



# Gender Disparities in Sentence Discourses for Parental Figures Convicted of Severe Violence Against Minors in Their Care in Portugal

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## Abstract

This study aimed to scrutinize court discourses in cases of severe violence by parental figures against minors. Studies on gender differences in judicial settings have revealed that women may be either protected or demonized, as framed by the chivalry hypothesis, familial paternalism, and the double deviance/evil woman hypothesis. This study analyzed 66 judicial sentences involving parental figures (i.e., fathers/stepfathers and mothers/stepmothers) who committed extreme violence against minors. Using Braun and Clarke's (2012) thematic analysis, we found three main themes: Description of the Act, Courts' Justifications, and Aggravating Factors. Findings revealed that maternal figures received more mentions of mitigating circumstances, psychological state, and motivations for committing their crime, but were more harshly punished and criticized, supporting the evil woman hypothesis. In a field lacking ample data, this study offers crucial findings that warrant discussion for contextualizing and guiding future research.

**Keywords:** Gender differences; parental figures; judicial sentences; filicide; negligence.

## Introduction

According to data from the General Directory of Political Justice (Direção-Geral da Política de Justiça, 2020; Pereira & Correia, 2021), in Portugal in 2019, 93.3% of incarcerated individuals were male, while 6.7% were female. However, more recent statistics from the Estatísticas da Justiça website (Justice Statistics: <https://estatisticas.justica.gov.pt>) show a reversal of this trend, with a progressive increase in female incarceration and a simultaneous decrease in male incarceration. This was except for the pandemic years, which saw a general decrease in incarceration rates (de Castro Rodrigues et al., 2022).

Additionally, recent data from the *Annual Report of Internal Security* (RASI) for 2021 and 2022 showed that 19% and 11% of voluntary homicide cases, respectively, were perpetrated by individuals who had a parental or familial relationship with their victim (Gabinete do Secretário Geral, 2021, 2022). Although these numbers are considered high, it is important to note that when comparing recent data to the RASI report from 10 years ago (2012), we found that 18.8% of reported cases back then fell into the same parental/familial category of crime, which means that, in spite of a slight increase from 2020 to now and having comparable percentages, overall the number of reported voluntary homicide cases in this category has decreased both percentually and in total in recent years.



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Furthermore, by doing a similar analysis with domestic violence cases, we found that there was an 8.1% increase in reported domestic violence cases against minors in 2021, compared to 2020, resulting in a total of 639 reported cases for that year. Again, in 2022, we saw an additional 28.2% increase in the number of reported cases, resulting in a total of 819 reported cases. When analyzing these data and observing trends, it is essential to note that, similarly to voluntary homicide cases, the number of reports is significantly lower than what was reported 10 years ago. More specifically, the RASI reported a total of 4,389 and 4,108 cases in which the perpetrator-victim relationship in domestic violence cases was paternal or maternal, for the years of 2011 and 2012 respectively, and from these 3,154 and 2,976, respectively, involved victims under 16 years of age. So, although the recently reported increases in the number of cases can be considered slight compared with the total number of reported cases a decade ago, they are still noteworthy considering that they show a reversal in a decreasing trend in previous years.

With these numbers in mind, it is worth mentioning that the literature has historically focused on gender differences in criminality. Gender is considered a “master status,” which means it can be considered relevant or “omnirelevant” in every situation (West & Zimmerman, 1987; Wiest & Duffy, 2013). In this sense, gender would be part of what is referred to as extra-legal or ajuridical variables (i.e., all those variables not accounted for by the law but that influence judicial decisions to a greater or lesser extent). Therefore, as Droppelmann et al. (2017) stated, the sentencing process consists of two dimensions: an objective dimension, comprised of what the law provides; and a subjective dimension, comprised of extra-legal factors, such as gender, the social contexts of judges and the victims, and the type of court. In the criminal and judicial setting, this information is of particular interest, given that criminological literature has historically questioned the existence of differential treatment of offenders based on their gender (e.g., Anderson, 1976). More specifically for the current study, it is of interest how differential treatment can lead to an illegitimate or discriminatory difference.

Most studies support the existence of sentencing differences based on gender, with most indicating women receive better treatment than men (Doerner & Demuth, 2014; Holland & Prohaska, 2021; Koons-Witt et al., 2012; Spivak et al., 2014; Tillyer et al., 2015). In this regard, we identified three main classical theories that support these differences, namely: the chivalry hypothesis, the evil woman hypothesis, and the selective chivalry hypothesis.

The chivalry hypothesis was historically created in 1907, with a proposal from Thomas (1907, as cited in Anderson, 1976) in his book *Sex and Society*. Thomas alluded to more lenient behavior towards women regarding questions about contractual morality and their flaws, that would be seen in a lighter and even amusing way. Considering Thomas’s hypothesis, Pollak (1950) later created a theory to explain female criminality, positing that the justice system has a more lenient and protective attitude towards female offenders than male offenders. Additionally, this author also defended the idea that female offenders typically commit crimes that are more “undetectable” (i.e., less severe crimes/crimes with less probability of having legal consequences, like theft). Other authors, including Barnes and Teeters (1959, as cited in Anderson, 1976), also defended the idea that the justice system has a chivalrous attitude towards female offenders. Accordingly, they postulated an underlying necessity to protect women, stemming from the ideals of a male-dominated world. This is also closely related to judicial paternalism, which would benefit women by considering them to be in an inferior position compared to men (Steffensmeier, 1980).

Later, Malon (2020) introduced the evil woman hypothesis, which states that—in specific circumstances and for certain crimes—women can be more severely punished in what is considered a “double punishment.” This concept refers to a female offender being punished both because she acted against the stereotypical gender role expectations of a woman and a maternal figure and also for the crime committed (Bodelón González & Aedo Rivera, 2015).

