



## CHARACTERIZATION OF COURT DECISIONS FOR CRIMES COMMITTED IN A CONTEXT OF DOMESTIC VIOLENCE AFTER THE MARIA DA PENHA LAW

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### ABSTRACT

**Importance:** The Maria da Penha Law (Federal Law 11340/2006) is an important legal instrument which institutionalized the issue of domestic and family violence against women in Brazil, conceptualizing and giving visibility to the hidden violence within the family environment, and acknowledged the responsibility of all people, and mainly the State's, in guaranteeing and protecting women rights, with the creation of mechanisms to restrain and prevent all forms of violence against them. The present research is the result of a study carried out at the 4th Criminal Court of Ananindeua, of the Court of Justice of Pará. **Objective:** The objective of the research was to verify which crimes committed in the context of domestic violence are judged and how has the outcome of such criminal cases involving conflicts of domestic and family violence against women occurred in the Judiciary Branch of the State of Pará, Brazil. **Methodology:** a quantitative, descriptive and documentary research was carried out, and 311 court decisions handed down in 2017 at the 4th Criminal Court of the Municipality of Ananindeua, State of Pará, Brazil, were analyzed. **Results:** In 46.08% of court decisions, the statute of limitations on the crimes under trial had expired, followed by 24.75% of cases in which the defendants had been acquitted. **Conclusion:** Even with the change of procedure as a way of guaranteeing the effective protection of women and avoiding impunity, there is still great delay of the legal system in responding to the expectations of women victims of violence in the judicial sphere.

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### INTRODUCTION

Violence against women, especially in the domestic and family spheres, is part of the Brazilian cultural roots. Historically, the patriarchal power, guaranteed by law, maintained the violence practiced against women hidden within the family context, a practice that was accepted and even stimulated by the population, since it was considered a natural and disciplinary action. In Colonial Brazil, for example, men were allowed to beat their wives by using a whip, as a way of correcting their behaviors if considered inappropriate. Women were assigned to household chores and to serve their husbands and children, who also had a distinct form of education, since girls were indoctrinated early on to passively accept the orders of their husbands, and boys were taught to believe that they had the power to educate their wives, including using violence. (ALVES; MELLO, 2017).

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Domestic violence against women may have a number of agents, and may include various types of domestic and family relationships such as siblings, parents, and grandparents. However, the intimate partner (husband or boyfriend) is singled out as the primary agent among them. The fact that women entered the labor market posed a great threat to men as the heads of the house, and to the monopoly on the exercise of women's sexuality, since equal working conditions gave women some autonomy and greater "creativity" in their relations with their partners and with the world. Therefore, men believed that their companions and wives had to be controlled, in order to not get too comfortable, even if this meant using physical and emotional coercion against them, which correspond to the forms of expression of violence present in the marital relationships of the subjects interviewed (ALVES and DINIZ, 2005; ALMEIDA and LOURENÇO, 2012). The Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women, known as the Convention of Belém do Pará, was the first specific treaty to combat violence against women in South America, approved in Brazil

and ratified in 1995. It treats violence against women as a violation of human rights, and establish the right of women to live a healthy and violence-free life. It claimed to be a State's duty to eradicate and punish situations of violence against women, thus serving as the original basis for Law 11340/2006, popularly known as "Maria da Penha Law" (ALMEIDA and FLAG, 2015). The process of institutionalizing the demands of the feminist and women's movements to curb violence against women in Brazil is represented by three major moments. First, there was the implementation of the Specialized Attendance to Women stations (*DEAMs*) in 1985, in the city of São Paulo. Secondly, there was the creation of the Special Criminal Courts (*JECRIMs*) in 1995, regulated by Law 9099/1995, and, subsequently, the enactment of Law 11340/2006, the Maria da Penha Law (BANDEIRA, 2009, 2014; TAVARES, 2015). The entry into force of Law 9099/1995 brought about a change in several sectors of the Brazilian legal system, especially within the Women's Defense Offices, where the police were confronted with a new procedure that prevented them from promoting disciplinary acts against the husbands. There were also changes in the Special Criminal Courts, since judges and public prosecutors suddenly had to deal with an enormous amount of police records that did not use to reach the courts, since many of the victim's reports were filed and "dismissed" in police stations, before even giving rise to a police investigation (MONTENEGRO, 2015, PASINATO, 2009).

