

Case: **6/2018-MM**



EARHVD

Equipa de Análise Retrospectiva de
Homicídio em Violência Doméstica

FINAL REPORT

Domestic Homicide Review

Report Author

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Glossary¹

CP – Penal code

CPCJ – Commission for the Protection of Children and Young People

CPP – Code of Criminal Procedure

EARHVD – The Domestic Homicide Review Team

LNES – National Social Emergency Hotline

LVD – Law no. 112/2019 of 16th September (legal regime applicable to the prevention of domestic violence, protection and assistance to its victims – LVD)

MP – Public Prosecutor’s Office

NPP – Police File Number

NUIPC – Unique Criminal Case Identification Number

OPC – Criminal Police Body

PGR – Public Prosecutor General

PSP – Public Security Police

RVD1L – Domestic Violence Risk Assessment

¹ Please see also general glossary



Domestic Homicide Review

01.

Case Identification



CHAPTER

01.

Identification of the case

1.1. Judicial conviction and analysis decision

The current review document concerns the facts that were object of the NUIPC (...).

In pursuant of article 10, no. 4 of the Ministerial Order no. 280/2016, of 26th October, the diploma that regulates the procedure for domestic homicide review, the identification of the intervening parties is the following: **A** - Victim; **B** – Perpetrator (murderer); all data allowing the identification of the parties has been eliminated.

In the process mentioned above, the conviction decision was delivered in 2016; the final decision was the conviction of **B** to 21 years imprisonment for the qualified homicide of **A** [articles 131, 132, no. 1 and 2b of the Penal Code (CP)].

The homicide analysed in this document occurred on the 8th January 2016.

In light of the article 4A, number 1 of Law no. 112/2009, of 16th September (law that establishes the legal framework applicable to the prevention, protection and assistance to domestic violence victims, hereafter identified as the LVD) in the wording of the Law no.129/2015, of the 3rd September, the analysis of the circumstances hereby described lie within scope of The Domestic Homicide Review Team's competences, as it is a situation specifically compliant with no. 1 and 2 of article 3 of the EARHVD Rules of Procedure.



1.2. Characterisation of the parties

Characterisation of A – Victim

- Gender: Female
- Age: 61 years old at the time of the homicide
- Civil Status: single
- Nationality: Portuguese
- Profession: Teacher
- Employment status: In employment

Characterisation of B – Perpetrator

- Gender: Male
- Age: 40 years old at the time of the murder
- Civil Status: single
- Nationality: Portuguese
- Profession: Hospitality worker
- Employment status: Unemployed

C – A's grandson (born in 2002)

D – A's oldest daughter, mother of C

E – A's youngest daughter



Domestic Homicide Review

02.

**Composition of the
review team,
information sources
and objectives**



CHAPTER

02.

Composition of the review team, information sources and objectives

On this occasion the EARHVD was constituted by its permanent members and one non-permanent member on behalf of the Public Security Police (PSP).

In pursuant of number 4 and 5 of the LVD, the review was based in the following crucial pieces of information:

- Documents included in the judicial process;
- Documents concerning other criminal procedures involving the perpetrator and the victim, as well as the intervention for promoting the rights and protection of the grandson, by action of the Commission for the Protection of Children and Young People (CPCJ) and also by judicial action;
- Clarifications by the social security services;

No additional elements gathered from other sectors were identified as relevant to this review. All the documents have been anonymised.

The objectives of this review are:

- Systematising the information collected in order to allow a better understanding of the reality, of the behavioural patterns, and the determining factors, as well as identifying the response by the entities/organisations involved and the supported



they lent to the parties.

- Identifying the lessons to be learned from this case, in all depth and breadth, by understanding the sequence of events and what needs to change to avoid similar situations to happen in the future.



Domestic Homicide Review

03.

Information collected



CHAPTER

03.

Information collected

3.1. Matter of proven fact during the judicial process (summary)

1. **B** and **A** lived together as civil partners, sharing home, food and intimate life, since the beginning of 2005 with some interruptions.
2. The grandson of **A**, **C**, was also living with the couple.
3. At a certain point in the relationship, more specifically in the year that preceded **A**'s death, it became frequent that **B** would say to **A** during arguments he would kill her, motivated by jealousy, drug addiction and alcohol abuse.
4. On the 8th January 2016, before 4 pm, **B** saw **A** exiting the local PSP police station, accompanied by a lawyer and suspected she had once again filed a complaint against him.
5. That same day and after **A** arrived home, inside the kitchen of the house they both lived in, and amidst an argument caused by unknown reasons, **B** grabbed **A** by the hair, forced her to her knees and repeatedly punch her in the mouth; **A** cried out for help.
6. At that point, on hearing the screaming, **C** came to help his grandmother; as he saw the situation, he jumped off the bedroom window and went to a nearby café to ask for help. "Help me, he says he is going to kill my grandmother", returning straight away accompanied with a neighbour. When the neighbour entered the front yard asking aloud what was going on, **B** showed up at the door of the house while he dragged **A** by the neck with his left arm, and held a kitchen knife in his right hand. Confronted with the threats of **B** while he held the knife against **A**'s



throat, the neighbour stepped out of the yard and awaited the arrival of the police.

7. Meanwhile, **B** stroke **A** with several knife blows, one of which directed to her throat causing her death.
8. When the police arrived to the scene, **A**'s body was in supine position, lying near the door to the kitchen and showing several lesions caused by trauma with a sharp and piercing object, located all over her face, neck, thorax and upper limbs, given the cause of death was the complete section of the right internal jugular vein.
9. **B** came from a culturally and financially disadvantaged background, having abandoned school prematurely when he was in Year 5; he then started working in construction, as a bricklayer, while he was also involved in crimes of petty theft, as part of a group, which ultimately led to a prison sentence (1993 to 1996); he then resumed a love relationship prior to the conviction from which he had his first child. He grew apart from his son when he reached 2 years of age, **B** thinks partly motivated by the increased use of drugs and his mother's death. After undergoing a rehab process, he returned to his original household, staying with his father until regaining his independence.
10. In 2003 he took a job opportunity and moved to another region where he settled, although developing a range of activities and changing employment very often while experiencing some job insecurity. He engaged in a new relationship, this time with a foreign citizen, only to end when she became pregnant. Her return to her country of origin contributed to the fact that **B** did not establish an emotional connection with his son.
11. A new job prompted **B** to move to a new town, where he then engaged in a relationship with **A** and moved in with her.
12. The stability shown by **A** at the professional and economical level contrasted with the instability and job insecurity experienced by **B**. This comparison may have contributed for his absences from town, relapsing in drug abuse and even tried to emigrate. Faced with failure, **B** returned to **A**'s home while holding a precarious job in the hospitality sector.
13. The couple relationship dynamics acutely deteriorated over time, leading to the behaviour of verbal and physical abuse whenever he drank too much or used drugs; in such situations he would show frustration, jealousy and the suspicion **A**



was being unfaithful to him, and displaying a threatening and controlling attitude.

