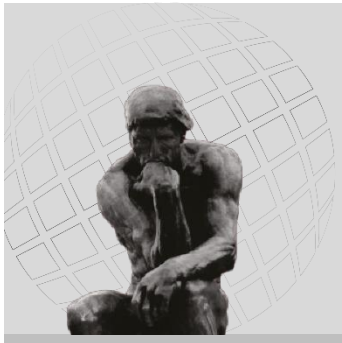
ISSN 2179-8214
https://doi.org/10.7213/revdireconsoc.v16i1.32018

Scientific article



Revista de
Direito Econômico
e Socioambiental

PUCPRESS

periodicos.pucpr.br/direitoeconomico

Legal and economic analysis of the changes enacted by Law n. 13,871/2019 on Maria da Penha Law

Análise jurídico-econômica das mudanças introduzidas pela Lei n. 13.871/2019 na Lei Maria da Penha

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How to cite this article: SIGRIST, Felipe; DIAS CARDOSO, Luiz Eduardo. Legal and economic analysis of the changes enacted by Law n. 13,871/2019 on Maria da Penha Law. **Revista de Direito Econômico e Socioambiental**, Curitiba, v. 16, n. 1, e294, jan./abr. 2025. DOI: https://doi.org/10.7213/revdireconsoc.v16i1.32018

Recebido/Received: 15/08/2023 / 08/15/2023
Aprovado/Approved: 21/11/2024 / 11/21/2024

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Abstract

This article aims to analyze the legislative innovations and the changes that occur in the individuals' incentives, which results from Law no. 13,871/2019. We investigate, through legal analysis, the goals of the policymakers on including new paragraphs in Maria da Penha Law and, through the Economic Theory of Crime, we elaborate a hypothetico-deductive analysis over the individuals' incentives. We conclude that Law no. 13,871/2019 follows the initial principles that underlie Maria da Penha Law, which does not only restrict itself to the criminal sphere, but also expands the punishments to the civil sphere. In economic terms, we understand that simply raising the severity of the punishments will have little effect on combating violence against women, besides creating opposite incentives to victims that seek medical help. At last, a few considerations about future research on this theme are made.

Keywords: Economic theory of crime. Economic analysis of law. Violence. Woman. Maria da Penha Law.

Resumo

Este artigo objetiva analisar as inovações legislativas e as mudanças nos incentivos dos indivíduos resultantes da sanção da Lei no 13.871/2019. Investiga-se, em uma análise jurídica, os objetivos dos legisladores com a inclusão de novos parágrafos à Lei Maria da Penha e, através da Teoria Econômica do Crime, elaboramos uma análise hipotético-dedutiva das implicações da mudança legislativa sobre os incentivos individuais. Conclui-se que, juridicamente, a Lei no 13.871/2019 segue o princípio subjacente à Lei Maria da Penha de não se restringir à esfera criminal, ampliando as sanções no âmbito cível. Sob a ótica econômica, entende-se que o simples aumento na severidade das penas pouco contribuirá para o combate a violência contra a mulher, com o agravante de gerar incentivos contrários às vítimas que procuram auxílio médico. Por fim, são feitas algumas considerações sobre pesquisas futuras dentro desta temática.

Palavras-chave: Teoria econômica do crime. Análise econômica do direito. Violência. Mulher. Lei Maria da Penha.

Contents

1. Introduction

Violence against women is an old social problem, which is far from being eradicated. According to the *Anuário Brasileiro de Segurança Pública 2022*, there is a continue increase in the cases of domestic violence against women from 2016 (422.718 cases) to 2021 (630.742 cases). The latest report, *Anuário Brasileiro de Segurança Pública 2024,* also shows an increase in all categories associated to violence against women (homicide and femicide, both consummated and attempted, assaults in the context of domestic violence, threats, stalking, psychological violence and rape). Furthermore, this problem has received larger attention from the state only in the last years, more specifically since Law no. 11,340/2006 – popularly known as the Maria da Penha Law – was enacted, and latter when Law. 13.104/2015 recognized femicide as a specific category of crime within the Brazilian legal system.

As Cerqueira et al. (2015) emphasize, until the approval of the Maria da Penha Law, the incidents regarding violence against women were judged according to the Law no. 9,099/1995, that is, as minor crimes. Maria da Penha Law represented a considerable advance in Brazilian legislation and in public policies regarding violence against women. Such advance occurred due to the broad participation of feminist non-governmental organizations in the law's sketch writing process, and also because of the idea underlying the law, which does not limit itself to the criminal sphere (CERQUEIRA et al., 2015). Since its approval in 2006, Maria da Penha Law has been modified several times, and one of its recent changes was introduced by Law no. 13,871/2019, which is the subject of the present paper. With the changes that this new law introduced, it is not only the Maria da Penha Law itself that has changed but also the incentives and restrictions it produces upon the individuals.

This article aims to analyze, from the legal and economic perspectives, the changes introduced in the Maria da Penha Law by Law no. 13,871/2019. The paper tries to answer to the following questions: i) which innovation induced by Law no. 13,781/2019 justifies its promulgation; and ii) how the new law changes the incentives and restrictions on the decision of committing a crime related to violence against women. Our paper contributes to the racent legal literature on Law no. 13,871/2019 (SOUZA; FERREIRA JR.; 2023) and innovates by using Economic Analysis of Law to understand how legal changes can affect individuals' behaviors.

