

# Between public agenda and the emergence of intervention programmes: sexual offenders within the Portuguese context

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## Abstract

*In Portugal, over the last decade, sexual abusers have gained considerable interest within clinical, academic, judicial and media circles. This paper will sketch an introduction to sexual crimes in Portugal. In order to achieve this aim, a brief description of the studies is presented, as well as the legal aspects of these offences and an indication of these crimes' prevalence in official files. Finally, some future directions on this issue are discussed, claiming for the urgency of articulated rehabilitation programmes conducted by government agencies and prisons.*

*Key words: Sex offenders statistics; intervention programmes; rehabilitation programmes; legal framework; juvenile sex offenders; adult sex offenders*

## Introduction

In Portugal, over the last decade, sexual abusers have gained substantial attention within academic, judicial and law enforcement circles. One should add to this subject the fact that media coverage (sometimes sensationalistic), as in many other countries, has put pressure on political decisions. Meanwhile, slowly but efficiently, studies on sexual related crimes have been more deeply dominated by, among others, psychological, criminological, and psychiatric domains. As in many other research areas, over the last few years there is a recognizable and significant improvement on the number of studies on sexual related-crimes and, above all, a progress on their quality, bearing significant practical implications for clinicians, scholars, judges, lawyers and policy makers. This gives us the sense that the field is developing rapidly and in a productive way. From the victim's point of view, the dissemination of theoretical perspectives (Alberto, 2004; Soeiro & Fonseca, 2004; Manita, 2003; 2004; Soeiro, 2003; Machado, 2002) and the development of procedures for the assessment and intervention process (Machado & Antunes, 2005; Magalhães, 2010; Manita, 2002; 2004) are examples of the work improvement for many professionals. Besides, the majority of the studies on this field have been focusing more on the victim's side than the offender's side. The latter has produced increasing interest and research attention in the most recent years (Gonçalves, 2003; 2004; 2005; Gonçalves & Vieira, 2005; Pereira, 2003; Gonçalves & Pereira, 2009) which that has provided better knowledge, better assessment and intervention conditions. For example, a research study about juvenile sex offenders has started and is now in progress (Barroso, Manita & Nobre, 2010). In the future, it could give us a better understanding of the national scenario concerning juvenile delinquency, particularly sexual delinquency, the dynamics and processes associated with the sexual violence of these youths and characteristics of the family, among other dimensions, besides allowing a differentiation of adults and adolescents' characteristics within the Portuguese

context.

## Legal Framework Overview

Adapting Henkel's well-renowned phrase, sexual-related criminal offences can be considered as a "seismograph" of a law system's consideration on a society's moral or ethical values. This is particularly noticeable in decriminalization and new criminalization trends which constitute these offences' ruling history in Portugal.

In spite of not being its aim in modern democratic rule of law States, only in the mid-20th century were European Penal Codes freeing themselves from a moralistic perspective on these offences' legally protected interests (*Rechtsgüter*, as developed by the German doctrine). In Portugal, this evolution was a little behind schedule as the original version of the country's Criminal Code (CC, 1982) still considered sexual offences as violating "society's values and interests", more specifically the "ethical and social foundations of social life"<sup>1</sup>. Only in 1995 was the Portuguese Criminal Code amended in a way that these offences were reputed as breaches of one's "sexual freedom and self-determination". The new legally protected interest has had major consequences in this criminality's legal interpretation. The acts or omissions infringing the concrete statutes are directed to the victim's individual interest, to a modality of her/his liberty and to a perspective of her/his right to a complete development of human personality.

Driven away by these moral excrescences ("sins", as portrayed by Beleza, 1996), the Portuguese lawmaker was then ready to envisage criminal protection as demanded by pluralistic and secular communities. The most important leading principle is that consensual sexual acts between adults performed in private (of a homosexual or heterosexual nature) are out of criminal law's sphere (Dias, 1993). The first main distinction is between "crimes against sexual freedom" and "crimes against sexual self-determination". The first ones include "sexual coercion", "rape", "sexual abuse of a person incapable of offering resistance" or of "a person in a prison, hospital, school", "sexual fraud", "non-consented artificial procreation"<sup>2</sup>, and "favouring prostitution"<sup>3</sup>. In these offences victims are generally adults whose sexual freedom is somehow violated.

