



The impact of plea bargaining on sexual offences in Spain: An analysis of judicial sentences

Pablo Romero Seseña^{*}, Laura Arantegui Arráez, Josep Maria Tamarit Sumalla

Universitat Oberta de Catalunya, Spain

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ABSTRACT

This study examines the effect of plea bargaining in sexual offence cases in Spain, using data obtained from judicial sentences issued by the Provincial Courts. A quantitative methodology was employed, combining descriptive analyses, variance analysis with covariates, and binary logistic regression analysis. The primary objective was to assess the prevalence and impact of plea bargaining on the penalties imposed in cases of sex crimes, as well as the factors that have an influence on the decision whether to accept a plea bargain agreement. Main findings reveal that plea bargaining in sexual offences is not as widespread in Spain as in other countries. Furthermore, the effects of plea bargaining on the severity of penalties appear to be less pronounced. Additionally, using ANCOVA and binary logistic regression analysis, the study investigates both the impact of plea bargaining on the penalties imposed in sexual offence cases, and the relevant factors related to the decision of whether to accept the plea agreement. The results suggest that while plea bargaining plays a role in Spanish criminal justice and has an influence on the severity of penalties imposed in sexual crimes, it does not have a significant influence on monetary compensation to the victim. The main factors associated with the decision to accept a plea bargain agreement are legal factors which can be expected to have an effect in this regard, and the presence of a private prosecution.

The implications of these findings are discussed, providing significant insights and a better understanding of the figure of the plea bargain in the Spanish context.

1. Introduction and background

The use of plea bargaining in the criminal justice field is a common practice in jurisdictions in many countries. Historically, plea bargaining was conceived as a response that not only met the need to offer a more negotiation-oriented form of justice delivery that allowed perpetrators to admit guilt and receive a less severe sentence, but also the need to reduce the overload of the criminal justice system by increasing its efficiency (Feeley, 1982). However, in the last fifty years, the presence of plea bargaining has increased dramatically to a level that many academics have labelled “epidemic” (Alschuler, 1979; Crespo, 2018; Feeley, 1982; Fisher, 2003). In this situation, the roles of some of the justice operators (primarily the defence attorney, but also the prosecutor and the judge) have shifted towards what we could call “a private case handler and negotiator”.

Nowadays, plea bargaining is one of the most frequent forms of conviction in countries such as the United States or the United Kingdom (Varona, Kemp, & Benítez, 2022). The former Associate Justice of the US

Supreme Court Anthony Kennedy stated in 2012 that the American criminal justice system is today “for the most part a system of pleas, not a system of trials” (Litpak, 2012, par. 3). More specifically, a study conducted in the USA in 2014 by Blume and Helm found that between 2008 and 2012, 96% of the cases within the criminal justice system were resolved through plea bargain, while in 2012, the rate increased to 97% of the cases. Moreover, the authors state that the justice system itself forces defendants to plead guilty, arguing that it is not prepared in terms of human resources to afford an increase in the number of people going to trial. However, this does not necessarily mean that defendants who plead guilty through plea bargain receive gentler treatment from the justice system than those who decide to go to trial; some authors discuss that, in some cases, the penalty received after the trial can be comparable in terms of time, size, and effect to the one proposed in the deal suggested by the public prosecutor with the so-called “plea discount” or “trial penalty” (Ulmer & Bradley, 2006; Varona et al., 2022).

As stated above, several reasons support the need for plea bargaining within the criminal justice system: it allows a quick way to resolve less

^{*} Corresponding author at: Open University of Catalonia, Studies of Law and Political Sciences, Rambla del Poblenou, 156.08018 Barcelona, Spain.

E-mail address: promerose@uoc.edu (P. Romero Seseña).

severe forms of crime, thus lowering the workload of the different institutions and operators involved; it offers a certain degree of flexibility to an otherwise rigid procedure; and it can even be potentially beneficial for victims, allowing them to avoid secondary victimization during the trial (Bushway, Redlich, & Norris, 2014; Wendel, 1999).

Nonetheless, the institution of plea bargaining has not been (and is not) exempt from criticism. One of the main arguments in this regard is that plea bargaining is a form of privatising the resolution of a prosecuted case, which is therefore most likely to be resolved through a “behind closed doors” agreement between the defence attorney and the public prosecutor (Cohen & Doob, 1989; Roberts, 2013), evading the control mechanisms and fairness procedures that a trial ensures. In other words, the public prosecutor assumes a role that involves a significant amount of discretionary power (Shermer & Johnson, 2010; Varona et al., 2022), while a judge or a jury would have more oversight and accountability. Plea bargaining has also been criticized for the use of coercion that it sometimes involves. Academics and practitioners have long discussed whether there is a “plea discount” when an agreement is accepted, or a “trial penalty” when it is not (Grunwald, 2021; Yan & Bushway, 2019).

Threatening the defendants with the risk of receiving a harsher penalty if they decide to go to trial has been found a significant reason for innocent people to end up pleading guilty (Blume & Helm, 2014; Cooper, Meterko, & Gadtula, 2019; Gross, 2008). This is consistent with the evidence of studies carried out in other Anglosphere countries showing robust empirical support for the idea of the trial tax, the imposition of harsher sentences on those who do not reach an agreement with the Public Ministry (Johnson, 2019). Studies have revealed that those who are convicted after a trial receive, on average, more prison sentences, and that those sentences are 15% to 60% longer than those imposed in an agreement with prosecutors (Testa & Johnson, 2020). Despite the abundance of literature on this topic, and as discussed broadly below, almost none of those studies have focused specifically on sexual offences.

A recent review summarizing the main empirical findings on this field conducted by Subramanian, Digard, Washington II, and Sorage (2020) describes the factors most commonly associated with plea bargaining and its consequences. The authors divided these factors into five large groups: coercive factors, legal characteristics, systemic inequities, factors regarding the criminal law and caseload management. For the first group, one of the most significant aspects was the pre-trial detention of the defendant, usually associated with easier acceptance of the deal proposed by the prosecutor. Among legal factors, the strength of the evidence, the severity of the charges, or the defendant not having a criminal background were also found to be significant predictors of plea bargain acceptance. For the systemic inequities group, the strongest predictors for pleading guilty related to the ethnicity and gender of the defendant. Black and Latino males were found to have the worst odds of receiving a lenient plea treatment, while white females had the best expectations on this matter. Finally, the criminal code and caseload management by the criminal justice system operators were also found to have significant impacts on plea bargain treatment. For example, cases that were easier to prove were less likely to be associated with a plea bargain agreement; or when a case was managed by a court with a high caseload, it tended to offer harsher plea bargain deals.

