***Contribution to the***
***Questionnaire for the evaluation of the implementation of the***
***Council of Europe Convention***
***on Preventing and Combating Violence***
***against Women and Domestic Violence by the Parties***

***2. Where relevant, please provide information on any measures taken to ensure the alignment of any definitions of domestic violence and of violence against women in national legislation or policy documents with those set out under Article 3 of the Istanbul Convention and provide the relevant applicable provisions in English or French.***

*In A.P.M.J.'s opinion, this is the greatest handicap of Portuguese law considering that the criminal definition of domestic violence is subject to varying interpretations. Namely, some courts interpret the concept of mistreatment too narrowly, demanding high severity and/or repetition of the conducts in order to qualify actions as crimes of domestic violence. This seldom results in the conviction for smaller crimes, that depend on the victim's complaint and that are not associated with the protection measures linked to the conviction for domestic violence. In cases where there has not been a complaint from the victim, some courts believe that the legitimacy requisite of the penal procedure is not fulfilled and hence the defendant is absolved.*



*The same applies to sexual violence. The concepts of abuse, rape, consent and many others tend to vary. A.P.M.J. believes this constitutes a huge obstacle in prosecuting and punishing offenders. Furthermore, the burden of proof often comes at a high price, with the systematic discrediting of victims, especially when there is an underlying romantic relationship between victim and abuser.*

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*With the entry into force of the Istanbul Convention in Portugal, the crimes of sexual coercion and rape have undergone successive amendments – in 2019 and 2023. Law No. 101/2019, dated September 6, in response to criticism by GREVIO, and inspired by German law, clarifies what is meant by coercion. Consequently, Section 3 was added to Articles 163 and 164: "For the purposes of the provisions in section 1, coercion is understood as any means not provided for in the previous section, (...) against the discernible will of the victim." The term "discernible will of the victim" clarifies that the concept of "coercion" is fulfilled whenever the agent acts against the will of the victim, with knowledge thereof. To act against the will of the victim, the agent must recognize it, that is, the victim must express their will. Therefore, a "no" from the victim is required, whether verbal or tacit (which can be expressed through gestures, attitudes, behaviors, or body expressions). Another amendment in 2019 was a step back in the protection of sexual freedom. This refers to the removal of "suffering" from Section 1 of Article 163 and Clauses a) and b) of Section 1, and Clause b) of section 2 of Article 164. Between the 2019 Law and the 2023 amendment (Law No. 45/2023, dated August 17) – which corrected this legislative oversight – only actions were protected. Thus, if the victim did not have an active role in the sexual act, the legal type could not be considered fulfilled, as they were "suffering" rather than "acting", which did not respect the principle of legality. However, some judicial decisions, such as the Judgment of the Court of Appeal of Lisbon, dated March 19, 2024, Case 3615/21.0T9SNT.L1-5, have broadened the definition of "acting" to include "suffering."*



*A.P.M.J. is saddened to say that currently there is no legislation regarding obstetric violence in Portugal, and the term is not well received by healthcare professionals and the professional associations who regulate those professions. As such, corporatism constitutes the main political obstacle to legislating women's rights during pregnancy and childbirth, and to protecting them from this type of violence and to criminalise obstetric violence. There is a law (Law No. 110/2019, of the 9th of September) that enshrines some rights during pregnancy*

*and childbirth, but it does not make a specific reference to obstetric violence, nor does it establish consequences for violating the law. In 2019, the Government recommended the Assembly of Republic to specifically legislate in order to eliminate obstetric violence, especially the infamous kristeller's manoeuvre and routine episiotomies, already considered as malpractice in the WHO's opinion. Regarding criminal matters, the only way to criminally complaint of obstetric violence is by fitting this conduct within other criminal provisions, such as corporal offences (it applies to kristeller's manoeuvre and other kinds of physical violence), female genital mutilation (it can be applied, in theory, to episiotomies - a surgical cut in women's perineum and vagina), homicide (it applies when mother or baby death occurs) and, eventually, medical-surgical interventions without informed consent (this one is never applied in criminal cases, as it is dead letter in Portuguese criminal law). In most cases, the Public Ministry archives the cases without making an accusation, only prosecuting when the damages are considered tangible and serious, such as when death or cerebral palsy occurs. The lack of typification of obstetric violence in effect hinders its operability in courts of law. Furthermore, the judicial practice of ignoring birth trauma and the violation of fundamental rights within the scope of obstetric and maternal care revitimizes victims of obstetric violence, and allows for the continuation and normalization of harmful practices entrenched in maternal and obstetric healthcare.*



***6. Please provide information on any new development since the adoption of GREVIO's baseline evaluation report on your country on the introduction of data collection categories such as type of violence, sex and age of the victim and the perpetrator, the relationship between the two and where it took place, for administrative data of relevance to the field of violence against women and domestic violence emanating from law enforcement agencies, the justice sector, social services and the public health care sector.***

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*The domestic violence database's creation is established by law, but it is still not implemented.*

*Concerning obstetric violence, although the law requires the collection, treatment and disclosure of data pertaining to all births in public and private hospitals alike, there is no such effort. The lack of human resources and other means for such endeavour is often reported. Sadly, this serves as another tool for the occlusion of concrete instances of gender-based violence.*