As in other European legislations (e.g. German), the Portuguese Criminal Code distinguishes "relevant sexual acts" from "copulation, anal or oral intercourses, vaginal or anal objects or body parts introduction". The latter are aggravated forms of the former, therefore demanding a more severe punishment. A "relevant sexual act" is not strictly defined by the Portuguese Criminal Code. Nevertheless, doctrine has proposed the following definition: *"an active behaviour (very rarely an omission) that, from a predominately objective point of view, assumes a nature, a contents or a meaning which is directly connected with sexuality and hence to sexual determination freedom of those who suffer or perform it"* (Dias, 1999, p. 447). It is an "indeterminate legal concept", typical within the frame of civil law tradition systems, concretely enlightened by jurisprudence. Objective guidelines should be observed in its hermeneutics, so as to ensure that only "severe acts" in no way driven by moral patterns are to be contained within the statutes' scope. For example, a tiny pinch is not enough to fulfill the concept of a "relevant sexual act" (Dias, 1993), by opposition to the clitoris' stimulation, masturbation, touching thighs, breasts or genitals, and ejaculating or urinating over the victim (Dias, 1999; Lopes, 2008). In all these situations, it is irrelevant whether the victim has or has not had any sexual experience (Albuquerque, 2010). Notwithstanding jurisprudential efforts, it is our opinion that this is a rather vague and diaphanous concept, inappropriate to determine which actions are to be considered or not to be of criminal nature. Therefore, it would be more compatible with the legality principle<sup>4</sup> if the Portuguese criminal law describes, even referring to standard examples (*Regelbeispieltechnik*), the particular conducts fulfilling the discussed notion (in a similar way, though more radical, see Pereira (1996)<sup>5</sup>.

The prototype offence in "crimes against sexual freedom" is "sexual coercion" (punished with imprisonment from 1 to 8 years), i.e., the use of violence, serious threat (e.g. menacing the victim to publically disclose a video in which he/she is involved in sexual intercourse) or putting the victim in a state of unconsciousness in order to constrain him/her to suffer or perform, with the defendant or with another individual, a "relevant sexual act". What is commonly described as "sexual harassment", in the sense that the defendant abuses her/his authority (deriving from family ties, hierarchy, labour relationship, economical dependence) to force someone else into a sexual act, is reputed to be a genre of "sexual coercion". An aggravated form of this basic crime is rape (copulation<sup>6</sup>, anal or oral intercourse, anal or vaginal penetration with objects - solid or liquid, e.g., urine or semen (Albuquerque, 2010) - or body parts), punished with imprisonment of 3 to 10 years. Only since 1998 were men seen as possible victims of this offence, since only at that time was rape disconnected from the "macho" concept according to which solely women could be raped (not mentioning its statistical predominance). Special circumstances in which the victim is incapable of resistance (e.g. because of alcohol or drugs) or is diminished in her/his liberty given the fact she/he is imprisoned, or has been admitted to a hospital, school or asylum, are also protected. There is a dominance relationship capable of lessening the victim's freedom. "Sexual fraud" is an offence consisting in misleading the victim about the offender's identity to perform sexual intercourse. An example of a new criminalization operated by the 2007 Criminal Code amendment is "sexual importunity". It encompasses exhibitionism (showing parts of the body with the intent of offending others' sexual freedom, but only when it is predictable that from such an action another sexual offence can result- Rodrigues, 1999a; 1999b; Albuquerque, 2010) and "constraining others to sexual nature contacts", which represents a normative phrase of difficult concretization and unparalleled in other legal systems.

Crimes against sexual self-determination punish "child's sexual abuse", "dependent minors' sexual abuse", "sexual acts with adolescents", "use of minors' prostitution", "minors' favouring prostitution", and "minors' pornography". The common goal is to protect those who, because of their age, *"have their own individual will not sufficiently developed and only partially autonomous"* (Natscheradetz, 1985, p. 153). There is a kind of "legal presumption" that certain acts, even though consensual, when perpetrated with a minor, are noxious to her/his personality's development. A special statute has been issued according to which a child is legally considered endangered when suspicions of sexual molestation exist, thus granting the State the power to withdraw the minor from their parents.

