Part III
Comparative Analysis and Conclusions

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1. Analysis of the main differences between Portuguese and Norwegian legal frameworks on domestic violence

In the first section of this chapter, we aim to examine the main differences that exist between the Portuguese and the Norwegian legal frameworks on domestic violence for the purpose of determining which respective aspects can be considered strengths or weaknesses and, consequently, to propose suggestions of improvement for both regimes.

Firstly, we believe it to be meaningful that 80 years separate the specific criminalisation of domestic abuse – even though in limited terms – in the two countries. In Norway, in 1902, a new Criminal Code included a specific offence regarding abuse in domestic relationships in the chapter of "Crimes regarding family relationships", and in Portugal, it wasn't until 1982 that the criminalisation of acts of domestic violence was initially introduced in the Criminal Code, in section 153, under the title "Ill-treatment or overload of minors and subordinates or between spouses". This shows that these actions began to be censored in a State-wide manner, including by Criminal Law, much earlier in Norway than in Portugal and consequently, that State's authorities have had a far longer period to delineate laws and procedures to prevent and contain this form of criminality. The conservative and notoriously patriarchal dictatorship under which Portugal lived from 1926 until 1974 played a significant role in this setback, of which the consequences are felt until today.

Regarding the legal frameworks themselves, one aspect that we deem important to highlight concerns the legislative method employed, that is characteristic of each of them.

While in Norway there is no overarching code regulating joint efforts to address domestic violence as a social problem, and legal issues of relevance to criminal law are regulated in the criminal code, issues relating to criminal procedures are addressed in the code of criminal procedure, administrative means are dealt with in administrative codes, and restitution for the victim in the code of torts, in Portugal, there is a specific regime dedicated to the compensation of victims of domestic violence – Law no. 104/2009 – and to prevention, protection and assistance of the victims of this crime – Law no. 112/2009, also known as Law on Domestic Violence. Outside of the Criminal Code, the Civil Code, the Labor Code and the Criminal Procedure Code address certain specific aspects concerning domestic violence. The law concerning all crime victims' rights – Law no. 130/2015 – and the Law on Witness Protection – Law no. 93/99 – are also, besides autonomous, applicable to domestic violence cases, among others.

Concerning the criminal act, an issue that has sparked discussion in Portugal pertains to the supposed requirement of the repetitive or particularly serious nature of behaviours to classify them as abuse/ill-treatment under section 152 of the Criminal Code. Before 2007, section 152 of the Portuguese Criminal Code, then titled "Abuse and violation of safety rules", described the criminal conduct solely as abuse/ill-treatment and both the academia and jurisprudence generally contended that it implied repetition. In 2007, simultaneously with the creation of an autonomous crime of domestic violence, the legislator introduced a clarification in section 152, stating that domestic violence consists in, repeatedly or not, inflicting physical or psychological abuse/ill-treatment on certain victims. So, today, the law expressly declares the non-necessity for the abuse to be repeated. Despite this, most of the case-law and many academics still argue that for conducts of aggression to be considered domestic violence, they have to be either

repeated or especially severe, even though the law does not make such demands.

On the other hand, section 282 of the Norwegian Criminal Code explicitly refers to the repetition or seriousness requirement of the conducts of "Abuse in close relationships", within which domestic violence is criminalised. The high threshold is in sync with the high penalties, as abuse in close relationships is punished more severely compared to if the violent crime is not committed in close relationships.

While by solely analysing the law one might think that the Portuguese framework is less demanding than the Norwegian one, regarding the characterisation of conducts of abuse as domestic violence. In reality, the restrictive interpretation that courts have been generically doing of section 152 of the Portuguese Criminal Code ends up resulting in an even higher threshold than the one established by the Norwegian Criminal law, which is not matched by the severity of the penalties, as we will observe later.

