



FREEDOM ON SOCIAL NETWORKS: Threats and Coercion in Light of Article 20.1 of the Spanish Constitution

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ABSTRACT

The enormous growth of the Internet in recent decades has led to the emergence of numerous online dangers, leaving victims increasingly exposed. The prevalence of crimes such as harassment, threats, and coercion on social media continues to rise, with the anonymity of perpetrators facilitating these offences. As a result, victims often experience heightened feelings of helplessness and fear for their safety, unable to identify or verify the authenticity of the threats or coercion they face.

There is an urgent need to implement measures aimed at preventing these behaviours while also regulating anonymity on social media, ensuring that such measures fundamentally respect the right to freedom of expression. Addressing this evolving social reality within the digital context is crucial for the effective regulation of crimes occurring on social networks. It is essential to establish safe spaces for victims and prevent the recurrence of criminal behaviour on these platforms.

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1. Introduction

The internet first appeared 41 years ago, giving rise to the interconnected world we know today. This development has transformed social and human relationships, overcoming barriers such as physical borders and language while providing immediate access to a wide variety of resources for leisure, work, and education, among others. By 2023, 95.3% of the population aged 16 to 74 used the internet, a 0.9% increase from 2022. The most common activity was the use of instant messaging services (WhatsApp, Skype, Messenger, etc.), alongside, of course, social networks (INE, 2023).

The origins of social networks can be traced back to the late 1990s with the appearance of SixDegrees. Since then, social behaviours have evolved, and today, social networks are the primary means of global interconnection. However, it was not until the advent of Facebook that a true revolution in online social interactions began, transforming social relationships into virtual experiences and giving rise to new controversies. This paper examines the growing phenomenon of crimes against freedom within social networks, which continues to increase each year.

It is estimated that there are 5.17 billion active monthly social network users, primarily from Europe, the Americas, and Asia, with 60% registered on Facebook (Fernández Llera, 2024). Having become key spaces for interaction, social networks have established a new paradigm for human relationships, bringing with them an unexplored frontier of controversies that arise as a consequence.

Given the nature of social networks such as X (formerly Twitter) and Facebook, which foster political debates and diverse, often opposing, opinions, this environment has contributed to the rise of crimes against freedom, including threats and coercion. These offences have grown exponentially alongside the expansion of social media and are the focus of this study. This evolving legal and social paradigm presents significant challenges that must be addressed by state institutions, which should enact laws and measures to curb the relentless increase in such criminal behaviours while ensuring the protection of victims.

Before the internet, such crimes took place within a physical context, with most cases involving only a basic identification of the victim of the criminal conduct. However, in this new digital context, the ease of creating accounts with just an email registration introduces the concept of anonymity in the perpetration of these acts, creating a new sphere of vulnerability for victims.

Furthermore, the anonymity enabling these crimes necessitates the protection of social groups that are frequently targeted by such offences. These include acts of hate and violence directed at public figures, elite athletes, celebrities, artists, and politicians—some of the most commonly affected individuals. This paper examines the social context of social networks, focusing on threats and coercion within the framework of criminal law, particularly in relation to the rights enshrined in Article 20.1 of the Spanish Constitution, as well as measures aimed at protecting victims in this digital context.

Anonymity is a key factor that increases the risk of criminal behaviours, amplifying the victim's sense of helplessness (Tamarit Sumalla, 2018, p. 17). Without knowledge of the perpetrator's location or physical characteristics, the victim is left vulnerable, while the perpetrator gains a sense of security and freedom, potentially feeling shielded from consequences.

The anonymity of the individual making threats intensifies the victim's insecurity. Receiving serious threats to their safety from an unknown person, whose location is also unknown, exacerbates feelings of vulnerability (SAP 104/2019). Unable to identify the aggressor or verify whether their intentions align with the threats made, the victim's sense of helplessness is further heightened.

In 2017, the Government of Spain proposed ending anonymity on social networks, sparking significant debate about the right to freedom of expression enshrined in Article 20.1 of the Spanish Constitution. However, support for this proposal has steadily grown as a potential solution to the challenges posed by online anonymity (Guzmán Floja, 2018, p. 59).

2. Threats and coercion on social networks

Criminal behaviours that occur repeatedly and persistently in the social and physical realms have increasingly migrated to the cyber realm, where crimes against freedom are deeply rooted in social relationships. In 2023, 472,125 cybercrimes were recorded in Spain, of which 17,472 involved threats and coercion (Ministry of the Interior, 2023)—offences targeting individuals' freedom. The majority of these crimes occur on social networks, which have become hotspots for interaction and communication

on the internet. Compounding this issue is the anonymity offered by most social networks, turning these tools for social connection into double-edged swords, with a significant concentration of crimes taking place on these platforms.