14. During his free time and in the absence of a structured activity, **B** would maintain contact with other drug addicts, fact which did not help him controlling his addiction habits and had a negative impact on his behavioural pattern.

3.2. Other information deemed relevant collected from the legal action

- i In PSP's report on the day of the homicide, it was recorded that "(...) when asked why he had acted like he did, the suspect stated that he had seen the victim leave this police station accompanied by her lawyer, and thinking she had filed a complaint against him, again, he decided to take her life".
- ii In the testimonies recorded throughout the investigation, the following stands out:
 - a. The statements of the PSP officers according to which a coercion measure (of guarding distance from the victim's home) had been applied to the perpetrator in 2015, as consequence of a complaint filed by the victim; however, "the neighbours declared that (the perpetrator) violated this prohibition with the agreement of the victim".
 - b. The statement of witnesses according to which the victim told them he threatened her with death, and that the day preceding the homicide the perpetrator had even said "one day he would chop her head off, as well as her grandson's, and would drop them off in front of the PSP police station".
- iii The coordinator of the victim's activities (...) stated the following:
 - a. "[The] teacher (**A**) showed up to work completely out of control", saying for instance that "she had spent the night with a knife held to her neck, that he had beaten her, threatened to kill her daughters, herself and her grandson"; her workmates had even "picked her up at the police station because she was afraid of walking home on her own"; and once she even spent the night in a public building, along with her grandson;
 - b. The perpetrator (**B**) often stood outside the school premises, watching, waiting for **A** to leave and sending texts, having even pursued other (female) employees;



- c. Declared that “every month the teacher asked me for money to buy food, because she said he threatened her and she had to give it away. She would often go hungry and ate the leftovers of the pupil’s meals”.

3.3. Previous criminal procedures

According to the information collected with the territorially competent PSP Command, added to the corresponding documentation, fourteen procedures could be counted that concerned actions perpetrated by **B** on previous occasions prior to the incident under review occurred on the 8th January.

3.3.1. Enquiry from 2006

Enquiry dated 2006 mentioning the complaint by **D** (**A**’s eldest daughter) concerning an aggression taking place on the 12th July 2006. On that day and while she was arguing with her mother, **B** would have grabbed her by the arms and slapped her on the left cheek. She was treated at the local Health Centre. She was called for a forensic exam. The process was dismissed on the 18th October 2006 due to withdrawal of the complaint.

3.3.2. Complaint from 2007

Complaint (NPP) dated 2007, by **D**, because of material damage to audio-visual equipment she had. The complaint occurred on 12th January 2007. **B** was under the influence of psychotropic substances, and after arguing with **A** because she did not give him the money he was demanding, he then threw the equipment against the furniture.

3.3.3. Added enquires from 2007

Added enquiries from the year 2007, initiated due to domestic violence following a complaint by **A**:

- a. The first enquiry was carried out on 22nd June 2007, when **A** declared that **B** often subjected her to psychological maltreatment, death threats, and said that if she called the police he would declare to be under the influence of alcohol and could



not remember anything; and that same day in the afternoon he had damaged her car, parked outside the house and piercing the tires with a pocket knife.

- b. The second enquiry was carried out on 18th July 2007, and again **A** declared that **B** subjected her to psychological maltreatment, constantly threatening to kill her daughter **D** and her grandson **C** (at the time, they both lived with the couple), saying we was going to get gas and acid to throw over them. **A** expressed fear for her own physical and psychological safety, as well as her daughter's and grandson's. She reported that **B** was showing a very disturbed behaviour for a year and she suspected he was taking drugs, more specifically heroin. She also mentioned that these events were witnessed by two minors, the youngest daughter **E** (14 years old at the time) and her grandson **C** (4 years old at the time).

The enquiries were dismissed on 6th November 2007 due to the complaint being withdrawn. Given the facts the enquiries were classified as a simple crime against physical integrity (article 142 of the CP), as it is stated in the final report "there is not enough evidence to fulfil the legal definition of a domestic violence crime".

3.3.4. Other added enquiries from 2007

These enquiries refer to the following facts occurred on days 14th, 29th and 30th October 2007.

- a. **D** (**A**'s eldest daughter) at the time living with her mother and with her son (**C**) complaint against **B** because he threatened to kill her and her son, on the early hours of 30th October 2007, in the presence of **A**; and also, that he would damage her car, having in fact broken her laptop on 14th October 2007.
- b. On 30th October 2007, **B** visited the school where **A** worked and pushed her against the glass of the classroom window, breaking it. The facts were witnessed by several children, who were terrified. The deputy headmaster and **A** reported him to the police.
- c. **A** made another complaint for domestic violence because, one night, on 29th October 2007 and amidst an argument while the couple was in bed, **B** got up and broke the alarm clock on the bedside table and also punched **A** in the face causing her a cut in the upper lip. Also, that on 30th October 2007 when leaving the police station after reporting the incident that occurred at the school, **B** found



her in a café, threatened to pursue her if she wouldn't return home with him. Once at home he continued to voice threats against her and **D**, mother of her grandson and started breaking **D**'s electronic equipment, until finally lying-in bed keeping a hammer on the carpet next to him. In view of the incidents, **A** expressed her fears about the attitudes of **B** and worrying about her safety as well as her 4-year-old grandson's, she requested for a criminal procedure.

- d. All these enquiries were dismissed due to the complaint being withdrawn, which was accepted and ratified by the Public Prosecutor's Office (MP) in the understanding that the crimes in scope depended on the complaint in order for the criminal procedures to advance; in particular the crimes of damage, threat and simple offence to physical integrity (articles 212, 153, and 143 of the Penal code, respectively)".

3.3.5. Enquiry from 2009

The domestic violence enquiry carried out on 2009 was initiated by a communication by the Health Centre in **A**'s local area, because she had come to the walk-in centre at the early hours of 28th April 2009, saying that moments before, at home, she had been physically abused by her partner. The aggression consisted in two slaps to which the aggressor confessed during the enquiry.

"The victim added a request to the report, in an informed and voluntary way, for the process to be temporarily suspended, in the terms proposed by the MP to the defendant "(sic) a legal order was issued in pursuant to article 281 of the Penal Process Code (CPP), that temporarily suspends the process for a period of 4 months, while **B** is ordered to: "

- a. Proceed to the payment of 200 euros to an institution of social solidarity of his choice, and show evidence of this payment;
- b. Formally apologize to the complainant, to be recorded in the report"

This process was dismissed on 16th April 2010, in accordance to no.3, article 282 of the CPP, given that **B** fulfilled the obligations as instructed.