Combining the two previous hypotheses, the selective chivalry hypothesis argues that when women commit crimes that align more closely with gender role expectations, they receive more lenient treatment. Conversely, when they commit crimes not typically associated with female roles, such as violent offenses, they are more severely punished. This theory also asserts that, due to different levels of discretion in court processes, gender disparity is likely to occur in decisions made before the final sentencing, such as changing or reducing charges before final sentencing (Farnworth & Teske, 1995). Relatedly, in a study of individuals who committed crimes related to narcotics, Tillyer et al. (2015) found that female offenders had a less severe criminal history and received less serious sentences than their male counterparts. But, when their criminal history was more severe/extensive, the authors found evidence that they were punished more severely. Similarly, in another study conducted by Koons-Witt et al. (2012), it was discovered that female offenders with a more extensive/severe criminal history were more severely punished than their male counterparts.

More recently, the focal concerns theory posits that judicial decisions tend to be based on three aspects: “the offender’s blameworthiness and the degree of harm caused to the victim, protection of the community, and practical implications of sentencing decisions” (Steffensmeier et al., 1998, p. 766). In line with the latter factor, the concept of familial paternalism was

introduced by Daly (1987) to explain evidence of leniency towards accused offenders who have children. As Daly suggested, this stems from judges in the sentencing process who are influenced by the repercussions of incarcerating a parental figure regarding the subsequent social costs. Although there are “incarceration costs” for every offender, those of parental figures are subjectively superior. Judges consider both the emotional impact that incarceration of the parental figure will have on the child and the societal impact of incarceration when the responsibility of caring for a child will fall to the state (Daly, 1987). As such, this theory asserts that, to avoid “increasing costs,” judges tend to grant leniency to these types of individuals (i.e., parental figures; Daly, 1987). These theories also state that individuals, like judges, must make decisions that simultaneously fit both within the law and the culture of the legal communities. To do so, they often rely on evaluations of accused individuals that contain little detail about the circumstances of the crime and the possible consequences of sentencing (Crew, 1991, as cited in Hanrath & Font, 2020).

However, in a recent study by Pina-Sánchez and Harris (2020), the authors were unable to definitively conclude that the observed sentencing disparities were unjustified. Instead, they proposed that these disparities may be attributable to significant factors, such as risk, reintegration, and retribution, which were only partially accounted for in their analysis.

In any case, it is important to think about how specific aspects concerning the ways in which filicide, physical and/or emotional abuse and negligence are committed by each gender and how they are seen and dealt with by society can invert the pattern in what seems to be the judges’ tendency to be more lenient with feminine/maternal figures (Barnett, 2007; Gray & Snowden, 2016; Koons-Witt et al., 2012; Pierce & Freiburger, 2011; Tillyer et al., 2015; Wiest & Duffy, 2013). Namely, men tend to be more violent than women, and women are seen by society and described in media as crazy/mean and unable to commit such acts in a “normal” mental state (Cavaglione, 2008; Eastal et al., 2015; McKee, 2006; Resnick, 1969). As such, this leniency may not be universally granted, being essential to consider the circumstances of the act and of the agent to evaluate this phenomenon properly.

### **Filicide, Neonaticide, Physical and/or Emotional Abuse, and Negligence**

To better contextualize the phenomena considered as severe violence, it is important to note previous literature on filicide, neonaticide, physical and/or emotional abuse, and negligence.

Filicide, or the homicide of a child by one of its parents, is the most common intentional cause of death in the United States (Barnett, 2007; Wiest & Duffy, 2013) and has been reported for centuries in practically every society (McKee, 2006). Filicide attracts heavy sentences (Butrus, 2018) and, unlike other types of homicide, it has a similar probability of being perpetrated by men and women (Stroud, 2008). This is except for neonaticide (i.e., the homicide of a newborn), where the mother is usually the main offender (Bourget et al., 2007).

Like other violent crimes, the motives for committing filicide vary, with the main reasons being jealousy, suspicions of infidelity or other problems in the parents’ interpersonal relationship, poverty, stress, lack of emotional and social support, and mental illness (Friedman et al., 2012; Liem & Koenraadt, 2008; McKee, 2006). According to the literature, there are gender differences regarding filicide and, more concretely, in the way the minors are killed, the presence of deceit after the act, a history of mental illness, and successive suicide attempts (Wiest & Duffy, 2013). Fathers who commit filicide have a greater chance of using violent methods like beating, shooting, stabbing, or asphyxiating (Resnick, 1969) and are more likely to deny their actions (Alder & Polk, 2001) and commit suicide afterwards (Bourget et al., 2007). Mothers have a greater chance of using less violent methods, such as drowning, smothering, or poisoning (McKee, 2006) and of having a previously documented history of mental illness (D’Orbán, 1979). Systematic reviews of media representations of the maternal figure showed that women in these cases were typically categorized as “bad” or “crazy,” and that those descriptions have the power to shape the judicial system’s legal responses (Cavaglione, 2008; Eastal et al., 2015). This process strengthens social cohesion by authoritarily and confidently imposing limits (Tallgren, 2013).

Regarding physical and/or emotional abuse and neglect, the literature stated that most individuals first experience violence within their family (Straus et al., 2006), and the first episode is typically physical violence (e.g., Hines & Malley-Morrison, 2005, as cited in Chen et al., 2021). The greatest predictor of injury to a child caused by parents/guardians was a history of previous abuse, with the probability of injury being higher if the practice of severe violence was habitual (Frude, 2003, as cited in Ennis & Henry, 2004). Despite neglect being a separate offense from child abuse, both are categorized as child maltreatment, although abuse is often visible, while neglect is not, which makes it difficult to detect and investigate (Pierce & Freiburger, 2011). While physical abuse is the main category of abuse most likely to cause severe injury and death to the victims, negligence was also mentioned in the literature (Ennis & Henry, 2004; Hicks & Gaughan, 1995; Margolin, 1990).