In addition to the Penal Code, Royal Decree 43/2021, of 26 January, which builds upon Royal Decree-Law 12/2018, of 7 September, on the security of networks and information systems, seeks to establish a framework that ensures networks are safe spaces for users and provides oversight of service operators. Notably, this regulation sets out clear guidelines for user security within networks and information systems, aiming to reduce their vulnerability to external risks and address the lack of basic controls by service operators.

This regulation primarily targets essential service providers and digital service operators, outlining their obligations in scenarios involving risks and security breaches. Such breaches can, in turn, act as enablers in the commission of other crimes.

2.1. Threats

The crime of threats is regulated in Articles 169 to 171 of the Penal Code and is defined as the explicit communication by one person to another of the intent to cause harm to them, their family, or someone close to them. The nature of this harm depends on the specific type of offence involved (Muñoz Conde, 2021, p. 154). The purpose of this crime is to influence another person's free will by warning or informing them that negative consequences will ensue if they act in a certain way. These consequences typically involve the commission of another criminal offence directed at the individual or their loved ones.

The primary objective of this regulation is to protect freedom in general terms and, more specifically, the free exercise of decision-making. External illicit factors, such as threats, can undermine the decision-making capacity of the threatened individual (Fraile and Javato, 2015, p. 330). For this reason, it is crucial that the perpetrator's actions are sufficiently serious to compel the victim to modify their behaviour in ways they otherwise would not, as such conduct infringes upon the protected legal interest: the free will of the victim.

Regarding the involved parties, the perpetrator is the individual who commits the act that violates the protected legal interest through threats and must express their intention in a way that convinces the victim it is real, serious, and persistent, regardless of the method used to convey it (Muñoz Conde, 2021, p. 155). One of the greatest challenges in this context is anonymity, as perpetrators may feel a false sense of impunity by hiding behind anonymity, making it difficult to identify them.

Often, perpetrators take advantage of the unique environment provided by the cyber realm, which facilitates behaviours that are less common in offline contexts. They hide behind electronic accounts created solely to carry out such actions, exploiting the limited doctrinal and legislative frameworks addressing these behaviours on social networks.

To qualify as a threat, the perpetrator's conduct must have the clear intention of intimidating the victim and restricting their freedom. The act must be specific and plausible, with the harm intended to occur in the future but with a degree of immediacy. This conduct is considered a threat if directed towards the victim or individuals with whom the victim has a close personal connection (Fraile and Javato, 2015, p. 327).

Case law, particularly STS 259/2006 of 6 March 2006 and STS 268/99 of 26 February 1999, establishes specific criteria for determining whether a behaviour qualifies as a threat. These rulings emphasise that the harm conveyed, with the intent to influence the victim's behaviour or decision, must be unjust and fall within the scope of a crime. However, some instances of harm, while unjust, may not necessarily constitute a criminal offence. The Penal Code distinguishes between two general types of threats, based on whether the harm being threatened is lawful or unlawful.

Threats involving harm that constitutes a crime occur when intimidation is directed at an individual or their family and includes acts such as homicide, injury, abortion, attacks on freedom, torture, harm to moral integrity, sexual freedom, privacy, honour, property, or the socio-economic order. This type of offence is regulated in the first two sections of Article 169, which introduce the concept of conditional threats. The penalty ranges from one to five years if the criminal conduct is intended to achieve a specific objective or impose the desired behaviour. The second section addresses unconditional threats, where the penalty ranges from two to six years.

Furthermore, the first two sections of Article 170 address threats directed at groups, collectives, or communities. To qualify under this classification, the threats must be sufficiently serious and plausible. This includes cases where the conduct seeks to incite actions by armed groups or terrorists.

Threats involving harm that does not constitute a crime are regulated under Article 171. This regulation is particularly significant as it addresses threats linked to behaviours that are not explicitly classified as criminal offences under the Penal Code. It applies to situations where the condition imposed by the conduct is improper, and the intended harm does not qualify as a defined crime. Instead, such threats typically pertain to behaviours within the personal or intimate sphere of the victim, such as potential damage to their reputation or image.

In the context of threats regulated by Articles 169 and 171 of the Penal Code, the conditional nature of this offence results in harsher penalties if the condition underlying the threat is fulfilled. This highlights the possibility of an attempt, where the perpetrator's attainment of their objective serves as an aggravating factor rather than the outcome itself (Muñoz Conde, 2021, p. 156).