Section 30 of the Norwegian Children Act prohibits all forms of physical abuse of children, even when it is carried out with the intent of raising the child and correcting his/her behaviour. Such acts are considered as violence towards the child, and hence clearly relevant to the offence of abuse in close relationships. However, abuse does not have to be physical. Demeaning language, restrictions on food or exclusion from the living room or other family spaces and extensive control of the child are all examples of other forms of violations that may constitute domestic violence against the child.

Portugal expressly mentions physical punishment as one of the conducts that constitutes domestic violence under section 152. Notwithstanding this, academia and case law have, through the years, conjectured ways to consider certain punishments usually applied to children as lawful, either because they would be "socially adequate" or grounded in a "power of correction" when used with an educational intent. The tendency, however, is for such theories to evolve and for all corporal punishments to be considered criminal conducts. Whether they

would fit in the crime of domestic violence or in an offence to physical integrity would depend on the interpretation made of the term abuse/ill-treatment, as was just explained. As for emotional abuse, considering the restrictive way in which the criminal act characteristic of domestic violence is interpreted, it would have to be repeated or severe. Conducts such as punctual restrictions of food or exclusions from the living room are not considered conducts of domestic violence.

Therefore, the Norwegian regime seems to pay closer attention to the protection of the child from physical and psychological harm than the Portuguese system.

In Norway, to witness violence towards other family members would be considered a violation of the child.

In Portugal, since 2021, the Criminal Procedure Code defines a child victim, in its section 67-A, not only as the minor who suffered direct harm as a result of a crime, but also as the child who has suffered abuse by being exposed to domestic violence. The same law of 2021 introduced in the definition of victim in Law no. 112/2009 the concept of child exposed to domestic violence. These alterations were mainly the result of the Istanbul Convention and of the academics and NGO's work, who pointed out the need for a clarification in this matter. Section 152 of the Criminal Code criminalises all forms of physical and psychological abuse, so, it is clear today that a correct interpretation of the law demands that, if the level of exposure to domestic violence and its seriousness leads to psychological abuse of children, it should be considered not only an aggravating factor of the crime against whom the violence is directly aimed [see section 152, no. 2, subparagraph a)], but also an autonomous crime committed against the child. Portuguese superior courts have already convicted offenders in these terms, and it is expected that the interpretation of section 152 will no longer be as restrictive, when considering children who witness domestic violence as happened before 2021.

Having observed that Norwegian law promotes the protection of children against all forms of violence, including psychological, we must,

however, draw attention to the fact that section 282 of the Criminal Code is not clear regarding the type of psychological abuse it encompasses. This section, devoted to "Abuse in close relationships", describes the criminalised conducts as follows: to abuse seriously or repeatedly by threat, force, deprivation of liberty, violence or other degrading treatment. Even though the law project that preceded it explained it was meant to cover psychological abuse, the section did not explain by examples what that meant. This has been creating doubts as to what kinds of emotional abuse can be considered domestic violence. In Portugal, even if the conduct described as psychic abuse/ill-treatment by section 152 of the Criminal Code is not further clarified through examples, literature and case-law agree that it includes, namely, insults, humiliations, threats, manipulation and controlling behaviour. Apparently, section 282 of the Norwegian Criminal Code could benefit from a clarification in this matter.

Sexual violence is relevant to the offence of abuse in close relationships in Norway. However, at the same time, sexual crimes are considered particularly serious and punished more severely. Quoting the Norwegian preliminary report: "Therefore, indictments usually consider domestic violence and sexual crimes as different offences: if the case only concerns sexual abuse, it will only be indicted for sexual offences; but if a man, for example, subjects his partner to, namely, physical abuse, threats and sexual violations, the offender will ideally be charged with and convicted of both domestic abuse and sexual offences."