These offences have been largely amended by the legislator, as a result of severe sexual abuse on children and adolescents who had been under the surveillance of a public institution for minors in risk of social exclusion or without parental support ("Casa Pia de Lisboa"). This true "case study lawsuit", allegedly involving politicians, actors and other well-known personalities, started with news on the subject published in 2002. Apart from raising public awareness for the problem of sexual child abuse, it may also have contributed to the charges' increment over the past few years. Nevertheless, there are no available scientific studies on this relationship, since the condemning sentence is currently on appeal. Well-described prevalence of such crimes within relationships that should be characterized by supportive ties is a triggering ground for some disproportionate legal response (Leite, 2010). Thus, a continuum of elevating penalties for these offences and new criminalization such as child pornography possession are well pronounced features, especially under the 2007 Criminal Code amendment. These statutes consider "children" those who are under 14 years old and adolescent minors between 14 and 16. In 2005, the Portuguese Constitutional Court upheld unconstitutional the previous incrimination of "sexual acts with adolescents" inasmuch as it prescribed the proof of the "abuse of inexperience" in heterosexual contacts and not in homosexual ones (these were seen as always graver to the adolescent's physical and psychological development). Consensual paid sexual intercourse with minors between 14 and 18 years old (boys

or girls) were also made punishable. Favouring prostitution or obliging a person under 18 to undergo these activities is punished with imprisonment up to 10 years in more severe circumstances. Notice that in the offences involving adults, when the victim is minor, the statute does not demand that the act be perpetrated "professionally or with a lucrative intention". When the latter occurs, there is an aggravation. This is another mark of the minors' privileged protection. Deriving from international conventions and treaties, child pornography has steadily been more punished and new behaviours have been criminalised. Apart from using a minor in pornographic shows, photos or films and the acts of producing, distributing, importing, exporting, disclosing, exhibiting or giving in those materials, the 2007 Criminal Code amendment has criminally castigated the acquisition and possession of these items. Some authors have been arguing some of these provisions' constitutional non-conformity, especially concerning cases using adults disguised as minors in pornographic movies or pictures. There is a distance from the violation of the protected legal interest and of the proportionality principle (Albergaria & Lima, 2010; Antunes, 2010). Aggravations are prescribed, among others, whenever the victim is a relative to the offender, or if a sexually transmitted disease, suicide or the victim's death derives from the sexual act.

In terms of criminal procedure rules, sexual-related offences generally demand a plaintiff's presentation by the victim. If it is not so, the Prosecution Service is not legitimated to pursue the defendant. The lawmaker has decided that being of a very intimate nature, these lawsuits can sometimes provoke more disadvantages than advantages to the victim. However, recent amendments have gone in the direction of strengthening the public nature of sexual crimes when perpetrated on minors or when it results with the victim's suicide or death. This reinforced legal framework can also be observed in the rules of statutory limitations (as amended in 2007). They do not operate in "crimes against minors' self-determination freedom" until the victim is 23 years old. Special provisions on minors' safeguard in criminal procedure include the possibility of testifying before a judge without being physically present in trial, as well as other measures of the witnesses' protection which can vary from police protection to identity change.

A particular example of diversion has recently been introduced, enabling the Prosecution Service (in accordance with the judge and the defendant) to suspend criminal procedure in certain offences against the sexual freedom and self-determination of minors, provided the defendant is given duties and obligations, for a maximum of 5 years, directed at warranting a victim's interest. In crimes where it is related to the offence, defendants may be convicted to accessory penalties of parental responsibilities exercise inhibition, as well as being prohibited from having jobs or activities that include being responsible for minors. Both of these instances can result in a sentence of two to fifteen years.

A final remark must be made that, the field of sexual-related offences is one in which electronic monitoring is being used in Portugal, not only in a pre-trial phase, but also at a criminal sanctions' fulfillment level.

## Statistical Data

Portugal has a resident population of 10,637,940 inhabitants (INE, 2009), with 52% women. Nearly 11% of the residents are between the ages of 15 and 24, 56% between 24 and 64 and 17% of the population over 65 (INE, 2009). By focusing on sexual crimes and on their characteristics, we can provide a comprehensive statistical analysis within the Portuguese context, taking into account convicted defendants. An important detail is the fact that the data discussed here only concerns committed crimes by males, since the number of convicted women for sexual violence is extremely low (Portuguese Directorate-General for Justice Policy-PDGJP, 2010).