The article is structured as follows: an introduction (1); a legal analysis of the innovations introduced by the new law (2); a hypothetico-deductive analysis, under the Economic Analysis of Law, about the expected behavior of the potential criminals and victims (3); comments on future researches (4); final remarks (5).

2. Legal Analysis on the Law No. 13,871/2019

Law no. 13,871, of September 17th, 2019, came from Bill no. 9,691/2018 (renumbered, after, as Bill no. 2,438/2019), presented at the Chamber of Deputies. Legally, the legislative proposal is quite straightforward: only proposed, originally, the introduction of two paragraphs (§§ 4 and 5) to Maria da Penha Law's Article 9.

The original version of the bill was presented by the Federal Deputies Rafael Motta (PSB/RN) and Mariana Carvalho (PSDB/RO). As the proposal indicates, it concerns the criminal's liability to compensate the costs related to the health

services provided by the *Sistema Único de Saúde*[1] (hereafter SUS). It also refers to the duty to bear the costs of the safety devices used by domestic and family violence victims in panic cases (BRASIL, 2018).

The provisions whose adoption was proposed – and, later, accepted – had the following terms:

> §4. The individual who, by action or omission, based on gender, causes injury, physical, sexual or psychological suffering, and moral or patrimonial damages, is obligated to compensate all the damages caused, including the compensation to the Sistema Único de Saúde – SUS regarding the costs, according to SUS's price list, regarding the healthcare services to the total treatment of the victims in a situation of domestic and family violence, the resources collected being destined to the Health Fund of the Federal entity responsible for the healthcare units that provided the services.
>
> §5. The safety devices, for usage in case of imminent danger and provided for monitoring the victims of domestic or familial violence that are protected by protective measures, are going to be paid by the offender (BRASIL, 2018).

Maria da Penha Law, although usually associated with the criminal sphere, does not restrict itself to Criminal Law or Criminal Procedure provisions. In this sense, even though the provisions refer to many kinds of violence – not only physical but also psychological and even patrimonial[2] – the justification that accompanied the bill when it was presented, in March 2018, mentions the civil liability of the offender. According to this justification, the main foundation of the Torts Law can be defined as the principle which establishes the one who causes damage as responsible for its compensation. The justification adds that this foundation applies to the cases of domestic and family violence, to which the Maria da Penha Law refers (BRASIL, 2018). This is the logic underlying, for instance, the Articles 186[3], 927[4] and 944[5] of the Civil Code, provisions which give the grounds to the whole compensation principle.

Thus, the bill emphasizes the necessity of holding the offender responsible, in the extension of the damages he caused, not only in the criminal sphere but also, in a broader perspective, in the civil sphere[6]. The proposal states that the family or domestic offender must be held accountable for his violent acts against women, for which the criminalization of his behavior is not enough, and that is why the patrimonial and moral damages need to be compensated (BRASIL, 2018).

A broad liability – both criminal and civil – was already clear in Law no. 11,340/2006, for its teleology, since it was enacted. Following this track, Law no. 13,871/2019 instituted new rules that, despite also pointing to the civil liability, focus specifically on the patrimonial liability for the compensation of the costs related to health treatments, and security and monitoring devices.

Both liability hypotheses followed similar rules in previous legal provisions, also regarding the violence against women. The security and monitoring devices, for instance, have been used in the state of Espírito Santo since 2012, as Campos e Tavares (2018) present in recent work. On the other hand, the health treatment costs – especially those provided by the public healthcare system – were addressed in Law no. 13,846/2019, which added to Law no. 8,213/1991 an authorization for the social security institutions to sue those held accountable for domestic and family violence against women in order to have compensation for the resources spent (BRASIL, 2019a).

1 *Sistema Único de Saúde* is the Brazilian public health care system.

2 The Maria da Penha Law mentions, in its article 7, five kinds of violence: physical, psychological, sexual, patrimonial and moral.

3 "The one who, for voluntary action or omission, causes damage to others, even though negligently or recklessly, commits an illict act". See: BRASIL. *Decreto-Lei n. 10.406, de 10 de janeiro de 2002*. Brasília , DF, 2002. Institui o Código Civil.

4 "The one who, by an illict act (Articles 186 and 187), causes damage to others, must compensate it". Ver: BRASIL. *Decreto-Lei n. 10.406, de 10 de janeiro de 2002*. Brasília , DF, 2002. Institui o Código Civil.

5 "The reparation in measured by the extension of the damage". See: BRASIL. *Decreto-Lei n. 10.406, de 10 de janeiro de 2002*. Brasília , DF, 2002. Institui o Código Civil.

6 This interdisciplinarity is an important characteristic of the Law no. 11,340. As Cerqueira et al. (2015) observe, in more general terms, an important innovation of the Maria da Penha Law consists in the fact that it adopted an integral approach on the domestic violence, by not restricting itself to the imposition of a more severe punishment on the offender. Zapater (2019, p. 36), similarly, notes that the Maria da Penha Law is not properly penal, but a series of public policies that include determinations on the action of the Judiciary, with special attention to the domestic violence conflicts. See: ZAPATER, Maíra. *Pode a lei penal impedir que mulheres sejam sexualmente assediadas?* In: Visível e Invisível: Vitimização de Mulheres no Brasil. Fórum Brasileiro de Segurança Pública, 2019.

