

# Is a good woman hard to find?<sup>1</sup> Conceptions of victim and stereotypes in judicial intimate partner violence cases

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## Abstract

This article reflects on the role of law in cases of violence in intimate partner relationships. Through interviews with legal actors and analysis of sentences, the study highlights the persistence of myths surrounding this type of violence and the presence of a legal imaginary influenced by gender stereotypes, which are ingrained in legal culture. These stereotypes and misconceptions contribute to the creation of a typology of victimisation that undermines the recognition of the victim's experience and perpetuates conservative judicial practices. The study concludes with the urgent need to develop transdisciplinary training programs that incorporate a legal gender pedagogy.

**Keywords:** intimate partner violence, gender stereotypes, courts, victim, criminal justice system.

## Introduction

Violence within intimate relationships has been the object of various measures aimed at combating it almost everywhere in the West. While it is true that the response to cases of violence is not limited to the law – and the State has acted in other areas, such as prevention or increasing social services to support victims – the centrality of the law and the courts in this matter cannot be ignored. In Portugal, as in many European countries, the fight against domestic violence has primarily relied on a response developed by the criminal justice system aimed at protecting the

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<sup>1</sup> Flannery O'Connor, an American writer, has a set of short stories entitled "A good man is hard to find", a title I have adapted here to question whether in criminal law a good woman is hard to find.

victim, punishing the perpetrators, and preventing recurrence. But this response has been ineffective, as demonstrated by the most recent Grevio report (2025), which analysed the effective implementation of the Istanbul Convention in Portugal. According to the Council of Europe's group of experts, although Portugal has made significant progress in preventing and combating violence against women, the justice system continues to leave victims and their children in very fragile situations. This warning adds to the public discussion about sentences given in cases of gender-based violence, sparked by the media's reporting of court rulings that have become almost caricatured for openly devaluing certain types of violence, blaming the victim based on stereotypical models of femininity and using conservative arguments to reduce the defendant's sentence.

It is important to understand to what extent these cases are an exception or if, on the contrary, they reflect the tenacity of a conservative judiciary. Various studies have shown that myths and stereotypes concerning intimate partner violence persist in society (e.g., Czapanskiy, 1990; Hunter & Cowan, 2007; Kafka, 2019) which, despite not being legally enshrined, end up becoming a legal truth and, inevitably, help devalue this practice as a crime that should be effectively punished.

This article aims to offer a sociological contribution to this reflection by addressing the legal culture of judges within the criminal justice system. This culture consists of social and moral codes that are not related to any substantive or procedural requirement in the law, but rather informed by common sense and/or by their personal experiences. In this paper I propose to analyse the narratives of legal actors concerning intimate partner violence in Portugal, resorting to a qualitative analysis that includes interviews with judges and public prosecutors and sentencing analysis.

## **Methodology**

The study that serves as the foundation for this paper is based on semi structured interviews conducted with judges and public prosecutors from criminal courts of first instance and appeal courts (24 judicial magistrates and 14 public prosecutors). The aim was to analyse the representations and experiences of legal actors regarding intimate partner violence, the law that regulates it, and the possible obstacles to its effective implementation. More specifically, the interviews focused on issues such as the causes and dynamics of violence, mitigating factors in the crime and the social characteristics of victims and perpetrators. These interviews were conducted between 2020 and 2022. All interviewees were guaranteed anonymity and are identified only by a number, gender and professional category (from E1 to E38). The interviews were recorded,

transcribed, and analysed through a thematic analysis, that is a useful tool to organise the data and provide rich and detailed information (Bardin, 2011).

This analysis was complemented by a content analysis of 163 legal cases regarding femicides and homicides in intimate relationships, from the 23 Portuguese judicial districts. Each presiding judge in these districts was asked to provide a list of cases related to homicide occurring in intimate relationships, whether committed or attempted, that were adjudicated in the respective district court. Although the methods of case identification varied across district and did not fully encompass the scope of this crime, the sample provided was significant. The survey of the 163 cases took place between April 2019 and April 2021. The analysis of these legal cases was carried out using a matrix with predefined categories, including the initial prosecution charge, the judge's final decision, the mode of conviction and the length of the sentence, the characterisation of the case, the dynamics of the intimate relationship, the offender's characteristics, the victim's characteristics and the reasoning supporting the trial decision. This analysis was expanded with court rulings on domestic violence cases that received media attention because they contained gender stereotypes.

## **Myths and stereotypes about intimate partner violence**

Gender stereotypes remain deeply rooted and widespread throughout society and are present in the very social structures which often reproduce and perpetuate them, rather than counteracting them. These stereotypes can operate consciously or unconsciously, influencing behaviour and decisions in multiple areas. The literature has sought to demonstrate how gender stereotypes can play a significant role in individual perceptions of domestic violence (Grembi et al., 2024; Mulla et al., 2019). Ultimately, the stronger these stereotypes are, the more likely the victim blaming process will be (Grembi et al., 2024).

In the field of law, these dynamics are particularly serious, as they can jeopardise the impartiality of judicial decisions. Feminist theories of law have precisely sought to demonstrate how the law is gendered, designed to serve the interests of white, middle-class men, despite being based on the assumption of neutrality (Smart, 1989). Thus, some studies have shown that, despite the legal recognition of the principle of equality before the law, women are, as a social group, more severely affected by sexist myths, prejudices and stereotypes, contained both in the laws and in the minds of judges (Duarte, 2023; 2021; Ventura, 2018). In this sense, the law is a (re)producer of discursive and normalising truths based, among other aspects, on heteropatriarchal, colonial and capitalist relations which establish the legal subjects (Cornell, 1999; Kapur, 2006; Lugones, 2007). For some authors, this happens because the law does not take

into consideration the fundamental values, dangers and contradictions that characterise women's lives (West, 1988) and this occurs in different areas, whether in the public space (with the persistent devaluation of the jobs performed by women in the labour market) or in the private sphere (with the devaluation of the violence suffered). Others argue that it is not so much a question of thinking that the law ignores women, but rather that it reflects society's understanding of women (Finley, 1989). For instance, in many common-law jurisdictions, rape law historically incorporated a male-centred definition of sex – one that equated sexual intercourse with penile-vaginal penetration and thus excluded other forms of non-consensual sexual acts. Also, labour law has long been structured around a gendered understanding of work, taking the male breadwinner model as the norm and relegating unpaid or care work, predominantly carried out by women, to the margins. Similarly, compensation law has tended to calculate damages according to male employment trajectories and earning patterns, thereby undervaluing women's losses (MacKinnon, 2005).