***7. Where relevant, please provide information on any new development since the adoption of GREVIO's baseline evaluation report on your country to enable disaggregated data collection:***

***a. on the number of emergency barring and protection orders and the number of breaches and the resulting sanctions;***

***b. on the number of times custody decisions have resulted in the restriction and withdrawal of parental rights because of violence perpetrated by one parent against the other.***



*To A.P.M.J.'s knowledge, there is no such database.*

***8. Please provide information on measures taken to allow cases of violence against women and domestic violence to be tracked from reporting to conviction, at all stages of the law-enforcement and judicial proceedings.***

*The law provides for the database to collect these elements. However, it is not yet operational. On the other hand, Article 37 of Law 112/2009 of September 16, which stipulated the communication of decisions on dismissal, accusation, acquittal, and conviction, has been revoked.*

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*It is A.P.M.J.'s belief that one of the handicaps of not having legislation to specifically typify obstetric violence, let alone criminalise it, is that it hinders the effective protection and judicial coverage of such types of violence. As such, although specific acts of obstetric violence have tutelage in the eyes of the law (in civil suits, as a result of medical malpractice, criminally anywhere from personal injury to discrimination…), the legal dispersion of what constitutes a specific type of violence makes it difficult to apply to concrete cases, and even more difficult to track from a data collection point of view.*

***13. Please provide information on measures taken to increase the number of available preventive intervention and treatment programmes for perpetrators of domestic and sexual violence both for voluntary and mandatory attendance.***



*Preventive intervention and treatment in judicial processes continues to be limited to programs for offenders in the context of domestic violence, always on a voluntary basis. Only in sentencing can the treatment obligation be imposed as a condition for the suspension of a prison sentence.*

*However, this treatment obligation only persists until the closure of the case, with no mandatory follow-up after that date, even if in the context of a different process (only if the situation falls under the Mental Health Law).*

***30. Please indicate the procedures and time frames for collecting and storing forensic evidence in cases of sexual violence (e.g. existence of protocols, use of rape kits) in the relevant services.***

*Following a police complaint, if occurring within a useful time frame for collection of physical evidence, victims are accompanied by police officers to the*

*area's major public hospitals or medical-legal offices, where such evidence may be collected by medical-legal experts. In Portuguese health services there exists a rape kit. Often photographic evidence of possible existing trauma is also collected. The procedures and time frame for collecting, processing and storing evidence in the cases of sexual violence are obscure to the victims and to their legal representation, when they exist.*

***32. Please indicate whether under national law incidents of violence covered under the scope of the convention must be taken into account in the determination of custody and visitation rights of children.***

*The law regulating the determination of custody and visitation rights of children only includes two provisions related to domestic violence — one prohibiting mediation by specialised professionals in cases of domestic violence and another providing that, if there is a restraining order between parents in a criminal proceeding, the Public Prosecutor's Office initiates a custody or responsibility modification action regarding the child within 48 hours, with the first judicial hearing scheduled to take place within 5 days.*



***If this is the case, please clarify to what extent these provisions:***

***a. explicitly list domestic violence as a criterion to be taken into account when deciding on custody and/or visitation rights in the applicable legislation. If so, please clarify whether this criterion is/has been applied in practice in the determination of both custody and visitation rights;***

*According to national legislation, situations of violence covered by the Convention must be taken into consideration when determining the exercise of parental responsibilities regarding decision-making regarding the child's life, in*

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*accordance with article 1906-A of the Civil Code (CC), being the subject of an urgent process to regulate the exercise of parental responsibilities pursuant to article 44º-A of the General Regime of Civil Guardianship Procedure (RGPTC), both with regard to the visitation regime, which may be conditioned or carried out under the supervision of professionals – article 40, paragraphs 9 and 10 of the RGPTC.*

*In practice, the best interests of the child have been understood as requiring a life free from violence.*

*However, from the perspective of A.P.M.J., Family Courts are still considerably reluctant to conduct an effective investigation into the context of violence.*

***b. acknowledge the harm that witnessing violence by one parent against the other has on a child;***



*The Portuguese legislator recognized the harm resulting from the provision of testimony, having established the possibility of using statements for future memory, given in criminal proceedings, and statements in other civil proceedings in the presence of the judge or prosecutor in cases in which the child must give evidence. declarations (art. 5.º no. 7, al.s d) and e) of the RGPTC).*

*The possibility was also expressly established for the child to make statements with the support of a professional or person they trust, informally, only in the presence of the judge, in accordance with the Convention on the Exercise of the Rights of the Child and the Guidelines for child-friendly justice.*

*So, children who are in the context of domestic violence are considered direct victims under national law even if they are not themselves the object of violence.*

*However, regarding the inclusion of the aggravating factor provided for in Article152º, Nº2 Clause a) of the Portuguese Penal Code, the question is: should the child be considered an independent victim of an autonomous instance of domestic violence, or should their exposure to typical behaviour conducted against one of the parents or siblings in the context of family life be considered merely an aggravating factor to the initial crime?*

