

# #ISaidNo

When Women Are Victimised Twice



Il Sole

**24 ORE**

Alley Oop



**never  
again**

CONTRO LA  
VITTIMIZZAZIONE  
SECONDARIA



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THE POINT

# Why we need to talk about secondary victimisation

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by **Fabio Roia** — *Magistrate at the Court of Milan*

**T**he European Court of Human Rights has once again condemned Italy for violation of their constitutional obligations regarding the question of physical and psychological protection of the victims of sexual abuse. The aforementioned international court has condemned the decision of the Appeal Court of Florence to overturn the judgement of a lower court and acquitted a group of men accused of sexual assault on grounds that had little relevance to the actual offence. The alleged victim was described in terms which implied the girl was responsible for the said offences, using terms not pertinent to the motivation of the deeds in question with references to “the red lingerie shown by the girl during the evening in question, comments referring to her bisexuality, occasional romantic and sexual relations prior to the events, references to her irregular lifestyle and so on.”



Speaking and writing about secondary victimisation, we often come across a not exactly subtle violence, exercised by operators of the system designed to protect female victims of abuse. For example by professionals in the media, who describe incidents in a distorted manner, tending to minimise or justify certain male attitudes and behaviours, thereby effectively reinforcing prejudice, stereotypes and subcultures. This underlines the lack of awareness and training by those whose job it is to deal with episodes of sexual aggression, carried out for the most part by men.

This lack of understanding evidences the courage required to denounce situations, in too many sections of society, where still today women suffer secondary violence from a system which has the tendency not to give credence to reports of gender violence. These are often underestimated and treated in such a way as to blame the victim.

For example, a woman who has had the courage to rebel against a marital situation in which violence has become the norm with devastating consequences for children living in such threatening and dysfunctional circumstances might be accused of being an inadequate mother for breaking up the family. All this in a cloud of pervasive cultural hypocrisy, wherein one can hardly express the need to combat violence against women, notwithstanding the engrained daily practice of sexist language and attitudes in advertising and elsewhere. In the world of work, insinuations and sexual harassment, which underscore the power relations with men predominantly in dominant positions, are the order of the day; moreover the application of legislation and policies aimed at gender



Women suffer secondary violence by the system, that tends not to believe the violence reported

equality is hindered by systems that have absorbed prejudices and lack the necessary awareness and professionalism to transform good intentions into reality.

This brings us on to the question of training. From the 2021 report on sexual and domestic violence approved by the Commission of enquiry into femicide and all other forms of sexual violence, set up by the Senate of the Italian Republic, there emerges a scarce and extremely fragmentary picture in almost every sector responsible for the protection of actual and potential victims, as laid down Article 18, paragraph 2 of the Istanbul Convention, which represents a guideline for all the legislative measures the signatories have undertaken to apply. As a result, the approach to the phenomenon and its underlying dynamics has revealed itself half-hearted and fails to protect those most in need. In practice social workers, technical consultants, police officers, lawyers and magistrates do not always possess the necessary mindset and skills to intervene effectively. This lack of a methodical and result-oriented approach inevitably leads, albeit unintentionally, to a concrete form of secondary violence.



Training on gender-based violence is scarce and fragmentary among those whose responsibility it is to protect the victims of domestic violence

The Consiglio Superiore della Magistratura, the magistrate's governing body, in its latest deliberation on contrasting gender violence of 3 November 2021, found that in the offices of 90% of public prosecutors there was at least one magistrate specialising in this matter, a percentage which falls to 24% in judicial offices, leading inevitably to a patchwork performance across the country. As regards training in the techniques of

intervention and the acquisition of the necessary skills, the magistrates today are showing notable commitment. Despite this, gaps and incongruences still exist, especially in the dialogue between civil and criminal justice on the question of fostering minors, such as the role of male violence, which is not considered a determining element when it comes to judging the man's suitability for the role of parent. A male partner who is violent can never be an adequate father.

As regards secondary victimisation, to find and eliminate that subtle form of institutional and social violence that feeds every aspect of our social contract means in practice that we should always encourage women victims to report their aggressor, in order to shed light on the suffering inflicted by the suffocating dominance of males who abuse their partners. The victim should be put in the position where she can be able to say, “It was worth it,” rather than – as is too often the case – “why did I bother?”

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## Fabio Roia

### A life's work combating gender-based violence

Fabio Roia became a magistrate in 1986. After being public prosecutor at the Court of Milan, he was elected from 2006–2010 to the Consiglio Superiore della Magistratura, the magistrate's governing body in Italy, where he became involved in drawing up the first attempts at protecting women's rights and combating domestic violence. His work as a judge always involved him in the defence of the vulnerable and he was also presiding judge at the Court of Milan. A consultant for the Commission of enquiry into femicide, since August 2020 he has been acting chair of the Court of Milan. He has always been committed to defending women's rights in the area of domestic violence. He is the author of *Crimini contro le donne, politiche, leggi buone pratiche*, published by Franco Angeli, a book aimed at workers involved in the protection of women from male violence. He claims his greatest satisfaction came in December 2018, when the city of Milan gave him the Ambrogino d'oro – a prize awarded to people who work for the common good – for his lifelong commitment to defending women from violence.



In 2018, the magistrate was awarded the Ambrogino d'oro for merit by the City of Milan

I Said No. The E-book of the “Never Again” project

# No more secondary victimisation

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**A**nna, Giovanna, Mihaela, Giulia, Natalia: our eyes scroll across the names of the victims of femicide in the pages of the daily news. They represent the apex of violence, the most violent and bloody side of this phenomenon. But violence on women has a much broader span, that has its roots in the patriarchal society and is expressed in various ways, some more and some less overt. There is physical violence, sexual violence, psychological violence, economic violence. Violence against women, moreover, does not take place only through the hands of violent and abusive men, but is also manifested in ways more covert and more difficult to define through the system and institutions, namely in the inadequate and unsympathetic response of magistrates, lawyers, social workers and the media.

What can society do to eliminate this phenomenon and help women victims feel not blamed, but supported? The idea to participate in the European REC call for proposals with the “Never Again” project arises from the need to find concrete solutions for the victims who have lost faith in institutions and, in particular,



for those who have suffered secondary victimisation.

Il Sole 24 Ore-Alley Oop, which has published this book, is one of the partners of the project which won the competition along with the University of Campania Luigi Vanvitelli, who is the project leader, D.i.Re-Donne in rete, a network that coordinates 80 women's centres, Maschile Plurale, an association of men set up to support women's rights, the theatre association M.a.s.c. and Prodos, the European funds and projects consultancy founded by Manuela Marchioni. The project was kicked-off in 2021 on 25 November, “International Day for the Elimination of Violence against Women”, and is based on two pillars: education – which, as Fabio Roia highlights in his preface, is still lacking – and communication. The education or awareness training programme is aimed at 100 police officers, 200 professionals working in the legal sector and 50 journalists. The work of communication and awareness-raising, aimed at creating a new culture and combating sexist stereotypes will last throughout the entire project, due to end on 25 November 2022, and aims to reach a wide audience. Among the activities is a show to be performed in 10 Italian cities by M.a.s.c., which will illustrate how stereotypes commonly used by professionals in legal cases re-enforce gender prejudice.

This E-book, which is part of the communication programme completes the trilogy begun with *I Said No. How to Stop Violence Against Women* and *I Said No. Laws for Self-defence, Tools for Protecting Your Rights*. The aim is to describe secondary victimisation in all its forms, increase awareness among the professional categories who come into direct contact with women on the receiving end as well as society at large, and work on training, culture and practical skills, so that women will no longer have to suffer gender-based violence a second time, at the hands of the system.





Uruguay  
January 2022



A group of young people, mostly of Asian descent, are huddled together in a protective circle. They are all looking down or have their eyes closed, suggesting a sense of vulnerability or shared distress. The lighting is soft and natural, highlighting their skin tones and the texture of their hair. The composition is tight, focusing on the physical closeness of the group.

#01

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DUAL  
VIOLENCE

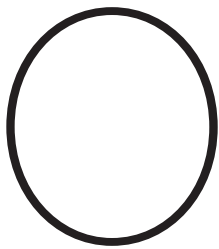


Secondary victimisation and Covid-19

# Institutional violence and the “booster” effect of the pandemic

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**Simona Rossitto**



One woman in three, according to the World Health Organisation, suffers violence at some point in their lives; in 2021, every three days one woman was a victim of femicide in Italy.

These statistics will probably suffice to give an idea of the level of violence against women and the fact that this scourge, deeply rooted in patriarchal society, concerns not just a small minority with little money and no luck but society as a whole. The pandemic, with all the concomitant stress and economic fallout has exacerbated situations of smouldering domestic violence and shed light on the isolation and, at times, the sense of asphyxiation of the women obliged to spend even more time with their abusive partners in the home, a place which for most people represents a safe haven from contagion, suffering and fear. The pandemic, with its restrictions and aftereffects has proved to be a suitable moment to raise questions about gender violence in Italy and how it is dealt with by the Italian authorities:

## The facts

One woman in three is subjected to violence at least once in their lives, according to data from the WHO. In Italy, in the year 2021 there was a femicide every three days.



in particular, to what extent the victims of violent abuse are mistreated a second time by the media, the courts and the social services. The aim of the Never Again project is to raise awareness of the problem of “secondary victimisation” to prevent women who have suffered gender abuse from becoming victims a second time.

**Bonetti: “Covid had worsened an already existing problem”**

During the pandemic, victims were forced to spend more time locked inside their homes with the perpetrators of violence, but that's not all. The psychological and economic context became worse across the globe and catalysed the dynamics of violence. As emerged from the 2021 report of GREVIO, the body that monitors the implementation of the Istanbul Convention for the prevention of gender and domestic violence, the pandemic has greatly increased the need for support. It has also had a significant negative effect on the ability of women to access support in the case of violence incidents.

“It is now clear to everyone,” says the Italian Minister for Equal Opportunities Elena Bonetti, “that the pandemic has exacerbated an already serious phenomenon, and one that is well rooted and widespread in the culture of our country. The new strategic national plan against violence for the years 2021-2023 is focused on prevention, protection, support and assistance, but alongside this there is a serious investment in training at every level, aimed at improving the work of and liaison between all those involved in combating violence against women. What is more, the universities have been called on for their contribution. In order to do all this, to tackle the problem at systemic level, systemic action



Asking for assistance and gaining access to support services was found to be difficult during the lockdown period

is required, not just provisional initiatives: hence the need for a structured anti-violence plan, which is included in the budget for the first time in our history”.

### **The import of the economic crisis on violence**

It is worth stressing the fact that in the current health crisis, with businesses closing and others struggling to keep afloat, women are the ones who have to bear the greatest burden. Frequently when schools close they have to give up their economic independence to look after their children. All this has a knock-on effect on levels of violence. A woman who is more independent, who has a job and manages her own finances, will find it easier to escape from a violent situation. With reference to this Paola Degani, professor of public policy and human rights at the University of Padua, makes a distinction between the lockdown period, with its easily imaginable chilling possibilities, albeit limited in time, from the longer period of the pandemic with all its present and future effects. For Paola Degani: “The pandemic period heightens economic difficulties, putting extra pressure on violent households. I am absolutely convinced, unlike many of my colleagues, that the economic difficulties cannot but exacerbate certain dysfunctional pathologies in the rapport between women and men, and reduce the margin of freedom in which victims can separate from their abusers, thereby making cohabitation more fraught and constrictive. The result of all this is a worsening of violence”.

### **Cohabitation in violent contexts during the pandemic**

The predicament of female victims of domestic violence during the pandemic has been the object of an ad hoc research project undertaken by Patricia Romito, lecturer in social psychology at the University of Trieste, in collaboration with Martina Pellegrini.

#### **ISTAT data**

98% of those who lost their jobs in December 2021 were women. Covid has become, therefore, also a gender issue. Women who lack independent financial means find it more difficult to escape from situations of domestic violence.

ni, legal expert at the GOAP women's centre in Trieste, and workers from women's centres in the Friuli Venezia Giulia Region which are part of the national D.i. Re – Donne in rete contro la violenza network. This includes, aside from GOAP – gruppo operatrici antiviolenza e progetti, Da donna a donna, SOS Rosa Ody, and Voce Donna Onlus. Described in the book *Pensare La Violenza Contro Le Donne. Una ricerca al tempo del Covid* by Patrizia Romito, Martina Pellegrini, and Marie Josèphe Saurel-Cubizolles (published by Rosenberg & Sellier), the impact of the pandemic on women has varied depending on whether the partner or ex-partner was cohabiting or not. Moreover, the authors note: “the strict lockdown imposed on Italians in the months of March and April 2020 represented a sort of natural laboratory experiment which allowed us to observe, through a microscope, what occurs during social distancing, with particular reference to women no longer living under the same roof as their ex-partner”.



The impact of the pandemic on women was different, depending on whether the woman was still living under the same roof as her partner or ex-partner

For this research project, analysis was carried out on a sample of 238 victims of a violent partner or ex-partner who sought support from the Friuli Venezia Giulia Women's Centre between June and September 2020. 104 of the women cohabited with their aggressor, while the remainder were separated. This was followed up by interviews with an additional 20 women. What emerges from the study is that in the period prior to lockdown, the two groups of women – those cohabiting and those no longer living with their partners – reported similar levels of aggression. As regards violence on the children of the father/ex-part-

ner, the women no longer cohabiting reported higher levels of violence. From the information received, it is clear that there was no let up in the violence directed against either the children or the woman after the couple separated. Moreover, as is to be expected, violence increased for 28% of the women still living with their aggressor: “We were stuck,” reported one woman, “for so much time inside the home together without work. Too much contact, no personal space, no distractions, no change or letting off steam with someone else”. In the case of women no longer cohabiting, on the other hand, for over half incidents of violence against them or their children declined during lockdown. In some cases, the women attributed this drop in violence to the measures imposed during lockdown: limitations on personal movement, reported one interviewee, “didn't allow him to follow me or hang about outside our house.” On the same theme, “Supervised visits were suspended during lockdown.” In other cases, because of lockdown the abuser felt less need to control his victims and this led to a drop in violence: “I was stuck at home with the kids, so he didn't feel the need to stalk me”. In conclusion, we can say that the measure for social distancing imposed by the government to control the spread of the pandemic had the paradoxical effect of shielding victims of abuse by a father or ex-partner no longer living in the home. If we look at the health of the women, the results show a strong connection between the intensity of violent abuse during the period of lockdown and symptoms of psychological suffering. Women no longer sharing a home with their abuser, thanks to rigid measures of social distancing reported an improvement in their mental state, unlike those women still



There is an urgent need for reliable data, which must be collected in a careful manner in full respect of the wellbeing and safety of those involved



cohabiting with an abusive partner. Overall the study showed that, “the collaborative research project between the university and the women's centres clearly demonstrates the need for reliable data on gender violence, i.e. information gathered in the careful and rigorous manner in full respect of the wellbeing of those involved”.

