

# INTIMATE PARTNER VIOLENCE – findings and lessons from a national deterrence policy

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## **Abstract**

*The ongoing pandemic is highlighting the fragilities of intimate partner violence deterrence in most European countries. The main objective of this research was to identify the outcomes of a national deterrence policy of intimate partner violence, complemented by special protection and support measures for mistreated women. One outcome was an increase in the prosecution and punishment of intimate offenders. The other was an apparent failure to reduce the prevalence of intimate partner violence against women. One of the possible causes for this failure can be a comparatively lower law enforcement investment in the persecution and punishment of intimate offenders.*

**Keywords:** *intimate partner violence; deterrence; Portugal.*

## **Introduction**

A violent intimate relationship terrorises the life of those subjected to such violence. Violence takes place in an environment believed to be a safe one but where a person, who's expected to respect and care for, is, in fact, doing exactly the opposite.

In an intimate relationship, violent behaviour can be persistent or a unique event and can be triggered by a large number of causes. Available evidence suggests that most violent

behaviours, in intimate relationships, aim at subjugating, dominating and controlling one of the partners (Johnson, 2016).

As most non-violent behaviours, violent behaviours, aiming at subjugating, dominating and controlling an intimate partner, usually emerge from a positively reinforced learning process (Swan et al., 2018), not from a personality trait or disorder. Looking at intimate partner violence as an outcome of a social learning process helps understanding why women are the most frequent targets of intimate partner violence. Most human societies still expect males to control and dominate an intimate relationship, and to learn how to do it, effectively and by coercive means if necessary. Male power, control, and domination, in intimate relationships, is socially driven, and legitimised by a vast array of religious, cultural, biological or psychological presumptions of asymmetric gender capacities and roles.

Males are driven to control and dominate their intimate relationships, and soon learn that society tolerates whatever type and level of violence they use to achieve it. That is, that society usually does not impose an unbearable cost on those resorting to violence in intimate relationships. Tolerance, towards male power, control, and domination, is certainly one of the main causes of intimate partner violence (Daly & Chesney-Lind, 1988; Buzawa & Buzawa, 2003; Costa et al., 2015; Johnson, 2016; Herrero et al., 2017).

Presumptions of asymmetric gender roles, imposing effective different rights and opportunities, and tolerance, towards the use of male violence in intimate relationships, are also key constraints to women's capacity and ability to break and move away from a violent intimate relationship (García-Moreno et al., 2015). Tolerance usually implies, for women, a strong concern of personal safety and fear of further violence even when they break and move away.

National policies, aiming at reducing the benefits, and at increasing the costs, of resorting to violence, in other types of human relationships, may have played a role in a long-term drop of most violent crimes in advanced societies (Eisner, 2014). It is therefore theoretically expectable that a deterrence policy, aiming at reducing the benefits, and at increasing the (legal) costs, of resorting to violence, in intimate relationships, has similar results.

The main objective of this research was to identify the outcomes of a national deterrence policy of intimate partner violence, complemented by special protection and support measures for mistreated women. The studied national policy started by criminalising, in 1982 and following mainstream deterrence theory assumptions, intimate partner violence. Special protection and support measures for women, needing to break and move away, from a violent intimate relationship, soon complemented criminalisation.

## Deterrence theory assumptions

One main assumption of deterrence theory (Durlauf & Nagin, 2011), building from the classical school of criminology and its belief in human behaviour governed by rationality and rational choice (Beccaria, 2007 [1764]), Bentham, 1996 [1781]), is that certain, swift and severe (legal) punishment enhances compliance to existing laws and deter unlawful behaviours. Such happens because it increases cost perception (Becker, 1968) of resorting to an unlawful behaviour.

Civilising process theory (Pinker, 2011; Eisner, 2001; 2014), building from the work of Elias (1989 [1939]), additionally assumes that, in advanced societies, personality structures transform in the direction of increased self-control of violent behaviour, partially driven by fear of external negative reactions to such behaviour, being one the fears legal prosecution and punishment.