Sexual offences are one of the types of conducts given as examples of physical and psychological abuse/ill-treatment in section 152 of the Portuguese Criminal Code. But, as in Norway, sexual offences, such as sexual coercion or rape, are generically more severely punished than domestic violence. The crime of domestic violence (section 152) states, at the end of its no. 1, that if the conducts may fall into a crime with a higher penalty, this last penalty should be applied. This apparently mandatory subsidiarity clause has led academics and case law, when facing situations where there are sexual offences among other types of

abuse, to support the conviction only for the sexual offence, more severely punished. This obviously results in the dismissal of all the other aggressive conducts, even though they might have relevance to determine the concrete penalty. Most authors and case law believe that this is the only possibility conveyed by the literal interpretation of section 152. Nevertheless, there have been some developments in this issue and the literature sustains that it is possible to distinguish in the general conduct of domestic violence autonomous behaviours corresponding to two separate crimes. These Courts are now convicting defendants in such circumstances for one crime of domestic violence and one of sexual offence, usually rape. However, this outcome does not result clearly from the Portuguese law because of the subsidiarity clause established by section 152, but it should. This is an alteration that could be made to the Portuguese Penal Code.

Another aspect of the two frameworks that differs is the range of potential victims of the crime of domestic violence. The Norwegian section on domestic violence is both broader and narrower than section 152 of the Portuguese Criminal Code.

It is broader as it encompasses relatives in direct line of ascent, any member of the offender's household or anyone in the person's care.

Relatives in direct line of ascent are only possible victims of domestic violence in Portugal if they are considered particularly vulnerable and they cohabit with the offender, according to section 152, no. 1, subparagraph d), of the Criminal Code. The same can be said about other members of the household: they would have to be considered particularly helpless to be possible victims of the crime of domestic violence.

As to subparagraph e) of section 282 of the Norwegian Criminal Code, pertaining anyone in the person's care, Portuguese Criminal Law protects these victims mainly through section 152-A which is titled generically "Abuse", and they also need to be considered particularly vulnerable.

But the Norwegian law is also narrower because section 152 of the Portuguese Criminal Code clearly encompasses victims of abuse in

former or current dating relationships, as well as any person in former or current intimate relationships, even if they do not cohabit or have never cohabited, and their descendants.

Literature has criticised the range of victims considered in section 152 of the Portuguese Criminal Code, by not encompassing relatives in direct line of ascent who are not particularly vulnerable and do not cohabit with the perpetrator. These conditions were also applied to descendants until 2021 but since then subparagraph e) specifically establishes that descendants of the perpetrator or descendants of the person in an intimate (present or former) relationship with the agent are possible victims of domestic violence, even in the absence of cohabitation. This can be an opportunity to also encompass, without additional conditions, ascendents in the group of potential victims of the crime. Hence, this is another alteration that could be done to the law.

Regarding section 282 of the Norwegian Criminal Code, the non-inclusion of people in present or former intimate relationships, besides marriage, without cohabitation, is subject to criticism. Dating violence is a phenomenon included in gender violence that appears to need to be dealt with in the scope of domestic violence. Moreover, the traditional structures of intimate relationships have been evolving and many individuals that are subject to violence within said relationships may very well not live together or be married. Thus, this is a potential modification to be made to the Norwegian Law.

With respect to general criminal law principles, although Norwegian, and Nordic criminal law more generally, focus on moderate levels of punishment, in recent decades there has been an increase on the levels of punishment in the areas of sexual crimes and violence, including domestic violence.

According to section 282, the punishment for domestic abuse is imprisonment between 14 days and six years. Section 283, related to aggravated domestic abuse, increases the possible punishment to 15 years of imprisonment. In determining whether the abuse is aggravated, some aspects should be considered: if it results in considerable bodily harm

or death, its duration, whether it was inflicted in a particularly painful manner or resulted in considerable pain, or whether it was committed against a defenceless person.

The Norwegian criminal law does not consider the possibility of suspending the execution of a prison sentence. Instead, it allows for making the sentence, or parts of it, conditional. But, in cases of domestic violence, due to the seriousness of the offence, the defendant generally serves an unconditional prison sentence.

