. merchant ships), alongside alerts from non-governmental organisations (NGOs) involved in providing humanitarian support to migration flows. This operational context also falls within the international legal framework defined by the 1982 United Nations Convention on the Law of the Sea (Articles 92 and 110 of UNCLOS), particularly with regard to jurisdiction on the high seas and powers of intervention, as well as within the regulatory framework of the European Union, notably Regulation (EU) No 656/2014 and Regulation (EU) 2019/1896, within the framework of which joint operations are carried out, coordinated by the European Border and Coast Guard Agency – commonly known as FRONTEX – integrating the functions of border surveillance, maritime rescue and the fight against irregular migration networks.

Except in cases of direct detection by units of the Civil Guard's Maritime Service, police intervention would take place upon the arrival of the competent authorities acting in their capacity as the Judicial Police⁴. In this context, it is essential to obtain information at an early stage, such as the geographical position, date and time of detection, course and speed, as well as the seaworthiness of the vessel and the situation of the persons on board. Incorporating this information properly into the initial factual account, together with the identification of the naval units involved and the officers in action, enables the construction of robust case files and strengthens their evidential value in court.

4.1. DETECTION AND MONITORING OF SUSPICIOUS VESSELS.

From a functional perspective, the initial detection and monitoring of a suspicious vessel serves a dual purpose. On the one hand, it enables the activation of a rescue or interdiction response and, on the other, it allows for the early establishment of relevant objective data — position, course, speed, route and environmental conditions — for the subsequent reconstruction of the facts. Given that the mobilisation times of naval assets depend primarily on the type of patrol vessel, the distance to the target and the weather and sea conditions, it is advisable to continue monitoring the vessel until a naval police unit arrives, both to track the progress of the journey and to ensure an appropriate response in terms of the safety of the migrants on board.

This monitoring can be carried out using approved RADAR equipment, supplemented, where appropriate, by electro-optical means or direct visual observation, provided that the source of the data, the time of capture and the identity of the officers or systems involved are properly documented. According to Moreno Torres (2011, p. 380), radar equipment constitutes a valid means and, in scientific terms, is sufficiently reliable for detecting vessels engaged in illicit trafficking, as well as providing information relevant to the investigation, such as geographical coordinates. In this regard, the radars of the Comprehensive External Surveillance System (SIVE), despite their limited range, can provide sufficient coverage for the recording of this data within Spanish territorial waters, whilst the RADAR equipment on the naval units of the Civil Guard's Maritime

⁴ The National Commission for the Coordination of the Judicial Police agreed that jurisdiction over matters relating to the Judicial Police in maritime areas should lie exclusively with the Civil Guard (Minutes of 12 March 2019, item 10 on the agenda).

Service (SEMAR) enables the general circumstances of the suspect vessel to be confirmed and facilitates a situational assessment prior to interception.

According to Estrampes and Domínguez (1997), on analysing the case law of the Supreme Court, records derived from this type of monitoring — whether electronic, audiovisual or in another format — may meet the requirements for circumstantial evidence. Electro-optical monitoring, carried out using cameras or telemetric viewfinders, extends the possibilities for observation and recording as far as the horizon, depending on the characteristics of the equipment and the installation height, and can be extended even further using airborne means. Meanwhile, direct observation from the official naval vessel itself allows this information to be supplemented through immediate visual perception or with the aid of analogue optical instruments.

In addition, the assessment of meteorological and sea conditions in the areas where irregular migration takes place may be relevant both for the adoption of operational measures and for documenting the scene. In this regard, parameters such as wave height or wind strength and direction may be included in the proceedings as descriptive elements of the environment, in terms similar to the ‘features of the terrain’ referred to in the second paragraph of Article 326 of the Criminal Procedure Act. Their inclusion in the report, supported by official forecasts and the direct observations of officers and on-board technical equipment, helps to provide the adjudicating body with an objective basis regarding the state of the sea.

However, the information obtained at this stage should not be presented conclusively as evidence of guilt, but rather as an objective basis for guiding subsequent investigative procedures involving reconnaissance, intervention and identification, as well as for assessing the risk context in which the clandestine navigation took place.

4.2. PROXIMITY RECONNAISSANCE.

Proximity reconnaissance would constitute a direct observation procedure of particular relevance in the marine environment, as it would enable the establishment of circumstances that are difficult to reproduce at a later date regarding the condition of the vessel, the transport conditions of its occupants and the observable behaviour of those who are steering it or assisting in its navigation.

This phase of the operation, carried out through direct visual observation and supported by electro-optical means, would enable the identification and physical description of the crew members, as well as the determination of the vessel’s objective seaworthiness and the conditions under which the passengers were being carried. Such actions would form part of the investigative and evidence-securing procedures for the punishable offence provided for in Articles 282 and 326 of the Criminal Procedure Act (LECrim) and are consistent with the principle of pre-established evidence, particularly where there are sources of evidence that are irreproducible or difficult to reproduce at the oral hearing, as explained by Gimeno Sendra (2018). The examination of the vessel, as the instrument used to commit the offence, and in particular the assessment of its physical and functional condition, would form part of the description of the elements relating to the existence and nature of the offence under investigation; hence the need to record its construction characteristics, materials, propulsion system, seaworthiness and safety features, given their bearing on the legal assessment of maritime transport and the risk

posed to those on board, in line with the approach outlined by Fontestad Portalés et al. (2024).

A distinction must, however, be made between the data that can be objectively verified at this stage — for example, the type of vessel, buoyancy features, the distribution of occupants, apparent safety conditions or the presence of minors — and the legal or criminological inferences that may be drawn from such facts. Such assessments must be made with caution and supported by the body of evidence gathered during the proceedings.

Consequently, and assuming that the helmsman or person in charge of the suspected vessel does not attempt to evade the police's approach manoeuvres, the inspection could be carried out at close range, whilst observing the necessary safety measures to prevent collisions and in accordance with the criteria set out in Article 326 et seq. of the Criminal Procedure Act (LECrim) for visual inspection. This procedure would take on particular significance where there are indications of imminent danger to the life or physical integrity of the occupants, or where the proximity would allow for the documentation of objective circumstances likely to influence both the adoption of rescue measures and the subsequent criminal-law assessment of the facts.

In itself, it would be useful to ascertain the conditions in which the occupants were travelling, including any precariousness, overcrowding or other circumstances, such as the presence of particularly vulnerable persons or minors, as well as their apparent state of health, taking into account the possible existence of any fatalities on board or adrift in the vicinity. Essentially, this would involve ascertaining the presence of any personal safety and flotation equipment that the occupants might be carrying, as this, together with the aforementioned circumstances, would contribute to the classification of the offence, but also to the implementation of appropriate rescue operations in the event of an imminent risk to human life.

4.3. RELEVANT EVIDENCE FOR IDENTIFYING POSSIBLE PERPETRATORS.

In this regard, evidence relating to the role played by certain occupants on board takes on particular significance. Monitoring and close observation can provide information on who is carrying out functions of command, practical leadership or logistical support. The observation of sustained, purposeful and non-erratic navigation, combined with other elements of direct perception, audiovisual records, seized items or subsequent statements, may contribute to the identification of those who assume tasks relating to the control or steering of the vessel.

Elements of interest include behaviour relating to steering, refuelling, engine maintenance, weight distribution, the coercive control of occupants, or the operation of navigational instruments. Other factors that may be assessed include the individual's position relative to the other occupants; the discovery on their person of objects or equipment necessary for navigation—such as GPS navigators or a marine compass; the presence of marks on the hands consistent with the continuous operation of the helm; or the use of gloves, protective straps or specific maritime clothing. To this may be added the collection of latent fingerprints from the helm, fuel cans or the casings of outboard motors, where such surfaces are physically suitable for their collection.

This purely observational assessment is complemented, from a legal perspective, by the requirement for an individualised attribution of liability. As Romeo Casabona (2016) points out, criminal imputation requires a joint assessment of the body of circumstantial evidence in accordance with the categories of imputation and perpetration. Added to this is Supreme Court Judgment 582/2007 of 21 June, which casts doubt on whether participation in any of the many tasks that make the voyage possible can be considered criminally relevant, without this authorising the replacement of individualised evidence with automatic inferences derived from mere presence on board.

Where the observed conduct⁵ reveals even a minimal stable or coordinated functional structure amongst several participants, this may also give rise to the possible involvement of a criminal group or organisation in accordance with Articles 570 bis and 570 ter of the Criminal Code, as systematised by Giner Alegría et al. (2022) on the basis of Supreme Court Judgment 852/2016. However, the police report should focus primarily on the roles, interactions and functions observed, leaving the definitive criminal-law classification to the appropriate stage of the proceedings.

In short, these are technical police criteria for observation and identification that guide the investigation, but whose translation into criminal law requires a joint assessment of the other investigative measures carried out.

4.4. PROCEDURES DURING THE PHASE OF DIRECT POLICE INTERVENTION.

Based on the evidence gathered in the previous phase, direct police intervention marks the point at which the initial practical measures to secure, identify and protect those on board are implemented. At this stage, given their different legal nature, a distinction should be made between measures aimed at the immediate safeguarding of the lives and physical integrity of those on board; the actions of the Criminal Investigation Department aimed at identifying possible perpetrators and securing sources of evidence; and any potential criminal law consequences arising from acts of resistance, disobedience or aggression towards the officers carrying out the operation. This distinction is not merely theoretical but also functional, as in the maritime environment the objectives of rescue, control and investigation occur simultaneously and must be coordinated in a manner consistent with the principles of legality, necessity, proportionality and documentary traceability.

In the event that the ship or vessel to be boarded flies a foreign flag, express record must be made of this fact in the report, as well as of the communications made, the authorisations obtained and, where applicable, the measures adopted under the Palermo Protocol. Similarly, when the intervention concerns stateless vessels or where there are urgent reasons relating to the safety of persons or the need to prevent the thwarting of police action, the orders issued by the unit carrying out the operation, the signals used, the means of transmission employed, the language of communication and the response

⁵ The Supreme Court has clarified that “it is sufficient for illegal immigration to be promoted, encouraged or facilitated by any means for the offence to be committed; which means that the offender’s participation in any of the many tasks involved in carrying out the act is sufficient [...] without it being necessary for the person to actually reach Spanish territory illegally” (Supreme Court Judgment 582/2007, Second Chamber, 21 June 2007, Legal Ground 3). This doctrine is reiterated in the Supreme Court Judgements of 5 February 1998 (RJ 1998/929) and 16 July 2002 (RJ 2002/5534).

observed should be documented as accurately as possible, given their potential relevance both for reconstructing events and as evidence.

From a procedural perspective, the conduct of proceedings at this stage is covered by Articles 13, 282, 284, 287, 295, 297 and 770 of the Criminal Procedure Act, insofar as they impose on the Judicial Police the duty to investigate the offence, identify the offenders, collect the objects, instruments or evidence relating to the offence, and report immediately to the judicial authority or the public prosecutor. Within this framework, direct intervention on the vessel should not be viewed exclusively as a physical rescue or control operation, but also as a particularly sensitive moment for securing perishable evidence and for establishing objective circumstances that would be difficult to reproduce at a later date, in line with the doctrine set out by Gimeno Sendra (2015) and Tomé García (2016) on the procedural significance of properly documented non-repeatable proceedings.

The decision to proceed with boarding, mooring or transfer must be guided, first and foremost, by the protection of human life at sea, in accordance with the SOLAS Convention and the basic principles of action set out in Article 5 of the LOFCS, without prejudice to its prejudicial dimension in terms of securing evidence where there is a risk of evidence disappearing or of those who were exercising functions of command or material control of the voyage concealing themselves. To this end, Article 520 ter of the Criminal Procedure Act (LECrim) provides specific guidance for arrest procedures carried out at sea, although its application must be considered in relation to the detainee's other procedural safeguards and the practical constraints inherent to the maritime environment.

Where, during the operation, evasive manoeuvres, failure to comply with orders, acts of resistance or conduct that objectively increase the risk to the enforcement unit or to the migrants being transported occur, such acts may acquire additional criminal significance. However, it is methodologically more correct to present them as cases whose classification will depend on the maritime area in which the events take place, the concurrent jurisdictional competence and the specific applicable legal provision, thereby avoiding the formulation of automatic subsumption rules. Thus, with regard to the possible application of Article 556(1) of the Criminal Code for serious disobedience, the starting point is the premise that its prosecution is subject to jurisdictional limits outside territorial waters, whilst acts of extreme violence occurring on the high seas could, from an interpretative perspective, give rise to the possible application of Article 616 ter of the Criminal Code, in accordance with the doctrinal approach of Marín Castán (2013), without prejudice to the caution required by this interpretation.

In this latter regard, where crew members attempt to prevent police action through threats, coercion or acts of violence against the persons being transported, such acts could, in conjunction, other criminal offences under domestic law if they take place in areas subject to Spanish jurisdiction; however, this raises issues of classification in high seas cases which judicial practice has not yet resolved in an entirely uniform manner when seeking to categorise acts as piracy. For this reason, it seems preferable for the police report to document in as much detail as possible the facts observed, the chronological sequence of events, the positions of the individuals involved and the material consequences of their conduct, leaving the final legal classification to the competent court.

Finally, once the situation has been brought under control and the protection of the rescued persons has been ensured, it will be appropriate to separate, as far as possible, those who appear, on the face of the evidence, to be linked to the governance or control of the vessel from the rest of the occupants, paying particular attention to minors and particularly vulnerable persons. According to García Magaños (2017), the verification of personal effects, the seizure of items related to navigation or to the commission of the offence, and their proper inclusion in the chain of custody are of particular importance in maritime interdiction operations; therefore, these actions should be accurately recorded in the official report and in the relevant chain of custody forms.

4.5. THE DISCOVERY OF HUMAN REMAINS AND THEIR HANDLING.

The discovery of human remains or a body in the context of a maritime interdiction requires the utmost care to be taken in securing, preserving and documenting the scene, given the particular fragility of the environment and the possible involvement of more serious offences connected with the voyage. From a procedural perspective, there is a functional equivalence between these urgent measures and the provisions of Articles 354, 770(4) and 778 of the Criminal Procedure Act, in that they require the scene to be secured, the position of the body to be documented and, as far as possible, the relevant evidence to be preserved until the subsequent intervention of the judicial authority and the forensic pathologist.

Where the body is found on board the vessel or in its immediate vicinity, the necessary photographic and descriptive records should be obtained, prior to any essential handling, to establish its position, apparent condition, spatial relationship with other elements at the scene, and the conditions of the surroundings. If safety and navigational conditions permit the towing or transfer of the vessel in question to port, it seems legally preferable to preserve, as far as possible, the location of the body and any nearby effects or evidence, in order to avoid alterations that might hinder the subsequent removal of the body and the expert assessment that follows.

Where the body is found adrift, the report should record not only the distance from the suspect vessel, if known, but also the exact geographical position, the time of discovery, the strength and direction of the current, and any other relevant maritime conditions. Such data may be of interest for a subsequent reconstruction of the possible relative trajectory between the body and the vessel, based on the records obtained during the prior monitoring phase, although this does not in itself authorise the drawing of definitive causal conclusions.

It is advisable to proceed with the recovery of the body, taking care, as far as possible, to prevent its loss, and to preserve any personal effects it is carrying, a list of which should also be drawn up. In the absence of a specific protocol, the temporary storage of the deceased on board should preferably take place in a designated area or, failing that, in the area that least compromises the manoeuvrability, health and safety of the vessel, until the body is handed over to the competent authority in port. At this stage, the police intervention would serve primarily a protective and initial safeguarding function, without prejudice to the fact that the medico-legal determination of the cause of death and its possible criminal relevance is a matter for subsequent forensic and judicial proceedings.

Nevertheless, it must be borne in mind that where the body of evidence gathered reveals an objective and sufficiently well-founded link between the death and the conditions of the voyage or the conduct of those who were in command of or in control of the vessel, it would be advisable to include in the police report any evidence pointing to potential criminal liability for homicide or reckless conduct, without prejudice to the final determination by the judicial body. In this regard, Sobrino Heredia and Oanta (2010, p. 770), as well as Supreme Court Judgment 637/2021 of 15 July, demonstrate that, in cases of the smuggling of migrants by sea resulting in death, criminal liability may extend beyond Article 318 bis of the Criminal Code to encompass offences of homicide in a situation of concurrent offences⁶.

4.6. THE FINAL CONDITION OF THE VESSEL AS AN INSTRUMENT OF THE OFFENCE.

The vessel used for the crossing constitutes, in principle, a material element of particular relevance to the criminal investigation, both in its capacity as the instrument used to commit the offence and as a possible scene of the events and a source of physical evidence. Consequently, its treatment must be guided by the provisions of Articles 13 and 282 of the Criminal Procedure Act, which require the collection and preservation of the effects, instruments and evidence of the offence, as well as by the need to preserve, wherever materially possible, a source of evidence whose subsequent reproduction may prove incomplete.

Consequently, where weather conditions, the stability of the hull, the distance from the coast and the technical capabilities of the police vessel permit, the law requires the vessel to be secured and towed to port, in order to enable a more comprehensive and technically organised visual inspection. During this manoeuvre, the custody documentation should record the vessel's identifying details, if any, any incidents occurring during the tow, the identity of the officers in charge, and a list of items recovered on board or in the vicinity, particularly where there is a risk of loss or damage.

Where the vessel lacks a name, registration number or identifiable flag, the report should compensate for this absence of official registration by providing a precise technical description of its construction type, colour, materials, propulsion system, distinctive markings, layout, steering mechanisms, as well as any relevant distinctive features. This type of description, supplemented by photographic or audiovisual evidence, can play an essential role in providing objective verification, in accordance with Article 770 of the Criminal Procedure Act and with the legal doctrine regarding the evidential value of properly documented visual records.

However, where the physical preservation of the vessel proves impossible or inadvisable for objective reasons relating to maritime safety, technical capacity or risks to navigation, priority must be given to compiling a comprehensive prior record of its condition, structure and contents. In such cases, the loss, abandonment or possible controlled sinking of the vessel cannot be presented as standard solutions, but rather as exceptional measures, strictly conditioned by necessity and thoroughly justified in the

⁶ In Supreme Court Judgment 637/2021 of 15 July (ECLI:ES:TS:2021:2953), two individuals were convicted of an offence against the rights of foreign nationals and of thirteen offences of manslaughter by negligence in a case of concurrent offences, as thirteen of the fifty-five people they transported died from drowning or hypothermia.

official report. In such circumstances, the prior photographic and descriptive documentation must aim to compensate, as far as possible, for the impossibility of physically preserving the vessel.

Doubts remain as to the appropriateness of the forced and controlled sinking of the vessel, once its occupants have been evacuated and a technical visual inspection has been carried out. As there is no provision for this in a specific protocol, the measure comes into conflict with the duty to preserve evidence that can be inferred from Articles 13 and 282 of the Criminal Procedure Act, although it may be justified, from a strictly practical standpoint, by the need to avoid the intrinsic risk arising from leaving the vessel adrift and the potential danger this poses to navigation. Precisely for this reason, should such a decision be taken, the grounds for it would need to be particularly well-substantiated, including the relevant technical reasons, the prior documentation procedures and the notification made to the competent maritime authority.⁷

4.7. PROCEDURAL STATUS OF THE ALLEGED PERPETRATORS.

The determination of the procedural status of the alleged perpetrators must be based on the existence of sufficient reasonable grounds obtained from the preliminary procedures of monitoring, proximity reconnaissance, direct intervention and the seizure of objects. Consequently, arrest, the status of a person under investigation but not in custody, or mere initial identification should not automatically result from mere presence on board, but rather from an individualised, documented and legally substantiated assessment of the observed conduct and its connection with the offences set out in Article 318 bis of the Criminal Code, as explained below.

From the perspective of the elements of the offence, the aforementioned provision penalises conduct involving the promotion, aiding or abetting of illegal trafficking or the smuggling of persons from, in transit through or bound for Spain; thus, attributing liability to those manning the vessel requires identifying their functional contribution to the offence. In this regard, the descriptive categories of skipper, captain, helmsman or material collaborator may be useful for organising the factual account, but they do not function as independent categories of criminal liability. Their criminal relevance will depend on effective control over the action, the specific contribution to the success of the crossing and the wilful knowledge of that contribution, as is evident from the analysis already included in the text and from the case law of the Supreme Court on the scope of the offence of aiding and abetting.

In particular, Supreme Court Judgment 582/2007 of 21 June states that it is sufficient to promote, facilitate or assist illegal immigration by any means for the offence to be deemed to have been committed, without it being necessary for the illegal entry into Spanish territory to be achieved. This doctrine, reiterated in subsequent case law, reinforces the idea that the involvement in any of the many tasks enabling the crossing to take place may be criminally relevant, although establishing this in relation to each individual requires individualised evidence and not an accusation based merely on presence or proximity.

⁷ As provided for in Article 29 of Law 14/2014 of 24 July on Maritime Navigation.

Furthermore, where the observed conduct reveals even a minimal stable or coordinated functional structure amongst several participants, this could give rise to the possible involvement of a criminal group or organisation in accordance with Articles 570 bis and 570 ter of the Criminal Code. In this regard, reference is made to Giner Alegría et al. (2022), who analyse Supreme Court Judgment 852/2016 as a doctrinal basis for distinguishing between a criminal organisation and a criminal group on the basis of the stability, hierarchy and duration of the structure. However, from a methodological perspective, it seems advisable for the police report to describe, first and foremost, the observed roles, interactions and functions, reserving the definitive classification under one provision or another for the appropriate stage of the proceedings.

Where the investigations carried out reveal sufficient reasonable grounds to suggest involvement in the criminal offence, arrest may be mandatory under Articles 490 et seq. of the Criminal Procedure Act (LECrim), with the aim of ensuring the person is brought before a court, preventing the destruction of evidence and avoiding the risk of flight, concealment or the influencing of victims. In the marine environment, the reading of rights and the documentation thereof must comply with the provisions of Articles 520 and 520 ter of the Criminal Procedure Act; it is advisable to record the language used, the detainee's understanding and, where applicable, any technical limitations on board that prevent the immediate exercise of any of their rights. In such cases, the practical impossibility of immediately fulfilling certain safeguards should be expressly justified, stating the reasons and the measures taken to remedy the situation as soon as possible.

Having analysed the doctrine of the Public Prosecutor's Office and Instruction 1/2024 of the Secretary of State for Security, both are based on the premise that detention must not be prolonged beyond the time strictly necessary, in accordance with the requirements of the Criminal Procedure Act and the guarantees set out in Article 17 of the Spanish Constitution. In the maritime context, however, this principle should be interpreted with functional flexibility, taking into account the objective particularities of navigation — particularly on the high seas — where time, weather conditions and technical limitations on the conduct of proceedings may have a decisive impact on the actual transfer, hence the provision for mechanisms to bring the suspect before a judge via teleconference when the period exceeds seventy-two hours.

Nevertheless, in cases where the existing evidence gives rise to a well-founded suspicion but does not yet support a sufficiently established attribution of guilt, it seems more prudent to apply the status of a person under investigation who is not in custody, a solution that is legally more appropriate than that of a detainee. This is suggested by the text itself, which refers to constitutional doctrine and Circular 3/2018 of 1 June from the State Public Prosecutor's Office on the right to information of persons under investigation in criminal proceedings, the application of which helps to avoid delays that could potentially undermine the right of defence.

With regard to minors, the issue presents added complexity due to the overlap between the general regime of Article 520 ter of the Criminal Procedure Act (LECrim) and the specific provisions of the Act on the Protection of Minors in Criminal Proceedings (LORPM), in particular Article 17(4) thereof. The text correctly points out the absence of specific and comprehensive regulations on the detention of minors in a maritime context, and it is therefore correct to maintain that, where there is evidence or indications of minority, an interpretation based on safeguards and enhanced protection must prevail, in

accordance with Instruction 1/2017 of the Secretary of State for Security and the requirement to bring the minor before the competent authority as soon as possible. In such cases, detention on board should be limited to what is strictly necessary, with a focus on ensuring separation from adults, providing adequate assistance and ensuring the early involvement of the Juvenile Prosecutor's Office or the competent authority.

4.8. TRANSFER TO PORT AND DISEMBARKATION.

Transport to port and disembarkation constitute a transitional phase between the intervention at sea and subsequent action on land; therefore, their proper documentation is essential to preserve the chain of custody, ensure the traceability of those apprehended and avoid discrepancies between the criminal, health and administrative aspects of the operation. As has been explained, in high-seas operations, the transfer to port may in itself constitute the minimum time strictly necessary for the conduct of proceedings and fulfil the period of deprivation of liberty for those detained; in any event, if pre-trial detention on board has been ordered by a court following their presentation via remote means, the transfer shall be subject to the formalities laid down for the custody of detainees and, in particular, the provisions of Instruction 4/2018 of 14 May, insofar as they apply to the custody record, body search, inventory of personal effects, surveillance, identification of custodial staff, food and medical care, as well as to the specific requirements relating to minors. In coastal maritime areas, custody arrangements may be adapted to the standards for the treatment and handling of detainees set out in Article 36 of the Prison Regulations, whilst respecting their dignity, rights and safety.

In accordance with Instruction 4/2018 of 14 May issued by the Secretary of State for Security, and given that the Logbook of official ships and vessels is a public document, it is reasonable that it should record essential information relating to admission, the period of detention and any incidents occurring during custody, provided that there is no specific register on board.

In the same vein, from the moment of arrest and within the technical capabilities of the naval vessel, it may be appropriate to carry out the procedure for identifying the detainee in parallel. Thus, if the detainee were to be in possession of authentic or verifiable documentation, their identity would be recorded in all proceedings; conversely, if they were unable to provide such documentation, the name by which they claimed to be known would be recorded, subject to verification, where appropriate, through references from third parties, and recorded as their presumed identity pending further verification.

It should also be noted that, from a legal theory perspective, the transfer to port does not, in itself, appear to constitute a criminal investigation or inquiry, but rather a custodial and escort procedure arising from the arrest itself. We find references to this in case law; in particular, Constitutional Court Ruling 21/1997 of 10 February addresses this phase of arrest and custody on the high seas — where the vessel transports the detainees to port — ; consequently, this distinction appears to take on particular relevance in the arrest of vessel skippers for offences against the rights of foreign nationals, as the mere transfer to port would not contribute any element to the police investigation, but would respond exclusively to the logistical need for a ' ' transfer from the maritime area to their physical appearance before the competent authority.

Once the police vessel or boat has arrived in port, and once the immigration services of the National Police Force (CNP) and the medical staff have arrived on the scene, the investigating officer may, as far as possible, obtain the NIE or the assigned health identification number, in order to ensure continuity of identification across administrative, health and criminal proceedings. In accordance with Instruction 20/2005 of 23 September, all occupants must be handed over to the CNP for the initiation of the relevant administrative proceedings relating to immigration, based on Organic Law 4/2000 and Article 12.1.A)(c) of the LOFCS, as well as for possible cross-checking in EURODAC⁸, where applicable.

From a functional perspective, this phase requires enhanced coordination between the agencies and services involved, particularly with regard to the identification of individuals, the separation of potential perpetrators from victims, emergency medical care, the provision of interpreters, and the continuation of police investigations initiated on board. Its importance is not merely logistical, but also relates to the admissibility of evidence and the protection of rights, in that it determines the proper coordination between the criminal investigation and the administrative and medical care of those rescued.

4.9. COMPLETION OF THE NAVAL POLICE REPORT.

The completion of the APN must be understood as the orderly conclusion of a series of procedures carried out in exceptional circumstances, the primary purpose of which is to ensure continuity, clarity and traceability of the actions undertaken at sea. Therefore, the proceedings should expressly state the professional identification of the officer receiving the APN, including their organisational and/or functional unit, in order to ensure traceability and transparency in the handover process, whilst recording the evidence forwarded to other bodies or specialist units for examination — such as the analysis of navigation instruments used — and, in all cases, reflecting this on the corresponding chain of custody form.

Based on the data collected in the marine environment and the technical complexity of the setting, a summary report may be included in the official report, aimed at outlining the facts under investigation and the actions carried out at sea. Its purpose is preparatory and descriptive, enabling the vessel's route to be succinctly reconstructed on the basis of early-warning monitoring positions or other data prior to the interception — including, where necessary, an estimate of the course and speed when electronic navigation equipment has not been seized. This report would summarise the maritime journey described in relation to the alleged offence, including a technical description of the vessel, the number of migrants, accommodation conditions, the identities of the responsible crew members and relevant details up to the point of the police interception.

Separate from the above, a technical report could also be drawn up which would not form part of the Preliminary Investigation Report (APN) or the police report, but could be issued at a later date and upon judicial request, based on and analysing the data incorporated into the police report, thereby potentially acquiring the status of an expert report under the terms of Articles 456 et seq. of the Criminal Procedure Act (LECrim), with the corresponding requirements regarding technical specialisation, formal

⁸ European system for the comparison of fingerprints of asylum seekers (EURODAC).

appointment and confirmation in court. In the same vein, the Supreme Court of Justice of Catalonia Judgment 76/2021 recalls that a police report does not in itself constitute expert evidence unless it has been requested by the court, whilst Supreme Court Judgment 202/2022 specifies that reports issued by public officials do not constitute expert evidence per se, unless they meet the criteria of technical specialisation, formal appointment and the possibility of explanation at trial.

5. TRANSFER OF PROCEEDINGS.

Once the preliminary investigation (APN) has been completed, the continuation of the investigative proceedings raises a question of the coordination of competences between the judicial police function assumed by the Guardia Civil in the maritime sphere and the powers of the National Police Corps (CNP) in matters of immigration. In application of the Organic Law on the Guardia Civil (LOFCS) and the functional criterion arising from the investigation of offences committed at sea, it appears legally justifiable that the transfer of proceedings for criminal prosecution should be directed to the UOPJ units of Guardia Civil at the place of disembarkation, without prejudice to the necessary coordination with the CNP in accordance with Technical Instruction 4/2018 of the Secretary of State for Security (SES), dated 14 May, regarding foreign nationals in an irregular situation.

However, the criterion that has remained in force since SES Instruction 20/2005 of 23 September is the handover to the CNP of all occupants of the intercepted vessel for the purposes of identification and administrative processing relating to immigration matters, meaning that the overlap between these two functional spheres — criminal investigation and administrative management of immigration matters — can lead to practical difficulties when the physical handling of victims, witnesses, detainees and interpreters is fragmented across different police forces.

From this perspective, the problem appears to be not only organisational, but also relates to procedural safeguards and the admissibility of evidence. If migrants are subjected to the administrative immigration process whilst the Guardia Civil continues the criminal investigation without direct and ongoing access to victims and interpreters, both the ability to obtain new sources of evidence and the effective enjoyment of the rights of those involved in the criminal proceedings may be compromised. Hence the need to strengthen inter-agency coordination mechanisms that allow the division of responsibilities to be reconciled with the continuity of the investigation and the effective protection of rights.

6. CONCLUSIONS.

The analysis carried out supports the view that the so-called Naval Police Report could be conceived, in strictly technical and functional terms, as a proposal to systematise the initial investigative procedures carried out at sea in cases of the smuggling of migrants, without this implying the creation of a separate legal category distinct from the police report provided for in the Criminal Procedure Act. Its usefulness would lie in providing a framework for organisation compatible with the constitutional and procedural framework of the Judicial Police, particularly in an environment characterised by operational urgency, the volatility of the situation and the frequent irreproducibility of certain actions.

From a legal and procedural perspective, the main contribution of this framework lies in highlighting that many of the procedures carried out at sea —when documented with precision, objectivity and respect for procedural safeguards— can prove highly effective in criminal proceedings, whether as acts of verification, as supporting evidence for subsequent expert or qualified witness testimony, or as a basis for the inclusion of non-reproducible elements, in line with constitutional case law and the procedural doctrine cited.

At the same time, the study shows that the effectiveness of these procedures depends less on a conceptual expansion of the official report than on better coordination between the functions of rescue, custody, criminal investigation and the administrative handling of rescued persons. Hence, the proposed systematisation should be understood, first and foremost, as an instrument for operational rationalisation and procedural continuity, useful for improving the traceability of proceedings and the quality of their documentation, but always subject to the current regulatory framework and the interpretation thereof by the courts.

Consequently, rather than definitively settling the doctrinal and jurisdictional issues raised by maritime interdiction in this area, the aim is to provide a systematic basis for its handling and for future doctrinal, jurisprudential and operational developments. In this regard, its main contribution lies not in formulating definitive solutions for all scenarios, but in proposing a technically structured and legally defensible framework for police action at sea and its subsequent procedural application against this type of crime, which also paves the way for the development of *ad hoc* procedural models specifically tailored to combating the smuggling of migrants by sea.

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Research Article

PRIMUS PROJECT. REFLECTIONS AND PROPOSALS FOR A THEORETICAL AND APPLIED FRAMEWORK OF LEADERSHIP BASED ON BEHAVIOURAL ANALYSIS

English translation with AI assistance (DeepL)

Antonio Domínguez-Muñoz

Lecturer at Evidentia University of Behavioural and Forensic Sciences (Evidentia University)

adominguez@evidentiauniversity.com

ORCID: <https://orcid.org/0000-0003-3771-9580>

Google Scholar: <https://scholar.google.es/citations?user=mCYKjdQAAAAJ&hl=es&oi=ao>

Rafael M. López Pérez

Lecturer at the Complutense University of Madrid – raflop10@ucm.es

ORCID: <https://orcid.org/0000-0002-2807-7419>

Jorge Jiménez Serrano

Director of the School of Crime Sciences, Evidentia University of Behavioural and Forensic Sciences (Evidentia University)

jjimenez@evidentiauniversity.com

ORCID: <https://orcid.org/0009-0007-3285-144X>

Beatriz Domínguez-Muñoz

Psychology student. University of Málaga (UMA), Málaga, Spain.

beatrizdominguez2002@gmail.com

Received 18/02/2026

Accepted 27/05/2026

Published 30/06/2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.8907>

Recommended citation: Domínguez-Muñoz, A., López, R. M., Jiménez, J. and Domínguez, B. (2026). The Primus Project. Reflections and proposals for a theoretical and applied framework of leadership based on behaviour analysis. *Logos Guardia Civil Journal*, 4(2), pp. 187–214. <https://doi.org/10.64217/logosguardiacivil.v4i2.8907>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

PRIMUS PROJECT. REFLECTIONS AND PROPOSALS FOR A THEORETICAL AND APPLIED FRAMEWORK OF LEADERSHIP BASED ON BEHAVIOURAL ANALYSIS

Summary: 1. INTRODUCTION. 1.1. Methodology. 2. LEADERSHIP AND BEHAVIOURAL ANALYSIS. 2.1. Assessment Validity Analysis System (SAVE). 2.2. *Rapport-Oriented* Identity Analysis and Assessment System (SAVIOR). 3. THE PRIMUS PROJECT. 3.1. *Primus or Caesar*: self-leadership. 3.2. *Peer-to-Peer or Nothing*: servant leadership. 3.3. Anti-leadership in the 21st century: Either *Cyber-Caesar* or *nadIA*. 4. CONCLUSIONS AND PROPOSALS. 5. BIBLIOGRAPHICAL REFERENCES.

Abstract: Leadership is one of the major themes of the contemporary world, approached from various disciplines, including the behavioural sciences, given that rather than merely an era of change, we are facing a shift in the era itself, reflected in the VUCA model and subsequent frameworks. The complexity faced by organisations calls for leadership that serves people, based on behavioural analysis (AdC). A broad, interdisciplinary conceptual framework is needed to provide a scientific basis for something which, although we do instinctively, benefits from a systematic approach. We propose a versatile system for BA, with a meta-protocol structure (SAVE) and an adaptation particularly useful for team leadership (SAVIOR). Building on this, we have developed a proposal for humanistic, principles-based leadership: the PRIMUS Project (Promoting *Rapport* through Identity and Leadership through Unity, using SAVIOR). It is structured in two parts: *Primus or Caesar*, to emphasise the need for leadership as a personal development project (self-knowledge and self-leadership), useful for anyone. Next, *Inter Pares or Nothing* addresses, amongst other issues, how to practise positive leadership, given that leadership cannot be neutral; ‘anti-leadership’ is a frequent phenomenon, which is provisionally defined and discussed in relation to its organisational consequences (burnout, deterioration of cohesion, loss of morale) and its prevention through PRIMUS. Finally, the functional integration of the model with the complex environments of our century is addressed. We thus draw on a long tradition and embrace the spirit of the current motto of the Department of Leadership at the Army War and Leadership School to conclude: *‘To lead is to serve’*.

Resumen: El liderazgo es uno de los grandes temas del mundo contemporáneo, abordado desde distintas áreas, incluidas las ciencias de la conducta, dado que más que una época de cambios, estaríamos ante un cambio de época, reflejado en el modelo VUCA y los posteriores. La complejidad que enfrentan las organizaciones demandaría liderazgos al servicio de las personas, desde el análisis de conducta (AdC). Un marco conceptual amplio e interdisciplinar para dotar de base científica algo que, aunque hacemos de manera instintiva, se beneficia del método. Planteamos un sistema versátil para el AdC, con estructura de meta-protocolo (SAVE) y una adaptación especialmente útil para el liderazgo de equipos (SAVIOR). A partir de aquí, desarrollamos una propuesta de liderazgo humanista basado en Principios, el Proyecto PRIMUS (Promoción del *Rapport* desde la Identidad y del Mando a través de la Unidad, con SAVIOR). Se estructura en dos partes; *Primus o César*, para insistir en la necesidad del liderazgo como un proyecto de desarrollo personal (autoconocimiento y autoliderazgo), útil para cualquier persona. Luego, *Inter Pares o Nada*, plantea entre otras cuestiones cómo practicar un liderazgo positivo, dado que este no puede ser neutro, siendo frecuente el anti-liderazgo, que se define provisionalmente y se discute en relación con sus consecuencias organizacionales

(burnout, deterioro de cohesión, pérdida de moral) y con su prevención desde PRIMUS. Por último, se aborda la integración funcional del modelo con los entornos complejos de nuestro siglo. Recuperamos así una larga tradición y hacemos nuestro el espíritu del actual lema del Departamento de Liderazgo de la Escuela de Guerra y Liderazgo del Ejército de Tierra para concluir, *Liderar es servir*.

Keywords: Behavioural Analysis, Influence, Leadership, Indirect Personality Profiling, SAVE.

Palabras clave: Análisis de conducta, Influencia, Liderazgo, Perfilado Indirecto de Personalidad, SAVE.

ABBREVIATIONS

AdC: Behavioural Analysis

BANI: Brittle, *Anxious, Non-Linear and Incomprehensible*.

CNV: Non-Verbal Behaviour.

CPS: *Complex Problem Solving*.

MoM: *Mission Command*.

MACONVE: Manual of Non-Verbal Behaviour (2016).

MAD MEN: Manual on Detecting Lies and Deception (2020).

MOSAVE: SAVE Operational Manual (2021).

OSINT: *Open-Source Intelligence*.

NATO: North Atlantic Treaty Organisation.

PEN: Psychoticism, Extraversion and Neuroticism.

PRIMUS: Promoting Rapport through Identity and Leadership via Unity, with SAVIOR.

SAVE: System for Analysing Validity in Assessment.

SAVIOR: *Rapport-Oriented Identity Analysis and Assessment System*.

SCARF: Status, Certainty, Autonomy, Relatedness, *Fairness*.

EU: European Union.

VUCA: Volatility, Uncertainty, Complexity *and* Ambiguity

VI₃ RCA₂ S: Evolution of VUCA, which adds (in Spanish) to VUCA: Immediacy and Insecurity, Noise, Acceleration and Simultaneity of disparities.

1. INTRODUCTION.

In the 21st century, the demands of the environment have changed profoundly (Díaz-Carrera, 2007). The institutional mission across various areas of public administration remains the same, but the contexts in which it is carried out have been radically transformed. This presents a clear challenge; leadership can no longer rely solely on traditional command; it must evolve towards a strategic competence: Mission-Oriented Command (MoM). This is not an optional transformation, but a necessary one. The contemporary landscape, described by the VUCA (volatile, uncertain, complex and ambiguous) and BANI (fragile, anxious, non-linear and incomprehensible) models, has been made even more challenging by environments such as the VI₃RCA₂S model, which adds immediacy, insecurity, noise, acceleration and simultaneity to VUCA. These acronyms are not mere conceptual labels; they describe operational realities that also affect members the Guardia Civil, from the tactical to the strategic level (Diz, 2021; López, Pascual and Parrilla, 2023; Guilló, 2024; Martínez, 2025).

Table 1
Complexity in the past vs. Complexity today¹

Dimension	Complexity in the past	Complexity today
Information flow	Limited, slow (letters, messengers, spoken communication)	Instantaneous, overwhelming (the internet, social media, artificial intelligence – AI)
Decision-making time	Longer, allowing for deliberation	Fast, requires immediate responses
Interconnectivity	Local or regional	Global, highly interconnected
Control and governance	More centralised (states, empires)	More decentralised (multinational corporations, digital platforms)
Knowledge storage and processing	Libraries, oral traditions	<i>Big Data</i> , machine learning, AI
Technology adoption	Slow adoption cycles	Rapid and disruptive change

Thus, leadership would cease to be a formal role and become a cross-cutting skill. It involves exerting influence through setting an example, creating safe and emotionally sustainable environments where team members feel capable of tackling challenges, innovating and maintaining morale even in adverse situations. Leadership today is, in short, a form of service – and a particularly important one at that.

Neuroscientific studies over recent decades have provided us with essential insights into how the human brain behaves under conditions of pressure, threat or disorientation. For example, the SCARF model (*Status, Certainty, Autonomy, Relatedness, Fairness*) explains how certain relational conditions affect motivation, cooperation or performance (Rock, 2008). For an operational leader, understanding these mechanisms is no longer a

¹ Adapted from a presentation by María Blanco, Lecturer at the University of San Pablo CEU, Department of Economics, at the CPS Live Conference (Madrid, March 2025).

luxury but a necessity. A leader who does not know how their non-verbal behaviour or decisions impact the limbic system – the emotional part of the brain – of their colleagues is, at the very least, losing their capacity to influence. Thus, Damasio's (2001) studies have shown us the importance of the connections between the limbic system and the prefrontal cortex in decision-making, which enable us to correct mistakes and learn from them. All of this takes place within a framework that integrates emotional intelligence, building on self-awareness and emotional self-management to achieve better and more appropriate social relationships, through the development of effective social skills (Goleman, 2005; Martínez, 2025).

Of course, leadership in the Guardia Civil must not be separated from its history which, like its anthem and motto, is – from Article 1 of the first chapter of the Manual – inextricably linked to Honour. Honour, understood as the manifestation of Virtue, has clear implications for leadership, which would be an effect of virtuous actions: the social shadow cast by Virtue, without intending to do so. The Corps thus boasts a history that underpins a unique institutional narrative, with symbols, values and practices that help to sustain and enhance its prestige, moral authority and loyalty. Discipline, loyalty, austerity and a vocation for service are values that have led generations of Guardia Civil to face circumstances of high risk, threat and uncertainty (Martínez, 2019).

PRIMUS was conceived as a modest contribution to this difficult challenge. It does not aim to offer theoretical frameworks or conceptual resources beyond what is necessary, but rather to create a space for reflection applied to the practical realities of command. From emotional self-awareness to the analysis of complex operational environments, from stress management to the use of methods such as the SAVE system or the SAVIOR approach, knowledge from different disciplines is integrated with a clear focus: to improve the capacity for effective leadership in real-world contexts (Domínguez-Muñoz, López and Jiménez, 2025).

To this end, participants are encouraged to reflect on themselves, their identity and their leadership tendencies or styles, in order to identify and understand biases and blind spots (Kahneman, 2012; Tversky and Kahneman, 1974), and thereby to develop key competencies: assertive communication, building trust, decision-making under pressure, managing diverse teams, behavioural analysis in complex situations, and resilience. PRIMUS has undoubtedly grown through the experience gained so far, reinforcing our conviction that leadership today means serving with the right attitude, vision and awareness.

For all these reasons, it is not aimed solely at those who already hold or aspire to hold positions of responsibility, but at all members the Guardia Civil, based on the conviction that leadership is not an option, but a shared responsibility. In the PRIMUS Project, leadership means being at the forefront of commitment to oneself, acting as an example and a guide, striving for excellence – competence combined with ethics – without forgetting humility – understood as authenticity – and the human warmth of the MoM.

1.1. METHODOLOGY.

This article falls within the genre of theoretical-doctrinal reflection with a proposed applied framework. It is therefore neither an empirical study nor a systematic review, but

rather a conceptual framework that brings together three elements: a) a theoretical body drawn from behavioural analysis, forensic medicine and psychology, applied neuroscience and behavioural economics; b) a technical toolkit developed by the authors and previously published – SAVE as a meta-protocol and SAVIOR as an application to leadership; and c) a deliberative proposal for leadership – the PRIMUS Project – derived from twelve years of teaching, training and collaborative work with security and defence institutions.

There are three objectives; the main one is to present the PRIMUS Project in an integrated manner as a conceptual framework for leadership in hierarchical organisations dedicated to public service. Secondly, to operationalise this framework through an approach that combines Identity (V₀ in SAVE) with principles of influence (Cialdini, 2017), of direct utility to commanders and operational personnel. Thirdly, to propose and characterise ‘anti-leadership’ as a specific category, outline some organisational consequences and suggest ways to prevent it using PRIMUS.

The methodology is that typical of a conceptual study: a narrative review of selected academic and doctrinal literature on leadership, an analysis of behaviour and 21st-century environments, integration with the technical corpus previously published by the authors (López, Gordillo and Grau, 2016; Viñambres et al., 2020; Domínguez-Muñoz, 2021a) and the formulation of a framework that has been applied and discussed in professional and academic forums. This article substantially expands on a previous conference paper by the authors (Domínguez-Muñoz, López and Jiménez, 2025), incorporating, amongst other things, greater theoretical development, a discussion of anti-leadership and a connection with the institutional doctrine the Guardia Civil, which were not included in that preliminary five-page version.

The limitations of this work include, amongst others, those inherent to a proposed framework: it does not provide quantitative data on effectiveness but rather on reasoned applicability, due to its versatility and dependence on specific operational contexts, as is also the case with the SAVE meta-protocol. The empirical validation of PRIMUS in police and military leadership contexts constitutes a line of research, with avenues already open such as the recent Master’s thesis at the Guardia Civil University Centre (Martínez, 2025), which the authors hope to develop in future contributions

2. BEHAVIOURAL ANALYSIS WITH SAVE: THE IMPORTANCE OF THE METHOD.

Behavioural analysis (BA) is a polysemous term, which we use here to refer to the basic scientific study of behaviour; to better understand how biological-psychological and socio-environmental factors influence behaviours, their onset, maintenance and/or modification. With a practical focus, as we shall see, it proves useful in fields such as forensics (Domínguez-Muñoz and López, 2022), security and defence.

*The word ‘method’ comes from the Latin **methodus**, which in turn derives from the Greek **μέθοδος** and means ‘the path to follow’, ‘the steps to be taken to carry something out’, or ‘the procedure or protocol’. It refers both to a well-structured and organised (systematic) way of achieving a goal or result, and to the way of thinking, acting or behaving – the skill or habit that each individual follows. The interview or other research techniques would not – in this sense – be methods in their own right, but merely*

devices or tools of the method; and the method itself is a process within its theoretical framework (Nateras, 2005), such as the clinical method (Ilizástegui and Rodríguez, 1990) routinely used in daily medical practice.

The purpose of the System for the Analysis of Validity in Assessment (SAVE, López, 2021) is to provide a framework for the flexible, logical and orderly application of the most appropriate techniques and tools for the task at hand, tailored to each specific need. It combines different perspectives and structures what, in many fields, is currently carried out individually and intuitively. As a meta-protocol (a protocol of protocols), it integrates and contextualises other evidence-based tools, already scientifically accepted for independent use, ranging from HELPT (the Holistic Protocol for the Evaluation of Witness Testimony) (Manzanero and González, 2015) to the TOMM (*Test of Memory Malinger*), including OSINT techniques (Rodrigo, 2021) or indirect personality profiling, such as ENCUIST (Halty, González and Sotoca, 2017). It thus enables its application in diverse yet related fields; from forensic medicine or psychology (Domínguez-Muñoz et al., 2024), forensic or assessment psychology (Domínguez-Muñoz et al., 2017b), to the analysis of criminal behaviour, military intelligence (García-Rodrigo et al., 2019) and fraud in the insurance sector (Domínguez-Muñoz et al., 2018). What all these fields have in common with legal psychology is the high frequency of deception, a phenomenon that takes on particular significance in the forensic context (Muñoz, 2013).

Briefly, as this goes beyond the scope of this article, we would also like to highlight the importance of projecting leadership into Spanish security doctrine regarding external action, as part of the EU's Common Security and Defence Policy, the *Mission Command* (MoM) doctrine promoted by NATO and its associated principles: command intent, subordinate initiative, mutual trust and shared understanding. This is particularly necessary in our current geopolitical environment (Rosety, Caldach and Fojón, 2026), characterised by multi-domain operations, including the cognitive and digital domains (Segoviano, 2025). However, *Sun Tzu* (2015) – a contemporary of Socrates – already asserted that *all warfare is based on deception. The supreme art of war consists in subduing the enemy without fighting*.

Today, military and police leadership no longer operates solely on the physical plane, but also in the information domain, the digital environment and the cognitive space (perception, narrative, trust). In this regard, leadership must not only bring teams together, but also manage narratives and public perception (García-Vaquero, 2026).

2.1. VALIDITY ANALYSIS SYSTEM IN EVALUATION (SAVE).

The Validity Analysis System in Assessment and the main scientific and technical body of work underpinning it are set out – alongside the articles referenced in the **bibliography** – in the so-called ‘Trilogy of Behavioural Analysis’ by *Behavior & Law* and *Evidentia University*, three manuals published by Pirámide (2016) and Behavior & Law Ediciones (2020 and 2021). The most recent of these, produced in line with the objectives of the *PsicInt* (Psychological Intelligence) *Group* and presented at the Academy of the National Intelligence Centre (CNI) in late 2021 (Domínguez-Muñoz, 2021a), was the SAVE Operational Manual (MOSAVE), complementing the previously published manuals (MACONVE and MADEMEN) dedicated, respectively, to non-verbal behaviour (NVB) and indirect personality profiling (López, Gordillo and Grau, 2016) and

to the detection of lying and deception, using an academic-applied approach (Viñambres, Ramos, Juárez and López, 2020).

Behavioural Analysis in Ethology, Criminology and Psychology forms the pillars of SAVE (Domínguez-Muñoz, 2021b), establishing four phases across two domains—which can be applied flexibly to scientifically examine the validity of a case and even confirm its consistency and legal standing. Originating in a clinical context (Domínguez-Muñoz et al., 2014), its four phases specifically examine the various manifestations of human behaviour; verbal discourse analysis is included in the *Plausibility* section, phase V_1 (Grau, 2021). The indicators present in non-verbal behaviour and their congruence with verbal cues (Juárez, 2021) correspond to *Veracity* (V_2). Both are closely linked within the Interview Domain. The third phase, or V_3 , which is directly related to legal evidence, is *Verification* or Context (Jiménez, 2021) and involves the search for evidence external to the interview with which to confirm or refute what was recorded during the interview. It incorporates both objective elements (inspections, examinations, etc.) and subjective ones such as witness statements; in general, the various forms of evidence admissible in each field. Finally, although applicable across the entire process—hence its designation as V_0 (Garrido, 2021)—there is the *Assessment* of the subject's Identity, connections, intelligence and personality (*VIP*), using indirect profiling to identify their main characteristics and adapt our actions, thereby optimising the results of the other phases. V_3 and V_0 form the Investigation Domain, and all of this can be reduced to a simple formula, the SAVE equation: $X = (V_1 + V_2 + V_3)V_0$

Its application would begin upon detecting – even intuitively, using what is known as System 1 or automatic thinking, as described by Kahneman (2012) – a deviation from the pattern of behaviour, an anomaly. Before applying the validity analysis and for subsequent expert use, we must establish the factual assumption; a premise which, if fulfilled, will give rise to legal or other consequences. The scientific-technical phase follows: the Validity Analysis proper. Its core consists of the phases already explained and, as this is a science-based investigation, it must contain an initial hypothesis which, to provide greater safeguards for the subject under investigation and in accordance with the *Truth Default Theory* model (Levine, 2014), will be presumed to be true, placing the burden of proof to the contrary on the findings of the validity analysis.

Depending on the results obtained in the applied phases—which in V_1 , V_2 and V_3 may be presented on a Likert-type scale—conclusions will be drawn regarding the proposed factual assumption, in accordance with the unknown variable in the SAVE equation. Identity Assessment, or V_0 , would be carried out transversally and based on indirect personality profiling, a technique we believe to be useful in Validity Analysis. By observing behaviour, we can infer personality traits without the need for respondents to complete a psychometric instrument for that purpose (classical or direct assessment). Specifically, drawing on a biological basis and using just three macro-traits, we highlight the PEN model – Psychoticism (P), Extraversion (E) and Neuroticism (N)—proposed by Eysenck (1967), although there are other models and aspects of personality that are specifically linked to the likelihood of engaging in criminal acts or deception – including in a clinical context – or of triggering a faster and more widespread spiral of fraud. The so-called ‘Dark Triad of Personality’ comprises narcissism, Machiavellianism and psychopathy, all at a subclinical level. These are three important sub-traits, which we could link to the macro-trait of psychoticism in the PEN model, particularly if we use the

tool known as *the ‘Dirty Dozen’* (Jonason and Webster, 2010; Nohales, 2015) as a reference for indirect profiling.

It is worth highlighting the versatility offered by SAVE; from its most basic application, such as the 112 – a minimal, emergency analysis – with two V_1 procedures and a single CNV channel for $V_{(2)}$, right through to a complex, spiral, multi-level, meta-system such as SAFE, with successive cycles incorporating waves of new information and thereby increasing the accuracy of the analysis when recorded material is available or when it is possible to repeat the investigative interviews. Furthermore, MOSAVE includes other options designed for specific uses, such as SAVIOR, which we will discuss below due to its importance in PRIMUS.

2.2. RAPPORT-ORIENTED IDENTITY ANALYSIS AND ASSESSMENT SYSTEM (SAVIOR).

Chapters 4 and 8 of MOSAVE (Domínguez-Muñoz, 2021a) explain how to subordinate the remaining phases of SAVE to a better understanding of Identity (V_0), in order to foster a good interpersonal relationship (*rapport*), using the SAVIOR application, *the Rapport-Oriented Identity Analysis and Assessment System*. It enables the entire behavioural analysis (Figure 1) to be dedicated to the purpose of optimising understanding and connection in human relationships, building trust and facilitating influence.