2. Plea bargaining in Spain

The plea bargain (or, in Spanish, *conformidad*), is not as widespread in Spain as it is in the aforementioned countries. The latest data available (National Public Prosecutor’s Office -Ministerio Fiscal, 2021) indicate that 64% of the sentences issued in 2021 by the regular criminal courts and 58% of the sentences issued in the Provincial Audiencias (courts that deal with severe offences) were achieved through plea bargaining, a stable trend during the last ten years. Notwithstanding this, the practice of plea bargaining in criminal proceedings in Spain has

received attention from the point of view of legal doctrine, and numerous studies highlighting the risks mentioned above have been published. One of the most notable of these is Lascurain and Gascón (2018), which examines the reasons for fearing the worst: punishment of the innocent. This is not a mere possibility, but a reality that has obtained empirical confirmation in studies in other countries (Beenstock, Guetzkow, & Kamenetsky-Yadan, 2021).

In addition, the negative effects of plea bargain on the principle of equality have been pointed out, given the unequal impact it has on the defendants, the granting of exacerbated and unlimited power to prosecutors, and the downplaying of the victims’ interests (Del Moral García, 2008; Ferré Olivé, 2018). Regarding the latter, as Aguilera Morales (2019) highlights, the role of the victims in this form of negotiated justice becomes insignificant -insofar the victim has not constituted itself in private prosecution, as Spanish procedural Law permits- since the representatives of the Public Ministry can promote transactions with the defendant’s attorney without taking into account the opinion or interests of the party primarily offended by the crime. It is not clear that this drawback could be adequately compensated by the advantage of avoiding secondary victimization derived from having to testify in the oral trial, even though the law does not provide for victims to be heard in relation to this matter (despite the advances introduced by Law 4/2015 on the standing of victims of crime, transposing EU Directive 2012/29/EU).

From a legal standpoint, the current procedural law in Spain (*LECrim*) allows plea bargain agreements in all cases with possible penalties not exceeding six years of prison, and although this is the minimum penalty provided for the crime of rape in Article 179 SPC, the appreciation of a qualified mitigating circumstance (for example, damage reparation in Article 21–5 SPC) allows imposing a penalty below that minimum threshold, in addition to cases of attempted rape or sexual assault and sexual abuse¹ (Articles 178, 181, 182, and 183 SPC before the legal reform of 2022) in which the legally applicable penalty is less than six years in prison. In addition, it is worth noting that in 1983, pardons were no longer allowed as a cause for the dismissal of criminal proceedings for rape and indecent abuse, in order to avoid pardons being “sold”. This rule was kept unchanged after the approval of the SPC in 1995 and subsequent legal reforms regarding crimes of sexual assault, sexual abuse and sexual harassment (Article 191–2).

Despite the criticisms and risks, plea bargaining continues to be a widespread practice, both in Duty Courts (*Juzgados de Guardia*), following the rules on speedy trials (Articles 800 and 801 of Spanish criminal procedural law, *LECrim*), as well as in the Criminal Courts and in the Provincial Courts, according to the rules provided for in the abbreviated procedure (Articles 784–3 and 787 *LECrim*). In both cases, the judges must, by legal mandate, issue a plea bargain sentence when the defendant, through legal assistance, agrees with the most serious request of the charges formulated by the accusations (prosecutor and private accusation) and the qualification of the facts is legally correct.

Unlike in other countries, mainly in the Anglosphere, the practice of plea bargaining in Spanish courts has barely been empirically studied. A pioneering study is Varona et al. (2022), conducted with a sample of 2959 cases drawn randomly from the Criminal Courts in the cities of Barcelona and Girona. Through a multinomial regression analysis of a series of variables, the authors found significant differences with respect to some of them, including the defendant’s nationality: foreigners opt for plea bargaining less than Spaniards, both in the Duty Courts and in the Criminal Courts. Other interesting findings were that those who had requested the services of an interpreter or hired a private lawyer had also opted less for an agreement, compared to those who had legal

¹ The reform of the Spanish criminal law (Spanish Penal Code; SPC), introduced through Organic Law 10/2022, subsequently amended by Organic Law 4/2023 of 27 April, modified the crime of sexual abuse (former Arts. 181 and 182 SPC), that is now conceived as a modality of sexual assault (Art. 178 SPC).

assistance, in both cases with significant differences.

Other results show a higher proportion of plea bargaining in road safety offences compared to the other crimes examined, and in cases where the defendant had been in provisional detention during the process.

The lower willingness to accept plea bargain among foreigners is somewhat consistent with the results of studies carried out in Anglo-sphere countries regarding ethnic minorities. In the USA, a lower presence of the Black and Latino population has been found among the defendants who accept plea bargain agreements (Testa & Johnson, 2020). This difference has been explained by three reasons: a greater distrust of the criminal justice system among people from such minorities, associated with a lower perception of legitimacy; discrimination by members of the Public Ministry, who make worse offers to those outside the dominant social group; and discrimination against these people in the initial phases of the criminal process that predisposes them against a collaborative or submissive attitude. To these reasons, Varona et al. (2022) add a hypothesis related to the situation of foreigners in Spain: deportation as a possible added effect associated with a criminal conviction would motivate them to try for an acquittal, assuming the risk of a trial.

Another study by Varona et al. (2022) examining the “trial penalty” and the “plea discount” in Spain, with the same sample as the previous one, tried to determine both the effect of plea bargain agreements in prosecuted cases, and the potential effects of these agreements in the prosecutors’ decisions. The authors found that the cases in which the plea bargain agreement proposed by the Public Prosecutor was accepted received a more lenient treatment, while those that went to trial received harsher sanctions, proving the existence of a “trial penalty”. Varona & Kemp raise concerns regarding the potentially undermining effect that this might have on the proportionality principle (recognized as a fundamental right by the Spanish Constitutional Court) in the justice system. The researchers also focused on the role of the prosecutor in the plea-bargaining process, considering their discretionary power and the reduced accountability and poor oversight of these justice operators compared to judges. However, judges were also found to participate in this “trial tax” system, as they decide the suspension of a sentence. The authors theorize that treating defendants who do not accept plea agreements more harshly might constitute a way -conscious or not- of taxing those who “do not help the system”.