However, there were some incompatibilities between Law 9099/1995 and the Convention of Belém do Pará, one of them being the interpretation of crimes committed against women as of "less offensive potential", in addition to the dealing of Special Courts with the administration of cases arising from domestic violence against women, in which, as a rule, the perpetrator saw in plea bargaining a mechanism to "get rid" of the legal procedure through the payment of "*basic-needs grocery packages*" or *staple food* for charity institutions, corroborating the idea that domestic violence can be solved in a relatively simple way, as long as the author is able to afford financially with the consequences of his acts (VASCONCELOS, 2015).

Thus, the Special Criminal Courts Law, which came to judge most cases of domestic violence, resulted in the trivialization of this type of violence, with the massive closure of court cases motivated by the waiver of the victim's right to be represented criminally and, therefore, because of the difficulty of solving these cases, since victims were not effectively heard during the legal proceedings. This situation entailed the maintenance of men's power over their wives, as the conflicts returned to the private sphere of the couples' lives (CAMPOS, 2003). As a result of such negative consequences from the application of Law 9099/1995, a large part of feminist groups, and women in general, pressed the authorities to approve a special law for the legal treatment of the crimes. After the discussion of the matter in public hearings held in the Legislative Assemblies of several Brazilian states, Law 11340, created on August 6, 2006 and commonly known as the *Maria da Penha* Law, provided modifications in the concept of crimes against women, with guidelines that politicized, characterized and criminalized such violence, including the definition of domestic and family violence against women itself, as well as the classification of the types of violence as physical, psychological, sexual, patrimonial and moral (PASINATO, 2009; TAVARES, 2015). The manifestation of physical violence occurs through slapping, punching, shoving, and other kind of aggressions

with blunt instruments, capable of causing physical marks and damages to the victim's health, though leaving no visible marks (scratches, burns, bruises and fractures). Psychological violence as an emotional aggression is characterized when the agent threatens, humiliates, rejects or discriminates against the woman, for the pleasure of frightening and diminishing her, an act that is directly related to other types of violence, since it's linked to the impediment of the woman to exercise her freedom and alterity regarding the aggressor (DIAS, 2012, FERNANDES 2015). The mechanisms of the Maria da Penha Law may affect personal relationships, regardless of sexual orientation, so the person that causes the violence can be either a man or another woman. Therefore, domestic violence involves conflicts between partners, as well as between mothers and daughters and between sisters, whenever there is a family-based motivation involved. However, regarding the person who suffers from gender-based violence, whether in the domestic or family environment, or in any intimate relationship of affection, the Maria da Penha Law was originally intended to protect only women, regardless of their sexual orientation. Thus, all people who identify as females are under the protection of the law, including lesbians, transgenders, transsexuals and *travestis* (CUNHA, PINTO, 2015, DIAS 2012). This research was elaborated with the general aim of characterizing court decisions in cases involving crimes committed in the context of domestic violence, and verifying the criminal response rendered in such cases after the implementation of Law 11340/2006. Specifically, we intended to: *a)* Check the types of crimes, in the context of domestic violence, judged in the 4th Criminal Court of Ananindeua, in 2017; *b)* Identify the response given in criminal cases from court decisions; and *c)* Identify if the victim's testimony interferes in the decision. In order to carry out the research, we hypothesized that most of the demands in Criminal Courts are of crimes such as threat and bodily harm, and that most cases are closed due to the extinction of criminal liability, with the victim entering a *nolle prosequi* motivated by the lack of interest to pursue the case against the aggressor, for reasons sometimes related to family pressures, retaliation and affective or financial dependence.

## MATERIALS AND METHODS

The study was developed with the perspective of the quantitative research of exploratory and descriptive approach, through documentary analysis that allows the gathering of a great amount of information about laws, lawsuits, and study plans contained in written or unwritten documents, known as "primary sources", which may be collected at the moment or after the event takes place (LAKATOS, 2008; TRIVIÑOS, 1987). According to Freitas and Prodanov (2013), these two approaches, although different, are intertwined and complement each other, since exploratory research is used when more precision is sought to define the problem, and descriptive research is intended to record, analyze and interpret current phenomena aiming at their functioning in the present, as well as to describe the characteristics of a certain phenomenon, establishing possible relations between the analyzed variables (Malhotra, 2001; Marconi, Lakatos, 2008). The organization, exposure and interpretation of the collected data were guided by descriptive statistics, which provides the researcher with a series of tools, such as tables, graphs and means, that allow the organization, description and summarization of the information in relation to the set of existing observations (WITTE, WITTE, 2005). The type of