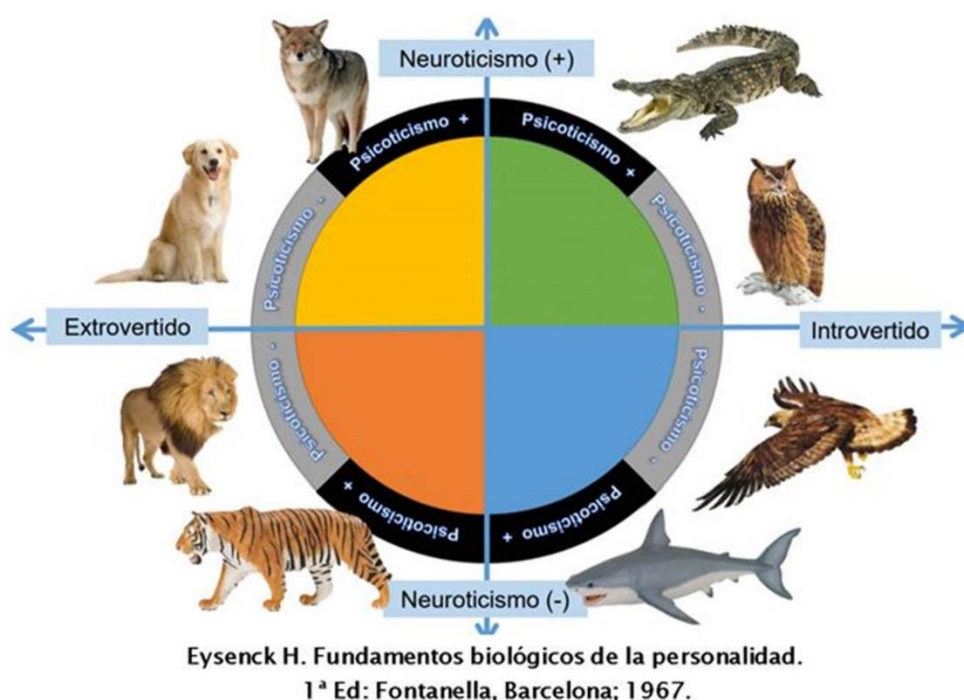
Figure 1.
Analysis of Verbal and Non-Verbal Behaviour and Context in Relation to Identity.



One of the great challenges in the history of psychology is understanding why an individual behaves in the way they do. In an attempt to answer this question, amongst others, a multitude of personality models have been developed from different perspectives, such as the psychodynamic or biological approaches. Within the latter approach, and based on just three traits, Eysenck's (1967) PEN model—mentioned earlier—stands out for its parsimony and for the number of hypotheses that have been tested since its initial formulation. For these and other reasons, it was the model initially chosen by the Criminal Behaviour Analysis Section (SACD) to develop its indirect personality profiling (González, Sotoca and Garrido, 2015; González and López, 2016), which forms the basis of the subsequent Identity Assessment or Phase V_0 in SAVE.

Figure 2.

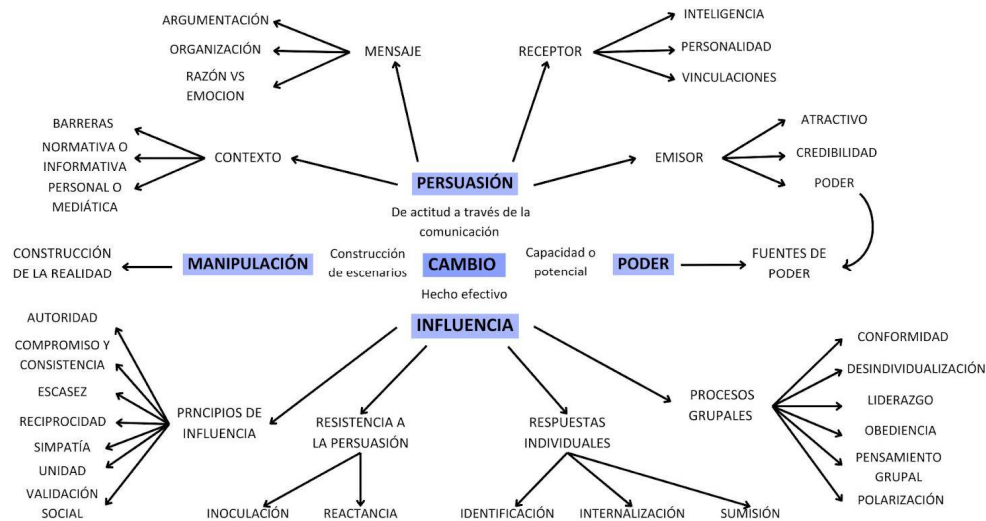
The eight personality types according to Eysenck's PEN Model.



This technique avoids the limitations that arise when assessing personality using standardised questionnaires, which yield a series of direct scores. For example, these limitations may stem from social desirability or deliberate distortion on the part of the person being assessed; that is, the natural – or, as the case may be, intentional – tendency to respond to personality-measuring items, due to social pressures or other variables, in order to present the best image, the one most favourable to others, or the one best suited to one's own interests in a given situation. Brunswick (1956) proposed his well-known 'lens' model, which explains how individuals select and create their own social environment, activities or hobbies that reinforce their own dispositions, preferences and attitudes (behavioural indicators), as well as those derived from physical environments (observable indicators). We should also highlight how other studies link the personality traits of the PEN model to vocabulary used, musical preferences (Rentfrow and Gosling, 2003), preferred types of food, sports, use of social media (Qiu, Lin, Ramsayan and Yang, 2012) or tattoos (López, García, Gonzalez and Sanchez Buró, 2017).

Based on the V₃context—through observation and other analysable elements—indirect profiling would operate within this model; however, more recently, interesting proposals geared towards the policing sector have been developed, such as ENCUIST (Halty, González and Sotoca, 2017). To complete the Identity Assessment, the acronym VIP incorporates the main aspects of V₀: Connections, Intelligence and Personality. SAVIOR in leadership enables a better understanding of team members, based on their behaviours, in order to serve them better and avoid conflicts. Furthermore, it helps to build the necessary trust, to inspire and to influence, so that team members can find their bearings and manage themselves, drawing inspiration from freedom of choice wherever possible. Here, we understand 'to influence' as *bringing about change* (Figure 3).

Figure 3.
Influence Map, a simplified overview².



Such changes can be facilitated through power – authority – or the various forms of influence outlined above. In turn, they may be directed towards the common good or individual interest, whether or not this harms the former. Insights from neuroscience and behavioural economics are useful for making better use of influence, in its various forms (Domínguez-Muñoz, 2023), and adapting it as far as possible to each individual or to our team as a whole. It is therefore best to begin by assessing our own identity – using the Johari window (Luft and Ingham, 1955), consulting others, etc. – and any other relevant factors to minimise our biases when evaluating others. The various aspects of identity can be examined individually or – preferably – by involving several analysts. Ideally, this should be combined with assessments carried out by psychology teams or other specialised professionals, although anyone acting in good faith, with a willingness to lead and a genuine interest, would benefit from knowing and applying this method rather than using none at all. Once SAVIOR has been completed, it will be easier to choose the appropriate leadership courses of action, whether at an individual or group level. Understanding the SAVE elements already embedded in one’s own identity and that of team members enables us to exert a positive influence subsequently, by creating ‘privileged moments’ and applying the seven principles of influence described by Cialdini (2017), in order to optimise outcomes and the MoM.

² Adapted from the map presented by Prof. Jesús María de Miguel in his paper at the 4th International Scientific Congress, organised by the UDIMA Chair in Behavioural Analysis and *Behaviour & Law* at the Canillas Police Complex (Madrid) on 31 May and 1 and 2 June 2017.

Table 2.*Proposals for improving ³ 'influence during interviews according to identity.*

TRAIT/TYPE	INTERVIEWER	SITUATION	PRINCIPLES OF INFLUENCE
PSYCHOTICISM (P)	To surprise; to arouse interest.	Balanced, safe.	Check for narcissism. If (P) ↑, C and Au are preferable.
EXTRAVERSION (E)	Multiple, (E), sex as an attractor. Active, sociable, stimulating, new.	Active environment. Out and about, public areas; includes new experiences.	Peripheral pathway ↑↑ (impulsive); more A, S, R, Au.
NEUROTICISM (N)	Single, introverted or environmental. Same sex or female. Familiar (seen).	Safe environment, avoiding public exposure, etc.	Resistant to new developments. More towards E, R and S.
LION (D)	(E) Set boundaries, take the initiative. Be concise.	(E), avoid wasting time, but let them speak if they wish.	Central and/or Peripheral Path, Attraction (A) and Reciprocity (R).
DOG (I)	In a friendly, natural tone. Similar. Use the mirroring technique.	(E), let them speak.	Central Path ↓ (slow) Impulsive. More S and R. E is useful.
OWL (S)	(N), best to proceed with caution.	(N), <i>Humble Inquiry</i> approach.	VP and VC, Au, S and R.
EAGLE (C)	Neither cold nor predictable. Direct and precise.	Allows for the presentation of data or arguments.	Central channel if possible, but sensitive to VP.
INTELLIGENCE	Yes↑, according to PEN, preferably several.	Yes↑, according to PEN, or offer a choice.	More difficult for VC, less for VP.
SELF-ESTEEM	Yes↓, like (N) or (S).	Yes↓, like (N) or (S).	Susceptible to influence, guilt.

3. PRIMUS PROJECT: PROMOTING RAPPORT THROUGH IDENTITY AND LEADERSHIP VIA UNITY.

Leadership would lie at the intersection of the main areas of knowledge within the current faculties of *Evidentia University of Behavioural and Forensic Sciences*: Behavioural Sciences, Criminal Investigation and Behavioural Economics. The interdisciplinary approach is one of the main guiding principles of our work, alongside a firm commitment to bridging the *gap between academia and applied practice*. This has been the case since

³ Adapted from Sánchez-Muñoz, Calcerrada, González and de Juan (2018), it integrates elements of Identity with the techniques of influence according to Cialdini (2017) and his six classic principles, grouped under the acronym CAERÁS; Coherence (C), Attraction (A), Scarcity (E), Reciprocity (R), Authority (Au) and Social Support (S). References to the Central Pathway (VC) and Peripheral Pathway (VP) of Influence are taken from Petty and Cacioppo (1986). '*Humble Inquiry*' refers to the listening approach proposed by Schein (2013), which is particularly useful for research interviews (Willis, 2016).

that first cohort, which began in 2013, organised at the Camilo José Cela University Campus in collaboration with the *Behavior and Law* University Foundation.

For this reason, over the past 12 years, we have been developing this methodology which, starting from the study of deception in the clinical setting, has led us to an analysis of behaviour that—whether basic or complex—always has a scientific basis and multiple potential applications. All of this has in common the need to work with other people; people who, in many cases, are still referred to as ‘human resources’ – a term with which we cannot agree, as the word ‘resource’ corresponds to a *means of any kind or an available element* for achieving something, according to the definition in the RAE dictionary. That is precisely why we suggest that people are not ‘managed’, nor is their talent ‘retained’, but rather – if anything – they are ‘led’ and their loyalty is ‘fostered’ or they are ‘attracted’. Admittedly, the use of words does not always need to be scrutinised under a microscope, but in this instance it allows us to highlight institutional cultures that use such terms precisely because their behaviour tends to reflect them, thereby demonstrating the considerable scope for improvement we all have in the field of leadership.

We present here – in an adapted form – a definition of leadership that we consider to be a benchmark (Hunter, 2018): it is *the ‘scienart’ of influencing people so that they act with enthusiasm in the pursuit of objectives for the common good. ‘Cienciarte’ is a discipline situated in the liminal space between science and art, simultaneously embodying a significant degree of scientific determinism and artistic inspiration*⁴. This is because we believe that the contributions made from the academic sphere in recent decades are fundamental to developing the skills needed to lead, as there is no such thing as neutral leadership; when we do not lead (well), we are negatively influencing the pursuit of objectives for the common good; we would be ‘anti-leading’ and becoming part of the problem, rather than contributing to the solutions. If leading is about influencing, then we must all be leaders, as we all – inevitably – influence those around us, and it is essential that we do so effectively.

In his **Rhetoric**, written some 2,400 years ago, Aristotle listed the three pillars of a persuasive speech: *Ethos* (character, credibility), *Pathos* (emotion, connection) and *Logos* (logic, reason). Thus, a speaker who conveys confidence and honesty has a greater influence, inspiring credibility. In turn, the message being conveyed must incorporate emotions and take into account the psychological factors of the audience, in order to connect with and mobilise them (*Pathos*), without, of course, neglecting the use of logical arguments, reasoning, data and solid evidence (*Logos*). Leadership must therefore be built on *self-leadership*, *Ethos* or character – that part of our identity (V_0) which we develop, particularly through habits, by exercising our will. Once this is achieved, relationships with others require communication – verbal (V_1) and non-verbal (V_2)—that is effective, truthful and empathetic, well-suited to the context (V_3) and, as far as possible, to each recipient (V_0) or to the team as a whole (Domínguez-Muñoz, López and Jiménez, 2025).

For all these reasons, we shall develop the following two sections – devoted to self-leadership and interpersonal relationships – in a dichotomous manner, emphasising the idea that there is no such thing as neutral leadership. Thus, we shall use two well-known aphorisms: ‘*Primus inter Pares*’, to refer to good leadership, and ‘*Caesar or Nothing*’, as

⁴ Javier G. Recuenco @Recuenco, personal communication at the CPS Live Conference (Madrid, March 2026).

an example of the opposite. This latter expression, attributed to Cesare Borgia, illustrates the model of extreme leadership, based on absolute domination—the antithesis of the service-oriented paradigm we advocate and an example of ‘anti-leadership’, which we shall discuss later.

3.1. PRIMUS OR CAESAR: Self-leadership through personal development.

The path to sound leadership begins with self-mastery. As Seneca is said to have remarked, *the most powerful man is he who is master of himself*. This premise forms the core of the first part of the PRIMUS Project, which seeks to bring about a paradigm shift: from ‘it’s your fault’ to ‘I am responsible’. Stephen Covey (1989) puts it clearly:

On the continuum of maturity, dependence is the ‘you’ paradigm: you look after me; you do or do not do what you ought to do for me; I blame you for the results. Independence is the ‘I’ paradigm: I can do it, I am responsible, I am self-sufficient, I can choose.

This paradigm shift involves embracing personal leadership as a daily process, where one learns more in adversity than in comfort. Authentic charisma is not a superficial quality, but a combination of technical competence and human warmth – in other words, humility. Most mental processing is unconscious (Kahneman, 2012), which reinforces the need to implement deliberate practices of self-awareness and emotional regulation. It is not just a matter of knowing, but of training our minds through voluntarily chosen behaviours that form habits. The AdC would be a useful tool for assessing the consistency between Principles and actual actions, which is an indicator of mental health and ethical leadership (Bardera, 2022). The goal is not perfection, but sustained adherence to the Principles, even in difficult contexts. In an institutional setting, this translates into leaders who do not merely follow orders, but who act with judgement and autonomy, guided by the mission.

A useful educational metaphor, drawn from popular narrative tradition, illustrates this idea; when we are asked which of the two wolves within us will ultimately prevail – the good one or the bad one – the answer is simple: the one you feed. In this sense, PRIMUS prepares leaders to choose wisely which wolf to feed: the one that embodies responsibility, a focus on the shared mission, and honour. For this reason, self-leadership has no end, no clear finishing line. As stated in the project:

True leadership begins with oneself, here and now. It involves knowing oneself, the world and others. It involves guiding and treating oneself with care. It never ends; sometimes you win – you lead – and other times you learn.

If leading were a game of chess—which is a useful analogy for the MoM on many levels—it requires being fully aware that we can always choose to make the first move: *to lead is to always play with the white pieces*. In other words, we must not allow ourselves to be swept away by the difficulties of the environment and uncertainty; we have a responsibility to act proactively at all times, not reactively. By choosing our response and managing our emotions, guiding ourselves and treating ourselves with respect.

3.2. PEER-TO-PEER OR NOTHING: Servant Leadership.

According to Aristotle, *knowing oneself means knowing what one is good at so as to be able to help others*, thus explaining the famous aphorism inscribed on the Temple of Apollo at Delphi and expanding on the meaning of the previous section. Joseph Campbell, in his **The Hero's Journey**, suggests that there is a universal narrative in which the hero goes through three main phases: *Separation* from his world of origin, *Initiation*—the core of the journey—and the *Return*, which is as complicated as the initial journey, if not more so, as demonstrated by Homer's **Odyssey**. Upon returning with the *elixir*, the hero returns to his home world, sharing his gift—the knowledge he has acquired—for the benefit of his community.

Figure 4.
Stages of the Hero's Journey according to Campbell (1991).



Thus, this second part takes us beyond *independence* – the ‘I’ paradigm – in search of *interdependence*, defined by Covey (1989) as the ‘we’ paradigm:

We can do it, we can cooperate, we can combine our talents and skills to create something greater together.

Here, leadership ceases to be a matter of individual power and becomes a relational skill. It involves creating collaborative networks, establishing relationships based on trust and service to build unity and a greater purpose. One of the project’s key propositions is: *leading others is knowing how to lead*. But leading well is not about imposing, but about serving, inspiring and caring: *knowing how to lead is serving*.

In this final stage, PRIMUS uses SAVIOR to actively and effectively develop *rapport* – the emotional connection that enables the building of trusting relationships through active listening, empathy (with clear boundaries) and mutual respect. This is particularly relevant in hierarchical institutions, where human relationships can become highly strained due to the power structure. Leaders must take circumstances fully into

account and understand the fundamentals of complexity and systems thinking (Liévano-Martínez and Londoño-Salazar, 2012) in order to grasp the intertwined influences within organisations and better address problem-solving. PRIMUS maintains that to lead is to inspire others to be leaders, that no one is exempt from the need to lead, least of all in a MoM context. Leadership that empowers is leadership that transforms.

From a profoundly human perspective, PRIMUS proposes a vision of leadership as a vocation of service and a life's mission, in line with the search for meaning that Frankl (2015) identified as a fundamental anthropological driving force. This focus on service places purpose above personal comfort and constitutes, in our proposal, the ultimate criterion for evaluating leadership: anyone who does not direct their authority towards serving the common good and people does not fulfil the essential requirements of leadership, however much they may formally hold a position of authority.

3.3. ANTI-LEADERSHIP IN THE 21ST CENTURY: EITHER *CYBER-CAESAR* OR *NOTHING*.

One of the key concepts underpinning the PRIMUS Project is that of anti-leadership. We define it operationally as that *pattern of behaviour which, even from a formal position of authority, influences people by placing one's own interests ahead of the common good*. It therefore involves renouncing Roman *Auctoritas*—directly linked to the Aristotelian *Ethos*—in favour of *Potestas*, the raw power of coercion, as soon as the pretence of proper leadership is exposed, leading to a loss of trust and psychological security, demotivation with a progressive deterioration of cohesion, and a decline in collective performance.

Anti-leadership is not, therefore, simply the absence of leadership—the *laissez-faire* approach described in the classical literature (Lewin, Lippitt and White, 1939; Bass and Avolio, 1994)—nor is it equivalent to the concept, also documented, of destructive leadership (Einarsen, Aasland and Skogstad, 2007; Krasikova, Green and LeBreton, 2013). Our proposal integrates both categories and links them as an ethical stance that is the opposite of servant leadership. In other words, it is not merely a matter of actively harmful behaviours (harassment, intimidation, manipulation) nor of the mere passivity of an absent leader, but rather the display – whether deliberate or not – of a behavioural pattern that places individual interest, the preservation of status or the avoidance of personal risk above the common good, the mission, and the people with whom it is to be carried out.

This conceptualisation is consistent with the premise already set out regarding the impossibility of neutral leadership: if leading is about influencing, and we all influence those around us, then anyone who does not lead well is, to varying degrees, engaging in anti-leadership. Anti-leadership, understood in this way, would be a more widespread phenomenon than the literature suggests, which tends to treat it as an exceptional category. Our experience in hierarchical organisations suggests the opposite: low-level, everyday and almost routine anti-leadership constitutes one of the main sources of organisational decline. However, contemporary scientific evidence shows that we must not overlook the many cases of more pronounced anti-leadership, a phenomenon in which a hierarchical position ceases to be a tool for service and instead becomes a mechanism for purely personal gain. This more deviant behaviour manifests itself in two distinct ways: the systematic promotion of individuals exhibiting traits of the Dark Triad of personality, and the neuropsychological erosion of empathy in normative leaders who rise

to positions of power. However, the literature also warns that anti-leadership does not operate in a vacuum; its capacity for harm necessarily requires an ecosystem of group conformity that acts as a catalyst and validator of its disruptive behaviours, and it is here that we must remember that, in the PRIMUS Project, we all have a dual responsibility to lead, regardless of our position in the hierarchy. And if we fail to exercise this responsibility, we engage in anti-leadership at our own level and become part of the problem – indeed, a key part of it.

Firstly, anti-leadership emerges endogenously when organisations select individuals exhibiting traits of the Dark Triad: narcissism, Machiavellianism and psychopathy. Systematic reviews (Tokunbo and Borisade, 2025) show that these profiles possess a temporary adaptive advantage in traditional selection processes. The superficial charm of the integrated psychopath, the eloquence of the narcissist and the political manipulation of the Machiavellian are often mistaken for desirable executive competencies, such as false charisma or a focus on success. Once their rise to power is secured, these anti-leaders exploit their status, prioritising their self-image by exploiting their subordinates, thereby destroying the ethical fabric and well-being of the team (LeBreton, Shiverdecker and Grimaldi, 2018).

Secondly, this phenomenon can manifest as an exogenous or environment-induced process, affecting people who, whilst lacking any prior pathological traits, undergo a profound transformation upon acquiring authority. This process, linked to *Hubris Syndrome*, is explained by cognitive neuroscience. Research using *Transcranial Magnetic Stimulation* has shown that the exercise of power affects brain circuits (Hogeveen, Inzlicht and Obhi, 2014). Specifically, states of hierarchical superiority reduce motor resonance and the activation of the mirror neuron system, diminishing the leader's ability to simulate the emotional states of subordinates, which results in a lack of perspective (Galinsky et al., 2006). As they do not need to read others' emotions to ensure their survival within the hierarchy, normative leaders gradually switch off their empathy, beginning to objectify their team in order to perpetuate their own status. Ultimately, the consolidation and effectiveness of anti-leadership depend on the psychosocial dynamics of group conformity, a mechanism of submission whereby employees modify their judgements and behaviours (Ash, 1956) to align with management directives, thereby avoiding isolation or reprisals. This abdication of individual responsibility ties in directly with Hannah Arendt's (2003) thesis on the *banality of evil*. Applied to the corporate context, the normalisation of unethical or destructive directives does not require employees to be inherently wicked, but rather functional bureaucrats who relinquish critical thinking and carry out orders as mere technical or administrative tasks. As personal responsibility is diluted within the cogs of the hierarchy, group members become passive accomplices, normalising workplace abuse and allowing the tyrannical dynamics of the anti-leader to become institutionalised without internal resistance. Thus, anti-leadership represents a critical dysfunction in today's organisational systems. Whether due to the infiltration of exploitative figures who make use of the structure, or to the erosion that power itself exerts on the empathy of promoted leaders – and both factors often come into play – the result is the same: a perverse reversal of the leadership role, in which the team comes to serve instrumentally the individual who holds power, sustained by a mass of employees whose bureaucratic compliance enables and perpetuates corporate impunity. And all this, in a context as complex as the present one, with a set of gravitational and transformative forces that are completely redefining the strategic, economic and social fabric, rendering the structures of the last century obsolete – forces

that have come to be known as the *Five Attractors of the Apocalypse*; Technological megatrends, Acceleration of everything (*Warp speed*), Hyper-personalisation (*Relevance First*), Collapse of post-Second World War agreements and Reconfiguration of the intellectual hierarchy⁵.

Research into destructive leadership and toxic work environments identifies a set of consistent effects that can also be attributed to anti-leadership in the sense proposed here. These include, in particular: a) burnout or occupational exhaustion syndrome (Maslach, Schaufeli and Leiter, 2001), which is particularly prevalent amongst middle managers or in professions subject to conflicting demands; b) the deterioration of group cohesion and interpersonal trust, leading to a decline in collective performance (Schyns and Schilling, 2013); c) an increase in the voluntary turnover of valuable staff and the retention, by inertia, of those who are less so; d) a loss of operational morale, which is particularly critical in security and defence institutions where cohesion is a doctrinal asset; and e) the erosion of institutional legitimacy and image, when anti-leadership transcends the internal boundaries of the team or becomes visible externally.

The SAVE framework enables the detection of anti-leadership by cross-referencing its four phases. In V_0 , indirect profiling can identify traits associated with a high probability of anti-leadership behaviour; specific combinations within the PEN model, particularly high psychoticism with low extraversion and unstable self-esteem, as well as a significant presence of Dark Triad traits. In V_1 and V_2 , sustained incongruence between a leader's public discourse – focused on the mission and the team – and their private discourse, their Non-Violent Communication (NVC), or their day-to-day decisions, constitutes robust indicators. In V_3 , the context provides verifiable data: staff turnover, workplace climate indicators, actual productivity, formal or informal complaints, and psychosocial health indicators. The combined application of the SAVE phases makes it possible to distinguish anti-leadership from simple maladjustment or isolated interpersonal conflict.

The PRIMUS Project tackles the prevention of anti-leadership on three levels. On a personal level, personal development work based on self-awareness (V_0 personal) would be the first line of defence; those who seek to understand their traits, biases and blind spots, and have developed deliberate practices for emotional regulation, significantly reduce the likelihood of drifting towards anti-leadership patterns. At the relational level, building *rapprochement* through SAVIOR fosters bonds of trust that act as an early-warning system; in a team where communication is good, the first signs of anti-leadership emerge before they crystallise into a pattern. At the organisational level, the PRIMUS Project, combined with 360-degree feedback tools or peer supervision, amongst other measures, enables the organisation to detect and correct anti-leadership before its consequences become structural. The MoM doctrine, which encompasses command intent, subordinate initiative, mutual trust and shared understanding, is incompatible with anti-leadership; when these four conditions of the MoM are met, anti-leadership becomes operationally unsustainable.

Finally, with regard to the environments described as characteristic of the 21st century, the four elements of the VUCA model – Volatility, Uncertainty, Complexity and Ambiguity – demand distinct capabilities from leadership. Volatility demands agility in

⁵ Javier G. Recuenco, personal communication at the CPS Live Conference (Madrid, March 2026).

decision-making and the ability to adapt one's leadership style rapidly to a changing context; PRIMUS responds through the flexibility inherent in the SAVE system, which allows for everything from a 112 analysis (rapid, emergency response) to more elaborate protocols, depending on the availability of time and information. Uncertainty calls for the ability to make decisions without complete information, whilst maintaining the team's confidence; PRIMUS addresses this challenge by focusing on the ethos of self-leadership, which provides leaders with the inner confidence needed to stand by their decisions under pressure. Complexity requires systems thinking and an understanding of interdependencies; PRIMUS tackles this through interdisciplinary training and the integrated mastery of SAVE across its four phases. Finally, ambiguity demands interpretative skills and tolerance for uncertainty; PRIMUS responds by developing vision and practical judgement that combine Ethos, Pathos and Logos in proportions tailored to each situation.

BANI environments – Fragile, Anxiety-inducing, Non-linear and Incomprehensible – present an additional challenge. Systemic fragility requires the deliberate building of individual and collective resilience; PRIMUS addresses this by fostering sustained habits of self-leadership and building *rapprochement* as the fabric of institutional trust. The anxiety-inducing dimension of the environment – perhaps the most distinctive feature of the BANI model – directly affects the limbic system (Damasio, 2001) and impairs the quality of decision-making; PRIMUS addresses this through the neurocognitive work of the SCARF model applied to the team, transforming organisational anxiety into active attention, shared purpose and cooperation. Non-linearity requires moving away from simple cause-and-effect logic; PRIMUS embraces this systemic perspective at the core of its methodology, in which the SAVE phases are integrated in a non-linear and cyclical manner. Incomprehensibility calls for epistemic humility and a willingness to learn under conditions of partial information; PRIMUS cultivates this based on Schein's (2013) '*Humble Inquiry*', incorporated into the SAVIOR framework as a fundamental attitude for interviews and leadership interaction, whilst emphasising abductive reasoning.

4. CONCLUSIONS AND PROPOSALS: To Lead is to Serve, Learn and Unite.

The PRIMUS Project is not presented as a self-contained programme, but rather as a coherent framework proposal for leadership in hierarchical organisations dedicated to public service, with particular relevance for the security forces. The following proposals and areas for further development emerge from the analysis:

1. The integration of behavioural analysis with the doctrine of *Mission Command* and with 21st-century frameworks enables the formulation of leadership that is operationally applicable, rather than merely declarative. The PRIMUS Project offers concrete tools – ranging from the 112 analysis to the influence matrix in Table 2 – for commanders who need to make decisions under pressure and uncertainty, with agility and without resorting to lengthy protocols.
2. The operational definition of anti-leadership as a category distinct from *laissez-faire* and destructive leadership raises a line of research that we consider necessary. The reasoned hypothesis we put forward is that even low-level anti-leadership constitutes one of the main sources of organisational deterioration in public service institutions, and its early detection using SAVE is operationally viable. Its empirical validation constitutes an open line of research.

3. The proposed connection between the VUCA dimensions, the BANI dimensions and the specific components of PRIMUS suggests that the framework is not only applicable to complex environments but is structurally suited to them. This functional correspondence would provide the basis for further work in the future, within the PRIMUS Project.
4. Leadership, understood in this way, draws on a long tradition stretching from Aristotle to Viktor Frankl, via the founding values the Guardia Civil as set out in its 'Cartilla'. The synthesis of this tradition with contemporary contributions from neuroscience, behavioural economics and the military doctrine ' ' (MoM) forms the core of the proposal. To lead is to serve, to learn, to inspire and, above all, to unite through authenticity and humility. The building of cohesive teams, focused on the purpose of a shared mission, proposes a form of leadership that combines operational excellence with human depth, seeking to blend Science and Art (Domínguez-Muñoz and Domínguez-Muñoz, 2025), without sacrificing genuine charisma. As the ancient maps warned when facing the unknown: *Hic sunt dracones*. Recognising one's own limits and accepting the uncertainty of the territory being explored is, in itself, a prerequisite for such leadership.
5. The empirical validation of PRIMUS and its usefulness for teams within the Guardia Civil and other law enforcement agencies is the authors' top priority. Recent research at the Guardia Civil University Centre (Martínez, 2025) points in the same direction, although we are aware of the many limitations and challenges facing the PRIMUS Project, and its need for applied development.

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Research Article

MONEY LAUNDERING THROUGH CRYPTO-ASSETS: REGULATORY EFFECTIVENESS AND THE GAP BETWEEN TECHNOLOGICAL TRACEABILITY AND LEGAL ATTRIBUTION IN THE EUROPEAN UNION AND THE UNITED STATES

English translation with AI assistance (DeepL)

Benjamín Garcinuño Roldán

PhD candidate at the UNED International Doctoral School (EIDUNED), member of Guardia Civil, practising lawyer at the Córdoba Bar Association. Master's degree in Security, Bachelor's degree in Law
bgarcinun2@alumno.uned.es
<https://orcid.org/0009-0005-6923-1004>

Received 25/02/2026
Accepted 02/06/2026
Published 30/06/2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.8913>

Recommended citation: Garcinuño B. (2026). Money laundering through crypto-assets: regulatory effectiveness and the gap between technological traceability and legal attribution in the European Union and the United States. *Revista Logos Guardia Civil*, 4(2), pp. 215–252. <https://doi.org/10.64217/logosguardiacivil.v4i2.8913>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

DEDICATION

To Mariam, for trusting me,
and for feeding the birds in my head.
I must remind her that the sun is still shining, even if she doesn't look at it.

MONEY LAUNDERING THROUGH CRYPTO-ASSETS: REGULATORY EFFECTIVENESS AND THE GAP BETWEEN TECHNOLOGICAL TRACEABILITY AND LEGAL ATTRIBUTION IN THE EUROPEAN UNION AND THE UNITED STATES

Summary: 1. INTRODUCTION. 2. RESEARCH METHODOLOGY. 3. ANALYSIS OF THE (MIS)USE OF CRYPTO-ASSETS BY CRIMINAL ORGANISATIONS. 4. CRYPTO-ASSETS AND MONEY LAUNDERING BY CRIMINAL ORGANISATIONS. 5. MOST COMMON METHODS OF CRYPTO-ASSET LAUNDERING USED BY CRIMINAL ORGANISATIONS. 5.1. General considerations from the perspective of money laundering doctrine. 5.2. Techniques linked to the integration phase: *smurfing*. 5.3. Techniques linked to the stratification phase: concealment and dissociation of the illicit origin. 5.3.1. Crypto-asset portfolios (*medium-sized wallets*). 5.3.2. Consolidation crypto-asset portfolios. 5.3.3. Mixing services, privacy coins and bridges. 5.4. Crime-facilitating environments: darknet markets. 5.5. Final doctrinal considerations. 6. LEGAL FRAMEWORKS FOR COMBATING CRYPTO-ASSET MONEY LAUNDERING BY ORGANISED CRIME GROUPS. 6.1. United Nations Convention against Transnational Organised Crime. 6.2. Recommendations of the Financial Action Task Force. 7. TRANSATLANTIC REGULATORY MODELS FOR CRYPTO-ASSET MONEY LAUNDERING: A COMPARATIVE ASSESSMENT OF THE US AND THE EU. 7.1. The United States. 7.2. The European Union. 8. LEGISLATIVE DEVELOPMENTS IN THE EUROPEAN UNION. 8.1. What changes is the EU introducing, compared to the US, to mitigate pseudonymity and opacity in the use of crypto-assets? 8.2. What new developments affect the identification of the beneficial owner and corporate transparency in relation to opaque structures? 8.3. Legal and doctrinal implications of identifying the beneficial owner. 8.4. How are account tracing mechanisms and European supervision being strengthened to detect schemes involving crypto-assets and companies with opaque structures? 9. EFFECTIVENESS OF THE REGULATORY FRAMEWORK IN COMBATING MONEY LAUNDERING THROUGH CRYPTO-ASSETS. 9.1. Preventive capacity. 9.2. Detection capacity. 9.3. Attribution capacity. 9.4. Enforcement and sanctioning capacity. 9.5. Comparative assessment of effectiveness. 10. CONCLUSIONS. 11. FINAL REFLECTIONS. 12. BIBLIOGRAPHICAL REFERENCES. 13. REPORTS BY ORGANISATIONS. 14. LEGISLATION. 15. OTHER NON-SCIENTIFIC SOURCES. 16. DECLARATION OF ACADEMIC AND SCIENTIFIC INTEGRITY.

Abstract: Money laundering is a dynamic phenomenon whose evolution is linked to the international economic environment. Methods of laundering illicit funds pose new regulatory and operational challenges to authorities and financial institutions, driven largely by technological developments. Through the use of certain recent technologies, they create an environment of pseudonymity, which transcends its purely technical nature. This feature acts as a strategic tool for criminal organisations (COs) seeking to refine their money-laundering schemes, enabling them to conceal the traceability of funds and the consequences of the underlying harm. This article critically analyses the issue of illicit funds being laundered via crypto-assets by COs and the various strategies employed by COs to conceal their traceability and identity. Firstly, international instruments such as the United Nations Convention against Transnational Organised Crime and the recommendations of the Financial Action Task Force (FATF) are systematically examined in relation to the system for prosecuting and preventing the laundering of illicit funds through crypto-assets. Building on this international framework, this paper is

structured around a comparative analysis of the legislative frameworks—which differ substantially—regarding money laundering through crypto-assets in the United States (US) and the European Union (EU). This study is not limited to a descriptive analysis of the phenomenon, but rather highlights the need to strengthen the regulatory framework by identifying significant legislative divergences, legal loopholes and limitations in supervisory mechanisms.

Resumen: El blanqueo de capitales es un fenómeno dinámico cuya evolución está vinculada al entorno económico internacional. Los métodos de blanqueo de capitales ilícitos generan nuevos desafíos regulatorios y operativos a las autoridades y a las entidades financieras, en gran medida impulsados por el desarrollo de la tecnología. Con el uso de ciertas tecnologías recientes, generan un entorno de seudonimidad, el cual trasciende su naturaleza meramente técnica. Este rasgo opera como un instrumento estratégico para las organizaciones y grupos criminales (OC) que buscan sofisticar sus esquemas de blanqueo, permitiendo la ocultación de la trazabilidad y la consecuencia de los daños subyacentes. El presente artículo analiza críticamente la problemática del blanqueo de fondos ilícitos mediante criptoactivos por parte de las OC y las diversas estrategias que emplean los OC para ocultar su trazabilidad e identidad. En primer lugar, se examinan de manera sistemática los instrumentos internacionales como son la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional y las recomendaciones del Grupo de Acción Financiera Internacional (GAFI) en relación con el sistema de persecución y prevención del blanqueo de fondos ilícitos mediante criptoactivos. A partir de este marco internacional, el presente trabajo se articula en torno a un análisis comparativo del marco legislativo, sustancialmente diferentes frente al blanqueo de capitales mediante criptoactivos en los Estados Unidos (EE. UU) y la Unión Europea (UE). El presente estudio no se limita a una aproximación descriptiva del fenómeno, sino que pone la necesidad revisión de reforzar la arquitectura regulatoria, mediante la identificación de divergencias legislativas significativas, lagunas jurídicas y limitaciones en los mecanismos de supervisión.

Keywords: Crypto-assets, money laundering, organised crime, digital pseudonymity, financial regulation, emerging technologies, the darknet, transparency and beneficial ownership.

Palabras clave: Criptoactivos, blanqueo de capitales, criminalidad organizada, seudonimidad digital, regulación financiera, tecnologías emergentes, darknet, transparencia y titularidad real.

ABBREVIATIONS

AML: *Anti-Money Laundering*. In Spanish: the fight against money laundering.

AMLA: *Anti-Money Laundering Authority*. In Spanish: European Authority for Combating Money Laundering and Terrorist Financing.

AMLC: *Anti-Money Laundering Council*. In Spanish: Council against money laundering.

BARIS: *Bank Account Registers Interconnection System*. In Spanish: European Union Bank Account Registers Interconnection System.

BC: Money laundering.

BSA: *Bank Secrecy Act*. In Spanish: Ley de Secreto Bancario.

CDD: *Customer Due Diligence*. In Spanish: Diligencia Debida en relación con el Cliente (DDC).

CEO: *Chief Executive Officer*. In Spanish: director ejecutivo or Consejero Delegado, depending on the country.

CFT: *Countering the Financing of Terrorism*. In Spanish: Lucha contra la Financiación del Terrorismo.

CFTC: *Commodity Futures Trading Commission*. In Spanish: the independent US federal agency that regulates derivatives markets (futures, swaps and certain options).

DAO: *Decentralised Autonomous Organisation*. In Spanish: in the context of anti-money laundering (AML/CFT), this is a *blockchain-native* organisation that coordinates decisions and manages assets through *smart contracts* and token-based governance, without a traditional central management structure.

DEA: *Drug Enforcement Administration*. In Spanish: Administración para el Control de Drogas.

US: United States.

EUR: Euro.

FATF: *Financial Action Task Force*. In Spanish: GAFI.

FBI: *Federal Bureau of Investigation*. In Spanish: the US Federal Bureau of Investigation and its main federal law enforcement agency.

FinCEN: *Financial Crimes Enforcement Network*. In Spanish, this is usually translated as ‘Red de Control/Ejecución de Delitos Financieros’.

FT: Terrorist financing.

GAFI: Financial Action Task Force.

AI: Artificial intelligence.

IEEPA: *International Emergency Economic Powers Act*. In Spanish: Ley de Poderes Económicos en Emergencias Internacionales.

ICO: *Initial Coin Offering*. In Spanish: Oferta Inicial de Monedas.

IRS: *Internal Revenue Service*. In Spanish: the US Federal Tax Collection Agency.

KYC: *Know Your Customer*. In Spanish: Conoce a Tu Cliente.

MiCA: *Markets in Crypto-Assets*. In Spanish: Regulation on Markets in Crypto-Assets.

NCA: *National Crime Agency*. In Spanish: UK National Crime Agency.

NYDFS: *New York State Department of Financial Services*. In Spanish: Departamento de Servicios Financieros del Estado de Nueva York.

OC: Criminal organisation.

PBC/FT: Prevention of money laundering and terrorist financing.

SEC: *Securities and Exchange Commission*. In Spanish: US Securities and Exchange Commission.

SEPBLAC: Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences.

STR: *Suspicious Transaction Report*. In Spanish: Reporte de Transacción Sospechosa.

UIF: Financial Intelligence Unit. In Spain, this is SEPBLAC (Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences).

UNODC: *United Nations Office on Drugs and Crime*. In Spanish: Oficina de las Naciones Unidas contra la Droga y el Delito.

UNTOC: *United Nations Convention against Transnational Organised Crime*. In Spanish: Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional.

USD: *United States Dollar*.

VASP: *Virtual Asset Service Provider*. In Spanish: Proveedores de Servicios de Activos Virtuales or CASP within the European framework.

6AMLD: Sixth Anti-Money Laundering and Counter-Terrorist Financing Directive.

1. INTRODUCTION

In recent years, crypto-assets have revolutionised the world of finance, opening the door to innovation and financial inclusion on an unprecedented scale. However, this technological progress has also given rise to new challenges, particularly in the field of financial crime. One of the most worrying issues is the use of crypto-assets for money laundering (ML) by criminal organisations or groups (COs).

These assets generally operate on decentralised networks known as *blockchains*, which ensure transparent and secure transactions without the need for a centralised third party such as a bank (Bhutta et al., 2021). When a cryptocurrency is transferred, the transaction is recorded on *the blockchain*, which functions as a public ledger distributed across many computers worldwide (Soltani et al., 2022). Transactions are verified by a network of users known as miners, who are rewarded with new units of crypto-assets (Binance Academy, 2024).

For decades, money laundering (ML) has been a global problem. Concealing the source of illegally obtained funds has been the primary objective of organised crime (OC) groups, with the firm aim of giving these funds a legal appearance within economic systems. Using this technique, OC groups were able to invest their illegal profits without leaving a financial trail that could lead to their discovery and prosecution.

Conventional organised crime groups are highly structured, with defined hierarchies and roles for their members (Enríquez Pérez, 2020); they are often supported by local politicians and use corruption to avoid problems with the police (Luna Galván et al., 2021). They operate through decentralised structures that make it difficult to identify their activities (UNODC, 2024). The structure of such OCs is designed to protect them from law enforcement and reduce the risk of infiltration or betrayal (UNODC.1, 2024). To ensure a common definition of organised crime amongst Member States, the United Nations Convention against Transnational Organised Crime was established. This Convention defines an OC as a structured group of three or more persons acting in concert to commit offences with the aim of obtaining a direct or indirect financial benefit (Akkoyun & Çelik, 2022).

OCs, with a high level of specialisation in the use of complex financial tools, are increasingly using virtual currencies to conceal the origin of their illicit funds (Trozze et al., 2022). OCs employ techniques such as layering¹, mixing services and cross-border transfers to make it difficult to trace funds. (Arnone et al., 2025). The incorporation of *blockchain* analysis tools and the strengthening of KYC/AML/CFT (Anti-Money Laundering and Counter-Terrorist Financing) obligations make it possible to optimise the detection and control of illicit transactions. (Rodríguez-Valencia et al., 2025).

The following article addresses the issue of money laundering involving illicit funds via crypto-assets by organised crime groups (OCGs) and the existing legal framework to combat it. The analysis includes the FATF's recommendations, international instruments and the regulations of the United States (US) and the European Union (EU) aimed at

¹ *Layering* is the second stage of the money laundering process, in which the main objective is to conceal the illicit origin of the funds through a series of complex, successive and often cross-border financial transactions. This stage aims to break the traceability of the money and make it difficult for the authorities to reconstruct the original path of the funds.

preventing money laundering via crypto-assets by organised crime groups. This paper examines the international treaties and national laws of the US and Europe that seek to prevent money laundering by organised crime groups.

Building on this premise, this article presents a comparative analysis of the regulatory models in the US and the EU, with the aim of identifying their strengths and weaknesses and formulating legal assessment criteria. Furthermore, this paper argues that institutional efforts to mitigate money laundering via crypto-assets are effective only if they do not rely solely on the formal development of regulatory frameworks. Moreover, their degree of effectiveness depends on the actual capacity to prevent, detect, attribute and sanction unlawful conduct in an environment characterised by pseudonymity, technological decentralisation and the transnational dimension of the phenomenon.

The main contribution of this study lies in identifying the existence of a structural gap between the technical traceability of *blockchain* transactions and their effective legal attribution. Consequently, conventional models of prevention, detection and sanctioning—which incorporate technological capabilities into regulatory systems—must be re-examined.

2. RESEARCH METHODOLOGY

This document adopts a descriptive analytical approach. The analysis will be multidimensional, examining legislation, the literature and relevant information to assess the measures taken by financial institutions to prevent the laundering of crypto-assets. An exploratory review of the existing literature (books, journals, articles, etc.) will provide a better understanding of the concept, the nature of the issue and the most effective ways of addressing it.

This approach constitutes the most appropriate methodology for conducting the research, given the lack of information and the scarcity of articles discussing the FATF recommendations, international conventions and national legislation in the US and Europe regarding the issue of crypto-asset money laundering by COs.

Furthermore, the study incorporates a proactive analytical dimension, aimed at identifying the structural limitations of the current legal framework in decentralised digital environments.

3. ANALYSIS OF THE (MIS)USE OF CRYPTO-ASSETS BY CRIMINAL ORGANISATIONS

The proliferation of clandestine banking services and other online money-laundering networks has created more anonymous channels for financial transfers (Europol, 2022). Crypto-assets have the potential to be misused by criminals; as a result, the industry is developing new, complex forms of peer-to-peer mixing services. This creates the conditions for concealing transactions, decentralised *blockchain* analysis, and the new peer-to-peer networks that have recently emerged and are likely to be used for illegal activities (Hinojal, 2023). Such developments will significantly hinder the identification of criminal organisation activities that use conventional cryptocurrencies to conceal illicit proceeds (Fu et al., 2025).

Drug trafficking, arms trafficking and the trafficking of other illegal goods are lucrative ventures, insofar as illicit funds can be easily moved to and from organised crime groups anywhere in the world (Sudan et al., 2023). Indeed, beyond scams, crypto-assets have been linked to almost every type of cybercrime, ranging from services on the *deep web*² or *darknet*³ to theft and fraud in their many forms.

Crypto-assets have been used in a variety of organised crime (OC) activities, including money laundering, *ransomware* attacks⁴ and online fraud. In order to combat these illicit practices, law enforcement agencies have been provided with an overview of the existing literature on the subject (Trozze et al., 2022). Research into misuse by organised crime remains limited compared to other areas of research on crypto-assets and *blockchain*. Among the illegal activities carried out by organised crime using digital currencies are money laundering (proceeds of crime), *ransomware* and black markets (Alessi Longa, 2025).

Seven categories have been identified, each of which encapsulates a specific pattern of criminal behaviour in the use of crypto-assets and its implications for prevention, detection and response mechanisms:

(1) the financing of terrorism, (2) on the dark web, (3) on *deep web* or *darknet* markets, (4) in cybercrime, (5) in drug trafficking, (6) in human trafficking, (7) and in corruption.

We will focus our research on option 2:

4. CRYPTO-ASSETS AND MONEY LAUNDERING BY CRIMINAL ORGANISATIONS

Crypto-assets received by illicit addresses in 2023 amounted to 46,100 million US dollars (Chainalysis, 2025). In 2024, the value received by illicit addresses plummeted to US\$40,900 million. However, the figures for 2024 are provisional and could easily exceed US\$51,000 million (Atlam et al., 2024).

Whilst some argue that crypto-assets entail high information and control costs, transactions are generally cheaper and faster than those involving fiat currencies, as there are no intermediaries between buyers and sellers (Medranda Morales & Arcos Argudo, 2023). Yet these very characteristics have been exploited by organised crime groups for money laundering. In particular, three characteristics of crypto-assets drastically reduce the transaction costs of these illegal activities.

Firstly, the decentralised nature of crypto-assets enables users to exchange value directly with one another without the need for intermediaries. As already mentioned,

² The deep web is the part of the internet that is not indexed by conventional search engines, such as Google, Bing or Yahoo. This means that its content cannot be found through normal searches and is only accessible if the address is known directly, if authorisation is granted, or if specific credentials are used.

³ The darknet is a specific and deliberately hidden part of the internet that can only be accessed via special software, configurations or protocols that provide anonymity, such as Tor, I2P or Freenet. It is not indexed by conventional search engines and is designed to protect the identity and location of users and servers.

⁴ *Ransomware* is a type of malicious software (*malware*) designed to lock, encrypt or render a victim's computer systems inoperable, with the aim of demanding a financial ransom — usually in cryptocurrencies — in exchange for restoring access to data or systems.

traditional anti-money laundering regulations are designed to regulate intermediaries carrying out transactions in order to prevent illegal transfers (Longa, 2025), and the absence of face-to-face interactions in crypto-asset transactions makes it more difficult to identify the parties involved (Montoya Arrubla, 2025). Secondly, whilst all transactions are recorded and traceable on the *blockchain*, there is no explicit link to the actual individuals or organisations behind them. Crypto-assets operate within a pseudonymous system in which only the public key (a random string of numbers) is known, whilst the private key remains secret.

This makes it significantly more difficult to link a real identity to a cryptocurrency address (Béres et al., 2021). However, users can generate multiple electronic crypto-asset wallets with different public addresses, which hinders traceability in cases of suspected money laundering (Atlam et al., 2024).

Finally, the speed of crypto-asset transactions and their ease of use give them an advantage over traditional money-laundering methods, such as cash. Unlike paper money, which is limited by weight and size, crypto-assets can be stored in unlimited quantities on a USB stick and sent to anyone in the world in a matter of minutes. The malleability of transactions makes it easier to circumvent regulatory measures, as a large transaction can be split into smaller ones (Koelbing et al., 2024). This operational flexibility is vital and reinforces money laundering for organised crime groups operating in crypto-asset markets. Such groups generate a large volume of crypto-assets, which they need to convert into funds with a legitimate appearance.

This process generally involves a series of complex financial transactions that move funds through multiple accounts and jurisdictions, making it difficult to trace the origin of the funds. This enables COs to continue operating illegally and conceal the proceeds of drug trafficking (FATF, 2022). Criminal organisations that use the *deep web* are experts in laundering crypto-assets, which can be transferred instantly from one account to another and are difficult to trace (Holt et al., 2023). Such criminal organisations often hire professional facilitators (lawyers, accountants, bankers, etc.) to make it harder to trace their illicit funds.

Criminal organisations may hold on to the crypto-assets they receive from crypto-market transactions as an investment. These are used to launder other illicit funds both online and in the real world (Arnone et al., 2025). Those not retained as an investment are laundered and channelled into the legitimate economy. For example, the Dutch police discovered that a moderator of a crypto marketplace was exploiting his contacts to exchange bitcoins for cash (Ministry of the Interior, 2024).

In East and South-East Asia, ‘*point runners*’ or ‘*moving ants*’ organisations are used to launder illicit funds, recruiting large numbers of people (often unemployed young people) who lend their bank accounts and set up shell companies to conceal the source and destination of the illicit funds (UNODC, 2025). These networks move the funds through multiple bank or crypto-asset accounts and online casinos, where they are disguised as legitimate casino winnings (Langdale, 2024).

Now that the authorities have a better understanding of third-party payments (following ‘*Operation Chain Break*’ and similar operations in China) (FinCEN, 2025),

organised crime groups have increasingly turned to crypto-assets for their illegal gambling operations, posing serious challenges for investigators (Europol, 2024). For example, casinos and *junket* operators⁵ licensed in the Philippines were involved in laundering some US\$81 million stolen in a 2016 cyberattack attributed to the Lazarus Group from the Central Bank of Bangladesh (Langdale, 2024). Although the funds passed through banks and remittance companies, it was extremely difficult to trace them once they reached the casino junket operators (AMLC, 2023).

Global drug cartels were accused by the DEA of using *Binance*,⁶ – the largest cryptocurrency exchange – to launder between 15 and 40 million dollars in various transactions (DEA, 2025). According to DEA reports, *Binance* is cooperating with investigators amid scrutiny over various allegations.

These sophisticated mechanisms pose new challenges for detection and investigation due to the volume of transactions and their cross-border nature, requiring greater financial transparency, international cooperation and stronger regulatory frameworks to combat such crimes (Legrand & Leuprecht, 2021).

5. MOST COMMON METHODS OF CRYPTO-ASSET MONEY LAUNDERING USED BY CRIMINAL ORGANISATIONS

5.1. GENERAL CONSIDERATIONS FROM THE PERSPECTIVE OF MONEY LAUNDERING THEORY

The phenomenon under consideration highlights that the various techniques employed by organised crime groups fall within the classic phases of money laundering, in particular placement, layering and integration.

These practices, described in the previous section, are what give rise to problems regarding criminal classification, the attribution of liability and the reconstruction of the financial trail of illicit funds. This is particularly true in an environment characterised by pseudonymity and technological decentralisation, such as that of crypto-assets.

5.2. TECHNIQUES RELATED TO THE INTEGRATION PHASE: *SMURFING*

The practice known as *smurfing*, or ‘breaking up large sums into small ones’, involves integrating funds obtained through illicit activities—such as proceeds from drug trafficking, payments from fraud, corruption or profits derived from sexual exploitation—into the financial system in a varied manner and in small amounts (Isolauri & Ameer, 2023). This technique, used in conventional finance, appears to have been transferred to the world of crypto-assets (Koelbing et al., 2024).

⁵ Junket operators are specialised intermediaries who act as a link between casinos and VIP or high-roller players, particularly in markets such as Macau, Las Vegas, Singapore and other international gambling hubs. Their main role is to recruit, transport, finance and manage high-value clients so that they gamble at specific casinos.

⁶ Binance is the world’s largest cryptocurrency exchange by trading volume and number of users, founded in 2017 by Changpeng Zhao (CZ) and Yi He. It is a centralised exchange (CEX) that allows users to buy, sell, trade and hold digital assets.

From a criminal law perspective, such practices may fall within the integration phase of money laundering. It is clear that the intention is to introduce illicit funds into the official financial system by splitting them up, in order to circumvent control mechanisms. From a legal perspective, this raises significant questions regarding the application of regulatory thresholds and the effectiveness of automated detection systems.

5.3. TECHNIQUES RELATED TO THE STRATIFICATION PHASE: CONCEALMENT AND DISASSOCIATION OF ILLICIT ORIGIN

5.3.1. Crypto-asset wallets (medium wallets or mid-size wallets)

A common money laundering method involving crypto-assets entails the use of intermediary wallets. This layering technique seeks to conceal the link between illicit funds and their subsequent entry into the legal financial system (Elliptic, 2024). Consequently, intermediary wallets are being used by criminals on both KYC-compliant and non-KYC-compliant *exchanges*.

From a theoretical perspective, intermediary accounts and their use are directly linked to the layering phase of money laundering, as they are intended to hinder the traceability of illicit funds. These described practices pose significant challenges regarding the objective attribution and identification of the beneficial owner, particularly when there are no points of contact with intermediaries obliged to carry out identification checks.