According to data from Pettalia et al.'s (2017) study, cases of neglect were the most reported, followed by physical abuse. Despite composing 9% of the total cases, emotional abuse was one of the least reported types. Their data also suggested that men received higher sentences when it came to physical abuse versus emotional abuse and neglect. Such evidence is noteworthy for investigation because it suggests that, although the accused individual in this case was not considered more guilty per se, the type of abuse they perpetrated influenced the subjective severity. According to the authors, that is concerning because emotional abuse and neglect were considered less severe (Pettalia et al., 2017), despite the empirical evidence that pointed to these forms of abuse as being as damaging as the others (Infurna et al., 2016).

Considering these findings, it becomes crucial to deepen our understanding of how gender influences sentencing by employing thematic analysis to examine judicial discourses.

## **Current Study**

The literature has predominantly focused on the sexual abuse of minors. Extending this, we specifically investigated and thematically analyzed discourses on rulings of cases of severe abuse committed by parents/guardians, specifically fathers/stepfathers and mothers/stepmothers. Offenses included homicide/filicide, physical abuse, emotional abuse, and neglect against their children. Sexual abuse was excluded from this investigation because females rarely perpetrate it, and regardless of gender, offenders typically receive severe sentences, negating any gender-related effects (Cross et al., 2003; Hanrath & Font, 2020).

We collected relevant articles of the Penal Code (PC), that by name, definition (i.e., crimes with the potential to endanger one's well-being seriously), and criteria (i.e., criteria that mentions the need for the crime to cause harm to someone, particularly if the person is defenseless by reason of age) best fit what is considered a form of severe violence against minors, according to the literature. Offenses included aggravated murder, infanticide, homicide by negligence, physical assault by negligence, domestic violence, and maltreatment.

The central question guiding this research was: To what extent does gender influence sentencing decisions by judges in cases involving extreme violence perpetrated by fathers/stepfathers and mothers/stepmothers against minors under their care?

## **Methodology**

### ***Procedure***

It was essential to access a substantial number of judicial rulings (i.e., different types of criminal typologies, ways of perpetrating the same crime, different locations/possibly different views based on such) corresponding to specific crimes outlined in the PC. These included aggravated murder (art. 132°), infanticide (art. 136°), homicide by negligence (art. 137°), physical assault by negligence (art. 148°), domestic violence (art. 152°), and maltreatment (art. 152°A). Moreover, strict criteria were applied, excluding cases involving sexual violence and ensuring that the crimes were committed against minors by fathers/stepfathers and/or mothers/stepmothers responsible for them. Methods included using the advanced search to exclude sexual crimes and conducting preliminary checks to ensure the age of the victims and crime typology were within the scope of the research. Cases were also cross-referenced by specific details about the way the crimes were committed to prevent the analysis of two judicial rulings about the same case.

The initial selection of rulings was facilitated through the European Case Law Identifier (ECLI) online platform, using keywords such as "Maltreatment," "Filicide," "Homicide," and "Violence Against Minors."

Following careful analysis, we determined that examining the rulings in their entirety would be impractical, due to their size and the time constraints regarding the original analysis—a master's dissertation. Moreover, doing so would not add to the discoveries of our study since only previous rulings and legal literature were excluded. Instead, we focused on descriptors, ruling justifications, and decisions. Additional crimes were included for analysis, such as homicide, threat, hiding of a corpse, and desecration of a corpse, to ensure comprehensive coverage. These additional crimes were added due to their presence in the analyzed rulings. A coding grid was developed through an inductive and deductive process, tested with a subset of rulings to assess inter-judge agreement, which was found to be acceptable at 78.43%. Despite some disagreements arising from coding clarity issues, a final grid was approved for use.

Out of the 100 rulings analyzed, 34 were excluded for various reasons. These included being part of/related to rulings already analyzed (to avoid replication of data); the victim ended up not being a minor at the time of the ruling; and, in one case, the

concurrent practice of sexual violence, which was not identified in the first analysis. A final corpus of 66 rulings was obtained. Although small, this comprised rulings from all over the country, thus adequately representing our context, given what was available. Among these, regarding crimes resulting in the death or attempted death of minors, three instances of homicide and three cases of non-aggravated homicide were identified (see Table 1). Additionally, concerning crimes involving physical, psychological, and emotional violence, as well as neglect, the predominant offenses were 16 cases of domestic violence, 10 instances of maltreatment, and five cases of aggravated physical assault (see Table 1).

**Table 1**

*Frequency of Offenses Separated by Type of Crime*

General type of crime	Specific type of crime	Frequency
<b>Homicide</b>	Aggravated Homicide	8
	Homicide	3
	Non-Aggravated Homicide	3
	Homicide by Negligence	1
	Attempted Murder	1
	Aggravated Homicide and Hiding of a Corpse	2
	Homicide With Desecration of a Corpse	1
	Aggravated Homicide with Desecration of a Corpse	2
	Attempted Murder with Desecration of a Corpse	1
	Attempted Murder with Illegal Weapon	1
<b>Violence/Negligence</b>	Domestic Violence	16
	Aggravated Domestic Violence	1
	Maltreatment	10
	Aggravated Physical Assault	5
	Non-Aggravated Physical Assault	3
	Negligence	2
	Aggravated Threat	1
	Maltreatment with Negligence	1
	Domestic Violence with Aggravated Threat	1
Domestic Violence with Kidnapping of a Minor	1	

### **Data Analysis**

To analyze and categorize the data, we employed a thematic analysis technique. This method, guided by Braun and Clarke's (2012) six-phase approach, involved reading and familiarizing ourselves with the data; identifying/selecting quotes; creating initial codes; reviewing quotes to find themes; reviewing potential themes; and inductively identifying subthemes and defining/naming themes, describing results, and producing a report.