document analyzed in this study was court decisions. The Brazilian literature usually classifies the jurisdictional acts in three categories: orders (*despachos*), which do not have decisive character, only ordinatorily contents; interlocutory judgments (*decisão interlocutória*), which may be simple, when they have a minimum of decisive character, or mixed, when they have definite force, closing the case without making a decision on the substance or grounds for the action, with conclusive or inconclusive effects; and judgments (*sentenças*), which are judicial acts par excellence, since they may have a conviction, acquittal or declaratory efficacy (LOPES JÚNIOR, 2010).

The city of Ananindeua, located in the State of Pará was defined as the place of research, being the second most populous city in the Metropolitan Region of Belém-Pará, Brazil, which was created as a result of Federal Supplementary Law 14/1973, and currently includes the Municipalities of Belém, Ananindeua, Marituba, Benevides, Santa Izabel do Pará, Santa Bárbara do Pará and Castanhal (PARÁ, 2011). Regarding the demographic aspects, the municipality of Ananindeua has 471,980 inhabitants, distributed in an area of 190,451 km<sup>2</sup> (IBGE, 2010). The year of 2017 was defined as the period to be investigated for the study, and we analyzed all court decisions regarding domestic violence cases judged by the 4th Criminal Court of the Court of Justice of Pará, located in the municipality of Ananindeua. The 4th Criminal Court cumulates the competence to judge cases involving children and adolescents, as well as cases of domestic and family violence against women. Statistical reports of interlocutory decisions and judgments handed down in the period from 01/01/2017 to 12/31/2017 were extracted from the Legal Cases Management System (*LIBRAS*). The reports provided the number of cases that obtained some sort of handling, excluding decisions rendered in cases that were not domestic or family-related, as well as protective measures and all decisions and orders that did not contain any outcome of the case, such as the enactment and revocation of preventive detention, service of process, among others.

The consultation of the data of cases which were being heard in private was carried out within the Secretariat of the 4th Criminal Court, under the orientation of the department director. At the end of the consultation, approximately 4203 case numbers were verified, of which we identified 1379 containing jurisdictional acts between interlocutory decisions and sentences in cases related to domestic violence which received the appropriate response. As many as 311 decisions were randomly selected and defined through simple random sampling, considering a maximum sampling error of 5% (BOLFARINE, BUSSUB, 2005). After obtaining the sample, we proceeded to a thorough reading of the court decisions, seeking to extract the types of crimes that were the object of each decision, the solution given to the case and the type of relationship between those involved. In some cases, other documents from the cases were consulted, such as accusatory follow-up complaints from the Public Prosecutor's Office, and denunciations that were available for public consultation, on the website of the Court of Justice of Pará, as well as police reports and the reports of the public police investigations (*inquéritos policiais*), consolidated by the Assistant Secretariat of Intelligence and Criminal Analysis, in order to collect information not contained in the decisions analyzed. After this procedure, there were seven substitutions to the randomized decisions, since the essential information for the research couldn't be found in some of them.

## RESULTS AND DISCUSSION

The results obtained are presented in Table 1, which shows the data on the court responses given to domestic violence cases. It also presents the types of decisions handed down in courts, as well as the types of crimes related to the decisions and the type of relationship between the victims and the aggressors. Due to the legal obligation of the judges to make a decision regarding each of the crimes subjected to a criminal prosecution, the total percentage corresponds to the totality of crimes and not to the totality of the cases investigated. In Table 1, the types of court decisions handed down were expiration of the statute of limitations on the crime; forfeiture of entitlement to claim rights; waiver; death of the accused, judgments of acquittal and conviction, and decisions to close the police investigation on the crime. The types of offenses related to the cases of domestic violence were: threat, bodily harm, battery, disturbance of peace, slander, defamation and rape. There were other crimes, such as damage; housebreaking; false imprisonment; false accusation; illegal containment; firearm shooting; theft; arson; omission of relief; and disturbance of work and peace, which did not present a significant quantity, thus being grouped in a single category.