### **Patriarchal mentality and secondary victimisation**

During the pandemic the attention of the media and politicians for the phenomenon of violence against women remained high. At the height of the crisis, on 25 November 2021 – International Day for the Elimination of Violence against Women – the President of the Republic, Sergio Mattarella, underlined how our society was, “Still marred by episodes of verbal, economic and physical violence against women, based on the unjustifiable idea pervasive in many territories and contexts that men have the right to dominate women by force”. Direct violence is also accompanied by an indirect, less well-publicised kind, called “secondary victimisation”. This is also rooted in the patriarchal mentality, which shows little sign of disappearing. Secondary victimisation can be defined as the process that forces women victims of abuse to relive their experience, not at the hand of their abuser but by the authorities they come into contact with, be it the police, the courts, lawyers, social workers, health workers, not forgetting the media that often provide an inaccurate account of this phenomenon. One of the main reasons for this institutional failure is to be found in the lack of adequate training.

### **“A model father, highly respectable aside the horror”**

When a local newspaper (La Nuova Sardegna) reporting a femicide describes a man who has killed his wife and children as “a

### **Research**

The University of Trieste and the women's centres in Friuli Venezia Giulia have carried out a research project involving 238 women, who have suffered at the hands of a partner or ex-partner during the period of lockdown and social distancing

peaceful man, model father, a beautiful house, a gun for hobby, everything as it should be, aside from the horror”, anyone might think – notes the Vanvitelli University in Naples in its case study for the Never Again project – that “the victim was the killer himself, deprived of the homely paradise built with the sweat of his brow for his family”. The case in question is dated 9 November 2020, the perpetrator of the violence that took place in Carignano in the province of Turin was a man who killed his wife, their two-year-old twins, the dog and then himself. Before the massacre he called his brother and, as emerges from the latter's account and those of other witnesses, explained that what led him to wipe out his family was his wife's expressed intention to leave her husband. The victim of the femicide, therefore, becomes victim once again through the distorted and biased media report: the wife guilty for wanting to leave her husband, whose act was, in a certain sense, justified or attenuated by extenuating circumstances.

### **Judicial pronouncements**

It is not only the media that is incapable of dealing with the issue of gender violence in a serious manner – suffice it to think of examples from the courts, that can become the new battle ground from women who report abuse. One

example from the many occurred at the Appeal Court of Ancona, which acquitted two men who had already been found guilty by a lower court in 2016 of using abusing and discriminatory language. In its judgement of 23 November 2017 the Court declared there were reasonable grounds to doubt the veracity of the girl's



From the newspaper account it would seem that the real victim of the massacre was the killer, deprived of his little domestic paradise

account and that “the defendant may have ‘invented’ ex post a good part of her story in order to justify herself in the eyes of her mother in such a way as to appear a victim instead of an agent complicit in the events.” The judges went on to describe the girl as a “devious Peruvian”, whereas the accused men were referred to as “ingenuous” and “sincere”, claiming that it was the victim herself who arranged the wild night out. Indeed, the judges underlined the fact that the accused were not even attracted by the victim, whose personality and appearance was more masculine than feminine, as could be confirmed by the photographs shown to the Court. On 5 March 2019 the Supreme Court of Appeal (Corte di Cassazione, judgement no. 15.683) annulled the judgement and referred the case back to the Supreme Court of Appeal. According to the Court, the not guilty verdict of the two accused was based on the unjustified and unreliable rejection of the young woman's version of the events. To get a better idea of the motivation of the Supreme Court's judgement, the judges wrote that “the accused did not even fancy the girl”. The Supreme Court's comment on this was: “apart from being completely irrelevant, the use of such considerations combined with the lack of attention to the language used risks inflicting another form of violence on the victim”: in other words, a form of secondary victimisation.



The use of certain considerations in a judgement, and the careless use of the language employed, risk provoking further violence

“The use of coherent, relevant and consistent arguments and the correct language used to express them would prevent a trial and the court judgements from becoming on one hand, a source of secondary victimisation, and on the other, a pulpit for outworn

but persistent prejudices,” is the observation found the case study collection from the Vanvitelli University in Naples.

**Social services accused of ignoring violence: the story of S.**

“Had I known I would lose my children I would never have reported the abuse”. This is the story of a young woman who, after suffering violence, was initially deprived of her children. This is not an isolated case. Biassed technical consultants, unbalanced reports from the social services that do not take into consideration the violence suffered by the mother can contribute to decisions favourable to the man, as the case of S. demonstrates.

This mother, after having reported her partner for violence had to face a legal battle to regain custody of her child. The court first awarded custody to the father, with the mother having the right to supervised visits. Later S. reported her ex-partner for preventing her from seeing their child using excuses which she claimed were invented. When the public prosecutor applied for the case to be dismissed, S. objected. The judge then rejected the plea for the dismissal, ordering the public prosecutor to charge the ex-partner under article 388 of the Italian criminal code, that punishes failure to carry out a judicial ruling. The judge went on to instruct the prosecutor to investigate the further accusation of ill-treatment of the woman which emerged from the documentation brought before the Court.

**Bene (Vanvitelli University): “There is a need to innovate training”**

“As regards the macro-theme of gender violence,” explains Teresa Bene, professor of criminal law at the University of Campania Luigi Vanvitelli, “there are numerous critical areas. Some have been resolved through legislation, but others are linked to the complexity of secondary victimisation, underpinned by a wide-



spread culture of discrimination that can influence reactions to the abused woman. Secondary victimisation is a complex phenomenon that can reactivate the suffering of the victim, depending on the way the agents of the institutions handle episodes of gender violence”.

“The phenomenon,” she underlines, “contains within itself diverse profiles. If the variety of the diverse perspectives often depends on the scientific sector referred to, secondary victimisation is always concealed in, often contradictory, cultural stereotypes that condition our structure of thought, even at a subconscious level”.

“Generally speaking,” she goes on, “it can happen that the forms of secondary victimisation can come into play because they are favoured by certain mechanisms linked to social and cultural aspects. Understanding these is essential before we can decide on the correct strategies to recognise the problem and come up with an effective collective response.

Certain problems are met with insufficient forms of support, or responses that blame the victim, in a more or less subtle way. This can also depend on a narrow mono-sector training and a vision centred solely on one's particular ambit of work, rather than looking at the overall situation. This leads us to believe that it is not effective to act only by introducing corrective norms that orient the judicial system towards taking the victim seriously and recognising the secondary victimisation to which she has been exposed. What we also need to do is introduce innovations in the system of training by rewriting those cultural models which are also incorporated into the very institutions and professions, from organisational to management practices, in order to harmonise



Secondary victimisation is found in cultural stereotypes that condition people's opinions and judgement

the different points of view and produce closer liaisons between the different institutions involved. In other words, we need to intervene in terms of values to recognise the cultural stereotypes to which secondary victimisation is attached, raising the awareness of the institutions so they can work to overcome these prejudices.”

### **Austria: the case of Diana**

Secondary violence is not just confined to Italy, but in a variety of forms exists everywhere, with some countries worse than others. There was a recent case in Austria where at the end of January 2022, a four-year-old child called Diana was taken from the arms of her mother by the police and driven to Vienna airport, where she was delivered to her American father who boarded the plane with his daughter and returned to California. The child had not actually seen her father since 2019, when her mother on a visit to Austria had decided not to return to her husband in America but to remain in her home country. The woman had accused her husband of physical and psychological abuse, the case is still being heard in the American courts. The father managed to regain possession of his daughter by appealing to the Hague Convention, in particular the part that regulates the international removal of children without parental consent. According to the Austrian women's centre that followed the case, in this and other similar cases, more weight should have been given to article 13 of the Convention that allows the judge not to



The judge may not to proceed with the return of the minor in cases where there is a serious risk of the child being exposed to psychological and physical danger

proceed with the return of the minor in cases where, “there is a serious risk of the child in the event of return being exposed to psychological and physical danger or being placed in an intolerable situation”.

It should be remembered that the child was forcibly removed from her mother notwithstanding the father's ongoing legal trial for abuse, and placed in an unknown environment with a father she had not seen for two years and may not even have remembered.

### **Bonetti on greater European coordination**

The above case, like others, shows that gender violence and secondary victimisation exists throughout Europe, thus the need for more coordination. “The global agenda,” says the minister, “must work on two profoundly interconnected levels: the protection and promotion of gender equality and empowerment. Last 25 November I met the Secretary General of the Council of Europe Marija Pejčinović Burić, to testify to the Italian government's commitment to legislation in which all European governments come together to lend their weight to combating violence, and to reiterate our government's support for the implementation of the Istanbul Convention, the most advanced international tool for protecting victims of gender-based violence and promoting policies of prevention”. “At the level of the European Union,” Bonetti goes on to say, “Italy is totally committed to supporting the work of the Equal Opportunities Commissioner, Helena Dalli, who is currently working on an effective intervention against violence as part of the overall European strategy on the theme of gender equality”.



Italy is committed to supporting the need for European Union legislation against gender violence



serbia  
MAY 2019



БЕПЫС



# #02

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## Media Wounds



IDENTITY



The press

# When words weigh like stones on female victims of violence

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**Simona Rossitto**

Violence against women is also carried out through verbal attacks, namely through misreporting, prejudice, and stereotypes encouraged by the media. Words that weigh like stones can hurt, victimising someone for a second time. The “secondary victimisation” of women through newspapers, TV and on the web takes place, above all, in two main ways: when a victim is considered responsible for the abuse suffered, in other words victim blaming, and/or when excuses and justifications are found for the man's abusive behaviour. As Angela Romanin, former director of the Casa delle Donne in Bologna says: “The killer in a murder case was described as the ‘boy-friend’ in all the newspapers. The victims of violence are often stripped naked and raped a second time”.

## Consequences of the misuse of words

The weight of ill-chosen words affects the lives of the victims

## Research

The Tuscia University analysed 16,715 articles between 2017 and 2019, bringing to light prejudices and negative stereotypes embedded in the storytelling.

and their relatives both on a psychological and a social level. Words inflict pain also because of the prejudices they convey, which often can condition judicial proceedings. Language borrowed from media coverage, echoing prejudices and negative stereotypes, enter the minds of the protagonists, even influencing the outcomes of trials.

Before going on to explain how to counter the phenomenon of secondary victimisation in the media, we need to consider why it is that the media, in spite of the information campaigns and ever greater general awareness, still make the same mistakes. At this point, it is necessary to underline the following premise: male violence is not confined to a momentary loss of sanity or a sudden raptus; in the overwhelming majority of cases, it is an expression of the patriarchal mentality still rife in our society. Remember that honour killing in Italy was only abolished in 1981, and it was only in 1986 that sexual violence became a crime against the person and no longer against public morality. Clearly abolishing outworn legislation is one thing but eradicating deep-rooted, albeit at times unconscious, preconceptions is another. This can impact on the way the media reports certain kinds of violence.



There are still too many articles in which gender violence is excused by the use of expressions such as 'raptus', family rows and jealousy

### **Raptus and fits of jealousy**

The Tuscia University carried out a three-year research project in which, from 2017 to 2019 over 16,715 articles were analysed to find evidence of bias towards male violence. The frequent use of defining words or phrases, such as raptus, family row, story

of jealousy, diminishes the true nature of the phenomenon, which is not about momentary loss of control but male superiority and entitlement.

Examples from recent newspaper coverage – “he was possessed by an endless raptus”; “I killed her out of jealousy” – tend to find a justification for the violence by focusing on triggering factors. In the case of the murder of Illenia Fabri, the motive of the husband who paid an assassin to murder his wife (both confessed and were given life sentences) was, according to one daily paper, his wife's “demands” for money. Not, therefore, rows over money or economic questions but his wife's “demands”, a word which encapsulates in itself a negative value judgement.

In the Grillo case, the alleged “gang” rape involving the son of the famous comedian turned political leader, the pretrial coverage has victimised the woman once again: “giving voice to those who shout the loudest”. Various articles have reported statements given to investigators offering different versions of the events. A way of selling newspapers without any consideration for the victim, roundly condemned by the equal opportunities commissions of associations including media trade unions FNSI and USIGRAI, the National council of journalists and GiULiA Giornaliste. There are plenty of other examples of sensationalist press coverage of alleged rape as the one above-mentioned and, as shown by numerous research studies, despite the advances made, the stage has not been reached where words are chosen with awareness and cases are reported in a way that does not cast shame on the victims of gender violence. According to the study by the Tuscia University, there is an over-reporting of violent phenomena involving young people and parties, yet such cases, albeit serious, are only a small fraction of gender-based violence overall. The crime most fre-

### Crime reporting

The Grillo case and the lack of consideration due to the alleged victim, with the publication of police statements given to the investigators has been condemned by the National Order of Journalists, media trade unions FNSI and USIGRAI and by GiULiA Giornaliste

quently reported to the police is domestic abuse (51.1%), followed by stalking (30.7%); the third is sexual violence (17.1%), the fourth is femicide (0.7%), and, finally there is enslavement (0.4%). As regards the cases of violence reported in the press, the order is quite the reverse: the most commonly reported crime is stalking (53.4%), followed by cases of murder/ femicide (44.5%), then comes domestic violence (14% of reports), whereas the latter represents the majority of crimes against women. In other words, the underlying problem is cultural and concerns the relationship between men and women, above all in the domestic setting, rather than fits of madness or jealousy.

### **It was all her fault**

Victim blaming is the phrase used to describe reports that imply through their use of language (e.g. her clothes, her lifestyle) that the victim was responsible for the crime committed against her.