*As such, another very relevant question depends on the answer given to the previous one: should the perpetrator be convicted for several offences – (at least) for as many crimes of domestic violence as there are victims of abusive behaviour – or should the abuser be criminally liable for a single aggravated crime within the limits of the abstract criminal framework, due to having been committed against another family member, but in the presence of the child? The content of Clause a) of Paragraph 2 of Article 152 of the CP is not clear.*



*The consideration that there may exist a combination of aggravated, autonomous, but interdependent domestic violence crimes would be more in line with the Istanbul Convention, who recognized that children are also victims of domestic violence, even when they are only witnesses of violence between family members – Article 46, clause d). Therefore, in this regard, a clarifying legislative intervention is also required to take into account the degree of artificiality in the distinction between direct and indirect victimization of children in contexts of domestic violence.*

***c. ensure that custody with the non-violent parent is preferred over foster-care;***

*The Portuguese law establishes that custody with the non-violent parent is always preferable to foster-care.*

*The Portuguese legislator only provides for the possibility of a child being removed from their family if both parents put them in danger and intentionally violated their parental duties.*

*The Constitution of the Portuguese Republic establishes in article 36, no. 6 that Children cannot be separated from their parents, except when they do not fulfil their fundamental duties towards them and always by judicial decision.*

*This right of the child not to be separated from their parents and in the case of the non-violent parent has always been fulfilled, and is also enshrined in ordinary law that provides for and subjects the removal of the child from their family to strict and demanding criteria, art. 1907th and 1918th of the CC.*

***d. foresee the screening of civil proceedings related to the determination of custody or visitation rights for a history of domestic violence among the parties;***



*There exists the possibility of the regulation and exercise of parental rights to be supervised by a technical team, but it does not specify that domestic violence is one of the conditions on which such must be mandatorily effected. As such, it depends on the acting judge(s).*

*Legal principles and commands are not applied in the processes of regulating the exercise of parental responsibilities in the best way, with a tendency to separate the figure of the "husband" from that of the "father", "a husband is not necessarily a bad father", and a devaluation of the harm suffered by children resulting from exposure to domestic violence. When the child is not the direct victim of mistreatment, it has been considered that he or she should not be "deprived" of coexistence with the aggressor.*

***e. foresee that judges conduct risk assessments or request the disclosure of risk assessments drawn up by law-enforcement agencies or other competent stakeholders for victims of domestic violence, with a view to taking them into account and determining the best interest of the child in the context of custody and visitation decisions.***

*The law allows the judge to carry out all the steps he deems necessary to determine and decide in accordance with the best interests of the child. In processes aimed at determining custody and visitation arrangements, the judge is not subject to either the facts that the parties bring to the process or the evidence that is indicated, thus she/he can and must determine all evidentiary measures or request criminal proceedings , if there is documentary or expert evidence that is useful for the decision, including risk assessment (Art. 12 of the RGPTC and 1409.º, no. 2 of the Civil Procedure Code – CPC).*



*For family jurisdiction there is not such a provision. The only rule that specifically binds judges to conducting a risk assessment is outlined in Law No. 112/2009 of September 16, which states that in criminal proceedings the court should order an updated risk assessment when scheduling a trial date. Additionally, A.P.M.J. believes that mandatory risk assessment only exists for the police and the Public Prosecutor's Office. However, the risk assessment manual stipulates that risk should be reassessed at the end of a certain period based on the previously calculated risk level, implying continuous risk assessment. In practice, though, A.P.M.J.'s empirical evidence suggests that this is not always complied with.*

*In the area of crimes of domestic violence, it is of decisive importance for the success of the investigation that, the production of evidence is carried out in a timely manner, preferably during the period of 72 hours as soon as news of the*

*crime is obtained, as established fin Article 29-A of the Law No. 112/2009 of 16 September.*

*The recording of declarations for future memory of the victims should have the same urgency and speed as the first judicial interrogation of detained defendants and, therefore, ideally it should take place within 72 hours of the complaint, except in cases where, due to trauma, the victims are not yet in the mental and emotional conditions that allow them to report the facts, in which case the Victim Support Technician would be the one to provide such information and who, in consultation with the Court, would indicate the time at which the victim was emotionally stabilised to be able to give statements with the indispensable tranquillity.*

*The victims should always be assisted by a Lawyer, even if publicly mandated, according to a shift schedule identical to that used for defendants, when heard during the first judicial interrogation.*



*The risk assessment should be carried out not with the news report (because the way this assessment is designed will always involve the victim hearing about the facts outside the conditions of privacy and serenity that should involve making declarations for future memory), but only after such declarations have been made for future memory and based on them (thus avoiding hearing the victim more than once about their experience of violence and abuse and, thus, minimising secondary victimisation).*

*Victims that are minor should have their own and autonomous victim status. Risk assessment sheets should have specific questions adapted to assess the risk of revictimization of children.*

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*The language used in the questions included in the risk assessment sheets must be simple, direct, easily understandable, based on a literacy standard that simplifies the assessment and makes it more reliable to the victim's real living conditions and their interaction with the aggressor.*

***33. Please describe the measures in place to ensure that judges, court-appointed experts and other legal professionals:***