The case of Law no. 13,846/2019, along with Law no. 13,871/2019, shows that the enforcement against domestic violence has not focused only on the old strategy, so widely adopted, of raising the punishments for the crimes that the state wants to deter. Enacted on December 10th, 2019, Law no. 13,931 also follows this track, by raising the effectiveness of the enforcement against domestic violence without raising the punishments. This law adds to Law no. 10,778/2003 (which establishes the compulsory notification, in the Brazilian territory, in cases of violence against women in which the victim is attended at the public or private healthcare systems) a provision (§4 of the Article 1) that makes compulsory the notification to the police authorities within 24 hours[7], for the appropriate measures and statistical objectives[8].

Law no. 13,871/2019, similarly, follows the path of those recent legislative innovations[9]. Therefore, once domestic violence usually demands "whole attention to the victims' health and the adoption of protective measures" and because of the "need for monitoring the protective measures provided to the victim" (BRASIL, 2018), Law no. 13,871/2019 imposes on the offender the duty to compensate for the damages and costs resulting from the aggression.

In Bill no. 9,691/2018, the imposition of civil liability is conceived, by the congresspeople who wrote the proposal, as a negative incentive that may deter violence against women. The statement, given its relevance, is transcript below:

> It is important to remember that the obligation of compensating the damages, being expressed undoubtedly in the law, may act as an additional factor to deter violence against women in the family and domestic surroundings. Besides the punishments imposed on the criminal sphere, the offenders will know that the damages they cause – the financially measurable ones – will be charged directly upon them (BRASIL, 2018).

That is, even unintentionally, the congresspeople who proposed the bill seem to have applied an economic rationale. According to this logic, imposing on the offender the duty to compensate for damages he caused – either public or private – would deter potential criminals, further causing a reduction in crimes related to domestic violence.

This rationale, quite simple, seems to assume that, in the comparison between the costs and benefits of committing a crime, the imposition of a new cost – related to health treatments and safety and monitoring devices –, *coeteris paribus*, would deter potential criminals[10].

Furthermore, this reasoning tries to minimize the social cost resulting from the crime, which comes, at first sight, from the damages held by the victim, whether physical, psychological, or patrimonial. Besides, there are also the costs

7 Although objectionable for mitigating the autonomy of the victim, the law seeks to fulfill a gap that had already been indicated by Cerqueira e Coelho (2014, p. 28) regarding the crime of rape: the authors say that as in the case of rapes involving adults, the notification of the police is an individual decision, there is no need for the healthcare system to make this denunciation, what shows the difficulties of the law enforcement authorities to break a cycle of violence that occurs within the homes. This legislative innovation also meets what Saliba et al. (2007, p. 476) affirm regarding the healthcare sector, which cannot assume the responsibility in the combat against violence but has to involve itself institutionally, training the health professionals to face the issue, grounded on the comprehension of the conflictive social relationships. The notification, the authors continue, is an important public policy strategy, because it helps to measure the size of the domestic violence problem, to assess the necessity for investments in vigilance and assistance units, and to know properly the dynamics of domestic violence.

8 The public policies related to statistical studies and data regarding the domestic violence are especially important in the Maria da Penha Law. Its Article 8, II, establishes "the promotion of studies and research, statistics and other relevant information [...] and the periodic evaluation of the results of the adopted measures" as some of the law's guidelines.

9 It is important to observe that, between 2018 and 2020, the Maria da Penha Law has been modified nine times, by Laws no. 13,641 and 13,772 of 2018; Laws no. 13,827, 13,836, 13,871, 13,880, 13,882 and 13,894, of 2019; and Law no. 13,984, of 2020. In general, as stated earlier **(footnote 5)**, these recent changes do not restrict themselves to the imposition of harsher penalties (except for Law no. 13,641, which criminalizes the disobedience of emergency protective measures, and Law no. 13,772, which criminalizes the unauthorized registration of sexual content). The other laws concern issues such as protective measures, apprehension of firearms owned by the aggressor, education of the victim's children, divorce and psychological rehabilitation for the offender.

10 This logic meets what Cerqueira et al. (2015) say; they affirm that the Maria da Penha Law affected the offenders' and victims' behaviors in three different ways: i) by raising the punishment's cost to the offender; ii) by improving the empowerment of the victims and their conditions to denounce; iii) by improving the judicial mechanisms, making it possible for the criminal justice system to attend effectively the cases involving domestic violence. The reasons ii and iii, together, raise the probability of conviction. Those three factors raised the expected cost of the punishment, with potential effects to deter domestic violence.

related to the health treatments paid by the state to the victims, especially through the SUS, and those related to the monitoring and safety devices.

Although the §§4 and 5, added to the Maria da Penha Law's article 9, are the main feature of the proposal analyzed here, a new provision was added to the original version of the bill, through an amendment presented by the congresswoman Erika Kokay (PT/DF):

> §6. The compensation mentioned in §§4 and 5 will not impose any patrimonial burden upon the victim and her dependents, and will not diminish the punishment or allow its substitution.

With the new provision (§6), Bill no. 9,691/2018 was sent to four parliamentary commissions, with votes for approval in all of them.

Approved in the Chamber of Deputies, the project was sent to the Federal Senate, where it received two amendments, both related to formal and legislative technique issues. The first of them suggested that the new provisions should form a new article (17-A), in Chapter I of Title IV – which provides rules on the procedural issues –, instead of being included as paragraphs in Article 9.

The other amendment, which would introduce a more relevant change, established that the duty to compensate would be imposed only on those convicted offenders, in such a way that the *res judicata* would be necessary.