Prior to this process, we conducted a comprehensive literature review and identified specific factors related to crimes against minors committed by their parental caretakers. This enabled us to develop a grid that also integrated these factors in an abductive manner, akin to previous work conducted in a national context by Pereira et al. (2022).

## Results

Our analysis identified four primary categories within rulings on parental figures who committed extreme violence against minors they cared for: 1) Circumstances of the Act; 2) Characteristics of the Victim/Perpetrator; 3) Circumstances of the Perpetrator; and 4) Characteristics of the Sentence. Within these categories, we further delineated 15 subcategories, including Description of the Act, Extenuating Factors, Aggravating Factors, Perpetrator's Perceptions of the Victim, Sociodemographic Aspects, Motivations, Personality/Psychological State, Relationship with the Victim, Regret for the Crime, Type of Voting, Years/Months Sentenced, Way of Serving the Sentence, Additional Measures, Pleading Principles, and Courts' Justifications for Their Choices. Table 2 presents the frequencies and percentages of each category and subcategory.

**Table 2**

*Analysis Grid with Frequencies and Percentages*

Categories — frequency (%)	Subcategories	Codes (%)
1. Circumstances of the act: 4,003 (59.2%)	1.1 Description of the Act	2,682 (39.7%)
	1.2 Extenuating Factors	230 (3.4%)
	1.3 Aggravating Factors	1,091 (16.1%)
2. Characteristics of the victim/perpetrator: 539 (8.0%)	2.1 Perpetrator's Perceptions of the Victim	30 (0.5%)
	2.2 Sociodemographic Aspects	509 (7.5%)
3. Circumstances of the perpetrator: 524 (7.8%)	3.1 Motivations	80 (1.2%)
	3.2 Personality/Psychological State	370 (5.5%)
	3.3 Relationship with the Victim	38 (0.6%)
	3.4 Regret for the Crime	36 (0.5%)
4. Characteristics of the sentence: 1,693 (25.1%)	4.1 Type of Voting	66 (1.0%)
	4.2 Years/Months Sentenced	155 (2.3%)
	4.3 Way of Serving the Sentence	130 (1.9%)
	4.4 Additional Measures	38 (0.6%)
	4.5 Pleading Principles	97 (1.4%)
	4.6 Courts' Justifications for their Choices	1,207 (17.9%)
Total		6,759 (100%)

Table 2 shows the majority of rulings (73.7%) were comprised of segments related to the Description of the Act (39.7%), followed by Courts' Justifications for Their Choices (17.9%) and Extenuating Factors (16.1%).

These results align with legal expectations, as our focus was primarily on analyzing justifications and decisions within the rulings. As a result, many factual and accusatory segments fall under the category of Description of the Act.

To clarify our findings and coding criteria further, we conducted an in-depth analysis of each subcategory of our grid and provide examples of quotes extracted from our data below.

### 1. Circumstances of the Act

#### 1.1 Description of the Act

Subcategory 1.1, Description of the Act, emerged as the most prevalent category in judges' discourses, comprising 39.7% of the entire discourse on sentencing decisions (Table 2), with a total of 2,682 coded segments. This category encompassed all accusations and proven facts mentioned by the courts in their discourses. We restricted our analysis to sections of discourses

that were objectively clear of judgment towards the perpetrator (i.e., facts), ensuring that segments lacked any adjectives describing the offender's conduct.

Segments coded for this category were found throughout the text, detailing events leading up to, during, and after a crime. Descriptions of the perpetrator's behavior, as well as injuries and findings from medical exams/autopsies, were included as they provided objective accounts of the events and their immediate consequences. For example:

The minor is hospitalized in the pediatric services of that hospital, without medical release, he has many lesions, one of which is a red bruise on the left side of its face, of approximately 10cm, and with three distinct lines and a lesion and a abrasion on his left chin, and he's very nervous and crying, talking about the aggression, but denying it in front of his mother. (Ruling 756/07.0TBLNH-B.L1-6)

The death was due to asphyxiation with occlusion of the respiratory cavities, which was the result of the defendant mentioned in 16. (Ruling 1795/07.6GISNT.L1)

### 1.2 Extenuating Factors

Subcategory 1.2, Extenuating Factors, although the least mentioned subcategory within Circumstances of the Act, merited thorough examination. Out of 4,003 segments in this category (59.2%), we coded 230 coded segments as Extenuating Factors (3.4%). In this subcategory, we considered factors like single violations (i.e., not being judged for multiple crimes simultaneously), absence of a criminal record (the most common extenuating factor), the crime being a single episode of physical/psychological violence or neglect (as opposed to continued abuse), and favorable testimonies. For instance:

[The perpetrator] doesn't have a criminal background. (Ruling 1795/07.6GISNT.L1)

The witness explains, in a credible way, that the perpetrator didn't intend to push his daughter down the stairs, he was simply leading her in their direction. (Ruling 309/09.8PEOER.L1-5)

Throughout the rulings, the lack of a criminal record as an extenuating factor was consistently mentioned. Favorable testimonies were also prevalent, but they were often provided by individuals who did not witness the events firsthand, or knew the individual in unrelated contexts, or had family or friendship ties to the accused.

Interestingly, extenuating factors for women were mentioned twice as often on average ( $M = 4.93$ ) compared to men ( $M = 2.10$ ). This difference was more pronounced in homicide cases, with women's mentions being over six times higher ( $M = 6.89$ ) than men's ( $M = 1.0$ ). However, in cases of violence/neglect, this gender disparity in extenuating factor mentions was less noticeable, with similar averages for men ( $M = 2.24$ ) and women ( $M = 2.08$ ).