Providing empirical research in the field of plea bargaining is particularly significant not only because of its increasing prevalence throughout the criminal justice system, but also because of its effects on the process itself and on the individuals who navigate through it. A better understanding of its functioning and the main factors that can predict a more lenient or harsher treatment of the defendants, and how those factors interact in their decision-making process, is undoubtedly a significant research topic for criminological academics.

3. Plea bargaining in sex crimes

The use of plea bargaining in cases involving sex crimes has been quite controversial, considering the pressure that public opinion usually exerts in such cases, especially the ones with a high degree of social sensitivity and exposure to mass media (Edwards & Hensley, 2001). There appears to be growing concern in certain sectors of Spanish society regarding the use of plea bargaining in the field of sexual criminality. Several media, including social media channels, have discussed some cases in the past months in which agreements have allowed people accused of sexual assault and/or rape to evade trial and the execution of prison sentences, even with the victim’s consent. This has sparked criticism towards the attitude of prosecutors, the figure of plea bargaining itself, and the victims who have accepted these agreements in exchange for monetary compensation.

Different concerns were also raised in the Spanish context by Del Moral García (2008), a former prosecutor at the Supreme Court and now

a judge of this Court, arguing that in some cases a defendant accused of a sex crime might plead guilty even when being innocent in order to avoid being stigmatized as a sexual offender. Nonetheless, there is currently no empirical evidence in the Spanish legal framework to support such arguments. Hence, the role of public opinion, and the pressure that society often can exert on defendants accused of a sex offence, have been found to be significant when assessing the acceptance of plea bargain agreements. Studies such as Golding, Lynch, Malik, and Foster-Gimbel (2017) have examined this topic, exploring how the general public accepts plea bargaining in different mock sexual assault cases with a sample of 74 informants. The main findings showed that plea bargain agreements involving sexual offences committed against children had the least support, followed by agreements that only include probation sanctions. In addition, plea bargain agreements that were justified using procedural efficiency arguments also found little support among the study sample.

However, it must be noted that evidence to prove the guilt of the alleged offender can sometimes be hard to gather, especially in cases within the intimate sphere of the parties involved. Prosecutors can then often rely on the use of plea bargain, offering the defendants less severe penalties in order to get a conviction. Research has shown that in these cases it is not clear whether the prosecutor will offer a more lenient treatment in relation to the sex crime initially prosecuted, or a harsher one for a non-sexual crime related to the primary case. In fact, there is evidence that indicates that plea bargaining does not automatically mean a sentence reduction nor more lenient treatment for defendants, including in sexual offences (Abrams, 2011).

Research in the field of plea bargaining in cases of sex crimes is still scarce at the international level, and almost non-existent in Spain. The research by Letourneau, Armstrong, Bandyopadhyay, and Sinha (2013) mentioned above gathered a sample of almost 20,000 cases of young males charged with sex offences, assault, and/or robbery between 1990 and 2004. Results showed a marked increase in plea bargain agreements in cases of sexual offences, especially after 1995 when the new policy of sexual offenders’ registration and notification was enacted. Authors argue that pleading guilty in cases of sexual offences committed by juveniles can be associated with a manoeuvre oriented to avoid the excessive penalization of being included in South Carolina’s registration and notification policy. Hence, findings suggest that pleading guilty for a different non-sexual offence that is somehow related to the initial charges is a common practice, partly generated by the effects of South Carolina’s policy on the juvenile justice system.

Similar conclusions were also drawn by Johnson (2017) in a qualitative study based on semi-structured interviews with several criminal justice system operators (mainly judges, prosecutors and defence attorneys). The author examined questions that might not be explained using exclusively quantitative data, such as the subjective value of plea agreements for the defence attorney, the public prosecutor or even the court itself. Johnston argues that examining plea bargaining only from a quantitative perspective prevents researchers from fully understanding what underlies the decision-making process, as quantitative analysis can hardly assess the personal implications of the judicial outcome for the defendant. The main findings of this research showed that defendants accused of sexual offences would rather accept harsher plea agreements for non-sexual charges rather than go to trial and/or face the possibility of being included in the register of Sex Offenders, due to the implications that this might have in their day-to-day lives for a considerable period.

An exception to the aforementioned studies is the study conducted in Massachusetts, United States, by Frazier, Shockley, Keenan, Wilford, and Gonzales (2018) about the outcomes in cases of sexual and non-sexual offences, which found that plea agreements were “infrequent” in cases of violent non-sexual crimes, and that when they happened, they did not appear to reduce the length of the imprisonment sentence nor gain any other benefits (i.e. probation, etc.) in comparison to cases that went to trial. Similarly, sex crime defendants were observed to be treated even more harshly within the agreement, with stronger

differences than in the violent non-sexual cases. The study could not confirm previous findings related to the “exchangeability” of the charges when plea bargaining in cases initially prosecuted as sexual offences (as previously stated by Letourneau et al., 2013). The authors link this conclusion to the seriousness of the crime and the possibility of being included in the Sexual Offender Registry Board (SORB). Hence, those cases where a sexual offender pleaded guilty through a bargaining agreement could be cases with stronger evidence, while those that went to trial may have had less evidence to ensure conviction.

This theoretical review has provided valuable insights into the complex and multifaceted issue of plea bargaining in sexual crimes. The examination of existing studies has revealed a range of perspectives and findings regarding the impact of plea bargains on the criminal justice system. While some argue that plea bargains may offer certain benefits, such as reduced caseloads and enhanced efficiency, others express concerns regarding the potential re-traumatization of survivors, diminished accountability for offenders, and the perpetuation of systemic inequalities. The literature highlights the need for further research, comprehensive policy reforms, and improved victim-centred approaches to ensure that the plea-bargaining process is conducted with the utmost care, sensitivity, and consideration for the rights and well-being of all parties involved in cases of sexual offences.

4. The present study

The main purpose of this study is to address the impact of plea bargaining on the criminal process, and its implications for the severity of prison sentences and compensation in cases of sexual offences.

With regard to the determination of penalties, the system provided in the Spanish Penal Code (SPC) is based on the mandatory application of a series of legal rules. The Court must first consider the elements of the criminal offences of sexual assault and sexual abuse (Articles 178 to 183 SPC according to the law in force at the time of the crime), which determines the imposition of more severe penalties if the victim is under 16 years of age and if violence and penetration are present. Secondly, the Court must consider whether the crime is consummated or attempted, if there has been a continuous offence, and must apply the legally provided generic aggravating and mitigating circumstances (with mitigation possibly being considered as highly qualified). All these elements and circumstances have been codified, for the purposes of our study, as legal factors that influence the determination of the penalty. The circumstance of the victim being a family member or partner of the offender can be assessed as an aggravating or mitigating factor depending on the nature, motives, or effects of the crime (kinship clause).