### **Judgemental language still used for the victim**

Another example from the research describes how the narration of blame is often used to portray the victim. This phenomenon, which is called “victim blaming”, implies the assumption that the woman is responsible for what has happened both directly, for example the clothes she was wearing, which aroused the man's anger, or indirectly by listing, often in a salacious or classist manner, irrelevant details of the woman's lifestyle.

Another element that can accompany this type of discourse is subjectivity, of which the woman is deprived – as she is seldom the protagonist but rather the passive object of the story. Often the women are only known by their first name as if to underline their lack of status, for example “Parolisi killed Melania for a no”. In the coverage of the two American students raped by the Carabinieri, explicit reference was made to the fact that, having taken out an insurance policy which also covered sexual assault, the young wo-



Headlines often underscore the man's justification – unrequited love, rejection, uncontrollable passion, etc

men had an economic motive for reporting their aggressors. Thus, in the eyes of the newspapers and their readers the victims found themselves in the dock along with the two policemen. The press forgot to mention, however, that it is common practice for American students to take out such criminal injuries policies before studying abroad.

### **Why it is wrong to describe a crime from the aggressor's perspective**

Besides the excessive attention given to the victim's lifestyle, another journalistic trope is to see the crime from the aggressor's viewpoint. For example a headline from 2019, in the case of the murder of Elisa Pomarelli, would seem to imply a sort of excuse: “The gentle giant and unrequited love”. A similar example comes from reportage of the murder of Damiana Proviero in 2021: “Unable to accept a separation he massacred his ex with a hammer”. Here is another sample, reporting the murder of Laila Masteri: “Then he pulled out a knife from his pocket and stabbed the woman he loved, who wanted to leave him”. The killer is described, as Nadia Somma notes in her book *Le parole giuste*, as a man in love with a woman who no longer wanted him. In other words, the victim gets the blame.



Reports that describe the author of the violence as someone too much in love with the person who has decided to abandon him, implicitly lay the blame on the victim

### **Avoid sensationalist language**

In romanticised accounts, full of superfluous and irrelevant details, one can find echoes of the outmoded but still present myth



of a “sick love”, unrequited love that leads to death in a union between Eros and Thanatos, borrowed from literature. We're thinking of the murder of Nadia Ormando at Palmanuova, a case in which the fiancé drove the dead woman around in his car all night. An article from 2012 reports him to have said:

“I was worried and set off towards the hospital in Spilimbergo. But the car never got there”. Mazzega falls into a sort of trance, sock and turns back on himself. During interrogation the man is desperate:

“My life is finished”. The references to a trance seem to have taken the place of the previously criticised raptus. This report has more to do with a work of fiction, in which the author seeks to drum up sympathy for the murderer.



Analysing the problems of the relationships between men and women within the family or in the social context, beginning with school

ALESSIO MICELI — MASCHILE PLURALE

### Male stereotypes

As aforementioned, one of the common signatures of the crime report is the event seen through the man's eyes. Alessio Miceli, from the association Maschile Plurale, invites the reader to go beyond the common representation of male stereotypes and analyse the real issues in the relationship between man and woman in family life and in the wider social context, starting from school. “In the typical journalistic account from the man's perspective,” says Miceli, “the narrative often takes shortcuts that lead to two families of stereotypes: the good man or the monster. The good man in a fit of passion who reacts to an injustice. Or the monster, viz. the outsider, the drug addict, the madman, the social reject and so on. All these categories are flatly contra-

dicted by the available data, which shows that most violence takes place within the family. The reality of the man who commits a violent crime against a woman fits into neither of the two categories above, but the message has yet to get through to the media.” Miceli believes we need to analyse the cultural assumptions and, “the ages-long imbalance of power between women and men, that is to say control, evidences the difficulty of the dominant male mindset to come to terms with the idea of women's freedom.” Hence, in order to make a difference in the information field, “there is a need to become aware of and provide a better description of the men who commit violent acts against women. When, for example, yet another femicide is reported, in the context of a separation the man cannot accept, ending perhaps with his suicide, all this means that the authors of violence are convinced they are unable to exist without her. In this case, we should rethink the whole question of the division between care work and productive work, analysing how we men arrange to share these ambits within our relationships, seeking to become more autonomous, instead of taking a violent shortcut”.

### **GiULia: “In recent years there have been improvements”**

Seeing through his eyes, victim blaming, romanticised reporting and sensationalised headlines: faced with these widely used instances of bad reporting, the journalist who really wants to report a crime in a comprehensive and objective manner, must try to provide – according to Flaminia Saccà of the Tuscia University – a reconstruction of the facts. In the case of wanting to express the viewpoint of the guilty party, it must be done with due impartiality. However, awareness of the problem of reporting violence has considerably improved over recent years. “In the last 10 years,” says Silvia Garambois, president of GiULia

### **Deontology**

Faced with widespread misreporting – the event told uncritically from the man's perspective, victim blaming, romanticising violence and click-bait and sensationalist headlines – the vigilant journalist should employ a measure of detachment when reporting the man's viewpoint

Giornaliste, an association of women journalists, “since we have come together in numbers with a mission to focus attention on the words and how they are used by newspapers and the TV to describe gender violence, we can see a greater caution by the media to avoid falling into the trap of using stereotypes that effectively point the finger of blame at the woman, turning her into a victim for the second time”. The president of GiULia makes a point of adding: “Even recently there have been cases of bad reporting, but – and this is new – for the first time, those responsible have stepped up and apologised for the offensive headlines and articles that have insulted not just the victims, but also the intelligence of the readership and viewers.

There was one interview where the survivor of abuse was given the third degree about her responsibilities. There was an instant response from women's groups, which led to the person in question to being invited to a second interview to set the picture straight. Another instance involved a newspaper article lauding the entrepreneurial virtues of a businessman who had just been arrested for rape. The national newspaper was forced to make a public apology after pressure from the paper's female journalists. In all these cases, the traditional narrative has been stood on its head. The fact that newspapers accept their responsibility and apologise when they make mistakes, is evidence of a radical change in the cultural approach to the reporting of violence against women”.

A proactive approach, and greater awareness also among the general public, according to Paola delle Molle, vice president of the Order of Journalists of Friuli Venezia Giulia: “There is more sensitivity with regards to how violence is reported; critical fee-



Training is needed at every level: even the sources journalists use for information can insert gender prejudices into their accounts

edback to the different TV stations and newspapers also comes from ordinary readers, not just colleagues or interested groups.”

### **The need for training at all levels**

What is required now to further improve the language used to describe gender violence? Silvia Garambois, along with Saccà from the Tuscia University and Paola della Molle have no doubt: training, training, training.

“We must have training at every level,” says Silvia Garambois. “At times the sources journalists use relay negative stereotypes of women; the declarations of the lawyer or the examining magistrate that end up in the communications of the forces of law and order, regurgitating the old tropes of raptus, jealousy, too much love. It's a circle that can only be broken if we all collaborate”. Training also at the highest levels of the press hierarchy, from the non-specialist collaborator to the person that works on the desk, checking and publishing the work of others, who at times can be tempted to go for a bit of click-bait, right up to the top management.



The journalist's toolbox is ready for use and recent years have witnessed a completion of the framework. It only needs to be applied

### **The problem is cultural. The legislation is already there**

At the end of the day, the real problem is cultural. not legislative or deontological, as the tool box is ready and waiting to be used, says Paola Spadari, president of the Order of Journalists in Lazio, among others. In recent years the normative framework has been further strengthened. In 2013, Italy ratified the Istanbul Convention of 2011, which in Article 17 lays out how the media

have to participate in the drawing up as well as activate policies, and set the guidelines and norms for self-regulation in order to ensure respect for women's dignity. There is by now no shortage of examples of self-regulation, such as the 2017 Venice manifesto, fruit of a collaboration between the equal opportunities commission for the Italian press, USIGRAI, the GiULia association and the Veneto journalist union; the norms of the International Federation of Journalists, established by the national Council of the Order of Journalists and finally Article 5 bis of the consolidated text on the duties of journalists, stipulated recently for further clarification. The norm states that in cases of femicide, violence, harassment, discrimination and articles in the press pertaining to sexual orientation, journalists must avoid gender stereotypes, maintain a linguistic tone which is sensitive and restrained, and limit themselves to reporting the basic facts. Journalists should also avoid belittling or spectacularising violence and, while the public interest in the facts is legitimate, storytelling must be respectful of the victims and family members involved in the events. “The norm,” explains Paola delle Molle, vice president of the Order of Journalists in Friuli Venezia Giulia and former coordinator of the equal opportunities commission of the National Council of Journalists, “came into force in January 2021. The commission's work was really demanding, but we carried on despite the pandemic. The Order's total commitment to the task in hand ensured the achievement of the final article and, even if Article 5 bis could be deduced from other principles, with this clear statement we wanted to ensure that the resolutions contained in the article become a go-to point of reference, which guarantees a



The use of respectful language devoid of stereotypes is enshrined in the consolidated text governing the work of journalists



respectful language devoid of stereotypes”.

### **The case of the missing girl in Spain**

The problem of using the right words to describe gender violence is by no means limited to Italy. Examples of secondary violence are also found in Spain, a country similar to ours culturally. Take the case covered by the Law faculty of the Vanvitelli University in Naples concerning the disappearance and murder of an 18-year-old girl. For 497 days there was no sign, then on 31 December 2017, her body was found. The case was relentlessly covered by the media, especially in the period following the disappearance and again 16 months later, following the arrest of the murder suspect, who confessed and led the investigators to the place where the body was hidden. From the outset the hypothesis adopted by most of the Spanish media to reconstruct the event was that the girl had run away of her own volition due to family arguments and her temperamental disposition. Prejudices, according to the study by Vanvitelli University, “had the effect of leading the Spanish media to probe into the life of the missing girl, the way she dressed, her personal relationships, her social network posts to explain her disappearance. But in so doing, they showed that even the concerns for the girl's fate did not prevent them from considering her responsible for what happened to her: in other words, a textbook example of secondary victimisation.” To give just one example, on a TV programme that investigated the life of people, D was presented as a problem girl, who “smoked”,



Prejudice had a determining influence in the work of many sectors of the Spanish media on the life of the missing girl

**VANVITELLI UNIVERSITY**

“went out with boys”, “that night she wasn't being discreet”.

Even a famous daily paper devoted a long article to the case, mortifying the girl through a series of negative value judgments with no right of appeal, bringing into the public view many details of her private life, including the presumed troubled relationship with her mother, and her questionable relations with other youths. In sum, the disappearance and murder of D had the effect of propelling her family into a sort of reality show with the media pulling the strings, triggering a macabre carnival of sexist bigotry and fear of women. “Thus,” conclude the researchers from Vanvitelli University, “the girl's disappearance, from being an alarm bell warning of something bad, took on another meaning and became the excuse for an outpouring of a whole series of misogynistic prejudices.”



The disappearance and murder of D. led to her family being subjected to a reality TV show piloted by the media

## Social media

“Besides the role of the traditional media in secondary victimisation we should not forget the digital sphere,” warns Elisa Giommi, commissioner of AGCOM. “From hate speech based on sexism to what as come to be known as ‘technology-facilitated sexual violence’”.

This section of the media also needs “to become the object of public intervention with policies aimed at confronting its toxic role in order to redirect gender relations in a healthier and more humane direction”.



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## THE VIOLENCE OF IMAGES



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**Sensationalism**

# The role of social media and the narrative of infotainment

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**Chiara Di Cristofaro**

**W**ords are important because they mould our thought processes: this is why linguistic analysis of how gender-based violence is narrated in the newspapers and elsewhere is important. Yet communication does not only take place through the printed media and the use of words: as, in recent decades, the use of images has taken on an increasingly important role, it has become necessary to reflect on how the choice of images can reinforce stereotypes and contribute to the secondary victimisation of women.

## **Images have become the story**

The role of images in communicating information has become more crucial than ever: we can no longer consider them as a mere side dish accompanying the main course of articles or other genres of written text. They are now an integral part of the message, if not the message itself. A prime example of this phenomenon is the rise of Instagram: in the last 10 years it has become a macro-trend, one in which people no longer look to new-

## **Social network**

### **Reuters Digital News Report 2021**

Social networks are the second principle means of searching for news online

spapers – either printed or online – for the news but find it on social media. The most important means of communication, however, is still the television, especially in the older age range (though it is worth noting that, during the pandemic, the TV made up lost ground also among the young). According to Reuters' Digital News Report 2021, social media is the second research source for online news (21% of those interviewed), search engines for finding a site come next (22%). Among social media, Facebook is still the most used for finding, reading and discussing news (50% of interviewees), with YouTube on 22%, and Instagram on 15%. Only 8% use Twitter and 7% use Telegram.



Women are portrayed as weak, wounded and defenceless with their backs to the wall. The perspective is always the man's

### **Symbolic and standard**

Which images are used to illustrate gender violence? If we consider the symbolic or stock images (those used on 25 November, for example) there are several recurring themes which deserve attention. The assailant is rarely featured, and when he is, he appears waving his fists in the foreground. These kinds of images present the woman as impotent victim, cowering and helpless with her back against the wall: the viewpoint of the camera is always that of the man. The images seem to need to underscore the marks of violence on the body, signs which in most cases are not, in fact, visible. The woman is often shown bent over, sometimes naked or with her clothes torn and dishevelled, thereby hinting at a certain sensuality, frequently associated with gender-based violence. In recent years we can note another type of photographic storytelling alongside the traditional one: accompanying articles and news items appear with greater frequency images aimed at raising awareness and contrasting violence (for instance,



a pair of red shoes) or symbolic images implying the idea of freedom, hope, a way forward, or another kind with images of ordinary women with whom women can identify with.

### **Pictures on social networks: the risks of secondary victimisation**

If one moves from the stock images portraying gender violence to the images accompanying crime reports, analysis of the iconography becomes more complex. Roberta Siragusa, who was 18 years old, was the third victim of femicide in 2021, on 24 January. In prison on a charge of murder is her fiancé, Pietro Morreale, 19 years old. The articles reporting her killing are illustrated by displaying the victim heavily made up and winking at the camera, in an influencer pose. Or others together with her fiancé, where she is happy and smiling, or still others of the young couple with her future in-laws, an idyllic foursome. These pictures of Roberta Siragusa, which have finished up on web pages, newspapers and TV programmes, have all been extracted from her personal social media profile.