Civilising process theory also assumes that modern societies are gradually developing a culture of non-tolerance towards most forms of violence. The development of such culture is, however, not entirely a self-induced and self-sustained process. It depends on how national states are able to consolidate and legitimise, through a process of political democratisation, a state monopoly of violence (Elias, 1989 [1939]). The development of a culture of non-tolerance, towards violence depends, therefore, on an effective and legitimate use of state violence to deter interpersonal violence – i.e., on an increased (legal) cost of resorting to violent behaviour.

Penal laws, punishing the use of violent behaviours in intimate and other social relationships, can be, therefore, necessary but not sufficient. Their ability to deter violent behaviours depends on how swiftly and certainly, offenders can expect (legal) punishment. Cost perception results from a complex evaluation process. In advanced societies, direct (objective) and/or indirect (subjective) knowledge and/or experience (Nagin, Solow & Lum, 2015) usually influence such process.

Reporting a crime to police can increase cost perception because only reporting allows police to initiate an investigation that will eventually lead to the prosecution and punishment of the offender. High non-reporting rates mean that offenders can reasonably expect that legal prosecution and punishment will almost certainly not occur (Xie & Lynch, 2017).

Information on prosecution rates can also influence (legal) cost perception since offenders can expect not going to trial when such rates are low (Entorf & Spengler, 2015). Sentencing and type of sentencing can also influence cost perception. An effective imprisonment sentence is, in most advanced societies, the harsher admissible legal punishment

for committing a crime but although there is not sufficient evidence that crime responds to the severity of criminal sanctions (Chalfin & McCrary, 2017; Entorf & Spengler, 2015), low sentencing rates probably decrease cost perception.

## Methodology

The main objective of this research is to identify how and if the selected deterrence policy, of intimate partner violence, contributed to a drop of this type of violence.

The first research step consisted in the characterisation of the deterrence policy framework. Penal laws, applying to violent crimes and to intimate partner violence, were collected and analysed. The studied policy assumed, almost from the beginning, that asymmetric gender role, imposing effective different rights and opportunities, as well as fear of further violence, constrain women's capacity and ability to break and move away from a violent intimate relationship (García-Moreno et al., 2015). Therefore, additional and related laws, aiming at the special protection and support of mistreated women, were also collected and analysed.

This first research step revealed three major policy momentums – 1982 to 1994, 1995 to 2006, and 2007 to 2018. The first momentum starts in 1982, with the criminalisation of intimate violence inside formal marriage and the establishment, in 1991, of the first special protection and support measures and services for mistreated women. This first momentum lasts until 1994.

The second momentum starts in 1995, with the strengthening of legal punishment of intimate violence, in and outside formal marriage. This second momentum is also characterised by giving police and public prosecutors additional capabilities to intervene in intimate violence cases, namely the ability to apply preventive arrest of the offender or to prohibit further contacts with the offended, as well as by further special protection and support measures for mistreated women. This second momentum lasts until 2006.

The third momentum starts in 2007, with the criminalisation of almost all forms of power, control, and domination behaviours in intimate relationships, and increased law enforcement capabilities and special protection and support for those subjected to violence in intimate relationships. Significant alterations did not take place after 2013, meaning this third momentum is still ongoing.

The second research step consisted in the identification of how the three momentums affected reporting, prosecution and punishment rates, as well as self-reported rates of intimate partner violence against women. To calculate such rates official statistics data-

bases and victimisation surveys were used. In the calculation of prosecution rates, marginal errors may have occurred since prosecution does not always happen in the same year the crime is committed and/or officially recorded. In the calculation of punishment rates, marginal errors may also have occurred since a final court decision does not always happen in the same year reporting and/or prosecution takes place.

A third and final research step consisted of a comparative analysis of reporting, prosecution and punishment rates, as well as of self-reported prevalence, of crimes of assault and threat. Selection of these two crimes took in consideration they encompass similar intimate violence behaviours, being the difference the fact that they occur outside intimate relationships.