Threats are consummated the moment the victim becomes aware of the perpetrator's communication of them (Fraile and Javato, 2015, p. 398). A notable issue arises when the perpetrator uses the "block" feature on social networks to argue that an essential element of the offence (namely, the victim's awareness of the threats) has not been met. However, case law (SAP 16/2014) establishes that blocking the victim on social networks, combined with publishing threats on the perpetrator's profile, is sufficient to bring the threats to the victim's attention and does not constitute grounds for exoneration.

2.2. Coercion

Coercion, like threats, is another offence against freedom. Unlike threats, however, the fundamental element of coercion is the use of violence, which encompasses not only physical violence but also intimidation and the exertion of force (Muñoz Conde, 2021, p. 162). Coercion is characterised by restricting the victim's freedom to carry out actions they are legally entitled to undertake.

The distinction between the two offences lies in the fact that coercion undermines an individual's ability to act according to their free will, which is compromised in this context (Fraile and Javato, 2015, p. 364). Therefore, the aim of the offence of coercion is to alter a decision that has already been freely made, without external stimuli intended to influence it, as happens in the case of threats. The protected legal interest, in a general sense, is the individual's freedom, and more specifically, their ability to make decisions freely.

The crime of coercion is regulated under Article 172 of the Penal Code, which defines the offence as involving the perpetrator, through the use of violence, either preventing another person from performing an act that is legally permitted or compelling them to do something they do not wish to do in the exercise of their freedom. What renders this conduct unlawful is the absence of legitimate authorisation to employ such means and the intent to achieve such outcomes (Fraile and Javato, 2015, p. 363).

The key requirement for this criminal offence is the use of violence, which in the context of coercion also encompasses intimidation and the use of force. The inclusion of intimidation blurs the distinction between coercion and threats, often resulting in the application of the penalty for the more serious offence (Muñoz Conde, 2021, p. 162). Another important factor is the intensity of the action, which must be sufficient for the perpetrator to achieve their intended result.

Coercion is exclusively an intentional offence, with generic intent being sufficient to infringe upon the victim's freedom of action (Fraile and Javato, 2015, p. 364). Furthermore, the perpetrator's intent must encompass not only the use of violence to overpower the victim's will but also the deliberate aim to achieve this outcome (Muñoz Conde, 2021, p. 163). Consequently, coercion cannot exist without intent, making this a fundamental element of the offence.

As with threats, the crime of coercion is categorised based on the severity of the offence or the means employed (Fraile and Javato, 2015, p. 367). The serious form of coercion constitutes the generic type outlined in Article 172 of the Penal Code. Within this category, two specific forms are identified: coercion aimed at preventing the exercise of a fundamental right, regulated in the second paragraph of Article 172.1, and coercion intended to prevent the enjoyment of one's home, addressed in the third paragraph of Article 172.1. Notably, the primary objective of serious coercion targeting the enjoyment of one's home is to deter speculative practices in the housing market.

Minor coercion, previously classified as a misdemeanour, is now defined as a criminal offence under the third section of Article 172 of the Penal Code. A key requirement for prosecution is the prior complaint filed by the affected individual or their legal representative. This category also includes cases of minor coercion within the context of gender-based violence.

The application of legal categories such as threats or coercion was often constrained by the absence of an explicit declaration of intent to cause harm or the use of violence to undermine the victim's will (Fraile and Javato, 2015, p. 394). To address these legal gaps, it became necessary to introduce the offence of harassment into the Penal Code, as regulated under Article 172 ter.

This article criminalises actions in which an individual, persistently and without legitimate authorisation, engages in behaviour that continuously and repeatedly disrupts the normal course of another person's daily life (SAP 210/2013). It also includes cases where psychological violence, rather than physical violence, is used to alter the victim's daily routines by wearing them down and isolating them through constant harassment (SAP 469/2022).

3. Precautionary and extrajudicial measures to be taken by the victim

3.1. Precautionary measures for victim protection

The primary objective of the law is to ensure comprehensive protection for the victim from the moment any competent authority becomes aware of the situation. It also seeks to facilitate the efficient progression of the criminal process and the implementation of precautionary measures for victim protection, in accordance with the legal procedures outlined in Law 4/2015, of 27 April, on the Statute of the Victim of Crime.

The precautionary measures available to safeguard victims of the aforementioned crimes are varied. Notably, measures that can be adapted to the realm of cybersecurity, particularly within social networks or digital platforms, are of increasing importance. These measures range from the removal of content to prohibitions on communication and are applied with legal efficacy. Whether these measures are implemented directly within social networks or when crimes originating in the physical realm are later transferred jurisprudentially to the digital sphere, they may fall under the jurisdiction of the Penal Code and the Criminal Procedure Law, depending on the severity of the crime and the victim's circumstances. Additionally, these measures are addressed in Organic Law 1/2004, of 28 December, on Comprehensive Protection Measures Against Gender-Based Violence; Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors; and Law 4/2015, of 27 April, on the Statute of the Victim of Crime (Alonso García, 2015, p. 106).