Official justice statistics collected from government agencies (PDGJP, 2010) indicate that from the global figures on "crimes against persons", the "offences against physical integrity" (includes assaults and aggravated assaults) show clear dominance with 63,772 crimes in 2009. Figure 1 also shows us the "offences against personal freedom" (including kidnapping), reveal 18,251 crimes in 2009 and the "crimes against honour" (e.g. defamation) with reveal 7070 crimes (this one with a slow tendency to decrease over the last years). Crimes against life and sexual offences have the lowest number of perpetrations, with the first one revealing a reduced occurrence since 2006. On the contrary, sexual crimes have, from the same year (perhaps earlier), a tendency to increase the number of convicted defendants until 2009. Figure 2 more clearly shows the prevalence of sexual crimes in the course of the last decade and it corroborates in a better way the tendency on the sentenced criminals' intensification.

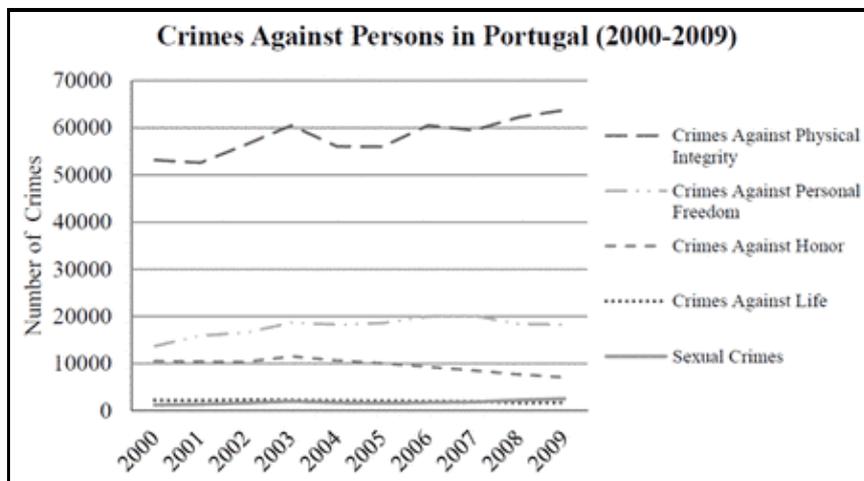


Figure 1: Comparison involving other crimes against persons and sexual crimes between 2000 and 2009. Source: Portuguese Directorate-General for Justice Policy (2010).

Data was analysed to further examine how sentencing involving sexual crimes evolved since 2000 (Figure 2). As we have underlined, by "sexual crimes" one means rape, child sexual abuse, human trafficking and sexual coercion. A brief analysis of the data clearly indicates an amplification of these types of crimes. However, it is possible that dark figures have been reducing as these offences have been gaining increased attention over the past few years, resulting in an increase of formal charges. The "Casa Pia" lawsuit could explain the increase to a certain extent. Beginning in 2002, there have been some changes in the practices of government departments (e.g. police and justice agencies) and a faster reaction of institutions (e.g. courts or residential children's houses). These changes have provided, among other things, improved professionals' training, increased stimulus for the denunciation of these offences and it has even reduced the stigma sometimes associated with these crimes.

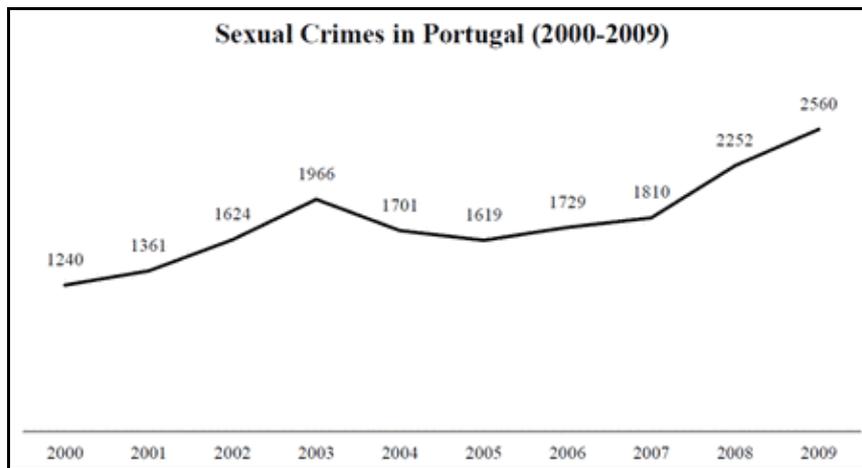


Figure 2: Sexual crimes perpetrated by men and women between 2000 and 2009. Source: Portuguese Directorate-General for Justice Policy (2010).