3.3.6. Enquiry from 2010

The 2010 domestic violence enquiry of **B** against **A**, the police intervention was called for by neighbours motivated by incidents occurred in the public space in the morning of 22nd April 2010. **A** was attacked by **B** in a public space, punched in the face, and causing her to fall and being injured in her left arm as a result. **A** informed as well that that night **B** arrived home utterly disturbed (under the influence of alcohol or drugs), claiming she "was walking out on the street with whores", damaged two phones, one computer and one mobile phone. **A** was notified to undergo a forensic exam, but she did not attend the appointment.

This enquiry was dismissed on 04th May 2011 because "the evidence collected was frail and scarce".

The facts described in the reports triggered the beginning of a Judicial Process of Promotion and Protection in favour of **A**'s grandson, during which came to light that **B** "went to the room where the child slept and shook him, saying his grandmother was lying on the floor", and then saying to **A** "if you don't get up, I'll finish your grandson", and she had to keep him away from the child's room.

3.3.7. Period between 2010 and 2014

Between 2010 and 2014 no complaint against **B** has been recorded. This period of time corresponds to the four years during which **B** was away from **A**'s residence area and even living out of the country.

3.3.8. Enquiry from 2015

NUIPC dated 2015 for domestic violence of **B** against **A**, the police intervention was called for by the victim on 08th April 2015. When the PSP arrived to **A**'s residence, **B** was sitting inside the car that **A** usually drove (property of daughter **D**); he was in an altered state of mind, and drove the car at a considerable speed against the wall of the house, damaging it. When he was taken to the police station he stated "I'm going to kill myself if I get arrested" and "I'll make her pay".

A called the police following a fight between **B** and a friend of hers (**F**) in a local café, caused by **B** jealousy outburst; he then said he would go to her home and "finish the



kid off" (meaning her grandson, 12 years old at the time) and he was going to trash the house. When **A** made home, she saw **C** leaving, very upset and crying, followed by **B** claiming he had broken the computer. After this, he walked up to **A**, and in front of **C**, slapped her across the left cheek. He then got back into the house and kept trashing the electronic equipment, furniture and other household items (glassware), and also smashed a window. **B** came out of the house and into the car, smashing it against the wall, at which point the authorities intervened.

A stated she was very fearful **B** would keep his threats, having even declared to the police "I'm going to die", saying she feared for her life as much as for her grandson's.

The following coercion measures were imposed on **B**:

1. Obligation to present himself thrice a week at the local police station;
2. Not remaining in **A**'s house; and
3. Not to contact **A**, by any means, and not to come near her area of residency.

On 18th October 2015 the second and third coercion measures were terminated at the expiration of its course by judicial decision (item a), no.1, article 215, ex vi 218, no. 2, both from CPPJ. The NUIPC for the complaint by **F** concerning the jealousy-driven assault by **B** was included in this process.

B was convicted on 1st April 2016 (about 3 months after the homicide of **A**) to a cumulative sentence of two years and five months imprisonment by the practice in simultaneous of a crime of qualified domestic violence, one crime of offence to physical integrity and one crime of qualified damage.

3.3.9. Added enquiries from 2015

- a. On 12th November 2015 (after the expiry of the distancing measures mentioned above), **A** went to the police station to communicate that for some days **B** was approaching her and even entered her home, where he then threatened her with physical assault, more specifically of grabbing her by the neck to break it. She additionally told the officers that one night (she could not specify the date), **B** had threatened her with a kitchen knife. She stated that there were messages from **B** with threats of aggression and death threats. She reminded the officers that **B**



was subject to coercion measures to prevent him getting closer to her house, and visiting her town. At that point, she was informed the coercion measures had been deemed terminated, and she was rather upset, also because she had not been notified about this.

- b.** The record regarding this complaint mentions that “the RVD1L was not completed because the victim left and the necessary questions were left unanswered”.
- c.** In the night of 3rd December 2015, **A** called the police three times because she was fearful of **B** coming in, given that he was constantly issuing threats to her life and of trashing the house. On the third call to the scene, the PSP visited the several rooms of the house along with **A**, having found **B** sleeping in the bed **A** had authorised him to use.
- d.** **A** and **B** refused to deliver a statement, the reports were dismissed as, according to the MP, without the victim's deposition “the report would lack any supporting evidence”.

3.4. Information about A concerning the social security sector (source: social security)

On the 23rd April 2010, **A**'s brother contacted over the phone a domestic violence social security team, requesting for support. He reported that **A** was a victim of domestic violence by her partner, and that she had a grandson under her care (the mother of the child lived abroad); he also mentioned that had been filed three domestic violence reports with the PSP, that **A**'s partner used drugs, that the PSP had advised **A** to leave the area of residence; and that **A** had eventually left home as a consequence of the violence to seek refuge in a work colleague's house located in another town.

In view of this request, the social security team:

- a.** Contacted PSP in **A**'s local area over the phone, which informed of the following:
 - **A** lives with **B**;
 - **A** reached out for the PSP several times to report maltreatment by **B**;
 - Despite numerous reports, **A** did not commit to cooperate in the judicial pro-



cesses, as she did not confirm the statements given at the station;

- In the previous week the partner had “thrashed the whole house” and **A** asked the PSP for help again;
 - Even though she is the owner of the house, “she feels sorry for **B**” and supports him financially;
 - **A**'s circumstances are known to the CPCJ and by the local service of Social Intervention, and she is supported by these institutions.
- b.** Contacted **A** over the phone, to suggest an appointment for assessing and exploring forms of support. **A** declared she was living at a friend's house, away from her residence area, and accepted the appointment.
- c.** From this appointment, the following facts were gathered:

Characterisation of **A**'s current family structure

- **A**'s household is constituted by herself, her grandson **C** (7 years old) and her boyfriend **B**, 35 years old, single and unemployed;
- They all live in **A**'s house;
- She had a son who died in 1992 when he was 18; she has two daughters from a second relationship (non-marital partnership) that lasted 10 years: **D**, 25 years old, living abroad, and **E**, 17 years old, living with her father;
- **D** is mother of **C**, and the child is under the care of **A**

Characterisation of the violent relationship – the situation is assessed as being a high risk one due to the following:

- The controlling relationship that **B** exerts over **A** which reveals features of obsession and persecution;
- **B**'s unemployment and housing and economic dependence on **A**;
- Drug and alcohol abuse by **B**;