5.3.2. Consolidation crypto-asset wallets

Consolidation wallets, which pool and combine funds from various sources, are another trend to bear in mind. This consolidation pattern may reveal attempts to conceal the illicit origin of funds before moving them to exchanges or other locations for cash withdrawal (Chiang, 2024).

From a legal perspective, these structures could be regarded as instruments designed to reinforce the concealment of the illicit origin of the funds. This circumstance directly affects the typical configuration of the offence of money laundering in its form of concealment or cover-up.

5.3.3. Mixing services, privacy coins and bridges

The aim of mixing and shuffling is to break up large amounts of virtual currency by distributing them in multiple directions (Gorjón, 2023). Mixers are individuals or companies that distribute the funds amongst participants and mix them with legitimate income in order to obscure the traceability and identification of the owners (Coinmetro Editorial Team, 2024).

The specific issues regarding criminal liability in the concealment phase of money laundering arising from the use of mixing services are designed precisely to hinder the traceability of funds. Consequently, this issue calls into question the scope of the due diligence obligations of virtual asset service providers (VASPs) or CASPs within the European framework. This circumstance is addressed in Article 13 of Directive (EU)

2015/849, particularly where such providers operate in jurisdictions with limited or non-existent supervision.

Privacy coins exacerbate the problems associated with attributing transactions by reinforcing pseudonymity in terms of identity. This creates a significant operational limitation on the admissibility of evidence in criminal proceedings, particularly with regard to linking addresses to specific natural or legal persons. Privacy coins have become popular amongst those who wish to remain anonymous. (Cremers et al., 2024).

The transfer of assets between different *blockchains* is a technique known as crypto bridges, which is an increasingly popular method or tool for cross-border crime.

From a legal perspective, the use of *cross-blockchain* bridges exacerbates the transnational dimension of cybercrime, giving rise to issues of jurisdictional competition and international cooperation, as well as additional operational constraints in reconstructing the financial trail of funds.

5.4. CRIMINOGENIC SPACES AND FACILITATORS: *DARKNET* MARKETPLACES

Darknet markets are hidden online sites accessed via specific software (such as Tor) and paid for using anonymous crypto-assets. These markets facilitate the trade in illegal goods and services and provide money launderers with a means of converting illicit funds into crypto-assets and vice versa (Jordá et al., 2024). It is extremely difficult to determine precisely how much illicit money is laundered using this virtual asset (Alessi Longa, 2025).

On the darknet, *Silk Road* was the most popular marketplace operating on the *Tor* network, as it enabled anonymous trading using crypto-assets. Despite attempts to maintain pseudonymity, its founder, Ulbricht, was arrested by the FBI in 2013 and ultimately convicted on several charges.

Given the large volume of money laundering, it is pertinent to examine the existing legal framework with a view to combating the laundering of crypto-assets by organised crime groups. Such environments exacerbate the structural challenges faced by the authorities in intervening and pose regulatory and operational challenges both in obtaining digital evidence and in identifying the parties involved, which directly affects the effectiveness of criminal prosecution by the BC. The case illustrated the challenges of regulating and monitoring the *deep web* (Hemdani, 2025).

5.5. FINAL DOGMATIC CONSIDERATION

All these techniques highlight the limitations of conventional criminal law in adapting to decentralised technological structures. This raises questions about the definition of criminal offences and the effectiveness of regulatory responses in a constantly evolving digital environment.

6. LEGAL FRAMEWORKS FOR COMBATING CRYPTO-ASSET MONEY LAUNDERING BY FINANCIAL CRIMINAL ORGANISATIONS

Legal frameworks for crypto-assets are highly fragmented globally, with some countries banning them outright and others embracing them fully. Attempts have been made through the United Nations Convention against Transnational Organised Crime (UNTOC) to combat transnational organised crime.

6.1. UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME

The UNTOC Convention of 2000 is the principal international legal instrument for addressing the challenges posed by transnational organised crime. It provides a set of tools for States to develop policies and legal frameworks to prevent and combat various forms of organised crime, such as money laundering associated with crypto-assets (Kabra & Gori, 2025). This convention is relevant insofar as such virtual assets are playing an increasingly significant role in the financial world of organised crime groups. The UNTOC can support the prosecution and prevention of crypto-asset money laundering through the development of stronger legal frameworks, international cooperation and the application of common standards to combat illegal transactions involving these virtual assets (Wang & Hsieh, 2023).

Articles 1, 13, 16 and 18 regulate cross-border cooperation on mutual legal assistance, extradition and the exchange of information. As transactions involving crypto-assets may span multiple jurisdictions, the UNTOC's focus on international cooperation is essential for identifying and bringing to justice organised crime groups that abuse these virtual assets. For example, the UK's National Crime Agency (NCA) dismantled a massive, multi-billion-dollar cryptocurrency network known as Operation Destabilise (Anggriawan & Susila, 2024).

This network served a wide range of organised crime groups, from wealthy Russians and global influencers to cybercriminals and drug traffickers. The NCA identified two Russian-speaking OC, 'Smart' and 'TGR', as the masterminds. To date, its investigation has led to 84 arrests and the seizure of over 20 million euros in cash and crypto-assets (UNODC2, 2024). This successful operation was made possible by the joint efforts of the signatories to the convention, including the , the UK Metropolitan Police Service, France's *Direction Centrale de la Police Judiciaire*, the US Treasury's Office of Foreign Assets Control, the Drug Enforcement Administration and the FBI. (FATF et al., 2025).

Article 34 of the UNTOC encourages States to adopt compatible legislative measures to prevent money laundering, which is essential for addressing the growing risks of financial crimes related to crypto-assets. For example, the FATF requires KYC and customer due diligence measures to identify and report suspicious crypto-asset transactions, which must be implemented in all countries, regardless of their local laws. (FATF, 2024).

The UNTOC supports the development of international standards, assisting countries in building enhanced cybersecurity and investigative capabilities to detect

crimes related to crypto-assets. UNODC. (2026) For example, the UNTOC's information-sharing channels support EU law enforcement agencies, such as Europol, in tracing illegal transactions involving this virtual asset. This may involve Eurojust, the EU agency for judicial cooperation, to ensure effective cross-border prosecution.

In this context, the UNTOC provides an international framework aimed at combating the laundering of crypto-assets by promoting international cooperation, legal harmonisation and capacity-building in the area of regulatory enforcement.

6.2. RECOMMENDATIONS OF THE FINANCIAL ACTION TASK FORCE

The FATF has established a comprehensive set of standards aimed at mitigating and combating ML/TF, covering virtual assets and virtual asset service providers (VASPs). From a legal perspective, the FATF defines 'virtual assets' and 'virtual asset service providers' to ensure the consistent and uniform application of its standards. Virtual assets are a digital representation of value that can be traded or transferred digitally and used to make payments or investments (FATF, 2023).

VASPs include any natural or legal person not otherwise covered by the Recommendations who, as a business, engages in one or more of the following activities: the exchange of virtual assets for fiat currencies; the exchange of virtual assets for one or more other forms of virtual assets; the transfer of virtual assets; the custody and/or management of virtual assets or instruments enabling the regulation of virtual assets; and the participation in and provision of financial services relating to the offering and/or sale of a virtual asset by an issuer (FATF, 2021).

From a legal perspective, Recommendation 15 deals specifically with virtual assets, stipulating that countries must identify and mitigate ML/TF risks associated with virtual assets and VASPs. The FATF requires the implementation of customer due diligence (CDD), record-keeping, the reporting of suspicious transactions (STR), internal controls and compliance programmes, and sanctions (FATF.1, 2023). Similarly, Recommendation 16 requires VASPs to obtain, retain and transmit information on the payer and payee for transfers of virtual assets above a specified threshold (1,000 USD/EUR). This is sometimes referred to as the 'travel rule'.⁷

This rule aims to prevent the use of virtual assets for illegal purposes and to ensure transparency in transactions, insofar as it requires VASPs to share this information with other obliged entities. The 'travel rule' for virtual assets has been a priority for the FATF, which continues to press countries to implement and enforce it (Mollaahmetoğlu & Baykut, 2021).

The FATF regularly updates its recommendations on virtual assets to keep pace with evolving risks and technological innovations in the world of virtual assets. Countries should incorporate these rules into their national laws and regulations. The FATF

⁷ The Travel Rule is a requirement established by the Financial Action Task Force (FATF) which obliges financial institutions and virtual asset service providers (VASPs) to transmit information on the originator and the beneficiary alongside the transfer of funds or crypto-assets. Its purpose is to ensure traceability and enable the authorities to identify the parties involved in transactions that may be linked to money laundering, terrorist financing or other serious crimes.

continues to monitor the implementation of these standards worldwide and urges jurisdictions to prioritise their effective implementation (Teng et al., 2026).

7. TRANSATLANTIC REGULATORY MODELS FOR COMBATING MONEY LAUNDERING INVOLVING CRYPTO-ASSETS: A COMPARATIVE ASSESSMENT OF THE US AND THE EU

7.1. UNITED STATES

In the US, there is no unified regulatory framework for crypto-assets; instead, various federal and state agencies oversee these virtual assets. The US *Securities and Exchange Commission* (SEC) regulates securities and has classified many crypto-assets and initial coin offerings (ICOs) as securities. In *SEC v. Decentralised Autonomous Organisation* (DAO), the SEC held that crypto-assets are securities and are therefore subject to SEC regulation (Lom & Hashmall, 2021). The *Commodity Futures Trading Commission* (CFTC), the US federal agency that regulates derivatives markets, considers Bitcoin and other virtual assets to be commodities and regulates derivatives and futures markets involving crypto-assets (Hinojal, 2023).

The *Financial Crimes Enforcement Network* (FinCEN) regulates crypto exchanges and e-wallet providers as money transmitters, and they must comply with AML/CFT and KYC regulations. The *Internal Revenue Service* (IRS) treats crypto-assets as property for tax purposes, and gains and losses are subject to capital gains tax (Baer et al., 2023). Regulation tends to be decentralised; states such as New York have their own laws (*BitLicense*),⁸ whilst others have more lax or undefined policies.

The *BitLicense* is a business licence that requires operators to comply with stricter AML/CFT rules. In California, the law requires bitcoin operators to hold reserves equivalent to those of banks to cover losses, but North Carolina is still working on draft legislation to regulate bitcoin and has no regulations currently in force (NYDFS, 2024–2026).

The US Department of Justice brought criminal charges against *Rule and Nysewander*⁹ for conspiring with others to launder illicit proceeds from online romance scams, business email compromise scams, property scams and other frauds via crypto-assets (Lim & Choi, 2025).

According to the indictment filed by the US Department of Justice, they had converted the illicit funds into crypto-assets and transferred them to accounts controlled by their accomplices in the US and abroad. This demonstrates a strategy designed to conceal the illicit origin of the funds and make them difficult to trace. Furthermore, when opening accounts and conducting transactions with banks and cryptocurrency exchanges, *Rule and Nysewander* are alleged to have made false statements and withheld relevant

⁸ The *BitLicense* is a mandatory regulatory licence issued by the New York State Department of Financial Services (NYDFS) for companies conducting business involving cryptocurrencies or virtual assets in the state of New York or with New York residents. It was introduced in 2015 through Regulation 23 NYCRR Part 200.

⁹ Two men (from Nevada and South Carolina) were charged and subsequently convicted of participating in a cryptocurrency money-laundering conspiracy, according to the US Department of Justice.

information in order to circumvent the controls and safeguards in place at these institutions.

As a result of these actions, in this alleged conspiracy, they and their accomplices laundered more than 2.4 million US dollars. Ultimately, both were found guilty and could face up to 20 years' federal imprisonment for each money laundering charge (Farrukh et al., 2025).

Similarly, in August 2024, Lam and Serrano were charged with the theft of crypto-assets worth US\$230 million (Trozze et al., 2022).

US prosecutors have also targeted *Binance*, the company that operates the world's largest crypto-asset exchange platform, *Binance.com*. The company has pleaded guilty and will pay over US\$4,000 million to settle the Department of Justice's investigation into breaches of the Bank Secrecy Act (BSA), for failing to register as a money transmitter, and of the International Emergency Economic Powers Act (IEEPA) (U.S. Department of Justice, 2023).

Changpeng Zhao, a Canadian national and founder and former CEO of *Binance*, also pleaded guilty to failing to maintain an effective anti-money laundering (AML) programme, in breach of the BSA. As part of the plea agreement, Zhao has resigned as CEO of *Binance* (U.S. Department of Justice, 2023).

Whilst US prosecutors have succeeded in prosecuting money launderers and cryptocurrency exchange platforms, the crypto-asset market still requires greater levels of transparency in order to protect potential investors (Anguren et al., 2023). A few decades ago, the boom in e-commerce led to innovative legal frameworks; today, these virtual assets and their many forms deserve similar guidance. The creation of clear rules for the sale of certain cryptocurrencies and crypto funds could provide much-needed clarity (Blanco Barón, 2025).

Without a more mature regulatory framework, relying solely on enforcement actions by agencies such as the SEC is insufficient to achieve its regulatory objectives. Ultimately, these punitive measures may harm the very investors the SEC seeks to protect and stifle investment in promising companies. Among the proposed regulations for crypto-assets is the draft bill against digital asset money laundering, which seeks to prevent other crimes related to virtual assets, whilst focusing on those carrying out the transactions (miners, validators, etc.) (Warren & Marshall, 2022).

From a legal perspective, the US system is characterised by being fragmented and reactive, as multiple agencies with interrelated powers are involved. The regulatory flexibility afforded by this structure can give rise to issues of regulatory consistency and potential overlaps in jurisdiction.

This approach has limitations in terms of *ex ante* prevention when it comes to BC, insofar as its actions are primarily centred on *enforcement* mechanisms that come into play after an offence has been committed. The regulatory shortfall of a unified framework likewise prevents the uniform application of compliance obligations by virtual asset service providers (VASPs); in this context, it could create areas of regulatory risk.

7.2. EUROPEAN UNION

At present, the EU does not have a harmonised legal framework for crypto-assets across all Member States. However, the European Commission has proposed certain measures, such as the Sixth Anti-Money Laundering Directive (6AMLD), which would require firms dealing in crypto-assets to register with national authorities.

They would also be required to comply with anti-money laundering rules and report any suspicious transactions. The aim of 6AMLD is to close the legal loopholes in the individual laws of EU countries by establishing consistent definitions for cryptocurrency and virtual assets across the EU (European Parliament, 2024).

To establish a uniform approach to regulating trading in crypto-assets across the EU, the European Commission proposed the Regulation of the European Parliament and of the Council on Markets in Crypto-Assets and the amending Directive. This set of rules, known as MiCA (¹⁰), aims to establish a supervisory framework, including rules for issuers, service providers and participants in the secondary market.

Using these MiCA and 6AMLD regulations, on 19 September 2024, the German Federal Criminal Police dismantled the infrastructure of 47 Russian-language crypto-exchange platforms operating without identity verification (without KYC protocols). This operation, dubbed ‘Operation Final Exchange’, is large-scale and highlights the crucial role played by instant, non-KYC exchange platforms in cybercrime (Menacho-Inga et al., 2025). As their names imply, these sites without KYC protocols have no visible process for collecting users’ identification information before allowing them to deposit or withdraw any amount. They do not ask for names, telephone numbers or email addresses, and do not bother to verify this information before carrying out transactions (Anggriawan & Susila, 2024).

One of the greatest vulnerabilities of the current regulatory framework for crypto-assets is the lack of a central authority with the capacity to supervise and audit transactions. Assigning the supervision and regulation of crypto-assets to non-specialised agencies reduces the effectiveness of these regulations. Furthermore, in the legal sphere, there are no guidelines or prerequisites for obtaining licences to operate in the crypto-asset sector (Hope Kanu, 2025).

From a comparative perspective, the US model presents a fragmented and reactive approach, based on the ex post actions of various agencies. On the other hand, the EU model is characterised by a preventive and harmonised approach, which is geared towards reducing pseudonymity *ex ante*. However, both systems face operational limitations in addressing the international scope of the phenomenon.

Neither system is fully effective. The US model may have gaps in its preventive phase, whilst the European model continues to face challenges in its effective

¹⁰ This stands for *Markets in Crypto-Assets Regulation*, Regulation (EU) 2023/1114 on crypto-asset markets. It is the EU’s first comprehensive regulation governing crypto-assets, their issuers and the service providers associated with them.

implementation and in adapting to the rapid technological evolution of the crypto ecosystem.

8. LEGISLATIVE DEVELOPMENTS IN THE EUROPEAN UNION

The opaque corporate structures used by criminal organisations to launder virtual assets – with the regulation coming into force on 10 July 2027 – will strengthen transparency regarding beneficial ownership, enhance traceability and control over crypto-asset transactions, and prohibit anonymous accounts (Regulation (EU) 2024/1624, Article 79(1)) and will require specific measures for transfers to self-hosted addresses¹¹ (Regulation (EU) 2024/1624, Article 40).

At the same time, the previous legislative package has been updated by a new Directive on preventive mechanisms, which introduces a state-level obligation to establish mechanisms to identify the person who holds or controls crypto-asset accounts and to interconnect these mechanisms via an EU-wide system (Directive (EU) 2024/1640, Article 16). From a legal perspective, European supervision is strengthened by the creation of the AMLA Authority, which has been fully operational since 1 July 2025 (Regulation (EU) 2024/1620).

8.1. WHAT CHANGES IS THE EU INTRODUCING COMPARED TO THE US TO MITIGATE PSEUDONYMITY AND OPACITY IN THE USE OF CRYPTO-ASSETS?

The EU prohibits crypto-asset service providers from maintaining anonymous accounts or any accounts that allow the account holder to be concealed or that increase the opacity of transactions, specifically mentioning privacy coins (Regulation (EU) 2024/1624, Article 79(1)). In line with this approach, the European PBC/FT package imposes an obligation on crypto-asset service providers to identify and assess risks inherent in transfers involving self-hosted addresses. Similarly, such providers must apply proportionate mitigation measures, which may include identifying and verifying the sender or recipient and collecting additional information on the origin and destination (Regulation (EU) 2024/1624, Article 40(1)). These rules reinforce the objective of limiting the use of crypto-assets for anonymisation purposes, particularly when combined with opaque corporate structures – a context which the European framework itself recognises as giving rise to risks of circumvention and obfuscation, and to which the new 2024 package responds.

The EU has opted to adopt a ‘zero-tolerance’ approach to pseudonymity, with outright bans, uniform rules and a new supranational authority. In contrast, the US follows a decentralised model where anonymity is not prohibited, and the authorities act primarily through criminal or administrative proceedings following the detection of infringements.

¹¹ A self-hosted address is a cryptocurrency address controlled directly by a user, without the intervention or custody of a regulated intermediary (such as an exchange or a VASP).

The key difference is simple. The EU restricts pseudonymisation *ex ante* through prohibitions, whilst the US combats it *ex post* through *enforcement*.¹²

Table 1.
Key differences between the EU and the US regarding pseudonymity and opacity in crypto-assets.

DIMENSION	EU	US
Anonymous accounts.	Explicitly prohibited (Art. 79.1).	Not prohibited by federal law.
Privacy coins	To be banned from 2027.	Not prohibited, but subject to monitoring.
Self-hosted crypto-asset wallets.	Mandatory risk assessment and possible identification. (Art. 40.1).	No federal obligation to identify users.
Regulatory framework.	Comprehensive, unified (MiCA + AMLR).	Fragmented: SEC, CFTC, FinCEN, IRS, states.
Supervision.	Centralised under the AMLA.	Decentralised; each agency acts within its own remit.
Private tokens.	Total elimination.	Not prohibited.
Approach.	Preventive, restrictive, full traceability.	Reactive, punitive, <i>enforcement-based</i> .

8.2. WHAT NEW DEVELOPMENTS AFFECT THE IDENTIFICATION OF THE BENEFICIAL OWNER AND CORPORATE TRANSPARENCY IN RELATION TO OPACEOUS STRUCTURES?

Regulation (EU) 2024/1624 specifies the chain of identification of the beneficial owner based on ownership and control, and requires that beneficial ownership information be adequate, accurate and up to date, and that entities report to the central register without undue delay and within a maximum period of 28 calendar days to notify any changes (Regulation (EU) 2024/1624, Article 63). The information required to obtain beneficial owner data is expanded and specified, including, amongst other things, full identification, the nature and extent of the beneficial interest and, where there is a structure involving multiple entities or instruments, a description of the ownership and control structure (Regulation (EU) 2024/1624, Article 62). From a legal perspective, Directive (EU) 2024/1640 lays down rules on the establishment of and access to central beneficial ownership registers and replaces Directive (EU) 2015/849, which is repealed with effect from 10 July 2027 (Directive (EU) 2024/1640; repeal provision).

All of this is in line with the strengthening of the framework for transparency and cooperation across the EU, with the aim of significantly limiting the use of shell companies or opaque corporate structures.

¹² It is an English term meaning ‘application’, ‘execution’ or ‘enforcement’ of the law. In the legal and regulatory sphere, it describes the set of actions, measures and procedures carried out by the competent authorities to ensure that regulations are effectively complied with. In general terms: *enforcement* is the capacity and practice of a state or regulatory authority to investigate, monitor, sanction and rectify regulatory breaches.

In contrast, the United States is facilitating the use of corporate structures by making a U-turn, drastically reducing transparency by removing obligations for US companies, weakening the *Corporate Transparency Act*¹³ and leaving transparency in the hands of the states.

Table 2.
Comparison of the framework for beneficial ownership transparency and AML/CFT supervision: European Union vs. United States.

ELEMENT	EUROPEAN UNION	UNITED STATES
Beneficial owner identification chain.	Detailed, comprehensive and mandatory (ownership + control, extent of interest, full corporate structure).	Almost entirely abolished for domestic entities from 2025; applies only to certain foreign entities. ¹⁴
Data updates.	Maximum of 28 calendar days to report changes.	There is no federal obligation for US companies.
Central registers.	Mandatory and harmonised under Directive 2024/1640.	There is no federal register for domestic entities following the 2025 IFR; transparency depends on the states. ¹⁵
Strategy regarding shell companies.	Restrictive, preventative and based on comprehensive traceability.	Regulatory relaxation: the abolition of the federal reporting system facilitates the use of opaque corporate structures.
AML/CFT supervision.	Unified European model under the Anti-Money Laundering Act (AMLA).	Fragmented enforcement (FinCEN, IRS, SEC, CFTC), with no single federal framework for beneficial owners.

8.3 LEGAL AND DOCTRINAL IMPLICATIONS OF THE IDENTIFICATION OF THE BENEFICIAL OWNER

From a legal-theoretical perspective, Regulation (EU) 2024/1624 is not merely a reinforcement of formal transparency, insofar as it directly impacts the structural development of the concept of beneficial ownership. This shifts the focus from a purely registrational perspective towards a substantive principle based on effective supervision.

¹³ The *Corporate Transparency Act* (CTA) is a US federal law, enacted in 2021, which aims to combat money laundering, terrorist financing, tax fraud and the use of shell companies by requiring the reporting of information on the beneficial owners (*Beneficial Ownership Information*, BOI) of certain entities.

¹⁴ Financial Crimes Enforcement Network. (2025). *Beneficial Ownership Information Reporting*. U.S. Department of the Treasury. <https://www.fincen.gov/boi>

¹⁵ Weiner, A. J., Montgomery, B. H., Thoren-Peden, D. S., Robbins, R. B., Patay, C. H., Keyko, D. G., & Yee, S. D. (2026). *CTA Update: A review of the status of beneficial ownership reporting requirements under the Corporate Transparency Act and related initiatives as of 5 January 2026*. Pillsbury Winthrop Shaw Pittman LLP. <https://www.pillsburylaw.com/en/news-and-insights/cta-update.html>

From the perspective of economic criminal law, this change is highly significant, as it reduces the scope for indefinite attribution of liability that is characteristic of complex corporate structures. When the identification of the beneficial owner is sought on the basis of both ownership and control, the Regulation establishes a functional criterion that simplifies the legal attribution of liability. It is particularly in money laundering offences where the concealment of the beneficial owner constitutes a central constituent element.

In the same vein, the requirement that information on beneficial ownership be appropriate, accurate and up to date, together with the obligation to notify within a maximum period of 28 days (Article 63), not only has an administrative aspect but also has a direct impact on the probative value of evidence in criminal proceedings. To this end, beneficial ownership registers are established as genuine tools for analysing the financial *crime trail*. This helps to mitigate risk during the investigation phase and facilitates the legal traceability of illicit funds.

The expansion of the information required (Article 62), which includes the nature and extent of beneficial ownership and the analysis of complex structures, introduces a fundamental aspect from the perspective of money laundering doctrine. This makes it possible to establish a legal link between beneficial ownership and the formal appearance of legality. This link is essential for circumventing the conventional limits of criminal law in relation to aspects of asset stratification and segregation, which are common features of money laundering involving crypto-assets.

In line with this approach, Directive (EU) 2024/1640 strengthens the framework for systems of access to and centralisation of information. In this way, it establishes a perspective that goes beyond mere regulatory harmonisation, moving towards a supranational legal framework for transparency. This development entails an optimisation of the principle of administrative and judicial cooperation within the EU, an essential principle in the context of transnational crime.

It can be said that, taken together, these rules create the conditions to sustain the European model by being guided by a preventive and structural approach, aimed not only at punishing conduct but also at limiting, *ex ante*, the conditions under which crime can occur, thereby restricting the use of corporate instruments as mechanisms of opacity.

The US model, by contrast, has significant implications for legal theory. Weakening the *Corporate Transparency Act* and easing the obligations regarding the identification of beneficial owners implies a shift towards a system in which corporate opacity once again becomes a significant area of legal risk. From a legal theory perspective, this complicates the identification of the perpetrator of the offence and makes criminal prosecution more difficult in complex structures.

This stance highlights a structural disparity between the two systems. On the one hand, the EU has developed a model based on *ex ante* identification and legal traceability. Conversely, the US retains a largely reactive approach based on *enforcement*, in which intervention takes place only after the offence has been committed.

From a critical perspective, this divergence is not merely technical, but reflects two distinct conceptions of economic criminal law:

A European model of structural prevention and systemic risk reduction.

An American model of punitive reaction and the prosecution of crime.

In fact, the development of European legislation demonstrates an effort to resolve the conventional disparity between economic traceability and legal attribution. By contrast, the US model continues to face difficulties in integrating both aspects coherently within the sphere of money laundering.

8.4. HOW ARE ACCOUNT TRACING MECHANISMS AND EUROPEAN SUPERVISION BEING STRENGTHENED TO DETECT SCHEMES INVOLVING CRYPTO-ASSETS AND COMPANIES WITH OPAQUE STRUCTURES?

Directive (EU) 2024/1640 requires Member States to establish centralised automated mechanisms enabling the real-time identification of any person who holds or controls, amongst other products, crypto-asset accounts, as well as bank accounts, payment accounts, securities accounts and safe deposit boxes (Directive (EU) 2024/1640, Article 16(1)).

These mechanisms must include minimum information on the account holder, representative, beneficial owner and the dates of opening and closure; for crypto-asset accounts, this must also include a unique identifier and the dates of opening and closure (Directive (EU) 2024/1640, Article 16(3)(f)). Similarly, provision must be made for their interconnection via the BARIS system¹⁶, which the Commission is to establish and manage, with the aim of achieving interconnection by 10 July 2029 at the latest (Directive (EU) 2024/1640, Article 16(6)).

This strengthening is complemented by the creation of AMLA¹⁷ to oversee and harmonise supervision and make the European system more effective in preventing cross-border risks of money laundering and terrorist financing (Regulation (EU) 2024/1620; general entry into force 1 July 2025), as part of the 2024 European legislative package.

9. EFFECTIVENESS OF THE REGULATORY FRAMEWORK ON MONEY LAUNDERING INVOLVING CRYPTO-ASSETS

The ability to prevent, detect, attribute and sanction money laundering, viewed from the perspective of regulatory effectiveness, requires a comparative examination of these frameworks, insofar as it must also be considered in relation to the principles of legality and legal certainty. The identification of typical offences and their effective investigation depend on the precision of the legislation and the adaptability of economic criminal law in sophisticated technological environments.

¹⁶ The *Bank Account Registers Interconnection System* (BARIS) is a Europe-wide computerised system designed to interconnect the national bank account registers of EU Member States, enabling rapid, secure and harmonised access to financial information relevant to the prevention, detection, investigation and prosecution of serious crimes, including money laundering and terrorist financing.

¹⁷ The AMLA (*Anti-Money Laundering Authority* / European Authority for Combating Money Laundering and Terrorist Financing) is a decentralised EU agency, established in 2024 and based in Frankfurt, whose objective is to supervise, coordinate and strengthen compliance with European rules on the prevention of money laundering (AML) and terrorist financing (CFT).

Any analysis of the effectiveness of regulatory frameworks concerning money laundering via crypto-assets must move beyond a formal approach centred on the mere existence of rules. Its aim is to assess their actual capacity to prevent, detect and prosecute illicit conduct in a technologically sophisticated environment, as well as the international dimension of this phenomenon. The degree of regulatory development must also be examined in terms of its practical effectiveness and its ability to adapt to the dynamics of the crypto ecosystem.

Based on this premise, it is possible to identify legal and operational criteria for assessing the effectiveness of AML systems in this area.

9.1. PREVENTION CAPACITY

For a system to be effective in policies aimed at preventing and combating money laundering, the first pillar is prevention. In the context of crypto-assets, this first pillar is primarily embodied in the due diligence obligations set out in Article 13 of Directive (EU) 2015/849, relating to know-your-customer (KYC) procedures and risk assessment, with which VASPs must comply.

The EU model takes a more robust approach, offering a harmonised system with clearly defined obligations for intermediaries, thereby strengthening traceability and restricting pseudonymity. The US model, by contrast, faces numerous operational constraints in establishing uniform obligations, which could give rise to areas of risk.

However, preventive effectiveness depends not only on the existence of these obligations, but also on their proper implementation and supervision.

9.2. DETECTION CAPACITY

The detection of suspicious transactions is crucial for mitigating money laundering. In the context of digital currencies, this capability involves the use of *blockchain* analysis tools and collaboration between public and private sector actors.

The traceability or technical tracking of these transactions on public networks does not always result in the effective identification of the participants involved. The effectiveness of regulatory frameworks lies in equipping authorities with technical capabilities and in collaboration with specialised bodies.

9.3. ATTRIBUTION CAPABILITY

As mentioned in the analysis of beneficial ownership, the strengthening of the identification systems set out in Regulation (EU) 2024/1624 helps to bridge the traditional gap between technical traceability and legal attribution. In the BC via crypto-assets, one of the main structural challenges lies in the separation between the traceability of transactions and legal attribution to specific natural or legal persons.

Thus, the requirement for accurate, up-to-date and functionally complete information on the beneficial owner makes it possible to identify links between transactions recorded in decentralised systems—such as the *blockchain* ()—and specific

legal entities, thereby facilitating criminal prosecution in cases involving decentralised cryptocurrencies.

From a legal theory perspective, these mechanisms enhance the ability to identify the true beneficial owner beyond formal structures, which is of essential importance for establishing the subjective element of the offence and for proving knowledge of the illicit origin of the funds. In this way, the European regulatory framework not only strengthens detection capabilities but also has a decisive impact on the ability to attribute legal liability, overcoming one of the main structural shortcomings of the traditional system in the face of new forms of financial crime based on crypto-assets.

It is necessary to prove the existence of suspicious transactions in order to investigate an offence, its link to a specific individual, and knowledge of the illicit origin of the funds. *Blockchain* networks, together with the use of *mixers*, privacy coins or layering structures, complicate this task due to their pseudonymous nature.

The effectiveness of regulatory frameworks depends on their ability to create points of connection between the digital sphere and the legal world through identification mechanisms and reporting obligations.

9.4. ENFORCEMENT AND SANCTIONING CAPACITY

The final element of assessment concerns the power to investigate, impose sanctions and confiscate illicit assets. This dimension has its own specific characteristics within the field of crypto-assets, such as *blockchain*, cross-border transfers and the operational and technical limitations on their confiscation.

The enforcement-based approach, in line with the US model, is characterised by strong investigative and criminal prosecution capabilities. This reactive nature, however, may not be sufficient unless complemented by preventive measures.

Conversely, we observe a strengthening of the EU's supervisory instruments through the creation of the AMLA, with its effectiveness depending on its capacity to coordinate national authorities.

9.5. COMPARATIVE ASSESSMENT OF EFFECTIVENESS

Having examined this criterion, it is evident that neither model is fully effective on its own. The US system has strengths in sanctions but shortcomings in structural prevention. However, the EU model provides a more coherent and preventive framework, although it faces a structural challenge in its implementation.

For regulatory frameworks to be effective—not merely through legislative development—there must be interaction between regulation, technological capabilities, international cooperation and institutional specialisation. The separation between regulatory planning and operational capacity is the main problem, which reinforces the need for a comprehensive and coordinated approach.

The need for economic criminal law to evolve highlights the importance of striking a balance between the effectiveness of investigations and respect for fundamental rights.

10. CONCLUSIONS

The analysis carried out throughout this paper confirms that the effectiveness of regulatory frameworks governing money laundering involving crypto-assets does not depend solely on the level of regulatory development. In this regard, it depends on their actual capacity to prevent, detect, attribute and sanction unlawful conduct, by establishing the conditions to affirm that crypto-assets, cryptocurrencies and virtual assets give rise to unique methods, owing to their pseudonymity and the global and decentralised nature of *blockchain* technology, a phenomenon that is expanding. Criminal organisations deliberately exploit these characteristics, using a combination of sophisticated obfuscation techniques (for example, *smurfing*, crypto-asset wallets, mixing services, privacy coins and *cross-chain* bridges) and opaque corporate structures.¹⁸ This serves to fragment, move and conceal the trail of funds, transactions and mixing services, private coins and bridges – vehicles that are susceptible to illicit exploitation to further obscure their tracks. This combination of technological and corporate elements demonstrates that the illicit use of such environments is not accidental, but strategic and deliberate. *Darknet* markets, however, act as facilitators in such cases, providing venues for anonymous trade.

Based on the analysis carried out, it can be stated that money laundering via crypto-assets is a complex phenomenon. It is characterised by the interaction between the technological infrastructure of the digital ecosystem, the international dimension of operations and the adaptability of criminal organisations. The existence of regulatory frameworks in this regard is not sufficient to guarantee their effectiveness.

The US and the EU highlight very different approaches with regard to their regulatory models. Whilst the US model is based on an *enforcement-led* approach, focusing on investigative capacity and the imposition of sanctions, the EU, by contrast, has developed a more harmonised, preventive system aimed at limiting pseudonymity and strengthening the traceability of transactions. Both models, whether in terms of structural prevention or the practical application of the rules, have clear limitations.

The technical traceability of transactions, as noted, does not always translate into the effective identification of the parties involved, which creates significant evidential challenges and limits the legal attribution of the offence. Consequently, the effectiveness of the regulatory framework cannot be measured solely by the degree of regulatory development. It must be assessed on the basis of its actual capacity to prevent, detect, attribute and sanction unlawful conduct.

The notion that effectiveness depends on the integration of supervisory mechanisms, technical capabilities and international cooperation corroborates this reality. The use of third-party crypto-asset wallets, *mixing* services, privacy coins or markets on the *darknet and deep web* demonstrates that the problem lies not solely in pseudonymity, but in the combination of technological, regulatory and institutional factors.

¹⁸ An opaque company is a legal entity whose structure of ownership, control and beneficial ownership is designed to conceal the identity of the persons who actually own or control the company. Its defining characteristic is a lack of transparency, which prevents the identification of *the ultimate beneficial owner* (UBO).

Institutional efforts to mitigate money laundering through crypto-assets require a comprehensive approach that combines regulation, technology and operational capacity, bridging the gap between regulatory design and its effective implementation. Through this interaction, it becomes easier to strengthen prevention, detection and prosecution in the crypto-asset environment, given that none of the models examined are fully effective on their own.

The main contribution of this study lies in having identified the disconnect between technological traceability and legal attribution as the central issue underpinning the current limitations of the ML prevention system for crypto-assets.

11. FINAL REFLECTIONS

The study of money laundering through crypto-assets highlights a phenomenon that goes beyond the traditional categories of criminal law and financial regulation. Technological developments have brought with them not only opportunities for innovation and new forms of value circulation, but also the potential to create areas of risk that are difficult to reconcile with existing regulatory models.

This comparative study demonstrates that neither an *enforcement-centred* approach nor a predominantly preventive model is sufficient on its own, as it is necessary to rethink conventional mechanisms of legal intervention. The ability of legal systems to adapt to an environment characterised by speed, decentralisation and technical complexity is the new challenge we are forced to face, as is the need for more modern regulations.

In the context of crypto-assets—which reflect a growing tension between technical traceability and legal attribution, and between formal regulation and operational effectiveness—the Central Bank goes beyond the divergences between jurisdictions. The new role of institutions necessitates a re-evaluation of this emerging tension, international cooperation and the integration of technological capabilities as essential elements of the system.

The definitive institutional response to mitigate this phenomenon cannot be solely regulatory, but must also be technological. A comprehensive approach will help bridge the gap between the development of regulations and their efficient implementation, ensuring a coherent legal response to a constantly evolving phenomenon.

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Research Article

THE ROLE OF PSYCHOPATHY IN INTIMATE PARTNER VIOLENCE: A SYSTEMATIC REVIEW

English translation with AI assistance (DeepL)

Ángela Mateos Valle

Faculty of Psychology, University of Granada
Bachelor of Psychology

José María Palomares-Rodríguez

Unit of Legal and Forensic Psychology, a spin-off from the University of Granada
Official Master's Degree in Legal and Forensic Psychology
<https://orcid.org/0000-0002-7357-0587>

Raúl Quevedo-Blasco

Centre for Research into Mind, Brain and Behaviour (CIMCYC)
University of Granada
PhD in Psychology
rquevedo@ugr.es - <https://orcid.org/0000-0001-7350-5374>
<https://scholar.google.com/citations?user=AWjBRVAAAAAJ&hl=es>

Received 10/04/2026

Accepted 08/06/2026

Published 30/06/2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.8946>

Recommended citation: Mateos, Á., Palomares, J. M. et Quevedo, R (2026). The role of psychopathy in intimate partner violence: a systematic review. *Revista Logos Guardia Civil*, 4(2), pp. 253–280
<https://doi.org/10.64217/logosguardiacivil.v4i2.8946>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

THE ROLE OF PSYCHOPATHY IN INTIMATE PARTNER VIOLENCE: A SYSTEMATIC REVIEW

Summary: 1. INTRODUCTION. 2. METHODOLOGY. 3. RESULTS. 3.1. Association between Psychopathy and the Perpetration of Intimate Partner Violence (IPV). 3.2. Differential Relationship between Dimensions of Psychopathy and Types of Violence. 3.3. Link between Psychopathic Traits and the Severity of IPV. 3.4. Differences in Frequency and Recidivism According to Facets of Psychopathy. 4. DISCUSSION. 5. CONCLUSIONS. REFERENCES.

Abstract: Intimate partner violence (IPV) constitutes a public health problem with serious physical, psychological and social consequences. Among the individual factors associated with its perpetration, psychopathy has gained particular significance in recent years. The aim of this study is to update and analyse the published empirical evidence, from 2017 to 2025, on the relationship between psychopathic traits and intimate partner violence. A systematic review was conducted in accordance with the PRISMA guidelines. The search was carried out in the Scopus and Web of Science databases and on the ProQuest platform, applying predefined PICOS criteria. Twenty quantitative studies were included, comprising a sample of 7,706 adults from clinical, community and forensic settings. The results show a significant association between psychopathy and intimate partner violence (IPV), particularly when the dimensions of the construct are analysed separately. Primary psychopathy is mainly linked to instrumental violence and control strategies, whilst secondary psychopathy is associated with impulsive violence and a higher risk of reoffending. Furthermore, distinct profiles of perpetrators were identified based on the predominant psychopathic facets. The clinical and forensic implications arising from these findings are discussed, as are the methodological limitations of the current literature. Taken together, the results support the importance of a dimensional analysis of psychopathy for understanding the heterogeneity of IPV.

Resumen: La violencia de pareja íntima (VPI) constituye un problema de salud pública con graves consecuencias físicas, psicológicas y sociales. Entre los factores individuales asociados a su perpetración, la psicopatía ha adquirido especial relevancia en los últimos años. El presente estudio tiene como objetivo actualizar y analizar la evidencia empírica publicada, desde el año 2017 hasta 2025, sobre la relación entre los rasgos psicopáticos y la violencia de pareja. Se realizó una revisión sistemática siguiendo las directrices PRISMA. La búsqueda se efectuó en las bases de datos Scopus, Web of Science y en la plataforma ProQuest, aplicando criterios PICOS previamente definidos. Se incluyeron 20 estudios cuantitativos con una muestra de 7.706 adultos procedentes de contextos clínicos, comunitarios y forenses. Los resultados muestran una asociación significativa entre psicopatía y VPI, especialmente cuando se analizan de forma diferenciada las dimensiones del constructo. La psicopatía primaria se vincula principalmente con violencia instrumental y estrategias de control, mientras que la psicopatía secundaria se asocia con violencia impulsiva y mayor riesgo de reincidencia. Asimismo, se identifican perfiles diferenciados de agresores en función de las facetas psicopáticas predominantes. Se discuten las implicaciones clínicas y forenses derivadas de estos hallazgos, así como las limitaciones metodológicas de la literatura actual. En conjunto, los resultados respaldan la importancia del análisis dimensional de la psicopatía para comprender la heterogeneidad de la VPI.

Keywords: psychopathological disorders, intimate partner violence, psychopathic dimensions, recidivism, systematic review

Palabras clave: trastornos psicopatológicos, violencia de pareja íntima, dimensiones psicopáticas, reincidencia, revisión sistemática

ABBREVIATIONS

AQ-RSV = *Aggression Questionnaire-Revised Swedish Version*

ASP = *Aggression Subscale of the Physical Aggression Scale*

BIS-11 = *Barratt Impulsiveness Scale-11*

BPD = *Borderline Personality Disorder*

CAB = *Conflict Assessment Battery*

CASP: *Critical Appraisal Skills Programme*

CTS2 = *Conflict Tactics Scale-2*

ENHVdG = *National Survey on Homicide and Gender-Based Violence*

EPA-SSF = *Externalising Personality Assessment Short Form*

ICU = *Inventory of Callous-Unemotional Traits*

IVC = *Inventory of Intimate Partner Violence*

LHA = *Life History of Aggression*

LSRP = *Levenson Self-Report Psychopathy Scale*

MACH-IV = *Machiavellianism Scale-IV*

MCMI-III = *Millon Clinical Multiaxial Inventory-III*

MJS = *Multidimensional Jealousy Scale*

NPI = *Narcissistic Personality Inventory*

PAI-BOR = *Personality Assessment Inventory–Borderline Features Scale*

PCL-R = *Psychopathy Checklist-Revised*

PCL:SV = *Psychopathy Checklist: Screening Version*

PCL:YV = *Psychopathy Checklist: Youth Version*

PICOS: *Population, Intervention, Comparison, Outcome, Study design*

PID-5 = *Personality Inventory for DSM-5*

PPPAS = *Prisoner Perceptions of Prison Adjustment Scale*

PRISMA: *Preferred Reporting Items for Systematic Reviews and Meta-Analyses*

PRQC = *Perceived Relationship Quality Components Inventory*

PPI-SF = *Psychopathic Personality Inventory–Short Form*

RPQ = *Reactive-Proactive Aggression Questionnaire*

RCSI = *Romantic Conflict Style Inventory*

SCR = *Skin Conductance Response*

SCID-II-PQ = *Structured Clinical Interview for DSM-IV Axis II Personality Disorders – Personality Questionnaire*

SCIRS = *Sexual Coercion Inventory–Revised Short*

SOI-R = *Sociosexual Orientation Inventory–Revised*

SRP: SF = *Self-Report Psychopathy Scale–Short Form*

SRP-III = *Self-Report Psychopathy Scale-III*

STAI = *State-Trait Anxiety Inventory*

TLS = *Triangular Love Scale*

TriPM = *Triarchic Psychopathy Measure*

VPI = *Intimate Partner Violence*

VPR = *Recorded Partner Violence*

1. INTRODUCTION.

Intimate partner violence (IPV), also known as domestic violence, refers to behaviours perpetrated by an intimate partner or former partner that may cause physical, sexual or psychological harm (Stewart et al., 2021). These encompass any form of aggression, whether physical, sexual, psychological or controlling (Centres for Disease Control and Prevention, 2024). Some authors have broadened this definition to include other forms of violence such as stalking, financial abuse (Breiding et al., 2015) or cybercontrol (Niehaus et al., 2025). IPV represents a serious global public health problem, contributing to both global morbidity and mortality and violating fundamental human rights (World Health Organisation, 2019). According to existing evidence, it is estimated that more than 25 per cent of women aged between 15 and 49 have experienced an episode of IPV in their lifetime, with a marked increase in its incidence following the COVID-19 pandemic (World Health Organization, 2024).

IPV has traditionally been conceptualised as a violent act committed by men against women. However, recent research has shown that this phenomenon affects all genders, socioeconomic backgrounds, age groups and sexual orientations (Ali et al., 2016; Gerino et al., 2018; Halty et al., 2023; Wasarhaley et al., 2017). In the United States, approximately 41 per cent of women and 26 per cent of men have experienced sexual or physical violence or harassment; and more than 61 million women and 53 million men have been victims of psychological IPV (Centres for Disease Control and Prevention, 2024). According to data from the *Office for National Statistics* (2016), in the United Kingdom, women are twice as likely as men to be victims of some form of IPV. This highlights the need to adopt an inclusive perspective in the study of IPV that allows the experiences of all affected groups to be addressed.

Various community, family and individual risk factors have been linked to the perpetration of IPV, including substance abuse, levels of social support, previous exposure to domestic violence, educational attainment, financial difficulties and child abuse (Robertson et al., 2020). However, in recent years, psychopathic traits have emerged as a particularly relevant variable due to their strong association with various criminal behaviours, acting as significant predictors of violent and antisocial conduct (De Brito et al., 2021; Sica et al., 2023). Psychopathy is considered a severe personality disorder characterised by a combination of affective, interpersonal and behavioural symptoms; it manifests itself through a lack of empathy or remorse, interpersonal manipulation and impulsivity (Burghart and Mier, 2022; De Brito et al., 2021).

In this context, it is particularly important to analyse the internal structure of psychopathy in order to understand its association with this type of violence. Firstly, general psychopathy (also referred to as global or total) refers to the comprehensive construct encompassing the full range of personality deficits and disruptive behaviours. For its empirical study, the bifactorial model proposed by Hare conceives of psychopathy as a multidimensional concept comprising two major factors: Factor 1 (equivalent to primary psychopathy), which encompasses affective and interpersonal aspects, and Factor 2 (comparable to secondary psychopathy), related to an impulsive lifestyle and antisocial behaviours (Hare and Neumann, 2008). Factor 1 encompasses the interpersonal facet, characterised by egocentricity, manipulation and superficial ‘ ‘ charm; and the affective facet, characterised by profound emotional insensitivity and a lack of empathy (Burghart and Mier, 2022; De Brito et al., 2021; Douglas et al., 2015). Factor 2

encompasses the lifestyle facet, characterised by impulsivity and irresponsibility; and the antisocial facet, which includes criminal behaviour and violation of social norms (De Brito et al., 2021; Douglas et al., 2015). In line with this, the triarchic model of psychopathy (Patrick et al., 2009) offers a complementary perspective by breaking psychopathy down into three dimensions: boldness, linked to Factor 1; *meanness*; and *disinhibition*, related to the characteristics of Factor 2. These dimensions have been differentially linked to IPV. Recent studies show that Factor 2 traits are associated with a higher likelihood of violent and repeat offending, whilst those of Factor 1 are linked to violence that is more instrumental, strategic and resistant to treatment (Fernández-Suárez et al., 2018; Robertson et al., 2020). This distinction is essential for understanding the heterogeneous nature of perpetrators in contexts of intimate partner violence and for designing more effective interventions.

The evidence suggests that individuals with psychopathic traits are more likely to perpetrate IPV, have higher rates of reoffending and face greater difficulties in treatment programmes (McDonagh et al., 2024; Robertson et al., 2020). In recent years, research into the relationship between psychopathy and IPV has evolved, incorporating new theoretical and methodological approaches that were not fully addressed in previous reviews such as those by Fernández-Suárez et al. (2018) and Robertson et al. (2020). These studies identified various limitations in the existing literature, such as the heterogeneity of the tools used to assess psychopathy, the indiscriminate inclusion of antisocial or criminal traits in the definition of psychopathy, and the lack of differentiated analyses according to the specific dimensions of psychopathy. In light of these limitations, the aim of this study is to update the empirical evidence available since 2017 and to examine, in a differentiated manner, how the various dimensions of psychopathy are associated with the severity, frequency and types of IPV, thereby complementing the findings of Fernández-Suárez et al. (2018).

The research question guiding this systematic review, formulated in accordance with the PICOS model (Richardson et al., 1995), focuses on determining whether, in adults who have perpetrated physical, psychological or sexual violence against their partners, the presence of specific dimensions of psychopathy—assessed using validated instruments—is differentially associated with the perpetration, frequency, severity or type of intimate partner violence, considering exclusively quantitative empirical studies.

Updating and expanding the available knowledge in this area is crucial for understanding the individual factors involved in intimate partner violence (IPV), as well as for the design of specific and effective interventions. In this regard, analysing the differential role of psychopathic traits in perpetrators can offer relevant insights both for advancing research and for its application in clinical and forensic settings.

2. METHODOLOGY.

This systematic review was conducted in accordance with the methodological guidelines set out in the PRISMA 2020 statement (*Preferred Reporting Items for Systematic Reviews and Meta-Analyses*; Page et al., 2021), with the aim of identifying and analysing empirical studies examining the relationship between psychopathic traits and the perpetration of *intimate partner violence* (IPV). This review aims to update the available evidence from December 2017 to the present day, complementing and updating the previous review by Fernández-Suárez et al. (2018).

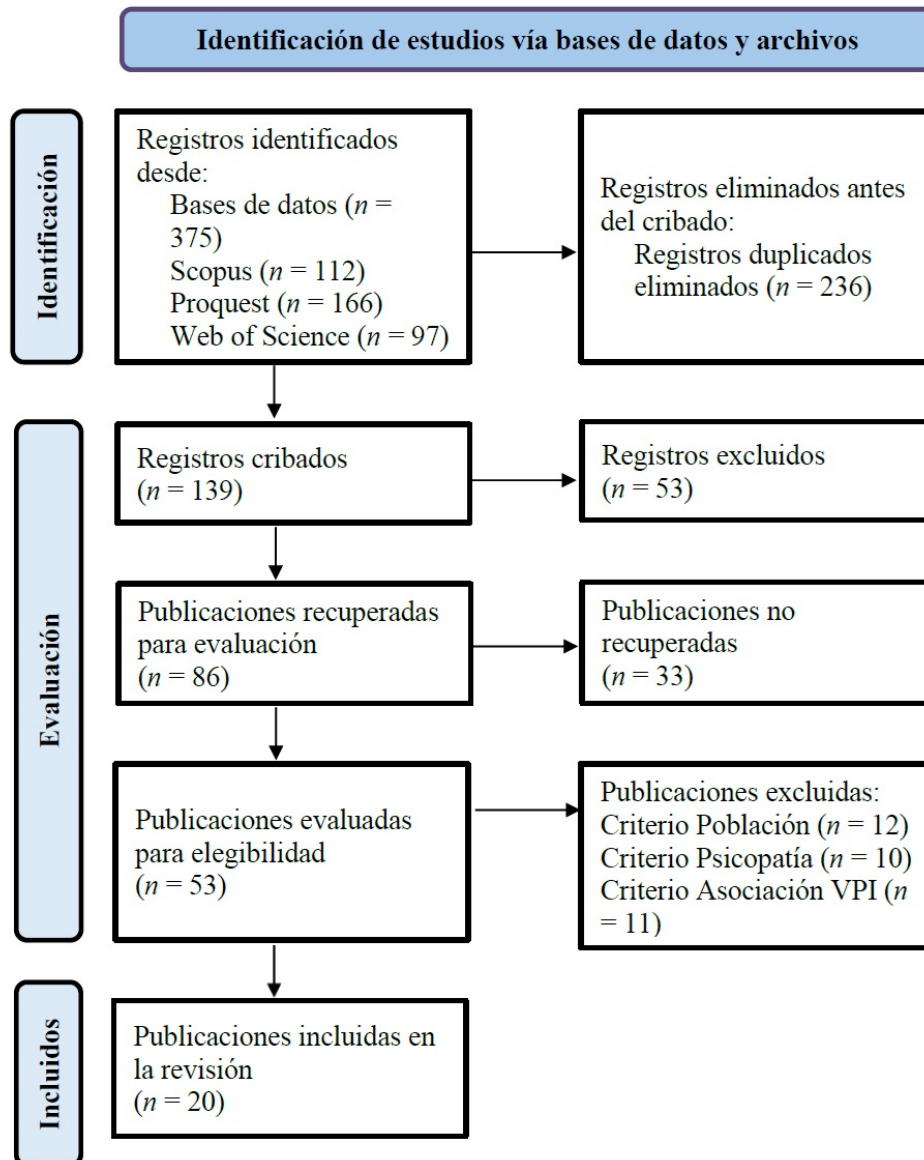
The literature search was conducted in April 2025 across three databases: Scopus, ProQuest and *Web of Science Core Collection*. A combined search strategy was employed, using the following terms across all databases: (*Psychopathy* OR *Psychopathic* OR *Psychopath* OR "*Psychopathic traits*") AND ("*Intimate Partner Violence*" OR "*IPV*" OR "*Partner abuse*" OR "*Partner violence*" OR "*Relationship violence*" OR "*batterers*" OR "*Spousal abuse*" OR "*Spousal* violence*" OR "*Family Violence*" OR "*Domestic Violence*" OR "*Domestic Abuse*"). The results were filtered to include only scientific articles published between December 2017 and April 2025, with no language restrictions.

The following inclusion criteria were established for the selection of studies: quantitative empirical research; samples of adults (men and women) who had perpetrated physical, psychological or sexual violence against their partners; assessment of specific dimensions of psychopathy using validated psychometric instruments such as the *Psychopathy Checklist-Revised* (PCL-R), the *Psychopathy Checklist: Screening Version* (PCL:SV), the *Psychopathic Personality Inventory-Revised* (PPI-R), the *Self-Report Psychopathy Scale* (SRP) or the *Triarchic Psychopathy Measure* (TriPM); and direct analysis of the relationship between psychopathic traits and IPV, taking into account the frequency, severity or type of violence perpetrated. Studies that assessed recidivism as an indirect measure of the frequency of violence were included, as were studies on intimate partner homicide, as these are considered extreme expressions of physical violence. Studies of a qualitative or theoretical nature, reviews, meta-analyses, theses or editorials were excluded, as were studies focusing exclusively on adolescents, victims, minors exposed to violence, children, or clinical or forensic professionals. Furthermore, studies that did not directly assess the association between psychopathic traits and IPV were excluded. Where a single article contained several studies, only those that met the defined inclusion criteria were considered.

