

## LA TRADUCCIÓN DE LOS DELITOS SEXUALES EN EUROPA: UNA COMPARATIVA DE SENTENCIAS DE ESPAÑA, ALEMANIA E IRLANDA

### *THE TRANSLATION OF SEXUAL OFFENCES IN THE EU: A COMPARISON OF COURT RULINGS IN SPAIN, GERMANY AND IRELAND*

#### RESUMEN

La cuarta ola de feminismo en España, Alemania e Irlanda ha estado marcada por los casos de «La Manada», *Kölner Silvesternacht* y *The Lacy Thong* sobre delitos sexuales. Sus históricas sentencias han sido objeto de sonados debates en los medios de comunicación y han visibilizado dos importantes fracturas: la primera, entre la sociedad de la UE y el sistema judicial y la segunda, entre las diversas culturas jurídicas de los países miembros. Tal disonancia se observa mejor en la interpretación de los términos jurídicos y su traducción. Por ende, nuestro estudio se plantea tres objetivos: analizar las disparidades terminológicas entre los derechos penales de España, Alemania e Irlanda y ofrecer un listado de (in) equivalencias; identificar cómo la ley se aplica e interpreta en las sentencias en cuestión; y, finalmente, extraer fragmentos de las sentencias españolas y traducirlas al inglés para comprobar cómo la jurisprudencia, en consonancia con la evolución social y feminista, ha forzado cambios interpretativos e, incluso, normativos en algunos países.

**Palabras clave:** cuarta ola del feminismo, violencia sexual, consentimiento, derecho comparado, traducción de jurisprudencia, traducción de inequivalencias.

#### ABSTRACT

The fourth wave of feminism in Spain, Germany and Ireland has been marked by the sexual offence cases of *La Manada*, *Kölner Silvesternacht* and «The Lacy Thong», respectively. They resulted in unprecedented judgements that have been fiercely debated in media and have brought to light two important fractures: the first one between the EU society and the judicial system, and the second between different legal cultures within the EU. These disjunctions are best observed in the interpretation of legal terms and their translation. Thus, our aim is threefold: first, we examine the terminological disparities between Spanish, German and Irish criminal law and provide a list of (in)equivalences; second, we identify the way the law is applied and interpreted on the judgements. Finally, we extract key fragments of the Spanish judgments and translate them into English to verify how jurisprudence, in line with social and feminist evolution, has forced interpretative and even normative changes in some countries.

**Keywords:** fourth-wave feminism, sexual violence, consent, comparative law, translation of jurisprudence, translation of inequivalences.

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## SUMMARY

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## 1.- Introduction

The present article is framed in transnational feminist translation (TFT) as defined by scholars and feminist translators Castro, Ergun, von Flotow and Spoturno: «transnational feminist translation practices and ethics promote the emergence of multiple and diverse intersubjectivities in translation, questioning and denaturalizing categories and practices of colonial modernity such as gender and gender patterns» (Castro *et al.*, 2020). Since its origins in the 1970s, feminist translation practice has evolved from applying feminist techniques to the translation of literature to focusing on new areas of social justice and intersectionality, including the translation of scientific and legal texts, among others. Castro and Spoturno (2020) consider that the presence of translation should be explored as a key in feminist movements of social activism for the (trans)formation of cross-border alliances which are necessarily plurilingual, such as #MeToo.

In this context, the fourth wave of feminism has been marked by the rejection of rape culture, especially represented by the #Metoo campaign. Beyond citizens' movements, international organisations such as Amnesty International are calling on governments to introduce consent as a basic principle to legally treat sexual assault and thus avoid the requirement that the woman must show signs of violence for her complaint to be credible. Social change implies normative and jurisprudential change. Thus, in 2011, EU member states agreed upon the articles of the Council of Europe Convention on preventing and combating violence against women and domestic violence; specifically, they acknowledged the provisions contained in art. 36 regarding Sexual violence, including rape, in which the key element of sexual offences is a contextualised assessed consent: '2. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.' (Council of Europe, 2011). However, six years later, in a report issued in 2018 by Amnesty International, which analysed rape legislation in 31 EU countries, found that only 8 of them have consent-based definitions of rape, while the vast majority only recognize rape when physical violence, threat or coercion is involved. Only Ireland, the UK, Belgium, Cyprus, Germany, Iceland, Luxembourg and Sweden define rape as sex without consent. Sweden changed

the definition only in the past few months. The social impact of this insufficient legislation is not to be overlooked since, according to the European Union Agency for Fundamental Rights (FRA), one in 20 women in the EU has been raped since the age of 15 – what amounts to about 9 million women (Amnesty International, 2018b).

In Spain, the Congress passed in July 2021 the bill for an Organic Law to fully guarantee sexual freedom (*Proyecto de Ley Orgánica de Garantía Integral de la Libertad Sexual*, see Congreso de los Diputados, 2021), which aims to amend the Spanish Criminal Code article 187 and to introduce 187 BIS, in order to eliminate the current distinction between sexual abuse and sexual assault/rape that caused the controversy around *La Manada* case. Largely based on the concept of consent and popularly known as the ‘Only yes is yes’ Law (*Ley del solo sí es sí*), it includes further offences such as street harassment (*acoso callejero*) and gender-based murder of women (*feminicidio sexual*). Despite the positive reactions it has prompted, criticism has also been expressed on the fact that the bill focuses on sexual violence rather than adopting a global approach to gender-based violence. In this study, the key concepts around this debate shall be examined from a transnational feminist translation perspective.

### 1.1.- Study purpose and research method

The purpose of this study is to examine the treatment of sexual offences in three European countries by contrastively analysing three high profile trials that outraged European societies: *La Manada* (The Wolfpack) 2018-2020, *Kölner Silvesternacht* (Cologne New Year’s Eve) 2015-2016 and ‘The Lacy Thong’ 2018. We do this by focusing on the legal and social contexts in which the events took place, the factors through which the criminalisation of sexual offences is realised by pointing out the basic concepts in each legal culture and by examining fragments from judgements in which judges actually interpret these concepts. We also include other aspects of male violence in the courts, such as the narrative used in examinations and cross-examinations against the victim. The choice of the three cases under examination is based on the working languages of the authors of this article, the high profile of the cases and the comparability of the three legal systems in question, since they are geographically and culturally close countries although they are based in different legal traditions: Common Law in the case of Ireland and Roman-Germanic Law in the case of Germany and Spain. However, the results will show that, even inside the (West) European Union, there are striking differences in legal terms and interpretation thereof, and at the same time common issues that call for transnational joint efforts in order to be resolved.

As to the research method, it is based on comparative analysis applied to legal terminology as described by Šarčević (1989, 2000), Arntz (2001), Bestué (2008), Holl (2010).