- **A** being forced to financially support **B**'s addiction habits;
- Scenario of continued violence for a period of six months to a year;
- Violent behaviour persists even after being reported to the PSP;
- Episodes of violence occur in the presence of 7-year-old grandson, **C**;
- The situation is well known to the community and that does not seem to bother **B**;
- **A** is not aware of the risk herself and **C** are exposed to by cohabiting with **B**;
- **A** does not consistently corroborate the reports on **B**'s violent behaviours;
- **A** feels it is her responsibility to "save" **B**;
- The family is socially isolated (the household does not benefit from social relations considered close or supporting);
- **A** does not have relatives living in the same area of residence, besides 7-year-old **C**, and **B**;
- Measures of distancing and effective protection of **A** cannot be ensured or expected to be complied with while both **A** and **B** keep living in the same house.

d. Proposed immediate Safety Plan for **A**

- Distancing **A** of her residence area while the judicial process for Domestic Violence develops – possibility of going to a shelter home with immediate effect, and later being housed autonomously;
- Request to be transferred to another school;
- Locking the house to avoid **B** selling her goods, and incentivising **B** to return to his town of origin;
- Return to her house once the judicial process is over and **B** has left;



- Facilitating visits to her house to collect her belongings with protection of the PSP.

e. Attitude of **A** in relation to the Safety Plan

A reiterated her emotional connection with **B**, recognising her responsibility in caring for him, and the hope she had on him changing his behaviour. She rejected the whole suggested Safety Plan, confirming the return to her home, from where she did not intend to leave, or even think she should.

A was offered the contact numbers and the availability to protect her and her grandson there and then, or at any point in the future, in case **A** wanted or considered to accept.

This stance by **A** was communicated to the PSP, to the social worker who forwarded the case from the LNES attending line, and the officer from the Social Service in **A**'s local area, as well as to **A**'s brother.

No further contact was made with **A**.

3.5. Information about **C** (sources: judicial process and social security)

3.5.1. CPCJ intervention

Overview of the situation/additional Information

- 12th June 2006 – CPCJ decided to place **C** under the provisional care of **A**.
- 2006/2007 – **A** started a relationship with **B**. According to the information on record, **B** is addicted to drugs and alcohol. **B** displayed a violent behaviour towards the members of the household, deeply disagreeing with **D**'s (daughter of **A**) situation of unemployment, as well as the fact she was an absent mother to her child, to the point of forbidding **A** of supporting them both. This situation peaked at an episode of mutual aggression between **D** and **B**, which lead **D** to leave the household.
- 27th May 2008 – The agreement of Judicial Promotion and Protection was signed, and **C** was trusted to the mother.



- 15th February 2010 – **A** informs that **D** has left the country seeking better working opportunities abroad.
- 22nd April 2010 – CPCJ is informed that **A** had been beaten by **B** and she feared for her life as for her grandson's **C**. **C**'s father was contacted by phone and he agreed to take the child temporarily.
- 26th April 2010 – **B** was contacted by phone and he declared he would leave the house voluntarily without the need for police intervention. **A** then informed that if **B** left the house, she would return with her grandson **C**. **B** left the house, however one week after he returned to join the household.
- 24th February 2011 – During a home visit to the household, it came to light that although **B** was living in another region, **A** kept in touch with him via phone.

3.5.2. Judicial process for protection and the promotion of rights

The Judicial Process of Protection and Promotion, to which the above description was added, started as a consequence of the facts that took place on the 22nd April 2010, and that resulted in the enquiry mentioned in point 3.3.6. At that date, **C** was under the care of her grandmother **A**, given that his mother had emigrated (**D**) and the father did not maintain any contact with him, living in another town.

The process was dismissed following a decision on 30th March 2021, because it was understood that the dangerous situation triggering the process was no longer there.

3.6. Information concerning the healthcare sector and forensic sector

Despite the repeated diligences carried out between 8th February 2019 and 21st September 2020 by the EARHVD with the local health bodies (deployed directly or under guidance of the doctor assigned by the National Institute of Legal Medicine and Forensic Science, in pursuant of no.2 article 12 of Ministerial Order no 280/2016, of the 26th of October), it was not possible to obtain any information about the contacts of the intervening parties with the health sector. On the other hand, as the forensic exams were carried out in the local Health Centre and not in the county Forensic and Medico-legal



Office - due to limitations imposed by the location of the intervening parties house – it was not possible to obtain any information regarding this sector through the same means.



Domestic Homicide Review

04.