When the bill returned to the Chamber of Deputies, the amendments proposed in the Federal Senate were rejected. The first one was rejected because the congresspeople thought it would be better, as initially proposed, to add the new provisions as paragraphs to Article 9. The second was rejected on the grounds that the time between the aggression and the *res judicata* is too long, which would further compromise the capability of effectively imposing the duty to compensate upon the offender.

With the rejection of the amendments proposed by the Federal Senate, the Bill no. 9,691/2018 (already renumbered as Bill no. 2,438/2019) was approved in the National Congress and, after the presidential sanction, gave birth to the Law no. 13,781/2019.

Summarizing the aforementioned, one can say that the §§4 and 5 impose civil liability upon the offender, who will have to compensate the costs (public and private) resulting from health treatment and safety and monitoring devices. These are not, thus, conviction's secondary effects[11] – like those established Articles 91 and 92 of the Penal Code –, because the imposition of such civil liability hypothesis does not depend on the *res judicata* on the criminal sphere. In fact, it does not even depend on a criminal conviction. If this interpretation is already undoubted from in the legal provisions themselves, the *mens legis* gets even clearer with the rejection, in the Chamber of Deputies, of the amendment presented in the Federal Senate, which submitted the civil liability to the criminal conviction and the *res judicata*. The compensation, thus, must occur immediately – and not only after the criminal case is closed.

Legally, it seems that there is no juridical or constitutional obstacle to the imposition of such duty to compensate before a criminal conviction and the respective *res judicata*. Initially, because the duty to compensate results from civil liability and, even though there is a connection between the Torts Law and the Criminal Law – when some action is, at the same time, a crime and a tort –, the civil and criminal spheres are independent. The Civil Code itself states this independence, in its article 935, according to which the civil liability is independent of the criminal one, although it is not possible to question about the existence of a fact or its author if those issues are decided in a criminal trial (BRASIL,

11 The conviction's effects are those that, directly or indirectly, affect the life of a convicted criminal. The fact that the defendant is submitted to the execution of the criminal punishment does not prevent the imposition of other effects, either with a criminal or with a non-criminal character, that in some cases necessarily go along with the punishment. The main effects are those resulting from the conviction imposed upon a defendant, the restriction of liberty being the most evident example. The secondary effects are those that, either obligatorily or not, follow the main effects. See: PRADO, Luiz Régis. *Curso de Direito Penal Brasileiro, volume 1: parte geral, arts 1º a 120*. São Paulo: Editora Revista dos Tribunais, p. 393, 2007.

2002). Furthermore, the duty to compensate appears after the practice of the illicit act, so it is not necessary, for the imposition of the civil liability, to have a criminal conviction, with the *res judicata*.

Despite establishing a criminal policy strategy – consistent in imposing to the offender every cost resulting from his aggression –, the §§4 and 5 clearly rule a civil liability case, which comes from the general principle underlying Articles 186 and 927 of the Civil Code. In a certain way, those new legal provisions also come from Article 91, I, of the Penal Code, which indicates that one of the conviction's secondary effects consists in imposing on the convicted criminal the duty to compensate the damages caused by the crime (BRASIL, 1940). Nevertheless, it must be reaffirmed that the §§4 and 5, now added to Maria da Penha Law's article 9, are not a conviction's secondary effect, but a hypothesis of civil liability[12].

The §6, in its turn, introduces a concern that is at the very heart of the present paper. As emphasized earlier, the provision seeks to assure that the imposition of the duty to compensate the offender produces effects only upon him, not affecting the victim herself and also, eventually, her dependents. Furthermore, the provision also states, expressly, that the compensation of the damages will not mitigate the punishment imposed upon the criminal. By doing this, the law moves away from the incidence of Article 65, III, b, of the Penal Code, which establishes a cause for mitigating the punishment, consistent in trying, soon after the crime, to spontaneously avoid or lessen the consequences resulting from the crime or in repairing the damage before the trial (BRASIL, 1940). Similarly, the §6 establishes that the imposition of the civil liability hypotheses ruled in the §§4 and 5 does not represent the imposition of a substitutive punishment; the Maria da Penha Law itself prohibits the imposition, on the domestic violence against women cases, of alternative punishments such as paying an amount, as well as the imposition of fines as the only sanction[13] (BRASIL, 2006). This provision is also endorsed by the Superior Tribunal de Justiça's Precedent 588, which rules that the commission of a felony or a petty crime related to domestic violence against women makes it impossible to substitute the prison for a punishment that only restricts some rights.

The assumption that underlies the §6 is that the violence referred to in the Maria da Penha Law usually takes place at home and there is usually a relationship characterized by a financial dependence between the victim and the aggressor. In this scenario, any duty to compensate for the damages imposed upon the offender will also have a negative impact on the victim.

Thus, when enacting the §6, the legislator assumed that the imposition of such a compensatory duty on the aggressor can also represent a burden for the victim, given the financial dependence that usually characterizes this relationship – which can even aggravate the context of subjecting the victim to the aggressor, a crucial factor domestic violence cases.

In legal terms, the provision limits the financial consequences to the offender, thus preventing the victim's and any dependents' property from being vulnerable to the other provisions ruled in the same bill. This is, in a certain way, something similar to the principle of personal responsibility of the sentence, a basic Criminal Law doctrine ruled in the Constitution (article 5, XLV), which assumes a very wide range in the aforementioned §6.