In Portugal, the penalty for the basic offence of domestic violence is imprisonment between one and five years (section 152, no. 1). The most severe penalty for the crime of domestic violence, ranging from three to ten years, is applicable when the physical or psychological abuse results in the (unintentional) death of the victim – section 152, no. 3, subparagraph b). Additionally, a penalty of two to eight years of imprisonment is prescribed for situations where the consequence of the physical or psychological abuse is not death, but a serious bodily harm (also unintentional) – section 152, no. 3, subparagraph a).

The penalties in the Portuguese Criminal Code, especially concerning aggravated domestic violence, are much lower than in the Norwegian Criminal Code. Also, as most of the prison penalties range between one to five years imprisonment, the execution of the penalty can be suspended, and it generally is (see section 50 of the Portuguese Criminal Code). This is a matter where the need for change must be seriously discussed: should the upper limit of the penalty be higher? Either way, the suspension of the execution of the prison sentence and its conditions to take place, namely the fulfilment of the penalties' aims, should be more carefully considered bearing in mind the concrete circumstances of the cases.

Regarding protective measures as a result of a conviction, sections 56 and 57 of the Norwegian Criminal Code, on the loss of rights and restraining orders, seem to correspond to the Portuguese accessory penalties (sections 65 to 69-C and section 152, nos. 4, 5 and 6, of the Portuguese Criminal Code), as well as to the duties or rules of conduct associated

with the suspension of the imprisonment penalty (sections 51, 52 and 53 of the same law) that implicate, for example, the prohibition of contacting the victim. Section 34-B of Law no. 112/2009 states that the suspension of the execution of the imprisonment sentence must be subject to the fulfilment of duties or rules of conduct that protect the victim.

So, the Norwegian restraining orders seem to be equivalent to the Portuguese accessory penalties and duties or rules of conduct applicable when an imprisonment penalty is suspended. What about visitation bans (section 222a of the Norwegian Criminal Procedure Act)? They can also be imposed independently of an ongoing criminal case. In Portugal, "coercive measures" can also be imposed during criminal proceedings, but they are different from the Norwegian "visitation ban".

The regime of coercive measures is established in sections 196 to 218 of the Portuguese Criminal Procedure Code and in section 31 of the Law on Domestic Violence that mentions the so-called "urgent" coercive measures.

The type of measure that a visitation ban is would correspond specifically to what, under section 200 of the Criminal Procedure Code named "Prohibition and enforcement of conducts", corresponds to the possibility to forbid contact through any means with someone [no. 1, subparagraph d)]. This type of measure – a sort of visitation ban –, including the imposition to leave the family home and other specific coercive measures applicable to domestic violence cases, are mentioned as well in section 31 of the Law on Domestic Violence.

But, although similar in forbidding contacts between the suspect/defendant and the victim, they are different regarding their criminal law nature and their connection to criminal proceedings.

Visitation bans are non-procedural preventive measures with no necessary connection to criminal proceedings inserted in the Criminal Procedure Act to be enforced by police prosecutors instead of the "regular" police, so that all rights of the parties involved are safeguarded.

Coercive measures in Portugal can only be applied if the subject is a defendant in criminal proceedings, only by a judge and after the defendant

is heard (except in cases of substantiated impossibility). Coercive measures are procedural and strictly connected to criminal proceedings.

Would Portugal benefit from having a measure like the Norwegian visitation ban?

In Norway, if deemed necessary, electronic surveillance – also known as a "reverse panic alarm" –, is authorised by the court to monitor restraining orders, as outlined in section 57 of the Norwegian Penal Code. The 8th of April 2024, a new paragraph 222g came into force, allowing the prosecution authority – under specific conditions – to impose electronic surveillance (also known as a "reverse panic alarm") of a visiting ban or a restraining order if the person against whom the order is directed is suspected with reasonable grounds of violating the order, and electronic monitoring is considered necessary to ensure compliance with the order. The individual targeted by the ban should be given the opportunity to bring the matter before the court for review.