Another emblematic case is that of 16-year-old Noemi Durini, also killed by her fiancé, he too a minor. She can still be seen on the web, in suggestive poses, arms wrapped around her fiancé. Another victim, 15-year-old Nicoletta Pacini, murdered by her mother's ex in 2017, is shown to the world sucking her finger and sulking. Ilaria Palummieri, 20, was murdered by her ex, Riccardo Bianchi, who also murdered Ilaria's brother Gianluca. Her photograph? She is shown dancing in a disco wearing a bra, putting her tongue out, arms around her killer. Giovanni Palummieri, Ilaria and Gianluca's father, describes how each photograph is another knife blow to the heart, when he says, "I've thought about it for years. I lost two children on 24 June 2011. Both of them." He remem-



Too often there emerges an eroticisation from the choice of photographs accompanying a report of femicide

bers every detail of that day, and describes in the same tone the photographs that accompany reports of his children's murder. "What struck me about that photo was that Ilaria appears half-undressed, as if to insinuate she wasn't a serious girl. As if she was asking for it. It's like saying that Ilaria, in her behaviour, in the way she dressed, provoked his reaction, the violent reaction of a man who was possessive and consequently acted in a fit of jealousy. Of course, it's much easier to accuse someone who is no longer around to defend herself."

The pictures of Ilaria and the other girls had been published on their web profiles by the girls themselves before being murdered.

But the photographs stay online, to be used by anyone without any regard for the victims or their loved ones. What lies behind the choice of these images? What has gone wrong?



After a woman's death her Facebook 'memorialised' profile remains on display, unless she had designated an heir prior to her murder

### **Violence narrated like in a novel**

The first thing to notice in the choice of images to describe the murder of women is that there are many photographs of the victims but few of their assassins. Emanuela Valente, a communications expert and blogger has, for many years, recorded episodes of femicides in "In Quanto Donna". From a study of all the articles published in print or online in the last 10 years Valente notes, "for every 10 femicides there are seven photographs of women. Usually there are no photographs of elderly women or prostitutes, who more often than not are not even given a name. The images most commonly published are of attractive young women under 40, taken from the internet." Photographs of the men are much rarer, roughly three on 10. Obviously pre-trial the identity of the man has to be protected to guarantee the presumption of

innocence, thus we may find the face of the alleged assailant blurred, while the victim's is fully disclosed. But what about the victim? Once murdered the victim seems to have no rights.

This is not just a question of numbers. “In the choice of photograph one can note a marked eroticism, sexualising and beautifying of the victim and her violent death,” says Nadia Somma, who has been president of Demetra Women's Centre for ten years. A close observer of communications and author of *Le Parole Giuste*, Somma notes, for example, that: “In reports on the rape of elderly women there are no traces of violent eroticism, just dry reporting of the crime with no attempt to sound like a novel. Such cases are unlikely to be accompanied by a photograph”. Thus, along with the words, the message is also conveyed through the images, and the message is, “a woman is killed also because of her sexuality, that is to say Eros provokes: she is the cause of her own death”.

Another aspect to consider is the portrayal of the couple, “When there's a case of femicide,” says Somma, “we find a photograph of the woman embracing her lover, both smiling, happy together. These images pass on the message of the link between love and death, romanticising once again the woman's death of too much love. It is quite wrong to display to the public gaze, the woman after her death in the possession of the man who caused it. What makes this even worse is that many of the victims are still minors”.

### **Rules exist: norms and deontology**

Given that they represent first femicide, then secondary victimisation, photographs like these should never be published – also because the victim being dead has no chance to express her will. Here, however, it is not just a matter of whether it is opportune to publish or not, it is rather a legal question. The framework in which we act has been set up by legislation covering authors' rights and the protection of private data, besides the codes governing journalistic standards. If this fra-

## **Norms**

### **A journalist's duties**

Article 5 bis of the Consolidating Act states that a journalist must avoid gender stereotypes, and expressions or images damaging to personal dignity. It is necessary to report the details of a crime in a dispassionate and objective manner, avoiding at all times sensationalising the events described

mework defines the responsibility of the journalist in deciding what they publish, be it a text or an image, the cases cited above are much more delicate. When the matter concerns sexual violence, for example, there is a Supreme Court judgement reiterating that a journalist must demonstrate having taken into consideration the right to human dignity with respect to the duty to provide details of the victims.

### Undying dignity

Giorgio Resta, professor of private law at the Roma Tre University, where he is also acting director of the Law department says: “The image of a dead person, victim of violence is covered by a different statute, and must be handled with even greater caution”. There is a line which the journalist must not cross, explains professor Resta, that is called “personal dignity”. The dignity of a person who has died, he continues, “is accorded considerable importance in the legal system, because it is the final thing the dead possess. The rights die with the person but dignity, that continues after death, has a value based on legal principles and the legal system must ensure that this value is respected”.

The effects of publication of such images, as well as the weight of the legal proceedings and media attention, must also be taken into consideration, in particular the reactions of the family and loved ones of the victim who are still alive. In such cases it is up to the family to request intervention by the professional body or the guarantor of privacy in the first instance and then if necessary take legal action. This – it has to be admitted – is an intervention *ex post* when the damage has already been done, and one that has to be undertaken by the family.

On this question we turn to Giovanni Palumbieri, who recalls the shock and trauma of that moment in 2011, which he has to contend with



The image of deceased person, victim of violence, must be treated with greater caution and respect

even today. In order to act in time to defend the dignity and images of the victims requires a certain lucidity, which someone who has just lost a loved one in such an atrocious manner is unlikely to possess, unless they happen to have an already functioning support network. “In my case,” says Giovanni, “there was zero support. Nothing. A call from the police, confusion, my children not answering their phones. I learnt of their deaths from the television. I fell into a state of limbo, then I went mad, with moments of complete blank”. As a result of his experience, along with the association Libere Sinergie and his partner Alessia Giudetti, Giovanni is calling for a support system for those who have to live with their loss, a back-up network offering practical assistance – legal, psychological and financial – to help those who always hope that, “this is just a bad dream from which I will soon wake up”.



The families of the victims find themselves distraught and alone at a time when they need to act to protect the image of the victim

### **What happens to social media profiles after death?**

In the death of Roberta Siragusa and other victims of femicide there is another open question, viz. digital identity after death. In fact, in most cases once a person dies the account is either closed or remains blocked so that it cannot be modified even by someone with the access codes. As regards Facebook, for example, the profile becomes memorialised, unless a legacy contact had been designated previously or the owner of the profile had explicitly requested the profile to be shut down post mortem.

Professor Resta explains: “This implies running the risk that the images will remain open to public view after the person's death. On this question, however, Italy is in a strong position: when the European regulation was applied to Italy, the legislative commission decided

to strengthen data protection after death, and establish a way to ensure that surviving family members would be able to exercise their rights, among which revocation of consent, the rectification of information and the right of access to the profile and its removal”.

Once again in this case it is the family who have to act to protect the rights of the deceased. It is not hard to imagine that, given the loss of a loved one in such circumstances, this does not often happen, and when it does, it rarely happens in time to be effective.

### **The questionable role of infotainment**

Turning from social media to more traditional media we cannot fail to mention the role of infotainment in all this. We should not overlook the fact that television is still the primary source of news, and in programmes that combine current affairs and human-interest stories, exploitation of people's suffering is a daily occurrence.

One example in particular can illustrate how this works: at the beginning of 2017 a popular afternoon TV show on Italian Canale 5, called *Pomeriggio 5*, invited and interviewed a young woman whose fiancé had poured petrol over her and ignited it with a cigarette lighter. The young woman in the course of the interview with the hostess Barbara



Images on social media remain on display after death, but there is a legal way to shield the information and images of the victim post mortem

D'Urso, denying the evidence, strenuously defended her fiancé, saying “that he had even given her money to go out and enjoy herself that evening” and that even she was a difficult type with a violent temper. Barbara D'Urso tried to convince the girl of her boyfriend's guilt, underlining in a dramatic tone that one can do terrible things for love. At this point the mother of the young woman barges in to take her



daughter away, the young woman protesting that she wanted to remain. The evident stage of confusion of the girl who had difficulty expressing herself, and the whole shoddy spectacle of putting her on show provoked a great deal of anger and protest. Barbara D'Urso had to explain herself a number of times, saying her intention was to combat the violence against women and show its horrific consequences. That said the distraught state of the girl was there for all to see, the emphasis on passion as a motivating factor and violent nature of the couple's relationship evident. This tawdry spectacle made the young woman a victim for the second time.

A further example the analysis has frequently cited is a show called *Amore Criminale* (Criminal Love), which has been shown on Rai Tre since 2017. Created with the declared intention to combat violence against women, the format announced by the title sends mixed and dangerous messages. Here we are in the ambit of actual entertainment rather than infotainment. Elisa Giomi, a sociologist writes in her book, *Relazioni brutali*, that though for many years in the front line for condemning femicide, the programme, the show represents it as a “life incident”, that is to say a pathology that can affect the relationship of a couple.

*Amore Criminale* is closely examined in a study published in 2021, “The mediatisation of femicide: a corpus based study on the representation of gendered violence in the Italian media” (Buso, Combei, Tordini, 2021), that carries out an analysis on the language and gestures used in the programme. All the episodes of *Amore Criminale* contain parts of docufiction and include a reading of the legal material. The women authors of the study identified three types of episode: the first shows a victim of femicide murdered by her partner or ex, retold through interviews with family friends and work colleagues, as well as the police and lawyers involved in the case. Other episodes revolve around interviews in which women who have survived physical and psychological abuse recount and share their feelings and experience. Finally in other episodes men with a history of violence and abuse are

## infotainment

### Between information and entertainment

This blend of information and entertainment, that emerged in the 1980s, has led to a profound change in TV journalism in various ways. In the same programme we may find a mix of different and not necessarily compatible genres – crime reporting, entertainment, foreign affairs and so on

interviewed; they are invited to talk about their experience and describe the build up to the violence inflicted on their partner. The authors note that, in the episodes focusing on the men's story, the men adopt an attitude that seems to by-pass any moral responsibility, preferring to explain their behaviour in terms of uncontrollable urges or raptus, as though someone else took possession of their body. Moreover, the narration devotes a lot of time to explaining how the abusive men were themselves victims of violent abuse which has left permanent scars on their personality. On the one hand, it appears as if the men are seeking an excuse for their actions, though at the same time we realise from the interviews that these men are profoundly aware of the damage they have inflicted on their victims, also given the fact that they have consented freely to follow of course of psychological therapy in specialised rehabilitation centres.

### **“TV of pain” on the rise**

The two examples presented above help us understand how dangerous it is to insert crime reporting and especially gender violence in a context which is supposed to be entertainment. Attention to “TV of pain”, shows in which pain becomes a spectacle has grown considerably in recent years, which is hardly surprising seeing how popular and ever-present these programmes have become on our screens. In an in-depth and pioneering research study on the TV of pain, carried out by the Media Observatory in Pavia and the Order of Journalists in 2014, the main infotainment programmes were analysed to reveal that roughly 100 hours of TV per month was devoted to programmes covering violent crime, concentrating mainly on the most emblematic notorious cases such as serial violent abusers. In most cases the victims were women. Among the points of criticism highlighted, the Observatory cited the emphasis on maximising emo-



The men who appear on these shows tend to look for excuses and not fully accept responsibility for their acts of violence

tional content by conductors, experts and guests; the blurring of the role of technical experts (now dispassionate witness, now one-sided cheerleader) and a wealth of redundant information and opinions on the most notorious cases of violent crime. Even if it is not made explicit, the TV investigations generally perceive women as passive victims, often by means of common albeit debased gender stereotypes. The Observatory's research reveals how, “the blind love” of the victims for their assailants triggers heated debates by the guests and studio audience on possible motives; psychological profiles are offered of women enslaved by passion; invasive investigations are carried out into the love life of women murdered or missing, in the search for dangerous relationships and lovers. And there is no shortage of otiose moralising of women involved in cases of betrayal or prostitution. Finally, there are voyeuristic and macabre descriptions of sexual violence, included merely to titillate the audience.



The women, who often appear as passive victims, are made to fit into a narrative loaded with gender stereotypes

The same unwanted and invasive attention is also reserved for the children of the victims, also dragged in against their will into the show and compelled to become TV personalities. Even if the actual research was based on the not so recent past, nearly all the programmes studied are still going: in particular, *Storie Vere*, *Pomeriggio Cinque*, *La Vita in diretta*, *Mattino Cinque*, *Quarto Grado*, *Chi l'ha visto?*, *Amore Criminale*, *I Fatti Vostri*, *Uno Mattina* and *Domenica Live*. It has to be said, however, that attention to how sexual violence is treated in the media has grown considerably in recent years, and a lot of good work has been done. Better data comes from a monitoring study of representations of the female figure carried out by the RAI (Italian Public TV) in 2020, from which it emerges how gender violence is the issue that has

most occupied programmes dealing with questions of gender and equal opportunities, as can be seen from the following statistics. Physical violence (57.5%) and femicide (40%) are the themes most often treated, along with psychological violence (35.6%), rape (21.9%) and sexual harassment (16.1%). Often the arguments are dealt with in talk shows looking at the events behind the news, or fictional TV series, as in the case of *Bella da Morire* on RAI 1, March 2020, which was given as an example of “best practice”. The results show that much progress has been made, though there is still a long way to go: regarding the programmes examined, in 70.5% of cases, the author of violence is not considered unaccountable for his actions or justified, and in 58.3% of cases the violence is neither minimised nor normalised. In 50.6% of the sample the woman is not treated as co-responsible for the violence she suffered, nor victimised a second time, and in 25% the violence is not sensationalised in any form. In 49.3% of the sample, the general tenor of the show as a whole is constructive vis-à-vis the treatment of gender violence, yet it should be underlined that this is mainly down to how the programme is conducted, which in 42.3% of the sample is reflected the behaviour of the presenter, seen as the guiding light in realising best practice. In only two out of 1,268 shows analysed with regard to the representation of the female figure, the treatment of violence was handled in an unsatisfactory manner. There was another handful of cases in programmes such as TV crime series, in which various scenes depicting violence left much to be desired, “overall the storytelling has always shown itself to be able to rebalance any possible element of exploitation”.

In sum, attention to the theme is high, yet there is still much work to be done. The recent calls from the official bodies overseeing communications and privacy – Autorità per le garanzie nelle comunicazioni and Garante per la Privacy, as well as the Order of Journalists – are all moving in the right direction.