### 1.3 Aggravating Factors

Subcategory 1.3, Aggravating Factors, constituted 16.1% of the judges' discourses, encompassing 1,091 coded segments of text. We considered various aspects within this subcategory, including the condemnable nature, illegality, and intentionality of the act, as well as the perpetrator's criminal record. For example:

With this conduct [the perpetrator] acted in a deliberate, free and conscious manner, knowing that their actions were prohibited and criminally punishable. (Ruling 1795/07.6GISNT.L1)

Additionally, we identified aggravating factors, such as the perpetration of multiple crimes, involvement of both parental figures, presence of multiple victims, co-occurrence of different types of violence/neglect, severity of the crime, mentions of consequences to others, and unfavorable testimonies. For instance:

These two witnesses saw that the child had two bruises on its head. (Ruling 309/09.8PEOER.L1-5)

The primary aggravating factor identified in this category was the reprehensibility of the perpetrator's conduct, which was prevalent across all types of crimes, especially homicide. Mean values for both men and women were comparable overall, with slightly higher values for men in homicide cases. Conversely, in cases of violence/neglect, women exhibited slightly higher mean values than men.

## 2. Characteristics of the Victim/Perpetrator

### 2.1 Perpetrator's Perceptions of the Victim

Although this subcategory comprised only 30 coded segments, or 0.5% of the entire discourse, it remained significant as it emerged during our data analysis. This subcategory predominantly surfaced in cases of homicide involving female perpetrators. It aimed to encapsulate situations where the victim had chronic or incurable diseases, or common ailments perceived as such, representing fragility and necessitating constant care. For instance:

She decided to end his life, and then hers, reasoning that he suffered 'too much' due to recurrent tonsillitis, pharyngitis, and common respiratory diseases. (Ruling 557/09.0GEVNG.P3.S1)

Additionally, we considered aspects like perceptions of the victim's psychological fragility (e.g., belief that the victim could not cope with the perpetrator's suicide, prompting a joint demise) and the victim's perceived vulnerability to external threats (e.g., fear of mistreatment after the perpetrator's demise). For example:

She believed his death was necessary for her to commit suicide, as she couldn't bear the thought of him suffering because of her absence. (Ruling 697/16.0JABRG.S1.G1.S1)

She concluded that both their lives must end, fearing her son couldn't cope with her absence, especially due to his strong bond with her and the fear his father instilled—unlike his younger sibling, who viewed the father as a friend. (Ruling 697/16.0JABRG.S1.G1.S1)

In cases involving violence, factors such as the victim's behavior and the relationship with the perpetrator were considered, including mentions of inappropriate language or perceived misbehavior.

Overall, upon analysis, it was evident that this subcategory largely stemmed from cases involving female perpetrators of homicide. These cases primarily revolved around health issues, with maternal figures feeling compelled to shield their children from potential hardships following their own demise.

### 2.2 Sociodemographic Aspects

Subcategory 2.2, Sociodemographic Aspects, included 509 coded segments, making up 7.5% of the total discourse in the rulings. This subcategory encompassed data such as marital status, address, income, education level, and social fitness. Most of this information was derived from social reports attached to the rulings, with some details also present at the beginning of the rulings. Examples include:

The defendant is a professional blind installer, earning €800.00 monthly. (Ruling 0842772)

The defendant has completed the 9th year of education. (Ruling 0842772)

## 3. Circumstances of the Perpetrator

### 3.1 Motivations

Subcategory 3.1, Motivations, despite comprising only 1.2% of the total discourse with 80 coded segments, yielded diverse results worth analyzing. This subcategory was based strictly on our data. We coded mentions that clearly categorized the perpetrator's motivations, such as labeling them as "selfish" or "unjustified," or as understandable and potentially mitigating. Examples include:

The news about being pregnant presented an emotional shock for N ... and was perceived as a stress factor. She felt unprepared for a pregnancy and feared her father's reaction, fearing he would abandon her, though she recognized this fear as excessive and irrational. (Ruling 288/09.1GBMTJ.L1-5)

Additionally, we coded various external factors influencing conduct, such as family disapproval, lack of support from family/partner, pressure to abort (by family/partner), violent partner, end of a relationship, suspicions of infidelity, poor work stability, sole income in the household, lack of social support, and societal disapproval/censure. Examples include:

During her pregnancy, her concern was ensuring her mother, an oncology patient, did not find out. (Ruling 423/10.7JAPRT.P1)

The mixture of circumstances surrounding her, coupled with homelessness and inability to maintain a child, better suited the crime of infanticide. (Ruling 1589/19.6PKLSB.L1.S1)

The defendant's conduct stemmed from fear of disapproval from her family and society because she was pregnant with a married man's child, fearing social censure she felt incapable of facing. (Ruling 1052/07-2)

Most mentions in this subcategory came from crimes committed by maternal figures ( $M = 2.38$ ) compared to paternal figures ( $M = 0.12$ ). Specifically, in homicide cases, there were significantly more mentions for women ( $M = 3.58$ , or 68 mentions) than for men ( $M = 0.20$ ). Even in cases of violence, mentions were more frequent for female perpetrators ( $M = 0.62$ ) compared to males ( $M = 0.11$ ).