Section 35 of the Law on Domestic Violence states that electronic surveillance must be used to monitor penalties, duties, rules of conduct or coercive measures (sections 52 and 152 of the Criminal Code, and 31 of Law no. 112/2009) when it is essential to protect the victim, and section 152 of the Criminal Code, in its no. 5, also mentions that the accessory penalty of prohibition of contacts must be monitored by electronic surveillance. The use of this method must be decided by the court.

The provisional suspension of proceedings is a legal institute established by section 281 of the Portuguese Criminal Procedure Code that, generically, allows the Public Prosecutor's Office, either on its own initiative or at the request of the defendant or the victim, to determine, with the agreement of the investigating judge, if the crime is punishable by imprisonment not exceeding five years or by a sanction other than imprisonment, the suspension of the proceedings, subject to the imposition on the defendant of injunctions and rules of conduct, whenever certain prerequisites are met such as the agreement of the defendant and the victim and the absence of a previous conviction for a crime of the same nature.

As previously explained, in 2000, when the criminal proceedings for domestic violence ceased to depend on the complaint made by the plaintiff and it was no longer possible to drop the charges against the offender, the legislator tried to create a "gateway" for victims: in proceedings for non-aggravated domestic violence crimes, upon the victim's voluntary and informed request, the Public Prosecutor's Office determines the provisional suspension of the proceedings, with the agreement of the investigating judge and the defendant, provided that the defendant has never been convicted for a crime of the same nature and has never benefited from a previous application of provisional suspension of proceedings for a crime of the same nature (section 281, no. 8, of the Criminal Procedure Code).

This possibility was meant to give victims of domestic violence, which is a crime that collides with intimacy and family life, a way to not go through with proceedings that could be invasive and originate secondary victimisation for them. This was also the main justification for the proceedings to be dependent on the victims' complaint in the first place. This is still a polemic and problematic institute, since victims of domestic violence are often under severe pressure and subject to manipulation by defendants and their request, by definition, is usually not freely made. Public Prosecutors, even if they attempt to guarantee, as they must, that the victim is aware of the consequences of the request and that he/she is making it freely, are limited to what the victim is asking, which can be the result of the pressure exerted by the defendant. Moreover, as the State must protect the fundamental values attacked by crimes, especially violent crimes such as these, it is questionable whether the victims, who could be suffering from battered woman's syndrome, should be given the option of, ultimately, preventing such protection.

The provisional suspension of proceedings does not exist in Norway.

Citing the Norwegian preliminary report: "A central premise here is that the decision to initiate a case is subject to public prosecution.

Thereby, the victim cannot make decisions about the prosecution of the case for the courts, such as stopping the case. At the same time, mediation assisted by The National Mediation Service may be relevant also in such cases."

While in Norway is does not seem to exist a specific system or programme for offenders convicted for domestic violence, in Portugal, section 38 of the Law on Domestic Violence imposes the creation of these special treatments and they have been in place. Despite the perceived disparity between the two frameworks, Norway's general rehabilitation programmes are comprehensive and cover a wide range of treatments, including psychological and addiction treatments, from which individuals convicted of domestic violence benefit.

In Norway, section 196 of the Criminal Code establishes that "[a] penalty of a fine or imprisonment for a term not exceeding one year shall be applied to any person who fails to report or seek to avert by other means a criminal act or the consequences thereof at a time when this is still possible and it appears certain or most likely that the act has been or will be committed. The duty to avert applies regardless of any duty of confidentiality and applies [...]" namely to domestic violence, criminalised by sections 282 and 283. The duty, the breach of which is criminalised by section 196, is to avert crime and not to report it. However, the duty to avert crime can be fulfilled through its reporting, but also through other means.