The occurrence of rape and child and/or adolescent sexual abuses perpetrated by juvenile and adult sex offenders is extremely important. The official available statistics are from 2004 to 2008 (see Figure 3). These statistics show clearly that a significant proportion of these offences are committed by adults (PDGJP, 2010). A major issue at this level, when dealing with the judicial implications of this behaviour, is the age of criminal liability, which in Portugal is sixteen years old. Thus, in our study with the official data, any sexual abuse committed by a juvenile sex offender between the ages of 12 and 18 years (Milner et al., 2006) will remain within the adolescent statistics' portion. Portuguese official data on rapes and child and/or adolescent abuse by juvenile offenders is reduced compared with other countries (Jaffé, 2010). Some authors (Barbaree & Marshall, 2006; Varker, Devilly, Ward, & Beech, 2008) argue that it is likely that adolescent offenders are responsible for almost one third of all cases of sexual child abuse. However, even if that appears to be the tendency, our position is that a review of these statistics applying the same standards and criteria is strongly recommended, since some countries' results seem to be very different on a considerable number of occasions.

In analysing adult perpetrators' data, a tendency of growth within the number of sexual crimes is to be stressed (from 191 in 2004 to 299 in 2008). If, on the one hand, there are better conditions for charging defendants, on the other hand, as it is well recognized (Jaffé, 2010), many sexual abuse victims do not report the offences, hence making these crimes go unnoticed. If this apparent "tip of the iceberg" changes within the next few years, the number of crimes will almost certainly increase, in particular the crimes involving adolescent sexuality. Furthermore, some public campaigns are also gradually drawing attention to this matter, based on research studies (Caridade & Machado, 2010; Martins & Machado, 2010).

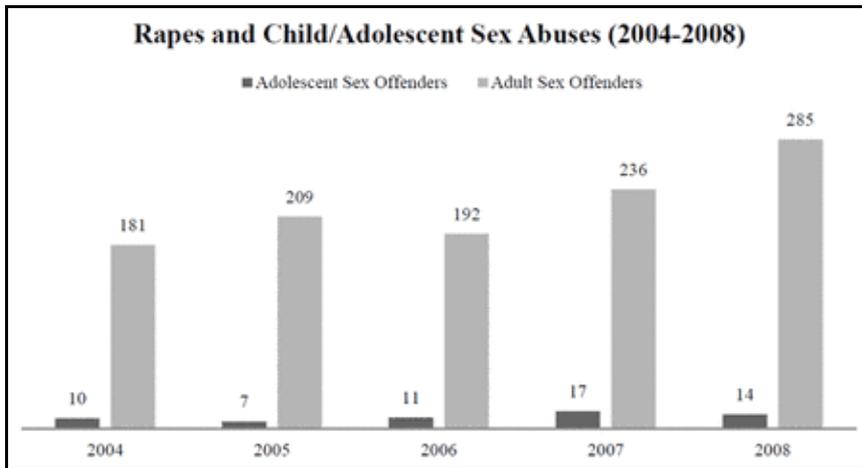


Figure 3: Prevalence of rapes and child and/or adolescent sexual abuses perpetrated by adolescent and adult sexual offenders between 2004 and 2008. Source: Portuguese Directorate-General for Justice Policy (2010).

Data about rape and child and/or adolescent abuse by adult sex offenders collected from government agencies (PDGJP, 2010) indicate that nearly eighty-six forcible rapes occurred in 2008, as well as 199 child and/or adolescent cases of sexual abuse. Figure 4 summarizes the data. Once again, the increase of sexual abuse from 2004 to 2008 should be highlighted.