In economic terms – to be more profoundly explored in the next section –, it is also possible to interpret the §6, under the principle of personal responsibility of the sentence, as a way of limiting the negative externalities resulting from the imposition of criminal punishment. Thus, this rule tries to avoid imposing further damages upon those who

12 Despite not being a conviction's secondary effect, the duty to compensate the damages now imposed by the new provisions (Maria da Penha Law's article 9, §§4 and 5) results in the same consequences as those resulting from the conviction's secondary effect ruled by the Penal Code's article 91, I, which also imposes the duty to compensate the damages. Therefore, the state will incur extra costs to sue the offender also in the civil sphere, in order to obtain a result (the compensation of the damage) that is probably going to be achieved in the criminal proceedings (at virtually no extra cost, except the additional time between the crime and the res judicata).

13 Although at first sight this provision might seem trivial and even unnecessary, until the Maria da Penha Law was enacted, the domestic violence cases were usually sent to minor crimes courts, without the concession of any protective measure in favor of the victim and with the frequent substitution of the prison for the payment of a small value. The authors add that 90% of those cases ended up being shelved in conciliation hearings, without any effective response from the state. In the few cases in which the offender was punished, he only had to deliver some items to philanthropic entities. See: CALAZANS, Myllena; CORTES, Iáris. *O processo de criação, aprovação e implementação da Lei Maria da Penha*. In: CAMPOS, Carmen Hein de. Lei Maria da Penha comentada em um perspectiva jurídico-feminista. Rio de Janeiro, Lumen Juris, p. 39-64, 2011.

live close to the convicted criminal – for instance, his wife and children. Specifically, this §6 represents an attempt by the legislator to limit the negative externalities that, due to the imputation of a compensatory duty to the aggressor, can also have an impact on the victim and his dependents.

Once the introduction to the topic addressed in this study has been done, with a short overview of the legal issues regarding the changes introduced by Law no. 13,871/2019 in the Maria da Penha Law, the article now moves to an economic analysis of this legislative innovation.

3. Economic Analysis on the Law N. 13,871/2019

Violence against women has negative impacts on the victim and society, whether due to the decrease in human capital caused by physical and mental morbidities (DUVVURY; GROWN; REDNER, 2004; OLIVEIRA, 2018); the stress generated on the family, with negative work impacts on adults and educational on children (BUTCHART; GARCIA-MORENO; MIKTON, 2012); or the medical and hospital costs incurred by the victim or society (SUS treatment) associated to women violence (DUVVURY; GROWN; REDNER. 2004; CERQUEIRA; COELHO, 2014). A study of Santa Catarina's State Court of Accounts (2018), for instance, pointed out an R$ 424,3 million of costs borne by the state, due to the intimate femicides that occurred in its territory between 2011 and 2018. These reasons would be enough to justify the investigation, within the economic science, of violence against women. However, the focus of this work is not on economic costs caused by women violence, but in the economic implications caused by the legislative innovation introduced by Law no. 13,871/2019.

According to Tabak (2015), the use of economic tools in legal analysis allows a better understanding of how the changes proposed in the new law will affect the decisions of individuals, mainly concerning the incentives associated with the execution, or not, of a certain action.

A specific aspect of crimes, in general, is the necessary presence of at least two agents for its occurrence – the aggressor and the victim. Therefore, a legislative change can either alter the incentives related to the aggressor's motivation or affect the determinants that lead an individual to become a victim of a crime. Detaching the analysis between aggressor and victim allows an analytical richness of the possible outcomes of Law no. 13,871/2019.

3.1 Economic reasoning from the perspective of the aggressor

Since violence against women is a crime the use of the Economic Theory of Crime (ETC hereafter), proposed by Becker (1968), provides the necessary tools for analyzing the incentives involved in this behavior.

Becker argues that crime, like all human actions, is committed after an evaluation of costs and benefits by the potential criminal. If the perceived benefits outweigh the costs, there is a greater chance that the crime will actually be committed. Following the logic, an increase in benefits increases the occurrence of crime, while an increase in costs reduces it.

For cases of economic crimes[14] such as theft, burglary, extortion, and fraud, the valuation of benefits is given more clearly. On the other hand, non-economic crimes such as aggression, rape, and homicide, present benefits that are difficult to measure. Factors such as patriarchal societies, male dominance, and forms of socialization can contribute to a better understanding of violence against women (BUTCHART; GARCIA-MORENO; MIKTON, 2012; CERQUEIRA; COELHO, 2014).

On a different way, Posner (1985) argues that passionate crimes can also be understood as a "market bypass" in which one side, the aggressor, obtains, coercively – on the margins of the market –, benefits at the expense of losses

14 Economic crimes means crimes whose benefits can be measured monetarily.

on the victim's side. Still, the author admits that it is difficult to calculate the gain of subjective utility arising from these crimes. Therefore, the biggest contribution that ETC can provide to this case study concerns the costs involved in the aggression.

In his seminal paper, Becker (1968) proposes that the costs perceived by a potential criminal derive from two main sources: the probability of being arrested and the severity of the sentence, in case of conviction. Becker argues that both the probability of punishment and the severity of the penalty exert identical weights on the individual's decision. Also, an increase in punishment is more efficient than an increase in the probability of seizure, as the latter represents a higher social cost than the former[15]. By forcing the aggressor to bear the victim's medical and hospital costs, attempts are made to deter violence against women by increasing the severity of the punishment. However, empirical studies, like Grogger (1991), found a flaw in Becker's initial prediction, showing that a greater deterrent effect is caused by more certainty of punishment and much lesser, if not insignificant, effects on the severity of the sentence.