Bestué (2008: 199) describes the importance of comparative law in legal translation and indicates some principles applicable to translation that are derived from the analyses of the use of English vocabulary that legal experts made in comparative studies. She points out that, in contrast with the liberties taken by comparative law scholars, that can use calques to describe a particular legal aspect, legal translators must comply with all the pragmatic parameters of the text, and therefore cannot limit themselves to analysing linguistic or legal factors but must also consider the communicative and cultural factors at play. Therefore, an in-depth descriptive specialised monolingual study of every term that poses a translation challenge shall be the preliminary step before transferring real texts such as the legislation and jurisprudence examined in this study. In the same line, Šarčević (1989) underlines the reliability of lexicographic resources providing that they are «conceptually-oriented», analytical and descriptive. For this author, translation is not «a mechanical process of transcoding» since «legal translation is essentially a process of translating legal systems» (Šarčević, 2000: 229). Moreover, we build on Holl's approach to legal analysis based on Contrastive Textology and Arntz' description of legal language, in order to compare the Irish and German Criminal Codes with the Spanish one, to establish the main legal concepts in sexual legislation and to suggest a translation for these. It should be highlighted that the translations put forward in the Appendix are descriptive, not full equivalents since these do not exist in the current legislation across the countries studied here.

This approach has been applied in a prior study by the authors of this article, albeit in the context of journalistic texts reporting on sexual offences in the Spanish *La Manada* case. The results of said study showed a lack of equivalence in sexual offence types in the countries studied (Spain, Germany and UK) and a diversity of translation techniques (particularisation, generalisation, description or borrowing of offence types, often in a different register), possibly depending on the ideology of the media in question (Rodríguez Muñoz y Castillo Bernal, 2020). A further finding was the absence of consent as a key concept in legislation on sexual freedom in the abovementioned countries, despite recent efforts to update the Law.

With the intent to expand and delve into this comparison, in the present article we provide the translation of relevant fragments of the judgements to make the common and discordant areas visible so that both jurists and laymen are aware of the cultural burden that still exists in areas of explicit violence against women. More specifically, the methodology is structured in three phases: first, we contextualise three legal cases of sexual offences in Spain, the UK and Germany to establish the social repercussion and the similarities or discrepancies in terms of media coverage, surrounding circumstances, interpretation of the Law and corrective measures taken by the government and the judicial system, if applicable. Second, the key terms on sexual offence types are extracted from the media reports on the judgements, defined in the context of the corresponding national Criminal Codes and translated for clarification and interlingual and legal comparison purposes. Third, we translate some excerpts of the three judgements in *La Manada* case in order to conduct a contrastive analysis of key terms and discourse. The translated

fragments have been selected based on key legal concepts which were extensively discussed in the media and that ultimately justify each court ruling: *abuso sexual* (sexual abuse), *prevalimiento* (undue influence), *violencia* (violence), *intimidación* (intimidation), *violación* (sexual assault or rape) and *consentimiento* (consent). We have translated the excerpts of the rulings in which said key concepts are explained. Due to the several instances involved and the different verdicts, *La Manada* case can best serve as an example of the consequences of the interpretation of the Law and the evolution of jurisprudence in a non-Common-Law country, which can either adjust to the spirit of the times or stick to a more rigid interpretation of the codes.

In order to ensure universal equality in Europe, it is paramount that the Law on sexual offences be updated and the key terms and types defined as accurately and free of prejudice as possible, a process that requires international comparison and efforts to overcome the constraints of national legal cultures. In this sense, we intend that the material and reflections provided in this paper can serve as a basis for the introduction of new regulatory measures within the European Criminal Justice Area to harmonise criminal law and fight gender discrimination and violence in order to guarantee sexual integrity for women in Europe regardless of their country of origin.

## 2.- Context: Timeline of the Court Rulings in *La Manada* Case

The following account of the so-called *La Manada* case is based on the chronicle published in Spanish national leading newspaper *El País* on April, 23rd 2018.

In 2016, an 18-year-old woman reported that she was raped by five men in the early hours of 7 July in Pamplona, during the famous running of the bulls local festivity known as *San Fermín*. The perpetrators, who nicknamed themselves *La Manada* (The Wolfpack), recorded the facts on tape. A few days later they were taken into preventive custody and charged with offences of sexual assault (*agresión sexual*) and robbery with assault (*robo con violencia*). After the motion to dismiss was denied, in November 2017 the trial began at the provincial court of Navarra, whereby the private accusation asked for 22 years prison time, while the city council of Pamplona and the regional government asked for 26 years imprisonment for each subject, based on offences of sexual assault, violation of privacy and robbery with intimidation.

During trial, the victim declared that she had gone into shock and therefore did not resist the sexual assault. The five respondents considered that the sexual relation was consented but failed to specify in which way the victim had shown said consent. Finally, on 26 April 2018 the provincial court of Navarra sentenced the accused to nine years jailtime for 'continuing sexual abuse'. It was considered that there was no proof of physical violence, hence no intimidation, a concept which is key to rule for rape in Spain. The court did include undue advantage (*prevalimiento*) as an aggravating circumstance, since it was considered that the perpetrators committed abuse of power. The court's decision included a particular vote for absolution by one of the judges. While the decision was being announced,

dozens of demonstrators gathered at the court gates to protest against the verdict. The decision included five-year probation and 50,000€ to be paid to the victim as compensation.

Both the victim and the perpetrators appealed to the Superior Court of Justice of the region Navarra, which in their decision on 5 December 2018 maintained the same sentence, albeit instructing the provincial court to rule again for charges of violation of privacy, since the victim had been recorded while forced. The criminal case did not end here, since both parties appealed again to the Supreme Court of Spain which ruled on 21 June 2019 against the prior verdict, raising jailtime from 9 to 15 years for a continuing crime of rape (*delito continuado de violación*) with two aggravating circumstances: degrading treatment (*trato vejatorio*) and joint acts (*actuación conjunta*) committed by two or more people. The Supreme Court ruled that the provincial court of Navarra had 'erred' when considering the facts as an ongoing single offence, since there were several perpetrators and «acts of assault» (*actos de agresión*) (El País, 2019).

### 2.1.- Categorisation of sexual offences in the Spanish Criminal Code (*Código Penal*)

The Spanish Criminal Code regulates sexual criminal offences in Title VIII: *Delitos contra la libertad e indemnidad sexuales* (Crimes against sexual freedom and indemnity). It is divided into six chapters,<sup>3</sup> here we shall examine chapter I on sexual assaults (*De las agresiones sexuales*) and chapter II on sexual abuse (*De los abusos sexuales*), since they are relevant for the case we are dealing with.

Chapter I on sexual assaults comprises three articles: 178 to 180.

Article 178 defines sexual assault (*agresión sexual*) as an attack against sexual freedom with violence or intimidation, punishable with one to five years of prison. In turn, chapter 179 defines rape as a type of sexual assault with penetration. In this case, sentences range from six to 12 years of prison. Finally, chapter 180 deals with aggravating circumstances [2] that can raise the sentence for the abovementioned crimes.