***a. have sufficient knowledge of the law and understanding of the dynamics of intimate partner violence, including the psychological impact of witnessing violence on the child;***

*A.P.M.J. considers that training in this matter is insufficient.*

*Prior to the appointment of any judge, candidates must undergo initial training lasting one year (under the responsibility of the Center for Judicial Studies – CEJ) and a one-year internship in the courts, after which they perform functions of and as judges in internship regime. As part of the initial training, specific legal, sociological and psychological training is provided on the crimes covered by the Convention and also on the hearing of the child. These themes are addressed within the scope of criminal jurisdictions and family and children.*



*After their appointment as judges, they are statutorily obliged to undergo continuous training (art. 10.º A of the Judges' Statute) under the responsibility of the CEJ, which every year develops multidisciplinary training actions on the subject.*

*Therefore, we believe that it is not due to lack of training that the principles and norms of the Convention and national law are not properly applied, but due*

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*to mentalities, beliefs, stereotypes, and biases that affect the function of judging and accusing.*

*The training of technicians is not the responsibility of the CEJ, although they are involved in both initial and ongoing training provided to candidates for judges and prosecutors, judges and prosecutors in office.*

***b. duly take into account victims' grievances in cases of domestic violence and hear children victims/witnesses, where applicable, in the determination of custody and visitation rights;***

*Children are generally heard, but not necessarily about issues of violence since it is not mandatory. Their audition takes place especially when they are 12 years of age or older, as this is the age at which their hearing is mandatory in processes to determine custody and visitation rights (art. 4 of the RGPTC). The child may be heard earlier if he or she shows maturity for this purpose, and the judge must assess this capacity on a case-by-case basis if necessary with the help and collaboration of a specific and appropriate professional.*



*However, there is a devaluation of the issue of DV in the processes of determining custody and visitation rights, going so far as to decree alternating residences for the child – one week with each parent – and visitation rights with deliveries involving the aggressor and the victim.*

***c. are informed of the unfoundedness of notions of "parental alienation" or analogous concepts that are used to overshadow the violence and control exerted by perpetrators of domestic violence over women and their children.***

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*Judges are informed of all trends and theories tending to devalue complaints, the care to be taken when analysing allegations and steps to be taken with a view to ensuring decisions that respect human rights.*

*However, in Portugal, "parental alienation" is a concept largely accepted by case law/doctrine and is often invoked in national courts. This causes great suffering to parents, largely mothers, and children who do not want to visit the perpetrator, and it is a big concern for A.P.M.J..*

***34. Please provide details on the procedures in place to ensure that the competent court for family-related issues co-operate/communicate with other relevant bodies/professionals, including, but not limited to, criminal courts, law-enforcement agencies, health and education authorities and specialist women's support services when taking decisions on custody and visitation or when offering family law mediation. Please specify whether the law provides a legal framework for any of the procedures in place.***



*Regarding the connection between Family and Criminal Courts, there is an obligation for the criminal jurisdiction to communicate to the family jurisdiction when a measure prohibiting contact between parents is applied. The law allows for the use of statements taken in the criminal process from children in the family process.*

*The Family Court can, but is not obligated to, interact with other entities.*

*The criminal procedural law provides and requires that the Public Ministry (MP) at the Criminal Court immediately inform the MP at the Family and Minors Court of the existence of criminal proceedings for the commission of the crime in*

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*which and as soon as the obligation or obligations that imply the restriction of contact between parents (...), for the purposes of establishing, as a matter of urgency, the respective process of regulation or changing the regulation of the exercise of parental responsibilities (art. 200, no. 6 of the Code of Procedure Criminal, in conjunction with articles 1906.º A of the CC and 44.º A of the RGPTC).*

*In addition to this imposition of communication and initiation of appropriate action to determine or change custody/custody and/or visits, the judge in the process of regulating or changing custody/custody and establishing a visitation regime as soon as the existence of violence is raised, of whatever type, and even negligence, contact all services that have or may have contact with the child, from school, nursery, tutoring centers, child protection committees, health centers, hospitals and all entities or people with whom the child contacts or lives in order to collect as much information as possible so that they do not hand the child over to a possible aggressor, or person who does not have parental skills – he is obliged to take these steps, taking into account the nature of these processes to which was already mentioned in answer 32.e).*



***35. Please provide detailed information on the procedures in place (including, if applicable, the relevant personnel used, the specific infrastructure available), in the exercise of custody and visitation rights, to:***

***a. eliminate the risk for the abused parent to be subjected to further violence;***

*When situations of violence or serious conflict between parents are demonstrated, family courts must determine, if visiting regimes for the child with the non-resident parent are maintained, that the child is handed over in the presence and with the mediation of a professional, such as provided for in art. 40, paragraphs 6 and 7 of the RGPTC, involving the Family Support and Parental*

*Counseling Center (CAFAP) and technical support technicians to the courts (art. 20 of the RGPTC).*

***b. eliminate the risk for the child to witness or experience violence;***

*Delivery of the child to an appropriate location, such as CAFAP, without any crossing between the parents, ensuring that the child is handed over to the aggressor by a third person, in order to avoid persecution by the aggressor of the other parent or tactics to that you can find him/her.*