In Portugal, any individual can report the crime of domestic violence, but they are not obliged to do so (section 244 of the Portuguese Criminal Procedure Code defines non-mandatory reporting). According to section 242 of the Portuguese Criminal Procedure Code (on mandatory reporting), police entities are obliged to report all crimes of which they become aware. On the same legal grounds, other public servants (which, for the purposes of criminal law, corresponds to a very broad notion) are obliged to report all crimes of which they become aware in the exercise of their functions and because of them. The omission of the

mandatory reporting can constitute a crime if the requisites of section 367 are met.[249]

The crime of "Breach of secrecy" established in section 195 of the Portuguese Criminal Code, and its aggravated form under section 383 titled "Breach of secrecy by public servant", do not seem to apply when the secrecy regards an ongoing or preparatory criminal activity. If there is a duty to report, according to section 242 of the Criminal Procedure Code, the police authority or the public servant must fulfil their duty of reporting, despite the secrecy. If such a duty to report does not exist, the individual does not have to report the crime; but if he chooses to do so, his duty of confidentiality is not protected by criminal law and hence he does not incur in any crime of breach of secrecy. Paulo Pinto de Albuquerque[250] believes that the "legal authorisation", provided for under section 242 of the Criminal Procedure Code, prevails over the secrecy, and thus constitutes a justification defence for the crime of breach of secrecy. In situations where there is not a duty to report, the author explains that the reason for the non-criminalisation of the breach of secrecy emanates from the *ultima ratio* nature of criminal law itself and from the principle of proportionality, as criminal law cannot protect secrecy about the commission of a crime as that would constitute the promotion of its own violation. However, there are divergent opinions within the literature, as this is not clearly stated by law, unlike what happens in Norway, where section 196 expressly establishes that the "duty to avert

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249 In its no. 1 the section states that: "Anyone who wholly or partially obstructs, frustrates, or circumvents investigative or preventive activities of competent authority, with the intention or awareness of preventing another person, who has committed a crime, from being subjected to punishment or security measures, shall be punished with imprisonment for up to three years or with a fine."

250 *Comentário do Código de Processo Civil à luz da Constituição da República e da Convenção Europeia dos Direitos Humanos*, Vol. I, 5th edition, Lisbon: Universidade Católica Editora 2021, pp. 834, 836 and 1302.

applies regardless of any duty of confidentiality". Having this in mind, we propose a legal clarification of this matter.

In Norway, any victim of domestic violence has the right to be represented by an attorney and it is mandatory for the state to nominate one, but it is not mandatory for the victim to accept the offer.

According to section 25 of Law no. 112/2009, the victims of domestic violence have the right to "legal support", namely, to be represented by a lawyer appointed and paid by the State, if they fulfil the overall requirements – namely financial, which are very restrictive – listed to allow access to it, but with "urgent nature". Section 54, no. 2, of the same law states that the legal support to victims is provided by the state if they prove the insufficiency of economic means.

In both Norwegian and Portuguese systems, it is not mandatory for the victim to be represented by a lawyer. But in Norway it is mandatory for the State to provide one. In Portugal, if the victim wishes to have a more active participation in the criminal proceedings, he/she must request the court to assume the position of "assistant" (according to sections 68, 69 and 70 of the Criminal Procedure Code). The victim who assumes this position must be represented by a lawyer but is only financed by the state if the conditions of economic insufficiency – that, again, are very restrictive – are met.

2. Conclusions

After comparing the two legal systems, we may now question if the Portuguese legal system regarding the prevention and combat of domestic violence could be improved, in particular in the aspects concerning criminal law and criminal procedure law, which was the aim previously defined for our comparative study.

Domestic violence is a social issue culturally and economically influenced, which means that it is natural to find differences of approaches between Northern European States and Southwest European

States. However, both States are European and although Norway is not a member State of the European Union, it is part of the ECHR and of the Istanbul Convention. That said, despite diversity, it is possible to find a common ground, as we have seen throughout this report.

