



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Spain
<b>Title:</b>	Recent ruling from the Provincial Court of Navarra shows inconsistencies between the Spanish criminal code and the Istanbul Convention
<b>Date:</b>	04 May 2018
<b>Expert:</b>	Maria Amparo, Ballester Pastor
<b><u>Context</u></b>	
<b>Issue at stake:</b>	The Provincial Court of Navarra has ruled that sex without consent is not rape but sexual abuse, unless express and clear violence and intimidation has taken place
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Provincial Court Decision
<b>Field:</b>	Other
<b>Applicable law:</b>	Articles 177, 178, 179, 180 and 181 of Spanish Criminal Code <sup>1</sup>

### **Content**

On 27 April 2018, the Provincial Court of Navarra published its Judgment 38/2018, of 20 April 2018 which was awaited with great expectation. The facts of the case took place during the 2016 San Fermin festival, when, in the early hours of 7 July 2016, an 18 year old woman reported that she had been raped by five men. The assault was recorded by the men, who called themselves "La Manada" (The Heard) and frequently shared their sexual activities on social networks. The recording was used as decisive evidence during the trial. The judgment states the following: "This video illustrates in our consideration the reality of the situation. It clearly shows that the complainant is subject to the will of the accused, who use her as a mere object, for their sexual instincts". The judgment further states that the woman never accepted to have sex with the five men, and that she always maintained a passive and submissive attitude. It has been proven that she was pushed into the hall of a building and was assaulted by the five men who she had just met, without any physical resistance on the part of the woman. The complainant and the public prosecutor considered that the woman had been victim of a sexual assault (or rape) which according to the Articles 177, 179, 179 and 180 of the Criminal Code, should be punished with 18 years of prison for each of the five men. According to these articles, sexual assault exists when a person is forced to have sex with violence or intimidation. On the other hand, the defendants considered that the sexual assault did not take place because the complainant consented to the sexual activity.

---

<sup>1</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>, accessed 28 April 2018.

Two magistrates in this case held that the complainant did not consent to the sex, but there was no evidence that violence or intimidation had taken place. Therefore they held the men guilty only of sexual abuse rather than rape, which leads to nine years of prison for each of them. However, a third magistrate disagreed with this interpretation and wrote a particular vote where he explained the reasons for thinking that the accused should have been acquitted. Basically he considered that the sexual relations were consented given that the woman did not expressly oppose or offered clear resistance.

It has to be taken into account that the Judgment has been appealed by the complainant and by the defendants, so we have to await the definitive ruling of the case.

This Judgment has triggered an important social reaction: Spontaneous and massive demonstrations took place in many Spanish cities.<sup>2</sup> The media have reported widely on this state of social unrest, and the Government is considering to amend the criminal code.<sup>3</sup> Many associations have written communications against the Judgments, including the Association of female judges.<sup>4</sup> The judgment shows that the Spanish criminal code does not comply with the Istanbul Convention, which states that sex without mutual consent is rape.

**Key points of analysis:** The Judgment of the Provincial Court of Navarra of 20 April 2018 has shown that, according to the Spanish criminal code, sexual relations without mutual consent cannot be considered rape but qualifies as sexual abuse in cases where express and clear violence and intimidation is absent. This Judgment has triggered a massive social reaction opposing to the judgment, because it implicitly considers a woman responsible of being assaulted unless she shows clear and express opposition, forcing her to put her life at risk.

**Internet link source:** The judgment is still not available in the Spanish official repertoire of jurisprudence, but the media has made public the sentence [https://www.eldiario.es/norte/navarra/DOCUMENTO-sentencia-integra-manada\\_0\\_765024296.html](https://www.eldiario.es/norte/navarra/DOCUMENTO-sentencia-integra-manada_0_765024296.html), accessed 28 April 2018.

---

<sup>2</sup> <https://www.lainformacion.com/espana/sentencia-manada-reacciones-indignacion/6347071>, accessed 28 April 2018.

<sup>3</sup> <https://www.elperiodico.com/es/politica/20180427/gobierno-violacion-codigo-penal-la-manada-6788534>, accessed 28 April 2018.

<sup>4</sup> <http://www.mujeresjuezas.es/2018/04/28/nuestro-comunicado-sobre-la-sentencia-de-la-audiencia-p-del-caso-la-manada/>, accessed 28 April 2018.