***c. ensure that the responsible personnel are trained and that the facilities are suited to enable safe supervised visitation.***

*The training of technicians is not the responsibility of the Court, nor of the Ministry of Justice, so the judge can only inquire about the training of the technicians who make up the technical support and advisory team for the court, determining that the one who has the appropriate competence carry out the supervised visit, and can and should visit the specified location to ensure that they have suitable conditions for the intended purpose, both in terms of safety and suitability for the child.*



***36. Please indicate whether national provisions foresee the withdrawal of parental rights in criminal sentences if the best interest of the child, which may include the safety of the victim, cannot be guaranteed in any other way.***

*The criminal law provides that the Criminal Court itself, judging the accusation of committing a crime of domestic violence, as well as crimes of sexual abuse committed against children, to be valid, may inhibit the aggressor from*

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*exercising parental responsibilities, without the need for recourse to the court. family and minors (art. 152, no. 6 and 179 of the CP).*
*However, there are few criminal decisions that decree the inhibition of the exercise of parental responsibilities, or even the precautionary restriction of the exercise of parental responsibilities during the course of the criminal process.*

***37. Please provide information on the measures taken to ensure that mandatory alternative dispute resolution processes are prohibited in criminal proceedings related to cases involving the different forms of violence against women covered by the Istanbul Convention.***

*The provision for restorative meetings in cases of domestic violence was included in Law No. 112/2009 of September 16, a legal provision that has been repealed.*



*However, if a victim of domestic violence requests provisional suspension of the proceedings in Portugal, it is mandatory for such a measure to be applied, with the only legal requirements being that the perpetrator has no criminal record or prior provisional suspensions for the same type of crime. A.P.M.J. believes that this mitigates the public nature of the crime and allows for consensus solutions to be applied in situations of violence even when guilt does not permit it.*

*Sexual crimes against minors can also be subject to provisional suspension of the proceedings, whenever the Public Prosecutor's Office believes that this outcome best serves the interests of the victim.*

*A.P.M.J. believes that this rule allows for the normalization of sexual abuse against minors by the system, as there is difficult to foresee situations where the minor's interest may result in this benefit for the defendant.*

*In its most violent and/or lasting forms, domestic violence is associated with tragic consequences that result, in the worst case scenario, in the murder of the victim, the suicide, or even in the murder of the aggressor and, outside of that, in general, in incapacitation irreversible or almost irreversible impact on most victims, due to the extremely serious physical, psychological and emotional damage that degrades or takes away their health and personal, professional and social relationship skills, which, consequently, involves high social costs. Therefore, it deserves a vehement and effective response from Criminal Law, in preventing, combating and repressing this type of crime.*

*The abstract criminal framework provided for in Article No. 152 of the Portuguese Criminal Code does not have enough scope to cover, from a legal point of view, the enormous plasticity that the phenomenon of domestic violence has at an empirical level. This can contribute to increasing the victim's vulnerability, the aggressors' feeling of impunity and discredit in the Criminal Justice system.*



*To illustrate with a concrete example, the crime of serious qualified physical integrity through Article No. 144 of the Portuguese Criminal Code, which aggravates offences against physical integrity resulting in: the deprivation of an important organ or limb, or serious and permanent disfigurement; the loss or serious impairment of the ability to work, intellectual capabilities, procreation or sexual enjoyment, or the possibility of using the body, senses or language, the emergence of a particularly painful or permanent illness, or anomaly serious or incurable mental illness, or danger to life, has an abstract criminal framework with a maximum limit of ten years. However, if the same consequences result for the victim of corporal punishment or psychological abuse or sexual offences, carried out in a family environment and of abuse of power, therefore, in the execution of crimes of domestic violence, the maximum limit of the applicable criminal framework is eight years in prison, under the terms of Article No. 152, No. 3, Clause a) of the Portuguese Criminal Code.*

*With this difference, the legislator conveys the message that serious and permanent injuries caused by attacks on physical integrity between two strangers are more serious than if they occur within a family relationship or in a close relational context, in which values of mutual protection, respect, affection and solidarity should prevail.*

*The five-year sentencing limit also has two other consequences that neutralise the purposes of strengthening the protection of particularly defenceless people, such as victims of domestic violence, expressly assumed by the legislator, from the outset, in No. 1, Clause j), of the Article No. 67-A of the Portuguese Criminal Procedure Code and in Laws No. 112/2009 of 16 September and No. 130/2015 of 4 September. These state the admissibility of appealing to the provisional suspension of the process and the systematic appeal to the institution of suspension of the prison sentence. The appeal to the provisional suspension of the process provided for in Article 281 of the Portuguese Criminal Procedure Code in the pre-judicial phase of the process is incompatible with the public nature of the crime of domestic violence and with its classification as a violent crime in the No. 1, Clause. j) of the same provision.*



*The statistical data and studies carried out on the prevalence of convictions in prison sentences suspended upon execution may correspond to an excessive use of the institute of suspension of the execution of the sentence, which does not reflect the seriousness of the crimes and does not fully and effectively meet the demands of general and special prevention that must justify the application of criminal sanctions*