## Results

Portugal, a European Union Member State, had, until 1974, high gender asymmetries and inequalities imposed by law (Ramos, 2004). Following the implementation of the current democratic regime, in 1974, the parliament approved a vast array of laws aiming at equalising gender rights and opportunities.

In 1976, a new Constitution (Decree of 10 April 1976) granted Portuguese women full citizenship rights (Article 12º), including the right to vote and to access and perform (almost) any profession. This new Constitution also prohibited any form of gender-based discrimination (Article 13º). Soon after, parliament repealed several laws, namely Law Decree nº47344, of 1966, which assured female unconditional obedience to fathers and/or husbands, enforced, whenever thought necessary, by legal or informal coercion.

Although there wasn't, at the time, hard evidence on the extent of intimate partner violence, given the long history of male domination and control inside intimate relationships such violence was most probably widespread.

A deterrence policy of intimate partner violence starts with the approval of a new Penal Code and the criminalisation of intimate violence (Article 153º of Law Decree nº 400 of 1982). Intimate partner violence crime is entitled mistreatment of minors or a spouse and establishes, for violent physical and psychological violent behaviours, inside a formal marriage, a maximum of three years of imprisonment. Additionally, a maximum of four years of imprisonment is set for extremely violent assault and a maximum of nine years of imprisonment in case the offended died because of mistreatment or cruel treatment (Article 154º).

The aim is clearly to state that the then sensed widespread tolerance, towards male violence inside an intimate relationship, needed to end. For such purpose, maximum imprisonment sentences are set to be slighter higher than the ones applying for crimes committed outside marriage. Assault, outside formal marriage, is punishable by a maximum of two years of imprisonment (Article 142º) and death, resulting from assault, by a maximum of eight years (Article 145º). However, intimate relationships, outside formal marriage, are not included in the new crime and, strangely, punishment, for extremely violent assault, outside marriage, remains higher, with a maximum five years of imprisonment (Article 143º).

The short-term outcomes of this first momentum are two folded. Prosecution and punishment of offenders increase slowly but remain truly exceptional events (Table 1).

**Table 1:** Crime of mistreatment: Recorded events and prosecuted and punished offenders (per 100 000 inhabitants) between 1983 and 1994.

Year	Recorded events <sup>1</sup>	Prosecuted offenders	Punished offenders
1982	n. a.	n. a.	n. a.
1983	n. a.	n. a.	n. a.
1984	n. a.	n. a.	n. a.
1985	n. a.	n. a.	n. a.
1986	n. a.	0,4	0,1
1987	n. a.	0,3	0,2
1988	n. a.	n. a.	n. a.
1989	n. a.	n. a.	0,2
1990	n. a.	n. a.	0,2
1991	n. a.	n. a.	0,2
1992	n. a.	n. a.	0,4
1993	n. a.	n. a.	0,3
1994	n. a.	0,6	0,4

Source: Estatísticas da Justiça, Gabinete de Estudos e Planeamento do Ministério da Justiça.

No reporting, to police, of mistreatment behaviours inside formal marriage is one important cause for such disappointing outcome. The first national survey on violence against women (Lourenço et al., 1997) reveals that 20,5% of the surveyed women, aged over 17 years, experienced, in 1994, physical, psychological and/or sexual violence, inflicted

<sup>1</sup> Reported events effectively recorded by police.

by their husband or intimate partner. It also reveals that less than one percent of them sought assistance or protection from police or judicial authorities.

Legal singularities link widespread non-reporting to prosecution and punishment exceptionality. Because of the maximum imprisonment of three years, women reporting mistreatment, not involving extremely violent assault, have to take into consideration the offender will not face preventive arrest, removal from the family household or contact prohibition. Articles 200° and 202° of Law Decree n°78 of 1987 allow such protection only when the committed crime is punishable with a maximum imprisonment sentence of five or more years. Women needing to break and safely move away from a violent husband knew they had to cope with him and with his violent behaviour until a court imposed an eventual imprisonment sentence.