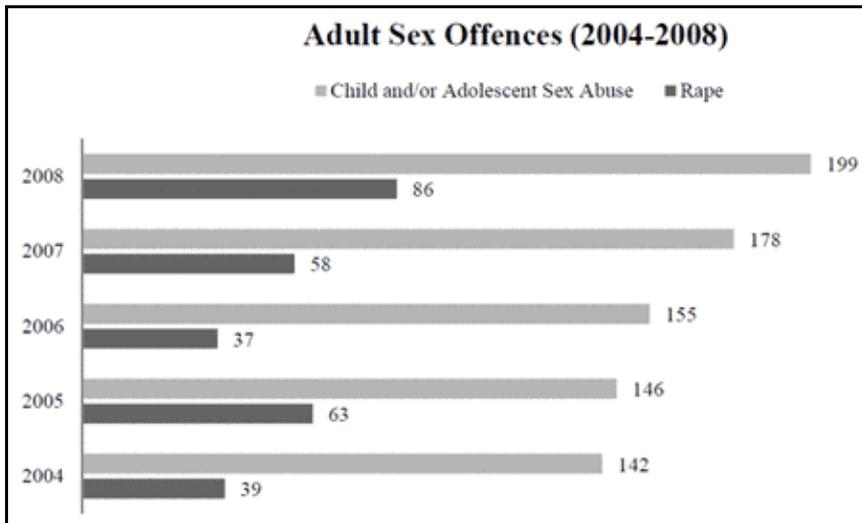


Figure 4: Number and type of sexual abuses perpetrated by adult sexual offenders between 2004 and 2008. Source: Portuguese Directorate-General for Justice Policy (2010).

## Future Directions

The investment in research in recent years has given an impulse to sexual crimes study field and has aroused the interest of a new group of researchers. Two major national universities - University of Porto and University of Minho - have been developing investigation, undergraduate and postgraduate training, as well as intervention programs for victims and offenders, including victims and perpetrators of sexual crimes since 1998 (Gonçalves & Machado, 2002; Manita, 2002, 2004). Pioneers in Portugal, the consulting services of these Universities - *Gabinete de Estudos e Atendimento a Agressores e Vítimas* (Centre for Research and Counselling of Victims and Offenders) and *Unidade de Consulta de Psicologia da Justiça* (Psychological Services of University of Minho) - offer two of the few programmes developed by scientific evidence supported intervention programs for adult and youth sex offenders in the country.

The first structured treatment programmes for sexual offenders have only recently been initiated in Portuguese prisons (Gonçalves, 2008) and will certainly follow the best international practices. Treatment efficacy results will be essential for better interventions in the future. Moreover, forthcoming programmes will also address that rehabilitation goal within juvenile sexual offenders (Barroso, Manita & Nobre, 2010). In terms of the legislation concerning sexual-related crimes, it is now time to leave the police and the courts to comply with the statutes as amended in 2007. In recent decades, Portugal and other European countries have experienced continuous turmoil in legislation with negative consequences. Formal control institutions have had no time to adapt to new regulations. Therefore, taking into account the fact that the Portuguese legal framework on the subject complies with international conventions and treaties as it is encompassed with the most advanced legislations in the world, the time now is to enforce and monitor. This does not imply that, as previously stated, a discussion on the replacement of the "relevant sexual act" concept should not be started. In our opinion, a more detailed definition would better comply with the legality principle demands, thus improving certainty in applying the law.

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## Footnotes

<sup>1</sup> In the country's previous Criminal Code (1886), sexual crimes were considered as "offences against honesty".

<sup>2</sup> It is highly questionable whether this offence is still connected to the protected legal good of "sexual freedom and sexual self-determination". It should be moved away to other part of the Criminal Code.

<sup>3</sup> This crime's legitimacy has continuously been criticized, since it seems committed in preserving certain moral views (Rodrigues, 1999).

<sup>4</sup> For a general overview of the principle in the Portuguese Criminal Law context, see, among others, Leite (2007).

<sup>5</sup> Beleza, 1994 criticizes, to a certain extent, the concept of "relevant sexual act" for the fact it can encompass a moral blame towards certain types of relationships.

<sup>6</sup> With or without *emissio seminis*, this was a discussed topic in jurisprudence. In 2003, the Portuguese Supreme Court stated that this was not to be demanded in order to make the offence punishable.

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