*It contradicts the jurisprudence of the ECHR, which has even equated it with violation of the right to life (Article 2) and torture, prohibited by Article 3, both of the European Convention on Human Rights determine more severe forms of physical and psychological abuse typical of the crime of domestic violence*

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*It also violates the values of the European Convention on Human Rights and the Istanbul Convention (namely articles. 45 to 50 of this Convention), and GREVIO's recommendations to the Portuguese State, regarding the understanding of domestic violence as a matter of human rights and violence of gender and the need for penalties to be compatible with the seriousness of the facts, and to reinforce the criminal liability of offenders, set out in numbers 191 and 200, as well as in conclusion 45 of the 2019 GREVIO's Report.*

*Regarding obstetric violence, as there is no such crime in the Portuguese Criminal Code, alternative dispute resolution processes are often the best choice, especially when it means negotiating with private hospitals, as these have insurance and can compensate the victims for damages. This kind of agreement only happens depending on the result and not on the type of violence. If the result is physical damage for the mother, it's often disregarded as "normal consequences of childbirth", but when the result is a dead foetus/baby or a baby with cerebral palsy, private hospitals tend to reach agreements in order to compensate the victims, but only if they sign an agreement stating they will not file criminal or civil complaints against those healthcare professionals and/or the hospital based on those facts.*



***41. Which measures have been taken to ensure that the premises of police stations are accessible and suitable for receiving and interviewing victims of violence while ensuring their privacy? Is it possible to report cases of violence against women elsewhere than in police stations, including through digital means?***

*To the best of A.P.M.J.'s knowledge, police stations are not equipped with such spaces. The interviewing rooms for filing police complaints generally have some degree of privacy, and individual police officers may go to great lengths personally to ensure the comfort of the reporting victim. The norm for filing any*

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*complaint is the in-person complaint made at police stations, with digital complaints not being offered.*

*Complaints of domestic violence can be filed not only at police stations but also at Public Prosecutor's Offices and Medical-Legal Offices. Furthermore, as it is a public crime, any entity that becomes aware of a situation of domestic violence must report it to the Public Prosecutor's Office, regardless of the victim's desires to file a complaint.*

*Complaints or reports can all be made digitally.*

***42. Please explain whether specialist police/prosecution units exist to investigate and prosecute violence against women and specify: a. which forms of violence against women they are competent for; b. whether such units exist in all police/prosecution districts throughout the country.***



*In the Portuguese Public Prosecutor's Office, there is specialisation in domestic violence. There are specialised units for investigating DV crimes in Porto, Sintra, Lisbon, and Seixal. These units handle cases of domestic violence as well as family and children welfare-related cases associated with these criminal proceedings. However, in most locations across the country, this specialization does not exist within the Public Prosecutor's Office.*

*Within the investigative departments of the Public Prosecutor's Office, there is usually specialisation, with one or more prosecutors dedicated to handling criminal proceedings related to domestic violence. Sometimes, they also handle cases of sexual crimes, forced marriages, female genital mutilation, soliciting prostitution, and stalking.*

***45. Please indicate whether protocols/standard operating procedures or guidelines for police officers are in place providing guidance on how to receive reports, interview victims, investigate and collect evidence in cases of rape and sexual violence, domestic violence, psychological violence, stalking, sexual harassment (including their online manifestation), forced marriage, female genital mutilation and forced sterilisation/abortion. Please provide information on how the authorities ensure the comprehensive collection of evidence beyond the victim's testimony.***

*There is the Police Action Manual which establishes all procedures that must be carried out by the police in cases of domestic violence.*

***48. Please describe any standardised and mandatory risk assessment tools in use by all relevant authorities in all regions for forms of violence against women such as stalking, violence committed in the name of so-called honour and domestic violence and to what extent these tools are being used in practice to assess the lethality risk, the seriousness of the situation and the risk of repeated violence with a view to preventing further violence.***



*To the best of A.P.M.J.'s knowledge, in Portugal, risk assessment is only conducted in cases of domestic violence. The assessment form is provided for criminal proceedings and consists of 20 questions, the answers to which allow for the calculation of risk at three levels - low, medium, and high. The form measures the risk of recurrence of violent acts or a lethal outcome. The varying levels of risk carry different consequences, namely in terms of the timeline of a future reassessment. As previously explained, the continuous assessment/reassessment deadlines are unfortunately not complied with, due to insufficient means to be allocated to these tasks.*

***Please specify whether the following elements are considered as red flags when carrying out the risk assessment:***

***a. the possession of or access to firearms by the perpetrator;*** *Yes.*

***b. the filing for separation/divorce by the victim or the break-up of the relationship;*** *Yes.*

***c. pregnancy;*** *Yes.*

***d. previous acts of violence*** *Yes.*

***e. the prior issue of a restrictive measure;*** *Yes.*

***f. threats made by the perpetrator to take away common children;*** *Yes.*

***g. acts of sexual violence;*** *Yes.*

***h. threats to kill the victim and her children;*** *Yes.*

***i. threat of suicide;*** *Yes.*

***j. coercive and controlling behaviour.*** *Yes.*



***50. Please describe the efforts made to analyse retrospectively all cases of gender-based killings of women, in the context of domestic violence and other forms of violence against women to identify the existence of possible systemic gaps in the institutional response of the authorities with the aim of preventing such acts in the future.***