The types of relationships found were: heterosexual couple (partners); heterosexual couple (ex-partners); heterosexual couple (boyfriend and girlfriend); heterosexual couple (ex-boyfriend and ex-girlfriend); mother and son; stepfather and stepdaughter; father and daughter; and other types of relationships that, due to not having significant individual quantity, were grouped into a single category, such as homosexual couple (ex-partners); brother-in-law and sister-in-law; uncle and niece; son-in-law and mother-in-law; brother and sister; and mother and daughter. The types of court decisions indicate that 47.55% of the decisions are related to the crime of threat (Table 1). Secondly, the crime of bodily harm (30.64%) appears, followed by battery (7.35%) (Table 1). It was also verified that 89.95% of the cases refer to physical and psychological violence against women (Table 1). When observing the *type of decision* variable, it was verified that 46.08% of the court decisions referred to the expiration of the statute of limitations on the crime, followed by a judgment of acquittal (24.75%), and thirdly, the end of the police investigation, corresponding to 13.48% of the judgments handed down. Only 5.88% of the cases were converted into a conviction (Table 1). The dismissal of the criminal case motivated by waiver and forfeiture of entitlement to claim rights represents 7.84% of the cases analyzed (Table 1). Such institutes, for legal reasons, are directly related to the will of women, who in some criminal cases (such as threats and crimes against honor) may or may not choose to proceed with the charges until a verdict is rendered.

The Portuguese term *renúncia* (or waiver), used in Section 16 of Law 11340/2006 (BRAZIL, 2006), refers to the disinterest of women victims of violence in prosecuting the perpetrator in crimes of public prosecution conditioned to the victim's representation, such as cases involving a threat (FERNANDES, 2015). The term *decadência* refers to the loss of the victim's right to file a claim as a result of inertia, after a certain period of time fixed by law, which in the cases analyzed is about six months from the day the victim becomes aware of who the author of the crime was (BRAZIL, 1941). When analyzing the *type of decision* and *type of crime* variables, it was verified that the statutes of limitations tend to expire

**Table 1. Number and Percentage of Domestic Violence cases completed by the 4th Criminal Court of the Municipality of Ananindeua, Pará, by Type of Crime, Type of Decision and Type of Relationship among the People Involved, in the Year of 2017**

Variable	Category	Type of Crime							Total	
		Threat	Bodily harm	Battery	Disturbance of Peace	Slander	Defamation	Other		
Type of Decision	Expiration of statute of limitations ( <i>prescrição</i> )	123 (30.10%)	22 (5.39%)	24 (5.88%)	8 (1.96%)	8 (1.96%)		3 (0.74%)	188 (46.03%)	
	Judgment of acquittal	23 (5.64%)	67 (16.42%)			3 (0.74%)	2 (0.49%)	6 (1.47%)	101 (24.76%)	
	Closure of police investigation	20 (4.90%)	15 (3.68%)	4 (0.98%)	9 (2.21%)	2 (0.49%)	1 (0.25%)	4 (0.98%)	55 (13.49%)	
	Judgment of conviction	5 (1.23%)	17 (4.17%)	1 (0.25%)				1 (0.25%)	24 (5.90%)	
	Waiver ( <i>renúncia</i> )	21 (5.15%)		1 (0.25%)					22 (5.40%)	
	Forfeiture of entitlement to claim rights ( <i>decadência</i> )				1 (0.25%)	2 (0.49%)	4 (0.98%)	3 (0.74%)	10 (2.46%)	
	Death of the accused	2 (0.49%)	4 (0.98%)					2 (0.49%)	8 (1.96%)	
	<b>Total</b>	194 (47.51%)	125 (30.64%)	30 (7.36%)	18 (4.42%)	15 (3.68%)	7 (1.72%)	19 (4.67%)	408 (100.00%)	
	Type of Relationship	Heterosexual couple (ex partners)	81 (18.33%)	36 (8.14%)	11 (2.49%)	11 (2.49%)	7 (1.58%)	4 (0.90%)	8 (1.81%)	158 (35.74%)
		Heterosexual couple (partners)	94 (21.27%)	101 (22.83%)	18 (4.07%)	2 (0.45%)	4 (0.90%)	1 (0.23%)	14 (3.17%)	234 (52.92%)
Heterosexual couple (ex boyfriend and girlfriend)		3 (0.68%)	2 (0.45%)		5 (1.13%)	1 (0.23%)			11 (2.49%)	
Heterosexual Couple (boyfriend and girlfriend)		2 (0.45%)	5 (1.13%)	1 (0.23%)		1 (0.23%)			9 (2.04%)	
Mother and son		4 (0.90%)	2 (0.45%)	1 (0.23%)			1 (0.23%)	1 (0.23%)	9 (2.04%)	
Stepfather and stepdaughter		2 (0.45%)	1 (0.23%)			1 (0.23%)			4 (0.91%)	
Father and daughter		3 (0.68%)	1 (0.23%)			1 (0.23%)			5 (1.14%)	
Others		5 (1.13%)	6 (1.36%)				1 (0.23%)		12 (2.72%)	
<b>Total</b>		194 (43.89%)	154 (34.82%)	31 (7.02%)	18 (4.07%)	15 (3.40%)	7 (1.59%)	23 (5.21%)	442 (100.00%)	