This social and legal understanding of women, however, must take into account the multidimensionality of marginalised women. Intersectional theory, as well as transfeminist and queer scholarship, has significantly expanded the conceptual scope of gendered law by exposing the limitations of cis-heteronormative assumptions embedded in legal institutions. Intersectionality, rooted in Black feminist legal thought, has further pushed feminist legal theory beyond single-axis analyses by demonstrating how gendered legal harm is co-produced through race, class, disability, migration status, and coloniality (Crenshaw, 1989). On this subject, Patricia Collins' analysis (1990) is paradigmatic in demonstrating the segregation of black women in terms of economic rights – the poorly paid work of black women in neoliberal capitalism –, political rights and, on an ideological level, the exclusion of social justice through the perpetuation of stereotypes about black women dictated by a racist and patriarchal system. Also, queer and transfeminist theorists demonstrate that law not only reflects but actively produces gendered subjects through classificatory practices, administrative norms, and regulatory systems (Butler, 1990; Spade, 2015). This line of thought foregrounds how binary sex/gender categories are stabilised through legal mechanisms such as identity documents, medical regulations, and family law, thereby marginalising transgender, nonbinary, and gender-nonconforming individuals (Stryker & Bettcher, 2016; Hines, 2020). Moreover, it critiques earlier feminist legal models predicated on a universal female subject, arguing instead for an understanding of gendered vulnerability shaped by intersecting structures of power. As a consequence, we have to take into consideration, as mentioned by Reeves et al., that “the complex nature of [intimate partner violence] intersects with broader structures of gender inequality and systemic biases within the legal system, rendering engagement with the law fraught with experiences of skepticism, delegitimation and disbelief for victim-survivors” (Reeves et al., 2023, p. 768).

The myths and stereotypes that negatively affect the credibility of victims' stories are related to various aspects. Firstly, there are myths related to the very nature and dynamics of intimate partner violence. Until the end of the nineteenth century, wife abuse was a lawful means for husbands to exercise familial control and this has ramifications in the present (Esqueda & Harrison, 2005). Although this is not an acceptable understanding these days, it cannot be denied, as Myrna Dawson (2016) contends, that these crimes are still frequently regarded as “common” or “normal” incidents, which results in them being perceived as less serious. This, in turn, leads to normative propositions or legal-conclusive judgments about a diminished need for the deterrent role of criminal law. So, if it's true that the relationship between victim and offender is critical for understanding the motives, context and dynamics of violence, some studies clearly show that the greater the level of intimacy between offender and victim, the less severe the legal responses to the crime tend to be (Dawson & Gartner, 1998). Also contributing to this belief are stereotypes based on cis-heteronormative and conservative models of the family, which continue to structure institutional and legal action (Diduck & Kaganas, 2012; Spade, 2015). In the same vein, several studies (see Gillis et al., 2006) have tried to demonstrate that for many judges, intimate partner violence is a victimless (or guiltless) crime, considering that family dysfunction, economic problems, addiction, etc. are to blame.

Another pervasive myth is rooted in the belief that such violence primarily consists of physical abuse (Epstein & Goodman, 2019). This narrow understanding of the phenomenon disregards the feminist perspective, which asserts that violence is not solely about physical harm, but rather about the exertion of power and control by one partner – typically the man in heterosexual relationships – over the other (Stark, 2009). This power can manifest in multiple forms. As highlighted by numerous studies, women who experience this type of violence often find that physical assaults, when they occur, are part of a broader, complex and “continuum” web of abuse and coercion (Kelly, 1987). This may include sexual violence, emotional abuse, isolation, economic restrictions, threats, coercion, and intimidation (Duarte, 2023). Within this web, many women report that the emotional harm inflicted by their partners is far more devastating than the physical injuries (Duarte, 2023; Epstein & Goodman, 2019).

Additionally, there exists a range of stereotypes surrounding the very notion of “victim”, which can undermine their credibility in legal contexts where evidence often relies solely on witness testimony. These stereotypes are generally based on the assumption that victims of violence in intimate relationships are guilty until proven otherwise. This reflects a deeply problematic conception of victimhood, present since classic studies on victimology (Mendelsohn, 1959; Wolfgang, 1971). This conservative view of the victim seeks to find reasons, not for the occurrence of the crime, but for the emergence of the victim. Included in this understanding is the following assumption: something the victim did, or did not do, led to her victimisation and, therefore, if she

changes her behaviour the victimisation will not take place again (Karmen 2000). There is therefore a clear idea of shared responsibility; that is, the fault of the crime does not lie entirely with the offender (Karmen, 2000, p. 416). In this process of victim-blaming, differences in sex role stereotyping seem to be relevant (Willis et al., 1996). Kristin Bumiller (2013) uses the popular concept of “Fallen Angels” to show that the population has an idea of the female victim that coincides with social expectations of women’s performance in society, at work and in the family. In other words, a “good” or “bad victim” is subject to the criteria of femininity and cisnormativity that define what a “good” and a “bad” woman is (Chesney-Lind, 2006). Victims must be good women, because “nothing bad happens to good girls” (Madriz, 1997).