These legal rules must be also taken into account by the prosecutors when they negotiate and reach an agreement with the defendant.

The amount to be imposed as compensation (civil liability) is not subject to this kind of legal rules; instead, the court has broad discretion, especially in setting the moral damages arising from the crime (*pretium doloris*).

More specifically, the main objective of this study is, firstly, to determine which factors are related to the defendant accepting plea bargain agreements and which of these factors may predict such a decision, and, secondly, what is the impact of such agreements on the outcome of the criminal process (in terms of severity of the prison penalty and amount of monetary compensation to the victim).

For this purpose, the following research questions are proposed:

1. What is the effect of plea bargaining on the outcome of criminal processes for sexual offences in Spain in terms of imprisonment length?
2. What is the effect of plea bargaining on the outcome of criminal processes for sexual offences in Spain in terms of monetary compensation (*civil liability*) to the victim?
3. Which variables can predict there will be a plea bargain agreement?

5. Method

5.1. Procedure

Sentences imposed by the Spanish Provincial Courts within the period of 2019–2020 were consulted using the Judicial Documentation Centre (*Centro de Documentación Judicial*, CENDOJ) of the General Council of the Judicial Power (*Consejo General del Poder Judicial*, CGPJ) open access database. The case selection included all judicial sentences for cases prosecuted in first instance (therefore, appeal cases were excluded) for the crimes of sexual abuse, sexual assault and/or rape (Articles 178, 179, 181, 182, 183 SPC) committed against both adults and underage victims. The available data does not include all sentences from the Provincial Courts issued in Spain during the studied period, but most of them (as not all sentences are uploaded to the CENDOJ database in time). The collected judicial sentences have been subsequently coded and quantified based on previous studies conducted with similar samples in Spain (Tamarit, Aizpitarte, Arantegui, & Romero, 2022; Tamarit-Sumalla, Romero-Seseña, Arantegui, & Aizpitarte, 2023). Therefore, no reliability in the coding was needed, as collected information was explicit. Not all the gathered judicial include the same quantity and quality of information; therefore, missing data (same amount of information is not available for every case) can be also considered as a limitation, as addressed in Section 5.4, but variables lacking more items (such as the victim’s exact age or origin) have been excluded from the analysis to avoid bias in the estimations. Considering that all the data analysed come from public sources, an institutional ethics committee evaluation was not required for this research. The authors take responsibility for the integrity of the data and the accuracy of the data analysis and have made every effort to avoid inflating statistically significant results.

5.2. Sample

The sample was composed of 2239 cases, considering any alleged victim that had filed a charge of rape, sexual assault, or sexual abuse as a case. The cases correspond to a total of 913 sentences issued in 2019 and 2020 by the Spanish Provincial Courts. Therefore, each case included corresponds to one victim.² The most frequent types of crimes were sexual abuse of a child under 16 years of age without penetration (38.2%; $n = 820$), followed by rape (17.3%; $n = 372$) and sexual abuse of a child under 16 years of age with penetration (16.8%; $n = 361$). The rest of the crimes were below 15% (for more information see Table 1). 85% of the victims were female, and 88% were minors, 45% of whom were boys and girls under 13 years old. The mean age of the victims was 13.8 (SD = 8.18). If we group the victims by associating their sex and age, the majority group is made up of girls, up to 18 years of age (72%; $n = 1250$), followed by boys, up to 18 years of age (15%; $n = 269$), adult women (11%; $n = 189$) and adult men (0.8%; $n = 15$).

Regarding the characteristics of the offenders, 98% of them were male. The mean age was 39.7 years (SD = 15), while 61% were of Spanish origin, and 38% had a foreign background. As for the relationship between victim and offender, in the vast majority of cases, these were crimes committed by acquaintances (43%; $n = 922$), followed by relatives (36%; $n = 771$) and finally strangers (21%; $n = 455$). Among family members, we can distinguish between the crimes committed by the partner or ex-partner (23%; $n = 176$), the father’s or mother’s partner (22%; $n = 167$) and the father or mother (18%; $n = 141$). Considering the four groups of victims separately, the group of girls (M

² Victims with the same offender have been counted as separate cases. The impact of that can be considered a limitation, as addressed in Section 5.4. Also, victims with multiple offenders (up to 2) have been considered. However, and given the residual number of cases, that information has been excluded from the analysis.

Table 1
Descriptive analysis for general sample (N = 2239).

	n	%
Offence		
Sexual assault (178)	77	3.59
Rape (179)	372	17.33
Sexual abuse without penetration (181-1)	108	5.03
Sexual abuse with penetration (181-4)	237	11.04
Sexual abuse >16 < 18 without penetration (Article 182-1)	9	0.42
Sexual abuse >16 < 18 with penetration (Article 182-2)	11	0.51
Sexual assault against underage without penetration (183-2)	29	1.35
Sexual assault against underage with penetration (183-2,3)	80	3.73
Sexual abuse against minor without penetration (183-1)	820	38.19
Sexual abuse against minor with penetration (183-1,3)	361	16.81
Other	27	1.26
Use of violence		
Yes	558	25.10
No	1665	74.90
Penetration		
Yes	1061	49.79
No	1070	50.21
Execution		
Attempted	106	4.94
Completed	2040	95.02
Preparatory acts	1	0.05
Authorship		
Author	2230	99.87
Necessary co-operator	3	0.13
Continued offence		
Yes	650	29.69
No	1539	70.31
Mitigating Article 21		
Yes	450	20.13
No	1786	79.87
Aggravating Article 22		
Yes	150	6.71
No	2085	93.29
Qualified Mitigating Article 21-1		
Yes	81	3.62
No	2155	96.38
Kinship Clause Article 23		
Yes	49	2.19
No	2186	97.81
Victims' gender		
Male	325	14.57
Female	1906	85.43
Victims' age		
Under 13 y/o	780	45.24
Between 13 and 15 y/o	613	35.56
16 and 17 y/o	127	7.37
Adult	204	11.83
Victims' age (2 categories)		
Minor	1520	88.17
Adult	204	11.83
Victims' nationality		
Spanish	227	67.16
Foreigner	111	32.84