### 3.2 Personality/Psychological State

This subcategory accounted for 5.5% of the discourse, or 370 coded segments, and became particularly interesting when considering the studied crimes. For example:

This case is 'a psychiatric situation,' an out of context slip up, because 'everything is out of its normal context' ... pointing to psychiatric illness, making the events understandable only "in light of a mental illness." (Ruling 150/11.8JAAVR.P1)

We coded both favorable and unfavorable mentions about the individual's personality. Favorable mentions included states of "despair" or compromised mental states, which could diminish guilt:

It's important to consider that the defendant acted in bad faith, although attenuated by her state of intense emotional disturbance. (Ruling 423/10.7JAPRT.P1)

The proven facts are enough to conclude the true existence of 'despair' that significantly diminished the appellant's guilt. (Ruling 697/16.0JABRG.S1.G1.S1)

The defendant killed to 'liberate herself from constraints,' indicating a 'considerable diminished guilt.' (Ruling 1052/07-2)

Unfavorable mentions included psychological states reflecting coldness, perversion, or ill intent, where mental illness did not diminish guilt but rather worked against the defendant:

Before the birth, she seemed unconcerned about her minor sisters' well-being, showing selfishness and coldness. (Ruling 423/10.7JAPRT.P1)

The defendant's specific conduct against each minor, over whom he had custody, shows a great will to harm them. (Ruling 326/13.3GLSNT.L1-9)

Results showed a significantly higher number of mentions related to the personality/psychological state of female defendants ( $M = 9.75$ ) compared to male defendants ( $M = 1.69$ ). This discrepancy was particularly pronounced in homicide cases, with higher mentions for maternal figures ( $M = 14.42$ ) versus paternal figures ( $M = 3.80$ ). In cases of violence/neglect, this trend persisted, though with a smaller difference between females ( $M = 2.92$ ) and males ( $M = 1.41$ ).

### 3.3 Relationship with the Victim

Subcategory 3.3, Relationship with the Victim, was among the least mentioned in legal rulings, appearing only 38 times, or in 0.6% of the discourse. This subcategory coded mentions of attachment or lack thereof between a parental figure and a minor, as well as the quality of this relationship:

Given the defendant's mindset at the time, hiding her pregnancy from everyone, isolating herself from work, and her anxiety over her mother's illness, she apparently didn't create any affection or maternal feeling toward the baby during pregnancy and birth. (Ruling 423/10.7JAPRT.P1)

The child was born and her sister handed it to her, but she didn't want to form an attachment. She said during her first interrogation that when her sister delivered the baby, she told her it was alive, and she responded that it couldn't be, because she didn't want to bond with the child. (Ruling 259/18.7PFSXL.L1.S1)

After the incident, the relationship between father and daughter improved significantly. (Ruling 0842772)

Despite the few mentions, there were notable differences in the frequency of mentions between women and men. Women had a higher mean ( $M = 0.91$ ) compared to men ( $M = 0.29$ ). In homicide cases, the means were closer, with women at  $M = 1.11$  and men at  $M = 0.80$ . In cases of violence/neglect, women again had a higher mean ( $M = 0.62$ ) compared to men ( $M = 0.22$ ).

### 3.4 Regret for the Crime

Mentions of regret constituted only 0.5% of the entire discourse, appearing in just 36 segments. Similarly to Subcategory 3.3, we coded mentions of the presence or absence of regret. Given the potential impact on judges' perceptions, we also included statements about the stability of that regret (i.e., whether the defendant expressed remorse immediately after the crime or only during the trial). Examples include:

The defendant placed the bag with the baby at dawn and later returned to the area, hearing from others that they heard cries but felt no remorse or desire to search for the baby. (Ruling 1589/19.6PKLSB.L1.S1)

She acknowledged her remorse, stating she regrets it every day, surviving one day at a time. She admitted everything from the start and said that in hindsight, she sees herself as a "monster." (Ruling 423/10.7JAPRT.P1)

The mean value for expressions of regret was similar for women ( $M = 0.56$ ) and men ( $M = 0.40$ ) overall. In homicide cases, the means were  $M = 0.89$  for women and  $M = 0.80$  for men. In cases of violence/neglect, we observed a disparity: there was only one mention in maternal cases compared to 13 mentions in paternal cases.

## 4. Characteristics of the Sentence

### 4.1 Type of Voting

Subcategory 4.1, Type of Voting, appeared once in every ruling, derived from the descriptors. Thus, there were 66 coded segments that made up 1.0% of the total discourse. In this subcategory, only one of the 66 rulings was decided by a majority vote, with one dissenting vote. This suggests that, in these cases, there was little reasonable doubt about the culpability of the parental figures, reflected in the concise decision statements:

Vote: Unanimity

Vote: Majority with 1 vote won. (Ruling 0842772)

### 4.2 Years/Months Sentenced

In Subcategory 4.2, Years/Months Sentenced, we recorded 155 text segments, making up 2.3% of the total discourse. This subcategory focused solely on the length of sentences, not on how they were served, which was covered in Category 4.3. Sentences ranged from a minimum of 50 days to a maximum of 25 years, the latter being a juridic maximum as the combined sentences for multiple crimes would exceed 25 years.

Men received the shortest sentences (85 days) and women the longest (24 years), with mean sentences of 5 years and 3 months for men and 8 years and 8 months for women.

When examining sentences by type of crime (homicide vs. violence/negligence), we observed different trends. For parental homicide cases, the mean sentence for men was 20 years and 6 months. Maternal homicide cases varied widely (from 2 years and 6 months to 24 years), resulting in a mean sentence of 10 years and 3 months.

In violence/negligence cases, maternal figures received longer sentences on average (5 years and 2 months) compared to paternal figures (2 years and 11 months), despite the latter having more cases overall but generally shorter sentences.

### 4.3 Way of Serving the Sentence

In subcategory 4.3, Way of Serving the Sentence, we coded 130 text segments, representing 1.9% of the discourse. Although this subcategory constituted a small portion of the rulings' discourse, it is noteworthy, as it reflected how judges wanted perpetrators to serve their sentences. The primary forms of serving time were imprisonment and suspended prison sentences, with some cases involving daily fines or lump sum payments.

For female perpetrators, 67.9% received prison sentences, 28.6% received suspended prison sentences, and 3.6% were fined. For male perpetrators, 40% received prison sentences, 43.3% received suspended sentences, and 16.7% were fined.

Regarding the types of crime, all paternal homicide cases resulted in imprisonment. In maternal homicide cases, the sentences varied: 84.2% received prison sentences and 15.8% received suspended sentences.