To make things worse, the ability to legally prosecute and punish an intimate offender, with effective imprisonment, was severely constrained. Article 187° of Law Decree n°87, of 1987, prohibits evidence gathered, for example, by intercepting communications, for crimes not punishable with a maximum imprisonment sentence of five years or more. Article 135°, of the same Law Decree, grants the right to refuse testifying to doctors, lawyers and other professionals, bounded by a confidentiality agreement, even when they have evidence on mistreatments inside a formal marriage. Such means that prosecution and punishment, of intimate offenders, has to rely almost exclusively on the testimony of the offended that, according to Article 134°, had the right to refuse testifying against the offender on facts occurred during their marriage or cohabitation.

Most mistreated women faced heavy constraints and threats when breaking and moving away from a violent husband and in particular when starting to do so by reporting the event and later by testifying against him in court. In 1991 this is acknowledged and Law n° 61, of 1991, establishes a support framework, namely in the form of immediate counselling services, of special police units and of governmental financial compensations, which were later regulated by Law Decree n°423, of 1991. One of the results is a significant increase in prosecuting and punishment rates, as can be seen in Table 1.

In order to solve prosecution and punishment constraints, a 1995 revision of the Penal Code (Law Decree n°48 of 1995) increases punishment and initiates a second policy momentum. Article 152° strengthens punishment severity of intimate mistreatment by increasing maximum imprisonment to five years, thus allowing for the preventive arrest of the offender and for additional evidence gathering methods. A maximum of eight years of imprisonment is set for extremely violent assault and a maximum of ten years of imprisonment is set in case the offended died because of mistreatment or cruel treatment. Article 152° also includes intimate partner violence, outside formal marriage, as a behaviour falling under the crime of mistreatment.

By comparison, assault, outside intimate relationships, became punishable by a maximum of three years of imprisonment (Article 143°), and threat outside intimate relationships, by a maximum of two years of imprisonment (Article 153°). However, extremely violent assault, outside intimate relationships, became punishable by a maximum of ten years of imprisonment (Article 144°), not eight as in intimate relationships. In case the offended died, because of the assault, the offender could be sentenced to a maximum of twelve years of imprisonment (Article 145°), not ten as in intimate relationships.

These odd differences leave untouched the assumption that intimate partner violence was still less serious than other forms of violence. Additionally, a formal complaint became mandatory, before initiating an investigation, possibly to avoid the already known setbacks during prosecution or trial. Law n° 65, of 1998, later amended this limitation by giving authorisation to public prosecutors to initiate an investigation, in the offended best interest, providing her or he did not oppose to it.

In order to increase protection measures, for offended deciding to report mistreatment to the police and to testify during prosecution and trial, Law n°59, of 1998, provides a new legal basis for the removal of the offender from the common household, while Law n°93, of 1999, establishes new measures for witness protection. Law n°107, of 1999, and Law Decree n°323, of 2000, establishes a public network of safe houses for mistreated women. Law n°7, of 2000, establishes an additional sentence of up to two years of no personal contact or any other form of communication between the offender and the offended. Laws n°6 and n°7, of 2001, extend the protection measures to intimate relationships outside formal marriage. Law n°31, of 2006, establishes increased support measures for persons targeted by crime in general, namely the right to adequate compensation.

Outcomes of the increased punishment severity, allowing for the use preventive arrest, removal from the household, contact prohibition and more evidence gathering methods, as well as of the increased protection and support of the offended, are encouraging (Table 2).

Reporting, measured by the events recorded by the police, increases remarkably, especially after an also remarkable increase, beginning in 2001, of prosecuted offenders. Reporting increases allow, in turn, for the prosecution and punishment of more offenders. Following these encouraging outcomes, a third, and so far last, effort to deter intimate partner violence begins in 2007.

**Table 2:** Crime of mistreatment: Recorded events and prosecuted and punished offenders (per 100 000 inhabitants) between 1996 and 2006.