One common prejudice is the ongoing question of “why did she stay?”. This question is in line with the proposition, suggested by liberal theory, that the conception of autonomy and citizenship cannot accommodate situations of violence in intimate relationships, since self-control decrees that the person simply leaves or deals with the situation without state intervention - which is not feasible for most abused women (Pateman, 1988). In this sense, as argued by Epstein & Goodman (2019), this question is really more of an accusation: “In her shoes, I would most definitely have left”. (p. 414). In a previous study, I administered a survey to judges, and when presented with the question, “Have you ever been the victim of insults or assaults by your partner?”, 20% (14% men and 6% women) responded that “I would hardly allow myself to be subjected to such a situation”. This suggests a difficulty in adopting the victim’s perspective (Duarte, 2023). Even if judges are less likely to make such explicit statements on the record, many continue to perceive a woman’s decision to stay as externally inconsistent (Epstein & Goodman, 2019, p. 414).

A second bias concerns the notion that victims manipulate allegations for personal gain in divorce or child custody proceedings, or as an act of revenge against their partner, particularly in cases involving the partner’s infidelity (Epstein & Goodman, 2019; Koshan, 2023).

Another misconception identified in the literature is the distortion among legal actors regarding how a victim is expected to recount her story. The issue is not so much the content, but rather the manner in which the narrative is delivered (Epstein & Goodman, 2019, p. 420). There is a degree of intolerance towards the fact that the victim might forget specific dates or details – failing to acknowledge how trauma can affect survivors’ memory, testimony, and demeanour – (Epstein & Goodman, 2019, p. 421) or towards whether she appears more or less emotional (Duarte, 2023).

It is, of course, essential to recognise that these stereotypes, rooted in a heteropatriarchal context, intersect with other axes of oppression. The imaginary of this type of victim and the culpability notions and beliefs are in line with the cis white woman, mother or aspiring mother, of working or lower-middle class (Esqueda & Harrison, 2005; Garcia & McManimon, 2011).

These myths and stereotypes can have serious consequences for victims in the context of judicial decisions, leading to processes of re-victimisation. It is therefore essential to pay attention to how stereotypes can interfere with the implementation of the law.

The concept of legal culture, although not consensual, is at this point fundamental. Lawrence Friedman (1975) was one of the first writers to use this concept, regarding an analysis centred on Law as a mere set of rules, procedures and normative texts to be insufficient. For David Nelken (2010), legal culture refers not only to what legal actors do, but to what they are and, at this point, there is an influence of a *self* that is social before being legal. This *self* demonstrates that the assumption that there is a separation between the legal and the non-legal sphere is incorrect (Kingdom, 1991). The legal sphere includes the law, judicial practices, processes of education and legal professionalisation, and the ideologies concomitant and embodied in such laws, practices and processes. In contrast to this legal sphere, there is the non-legal sphere which contains the desires, emotions, motives, economic and political interests, religious beliefs, etc. What is striking about the use of this distinction is that biases, including gender biases, in law are conceptualised by the emergence in the legal arena of elements derived from one or more non-legal spheres. Legal culture is full of legal categories that are fed by gendered imaginaries that construct an idea about who people are and how they should act and this is reflected in judicial sentences (Timmer, 2011). In that sense, the legal culture around this type of crime is simultaneously imbued with paternalism and intolerance towards the victims (Landau, 1989).

## **Myths and stereotypes in the Portuguese criminal justice**

The crime of domestic violence has existed in Portugal since 1982 when the Penal Code included the offense of “ill-treatment of minors, subordinates, or between spouses”. This was an important milestone, after a long period of a dictatorial political regime oppressing women’s rights, although it was criticised by the feminist movement for being based on unequal power relationships. In 2000, this crime became a public offense and in 2007 there was a significant change in the legal understanding of this crime, becoming explicitly framed in the law as “domestic violence”<sup>2</sup>. Despite the legal changes, the effectiveness of the law has raised some doubts. Firstly, because of the concerning number of femicides. Official data indicates that, between 2014 and 2019, 111 women

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<sup>2</sup> The crime includes “Whoever repeatedly or otherwise inflicts physical or psychological ill-treatment, including corporal punishment, deprivation of liberty and sexual offences on a spouse or ex-spouse; on a person of another or the same sex with whom the perpetrator maintains or has maintained a relationship similar to that of a spouse, even if not cohabiting; on the parent of a common descendant to the first degree; or on a person who is particularly vulnerable due to age, disability, illness, pregnancy or economic dependence and who is cohabiting with the perpetrator” (Law 59/2007). The punishment is imprisonment for one to five years, if a more serious penalty is not provided by other legal provisions.

were murdered in an intimate context (Polícia Judiciária, 2020). More recently, in 2023, 22 people were murdered in similar circumstances, 17 of whom were women (PGR, 2024). Although official statistics for 2024 are not yet available, the NGO UMAR, through its Observatory of Murdered Women, which collects information based on press analysis, reports that in 2024, 16 women were murdered in an intimate context (UMAR, 2024). In six of these cases, complaints had already been filed with the police for domestic violence (UMAR, 2024). These numbers persist despite efforts to combat domestic violence, such as the implementation of Domestic Violence National Plans, additional social support measures for victims, numerous awareness campaigns, and a strong emphasis on legislative changes that increase penalties.

A second factor relates to the high number of cases being dismissed. According to the most recent Portuguese justice statistics (SGMAI, 2022), out of a total of 94.282 investigations into domestic violence opened between 2015 and 2021, 78.3% resulted in case closures. Looking at the reasons for closing cases, it can be concluded that 79.2% resulted from lack of evidence.

Thirdly, although it is observed that the number of defendants convicted for domestic violence has been increasing (SGMAI, 2022), the imposed sentences are not always adequate for the protection of the victim or to send a symbolic message to the community about the seriousness of this crime. As stated in the GREVIO report on Portugal (2025), it is crucial not only for complaints to lead to charges and convictions but also for these convictions to be appropriate.