The study selection process was carried out in accordance with the phases set out in the PRISMA 2020 model (Page et al., 2021). The detailed flowchart of the process is presented in Figure 1.

Figure 1

Flowchart following the PRISMA 2020 model



To ensure the reliability of the study selection process, a peer review was carried out, in which two independent assessors independently examined the identified records, achieving an excellent level of agreement ($\kappa = .76$). Furthermore, a double-coding procedure was applied to verify the reliability of data extraction, yielding an average reliability index of .84, which indicates a good level of agreement according to conventional standards (Orwin, 1994).

The methodological quality of the studies included in this review was assessed using tools selected according to the research design of each article. Most of the studies were quantitative in nature and employed an associative approach; therefore, the *Critical Appraisal Skills Programme* (CASP, 2024) checklist, in its cohort-specific version, was used for cross- studies. For case-control studies (Brzozowski et al., 2021; Collison and Lynam, 2023; Fox et al., 2022; Halty et al., 2023; Santos-Hermoso et al., 2022), the CASP

version specific to case-control studies (CASP, 2024) was applied. The study by Babcock and Michonski (2019) was assessed using the CASP checklist adapted for experimental studies in psychology (CASP, 2024). Finally, the studies by Shaffer et al. (2021) and Verdugo-Martínez et al. (2025), which employed a longitudinal cohort design, were assessed using *Checklist 3 (Cohort studies from the Scottish Intercollegiate Guidelines Network; SIGN, 2019)* for cohort studies. After applying the respective checklists, it was concluded that all articles had an overall methodological quality ranging from moderate to high; consequently, none were excluded on the basis of this criterion.

3. RESULTS.

The studies included in this review involved 7,706 participants (5,476 men, 2,230 women) across 22 studies involving adults, recruited from forensic centres ($k = 8$), the community ($k = 11$) or a combination of settings ($k = 3$). The studies were conducted in the United States ($k = 7$), the United Kingdom ($k = 2$), Spain ($k = 4$), Portugal ($k = 3$), Sweden, Canada and Italy ($k = 1$ each), or a combination of two countries ($k = 3$). Consequently, 45.8% of the studies included European samples. Table 1 presents a summary of the main characteristics and results of the reviewed studies.

Table 1

Summary of the characteristics of the studies included in the review

Studies (year)*	Sample	Assessment tools	Type of violence	Results
Babcock and Michonski (2019)	$N = 79$ 100% men Country: USA <i>Mean</i> age = 29.9 (19–52) Community sample	PPI-SF (Factors 1 and 2) PAI-BOR CTS2 (physical, psychological and sexual violence) Emotion recognition + SCR	Physical	Secondary psychopathy ($r = .30$) and BPD ($r = .20$) are associated with higher levels of violence; primary psychopathy does not correlate with VPI
Brassard et al. (2022)	$N = 226$ 100% men Country: Canada <i>Mean</i> age = 34.18 (18–69) Clinical/community sample	LSRP (primary and secondary psychopathy) CTS2	Physical, psychological and sexual (distinguished by severity)	Secondary psychopathy predicts higher psychological and sexual VPI scores ($\beta = .26, p < .01$); primary psychopathy is negatively associated with severe physical VPI scores ($\beta = -.19, p < .05$)

Studies (year)*	Sample	Assessment tools	Type of violence	Results
Brazil et al. (2023)	<i>N</i> = 286 participants 50% men 50% women Country: USA and Canada Men: <i>M</i> = 27.2 (18–60) Women: <i>M</i> = 25.8 (18–58) Community sample	SRP: SF SCIRS (sexual coercion) MJS (jealousy)	Sexual (coercion)	Total psychopathy predicts sexual coercion mediated by suspicious jealousy ($\beta = .17$ and $.15$)
Brzozowski et al., 2021	Study 1: <i>N</i> = 443 100% women Country: United Kingdom <i>Mean</i> age = 19.37 (18–45) Community sample	CTS2 LSRP PCL-R STAI MCMI-III	Physical	Only secondary psychopathy was significantly higher among female perpetrators of violence ($U =$ 17,433.5, $p = .005$, $r = -.14$)
	Study 2: <i>N</i> = 92 100% women Country: United Kingdom <i>Mean</i> age = 19.09 (18–28) Community sample	CTS2 TriPM (meanness, disinhibition, audacity) RPQ	Physical	The female aggressors scored higher on the scales for meanness ($U =$ 2249.5, $p = .014$) and boldness ($U =$ 2300.5, $p = .040$), with high levels of both reactive and proactive aggression
Collison and Lynam (2023)	<i>N</i> = 307 54.7% women 45.3% men Country: USA <i>Mean</i> age = 39.4 Community sample	EPA-SSF PID-5 CTS2 RPQ CAB SCID-II-PQ	Physical and psychologica l	Total EPA correlates with physical VPI ($r =$.22), psychological VPI ($r = .23$), and proactive VPI ($r =$.48)
Cunha, Braga et al. (2021)	<i>N</i> = 152 100% men Country: Portugal <i>Mean</i> age = 42.8 (22–70) Forensic evidence and parole	PCL-R (total and 4 subscales) IVC (physical and psychological violence)	Physical and psychologica l	The affective dimension predicts a higher frequency of PVI ($\beta = .239$, p < .05) and is positively correlated with the total IVC score ($\beta =$ - .673, $p = .502$)

Studies (year)*	Sample	Assessment tools	Type of violence	Results
Cunha et al. (2024)	<i>N</i> = 245 100% men Country: Portugal <i>Mean</i> age = 44.14 (22–81) Forensic and community sample	PCL-R IVC	Physical and psychological	Positive correlation between psychopathy and VPI frequency (total, physical and psychological); the interpersonal facet correlates significantly with psychological VPI frequency
Cunha, Pinheiro et al. (2021)	<i>N</i> = 279 100% men; Country: Portugal <i>Mean</i> age = 44.29 (22–81) Forensic and community sample	PCL-R IVC	Recidivism Physical and psychological	The antisocial facet of the PCL-R predicts general recidivism (<i>OR</i> = 1.71) and recidivism in VPI (<i>OR</i> = 2.00)
Fox et al. (2022)	<i>N</i> = 99 (57 VPI, 42 violent non-VPI) 100% men Country: USA <i>Mean</i> age = 32.4 Forensic sample Comparison group	PCL-R Life history interviews Neuropsychological tests	Physical (presence/absence of VPI)	The interpersonal facet (Factor 1) is negatively associated with membership of the VPI group (<i>r</i> ≈ −.27); no differences were found in other facets
Golmaryami et al. (2021)	<i>N</i> = 216 77% women 23% men Country: USA <i>Mean</i> age = 22.93 (18–50) Community sample	ICU CTS2 SOI-R RCSI PRQC	Physical	CU traits predict physical VPI (β = .15, p < .05), dominance (β = .47, p < .001) and lower relational satisfaction (β = −.19)
Gómez et al. (2021)	<i>N</i> = 92 100% men; Country: Spain <i>Mean</i> age = 40.33 (22–61) Forensic sample	PCL-R (regrouped into 6 factors) Structured interviews	Physical (serious assault, attempted or completed homicide)	Factors relating to past criminality, impulsivity and manipulation predict greater involvement in IPV (model R^2 = .53)

Studies (year)*	Sample	Assessment tools	Type of violence	Results
Halty et al. (2023)	<i>N</i> = 76 100% men Country: Spain <i>Mean</i> age = 48 (20–86) Forensic sample	PCL-R (total, factors and facets) ENHVdG	Intimate partner homicide	Murder associated with high scores on Factor I and low scores on Factor II ($p < .0001$, $d = .85$), particularly with high scores on the affective facet ($M =$ 5.17, $SD = 2.68$)
Hoffmann and Verona (2021)	<i>N</i> = 300 57% men 43% women Country: USA <i>Mean</i> age = 34.8 (18–62) Community sample with a history of criminal offences/substan- ce use	PCL:SV (4 subscales) CTS2 (sexual coercion and physical violence)	Sexual (coercion) and physical violence as covariates	Women: the interpersonal facet predicts total and minor coercion ($IRR = 1.50$ and 1.45, respectively), and the antisocial facet predicts severe sexual coercion ($IRR = 2.56$) Men: the interpersonal facet correlates with total coercion ($r =$.19, $p < .05$)
Mejia et al. (2020)	Study 2: <i>N</i> = 125 53% women 47% men Country: USA <i>Mean</i> age = 36.74 Community sample	TriPM TLS CTS2 SOI	Physical and psychologica l	Meanness and disinhibition predict physical ($B = .27$ and .31, respectively) and psychological ($B =$.32 and .35, respectively) VPI
Plouffe et al. (2022)	Study 1: <i>N</i> = 399 (109 men, 290 women) Country: Canada and the US <i>Mean</i> age = 18.74 (18–34) Community sample	SRP-III (Factors 1 and 2) CTS2 NPI MACH-IV ASP	Physical and psychologica l	Psychopathy Factor 2 predicts psychological VPI ($IRR = 1.40$) and higher frequency in both physical ($\beta =$.22, $p < .01$) and psychological ($\beta =$.38, $p < .001$)

Studies (year)*	Sample	Assessment tools	Type of violence	Results
	Study 2: <i>N</i> = 360 (153 men, 207 women) Country: Canada and the USA <i>Mean</i> age = 34.39 (18–73) Community sample	SRP-III CTS2 NPI MACH-IV ASP	Severity of physical violence	Factor 2 predicts greater severity of physical IPV ($\beta = .21, p = .004$)
Santos-Hermoso et al. (2022)	<i>N</i> = 97 100% men Country: Spain <i>Mean</i> age = 46.4 (20–86) Forensic sample	PCL-R (4 dimensions) VPR ENHVdG database	Physical (lethal), psychological, control (financial/work-related)	High scores on Factor 2 and the antisocial facet are associated with a higher probability of VPI, particularly psychological VPI ($p = .043$ and $p = .001$ respectively)
Shaffer et al. (2021)	<i>N</i> = 885 100% men Country: USA Aged 18–25 Forensic sample	PCL: YV (juvenile psychopathy) Annual self-reports	Physical	Factor 2 (impulsivity/antisocial) predicts membership of the high VPI group ($OR = 1.12, p = .013$)
Sica et al. (2023)	<i>N</i> = 1,149 45.8% women 54.2% men Country: Italy <i>Mean</i> age = 31.3 Community sample	TriPM Questionnaire adapted from the tNISVS	Physical and psychological	Disinhibition predicts physical ($\beta = 1.00$) and psychological ($\beta = 1.10$) VPI; Meanness predicts VPI in women ($\beta = 0.64$ for psychological and 0.97 for physical); Audacity is negatively associated with psychological VPI
Sjödin et al. (2018)	<i>N</i> = 171 100% men Country: Sweden <i>Mean</i> age = 21.9 (18–25) Forensic sample (young people in prison)	PCL-R PPPAS AQ-RSV LHA	Physical and psychological	Factor 2 (lifestyle/antisocial) significantly higher in the high-violence cluster ($d = .98$); association with frequency and severity

<i>Studies (year)*</i>	<i>Sample</i>	<i>Assessment tools</i>	<i>Type of violence</i>	<i>Results</i>
Verdugo-Martínez et al. (2025)	<i>N</i> = 1,628 100% men Country: Spain <i>Mean</i> age = 38.99 (20–82) Forensic sample	LSRP (primary and secondary psychopathy) BIS-11 MSI-BPD	Recidivism in VPI (no specific type of violence)	Primary psychopathy increases the risk of recidivism by 2% for every point on the psychopathy scale; impulsivity by 3% (Cox model)

* Studies are listed in alphabetical order by the first author’s surname.

Note: The meanings of the abbreviations appearing in the table can be found in the ‘Abbreviations’ section.

3.1. ASSOCIATION BETWEEN PSYCHOPATHY AND THE PERPETRATION OF IPV.

The results confirm the existence of significant associations between psychopathy and the perpetration of IPV, in line with the findings of Robertson et al. (2020). Fox et al. (2022) found that intimate partner offenders scored significantly higher on total psychopathy ($W = 850.0$, $p < .05$, $r = -.25$) compared with other violent offenders. Empirical evidence points to a significant relationship between total psychopathy scores and the likelihood of exhibiting trajectories of persistent physical violence (Shaffer et al., 2021), as well as correlations with physical and psychological aggression (Collison and Lynam, 2023; Santos-Hermoso et al., 2022).

Furthermore, the study by Cunha et al. (2024) showed that overall psychopathy significantly predicted the frequency of VPI ($\beta = .13$, $p = .041$), replicating previous findings such as those of Cunha, Braga et al. (2021), who demonstrated that total PCL-R scores significantly predicted the overall frequency of IPV, and those of Brazil et al. (2023), who identified a significant association between general psychopathy and higher levels of sexual coercion. It is thus evident that total psychopathy is significantly associated with the perpetration of IPV, although the magnitude of this association may vary depending on the specific facets assessed, the type of violence perpetrated, the gender of the perpetrator and the context of the assessment.

3.2. DIFFERENTIAL RELATIONSHIP BETWEEN THE DIMENSIONS OF PSYCHOPATHY AND TYPES OF VIOLENCE.

The literature shows that global psychopathy does not always accurately predict IPV, and it is necessary to break it down to identify differential effects. Various studies have analysed how specific facets of psychopathy relate to different types of IPV (physical, psychological and sexual). Based on Hare’s model, the evidence consistently shows that Factor 2 is significantly associated with physical and psychological violence ($U = 17.433.5$, $p = .005$, $r = -.14$; $d = .98$) (Brzozowski et al., 2021; Plouffe et al., 2022; Santos-Hermoso et al., 2022; Sjödin et al., 2018). The interpersonal facet shows significant associations with psychological violence and sexual coercion (Fox et al., 2022; Hoffmann and Verona, 2021). Furthermore, the traits of callousness and emotional insensitivity (, considered the affective component of psychopathy, have been significantly associated with physical aggression ($\beta = .15$, $p < .05$) (Golmaryami et al., 2021).

Based on the triarchic model of psychopathy, distinct relationships have also been observed depending on the dimension assessed. Female perpetrators tended to show high levels of meanness ($U = 2249.5$, $p = .014$, $r = -.25$) and boldness ($U = 2300.5$, $p = .040$, $r = -.21$) (Brzozowski et al., 2021; Mejia et al., 2020). Similarly, Collison and Lynam (2023) found that antagonism and disinhibition correlate with psychological aggression ($r = .27$ and $.22$, respectively) and physical aggression ($r = .26$ and $.30$, respectively). Finally, Sica et al. (2023) highlighted that disinhibition was a robust predictor of all types of IPV, whilst audacity was negatively associated with psychological violence ($\beta = -.23$, 95% CI = $-.30$ to $-.04$).

3.3. THE RELATIONSHIP BETWEEN PSYCHOPATHIC TRAITS AND THE SEVERITY OF IPV.

With regard to the severity of IPV, Brassard et al. (2022) found that primary psychopathy predicted the most severe forms of psychological violence ($\beta = .189$, $p = .007$) and sexual violence ($\beta = .192$, $p = .003$), whilst secondary psychopathy was associated solely with minor psychological violence ($\beta = .173$, $p = .024$). According to the results presented by Hoffmann and Verona (2021), in women the antisocial facet is significantly linked to severe sexual coercion, whilst the interpersonal facet significantly predicts minor coercion. In contexts of femicide, the empirical evidence provided by Halty et al. (2023) shows that Factor 1 was significantly higher amongst perpetrators, particularly in its affective component ($M = 5.17$, $SD = 2.68$). Finally, Plouffe et al. (2022) identified Factor 2 as the sole significant predictor of the use of severe violent responses in hypothetical scenarios ($\beta = .21$, $p = .004$).

3.4. DIFFERENCES IN FREQUENCY AND RECIDIVISM ACCORDING TO THE FACETS OF PSYCHOPATHY.

The results regarding the frequency and recidivism of VPI indicate that certain psychopathic dimensions play a significant role. It is observed that both the affective facet ($\beta = .239$, $p < .05$) and the total PCL-R score ($\beta = .229$, $p < .01$) are significant predictors of the overall frequency of violence (Cunha, Braga et al., 2021), whilst the interpersonal facet has been specifically associated with the frequency of psychological violence ($r = .21$, $p < .01$) (Cunha et al., 2024). Furthermore, secondary psychopathy has been linked to the frequency of physical violence (Babcock and Michonski, 2019). These findings are reinforced by research highlighting that young people with high scores on Factor 2 exhibit more frequent and aggressive patterns of violence, thereby predicting trajectories of high and persistent physical violence (OR = 1.12, $p = .013$) (Shaffer et al., 2021; Sjödin et al., 2018).

With regard to recidivism, Cunha, Pinheiro et al. (2021) identified the antisocial facet as the only significant psychopathic predictor of recidivism in VPI (OR = 2.001, $p < .01$). Complementarily, Verdugo-Martínez et al. (2025) showed that primary psychopathy increased the risk of recidivism by 2% for each additional point, whilst impulsivity increased it by 3%.

4. DISCUSSION.

The aim of this review was to analyse the existing literature on the relationship between psychopathy and VPI. Whilst previous systematic reviews have focused on confirming the undeniable general association between the two constructs (Fernández-Suárez et al., 2018; Robertson et al., 2020), the specific contribution of this study lies in the empirical deconstruction of this relationship through an updated dimensional analysis. Moving beyond the view of psychopathy as a unitary construct is critical, as grouping all facets under a single overall score masks the underlying dynamics of aggression.

In this regard, the results presented reinforce the view that not all facets of psychopathy contribute equally, nor are they associated with the same types of violence. Firstly, a consistent relationship was found between the antisocial and affective facets and the perpetration of IPV, including physical, psychological and sexual violence (Brassard et al., 2022; Cunha, Braga et al., 2021; Cunha et al., 2024). Specifically, the affective facet predicts patterns of instrumental violence, whilst the antisocial facet is more closely linked to a type of impulsive violence (Plouffe et al., 2022; Sica et al., 2023; Sjödin et al., 2018). These patterns are consistent with those proposed by other studies that associate Factor 1 with instrumental and planned violence profiles and Factor 2 with general reactive violence and impulsivity (Kennealy et al., 2010; Ojanen and Findley-Van Nostrand, 2019; Swogger et al., 2007), highlighting the importance of distinguishing between the facets of psychopathy to understand the mechanisms underlying IPV. A possible explanation for these differential effects may lie in psychophysiological mechanisms. Babcock and Michonski (2019) demonstrated that primary psychopathy is associated with emotional hypoactivation, favouring instrumental violence, whilst secondary psychopathy is linked to emotional hyperreactivity consistent with reactive violence, partially replicating the findings of Armenti and Babcock (2018) regarding the moderating effect of affective empathy.

Some authors suggest that intimate partner offenders constitute a specific subgroup within violent offenders (Espinosa-Gárate et al., 2025; Suevos-Rodríguez et al., 2026). Fox et al. (2022) found that the interpersonal dimension distinguishes these offenders from others, suggesting a more premeditated form of violence, devoid of emotional or moral inhibitions and stable in nature, which represents a prospective risk factor for IPV. This is consistent with the findings of Halty et al. (2023) on lethal violence and with the specific factorial models proposed by Gómez et al. (2021), who identify variables such as impulsivity, criminal versatility and lack of empathy as robust predictors of severe violence.

With regard to contextual factors, variables such as exposure to interparental violence during childhood or violence against women by a partner (Cunha et al., 2024; Ríos Lechuga et al., 2024), dating violence (Arrojo et al., 2024) or antisocial trajectories during adolescence (Shaffer et al., 2021) emerge as relevant predictors of both psychopathy and IPV in adulthood. Furthermore, variables such as impulsivity, pathological jealousy, sexual consent (Gómez-Pulido et al., 2024) or factors relating to criminal history mediate the relationship between psychopathy and IPV, providing new explanatory pathways (Brazil et al., 2023; Cunha, Pinheiro et al., 2021; Gómez et al., 2021).

Although this was not a specific objective, the findings reveal a gender-differential profile in the relationship between psychopathy and IPV. Whilst female samples have been less extensively studied, it is confirmed that female perpetrators tend to exhibit higher levels of secondary psychopathy, spitefulness and verbal control (Brzozowski et al., 2021; Hoffmann and Verona, 2021), challenging previous stereotypes of female violence as purely reactive (Palumbo et al., 2020; Savard et al., 2015). This highlights the need to include gender as a moderator in future research, as well as to take into account demographic patterns and possible temporal trends (Gracia et al., 2025).

Despite methodological advances compared with previous studies, this review is not without limitations. Firstly, most of the included studies employ cross-sectional designs, which prevent the establishment of clear causal relationships, the tracing of developmental trajectories of violence, or the observation of the development of psychopathic traits. Furthermore, the heterogeneity in the instruments used to assess psychopathy hinders the direct comparison of results and may introduce biases in interpretation when working with different definitions of the dimensions of psychopathy. Added to this are the limitations in measuring violence, as many studies rely exclusively on self-reports from perpetrators, without cross-checking the information with victims; this may introduce social desirability bias and result in an underestimation or distortion of violent behaviours. Another shortcoming is the scarcity of research on sexual and economic violence (see Pineda-Rojas et al., 2025) or psychological coercion as specific forms of IPV, despite their growing relevance. Furthermore, the lack of psychophysiological measures makes it impossible to understand the mechanisms underlying violent behaviour. Finally, there remains an over-representation of male and Western samples, which hinders research into gender differences and limits the generalisability of the findings.

Despite these limitations, the results have significant clinical and forensic implications. The need to assess the facets of psychopathy separately is emphasised, as they can predict different patterns and severities of violence, the risk of reoffending, and even facilitate the identification of offender profiles (Cunha, Pinheiro et al., 2021; Fox et al., 2022; Granda-Vivas and Moral-Jiménez, 2025; Halty et al., 2023). This differentiation is key to designing interventions tailored to the specific profile of the perpetrator, thereby increasing their effectiveness. Treatment programmes should be tailored to incorporate specific strategies for managing impulsivity, emotional dysregulation and the development of interpersonal skills in secondary psychopathy; and to address the dynamics of power, control and manipulation that hinder the therapeutic alliance in primary psychopathy (Häkkinen-Nyholm, 2012; Savard et al., 2011). Furthermore, the findings support the development of preventive programmes targeting adolescents exposed to domestic violence to mitigate the intergenerational perpetuation of this problem. Furthermore, the need to consider moderating variables such as empathy, a history of childhood abuse, jealousy or impulsivity is highlighted, in order to improve the assessment of the risk of reoffending and the effectiveness of intervention programmes. In this regard, long-term follow-up after treatment is necessary, with continuous risk assessment.

Looking ahead to future research, it is essential to address the limitations identified by incorporating longitudinal designs to analyse developmental trajectories. Furthermore, there is a need to include female samples and comparative studies by gender, as well as research into the underlying mechanisms of IPV, including multifactorial explanatory

models that take into account both personality variables and historical and contextual factors. Finally, it would be necessary to incorporate the victims' perspective and employ multi-method approaches to overcome the limitations of self-reporting and move towards more comprehensive explanatory models. These findings not only enrich our understanding of the phenomenon, but also provide new opportunities for the design of more humane, sensitive and effective interventions, as well as assisting in the conduct of expert assessments (e.g., Palomares-Rodríguez et al., 2024).

5. CONCLUSIONS.

This review goes beyond merely confirming a theoretically expected premise, such as the general association between psychopathic traits and IPV. Its true justification and value lie in the practical and forensic implications derived from the clinical differentiation between the dimensions of psychopathy. The findings critically demonstrate that the profile of the aggressor is not homogeneous and, therefore, the approach cannot be standardised.

Adopting a multifactorial approach and distinguishing between proactive, instrumental and coercive violence (characteristic of primary psychopathy or Factor 1) and reactive, impulsive and dysregulated aggression (characteristic of secondary psychopathy or Factor 2) is of particular interest. On the one hand, perpetrators with a predominance of primary psychopathy—linked to coercive control, manipulation and a potential false therapeutic alliance—require strategies focused primarily on strict containment and objective risk management. On the other hand, a profile dominated by secondary psychopathy—characterised by high reactivity and an unstable lifestyle—requires intensive interventions centred on emotional regulation and impulse control.

In short, the dimensional analysis of psychopathy is not merely a theoretical refinement, but the cornerstone for refining risk assessment tools. Furthermore, it will enable us to optimise decision-making within the prison system and design more effective interventions that are tailored to each profile and genuinely aimed at reducing reoffending.

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Research Article

SPANISH CRITICAL INFRASTRUCTURE AS A TARGET FOR TERRORISTS. ANALYSIS OF VULNERABILITIES, REGULATORY FRAMEWORK AND PROTECTION STRATEGIES

English translation with AI assistance (DeepL)

Raúl Moreno Ruiz

Captain, Guardia Civil

Prison Security Specialist (Ministry of the Interior)

Master's Degree in Operational Security Management – Bachelor's Degree in Law

raul.moreno@dgip.mir.es

Received 23/03/2026

Accepted 04/06/2026

Published 30/06/2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.8979>

Recommended citation: Moreno, R. (2026). Spanish critical infrastructure as a target for terrorists. Analysis of vulnerabilities, regulatory framework and protection strategies. *Revista Logos Guardia Civil*, 4(2), pp. 281–302. <https://doi.org/10.64217/logosguardiacivil.v4i2.8979>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

SPANISH CRITICAL INFRASTRUCTURE AS A TARGET FOR TERRORISTS. ANALYSIS OF VULNERABILITIES, REGULATORY FRAMEWORK AND PROTECTION STRATEGIES

Summary: ABBREVIATIONS. 1. INTRODUCTION. 2. METHODOLOGY. 3. CONCEPTUAL FRAMEWORK: WHAT IS CRITICAL INFRASTRUCTURE? 3.1. Sectoral classification. 3.2. National critical infrastructure and European critical infrastructure. 3.3. The concept of interdependence. 4. REGULATORY FRAMEWORK. 4.1. Spanish legislation. 4.2. European legislation. 4.3. International framework. 5. TERRORISM AS A SPECIFIC THREAT TO CRITICAL INFRASTRUCTURE. 5.1. Types of terrorist groups. 5.1.1. Jihadist terrorism. 5.1.2. Hostile state actors and hybrid threats. 5.1.3. Far-right terrorism. 5.2. Relevant historical cases. 5.3. Cyber-terrorism and hybrid attacks as a new frontier. 6. VULNERABILITIES OF SPANISH CRITICAL INFRASTRUCTURE. 6.1. Sectoral analysis. 6.1.1. Energy sector. 6.1.2. Transport sector. 6.1.3. ICT sector. 6.2. Risks associated with digitalisation and connectivity. 6.3. Public-private coordination. 7. THE SPANISH CRITICAL INFRASTRUCTURE PROTECTION SYSTEM. 7.1. Institutional architecture. 7.2. Counter-terrorism alert levels. 7.3. International cooperation. 8. CHALLENGES AND PROPOSALS FOR IMPROVEMENT. 8.1. Transposition of the NIS Directive. 8.2. Industrial cybersecurity. 8.3. Public-private coordination. 8.4. Training and drills. 8.5. Predictive intelligence. 9. CONCLUSIONS. 10. BIBLIOGRAPHICAL REFERENCES. 11. REGULATIONS.

Abstract: The vulnerability of Spain's critical infrastructure to the terrorist threat from a legal, institutional and operational perspective. The study examines the existing regulatory framework — through Law 8/2011 and Directive (EU) 2022/2557 on the resilience of critical entities (CER) — focuses on the key sectors most vulnerable to risk, and assesses the institutional architecture of the Spanish protection system. Using a methodology based on documentary analysis and a review of specialist literature, the study finds that, despite a robust critical infrastructure protection (CIP) system in Spain, there are significant gaps in industrial cybersecurity, inter-administrative coordination and the transposition of European directives, which require urgent attention. The main threats for the 2025–2030 period are identified as jihadist terrorism, hostile state actors and cyberterrorism.

Resumen: La vulnerabilidad de las infraestructuras críticas españolas ante la amenaza terrorista desde una perspectiva legal, institucional y operativa. El estudio considera el marco normativo existente —a través de la Ley 8/2011 y la Directiva (UE) 2022/2557 sobre la resiliencia de las entidades críticas (CER), se centra en los sectores clave más vulnerables al riesgo y evalúa la arquitectura institucional del sistema de protección español. A través de una metodología de análisis documental y la revisión de literatura especializada, se encuentra que a pesar de un sólido sistema de protección para infraestructuras críticas (PIC) en España, existen brechas significativas en la ciberseguridad industrial, la coordinación interadministrativa y la transposición de directivas europeas, que requieren atención urgente. Las principales amenazas para el horizonte 2025-2030 se identifican como el terrorismo yihadista, actores estatales hostiles y el ciberterrorismo.

Keywords: critical infrastructure; terrorism; national security; cyberterrorism; hybrid threat.

Palabras clave: infraestructuras críticas; terrorismo; seguridad nacional; ciberterrorismo; amenaza híbrida.

ABBREVIATIONS

CCN-CERT: National Cryptology Centre – Computer Emergency Response Team

CITCO: Centre for Intelligence against Terrorism and Organised Crime

CNI: National Intelligence Centre

CNPIC: National Centre for the Protection of Critical Infrastructure

DSN: Department of National Security

ENISA: European Union Agency for Cybersecurity

ICS: Industrial Control Systems

ICE: European Critical Infrastructure

ICN: National Critical Infrastructure

IoT: Internet of Things

NAA: Terrorist Threat Level

NIS: Network and Information Security

PES: Sectoral Strategic Plan

PIC: Critical Infrastructure Protection

PNPIC: National Plan for the Protection of Critical Infrastructure

PSO: Operator Security Plan

SCADA: Supervisory Control and Data Acquisition

TE-SAT: EU Terrorism Situation and Trend Report

ENCOT: National Counter-Terrorism Strategy

1. INTRODUCTION

Terrorism has undergone a radical transformation over the years, both in its nature and in the objectives it pursues. Terrorist attacks in the 20th century focused predominantly on a small percentage of people: political leaders, military personnel or civilians in public facilities. However, today, the current trend is an increase in the number of attacks on vital infrastructure and systems that enable the development and functioning of a modern state. This strategic shift is no accident; it follows a logic of maximising impact that terrorist and militant groups have refined over time: disrupting the material foundations of society generates a far greater destabilising and psychological impact than that of conventional attacks, which are high-profile but have little structural impact. This comes as no surprise to Spain.

On 11 March 2004, when several commuter trains operating on the Renfe network in Madrid were destroyed, killing 193 people and injuring more than 2,000, this constituted the most devastating terrorist attack on Spain's transport infrastructure. At that time, the critical infrastructure protection system was in its infancy, but the event catalysed a legislative and organisational process that resulted in the adoption of Law 8/2011 of 28 April, the first comprehensive regulatory framework at national level. To date, the experience gained has enabled the development of a protection system that now faces qualitative challenges arising from the very challenges that led to its creation.

By the first half of the 2020s, the threat landscape in Europe had changed considerably. The ongoing Russian aggression against Ukraine since February 2022 demonstrated the vulnerability of European energy infrastructure to hostile state actors through the sabotage of the Nord Stream gas pipelines in September 2022. And jihadist terrorism, particularly linked to Daesh and Al-Qaeda, remains a persistent threat across Europe, with active residual cells and a worrying capacity for online radicalisation to fuel the phenomenon of the so-called 'lone wolf'. Furthermore, right-wing radicalism has seen a worrying resurgence within many European Union nations, broadening the scope of conventional forms of terrorist threat beyond mere calls for jihadism.

This article aims to explore, from a multidisciplinary and academic perspective, the threat that terrorist elements pose to Spain's critical infrastructure. To this end, the study will examine the relevant regulatory frameworks at national, European and international levels in Spain; identify the most vulnerable strategic sectors; scrutinise the institutional framework of the Spanish Critical Infrastructure Protection (CIP) system; and propose improvement mechanisms designed to enhance the system's resilience for the period 2025 to 2030.

The present study adopts an integrative approach that combines legal analysis with the perspectives of security studies and criminology, on the basis that the complexities of the phenomenon require a multifaceted and complementary approach. The guiding hypothesis underpinning the research is expressed as follows: Spain has a robust regulatory system and an institutional framework covering critical infrastructure in line with European standards, but it also has structural vulnerabilities, particularly with regard to industrial cybersecurity and public-private partnerships, which terrorist actors could exploit in a context of growing and diversifying threats.

In line with this hypothesis, the paper will demonstrate that the response to this threat requires a new approach, involving not only reforming the current regulatory framework for critical infrastructure, but also rethinking governance models and the partnership between the public sector and private operators of critical infrastructure. This specific methodology is based on a documentary analysis of primary sources — legislation, official reports, strategic documents — and secondary sources — specialist academic literature, reports from international organisations — covering a reference period from the adoption of Law 8/2011 to 2025.

2. METHODOLOGY

The research adopts a qualitative design based on systematic documentary analysis, an approach suited to the study of legal and institutional phenomena in which an understanding of the regulatory and conceptual framework is a prerequisite for any empirical assessment. The gap that this study aims to fill lies in the absence of research that coherently integrates the three dimensions – legal, institutional and operational – of the Spanish CIP system in the face of the terrorist threat, incorporating the most recent European regulatory developments (the CER Directive and NIS2, both from 2022) and the new National Counter-Terrorism Strategy of 2023.

The primary sources comprise: national legislation (Law 8/2011, Royal Decree 704/2011, Organic Law 4/2015, Royal Decree 311/2022 and Royal Decree 1150/2021); European regulations (CERT Directive 2022/2557, NIS2 Directive 2022/2555 and Directive 2008/114/EC); international instruments (UN Security Council Resolutions 1373/2001 and 2341/2017; CETS No. 196); and official strategic documents (National Security Strategy 2021, ENCOT 2023, annual reports of the CNPIC). Secondary sources include specialist academic literature on national security, critical infrastructure protection and terrorism, retrieved through a systematic search of the Scopus, Web of Science and Google Scholar databases, using the following keywords: ‘critical infrastructure protection’, ‘terrorism’, ‘hybrid threats’, ‘CIP Spain’, ‘infraestructuras críticas’, ‘terrorismo’ and ‘resiliencia’; as well as reports from international organisations (Europol TE-SAT, ENISA Threat Landscape). The following inclusion criteria were applied: publications in Spanish or English, covering the period 2001–2025, and direct relevance to the subject of the study. Works of a purely descriptive nature offering no analytical or propositional contribution were excluded, as were unverifiable sources or those with restricted dissemination.

3. CONCEPTUAL FRAMEWORK: WHAT IS CRITICAL INFRASTRUCTURE?

The concept of ‘critical infrastructure’ is not unambiguous in academia or in regulation. As modern societies have become increasingly dependent on certain critical systems or services, its definition has evolved. For the purposes of this paper, within the scope and parameters of Law 8/2011, critical infrastructure refers to information and communication technology facilities, networks, services and equipment whose disruption or destruction would have a significant impact on the health, safety or economic well-being of citizens, or on the effective functioning of State institutions and public administrations. This definition reflects a perspective on potential impact that focuses not so much on the nature of the infrastructure, but rather on the consequences of its failure or destruction for society as a whole.

3.1. SECTORAL CLASSIFICATION

Article 2 of Royal Decree 704/2011 identifies twelve strategic sectors subject to protection under the Spanish PIC system: administration, water, food, energy, space, the nuclear industry, the chemical industry, research facilities, health, the financial and tax systems, information and communication technologies (ICT), and transport. This categorisation is consistent with the description given in Directive (EU) 2022/2557 (the CER Directive), which expands the set of sectors to eleven and explicitly defines digital infrastructure, space and public administration as specific categories.

The relative importance of sectors in terms of security varies according to different types of threats and the potential consequences of a disruption, but essentially, the energy, transport and ICT sectors in Spain are relatively concentrated in terms of their key assets. Based on data provided by the CNPIC, Spain has more than 3,700 designated critical operators spread across the twelve strategic sectors, with the ICT and energy sectors accounting for the largest number of operators in absolute terms.

3.2. NATIONAL CRITICAL INFRASTRUCTURE AND EUROPEAN CRITICAL INFRASTRUCTURE

The distinction between national critical infrastructure (NCI) and European critical infrastructure (ECI) is particularly relevant in the context of EU legislation. An infrastructure is designated as ECI if its disruption or destruction would seriously affect two or more Member States, or the EU as a whole. Directive 2008/114/EC was the first to establish this concept; it initially restricted its scope to the energy and transport sectors. The 2022 CER Directive broadens the scope of the concept and strengthens the means for identifying and protecting such infrastructure. Spain has designated several such facilities as ECI, mainly in the energy and transport sectors, given the country's strategic role as an energy and communications corridor between Europe and North Africa – a geopolitical position which, whilst granting Spain a central role in the European security architecture, increases its exposure to certain transnational threats.

3.3. THE CONCEPT OF INTERDEPENDENCE

A central theme in the analysis of critical infrastructure is the issue of interdependence. Today's critical systems do not operate in isolation; they are heavily reliant on other systems on which their operation depends. The electricity industry relies on telecommunications infrastructure for its automated management; rail transport is powered by electricity; and the financial sector depends on ICT for virtually all its operations. Such interdependence creates what the specialist literature refers to as 'cascading effects': the failure of one infrastructure can cause the successive failure of others, with potentially devastating consequences for the entire system (Rinaldi et al., 2001).

The increasing digitalisation of critical systems — linked to IoT technologies, cloud-based data platforms and SCADA industrial control systems — has amplified these interdependencies, giving rise to new vectors of vulnerability that more sophisticated terrorist groups are beginning to exploit systematically. This interdependence is not merely a technical or cyber issue; it involves geographical aspects — cross-border infrastructure such as electricity grids or gas pipelines — cyber aspects — shared or

interconnected control systems — and organisational aspects — operators managing assets across numerous sectors.

The multifaceted nature of such interdependence makes the analysis of critical infrastructure risk an immensely complex process that cannot be reduced to examining each piece of infrastructure in isolation.

4. REGULATORY FRAMEWORK

The protection of critical infrastructure against terrorist threats and other deliberate threats is structured through a complex, multi-level regulatory framework, comprising national, European and international provisions. This regulatory architecture also reflects the growing understanding that the threat to critical infrastructure transcends national borders and requires coordinated responses at different levels of governance. Each of these levels is discussed in subsequent sections, with a focus on the latest regulatory developments and the challenges posed by their implementation.

4.1. SPANISH LEGISLATION

Law 8/2011 of 28 April forms the basis of Spanish national legislation on the protection of critical infrastructure. This Act transposes Directive 2008/114/EC into Spanish law and establishes the Critical Infrastructure Protection System, a framework based on three fundamental principles: the National Centre for the Protection of Critical Infrastructure (CNPIC), the National Catalogue of Strategic Infrastructure and protection planning. It distinguishes between the National Plan for the Protection of Critical Infrastructure (PNPIC), the Sectoral Strategic Plans (PES) and the Operator Security Plans (PSO) within Spain's legal framework and provides a 'tiered, high-level' plan that is developed from the general to the specific level. The PIC Act is implemented through Royal Decree 704/2011 of 20 May, which sets out the provisions for the protection of critical infrastructure.

This regulation sets out the criteria for the designation of critical operators, the minimum content of Operator Security Plans and Specific Protection Plans, and the responsibilities regarding the reporting of incidents. Of particular relevance is Article 24, which establishes the inspection and supervision regime for critical operators, thereby enabling the CNPIC to verify compliance with security obligations. Several authors have highlighted how this compliance oversight has, in practice, been identified as a weakness in the system, given the large number of operators and the limited resources available for operational management. The 2021 National Security Strategy, as authorised by Royal Decree 1150/2021, identifies terrorism as one of the key risks of concern and threats to Spain, and regards the protection of critical infrastructure as a key objective of the national security system, within the holistic approach to security that characterises the Spanish system.

In line with this, the 2023 National Counter-Terrorism Strategy (ENCOT) — which updates and replaces the 2019 version — structures the State's counter-terrorism response around four pillars of action (prevent, protect, pursue and respond) and places the protection of critical infrastructure at the heart of the 'protect' pillar. The 2023 ENCOT introduces a major conceptual innovation by institutionally acknowledging that absolute invulnerability is unattainable, shifting the strategic focus from mere static protection

towards comprehensive resilience, understood as the capacity to absorb the impact of an incident, ensure the continuity of essential services and restore normality swiftly. This vision is fully aligned with the approach of the 2022 CER Directive, making ENCOT 2023 a doctrinal bridge between the national counter-terrorism strategy and the European framework for critical entities. Furthermore, ENCOT 2023 highlights the shift in the threat towards so-called ‘soft targets’ — places of worship, mass gatherings and public spaces — which, whilst not constituting critical infrastructure in the technical sense, are crucial to public safety; a reality that directly challenges the scope of application of the future transposition legislation. In terms of cybersecurity, the National Security Framework, approved by Royal Decree 311/2022, sets out minimum requirements for the information systems of public administrations and their essential service operators, thereby complementing the PIC regime with regard to the information assets of critical operators.

Organic Law 4/2015 of 30 March on the Protection of Public Safety introduces significant measures for controlling access to sensitive facilities and monitoring high-risk environments, complementing the physical protection system provided by the PIC regulations.

4.2. EUROPEAN LEGISLATION

The European Union’s regulatory framework has been thoroughly revised following the adoption of Directive (EU) 2022/2557 (14 December 2022) on the resilience of critical entities (the CER Directive). This regulation replaces Directive 2008/114/EC and establishes a reconceptualised framework that focuses on the comprehensive resilience of entities operating infrastructure, rather than solely on the physical provision and protection of systems; resilience is defined as their ability to prevent incidents, withstand their impact, respond to the consequences and recover swiftly. Key developments in the CER Directive include the expansion of the sectoral scope from two sectors to eleven, the need for strengthened requirements on risk analysis and incident reporting, and the establishment of an EU mechanism to support Member States in identifying critical entities—those of particular European significance.

The deadline for transposing the CER Directive was 17 October 2024. Spain had not completed this process by that date, leaving it in a state of non-compliance which could lead to infringement proceedings by the European Commission if the situation persists. This delay stems from the technical and political complexity involved in transposition, which entails amending or repealing Law 8/2011 and its implementing regulations, as well as revising the National Catalogue of Strategic Infrastructures to bring it into line with the new sectors covered and to reform the mechanisms for interministerial and intersectoral cooperation.

The NIS2 Directive (Directive (EU) 2022/2555), which was adopted on the same day as the CER Directive, revises and repeals the 2016 NIS Directive and sets out measures to maintain a high common level of cybersecurity across the EU. It greatly broadens the scope of cybersecurity regulations, moving from ‘operators of essential services’ to ‘essential and important entities’, and entails strengthened responsibilities based on risk management, incident reporting and cross-border cooperation.

The interaction between the CER Directive and NIS2 is one of the most complex aspects of this new European framework: both directives apply to many of the same entities, yet from different perspectives – namely (1) comprehensive physical resilience and (2) cybersecurity – and therefore require a coordinated approach during transposition to avoid overlaps and contradictions.

4.3. INTERNATIONAL FRAMEWORK

On the international stage, United Nations Security Council Resolution 1373 (2001) sets out the obligations of all States in the fight against terrorism, including requirements to implement measures to prevent the use of their territory for terrorist activities and to exchange information with other States.

Security Council Resolution 2341 (2017) is the Council's first instrument specifically dedicated to the protection of critical infrastructure against terrorism, urging States to develop protective measures proportionate to the identified risk and promoting international cooperation in relation to the cyber dimension of the threat. The Convention on the Prevention of Terrorism (CETS No. 196), in force since 2007, and its 2015 Additional Protocol establish obligations regarding criminalisation and judicial cooperation that complement the UN framework.

5. TERRORISM AS A SPECIFIC THREAT TO CRITICAL INFRASTRUCTURE

5.1. TYPES OF TERRORIST GROUPS TARGETING CRITICAL INFRASTRUCTURE

Terrorism therefore stands as one of the most complex and multifaceted threats to the critical infrastructure of contemporary society. Unlike other threats such as natural disasters or accidental technological failures, terrorism is characterised by malicious intent and strategic rationality, meaning that terrorists adapt and refine their tactics, techniques and procedures in response to the protective measures deployed. An effective protective response therefore requires an equally dynamic and proactive reaction to the adaptive nature of the threat, which cannot be limited to static physical and logical security measures.

5.1.1. Jihadist terrorism

Jihadist-inspired terrorism, particularly associated with groups such as Daesh and Al-Qaeda, has repeatedly expressed a strategic interest in attacking key infrastructure in Western countries. In pamphlets published, for example, in **Dabiq** or **Inspire**, both groups have included explicit guidance on attacking power stations, drinking water sources and transport facilities in Europe and North America, paying particular attention to the knock-on effects of disrupting interconnected infrastructure.

In Spain, more specifically, the attack (in August 2017) on La Rambla in Barcelona and Cambrils by a Daesh cell demonstrated how the jihadist threat remained present at a national level, although, on this occasion, its aim was to inflict casualties in public spaces rather than to attack a specific piece of infrastructure. According to Europol's TE-SAT 2024 report, jihadist terrorism remains the most serious threat to the European Union in terms of the number of operations, arrests and attacks carried out or foiled.

In this context, Spain finds itself in a particularly vulnerable position: its status as a transit country between North Africa and Europe, the migratory flows crossing its southern borders, and the presence of communities with documented levels of radicalisation. The ‘lone wolf’ model, in which an individual acts autonomously after being radicalised via digital channels, poses unique challenges for early detection and currently represents the most likely profile for jihadist-inspired terrorist attacks on Spanish soil.

5.1.2. Hostile state actors and hybrid threats

This category of hostile state actors warrants special consideration within the context of threats to critical infrastructure. The body of evidence gathered since 2014 suggests that Russia has developed and deployed advanced capabilities to sabotage critical infrastructure in Europe, through direct cyber means (including attacks by the Sandworm group against the Ukrainian power grid in 2015 and 2016) and through covert physical sabotage activities.

The most spectacular example is the sabotage of the Nord Stream gas pipelines in September 2022, which cut off the supply of natural gas to Europe from Russia and demonstrates the willingness of state actors to attack Europe’s infrastructure with the intention of using it as a geopolitical lever.

The concept of a ‘hybrid threat’ refers to the combination of a range of traditional and unconventional tools, including disinformation, cyber-attacks, physical sabotage and economic pressure, to create an integrated ‘hybrid threat strategy’ designed to weaken a state without crossing the threshold into conventional armed conflict. This type of threat – in which Russia has emerged as the most active actor in Europe in recent years – poses a particular challenge for systems whose primary objective is to protect critical infrastructure, where the underlying threat is typically addressed as a series of individual traditional threats. Iran and North Korea, which are also viewed by experts as cyber attackers targeting critical infrastructure, have demonstrated cyberattack capabilities against critical infrastructure, although the actual danger they pose to Spanish territory is now considered less substantial than the Russian threat.

5.1.3. Far-right terrorism

Although far-right terrorism does not generally focus on attacking infrastructure in the same way as jihadist terrorism, it has been linked to several serious incidents in Europe in recent years. The attacks in Utøya (Norway, 2011), Hanau (Germany, 2020) and Christchurch (New Zealand, 2019) have highlighted the lethal capacity of such actors.

In the field of critical infrastructure, some far-right extremist cells have shown an interest in targeting communications, energy or transport infrastructure as a means of destabilising society and bringing about a collapse of the established order – a process these groups refer to as ‘acceleration’. This phenomenon is recognised as an emerging threat by the EU Strategy for the Security Union 2020–2025, which maintains that, in the field of intelligence as well as in regulatory frameworks, it must be treated and addressed with the same seriousness as jihadist terrorism.

5.2. RELEVANT HISTORICAL CASES

The attack of 11 March 2004 in Madrid remains, without doubt, the benchmark case in Spain. During the morning rush hour, the coordinated detonation of ten explosive devices on commuter trains exploited the inherent vulnerabilities of mass transit systems; these systems are open, passengers are concentrated, and it is difficult to implement a comprehensive security infrastructure without sacrificing the efficiency of the service. The attack resulted in 193 deaths and over 2,000 injuries, and had a major economic and social impact (Reinares, 2014). Not only was it immediately effective: 11 March exposed the rail transport infrastructure as having structural vulnerabilities that had not been sufficiently taken into account in the security plans of the time. In the European context, the 2016 attack in Brussels, which involved the detonation of explosive devices at Zaventem International Airport and within the city's metro system, demonstrates how terrorists are capable of striking two or more transport infrastructure hubs simultaneously, maximising the psychological and media impact.

An international airport is considered a deliberate target: this type of airport brings together large numbers of people of different nationalities in a single location, which attracts significant international media attention; indeed, disruption to such an airport creates economic and reputational consequences that are disproportionate to the material cost of the attack. In the Spanish context, a series of acts of sabotage against fibre-optic infrastructure reported in several autonomous communities in 2024 highlighted the vulnerability of telecommunications networks to deliberate acts of destruction; demonstrating that the disruption of vital infrastructure can be carried out using relatively simple technical methods where assets lack adequate physical protection.

5.3. CYBERTERRORISM AND HYBRID ATTACKS AS THE NEW FRONTIER

Cyberterrorism, defined as the deliberate use of computer capabilities (for intimidation or political pressure) to wreak havoc on critical infrastructure, is the newest – and possibly most disruptive – aspect of terrorist attacks against high-value infrastructure. And unlike traditional terrorism, cyber-attacks can be carried out remotely, in some cases without being traceable, and from various locations, making attribution and control a far more complex challenge for the authorities.

The interconnection and convergence of cyberspace and industrial control systems has led to what some call the 'fifth domain of warfare' (Clarke and Knake, 2010), where terrorists are able to inflict real physical damage on critical infrastructure without having to be in close proximity to it. The US attack on the Colonial Pipeline (May 2021) using ransomware highlighted just how vulnerable critical energy infrastructure is to such cyberattacks and how quickly such attacks can lead to supply shortages and public alarm.

In Europe, the cyber-attacks on the Ukrainian electricity company Ukrenergo in 2015 and 2016, carried out by individuals associated with the Russian state, left large areas of Ukraine without electricity for several hours, a harbinger that attacks on energy infrastructure in Europe could emerge at a time of growing geopolitical conflict.

According to the ENISA Threat Landscape 2024 survey, the cyber threat to industrial infrastructure in critical sectors in Europe rose by 78% between 2022 and 2023, demonstrating the growing trend in this type of attack.

6. VULNERABILITIES OF SPANISH CRITICAL INFRASTRUCTURE

In an effort to analyse the vulnerabilities of Spain's critical infrastructure system in the face of the terrorist threat, the approach must be both sector-specific — taking into account the specific characteristics of each strategic sector — and cross-cutting, identifying the structural weaknesses common to the entire system. The sections below first address the specific vulnerabilities of the sectors at greatest risk, followed by an examination of cross-cutting vulnerability factors.

6.1. SECTORAL ANALYSIS OF VULNERABILITIES

6.1.1. Energy Sector

The energy sector represents one of the priority targets for sophisticated terrorist groups due to the magnitude of the potential impact of a successful attack. Spain operates a high-voltage electricity grid, which connects the mainland system with the Canary Islands and the Balearic Islands, and with France and Portugal via the Pyrenean interconnectors, and is operated by Red Eléctrica de España (REE). The concentration of critical assets at certain network nodes — power stations, load dispatch centres and high-voltage transformers — and the fact that replacing them following severe damage takes months, creates particular vulnerabilities to coordinated physical or cyber attacks. Furthermore, the existing and operational nuclear power stations in Spain — Almaraz, Ascó, Cofrentes, amongst others — require protection at various levels due to the potentially catastrophic effects of incidents at these sites, but their physical and radiological security is monitored at all times by the Nuclear Safety Council (CSN).

6.1.2. Transport Sector

Spain has one of the most extensive high-speed rail networks in the world, with over 3,900 kilometres of operational high-speed lines. This infrastructure, with passenger concentrations at major stations — Atocha, Sants, Santa Justa — as well as certain elements that make it vulnerable, such as tunnels, viaducts and signalling systems, represents prime targets for terrorists to exploit. Adolfo Suárez Madrid-Barajas Airport, the fourth busiest airport in Europe with over 62 million passengers a year, and the Port of Algeciras, Spain's main container port and a gateway for goods from North Africa, present high-risk characteristics that require particularly rigorous security measures.

6.1.3. ICT Sector

Spain's digital infrastructure has grown rapidly in recent years due to the digitalisation of the economy, as well as the roll-out of 5G and the adoption of cloud computing infrastructure. The submarine communications cables connecting Spain to the rest of the world — including those linking the Iberian Peninsula to the Canary Islands and the Americas — have also become a major vulnerability, as evidenced by the incidents recorded in the Red Sea and the Baltic Sea between 2023 and 2025. These cables carry the bulk of international data and voice traffic, and their deliberate damage could lead to a loss of communication capacity on a continental scale. Given the geographical dispersion of ICT assets and the rapid evolution of both technologies and attack vectors, the CNPIC noted that the ICT sector presents some of the most pressing challenges in terms of protection.

6.2. RISKS ARISING FROM DIGITALISATION AND CONNECTIVITY

The adoption of information technology (IT) and operational technology (OT) in industrial contexts is one of the most significant—and most worrying from a security perspective—trends of the last ten years. The so-called ‘air gap’ between industrial control systems (ICS/SCADA) and corporate networks and the internet has led to the gradual integration of IT systems into digital environments to improve operational efficiency and the management of remote repairs.

This connectivity creates new attack surfaces that can be exploited by terrorist groups with advanced cyber capabilities. The number of IoT devices installed as key components of critical systems—such as temperature sensors, security cameras and access control systems—exacerbates the threat by introducing components that are not inherently secure when integrated into security-critical operating systems. The absence of security updates for embedded devices, the existence of outdated industrial communication protocols lacking cryptographic capabilities, and the shortage of professional cybersecurity experts within the industrial sector severely increase this level of vulnerability.

6.3. PUBLIC–PRIVATE COORDINATION: THE CHALLENGE AHEAD

A systemic characteristic of Spain’s critical infrastructure system that has created specific vulnerabilities is that the majority of critical operators are privately owned. Of the approximately 3,700 designated operators in Spain, the majority are private or mixed-ownership entities, which presents an ongoing challenge given that private interests prioritise profit and efficiency over national security.

In this regard, and in the context of these obligations, combined with the provisions of the Critical Infrastructure Act (PIC), critical operators must draw up Operator Security Plans and Specific Protection Plans for their operations; however, the investment made in these schemes often exceeds the minimum compliance requirements of the PIC Act, at least where there are very few economic reasons to commit such a sum of capital. The exchange of information and mutual trust between the public and private sectors are highlighted in the specialist literature as critical components for the effectiveness of the CIP system (Moteff, 2014).