Anyhow, in the previous chapter we came across the identification of several weaknesses in both legal systems. Bearing in mind that HYMENAEUS – *improving legal response and access to the law for victims of domestic violence* is financed by the EEA Grants Bilateral Relations Fund, which aims to reduce social and economic disparities in Europe and to strengthen bilateral relations between, in this case, Norway as a donor State and Portugal as a beneficiary State, we will now point out what we have learned from the study of the Norwegian legal system and which aspects we consider relevant to introduce in our own legal system towards the improvement of our legal response to domestic violence. That said, it is only fair to say that the Portuguese legal system comprehends an ensemble of legislative measures which provide a rather adequate approach towards domestic violence. The failures to protect are usually connected with the misinterpretation of the law by practitioners, namely judges, public prosecutors, and the police. But this does not mean that there is no room to improvement, as follows.

The first suggestion of alteration we propose regards the range of victims who fall under section 152 of our Criminal Code. Although this section of the Criminal Code is already long, containing a large cast of possible victims, we realise that some others should be included, as it happens in other states, including Norway. As seen previously in chapter 1 of part III, in Norway, relatives in direct line of ascent, any member of the offender's household or anyone in the person's care fall under section 282. In Portugal, existing literature has criticised the range of victims considered in section 152 of the Portuguese Criminal Code, by not encompassing relatives in direct line of ascent who are not particularly vulnerable and do not cohabit with the perpetrator. As we know, for instance, violence against senior citizens is a problem in our society, and sometimes perpetrators neither live with nor are related to the victim.

In these cases, we cannot apply section 152 of the Criminal Code. It may be possible to apply section 152-A, depending on the fulfilment of all requirements, or we must apply other crimes, most of them subject to the lodging of s complaint. However, this possibility does not provide for a reasonable satisfaction regarding victim protection and avoiding recurrent criminal behaviours, because these sections, in particular, section 152, does not establish any accessory penalties, which are extremely important in this type of violence. So, we propose the inclusion of all victims in direct line of ascent under the protection of section 152, whether or not cohabitants or particularly vulnerable. We also propose the introduction of the same accessory penalties under section 152-A, because they may also be relevant here.

Considering the problem of coexistence of sexual assault or rape and other behaviours that fall under section 152, it would be advisable for the legislator to clarify in the text of this section that, when there is a rape, we are in the presence of two crimes: rape and domestic violence, because we have two different juridical interests to protect – sexual freedom on the one hand (rape), health on the other (domestic violence) –, and the crime with a more severe penalty does not erase the acts of domestic violence.

We believe that the provisional suspension of the proceeding should be allowed, but the requirement of freedom should be effectively ensured. On the other hand, the current requirements are insufficient to protect the victim, because upon the victim's request, the Prosecutor must suspend the process, even if he is convinced that the suspension will not ensure the needs of prevention existing in the case. Although this possibility is a counterbalance of the public nature of the crime, we cannot allow the victim to jeopardise his/her own safety at any cost. If the Public Prosecutor realises suspension will not produce a positive outcome, he should not be forced to apply the suspension. So, section 281 of the Criminal Procedure Code is in need of an alteration.

Regarding the possibility of suspension of the execution of the prison sentence, it is of common knowledge that this is a highly used

resource – maybe too used. Although we have to regulate the crime of domestic violence under the principle of unity of the legal system, according to the principle of legality, proportionality and respecting the goals defined for the serving of sentences, it is necessary to rethink this excessive use of the suspension of execution, even more so when, in most cases, the offender reoffends committing the same kind of crime. Despite the maximum penalty for this crime being five years of imprisonment, in cases of domestic violence (section 152) a certain period of time should actually be spent in prison. The suspension gives the defendant a sense of impunity – the sense that he/she can easily get away with this kind of actions just with a reprimand from the judge. It is our belief that experiencing a period incarcerated would have a positive deterrence effect on the defendant and would pass on the message to other potential offenders.