**Timeline of the case –
Graphic Representation**

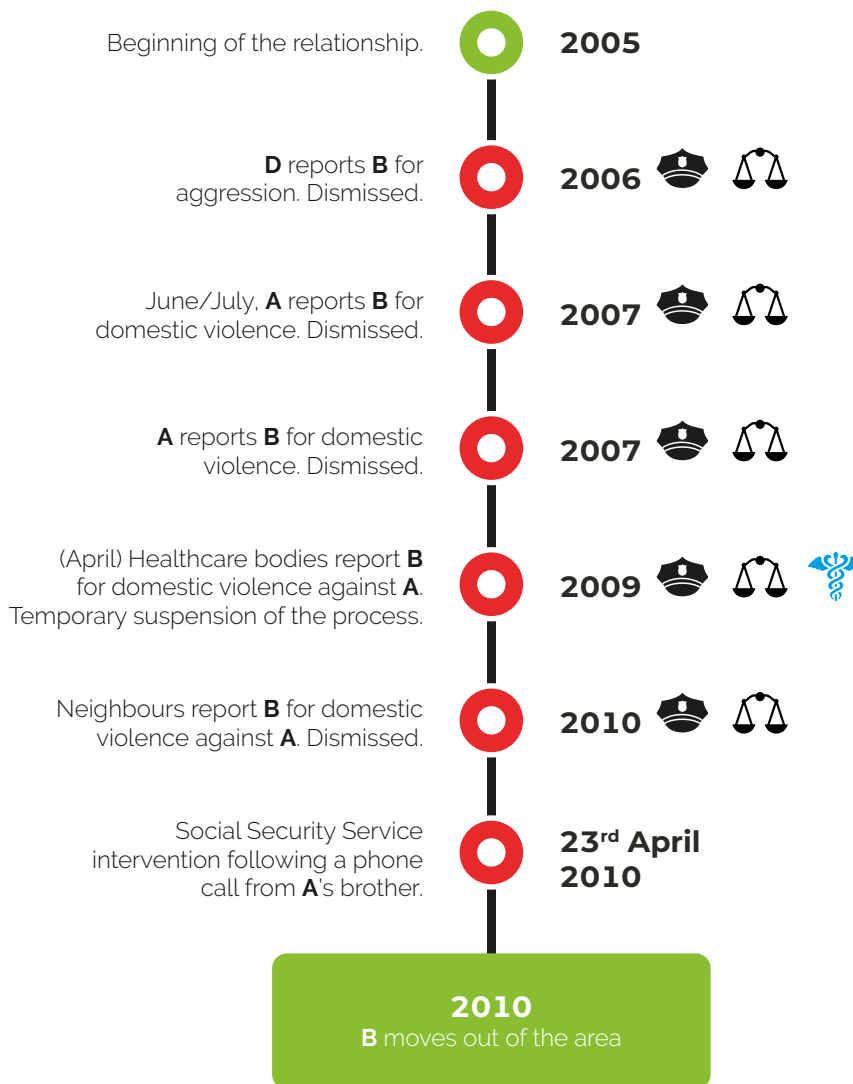


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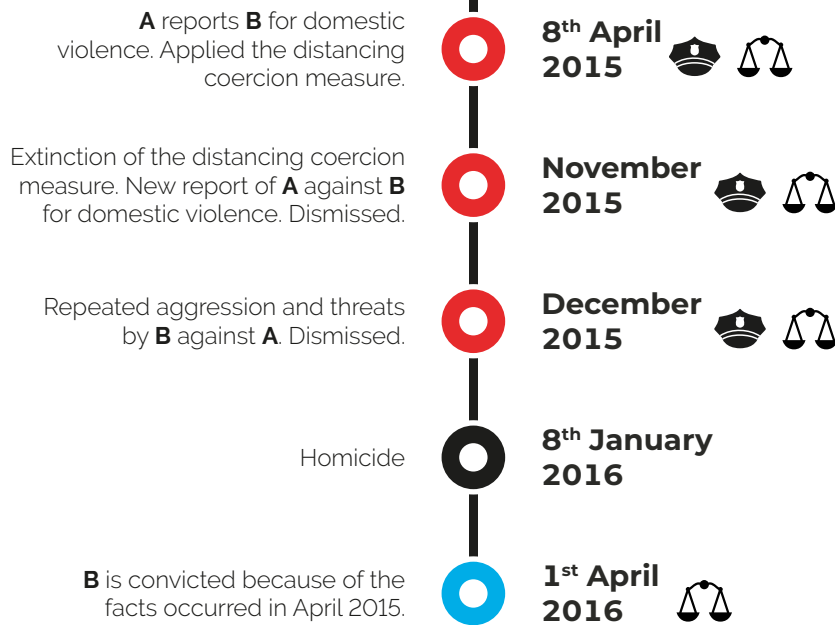
04.

Timeline of the case – Graphic Representation

Based on the information collected, a timeline of the case was drafted, including the most relevant milestones to consider in its review.



DOMESTIC HOMICIDE REVIEW
CHAPTER 04. TIMELINE OF THE CASE – GRAPHIC REPRESENTATION



C, grandson of the victim, born in 2002, lived with his grandmother throughout this period and witness the aggressions suffered by her and by his mother (**D**) and was himself the target of severe threats.

Legend

- Beginning of relationship
- Background/risk factors
- Opportunities for intervention
- Homicide
- Contacts with Justice
- Contacts with Police Forces
- Contacts with Health
- Contacts with Social Security

Domestic Homicide Review

05.

Review



CHAPTER

05.

Review

5.1. Scope of the review

The aim of the current review report is to achieve a wider perspective about this conflict which culminated with the facts proven during the legal process that led to the final court decision; conclusions and recommendations could be drawn based on the journeys of those involved and from the actions of the intervening organisations.

5.2. The sequence of criminal proceedings that failed to protect the victim and led to a sense of impunity by the perpetrator

A and **B** started their life as a couple in 2005, which lasted to the date of the homicide (08th January 2016) with an interruption of four years between 2010 and 2014, during which **B** was absent from **A**'s area of residence.

A had a settled professional life, and her grandson lived with her throughout the period under review; the child is the son of one of her daughters who also integrated the household during the initial years of the relationship with **B**.

B was a regular user of alcohol and drugs, and had already served a prison sentence for crimes against property, his personal life journey had been unstable and his professional situation was precarious. He depended on **A**'s financial support and there were reports of a violent behaviour directed towards his partner, her daughter and her grandson since 2006.

During those years of life in common several criminal procedures were initiated in response to the behaviour displayed by **B**, through which he targeted **A**, her daughter and her grandson, as well as other people that had any connection with her, as described hereafter.



Between 2006 and 2010 (year during which **B** was absent of **A**'s residence) 9 criminal enquiries concerning damage, threats, physical abuse and domestic violence were opened.

The enquiries initiated in 2006 and 2007 were dismissed due to the complaint being withdrawn, as the facts reported by **A** were classified from a legal point of view as crimes of injury, threat and simple offence against physical integrity, as in these instances the criminal procedure relies on the complaint to move forward. Of note that such facts – physical aggression, threats, damage of property for scaring and subduing someone – although in the context of an intimate relationship, were already eligible to be considered a public crime of maltreatment (no.2 article 152 of the Penal code in the version in place up to 14th September 2007) and domestic violence (from 15th September 2007), and as such not admitting a withdrawal of the complaint.

The enquiry triggered by the facts occurred in 2009 and reported by the Health Centre was temporarily suspended for 4 months, when the law allows and extension up to 5 years (no.5, article 5 of the CPP). On one hand it can be read from the legal order that the request by **B** to apply this legal tool was presented “according to the terms proposed by the MP to the defendant” (sic), raising doubts as to whether it has been presented in a “free and informed” manner by the victim, being this a mandatory requirement (no.6 article 281 of the CPP). On the other hand, the obligation to “make a payment of 200 euros to an institution of social solidarity” ordered to **B**, in addition to a formal apology to **A**, was clearly inadequate to this case. Knowledge of the circumstances would lead us to believe that the payment of such amount would most certainly weight on the victim herself, and in consequence do not fulfilling the objective as a preventive measure that otherwise justify the application of such a measure. The MP determined, and the investigating judge agreed, on the verification of the legal criteria and with the measures applied in this case, however this proved to be inadequate to the challenge presented in this case.

Six days only after the dismissing order was issued, the neighbours reported aggression of **B** towards **A** out in a public area, having the enquiry been dismissed because “the evidence was frail and scarce”.

Shortly after **B**'s return to the area and life in common with **A**, and following a 4-year absence, **B**'s aggressive behaviour towards **A** resumed and in 2015 were initiated further 4 criminal enquiries for injury, offence to physical integrity and domestic violence.