It is worth mentioning that, based on a victimization study carried out by Ipea in 2013, which contained questions related to domestic violence, it was estimated that only 10% of attempts or cases of rape are reported to the police. Since the rate of underreporting of violence against women is high, the likelihood of an aggressor being legally punished is very low. If the conclusions above are correct, public policies aimed at increasing the likelihood of punishment, and not just the severity of the sentence, would be more effective in tackling domestic violence.

Every new law created represents a higher cost of enforcement to the State. So, the drafting of standards must be done carefully so as not to incur unnecessary social costs. Trying to tackle the problem on the side of the severity of sentences – with the imposition of higher costs on the aggressor – and not on the probability of conviction, lawmakers opt for a strategy that, at least in theory, is not the most recommended for this type of crime.

3.2 Economic reasoning from the perspective of the victim

The standard beckerian model looks to crime occurrence (and prevention) only through the side of the aggressor. Criminologists of the situational analysis and opportunity model, however, argue that the occurrence of a crime necessarily depends on the interaction between two individuals – the aggressor and the victim – and, therefore, researchers of crime and criminality should pay attention to factors related not only to the criminal, but also to the victim[16] (CLARKE, 1980).

If there is a clear intention to change the incentives linked to the aggressor through the provisions introduced by Law no. 13,871/2019, the policymakers appear to have paid little – if any – attention to changes in incentives that may occur on the victim's side[17]. For a realistic analysis, attention is needed to the demographic characteristics of women victims of aggression. In order to identify this profile we consulted several empirical pieces of research.

The report "*Prevenção da violência sexual e da violência pelo parceiro íntimo contra a mulher*", organized by the Pan American Health Organization, presents several results of research on female victimization in different countries and highlights some characteristics common to victimized women (intimate partner violence and sexual violence), such as youth, poverty, low education, parental violence, harmful use of alcohol and acceptance of violence (BUTCHART; GARCIA-MORENO; MIKTON, 2012, p. 21).

Cerqueira e Coelho (2014) present similar results when investigating rape victimization in Brazil using health data. The results obtained by the authors are alarming: among other findings, it is identified that 70% of the victims are children or adolescents, and 70% of the aggressors are known to the victim, indicating that the prevalence of this crime

15 Increasing the punishment of a certain penalty could be done by just a simple change of the law, while to increase the likelihood of punishment, greater spending should be made on hiring and training law enforcement agents.

16 To do so, of course, does not imply blaming the victim for the violence that is imposed on her.

17 In this case, the incentives are not related to "being victimized" - as in the case of the criminal who referred to "committing the crime" -, but to the way the victim will behave after the crime occurs.

occurs in the domestic environment. More recent studies, as Fernandes (2018) and Bueno and Lima (2019), also indicate a greater prevalence of this sort of crime in the victim's residence. Similar results were presented by Oliveira (2018), who, analyzing violence against women by the federative units, found a negative correlation between participation in the labor market, political participation, and education with violence perpetrated by an intimate partner.

The economic literature on intimate partner violence (IPV, hereafter) has two main theoretical streams. Interestingly, each theory points to oppositional reasoning. *Marital dependency theory*, on the one hand, postulates that women who are financially dependent on their partner or spouse are more vulnerable to violence (AIZER, 2010; COOLS; KOTSADAM, 2017; PEROVA, 2010). *Resource theory*, on the other hand, portrays male violence against an intimate partner as an instrument to regain power and control if economic resources are imbalanced in favor of the female partner (ANDERSON, 1997; ATKINSON et al., 2005; BASILE et al., 2013). For the former theory, the majority of women who suffer violence inside their own homes have low emancipatory potential, which puts them with low bargaining power and makes them more vulnerable to IPV, while the latter argues that a higher emancipatory power confronts established gender norms which, in turn, makes women more vulnerable to IPV.

According to the empirical studies discussed before, we understand that the *martial dependency theory* fits better to explain the characteristics of IPV in Brazilian society, i.e., women who are economically dependent on their partner and, therefore, have lower bargaining power in the relationship, are more prone to suffer IPV. Having traced the profile of victims of aggression in Brazil, it is possible to elaborate on the expected behavior of these women. Because of their profile – poor, economically dependent, low emancipatory potential – it is expected that the victimized women will return to their homes and their partners or family members after being assaulted, even if the aggressor is one of these. Also, the structure of refuge in shelter houses, which is part of the public policy to help women who suffered domestic violence, foreseen in article 35, II, of Law no. 11,340/2006[18], is extremely precarious, being present in only 2,4% of Brazilian municipalities[19].

With the enactment of Law no. 13,871, these victimized women will face the following situation: when seeking medical assistance, even in SUS, the medical costs will be passed on to the aggressor, even before the final judgment of the condemnatory criminal sentence. As the aggressor is the victim's partner or family member, this debt will be incorporated into the household budget of which the victim is a part and probably will return even after the aggression. The addition of §6 is clearly intended to mitigate this problem. However, in cases where the woman is financially dependent on her abuser, it is not clear how a financial penalty on him would not affect the victim herself, with the same happening for those cases of aggression where victim and aggressor are married under the community property system.