Table 1 (continued)

	n	%
Offenders' gender		
Male	2200	98.39
Female	36	1.61
Offenders' nationality		
Spanish	1220	61.71
Foreigner	757	38.29
Victim-offender relationship (3 categories)		
Relative	771	35.89
Acquaintance	922	42.92
Stranger	455	21.18
Victim-offender relationship (6 categories)		
Father/Mother	141	6.57
Stepfather/Stepmother	167	7.78
Partner or ex-partner	176	8.20
Other relatives	286	13.32
Acquaintance	922	42.94
Stranger	455	21.19
Private prosecution		
Yes	1255	56.15
No	980	43.85
Physical impact		
Yes	372	16.64
No	1864	83.36
Psychological impact		
Yes	477	21.33
No	1759	78.67
Emotional impact		
Yes	441	19.72
No	1795	80.28
Material impact		
Yes	31	1.39
No	2205	98.61
Victim group according to age/gender		
Female minor	1250	72.55
Female adult	189	10.97
Male minor	269	15.61
Male adult	15	0.87
Province		
Rural	1283	58.03
Urban	928	41.97
Region		
Andalucía	250	11.17
Aragón	51	2.28
Asturias	60	2.68
Baleares	117	5.23
Canarias	153	6.83
Cantabria	11	0.49
Castilla y León	103	4.60
Castilla-La Mancha	123	5.49
Cataluña	307	13.71
Comunidad Valenciana	148	6.61
Extremadura	59	2.64
Galicia	106	4.73
Comunidad de Madrid	396	17.69
Región de Murcia	88	3.93
Comunitat Foral de Navarra	54	2.41
País Vasco	175	7.82

(continued on next page)

Table 1 (continued)

	n	%
La Rioja	10	0.45
Ceuta	14	0.63
Melilla	14	0.63
Sentence		
Conviction	1757	78.97
Acquittal	468	21.03
Plea bargain		
Yes	515	29.18
No	1250	70.82
Sentence: prison		
Yes	1707	78.66
No	451	20.78
Yes, conjunction of crimes	12	0.55
Sentence: civil liability		
Yes	722	32.36
No	1509	67.64
Subsidiary civil liability		
Yes	59	2.64
No	2177	97.36
Civil liability for moral harm		
Yes	1173	52.46
No	1063	47.54
Civil liability for physical harm		
Yes	149	6.66
No	2087	93.34

= 11.7) suffered aggression or abuse, mostly by relatives (46%) and acquaintances (37%), while adult women (M = 29.2) were mostly victimized by acquaintances (48%) and strangers (32%). Children (M = 11.8) and adult men (M = 29.3) were abused mostly by acquaintances (64% in the case of minors and 73% in the case of adults). Regarding the territory, data have been collected by autonomous communities and provinces. These have been divided into two groups, urban provinces and rural provinces, according to the greater or lesser proportion of population living in urban areas in each of them, as can be seen in data from the National Institute of Statistics³ referring to 2020, resulting in 58% of cases prosecuted in Courts of provinces classified as “rural” and 42% in “urban” provinces (for more information see Table 1).

From the initial total sample (N = 2239), a sub-sample was extracted considering only those cases that end up with a conviction (n = 1754). Among these, the most common criminal offences were sexual abuses without penetration in which the victim was a minor (41.7%, n = 732), followed by sexual abuses against minors with penetration (16.7%, n = 293) and rape (15.6%, n = 273). For all the sub-sample, the majority of victims were females (84.6%, n = 1484) and minors (89%, n = 1250). Regarding the offender, results showed that a male (98.8%, n = 1736), Spanish (62.6%, n = 979) and acquaintance of the victim (42.5%, n = 717) was the most common profile (for more information see Table 2).

5.3. Statistical analysis

The statistical analysis used the software IBM SPSS Statistics version 24.0 and Jamovi 2.3.28. In order to answer the research questions, it was considered appropriate to use three types of statistical analysis:

³ The provinces classified as urban were Barcelona, Madrid, Valencia, Alicante, Malaga, Seville, Vizcaya and Zaragoza. The rest were considered rural.

Table 2

Descriptive results only for cases with a conviction sentence (n = 1754).

	n	%
Offence		
Sexual assault (178)	59	3.4
Rape (179)	273	15.6
Sexual abuse without penetration (181–1)	85	4.8
Sexual abuse with penetration (181–4)	188	10.7
Sexual abuse >16 < 18 without penetration (Article 182–1)	7	0.4
Sexual abuse >16 < 18 with penetration (Article 182–2)	10	0.6
Sexual assault to underage without penetration (183–2)	24	1.4
Sexual assault to underage with penetration (183–2,3)	67	3.8
Sexual abuse to minor without penetration (183–1)	732	41.7
Sexual abuse to minor with penetration (183–1,3)	293	16.7
Other	16	1.0
Continued offence		
Yes	596	34.0
No	1158	66.0
Victims' gender		
Male	270	15.4
Female	1484	84.6
Victims' age		
Minor	1250	89.0
Adult	154	11.0
Offenders' gender		
Male	1736	98.8
Female	18	1.2
Offenders' nationality		
Spanish	979	62.6
Foreigner	586	37.4
Relationship victim-offender		
Relative	569	33.7
Acquaintance	717	42.5
Stranger	400	23.7
Plea bargain conviction		
Yes	515	29.3
No	1242	70.7
Province		
Rural	1035	59.6
Urban	702	40.4
Degree of execution		
Attempted	84	4.8
Completed	1670	95.2
Preparatory Acts	1	0.1
Mitigating Article 21		
Yes	447	25.4
No	1310	74.6
Aggravating Article 22		
Yes	148	8.4
No	1608	91.6
Qualified Mitigating Article 21–1		
Yes	79	4.5
No	1678	95.5
Kinship Clause Article 23		
Yes	47	2.7
No	1709	97.3

(continued on next page)

Table 2 (continued)

	n	%
Private prosecution		
Yes	997	56.8
No	759	43.2
Sentence: prison		
Yes	1704	97.5
No	31	1.8
Yes, conjunction of crimes	12	0.7
Sentence: civil liability		
Yes	1500	85.4
No	257	14.6
Physical impact		
Yes	313	17.8
No	1444	82.3
Psychological impact		
Yes	450	25.6
No	1304	74.4
Emotional impact		
Yes	418	23.8
No	1339	76.2
Material impact		
Yes	25	1.6
No	1729	98.4

descriptive analysis and sample frequencies, multiple regression analysis to determine the covariance (ANCOVA) between the variables of plea bargain and the result of the criminal process, and binary logistic regression analysis. The purpose of the descriptive and frequency analysis was to give an overview of the characteristics of the sample studied. Likewise, contingency tables were based on the Bonferroni test to determine the existence of significant differences between the percentages of categorical variables of interest and the plea bargain variable. The purpose of the analysis was to compare the means in the variables of imprisonment (in months) and amount of civil liability (in euros) with respect to the existence or not of a plea bargain in the sentence, controlling for those legal variables whose impact in the resolution of the case is given by the current criminal legislation (degree of execution, continuing offence, and aggravating and/or mitigating circumstances or exemption circumstance). Lastly, the binary logistic regression analysis generated a model that enables us to verify whether the defendant's decision to accept a deal through plea bargain is related to any of the variables studied, and whether these may have the capacity to predict such a result.