Chapter II comprises articles 181 and 182, where the so-called sexual abuse (*abuso sexual*) is defined as an attack against a person's sexual freedom or indemnity without violence or intimidation and without consent. The victim may be unconscious due to the effect of intoxicating substances or to a mental disorder. This includes undue influence consent (*consentimiento viciado*) because the abuser is exerting undue advantage over the victim. The sentences range between one and three years of prison or an 18 to 24-month fine except in cases of penetration, which raises the sentences to four to ten years.

### 3.- The case of the 'Lacy Thong' in Ireland

On 6 November, news broke in the Irish media and, subsequently, in the media around the world about the trial for alleged rape of a 17-year-old girl by a 27-year-

3 Our translation.

old man in the county of Cork. He was finally acquitted by a jury composed by eight men and four women. The case, which initially did not seem particularly complex, became a discussion area on the issue of consent. In order to determine whether the act was consensual or not, during trial it was alleged that there was kissing beforehand, although no eyewitnesses testified so, that the accused dragged the girl to the place where the assault or sexual intercourse took place, that he put his hand on her throat as part of the sexual act or as a form of intimidation typical of rape. It was also not clear if she shouted or not or whether he stopped when she asked him to. Nevertheless, what really got the newspapers buzzing and caused real social alarm was the plea of the defence lawyer, who used the description of the girl's underwear as evidence of her desire to have sex that night: 'Does the evidence out-rule the possibility that she was attracted to the defendant and was open to meeting someone and being with someone? You have to look at the way she was dressed. She was wearing a thong with a lace front.'

According to issues published by BBC (2018) and Independent (2018) just a day after the publication of the court report, Noeline Blackwell, the head of Dublin's Rape Crisis Centre, criticised the barrister's remarks and urged a reform of the Irish legal system and better directions (like those of England and Wales) at trial level on matters such as clothing, alcohol intake or not crying by the victims.<sup>4</sup> She stated: 'These kind of mythologies and stereotypes around rape come up again and again in court cases, because the defence to rape is that the sex was consensual. So anything the defendant can do to suggest there was consent will be used.' (Dillon, 2018).

Another critical voice was that of the chair of the National Women's Council of Ireland, Grace O'Malley Dunlop, that considered that using the underwear worn by a rape complainant as a defence was 'not acceptable' as 'rape is rape, and no victim of rape or sexual assault brings it upon themselves. It is an act of violence and it is nothing to do with sex.' (Dillon, 2018). She underlined the importance of legal training on gender. On the opposite side of the balance, legal sources insisted on the legitimacy of this kind of arguments as the presumption of innocence of the accused is vital in the Irish system and there are no rules on this issue. (Dillon, 2018).

Protests against this victim-look scrutinising narrative spread in the social media, as a high number of users expressed outrage at the remarks at court by uploading photographs of their underwear of different colour and type under the hashtag #ThisIsNotConsent. MP Ruth Coppinger did the same by pulling out of her sleeve a thong while in session in the Dáil to highlight 'routine victim-blaming': She stated: 'It might seem embarrassing to show a pair of thongs here... how do you think a rape victim or a woman feels at the incongruous setting of her underwear being shown in a court?' (BBC, 2018).

Up to date, no legal reform has been conducted regarding how to prove consent

4 [1] The Special Eurobarometer study released in November 2016 determined that 9% of the 1,000 Irish people that participated in the survey considered consent was unnecessary if somebody was dressed provocatively (Dillon, 2018).

without using sexist arguments at trial in Ireland. Nevertheless, in 2019 The Law Reform Commission examining Ireland's legislation on rape released the *Report on Knowledge or Belief Concerning Consent in Rape Law* in which the 'Lacy Thong case' was mentioned. This body urged the expert working group organised by the Department of Justice and Equality of Ireland to review the investigation and prosecution of sexual offences to work on remarks on women's clothes at sexual assault trials. In fact, in May 2019, the strategic committee lead by Professor O'Malley recommended the Department to develop and implement specialised training for members of An Garda Síochána (the judiciary and legal professionals dealing with sexual offences) in order to 'understand the societal attitudes, myths and stereotypes in relation to sexual violence and victims of sexual crimes'. The final report by the Review Group has not been published yet.

### 3.1.- Categorisation of sexual offences in Irish Law

In Ireland, two acts deal with sexual offences against adults: the Criminal Law (Rape) Act, 1981 and the Criminal Law (Rape) (Amendment) Act 1990, which distinguish between *rape*, *sexual assault* and *assault with sexual aggravation*. As in the Spanish case, we include only those relevant to this study. There is a third act concerning sexual violence, The Criminal Law (Sexual Offences) Act of 2017 that, although regulates children abuse, amended the definition of consent set in Section 9 of the 1990 Act.

According to both applicable regulations *rape* has two definitions in the Irish legal system. In section 2 of the Criminal Law (Rape) Act, 1981 it is stated that 'A man commits rape if (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it, and (b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it, and references to rape in this Act and any other enactment shall be construed accordingly'. In section 4 of the Amendment of 1990, it is set that 'a sexual assault that includes (a) penetration (however slight) of the anus or mouth by the penis, or (b) penetration (however slight) of the vagina by any object held or manipulated by another person'. Both crimes are serious offences and those convicted can be sentenced to life imprisonment. It is remarkable that, as the Head of Public Prosecutions Oireachtas Joint Committee on Child Protection (2006) points out, in the 1981 text this offence was 'gender specific' but in 1990 Act a woman can be charged 'as an aider and abettor'. Moreover 'the offence may be committed against either a man or a woman' under Section 4(a). Finally, 'section 4(b) rape is gender specific in that it can be committed only against a woman, but can be committed by persons of either sex'.

As we can see, 'consent' is a vital aspect that is clarified in Section 9 for this and the two other crimes that we will define below. According to Irish law, 'consent' implies that the person 'freely and voluntarily agrees to engage' in the sexual act. A defect of consent will be produced in case of assault or intimidation, unconsciousness or being under alcohol/drug influence, physical disability that prevents the person



from communicating, ignorance about the sexual nature of the act or the identity of another person involved in it or it is given by a third party. It is further stated that those circumstances are not exhaustive, consent can be withdrawn at any time and it is not presumed in case of failure to resist by the victim.

*Sexual assault* is regulated in Section 2 and refers to an indecent assault on a male or a female, which may be punishable with a prison sentence not exceeding 5 years.

*Aggravated sexual assault* implies ‘sexual assault that involves serious violence or the threat of serious violence or is such as to cause injury, humiliation or degradation of a grave nature to the person assaulted’. As in the case of ‘rape’, those convicted of this offence may be sentenced to life imprisonment.

Taking into account the description of *rape* and *sexual assault* in the Irish system and of *abuse* and *rape* in the Spanish system, we conclude that the same facts are more serious in the Anglo-Saxon country and that there, unlike in Spain, sexual crimes are based on the lack of consent, tacit or explicit, of the person assaulted and on the intentionality of the perpetrator. It is not necessary in any of these offences to demonstrate the concurrence of physical violence or intimidation as indicated in the Spanish Penal Code, which must only be proved in the case of the crime of ‘aggravated sexual assault’.