One notable precautionary measure in the investigation of crimes committed via the internet, phone, or other information and communication technologies is the provisional removal of illicit content. This can be initiated either *ex officio* or at the request of a party and is regulated by Article 13 of the Criminal Procedure Law, supported by Article 11 of Law 34/2022, of 11 July, on Information Society Services and Electronic Commerce.

The primary purpose of this measure is the judicial removal of content uploaded to a website that is under investigation for online threats or coercion. Content removal can be executed either directly or indirectly. In cases of direct removal, judicially certified copies of the reported content must be preserved as evidence before instructing the cybercrime units of the National Police and the Civil Guard to act. This process not only involves verifying the authenticity of the reported content but also determining the most effective method for implementing the precautionary measure of content removal (Velasco Núñez, 2010).

When considering the tools available on the platforms themselves and the possibility of extrajudicial removal, each case must evaluate whether to use these tools based on the interests of the victim. This is because extrajudicial removal of content could potentially weaken the evidence (Alonso García, 2015, p. 121). If the victim intends to pursue judicial action later, it is essential to preserve evidence of the illicit actions—subject to the subsequent complaint—either as printed copies or stored on a stable medium. From a procedural and evidentiary perspective, it is preferable for such evidence to be notarised (Alonso García, 2015, p. 121).

Regarding the indirect removal of content, this measure applies in cases where the service operator is located outside Spanish territory or beyond the European Economic Area (EEA). Such situations are

rare, as most companies providing these services typically operate within Spain (Alonso García, 2015, p. 122). Consequently, given the social context and the circumstances in which these crimes occur, precautionary measures involving content removal are generally direct, as major social network providers have permanent headquarters in Spain, within the EEA, and specifically under Spanish jurisdiction.

The communication ban, as a precautionary measure, prohibits the accused from contacting specific individuals. It is regulated under Article 13 of the Criminal Procedure Law, alongside Article 544 bis, which allows the imposition of communication prohibition measures in cases involving crimes listed in Article 57 of the Penal Code, including crimes against freedom (Alonso García 2015, p. 124). Unlike content removal, this measure is not limited to digital media; it can also apply to phone communications, traditional mail, and in-person contact.

In the judgment of the Provincial Court of Pontevedra 11/2023, dated 2 February 2023, the dismissal of the appeal was upheld in the second instance, confirming the appellant's conviction for the continued offence of violating a precautionary measure by failing to comply with communication prohibition orders imposed on him. This violation occurred when the appellant sent several WhatsApp messages and made multiple calls via the Facebook Messenger application. Consequently, this type of precautionary measure is more frequently applied in cases of coercion and harassment, as these crimes are characterised by the repeated and sustained communication—or attempts at communication—by the perpetrator with the victim.

Another precautionary measure outlined in Article 13 of the Criminal Procedure Law is the interruption of service provision. This measure involves judicially halting one or more services provided through a website, either partially or completely, depending on the extent of the service affected (Alonso García, 2015, p. 122). It can be implemented either directly or indirectly.

In cases of direct interruption, access to the data stored on the server involved in the crime is cut off by judicial order, typically by blocking its IP address. This is a highly restrictive measure that involves significant effort to isolate and restrict access to content stored on servers holding data related to the crime (Alonso García, 2015, p. 123).

As for indirect interruption, it is unlikely to be applied in the context of social networks, as most platforms where such crimes are commonly committed are based in Spain and are therefore subject to national regulations.

Under Article 13 of the Criminal Procedure Law, these measures are often effective tools in addressing crimes against freedom, including those occurring on social networks. While not specifically tailored for the digital realm, their primary purpose is to impose precautionary restrictions on the accused, such as prohibiting residence in or access to specific places or territories, and limiting proximity to certain individuals (Alonso García, 2015, p. 125).

In this context, Supreme Court ruling 547/2022 of 2 June 2022, FJ 3.3, affirms that traditional forms of offences coexist with new forms of cybercrime, where the execution of the crime takes place entirely within telematic networks, which, by their nature, cannot be confined to a specific physical location.

Thus, the Supreme Court acknowledges that, given the social and technological realities of contemporary society, social networks can be considered places where crimes are committed—particularly when the criminal act occurs repeatedly within the network itself, without extending beyond it. In such cases, precautionary measures, such as proximity bans, can be adapted to this context, utilising tools provided by the platform, such as restricting likes on Instagram. This measure remains particularly significant in cases of threats committed on social networks due to its effectiveness (Alonso García, 2015, p. 126).