In this section, I will seek to examine the extent to which these issues in law enforcement may be exacerbated by legal culture. To this end, I will analyse the views expressed by the interviewed judges and public prosecutors, and identify judicial decisions that explicitly or implicitly reflect myths and stereotypes related to intimate partner violence and its victims, as discussed in the previous section.

### **Myths concerning intimate partner violence**

The majority of the legal actors interviewed considered that the legislative evolution in this matter has been generally positive since 1982. In fact, it was clear from the interviews conducted that the obstacles to a more effective application of the law are not related to the law itself. However, there was a disagreement among the interviewees about two concepts inscribed in the law: “intensity” and “repetition”. Several judges, mainly men, stated that cases of domestic violence should exhibit a significant level of intensity, which distinguishes “true domestic violence” from “frivolous cases”. In line with these opinions, a case should only be considered domestic violence when the aggression jeopardises the dignity of human life, which is the legal asset considered to be harmed in the Portuguese Penal Code. For others, such insistence reveals a lack of understanding of the dynamics of domestic violence and seems to assume that episodes of physical violence are



relatively normal within intimate relationships. This dissensus illustrates that the definition of “intensity” is not grounded in legal criteria, but rather shaped by subjective interpretations that differ from one judge to another – highlighting the potential for inconsistency and arbitrariness in judicial decision-making (see Kafka et al., 2019).

Although repetition is not a legal assumption in Portugal since the entry into force of Law 59 in 2007, there was disagreement about the level of recurrence that violence should have to be considered a crime. An analysis of the interviews revealed that judges who deem a pattern of repeated behaviour essential for classifying a case as domestic violence are also the most inclined to interpret the abusive acts described by victims as isolated “incidents”, which, in their view, do not constitute a violation of the legal concept of human dignity. For these judges, repetition is seen as an indispensable criterion preventing the trivialisation of its legal treatment. They argue that the resolution of such conflicts should lie outside the scope of criminal law, and in some cases, even take the form of “self-composition” – that is, a resolution reached outside the mechanisms guaranteed by the courts and the State.

With regard to myths surrounding violence, and not completely in line with the existing literature, the interviews conducted did not reveal a systematic downplaying of psychological violence. In several narratives, even though there was a greater concern with physical violence, psychological violence also proved to be the subject of close scrutiny by judges. Nevertheless, it was notably emphasised when attributed to women: “Psychological violence is also very serious, especially when perpetrated by women. There are women who engage in extremely severe acts of psychological violence towards their partners” (E1, female public prosecutor). Considerations such as the one mentioned were conveyed mainly by judges, both men and women, whose narratives were based on the idea of “aggressive victims” and “situational couple violence”, as we will discuss later. These opinions indicate a gendered analysis of different types of violence depending on the victim’s gender.

### **Assessing the victim’s credibility**

The most consensual obstacle mentioned in the interviews was the difficulty in obtaining evidence, which explains, according to almost all the interviewees, the high number of case dismissals during the investigation phase or acquittals during the trial phase. In a crime that often relies solely on testimonial evidence, the victim’s testimony was considered essential by the majority of the interviewees. The problem arises when the victim refuses to provide a statement or when the testimony is not deemed credible. This reliance on victim testimony has several problematic implications. Firstly, it increases the risk of acquittal if the victim is unwilling or unable to testify

at trial. As Busawa & Busawa (1990) observes, legal actors often struggle to understand the reluctance of victims to accuse their aggressors, despite a broad consensus that this is the victim's right and should not be subject to change. This recognition underscores the need to establish evidentiary support through alternative sources, thereby ensuring that the burden of proof does not rest entirely on the victim. Secondly, in the interviews, but also in legal cases, it was possible to identify different criteria underlying that assessment, which are not related to legal issues, but rather with an analysis of the victim's behaviour, particularly the emotions she transmits, or her (in)ability to recall details related to the episodes of violence suffered.

*The victim provided a statement that seemed to us to be impartial, credible, and free from contradictions. The impartiality of her testimony was also reflected in the fact that she did not intend to give an absolutely accurate account of the events that took place (Ruling no. 702/06.8GBCNT, Coimbra District Court).*

*The victim made statements in an impartial, objective and detailed manner, in an account and posture that made her testimony and what was reported in it deserve the full credibility of the Court (Ruling no. 614/14.1TAPTM, Faro Judicial Court).*

*The victim [...] statements were sincere, substantiated, detailed, and credible; she demonstrated impartiality and objectivity, and testified in a coherent, sequential, and contextually grounded manner, with no contradictions detected in her account. Her testimony was deemed credible and succeeded in convincing the court of the truth of the facts, particularly due to the emotional and genuine manner in which it was delivered (Ruling no. 77/14.1PAABT, Santarém District Court).*

*Visibly distressed and uneasy, she provided a serious, impartial, and objective deposition, clarifying the spatio-temporal circumstances of her relationship with the defendant. She described in detail the incidents that occurred in February and March 2017 (Ruling no. 55/17.9PAPTM, Faro District Court).*

Since judges don't have specific tools or training to assess the credibility of the testimony, several interviewees admitted that they follow their "intuition", "common sense" and/or the "experience" that the professional path has allowed them to acquire. However, this common sense and intuition are socially constructed, depending on a very varied set of factors such as each one's experience, multidisciplinary knowledge on the subject, socialisation, training, etc. It is not

surprising, therefore, that different judges have completely contrasting assessments of these emotions:

*As a judge, I have found that victims of domestic violence often face considerable difficulty in telling their stories – they cry, they are visibly nervous [...] (E15, female judge).*

*I have encountered numerous cases in which the woman remained completely composed throughout her testimony. She did not cry or display overt emotion, but recounted her experience with accuracy – and this, ultimately, is what matters most when assessing her credibility and establishing the facts (E2, male public prosecutor).*

These variations indicate a lack of consistency and highlight the subjective nature of such evaluations in intimate partner violence cases. There are several risks arising from this, in particular that discretion about how a woman should behave during testimony becomes legal truth.