It is also worth noting that the offence of rape under Irish law occurs whenever there is a non-consensual penetration.

In the light of these data, given the lack of equivalence between systems, if we were to translate Irish offences into Spanish, we would be forced to make them explicit:

<b>Rape</b>	violación (penetración bucal o anal con el pene o vaginal con cualquier parte del cuerpo o un objeto) y sin consentimiento tácito o explícito
<b>Sexual assault</b>	abuso sexual sin penetración; tocamiento carnal sin consentimiento
<b>Aggravated sexual assault</b>	abuso sexual sin penetración; tocamiento carnal sin consentimiento con violencia física o intimidación

Table 1. Translation of Irish sexual offences

### 3.2.- Jurisprudence from the case of ‘Lacy Thong’ in Ireland

Unlike the *La Manada* case, the defendant was finally acquitted. After hearing the closing arguments, the jurors took 90 minutes to reach a unanimous verdict of innocence. What was not initially disclosed was that what the Central Criminal Court at Cork really heard was a retrial. Based on the reports by Phelan and Riegel (2018) and Heylin (2018) the relevant facts of the case and the final judgment are as follows:

**3.2.1.- Facts**

During a night of July 2015, the 17-year-old girl made her way home on foot through her hometown from a party with teenage female friends. But as she reached a street just outside the town centre she happened upon a man 10 years her senior. The girl claimed he dragged her up a laneway and raped her on a muddy patch of ground. A witness would later say the man had his hand around her throat.

The family of the girl became concerned when she did not return home and went searching for her. They discovered her in a distressed state.

A week and a half later, the 27-year-old man was arrested for questioning and during interviews denied raping the girl. He was released without charge and a file was sent to the Director of Public Prosecutions.

**3.2.2.- First trial**

In November 2015 he was charged for rape. The trial took place at the Central Criminal Court in Dublin in front of Mr. Justice Paul Coffey in June 2017.

This first trial was halted amid legal argument over medical testimony and due to the fact that the jury was discharged following an application from the defence.

**3.2.3.- Retrial**

A retrial was later fixed for the new criminal courts complex of Cork and got under way on October 24 finishing on November 6.

Again, there were periods of legal argument, but the same technical problems over medical evidence did not arise this time. As the case progressed, it became clear the central issue was that of consent.

**3.2.4.- Excerpts from the judgment: examination, cross-examination and final remarks**

*Counsel for the prosecution*

Mr Creed	The Defendant
‘There is not one person who saw you kissing.’	The defendant named one man who allegedly did see them kissing but this person did not give evidence in the trial.
Mr Creed asked him to describe the sexual contact.	The defendant said they had gone up a lane and were lying down in a muddy area. He said that he could not get fully erect and did not think his penis went into her vagina. He said it was possible that it did but he did not think so.

<p>‘A witness saw you with your hand to her throat.’</p>	<p>The defendant said that was not correct. He said the witness misread the situation.</p> <p>‘She was not crying at any stage.’</p>
<p>The complainant’s evidence indicated that he dragged her over 30 metres to the spot where the alleged rape occurred.</p>	<p>he said he ‘didn’t drag anyone anywhere.’ He said she was kind of worried about her dress getting dirty in what he described as ‘the moist mud’.</p> <p>He said that after (a witness at the scene) asked was everything alright in a sarcastic manner he replied: ‘What the fuck does it look like. Mind your own business.’</p>
	<p>‘Then she (the complainant) was getting funny, it was like she snapped out of a buzz. She said stop and I stopped. We were going to have sex, she said stop and I stopped,’ he testified.</p>

Table 2: Examination and cross-examination in the ‘Lacy Thong’ Case

**Final remarks**

‘You decide if there was sexual intercourse between them. You decide if there was consent.’

‘You have heard her say she did not consent. You have heard him say she did consent. The major issue you have to deal with is whether she consented to sexual intercourse. It is one way or the other. Either she did or did not. If you are satisfied, she did not consent and that he knew she did not consent then you convict.’

‘She is quite clear she did not consent. She said she never had sexual intercourse before.’

‘It has been alleged by the defendant there was lots of kissing going on. In terms of kissing there is not one witness in this case who can say they were kissing.’

**Counsel for the defense**

‘Does the evidence out-rule the possibility that she was attracted to the defendant and was open to meeting someone and being with someone? You have to look at the way she was dressed. She was wearing a thong with a lace front.’

**4.- The case of New Year’s Eve 2015-16 in Cologne**

Before examining the German Criminal Code, we will briefly outline a German case comparable to *La Manada* in terms of its social impact and legal repercussions, albeit the circumstances and scope were completely different. In the night of 31 December 2015, massive sexual assaults were committed in Cologne, as the following newspaper fragments describe:

Fiebig (2017)	Translation
<p><b>Kölner Silvesternacht 2015/2016</b> Die Nacht wird in Erinnerung bleiben als die Nacht, in der vieles außer Kontrolle geriet: Es kam massenhaft zu Diebstählen, Körperverletzungen und vor allem zu sexuellen Übergriffen. Laut eines im Juli 2016 veröffentlichten Abschlussberichts des Bundeskriminalamtes sind in dieser Nacht in Köln <b>etwa 650 Mädchen und Frauen</b> Opfer von Sexualdelikten geworden. Nur wenige Monate später hat der Bundestag ein neues Sexualstrafrecht verabschiedet. Das Gesetz zur Verbesserung des Schutzes der sexuellen Selbstbestimmung trat am 10. November 2016 in Kraft.</p>	<p><b>New Year's Eve 2015-16 in Cologne</b> This night shall be remembered as the night things got out of control: there were massive muggings, physical assaults and, mostly, sexual assaults. According to the report by the German Criminal Office published in July 2016, <b>some 650 girls and women</b> were victims of sexual offences that night in Cologne. Only nine months later, the German parliament passed a new criminal law on sexual offences. The law to improve the protection of sexual self-determination came into force on 10th November 2016.</p>

Table 3: Translation of media excerpts from the Case of New Year's Eve 2015-16 in Cologne (1)

As explained above, around 650 women were victims of diverse sexual crimes during that night. As a consequence, only nine months later the German criminal law was modified to ensure the protection of sexual freedom. The following fragment describes the main modifications introduced by the new law to improve the protection of self-determination (Bundesgesetzblatt, 2016):