3.2. Extrajudicial measures to be taken by the victim

At times, victims, uncertain about the appropriate actions to take when facing criminal conduct, choose to address the matter extrajudicially by using mechanisms provided by social networks. However, these measures do not preclude victims from pursuing judicial action. That said, such actions do not guarantee that the criminal behaviour will stop, as no legal order enforces these measures. Nonetheless, victims may be able to halt the misconduct within the social network where it is occurring.

Despite these efforts, perpetrators can often return to the platform by creating new accounts, as the measures implemented by social networks are not entirely effective. For instance, many platforms do

not utilise IP blocking, and creating a profile is straightforward, often requiring only a new email address and no identification.

For example, social network X, through its Help Centre, offers the option to report abusive behaviours, providing a quick and efficient solution for issues related to accounts, messages, or posted content. Victims can specify the group affected by the report—whether it concerns only themselves, a specific group, or all users of the platform. However, if the victim receives violent and credible threats, it is recommended that they contact the authorities to file a report. In such cases, if law enforcement reaches out to the company, X will provide the necessary information for the investigation. Regarding access to information about the account responsible for the misconduct, X cannot disclose any details unless a judicial request is made.

Instagram allows users to report posts, comments, accounts, and direct messages received by the victim. Additionally, users have the option to block an account to prevent further comments and messages or to restrict another person from viewing posts uploaded to the platform. Instagram also encourages victims to contact the authorities and report any behaviours that appear violent and credible, with the option of using Instagram reports as evidence.

Similarly, Facebook offers the option to report content that violates its community standards, such as hate speech or incitement to violence, through the content or account responsible. Like other social networks, Facebook advises victims to report threatening behaviour to the authorities.

4. Conclusions

The tremendous growth of the internet over the past two decades has brought about unimaginable changes in social relationships. Instant connectivity and the relative decline of physical interactions have compelled people to adapt their behaviour to this new social paradigm. Furthermore, the advent of social networks has elevated global connectivity, particularly in terms of interpersonal relationships, ushering in an era of mass interaction.

This progress in human interaction has also given rise to numerous dangers on the internet, leaving individuals increasingly exposed to crimes and the inherent publicity surrounding their commission on social media. The rise in crimes committed on social networks continues to grow significantly, particularly since the pandemic and subsequent COVID-19 lockdown. This exceptional situation has turned social networks into a new frontier and the primary space for committing crimes against freedom. Moreover, it has highlighted the challenges of prosecuting these crimes and, in particular, the difficulty of preventing their occurrence.

Anonymity is a key factor in crimes committed on social networks, yet regulation in this area is almost non-existent. Adequate measures have not been implemented, and there are no comprehensive mechanisms that allow victims to easily identify users who threaten or coerce them.

Anonymity serves as an incentive for the prevalence of crimes on social networks, significantly increasing victims' sense of helplessness and fear for their safety, as they are unable to identify or verify the authenticity of the threats or coercion they face. State institutions must prioritise the implementation of measures and the approval of legislation to regulate anonymity, ensuring that the right to freedom of expression is respected while preventing it from becoming a barrier to the comprehensive protection of victims.

Regarding the criminal offence of harassment, legal doctrine has been highly critical of its inclusion, arguing that it could be sufficiently encompassed within other criminal offences. This suggests that some of the measures adopted by the Penal Code have not been entirely effective. In the first instance, it is necessary to analyse the context in which the offence occurs and to incorporate the relevant case law in line with the social realities that prompted the regulation. Conversely, certain issues, such as sexting and the abuse of minors on social networks, have been widely categorised and addressed.

As for the precautionary measures available to victims, their effectiveness in offering protection must be acknowledged. However, these measures are not always easily applied within case law, as they often require substantial evidence that the behaviours constitute an infringement upon the individual. It seems imperative to promote measures addressing anonymity on social networks, such as requiring users to register with their national identification number (DNI). Additionally, more specific regulation of crimes committed on social networks is needed, with clearly defined aggravating and mitigating factors tailored to the digital reality and the nature of these behaviours.

Spanish law must confront this new social reality with energy and effectiveness, providing jurisprudential responses that fully protect victims and prosecute perpetrators, even when anonymity is involved, through the use of technology by State Law Enforcement Agencies. However, a thorough analysis of both the social and digital contexts is required to ensure that legislation and measures are effectively implemented to prevent these behaviours on social networks. At the same time, creating safe spaces for victims must remain a priority to prevent the recurrence of criminal behaviours on these digital platforms.

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