In cases of violence/negligence, 30.8% of male perpetrators were sentenced to prison, 50% received suspended sentences, and 19.2% were fined. Among female perpetrators, 33.3% were sentenced to prison, 55.6% received suspended sentences, and 11.1% were fined.

#### 4.4 Additional Measures

In Subcategory 4.4, Additional Measures, we registered 38 text segments, making up 0.6% of the total discourse. This subcategory represented instances where judges established additional measures beyond the main sentence, such as prohibiting contact with victims, mandatory rehabilitation programs, or paying damages.

Out of 66 rulings, only nine included additional measures, with just two being homicide cases. Specifically, four cases involved rehabilitation measures. Of these nine cases, 55.6% involved male perpetrators, while 44.4% involved female perpetrators.

Four rulings had multiple additional measures. The most common measures were paying damages to victims (55.6%), specialized counseling (22.2%), participation in programs/training (22.2%), and prohibition of contact with victims (22.2%). Less frequent measures, appearing in only one case each, included commitment to a psychiatric prison hospital (11.1%), loss of parental rights (11.1%), and the obligation to report job search efforts to The General Directory of Reinsertion and Prison Services (DGRSP) every 15 days (11.1%).

#### 4.5 Pleading Principles

Subcategory 4.5, Pleading Principles, encompassed 97 mentions, or 1.4% of the discourse, reflecting the invocation of 29 different legal principles. The most frequently mentioned principle was *In Dubio Pro Reo* (34 mentions, 35.1%), which appeared both in support of and against the defendants. Other notable principles included: Free Appreciation of Evidence (12 mentions, 12.4%), Proportionality (11 mentions, 11.3%), Legality (six mentions, 6.2%), and Excess (four mentions, 4.1%).

These five principles accounted for 69.1% of the discourse in this subcategory. Example mentions include:

Violation of the Principle *In Dubio Pro Reo* for considering that it wasn't proven that the defendant committed the proven facts. (Ruling 533/16.7PBSTR.E1.S1)

The appellant invokes the violation of the Principle of Free Appreciation of Evidence, guaranteed in Art. 127.º of the PPC, to justify her disagreement with the facts. (Ruling 08P827)

The Principle of Legality demands that the Public Ministry oppose the appealed decision regarding the imposed conditions for suspension due to its lack of proof as required by Art. 374., N3, a) of the PPC. (Ruling 413/15.3PFAMD.L1-3)

Other principles mentioned twice (2.1% each) were: Maximum Sentence Allowed, Family Prevalence, Justice in the Concrete Case, Orality, Proximity, and Adhesion.

Example mentions include:

To safeguard the child's physical integrity and well-being, it's important to remove the child from their family environment, not invoking principles like Family Prevalence. (Ruling 756/07.0TBLNH-B.L1-6)

Considering the Principle of Justice in the Concrete Case, we must examine the current proceeding. (Ruling 4/11.8GATBC-A.P1)

Finally, there were singular mentions of several principles, each making up about 1% of the identified mentions. These included: Principle of Contradiction, Equality of the Parties, Non-Bis In Idem, Double Appeal, Double Grade of Jurisdiction, Prohibition of *Reformatio in Pejus*, Adequacy, Necessity of the Sentence Guilt, Juridic Security, Typification, Equality of Onuses and Sacrifices, Indispensability, Actuality, Early Intervention, Prohibition of Double Valuing, Investigation, and Discovery of the Material Truth. Examples include:

By the Principle of *Reformatio in Pejus*, we would maintain the defendant's sentence of suspended prison. (Ruling 356/17.6GACSC.L1-3)

The daily amount concerns the Principle of Equality of Onuses and Sacrifices to address criticisms about differing impacts based on economic status. (Ruling 220/07.7GCACB.C1)

#### 4.6 Courts' Justifications for Their Choices

Subcategory 4.6, Courts' Justifications for Their Choices, was the second most prevalent category, comprising 1,207 segments or 17.9% of the total discourse. This subcategory held significant importance in this research as it delved into the courts' rationale beyond legislative perspectives, often including ajuridical motivations. These motivations encompass instances where the courts make character judgments about parental figures, discuss sentencing choices, and consider gendered discourse that

may either benefit or harm the defendants. Examples highlight varying treatment based on gender and expectations placed on pregnant women:

- Court discourse questioning the defendant's cognitive capacity while downplaying the impact of mental health issues: "Making excuses for the defendant's behavior based on mental imbalance would weaken penal protection of juridic assets" (Ruling 312/15.9POLSB.S1).
- Criticism of parental figures for failing to fulfill duties: "Violated his duties as a father by neglecting the child's education, health, and well-being" (Ruling 1271/04-1).
- Framing defendant behavior according to psychological characteristics: "Characteristic of a violent and ill-intended personality" (Ruling 125/15.8PHSNT. S1).
- Assumptions about defendants' knowledge of pregnancy: "Less believable is the defendant's claim of unawareness after the third/fourth month" (Ruling 08P3547).

Some instances revealed insensitive questioning and statements from the court:

Confessed to kill your son to just get over it? (Ruling 9170/2008-5)

The minor's progenitor is incapable of developing an affectionate relationship with the child due to mental retardation. (Ruling 0752873)

Additionally, there was a call for severe punishment:

Facts proven are of extreme gravity, warranting rigorous intervention from courts to dissuade potential delinquents. (Ruling 1081/09.7JAPRT.P2.S1)

Deserving of severe censorship for harming a thirteen-month-old child with ill intent. (Ruling 220/07.7GCACB.C1)

And there were also mentions of the benefits of particular sentences or actions:

Putting the child back into the family would compromise her future, safety, and stability. (Ruling 1397/16.6T8BCL.G1.S2)

Arranging a substitute caregiver would be necessary for the child's well-being. (Ruling 997/08.2TMFAR.E1)

However, some instances showed leniency or apologetic views towards the defendant's conduct:

Exceeded power/duty of correction but not indicative of abominable selfishness. (Ruling 141/16.2 T9FAL.E1)

Defendants, while suffering, still need to be sentenced for committing homicide by negligence. (Ruling 0843879)

These excerpts reflect the complex interplay of legal reasoning, societal expectations, and individual circumstances in judicial decisions regarding parental figures.