### infotainment

# 100

Hours of TV a month are devoted to sensationalised crime reports concentrating on cases of violence in which the victims for the most part are young women

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Change

SPEAK



A close-up of a person's open palm facing the camera. The word "Stop" is written in black marker on the palm. The person has long dark hair and is wearing a light blue sweater. In the background, a blurred crowd of people is visible, suggesting a protest or public gathering. A white shirt with red and black markings is also partially visible.

Stop

#04

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THE JUDICIAL  
PROCESS



IN COURT

# Women are victims for a second time in the courtroom

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**Livia Zancaner**

«Why didn't she react?», «Why didn't she scream?», «Did she say no?», «Had she been drinking?», «Why didn't she report him sooner?», «Why didn't she leave home?», «Was she having an extra-marital affair?», «What did she do to provoke the violence?» These are some of the questions heard in the courts, when a woman reports abuse or mistreatment. Such questions automatically insinuate the idea that the woman had some form of responsibility for the violence inflicted on her through her own behaviour. Thus, it happens, even in the courts of justice, that violence becomes confused with jealousy, family rows, conflicts, and the everyday life of the women – not of the men – is X-rayed. How many times does a man commit acts of violence or even murder, in the words of the court, in a “fit of jealousy”, or that sexual violence by a group of men was driven by an “uncontrollable impulse”? How often is it that a woman is considered an unreliable witness because she did not cry or scream when attacked or because she only reports the inci-

**Strasburg**

Italy was condemned for the judgement of the Appeal Court of Florence that contains «unjustifiable comments and prejudice on the role of women»

dent after months have elapsed? How often is the private life of the woman dredged up for inspection? All this means ignoring the real issue and making the woman a victim for a second time: first the physical violence, then the institutional violence. Similar statements come not only from lawyers, magistrates and judges, but also from social workers and psychologists.

### **If prejudices and negative stereotypes enter the courts**

“Prejudices and stereotypes exist in all walks of life, no one is immune. The thing is to be aware of them. In the courts we can find an abundance of evidence that both male and female judges are not above prejudice but rather mirror those of society. It comes as no surprise, therefore, that in May 2021 the European Court of Human Rights condemned Italy for using sexist preconceptions as grounds for acquitting a group of men of a violent sexual offence”, says Paola Di Nicola Travaglini, criminal judge at the Court of Rome and legal consultant for the Senate Commission of Inquiry into femicide.

She continues: “The relationship between men and women has always been hierarchical. Men decide and command, while the life of the woman is constrained by vetoes and the duty to obey male desires. It was only in 1946 that women were given the right to vote and it was only in 1963 that the ban on women having direct access to the judiciary was abolished. The history of women is the history of a minority (albeit not a numerical one), that is to say, a history of subjection without redress”.

All this permeates the courts of justice in a variety of ways. The training of judges, a training even today that fails to guarantee gender equality because of cultural assumptions putting men on a different and a higher footing than women. “We are rigidly divided into two



Prejudices and stereotypes concern us all. What is important is to be aware of them and not use them to guide our behaviour

categories, in which the male is positive, the female negative. 'Don't act like a woman', is said to a man, while the characteristic stereotypes of women are timidity, fragility and duplicity," Paola Di Nicola Travaglini explains.

"Up until the 1960s, violence within the family was not only tolerated, but was the man's right, under *ius corrigendi*, a law which gave the man the right to exercise violence to correct their wives. It was finally abolished through the ruling of the Supreme Court that forbade the *paterfamilias* from using corporal punishment as a means of marital control, in other words from beating their wives".

"When a woman reports violence in court, be it criminal, civil or family, she enters an environment in which the protagonists and actors – from the judge to the public prosecutor, from the defence lawyers to the police witnesses – share a set of cultural assumptions imbued with negative gender stereotypes that skew the narration of the facts and condition the decisions. A woman who does not accept restrictions or conform to certain moral standards automatically becomes an unreliable witness and ends up in the dock," says Judge Di Nicola Travaglini. "A woman who likes going out and enjoying herself, wears what she likes, drinks, works late, has a free sex life is not believed because she does not correspond to the perfect victim, that is to say how a woman ought to be according to age-old gender stereotypes, chaste, reserved, timid and submissive. The trial proceeds with an infinite series of questions into her life and motives, so that in the end the judicial appraisal is turned upside down and the woman becomes the person to be judged, while the guilty party departs with an acquittal".

How can a judge be biased without realising it? "After 20 years on the bench following sentences, including my own," she continues, "I have come to realise that even we judges are influenced by deeply rooted stereotypes that condition our reading and interpretation of the evidence, to the extent that our decisions are skewed without us being aware of it. Gender preconceptions, for example, that women are

### **Ius corrigendi**

The right of the man to correct and educate his wife and children even with physical force was abolished in Italy in 1956. In 1969, article 559 of the criminal code that punished adultery for married women was abolished

wont to lie, exaggerate, report crimes in order to gain economic advantages in cases of divorce or separation; that they seek notoriety; that women 'are asking for it' or use their sexual attraction as a means to gain power and so on".

It is such lazy, commonplace and, above all, flawed notions, masquerading as ancient wisdom, that impel judges, but also the police when a crime is reported to raise intrusive questions, and automatically interpret acts of male violence as a reaction to feminine provocation.

"I too have written judgements," says the judge, "which today I would approach and deliver in a different way, and would avoid value judgements that condemn behaviour that is perfectly guilt free. I remember one case, in particular, in which I concluded that the only victim of the case was the couple's daughter, because she had witnessed the daily conflict of her parents: the father whose behaviour was violent and authoritarian, but also the mother who had been too submissive. The anger I still feel with myself for having fallen into the trap of victimising the woman for not being strong and courageous enough to liberate herself and her child from the abusive situation. And for having considered the daughter the only victim and not the mother." Women thus often become victims in the very places where their rights and safety should be protected: the courts of justice.

### **Too often, women are not taken seriously**

"The testimony of someone who has suffered violence can on its own, without the need for external corroboration, constitute the grounds for the accusation of the criminal responsibility of the accused, prior to verification of the accusation, accompanied by relevant motivation, of the subjective credibility of the plaintiff and the intrinsic reliability of the declaration given, which must, moreover, be subjected to more penetrating and rigorous inspection than in the case of those of an ordinary witness" (Appeal Court, third criminal section, 12 October



2018, judgement no. 46218).

Thus declared the judges of the Supreme Court. For over 10 years the Appeal Court has stated, in an unequivocal manner, that the judge is not obliged to look for external evidence, above all, in questions of violence against women, since the events often take place in the domestic setting where there are no external witnesses and the pre-existing links between the victim and aggressor weaken the ability of investigators to isolate and recognise violent episodes. The declarations of the plaintiff can, therefore, be the basis of the accusation of criminal responsibility.

In the courtrooms, however, the opposite often happens. The credibility and reliability of the woman are questioned, investigations are carried out into the private life of the plaintiff and her past, collecting reports on her behaviour from a moralistic perspective, though the same hardly ever happens for the accused.



“Sexual violence is the only crime in which, all over the world, the main suspect is the victim, while the accused remains in the shadows,” explains judge Di Ni-

cola Travaglini, who adds: “In 20 years of experience I have never come across a single case where a woman has falsely accused a man of violence. Moreover, in Italy there are no studies that demonstrate in objective and numerical terms that calumny in this type of crime is more common than in others”.

The private life and past of a woman are spied on through a moralistic lens

Why must a woman who has suffered violence be asked if she had a drink? “Because if a woman in a state of semi or complete unconsciousness due to excessive alcohol consumption is raped, even if this is not made explicit, the common idea is that she has some form of responsibility for leaving herself vulnerable,” continues the judge,

author of, among other works, *La Mia Parola Contro la Sua* (My Word Against His). “This continues to be the case, notwithstanding the fact that the criminal code considers the inebriation of the victim to be an aggravating factor”. “Because, as we said before, drinking for a woman is considered morally unacceptable. It violates her social and moral obligations to be reserved and in control. The same goes for the clothes she wears”. So, responsibility shifts from the defendant, who commits sexual or domestic abuse to his victim. The woman is blamed for having triggered the violence, as though violence was an uncontrollable male impulse and not, as is the case, a deliberate act of power and domination.



Something that only happens in crimes of gender violence is that women's testimony is presumed a priori to be false, and this then becomes the focus of the trial

“It is very simple, a step no one seems to be aware of, unless one is aware that it does happen. In trials of violence against women, the stereotype is so deeply rooted that a pernicious inversion of the trial logic takes place, casting doubt on the woman's word. If in a normal trial it is assumed that the person who gives evidence is telling the truth (to do otherwise would be to commit a serious crime), in crimes of violence against women, on the other hand, the assumption is that the woman is lying and the task, therefore, is to uncover her motives for so doing: what were her previous relations with the defendant? Why hadn't she reported him earlier? Perhaps she was looking for a pay rise and so on,” Paola Di Nicola Travaglini concludes.

### The ideal victim

“Far too many people still believe that the victim must behave in a certain way, in line with certain abstract and predefined parameters and

if she doesn't, this means something is wrong," says Elisabetta Canevini, judge of the Milan Court, (IX Criminal Section) specialist in crimes against the vulnerable, i.e. domestic abuse, sexual violence, harassment and so on.

"Most stereotypes," she continues, "are linked to how a woman should behave in order to avoid finding herself in unpleasant situations, forgetting that three quarters of the crimes we deal with take place within the home, forgetting that domestic violence takes place in all social classes, rich as well as poor, black as well as white". It is exactly due to this strange idea of the perfect victim that certain questions are raised in court trials. "At times I am still astounded," says Elisabetta Canevini, "Why were you in that place? Why didn't you cry for help? Why did you open your legs? Such questions still get asked! The perfect victim fortunately does not exist, as the Appeal Court has declared on numerous occasions. The problem is that the shortage of specialised training sometimes leads judges and others to indulge in moralising on matters that have absolutely nothing to do with the facts of the case. It is necessary to stick to the facts, not interpret them to fit in with one's own prejudices".

"She was willing. She didn't put up much of a fight. She hardly resisted. These phrases are often heard in rape cases. Yet certain studies show that most women victims of violent sexual assault enter a state of involuntary paralysis: the technical term is "thanatosis", from the Greek word for death, *thanatos*, a stiffening of the body to simulate death used by certain animals in life threatening situations. From the work of a Swedish medical researcher at the Karolinksa Institute and the South General Hospital in Stockholm, on 298 women victims of rape it emerges that 70% of the victims reported a significant degree of muscle immobility, in 50% the effect was severe.

Another question which often crops up in cases of sexual violence is: why didn't you report it immediately? Law 69 passed on 10 July 2019, entitled *Codice rosso* (code red), has extended the time allowed

### Research

Most women (70%) enter a state of thanatosis when sexually attacked. The study carried out in Stockholm on 298 cases of female victims of rape. Half of the victims stated that the immobility was extreme

to report a sexual attack from six to 12 months. As things stand, however, roughly 90% of rapes go unreported to the police, and some that are reported are later retracted, for various reasons: the fear of not being believed and the fear of losing custody of the children are the two main reasons. The central point here is the question of credibility: women are often not taken seriously. One of the most common causes of secondary victimisation, is the inability to listen to what the victims are saying, says judge Elisabetta Canevini, who collaborates with a work group set up by the Consiglio Superiore della Magistratura (the body governing the work of the Italian judiciary) to monitor the implementation of the 2018 circular on gender violence. “In many cases women have suffered violence and abuse for, on average eight years, and so it is easy to get confused about the details of dates and times. If the court is not aware of the overall cycle of violence, the victims can be considered incoherent, and this is an even more serious problem in the case of retraction”.

It can happen that, after being reported to the police, the aggressor begs forgiveness and promises to mend his ways, which can lead to a change of heart

by the victim. If the examination of the plaintiff takes place during this phase, she may begin to retell the events to make them sound less serious or even claim to have lied in her original report.

“All of us – judges, magistrates, lawyers and police – must be aware of the danger of retraction,” says judge Canevini. “We need to have the technical and scientific training to be in a position to deal with such situations if and when they arrive.” The need, therefore, to have at hand the keys to unlock these complexities; to read between the lines and ask the right questions, at the right time and in the right way. “It



One of the main reasons for secondary victimisation is the inability to really listen to what the victims are saying



can happen that in the preliminary investigation, the plaintiff is continually interrupted, on the basis of minor inconsistencies with the original verbal statement: 'You said it was at five o'clock but before you said it was at seven.' 'You claimed she was your friend and now it turns out she is a friend of your husband's.' And so on". If the judges and lawyers lack the relevant legal training and human sensitivity to deal with cases of gender violence the plaintiff, already under considerable strain, will become ever more ill at ease and disorientated. The judges, therefore, whose task it is to conduct the examination and evaluate the plaintiff's statements as the basis of the accusation, must listen with as little interruption as possible. It is essential that the woman tells her story in her own time, because minor discrepancies to do with, for example, the dates are inevitable, given that many of these stories of abuse go back years. "As stated in the Istanbul Convention the system must be equipped to guarantee protection: this requires measures which counter secondary victimisation and guarantee safe and efficient legal process," says judge Canevini. "To ensure this, direct contact between the plaintiff and the defendant must be avoided wherever possible, for example, by allowing the plaintiff to testify through a one-way mirror. Sadly, these modern communication systems are rarely used in court".

### **The bad mother**

Let us begin with one of the most deeply rooted prejudices: a good mother does not denounce her children's father. Then if she does report him: why didn't you protect your children before? Why did you continue to live with that man? Anyway, why prevent a father from seeing his children? Even a violent father has the right to see his children, children need both parents. These are some of the classic stereotypes heard in cases of separation, divorce and the awarding of custody and domestic violence.

Article 31 of the Istanbul Convention stipulates that, as regard

### **Norms**

#### **Article 31 of the Istanbul Convention**

Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account

awarding custody and visiting rights, “Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account”, so as to ensure that the decisions taken do not compromise the safety and rights of the victim and the children.