Source: Court of Justice of the State of Pará, 2018.

Note: \*1 – Damage; Housebreaking; False imprisonment; False accusation; Illegal Containment; Firearm Shooting; Theft; Arson; Omission of Relief; Disturbance of the Work and Peace.

\*2 – Homosexual couple (former female partner); Sister-in-law and brother-in-law; Uncle and niece; father-in-law and mother-in-law; Brother and sister; Mother and daughter.

more often on crimes like threat (30.15%), followed by battery (5.88%) and bodily harm (5.39%) (Table 1). Regarding the sentences, the crime of bodily harm was the one that represented the highest number of acquittals (16.42%), with the crime of threat representing 5.64% (Table 1). The crime of bodily harm was also the one that presented the most convictions (4.17%) (Table 1). The expiration of the statute of limitations is the loss of the punitive claim of the State over the course of time. The Brazilian Criminal Code establishes that the "prescription" of a crime (*prescrição*), as a general rule, is regulated by the maximum sentence related to the deprivation of liberty commenced with the crime, being: a) eight years, if the maximum penalty is more than two years and does not exceed four; b) four years, if the maximum penalty is equal to one year or, if higher, does not exceed two; and c) three years, if the maximum penalty is less than one year. Thus, the maximum time within which legal proceedings may be initiated after a threat is committed is three years, and eight years for the crime of bodily harm, as these crimes have a maximum penalty defined by law of six months and three years, respectively. (BRASIL, 1940; LOPES JÚNIOR, 2010). Regarding the type of relationship between the victim and the aggressor, it was verified that more than half of the cases happened between partners (52.94%), followed by ex-partners (35.75%) (Table 1). Boyfriends and ex-boyfriends perpetrated 4.53% of the crimes, and the most common offense committed by partners was the crime of bodily harm (22.85%), followed by threat (21.27%) and battery (4.07%) (Table 1).

## Conclusion

Through this study, it was possible to rectify part of the hypothesis raised, since most of the cases that were tried involved the crimes of bodily harm and threat. However, the main cause of dismissal of cases was not a waiver, but the extinction of the statute of limitations (*prescrição*) on the crimes. Even in cases where the victim could voluntarily discontinue the criminal charge before a verdict was rendered, the end of the cases was most related with the claim being time-barred. The expressive percentage of cases closed due to the expiration of the statute of limitations suggests that legal handling of domestic violence cases is slow, due to the lack of articulated action among the different organizations that integrate the system of public security and criminal justice. The dismissal of cases due to passage of time demonstrates a combination of delays in conducting criminal proceedings in the following situations: the conclusion of investigative procedures by the Brazilian Civil Police; the provision of complaints by the Public Prosecution Service, as well as in the progress and conclusion of cases in courts; and the unbalance between such state institutions. All these situations contribute to the reduction of women's rights in the country and the efficiency of justice. On the one hand, the implementation of the Maria da Penha Law represented greater visibility to violence against women perpetrated in the country, through the impossibility of judging gender violence as crimes of lower offensive potential, punished with the payment of compensations to the victim and community services, as previously stated in Law 9099/1995. On the other hand, it is clear that most of the cases are dismissed not because of a judgment of conviction or acquittal, but because of the extinction of the statutory limitations on the crimes under study, which represents an increase in the vulnerability of women, since impunity still remains, leaving the victims without a response and with another difficult obstacle to

overcome, since the State is the main responsible for the delay in such cases.

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