## Discussion

This study aimed to scrutinize court discourse in cases of severe violence by parental figures against minors. In a field lacking ample data, this study offers crucial findings, warranting discussion for contextualizing and guiding future research. Initially, the study uncovered that 40% of court discourses was comprised of proven facts and accusations, as expected in legal proceedings. However, this figure prompted deeper analysis, suggesting that the remaining 60% of discourses may entail subjective considerations, necessitating further investigation.

Examining extenuating and aggravating factors, striking gender disparities emerged. Female perpetrators faced a higher ratio of aggravating factors, particularly in cases involving violence or negligence. Conversely, male perpetrators exhibited a higher ratio of aggravating factors in homicide cases, indicating potential biases in judicial discourse.

Regarding Motivations, female perpetrators received significantly more mentions than their male counterparts. This could stem from societal stereotypes, such as the incongruity of violent crimes with the maternal image, leading to a heightened need to understand female motivations (Malon, 2020; Tillyer et al., 2015). Personality aspects were frequently mentioned in female cases, potentially reflecting societal expectations of women's emotional expression and stereotypes surrounding maternal

figures (Barnett, 2007; Cavaglion, 2008; Easteal et al., 2015). Conversely, male perpetrators' motivations were scarcely mentioned, indicating a possible insensitivity or reluctance to identify male motivations influenced by stereotypes of male violence and societal stigma (Archer, 2000; Gray & Snowden, 2016).

This study also shed light on sentencing patterns. Despite considerations of extenuating factors and psychological states, maternal figures often received severe sentences, with few instances focused on rehabilitation. Courts' justifications revealed inappropriate language and non-legal judgments toward parental figures, particularly pregnant women, who faced harsher sentences and societal expectations (Daly, 1987; Hanrath & Font, 2020; Pierce & Freiburger, 2011).

These findings underscore the complex interplay of legal discourse, societal stereotypes, and gender biases. While supporting the evil woman hypothesis, the study also acknowledges the need for a more representative sample to capture gender dynamics in filicide cases entirely (Wiest & Duffy, 2013).

In summary, this study's nuanced analysis offers valuable insights into the multifaceted nature of court discourses about parental violence against minors, highlighting the need for further research and scrutiny in this critical area. These findings must inform future policies and highlight the importance of the judge's continued education regarding the law and its commitment to being neutral, despite gender. It is only through further training and by developing programs that specifically target gender biases that these discrepancies in sentencing can be mitigated.

### **Limitations and Future Studies**

This study had several limitations that warrant discussion for future research endeavors.

Firstly, the groundbreaking nature of the study, being the first of its kind in Portugal, limits comparative analysis with existing data. Future studies can benefit from our findings as a benchmark for comparison, enriching our understanding of the national context. Also, future studies should take these findings into account in order to create programs and policies that promote a constant and evolving education of judges. This should be characterized by the promotion of good practices, such as impartiality when judging and being rigorous as to what is written and should be followed in the PC.

Secondly, we could not analyze the rulings comprehensively due to time constraints, potentially omitting insights from the initial report sections. Future studies should prioritize a thorough examination of the complete rulings. Moreover, while convenient, the methodology used to obtain rulings may have restricted the quantity and quality of information. Accessing rulings directly from courts could enhance sample diversity and provide a more illustrative depiction of the national reality. The overrepresentation of maternal, compared to paternal, filicide cases raises questions about potential biases in sentencing. Exploring more paternal filicide cases could yield insights into sentencing disparities. The codification grid's agreement level, though acceptable, could be improved. Future studies utilizing similar categories should refine the grid to ensure better understanding and agreement among coders.

Also, exploring courtroom discourses in future studies could enrich our understanding of parental violence against minors. It could also allow for the measurement of variables, such as gender, age, and years of practice for judges, complementing our findings and contributing to existing literature.

Moreover, further investigation into the discrepancy between extenuating and aggravating factors in these crimes, particularly regarding the severe punishment of female offenders despite receiving more extenuating factors, is warranted. Future research should delve deeper into individual motivations for these crimes in the national context and explore reasons for the infrequent mentions of motivations in judicial rulings.

Additionally, understanding the relatively frequent mentions of psychological and personality aspects in crimes committed by female offenders warrants investigation. Observing interviews, especially those conducted by psychology experts and other law enforcement agents during judicial phases, could provide useful insights. This may shed light on whether these types of judicial proceedings are conducted in an unbiased way, considering the same factors for both men and women. Such observations might also reveal courts' treatment of this expertise. Comparative analysis between violent and non-violent crimes could elucidate the interaction between crime type, perpetrator–victim relationship, and sentencing patterns.

Finally, future studies comparing different groups of parental figures (e.g., fathers/mothers, stepparents, grandparents) could reveal whether our findings were influenced by gender or other variables, such as consanguinity and age.

## Conclusion

This study represents a pioneering national endeavor to analyze court discourse in cases of severe violence against minors by parental figures. It sheds light on various gender discrepancies in sentencing outcomes, revealing that, despite initial indications of leniency toward female perpetrators, they ultimately faced more criticism and severe punishment. These findings align with the evil woman hypothesis, suggesting that female perpetrators are doubly judged and punished for the severity of their crimes and the violation of feminine ideals. This highlights the complexities of gender dynamics within the judicial system, warranting further exploration in future research.

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