However, listening to witness statements, reading the judgements, examining the reports of the social workers and professional consultants and speaking with lawyers, judges and magistrates, we realise that often this does not happen. From the moment they report the abuses, the mothers are exposed to secondary victimisation, at times even in the presence of medical reports from casualty wards, court rulings and criminal sentences against the violent father. In civil law the difficulties a woman has to overcome in order to be believed amount to a veritable obstacle race; only rarely is the history of violence presented fully, otherwise the debate is relegated to run of the mill conjugal differences and the woman's understandable fears for herself and her children are taken as signs of inadequacy or maternal manipulation.

Thus, the constitutional rights of children to grow up in a safe and secure home have to give way to the parental rights of the father. In this way, despite the recognition the children have suffered or witnessed violence, the abusive father is judged to be “a good dad all things considered”. There are numerous issues outstanding: the lack of dialogue between civil and criminal lawyers, insufficient training, misleading risk evaluations, the practice of judges to nominate expert witnesses untrained to deal with cases of domestic violence. The fact that women at risk have insufficient support or protection from the courts, demonstrates, once again, that their accounts of abuse are not taken seriously.



The refusal of children to see their father is not seen as a reaction to abuse but the result of manipulation

## **Specialisation and skills are missing**

Only in 12% of the Italian seats of justice can we find specifically trained magistrates working exclusively on cases of domestic and sexual violence, while many small courts (10% of the total) have no one trained to deal with cases of violence against women. Such violence is often ignored: in 95% of the tribunals no attempt is made to keep records and quantify episodes of domestic violence that emerged from cases of separation, divorce, awarding of alimony, division of property and custody. This information comes from the report on gender and domestic violence in the judicial system, presented in July 2021 by the Senate Commission of enquiry into femicide and gender violence. The findings show, “an undervaluation of gender and domestic violence”. 130 courts and 138 prosecutors' offices (95% of the total) participated in the investigation, as well as the Consiglio Superiore della Magistratura (the magistrates' governing body), the school of magistrates, the national council of forensic scientists and the Order of Psychologists. They criticised the role of expert witnesses, summoned by judges to express their opinion of the parental capability of the parties involved. The research, which covers the three-year period from 2016-2018, found that almost all courts (95.5%) were unable to nominate an expert who has the requisite training to deal with violent cases, and only in 29% of tribunals did civil judges use a standard questionnaire before nominating an expert witness in cases of violence against women and minors. Another fundamental point is the link between civil and criminal justice hinted at above. “The domestic violence at the heart of many cases of divorce and se-



In only 12% of the prosecutors' offices are there magistrates specialised in cases of gender and domestic violence and working exclusively in those areas

paration is often not taken into account, because civil cases and the criminal cases involving domestic violence run on parallel lines, without any exchange of information. Only 41 courts out of a total of 130 (35.5%) regularly obtain the acts and procedures of criminal trials concerning the same persons involved in both civil litigation and criminal proceedings. 11% of the tribunals declare, in fact, that the public prosecutor was never informed about cases involving accusations of domestic violence: the participation of the public prosecutor in civil cases in which elements of violence, also involving minors, emerge “would appear to be patchwork and clearly inadequate”. Only 25% of tribunals apply the guidelines, protocols, collaboration accords in family disputes and episodes of gender violence. The level of expertise among forensic experts, technical consultants and psychologists is drastically low: “all have shown evidence of a lack of attention and sensitivity on the theme of gender and domestic violence,” concludes the commission. In the three years studied, very few lawyers (0.4%) took part in the six training courses aimed at raising awareness of domestic and gender violence and how to deal with it, organised by the Scuola Superiore della Magistratura. Though much good work has been done and some courts are role models for best practice, most of the resolutions of the Istanbul Convention are yet to be implemented,” reads the report. The overall picture is varied and complex, with considerable progress made by the magistrates which hopefully will encourage other sections to follow. In conclusion, there is still a great deal to be done before we can say that our system in Italy is really democratic in the sense that it guarantees women freedom from oppression and abuse.



Only 25% of the prosecutors' offices apply guidelines, protocols or accords regarding family, gender-based and domestic violence





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ujas

INES



# #05

## THE WORDING OF COURT JUDGEMENTS

U MIEDO A  
LIBERTAD ♀  
AMA MACHISMO

colombia  
november 2019



In court

# From victims to culprits: justice does not work for women

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**Livia Zancaner**

**A**n adolescent girl, “with a sexually exuberant personality, proactive and very uninhibited, accustomed to conducting numerous sentimental relationships at the same time” (rape trial). A man, “profoundly disturbed and distressed by his action” (femicide). “She didn't scream, shout or cry” (sexual abuse). “Moved by a cloud of anger and desperation, profound disillusion and resentment” (femicide). “Uninhibited and eccentric personality likely to attract the attention of men” (sexual abuse).

These are some of the phrases taken from the court judgements, in which in some cases led to acquittal, in others – rape cases, attempted femicide, grievous bodily harm, sexual abuse, maltreatment and murder, they outlined attenuating circumstances.

In brief, the woman becomes co-responsible or, indeed, entirely responsible, for the violence suffered, while the desire, the character and behaviour of the guilty party is revised and mitigated.

**In the judgements**

The wordings of the judgements have weight and condition the judges' decisions, with the woman becoming also responsible

Phrases such as family rows, jealousy, uncontrollable sexual desire are still being used in the declarations of public prosecutors. All these references to the private lives of women, their relationships, their underwear, their behaviour (“a sexually provocative teenager”) are designed to make women unreliable witnesses. Thus, while the woman becomes untrustworthy if she happens to have more than one sentimental relationship in a given month, a man's emotional storm of jealousy can be used to mitigate murder. In this way the violence is not laid at the author's door, but rather attributed to forces beyond his control, such as extreme provocation or irresistible passionate rages.

“In a trial, the reliability of the plaintiff is fundamental, which is why it becomes the primary target, leading to character assassination, denigration, insinuation, in other words secondary victimisation. One often witnesses prolonged assaults on the private and emotional life of the plaintiff. Is she faithful? Does she dress modestly? How many boyfriends has she had? Her entire life is passed through the mincer but not that of the defendant who is accused of violating her”, says Flaminia Saccà, curator of the research project STEP – Stereotipo e Pregiudizio, carried out by the Tuscia University in partnership with the association Differenza Donna Ong.

### Strasbourg

On 27 May 2021, the European Court condemned Italy for violation of the human rights of the alleged rape victim in a sentence by the Appeal Court of Florence containing disrespectful and prejudicial passages in their judgement referring to the private life of the young woman

### The case of Fortezza da Basso: Strasbourg condemns Italy

On 27 May 2021, the European Court of Human Rights condemned Italy for violation of the rights of an alleged victim of rape, stemming from the judgement of the Appeal Court of Florence, containing disrespectful passages of the intimate life of the young woman, unjustifiable language and sententious rhetoric that effectively exposed the woman to secondary victimisation

The incident took place in July 2008, when the young woman reported being raped in a car parked outside the Fortezza da Bas-



so in Florence. After she reported to the police – four days after the event – medical examinations were carried out and seven young men between the ages of 20 and 25 were arrested. The trial was concluded in January 2013 with six of the seven accused being sentenced to between four years and six months' prison for sexual group violence, aggravated by the fact that the victim was drunk. In March 2015, however, the Florence Court of Appeal overturned the previous sentence and the men were acquitted. A successful recourse was made to the European Court in Strasbourg following the decision of the Florence Appeal Court. What were the grounds for the acquittal? The magistrates pointed out some contradictions in the young woman's account: the young woman claimed to have been taken to her bicycle, a statement which she later corrected. In their reconstruction of her private life, including her sexual habits, the judges described the woman as in need of protection, “a fragile subject, but at the same time creative and uninhibited, able to handle her bisexuality and able to have occasional physical encounters without being emotionally involved.” The magistrates also mention, “her carefree and provocative behaviour”, citing the woman's underwear (the young woman danced in an uninhibited fashion with some of the young men and showed her red knickers when she climbed upon a mechanical bull). In the judgement reference is made to the woman's previous relationships, underscoring the fact that she had had a homosexual relationship and that evening she had left her boyfriend, who was ill, at home. We learnt everything about the woman but nothing about the private life of the defendants,



A fragile subject, but at the same time creative and uninhibited, able to handle her bisexuality, reads the judgement

whom she knew. One of them had made a film full of sex and violence, in which the woman had appeared, according to the judges, without any reservations. Moreover, the magistrates did not deem that the certificate from the women's centre demonstrated such an extreme level of violence and lesions, as claimed by the plaintiff, and her symptoms of Post Traumatic Stress Disorder could equally be explained as the result of consensual group sex. Furthermore, the woman could not be said to be in a state of psychic inferiority as, though she was a fragile female figure, she was also uninhibited.



They misinterpreted her availability with regard to participating in group sex, which in the end satisfied no one

In the pages of their judgement the Appeal Court wrote that the incident was regrettable and no one behaved well that evening but nothing criminal took place.

According to the judges, by reporting the incident the woman wanted to remove an embarrassing moment of weakness and fragility, but she did nothing to stop the group. Further passages follow, casting the woman in a bad light: we read that “all the defendants misinterpreted the girl's prior availability as a willingness to have group sex, which in the event satisfied no one, even those who proposed it... as no one had an orgasm and the experience was a disappointment”.

### **Femicide and generic mitigation**

In May 2020 in Lombardy a 42-year-old man killed his 38-year-old wife with 11 stab wounds. Their three children were in the house. In December of the following year, the killer was sentenced to 24 years, rather than life imprisonment, as requested by the public prosecutor, on the grounds that the crime was not committed

for “futile motives”. Jealousy was not considered a “futile motive”, because, though wrong and illogical, it is not a baseless emotion. According to the court's motivations, the crime was not premeditated but the result of an instinctive reaction. The judge wrote that the family had been united until the birth of their third child, who was severely handicapped. After that the wife changed towards her husband, focusing all her attention on her youngest child. Shortly afterwards she began a relationship with another man. When the husband asked for clarification, the wife, rather than reassuring her husband, behaved in an impatient manner and refused to listen. In brief, the wife's behaviour is analysed in the judgement as if she had some responsibility for what occurred.

“A man disturbed and horrified by his actions”, who gave the alarm and made no attempt to flee. On these grounds, considered to be mitigating factors, on 15 September 2021 the Appeal Court of Florence reduced the sentence for a crime of femicide from 30 to 16 years. The crime had taken place on 24 November 2018 in a hostel in Florence. According to the court account the killer, a 32-year-old man, after having strangled a 21-year-old woman, realised the gravity of what he had done and immediately alerted the reception, after which he sat on the stairs in tears and waited for the police to arrive. This reaction, writes the Court of Appeal, is worth far more than a public show of repentance and plea for forgiveness at a court hearing, days or even months after the crime has been committed.

An “overpowering emotional storm” caused by jealousy can mitigate the responsibility of the person who kills. On the basis of this reasoning, the Court of Appeal in Bologna virtually halved the sentence on a 57-year-old man, who in October 2016 in Riccione killed a woman with whom he had a relationship. In a lower court he was sentenced to 30 years for murder aggravated by futile motives. The Appeal Court judges, however, conceded mitiga-

## Femicide

«Seriously disturbed and distressed by his action», he raised the alarm and did not try to flee. Thus, the Appeal Court Appeal of Florence on 15 September 2021 justified halving the sentence for femicide from 30 to 16 years in prison

ting circumstances. Although the accused's jealousy was unmotivated and insufficient to make him incapable of reasoning, reads the judgement, it determined in the accused, “because of the unfortunate and unhappy experiences in his life an overpowering emotional storm of passion”. Nevertheless, when the case arrived at the Supreme Court, the Appeal Court's reduction of the sentence was rejected.

The victim was struck by the accused, who had reacted “driven by a cloud of anger and desperation, profound delusion and resentment, urged on by an extreme mental state, without pretence and, from a human perspective, not entirely incomprehensible”.

In was in these terms that the judge at the preliminary hearing in Genoa, ignoring the prosecutor's request for a sentence of 30 years, conceded mitigating circumstances and sentenced to 16 years a man who – in April 2018 in Rivarolo in the province of Turin – killed his wife with a knife. In the wording of the sentence, we read that the man had not been driven to act by jealousy qua jealousy or by the fact that his wife preferred another man to himself, but as a reaction to the woman's inconsistent behaviour, that seemed to encourage and discourage him at the same time. The man had found out that his wife had not kept her promise to leave her lover. Here too, it is claimed, it was the woman who provoked her husband.



«An extreme state of mind, not entirely incomprehensible» – these words are used to grant mitigating circumstances in a case of femicide

### **“Is this the first time you have been raped?”**

Stereotypes and prejudices arrive in court also with the lawyers. This was the case of the two American students in their 20s, who in September 2017 reported being raped by two Carabinieri in Florence. The two officers admitted to having had sex with the stu-



dents but claimed it was with the consent of the students, who were both drunk (as confirmed by the medical analysis). The lawyers representing the police officers prepared 250 questions for each of the plaintiffs, some of which were ruled inadmissible by the judge on account of being offensive and degrading to the young women. Among them were the following: “What were you wearing that evening? Were you wearing underwear? Had you been drinking? Are you attracted to men in uniform? Have you had any viral infections? Is this be the first time you have been raped?”



In effect the woman did not react, according to the judge, like the perfect rape victim should

Such questions, as the judge explained, take the judicial system in Italy back 50 years: phrases directed at the intimate life of the plaintiffs, their personal habits, their sexual preferences. Hence, in this case at least, they were ruled out of court.

“You didn't cry or shout”: an absolution for rape

“She didn't yell, scream or cry. She answered the phone while he attacked her, without, even involuntarily, making the operator suspect anything.” These are the grounds on which – in April 2017 – the court in Turin acquitted a man accused of sexual abuse against a female colleague in the Red Cross, for events occurring in 2010 and 2011. The judge describes the plaintiff's account as implausible, because the woman did not mention sensations or behaviours generally found in reports of sexual abuse – feeling dirty, pregnancy tests, pains in various parts of the body. The woman did not shout but limited herself to telling the man to stop. The plaintiff, “did not exhibit that emotional reaction, which she surely must have felt had she been sexually violated”. In other words, the woman did not behave, according to the judges, like

the perfect rape victim. Thus, we are back again at preconceptions of female behaviour, their weaknesses, their reactions. The judgement goes on to describe how the woman finished her shift. When the case went to appeal, however, the event was completely reinterpreted. The woman's account was found coherent and believable, even if in the end the accused was acquitted for technical reasons (lack of admissibility).

