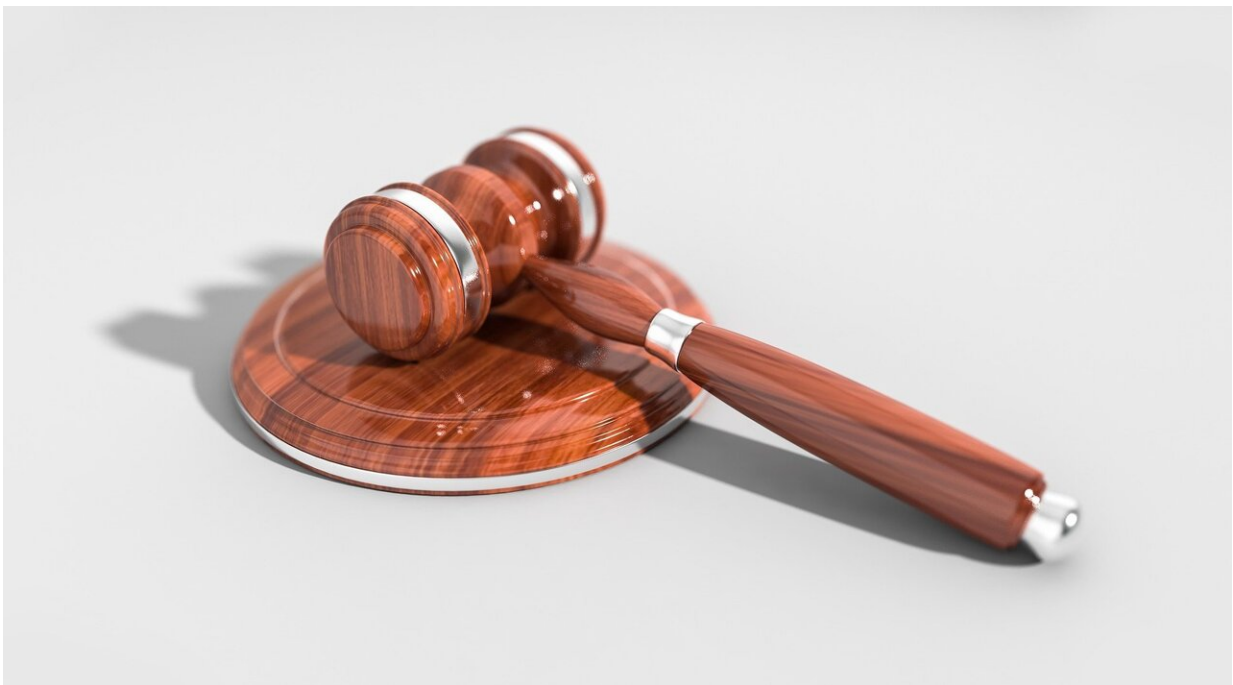


# Study: Spanish courts hand down milder sentences for rapes if they are committed by the victim's partner or ex-partner

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Just four years ago, the Spanish Supreme Court [pointed out in a ruling](#) that there is no such thing as a "conjugal debt." In other words, a woman is not obliged to satisfy her husband's sexual needs. It may come as a surprise that this point still needs to be made, but the statistics speak for

themselves. According to a [national survey](#) carried out in 2019, 7.5% of Spanish women over 16 years old have been raped by their partners or ex-partners.

These rapes are usually subject to less attention, and they tend to be "perceived as something less serious." So says Josep Maria Tamarit Sumalla, a full professor of Criminal Law at the Universitat Oberta de Catalunya (UOC) and the lead author of a pioneering study in Spain which concludes that Spanish courts hand down milder punishments for rapes when they are committed by the victim's partner or ex-partner.

The study is titled "How Criminal Is It to Rape a Partner According to the Justice System? Analysis of Sentences in Spain (2015-2022)," and has been published in the *European Journal on Criminal Policy and Research*. It examines nearly a thousand rulings on cases of [rape](#) in which the victims were [adult women](#), which were handed down by Spain's provincial courts between 2015 and 2022.