In this regard, Spain has established mechanisms for information exchange and early-warning systems through the CNPIC; however, the full integration of private operators into the threat intelligence system remains a critical area where progress must not be limited. The information asymmetry between the competent authorities, who have access to classified threat intelligence, and private operators, who require this knowledge to gauge their security investments, is one of the most enduring barriers to forging effective public–private cooperation in CIP.

7. THE SPANISH CRITICAL INFRASTRUCTURE PROTECTION SYSTEM

7.1. INSTITUTIONAL ARCHITECTURE

Spain’s Critical Infrastructure Protection System is based on a complex institutional structure linking institutions of various sizes and specialisms. The CNPIC, within the

State Secretariat for Security of the Ministry of the Interior, is responsible for developing, coordinating and supervising the system. It is responsible for regulating the National Catalogue of Strategic Infrastructure – the country's classified inventory of critical infrastructure – planning coordinated protection schemes and monitoring compliance by critical operators.

The CNPIC benefits from the ongoing cooperation of the Centre for Intelligence against Terrorism and Organised Crime (CITCO), the institution responsible for providing counter-terrorism intelligence and information on Spain, in order to deliver risk-based protection measures capable of countering such threats. The National Intelligence Centre (CNI), through the National Cryptology Centre (CCN) and its incident response team, CCN-CERT, is the competent body for cybersecurity for public administrations and the information systems of essential service operators.

The inherent complementarity between the roles of the CNPIC (focused on physical protection and security planning) and the CCN-CERT (focused on cybersecurity) is key to the effective protection of critical infrastructure against a threat that can manifest itself in both physical and cyber forms. Recent operational coordination between the two organisations has evolved significantly, leading them to join forces to set up working groups and develop protocols for sharing information on incidents of a hybrid nature.

The Department of National Security (DSN) is responsible for the strategic coordination of the entire national security system, including the protection of critical infrastructure, and reports to the Office of the Prime Minister. In matters of national security, the DSN develops and monitors National Security Strategies and acts as a liaison with NATO and the EU's strategic coordination mechanisms.

The State Security Forces and Corps — the National Police Force and the Guardia Civil — and the Armed Forces, through their specialised units, complete the institutional framework with national expertise in physical protection, response to major incidents and support for civil authorities. The operational role of Guardia Civil within this system deserves special attention. Through its specialised units — in particular the Central Operational Unit (UCO), the Cybercrime Unit (UCC) and the CBRN Response Teams — the Guardia Civil deploys specific capabilities to respond to physical and cyber incidents affecting critical infrastructure in rural, industrial and transport sectors, which are precisely the environments most exposed to hybrid threats. Close technical and police coordination between the Guardia Civil and the CNPIC is organised through joint action protocols which enable the activation, depending on the current counter-terrorism alert level, of specific infrastructure protection measures in the energy, transport and water sectors. This complementarity between the tactical intelligence capabilities of the security forces and the strategic coordination function of the CNPIC constitutes one of the distinguishing features of the Spanish CIP model in a comparative European context.

7.2. THE SYSTEM OF COUNTER-TERRORISM ALERT LEVELS (NAA)

The Counter-Terrorism Alert Level (NAA) refers to the mechanism established to implement protective measures commensurate with the terrorist threat at any given time. The five-level NAA, which was updated by the Resolution of the Secretary of State for Security in 2019 — ranging from 1 (low) to 5 (very high) — is complemented by a catalogue of security measures applied progressively across various strategic sectors.

Since June 2015, Level 4 (high) has been in force in Spain, involving the implementation of enhanced security arrangements for all strategic sectors, such as checks at transport infrastructure, increased perimeter surveillance of key institutions and the deployment of priority communication protocols for incidents.

The link between the NAA and the PIC system is established through Response Plans, which set out the specific actions that critical operators must take according to the current alert level. This enables a phased and coordinated response as the threat level changes. However, maintaining alert level 4 for more than ten years could lead to a certain degree of ‘alert fatigue’ amongst critical operators, whose protective measures associated with this level may become routine and an insufficiently vigilant part of their work.

The implication is that the alert system needs to be reviewed periodically and mechanisms established to assess the true effectiveness of all measures taken.

7.3. INTERNATIONAL COOPERATION

The international dimension of critical infrastructure protection is becoming increasingly relevant in a context where threats are transnational in nature. Spain actively participates in various multilateral cooperation initiatives in this field. Within Europol, the Atlas Network of Special Intervention Units facilitates operational cooperation between the police forces of member states in terrorist crisis situations that may affect critical infrastructure.

The Advisory Board of the EU Critical Infrastructure Partnership (CP-ISAC) promotes the exchange of information and best practice between national authorities and European critical infrastructure operators. Within the framework of NATO, Spain participates in the Alliance’s critical infrastructure protection mechanisms, which were significantly strengthened following the 2022 Madrid summit, recognising the resilience of critical infrastructure as a central element of collective defence.

8. CHALLENGES AND PROPOSALS FOR IMPROVEMENT

The preliminary analysis identifies the challenges and gaps in the Spanish system for the protection of critical infrastructure that require urgent attention. The proposals set out here are far from exhaustive, but they do outline the most urgent courses of action with the greatest potential for positive change to improve the system’s resilience in the face of the terrorist threat.

8.1. URGENT TRANSPOSITION OF THE CER DIRECTIVE

It is therefore necessary to amend the regulatory framework in accordance with the terms of the CER Directive to the standard required to ensure the Spanish system remains consistent with the European framework and to make the most of the support mechanisms incorporated into the Directive.

It is strongly recommended that this legislation be adopted, in the form of a re-enactment act covering the protection of critical infrastructure and entities, which repeals Law 8/2011 and merges the elements of the CER Directive with the provisions of NIS2 into a single regulatory regime, with significant improvements to the mechanisms for

monitoring operators' compliance. This new regulation should implement a system of incentives — such as tax deductions or preferential access to public funding — to encourage private operators to invest voluntarily in measures to increase resilience beyond the legal minimums. It is therefore necessary for the new law to require the active participation of critical operators in the process, so that it is formally aligned with the operational reality of each sector.

8.2. STRENGTHENING INDUSTRIAL CYBERSECURITY

The convergence of IT and OT in critical environments requires ongoing investment in industrial cybersecurity that goes beyond minimum regulatory compliance. It is recommended that a National Industrial Cybersecurity Plan be implemented to set out specific standards for critical operators' SCADA/ICS systems, promote the certification of industrial components in accordance with Regulation (EU) 2019/881, and support the upgrading of legacy systems with known vulnerabilities. The CCN-CERT should further enhance its capacity to support operators in the critical private sector with industrial cybersecurity by establishing specialised sectoral teams (prioritising energy, transport and water) that can provide specific technical support in the event of hybrid physical-cyber incidents.

8.3. IMPROVING PUBLIC-PRIVATE COORDINATION

The creation of sector-specific platforms for the exchange of threat intelligence, in line with the model of the US Information Sharing and Analysis Centres (ISACs), is a priority for improving cooperation between the public sector and private operators. These platforms, which should operate under the umbrella of the CNPIC and with the participation of the CCN-CERT and CITCO, would enable a two-way flow of information on threats, vulnerabilities and incidents, thereby strengthening the response capacity of the entire system.

An essential condition for their effectiveness is the adoption of a legal framework that guarantees the confidentiality of information shared by private operators, eliminating the risk that its disclosure might give rise to legal liabilities or confer competitive advantages on their competitors.

8.4. TRAINING AND SIMULATION EXERCISES

The resilience of critical infrastructure to terrorist attacks depends largely on the preparedness of the staff who manage and protect it. It is recommended that a national training programme on critical infrastructure protection be institutionalised, with specific modules for operators in different sectors, and that annual crisis simulation exercises be carried out, covering scenarios involving combined physical and cyber attacks. These exercises, which should simultaneously involve the relevant authorities, security forces and critical operators, enable the identification of gaps in response plans, strengthen coordination between stakeholders and keep organisations' security culture up to date. The European Centre of Excellence for Countering Hybrid Threats (Hybrid CoE) in Helsinki is a key partner in the design and implementation of these exercises at the transnational level.

8.5. FORESIGHT INTELLIGENCE

Anticipating terrorist threats against critical infrastructure requires strengthening the strategic intelligence capabilities of CITCO and the CNI, with particular attention to analysing trends in the operational aspirations of terrorist groups and hostile state actors targeting infrastructure. The integration of open-source data, including the systematic monitoring of extremist forums on the dark web and the analysis of publications by terrorist organisations, should be systematised as part of the specific threat assessment for each strategic sector.

The development of artificial intelligence capabilities applied to the analysis of threats against critical infrastructure represents a promising area for investment, although its implementation must be accompanied by adequate legal safeguards to protect fundamental rights.

9. CONCLUSIONS

The analysis presented in this document allows us to draw the following conclusions regarding the terrorist threat facing Spain's critical infrastructure and the current state of the protection system.

Firstly, Spain has a regulatory and institutional framework for the protection of critical infrastructure, which, taken together, provides an adequate level of protection by European standards. Law 8/2011 and its implementing regulations form the cornerstone of a coherent system that has, for more than ten years, demonstrated its effectiveness in inter-institutional coordination and incident management. However, the delay in transposing the 2022 CER Directive has created a regulatory vacuum that undermines Spain's position within the European critical infrastructure protection system and must be urgently resolved through new legislation that incorporates the comprehensive resilience approach characteristic of the new European framework.

Secondly, jihadist terrorism remains the main terrorist threat to Spain's critical infrastructure in terms of probability of occurrence, as evidenced by the persistence of active cells within Spain and the continued dissemination of propaganda promoting attacks against infrastructure targets across Europe. The ENCOT 2023 report concurs with this assessment, highlighting the rise in lone actors who, following processes of self-radicalisation in digital environments, carry out attacks using rudimentary yet highly lethal means — a pattern illustrated by the attacks on Las Ramblas and in Cambrils — which poses a major challenge for early-warning systems. However, the threat posed by hostile state actors — particularly Russia — and attacks inspired by extremists of various ideological persuasions must be addressed with comparable strategic efforts, given their potential to cause catastrophic damage to critical infrastructure.

Thirdly, digitalisation and IT-OT convergence have transformed the landscape of vulnerabilities for Spain's critical infrastructure and created new attack vectors that existing protection systems cannot always neutralise effectively. Strengthening industrial cybersecurity must be considered a top national priority, which can only be achieved through sustained investment in technology, specialised training and the updating of regulatory frameworks and technical standards.

Fourthly, public-private coordination, although it has evolved considerably since the adoption of Law 8/2011, remains a critical area for improvement within the Spanish system. Privately-owned critical infrastructure assets require more sophisticated mechanisms to align incentives and exchange classified information between the public sector and operators; these can only be developed on the basis of a legal framework that guarantees the trust and confidentiality of all parties.

Fifthly, international cooperation – not only within the EU framework, but also within NATO and other multilateral forums – is a key factor in the effectiveness of Spain's critical infrastructure protection system. Spain's location as a gateway between Europe and North Africa should translate into a unique role within the European security architecture and, consequently, a specific commitment to existing multilateral cooperation mechanisms and the development of its own capabilities to provide added value to the entire system.

Future research in this area should focus on sector-specific vulnerability analyses using quantitative risk assessment methodologies; a comparative study of the models for transposing the CIP Directive adopted by the main Member States of the European Union; and an empirical evaluation of the effectiveness of existing public-private coordination mechanisms through primary research methodologies involving critical operators.

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Research Article

LOS GALINDOS: ANATOMY OF AN INSTITUTIONAL FAILURE. CRIMINOLOGICAL, JUDICIAL AND VICTIMOLOGICAL LESSONS HALF A CENTURY LATER

English translation with AI assistance (DeepL)

Francisco Pérez Fernández

Doctor of Philosophy and Educational Sciences

Camilo José Cela University, Madrid (Spain) fperez@ucjc.edu

ORCID ID: 0000-0002-3039-2397

Google Scholar: https://scholar.google.es/citations?hl=es&user=O_7qrwgAAAAJ

Francisco López Muñoz

Professor of Pharmacology and Vice-Rector for Research, Science and Postgraduate Studies Camilo José Cela University,, Madrid (Spain) flopez@ucjc.edu

ORCID ID: 0000-0002-5188-6038

Google Scholar: <https://scholar.google.es/citations?user=IbuwtWgAAAAJ&hl=es>

Received 24 2026 March

Accepted 1 June 2026

Published 30 June 2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.8949>

Recommended citation: Pérez, F. and López, F. (2026). Los Galindos: anatomy of an institutional failure. Criminological, judicial and victimological lessons half a century on. Revista Logos Guardia Civil, 4(2), pp. 303 -330 . doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.8949>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

LOS GALINDOS: ANATOMY OF AN INSTITUTIONAL FAILURE. CRIMINOLOGICAL, JUDICIAL AND VICTIMOLOGICAL LESSONS HALF A CENTURY LATER

Contents: 1. INTRODUCTION. 1.1. Overview 2. FROM THE CRIME TO THE EVIDENCE. 3. EXCESSIVE HYPOTHESES. 4. DEFICIENT INVESTIGATION AND A CRIMINOLOGICAL DISASTER. 5. FINAL REFLECTIONS: THE CONSTRUCTION OF A NARRATIVE.

Abstract: The quintuple murder at the Los Galindos farmhouse (Paradas, Seville, 1975) is one of the most paradigmatic cases of institutional failure in criminal investigations during the late Franco era. Beyond its media notoriety and the enduring mystery it holds in the collective imagination, the case offers an exceptional example of how the convergence of structural shortcomings (police, judicial, forensic and administrative) can completely undermine the possibility of establishing a sound procedural truth. This article analyses, from a multidisciplinary perspective, the root causes of this failure: the early contamination of the crime scene, the absence of forensic protocols, discontinuity in the preliminary investigation, discrepancies between autopsy reports, weaknesses in the chain of custody, and the proliferation of hypotheses that were not subject to progressive vetting. At the same time, it examines the political and institutional context of the period, characterised by outdated structures, the politicisation of the judiciary and a policing model still rooted in antiquated approaches, as well as the impact of media hype, which helped to cement contradictory narratives and generate lasting social stigmas. Furthermore, the study addresses the victimological and sociological dimensions of the case, demonstrating how the public narrative—fuelled for decades by media coverage, fictionalised accounts and anniversary commemorations—replaced the lost case file itself, thereby cementing exaggerated interpretations that affected families and communities. Based on a technical and comparative analysis, a series of lessons are drawn that are applicable to contemporary criminal investigations, particularly regarding the initial preservation of evidence, inter-agency coordination and the responsible management of information.

Resumen: El quintuple homicidio del cortijo Los Galindos (Paradas, Sevilla, 1975) constituye uno de los casos más paradigmáticos del fracaso institucional en la investigación criminal durante el tardofranquismo. Más allá de su notoriedad mediática y de la persistencia del enigma en el imaginario colectivo, el caso ofrece un ejemplo excepcional de cómo la convergencia de déficits estructurales (policiales, judiciales, forenses y administrativos) puede desarticular por completo la posibilidad de generar una verdad procesal sólida. Este artículo analiza, desde una perspectiva multidisciplinar, las causas profundas de dicho fracaso: la contaminación temprana de la escena, la ausencia de protocolos criminalísticos, la discontinuidad instructora, la ruptura pericial entre autopsias, la debilidad de la cadena de custodia y la hiperinflación de hipótesis no sometidas a filtrado progresivo. En paralelo, se examina el contexto político-institucional del periodo, marcado por la desactualización de estructuras, la politización judicial y un modelo policial todavía anclado en lógicas anticuadas, así como el impacto del ruido mediático que contribuyó a fijar narrativas contradictorias y a generar estigmas sociales duraderos. Asimismo, el trabajo aborda la dimensión victimológica y sociológica del caso, mostrando cómo el relato público, alimentado durante décadas por coberturas periodísticas, ficciones narrativas y balances de efeméride, sustituyó al propio sumario perdido, consolidando interpretaciones inflacionarias que afectaron a familias y

comunidades. A partir del análisis técnico-comparado, se extraen una serie de lecciones aplicables a la investigación criminal contemporánea, especialmente en materia de preservación inicial de la prueba, coordinación interinstitucional y gestión responsable de la información.

Keywords: The “Los Galindos” case; Criminal investigation; Forensic shortcomings; Institutional dysfunction; Media narratives.

Palabras clave: Caso “Los Galindos”; Investigación criminal; Deficiencias forenses; Disfunciones institucionales; Narrativas mediáticas.

1. INTRODUCTION

The notorious quintuple murder committed at the Los Galindos farmhouse (Paradas, Seville) (Figure 1) on 22 July 1975 took place at a particularly unique moment in Spanish history: the twilight of the Franco regime. Over the years, this has made it not only one of the recurring narratives of the Transition, but also the end of a way of understanding police action and judicial investigations – linked to reasons of state – which was undoubtedly far removed from today's standards of objectivity, quality and meticulousness. It is a well-established fact in contemporary historiography that, in those days, the regime's institutions showed visible signs of fatigue and maladjustment in the face of a society undergoing transformation (Sánchez Recio, 2017).

Figure 1

View of the Los Galindos farmhouse, situated two kilometres from the town of Paradas (Seville), where the five murders were committed on 22 July 1975 (El País), and courtyards and dwellings inside the farmhouse (Nius Diario).



The public resonance of the case – widely covered by the national media and evoked in an endless string of anniversaries, TV series and reports in the mainstream media – has established it as one of the emblems of the traditional and clichéd ‘dark side of Spain’, which the country was then trying to leave behind, whilst at the same time becoming a symbol of institutional failure when it came to solving complex crimes in rural settings. It is no surprise, then, that the most significant aspect of the case at the time was not the

constant delay in reaching a satisfactory resolution, but rather that it clearly demonstrated to the emerging public opinion the shortcomings of the policing and judicial systems of the era, which were primarily focused on controlling the population. In this context, the uniqueness of the case went beyond the brutality of the events that took place, insofar as—having gone beyond the limits traditionally imposed by government censorship—it laid bare the investigators’ missteps, the inefficiency in the processing and handling of evidence, legal bureaucratisation and procedural delays, as well as the consequent deterioration of the evidence. All of this, taken together and viewed in perspective, contributed to the impossibility of identifying those responsible and explains the outcome of the case—the expiry of the limitation period—without any need to resort to the usual sensationalist conjectures or peculiar conspiracy theories (Chinchón Álvarez, 2012; Aguilar Fernández, 2013). In short: everything that could go wrong did go wrong.

1.1. GENERAL OVERVIEW

An examination of the historiography of Francoism during the period 1969–1975 reveals the institutional crisis of an exhausted regime. Fuelled by the leader’s physical decline, which already foreshadowed the end of an era, internal rifts had emerged amongst the regime’s elites, whilst a policy of political immobility was adopted in the face of growing social modernisation, pressure from an increasingly organised opposition and international isolation (Notario & Corrales Díaz-Pavón, 2025). There was a progressive and increasingly pronounced tension between the socio-economic advances of the technocrats and the institutional deadlock, a contradiction that shaped the functioning of the state apparatus in the final phase of the dictatorship and hindered the development of consistent technical responses to complex problems, including criminal investigations. In this context, the administration of justice and its bureaucratic ecosystem were burdened by long-standing inertia – such as special jurisdictions, a heavily politicised legal culture, and severe organisational shortcomings – all of which were well documented and irreparably hampered their effectiveness (Carrillo, 2023).

In the field of police investigation, the responsibility for solving violent crimes in rural areas fell predominantly to Guardia Civil. Some relevant details will be discussed later, but it is worth noting now that, in the 1970s, still steeped in many of the old traditions that had seen it come into being, the Guardia Civil was a highly militarised force that built its professional identity around discipline, strict command structures, close-knit camaraderie and a strong *esprit de corps*, rather than on the competence and professionalisation of its members. Qualitative studies based on the life stories of guards from that era, such as that by Quesada Aguilar (2021), have interpreted this institutional socialisation using analytical categories such as that of the ‘total institution’ (Goffman, 1961)¹, highlighting how the training of officers, characterised by indoctrination, shaped

¹ This concept, which Goffmann developed in relation to the *modus vivendi* of mental institutions, refers to a type of closed, highly regimented and strictly hierarchical social organisation, in which members live, work and carry out all their activities under centralised authority, to a certain extent isolated from the wider social environment. This leads to a blurring of the lines between professional and private life, which become indistinguishable.

their day-to-day practice and the scope of technical autonomy available to frontline personnel. Admittedly, this model proved functional when it was designed in the nineteenth century for the execution of public order tasks and the necessary increase in institutional presence in rural areas and livestock trails, but it exhibited serious limitations when it came to investigating complex crime scenes (Quesada Aguilar, 2024). This shortcoming persisted into the 1970s, insofar as procedures such as the preservation and cordoning off of crime scenes, structured interviews, coordination with forensic specialists, maintaining the chain of custody and other forensic protocols—which were already beginning to be standardised in other contexts—were not an intrinsic part of officers' training or remit.

At the same time, the judicial system had been shaped for decades by a culture of politicisation and control that undermined the professional independence and organisational capacity of the ordinary courts. The Spanish judiciary was marked by post-war purges and exceptional courts, as well as by practices geared towards maintaining the political order rather than the effective protection of rights. The repercussions of all this persisted right up until the final years of the regime. This institutional legacy, combined with inevitable logistical shortcomings – such as a lack of resources, poor document management and the dispersal of archives – as well as procedural routines incompatible with the preservation of physical evidence, helps to explain why particularly complex investigations – and the Los Galindos case was one such example – could easily unravel over time. The loss and contamination of evidence was a common occurrence that arose naturally as circumstances became more complex, without any need for special external interventions aimed at obstructing the investigation (García Valdés, 1975; Chinchón Álvarez, 2012; Carrillo, 2023).

The media coverage of the case – which is perhaps perceived as more of a 'mystery' by the general public due to its 'unsolved' label, rather than, because of any particular criminal interest – serves to reinforce this framing. Striking a balance between public interest in so-called 'crime reporting' and a critical review of the investigation, the accumulation of interlinked errors has been highlighted ad nauseam as more than sufficient cause to explain the impunity surrounding the crime, without the need to invoke conspiracies which, today, would even be pointless to keep alive, since, as far as is known, they would no longer benefit anyone in particular². Half a century after the event took place, news reports and interviews have focused on three factors explaining the police failure: chance, the silence of witnesses and the lack of documentary evidence, and failures in coordination between different institutional actors who operated without a single chain of command or a consistent protocol. All of this resulted in a compromised

² See, for example, Corroto, P. (2024). The Galindos: a sordid crime in Franco's Spain that still raises questions 50 years on. *El Confidencial* (7 September) [at: https://www.elconfidencial.com/cultura/2024-09-07/el-crimen-de-los-galindos-50-anos_3955151/], accessed in February 2026]; RTVE. (2025). Five murders, no one found guilty: 50 years since the massacre at the Los Galindos farmhouse in Seville. *RTVE News* (22 July) [at: <https://www.rtve.es/noticias/20250722/cinco-asesinatos-ningun-culpable-aniversario-crimen-galindos/16673146.shtml>], retrieved in February 2026]; Cabrera, E. (2025). The Los Galindos murder: Unresolved questions half a century on. *La Voz del Sur (Seville)* (23 July) [at: https://www.lavozdelsur.es/ediciones/sevilla/cinco-muertes-ningun-culpable-todas-incognitas-nunca-vamos-encontrar-testimonio-aclare_338643_102.html], accessed in February 2026].

investigation – which was ultimately lost – and a procedural truth that remained elusive. The truth is that all this is better understood if one considers the two ‘simultaneous transitions’ that revolve around the case:

1. The socio-legal and criminological transition. In the mid-1970s, the social and forensic sciences were experiencing a period of increasing modernisation and standardisation of investigative processes – the autopsy revolution, the nascent use of instrumental techniques, novel criteria for sample traceability, the emergence of psychosocial studies – which were not uniformly incorporated across all jurisdictions, let alone in rural areas with obvious resource shortages and a lack of specialisation among officers.

2. The political and institutional transition. The democratic reform following the end of the Franco regime gradually and completely redefined police and judicial powers, created new legal frameworks and professionalised training. In fact, in 1975, the operational framework of the Guardia Civil remained rooted in outdated protocols and practices .

In light of this combination of factors, it makes sense to re-examine the Los Galindos case as a paradigmatic example of the systemic risk that arises when first-response officers lack sufficient up-to-date training and protocols, and when the judge–investigating magistrate–police–forensic scientists chain lacks synergies and shared standards for preserving physical and documentary evidence (Carrillo, 2023). For this reason, this study, deliberately distancing itself from the ‘mystery’ narrative or outlandish conspiracy theories, focuses on a detailed analysis of ‘lessons learnt’. The reconstruction and technical classification of the police, judicial, forensic and administrative errors identified in the case, cross-referenced with current methodological frameworks for criminal investigation and with comparative literature on systemic organisational failures, enables an understanding of the importance of constant monitoring of protocols, as well as the need for quality standards to ensure sound training and policing practices. Indeed, it is through this process analysis that we see how an accumulation of minor failures—seemingly irrelevant at first—can snowball and intensify when exacerbated by training deficits among front-line officers and their superiors, organisational weaknesses inherent in the judicial system and, of course, the absence of concrete and robust protocols for inter-institutional coordination.

Consequently, more than half a century on, the Los Galindos case remains a first-rate educational opportunity for criminology, procedural law and police science: it is an iconic event, but also a major opportunity from which to conduct an operational analysis of what went wrong and why, under the specific conditions fostered by a declining socio-political model and an inefficient organisational structure. In fact, there is no need for a conspiracy to explain a failed investigation when what exists is the direct manifestation of a dysfunctional system incapable of properly locating, preserving, processing and adjudicating evidence. Methodologically, on the other hand, and in order to ensure the achievement of its proposed objectives, this study is based on a documentary analysis of

primary and secondary sources, complemented by a conceptual review of police investigation models.

2. FROM CRIME TO EVIDENCE

It would serve little purpose to dwell on the account of a crime that has been amply illustrated, recounted and is well known, even down to its most trivial details, such as the Los Galindos case (Figure 2), on which there is also literature – and press coverage – that has been widely read, studied and referenced (e.g. Pérez Abellán, 1976; Gil Chaparro, 1999; Fernández de Córdova, 2024). We shall therefore confine ourselves to presenting an outline of the main events (Table 1) to enable the prospective reader to piece together the various elements discussed and analysed here .

Figure 2

The five people murdered in the Los Galindos crime: Manuel Zapata, Juana Martín, José González, Asunción Peralta and Ramón Parrilla (La Vanguardia)



Table 1.
General timeline of the Los Galindos case (1975–2026)

DATE	EVENT	DESCRIPTION
22 July 1975	Quintuple murder	-Five people were found murdered at the Los Galindos farmhouse (Paradas, Seville): Manuel Zapata, Juana Martín, Ramón Parrilla, José González and Asunción Peralta. -At the time of the crime, the post of presiding judge at the Marchena Judicial District Court was vacant, so the preliminary investigation was provisionally assigned to the judge at the Carmona Court, who was the first to take charge of the case. He arrived at the scene 24 hours after the crime was committed. -The deaths involved three <i>different methods</i> : bludgeoning, gunshots and burning of the bodies.
22–30 July 1975, * *	Initial investigations and confusion	-It was initially believed that the foreman, Manuel Zapata, was the murderer, as his body had not been found; it turned up a week later. -The post-mortem revealed that Zapata was the first victim. -The police investigation was closed without any clear conclusions.
1975–1983	Irregular investigation	-The case is being transferred to a second investigating judge, now within the ordinary jurisdiction of the competent court (Marchena), once the vacancy has been filled. The exact dates are unknown, but sources suggest an early rotation due to initial instability within the court. -Contradictions in police accounts, errors in the handling of evidence, the omission of key clues and numerous rumours about possible suspects. -Various hypotheses are being considered, but no conclusions have been reached. The case has stalled.
1980–1983	Third judge	-A third judge takes charge, reopening the case and initiating proceedings for a second post-mortem to address the shortcomings of the first.
1983	Second post-mortem	-A full second post-mortem is carried out using new forensic techniques. An expanded report reveals serious flaws in the first post-mortem and the initial investigation. -The case is reopened, but again to no avail.
1995	Statute of limitations	-Under the Criminal Code in force (1973), the statute of limitations for the crime is 20 years. Even if the culprit were to come forward, they could not be prosecuted. -Reports and investigations are published to coincide with this date.
2015	Disappearance of the case file	-The case file was lost during an incident involving either a collapse or structural problems in the court buildings (this was not clarified). -Other sources merely state that the disappearance was officially recorded in 2015, which surprised legal practitioners themselves and sparked fierce controversy.

The initial errors in the investigation of the crime, once it had been brought to the attention of officers at the post of Guardia Civil in Paradas, began with the handling and securing of the crime scene. Certainly, from the usual retrospective analyses of the case – which tend to categorise and judge past situations with excessive levity – it must be understood that the conduct of the officers dispatched to the scene at that time may well

seem absurd and nonsensical from today's perspective of a technologically advanced police force, but it makes perfect sense in the Spain of 1975. Whilst in complex investigations the primary criterion is to guarantee the 'quality at source' of all evidence, in the rural context of the late Franco era many stations lacked standardised protocols for cordoning off areas, controlling access, recording entries and exits, or segregating 'hot', 'warm' and 'cold' zones (Ortiz Heras, 2019). Thus, the initial preservation of evidence depended excessively on the theoretical and/or empirical experience – whether extensive or limited – that the officers on duty might have.

It should be borne in mind that, during the Franco regime, the Guardia Civil was a military corps fully integrated into the Army, in accordance with the structure laid down by the 1942 Military Regulations. This determined entry requirements that not only differed significantly from the current ones—which followed the major reforms of the period 1978–1986—but also meant that the Guardia Civil was, essentially, previously a force dedicated to the maintenance of public order rather than the proactive management of complex police investigations. The institutional culture of the Guardia Civil, which was highly disciplinary and military in character, prioritised the fulfilment of general duties over crime scene investigation techniques or other alternative police expertise, which were often even unknown to the officers, explaining why early decisions that were poorly aligned with modern evidential standards undermined the case from the outset (González Martínez & Ortiz Heras, 2007). The press coverage of the time (Figure 3) documents countless instances of unnecessary movements by officers, unintentional contamination, the presence of countless onlookers wandering around the farmhouse, significant disturbances and even the cleaning of the crime scene, the absence of a well-established initial chain of custody, and so on.

Figure 3

Some photographs from the first report drawn up by the Guardia Civil and published in the numerous media outlets covering the case (ABC). On the left, one can see the trail of blood left by one of the victims whilst being moved, and on the right, placed on the bed, a part of a baler, commonly known as 'el pajarito', one of the instruments used in the murders.



It is worth noting that, at that time, joining the Guardia Civil did not require exceptional abilities or extensive training. Generally speaking, it was sufficient to be a Spanish national, a man aged between 18 and 25 – equivalent to enlisted personnel in the Army – as well as passing the medical and physical examinations, having no criminal record and holding a 'good conduct' certificate issued by the relevant municipal and military authorities. As for the academic requirements for enlistment as a rank-and-file

soldier, these were limited to holding the Certificate of Primary Education³, although in practice many command posts required only the ability to read and write correctly, in accordance with the ‘minimum military requirements’. Furthermore, only those officers who distinguished themselves in service for any reason could seek to enter the non-commissioned officers’ ranks, where progression was usually achieved through years of service—a practice later recognised and formally regularised in Royal Decree 1970/1983 (Quesada Aguilar, 2021).

Meanwhile, from 1942 onwards, Regional Academies began to appear, created to train newly recruited constables. The training provided there was a far cry from anything related to modern forensic techniques, as it consisted of strictly military training: weapons, drill, discipline, physical training, rural patrol tactics, and a militarised barracks regime. Police training was restricted to arrest procedures, the drafting of police reports, regulations governing the surveillance of roads and rural areas, and the basic criminal legislation in force during the Franco regime. It was only in the late 1950s and throughout the 1960s that a process of gradual specialisation by unit began, such as the Traffic Police or the Mountain Service, a development which helped to raise the force’s technical competence. It should be borne in mind that the training period for constables ranged from 3 to 6 months, followed by a period of practical training at police stations. This resulted in the average officer being trained for very specific duties, such as: rural and road patrols, security and public order, checking people’s identification documents, guarding public buildings and town halls, carrying out basic judicial procedures, protecting crops, preventing common crimes – such as brawls, agricultural theft or domestic violence – and monitoring population movements. As can be seen, therefore, the vast majority of officers were generalists – not specialists – and the success of their duties depended as much on their individual intelligence as on their ability to get to know the local population, become familiar with the local courts, receive good practical training in the use of weapons, and acquire a thorough knowledge of the terrain that would enable them to move effectively through the countryside, whether on horseback, by motorbike or on foot. Bearing in mind that roughly half of Spain’s population at the time lived in rural areas, and that in many places the Guardia Civil was the only police force available, it is understandable that it had an extensive jurisdictional reach and a wide range of powers (Quesada Aguilar, 2021; Lara Lara, 2024).

The foregoing leads us to identify the second major problem in the Los Galindos investigation during its initial stages. It appears that countless people were interviewed, yet this did not seem to serve much practical purpose, as no one provided information that could be considered relevant. It is a well-established fact that the interviewing of key witnesses requires structure, neutrality, documentation and the management of bias. By the end of 1975, as might be expected, specific training in investigative interviewing techniques was patchy and often left to the officer’s intuition and the urgency to produce reports that would fill bureaucratic gaps. The judicial framework of the Franco regime – always geared towards stability and order – did not favour systematic evidential safeguards in interview procedures, which ultimately led to a multitude of inconsistent accounts, exacerbated by several inevitable secondary factors: the complexity of giving evidence within a narrow socio-cultural context and regarding people one knew⁴; a high

³ Equivalent to the 6th year of primary education at the time, or, in other words, schooling up to the age of 12.

⁴ The population of Paradas in Seville and its surrounding area stood at around 5,800 registered inhabitants at that time.

concentration of rumours and local accounts; the oppressive context of the era, which may have instilled a fear of speaking out; the inevitable contamination of testimonies; and the loss of memory or the inability to locate key witnesses. All of this increased the difficulty of conducting follow-up interviews with care and efficiency in later stages of the investigation (Alcántara Pérez, 2020). Furthermore, historiography and police and legal studies on the late Franco era repeatedly document the presence of procedural practices that failed to safeguard due process and a legal culture that prioritised social control and denunciation over evidential rigour, and in which training in the psychology of witness testimony among the authorities was virtually non-existent (Carrillo, 2023).

Furthermore, although Spanish forensic medicine was already making progress at that time, the regional implementation of modern techniques and resources was uneven. The standardisation of post-mortem examinations, the collection and labelling of samples, and their storage and transport with traceability were not guaranteed in all judicial districts during the 1970s. In a judicial environment that offered little protection of rights and was poorly resourced, expert validation and the preservation of documentary and material evidence could fail, leading to subsequent inconsistencies. Similarly, and as can be inferred from the foregoing, as regards the modernisation of police techniques, basic training did not include modules on field criminalistics – contamination-proof packaging, numbered seals, cross-signatures, dual-control custody – meaning that the chain of custody and the quality of evidence preservation were often compromised from the very early stages of the investigation (Jamardo Lorenzo, 2024). The barracks culture and the priority given to operational duty meant that forensic techniques were subordinated to routines of availability and territorial presence (Quesada Aguilar, 2021). Let us consider an example relating to the case at hand: although the literature on the subject refers to a ‘first post-mortem examination’, there is no record whatsoever that this was carried out in the strict sense – or where – on the victims of the Los Galindos crime, beyond the initial post-mortem examinations conducted by the Marchena coroner. In fact, the existing literature is generally inconsistent and vague on this matter.

This leads us to the following problem, as the issue was often not so much what actions were or were not taken, but rather the deterioration of case files and the loss and/or dispersal of procedural documents in older cases. This is a phenomenon described in the literature on the judicial history of the Franco regime, in that, beyond any explicit or implicit desire to conceal information, the reality is that special jurisdictions coexisted alongside archives with inconsistent criteria and a justice system with very few operational resources—a fact that greatly increased the risk of gaps and distortions in the documentation (Aguilar Fernández, 2002). Furthermore, in terms of training, police forces did not always incorporate content relating to archival management and evidential documentation – such as inventories, secure pagination and certified referrals – into their training programmes; as a result, the flow of information between police stations, courts and experts could be subject to unsound local practices that often led to the loss, theft and/or misplacement of information. The absence of preservation and transfer protocols exacerbated the fragility of a documentary trail whose traceability already was inherently unclear.

Bearing in mind that the late Franco era, due to its conservative nature, entailed a structural tension between social modernisation and institutional stagnation, it is understandable that the Guardia Civil operated – to a large extent – with the aforementioned characteristics of a ‘total institution’: discipline, indoctrination, the merging of personal life and duty, and a closed corporate identity. Given the absence of

specific technical training and inter-institutional protocols aligned with sound practices that are now undisputed standards, the professional *habitus* tended to reproduce established routines rather than incorporate new police and forensic techniques, as well as rigorous coordination strategies (Quesada Aguilar, 2021). At a systemic level, was there significant strain on institutional structures and a marked mismatch between the state apparatus and a society undergoing transformation, a situation that permeated both the courts and the police forces, leading to strong procedural inertia, regulatory obsolescence and inevitable organisational stagnation (Aguilar Fernández, 2002).

This leads us to an initial set of lessons learnt that highlight the importance of maintaining strict oversight of processes, procedures, standards and initial management, without which it is literally impossible to build a solid police-judicial case (Table 2) and which, evidently, makes the study of this police failure a key point of pedagogical importance. The fact that half a century has passed since these errors were committed does not in any way imply that they can continue to be made; for just as science and technology advance practically on a daily basis, the review of mechanisms for updating and procedures for implementing best practice must also continue to do so, in order to prevent a chain reaction of errors that could derail ongoing investigations.

Table 2.
Educational and procedural lessons derived from the Los Galindos case

AREA	CONTENT
Updating and ongoing training in protocols	Cordoning off the scene, access control, recording of footprints and vehicle tracks, scene log and initial evidence handling as part of basic training and periodic refresher courses.
Structured interviews and standardised recording	Training modules on bias, open-ended questions, re-interviewing and documentation (audio–video), with guidelines compatible with judicial instructions.
Interoperability and systemic working	Joint training for police, forensic experts and investigating magistrates on information flow, chain of custody forms, packaging and transport.
Continuing training in field forensic science	Minimum equipment requirements and accessible procedural manuals (seals, envelopes/bags categorised by type, labelling and cross-signing).
Robust and well-established document archiving and custody	Training in inventorying, pagination, certified dispatch and backup systems; appointment of archive managers with cross-checks and rigorous operating protocols.
An organisational culture of improvement	A shift from a general service <i>mindset</i> towards an evidence-based, technical culture; democratic reform professionalised teaching and frameworks, but progress requires ongoing training, standards and evaluation.

3. EXCESSIVE NUMBER OF HYPOTHESES

The investigation into the quintuple homicide was characterised, from its very outset, by a disorderly proliferation of investigative hypotheses which, far from guiding the investigators' analytical process, generated a chaotic structure of mutually incompatible narratives that the subsequent investigation—given the shortcomings described above—was no longer able to un . To understand this phenomenon and draw the necessary lessons from it that are applicable to police investigations, it is necessary to examine the main theories put forward (Table 3), the reasons why none of them could be ruled out on the basis of the available evidence, and to attempt to understand the distorting effect that this interpretative hyperinflation had on the preliminary inquiry.

Table 3
Comparative summary of the main hypotheses in the Los Galindos case

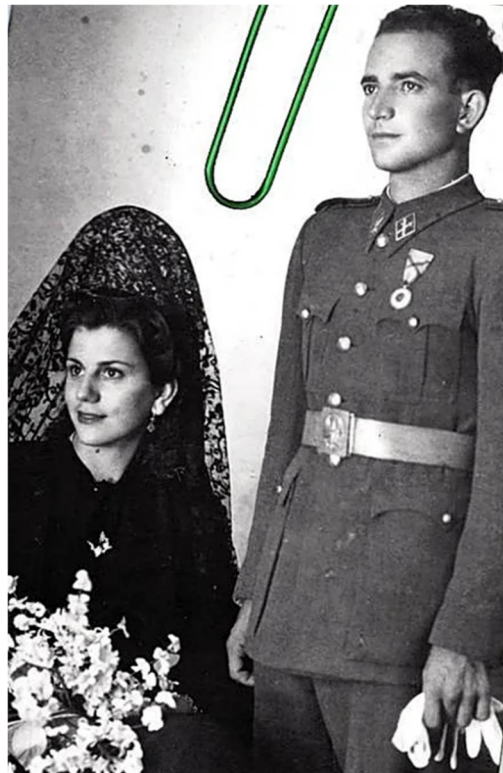
HYPOTHESIS	FOR	AGAINST
Internal economic conflict (co-operative fraud) [Best supported]	-Clear motive (financial fraud uncovered by the foreman). -Explains the elimination of potential witnesses. -Consistent with multiple perpetrators and a variety of weapons.	-Based on retrospective reconstructions and indirect testimony. -Lack of material evidence. -Possible <i>ad hoc</i> hypothesis.
Sole perpetrator: a farm worker [Inconsistent]	-Consistent with access to heavy tools and common weapons on the estate.	-It was established that the foreman (the initial suspect) was the first victim of the crime. -Difficult to reconcile with three distinct <i>modus operandi</i> .
Involvement of intruders (multiple assailants) [Less well-supported]	-Explains the variety of murder methods (blows, shotgun, rifle butt, arson). -Consistent with an attack carried out by more than one person.	-No signs of forced entry were found, nor was there an identifiable motive. -Lack of physical evidence linking third parties from outside the farmhouse.
Sociopolitical hypothesis (institutional cover-up) [Contextual, but not material]	-Consistent with the late Francoist context and the local patronage system. -Explains the flawed investigation, the media hype, the contradictory testimonies and the confusion in the line of argument.	-It does not explain who actually committed the crime (it is a theory about the handling of the case, not about the facts). -Lacks documentary evidence to confirm interference. -Lack of motive: if there was something to hide, what was it?

Another added problem was the lack of control over the flow of information that occurred from the very outset, which overwhelmed the authorities. The scale of the leaked information due to a lack of efficient protocols exceeded all expectations. There was an almost complete lack of control, a fact that led to the immediate emergence of various interpretative narratives running in parallel, in which police sources, witness accounts and media speculation merged seamlessly (A.G.R., 2025). Of these, the hypothesis with the greatest internal consistency was the one linking the events to an economic conflict – fraud linked to agricultural subsidies – within the estate. This theory essentially held that the farm's foreman and right-hand man, Manuel Zapata Villanueva (1916–1975)—who, incidentally, was a former legionnaire and former Guardia Civil officer—(Figure 4) had uncovered an accounting fraud relating to the management of the Coduva cooperative. This discovery is said to have led to a confrontation with the estate's owner, the Marquis of Grañina, as well as with his steward, triggering a series of murders intended to eliminate both direct and circumstantial witnesses⁵.

⁵ This interpretation always hovered over the case without ever being conclusively proven. The journalist from the newspaper **El País**, Ismael Fuente Lafuente (1951–1994), was one of the first to explore it in detail [see 'Más tierra encima del sumario' (**El País**, 21 October 1986. Available at: https://elpais.com/diario/1986/10/21/sociedad/530233201_850215.html), accessed in February 2026]. It was developed decades later by Juan Mateo Fernández de Córdova (b. 1960), the owner's son, who pieced together a reconstruction of the events based on family testimonies and other contextual documentation (Fernández de Córdova, 2024).

Figure 4.

Wedding photograph of two of those murdered in the Los Galindos case: the foreman Manuel Zapata, wearing a uniform of Guardia Civil, and his wife, Juana Martín (L as Provincias)



A second hypothesis, initially favoured by Guardia Civil investigators, drew on experience and posited the crime as the work of a single perpetrator from within the farmstead itself. The foreman was, in fact, considered a suspect because his body was the last to be found; however, when forensic examinations determined that he had been the first victim, thereby completely ruling out his involvement, the plausibility of the single-perpetrator theory began to wane, although speculation continued regarding the involvement of other victims – such as the tractor driver José González Jiménez (1948–1975). Nevertheless, and particularly due to the differences in the weapons and methods used to murder the employees, the hypothesis was called into question (Pérez Abellán, 1976).

A third line of inquiry, based on the diversity of the criminal *modus operandi* employed – bruises caused by a metal object, shotgun shots and blows with the butt of a firearm – as well as on the possibility that there were multiple assailants, suggested that the crime involved individuals from outside the estate who had arrived there for a purpose that was never fully clarified⁶. However, this theory lacked physical evidence, as no strangers could be confirmed to have been in the vicinity on the day in question, there was no evidence of forced entry, and no identifiable motives were presented. Thus, its explanatory power was limited until it was reduced to a mere theory. Why, then, maintain it? Well, in response to the information overload and the tensions this was generating

⁶ There was even talk of drug trafficking, which went on to inspire a rather famous novel of the time (*Los invitados*, a finalist for the Planeta Prize in 1978 and written by the Seville-born author Alfonso Grosso (1928–1995)), but such a claim could never be substantiated.

within the community—tensions which could lead to undesirable consequences such as stigmatisation and public order issues: the crime was so shocking that a small community such as Paradas (Figure 5), completely unaccustomed to events of this nature, could not accept without distress the idea that the criminal – or criminals – might have come from within it and be living among them with impunity (A.G.R., 2025).

Figure 5.

Residents of the municipality of Paradas gathered at the local cemetery during the funeral of four of the crime's victims (ABC)



Finally, a more structural interpretative approach – akin to conspiracy theory, if you will – emphasised the socio-political context of the late Franco era and the possibility of institutional irregularities or a bias towards protecting influential figures implicated in shady dealings linked to the farmhouse. From this perspective, the shortcomings of the investigation were highlighted, as was the existence of biased media coverage that contributed to framing the case within an atmosphere of rumour and ambiguity. Be that as it may, the problem with this ‘suspicion-based’ approach is that it neither explains the crime – it merely shapes the context – nor did it ever clarify exactly what was being concealed, who was being protected by the alleged cover-up, or to what end (Gil Chaparro, 2024).

What is interesting is that the convergence of all these hypotheses – all of which were possible and all of which were mutually inconsistent – stemmed less from the quality of the inferences made by the investigators than from the extreme fragility of the available evidence. From a criminological point of view, in fact, the case presents several factors that increased the uncertainty and, consequently, the difficulty of the investigation following a clear path:

1. The crime scene was contaminated even before it was formally secured. The farmhouse was an agricultural workplace with a high volume of foot traffic, and the initial handling of the bodies – which took place even before the investigators arrived, who were never able to determine to what extent the scenes had been disturbed – seriously compromised elements critical to the sequential reconstruction of events. These initial shortcomings structurally limited the ability to distinguish between different alternative

scenarios and, consequently, prevented the collection and analysis of information that might have ruled out certain hypotheses.

2. The inconsistency between the forensic examinations carried out in 1975 and the second post-mortems performed in 1983 introduced significant—and never considered during the preliminary investigation—contradictions regarding the order and nature of the deaths. The existence of two divergent expert reports prevented the establishment of a single forensic account and left open interpretations which, in most ordinary, methodical and well-coordinated expert contexts, would have been ruled out.

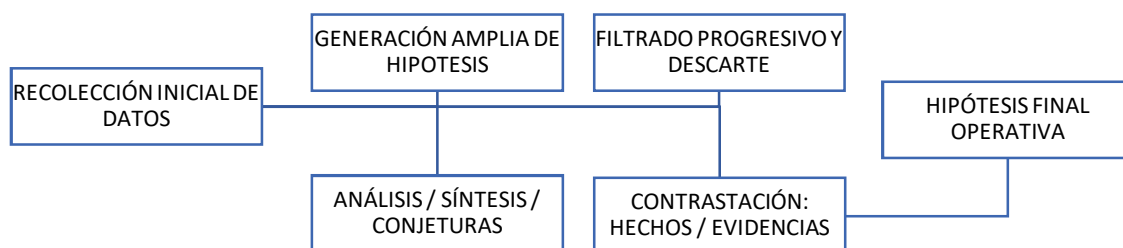
3. The variety of methods used in the killings presented a complication that neither the police nor the judiciary were able to resolve. Comparative criminology shows that the combination of improvised bladed weapons, firearms and blows with a rifle butt – plus an unnecessary attempt to burn some of the bodies, the motive for which was also not fully understood – may point either to multiple perpetrators or to a single assailant acting under severe personal and situational loss of control. The scarcity of evidence made it impossible to favour either of these possibilities, thereby contributing to the persistence of mutually exclusive scenarios.

The truth is that, of all the theories that have been put forward regarding the Los Galindos case, the theory of internal economic conflict appears to be the one that best integrates motive, sequence of events and victimological profile, as it provides a clear motive, explains the need to eliminate collateral witnesses and is consistent with the variety of injuries if the involvement of more than one assailant is posited. Although it cannot be fully verified, the comparative robustness of its narrative structure makes it the hypothesis with the greatest forensic coherence. By contrast, the theory of external intruders lacks objective evidential support, whilst the hypothesis of a single perpetrator is hardly compatible with the spatial distribution of the victims and the variety of weapons used; in other words, it runs counter to the vast majority of the behavioural evidence present at the crime scene itself.

The coexistence of multiple hypotheses, without a reasonable operational hierarchy, did little to help solve the case, in so far as it led to an ‘epistemological collapse’ of the investigation (McIntyre, 2006). Firstly, the cognitive overload experienced by the investigators, given the absence of a basic sequential narrative grounded in solid evidence, prevented the progressive filtering of facts that characterises efficient criminal investigations (Figure 6). This was exacerbated by media pressure and the mass dissemination of contradictory accounts which, at the local level, contributed to increasing information noise and conferring the status of operational plausibility on narratives that were nothing more than rumours and slander, and were therefore completely unverifiable. The consequences of this extended far beyond the crime itself, insofar as the small community of Parada, caught up in this whirlwind of information, was scarred by communal stigmas, false attributions, biases and narratives of wrongful guilt which not only shaped its future in the years that followed, but also, as highly disruptive factors, indirectly influenced the institutional perception of the case, as disjointed testimonies, tall tales, rumours and so on proliferated. And this is the crux of the matter: the investigation into the Los Galindos crime never managed to progress from the stage of proposing scenarios to that of systematically testing hypotheses, which ruled out any possibility of analytical clarification. This methodological shortcoming largely explains why the case was shelved in 1988 and definitively time-barred in 1995, whilst

also allowing us to draw a wide range of operational conclusions regarding what should – or should not – be done in the context of a criminal investigation.

Figure 6
Standard procedure for the progressive filtering of information during the investigation



4. DEFICIENT PRELIMINARY INVESTIGATION AND CRIMINOLOGICAL DISASTER

It is true that the preliminary investigation into the Los Galindos case constitutes a paradigmatic example of the structural weaknesses of the Spanish judicial system in the final months of the Franco regime and the early stages of the Transition, but not only that. It is also an ideal educational example of the chain of legal errors that can derail a preliminary investigation. When analysed from a strictly legal-procedural perspective, the course of the preliminary investigation into the Los Galindos crime presents three fundamental problems: discontinuity in the investigation, evidential deficiencies and the consequent expiry of the limitation periods.

To begin with, the fact that the investigation was marked by successive changes of judge, unjustified delays and a notable lack of coordination between the police and judicial authorities did little to help the case. The extensive journalistic analysis of the time insists that the first judge in charge of the investigation did not arrive at the farmhouse until 24 hours after the crime, an unacceptable delay which had irreversible effects on the chain of custody and the reliability of the initial forensic findings. Similarly, the forensic evidence suffered an internal inconsistency arising from the existence of two rounds of post-mortem examinations: the initial ones, deemed deficient, and the second set, carried out eight years later, which yielded contradictory conclusions regarding the sequence of events, injuries and *post-mortem* movements of the bodies. These discrepancies undermined the validity of the biomedical evidence and made it impossible to establish a legally valid hypothesis based on forensic evidence. It was now pointless to debate – despite the controversy that arose amongst specialists – whether the first or the second post-mortem examination was ‘the correct one’, as so much time had elapsed between them that the new information was of little use⁷. In this context, the case being shelved in 1988 – and its definitive expiry of the limitation period in 1995 – served as a formal closure of the case, but was not conclusive from an epistemic point of view, a fact that can only be regarded as a complete legal failure.

⁷ Occasional public debates still take place on this subject, such as the one held at the Royal Academy of Medicine and Surgery of Seville (RAMSE), as part of the ‘Medicine and Cinema’ series: ‘Controversies in legal and forensic medicine: 40 years since the Galindos murder’, published in **Memorias Académicas de la Real Academia de Medicina y Cirugía de Sevilla**, 2015, 171–172.

The combination of these elements places the Los Galindos investigation within what legal literature considers a ‘structural failure’, which is usually linked more to systemic dysfunctions in the process than to individual errors on the part of the investigating judge (Aguilar Fernández, 2002). In fact, from a legal-doctrinal perspective, the Los Galindos case is of great educational value, as it illustrates the difficulty of sustaining a viable charge when the following factors occur simultaneously: 1) a contaminated crime scene; 2) a breakdown in forensic analysis; 3) disjointed witness statements; 4) delays in the preliminary investigation; and 5) the expiry of the limitation period. From a purely criminological perspective, this led to failures in four fundamental areas: crime scene management, hypothesis modelling, the use of forensic evidence, and contextual interference.

The delayed arrival of the judicial authorities and the permissive attitude towards access by workers, neighbours, onlookers and journalists resulted in a degree of contamination that was as extraordinary as it was irreversible. The news archive highlights how the property remained open for hours and how numerous people handled objects, furniture and bodies without any police supervision. These events not only compromised the chain of custody but also prevented the reconstruction of blood trails and fingerprints or the clarification of initial positions. It is possible that this, compounded by inadequate preparation, led to inefficient hypothesis modelling (Gómez, 2025). From the outset, the Guardia Civil accumulated an excessive number of possible scenarios that could not be systematically prioritised or ruled out. The absence of progressive filtering – a central element of modern methodologies – contributed to an analytical breakdown, in which the multitude of theories supplanted inductive analysis based on verifiable evidence. Subsequently, despite attempts to steer the investigation back on track by bringing in new and better-trained professionals, this served little purpose, as the damage had already been done. To paraphrase Edmond Locard’s (1877–1966) famous assertion that ‘time passing is truth fleeing’, in this case—given the methodological and investigative difficulties described—the statement ‘ ’ is paradigmatic (Saferstein, 2011).