5.4. Methodological limitations

The limitations of this study primarily concern the access and availability of the collected data. As mentioned earlier (see Section 5.1), not all judicial sentences include the same quantity or details in the information, leading to a significant presence of missing data in some variables that, according to the literature, could be of interest for the analysis. Particularly, sociodemographic variables of both the victim and the offender (age, national or ethnic origin, etc.) have recorded a high number of missing cases. Therefore, they have been excluded from the analysis in order to avoid bias in the estimations, despite the substantial evidence supporting their significance in this context. For instance, the variable "national origin of the offender," whose influence on plea bargaining has been demonstrated in studies like Kemp and Varona (2022), could not be included in the study given the low number

of sentences in which this information was made available. In summary, the insufficient number of cases in some of these variables has limited a more in-depth analysis of extra-legal factors impacting the decision to accept a plea bargain, and it has precluded the possibility of conducting subsequent analyses, such as a counterfactual analysis.

Furthermore, it should also be noted that considering the victim as the unit of analysis can be perceived as a limitation. In this regard, when a defendant offended multiple victims, each case has been counted separately. However, this information has not been taken into account for the analysis. While these cases have been rare, the potential impact of this information on the analysis should be acknowledged, presenting an additional limitation to the study.

6. Results

6.1. Descriptive results

Of the 1754 cases that resulted in a conviction sentence, 95.2% (n = 1670) were completed crimes and 34% (n = 596) were continued offences, according to the Spanish Penal Code (SPC). Among the different sanctions included in the conviction sentences, prison was the most common penalty, being imposed in 98.2% (n = 1716) of the cases. Monetary compensation to the victim (civil liability) was ordered for 85.4% (n = 1500) of the convictions. The average length of the prison penalty was 61.4 months (SD = 45.9), while the average amount of civil liability imposed was 11,538 euros (SD = 15,200).

Mitigating circumstances, according to the Article 21 SPC, were applied in 25.4% (n = 447) of the convictions, while aggravating circumstances (Article 22 SPC) were imposed in 8.4% (n = 148) of the total convicted cases. Both the qualified mitigating circumstance (Article 21-1 SPC) and the mixed kinship clause⁴ (Article 23 SPC) were very little applied (4.5%; n = 79 and 2.7%; n = 47, respectively). Regarding the impact of the crime on the victim, the most common explicitly recognized in the judgment was psychological impact (25.6%, n = 450), followed by emotional impact (23.8%, n = 418) and physical impact (17.8%, n = 313).

Cases that finished with a conviction through a plea bargain agreement were 29.3% (n = 515), while those that did so following a trial constituted 70.7% (n = 1242) of the total convictions. Bivariate analysis was carried out through contingency tables to determine if there were significant differences between plea bargain convictions and trial convictions. Significant differences were found in relationship to the national background of the offender ($\chi^2(1) = 8.27, p = .004$), showing that those with a foreign origin tend to accept plea bargain agreements significantly less than Spanish nationals (31.8% vs 61.2%). The age of the victim also showed significant differences concerning the decision to accept or not a plea bargain agreement ($\chi^2(1) = 25.54, p = .000$), indicating that offenders committing a crime against a minor accept plea bargain deals significantly more than offenders responsible for a sexual assault or sexual abuse against an adult (95.2% vs 4.8%). Finally, the presence of a private prosecution (*Acusación Particular*) during the process was also found to be a relevant factor here ($\chi^2(1) = 18.27, p = .000$), meaning that when a private prosecution is a party in the process less plea bargain agreements were achieved (40% vs 60%).

⁴ According to the Spanish Penal Code, the mixed kinship clause is "a circumstance that can mitigate or aggravate responsibility, depending on the nature, motives, and effects of the crime, being or having been the aggrieved spouse or a person who is or has been stably linked by a similar affective relationship, or being an ascendant, descendant, or sibling by nature or adoption of the offender or their spouse or cohabitant". However, is more commonly used as an aggravating circumstance.

6.2. Covariance analysis (ANCOVAs)

In order to analyse the mean differences between a plea bargain conviction and a trial conviction in terms of affecting the length of the prison sentence and the amount of monetary compensation to the victim (civil liability), a covariance analysis was conducted, introducing several variables as covariates. More specifically, we controlled all those variables that due to their legal nature according to Spanish criminal law have a predictable effect in terms of determining the length of the prison sentence or the civil liability amount: degree of execution, continuing offence, mitigating circumstances, aggravating circumstances, qualified mitigating circumstances, use of violence and penetration (for more information, see Table 3).

Regarding the length of the prison penalty, results (Fig. 1) showed significant differences, finding significantly less severe prison sentences ($p = .000$) in those cases where a plea bargain agreement was accepted ($M = 67.8$ months) than those resulting in a conviction after a trial ($M = 77.1$). The size effect for this covariance was small ($d = 0.33$), according to Cohen's d interpretation (Cohen & Doob, 1989).

Concerning the civil liability (Fig. 2), no significant differences were found ($p = .408$) between the average amount imposed in conviction sentences with a plea bargain agreement and those that followed trial (16,369 euros for plea bargain vs 15,646 for trial).

6.3. Binary logistic regression analysis: Plea bargain conviction vs trial conviction

A binary logistic regression model (Table 4) was created to examine whether the independent variables could significantly predict whether a defendant would accept a plea bargain conviction (plea bargain conviction vs. trial conviction). Hence, the reference category for this analysis was "plea bargain". The overall model was significant, $\chi^2(11) = 311, p = .000$, with a Nagelkerke R^2 of 0.316, suggesting that the odds of accepting a plea bargain agreement can be explained through several of the independent variables introduced in the analysis.