The conclusions are clear: when the rapist is the victim's partner or ex-partner, "there are fewer convictions, the punishments are milder, and the compensation amounts are lower," according to the professor, who is also a researcher in the VICRIM (Empirical and applied victimology) group in the Faculty of Law and Political Science at the UOC.

## **Fewer convictions and one year less in prison**

When conducting the study, the team of researchers selected all rape cases in which adult women were the victims, heard in Spain's provincial courts between 2015 and 2022. Among other factors, they looked at whether the cases had led to a conviction, the [prison sentence](#) and the amount of financial compensation that had been imposed.

In 37% of the 964 rape cases studied, the offender was the victim's

partner or ex-partner; it was someone known to the victim in 17.6% of cases; it was a stranger in 22.7% of cases, and the offender was a relative of the victim in 20.9% of cases.

The study shows that the judges decided to convict 62% of those accused of rape who were [partners](#) or ex-partners of the victims. This percentage increases by 17 points, up to an average of 79%, in other cases. "That's a statistically significant difference," Tamarit pointed out.

The average prison term for those convicted was 83.4 months in cases of intimate partner rape, and 95.1 months in the other cases. In other words, the average length of the prison sentence was one year less for partners and ex-partners.

Partners and ex-partners had to pay an average compensation amount of around €12,600. Meanwhile, the compensation was almost €17,800 in the other cases.

## **An aggravating factor in only 22% of cases**

The Spanish Criminal Code made no explicit reference to a rape or sexual assault being committed within an intimate partner relationship until 2022. As a result, the judges had to issue sentences on both types of cases on the same basis, although they were able to take intimate partner relationships into account as a mitigating or aggravating factor due to the relationship between the offender and the victim.

"Our analysis has concluded that the courts only found this situation to be an aggravating factor in 22% of cases. Most rulings did not mention it at all, and milder sentences were imposed as a result," said Tamarit.

This situation will change as a result of the [country's 'only yes is yes' law](#), which was passed in October 2022. "Since the reform of the law, the

courts must now increase the penalty when the rape takes place within an intimate partner relationship, and there will probably be a change," the professor continued.

On the other hand, the professor of Criminal Law at the UOC said that the judges' task is not an easy one because in cases involving rape within intimate partner relationships, there is often a lack of evidence and, furthermore, "the law exempts the victim from the obligation to testify."

## **Limited study of psychological effects**

The article by the UOC researchers also points out that the prison sentences are longer and the financial compensation amounts are higher when the judges consider that the rape has had a serious psychological impact on the victims.

"It wasn't taken into account in many sentences because it wasn't apparent. The court isn't always able to take it into consideration, because there isn't always an expert assessment. There's still a long way to go to ensure that all victims receive a psychological assessment," Tamarit pointed out.

## **The perspective and gender of judges**

As regards the judges' conscious or unconscious beliefs, the UOC professor refers to the myth of the 'real rape': "According to the stereotype, a real rape is committed against an attractive young girl by someone she doesn't know. Anything that differs from that profile may have greater difficulty being recognized as such, whether it's the rape of a man, of an elderly woman or a rape within an intimate partner relationship."

When assessing the extent to which judges are affected by this myth, "we'd need more qualitative studies and interviews with them, which is very difficult," he added.

Nevertheless, with regard to the study they have already published, "The fact that there is this difference in penalties must be considered within the framework of a Spanish Criminal Code which imposes very severe penalties in cases of rape compared to other countries. We wouldn't like to say whether it should be subject to longer terms of imprisonment. But we have found that there is some degree of inertia in terms of failing to take cases of sexual violence within an intimate partner relationship as seriously. And they do need to be taken seriously," concluded Tamarit.

**More information:** J.M. Tamarit Sumalla et al, How Criminal Is It to Rape a Partner According to the Justice System? Analysis of Sentences in Spain (2015–2022), *European Journal on Criminal Policy and Research* (2023). [DOI: 10.1007/s10610-023-09537-x](https://doi.org/10.1007/s10610-023-09537-x)

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