Of note the enquiry to investigate the facts occurred on 8th April 2015 in which **B** threatened **A** again, abused her physically and psychologically and damaged goods,



and as a consequence was arrested, subjected to a judicial questioning and coercion measures: in addition to regular visits to the station he was ordered "not to remain in **A**'s residence" and not to establish any contact with her of any kind. This enquiry dragged for too long without an accusation being put together, these two last obligations were deemed extinct on 18th October 2015 given that the maximum legal duration had been reached, and **B** was informed of this. However, **A** was not aware, and she was surprised when he turned up at her home, making death threats and trashing the house, which has triggered two new criminal enquiries. The conviction of **B** by the facts carried out on that date happened only after the homicide on 1st April 2016.

Only two from all the criminal enquiries initiated did not come to be dismissed without any consequences to **B**; in 2009, one of the enquiries for domestic violence was temporarily suspended and dismissed after the order had been complied with; in 2016, **B** was convicted for the facts occurred in 8th April 2015, but already after **A** had been murdered.

The criminal intervention in the scope of domestic violence means to reiterate the norm which forbids and punishes the maltreatments (in this case, committed against the person living with the individual in a marital status), contain and perform a socialising action on the aggressor to protect the victim. Containing the aggressor and the protection of the victim can be hugely relevant if developed in an effective way, given that very often the episodes of domestic violence tend to increase and escalate, as in the current case culminating in a homicide. In this setting, the social protection of the victim must be an ever-present concern for the criminal police, for the MP and for the court. This is an element that characterises the type of action to develop in order to combat such crimes.

In the case under review, such protection was not achieved and over time the aggressor kept building on his sense of impunity.

The following points stand out from the analysis of the parties' journey through criminal justice:

1. In the interventions occurred in the years 2006 and 2007 an oversight in regards to the behaviour of **B** became clear. The importance of this crime and the underlying reason for the public nature of this crime of maltreatment (undeniable since 2000) were not yet consolidated in the judicial practice at the time; this means that often alternative judicial qualification of the facts was chosen which allowed the termination of the process revealing lack of understanding of the evolution of the law and the cycle of domestic violence.



2. The cycle of domestic violence alternates stages of great tension, stages of violence and stages of quietness or reconciliation; the acts of violence tend to be more frequent, to increase its intensity as well as the severity of its consequences, in particular when the aggressors feel they are losing the control of the victim. The victim is entangled in this web, and oscillates between severance and rapprochement, often facing ambiguous feelings and the fear of the reaction of the aggressor, taking "risk management" in their own hands. Such attitudes or behaviours may come across as an acceptance of the violence, and of not being available to take the liberating opportunities one is being offered. The lack of training to understand and deal with the ambiguities often transpiring from the victim's behaviour, or an ill-informed reading, may, on one hand, lead to downplay the need for protection of the victim; and on the other hand, contribute to the withdrawal of the initial complaint being accepted without questioning.

In the case under review, substantial doubt remains about the legal qualification of maltreatment suffered by **A**, and that allowed some enquiries to be dismissed due to withdrawal of the complaint, as well as the sound verification of the free and informed nature of the victim's request to apply the provisional suspension of the process to the enquiry carried out in 2009. The insufficient consideration given to need to ensure protection to the victim is also evident when the victim was not informed of the extinction of the coercion measure of distancing applied to **B** in 2015 [this obligation is already a consequence of an interpretation of article 15 of the LVD, but that currently is clearly stated in no.9, article 11 of the Status of Victim in a legal proceeding, given that Guideline no. 5/2018-PGR about domestic violence tasks the MP magistrates to promote or order such communication whenever the courts do not ensure it (chapter VI no.1)].

3. The enquiry carried out in 2010 and the last two carried out in 2015, the former due to facts occurred after the term of the provisional suspension of the process, and the latter due to facts occurred after **B** was notified of the end of the distancing measure regarding **A** and from her residence, were dismissed for lack of cooperation from the victim in the evidence collection.

In the investigation of the crime of domestic violence, being proactive, searching for evidence beyond the statements of the direct players and its conservation (preservation of traces, documenting the crime scene and the consequences of the crime, ceasing the tools and instruments used, collection of information and statements) are particularly relevant because the facts often taken place out of sight and knowledge of third parties (that is not the case with the enquiries of 2009 and 2010, as the former resulted from



an alert from the local Health Centre and in the latter neighbours reported the facts) and the victim not always shows availability to cooperate, either at the time or later on. That is, it is crucial that for each case a prompt investigation is done, in such a way to preserve all the evidence and to allow firm and well-grounded protective measures to be put in place which neutralise the potential aggressiveness of the offender (article 29 of the LVD); such procedure is described in the **“The Procedural Manual for Criminal Police Bodies within 72 hours following a maltreatment report in a domestic violence context”** published in May 2020¹.

In the case under review, the period during which the temporary suspension of the process and the period during which the aggressor was subject to distancing measures from the victim **A** were confirmed to be periods in which **B** was contained, likely because he knew that non-compliance would translate into harsher measures and worsening of his situation. However, he promptly resumed the aggressions when he was informed of the archiving of the process (in the first instance) and that the coercion measure had terminated (in the second instance). The new enquiries were dismissed for lack of evidence.

The actions of the judiciary were inconsequential, increasing the feeling of insecurity and leading the victim to step back from her efforts to free herself from fear, and strengthening the sense of impunity by the perpetrator.

5.3. Failure to support the victim

Shortly after the aggressions occurred in 2010, which motivated the last enquiry preceding the absence of **B** from **A**'s residential area for about 4 years, **A** also left the area to live with a friend; she was contacted by a social security domestic violence team at the request of her brother. This team suggested a safety plan and lending her their support. However, **A** recognised her emotional connection to **B**, voiced her hope that he would change his behaviour and rejected the proposed plan. The safety plan involved distancing **A** from her residence and temporarily going to a domestic violence shelter.

¹ (https://www.cig.gov.pt/wp-content/uploads/2020/06/172-20_MANUAL_ATUACAO_FUNCIONAL_Final.pdf).



The contacts established with the social security team and **A** occurred solely at this point, limited to one conversation over the phone and another in person, having stopped when **A** rejected the support in such terms as proposed.

LVD establishes the principle of free will according to which "(the) intervention with the victim is limited by the full observation of their will" (article 7), and also the principle of consent, according to which "any intervention in support of the victim must only be taken after obtaining their free informed consent" (no.1, article 9). This means that the cooperation in the implementation of a safety plan or the acceptance of psycho-social support measures cannot be imposed upon them. However the right to safety, protection and assistance (cf. article 18 Istanbul Convention) is not lost, although will likely be made more difficult and its efficacy will lessen; the victim's right to protection (against reprisal and re-victimisation), clearly stated in LVD (article 20) and in the Status of the Victim in a legal procedure (article 15) is, in the case of domestic violence, linked to the public nature of the crime and the social commitment to end such behaviours, regardless of the victims engagement.