Here the effect of a continuing offence was significant ($B = -0.89$, $OR = 0.412, p = .000$), increasing the odds of plea bargaining. Also, the model showed that the age of the victim was a significant element when predicting a conviction through a plea bargain agreement ($B = -0.71$, $OR = 0.493, p = .017$). The presence of any of the three modifying circumstances included in the Spanish criminal law were also found to be significant: mitigating circumstances ($B = 1.64, OR = 5.17, p = .000$) and qualified mitigating circumstances ($B = 1.57, OR = 4.83, p = .000$) increase the odds of a trial conviction, while aggravating circumstances ($B = -1.83, OR = 0.16, p = .000$) increases the probability of a plea bargain conviction. The presence of a private prosecution was also significant ($B = -0.305, OR = 0.737, p = .039$), increasing the odds of a plea bargain conviction. Finally, the presence of violence ($B = -0.75, OR = 0.468, p = .005$) or penetration ($B = -1.08, OR = 0.338, p = .000$) were also significant and associated with the probability of getting a plea bargain conviction.

Table 3

Co-variance analysis (ANCOVA) for the length of imprisonment in months and compensation amount in euros in cases with plea bargain agreement vs cases with trial conviction ($n = 1754$).

Independent variable	Dependent variables							
	Prison (months)				Compensation (€)			
	M	F	p	d	M	F	p	d
Plea bargain conviction								
Yes	67.8	31.0	0.000***	0.326	16,369	0.68	0.408	0.053
No	77.1				15,646			

Note. Regarding the size effect interpretation (Cohen's d), according to Cohen and Doob (1989), values are: $0.20 < d < 0.50$ low; $0.50 < d < 0.80$ medium; $0.80 < d$ high. * $p < .05$, ** $p < .01$, *** $p < .001$.

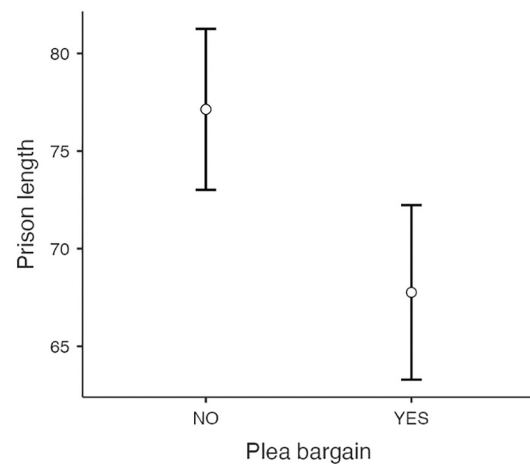


Fig. 1. ANCOVA for prison length for plea bargain vs trial conviction. Note. Only cases with a prison sentence have been considered for this analysis.

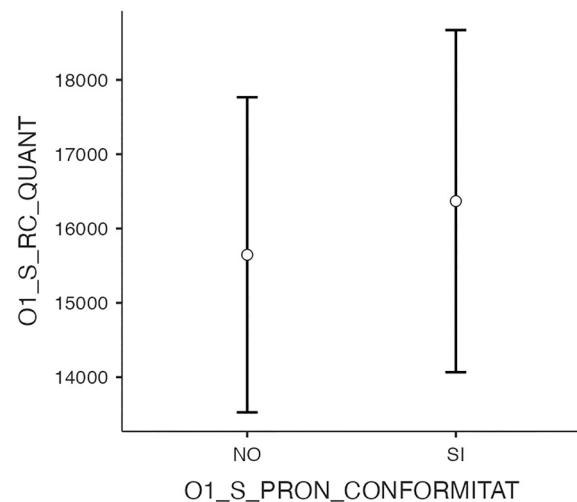


Fig. 2. ANCOVA for civil liability for plea bargain vs trial conviction. Note. Only cases with an imposed civil liability have been considered for this analysis.

7. Discussion

This study has provided insights, by means of data obtained from judicial sentences, on some important aspects related to the practice of plea bargaining in sex crimes in Spain. Plea bargaining has often been challenged and even criticized, given the risks derived from the discretionary power of the public prosecutors, who are not subject to control comparable to judicial decision-making (through guarantees such as argumentation of the sentences or the right to a revision in a second

Table 4
Logistic regression analysis for plea bargain conviction vs. trial conviction (n = 1754).

Variable	B	SE	χ^2	p	95.00% CI
Province - Rural/Urban	0.237	0.148	2.56	0.109	[-0.05, 0.52]
Degree of Execution- Attempted/Completed	-0.135	0.438	0.009	0.758	[-0.99, 0.72]
Continuing Offence - No/ Yes***	-0.896	0.160	32.35	0.000	[-1.19, -0.57]
Mitigating circ. - No/ Yes***	1.643	0.160	113.14	0.000	[1.32, 1.95]
Aggravating circ. - No/ Yes***	-1.835	0.369	31.38	0.000	[-2.55, -1.11]
Qualified mitigating circ. No/Yes***	1.576	0.338	22.68	0.000	[0.91, 2.23]
Offender nationality - Spanish/Foreign	0.092	0.159	0.335	0.562	[-0.21, 0.40]
Victims' age - Minor/ Adult**	-0.708	0.296	6.131	0.0017	[-1.28, -0.12]
Private Prosecution - No/ Yes*	-0.305	0.148	4.267	0.0039	[-0.59, -0.01]
Penetration - No/Yes***	-1.085	0.172	42.36	0.000	[-1.42, -0.74]
Use of violence - No/ Yes**	-0.758	0.273	8.385	0.005	[-1.29, -0.22]

Note. $p < .001$. Nagelkerke $R^2 = 0.316$. The reference category is "Plea bargain Yes/No." When B is negative, it means that the second category of that variable increases the odds of plea bargain. When B is positive, the first category increases the odds of plea bargain. The predictive potential from the odds ratio generated by the model was accurate in 84.6% of the cases. * $p < .05$, ** $p < .01$, *** $p < .001$.

instance); the risks for the equality principle; and the marginalization of the victim. This kind of criticism has had an appreciable impact in the field of sex crimes. However, the results presented here have revealed that plea bargaining is not largely used in Spain, compared to other countries such as the USA or the UK, and is less common in sex crimes than in other types of crime. In addition, the impact of plea bargaining on the penalties of convicted offenders is low in general terms, with a difference of less than one year between the cases with plea bargain agreements (mean prison penalty of 77.1 months) and those in which a sentence is issued after a trial (67.8 months). Nonetheless, this differs from previous research in the USA specifically conducted on the field of plea bargaining in sexual criminality (Frazier et al., 2018), where no variations were observed whatsoever.