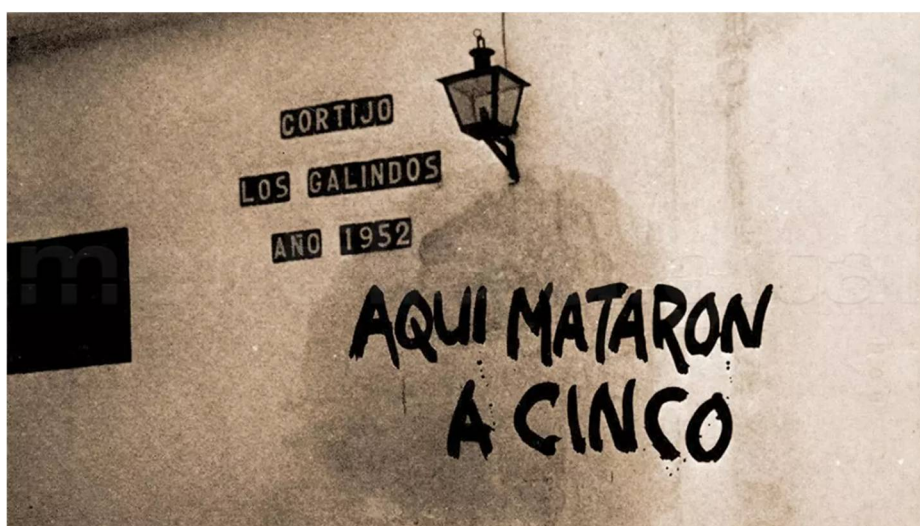
With regard to the forensic evidence itself, it seems obvious to point out—as it is a well-established fact—that it can both solve a case and, ultimately, contribute to general confusion, as it is of little use when there is no adequate narrative timeline into which to fit it. The inadequacy of the initial post-mortems and the contradictions introduced by the subsequent ones resulted in an evidential structure that could not be consolidated. Whilst contemporary criminalistics emphasises that expert consistency is essential to underpin operational hypotheses, the Los Galindos case stands as a clear example of inefficiency: the divergence in expert opinions acted precisely as an epistemic barrier, insofar as it failed to curb contextual interference. Furthermore, the media hype and the patronage-based structure of rural Andalusia in 1975, as well as the institutional biases of the final phase of Franco’s dying regime, created a perverse ecosystem that was highly unsuitable for fostering a rigorous and well-systematised investigation. Thus, viewed from a general perspective, the famous Los Galindos case can be interpreted as a textbook example of systemic criminological failure, in which an accumulation of methodological and structural errors—rather than a single critical failure—led to the establishment of a ‘poisoned tree’ that prevented the production of a valid inference regarding the perpetrator that was not already contaminated.

5. FINAL REFLECTIONS: THE CONSTRUCTION OF A NARRATIVE

Ever since it took place, the Los Galindos murder has become a case that has received significant media attention and has traditionally been viewed – depending on the context – either as the last major crime of the twilight years of the Franco regime, or as the first major crime of the Transition. In retrospect, the reports and successive anniversary reviews consistently highlight two fundamental features: 1) the extraordinary diversity of accounts regarding motives and perpetrators; and 2) the case's enduring status as a symbol of unresolved issues in the public memory, both in Andalusia and across Spain, a fact that may well be the reason for its continued relevance and almost constant resurgence (Corroto, 2024). The reconstruction of the crime, summarising decades of coverage, emphasises the coexistence of three different *modus operandi* and the impossibility of attributing responsibility, a fact that has fuelled open-ended narratives and speculation of all kinds. This open-ended narrative, reinforced by summaries that consistently highlight the same central idea – five murders and no culprit – (Figure 7), has cemented the case's media status more as an 'enigma' typical of mystery programmes or suitable for amateur detectives, rather than as an unsolved legal case. This has facilitated its transition from the purely police, judicial, educational and investigative spheres into popular culture and fiction. An unjust situation for the victims, who have never received justice and have instead been subjected to much questionable treatment, whilst being of little use to criminological studies

Figure 7

*Iconic photograph of the façade of the Los Galindos farmhouse with the graffiti 'Five were killed here', which drew attention to what had happened (La Vanguardia). Although it appears that this anonymous graffiti did exist, it was immediately removed by the farmhouse's owners (the effects of the cleaning in the photograph) can be seen. The widely circulated photograph, which is not authentic, shows a reconstruction created for the cover of the book *Orgía de sangre* (1976) by Francisco Pérez Abellán.*



Journalistic literature and publishing have contributed decisively to this perception (Figure 8). The idea has been repeatedly put forward that the Los Galindos crime was a 'crude and perfect' one – crude in its execution, perfect because it was never solved – (Gil Chaparro, 1999), a phrase that the press has repeated ad nauseam as an iconic, albeit insufficient, summary of the case. On the other hand, in what is nothing more than the

manifestation of a trend inherent to the changing times, the revival of the tragedy's memory has reintroduced and popularised the conspiracy theory positing economic fraud as the motive and the subsequent self-serving cover-up as the aim. This has led to a 'structural' reinterpretation of the case within the media sphere, which has gradually distanced it from the original explanations—centred on crime of passion and the 'dark side of Spain'—and moved it into the realm of conspiracy theories.

Figure 8

Covers of investigative books (Orgía de sangre, 1976; El crimen de los Galindos, 1999; El crimen de Los Galindos, 2024) and novels (Los invitados, 1978; Inocentes, 2025) on the Los Galindos case.



The fact is that the case's reception by society cannot be separated from its initial fictionalisation. The novel **Los invitados** (Grosso, 1978) offered a highly evocative narrative framework that interwove procedural elements, intrigue and social allegory, thereby establishing a literary poetics of the rural enigma that has had a ripple effect on the collective imagination. The widespread circulation of this work, its reissues and reinterpretations have reinforced the transition from the 'case' to the 'story', thereby fostering the consolidation of quasi-serialised interpretative frameworks – intruders, crimes of passion, cannabis trafficking, settling of scores – which the formal investigation was never able to confirm or refute, but which popular culture institutionalised as a repertoire of possibilities, even giving rise to films that were highly controversial in their day and which bear only a purely incidental resemblance to the known and verified facts⁸. Grosso's novel, written in the accusatory narrative style directed at the authorities that was characteristic – and indeed logical – of the time in which it was written, contributed greatly to the spread of the conspiracy theory:

“It has been proven, by irrefutable testimony, that Manuel Zapata Villanueva made more than one conference call in the first few days of July 1975. However, the official investigators did not appear to be interested in getting to the bottom of these matters. It was not just this, but many other possible threads of the plot that were inexplicably ignored; for example, neither the idiosyncrasies of those murdered nor their social and emotional relationships were studied from a psychological perspective, as they should have been. According to the reports we have been

⁸ There was a 1987 film adaptation of Grosso's novel of the same name, directed by the filmmaker Víctor Barrera Rodríguez (b. 1933), which was of questionable quality and caused a great public stir. There was even a silent protest organised by Paradas Town Council on the grounds that the film 'morally degraded' the families of two of the victims of the quintuple murder. The González family formally lodged a complaint the film against for alleged slander and defamation, on the grounds that it linked the murdered José González Jiménez—whom the film even ridiculed—to fictional events. The town's mayor even called for a court injunction to ban the film [see “Demonstration in Paradas against the film ‘Los invitados’”, *El País*, 26 February 1987. Available at: https://elpais.com/diario/1987/02/26/cultura/541292412_850215.html, accessed in March 2026].

able to obtain thanks to the cooperation of residents of Paradas, who finally decided to break their long silence, the simplicity of the characters involved in the tragedy that ravaged the farmhouse is highly debatable, to the extent that, before we knew whether we were finally on the right track, we came to question whether this could be a rural tragedy or an act of revenge, precisely because of the complexity of the characters” (Grosso, 1978: 207–208).

At a local level, the emerging narrative has sought to destigmatise the victims and the municipality of Paradas – which has been marred by a troubling historical stain – by highlighting the severe impact that the initial sensationalist media coverage, as well as decades of rumours, have had on the community and its people. For example, the novel **Inocentes** (Pastor Rodríguez, 2025) – which includes an official statement issued by the Town Council – emphasises this idea: dignity must be restored to the murdered workers, and the ‘erroneous accusations’ and ‘stigmas’ that the media narrative has ingrained in the town’s collective memory must be corrected. This tension between external mythologisation and local redress illustrates the extent to which the dissemination and reception of the crime have been a struggle over the framing of the case, and offers a perfect example of the socio-political damage – and even public order issues – that can arise from a poor police investigation and a flawed judicial inquiry (Anrango Narváez, 2023; Tuesta Castro, 2024).

The ‘fraud hypothesis’ – perhaps because its intricacies link it to the frequent cases of institutional corruption in the waning days of the Franco regime and largely aligns with the element of ‘third-party intervention’ in the events – has been the one that has gradually gained greater interest in the public sphere. This reinterpretation is evident in key media reports that have brought the possible economic and administrative motives and their link to the Coduva cooperative back into the spotlight, whilst emphasising the shortcomings of the initial investigation, which they portray as perhaps ‘biased’ (Fernández de Córdova, 2024). This interpretative shift does not close the case, and in fact does not even fully explain it, but it serves perfectly to reshape the media agenda: rather than the questions relating to the psychology of the individuals that Grosso demanded, or delving into a muddled examination of possible domestic tensions and quarrels, it presents a suggestive framework of organised crime – estate management, money flows, loyalties and silences – very much in line with current journalistic narratives. Undoubtedly, as has already been said, this theory could be the most coherent of those available, but it must be emphasised that it was never proven in court, nor is there – or at least none has been found – any document or evidence that could corroborate it.

The sociology and psychology of communication explain the enduring presence of certain cases in the collective imagination due to their heuristic capacity to speak in the present of past times and institutions, as well as their symbolic power (Dittus, 2006; Martínez Posada & Muñoz Gaviria, 2009). The Galindos case met the perfect conditions for this, as it not only occurred at a moment of historical significance but also served as a symptomatic event for a country in transition: residual political patronage, weak safeguards, outdated institutions and a justice system caught between the practices of a sclerotic regime and emerging democratic demands. Hence, reinterpretations of the narrative emphasise the statute of limitations and the failure to bring the case to light as the ultimate core of the case’s meaning: what society remembers is no longer so much the ‘who’ or the ‘why’, but the failure itself. This collective memory is fuelled by media rituals – anniversaries, documentaries, TV series – which revive the enigma and, at the same time, reproduce the noise, insofar as each retelling introduces slight variations on previous perspectives. Thus, new testimonies and updates to the hypotheses emerge

which, without a solid expert filter, serve only to expand the range of narrative possibilities.

The problem inherent in this dynamic – and this would now take the debate into the realm of a pertinent victimological reflection – is that this noise had – and continues to have – a social cost: it cemented labels and suspicions that had such a profound impact on families and professions, as is expressly denounced today by those who demand a dignified remembrance for the victims, since the valid point of reference for the case is no longer the investigation itself – which does not even exist – but rather an inflated, und public narrative inherited from decades of more or less questionable media coverage (Maiorano, Travers & Vallières, 2023). Furthermore, processes of local symbolic reparation, as the comparative literature on memory management suggests, are necessary insofar as they fulfil functions of community restoration even when criminal justice has failed.

The truth of the matter—and let this serve as a key pedagogical conclusion—is that the media and social narrative surrounding the events at Los Galindos reinforces the central thesis of this article: the failure of the investigation cannot be reduced to isolated or specific errors, as it is the result of a dysfunctional interplay between four levels of analysis that would require a detailed study and which, in reality, can be applied to countless failed police investigations and ineffective judicial inquiries; as such, they may inspire a review of protocols, as well as ongoing efforts to update ‘best practices’, beginning with well-established controls over information flows and leaks:

1. Serious initial investigative shortcomings – a contaminated crime scene, the judge’s late arrival, and a breakdown in the expert assessment – which prevented the production of sufficient conclusive evidence and, consequently, the formulation of hypotheses with probative value.

2. A proliferation of theories fuelled by intense media coverage, fictionalised retellings and anniversary round-ups, which have turned the case into an open ‘cultural asset’ rather than a judicial file, shifting the focus from the testing of hypotheses to narrative consumption.

3. Long-standing hypothetical and novelistic reframings – from the incident itself to a financial motive – which have enhanced the analytical coherence of the public narrative, but which lack the capacity to remedy the original evidential deficit, as they are nothing more than *ad hoc* reconstructions without an empirical basis.

4. Dynamics of social memory – particularly at the local level – which have sought to satisfy a demand for symbolic redress in the face of inherited stigmas, demonstrating that ‘the case’ has shifted from the police and judicial sphere to that of sociology and criminal policy. As a result, it is now firmly established within the realm of actions linked to the management of memory rather than within the context of criminal justice.

From an academic perspective, the Los Galindos crime constitutes a borderline case in which the ideal model of progressive filtering that should guide a criminal investigation has been supplanted by a contest of narratives with scant evidential support. As a result, the system failed insofar as it did not achieve the desired transition from the formulation of scenarios to the systematic testing of hypotheses, and the media amplified the

analytical noise that the – already weakened – investigation was unable to absorb. Admittedly, this implies that the available evidence does not allow for a definitive conclusion regarding the perpetrator, but it does, nevertheless, allow for a conclusion regarding the assessment of the process: Los Galindos exemplifies an epistemological collapse brought about by the convergence of judicial shortcomings, a proliferation of hypotheses and media coverage which, by turning the case into a ‘criminal myth’, reinforced its unresolved nature as its defining characteristic. That is why, more than half a century on, it survives less as a crime than as a narrative, and this is precisely the great lesson it offers; it has become an uncomfortable mirror of institutional fragility in situations of political tension and of the ambivalences of the public sphere when the truth established by evidence cannot be restored. Indeed, this is its greatest lesson: the ambiguous terrain in which conspiracy theories about the events take root so readily.

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Research Article

DYNAMICS OF VIOLENCE AND FIREARMS IN ECUADOR: SPATIAL PATTERNS AND CHALLENGES IN BALLISTIC TRACEABILITY FOR INVESTIGATIVE PURPOSES

English translation with AI assistance (DeepL)

Emilio Gabriel Terán Andrade

University of the Americas (UDLA), Faculty of Law, Quito, Ecuador
emilio.teran@udla.edu.ec
ORCID: 0000-0001-5744-2713

Diego Mauricio López Tapia

University of Alcalá (UAH), PhD Programme in Forensic Sciences, Madrid, Spain
diego.lopezt@edu.uah.es
ORCID: 0009-0000-3385-0421

Marcelo Javier Vinueza Calderón

Ecuadorian National Police, National Directorate of Information Analysis, Quito, Ecuador
marcelo.vinueza@policia.gob.ec
ORCID: 0000-0002-2908-352X

Received 23/03/2026

Accepted 10/06/2026

Published 30/06/2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.9062>

Recommended citation: Terán, E. G., López D. M. et Vinueza M. J. (2026). Dynamics of violence and firearms in Ecuador: spatial patterns and challenges in ballistic traceability for investigative purposes. *Revista Logos Guardia Civil*, 4(2), pp. 331–356. <https://doi.org/10.64217/logosguardiacivil.v4i2.9062>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

DYNAMICS OF VIOLENCE AND FIREARMS IN ECUADOR: SPATIAL PATTERNS AND CHALLENGES IN BALLISTIC TRACEABILITY FOR INVESTIGATIVE PURPOSES

Summary: 1. INTRODUCTION. 2. DYNAMICS OF VIOLENCE IN URBAN AND SUBURBAN CONTEXTS IN ECUADOR. 2.1. METHODOLOGIES FOR THE GEOGRAPHICAL TARGETING OF VIOLENCE AND THE CONTEXTUALISATION OF HIGHLY TARGETED AREAS OF VIOLENCE. 2.1.1. Methodologies for the geographical localisation of violence. 2.1.1.1. Sources of information and data collection procedures. 2.1.2. Contextualisation of hyper-localised areas of violence. 2.1.3. Cartographic representation and spatial analysis of critical zones. 2.2. TRENDS AND DETERMINANTS OF VIOLENCE IN ECUADOR: SOCIO-STRUCTURAL IMPACT AND THE CENTRAL ROLE OF FIREARMS IN LETHAL VIOLENCE. 3. TRACEABILITY AND IDENTIFICATION OF FIREARMS: CHALLENGES IN THEIR TRACKING, CLASSIFICATION AND BALLISTIC ANALYSIS 3.1. Unmarked privately manufactured firearms: challenges in their tracing, classification and criminal investigation. 3.1.1. Ballistic tracing tools and systems: implementation and limitations of the IBIS system. 3.2. Limitations of the study. 3.3. Implications for criminal investigation. 4. CONCLUSIONS.

Abstract: Analysis of the dynamics of lethal violence in Ecuador reveals a radical shift in the profile of public safety, characterised by an exponential rise in homicides, reaching a historic rate of 51 per 100,000 inhabitants by 2025. The temporal stability of crime concentration was demonstrated through the use of spatial autocorrelation tools and the Local Morán Index, revealing the existence of micro-territories with high crime concentrations, such as the Durán Canton. The recurrence of violent incidents demonstrates that crime is consistently concentrated in the same locations, as is the case in certain micro-areas that continue to exhibit high levels of violence over a prolonged period. Similarly, the central role of firearms as a means of committing homicides is highlighted, creating fundamental technical challenges for forensic science. The development of 'ghost' weapons using 3D printing or CNC machines complicates traditional techniques for the control and tracing of weapons. A comparison of genuine weapons and suspect weapons shows that the existence of highly sophisticated copies or technical modifications makes it quite difficult today to identify serial numbers and the clear origin of the weapons.

Resumen: El análisis de las dinámicas de violencia letal en el Ecuador revela un cambio radical en el perfil de la seguridad ciudadana, que se caracteriza por un crecimiento exponencial de los homicidios hasta alcanzar una tasa histórica de 51 por cada 100,000 habitantes en 2025. Se evidenció la estabilidad temporal de la concentración delictiva mediante el uso de herramientas de autocorrelación espacial y el Índice Local de Morán, al mostrar la existencia de microterritorios de alta concentración delictiva, por ejemplo, el Cantón Durán. La repetición de hechos violentos evidencia que el delito se concentra siempre en los mismos lugares tal y como sucede en algunas microzonas que continúan mostrándose con niveles elevados de violencia durante mucho tiempo. De la misma manera, se pone en evidencia el papel central de las armas de fuego como medio para cometer homicidios, lo que crea desafíos técnicos fundamentales para la criminalística. El desarrollo de armas fantasma que utilizan impresión 3D o máquinas CNC dificulta las técnicas tradicionales para el control y la localización de armas. La comparación de armas auténticas y armas sospechosas muestra que la existencia de copias o

modificaciones técnicas muy desarrolladas hacen que hoy en día resulte bastante difícil la identificación de los números de serie y del origen claro de las armas.

Keywords: intentional homicide, ghost guns, organised crime, ballistics analysis

Palabras clave: homicidio intencional, armas fantasma, crimen organizado, análisis balístico

ABBREVIATIONS

ABIS: Automated Ballistic Identification Systems.

Cartridge: A unit comprising a bullet, a cartridge case, gunpowder and a primer.

CNC: Computer Numerical Control.

DMG: Guayaquil Metropolitan District.

DGIN: General Directorate of Investigations of the Ecuadorian National Police

H.I.: Intentional Homicides

IBIS: Integrated Ballistic Identification System. A commercial ballistic identification system originally developed by Forensic Technology, now owned by LeadsOnline.

PAHO: Pan American Health Organisation

WHO: World Health Organisation

GDP: Gross Domestic Product

p-value: Level of statistical significance.

Projectile: Part of the cartridge expelled from the barrel when fired and which is in motion.

UNODC: United Nations Office on Drugs and Crime

UNRECPOL: National Crime Information Reception Unit of the Ecuadorian National Police

Cartridge case: The metal component of the cartridge that contains the other elements of the ammunition.

z-score: High and low values suggest that the locations of the homicides are not random

1. INTRODUCTION

Urban violence in Ecuador has risen significantly in recent years, reaching levels that have posed a challenge to public safety and the country's social development. This phenomenon is evident from an analysis of intentional homicides, specifically those committed with firearms, which shows that the homicide rate reached a record high in 2025 of 51 incidents per 100,000 inhabitants. Based on the data, it can be shown that the spatial and temporal concentration of these violent incidents is not random, but is focused on micro-territories, such as the Durán Canton, where lethal violence has remained stable over time, revealing patterns of recurrence and persistence.

From a methodological perspective, the analysis of these dynamics has relied on advanced spatial autocorrelation tools and the Local Morán Index, which enable the identification of hyper-focalised areas of violence to generate risk maps; this facilitates an understanding of the geographical distribution of crime and the identification of critical zones, which is essential for the design of targeted and effective public policies. Furthermore, the incorporation of traceability for firearms-related offences, as well as the integration of ballistic data and the evaluation of the IBIS (Integrated Ballistic Identification System), have provided valuable information on the use and circulation of firearms in urban contexts, although they have also revealed technical and operational limitations, particularly in the face of the proliferation of privately manufactured weapons and 'ghost' weapons produced using technologies such as 3D printing and CNC machines.

These technological advances in firearms manufacturing pose a challenge to security, as they make it difficult to identify serial numbers and trace the origin of firearms, thereby complicating the work of the authorities in preventing, controlling and detecting crime; furthermore, the existence of sophisticated replicas and advanced technical modifications requires the constant updating of ballistic analysis methods and the implementation of new control and regulatory strategies. In this regard, the illicit economy linked to the trafficking and use of firearms is a key factor in the perpetuation of urban violence, interacting with structural socio-economic factors such as poverty, inequality and social exclusion, which create conditions conducive to the expansion of organised crime.

Against this background, this article aims to analyse the dynamics of homicidal violence in Ecuador, its spatial distribution and the challenges associated with the traceability and ballistic identification of firearms used in contexts of criminal violence. To this end, the canton of Durán was selected as a case study due to its high levels of lethal violence and the persistence over time of areas of hyperconcentration. The study seeks to provide empirical evidence that contributes to an understanding of the spatial patterns of violence and the existing technical limitations on the identification and tracing of firearms used by criminal organisations.

2. DYNAMICS OF VIOLENCE IN URBAN AND SUBURBAN CONTEXTS IN ECUADOR

2.1. METHODOLOGIES FOR THE GEOGRAPHICAL TARGETING OF VIOLENCE AND THE CONTEXTUALISATION OF AREAS OF EXTREMELY HIGH VIOLENCE CONCENTRATION.

2.1.1. Methodologies for the geographical targeting of violence.

Homicidal violence is a deep-rooted problem that impacts the quality of democracy, institutions, the family and society. In general, it constitutes a social problem that affects the quality of life of citizens, households and the social and economic development of a locality. It is a multi-causal phenomenon that must be understood holistically; therefore, based on the existing academic literature, it can be analysed from various angles. One such angle is the crime triangle, derived from one of the main theories of environmental criminology (Cohen and Felson, 1979). In this model—the crime triangle—the victim and the offender coincide in time and space in the absence of a capable guardian. In light of the above, it is essential to identify and geographically locate the areas where problems of homicidal violence are concentrated.

2.1.1.1. *Source of information and data collection procedure*

The information used in this study is drawn from administrative records consolidated by the Special Commission on Statistics for Security, Justice, Crime and Transparency, a technical body coordinated by the National Institute of Statistics and Censuses (INEC), established to strengthen the production, validation and standardisation of official statistics relating to public safety, justice, crime and transparency in Ecuador.

The database used corresponds to the national register of intentional homicides, comprising the offences of homicide, murder, contract killing and femicide. Access to the information was obtained through institutional mechanisms, as the National Directorate for Information Analysis forms part of the Special Commission on Statistics, which allows authorised access to consolidated information for analytical and statistical purposes.

The period analysed covered the years 2022, 2023, 2024 and 2025. The database comprised 9,175 records relating to intentional homicides that occurred between 2022 and 2025.

The main variables used were: province code, canton code, sub-zone, district, circuit, sub-circuit code, revised geographical coordinates (X and Y), date of the offence, type of weapon and type of violence.

Prior to the spatial analysis, the records underwent validation, cleansing, georeferencing and quality control processes, ensuring the consistency of the information used for spatial autocorrelation analyses and the identification of hyper-focalised areas of violence.

Table 1
Descriptive statistics of the analysed database

Variable	Value
Records analysed	9,175 intentional homicides
Period analysed	2022–2025
Canton analysed spatially	Durán
Tiles generated	9,291
Identified hotspots	343
Areas of high concentration	19

Source: Special Commission on Security, Justice, Crime and Transparency Statistics. Compiled by the authors

Over the last 40 years, the identification of small areas with high concentrations of crime has become a fundamental requirement for the efficient management of security (Weisburd et al., 2016). In this regard, Professor Sherman demonstrated empirically in the late 1980s that crimes are not randomly distributed in space (Sherman et al., 1989); on the contrary, he identified strong concentrations of crime at a micro-geographical level, known as ‘*hot spots*’;¹ Specifically, he found that 50 per cent of all emergency calls to the police over a two-year period originated from just 3 per cent of the city’s addresses. Similar studies have shown that 5 per cent of *hot spots* accounted for 50 per cent of all crimes (Weisburd et al., 2004).

Within this empirical context, a series of further studies confirmed that crime tends to be concentrated in very small areas. Thus, Weisburd (2015) formulated the ‘law of crime concentration’, arguing that, regardless of variability, there is a narrow range in the proportion of crimes concentrated in certain locations, suggesting a consistent pattern across cities of different sizes and characteristics. For a 50 per cent concentration of crime, the range was approximately 4 per cent of street segments — between 2.1 and 6 per cent — whilst, for a 25 per cent concentration, the range was less than 1.5 per cent — between 0.4 and 1.6 per cent.

The law of crime concentration has been confirmed in Europe, Asia, North America, Latin America and several countries in the Global South; all empirical studies show that there are micro-territorial units which account for a very significant proportion of crimes and, consequently, a high presence of situational factors that facilitate their commission in those specific locations. Furthermore, various studies have demonstrated the existence of temporal stability in crime concentration (Weisburd, 2015). In one specific case, in Seattle, it was found that, over a seven-year period, the bandwidths for the cumulative proportions of 50 per cent and 25 per cent of crime ranged between 4.6 and 5.8 per cent and between 0.9 and 1.2 per cent of street segments, respectively. From this perspective, the stability of crime concentration does not necessarily imply that specific hotspots remain constant over time.

¹ An area with a high concentration of crime compared with the distribution of crime across the entire study area. In other words, a geographical area in which the number of criminal incidents or disturbances is above average, or an area where people face a higher-than-average risk of victimisation.

In conclusion, the methodology proposed for the geographical targeting of violence in Ecuador—through the integration and complementarity of qualitative analyses and multidimensional territorial assessments—enables an understanding of the social, economic, institutional and criminal mechanisms underlying the persistence of these hyperconcentrations of homicides.

2.1.2. Contextualisation of hyper-focalised areas of violence

In Ecuador, to identify hyper-focalised areas of violence, a tessellation process was used to identify statistically significant areas of crime concentration and to examine the persistence of these hotspots over the last three years.²

Firstly, to statistically identify critical points of violence in Ecuador, the ‘Morán Local Index’ was applied to the tessellation units established across the entire territory. This index is obtained through spatial autocorrelation, which compares the value of a given geographical unit — hexagonal tiles — with that of adjacent geographical units (Buzai and Montes, 2021). This type of calculation is based on a fundamental law of geography: everything is related to everything else in space, but nearby things are more closely related than distant ones (Tobler, 1970); in this regard, it is found that areas of high crime surrounded by similar areas exhibit positive spatial autocorrelation, whilst areas of high crime adjacent to areas of low crime exhibit negative spatial autocorrelation.

ArcGIS Pro was used to calculate the Morán’s Index, which enabled the generation of an automated statistical report containing *z-scores* —high or low values suggest that the spatial distribution of homicides is not random— and *p-values* —indicating the level of statistical significance; a value below 0.05 indicates significance—and the index itself—which ranges from –1 to 1 and indicates the degree of autocorrelation.

Secondly, the temporal variation of the micro-territories or tiles within each territory was analysed. We identified statistically significant *hotspots* for each year, from 2022 to 2024. Subsequently, the levels of homicide concentration were classified within each tessera according to the following parameters: *high-high*, for areas which, in a given year, had high levels of criminal violence and were adjacent to territories also with high concentrations; *high-low*, for territories with high levels of criminal violence adjacent to areas of low concentration; *low-high*, for territorial units with low levels of criminal violence and adjacent to high-concentration territories; *low-low*, for territories with low levels of criminal violence bordering on low-concentration zones; *non-significant concentration*, for areas with a very low probability of intentional homicides; and finally, *areas of hyper-concentration*, which correspond to the micro-cells that maintained the high-high category for three consecutive years.

² The entire district was divided into tiles represented by hexagons measuring 200 metres on each side. These tiles became our spatial units of analysis. Ignoring traditional territorial boundaries — as defined by the Secretariat for Planning — and instead using territorial units created by the analysts is a very common practice within the scientific community. This is because a set of regular units provides temporally stable cells, allows for the selection of cell size, ensures uniform coverage and enables the visualisation of absolute values, as all cells are the same size.

To determine whether the persistence of homicides in certain cells over a three-year period was not due to chance, the *p-value* and *z-score* were verified. Consequently, only those cells with *p-values* below 0.05 and classified as ‘High-High’ over the three-year period were identified as indicating that criminal violence in certain micro-territories is recurrent over time.

In summary, a concrete methodological framework is proposed for contextualising hyper-focalised areas of homicidal violence in Ecuador, aligned with government evidence on the concentration of crime in micro-locations and spatial analysis using the Morán’s Index. The combination of hexagonal tessellation, local spatial autocorrelation and a three-year temporal persistence criterion to define areas of hyperconcentration constitutes a technically suitable tool for determining and substantiating, through a comprehensive assessment, the dynamics of the phenomenon of violence affecting the national territory.

2.1.3. Cartographic representation and spatial analysis of critical zones

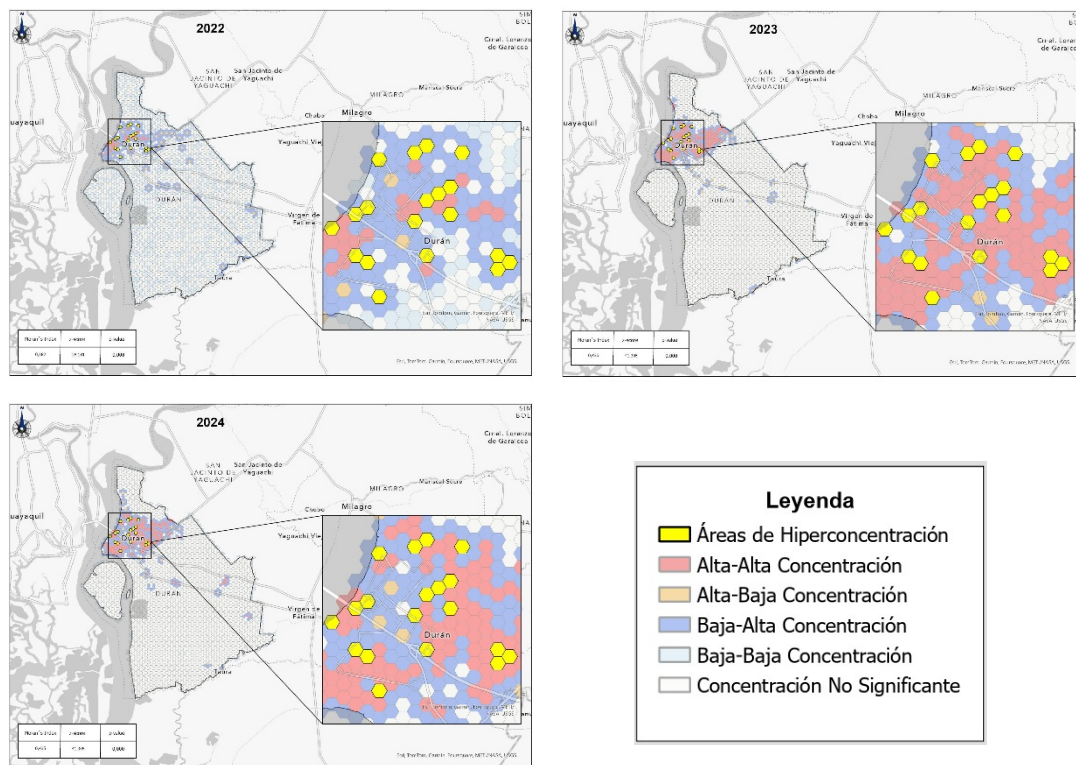
In this analysis, tesserae — micro-territories — were identified with a statistically significant spatial concentration of intentional homicides in the Durán canton³ and temporal stability, represented on the map in yellow. The Local Morán Index was calculated for each year to obtain the *z-score*, *p-value* and *index* values, as well as to generate the thematic layer of micro-territories with their different levels of concentration. In this way, the spatial representation made it possible to distinguish various levels of statistical concentration of intentional homicides in the Durán canton.

Among the micro-cells showing statistically significant values, the ‘*high-high* concentration’ category — shown in red — indicates units with high levels of homicides surrounded by other micro-cells also exhibiting high concentration. The ‘*high-low* concentration’ category describes areas with high levels of criminal violence bordering on zones of low concentration. The ‘*low-high* concentration’ category refers to units with low levels of criminal violence adjacent to areas of high concentration. The ‘*low-low* concentration’ category corresponds to areas with low levels of criminal violence bordering micro-cells of low concentration. Finally, the *areas of hyperconcentration* identify the micro-cells that maintained the ‘*high-high*’ status for three consecutive years.

Given this temporal persistence and the high density of criminal violence in the Durán canton, these micro-territories constitute areas of hyper-concentration and are therefore of particular relevance for the prevention of intentional homicides.

³ The canton of Durán belongs to the province of Guayas in Ecuador and is situated on the banks of the River Guayas, opposite the city of Guayaquil.

Figure 1
Areas of concentrated criminal violence in the Durán canton



Source: Special Commission on Justice Statistics. Note: The figure shows the identification of micro-territories with a statistically significant spatial concentration of intentional homicides in the Durán canton, as well as their temporal stability

Figure 1 shows that spatial autocorrelation—the Morán Local Index—identified 19 clusters⁴ of hyperconcentration in the Divino Niño, Recreo, Liga Cantonal, Arbolito, Centro de Durán and Albert Gilbert, all within the Durán canton. These represent the micro-territories which, over three consecutive years—from 2022 to 2024—exhibited high levels of criminal violence and were surrounded by areas with a high incidence of intentional homicides. Furthermore, over the three-year period, clusters classified as ‘high-high concentration’ were identified in the Divino Niño, Recreo, Liga Cantonal, Arbolito, Centro de Durán and Albert Gilbert sectors, where rates of criminal violence significantly exceed the average and are surrounded by areas with equally high rates. These patterns of spatial autocorrelation are significant because they have annual p-values below 0.05 and favourable z-scores, suggesting that the observed clusters are not the result of chance.⁵

⁴ A cluster is a group of incidents, places, people or cases that share similar characteristics and form a pattern relevant to the research.

⁵ The Durán canton comprises 8 districts

Table 2
Description of persistent violence hotspots over time.

Type of micro-territories	Year 2022	Year 2023	Year 2024
Hyperconcentration			19
High-High concentration	41	160	142
High-Low concentration	28	21	18
Low-High concentration	238	181	230
Low-Low concentration	1290	87	113
Trace Concentration	1500	2648	2594

Source: Special Commission on Justice Statistics

Table 2 shows the colour-coded classification of micro-territories based on the concentration of violence from 2022 to 2024. Of particular note is the temporal stability of certain micro-territories which, for three consecutive years, were classified as *having* a ‘high-high’ concentration; given this persistent condition, they came to be classified as areas of *hyper-concentration*. In total, there are 19 micro-territories which, over the last three years, have experienced significantly high levels of criminal violence and bordered on other territories also characterised by high levels of violence.

In conclusion, the cartographic representation and spatial analysis in the Durán canton demonstrate that homicidal violence is not a diffuse phenomenon, but is anchored in specific territorial micro-units. Using hexagonal tessellation and the Local Moran’s I — applied annually from 2022 to 2024 — 19 micro-territories were identified that classify as areas of hyperconcentration, mainly in the Divino Niño, Recreo, Liga Cantonal, Arbolito, Centro de Durán and Albert Gilbert sectors. The persistence of these ‘high-high’ *clusters* over three consecutive years confirms the temporal stability of crime concentration and suggests the presence of structural factors that sustain the high level of violence in these areas.

2.2. TRENDS AND DETERMINANTS OF VIOLENCE IN ECUADOR: SOCIO-STRUCTURAL IMPACT AND THE CENTRAL ROLE OF FIREARMS IN LETHAL VIOLENCE

In 2010, Ecuador recorded an intentional homicide rate of 17.5 per 100,000 inhabitants, remaining in double figures until 2013, when the rate stood at 10.9. The Pan American Health Organisation (PAHO) and the World Health Organisation (WHO) have indicated that homicide rates exceeding 10 per 100,000 inhabitants constitute an indicator of epidemic-level violence. According to this criterion, Ecuador recorded levels of homicidal violence considered epidemic between 2010 and 2013, subsequently reducing its figures to fall below that threshold in 2014, when it recorded a rate of 8.2 homicides per 100,000 inhabitants. In 2016, Ecuador recorded a rate of 5.8 homicides per 100,000 inhabitants, one of the lowest levels observed in the country in recent decades.

The rate remained at 5.8 in 2017 and 2018, rising to 6.9 in 2019 and 7.8 in 2020; in 2021, the rate exceeded 14, at which point Ecuador once again faced an epidemic of violence, and since that year an exponential rise has been observed; in 2022 the rate stood at 27.58, rising to 46.25 in 2023 before recording a slight decrease in 2024 to 39.31, but rising again in 2025 to 51, making it the most violent year in Ecuador since 1980.

It has been found that six provinces in Ecuador (Guayas, El Oro, Santa Elena, Los Ríos, Manabí and Esmeraldas) account for 86 per cent of all violence occurring in the country; in other words, approximately nine out of every ten intentional homicides recorded in the country are concentrated in these six provinces. According to Alvarado and Muggah (2018), the patterns of homicidal violence differ from one country to another and even within the same country, from one city to another and between neighbourhoods within the same city. Therefore, understanding the nature of the phenomenon of violence and identifying the structural factors influencing its exponential rise is essential to grasping the origins of the problem.

Various studies have highlighted that processes of social exclusion, institutional weakness, the presence of illicit economies and the state's limited capacity to exercise territorial control can foster the emergence of contexts conducive to criminal violence. These factors often interact with highly profitable illegal markets, creating incentives for the consolidation of criminal organisations and an increase in violent conflicts.

Sen (2020) noted that development cannot be measured solely on the basis of economic growth, but must also take human development into account; in other words, 'the expansion of freedom is both the primary end of development and its principal means' (p. 16). Thus, development is not merely about observing an increase in economic indicators such as GDP, but also involves the elimination of certain forms of deprivation of liberty that leave individuals with few options and limited opportunities in life; and one such factor relating to personal freedom is the freedom to live in a safe environment, where their rights are respected and, above all, their life – the primary legal right that the State is called upon to protect.

A global perspective, as outlined by the United Nations Office on Drugs and Crime (UNODC, 2019), indicates that increases in homicide rates are frequently associated with social and economic indicators that change slowly. However, when rapid changes occur, the explanation is usually linked to organised crime. Sudden spikes in homicide rates are linked to shifts in power dynamics between competing criminal groups. These changes can be triggered by various factors, such as the emergence of a lucrative smuggling route that causes the groups involved to come into conflict. Globally, men and male adolescents aged 15 to 29 are at the highest risk of homicide, both as victims and as perpetrators; this is largely due to the situation in Latin America, where the causes of homicidal violence are frequently linked to gangs and organised crime.

Saborío (2019) conducted a study on the influence of drug-related violence in Costa Rica and found that the rise in homicides is linked to small-scale drug dealing and drug trafficking. Local organisations that begin by selling drugs in vulnerable communities can evolve and become part of the international drug trade network.

The approaches developed in the specialist literature allow for a partial interpretation of the recent evolution of criminal structures in Ecuador. From this perspective, it can be argued that certain local criminal organisations gradually evolved until they became integrated into transnational drug trafficking networks, thereby gaining greater financial resources and operational capacity. This process is thought to have facilitated the consolidation of criminal alliances and the expansion of complementary illicit activities that strengthened their territorial presence.

Competition between criminal organisations is thought to have encouraged the systematic use of violence as a means of territorial control and positioning within illicit markets. In this context, firearms became the primary physical enabler, as shown below:

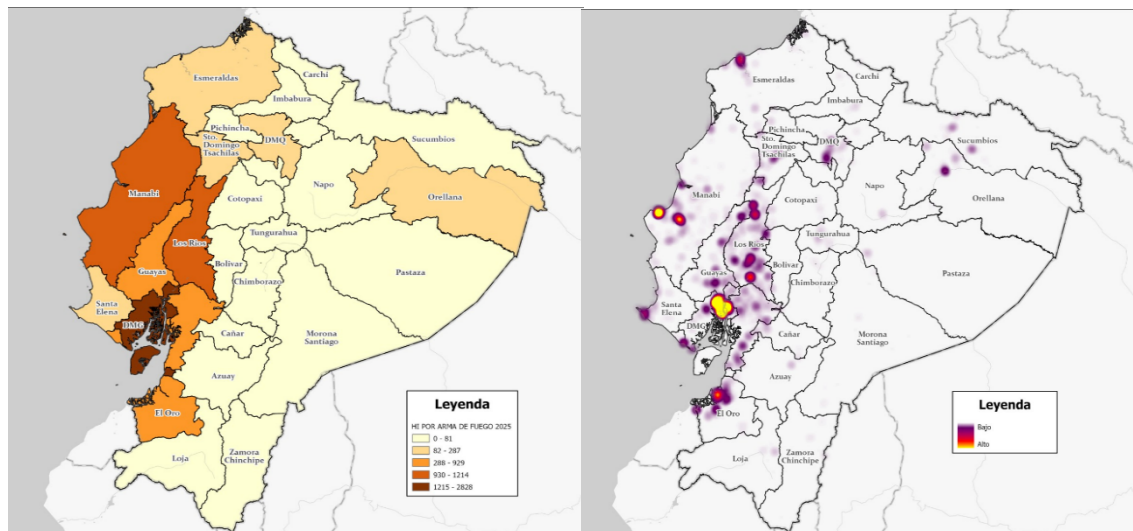
Table 3
Intentional homicides committed with firearms in 2025, by sub-zone

Sub-zone	H.I. Firearm
DMG	2828
Manabí	1214
Los Ríos	1199
Guayas	903
El Oro	667
Esmeraldas	287
Santa Elena	214
DMQ	163
San Diego de los Tsáchilas	121
Orellana	120
Sucumbíos	81
Cañar	57
Tungurahua	39
Bolívar	32
Pichincha	29
Cotopaxi	25
Azuay	20
Loja	20
Imbabura	19
Napo	17
Zamora Chinchipe	15
Pastaza	15
Morona Santiago	14
Chimborazo	10
Carchi	6
Grand total	8,115

Source: Special Commission on Justice Statistics.

In 2025, a total of 9,234 intentional homicides were recorded in Ecuador, of which 8,115 – that is, 88 per cent – were committed with a firearm. This means that of every 10 intentional homicides occurring in Ecuador, 9 were committed with firearms during that year. The zones and sub-zones where these incidents are concentrated are: Zone 8 DMG with 2,828 intentional homicides, Manabí with 1,214, Los Ríos with 1,199, Guayas with 903, El Oro with 667, Esmeraldas with 287 and Santa Elena with 214.

Figure 2
⁶ e choropleth map showing the concentration of H.I. by firearm in 2025



Source: Special Commission on Justice Statistics and author's own analysis

The maps show the distribution of homicides committed with firearms in Ecuador during 2025, broken down by province. It can be seen that the province of Guayas has the highest levels of violence, followed by Manabí and Los Ríos, which also show significant levels of violence. In contrast, the Amazon region and most of the south-central highlands have the lowest rates.

In summary, over the past decade, homicide rates in Ecuador have shifted from a 'island of peace' scenario—with rates below the epidemic threshold set by PAHO and the WHO—towards a criminal epidemic, characterised by exponential spikes that place the country among the deadliest in the world. The transition from single-digit rates to figures exceeding 40 homicides per 100,000 inhabitants in just a few years reflects a structural breakdown in security, consistent with regional evidence linking these figures to the reconfiguration of criminal markets and disputes between organisations involved in drug trafficking and related illegal economies.

3. TRACEABILITY AND IDENTIFICATION OF FIREARMS: CHALLENGES IN THEIR TRACKING, CLASSIFICATION AND BALLISTIC ANALYSIS

3.1. UNMARKED PRIVATELY MANUFACTURED FIREARMS: CHALLENGES IN THEIR TRACING, CLASSIFICATION AND CRIMINAL INVESTIGATION

As part of the operational and tactical interventions carried out in Ecuador by the Armed Forces and the National Police, firearms that have been the subject of illicit trafficking, as well as those used in intentional homicides, have been seized. Such findings are of particular relevance in judicial proceedings and criminal investigations, where the aim is to obtain as much information as possible: the perpetrators, the methods employed,

⁶ A choropleth map is a type of thematic map that represents the spatial distribution of a quantitative variable by using different shades or colours within predefined geographical areas, enabling patterns to be identified and comparisons to be made between regions.

the resources obtained and the links between members of criminal groups. For this reason, conducting an investigation into arms trafficking requires precise information on the firearms, such as their origins, manufacturer details and the routes taken, all with the aim of establishing traceability.

In the past, the acquisition of firearms might have been associated with traditional concepts linked to the arms industry, but this notion has changed and today we face new dynamics (Fletcher et al., 2026, p. 3), at present, the illicit trafficking of firearms is driven by new dynamics associated with black markets, transnational criminal networks and decentralised manufacturing processes. In the Ecuadorian market, the cost of firearms varies significantly depending on their origin, being considerably higher in the case of industrially manufactured weapons, whilst artisanal or locally produced versions are sold at notably lower prices.

Firearms manufacturing processes have undergone a revolution in recent times, as production has been liberalised in terms of design, manufacture and marketing. The United States has been one of the pioneering countries in driving this transformation, from the first 3D printers used by Cody Wilson to the present day, with manufacturing using aluminium blocks or metal powder printers (Armament Research Services [ARES], 2015). This development has been driven by collaborative manufacturing communities linked to the *maker* movement, whose principles promote the open sharing of designs, knowledge and tools for the independent production of various objects, including firearms. The digital dissemination of design files and manufacturing processes has facilitated access to technologies that previously required specialised industrial capabilities. As a result, criminal organisations can exploit these resources to manufacture, modify or assemble firearms outside traditional state control mechanisms, creating new challenges for criminal investigation and ballistic traceability (Gavilán, n.d.).

In Ecuador, specifically in the city of Manta, a clandestine workshop was discovered in 2023 that possessed 3D printers and CNC machines — originally known as computer numerical control machines — which were being used to manufacture the FGNE submachine gun — Sig Sauer MCX Rattler model; during the investigations, it was established that the organisation had a specialist in manufacturing and design, and .CAD, .CN, .STL and GCODE design files were found in their possession, all of which are used in printing and machining equipment (Teleamazonas, 2023); A key point is that this suggests the scope of such manufacturing poses a challenge to the investigation itself, since if the designs are accessible to anyone, it is possible to manufacture parts and components and modify weapons in terms of calibre or lethality—aspects that are essential when launching an investigation. So-called ‘ghost guns’ are so named because they lack conventional identification features, such as serial numbers, manufacturing records or formal traceability mechanisms. They are generally composed of parts and components acquired separately, assembled using private manufacturing processes or 3D printing technologies. In the United States in particular, a regulation issued by the *Bureau of Alcohol, Tobacco, Firearms and Explosives* (ATF) – part of the Department of Justice – permits the sale of firearm parts and components, but prohibits the sale of the basic structure, such as the receiver in long guns and the frame in handguns. It is in this context that, invoking the Second Amendment, certain sectors of society have manufactured their own action blocks and frames, and using parts purchased online have managed to assemble functional firearms (Policing Institute, 2026).

Alongside members of the public, there are private companies which, as part of this community, have specialised in the sale of parts and components for long and short firearms, including frames that are not fully manufactured but are 70 per cent complete, selling them alongside the accessories and tools required to complete their assembly. For example, mechanism frames for long guns are offered, made of aluminium and shaped to accommodate the component holes, but without the holes for the fasteners (Europol, 2025). One might think that, if the law permits the possession of a firearm, it would not allow it to be outside the legal framework; however, these ‘maker’ movements have set up clubs where people can use their replica firearms and fire them, as evidenced in written and audiovisual publications or on social media (Throwing Copper CRA, 2024).

The security agencies responsible for controlling and monitoring the use of firearms in various countries base their work on databases compiled from import and sales records, as well as applications for firearms licences. This entire chain generates records and traceability that can be used in criminal investigations. However, when it comes to ‘ghost’ or privately manufactured firearms, in most cases they do not have a serial number; although on some occasions the manufacturer under whose name they are sold can be identified, this poses difficulties for criminal investigations, as their true origin cannot be ascertained, which benefits criminal organisations by preventing traceability (Fletcher et al., 2026, p. 5).

According to data gathered from the media, it has been established that firearms trafficking originates in the south, from Peru, and enters the country via seaports. However, these are not the only sources; there are also light aircraft arriving from Central America or shipments via international post, meaning that establishing a clear line of inquiry is only possible within the context of a specific investigation. For example, in the *Casador* case in Peru, a company was involved that sold firearms to front men, who then reported them as stolen; these were subsequently trafficked to Ecuador, and one of these weapons was identified as having been used in the murder of presidential candidate Fernando Villavicencio; another significant case is the seizure of firearms off the coast of the Galápagos Islands, where it was established that some of the weapons lacked identification as they were privately manufactured (Insight Crime, 2023).

The situation is further complicated when weapons are manufactured using 3D printers, as the models are available for free download, making identification even more difficult, given that both the designs and the manufacturing processes are open-source (ARES, 2015).

3.1.1. Ballistic tracing tools and systems: implementation and limitations of the IBIS system

IBIS is one of the most important technological tools in the forensic analysis of firearms; this system enables the digital capture and comparison of the microscopic markings that the weapon’s mechanical components—such as the firing pin, extractor and chamber—leave on bullets and cartridge cases at the moment of firing.⁷ It should

⁷ In forensic ballistics, the term ‘projectile’ is used to refer to the element of the cartridge which, upon firing, is propelled through the barrel and travels towards its target. Once this element has lost its momentum and is recovered as physical evidence, it is usually referred to as a bullet in certain technical and operational contexts and in certain forensic fields. Microscopic markings produced by the individual

be noted that the IBIS system is one of several Automated Ballistic Identification Systems (ABIS) available internationally. There are other technological solutions with similar functionalities, including Evofinder, BalScan and Sensofar, which are used by various law enforcement agencies and forensic laboratories.

As these markings possess unique characteristics resulting from wear and tear and the specific features of the firearm, IBIS facilitates the identification of matches between ballistic evidence recovered from different crime scenes, enabling links to be established between violent incidents that might, at first glance, appear unrelated.

In investigations into intentional homicides, ballistic cartridge cases recovered from the crime scene constitute a source of evidence of high probative value. During the firing process, the firearm imprints a series of micro-markings on the cartridge case that reflect the internal characteristics of the mechanism that fired the shot. Comparative analysis of these marks enables ballistics experts to determine whether different cartridge cases originate from the same firearm, helping to reconstruct the sequence of events and establish possible links between different criminal incidents (Houck & Siegel, 2015).

Various studies have indicated that, in the context of organised crime, it is relatively common for the same firearm to be used in multiple violent incidents over time; this reuse is due, amongst other factors, to the limited availability of illegal weapons and the need to maintain operational resources within criminal organisations. Consequently, ballistic analysis makes it possible to identify patterns of repeated use of specific firearms, facilitating the linking of intentional homicides involving the same weapon (Braga & Cook, 2018).

From a criminal analysis perspective, the information derived from ballistic analysis is of significant strategic value; identifying matches between cartridge cases recovered at different crime scenes reveals hidden connections between violent incidents, contributing to an understanding of the territorial dynamics of homicidal violence. This type of analysis also facilitates the identification of potential repeat offenders, patterns of weapon movement, and geographical areas where certain criminal phenomena are concentrated (Ratcliffe, 2016).

The analytical potential of the IBIS system is considerably enhanced when ballistic information is integrated with other sources of criminal data, such as police records, territorial intelligence and analyses of patterns of violence; this integration enables a more comprehensive understanding of the role played by firearms in shaping homicidal violence and in the dynamics of criminal conflicts. In this way, ballistic analysis not only contributes to the forensic investigation of individual cases, but also becomes a key tool for developing strategies to prevent and control armed violence (Wellford, Pepper & Petrie, 2005).

characteristics of the firearm can be observed on this element; these form the basis of ballistic identification processes. The cartridge case is the metal component of the cartridge that contains the other elements of the ammunition and which, after the shot is fired, remains in the chamber before being ejected during the firearm's firing cycle. For the sake of clarity, this study will primarily use the technical terminology specific to forensic ballistics.

The implementation of the system has made it possible to link cases and identify firearms across different investigations; to ensure the system remains technologically up to date, it was upgraded with the latest IBIS technology from the Canadian company Forensic Technology —now part of LeadsOnline— and a key feature of this system is that it allows connection to an international network of IBIS systems, facilitating the exchange of information between countries in the region (IBIN Manual, n.d.).

Correlation takes place in two areas: the first links cases involving violent incidents based on ballistic evidence — bullets and cartridge cases — which, depending on the timing, can be linked across different dates when an unidentified firearm has been fired in multiple incidents; the second area links ballistic evidence collected at different crime scenes with ballistic records registered by firearms control authorities or obtained through forensic analysis, thereby establishing their origin (ISUPOL Research Journal, 2023). This approach has been extremely useful in solving cases, particularly those involving homicides; however, the system's effectiveness depends largely on the number of cases recorded: the greater the volume and variety, the higher the probability of correlation. The identification of firearms and their origin will depend on whether they are registered in the system, thereby establishing traceability (IBIN Manual, n.d.).

Computer systems and databases constitute another strength in the fight against arms trafficking and in criminal investigations; one aspect to consider is the tracing of firearms via the ATF's *eTrace* system, which has made it possible to trace firearms sold from the United States and distributed internationally, facilitating the tracing of those used in illegal acts (Policing Institute, 2026). At the local level, the first generation of IBIS was implemented approximately ten years ago, with the creation of databases integrating records of firearms control managed by the Ecuadorian Armed Forces, police firearms, and bullets and cartridge cases recovered from crime scenes or obtained through ballistic analysis (ISUPOL Research Journal, 2023); furthermore, the Ecuadorian Armed Forces manage the 5ARM system database, which is responsible for the control and issuance of certificates for firearms possession licences, maintaining information on legally held firearms belonging to individuals and legal entities. According to legal regulations, the Ecuadorian National Police has the authority to trace firearms in criminal cases.