Is twenty seconds too long to react?

“There is no doubt about the sexual nature of the acts performed by the accused, but the man was not put in a position to appreciate that woman's unwillingness. She was groped for a period, according to the plaintiff, of around 20 or 30 seconds, during which she continued to look through the documents in her hands, without showing any sign of resistance”. This is the motivation taken by the Court of Busto Arsizio for acquitting a trade unionist accused of molesting a flight attendant. According to the judges the details of the woman's reconstruction of an event that took place late in the afternoon of 12 March 2018 are perfectly credible, but the man was acquitted because the woman did not react quickly enough to the assault: she reacted after 20 seconds. Once again, the woman failed to behave in line with the criteria of the perfect victim.



«The accused was not in a position to appreciate the plaintiff's unwillingness»: reason for acquittal in a rape trial

### **Sentences under the microscope: STEP – Stereotipo e Pregiudizio**

The victim called by her name, emotions taken as mitigating factors, the myth of the perfect victim and female unreliability,

the overturning of the roles of victim and aggressor – these are just some of the elements found by STEP in their analysis of court judgements. This project, by the Tuscia University in partnership with the association Differenza Donna Ong, and some help from the Equal Opportunities Department, studied 283 sentences between 2010 and 2020, regarding femicide, stalking and domestic and sexual violence.

The study demonstrates how in the judgements the first imbalance is the recognition, or not, of the identity and dignity of the alleged victims and aggressors. The male accused are addressed by their first name,

surname and professional title (engineer, doctor, etc.), whereas the women are frequently addressed by their first name only. We find again the passage of the responsibility from the victim to the accused: the alleged author of the crime is portrayed as a victim, deprived of his reason, in the grip of feelings he is unable to control. The active party on the other hand, the person wronged, who by her actions provokes the uncontrollable reaction of the accused, explains Flaminia Saccà, professor of political sociology at the Tuscia University, who is in charge of STEP's scientific research. Often the violence does not figure as a deliberate act, but as a reaction to one or more acts of the victim.



Men are referred to by their first name, surname and professional title, women by their first name only

### **Victim as unreliable witness**

In a 2020 trial for domestic mistreatment, the woman is described as disinhibited and manipulative, quite the reverse from being put upon and resentful after her partner's episodes of betrayal. In a case of sexual violence from 2014, involving a mi-

nor and her teacher, the judges describe the girl's "sexually exuberant personality, proactive and extremely uninhibited, with the tendency to conduct numerous sentimental relationships". In another trial for violence, the victim is described as a woman "like all the others after the menopause, much older than the accused, hardly a celebrity actress or a top model". In all three cases, doubt is cast upon the honesty and credibility of the female plaintiff, in an attempt to turn the victim of abuse into the culprit.

### **Feelings as extenuating circumstances for the accused**

Jealousy that determines – as we have seen above – that "overpowering storm of burning emotions" becomes a useful tool to excuse and lessen the author's criminal responsibility. STEP reported a number of judgements regarding cases of femicide in which the man kills the woman because he is overwhelmed by a pathological and irresistible feeling of jealousy, for an impulse triggered by a sudden and overwhelming emotion. We read from a trial for femicide: the accused acts under the influence of an unbearably intense mental state, while the woman gives the man conflicting signals, cannot make up her mind, shows love, swiftly followed by contempt; this makes the husband lose control.

In another case of domestic abuse, the judges state that the couple's lifestyle involving outings, cruises and holidays and continual reconciliations rendered the victim's affliction less onerous. In still another the domestic violence is downgraded, by asserting that the woman who has reported her partner for domestic abuse likes to play the victim.



The killer is driven by an intense and uncontrollable state of mind; the woman encourages then rejects the man



In the judgements cited by the research, the woman is blamed because she decided to leave her husband, who is unable to accept her decision, or because the difficult character of the woman drove her husband to violent retaliation.

Cases of group sex, which are emblematic, generally revolve around the character and reliability of the plaintiff and whether she consented or not. What did she do to defend herself? Did she make her refusal clear? Such questions are frequently heard. The STEP project's research brings to light many disturbing examples, in which the hidden message reads: it was the woman's behaviour that drove the men to abuse her.

### Data from the Femicide Commission

Out of 118 femicide trials there were 98 guilty verdicts, 10 absolutions and one plea bargain. In the definitive rulings, the sentences of less than 20 years are more numerous than those of 30 and over. One explanation for this is the frequent use of the *rito abbreviato* or short trial (79.6%), which has now been abolished. Another reason is the frequent acceptance of mitigating circumstances (28.6%). This is what emerges from a report presented in November 2021 by the Senate Commission of Enquiry into Femicide and Gender Violence, examining 211 cases of alleged femicide in 2017 and 2018, 192 cases if only the guilty verdicts are considered, involving the murder of 197 women. As regards the first level of justice, the percentage of life sentences is halved and sentences under 15 years doubled. The report also reveals that 15% of women who become femicide victims had reported their abuser, whereas 63% had not. In 35% of the killings, security measures had been taken. One of the as-



In cases of abuse, the couple's living standards were deemed to make the situation less dramatic

pects that came under criticism was the insufficient response of the police, prosecutors and judges to the threat of violence from the partner or ex; another was the fact that in the courts, that violence was frequently downgraded by references to family rows or jealousy. In the femicide judgements analysed by the commission, jealousy or a fit of rage was frequently cited as the motive for the crime, without any reference to previous reports or evidence of violence towards the victim.

Among the most commonly cited reasons for granting mitigating circumstances were: the low intellectual level of the killer, personal and family conditions, being capable and appreciated at work, attachment to the family, social isolation, advanced age, financial problems, the wife's health, the emotional state of the killer at the time of the murder. From the court documentation we find a widespread use of words and phrases conveying stereotypes and prejudice: stormy, turbulent, difficult, unstable relationships, characterised by domestic conflict, the reverse of happy, and the femicide triggered by strong emotions and so on. The victims are often referred to by their first name, not by their social or professional role, but as mothers, wives and daughters. On the contrary, the condition of social disadvantage of the author of the violence is highlighted (addiction to alcohol, drugs, or gambling, unemployment, ill health, whereas the victim is blamed for having betrayed, provoked or accused the killer). The Commission concludes that: “the fact that institutional response is not always in line with the legislative norms is likely to foster a climate of mistrust among vulnerable women who suffer male violence.”



In sentences for femicide, the motive often given is jealousy or uncontrollable fits of rage







# #06

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## The Fear of Losing the Children



france  
november 2021



The judicial system does not understand gender violence

# The unending story of children being taken from their mother

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**Livia Zancaner**

It is a common tale. A woman separates from a violent partner, she reports him for violence and custody of the children is awarded to both parents, or worse they are put in a care home or sole custody is awarded to the father. The motives: the mothers are not considered capable of bringing up children on account of having stayed together with their abuser for too long or of not having defended and protected their children; or the mothers are accused of wanting to prevent the father, who was violent with them but never with the children, and thus in theory “a good father”, from having any relationship with the children.

“When I invited the expert witness, nominated by the court, to evaluate our suitability as parents, to consider the report of my husband's violence the reply was clear: this is beside the point, we are considering other matters. But if my husband attacks me in front of our son, I want his violence to be restrained. After which I was threatened: if you continue to cause trouble, I will take away your son and place him in care”. This is the story of Francesca, who years ago was married to

## Definitions

### Expert Witness

The judge can ask for assistance from one or more expert witnesses (consulente tecnico d'ufficio or CTU) if necessary. The role is defined by the Civil Code

a manager, the father of her son.

The daughter of Bianca, who was separated from a violent husband, told the expert witness many times: “But if I’m happy with my mother, why can’t I stay with her?” The psychologist’s reply was: “Because it’s for the grown-ups to decide, not for you.” Bianca replied: “So why have you called me here then?” In the end it was decided that the child, who did not want to stay with her father at all, would spend half her time with each parent. Now she is 11 and every two weeks has meetings with her social workers.

Cristina’s son was forcibly removed from his mother crying and screaming. The father, first reported then convicted of physical abuse and non-payment of child maintenance, only acknowledged paternity when the child was already five years old, and in the following five years, without ever being personally involved in the boy’s upbringing, he managed to have his son placed in a care home. Luca, who suffers from epilepsy, was also taken from his mother and grandparents at the age of seven and

placed in care. “No one listened to him, neither the social worker nor his tutor. At the court hearing the strong bond between mother and child was stressed but the violence completely ignored. I became the mother who hindered the father’s relationship with his son,” explains Luca’s mother, “In six months Luca has lost 10 kilos. He’s under-weight, lifeless and miserable. He wants his life back”.

In 2011 another child was torn from her mother’s arms at the age of 18 months. The mother, called Ginevra, left her partner on account of his violent behaviour, even while she was breastfeeding. The man had already been reported for violence to his two ex-wives, but the family tribunal granted him access to his daughter nevertheless. Once again in this case there were investigations: the diagnosis of the expert witness was histrionic personality disorder, the prognosis: unpre-



Mothers are considered unsuitable to bring up their children because they have lived too long in conditions of violence

dictable behaviour in the future. From that day forward Ginevra has not seen her daughter, apart from on one occasion in October 2020 in the social workers' office. Her daughter is now 12 and has no longer any connection with her mother.

After continual demands from her partner that she should have an abortion, Lucia brought up her son on her own for four years. Then her ex began a custody battle. The consultant nominated by the court decided that the child's fear at the thought of seeing his father was the fruit of a conflict of loyalty, which could have serious psychological consequences for the child's future. In the reports of the social workers and consultants, there was no mention of violence, nor were the wishes of the child taken into consideration. Thus, for having hindered the child's relationship with the father, the mother was separated from her child, who at the age of 10 was taken out of school and into care, with exclusive custody awarded to the father. Lucia could not see her son for a year and a half. He is now 14, and he calls his father's new partner "mother".



If a child does not want to see a father who has been accused of violence, the mother tends to get the blame for obstructing father-child bonding

### **Fragile mothers, symbiotic mothers.**

#### **What about the fathers?**

In Italy many children are obliged to see fathers with a history of violence – children under the custody of both parents, despite the mothers' reports of violence, or removed from the mother and placed in a care home or in the sole custody of the father. This happens because often the reports of the social worker and psychologist consider the mother unfit to bring up her children, being too fragile and conse-



quently unable to care for and protect them; “symbiotic” because the relationship with her children is too close or obstructive and alienating because, if her children are afraid of seeing their father, it is the mother's fault, for putting a spoke in the wheels. So, after months or years of domestic violence, threatened and beaten in front of their children or being stalked, mothers report their husbands, at which point the custody battle begins in the name of the two-parent family at all costs. Moreover, if the mother tries to shield their children from a violent father, judges, social workers and psychological consultants appointed by the courts often consider her guilty of not wanting the father to have contact with the children.

All on the basis of a pseudo-theory called Parental Alienation Syndrome (PAS) according to which, if the child refuses to see one parent, it is because the other is overly possessive, vindictive and obstructive. A syndrome that is not scientifically recognised and not present in the textbooks, and rejected by the WHO, the Italian Supreme Court and the European Parliament. In fact, the Supreme Court in decree no. 13217 of 17 May 2021 approved the appeal lodged by a mother against the exclusive custody order in favour of the father of their six-year-old daughter which had been awarded by the Appeal Court on the advice of a court-appointed expert witness. The judges stated that an abstract prognosis based on certain, albeit serious, episodes was insufficient to warrant the diagnosis of PAS. Some months later, on 16 October 2021 the European Parliament approved an urgent resolution safeguarding the victims of violence in child custody cases, requesting member states not to recognise PAS in the courts, in particular in cases of violence, and to invest in the training of all the professionals involved in child protection – social workers, the police, doctors and psychologists. Furthermore, in January 2022, the European Court of Human Rights condemned Italy for interrupting the relationship between a mother and her daughter, by putting up the child for adoption before other options had been tried. The woman in question had

### **European Parliament**

#### **Impact of violence by a partner and a mother's custody rights**

A resolution passed by the European Parliament in 2021 aimed to prioritise the safeguarding of mothers and children in custody litigations

gone to the social services in 2013, because of ill treatment by her husband. At that point mother and child were housed in a centre and followed by social workers, who began to doubt the mother's capacity to look after her child.

Even if the PAS is no longer cited explicitly, references are still made, for instance when mention is made of conflictual relationships or of women who try to prevent their children from having a rapport with their father.

### **Violence witnessed by children**

“It cannot be excluded that a child's fear and rejection stems from direct or indirect violence at the hands of the father. Nevertheless, we also need to consider the mother's alienating conduct. For this I would suggest the interruption of any contact with the mother and maternal relatives, by means of the temporary transfer of the infant to an educational community home, and the exclusive right of custody to the father”. This was written by a court-appointed expert witness in a civil case regarding separation and child custody, after the mother had reported her husband for violence also against the child, violence backed up by hospital reports. The expert witness at the same time carried out a criminal investigation into abuse and maltreatment of minors. The same consultant wrote that the child did not want to see the father even on supervised visits, because of fear of being beaten. The child's feelings and the history of maltreatment, however, were not taken into consideration and in the end the court accepted the recommendations of the expert witness and ordered that the child be removed from the mother's care, placed in a community home and custody awarded to the father. The motivation: the judge cannot exclude that the minor has been subjected to violence,



Even when children are not the physical victims of domestic violence, they may be traumatised by having to witness it

**AUTHORITY FOR CHILDREN'S RIGHTS**

but it appears reasonable to assume that this violence concerns the relationship between the couple and not the child directly, hence not direct but witnessed violence. Moreover, with reference to the alienation, the expert witness wrote, the assumed conditioning of the child by the mother needs to be assessed, regardless of the accusation of violence and abuse by the father.

“Whether the father behaved violently or not, often does not concern the civil courts: children must be brought up by both parents. This boils down to a specious justification for supporting at all costs the two-parent family,” says Manuela Ulivi, lawyer and president of CADMI (a safe house for women in Milan). Sometimes, if the mother reports domestic abuse it is said that she has negative feelings towards her partner, feelings that could be transmitted to her children. Few seem to grasp the effects on children of witnessing parental violence. Thus, in the worst, albeit all too frequent, case the circle closes with the court-appointed expert witness recommending that only the exclusion of the mother can repair the father-child bond. “So, if the mother reports domestic abuse in a child custody case, she can end up losing everything,” concludes Manuela Ulivi.