Fiebig (2017)	Translation
<p>„Der wesentliche Unterschied ist, dass wir vorher – in der alten Rechtslage – immer ein Gewaltelement brauchten. Und jetzt <b>brauchen wir kein Gewaltelement mehr</b>, um jetzt theoretisch zu einer Verurteilung wegen eines <b>Sexualdeliktes bei Erwachsenen</b> zu kommen, sondern es braucht nur – nur in Anführungsstrichen – eine Handlung <b>gegen den erkennbaren Willen</b> einer anderen Person.« Entscheidend ist jetzt, dass die sexuelle Handlung <b>nicht gewollt war</b> und dass das für den Täter auch <b>erkennbar</b> war – beispielsweise, weil das Opfer geweint hat.</p>	<p>‘The fundamental difference is that under the former law it was necessary <b>to prove violence</b>. Now, theoretically this is <b>no longer necessary</b> to obtain a judgement of <b>sexual offence against adults</b>, but it is «only» necessary that an act <b>against the identifiable will</b> of another person takes place.’ What is decisive is that the sexual act was <b>non-consensual</b> and this was <b>discernible</b> for the perpetrator of the offence if, for example, the victim was crying.</p>

Table 4: Translation of media excerpts from the Case of New Year's Eve 2015-16 in Cologne (2)

According to this new law, the key legal concepts in the field of sexual criminal offences in Germany are that it is no longer necessary to prove violence in a sexual offence case, the explicit will or consent and the fact that the perpetrator should identify said consent. In the following, we shall examine these concepts in the German Criminal Code.

#### 4.1.- Categorisation of sexual offences in the German Criminal Code

In the German Criminal Code (*Strafgesetzbuch*), articles regulating sexual offences are grouped in crimes against sexual freedom (§ 174-184), such as article 177 (sexual assault, intimidation and rape), 184h (acts of sexual nature) or 184i (sexual harassment).

The main terms related to sexual criminal offences in said articles are presented in Table below: [1]

Sexual offences in § 174-184	Translation
Sexueller Übergriff (jede sexuelle Handlung <b>gegen den erkennbaren Willen</b> einer anderen Person)	Sexual assault (any act of sexual nature committed <b>against the identifiable will</b> of a person)
Gewalt [nicht mehr notwendig]	Violence [it is no longer necessary to prove it in order to get a conviction for a sexual offence]
Sexuelle Nötigung § 177(5)	Sexual assault with violence, intimidation or taking advantage of a helpless victim
Vergewaltigung (Eindringen in den Körper)	Rape (penetration)
Sexueller Mißbrauch (Kinder, Jugendlichen)	Sexual abuse (children and adolescents)
Sexuelle Selbstbestimmung	Sexual self-determination, sexual freedom
Körperlich misshandeln	Physical abuse or mistreatment
Sexuelle Handlungen § 184h(1.) «nur solche, die im Hinblick auf das jeweils geschützte Rechtsgut von einiger Erheblichkeit sind» [sexuelle Selbstbestimmung]	<b>Sexual criminal offence? Act of sexual nature?</b> Only those of a certain relevance regarding the corresponding protected legal concept [sexual freedom]
Sexuelle Belästigung (§ 184i)	Sexual harassment

Table 5: Translation of the German Criminal Code

Some terms would seem to be problematic from the point of view of legal interpretation: *erkennbar* (identifiable) y *sexuelle Handlungen*. In the first case, Fiebig (2017) names the example of a person crying, whereby the other party should identify an opposing will to the sexual act. However, as has been explained in *La Manada* case, it is not always easy to prove that a perpetrator was aware of the victim's opposing will.

In the second case, *sexuelle Handlungen* does not equal sexual crimes (*Sexualdelikte*), but it is a more general term subject to interpretation. As an example, kissing and groping against a person's will are usually not considered sexual offences, but sexual harassment. The definition in the German Criminal Code is arguably ambiguous: *sexuelle Handlungen* are only those of a certain relevance regarding the corresponding protected legal concept [sexual freedom].

It should be also noted that the term *Mißbrauch* is used solely in reference to children, adolescents and other victims who are deemed to be at a disadvantage with regard to the perpetrator.

#### 4.2.- Jurisprudence from the case of New Year's Eve 2015-16 in Cologne

A few years after the events in Cologne, the account of sentences seems to have fallen rather short: according to German newspaper *Süddeutsche Zeitung* (2019), out of over 600 sexual offences reported, only two sentences for sexual assault (*sexuelle Nötigung*) were issued. The *Spiegel* had informed about 290 suspects being investigated by the public prosecution, of which 52 were finally charged and 32 sentenced, mostly for robbery (*Raub*), theft (*Diebstahl*) and receiving stolen goods (*Hehlerei*), according to the *Süddeutsche*. The severest punishment was issued against a 30-year Algerian who was convicted to one year and eleven months in prison for theft resembling robbery (*räuberischer Diebstahl*) according to the *Süddeutsche (ibidem)*.

The two sentences for sexual offences were issued in 2016 against a 21-year-old Iraqi and a 26-year-old Algerian, according to the *Süddeutsche Zeitung* (2016):

SD (2016)	Translation
Das Amtsgericht Köln sprach einen 21 Jahre alten Iraker wegen sexueller Nötigung schuldig und verhängte eine Freiheitsstrafe von einem Jahr auf Bewährung nach Jugendstrafrecht. Außerdem erhielt ein 26 Jahre alter Algerier wegen Beihilfe zur sexuellen Nötigung ein Jahr Haft auf Bewährung nach Erwachsenenstrafrecht.	The lower regional court of Cologne found a 21-year-old Iraqi guilty of sexual assault and gave him a suspended one-year sentence following the criminal law relating to young offenders. Besides, a 26-year-old Algerian was sentenced to one-year suspended prison time for aiding and abetting sexual assault, following the criminal law applicable to adults.

Table 6: Translation of media excerpts from the Case of New Year's Eve 2015-16 in Cologne (1)

The newspaper further explains the charges of sexual assault committed against two women, one of whom was kissed and licked in the face against her will. In this case, the judges considered it to be *sexuelle Nötigung*, which according to the German Criminal Code entails the use of violence, intimidation or taking advantage of the victim’s situation of helplessness and is punishable with three months to three years of prison, as opposed to *sexueller Übergriff* (sexual assault without violence, intimidation, etc.), which is punishable with one to ten years prison. In any case, the judges see in this act the graver offence:

SD (2016)	Translation
<p>Das Gericht sah es als erwiesen an, dass der Iraker Hussein A. in der Silvesternacht am Kölner Dom eine junge Frau gegen deren Willen geküsst und ihr Gesicht abgeleckt hatte. «Wir sehen das als sexuelle Nötigung an», sagte der Richter Gerd Krämer. Den Algerier Hassan T. hielt das Gericht der Beihilfe zur sexuellen Nötigung durch eine Gruppe von 15 bis 20 Tätern für überführt.</p>	<p>The court considered proved that Iraqi Hussein A. had kissed a young woman and licked her face against her will in New Year’s Eve at Cologne Cathedral. ‘We consider it to be sexual assault’, said judge Gerd Krämer. The Algerian Hassan T. was convicted by the court for aiding and abetting sexual assault in a group of 15 to 20 perpetrators.</p>

Table 7: Translation of media excerpts from the Case of New Year’s Eve 2015-16 in Cologne (2)