Through the several stages of the domestic violence cycle, the victim often shows different attitudes and openness to accept the support being offered, hence the relevance of follow up, proximity and accessibility to the teams and organisations available to provide such support, be it by request or when a new episode occurs, in a way to break the vicious cycle.

In the current case, the intervention triggered by the criminal reports was not robust. The contact with the social security team was occasional in a period during which **A** and **B** were physically apart (and so remained for 4 years), and the offer to leave the home and town of residence, where the aggressor would keep on living (according to **A**'s brother the PSP had made this suggestion already), this may have consolidated in **A** the feeling of being unprotected. Only later, in 2015 and as a result form an enquiry, the coercion measure of distancing and no contact with the victim was applied to **B**; however, the MP let the measure expire without communicating with the victim, who in turn was surprised by the presence of **B** and new episodes of aggression and might have felt even more defenceless and opted to pursue her own unsuccessful "risk management" strategy.

We highlight that in this case, particularly due to the geographical features of the place **A** and **B** inhabited, the proactivity in collecting evidence as well as the determination (lacking) in applying coercion measures that warranted the distancing and containment of the aggressor, were of particular importance. Such measures would certainly show



to be crucial tools in protecting the victim and could have created the environment for her to engage with the support plan, drafted to reorganise her personal and family life without having to endure living her home, her job and the region she had chosen to live in.

5.4. B's addiction and violent behaviour

B would have started taking drugs in his home town, at an early age and in connection with unlawful group behaviour; he served prison sentence and went through rehabilitation treatments, after which he returned to his father household until regaining his independence. During the year he lived with **A**, he went on abusing alcohol and drugs, and he joined other drug addicts; such behaviour contributed to a greater deterioration of the relation between both and the increased aggressiveness.

The consumption of psychoactive substances is associated to potential violent behaviours and namely to increased maltreatment in a family environment. The Annual Monitoring Report on domestic Violence issued in 2018 shows that 34% of the cases denounced presented issues related to alcohol consumption and 17% related to drug abuse. In the current case, considering the violence used on all members of the household at each moment in time, used as a statement of power, **B** exerted control and intimidation over **A** in a constant and persistent manner.

There is no record that **B** ever was referred to the health services with the objective of to act upon the addictive behaviour. We are not aware of any medical intervention in the context of mental health or the well-known addictive behaviours displayed by **B**. Again, in this context lies a missed opportunity of containing the spiral of violence that culminated in the death of **A**. The lack of cooperation between the healthcare services in the region where this murder occurred, mentioned earlier, does not allow a conclusion to be drawn.

5.5. How the actions intended to protect A's grandson proved ineffective

- a. The child (**C**) situation was known and followed by the local branch of CPCJ since 2006, date when the provisional guardianship was awarded to the grandmother, at 3 years of age. In 2008, the CPCJ trusted **C** to his mother (**D**), motivated by the violent behaviour of **B** which also targeted **C** and **D**. In the beginning of 2010, **A** informed the CPCJ that her daughter **D** had emigrated, and again the child was



returned to the grandmother's guardianship.

Following the aggressions perpetrated in April 2010, which triggered a report from the neighbours, the child was temporarily placed with the father, in another geographical region; at that point the CPCJ requested the intervention of the MP and a Judicial Process of Promotion and Protection was initiated. This process was dismissed in 2012 because the understanding was that the danger the child might be exposed had ceased (during this period, **B** had left the area of residence).

In fact, **C** always lived at his grandmother's house and under her care, whilst her mother lived there and also once she left the household to live abroad. The father was not in touch with the child at all. Until he became eight years of age, **C** experienced the violent environment created by **B** in the family home, and lived through it again when he was 12, upon the aggressor's return. When he was 13 years, he witnessed the facts leading to **A**'s homicide.

During this review, no record could be found of support given to this child, besides the exchanges made throughout the proceedings, regarding the promotion and protection of his rights, firstly by the CPCJ and later by the court. **A** always kept the grandson with her, despite the constant violence in the household and the concerns she expressed about his safety. After 2012, no action was taken towards promoting the rights and protecting the child.

The action developed to protect **C** was ill-informed and inconsequential, and between 3 and 13 years of age, the child suffered and witnessed the relentless, increasing violence in the household; during this 6-year period no effective measures for keeping him safe and offering conditions for a healthy development were taken.

The traumatic consequences and the support this child had from healthcare perspective are unknown, given the already mentioned lack of cooperation from the local healthcare services – no information was made available despite our repeated requests.

On this same subject, we reinforce that given the geographical features of the region in which the facts occurred, being proactive in the collection of evidence was of crucial importance, and the robustness in applying coercion measures in the scope of the criminal proceedings, that ensured the containment and distancing of the aggressor were essential to protect the victims, namely **C**.



b. As mentioned in the case report 1/2018-AC of the EARHVD, "often children are threatened, abused and even killed in circumstances similar to the ones here described and may even be used as a mean of control and threat to the victim. Whenever children are involved, they will certainly be at risk, even when not present at the violence episode itself, and any safety plan or intervention should include them".

This child (**C**) witnessed the aggressions his mother and in particular his grandmother were victims of and culminated in murder, throughout the years; he saw objects and equipment he used being destroyed by **B** and was target for his threats.

This are behaviours that represent maltreatment perpetrated by **B**, who co-lived with the child, and quite possibly could be classified as crimes of domestic violence, in pursuant of no.1 d) and no. 2, article 152 of the CP.

C was the victim of relentless, deep and severe psychological maltreatment every time he witnessed the aggressions that his mother and grandmother were subjected to, which he could not comprehend and whose consequences have not been assessed.

The practice of maltreatment in the presence of a minor is not only an aggravating factor to the sentence applied to the crime (in this case, committed against the mother of the grandmother), but in circumstances as the ones described throughout this review it qualifies as an additional crime of domestic violence, of psychological maltreatment to the child.

However, it was not considered as such in the legal procedures that followed since.

Domestic Homicide Review

06.

Conclusions



CHAPTER

06.

Conclusions

In light of the information collected and the review carried out, the following conclusions can be listed:

1. During more than 6 years of life in common of **A** and **B**, fourteen legal procedures were initiated due to violent behaviours displayed by **B**, targeting not only **A** but also the other members of the household and the community. All but two of the enquiries motivated by aggression towards **A** were dismissed without any consequences to **B**: one in 2009, on domestic violence, temporarily suspended and dismissed in 2010 after court mandate had been fulfilled; another in 2015, also on domestic violence which concluded with the conviction of **B** in 2016, after **A**'s death.