The limitation of these computerised tracing systems arises when seized firearms lack serial numbers or markings; whilst it is true that some may undergo restoration processes, this only applies to a small number of weapons; consequently, in other cases, as they lack serial numbers, it is not possible to determine their origin or place of manufacture unless a private-sector brand or company can be identified (Small Arms Survey, 2023)

3.2. LIMITATIONS OF THE STUDY

This research has limitations arising from the nature of the administrative records used. The database on intentional homicides contains both public variables and variables that are restricted for reasons of security and the protection of sensitive information. Furthermore, the spatial accuracy of the analyses depends on the quality of the georeferencing processes and the institutional validation of the records. Finally, the results reflect only officially recorded events; therefore, future updates or statistical reclassifications could partially alter some of the findings.

Furthermore, due to the observational nature of the study, the results allow for the identification of spatial associations and patterns of concentration, but do not establish direct causal relationships between the variables analysed.

3.3. IMPLICATIONS FOR CRIMINAL INVESTIGATION

The findings highlight several operational challenges for criminal investigations and the traceability of firearms used by criminal organisations. In particular, the growing prevalence of privately manufactured firearms necessitates strengthening the technical capabilities of forensic laboratories and expanding institutional and international cooperation mechanisms to improve identification and tracing processes.

To improve the effectiveness of methods for tracing privately manufactured or ‘ghost’ firearms, it is necessary to recognise that forensic ballistics studies can gather information which, when analysed collectively, enables the tracing of manufacturers, the identification of points of sale, potential routes and the ways in which criminal organisations use them. At present, information derived from expert reports and the records contained in the IBIS system constitutes a key source for criminal analysis, the identification of criminal patterns and the ballistic tracing of firearms used in violent incidents.

One of the main challenges for contemporary ballistic investigation is determining whether the weapons analysed are industrially manufactured or privately manufactured. In this context, ballistics experts must possess specialist knowledge that goes beyond the analysis of a weapon’s operating mechanisms, incorporating skills aimed at determining its origin through the examination of markings and serial numbers; the detection of attempts to remove, alter or falsify identifying features; the identification of modifications relating to calibre, firing capacity or lethality; and distinguishing between original firearms, replicas and privately manufactured firearms.

This last aspect constitutes an emerging phenomenon of particular relevance to criminal investigations, as the processes involved in the manufacture of privately made and industrially produced firearms may employ similar technologies, materials and equipment. However, differences tend to manifest themselves in the quality of the finish, the assembly mechanisms, functional modifications and the adaptation of components intended to alter the calibre, operational capacity or ballistic performance of the firearm.

4. CONCLUSIONS

The findings suggest that homicidal violence in Ecuador has undergone a structural transformation in recent years, as evidenced by the sustained increase in intentional homicides, which reached a historic rate of 51 per 100,000 inhabitants in 2025. The spatial analysis carried out identified persistent patterns of territorial concentration of violence, particularly in the canton of Durán, where the existence of areas of hyperconcentration confirms the temporal stability of certain criminal risk scenarios.

Firearms remain the primary means of committing homicides in Ecuador, which poses technical and operational challenges for forensic science and public safety. Ballistic analysis, supported by systems such as IBIS, has proved to be an effective tool for identifying weapons and linking violent incidents, thereby enabling the reconstruction of criminal sequences and the establishment of connections between

different cases that may occur in Ecuador or, through international judicial assistance mechanisms, in other countries in the region or around the world.

However, the emergence and proliferation of privately manufactured firearms, particularly those produced using three-dimensional (3D) printing and computer numerical control (CNC) machining technologies, poses a growing challenge to traditional systems of control, tracing and criminal investigation. The absence of serial numbers, the ease with which essential components can be modified, and the ongoing refinement of manufacturing processes significantly hinder the identification, classification and traceability of these weapons, thereby reducing the capacity of conventional mechanisms to determine their origin, routes of circulation and possible links to criminal activities. Consequently, this phenomenon calls for the strengthening of the technical capabilities of forensic laboratories, the ongoing updating of ballistic identification systems, and the development of national and international cooperation mechanisms to tackle new forms of trafficking and the illicit use of firearms more effectively.

The findings of the research lead to the conclusion that homicidal violence in Ecuador exhibits patterns of spatial concentration that are highly consistent with international evidence derived from environmental criminology and place criminology. The identification of persistent areas of hyperconcentration over several consecutive years confirms that lethal violence is not distributed randomly across the territory, but rather responds to structural dynamics associated with specific social, economic and criminal factors. In this regard, the findings support the need to implement prevention strategies targeted at high-risk micro-territories, optimising the allocation of institutional resources and strengthening local security governance.

Similarly, the growing presence of privately manufactured firearms and the expansion of decentralised production technologies represent an emerging challenge for traditional systems of control, tracing and criminal investigation. The evolution of these methods requires the strengthening of forensic capabilities, the ongoing updating of automated ballistic identification systems and greater international cooperation to trace weapons used by organised crime networks.

Finally, future research should explore in greater depth the relationship between the spatial concentration of homicides, criminal markets and the circulation of firearms, incorporating longitudinal analyses and predictive models that enable a more precise understanding of the factors underlying the persistence of lethal violence in certain areas of Ecuador.

The findings reinforce the need to integrate spatial analysis tools, criminal intelligence and ballistic traceability as complementary components in the design of public policies aimed at reducing lethal violence in Ecuador.

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Research Article

THE "TRANSFORMADOS" IN GUARDIA CIVIL

English translation with AI assistance (DeepL)

José Manuel Vivas Prada

Lieutenant Colonel of Guardia Civil

PhD in History from the University of Salamanca

jmvivasprada@guardiacivil.es

ORCID: 0000-0003-2443-0286

Received 23/02/2026

Accepted 21/05/2026

Published 30/06/2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.8910>

Recommended citation: Vivas, J. M. (2026). The "transformados" in Guardia Civil. *Logos Guardia Civil Journal*, 4(2), pp. 357–384.

<https://doi.org/10.64217/logosguardiacivil.v4i2.8910>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

THE "TRANSFORMADOS" IN GUARDIA CIVIL

Summary: 1. INTRODUCTION. 2. SPAIN, 2 APRIL 1939. 2.1. The Reserve Corps. 2.2. Provisional Officers. 3. THE TRANSFORMATION. 4. ENROLMENT IN THE GUARDIA CIVIL. 4.1. 1st Intake. 4.2. 2nd Intake. 4.3. 3rd Intake. 4.4. 4th Intake. 4.5. 5th Intake. 5. CONCLUSION.

Summary: Throughout the history of the Guardia Civil, the recruitment of officers has always posed a problem. Various factors and circumstances hindered the transfer of junior officers from the Infantry and Cavalry branches to the Guardia Civil. This reality, which was ever-present¹, became particularly worrying at the end of the Spanish Civil War since, logically, the Army's interests prioritised filling its own ranks over meeting the needs of the Civil Guard. On the other hand, the foreseeable future of a new Spain, with no foreseeable conflicts (at least in 1939), promised a smooth career path for those young officers; by contrast, the Guardia Civil offered nothing but hardships and risks, which became apparent almost immediately during the first clashes with groups of former Republican fighters, whether they remained on Spanish territory or carried out raids from France—commonly known as 'the maquis'.

Once the decision had been taken to convert them into 'regular' or 'professional' officers, thousands of junior officers who made up the Reserve and Provisional ranks—at least until the first lieutenants trained at the General Academy graduated—passed through the Conversion Academies.

In any case, the focus of our research is on those who, against all odds, chose to join the Guardia Civil and, through their decision, ensured continuity in the chain of command. Had the Corps relied solely on those promoted from within, it would later have faced serious difficulties in filling positions of greater responsibility.

Resumen: A lo largo de la historia de la Guardia Civil, la recluta de oficiales siempre supuso un problema. Diferentes condicionantes y circunstancias dificultaron el pase de subalternos desde las armas de Infantería y Caballería hacia el Cuerpo. Esta realidad, siempre presente², se hizo especialmente preocupante al acabar la Guerra Civil española

¹ So much so that, practically from the Corps' inception, the criteria for proportionality in the allocation of posts for junior officers – between those coming from the Army and those promoted from within – varied, in an effort to fill the posts. The need to fill vacancies led to the creation of the Getafe College (following the closure of the General Academy in its early years) and the Special Academy in 1907 (which would not begin operations until 1927). Gistau Ferrando (*Of Guardia Civil: history of this institution*) puts the number of unfilled vacancies for the rank of lieutenant at just over 100 in 1905. Turning now to the period covered by this study, the Act of 25 November 1944 stated: "*Since the publication of the Act of 15 March 1940, which organised the new Corps of Guardia Civil, there have been many vacancies that have not been filled despite repeated advertisements*". Obviously, the results were not as desired, as a new Act, that of 13 July 1950, acknowledged that: "*The Act of 25 November 1944, which laid down rules for filling officer vacancies in the Guardia Civil Corps, has failed to meet, in numerical terms, its essential requirements for officers from the Army*".

² Tal es así que, prácticamente desde la creación del Cuerpo, fueron variando los criterios de proporcionalidad en el reparto de las plazas para oficiales subalternos, entre procedentes del Ejército y los de promoción interna, tratando de completar las plantillas. La necesidad de cubrir las vacantes conllevó la creación del Colegio de Getafe (al cerrar la Academia General, en su primera época) y la Academia Especial en 1907 (que no comenzaría su actividad hasta 1927). Gistau Ferrando (*La Guardia Civil: historia de esta institución*) cifra, para 1905, en algo más de 100 las vacantes sin cubrir en el empleo de teniente. Ya centrados en la época en la que se enmarca este estudio, la Ley de 25 de noviembre de 1944 recogía: "*Desde la publicación de la Ley de quince de marzo de mil novecientos cuarenta, que organiza el nuevo Cuerpo de la Guardia Civil son muchas las vacantes que no han podido cubrirse a pesar de su anuncio reiterado*". Obviamente, los resultados no fueron los deseados, pues una nueva Ley, la de 13 de julio de 1950, reconocía que: "*La Ley de veinticinco de noviembre de mil novecientos cuarenta y cuatro, por la que se dictaron*

pues, lógicamente, los intereses del Ejército priorizaban la cobertura de sus plantillas antes que atender las necesidades de la Benemérita. Por otro lado, el horizonte presumible de una nueva España, sin conflictos previsibles (al menos en 1939), adivinaban una carrera sin sobresaltos para aquellos jóvenes oficiales; por el contrario, la Guardia Civil sólo ofrecía sinsabores y riesgos, casi inmediatamente puestos de manifiesto ante los primeros enfrentamientos con las partidas de antiguos combatientes republicanos, se mantuviesen en el territorio español o realizasen incursiones desde Francia, popularmente conocidas como “el maquis”.

Adoptada la decisión de transformarlos en “efectivos” o “profesionales”, miles de subalternos que engrosaban la Escala de Complemento y la de Provisionales, al menos hasta que egresasen los primeros tenientes que se formarían en la General, fueron pasando por las Academias de Transformación.

En cualquier caso, el objeto de nuestra investigación se centra en aquellos que, con todo en contra, optaron por ingresar en la Guardia Civil y permitir, con su decisión, mantener la continuidad en la cadena de mando. De haber contado sólo con los que procedían de la promoción interna, el Cuerpo habría tenido que afrontar, más adelante, serias dificultades para cubrir los puestos de mayor responsabilidad.

Keywords: "transformados" officers, provisional second lieutenants, supplementary scale, Guardia Civil.

Palabras clave: Oficiales transformados, alféreces provisionales, escala de complemento, Guardia Civil.

ABBREVIATIONS

AGM: General Military Academy

BOE: Official State Gazette

BOJDNE: Official Gazette of the Spanish National Defence Council

CFHGC: Centre de Photographie Historique de la Guardia Civil

D: Decree

DOM: Official Journal of the Ministry of the Army

FET-JONS: Traditionalist Spanish Falange and the National Syndicalist Offensive Committees

GM: Madrid Gazette

IMEC: Military Training for the Reserve Corps

IPS: Higher Pre-military Training

L: Law

O: Order

RD: Royal Decree

SEFOCUMA: Management Training Service

normas para cubrir las vacantes de Oficiales en el Cuerpo de la Guardia Civil, no ha logrado satisfacer, numéricamente, sus imprescindibles necesidades de Oficiales procedentes del Ejército”.

1. INTRODUCTION

Despite being a group of undoubted importance in the history of the Spanish military, there are no specific studies on the "transformados", let alone on those who pursued their careers in the Guardia Civil. These young men, initially regarded almost as *substitutes* for officers, helped to consolidate the foundations of the post-war army's hierarchical structure; yet we find scarcely any specific references to them in articles or books whose main focus lies elsewhere. Apart from brief notes in Colonel Isabel Sánchez's book (three pages out of a volume of over 1,900), a couple of isolated articles in the **Revista de Historia Militar**, or comments in a monograph on the Training Centre, no further information has been found; and, in any case, as regards Guardia Civil, only the content of this monograph is relevant.

The methodology, which is fundamentally exploratory and document-based, has relied on searching for information in a multitude of official gazettes and journals, particularly those published between 1936 and 1947, but extending to more recent periods such as the 1980s. To supplement this and, above all, to verify some of the data obtained, a large number of service records and files held in the Corps' Historical Archive were examined.

As a result of all this, this study will explore the origins of the "transformados" officers, the regulatory framework and the training process for their conversion into permanent officers and, with regard to the Civil Guard, the arrival, development and mark left by those who chose to serve in the Corps.

It may come as a surprise to learn how some of those 'officers of circumstance' came to occupy the most senior positions in the chain of command of the Guardia Civil – and not just on an ad hoc basis, but for an entire decade, perhaps the most significant in contemporary Spanish history.

It would have been very rewarding to explore the professional and even personal aspects of some of these officers in greater depth, but this is a challenge that may, perhaps, be addressed in a future book.

2. SPAIN, 2 APRIL 1939

With the war over, the command structures of the Army and of Guardia Civil found themselves in a critical situation, particularly with regard to junior officers, among whom the greatest number of casualties on the battlefield had been recorded. Furthermore, not all second lieutenants, lieutenants and, to a large extent, captains would find a place in the Spanish Army that emerged on 1 April 1939: those who had either fought on the Republican side or were simply declared disloyal following the relevant proceedings would be discharged.

The meagre number of these junior officers made it impossible to meet even the most basic requirements for rebuilding a devastated army—an army which, moreover, was being reoriented in an attempt to prevent any future deviations, should an undesirable situation such as that experienced during the previous three years arise again.

To overcome the continuous losses during the conflict, extensive use was made of two distinctive schemes. One of these, which had existed previously and which, with various adaptations over time, remains in operation today, was the Reserve Cadre. The other, created in the midst of the war and which gradually faded away after its conclusion, was the Provisional Cadre.

As far as the Guardia Civil is concerned, we can consider that the situation was even more serious; not so much because of the casualties suffered – which, although also considerable, were in much smaller numbers than in the Army – but because of its endemic shortage of personnel.

There were several attempts to stimulate young officers' interest in joining the force, but none came even close to meeting the expectations that had been raised. The Guardia Civil was also hampered by the fact that it could not draw on personnel from that Provisional Rank, whilst the newly created Armed and Traffic Police were permitted access to its members; indeed, they could do so at the rank of second lieutenant, something somewhat more difficult for the Guardia Civil to accept.

2.1. THE SUPPLEMENTARY RANK

We must go back to the Spain of Alfonso XIII to find the origins of the Complementary Officers. The first clear regulatory reference appears in a Royal Decree of 1918³, with a specific section entitled 'COMPLEMENTARY OFFICERS', which set out the lengthy process involved in attaining the first officer's post, and which required candidates to progress through the ranks of corporal and sergeant. Among the requirements to be met by those who were to form this corps, it is worth noting that "*certain training requirements shall be demanded for admission*".

Naturally, the Civil War was a peculiar period during which Reserve Officers continued to render important services. Incidentally, although it has occasionally been reported that the well-known Decree 94⁴ regulated this role, this is not strictly the case. The error may stem from the wording of Article 1, section A):

"Hold an academic or professional qualification, understood to mean at least a Baccalaureate, including, by way of example, those of Teacher, Technical Expert, Quantity Surveyor, etc., and those from the various State degree courses".

However, the interpretation to be made of this provision takes two relevant aspects into account. Firstly, it refers only to personnel already in service who, although at a basic level, have already received military training; and, secondly, they will not be performing duties related to their area of academic expertise, but rather, simply because of the status of 'officers' they are to acquire, it is necessary to require an appropriate level of education. Therefore, this new Provisional Rank is in no way intended to replace the Reserve Rank. In fact, as throughout the conflict, personnel will continue to join or be promoted within

³ Royal Decree of 7 March 1918, on *the Principles for the Reorganisation of the Army* (GM No. 69, 10 March 1918), subsequently confirmed by Law of 29 June 1918 (GM No. 181, 30 June 1918).

⁴ Decree No. 94 of 4 September 1936, *laying down rules for granting the rank of Second Lieutenant to members of the Non-Commissioned Officers' Corps, enlisted ranks and privates of the Infantry and Artillery Regiments, and members of the militarised militias serving in the ranks* (BOJDNE No. 17, 7 September 1936).

it. Sometimes, under truly striking, almost far-fetched circumstances, as we can see in the case of Andrés Hernández Roldán:

*“Pursuant to Article 444 and Rule 5.a of Article 449 of the current Conscription Act, the post of Reserve Ensign is hereby granted to retired Infantry Non-Commissioned Officer Mr Andrés Hernández Roldán, who is currently serving in the 27th Algiers Infantry Regiment”*⁵.

Over time, the requirements and duties would be defined in more detail, in accordance with various regulations, notably those of 1940⁶ (Higher Pre-military Training, IPS, with the University Militia), those of 1968⁷ (Service for the Training of Command Staff and Specialists in the Reserve and Naval Reserve), those of 1971⁸ (Military Training for the Reserve, IMEC), the 1984 programme⁹ (Service for the Training of Command Staff and Specialists, for both the Reserve and Naval Reserve ranks), the 1989 programme¹⁰ (Service for the Training of Command Staff, SEFOCUMA) and the 1999 programme¹¹ (Reserve Military Personnel).

It is worth noting that this form of Reserve service was not limited to officers; there was also a branch for non-commissioned officers.

2.2. PROVISIONAL OFFICERS

As we have already mentioned, Decree 94 established this Provisional Officers' Rank. The military authorities soon realised the need to maintain their command structure with the widest possible coverage; indeed, the decree was signed as early as 4 September, on the understanding that, prior to its publication, the necessary studies had been carried out, the options assessed and the corresponding proposal submitted.

In any case, the circumstances surrounding this cadre changed over time. Whilst in September 1936 it was envisaged that only non-commissioned officers, enlisted men and soldiers *‘present in the ranks’* would be promoted to the rank of officer, the passage of time and the loss of personnel in combat eventually made it necessary to extend the offer to other sources, ranging from members of militias belonging to organisations such as the *requetés* or Falangists, to ordinary civilians.

It is worth noting that the integration of personnel with lower ranks into the respective provisional ranks (as was the case with *‘Complemento’*, there was also a *‘Provisional Sergeants’* category here) should not be confused with the concept of *‘provisional promotion’*. This consisted of granting the duties and exercise of command

⁵ Order of 23 October 1936 (BOE No. 14, 28 October 1936).

⁶ Decree of 8 August 1940, *amending the legislation in force on conscription* (BOE No. 235, dated 22 August 1940). Details regarding the University Militia, linked to the Reserve Corps and the Spanish Falange, are set out in Decree D of 22 February 1941, on *the Organisation of the University Militia* (BOE No. 64, dated 5 March 1941).

⁷ Act 55/1968 of 27 July on *General Provisions for Military Service* (BOE No. 181, 29 July 1968).

⁸ Decree 3048/1971, of 2 December, on *the Reserve Ranks of the Armed Forces* (BOE No. 304, 21 December 1971).

⁹ Act 19/1984 of 8 June on *Military Service* (Official State Gazette No. 140 of 12 June 1984).

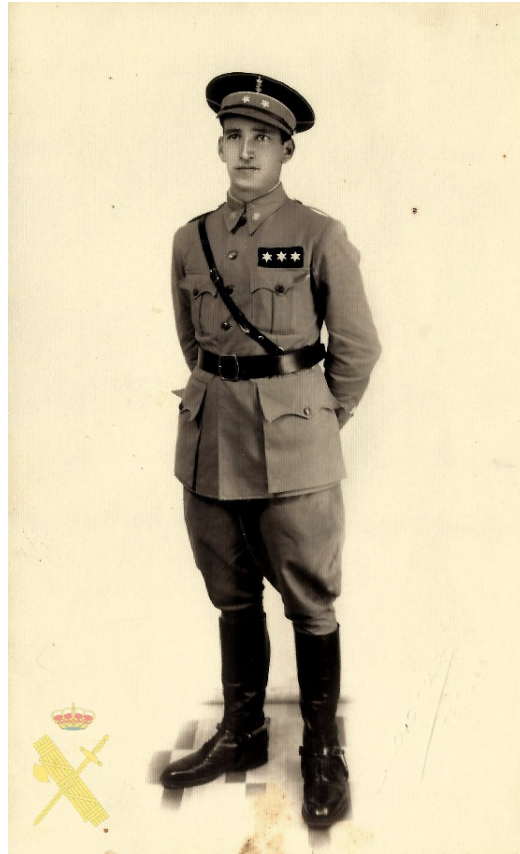
¹⁰ Act 17/1989 of 19 July, *regulating the status of professional military personnel* (Official State Gazette No. 172, 20 July 1989).

¹¹ Law 17/1999 of 18 May on *the Status of Armed Forces Personnel* (BOE No. 119, 19 May 1999).

at a higher level than that held, but without this entitling the holder, for example, to receive the emoluments of the post occupied; by contrast, in the Provisional Pay Scale, *‘During the time they hold this post of Ensign, they shall receive the salary corresponding to that post’*.

Figure 1

The authorisation of officers for higher posts occurred on both sides during the Civil War. In this case, Lieutenant Juan Aranguren da Ponte, son of General Aranguren, wears the stars of his actual rank on his headgear, but the breast ribbon identifies him as a commissioned captain. (CFHGC Reference 02 - MDGGC - 414). (1936)



On the part of the Republican government, which reacted much later, Provisional Officers were also created, in addition to Field Officers, Auxiliary Officers and those of the Popular Militias.

3. THE TRANSFORMATION

The provisional nature of those officers' status in the midst of the war had always been made sufficiently clear from the outset, with phrases such as *‘the measures proposed are only of a provisional nature’* or *‘when the National Government deems it appropriate, the Commanders and Officers thus promoted shall cease to perform their duties and shall return to the posts they hold in their own right’*.

Once the war was over, those provisional officers—who, in quite a few cases, had risen to the rank of captain—were retained whilst the situation was being reorganised, staffing levels stabilised and the normal conduct of the Army's activities ensured.

In September 1940¹² the General Military Academy (AGM) was re-established, but, naturally, and although the duration of training was shortened for the first two intakes, it was clear that it would still take several years before the first lieutenants graduated from it. Since the end of the war, various measures had been adopted, such as the reorganisation of the Army¹³, the reinstatement of military personnel, the reorganisation of the Reserve Officer Corps, etc.¹⁴. As a further step towards restoring the rhythm of military routine, a decision was taken to transfer provisional or reserve officers to the Active Officer Corps (also known as permanent officers).

However, even before the reorganisation of the Army, the future of those officers who, throughout the conflict, had been swelling the ranks of those scales had been addressed. As early as June 1939, given the need to fill command posts, particularly at lower ranks, it was proposed '*by law of urgent necessity*' that the initial appointments should be made from among those¹⁵. In a new decree¹⁶, the posts to be filled by the new officers—who would soon become known as 'transformados' officers, according to the official designation¹⁷—were determined.

It was obvious that the measure was merely a temporary solution to bridge the gap until the first officers from the General Staff began their service; this was not because, as we have seen, there was a firm intention not to perpetuate the procedure, but because there was a need for constant regulation to overcome obstacles, or to establish the appropriate organisation of the Scale to be phased out and its conversion into permanent officers. Thus, the academic requirements and the promotion system would vary. Whilst, in the first and second intakes, cadets graduated as lieutenants and were not subject to any conditions for the future, the military authorities, convinced that it remained necessary to expand the intake, were forced to lower the bar, albeit subjecting future military careers to certain conditions¹⁸. Thus, we see that, in the 3rd to 5th intakes, whilst maintaining the

¹² Act of 27 September 1940 (BOE No. 286, 12 October 1940).

¹³ Law of 22 September 1939 (BOE No. 1, 1 October 1939).

¹⁴ The last two as Decree of 22 September 1939 (BOE No. 1, dated 1 October 1939).

¹⁵ Decree of 4 June 1939, *stipulating that vacancies arising in the rank of Junior Officers as a result of the staff adjustments inherent in the reorganisation of the Army shall be filled by personnel from the Scale of Provisional and Reserve Officers, and regulating the manner and conditions of their admission* (Official State Gazette No. 156, 5 June 1939), implemented by the Order of 9 August 1939, *for the implementation of the Decree of 4 June last* (Official State Gazette No. 156) concerning the conversion of provisional and reserve officers into professional officers. (Official State Gazette No. 225, 13 August 1939).

¹⁶ Order of 2 September 1939, laying down rules for the admission to the active ranks of the Army of provisional and reserve Captains, Lieutenants and Second Lieutenants, and Cadets from the Military Academies (BOE No. 1, 1 October 1939).

¹⁷ "... the first and second intakes of the Officer Conversion Academies shall form a single cohort, to be known as the first cohort of "transformados" officers". Order of 28 March 1944 (DOME No. 75, dated 30 March 1944).

¹⁸ For example, exemption from the requirement to hold a baccalaureate is granted to candidates who are serving brigadiers or sergeants. All members of the new intake will graduate as second lieutenants and will not attain the rank of lieutenant until they have completed twenty-four inspections. Order of 5 November 1942 (DOME No. 250, dated 6 November 1942). Incidentally, when comparing the date of this Order, which convenes the 3rd Intake, one might interpret this as a dating error, given that Note 13 refers to the 1st and 2nd Intakes, yet it was promulgated two years later. Not only is there no error, but it also allows us to reaffirm our comment on the ongoing need to regulate and reorganise the Service: over the years, it was

same duration of training as the previous ones, their members will enter professional service as second lieutenants, but will no longer face any restrictions in the future. It is striking that, in the following two intakes, there were also many candidates who did not meet the requirements set in the previous ones. These last two intakes, who will be trained at the Villaverde Academy, will graduate after just eight months of training; however, in order to be promoted to captain, they will have to complete a further one-year academic period.

It appears that little time was spent when making this decision on calculating the number of posts that could actually be filled; apparently, the authorities were confident that there would be no need for many of them, and that it would only affect ‘*those essential for conversion to professional status*’. The reality is that more than 15,000 reserve and provisional officers became permanent officers after completing their training at the various Transformation Academies¹⁹. The process brought all cadets together²⁰ by providing them with professional and standardised military training, regardless of their role or background; at the same time, the transformation went beyond simply confirming their status as permanent officers, as for many it involved a change of branch or corps, as can be seen in Table 1.

Table 1

Origins and possible final assignments of provisional and reserve officers. (Compiled by the author)

INITIAL POSITION	FULL NAME	ORIGIN	ENTERS
Provisional Captain	Enrique Rodríguez Ajuria	Infantry	Engineers
Provisional Lieutenant	Juan José Caverio Salve	Cavalry	Infantry
Provisional Lieutenant	Alfonso Bernal Garrido	Infantry	Engineers
Reserve Captain	Felipe Machado del Hoyo	Infantry	Artillery
Second Lieutenant (Reserve)	Roberto Escribano Ortega	Legal	Cavalry
Alf. Reserve	Nicanor Álvarez Rodríguez	Infantry	Artillery

Among the officers who will be entering the Transformation Academies, we will also find some who can trace their origins to the Traditionalist Spanish Falange and the National Syndicalist Offensive Committees (FET and JONS). This is a rather peculiar matter which causes a great deal of confusion, and therefore warrants more in-depth study. For example, officers with this designation include those who had previously held such ranks and who, at the outbreak of the Civil War, found themselves in various situations (retired, removed from service, etc.²¹), but we also find civilians who, upon

necessary to redefine previous decrees and orders to make the new provisions that were emerging comprehensible or enforceable.

¹⁹ In addition to those already mentioned for the Army, the Navy will have its own at the San Fernando Naval Academy and the Air Force will have the León Transformation Academy.

²⁰ Those undergoing training whilst at the Academies were designated "Officer Cadets". Or, as of 5 November 1942, as we have just seen.

²¹ Such is the case of retired Lieutenant Manuel Rodríguez García of the Guardia Civil, whose appointment as an officer in the Militias of the FET de las JONS is confirmed, according to the Official Order of 12 September 1938 (BOE No. 82, dated 20 September 1938).

joining the Militias of this organisation—regardless of the training they had received—were recognised as holding various officer ranks (we even find Militia captains). Once these ranks had been confirmed and, of course, the entrance examinations had been passed, they were admitted to the Transformation Academies.

In these circumstances, following the publication of the syllabuses and the appointment of the directors of each Academy, the process began with the admission of the first candidates²². The knowledge tests comprised two sections, common to all branches of the armed forces; the first, the humanities, covered Grammar, Geography of Spain, World History and History of Spain; the second, the sciences, covered Arithmetic, Algebra, Geometry, Trigonometry, Physics and Chemistry. Those who passed²³ joined their respective Academies: Artillery, in Segovia; Engineers, in Burgos; Quartermaster Corps, in Ávila; Cavalry, in Valladolid; and, as regards the Infantry, given that the number of cadets would exceed the capacity of the academy in Zaragoza—particularly bearing in mind that work was already underway to reopen the General Military Academy, and that space would need to be made available for the First Intake of the Third Era—a new academy was also established in Guadalajara²⁴.

The training plans envisaged a 18-month stay at the Academy, with the exception of cadets who had already undertaken studies at the Special Academies before the outbreak of the War: those who had completed at least one course would graduate after six months in Zaragoza or Guadalajara.

In July 1941, the First Transformation Intake received their commissions, and from that point onwards, intakes followed one after another until, in 1948, new calls for applications ceased, as the first lieutenants of the AGM had already been appointed and the classrooms were filled by members of subsequent intakes.

²² Official Order of 2 January 1940 (*DOMÉ* No. 2, dated 4 January 1940).

²³ Strictly speaking, no examinations were held for that first intake; instead, a selection was made from among the applicants on the basis of prior qualifications, merits recognised during the conflict and length of service in various posts: we emphasise, ‘in various posts’, that is to say, holding the rank of major was not a priority.

²⁴ Or of 14 November 1939 (*DOMÉ* No. 40, dated 18/11/1939).

Figure 2

Adoratrices School in Guadalajara. Between 1940 and 1948, it became the Transformation and Infantry Academy. ('Tomás Camarillo' Photographic Collection. Guadalajara Centre for Photography and Historical Images. Provincial Council. Record CAM-1502). (c. 1930)



During this period, the general trend was that there was no general trend. As we have seen, the first two intakes entered active service as lieutenants, whilst the subsequent ones did so as second lieutenants; in the specific case of the 6th and 7th intakes, they were required to complete their training in order to be promoted to captain.

4. ENTRY INTO THE GUARDIA CIVIL

Throughout the history of the Guardia Civil, up until the creation of the Special Academy (in its second phase²⁵), a shortage of officers was a constant issue. The numerous attempts to resolve the problem, despite proposing different solutions, succeeded in improving the situation on only a few occasions. Although this is not the place to go into greater detail, we may note that one of the causes—at least to a large extent—was the slowness with which promotions took place within the Corps, which discouraged young Army officers; and, due to this very same slow process, officers drawn from the ranks themselves only attained junior posts, and at an advanced age.

²⁵ Although with a different structure and intake, a Special Academy of Guardia Civil did exist in the first third of the 20th century. Established by Act in 1907, it did not become operational until 1927, before ceasing operations in May 1932, following a request submitted by the Director-General to the Minister of War, Manuel Azaña: insurmountable organisational problems led to this drastic measure.

As yet another attempt to improve staffing levels, a new Act was enacted in 1944²⁶, the outcome of which was uncertain, although, on the whole, it did alleviate the situation.

The preamble could not have been clearer, beginning with a forceful acknowledgement of the failure of previous attempts:

"Since the publication of the Act of 15 March 1940, which organised the new Corps of Guardia Civil, there have been many vacancies that have remained unfilled despite repeated advertisements."

It also highlighted where the main problem lay at that time. The integration of the Carabineros had led to the creation of the Border Tercios, with the logical intention of maintaining their service, but now adding the need to seal off the border against incursions by exiled Republicans who, together with the guerrilla groups within the territory, came to be known as the *maquis*. These duties were likely to be the most thankless and least desirable. Consequently, the new Act stipulated that, for these units, *"their Commanders and Captains, who must primarily possess the qualifications of soldiers specialising in mountain troop command, shall be from the Infantry"*.

In view of this, Article 1 could only be worded as follows:

"The junior officer ranks of the Guardia Civil Corps shall be filled by officers drawn from the non-commissioned officer ranks of the Guardia Civil Corps and by those who, belonging to the Army's Infantry and Cavalry branches and having graduated from the Officer Conversion Academies and those of their respective branches, voluntarily wish to transfer to the Guardia Civil, whereupon they shall be enrolled, whilst being discharged from their original branches."

Although the traditional offer aimed at officers from the Army's branches was maintained, as regards those trained at the Special Academies, the truth is that subsequent recruitment drives would only include "transformados" fr²⁷. The fact is that this reference to "Special Academies" leaves the door open for the future, given that, at the time the Act was enacted, there were no junior officers from such a background, and there would not be any until the first intake of the AGM had completed its training.

4.1. FIRST RECRUITMENT ROUND

The first of these recruitment rounds was published the following month²⁸, offering 25 places with a single restriction: only those born after 1915 were eligible to apply. It can be said that it was a resounding success, as all places were filled²⁹ and some of the applicants had to wait for the next round. In any case, one of those initially selected did not complete the induction process; in fact, he did not even appear on the rank list.

²⁶ Order of 25 November 1944, *laying down regulations for filling officer vacancies in the Guardia Civil Corps*. (Official State Gazette No. 332, 27 November 1944).

²⁷ Although the term might be interpreted as undervaluing those first lieutenants, the fact is that it was the official designation. The Order of 28 March 1944 (DOMÉ No. 75, 30 March 1944) states, in Article 1: "... a single intake, to be known as the First Intake of "transformados" officers".

²⁸ Order of 30 December 1944 (DOMÉ No. 1, 1 January 1945).

²⁹ Order of 28 March 1945 (DOMÉ No. 74, dated 3 April 1945).

Table 2

Members of the First Intake for entry into the Guardia Civil, from the Transformation Academies. (Compiled by the author)

ADMITTED	FULL NAME	POSITION ACHIEVED
1 April 1945	Salvador Bujanda González	Major General
1 April 1945	Francisco García Laclaustra	Major General
1 April 1945	Miguel Luengo Tejero	Brigadier General
1 April 1945	Manuel Vicente Hernández	Brigadier General
1 April 1945	Guillermo Gutiérrez García	Brigadier General
1 April 1945	Manuel Prieto López	Brigadier General
1 April 1945	Juan Atarés Peña	Brigadier General
1 April 1945	Aurelio Herrero Miguel	Brigadier General
1 April 1945	Antonio Hermosilla Bernardín	Major General
1 April 1945	Rafael Girón Lozano	Brigadier General
1 April 1945	Diego Daza Ramírez	Brigadier General
1 April 1945	Rafael Serrano Valls	Brigadier General
1 April 1945	José Sánchez Alcaide	Colonel
1 April 1945	Miguel Martínez Bajatierra	Colonel
	Enrique Eady García Hidalgo	Not listed
1 April 1945	Julio Olarte Galarreta	Colonel
1 April 1945	Enrique Nieto Tejedor	Colonel
1 April 1945	Luis Rodríguez-Varo Guzmán	Colonel
1 April 1945	Heliodoro Jiménez Sánchez	Colonel
1 April 1945	José María Elena González	Retired 1959 (Captain)
1 April 1945	Manuel González López	Colonel
1 April 1945	Juan Antonio Castaño Calvo	Colonel
1 April 1945	Julián Moreno Gómez	Colonel
1 April 1945	Cesáreo Muñoz Paniagua	Colonel
1 April 1945	Clemente Antuña Claros	Colonel

Among the members of that first intake of "transformados" who joined the Guardia Civil are some illustrious names, such as those who served as deputy directors-general between 1974 and 1983.

Salvador Bujanda González, promoted to Brigadier on 12 September 1969, held command of the 2nd Zone in Seville, the 6th Zone in León and the 4th Zone in Barcelona; and, having been promoted to Major General, served as Deputy Director-General of the Civil Guard between 25 January 1974 and 26 July 1979.

He was succeeded by Francisco García Laclaustra, from 30 July 1979 to 9 September 1981. During his time as a Brigadier General, having been promoted on 9 October 1969, he had commanded the 5th Zone in Zaragoza and served as Inspector of Training for the Corps.

Figure 3

Visit by Lieutenant General José Miguel Vega Rodríguez, Director-General of the Guardia Civil, to the Training Centre. To his left is Major General Salvador Bujanda González, Deputy Director of the Corps, and to his right, standing slightly behind, is Brigadier General Francisco García Laclaustra, then Inspector of Training, who would later succeed Bujanda as Deputy Director. Both held the top two positions in the ranks of "transformados" transferred to the Guardia Civil.

(CFHGC Reference 05 - GCROC - 32344). (1974)



Rounding off the trio was Antonio Hermosilla Bernardín, a brigadier since 6 June 1975, who was assigned command of the Headquarters for Equipment and Maintenance until 3 December of that year, when he took command of the 3rd Zone in Valencia; after a period in charge of the 5th Zone, he returned to command the 3rd Zone. Promoted to Major General on 2 October 1981, he succeeded Laclaustra until 8 August 1983, when he was transferred to the 'Army or Corps Assignment' group.

That first cohort of "transformados" held the highest ranks within the Corps' hierarchy for a decade (1974–1984). A total of 12 of its members—50 per cent, if we take into account that one of the 25 did not complete the integration process—reached the rank of general.

But that decade was no ordinary decade. Within that timeframe, Spain underwent a transformation and played a leading role in a period that has been taken as a benchmark by many other countries: the Transition. Coping with those changes was not easy ... or perhaps it was: we must not forget that, early in their careers, those officers had been at the forefront of a unique process – the process of transformation; in a way, adapting to

new approaches was part of their DNA. During their tenure, they ensured that the Guardia Civil also played its part in that Transition.

However, these were not easy times. The scourge of ETA was ever-present and on the rise during those years, particularly in the early 1980s. They had to attend countless funerals and, whilst comforting the families of the murdered officers, they had to maintain their composure and avoid reactions which, whilst understandable, would have done nothing to help in the fight against the terrorist group.

The leading role played by those early "transformados" in the fight against ETA was epitomised by Juan Atarés Peña, the only general in the force to be assassinated by the 'Nafarroa' commando on 23 December 1985, whilst he was walking in a park near his home in Pamplona.

Regrettably, whilst it was already hard enough to endure the scourge of the ETA terrorist group, it was not the only one using terrorism as a means to attack the structure of the State. The FRAP was founded in 1973 and remained active until 1978. GRAPO emerged in 1975, carrying out particularly significant attacks during those years; although its activity waned, it continued until 2006. Although it had been advocating its positions for years prior, in 1976 the MPAIAC joined this list of criminal organisations by carrying out its first attack, against the Galerías Preciados shopping centre in Las Palmas; in 1979, it renounced the use of arms. And, before concluding this section, we must also mention another terrorist group that emerged during this same period; TERRA LLIURE began its activities in 1978 and continued until 1990. In short, in addition to ETA, the Guardia Civil of that era had to contend simultaneously with four other terrorist organisations.

4.2. SECOND RECRUITMENT ROUND

On this occasion, although the recruitment drive was not fully completed, 23,³⁰ s of the 25 advertised vacancies³¹ were filled, with an age limit set at 1,916. As was customary, those joining the Corps were required to undertake a three-month induction course and complete a further four months' practical training, two on the coast and two in rural areas.

³⁰ Order of 16 July 1945 (*DOME* No. 160, dated 20 July 1945).

³¹ Or of 15 September 1945 (*DOME* No. 208, dated 16/09/1945).

Table 3

Members of the Second Intake for entry into the Guardia Civil, from the Transformation Academies. (Compiled by the author)

ENROLLED	FULL NAME	POSITION ACHIEVED
1 October 1945	Pedro Martos Carricondo	Signed: AS 1947. (Lt)
1 October 1945	Francisco Morales Rodríguez	Signed AS 1947. (Lt)
1 October 1945	Ángel Ruiz Ayucar	Colonel
1 October 1945	Jaime Gullón Campoamor	Resigned 1946 (Lieutenant)
1 October 1945	Francisco J. Díez-Ticio Embarba	Colonel
1 October 1945	Ángel Pérez Macías	Colonel
1 October 1945	Guillermo Caldera del Pino	Colonel
1 October 1945	Francisco Alcalá Ramos	Colonel
1 October 1945	José Galán Patau	Colonel
1 October 1945	Antonio Laso Arroyo	Colonel
1 October 1945	José Aguilar Jiménez	Colonel (2nd Group)
1 October 1945	Mauro Alonso de Armiño Díez	Brigadier General
1 October 1945	Antonio Álvarez Castillo	Retired 1964 (Colonel)
1 October 1945	Eduardo Haro Vázquez	Colonel
1 October 1945	Francisco Jiménez Sánchez	Colonel
1 October 1945	Francisco Parra Marín	Colonel
1 October 1945	Francisco Fernández Herrero	Colonel
1 October 1945	Sergio Gallego Ronquillo	Colonel
1 October 1945	José Cruz Aldea	Colonel
1 October 1945	Francisco Jiménez Reina	Colonel
1 October 1945	Baldomero Domínguez Bueno	Colonel
1 October 1945	Florencio Pérez Pérez	Colonel
1 October 1945	Julio Valcárcel de las Casas	Not included

Unfortunately, this intake soon suffered its first casualties in the line of duty. In a cruel twist of fate, the number 1 and number 2, just a month and a few days apart and in neighbouring provinces, lost their lives in clashes with the *maquis*, in incidents that were virtually identical. Whilst Pedro Martos lost his life in Almería on 24 June 1947, Francisco Morales died in Granada on 30 July.

On 22 June 1947, at a roadblock on the road from Almería to Níjar, a shootout took place in which a guard was killed; hours later, a corporal died as a result of his injuries. On the 23rd, once a cordon had been set up in the capital to apprehend those who had managed to escape, another exchange of fire took place between members of 'El Cuco's' group and the Guardia Civil under the command of Lieutenant Martos. In the skirmish, he was wounded and, after being taken to hospital, died the following day.

Figure 4

Sixth Section of the Second Transformation Class at the Guadalajara Academy. In the second row, fourth from the left, is Pedro Martos Carricondo, the first Transformation Officer to join the Guardia Civil and die in the line of duty. (Source: Army Museum / Virtual Defence Library. Inventory No.: MUE-120459). (1942–43)



On 30 July, having received intelligence that a group of *maquis* might be hiding at Cortijo Maldonado, near Motril, Lieutenant Morales led an operation to try to apprehend the fugitives. Whilst attempting to enter the property, he was shot; he repelled the attack, killing his assailant. He was taken to Motril and subsequently to the military hospital in Granada, where he died a few hours later.

Figure 5

Second Section of the 2nd Transformation Intake at the Guadalajara Academy. Francisco Morales Rodríguez (seated, 3rd from the left) was the second of the officers to be killed in the line of duty. (Source: Army Museum / Virtual Defence Library. Inventory No.: MUE-120459). (1942–43)



Ángel Ruiz Ayúcar, number 3 in the intake, who rose to the rank of colonel, was the 6th Director of the Special Academy when it was still housed in the General Directorate building. Ruiz Ayúcar is one of those officers whose Service Record contains a curious peculiarity: he was promoted to honorary Brigadier General... on two occasions!³², a situation we see repeated in the case of Francisco Alcalá Ramos. And continuing on the subject of the general officer corps, with the first intake having filled almost all the general officer posts, it was only able to place one of its own at the very top of the hierarchy: Mauro Alonso de Armiño Díez. After being promoted to Brigadier on 1 March 1980, he was assigned to the Inspectorate of Education on the 21st, leaving the post on 15 June 1982 upon transfer to the 'Arms or Corps Assignment' group upon reaching the statutory retirement age.

Furthermore, we see that in the column for rank attained, José Aguilar Jiménez appears with the entry 'Colonel (2nd Group)'. This is because his promotion to that rank came whilst he was already in the 2nd Group, to which officers were transferred upon reaching the statutory age. We shall continue to see this same format for other officers.

Finally, we shall devote a few lines to Julio Valcárcel de las Casas, whose career history is particularly unusual. If we look at some details in the table, we shall see that, ,

³² The first by Royal Decree 1196/1987, of 21 September (BOE No. 237, dated 3 October 1987) and the second by Royal Decree 1459/1988, of 25 November (BOE No. 293, dated 7 December 1988).

he was indeed selected to join the Guardia Civil, although the process was not completed. Whilst in the previous intake, Eady García-Hidalgo's failure to join was due to a personal decision, in this case his withdrawal occurred when it was discovered that, at that time, he was not yet a full lieutenant; and it would be some time before he became one, as his promotion would not be published until March 1947³³, after completing the required 18 months as a second lieutenant. He would eventually join the Armed and Traffic Police Corps.

4.3. THIRD RECRUITMENT ROUND

Whilst we mentioned earlier that the outcome of this new approach to filling vacancies with "transformados" officers would be uncertain, we might question that view in light of the results of the 1st and 2nd Recruitment Rounds. However, in this 3rd round, the ghosts of the past would return and, once again, recruitment problems would become apparent.

Encouraged by the success of the previous calls and pressed by the vacancies that were arising without internal promotion being able to fill them, the Directorate-General published the third call offering fifty posts³⁴, for which, logically, the upper age limit was extended to those born in 1917. It was clear from the outset that the vacancies would not be filled. So much so that an extension to the call for applications was even published³⁵ so that those still at the Academy, bearing in mind their imminent graduation, could apply. Once again, only 23 names appeared on the admission list³⁶. However, this figure was increased slightly, thanks to concessions granted to allow two further candidates to be included on the final list: José del Amo Sociats³⁷ and Julio Ortega de Miguel³⁸. In any case, the final result was worse than the initial figure, as three of those originally published withdrew before completing the process of joining the Guardia Civil; in fact, they did not even appear on the relevant ranking list.

³³ Or of 27 February 1947 (*DOE* No. 51, 2 March 1947).

³⁴ Or of 6 July 1946 (*DOE* No. 154, dated 9 July 1946).

³⁵ Or of 20 July 1946 (*DOE* No. 165, dated 23 July 1946).

³⁶ Or of 5 September 1946 (*BOE* No. 252, dated 9 September 1946).

³⁷ Or of 1 October 1946 (*BOE* No. 284, dated 11 October 1946).

³⁸ Or of 20 September 1946 (*BOE* No. 266, dated 23 September 1946).

Table 4
Members of the Third Intake for entry into the Guardia Civil, from the Transformation Academies. (Compiled by the author)

ADMITTED		FULL NAME	POSITION ACHIEVED
1946	1 October	José del Amo Sociats	Colonel
1946	1 October	Juan Alcoba Muñoz	Colonel (2nd Group)
1946	1 October	Francisco Romero Solano	Retired 1971 (Lieutenant)
1946	1 October	Félix Fuertes Veiga	Colonel
1946	1 October	Ángel García Suárez	Colonel
1946	1 October	Antonio Glaria Iguacen	Colonel
1946	1 October	Manuel Caverio Agorreta	Colonel
1946	1 October	Mariano de Santos González	Colonel
1946	1 October	Antonio Gómez Nieves	Colonel
1946	1 October	Juan Torres Rodríguez	Left the service in 1951 (Lieutenant)
1946	1 October	Julio Ortega de Miguel	Colonel
1946	1 October	Isabelino Cáceres Ruiz	Brigadier General
1946	1 October	Justo García Gamarra	Colonel
1946	1 October	Juan Antonio Fajardo Quero	Brigadier General
1946	1 October	Manuel Pérez Ortiz	Colonel (2nd Group)
1946	1 October	Fernando Bouso Martín-Urda	Colonel
1946	1 October	José Cid Rodríguez José Sánchez Ocaña	Not assigned Colonel (2nd Group)
1946	1 October	Camilo Pajuelo Arteaga	Brigadier General
1946	1 October	Basilio Gómez Sanz	Resigned 1950 (Lieutenant)
1946	1 October	Vicente Romero Bernardo Alfredo Toledo Gete	Not commissioned Colonel
1946	1 October	César Pérez Blasco	Colonel
		Federico Carbonero Alonso	Not listed

1 1946	October	Enrique Tomé Marín	Left the service in 1967 (Captain)
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Unfortunately, we once again see the disheartening note ‘Did not complete training’: doubts about pursuing a career in the Guardia Civil continued to weigh heavily on their minds.

The quota of generals from this intake was filled by Isabelino Cáceres Ruiz, Juan Antonio Fajardo Quero and Camilo Pajuelo Arteaga. The first, during the two and a half years he served as Brigadier General, between 1 March 1980 and 1982, held command of three Zones: the 4th Zone in Barcelona, from 21 March to 22 December 1980; the 5th Zone in Logroño until 6 July 1981; and, once again, the 4th Zone until his retirement from active service. As a point of interest, it is worth noting that, whilst serving as a provisional second lieutenant, he was posted to the Armed and Traffic Police Corps³⁹.

Fajardo Quero remained an active General between 19 May 1980 and 9 July 1982, heading the Equipment and Maintenance Directorate. Pajuelo Arteaga, promoted on 4 December 1980, was Head of the 4th Zone in Barcelona from the 22nd of that month until 6 July 1981, when he moved to the 2nd Zone in Seville. On 3 August of the following year, he was transferred to the ‘Armed Forces or Corps Posting’ group.

4.4. FOURTH RECRUITMENT ROUND

Following the disappointment of the previous round, the notice published in March 1947 did not specify the number of posts, merely announcing a ‘*competition to fill vacancies for lieutenants in the Guardia Civil*’⁴⁰. And this caution proved justified, as when the list of successful candidates was published, only eleven were included⁴¹.

Table 5

Members of the Fourth Intake for entry into the Guardia Civil, from the Transformation Academies. (Compiled by the author)

ADMITTED	FULL NAME	POSITION ACHIEVED
1 May 1947	Jesús Ferrer Serrano	Colonel
1 May 1947	Manuel Cervantes Collantes	Brigadier General
1 May 1947	Enrique Cacena Acosta	Colonel
1 May 1947	Luis Pérez Pardiñas	Retired 1963 (Lieutenant)
1 May 1947	Miguel Oliete Mañas	Lieutenant Colonel (2nd Group)
1 May 1947	Pedro Galtier Montero	Colonel (2nd Group)
1 May 1947	Francisco Zájara Maya	Colonel (2nd Group)
1 May 1947	Juan Antonio Núñez García	Colonel (2nd Group)
1 May 1947	Serafín López Díaz	Colonel (2nd Group)
1 May 1947	Saturnino Estévez Rodríguez	Colonel (2nd Group)
1 May 1947	José Ginel García	Colonel (2nd Group)

³⁹ Or of 26 March 1941 (BOE No. 87, dated 28 March 1941).

⁴⁰ Or of 8 March 1947 (DOME No. 58, dated 11 March 1947).

⁴¹ Or of 21 April 1947 (DOME No. 91, dated 24 April 1947).

A notable figure in this intake is Jesús Ferrer Serrano, whose remarkable career began in 1937⁴², when he completed his training as a provisional sergeant and was posted to the Tercio Santiago; it continued in 1938⁴³, with his promotion to provisional second lieutenant; and culminated in 1939⁴⁴ with his appointment as a lieutenant in that rank. Some time later, after completing his studies at the Academy of Advanced Training, he became a permanent officer and joined the Guardia Civil.

Despite being a small intake, it also included a general: Manuel Cervantes Collantes. Between 9 June (he had been promoted on 24 May) 1980 and 22 December of the same year, he commanded the Madrid Zone, and subsequently the 6th Zone in León, from where he would move to the 'Armed Forces or Corps Assignment' group, having reached the required age on 1 September 1982.

4.5. FIFTH CALL FOR APPLICATIONS

The General Directorate remained concerned about the lack of interest shown by potential candidates. Publishing a new call for applications brought with it that strange sense of hope and caution. Once again, they avoided specifying a precise number of places⁴⁵. And, once again, as had already happened with the 3rd call, this call was extended⁴⁶. The rate at which applications were coming in must have been more than worrying, to the extent that this extension took into account those who '*having obtained the post of full lieutenant, numerous junior officers in the period immediately following the most recently mentioned call*'.

It is worth pausing here to highlight a point that is, to say the least, curious. In December of the previous year—that is, in 1946—the First Intake of the AGM would have graduated, but none of its members showed any interest in the Guardia Civil; consequently, the 4th Call for Applications—the woefully meagre 4th Call for Applications—consisted solely of "transformados." On this occasion, when the extension of the call-up refers to "*numerous junior officers*", it is referring to the Second Intake from Zaragoza⁴⁷, some of whose members—eight to be exact—did indeed join the Corps.

As regards age, the scheme excluded those born on or before 31 December 1917.

Table 6

Members of the Fifth Intake for entry into the Guardia Civil, from the Conversion Academies and the AGM (in blue). (Compiled by the author)

ADMITTED	FULL NAME	POSITION HELD
1 April 1948	Diego González Valverde	Colonel (2nd Group)
1 April 1948	José Francés y Arias Argüello	Colonel
1 April 1948	Ramón Borbolla Noriega	Colonel (2nd Group)
1 April 1948	Rafael Conesa Bensi	Colonel (2nd Group)
1 April 1948	Joaquín Vázquez García	Colonel (2nd Group)

⁴² Or of 11 August 1937 (BOE No. 295, dated 11 August 1937).

⁴³ Or of 21 January 1938 (BOE No. 460, dated 24 January 1938).

⁴⁴ Or of 22 June 1939 (BOE No. 181, dated 30 June 1939).

⁴⁵ Or of 8 November 1947 (DOME No. 256, dated 13 November 1947).

⁴⁶ Or of 18 February 1948 (DOME No. 42, dated 20 February 1948).

⁴⁷ Or of 15 December 1947 (DOME No. 289, dated 24 December 1947).