The second victim was touched against her will by a group of perpetrators. According to the *Zeit* (2016), the 26-year-old Algerian was also charged with stealing her mobile phone from her purse:

SD (2016)	Translation
<p>Die Staatsanwaltschaft hat erste Anklagen wegen sexueller Nötigung in der Kölner Silvesternacht erhoben. Beschuldigt wird ein 26-jähriger Algerier, sagte ein Sprecher des Kölner Amtsgerichts. Er soll in der Silvesternacht eine Frau zusammen mit knapp zehn anderen Männern umringt und sie dabei an Hintern und Hüfte angefasst haben. Dem Mann wird zudem vorgeworfen, der Frau das Handy aus ihrer Handtasche gestohlen zu haben.</p>	<p>The public prosecution has pressed the first charges of sexual assault during New Year’s Eve in Cologne against a 26-year-old Algerian, according to a spokesperson of the district court in Cologne. He stands accused of surrounding a woman together with ten other men and touching her bottom and hips, as well as stealing a mobile phone from her purse.</p>

Table 8: Translation of media excerpts from the Case of New Year’s Eve 2015-16 in Cologne (3)

According to Wolfgang Schorn, spokesperson of the district court, the criminal prosecution of New Year’s Eve 2015 in Cologne is ‘sobering’, since the chaotic

situation on the night in question complicated the evidence and made it barely impossible to charge specific individuals with specific offences (*Süddeutsche Zeitung*, 2019). Despite these difficulties, it is remarkable that the New Year's Eve cases prompted a rapid change in legislation with the 50 Law to amend the German Criminal Code: Improvement of the protection of sexual self-determination (*Bundesgesetzblatt*, 2016) which introduced the modifications discussed above.

In the following section the jurisprudence of the Spanish case *La Manada* shall be examined with special attention to the classification of sexual criminal offences.

### 5.- Court Rulings in the case *La Manada*

This controversial case comprises three court rulings: Judgment no. 000038/2018 by the second section of the Provincial Court of Navarra; Judgment no. 8 of 30 November 2018 by the Superior Court of Justice of Navarra and Judgment no. 344/2019 by the Superior Court of Justice of Spain. For practical purposes, we shall refer to these respectively as the first, second and third judgment.

The following excerpt of the first judgment (Sección Segunda de la Audiencia Provincial de Navarra, 2018) describes how the victim was subject to undue advantage by the perpetrators:

First judgment (p. 108)	Translation
En el caso que nos ocupa, todos los procesados mediante su actuación grupal, conformaron con plena voluntad y conocimiento de lo que hacían, un escenario de opresión, que les aportó una situación de manifiesta superioridad sobre la denunciante, de la que se prevalecieron, provocando el sometimiento y sumisión de la denunciante, impidiendo que actuara en el libre ejercicio de su autodeterminación en materia sexual, quien de esta forma no prestó su consentimiento libremente, sino viciado, coaccionado o presionado por tal situación.	In the present case, all persons accused created in their joint act, with complete willingness and awareness of their doing, an atmosphere of oppression which gave them a manifest superiority over the plaintiff, thus exerting undue advantage over her and provoking her subjugation and submissiveness, preventing her from acting and exerting sexual self-determination. She thus did not give her free consent, but an undue influence consent under the coercion or pressure of said situation.

Table 9: Translation of the first judgment of *La Manada* Case (1)

Even though the judges consider that the victim was in a situation of disadvantage, this is not enough in their opinion to prove intimidation or violence, and thus they conclude that the offence must be the lesser one of sexual abuse and not sexual assault:



First judgment (p. 109)	Translation
<p>Condenamos a los procesados por cinco delitos continuados de abuso sexual con prevalimiento, en el subtipo agravado por acceso carnal, previsto y penado en el Art. 181 3. y 4. del Código Penal. Mientras que las acusaciones pública, particular y populares les acusan de cinco delitos continuados de agresión sexual de los Arts. 178 179, 180.1. 1º y 2º (...)</p>	<p>We sentence the accused for five continuing offences of sexual abuse with undue advantage and the aggravating circumstance of sexual relations as set and punished in Art. 181 3. and 4. of the Criminal Code, while the public, private and popular prosecution charge them with five continuing offences of sexual assault according to Art. 178 179, 180.1. 1º y 2º (...)</p>

Table 10: Translation of the first judgment of *La Manada* Case (2)

The uproar in the Spanish society in the face of this decision was immense, demonstrators gathered in all major cities of the country chanting ‘No es abuso, es violación’ (It is not abuse, it is rape), since rape is a subtype of sexual assault involving penetration, but which requires explicit intimidation or violence according to the Spanish Criminal Code. The judges further explain their decision:

First judgment (p. 109)	Translation
<p>Nos remitimos a cuanto hemos razonado; descartamos el empleo por los acusados de violencia o intimidación que integran el concepto normativo de agresión y por el contrario, razonamos sobre la concurrencia de todos los elementos que conforman el tipo tanto objetivo como subjetivo de abuso sexual con prevalimiento, en el subtipo agravado por acceso carnal; manteniendo la continuidad delictual, conforme a lo postulado por las acusaciones.</p>	<p>We refer to our arguments; we rule out the use by the accused of violence or intimidation which are part of the Code concept of sexual assault and on the contrary we reason the presence of all elements of the objective and subjective criminal type of sexual abuse with undue advantage; in the subtype aggravated by sexual relations; maintaining a continuous offence as stipulated in the charges.</p>

Table 11: Translation of the first judgment of *La Manada* Case (3)

After both parties appealed this decision, the second judgment issued by the Superior Court of Justice of Navarra (Tribunal Superior de Justicia de Navarra. Sala de lo Civil y Penal, 2018) ratified the first regarding the absence of violence:

Second judgment (pp.40-42)	Translation
<p>En el presente caso, la violencia, que no se plantea en los recursos del Ministerio Fiscal y de la víctima, está expresamente excluida en el relato de hechos pues estos dicen textualmente que «...la apremiaron a entrar en el portal tirando de la denunciante, quien de esa guisa entró en el recinto de modo súbito y repentino, sin violencia»; la sentencia recurrida, por tanto, expresamente excluye la violencia. Y en el desarrollo de la acción contraria a la libertad sexual de la denunciante, la sentencia de instancia no identifica ningún acto expreso de fuerza por los acusados para conseguir sus propósitos, por más que alguna de sus frases pudiera ser equívoca, como cuando se refiere agarrarla del pelo y rodearle el cuello.</p>	<p>In the present case, violence, which is not included in the appeals of the Prosecution Ministry and the victim, is explicitly excluded from the account of the facts since these read that ‘...they prompted her to enter the building pulling her in a rash and sudden way, without violence’; the appealed decision thus excludes violence in an explicit way. In the account of the act contrary to the sexual freedom of the plaintiff, the corresponding judgment does not identify any explicit act of force by the accused to achieve their purpose, even if some of the phrases may be ambiguous, such as the references to them pulling her hair or putting their hands around her neck.</p>