The self-awareness of the presence of these stereotypes was noticeable in just two interviews:

*I pay attention to the way the victim speaks. And this may be my bias, but I always thought that nobody likes to talk about their intimacy persistently, to play the victim, to expose themselves. [...] There are things that are our own biases; we have to look at things critically. When I make an evaluation, I also have to distrust myself because we are so used to certain things that I have to say, hold on, this may be my bias (E16, male judge).*

This statement highlights the imperative of maintaining awareness of one's own biases when assessing the credibility of victims, while also acknowledging the extent to which societal norms and expectations can inform and reinforce these biases. Regardless of this inability it is necessary to ask: "why is it that when we talk about domestic violence and crimes against women one always has to put the assumption that women lie?" (E17, female judge).

### **The legal imaginary of the ideal victim**

In the sentences and in the discourse of the interviewees regarding the mitigating factors, it was also possible to observe certain stereotypes related to more conservative ideals of masculinity and femininity. These stereotypes remain in spite of the increased training directed at legal actors on domestic violence (Duarte, 2023) and lead to a categorisation of victims.

### *Deserving Victim*

The assumption behind the idea of the deserving victim is that there is a lessening in the aggressor's guilt due to the victim's passive behaviour. The problem of intimate partner violence is, for many interviewees, seen as a shared responsibility, with the woman taking the decision to leave the relationship and consequently ending the cycle of violence. The interviews show that the answer to the question "why doesn't she leave?" – which underpins the mythical fight-or-flight dilemma (Garcia & McManimon, 2011) – is marked by inconsistent thinking. Women must show some level of resistance, otherwise it will be thought that they have consented, by inaction, to the perpetuation of the violence. However, it is still necessary to be careful that this resistance is not excessive, otherwise the victim is perceived as aggressive and, in this uncomfortable vicious circle, this damages her identity as an ideal victim (Garcia & McManimon, 2011, p. 3). The "deserving victim" has been identified in several studies (Garcia & McManimon, 2011; Hunter, 2006) and her legal trajectory is marked by frequent complaints and withdrawals. Consequently, these victims are described as consenting to abuse, and even attracted to violent men. This victim was found mainly in the narratives of judges who have been dealing with domestic violence cases for several years. There is less empathy for these women caused either by a certain complacency or from a lack of understanding of the victims' experiences:

*There are several cases where we find ourselves thinking: how could she have stayed with him, when he assaulted her, belittled her [...] In many instances, I simply cannot understand it – and that lack of understanding makes it more difficult to assess the case when the evidence is not robust (E18, male judge).*

The transcribed quote demonstrates an uninformed reading of the complexities of intimate partner violence, ignores the strategies developed by the victims to survive and trivialises the fear of retaliation that the victim has.

### *Aggressive Victim*

The aggressive victim is in line with the idea of the "penal couple" (Picat 1982, 39) and with the "gender symmetry" thesis – advanced by Straus, Gelles and Steinmetz (1980) – that is, it is assumed that in that specific couple both assume simultaneously the role of victim and aggressor. We have, therefore, a victim who is seen as just as (or more) guilty than the aggressor, almost annulling the guilt imputed to the latter:

*There are several cases where there is physical violence on his behalf, but she already exerted psychological violence with blackmail, threats [...] It's not one-sided violence (E18, male judge).*

*Now, as it is usually said, it takes two people to destroy a relationship. The court does not believe at all that the blame leans exclusively on one side and that one of them is totally innocent or totally guilty in the deterioration of the relationship, and even more so in the current climate of conflict existing between the accused and the plaintiff (Ruling of Lisbon Court of Appeal, 30 September 2015)*

The following case concerns an accusation of domestic violence in which it was proven, among other facts, that

the defendant approached his former partner in a public place and [...] headbutted her and put his hands around her neck, squeezing it, and forced her to retreat until she hit her head and back against the wall of a building. As a result of this conduct, the victim suffered head and neck trauma. Moreover, when passers-by tried to intervene, the accused still exclaimed “she is the mother of my child, I do what I want” (Ruling of Oporto District Court, 24 September 2015).

The court considered that “this proven episode of physical violence” was “of average seriousness”, and claimed the following:

*From June 2013, and during the entire time they lived together, the defendant and the victim had several arguments during which the defendant called the victim a “cow”, “whore” and “pig”, and she replied in the same tone. [...] The insults took place during arguments and were not one-sided, which is equivalent to saying that their devaluation or censorship cannot also be seen in a unilateral way and that these episodes in no way reflect subjugation, but rather parity (Ruling of Oporto District Court, 24 September 2015).*

Although it shouldn't be ruled out that there are cases in which both members of the couple exert violence against each other, we have to take into consideration that this type of victim results from an understanding of intimate partner violence that neglects the importance of power asymmetries in an intimate relationship and how these are (re)produced by a patriarchal social system. When patterns of coercion, fear, injury and control are taken into account, intimate partner violence is profoundly asymmetrical, with men's violence more often embedded in coercive control and producing far more serious harms.