1 April 1948	Miguel Gemar Caro	Colonel (2nd Group)
1 April 1948	José María Bajos Ayala	Colonel (2nd Group)
1 April 1948	Marino Losa Martín	Retired 1971 (Lt Col.)
1 April 1948	Joaquín Andrés Andrés	Colonel (2nd Group)
1 April 1948	Augusto Casquero Izquierdo	Retired 1977 (Colonel)
1 April 1948	Antonio Cuadri Cano	Colonel
1 April 1948	José Moreno Antequera	Colonel (2nd Group)
1 April 1948	José Álvarez Arce	Colonel (2nd Group)
1 April 1948	Gregorio Fernández Torija	Colonel
1 April 1948	Martín Zabala Sáenz	Colonel (2nd Group)
1 April 1948	Sergio García Muñoz	Colonel
1 April 1948	José Tirado Urdiales	Retired 1974 (Lt Col.)
1 April 1948	Francisco Alonso Casado	Colonel (2nd Group)
1 April 1948	Francisco Javier Cereceda Colado	Major General
1 April 1948	Manuel de la Puente Llorente	Colonel
1 April 1948	Ginés López del Castillo Saavedra	Colonel (2nd Group)
1 April 1948	Buenaventura López Ruano	Brigadier General
1 April 1948	Alejandro de la Mata García de la Rosa	Brigadier General
1 April 1948	José Chápuli Pérez	Colonel

As with all intakes, this one also has certain distinctive features that set it apart – two, to be precise. The first concerns two of its members, José Francés y Arias-Argüello and Francisco Alonso Casado, who combined the two training systems; having been "transformados," they completed their training as members of the first and second intakes, respectively, of the General Military Academy. We must clarify a comment made earlier: we had stated that no member of the First Intake of the AGM had applied in the previous intake, but we now see that Arias-Argüello appears as a student from that intake. This is explained by the fact that he completed his training as a member of the second intake; his inclusion in the previous intake took place later, once his seniority had been recognised. What is beyond doubt is his unwavering determination to pursue a military career, for, in addition to undertaking the conversion courses and his time at the AGM, as early as 1941 he had sat the competitive examination to enter the Naval Academy in Marín⁴⁸.

The second point concerns the fact that, for the first (and only) time, we must include cavalry officers amongst those transferring to the Guardia Civil: Joaquín Andrés Andrés, Augusto Casquero Izquierdo, Antonio Cuadri Cano and Gregorio Fernández Torija. Incidentally, Cuadri Cano and Fernández Torija took advantage of the extension to the application deadline, which, as we have already seen, was introduced with recent graduates from Zaragoza in mind rather than "transformados," just as Moreno Antequera and García Muñoz, from the Infantry, did; all of them had been promoted just a few days before the extension was published.

In line with previous comments regarding generals, this intake will include three, all of whom are from Zaragoza, and one of them, Cereceda Colado, would take up the post of Deputy Director-General. Promoted to Major General on 8 August 1983, he took over from Hermosilla Bernardín on that day and, as one of the most prominent figures to have held the post, remained in the role until 28 October 1986. He had been promoted to general on 20 June 1981 and appointed commander of the 5th Zone in Logroño on 6 July;

⁴⁸ Or of 14 August 1941 (BOE No. 229, dated 17 August 1941).

on 24 July of the following year, he took command of the Materiel and Maintenance Directorate and, from there, moved to the Deputy Directorate.

López Ruano commanded the 3rd Zone in Valencia from 22 October 1981 (he had been a general since the 2nd) until 19 December 1983, when he moved to the 'Armed Forces or Corps Assignment' group.

De la Mata was promoted to General on 24 July 1982 and took charge of the 2nd Zone in Seville on 9 August, a post he left on 7 January 1985 upon reaching the statutory age for retirement from active service.

5. CONCLUSION

1986 would mark the end of the period that Bujanda González, as the most senior member of the 1st Intake, had begun on 1 April 1945. Curiously, 41 years later, it was a member of that very same intake who, upon transferring to the Active Reserve, became the last "transformado." Antonio Hermosilla Bernardín transferred to that status on 4 December 1984⁴⁹.

Figure 6

Major-General Antonio Hermosilla Bernardín, Deputy Director-General of the Corps, inspects the formation at the Segovia barracks, as part of the ceremonies organised to mark the presentation of the general's sash to Buenaventura López Ruano. (CFHGC Reference 02 - CGC - SG - 477). (1981)



⁴⁹ Royal Decree 2167/1984, of 5 December 1984 (BOE No. 292, dated 6 December 1984).

In total, 101 officers who had been "transformados" joined the Guardia Civil. If we take the 1950 rank structure as a reference—by which time all of them had already joined, but none had yet been promoted to captain—we can see that they accounted for just 11.48 per cent⁵⁰ of the junior officers. However, between 1974 and 1981, they dominated the Corps' senior leadership, which had no active generals other than those of this unique background. It is perhaps worth recalling that, at that time, there were only nine of them.

If we extend the timeframe to the moment when Hermosilla stepped down from his post as Deputy Director, the period will have seen a number of significant milestones in the history of the Corps, such as:

- 1975 – Reorganisation of the Guardia Civil.
- 1977 – The requirement to sit tests to secure a permanent post in the Guardia Civil was abolished (although, it is true, some regional commands continued to hold them).
- 1977 – The Police Dog Training School was expanded with the first training programme for drug detection dogs (explosives detection dogs would follow in 1979).
- 1978 – The COS units were established, following a brief trial period.
- 1978 – The Public Prosecutor's Academy is established in Sabadell (B).
- 1978.— The UAR is established.
- 1978.— The GEI is established. Some time later, it will change its name to UEI.
- 1979 – The GAR is established.
- 1979 – The DECEDEX was established. Since 1973, personnel had been trained to tackle the challenges posed by the fight against ETA's activities. The first EDEX units had been formed in 1978.
- 1979 – First Investigation and Report Teams.
- 1981 – The first 334 Renault 4s were acquired.
- 1981 – The GEAS emerged from the simple diving units.
- 1981 – The Special Academy moved to Aranjuez.
- 1981 – The creation of the Auxiliary Guards of Guardia Civil is approved; they will begin service the following year.
- 1981 – First IT Training Centre.
- 1982.- The Education Inspectorate is elevated to the status of a Directorate.
- 1982 – The Renault 4s begin to cement their legendary status: a further 584 vehicles are added to those from the previous year.
- 1982 – The Canine Service is reorganised, with a headquarters overseeing various groups and detachments, as well as the School itself.
- 1982 – Creation of the Judicial Police within the Guardia Civil.
- 1983.—Officers of the Guardia Civil are now eligible to undertake the General Staff course.
- Between 1974 and 1984, the UHEL expanded from 4 aircraft to 17.
- Between 1981 and 1983, the Mountain units were strengthened and reorganised, reaching a total of 4 Sections, 10 Groups and 13 Teams.

⁵⁰ That year, there were 851 lieutenants in the general rank structure, plus 3 from ranks that were due to be phased out (2 from the Rural and Mobile ranks and 1 from the Coast and Borders rank). Of the 101, we have subtracted 3: the two who died in the line of duty in 1947 and Gullón Campoamor, who requested discharge shortly after joining the service in 1946.

- Etc.

Naturally, as they held the highest posts within the structure of the Guardia Civil, many of the "transformados" assumed significant responsibilities, both within the Corps (Ángel Ruíz Ayúcar, 6th Director of the Special Academy) and outside it (Mauro Alonso de Armiño Díez, Representative of the Ministry of the Interior on the Permanent Higher Commission on Remuneration of the General Staff).

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III.- CASE LAW REVIEWS



Case law review

CASE LAW REVIEW, SECOND CHAMBER OF THE SUPREME COURT

English translation with AI assistance (DeepL)

Javier Ignacio Reyes López

Judge at Madrid Investigating Court No. 46

Diploma of Advanced Studies (DEA)

ji.reyes@poderjudicial.es

Received 13/05/2026

Accepted 13/05/2026

Published 30/06/2026

doi: <https://doi.org/10.64217/logosguardiacivil.v4i2.9166>

Recommended citation: Reyes, J. I. (2026). Review of case law from the Second Chamber of the Supreme Court. *Logos Guardia Civil Journal*, 4(2), pp. 387–408. <https://doi.org/10.64217/logosguardiacivil.v4i2.9166>

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Legal Deposit: M-3619-2023

NIPO online: 126-23-019-8

Online ISSN: 2952-394X

CASE LAW REVIEW, SECOND CHAMBER OF THE SUPREME COURT

Summary: 1. STS 195/2025, 5 March. Determination of the aggravating circumstance of an establishment open to the public in a case of robbery with force. 2. STS 185/2026, 3 March. Validity for prosecution of a witness statement given at police headquarters by a witness who subsequently dies. Murder. 3. STS 216/2026, 12 March. On the validity of a videoconference with the complainant during the oral hearing, via an unofficial application. 4. STS 241/2026, 27 March. Requirements for ambient audio recording. Determination of the starting point for calculating the duration of this technological measure. 5. STS 264/2026, 6 April. Validity of police imagery captured by a drone on a property used almost exclusively for an extensive and vast cannabis plantation. 6. STS 156/2026, 24 February. Grounds for the order authorising telephone tapping where the police merely request a change of telephone number for the person under investigation. 7. STCO 15/2026, 23 February. Pre-trial secrecy and the guarantee of access to the essential elements of the arrest. 8. STS 41/2026, 26 January. Reopening of proceedings provisionally dismissed due to the emergence of new facts and new lines of investigation, even if of a technical nature.

1. STS 195/2025, 5 March. Determination of the aggravating circumstance of an establishment open to the public in a case of robbery with force against property¹.

Factual background.

In this Supreme Court ruling, we examine the appeal lodged against the judgment handed down on appeal by the High Court of Justice of Galicia, confirming the conviction for the offence of burglary in an establishment open to the public. Appeal upheld.

Investigating Court No. 1 of Santiago de Compostela instituted summary proceedings No. 339/2020 against Pablo and others for the offence of burglary. Once concluded, it referred the case to the Provincial Court of La Coruña, Section 6, which handed down a judgment on 29 April 2022, setting out the following proven facts: “On 23 December 2019, at around 11.00 pm, two unidentified individuals, acting in concert with Guillermo and Clemencia, gained access to the premises of the Caballo Blanco Self-Service Laundrette, situated at Avenida da Liberdade No. 5 in Santiago de Compostela. Once there, after Guillermo and Clemencia had checked the premises and whilst they were keeping watch, the two unidentified individuals broke through the plasterboard wall where the coin change box was located, taking approximately €500, causing damage to the machine amounting to €674.30 and to the wall amounting to €423.50. The injured party did not claim compensation for the damages suffered.

Legal grounds.

The appellant does not dispute the offence of robbery with force, but rather the scope of the aggravating circumstance of a premises open to the public.

The judgment of the court of first instance, which was subsequently upheld by the High Court of Justice, maintains that the entry of the two accused, Guillermo and

¹ Supreme Court Judgment 195/2026 of 5 March 2026, published on the website of the Judicial Documentation Centre (CENDOJ) (ROJ: STS 940/2026 - ECLI:ES:TS:2026:940), appeal no. 4766/2023. Presiding Judge: His Honour Mr Antonio del Moral García.

Clemencia, into the premises took place before 11.00 pm, as did the departure of a customer who was there to collect her laundry, which occurred a few minutes later, after 11.00 pm, when the two unidentified men who smashed the wall and stole the cash box appeared, whilst the two suspects, later convicted, Guillermo and Clemencia, remained outside the premises and kept watch. It so happens, however, that the theft did not begin at that moment, but had already commenced before 11.00 pm with that initial act of entering and surveying the premises by the two convicted individuals, which was only possible precisely because the premises were not yet closed to the public and, moreover, remained open throughout the entire course of the unlawful incident. It is therefore beyond doubt that the Court has correctly applied the relevant offence.

Those two identified individuals were initially convicted as perpetrators of a crime of robbery with force in an establishment open to the public during opening hours.

In upholding the appeal and following an analysis of the footage recorded by the CCTV cameras, with reference to the relevant time period, the Supreme Court notes that, “...the burglary did not begin before 11.00 pm – the premises’ closing time. Until that moment, preparatory acts were carried out to verify, precisely, that no one remained on the premises, which is exactly what the legislator intended to reduce the penalty in such cases: there is no risk to persons. The actual acts of the robbery began after closing time had passed, regardless of whether the premises had actually closed, a fact of which they may not have been aware. At that point, the principal perpetrators arrived, whilst the two accomplices remained outside keeping watch. The burglary cannot be aggravated simply because it was preceded by preparatory acts during opening hours. What is punishable is the commission of the burglary, which begins after 11 pm in an establishment open to the public during opening hours. It is in this situation that the risk of incidents involving people is inherent to the act, which the legislator takes into account in order to impose a more severe penalty due to the greater intensity of the criminal act...”

Conclusions.

I do not entirely agree with the reasoning set out in this Supreme Court ruling to reduce the sentence for those it classifies as perpetrators of preparatory acts for a property offence and classifies the offence as robbery committed in an establishment open to the public, but outside opening hours, which entails a reduction in the sentence.

This solution is questionable given that the two convicted individuals objectively arrived at the premises before closing time with a very specific intention—to steal—and with a pre-agreed division of tasks; for if it had indeed been closed to the public, what purpose would their intervention have served? Furthermore, they remained there on the lookout whilst two other unidentified individuals arrived, entered the premises, broke through the wall, carried out the theft and left with the loot without being arrested.

In my view, and despite the scarcity of proven facts, the fact that some individuals’ involvement did not last as long as others’ this does not mean that the aggravated sub-type could not be applied not only to the two who were ultimately convicted and who arrived at before closing time, but also to those who, in agreement with them, had they been identified, actually carried out the robbery by force after closing time.

2. Supreme Court Judgment 185/2026, 3 March. Validity for the purposes of prosecution of a witness statement given at a police station by a witness who subsequently dies. Murder².

Factual background

The Supreme Court rules on the appeal lodged against the judgment of the High Court of Justice of Madrid, which upheld the judgment of the Provincial Court. Dismissed.

The Court of First Instance and Preliminary Investigation No. 2 of Parla initiated Jury Trial proceedings (PTJ) No. 814/2021 and, once concluded, referred the case to the Provincial Court of Madrid, Section 16, which, on 15 July 2024, handed down a judgment containing, amongst others, the following proven facts: “...On 27 December 2021, at around 7.00 pm, the defendant, Imanol, went to the bar La Espuela, situated at 21 Calle Guadalajara in the town of Parla, where he was playing on an arcade machine. The premises were run by Carlos Jesús and, in addition to him, Severino was also present. At some point after 01:30 on 28 December 2021, the defendant, with the intention of causing death or being aware of the high probability that such a result would occur, approached Severino, struck him repeatedly – particularly on the skull, face and neck – with one of the establishment’s stools and inflicted several cuts to his abdomen and chest with a sharp object, which he also plunged into his neck; this, by partially severing the jugular vein, caused his death within a few minutes...”

Legal grounds

The subject of the appeal is the scope of a witness’s statement made at the police station and subsequently during the preliminary investigation, but who later died.

Indeed, Article 46.5 in fine of the Organic Law on the Judiciary () states that statements made during the preliminary investigation, except those resulting from early evidence, shall have no probative value regarding the facts stated therein, which, on an initial reading, suggests that in any event juries must disregard as an element of conviction the information obtained from personal proceedings during the preliminary investigation phase, through the statements of the persons under investigation, witnesses or experts. However, this apparent exclusivity is more apparent than real, as has been clarified by the now unanimous case law of this Chamber, within the framework of constitutional doctrine and inspired by the idea that different rules of evidence cannot coexist in our criminal justice system depending on the type of proceedings in question, be it a jury trial, ordinary proceedings or summary proceedings.

It goes on to state that, “...in this case, the statement made by the witness Mr César during the preliminary investigation was read out at the trial, as he was unable to appear having passed away. It was a statement given in the presence of the court and the other parties, and therefore we can raise no objection to such evidence. It is true that his police statement was also read out...”

² STS 185/2026, 3 March 2026, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STS 925/2026 - ECLI:ES:TS:2026:925), appeal: 10309/2025. Presiding Judge: Her Honour Ms Ana María Ferrer García.

As we are well aware, the case law of this Chamber generally does not recognise the probative value of statements given at police headquarters. However, in this case, the matter involves significant nuances. That police statement was read out, as explained by the Presiding Judge of the Jury, as a supplement to the statement given in court, insofar as the witness expressly referred to it.

In any event, this is evidence whose exclusion in no way affects the body of evidence. The only relevant information it provides is that the defendant was at Bar la Espuela at around 7 pm on the evening of 27 December, and that he was there at the same time as both victims.

Conclusions.

A reminder of the professional diligence with which we must act in the early stages of an investigation, and all the more so in crimes of this gravity, which may be resolved years later and where some direct or indirect witness, whether principal or secondary, may have passed away.

The importance of that testimony in police and court proceedings, together with other evidence, was at least taken into account by the Jury Court, although it did not play a decisive or determining role in the subsequent judgment.

3. Supreme Court Ruling 216/2026, 12 March, on the validity of a video conference with the complainant during the oral hearing, via an unofficial application³.

Factual background

The Supreme Court ruled on the appeal lodged against the judgment of the High Court of Justice of Aragon, which upheld the judgment of the Provincial Court of Zaragoza, Section 6. Dismissed.

The Court of First Instance and Preliminary Investigation No. 2 of Calatayud initiated ordinary proceedings No. 155/2018 against Benigno for an offence against sexual freedom, and once the case was referred to the Provincial Court, he was sentenced to a lengthy term of imprisonment.

The statements of the parties leave no room for doubt, with the exception of the complainant's testimony given via videoconference.

Legal grounds

The first and second grounds of the appeal reproduce the reasons set out at the hearing, regarding the appellant's objection to the complainant's testimony being taken at trial via teleconference, on the basis that this left him defenceless, arising, in particular, from the fact that the witness was placed in a privileged position, her identity was not verified, nor

³ Supreme Court Judgment 216/2026, 12 March 2026, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STS 1142/2026, ECLI:ES:TS:2026:1142), appeal: 5149/2023. Presiding Judge: His Honour Mr Antonio Del Moral García.

was the impartiality of her statement, and, furthermore, that it was not documented in the case file that this method of taking the statement would be used, and that it did not appear necessary to do so on the grounds that the witness was pregnant.

Given that it has been established that the witness resided in Ceuta and was approximately eight months pregnant, we fully agree with the conclusion set out in the judgment under appeal that her personal appearance would have been particularly burdensome. Undoubtedly, unless strictly necessary, it does not seem advisable to transport a mother in an advanced stage of pregnancy, given the inconveniences, discomfort and potential risks that travel—whether by air or land—may entail for both her and the child. And in this case, it is not apparent that it was truly necessary for the statement to be given in person before the Court, since the means used to take the statement, although it gave rise, for technical reasons, to interruptions and shortcomings in the hearing of the witness, it nevertheless ultimately allowed, with a direct video feed of the witness, for her entire statement to be heard and for her to answer the questions that all parties were able to ask without any restrictions whatsoever.

The decision to use the telematic means being justified, no error can be identified in the specific conduct of the testimony that would render it invalid. Admittedly, the manner in which the testimony was taken was neither orthodox nor the most appropriate, as it took place at a private residence, without the presence of a public official to ensure *on-site* that the testimony was given correctly, and with the technical deficiencies observed during the hearing of the testimony.

However, such considerations should not lead, in this specific case, to upholding the alleged nullity, as the effects that the manner and circumstances in which the statement was given might have produced do not have the invalidating significance claimed. This is because the identity of the declarant is considered to be well-known, without the need to request a document to prove it and without any objection from the parties or any questioning of the fact that the declarant was the complainant. Nor is there any indication throughout the actual giving of the statement that the appellant's suspicion that the witness might have been coached whilst testifying is well-founded, since her gestures, demeanour, and the rapid and spontaneous manner of her responses demonstrate that she is answering in accordance with what she knows and understands, not because she is being told, directly or indirectly, what to say.

It cannot therefore be considered that the imperfections observed in the giving of the statement lead to the conclusion that the appellant was in any way deprived of a fair hearing, as they allowed the content of the statement to be fully understood and the evidence to be examined with the required immediacy and cross-examination, and, despite regrettable technical shortcomings, the provisions of Article 229.3 of the Organic Law on the Judiciary () were respected in practice, with the appellant's right to a defence being safeguarded at all times. In short, as stated by the Supreme Court, Second Chamber, in judgment 161/2015 of 17 March: "the pioneering regulation adopted at the time by Article 10 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, adopted in Brussels on 29 May 2000, has inspired other rules at European level which have only served to reinforce the advantages offered by that technical solution to bridge, with the necessary safeguards, the geographical distance between the witness and the court which is to assess the probative value of that testimony".

Conclusions.

The new Article 258 bis of the Criminal Procedure Act () is a provision rich in nuances, rules and exceptions. It establishes that videoconferencing is to be the preferred method for all procedural proceedings in general, subject to one exception—where the judge or court, having regard to the circumstances, decides otherwise—and one condition—that the courts or public prosecutors’ offices have the necessary technical facilities at their disposal.

Video conferencing has, and did at the time of the hearing, legal backing, not only for use during the investigation and pre-trial evidence-gathering phase, but also during the oral trial phase. The general rule under Articles 268.1 and 229.2 of the LOPJ is that proceedings must take place in the presence of the judicial body. However, in this case there were ample grounds for resorting to this method, as videoconferencing is merely a technical tool that allows evidence to be introduced into the proceedings—a method of taking evidence—so that it is the evidence in question, and in accordance with its own rules, which must be analysed in terms of the safeguards that must be in place for its use.

It can be asserted that the use of videoconferencing and the other technical means established by Article 230 of the LOPJ is not an optional or discretionary possibility at the disposal of the judge or court, but a means that is enforceable before the Court and constitutionally worthy of protection, although, as we well know, many courts continue to require the physical presence, primarily of members of the law enforcement agencies. Let us hope that this Supreme Court ruling, despite analysing an exceptional case, serves as a turning point for modernising the justice system with tools that are now conventional.

4. Supreme Court Judgment 241/2026, 27 March. Requirements for ambient audio monitoring. Determination of the starting point for calculating the duration of this technological measure⁴.

Factual background.

The Supreme Court rules on the appeal lodged against the judgment of the High Court of Justice of Galicia, which upheld the conviction of almost all the defendants handed down by the Provincial Court. Dismissed.

The Court of First Instance and Preliminary Investigation No. 4 of Vigo initiated preliminary proceedings under No. 520/2017, for an offence against public health, against Mr Abilio, Mr Alfonso, Mr Melchor, Mr Eugenio, Ms Belen, Mr Felix, Mr Abelardo, Ms Elisa and others, and once concluded, referred it for trial to the Provincial Court of Pontevedra, whose Section 5 handed down, in case no. 54/2019, a conviction on 11 July 2022.

⁴ Supreme Court Judgment 241/2026, 27 March, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STS 1369/2026 - ECLI:ES:TS:2026:1369), appeal 8231/2023. Presiding Judge: Her Honour Ms Carmen Lamela Díaz.

The technological tools used to identify those responsible for the offence during the preliminary investigation were telephone tapping and bugging.

Legal grounds.

The appellant seeks the annulment of the evidence obtained through the bugging of the Renault Express xx vehicle, authorised by order of 14 September 2016, on the grounds that it infringed fundamental rights (, Article 18.3 of the Spanish Constitution, and , Article 8 of the ECHR), as it failed to comply with the requirements of , Articles 588 ter g and , 588 quater c) of the Criminal Procedure Act (Lecrim) and the applicable case law, as well as exceeding the time limit set out in the court order.

The appellant argues that the order of 14 September 2016 authorising the installation of audio recording devices in the van fails to meet the requirements set out in Article 588 quater b) of the Criminal Procedure Code (), as it does not link its adoption to specific meetings the subject of the investigation may have with third parties, based on the evidence revealed during the investigation, but rather proceeded to indiscriminately record the conversations that took place, as the devices installed remained in a state of permanent recording and in generic mode, a fact which renders the order null and void as of right, as well as the entirety of the proceedings, since it allowed those involved to become aware of the operation itself.

In response to this challenge, the Supreme Court reasons that the order of 14 September 2016 authorises, in a reasoned and proportionate manner, the installation of audio recording devices inside the vehicle habitually used by the suspect, expressly limiting their use to meetings taking place between the suspect and other suspects, within the framework of an investigation into serious offences related to drug trafficking.

Indeed, whilst the initial judicial interpretations of Article 588 quater b) of the Criminal Procedure Act () advocated a strict application, requiring that the measure be limited to specific meetings and that the devices be switched off after each one, this position has been qualified by more recent case law. Thus, Constitutional Court Ruling No. 99/2021 of 10 May (), in line with Supreme Court Ruling No. 718/2020 of 28 December (), has expressly recognised the possibility of setting a time limit for the audio surveillance measure, so that it need not cease after each individual meeting, but rather at the end of the series of meetings for which it was authorised.

This interpretation allows the devices to remain installed and operational during the authorised period, without this implying indiscriminate recording, provided that the principles of proportionality, necessity and appropriateness are respected, and that the court order precisely defines the locational element (the vehicle), the subjective element (the persons under investigation), and the temporal scope of the interference, in accordance with the legitimate aims of the investigation and the seriousness of the offences under investigation, without an exact determination of the encounters being required, given the factual difficulty of predicting them with precision. Case law accepts, in this regard, the criterion of foreseeability as sufficient to justify the measure.

In the present case, the court order meets all these requirements: it defines the space (the interior of the vehicle), identifies the individuals concerned (Alfonso and the others under investigation), establishes a specific duration and makes the activation of the device

conditional upon the verification of relevant meetings, in coordination with operational surveillance.

The allegation that indiscriminate and continuous recording took place lacks factual and legal basis. As the Provincial Court set out in detail and rigorously, the proceedings show that the recording was not carried out continuously, but selectively. The device was activated only in coordination with operational surveillance, when the presence of the suspects inside the vehicle was detected.

The appellant's second ground of appeal is that the device was installed after the deadline and without any extension.

The appellant points out that the device was installed five months after the authorising order was issued. The order authorised the measure for an initial period of 30 days, extendable, but it was not installed until 15 February 2017. Nor was a new judicial authorisation sought, nor were any technical grounds put forward to justify the delay. The appellant therefore considers that the judge was deprived of control over the appropriate time to assess the necessity and proportionality of the measure. The authorisation would have lapsed, and the subsequent installation without a new order would be null and void.

He therefore considers that the measure must be declared null and void for infringing fundamental rights, that all information obtained from said bugging must be expunged, and that the entire subsequent investigation must be set aside on the grounds of illegality, given that it was the primary means by which it was initiated and sustained.

The Supreme Court points out that in order to determine when the period of a judicial authorisation for the bugging of a vehicle begins to run, we must refer to the rules governing investigative measures, specifically in the context of Organic Law 13/2015 of 5 October, which amended the Criminal Procedure Act.

The law provides that the investigating judge authorises the measure and must specify its duration. According to Article 588 bis of the Criminal Procedure Act (), 'the measures regulated in this chapter shall have the duration specified for each of them and may not exceed the time strictly necessary for the clarification of the facts'. It therefore appears that the law assumes that the period is calculated from the date of judicial authorisation and not from the implementation of the measure, unless otherwise provided for in the judicial decision authorising the measure. The measure shall have the duration specified by the judge in the authorising order.

Furthermore, Article 588 bis (f) provides, in paragraph 1, that the application for an extension shall be addressed to the competent judge sufficiently in advance of the expiry of the period granted; and, in paragraph 3, that the calculation of the extension shall commence from the date of expiry of the period of the agreed measure. This aspect reinforces the idea that the period is calculated from the date of the court order authorising the measure, since the extension is based on the duration previously established by the judge.

In our case, the appellant fails to mention that, as the Provincial Court explains, in the order dated 14 September 2016 authorising the measure limited to specific encounters taking place inside the vehicle between Alfonso and the other persons under investigation,

which were to occur within a period of thirty days, extendable under the terms set out in the order, expressly stating that ‘said period shall commence on the day the device is effectively installed, and the judicial authority must be notified of the moment the system is activated, with the appropriate record being drawn up’. This decision was duly substantiated by the Investigating Judge, taking into account that the installation of the device was contingent upon access to the interior of the vehicle, which posed difficulties due to the vehicle’s continuous use and the necessity for police officers to be present in order to gain access to it, also taking into account the need to enter the vehicle and the fact that the keys were required, for which he also agreed to issue an official letter to the manufacturer requesting that they provide Greco Galicia officials with a duplicate set of keys.

And, as the appellant also acknowledges, it is recorded in the relevant file that the device was installed on 15 February 2017, and that it was installed by the specialist officer attached to the Special Systems Headquarters, holding the rank of police officer and professional ID number NUM087.

No infringement of any fundamental right is therefore observed, as the authorisation and implementation of the measure comply with the legal requirements set out in Article 588 quater of the Criminal Procedure Act ().

The ground is dismissed.

Conclusions.

This Supreme Court ruling is particularly interesting in relation to the flagship measure of many judicial investigations into organised crime, namely the use of audio recording.

It is true that the Supreme Court initially adopted such a strict position that each new wiretapping operation gave rise to a new application, followed by a new judicial decision for each specific meeting, Supreme Court Judgment 718/2020, although that criterion was subsequently qualified by the Criminal Chamber in Judgment 99/2021, allowing such recordings to be made on a continuous basis and in a manner appropriate to the circumstances of the case for specific meetings taking place within a given period. It was striking how little sensitivity and sound judgement the legislator showed in drafting a rule that lacked practical sense and, on many occasions, was technically impossible to implement due to the urgency of the match.

Case law has made it possible to clarify the lack of a fixed duration for the measure in the provisions cited above, Article 588 quater a) of the Criminal Procedure Act and subsequent articles, a duration which will be similar to that established for telephone tapping in terms of its adoption and extensions.

If the above is important, it is even more so that, for the first time, the Supreme Court has set the dies a quo, the starting point, for calculating the duration of a technological measure, when the only previous judicial ruling was the very distant Supreme Court Order 205/2005 concerning an investigation from the late 1990s, well prior to the reform of Organic Law 13/2015, which set this as the date of the order authorising the measure; and that case which reached the Constitutional Court concerned a telephone interception; the factual scenario involved a judicial authorisation for a

telephone tap for three months, which began two and a half months after authorisation because the officers had not forwarded the warrants to the relevant telephone operator.

Now, however, the Supreme Court reasons that, thanks to the specification in the judicial order addressing the potential difficulties in implementing the wiretap—as it was not so straightforward for the police to install the device without being seen, given that the vehicle in question was frequently in use and the officers could be exposed to counter-surveillance by those under investigation—there is no objection to the time limit commencing at the time reasonably set by the Investigating Judge, having regard to the circumstances of the case.

5. Supreme Court Ruling 264/2026, 6 April. Validity of police image capture by a drone on a property used almost exclusively for an extensive and vast cannabis plantation⁵.

Factual background

The Supreme Court rules on the appeal lodged against the judgment of the High Court of Justice of Castile-La Mancha, which upheld the conviction of almost all the defendants handed down by the Provincial Court. Dismissed.

The Provincial Court of Guadalajara, First Chamber, handed down judgment no. 6/2025, 10 March, case file PO 2/2024, originating from Investigating Court no. 3 of Guadalajara, case file 1/23, concerning offences against public health, criminal organisation, bribery, disclosure of secrets and possession of weapons.

One of the investigative measures used by the Judicial Police was the use of drones to capture images of the premises used by the criminal organisation.

Legal grounds

The defence argues in the appeal that the obtaining of images and videos by means of drones or other aerial means over the rural property in xxx (Guadalajara) without judicial authorisation constituted a violation of the residents' right to privacy. During the investigation phase, the National Police used drones or aerial cameras to fly over and record the interior of the said property – the residence of some of the defendants, as stated in the proven facts, in point three – capturing images, apparently, of cannabis plants and the movement of plants within the property.

It is emphasised that this aerial surveillance was carried out without any court order authorising it. Subsequently, only individual still images taken from those flights were submitted to the proceedings, without the full video footage, precise geolocation data, or formal documentation of who captured the images and how. At the time, the defence argued that the date on which the defendants began occupying the property had not even been established, nor when the images were taken, raising serious doubts as to the

⁵ Supreme Court Judgment 264/2026, 6 April 2026, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STS 1661/2026 - ECLI:ES:TS:2026:1661), appeal 10648/2025. Presiding Judge: His Honour Mr Manuel Marchena Gómez.

legitimacy of the measure and the reliability of these unauthenticated photographs, which could have been of that property or any other.

The Chamber refutes the appellant's arguments and states that, in accordance with Article 588 quinquies (a), the Judicial Police's authority to capture such images on its own initiative is exclusively restricted to what the text itself refers to as '*public places or spaces*'. The scope of this term must be determined by contrast with the '*dwelling or enclosed premises*' referred to in Article 588 quater a), where, in all cases, judicial authorisation is essential for the taking of images.

In the aforementioned STS 797/2025, 2 October, we echoed the criticisms from certain sectors of legal doctrine regarding the notion that Article 588 quinquies (a) of the Criminal Procedure Act () supports the idea that privacy is never at stake in spaces classified as public, such that outside the home there is no expectation of privacy whatsoever and, consequently, police officers face no constitutional restrictions on obtaining images. Privacy may be affected – it is argued – when the investigator obtains personal information from a third party. This is referred to as the negative dimension of privacy. But it may also be compromised when the recording of images of a person who knows they may be under surveillance restricts their freedom to go about the ordinary aspects of their life. Be that as it may, the Spanish legislature has not deemed the collection of images by police officers in public spaces worthy of the enhanced protection afforded by judicial authorisation. It is, therefore, a locational concept of privacy which, in order to define the content of the constitutional right guaranteed by Article 18.1 and Article 18.2 of the Spanish Constitution (CE), requires a primary analysis of the domestic or public space in which the intrusion has taken place.

As we noted in the previous precedent, the case law that addresses the question of which places enjoy the constitutional protection afforded by sections 1 and 2 of Article 18.2 of the Spanish Constitution takes on full significance. It is these places that will require, for the capture of images, the authorisation contained in a reasoned judicial decision. The constitutional protection of the inviolability of the home – as case law consistently emphasises – applies exclusively to the home, that is, to the dwelling in which the person under investigation carries out their daily life and which, precisely for that reason, gives rise to an expectation of privacy that is protected by the Constitution. Consequently, the taking of images of the person under investigation in public places or spaces – including here, in general terms, all those outside the constitutional protection afforded by Article 18.2 of the Spanish Constitution () to the inviolability of the home or by Article 18.1 to privacy – may be decided on the police officers' own initiative.

It is not easy to establish precise rules that are general in nature and capable of strict application, setting aside the particularities of each specific case.

In the present case, the judgment under appeal endorses the reasoning set out by the Court of First Instance, based on the lack of evidence that, on the dates on which those photographs were taken, the area captured by the aerial images infringed the privacy of the residents. In fact, there is no evidence that Inmaculada and Abelardo – or any other person – resided on that property.

“...The photographs taken by aerial means, specifically drones, contained on pages 52 to 55 of the official letter of 12 May 2021, and taken in December 2020, 19 January,

18 February, and 2 April 2021, show only the greenhouses built on the property, which is situated in an isolated hollow, far from population centres, and is difficult to access. It would be virtually impossible to conduct any investigation without the risk of being discovered from the outset, without the use of these means, given that, as is well known, security measures are at their highest in trafficking activities, with collaborators who are in many cases impossible to identify and who are exclusively dedicated to surveillance...”

And to rule out the alleged violation of the right to the inviolability of the home, the contested judgment adds:

“...Regarding the lack of knowledge of the means used to capture the photographs, it should be noted that, although some of the officers who testified as witnesses stated that they were unaware of them, it was clarified by other police officers who testified that the assistance of the IT department of the National Police Force was requested for the capture of said images. As noted in the preceding paragraph of the Provincial Court’s judgment, pages 52 to 55 of the official letter of 12 May 2021 include the photographs in question and the dates: December 2020, 19 January, 18 February, and 2 April 2021. It is noted that these were preceded by an on-site investigation carried out on 14 December 2020, during which the construction of a large greenhouse (the size of a football pitch) was observed, with several workers operating cranes at heights of 70 to 80 metres. It is also noted in the said report or initial official document that some 70 metres away there was a large detached house and that the property had a riding school. And whilst it is true that there is such a reference to a detached house, the aerial photographs were taken from a height – not from a very low altitude – and the subsequent ones, also taken from a height, focus on the greenhouses. The aerial photographs, even if taken by drones, lack any substance that infringes upon any fundamental right, specifically the protection of privacy or personal integrity. They contain no images or data that could lead to a finding of such a violation. The defence seeks to cast doubt on the possibility of images being captured of the defendants’ alleged residence, due to the failure to produce the ‘complete recording’, as well as the content of the police report and the statements made by the officers who testified as witnesses; there is no objective basis whatsoever for concluding that images were captured beyond the photographs provided, let alone that they constituted a recording or that they reached the dwelling...”

Conclusions.

I have borrowed some excerpts from Supreme Court Ruling 264/2026 to better understand the doubts raised by the capture of images using drones in public, private or semi-public spaces, and we highlight the correct explanation of the proven facts in detail, given that in our case we are dealing with a property that does not constitute a dwelling and as it does not affect the rights of the alleged occupants, because there are none, the capture of police images is deemed acceptable given the seriousness of the conduct and the difficulty of acting otherwise.

And it reads as follows: “...when the placement of filming or listening devices encroaches upon the restricted space reserved for personal privacy (the home), this may only be authorised by virtue of a court order, which constitutes an instrument enabling the intrusion upon a fundamental right. Without the appropriate judicial authorisation, those means of capturing images or sound that film scenes inside the home by taking

advantage of the technical advances and capabilities of these recording devices would not be authorised, even if the recording took place from locations distant from the premises.

The Supreme Court ruling under consideration goes on to state that we are certainly not advocating a criterion that legitimises the covert capture of images on a property where the observation is captured in frames that are projected onto the interior of a building or that reveal spaces intended for the performance of acts that define the daily routine of any person.

Nor does the Chamber suggest that anything situated outside the strict confines of the home should be left unprotected. In fact, Article 241.3 of the Criminal Code (), when defining the concept of an ‘inhabited dwelling’ for the purposes of classifying the aggravated offence of burglary, considers ‘premises of an inhabited dwelling or of a building or premises open to the public, their courtyards, garages and other enclosed areas or sites adjacent to the building and in internal communication with it, and with which they form a physical unit’.

In short, the aim is to assess, in each case, whether the law enforcement authorities have complied with the principles of proportionality and necessity (, Article 588 bis a.1 of the Criminal Procedure Act). And in the present case, in view of the seriousness of the facts under investigation and the unique terrain on which the property was situated, we do not identify a breach of those legitimising principles.

6. Supreme Court Ruling 156/2026, 24 February. Grounds for the order authorising telephone interception where the police merely request a change of telephone number for the person under investigation⁶ .

Factual background

Investigating Court No. 1 of Denia instituted summary proceedings No. 24/2014 for the offences of administrative malfeasance, bribery, embezzlement of public funds, fraud against the administration and money laundering against Luciano, Lázaro, Genaro, Rafael, Alexander and SIREM S.L., amongst others. Once concluded, the case was referred for trial to the Second Chamber of the Provincial Court of Alicante, which handed down a guilty verdict against some of the defendants and acquitted others. (Brugal case).

The Public Prosecutor’s Office put forward a single ground of appeal, arguing that the right to effective judicial protection, enshrined in Article 24.1 of the Spanish Constitution (), had been infringed. The basis for the disagreement with the contested judgment lies in the declaration of nullity of the wiretap on telephone number NUM002, held by Emiliano, authorised by order of 15 January 2008. Appeal upheld.

Legal grounds.

It so happens that this Chamber has already examined the possible nullity of the order of 15 January 2018 in the proceedings from which this evidence derives, Supreme Court

⁶ Supreme Court Judgment 156/2026, 24 February 2026, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STS 885/2026 - ECLI:ES:TS:2026:885), appeal: 1549/2023. Presiding Judge: His Honour Mr Eduardo de Porres Ortiz de Urbina.

Judgment 753/2024 of 22 July, declaring that, as this is an order directing the extension of a previous telephone interception because the person under investigation has changed their telephone number or is using another number, no specific grounds are required, as the grounds provided when authorising the first interception are sufficient, noting, furthermore, that in this case the order in question was sufficiently reasoned.

It stated as follows: “...When a person is subject to a well-founded investigation and the interception of one of their telephone lines has been authorised, the interception of a new line discovered to be used by that person requires no further reasoning beyond that finding. It is not necessary to reproduce each time the evidence justifying the initial interception or which has led to the extensions...”.

In this case, we are dealing with the extension and/or application of a measure previously authorised and justified to the new telephone number used by the person under investigation, in respect of whom evidence of involvement in the scheme under investigation had already been established.

In particular, because the police report of 28 December 2007 (pages 1591 to 1625 of the proceedings – pages 1691 to 1725 of the digitised file –), which set out the specific evidence of this suspect’s involvement and served as the basis for authorising the interception of Argimiro’s communications (number NUM005), authorised by order of 28 December 2007, the termination of which had to be ordered as it was no longer operational, by order of 8 January 2008, and the grounds for which must also be taken into account for the purpose of supporting the new interception measure ordered by the order now under examination of 15 January 2008.

Consequently, no defect is apparent that could affect the constitutionality of the measure for the purposes of determining its nullity. This conclusion extends to the orders that authorised its extension; therefore, the ground under consideration is upheld.

Conclusions.

The criterion applied by the Supreme Court for telephone interception—simply changing the telephone number—must be applied with caution to other technological measures; consider, for example, a change of vehicle in a court-authorised geolocation, as such a modification of the object—the car—would not be so straightforward, since it would be necessary to detail the new police surveillance measures taken in relation to the suspect and that new vehicle, even though, in essence, we would be dealing with the same case.

7. STCO 15/2026, 23 February. Pre-trial secrecy and the guarantee of access to the essential elements of the arrest⁷.

Factual background

Constitutional appeal no. 2153-2025, brought by Mr R. G. against the orders for pre-trial detention of 2 and 14 February 2025, issued by the Central Investigating Court no. 3 in preliminary proceedings No. 62/2023 and against the order of 11 March 2025, issued by the Fourth Section of the Criminal Chamber of the National High Court in appeal No. 117-2025. Granted.

Legal grounds

It is necessary to set out the facts of the case in detail in order to rigorously apply the constitutional doctrine on access to the essential elements of detention in a case declared secret and thus avoid any lack of defence.

Prior to the hearing on 2 February 2025, the court provided the suspect with a document of the same date entitled: “Summary of the charges attributed to the suspect R.G., detained in the course of preliminary proceedings 62-2023, conducted in this Central Investigating Court No. 3, whereby the essential elements of the proceedings are communicated to him so that he may properly exercise his right of defence and, where appropriate, challenge the detention, given that at this time they are still classified as secret”. According to this document, the applicant for constitutional protection was under investigation as the alleged perpetrator of the offences of membership of a criminal organisation, an offence against public health and bribery. The content of the document is as follows: “By this Central Investigating Court No. 3 of the National High Court, within the framework of preliminary proceedings No. 62-2023, initiated by virtue of a complaint filed by the Anti-Drug Prosecutor’s Office, an investigation has been underway into the illegal activities of a criminal organisation allegedly engaged in drug trafficking by smuggling hashish from Ceuta to the mainland via the ports of Ceuta and Algeciras for subsequent distribution to various provinces across the country. As a result of the investigations, evidence was found revealing that we were dealing with criminal networks that enjoyed a high degree of impunity in the conduct of their alleged criminal activities thanks to the collusion of a ‘security structure’, composed mainly of members of the Civil Guard stationed at the Port of Ceuta who, acting in perfect coordination through a series of acts, whether by action or omission, facilitated the illegal activity in exchange for a benefit, generally financial. During the course of the investigation, reasonable grounds for suspicion of criminal activity have been established, pointing to the existence of a criminal organisation based in the city of Ceuta, whose aim is to obtain financial gain through drug trafficking [...]. Similarly, a series of indications have been obtained which have confirmed the existence of a network of officers allegedly responsible for ensuring the goods’ passage through the Port of Ceuta, namely Civil Guard officer R., assigned to the Vehicle Inspection Section of the th Tax and Border Company of Ceuta, and Civil Guard officer A., a member of the Ceuta Tax and Border Analysis and Investigation Unit (UDAIFF). Furthermore, based on the results of the activities carried out by the detainee

⁷ STC 15/2026, 23 February 2026, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STC 15/2026 - ECLI:ES:TC:2026:15), appeal 2153/2025. Presiding Judge: His Excellency Mr Ricardo Enríquez Sancho.

and other members of the criminal network under investigation, a significant quantity of narcotic substances, presumably hashish, has been seized; all of this is linked to the line of inquiry established. An operation in which the suspect participated, as indicated, as a member of a criminal organisation dedicated to this type of illicit activity, specifically carrying out the logistical tasks necessary for the illegal transport. During the investigation, evidence was obtained of the payment of certain sums of money by the criminal organisation under investigation as compensation for his collaboration with the criminal organisation in relation to the security tasks assigned to him. Specifically, evidence was obtained from intercepted and recorded conversations in which the detainee had already received 5,000 euros for the operation carried out on 8 December 2024. Furthermore, evidence has been obtained of the price agreed between the security unit and the criminal organisation under investigation for the security tasks...”

Against this background, it is worth reviewing the constitutional doctrine on the right of access to the essential elements of proceedings declared secret for the purpose of challenging the deprivation of liberty (a) There is established case law of this Court regarding the right of access to the essential elements of proceedings to challenge the measure of deprivation of liberty, (i) both in situations of police custody (SSTC 13/2017, of 30 January; 21/2018, of 5 March; 181/2020, of 14 December; 86/2025, of 7 April, and 188/2025, of 15 December); (ii) in relation to the holding of a court hearing under Article 505 of the Criminal Procedure Act () for the adoption of the precautionary measure of pre-trial detention. In the latter case, and specifically in cases declared secret by the investigating judicial authority (SSTC 83/2019, of 17 June; 94/2019 and 95/2019, of 15 July; 180/2020, of 14 December; 80/2021, of 19 April; 4/2023, of 20 February; 30/2023, of 17 April; 68/2023, of 19 June, and 152/2023, of 20 November). Constitutional doctrine on the guarantee of access to judicial proceedings held in secret, as summarised in the STC 152/2023, FJ 2 b), establishes that respect for the rights to personal liberty and to a defence requires recognition that the secrecy of proceedings does not preclude the right of access to challenge, in factual and legal terms, the lawfulness of the preventive deprivation of liberty. This right of access – together with the right to information, of which it is an inseparable complement and for which it serves as an instrumental guarantee – ensures equality of arms in the exercise of the right to a defence.

The guarantee of access does not operate *ex officio*, unlike the right to information, but requires a request by the person concerned or their defence counsel.

The request for access to secret judicial proceedings may be made before or at the time of the decision on the appropriateness of the precautionary measure of deprivation of liberty, or subsequently, either through the system of appeals against the order for provisional detention or through applications for its review. The guarantee of access is limited to the essential elements of the proceedings necessary to challenge the legality of the deprivation of liberty; the definition of these elements is necessarily case-by-case, and their specification falls to the competent judicial body responsible for deciding on pre-trial detention.

In stating that the person under investigation has the right to know the sources of evidence that could form the basis for their incrimination in criminal proceedings, this Court’s case law was not merely requiring that the person be informed solely of the ‘type’ or ‘nature’ of the sources of evidence linking them to the facts, but rather that this necessarily implies the competent authority identifying the ‘content’ of such sources in

the specific case. Informing the person concerned that they are under investigation, or that their arrest or remand in custody is justified on the basis of a document without specifying which one; or on the basis of statements made by unidentified witnesses, unless they have been declared protected witnesses by the judge, or without specifying what facts they claim to know; or on the basis of the findings of an expert report without knowing which person or entity has signed it and the data it contains; or on the basis of a telephone or other recording but without detailing its content, cannot in any way be considered to satisfy the right of access to essential proceedings, which has been recognised by this court as a guarantee of the fundamental rights to personal liberty and legal defence. (iv) With regard to technological investigative methods, the determination of the ‘essential elements’ shall be conditioned by the information obtained from the technological system, insofar as it is relevant to the decision on pre-trial detention: (i) in the case of telephone or electronic communications that have been intercepted, their transcript and the devices or terminals concerned (, Articles 588 ter of the Criminal Procedure Act); (ii) data held in automated files by service providers [Art. 588 ter j)]; (iii) data necessary for the identification of users, terminals and connectivity devices [Art. 588 ter k), l) and m)]; (iv) the transcript or recording of oral communications intercepted and recorded using electronic devices (Articles 588 quater); (v) the report setting out the results of the use of technical tracking and location devices (Articles 588 quinquies), and (vi) the content of specific files stored on computer equipment and other external storage systems (Articles 588 sexies), including in cases where the search of computer equipment is carried out remotely (Articles 588 septies).

Conclusions

Having read this Supreme Court ruling carefully, I wonder what purpose secrecy of proceedings serves in criminal proceedings and whether it should continue to be regarded as a mechanism essential to the success of the investigation.

A clear distinction is drawn between the guarantee of access to essential evidence—which does not operate *ex officio* but requires a request from the person concerned or their defence counsel—and the right to be informed of the facts with which they are charged, which the judge is obliged to provide to any person under investigation, *ex officio*.

I can only express my perplexity at statements such as those set out in the final paragraphs extracted from the legal reasoning of the aforementioned judgment, insofar as if case-by-case analysis is what should determine which elements may be made public upon request by the person under investigation, despite the secrecy, how can I disclose the content of a conversation with a third party who has not yet been arrested and who appears on the other end of the intercepted call without undermining the secrecy of the investigation? Could it not be that I do not wish to reveal their identity because there are other targets within that criminal organisation, known or unknown, who may still be operating?

In short, despite the commendable efforts of the investigating judge in that case at the National High Court to provide the parties with a document specifically drafted to set out the key factors underpinning the detention of a suspect at the time of their appearance before the court and to rule on their possible remand in custody, in my view, and having read that *ad hoc* document, I consider it to be more than reasonable, comprehensive and

detailed; and the TCO's clarifications regarding what cannot be kept under secrecy undermine the purpose of the previously agreed, proportionate and justified pre-trial secrecy in relation to the facts under investigation and in the face of such serious offences typical of organised crime.

Magister dixit and now, we must follow this interpretation of the TCO.

8. Supreme Court Ruling 41/2026, 26 January. Reopening of proceedings provisionally dismissed due to the emergence of new facts and new lines of investigation, even if of a technical nature⁸.

Factual background

Appeal lodged against the judgment dated 2 April 2025, handed down by the Appeals Chamber of the National High Court, in appeal case 9/2025, which dismissed the appeals lodged by the current appellants against the judgment dated 18 December 2024, handed down by the Criminal Chamber of the National High Court, Third Section, with the exception of the appeal lodged by Ángeles, which was partially upheld, the remainder of the contested judgment being upheld. Partial upholding.

Legal grounds

During the preliminary investigation of the case, a provisional order to dismiss the case was issued on the grounds that the commission of the offence was not duly substantiated, with insufficient evidence arising, firstly, from the fact that one of the tapped telephone lines had no traffic and another was not actually being used by the person under investigation who had ordered the interception, as well as the fact that vehicle tracking had proved untraceable or unsuccessful.

But it also stemmed, as the proceedings expressly reflect, from insurmountable technical difficulties encountered during that period of the investigation, as a third tapped telephone line could not be monitored, given that Orange, the owner of the line, had begun implementing a new communications protocol, known as RTP, which could not be decoded at that time.

The reopening challenged by the appeal was not due to a reconsideration of the existing material or to a belated rectification of a hypothetical investigative oversight—but rather to the concurrence of supervening circumstances that fall within the criteria of 'new evidence' required by this Chamber:

a) Firstly, new evidence had emerged suggesting a resumption of the criminal activity under investigation. Police surveillance had detected that the suspects might be preparing to receive a new consignment of precursor chemicals for drug synthesis, which opened up the possibility of a new surveillance operation that might prove more successful than the previous one. This objectively altered the factual basis on which the

⁸ STS 41/2026, 26 January 2026, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: **STS 158/2026** - ECLI:ES:TS:2026:158), appeal number 10294/2025. Presiding Judge: His Honour Mr Pablo Llarena Conde.

provisional closure rested, as it involved new circumstantial evidence pointing to new criminal activity and a renewed line of investigation, even though the legal classification of the conduct remained the same given that the commission of a general offence was suspected.

b) Secondly – and this is decisive in the face of the defence’s argument that there was no genuine evidence regarding the receipt of a new consignment of precursor materials – the existence of a new line of inquiry is established, as the investigating officers considered that they were now in a position to overcome the technical difficulties initially encountered in decrypting the new RTP communications protocol introduced by the telephone company on one of the lines initially tapped. This circumstance, in itself, constituted a ‘new element of evidence’ in the jurisprudential sense, as it opened up the real and concrete possibility of exploiting the investigative source for the first time by overcoming a technical impossibility not attributable to the investigators and which now appeared to be surmountable.

In light of the Supreme Court’s doctrine, this combination of factors amply satisfies the requirement that the reopening be based on new elements not on the record or not exploitable in the case at the time of the dismissal, thereby precisely avoiding the risk that case law prohibits: that proceedings be reopened merely due to a change in criteria, or due to an effort previously disregarded, or due to a belated correction of assessments that were previously possible.

The novelty here does not relate to incriminating evidence, but to the possibility of employing previously unfeasible forensic techniques, which, by definition, broadens the scope of investigation and procedurally justifies the reactivation of the preliminary investigation without infringing upon the suspect’s rights.

From a constitutional and treaty-based perspective, preventing the reopening of proceedings in a scenario such as that described—where new evidence has emerged and, furthermore, the subsequent availability of potentially illuminating forensic techniques—would lead to a rigid closure incompatible with the idea of a reasonably effective criminal investigation, as it would amount to converting the provisional dismissal into a definitive closure despite the removal of the obstacles preventing further investigation into a crime not subject to the statute of limitations. The doctrine of the Constitutional Court, in line with the European Court of Human Rights, emphasises precisely that the investigation must not be closed prematurely when there are reasonable and useful possibilities for further inquiry.

Conclusions

Technological investigative measures are subject to the common guiding principles of speciality, suitability, exceptionality, necessity and proportionality.

The standard of necessity does not amount to imposing on the judicial police or the investigating judge an obligation to exhaust all conceivable alternative investigative procedures in practice, nor to attempt – as a matter of principle – a catalogue of prior measures until they fail. The standard requires a reasoned comparative assessment of the actual availability of less intrusive alternatives that are equally suitable and effective for the legitimate aim pursued, or, where appropriate, to establish that without the intervention the investigation would be seriously hampered; furthermore, as this is a measure typically authorised in the initial stages, case law has emphasised that an exhaustive factual justification is not required, precisely because the measure is adopted to further an investigation that has not yet been completed, based on initial circumstantial evidence that must subsequently be verified.

The right to an effective remedy is infringed when the preliminary investigation is closed despite the existence of reasonable suspicions that could be dispelled through an effective investigation, which requires the prudent exhaustion of all useful investigative avenues to clarify the facts, emphasising that this doctrine is consistent with the case law of the European Court of Human Rights.

The Constitutional Court further emphasises that there is no rigid and exhaustive list of investigative steps required in every case, but there is an obligation to carry out those procedures which, given the circumstances, are reasonably suitable for advancing the clarification of what occurred; therefore, in the face of new facts and new avenues of investigation, even if they are of a technical nature and duly justified, it is appropriate to reopen the provisionally closed proceedings and resume the investigation.



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