Table 12: Translation of the second judgment of *La Manada* Case (1)

Furthermore, regarding intimidation, the Superior Court of Justice of Navarra considers that intimidation requires an objective action by the perpetrator and is independent of the victim’s reaction or fear, which is subjective, quoting as jurisprudence the Supreme Court Decision STS 368/2010 of 26 April (it should be noted that in Spain only the country’s Supreme Court sets court precedent). Besides, the victim herself in her statements had declared that she did not feel intimidated, which in this case shows how the examination of a witness can lead to contradictory, confused allegations:

Second judgment (pp.40-42)	Translation
<p>Lo relevante es el contenido de la acción intimidatoria llevada a cabo por el sujeto activo más que la reacción de la víctima frente a aquélla. El miedo es una condición subjetiva que no puede transformar en intimidatoria una acción que en sí misma no tiene ese alcance objetivamente, o carece objetivamente del componente normativo de la intimidación ... Además del elemento objeto de la acción intimidante, ésta debe estar abarcada por el dolo del autor, es decir, que éste intimide al sujeto pasivo con la finalidad de doblegar su voluntad contraria al acto sexual y permita, así, la consumación del mismo» (STS 368/2010 de 26 abril). El relato de hechos probados de la sentencia recurrida –de acuerdo al propio relato de la denunciante en su declaración en la vista oral, que constituye la principal prueba de cargo–, pone el acento en su situación subjetiva: <i>impresionada y sin capacidad de reacción, experimentó situación de angustia, intenso agobio y desasosiego..., que le hizo adoptar una situación de sometimiento y pasividad</i>. Ella declara expresamente que fue introducida sin violencia o intimidación, la pericial no identifica ningún signo físico de violencia.</p>	<p>What is relevant is the content of the intimidatory action carried out by the active subject, rather than the victim’s reaction hereto. Fear is a subjective condition that does not render intimidatory an action which in itself does not have such a scope objectively, or objectively lacks the Code’s element of intimidation... Besides the object of the intimidatory action, this must also include intention by the perpetrator, i.e. the perpetrator intimidating the passive subject with the purpose of bending their contrary will to the sexual act, thus allowing them to complete it» (STS 368/2010 of 26 April). The account of the proven facts in the appealed decision - according to the version of the plaintiff herself in her statement at the hearing, which constituted the main evidence for this charge - highlights her subjective situation: <i>impressed and without the capacity to react, she experienced a situation of anguish, intense distress and unease... which made her embrace a situation of submissiveness and passivity</i>. She explicitly declares that she was led in without violence or intimidation, and the expert opinion does not identify any physical sign of violence.</p>

Table 13: Translation of the second judgment of *La Manada* Case (2)

The contrast between the first and the second judgments and the Spanish Supreme Court’s decision (Tribunal Supremo. Sala de lo Penal, 2019) is striking. The latter focuses on the attitude of the perpetrators and moves away from the interpretation of the victim’s reaction or resistance to them:

Third judgment (pp.68-69)	Translation
<p>(...) la calificación jurídica de los actos enjuiciados debe hacerse en atención a la conducta del sujeto activo. Si éste ejerce una intimidación clara y suficiente, entonces la resistencia de la víctima es innecesaria pues lo que determina el tipo es la actividad o la actitud de aquél, no la de ésta.</p>	<p>(...) the legal categorisation of the acts on trial must be done according to the active subject’s behaviour. If they exert clear and sufficient intimidation, then the resistance by the victim is unnecessary, since what decides the type of offence is the activity or attitude of the first, not of the latter.</p>

Table 14: Translation of the third judgment of *La Manada* Case (1)

Thus, the Supreme Court concludes there was an element of intimidation, which allows them to rule for sexual assault:

Third judgment (p.70)	Translation
En estos casos el efecto intimidatorio puede producirse por la simple presencia o concurrencia de varias personas, distintas del que consuma materialmente la violación, ya que la existencia del grupo puede producir en la persona agredida un estado de intimidación ambiental.	In these cases, the intimidatory effect can be brought about by the simple presence or participation of several people, other than the person physically committing the rape, since the existence of a group can cause an environment of intimidation for the person assaulted.

Table 15: Translation of the third judgment of *La Manada* Case (2)

The Court further refers to the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (pp. 73-74) and to the Istanbul Council of Europe Convention on preventing and combating violence against women and domestic violence of 11 May 2011, regarding the concept of consent:

Third judgment (p.75)	Translation
La específica referencia que se hace en el Convenio de Estambul al consentimiento, como manifestación del libre arbitrio de la persona en función del contexto, deja clara la imposibilidad de interpretar una ausencia de resistencia física como tal voluntad, la misma debe manifestarse de forma expresa o deducirse claramente de las circunstancias que rodean al hecho.	The specific reference to consent in the Istanbul Convention as the manifestation of the free will of a person depending on the context makes clear the impossibility of interpreting the absence of physical resistance as such a will, such will must be shown as an express consent or be clearly deduced from the circumstances surrounding the fact.

Table 16: Translation of the third judgment of *La Manada* Case (3)

Finally, the Supreme Court rectifies the sentence from sexual abuse to rape (sexual assault with penetration), based on the circumstance of intimidation:

Third judgment (p.100)	Translation
En efecto, estamos ante un supuesto de violación múltiple, efectuada por cinco personas, en la que todos participan como autores, y en la que no se está valorando dos veces una misma situación, según se desprende del relato fáctico (...)	Indeed we are facing a case of multiple rape committed by five people, during which all participate as perpetrators and where the same situation is not being considered twice, according to the account of the facts (...)

Table 17: Translation of the first judgment of *La Manada* Case (4)

Besides the importance of a correct and updated categorisation of criminal offences in the Code and their nuances, it is apparent that an interpretation of the facts that places an emphasis on the perpetrators rather than the victim is key in order to avoid subjective interpretations and possible ambiguity in court statements (as was the case of the victims' examinations both in *La Manada* and the 'Lacy Thong' cases).

## 6.- Discussion

After conducting this study, we have obtained the following results:

Despite the fact that Spain, Ireland and Germany are EU member states, we have confirmed that the codification of sexual offences differs remarkably across the three countries.

In Spain, sexual assault (*agresión sexual*) and rape (*violación*) involve violence or intimidation, while the lesser criminal charge of sexual abuse (*abuso sexual*) is applied when the victim is unconscious or under undue influence consent (*consentimiento viciado*).

In Germany, *sexuelle Nötigung* is sexual assault with violence or intimidation or when taking advantage of a helpless victim. *Vergewaltigung* is rape (involving penetration) and *sexueller Übergriff* is considered a sexual criminal offence or an act of a sexual nature (*sexuelle Handlung*) against sexual freedom.

In Ireland, *rape* is defined as non-consensual penetration, *sexual assault* refers to an indecent assault on a male or a female and aggravated sexual assault is a type of sexual assault that involves serious violence or the threat of serious violence. Moreover, explicit *consent* is a vital element in the Irish law governing sexual offences.