In the scope of domestic violence, the criminal intervention aims to consolidate the norm that punishes and forbids maltreatment, contain and apply a socialising action on the aggressor and protect the victim. In the case under review, the protection of **A** could not be achieved and **B** boosted a feeling of impunity, as consequence of the lenience regarding **B**'s behaviour, the lack of proactivity evidenced in the criminal investigation and the shortcomings of the judicial action.

2. **A** did not accept the safety plan that she was proposed in 2010 by the social security services, because this would involve leaving the area of residence and her job. The endeavours by the service were limited to a phone call followed by a physical meeting at a time when **A** was away from her usual home, and immediately before **B** left for a 4-year period.

The inconsistency of the interventions actioned after the criminal proceedings, and the proposal made to leave her area of residence and employment, may have led **A** to feel unprotected. On the contrary, the collection of evidence and the robustness of the coercion measures as a way of ensuring the containing and distancing of **B** (in particular considering the geographic characteristics of the territory where they both lived) were beneficial to protect **A** and create the conditions for her to accept the support in reorganising her personal, familiar and



professional life, without forcing her to leave home, her job and the region where she lived.

- 3. B** kept abusing alcohol and drugs, surrounded himself by other addicts, a factor that may have influenced his aggressiveness and the degradation of the relationship with **A**. The lack of information from healthcare did not allow any reference to support to be found throughout the review, be it medical or psychological in nature. A single emergency episode was noted at the Healthcare Centre caused by an aggression against **A** in 2009, which led to a criminal enquiry. There is also no record that **B** was ever referred to a rehabilitation program to address his well-known addiction problems (with alcohol and drugs).
- 4.** The case under review involved a child (**C**), grandson of **A**, during the whole period the couple lived together. **C** always lived with his grandmother and under her care, experiencing from a very young age the environment of violence caused by **B**, culminating in the grandmother's homicide when he was 13 years old.

Besides the contacts established during the proceedings of protection and promotion of his rights, first by the CPCJ and then by the court, no reference to support being offered to this child could be found on the records and data collection; nor could be found any effective measures for the preservation of its safety and promotion of the appropriate conditions fostering a healthy development. This was despite **A** having repeatedly expressed her concern about her grandson's safety in this violence context.

This child witnessed aggressions endured by both his mother and his grandmother, including the ones culminating in murder, saw the objects and equipment he used being destroyed by **B** and was the target of threats. Not only the psychological consequences of these behaviours he was the victim were not assessed, but also those were not given the due criminal relevance. Such behaviours qualify as maltreatment committed by **B** against the child (repeated, intense and severe psychological maltreatment every time the child was forced to watch the aggressions perpetrated upon his mother and grandmother), and include the practice of domestic violence according to no.1 d) and no. 2, article 152 of the CP. However, this was not taken into consideration in the criminal procedures that followed.



Domestic Homicide Review

07.

Recommendations



CHAPTER

07.

Recommendations

In light of the conclusions drawn from this file review, the following recommendations are issued:

1. Addressed to the Public Prosecutor's Office and criminal police bodies

It is crucial to develop the implementation capacity of the **“The Procedural Manual for Criminal Police Bodies within 72 hours following a maltreatment report in a domestic violence context”**, published in May 2020², as a tool of great importance in combating the abuse inflicted within familial relationships, intimate and cohabitation relationships and in the protection of victims from such behaviours.

2. Addressed to the Public Prosecutor General

The relevance of assigning to Public Prosecutors who perform the actual penal proceedings – and considering the social protection aspect this entails within the scope of domestic violence – the responsibility to promote the necessary efforts, from the beginning of the enquiry, to foster the communication, collaboration and coordination of all the stakeholders for each particular case. The objective is to offer help and protection to the victim, reorganise the family, to protect children and young people or vulnerable adults, and provide treatment for the aggressor, ensuring a continued, planned and coherent course of action.

3. Directed to the Parliament and the Government

In judicial practice, when ill-treatment is committed in the presence of a minor, particularly in the situations described in article 152, no. 1, paragraphs a), b) and c) of the Penal Code, the understanding prevails that only the aggravating factor provided for in no. 2, a) of the same article is applicable. It is often overlooked that this conduct, practiced in the presence of the child, may constitute a psychological

² (https://www.cig.gov.pt/wp-content/uploads/2020/06/172-20_MANUAL_ATUACAO_FUNCIONAL_Final.pdf).



abuse of which the child is a victim and, therefore, constitute an autonomous crime of domestic violence. Therefore, it is recommended that the need and opportunity to clarify the text of article 152 of the Criminal Code, so that it expressly states that a minor who is forced to witness abuse committed against one of the persons referred to in no. 1 is himself/herself a victim of the crime of domestic violence.

Lisboa, 18th November 2020

Representative of the Ministry of Justice

Dr. Maria Cristina Mendonça (Permanent Member)

Representative of the Ministry of Labour, Solidarity and Social Security

Dr. Aida Marques (Permanent Member)

Representative of the General Secretariat of the Ministry of Internal Affairs

Dr. António Castanho (Permanent Member)

Representative of the Public Administration body responsible for the area of citizenship and gender equality

Dr. Marta Silva (Permanent Member)

Representative of the Ministry of Health

Dr. Odete Mendes (Permanent Member)

Representative of the Public Security Police

Cief Duarte Diogo Gouveia de Jesus (Non-permanent Member)

Approval of the Case Report No. 6/2018-MM

(Article 6, d), e) and f) of Ministerial Order no. 280/2016, of 26th October)

1. I certify that the qualification of all members of the EARHVD is adequate for the scope of the preceding report.
2. The review of homicides in a domestic violence context aims to contribute to improving the performance of the entities/services involved in the different aspects and levels of intervention in the domestic violence phenomenon, particularly for the implementation of new preventive methodologies.



3. In this specific case, the investigation and analysis focused on the judicial intervention, public services aimed at protection of the domestic violence victim and the protection of children at risk.
4. We highlight the fact that the EARHVD could not access the information held by the health services needed for a thorough review of this case, in disregard to what is established in article 4-A, no. 4 and 5 of the LVD and article 10, no. 1, and article 12 no. 2 of the Ministerial Order no. 280/2016, of 26th October.
5. The review procedure defined in the EARHVD rules of proceeding was respected.
6. The conclusions are based on the facts. The report is objective, reasoned and clearly written.
7. The recommendations presented are relevant and timely, in light of the facts verified, of the shortcomings evidenced in the approach to the case.

For all the above reasons, **I approve the Report.**

The Report should be communicated (...)

In due course, the adapted version of this Report will be uploaded to the EARHVD website.

25th November 2020

Rui do Carmo
Coordinator of EARHVD