Year	Recorded events	Prosecuted offenders	Punished offenders
1995	n. a.	0,9	0,6
1996	n. a.	1,0	0,3
1997	n. a.	1,2	0,5
1998	n. a.	1,7	0,5
1999	33,5	2,1	0,6
2000	48,5	3,1	1,3
2001	66,7	3,8	1,8
2002	79,3	5,5	2,8
2003	98,0	8,1	4,3
2004	86,1	9,4	5,1
2005	223,7	11,2	5,6
2006	295,2	11,4	5,6

Source: Justice Statistics (<https://estatisticas.justica.gov.pt/sites/siej/en-us>), accessed between October and December 2019.

Article 152° of Law nº59, of 2007, replaces the crime of mistreatment by the crime of domestic violence, which criminalises almost all forms of power, control, and domination in intimate relationships. The intimate relationship concept includes, for the first time, same-sex partners, and maximum punishment sentences are finally set to be no lower to those established for similar forms of violence, outside intimate relationships. Removal of the need to have a formal complaint also allows public prosecutors to initiate immediately a formal investigation, even if opposed by the offended person. Article 152° also extends contact prohibition, with the offended, to a maximum of five years, and adds prohibition to hold and carry offensive weapons for a maximum of five years and suspension of parenthood rights for a maximum of ten years.

Two years later, Law nº112, of 2009, states that domestic offenders can be arrested and kept under custody in any situation and gives urgent prosecution status to the crime of domestic violence (Articles 30° and 28°). Law nº112, amended seven times until 2017, also extensively increases protection and support for those subjected to violence in intimate relationships. Law nº104, of 2009, already regulated compensation rights to mistreated women, and Laws nº129 and nº130, of 2015, and Law nº24, of 2017, increase the protection of the offended. In 2013, Law nº19 includes violence in dating relationships in the crime of domestic violence and concludes the criminalisation of all possible violent behaviours in intimate relationships.

The outcomes are apparently positive ones. Recorded events start to decline in 2010, and rates of prosecuted and of punished offenders reach a maximum in 2016 (Table 3).

**Table 3:** Intimate relationship crimes: Recorded events and prosecuted and punished offenders (per 100 000 inhabitants) between 2007 and 2018.

Year	Recorded events	Prosecuted offenders	Punished offenders
2007	325,4	16,6	8,1
2008	237,8	20,3	9,5
2009	264,4	25,6	12,3
2010	290,7	37,5	17,9
2011	278,3	37,3	18,3
2012	258,9	35,2	17,8
2013	266,0	35,9	18,7
2014	268,0	30,2	16,5
2015	263,2	35,1	18,8
2016	268,1	38,4	19,9
2017	266,1	36,0	19,2
2018	264,7	34,0	18,3

Source: Justice Statistics (<https://estatisticas.justica.gov.pt/sites/siej/en-us>), accessed between October and December 2019.

Results of a European-wide survey on violence against women, carried out in 2015, show, however, a problem. The survey finds that near one in four, of the surveyed Portuguese women, aged 18 to 74 years, experienced physical, psychological and/or sexual violence by their intimate partner in the twelve months before the interview (Violence against women: an EU Wide survey, 2015). This prevalence is higher than the one found by a similar national survey, carried out thirty years before (Lourenço et al., 1997). Additionally, intimate partner violence events, recorded by police, are, in 2014, impressively lower, when compared to self-reported prevalence, than recorded assault and threat events (Table 4).

To what extent the increase, in self-reported subjection to intimate partner violence, derives from a higher sensitivity, and intolerance, towards all forms of intimate violence, against women, is not possible to ascertain. The only thing certain is that intimate violence still terrorised, in 2014, the lives of too many Portuguese women.

**Table 4:** Self-reported subjection to violent crime (per 100 inhabitants over 18 years).

	1994	2005	2014
Intimate violence (women)			
Self-reported prevalence	20,5	<i>n. a.</i>	24,2
Events recorded by police	<i>n. a.</i>	0,5	0,6
Assault			
Self-reported prevalence	0,8	0,7	<i>n. a.</i>
Events recorded by police	0,4	0,5	0,3
Threat			
Self-reported prevalence	0,9	0,7	<i>n. a.</i>
Events recorded by police	0,1	0,2	0,2

Sources: Almeida & Alão (1995); van Dijk et al. (2006); Violence against women: an EU Wide survey (2015).