These differences between national legislations have given rise to terminological inequivalences that make it exceedingly difficult for EU legal experts to communicate with each other with a view to harmonising their legal systems and establishing the common European Criminal Justice Area for the protection of sexual violence victims. Additionally, this inequivalence makes it harder to accurately inform the public about sexual offence cases in other countries, since the media resorts to generalisations or non-existent legal types, which may result in even greater confusion and conflict. The impact of a well-informed public opinion on the interpretation of the Law and the jurisprudence is not to be overlooked, bearing in mind that it was the outcry in the Spanish society after the first two rulings in *La Manada* case that possibly led to a reconsideration of the first two sentences by the Supreme Court, and in the case of Germany the Criminal Code was rapidly modified in the aftershock of the Cologne events. These cases have shown that society can bring about change and speed up law-making processes when the nature of the legal and judicial systems causes them to lag behind the spirit of the times. Undoubtedly, societies in the EU share a concern for issues on sexual freedom and the corresponding laws, a situation that calls for transnational dialogue and modernisation. Therefore, the only way to discuss criminal justice

across the different EU states is to make the semantic features explicit through explicative translations and avoid calques and literal versions of such terms (see Appendix I for an overview of legal anisomorphisms regarding sexual offences in Ireland, Germany and Spain).

Furthermore, we have isolated and translated significant interpretative differences in the narratives of the trials discussed in this paper in order to draw the attention of legal specialists to persistent cultural traditions. These misconceptions and beliefs surrounding sexual offences need to be overcome by means of new feminist regulations and jurisprudence such as the final ruling by the Spanish Supreme Court incorporating 'environmental intimidation' or the German regional courts which consider that licking and kissing against the victim's will constitutes sexual assault. In fact, we identified clear signs of rape culture and patriarchy in the Spanish and Irish courtrooms, namely that the burden is placed on the victim to resist the sexual assault to prove she suffered intimidation and physical abuse before being raped (first and second instances in the *La Manada* Case) or the victim-look shaming narrative to undermine her credibility before the judge (the 'Lacy Thong' Case).

## 7.- Concluding remarks

After examining the above, we have unveiled a strong divide between the #MeToo society and justice in the three countries: on the one hand, European women claim for a real feminist change to disrupt rape culture in all its forms and, on the other, in the absence of updated regulations and guidelines defence's narratives in trials 'bolsters rape myths and sexist stereotypes that lead to victim-blaming attitudes and perceptions.' (Law Reform Commission, 2018). On the positive note, the widespread criticism and mass demonstrations against sexual offences in the #MeToo context have given rise to political movements aimed at modifying the Spanish Criminal Code (for example, the 'Solo Sí es Sí' or 'Only yes means yes' bill, which is currently under discussion), training schemes to dismantle gender stereotypes as a *sine qua non* requirement for legal experts who intervene in sexual crime trials (i.e. the *Report on Knowledge or Belief Concerning Consent in Rape Law in Ireland* of 2018 and 2019 y the Law Reform Commission) and real legislative changes (the amendment of the Criminal Code in the case of Germany).

Finally, we found that the insertion of consent as an essential factor for the recognition and categorisation of sexual assault is a common issue in the three proceedings analysed. In the *La Manada* Case of Spain, the determination of consent through violence and intimidation led to a polarised interpretation between the two rulings in the first and second instance and the conclusive ruling of the Supreme Court, which inserted new concepts such as 'environmental intimidation,' involving the presence of multiple perpetrators, the feminist advance of society and the signing of international treaties such as the Istanbul Convention by Spain with the desire to eliminate the burden on the victim of sexual crimes who must show resistance in order to be recognised as such. In Germany, both the judiciary

and lawmakers have expressed a clear will to amend the Code to improve the protection of sexual self-determination and prosecute sexual assault with the greatest possible rigour. Nonetheless, the difficulties encountered by the judges of the Cologne cases to obtain convictions show that further efforts are needed in this regard. Meanwhile, in Ireland, the only country where consent is perfectly enshrined in law, we identified problems of determining consent as the attitude and clothes of the complainant in this case were called into question, thus revealing that the law itself is insufficient and new feminist mechanisms to measure consent in trials and rulings should be put into practice. Some of said mechanisms are, following Castro and Spoturno (2020: 32), the need to expand traditional topics to include further areas such as translation of legal texts, as well as to explore the presence of translation as a key in feminist activist movements in order to (trans)form cross-border alliances which are necessarily plurilingual, such as #MeToo. These alliances, which imply the contact among and with majority and minority languages, renew the questions on social representations and images evoked by said languages and on the agency of translation and translators for social transformation. The use of English as a pivot language and the role of translation in globalization and social justice movements are key aspects that have been touched upon in our research but which should be further developed and investigated.

In summary, in this work we have provided a comparative analysis of sexual offences and judicial proceedings in three countries through translation that can be helpful for the common work of European jurists. Given the results, we also conclude that a feminist perspective should be incorporated not only in the legislation but also in legal praxis to combat gender violence and protect women's sexual integrity.

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Appendix I

Countries	Sexual Offences		
Spain	<p><i>Agresión sexual</i> (sexual assault with violence and intimidation)</p> <p>Sentence: 1-5 years of prison</p>	<p><i>Violación</i></p> <p>(Sexual assault with penetration by means of violence and intimidation)</p> <p>Sentence: 6-12 years of prison</p>	<p><i>Abuso sexual</i></p> <p>(sexual abuse, that can involve penetration, when the victim is unconscious or under undue influence consent)</p> <p>Sentence: 1-3 years of prison or 18 to 24-month fine except in cases of penetration, which raises the sentences to 4-10 years.</p>
Ireland	<p><i>Aggravated sexual assault</i> (sexual assault with violence and intimidation. 'Non-consensual' means without free and voluntary engagement)</p> <p>Sentence: life imprisonment</p>	<p><i>Rape</i> (Sexual assault with penetration by a man. 'Non-consensual' means without free and voluntary engagement)</p> <p>Sentence: life imprisonment</p>	<p><i>Sexual assault</i> (indecent assault on a male or a female. 'Non-consensual' means without free and voluntary engagement)</p> <p>Sentence: not exceeding 5 years of prison</p>
Germany	<p><i>Sexuelle Nötigung</i> (sexual assault with violence, intimidation or taking advantage of a helpless victim)</p> <p>Sentence: 3 months -10 years of prison</p>	<p><i>Vergewaltigung</i> (sexual assault involving penetration)</p> <p>Sentence: 2-10 years of prison</p>	<p><i>Sexueller Übergriff</i> or <i>sexuelle Handlung gegen den erkennbaren Willen einer anderen Person</i> (sexual assault or act of sexual nature committed against the identifiable will of a person)</p> <p>Sentence: 6 months-5 years of prison</p>

Table 18: Comparative table of sexual offences in Spain, Ireland and Germany