#### *Superwoman: The non-victim*

As already mentioned, the judges' representations of this crime ignore its complexity, seeking a story that is easy to identify, describe and therefore understand. From this perspective, the victim is still a housewife, with no sources of personal income or assets, and totally dependent on the aggressor. It is true that this dependence is maintained at various levels, including the emotional level, but this view has not kept up with some of the changes in the position of women in the public

and private sphere, as well as in family dynamics. Some women have exogenous characteristics that prevent them from imagining themselves (and being seen) as victims, which is in line with the idea of passivity, psychological fragility and economic dependence on the aggressor. For Schafran (1995), these characteristics are found in the “Superwoman” type: a woman integrated into the labour market, with a successful and economically independent professional career who, consequently, has her own resources to support herself. This ideal type is fed by two fallacies. The first is that victimisation in intimate relationships is centred on the lower social classes. The second is the assumption that since these women are economically independent and have a high level of education, they can easily leave the abusive relationship.

I see, among my colleagues, some ideas, I don't know if they are biases, but they are very strong ideas that don't make sense in my opinion. One that is perhaps more evident is the idea that a successful, independent woman with a higher education cannot be a victim of these crimes. There is an immediate resistance, a doubt about the story she tells (E17, female judge).

The following decision is illustrative of the impact that the myth surrounding the “superwoman” victim can have on judicial decisions:

*She was noted at the trial hearing to be a modern woman, aware of her rights, autonomous, not submissive, employed and earning her own salary, not dependent on her husband. [...] Her strong and independent character was even confirmed by several witnesses. [...] Therefore, we believe that it would be difficult for the plaintiff to accept so many acts of abuse by the accused, and for such a long time, without denouncing them and trying to eradicate them, if necessary, by leaving him (Ruling of Viseu District Court, 3 October 2017).*

This type of victim brings into focus the already mentioned question: “Why didn’t she leave?”, reflecting a broader reluctance to accept that women with certain characteristics might remain in a violent relationship (e.g., Wallate, 2006). Since she does not meet the requirements that match the stereotype of a victim of domestic violence and the very understanding of this crime, some judges believe that this woman is a manipulative victim, that is, she forges or exacerbates violent situations in order to gain advantages from them, such as total custody of the children, benefits in the divorce, or as revenge on her ex-partner for ending the relationship.

This perception can be influenced by several factors, among them the inability to put oneself in the place of the victim. I asked the judges and public prosecutors interviewed what would they do if they were victims of domestic violence. The vast majority of female interviewees assumed that they could not imagine themselves in that situation:

*Anyone can be a victim of this type of violence, so I have to accept that it could happen to me as well. However, I cannot imagine myself being in a violent relationship for a prolonged period. I simply would not allow it (E25 female judge).*

*Any woman can be a victim, and even men, but... I can't explain it, I don't think I would subject myself to a situation of violence and humiliation, especially not for a long time (E3, female public prosecutor).*

When a female judge looks at a victim of violence, she does not see her reflection, but an image distorted by biases. So, although they are, or precisely because they are, of the same gender and are subject to the same patriarchal structures, the fact is that the condition of victimisation may cause more distance and censure than empathy.

#### *Eve: female sexuality and guilt*

In the imaginary of the “ideal victim” the question of female sexuality is central. By directly or indirectly penalising conducts which do not conform to a set of socially expected sexual behaviours, the law promotes a certain model of female sexuality which is monogamous, heterosexual and passive (Frug, 1992). “Eve”, in studies on victimology, is the one that carries the most pronounced stereotypes about women’s sexuality, as opposed to “Mary”, a chaste and domestic woman, for whom motherhood is the supreme achievement, characterised by passivity and the inability to take any position that implies authority over other people (Schaffran, 1985).

In the narratives of the interviewed judges and public prosecutors, this type of victim did not stand out. However, it was possible to find it, in a more or less subtle way, in several judicial decisions. The first case dates back to 2015 and refers to a woman who was psychologically and physically assaulted by her husband, from whom she was separated, and by her ex-lover. As proved in court, the aggressions resulted in abrasions, bruises, pain and psychological marks that affected the victim’s well-being. Still, the court considered that “this case is far from having the gravity with which, generally, cases of abuse in the context of domestic violence are presented”, and also stated that the husband’s conduct was justified by his wife’s infidelity:

*[...] The conduct of the accused occurred in the context of adultery by the plaintiff. Now, adultery by a woman is a very serious attack on the honour and dignity of men. There are societies in which an adulterous woman is stoned to death. In the Bible, we read that an adulterous woman should be punished by death. It was not so long ago that the criminal law (Penal Code of 1886, Article 372) imposed little more than a symbolic punishment for the man who, finding his wife in adultery, killed her in the act. With these references we intend only to stress that the adultery of a woman is a conduct that society has always condemned and strongly condemns (and honest women are the first to stigmatise adulteresses) and therefore views with some understanding the violence exercised by the man who has been betrayed, vexed and*

*humiliated by his wife. It was the disloyalty and sexual immorality of the plaintiff that made the accused X fall into a deep depression and it was in this depressed state and clouded by anger that he committed the act of aggression, as rightly considered in the appeal.* (Ruling of the Oporto Court of Appeal, 11 October 2017).

Although Catholic culture has historically shaped social norms and gender expectations in Portugal, the judge's invocation of the Bible to characterise the female victim's alleged infidelity introduces a moral and religious framework that is incompatible with the secular nature of the Portuguese legal order. By drawing on biblical morality, the judgment risks displacing the legal evaluation of the defendant's conduct and instead scrutinising the victim's personal life through culturally embedded, gendered assumptions concerning female chastity and fidelity. Note that the verdict does not consider infidelity in general, but only that committed by women. Legal discourse discourages women from living in celibacy or having sex outside marriage, with one partner, with multiple partners or with another woman (Frug, 1992).

In another verdict, the court acquitted the accused of the crime of domestic violence, arguing that:

*In a relationship plagued by frequent arguments over about nine years, the victim had assumed (and declared in the pre-trial hearing and trial itself) difficulties in sexual intimacy with the defendant and refused numerous times to have sexual relations with him. This [...] conferred a whole other meaning to the defendant's actions* (Ruling of the Évora Court of Appeal, 6 December 2016).