If there is little evidence to support the idea that increasing the costs imposed on the aggressor will deter violence against women, there are, on the other hand, strong indications that the incorporation of this debt into the victim's family may discourage her from seeking medical help. The fact that the law provides that the perpetrator can be held civilly responsible for medical and monitoring costs even before a criminal conviction has been adjudged makes the probability of this compensatory duty dependent on the victim seeking health care, without having to resort to the legal means. And even though is mandatory for every health professional, in the whole country, to notify violence against women – mandatory already indicated in Law no. 10.778/2003, but reinforced by Law no. 13,931/2019 – this is not what is observed during the assistance to victims (SALIBA et al., 2017).

The situation is aggravated when it is considered that it is still difficult for victims to seek help in cases of aggression, whether because of shame, fear, or difficulty in exposing themselves (ROSA et al., 2018). This difficulty in

18 "Art. 35. A União, o Distrito Federal, os Estados e os Municípios poderão criar e promover, no limite das respectivas competências: [...] II – casas-abrigo para mulheres e respectivos dependentes menores em situação de violência doméstica e familiar".

19 The IBGE study points out that there has been no evolution in recent years: the number dropped from 2.5% in 2013 to 2.4% in 2018; among the 3,808 municipalities with less than twenty thousand inhabitants, only nine of them had shelter houses. The gap does not occur only concerning shelters: other structures of assistance to women victims of domestic violence are deficient, as can be seen by the drop in the percentage of municipalities containing an executive body of policies for women between 2013 (27.5%) and 2018 (19.9%); in this same sense, it is observed that, in 2018, only 8.3% of Brazilian municipalities had specialized police station serving women and only 9.7% of those provided specialized services against sexual violence. See: IBGE. *Perfil dos municípios brasileiros: 2018.* Rio de Janeiro: Instituto Brasileiro de Geografia e Estatística, 2019.

exposing herself and exposing her aggressor – especially when he is a known person –, is one of the explanations for the high underreporting of this type of crime, reducing the effectiveness of the costs perceived by the aggressors and, consequently, the deterrent potential of legal sanctions.

These same barriers to notification were found in studies in the USA for cases of sexual violence, with several interviewees having answered that they did not seek legal means because "they do not understand what happened as a case of sexual assault" (ZINZOW; THOMPSON, 2011), especially in cases where the victim was under the influence of alcohol or other substances (COHN et al., 2013). This is a piece of worrying information and demonstrates the need to educate and inform women about the different ways in which violence manifests.

If today, when assaulted, women seek medical services more frequently in comparison to public security ones, it is to be expected that, with the new law, more pecuniary sanctions will be applied (compensatory duty) than criminal sanctions. However, when they realize that the burden of this punishment will be reversed on them (victims), the inhibition of seeking legal means can be passed on to medical ones. This inhibition is even more harmful when it is considered that women who have suffered violence use health services more often and are more frequent victims of future aggressions (ROSA et al., 2018), besides presenting higher rates of depression which causes a reduction in their income (OLIVEIRA, 2018). Medical assistance is essential in recovering from the traumas caused by aggression, and any public policy that discourages victims from seeking help ends up reducing social welfare in addition to reducing costs on the aggressor's side.

4. Comments for Future Research

Following the arguments set out in the previous items, it is possible to propose an alternative hypothesis to be tested regarding the consequences of Law no. 13,871/2019. If, in the original formulation of the law, it is believed that transferring medical or hospital costs to the aggressor may reduce the number of aggressions by increasing the punishment, in our formulation the increase in punishment will incur little increase in the aggressors' perceived costs. Furthermore, it may create unwanted incentives in the search for medical assistance by the victims, even if §6 explicitly guarantees that the victim will not be harmed.

The real consequences of this change can only be assessed as new data becomes available and new empirical researches are carried out. However, some caveats must be made. When researches analyze the effects of a new law or public policy through statistical or econometric tools, they must elaborate an identification strategy to isolate the effects of the law (or policy) in question. This is necessary because it cannot be assumed that all changes in behavior are an *ex post* consequence of the new law or policy, since other events may also affect individuals' behavior.

Specifically to the topic addressed in our paper, the COVID-19 pandemic had a significant impact on domestic violence. Evidence of that comes from different countries. Leslie and Wilson (2020) and Hsu and Henke (2021) found an increase in calls related to domestic violence and reported cases in police files, respectively, between March and May of 2020 in the USA; Arenas-Arroyo; Fernandez-Kranz and Nollenberger (2021) found a 23% increase in IPV against women in Spain during the first lockdown; and Barchielli et al. (2021) found an increase in domestic violence during the lockdown in Italy compared to the same period the year before[20]. In Brazil, although the lockdowns began later and in a decentralized way since it was the state governments rather than the federal government that imposed social isolation, increases in domestic violence against women were also observed. According to the ***Ministério da Mulher, da Família e dos Direitos Humanos***, the months of February, March, and April showed an increase of 13.35%, 17.89%, and 37.58%, respectively, in telephone reports related to domestic violence, compared to the same month of the previous year(SOUZA; FARIAS, 2022). Similarly, Marcolino et al. (2021) analyzed 102 news items from 4 online newspapers with national reach and found an increase in news reporting violence against women.