*A.P.M.J. acknowledges that there has been intense work in this regard by the team legally responsible for the analysis.*

*There is an obligation to report the existence of cases of homicide or attempted homicide, and the team analyses the cases and, in the end, produces recommendations for the various stakeholders in the system.*

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***51. Have any legislative or other measures been taken to introduce and/or amend the legal framework governing emergency barring orders in order to align it with the requirements of Article 52?***

*No.*

***53. Have any legislative or other measures been taken to introduce and/or amend the legal framework governing restraining and protection orders in order to align it with the requirements of Article 53?***

*No.*

***55. Please provide information on the measures taken to ensure the following:***

***a. that the relevant agency informs the victim when the perpetrator escapes or is released temporarily, at least when they or their family might be in danger (paragraph 1 b);***



*The release must be communicated.*

***b. the protection of the privacy and the image of the victim (paragraph 1 f);***

*Regarding child victims, the Victim's Statute establishes that information that may lead to the identification of a child victim shall not be disclosed to the public (article 22, No. 5 of the Statute).*

***c. the possibility for victims to testify in the courtroom without being present or at least without the presence of the alleged perpetrator,***

***notably through the use of appropriate communication technologies, where available (paragraph 1 i);***

*This possibility is legally provided for in the Criminal Procedure Code, in the Victim's Statute and in the Law on Domestic Violence.*

***d. the provision of appropriate support services for victims so that their rights and interests are duly presented and taken into account (paragraph 1 e).***

*This possibility is legally provided for in the Victim's Statute and in the Law on Domestic Violence.*

***56. Please provide information on new developments since the adoption of GREVIO's baseline evaluation report on your country concerning:***



***a. emerging trends in violence against women and domestic violence, including its digital manifestations (types of perpetration, groups of victims, forms of violence);***

*Obstetric violence is very common in Portugal, in all hospitals, whether public or private. It's perpetrated by healthcare professionals such as obstetricians and midwives, but also anaesthesiologists and paediatricians. The victims are pregnant people during consultations or, most often, during childbirth and in the immediate post-partum period. It can range anywhere from mild psychological violence to severe physical violence, and any combination of these. The most common types of obstetric violence have one thing in common: the lack of informed consent. Childbirth is routinely medicalized, midwives have no autonomy (as they should have, in the scope of the exercise of their professional skills, conferred by the Regulation No. 391/2019) and women are mistreated as*

*if Human Rights were suspended in virtue of the pregnancy and birth. Some medical interventions are performed without consent and they are often presented as mandatory. Private hospitals now present a document called "term of informed consent" that they coerce pregnant people to sign when entering the maternity ward, refusing admission without the signature, and in which the pregnant person signs off to every medical intervention that may be offered, giving pre-emptory consent to anything that may happen during the administration of obstetric and maternal care, in a direct violation of the laws that frame informed consent in Medicine in Portugal. There is a special concern regarding BIPOC persons and migrants in Portugal. Non-Portuguese mothers represented over 20% of births that occurred in Portugal in 2022. These families are especially risk because they don't understand Portuguese and can't speak for themselves, although the law requires interpretation for this cases. Likewise, persons with disabilities, neurodivergent persons, and any other persons who have a single or a combination of criteria of alterity, especially if visible, is at a higher risk of suffering from obstetric violence.*



***b. emerging trends in domestic case law related to violence against women;***

*Regarding obstetric violence, there have been criminal complaints made by women, but the Public Ministry doesn't qualify them as obstetric violence given that there is no such autonomous crime on our Penal Code and, more often than not, those complaints are dismissed by lack of evidence of crime, even when the lack of consent for medical interventions is the leading complaint.*

*As previously mentioned, legislative changes regarding sexual crimes have led to an evolution in the Portuguese Penal Code. As a result of these changes, case law has also evolved.*

*Notably, with the concept of "against the discernible will of the victim," a decision by the Supreme Court of Justice in the judgment dated February 24, 2022, Case No. 249/18.0JAFAR.E1.S1, clarified "(...) by making clear that situations of coercion are identified by reference to the discernible will of the victim, it expressly enshrined the dissent model, i.e., there will be coercion whenever the sexually significant acts performed by the agent are contrary to the victim's will (dissent)." Another example is the judgment of the Porto Court of Appeal, dated September 21, 2022, Case No. 3006/20.0JAPRT.P1, which dealt with a case of rape committed by an osteopath while treating a patient, during which he inserted a finger into her vagina. This Court, in analyzing the element "against the discernible will of the victim," states that, "(...) after the amendment of Article 164 with the reform introduced by Law No. 101/2019, the crime is considered committed when the agent acts without the victim's consent, regardless of the means used to coerce."*

*Furthermore, a judgment of the Coimbra Court of Appeal, dated March 4, 2020, Case No. 76/18.4PBCBR.C1, states "We are inclined to consider that the mere dissent [non-consent] of the victim, depending on the circumstances of the case, may constitute the objective element of the crime in question, a position that (...) finds support in the current wording of section 3 of Article 164 of the Penal Code, introduced by Law No. 101/2019, of 09.06, (...) a provision that we believe unequivocally translates the real scope of Article 36 of the Istanbul Convention."*