Low reporting, and consequent low prosecution and punishment rates, can be one of the explanations for the failure to reduce the prevalence of intimate partner violence, against Portuguese women. Prosecution and punishment rates, of offenders having an intimate relationship with the offended, remained below the reporting, prosecution and punishment rates of offenders having no intimate relationship with the offended. The gap narrowed in 2018 but available data (Table 5) shows that violent offenders, having no intimate relationship with the offended, expect a much higher probability of reporting and facing prosecution and punishment than those having an intimate relationship with the offended person.

**Table 5:** Violent crimes: Prosecuted and punished offenders (in % of recorded events).

	2003	2008	2013	2018
Intimate violence				
<i>Prosecuted</i>	8,3	8,5	13,5	12,8
<i>Punished</i>	4,4	4,0	7,0	6,9
Assault				
<i>Prosecuted</i>	31,4	59,3	57,2	39,1
<i>Punished</i>	10,7	18,3	20,4	14,8
Threat				
<i>Prosecuted</i>	14,9	21,4	20,7	15,5
<i>Punished</i>	4,6	6,2	9,2	8,2

Source: Justice Statistics (<https://estatisticas.justica.gov.pt/sites/siej/en-us>), accessed between October and December 2019.

## Discussion and conclusion

Deterrence of intimate partner violence followed, in Portugal, the theoretical assumption that certain, swift and severe punishment increases (legal) cost perceptions and an externally induced self-control, which, in turn, would contribute to a drop in the prevalence of intimate partner violence. Taking into consideration a long national history of gender inequality and of women subjugation to male power, control and domination, extensive protection and support measures for breaking and moving away from violent intimate partners, complemented the deterrence policy.

One outcome was a remarkable increase in the prosecution and punishment of offenders. The other was an apparent failure to reduce the prevalence of intimate partner violence against women.

Evidence, supporting that reporting, prosecution and punishment rates have an effect on cost perceptions and on an externally-induced self-control, and, in turn, in the prevalence trend of (violent) crime is still not conclusive (Entorf & Spengler, 2015; Xie & Lynch, 2017; Chalfin & McCrary, 2017). Evidence, gathered and analysed in this research, is not enough to conclude that an extremely low reporting rate, of intimate violence events, assuring most offenders low prosecution and punishment probabilities, explain why intimate partner violence prevalence, against Portuguese women, remains high. Nevertheless, results suggest the existence of a probable link that needs to be addressed and probably broken.

In a context where women can already rely on an extensive support framework, in case they decide to break away from a violent intimate relation, it seems that some law enforcement practices are preventing a more significant drop of intimate partner violence.

Women will not increase reporting to police if they keep sensing a threat to their personal safety and if fear of further violence remains high. They will also not risk being the only evidence supporting prosecution and punishment because of the fear of endless further violence. This, in turn, assures offenders they still face a low or at least a bearable cost.

Other researches, on intimate partner violence in Portugal, already pointed out this bottleneck. Reporting to police remains a dangerous move for an offended woman. Evidence gathering is, in most cases, limited to the offended testimony and, in such cases, non-persecution is frequent. When a single and unique event is at stake, non-prosecution is also frequent. The same tends to happen to preventive arrest of the offender, especially when non-extremely violent events are at stake. Lack of multiple and crossed evidence is usually the main reason for the acquittance of an offender. Finally, most

non-extremely violent offenders only face a suspended imprisonment sentence, if not a simple fine (Gomes et al., 2016).

Research findings suggest that investment in the investigation and prosecution of intimate partner violence, as a crime with the same and, frequently higher, cost, for those who are offended, as the one of any other violent crime, remains comparatively low in the Portuguese law enforcement system. Cutting the link between offended fears, and effective risk, of further violence, after breaking and moving away from a violent intimate relationship, and offenders' perceptions that violent behaviour, in an intimate relationship, still faces a low legal cost, appears to be needed as one of the main drives of a fourth policy momentum.

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