In the ruling one can also read that in the face of the refusal to have sexual intercourse with the accused, his actions were “in the light of human nature and ‘normal’ human behaviour, comprehensible”. A similar understanding is found in a ruling on a femicide case, where the court accepted the failure of the wife's duty of sexual submission to her husband as a mitigating circumstance in sentencing:

In the specific sentencing assessment, particular consideration must be given to the aggravating circumstances outlined, while not overlooking the [few] mitigating factors from which the defendant should benefit; namely, on the one hand, that he is illiterate, and also that the victim, for reasons unknown – ignorance once again favourable to the defendant – “after late March 2002, when the defendant returned from France following the completion of a work contract, [...] ceased to have sexual relations with him”, a circumstance that at least allows the assertion that violations of marital duties were not solely on the part of the defendant, and may even help explain the doubts raised in that unenlightened mindset regarding her (in)fidelity (Ruling of the Supreme Court of Justice, 27 May 2004).



The assumption of “conjugal duties” is based on stereotypical ideas about femininity and masculinity, but also about intimate relationships and marriage in particular. In a 2017 case in which the defendant was indeed convicted for the crime of domestic violence, the conviction was based, among other things, on the fact that the defendant had always refused to marry the victim and to have full sexual intercourse with her, despite living as a couple for 11 years:

*[...] the fact that for 11 years the defendant did not have sexual intercourse with the victim, despite having sexual desire and activity, constitutes a very serious psychological abuse, since he did it of his own free will, despite knowing, as he himself admits, that his partner had always wanted to marry and have children. [...] Such conduct by the defendant is offensive to the dignity and health of the plaintiff [...]. In a country which constitutionally guarantees gender equality, [...] one cannot fail to consider that the absence of full sexual intercourse with the woman with whom the defendant lives [...] is a factor which is detrimental to the mental and social health of the woman, who, at the very least, has a manifest desire to procreate (Ruling of the Guimarães Court of Appeal, 3 July 2017).*

Although the Court seeks to demonstrate that sexual activity and satisfaction are not exclusive to men, there remains a stereotypical vision of both women, whose sexuality remains associated with procreation and motherhood, and marriage, which “continues to be seen primarily, albeit under the guise of a romanticised discourse, as a central space for restricting fundamental rights, imposing duties and obligations, in essence, conditioning and oppression” (Leite, 2019, p. 38).

This categorisation shows us that gender stereotypes can be seen as affective infrastructures (e.g. Ahmed, 2004) since they cultivate paternalistic sympathy toward stereotypically feminised subjects. This affective circulation produces the conditions under which certain types of victims appear “fraudulent” and others appear “trustworthy”.

### **The perpetrator and the mitigation of guilt**

Some authors (e.g., Levit, 1998) tell us that the law, through norms and rules, legal thinking, and judicial decisions, contributes both to reproducing a typical idea of femininity and to sustaining patriarchal and heteronormative notions of masculinity. Through content analysis of the interviews and judicial decisions, it was also possible to identify a typology of perpetrators based essentially on three categories: the “victim”, the “passionate man”, and the “evil man”.

The “victim” is an aggressor who is involved in a relationship seen as conflict-ridden and often appears as a reflection of the “aggressive victim” already mentioned.

*Some men commit violence because they themselves have been subjected to repeated psychological abuse over many years (E26, male judge).*

Their guilt is also mitigated by understanding that certain contextual circumstances – whether intrinsic, such as psychological disorders or alcohol consumption, or extrinsic, such as unemployment – contribute to a certain condition of victimisation. “Poor thing”, “unfortunate”, “frustrated”, are recurring expressions in the characterisation of this man in court rulings.

Similarly, with a decrease in guilt, we have the “passionate man” whose actions are justified by the “passion” he had for his wife and could not bear the jealousy, the victim’s infidelity, or her lack of love.

*Why did the man commit the crime? Jealousy? Possession? Did the victim, in some way, contribute to this jealousy? All of this needs to be weighed in the final decision (E38, male judge).*

This category is very common in femicide cases. The mitigation of guilt for this “passionate man” also relies on the victim’s behavior, “Eve”, as we can verify in the grounds of the three femicide cases transcribed below:

*Despite the limitations imposed by the proved facts, it remains significant that the defendant had a complicated relationship with the woman he loved, who had asked him to leave the house – a request he was unwilling to accept [...] (Ruling of the Supreme Court of Justice, November 2005).*

*[...] the sequence of events [...] strongly suggests that the defendant formed the intent to take D.’s life in response to the termination of an eight-year relationship, initiated by the victim and/or driven by jealousy arising from his ex-partner’s new romantic involvement with another man. If this is the case, we are faced with a “broken heart” that triggered a dynamic of emotions and feelings in the defendant. This cannot be regarded as trivial or insignificant (Ruling of the Appeal Court of Coimbra, 3 August 2011).*

*[...] In any case, there is no doubt whatsoever that the motive for the crime was the termination of the romantic relationship initiated by the victim—a separation which the defendant refused to accept. This situation reflects a case of romantic disappointment and the emotional distress it caused the defendant (Ruling of the Supreme Court of Justice, 18 March 2010).*

The two types of aggressors discussed are examined in relation to the concept of the “reasonable man”<sup>3</sup>, a legal construct representing the standard of behaviour expected of an ordinary person.

<sup>3</sup> The figure of the “reasonable person” – referred to in Portuguese jurisprudence as the “average man” (“*homo medius*”) – is an objective standard measure that the law uses to assess a person’s behaviour in a given situation. It is a hypothetical criterion: how would an average and prudent person act in the same circumstances? According to Stern (2020), the figure of the reasonable man emerged in Common Law in the 19th century and became “reasonable person” only in the 1970s.