*With regard to the concept of violence as a typical means of constraint required by the offences of sexual coercion (Article 163, number 2 of the Portuguese Criminal Code) and rape (Article 164, number 2 of the Portuguese Criminal Code), there has been a change in the way the courts interpret this concept following the 2019 amendments (introduced by Law 101/2019 of 6 September). There is a tendency for the courts to relate the concept of violence to the use of physical force as a means of "overcoming the resistance offered or expected by the victim in response to the perpetrator's behaviour, which force,*

*without being required to have specific characteristics, must in any case prove, in the context of the facts, to be an adequate and appropriate means of overcoming the real or presumed resistance offered by the victim to the act".*

*In its Judgment of 7 June 2023, the Court of Appeal of Coimbra (Case 793/21.1JALRA.C1) expressly states that it rejects the "(...) view that the absence of consent and/or free will on the part of the victim to perform copulation is sufficient to identify a situation of violence that is relevant for the purposes of criminalisation".*

*Regarding the behaviours of the victim and the associated myths, A.P.M.J. has noted that despite some judicial decisions that do not dignify the victim, there is a positive evolution.*

*It is important to mention a ruling that does not aid in the advancement of case law - the Porto Court of Appeal's judgment of June 27, 2018, Case No. 3897/16.9JAPRT.P, in which two assailants engaged in sexual intercourse with a woman who was unconscious due to alcohol consumption. Among many unfortunate remarks, the judges claimed that the victim's failure to file a civil compensation claim constituted evidence of no intent for revenge or retaliation, and therefore speaking the truth, is at the very least disturbing.*



*Evaluating the victim's behaviour to justify or mitigate the aggressors' actions is nothing more than the perpetuation of sexist myths and beliefs that persist in society and the courts. [On this topic, we recommend reading Isabel Ventura's (2018) Medusa in the Palace of Justice or a history of sexual rape. Lisbon: Tinta da China.]*

*However, we must also mention that this more closed and complacent view of the behaviours of sexual aggressors has been changing, largely influenced, we believe, by the Istanbul Convention. The Lisbon Court of Appeal, in a judgment dated July 1, 2020, Case No. 1539/15.9PBCSC.L1-3 and citing a judgment from the same court in 2019, when discussing the victim's reaction, considered that*

*"(...) it is not necessary, nor required that the victim adopt heroic behaviours of opposition or defence against the aggressor's actions, taking even greater risks than that of injury to their freedom or their sexual self-determination, for the crime to be considered consummated, especially because 'it is now established by Psychology that the absence of physical resistance by the victim cannot be considered as a form of acceptance or consent to the aggression, but on the contrary, it merely expresses the desire to survive a situation over which they have no control and in relation to which they experience a feeling of complete helplessness'". Similarly, the Porto Court of Appeal on September 21, 2022, Case No. 3006/20.0JAPRT.P1, stated that "(...) if the victim remains silent during the act, this does not necessarily mean that the legal type of rape is not fulfilled, since there was no expressed or tacit opposition to the act. (...) Any study of psychology and sociology teaches us that often silence, passivity, or even cooperation from the victim are motivated by coerced consent"[ Likewise, the Coimbra Court of Appeal's judgment of June 7, 2023, Case No. 793/21.1JALRA.C1.].*



*This change that we see in Portuguese courts is the result not only of an evolution in society but also of an increasing concern with integrating other fields of knowledge, such as Psychology, into the Law. The path is not yet complete; there is still a battle to fight against all types of discrimination that victims of sexual assault face. However, we cannot fail to mention that progress is occurring.*

*Likewise, there is the overarching concern from stakeholders in civil society and in legal Academia of analysing and preventing intersectional forms of violence and discrimination, to which the legal system may yet be blind to. This is especially relevant in the field of violence against women, where multiple and interdependent alterity criteria combined exacerbates the risk for violence and discrimination, and further hinders the victim's ability to seek and effectively receive judicial protection.*

***c. emerging trends in the allocation of funding and budgeting by your state authorities;***

*There are none. With regards to obstetric violence in particular, being a type of violence not really recognized by all parties, as it collides with the interests of the medical lobby, and as such there is very little political will to tipify it in our legal system.*

***d. innovative approaches to primary prevention, for example new target audiences and means of communication, public/private partnerships etc.***

*The General Health Board (Direção Geral de Saúde — DGS) should be the one to tend to those matters, stating clearly that obstetric violence exists and drafting norms (NOCs) in order to prevent it. But we need a strong MP, and we need the support law enforcement for the hospitals and healthcare professionals to comply with, because right now, there are no consequences except for when a baby dies or gets a serious disability as a result of those practices, such as cerebral palsy (in which case, the health professionals are prosecuted for malpractice, in disregard of the lack of informed consent and obstetric violence that led to that result).*



***e. emerging trends related to access to asylum and international protection for women victims of violence against women.***

*It does not apply to obstetric violence.*

*Lisbon, 23 May 2024*

*The A.P.M.J. Board*

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