The difference in terms of imprisonment length was found to be statistically significant, and it can certainly be affirmed that -in line with previous research- an agreement between the parties in a process of plea bargaining is a predictor of a lower penalty, after controlling for other variables analysed. Nonetheless, the multivariate analysis revealed that the penalty agreed by the defendants and the prosecution is largely conditioned by the same factors that influence the decisions of the courts in cases resolved after a trial. The variables with a stronger capacity to predict a harsher penalty are penetration, use of violence, the presence of legal aggravating circumstances, the non-application of legal mitigating circumstances, a continuing offence, and a completed crime. In addition, the average penalty in cases agreed through a plea bargaining is just under six years, the maximum prison term of agreements between the parties that must be accepted by the court without going to trial in the Spanish legal system. On this regard, it's worth highlighting that when there are aggravating circumstances (for example, the presence of violence or penetration), there is a higher odd of pleading guilty, suggesting that the possibility of receiving a harsher penalty can be affecting the decision of accepting the plea agreement.

These results show that the discretionary power of the prosecutors to decrease the punishment of the defendant in sexual crimes is exercised with moderation, thus revealing a reluctance among public attorneys to distance themselves from the legal rules that are applicable when the

length of a prison sentence must be determined. We must consider that in the Spanish legal system the determination of punishment is strictly conditioned by legal rules, even though prosecutors could, de facto, apply them in a more flexible way than the courts if they wanted to ensure a conviction in the context of bargaining with the defendant. An additional explanation may be that social pressure demanding harsh punishment for sexual offenders exerts an influence on prosecutors, but not to the same extent as in the USA, where prosecutors sometimes take media reactions and public opinion into account when deciding how to handle cases (Tonry, 2012).

However, for to civil liability outcomes, no significant differences were found. This reveals that the compensation amount in favour of the victim does not play a significant role in the bargaining process and this finding can be an indicator that the interests of the victims are not taken into account, at least as a priority, by the public prosecutors. Moreover, this result can be considered in the context of our previous studies on judicial decision-making in sex crimes (Tamarit et al., 2022), which revealed that the determination of the compensation amount is a consequence of a decision made with a more discretionary approach than the decision to calculate the term of imprisonment. The present study has shown that the prosecutors' attitude is not basically different from that of the sentencing judges.

A significant aspect of our study is the assessment of the influence of extra-legal factors on the decision of the parties to reach an agreement. The national background of the defendant, which was found to be a significant factor in previous studies (Kemp & Varona, 2022), contributes significantly to the agreement (with native defendants likelier to agree with the prosecutors than those from foreign backgrounds), according to the present study, only when we consider the result of the bivariate analysis, but this has not been confirmed by the multivariate model. Before concluding that this finding can reveal a particular feature of sex crimes, it should be considered that the present study (unlike that previously cited above) was based on sentences dictated by high courts, which deal with cases in which a higher penalty can be imposed. In any case, although the differences are not statistically confirmed, the tendency to impose a harsher punishment on defendants with a foreign background is a significant and sensitive issue that should be considered in further studies.

In addition to the explanations offered in the Anglosphere bibliography for the lower predisposition of ethnic minorities to accept a plea bargain deal, and those related to foreigners in Spain being afraid of expulsion (pointed out by Varona et al., 2022), it is worth noting that the greater reluctance to accept the agreement could derive from cultural factors. For instance, people who do not entirely fit in the rationalist mentality of the global north societies, or do not feel fully identified with the institutions of those countries, might experience lesser faith in the criminal justice system, as Savitsky (2012) suggests.

Another extra-legal factor that was examined is the presence of private prosecution as a party in the criminal process. This is a unique characteristic of the Spanish legal system, which enables the victim (and even other persons and entities) to act as a prosecution actor bringing charges against the defendant independent of the public prosecutor, to the point that they can ask for the penalty which the defendant will receive and participate in plea bargaining. Our study has found that in cases with a private prosecutor acting as a party in the process (which occurred in around half of the cases) there were more plea bargain agreements. This confirms that the private prosecution model brings actual power to the victim in the criminal process and also shows that, in general terms, when the victims participate in it by means of a legal representative, they are more keen to accept reductions in penalties in exchange for assuring conviction. The finding of non-significant differences between the compensation amounts imposed in plea bargain agreements and sentences for tried cases is an indicator that the expectation of obtaining a higher amount in terms of civil liability does not operate as an effective stimulus to reach an agreement with the defendant.

A last extra-legal factor that must be considered is the age of the victim. It is already known that sex crimes against children are substantially different from crimes against the sexual freedom of adult people, and criminal law deals with these two phenomena according to different criteria. We have found that cases in which the victim is an adult are those with more plea bargain agreements, but with no significant differences in the multivariate analysis. Further research is needed to find out if the defendants tend to deny their guilt more consistently in cases in which the victim is a child (maybe as a consequence of the potential shame associated to these crimes), if the public prosecutors are more likely to not reducing charges against those sex offenders, or if it is just the consequence of the lower penalties available to the courts, making this a circumstance that encourages the parties to reach an agreement which can moderate the punishment.

8. Conclusions, recommendations, and future challenges

The results and arguments presented here bring up new elements that, again, raise awareness of the importance of research on plea bargaining, a practice performed routinely without the scrutiny of controls and guarantees that play a key role in judicial decision-making. Beyond quantitative studies which can expand the data provided by this initial contribution, qualitative methods can be used to uncover the attitudes and motivations of the different actors in the bargaining process, such as public prosecutors and private attorneys, the latter both when acting for the defence and when representing the interests of the victims. This can be an important contribution to our knowledge of the real operation of this unique institution in the Spanish legal system and the particular features of sex crimes with regard to the perception of social expectations and the victim's needs in this field of criminality.

A future challenge will also be the evaluation of the consequences that can arise from the approval of Organic Law 10/2022 on the integral guarantee of sexual freedom, which includes the right of the victims of such crimes to free legal assistance. Research will be needed to find out the impact of the implementation of this legal provision on plea bargaining, and in particular, whether there will be fewer such agreements, on the basis of the findings of our study.

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CRediT authorship contribution statement

Pablo Romero Seseña: Writing – review & editing, Writing – original draft, Methodology, Investigation, Formal analysis, Data curation.
Laura Arantegui Arráez: Writing – review & editing, Writing – original draft, Investigation, Data curation.
Josep Maria: Writing – review & editing, Writing – original draft, Methodology, Investigation, Formal analysis, Data curation.

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