This concept frequently appears in judicial decisions concerning femicides committed within intimate relationships. It is used to evaluate the extent to which certain circumstances may have led the defendant to deviate from the behaviour reasonably expected – namely, to resort to violence against their partner. The fallacy of the neutrality of the law is particularly evident in this concept which is constructed based on stereotyped notions of masculinity and by reference to what is the behavior socially expected from a woman.

Finally, the most extreme case of blame is attributed to the “evil man”. The term “maliciousness”, inscribed in the previous law, remained in legal narratives even after the legislative amendment, being used to refer to cases where the exercise of extreme violence is seen as inexcusable. The “evil man” emerges when no aspect of the victim’s behaviour can be construed – whether through legally relevant considerations or through the influence of entrenched social stereotypes – as mitigating the perpetrator’s culpability. In such circumstances, the absence of any narrative that might diffuse responsibility intensifies the system’s focus on the perpetrator’s conduct, which becomes framed as unequivocally intentional and morally reprehensible. This heightened censure is further reinforced by the inherent brutality of the act itself, including the extent to which the victim is perceived to have suffered. Together, these elements shape a more pernicious interpretation of the offender’s actions, underscoring the system’s tendency to impose greater blame where neither factual nor stereotypical justifications for mitigation can be identified.

## Final reflections

The law has played a very significant role in the fight against the different forms of gender violence. Its importance should not be overlooked, nor should the investment that has been made in the legal and social training of the judiciary. However, feminist theories of law must continue to be vigilant in identifying persistent obstacles and pointing out possible emancipatory paths. Gender stereotypes are one of those obstacles.

Gender stereotypes are performative norms that the law reiterates not only through institutional design, but also through legal decisions. Law does not merely reflect gender norms, but actively produces them through classifications and jurisprudential narratives (Butler, 2011; Spade, 2011). Gender stereotypes operate as regulatory knowledge forms that structure what the law recognises as legitimate personhood, capacity, vulnerability, or harm (Butler, 1990; Collins, 1990). These stereotypes function as epistemic frames that naturalise patriarchal norms, thereby shaping how legal actors interpret evidence and assess credibility.

In a crime where victims' statements deserve careful consideration, it is crucial that judges and public prosecutors are aware of the stereotypes they harbour and how these can interfere with their decisions. When persistent, these stereotypes can become normative truths, and the risk of secondary victimisation increases whenever the victim's behaviour (or characteristics) does not match the expectations of the judges. In fact, whenever a victim falls into one of the identified stereotyped categories, the juridogenic nature of law (Smart, 1989) becomes more evident: the woman complains of a violent event and is faced with the requirement not only to convince the judge of the veracity of the event, but also to eliminate from herself any blame for the violence suffered.

The empirical analysis carried out revealed that the concept of victim is not only legally informed but is the result of social norms that are entangled in the legal culture, protected by the supposed neutrality of the law and by the acclaimed impartiality of its application. Legal actors share a real concern about the violence to which a woman may be subjected in an intimate relationship. However, the increased awareness and/or concern about this specific type of violence does not fully translate into the deconstruction of certain preconceived ideas that persist. This was also the conclusion of the GREVIO report on Portugal (2019), which concluded that judicial proceedings continue to expose victims to the risk of secondary victimisation as a consequence of enduring stereotypes, and of the European Court of Human Rights, in its recent decision *Carvalho Pinto de Sousa Morais v. Portugal* (Duarte, 2021). These prejudices are deeply ingrained in society to such an extent that legal actors often have little awareness of their susceptibility to them, and they refer to these biases as evidence resulting from their professional experience. The persistence of these biases and the limited awareness of their presence lead to potentially transformative laws intended to protect victims and hold perpetrators accountable – those with the potential to transform hegemonic social logics and relations – being captured in their potential (Krieger, 2003).

Justice must be perceived as a product of the social relations that constitute it and of the interchange between the legal and the non-legal, and between the legislated and the lived. Taking into account the margins of discretion that judges have, it is fundamental to assess how beliefs/values, traditions, ideas and emotions influence their work. Monitoring these aspects, which are notoriously ingrained in the perceptions of such a complex legal type as domestic violence, is fundamental. It is necessary ongoing awareness, education, and training to address these biases and myths and ensure that laws intended to transform social dynamics are not undermined or misinterpreted in their application. This training must necessarily be based on a “gender legal pedagogy” (Duarte, 2023) with an intersectional approach. This pedagogy recognises that legal and judicial understandings of violence in intimate relationships must take into account the complexity of victim's stories in which violence appears not as an event, but as a structure, reproduced and legitimised by social institutions. It is, therefore, a process of recognising

narratives – legal storytelling –, shared by victims and activists, that guides the law towards a path that makes visible the structural processes through which law continuously reproduces cisnormative, racialised, and heteropatriarchal gender orders, even when appearing formally neutral. “Gender legal pedagogy” must be conceptualised as a site of structural transformation in legal reasoning and legal culture. Scholars from transformative justice and intersectional legal education, argue that legal education transmits dominant epistemologies that reproduce racialised, gendered, and classed hierarchies, suggesting that pedagogy must instead intervene in the underlying assumptions shaping legal knowledge (Delgado & Stefancic, 2017; Davis, 2011). Adopting a “gender legal pedagogy” implies recognising law as a dynamic and contested domain shaped by overlapping regimes of power and truth (Foucault, 2002) rather than a neutral framework for regulating pre-existing gender categories. In short, “gender legal pedagogy” must be seen as a practice that cultivates critical reflexivity, collective responsibility, and epistemic openness, enabling legal actors to interrogate how power operates through doctrine, legal practice, and institutional norms, and to imagine justice frameworks that move beyond the constraints of existing legal systems. This approach will allow a more nuanced legal understanding of intimate partner violence and its various dimension, contributing to fairer and more just outcomes for survivors of domestic violence, ensuring that their experiences are taken seriously, their voices are heard, and their rights are protected.

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