20 For a systemic review of papers about domestic violence during the COVID-19 Pandemic, see Kourti et al. (2023).

For Marques et al. (2020), within family dynamics, social isolation increased the risk of violence against women, as they had an increase in domestic services, and because movement restrictions, financial limitations, and generalized insecurity also encourage abusers, giving them give them additional power and control. Also, at a community level, the pandemic caused a reduction in social cohesion and raised the difficulty of accessing public services and institutions that make up the individuals' social networks. The search for help, protection, and alternatives is hampered due to the interruption or reduction of activities in churches, daycare centers, schools, and social protection services, as well as the shift in priorities from health services to actions aimed at assisting patients. Finally, in relational terms, spending more time with the aggressor is crucial. By reducing the victim's social contact with friends and family, the woman's chances of creating and strengthening a social support network, seeking help, and leaving the situation of violence are reduced. Coexistence throughout the day, especially among low-income families living in homes with few rooms and large crowds, reduces the possibility of reporting safely, discouraging women from making this decision.

Researchers who aim to investigate the impact of the changes enacted by Law no. 13,871/2019 must be careful when analyzing the data from the years following the approval of the law since these data contain not only the potential effects of the law on women's willingness to denounce but also the effects of COVID-19 on domestic violence and violence against women.

5. Final Remarks

The purpose of this article is to analyze, in the light of the Economic Theory of Crime, an amendment introduced by Law no. 13,871/2019 in 11,340/2006, known as Maria da Penha Law. Through this legislative innovation, civil liability for hospital expenses and related to monitoring and safety devices resulting from injuries and threats imposed on victimized women were imposed on the aggressor.

To this end, it began with the legal analysis of legislative innovation, pointing out that the new provisions – §§4, 5, and 6, added to Article 9 of Law no. 11,340/2006 –, represent a hypothesis of civil liability arising from the general rule contained in Articles 186 and 927 of the Civil Code, which shows the logic underlying the Bill that culminated in the enactment of Law no. 13,871/2019: the aggressor must be fully held responsible for the damages imposed on the victim and even for those caused, in a broader perspective, to society (such as hospital and monitoring expenses initially borne by public accounts).

The analysis developed in this first topic, although legal, observed that the legislator was imbued with the logic that the imputation of this new hypothesis of civil liability would produce the deterrent effect, which would discourage the practice of violence against women in the domestic and familiar environment. In other words, it is assumed that the imposition of a new cost on the potential aggressor will remove him from the idea of effectively exercising acts of violence against women. It was also observed that §§4 and 5 seek to minimize the social cost resulting from violence against women.

In turn, §6 – added to Bill no. 9,691/2018 during its processing in the Chamber of Deputies –, seeks to ensure that the imposition of the reparatory duty on the aggressor does not have a negative impact on the victim's patrimonial sphere; in other words, already anticipating an economic reading, the device seeks to minimize the externalities arising from the rules contained in §§4 and 5.

It was concluded that the hypotheses of civil liability provided for in these provisions are not to be confused with the secondary effects of the sentence provided for in Articles 91 and 92 of the Penal Code, not least because the new rules can be enforced even before the criminal sentence.

Then, we went on to the economic analysis of the legislative innovation discussed here, which used the analytical tool of the Economic Theory of Crime, built on the work of Becker. In that section, we sought to identify the microeconomic impact resulting from the normative innovation introduced by Law no. 13,871/2019, which, as we have

seen, clearly delineates the aggressor's civil liability for compensation for the damage caused by him. To this end, the analysis was undertaken from two different perspectives: that of the aggressor and that of the victim.

From the aggressor's standpoint, it was identified that the imposition of the duty to compensate raises the costs expected by the agent, which tends to dissuade him from practicing socially unwanted conduct. It was stressed, however, that the deterrent effects caused by increasing the probability of punishment of the offender are usually superior to those resulting from increases in the severity of the sentence (which, in a general perspective, also includes costs such as those related to the compensation of damages). As a hallmark of violence against women is the high underreporting – and, therefore, the reduced probability of conviction of the criminal –, public policies that seek to increase the probability of punishment tend to be more effective in tackling domestic violence.

From the victim's perspective, the analysis drew attention to the fact that legislative innovation changes not only the incentives directed at the aggressor but also those that affect the victim, which, in a situational analysis – that takes into account the interaction between victim and offender –, deserves attention from policymakers.

Because of the demographic profile that makes women victims of violence of all kinds – a profile of poverty, submission, low education, and proximity to the aggressors –, it was considered that, even if they suffer violence at home, it is expected that the victim will return to this environment, even if the aggressor is there. Indeed, the search for medical assistance by the victims will imply the transfer of the respective costs to the aggressor, and if there is cohabitation between these actors, the debt will be incorporated into the household of which the victim is a part.

As much as §6 seeks to mitigate this externality, it is not clear how the imposition of the compensatory duty on the aggressor might not reflect on the victim, which, in the final analysis, may deter him from seeking medical attention. This finding, coupled with the natural difficulty in turning to public security authorities – a difficulty that may spread, with the legislative innovation, to health services –, reduces the effectiveness of the costs perceived by the aggressors and, consequently, the deterrent potential of legal sanctions. It was concluded that, since medical assistance is essential to recover from the trauma caused by aggression, any public policy that discourages victims from seeking help reduces social welfare, in addition to reducing costs on the aggressor's side.

Considerations were also added for future research, especially concerning the impacts of social isolation due to the COVID-19 Pandemic on domestic violence and violence against women and how that needs to be taken into account when conducting empirical research about the effects of Law. no. 13,871/2019 on new violence cases and women's willingness to denounce.

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