There is a risk that those who witness domestic violence as children will reproduce the same behaviour as adults

### **Can a violent father be a “good father”?**

“When I hear in a court of law someone say, ‘he may be a violent husband but he has never touched his child and is a good father’, I jump out of my seat. A parent who beats another parent cannot be a good parent”. This is the opinion of Carla Garlatti, the Italian Authority for Children's Rights, who goes on to explain that cases of children witnessing domestic violence are on the increase, and the phenomenon is undoubtedly wider than reported. One of the risks is that children will reproduce the same behaviour when they become adults. Accor-



ding to Garlatti, this form of violence must be taken into consideration and the right to two parents – known as *bigenitorialità* and enshrined in law 54 of 2016 – must give way to the rights of minors to be protected. It is worth recalling that it was only in August 2019, with the passing of law 69/19, known as *Codice rosso*, that an 18-year-old who witnessed domestic violence could be considered an injured party, viz. a victim of the crime.

Ilaria Boiano, a lawyer for the association Differenza Donna, says: “On the one hand women are told to report domestic violence, while, on the other, the legal system – family courts, custody hearings, social services and so on – tends to disapprove of women who report their husbands”. In fact, women who denounce domestic violence can find their parental rights limited and the right to two parents (*bigenitorialità*), can be used to stigmatise any mother who defends her children against a violent father. Thus, women are obliged to endure abusive relationships, and refrain from shielding their children from the father. Then if the children don't want to see the father, it is the mother's fault and this can lead to measures separating the mother from her children, who then get placed in care.

### Magistrates give too much power to expert witnesses

“A woman reports abuse when she sees her children in grave peril, but for as long as possible, she will accept anything, even violence, in order to keep the family together, because of the threat of losing her children,” says judge Paola Di Nicola Travaglini. “From the moment the family comes under the authority of social services, and incompetent court-nominated expert witnesses, the first thing they want to find out is whether the woman who reported her husband is a good mother – not whether the man was a bad father, thereby ignoring the role of violence in the break-down of the family”. To redress the balance, we need to start from the man's abusive behaviour. “If this issue is not identified and fully understood, the danger is that the victim

istat

51%

**Separated women have suffered violence from their partners or exes**

This figure is much higher than the 31.5% for women who are neither separated nor divorced (2014 data)

takes all the blame and the man is absolved of any responsibility in the break-down, not to mention the paradox of awarding child custody to the violent parent”.

There is still a lack of communication between the civil and criminal sides of the judicial system. “As regards child custody and decisions on parental responsibility, there are clear protocols, in many places, between the various sectors involved – juvenile courts, family courts, ordinary courts – yet these protocols are not binding. No one has ultimate responsibility and it is all left to the good will of the signatories,” emphasises Annamaria Picozzi, deputy prosecutor in Palermo. She continues: “Legal sanctions are required”.

The *Codice rosso* (law 69 of 2019, article 64 bis), established the rapid transfer of decisions by the criminal court to the civil law one dealing with cases of separation and child custody. In particular, the civil court must be informed of the current state of the criminal court's proceedings and any precautionary measures taken against one or both the parties.

The obligation, therefore, to transfer the ongoing proceedings or judgements of criminal investigations to the civil law judge already exists, but no sanctions are entailed. Moreover, there remains the problem of “who is responsible, and for what?”: often the civil judges put themselves to a great extent or entirely in the hands of the social services or the expert witnesses. “But we shouldn't trust these evaluations alone”, says Annamaria Picozzi. “The audition of the minor before the judge must be obligatory, wherever possible. At the moment, the expert witness has virtually carte blanche and this is totally unacceptable: one cannot abdicate responsibility to an expert witness, who is a psychologist and should stick exclusively to their field of expertise. It is the responsibility of the judge to evaluate all the eviden-



There is a lack of communication between criminal and civil law: the times of judicial proceedings are different and many reports of domestic violence go unrecorded in civil law cases

ce unhindered”.

Why do civil law judges allow social services and expert witnesses to make the decisions, that is to say offload their responsibility onto others? “The judges find themselves in a position of weakness, because they lack the relevant knowledge”, says Raffaele Sdino, President of the first section of the Court of Santa Maria Capua Vetere. “To rely entirely on the opinion of one professional is quite wrong, the civil law judge must dig deeper, arrange ad hoc hearings with consultants from different sides. At present there is an over-reliance and excessive use of expert witnesses, and this has led to a psychologisation of disputes that, at times, seems wildly exaggerated. The judge is not there to understand but to judge, and determine who the children should live with, in a given context. If a man has been violent, the woman and children must be protected”.

It’s important to read between the lines. Often in the social workers’ reports it is stated that the mother is uncooperative, while the father, during these supervised meetings, is smiley and at ease and brings the children presents. The violent man, in fact, tends to get on well with the authorities.

Another problem: the questions for the expert witnesses are not transcribed correctly.

These court appointed experts must take the allegations of violence and the court’s decisions into their account, but this is not always the case, so the judge must demand that they do so

explicitly. Moreover, on the questions concerning violence, the access criteria, based on the premise that a parent should only be deemed suitable if favourable to the other parent having access to the child, should not be considered. “There is considerable ignorance and often



The judge is not required to understand but to judge and decide who should look after children in a given context

no reference to the Istanbul Convention. And let's not forget the widely-held idea that many reports of domestic violence are false, for which we have no data", Raffaele Sdino concludes. According to Sdino, there has to be a much closer liaison between the civil and the criminal courts; one suggestion is to introduce joint meetings between civil judges and public prosecutors to ensure they both have all of the background information.

But besides the problems of communication, the basic problem is that the time scales of civil and criminal justice do not coincide. The woman reports violence, her lawyer starts the procedure for separation but, when they

arrive in court, the case may well be still in the preliminary stages. "The judge in the civil law case, even without documentation of criminal proceedings cannot ignore accusations of violence, but must make enquiries. Furthermore, it is necessary to change the way magistrates, expert witnesses and social workers are trained: it's a big risk but specialisation may be the key to a fundamental shift in the right direction and a court for people, for minors, and for families, set up by a delegated legal reform of civil law may just be the answer. In the new law it is stressed that the civil law judge's right to summon a minor, cannot be delegated to anyone else, even an honorary judge", explains Sdino.

This opinion is shared by judge Di Nicola Travaglini, who believes in such cases it is imperative that the minor is heard and it is up to the judge to decide how to proceed, without necessarily following the recommendations of the court-appointed expert witnesses who, though professionals, are not always competent in questions of gender violence, the complexity of which also requires cultural awareness. "It should be established in law that in the case of the violence of a man



The family court, entailed in the civil law reform could be a turning point in terms of greater specialisation



against a woman with young children, the man's custody rights over his children should be suspended immediately for a limited period of time”, says judge Di Nicola Travaglini, “in line with the terms laid down in the Istanbul Convention, because a man who is violent with a mother is always a bad father”.

### **There is still too much submerged domestic abuse.**

Notwithstanding the laws in Italy, there are still too many cases involving domestic violence where custody of the children is still shared by both parents, or the children are taken away from their mother and either taken into care or into the custody of the father. The level of submerged domestic violence is high but we do not have the statistics. The most recent data from ISTAT, from 2014, shows that separated or divorced women are more likely to have been subjected to violence than other women (51.4% to 31.5%<sup>9</sup>). Only 11.8% of women report the violence of a partner or an ex. In 2018, again according to ISTAT, there were at least 120,000 minors in Italy involved in court cases of divorce (amical or otherwise) or separation; moreover, in 90% of the cases custody was awarded jointly.

According to a study by D.i.Re, a network of women's centres, carried out between January 2017 and June 2019, in 88.9% of cases heard by the court of first instance and in 51.9% of cases before the family court custody was awarded to both parents jointly. In 70.4% of cases in the court of first instance and 90.7% of cases before the family court children were taken into care by the social services, even if in nearly all cases children could have stayed with the mother. In all cases, the female lawyers who participated in the study – 54 out of 98 of the D.i.Re. network, following on average 15 women each year – presented documentation containing



On the one hand the woman is encouraged to report her abuser but, on the other, in so doing she can find herself on the wrong side of the law

allegations of violence inflicted on the women and witnessed by the children: police reports of abuse (94.4%), medical reports (100%), protective measures ordered by the court (98.1%), indictments (96.3%), guilty verdicts (88.9%), reports from women's centres (63%).

Between 2018 and 2020, the women's association Differenza Donna surveyed at least 100 cases of parental rights and the social services care orders, in which civil and juvenile judges adopted threatening measures against the mothers, once again the victims of secondary victimisation. “The phenomenon is largely hidden”, says lawyer Ilaria Boiano. “The episodes we have found in the last two years show the justification of the fear of mothers having their children taken from them”. This is a serious risk because, even when extreme measures, such as putting the children in a home, are not taken, court rulings still victimise women, who are exposed, along with their children, to continual meetings and mediations with the violent men under the watchful eye of the social services. Situations that have in extreme cases led to the murder of the mother and children.

Take the case of Federico Barakat, killed in 2009 by his father during a supervised meeting: the mother Antonella Penati had been accused of alienating the child from his father. Or those of Marianna Manduca, killed in 2007 by her ex husband, who was awarded custody of their three children, despite 12 reports of domestic violence; the young Iacovone brothers (2013), the Capasso sisters (2018), the Pontin children (2020) and Gloria, killed in 2019. And then Mirko (16 December 2021), and Daniele (1 January 2022) — both children were killed by their fathers to get back at the mothers who had left their violent ex. That notwithstanding, the fathers continued to be allowed access to their children.



Women are too often forced to meet their abuser in custody mediation sessions







# #07

## WHEN TRAINING IS LACKING



germany  
february 2022



Mistakes to be avoided at all costs

# From the police to the social services: the safety net that has got to work

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**Chiara Di Cristofaro**

**D**istracted, failure to recognise the dynamics of violence, stereotypes and prejudice in action, victim blaming, lack of liaison between official agencies can lead to serious personal, social and psychological consequences vulnerable women have to face.

Secondary victimisation can happen at any point in a woman's long struggle to escape violence; when one of the institutional links in the chain of support fails to function properly the results can be disastrous. A ruling in 2019 by judge Paola Di Nicola Travaglini helps us understand how secondary violence occurs and the dramatic consequences that can follow.

The case concerns the history of a young woman, joined at the age of 17 to a man seven years her senior, an alcoholic, who was violent both to her and their two children, aged two and three. From the reconstruction of her life there emerges a history of difficulty and deprivation starting from childhood and a series of missed opportunities to intervene: after reporting her husband the

## **The judgement**

### **The Court of Roman, no. 2400, 2019**

Condemns the accused for ill treatment and acts of violence on his wife and children. The judgement deals in depth with secondary victimisation

first time, the woman was sexually abused by his friend and reported a second time, she then went to the hospital with her one-year-old child, where the social services recorded her report of abuse but made no attempt to follow up, leaving the woman and her children vulnerable to further episodes. “None of the authorities intervened”, says judge Di Nicola. Moreover, neither report was mentioned in the documentation before the court. In fact, over the years the woman had suffered “continual” verbal and physical abuse, being pushed and slapped, but felt unable to respond because the man had threatened to take the children away. The situation was known to the health and social workers with whom she came into contact over the years, having reported the abuse, yet no one intervened to support the woman and her children. Why?



Over the years no one – neither social workers, nor the police, nor health workers – intervened to help the abused woman or her children

### **The wrong questions**

The incident that led finally to the guilty verdict arrived after the man attacked the children, causing injuries that required 10 and 22 days in hospital, respectively. The father was alone with the children at the time, his wife having been taken to hospital by an ambulance. A carabinieri in uniform and a doctor from the casualty ward came to the young woman's bed. The first question the carabinieri asked, without explaining the reason for his presence at her bedside, was what kind of relationship she had with her partner. “Good”, she replied, “Why? Has anything happened?” Only then did the carabinieri explain that the police had entered the house, arrested the man, who was in a confused state, and rushed

the children to the hospital. At this point the woman began to speak of the violence suffered at the hands of her partner, explaining she had only replied that their relationship was good because of the fear of her partner's reaction, as he had threatened to take the children to Romania. After having seen the children's injuries in hospital, the young woman decided to report the abuse and violence both she and her children had suffered over a sustained period. At this point the carabinieri enquired, "Would it not have been in your own and the children's interests to denounce your husband before?" She replied, "I feel guilty. I shouldn't have left them alone with him". The judge observes "this q&a exchange took place at one o'clock in the night between a man in uniform and a hospitalised woman, who had just been accompanied to the paediatric ward and had seen with her own eyes the violence inflicted on her children".

The judge continues, "Regardless of intentions of the person who posed it, the question implied that the mother was morally and legally at fault for not having reported her husband before, because this omission allowed the partner's criminal behaviour to continue. In this way, an albeit unconscious and invisible role reversal takes place, because the victim is implicitly accused both of co-responsibility in the criminal behaviour of others (viz. enabling the crime to be repeated) and also omission of the duty to remove herself from acts of violence (an obligation that only exists for this particular crime)."

"This conduct therefore", continues judge Di Nicola Travaglini, "leads – albeit unconsciously – to a classic case of secondary victimisation, even by the carabinieri who have a clear obligation to protect a victim of domestic abuse and her children, an obligation they later demonstrated when they left the victim alone with her mother to enable her to confide and thereafter report her partner's crimes".



In her sentence the judge underscores a fundamental element if we are to understand how secondary victimisation works: lack of awareness. In the above example, the carabinieri clearly means to do the right thing, that is to protect the woman and her children and guarantee their safety, yet despite this he triggers a mechanism that leads to making the woman feel guilty for the abuse suffered. A situation often reported by women who report domestic and gender violence.

“Go back home to your husband with the children, love. It will all sort itself out. Sometimes with men you need a little patience.” “Don't you think you might have wound him up to make him react like this?” These are some of the phrases that women are likely to hear, when they finally find the courage to report their partner, if the officer dealing with their report starts to mediate between wife and husband or lacks the skills to recognise the actual violence the woman is subjected to. This institutional blindness or underestimation of the gravity of certain situations leads to the loss of trust in the police and means that the safety of the woman who has reported the abuse is placed in further danger.



Women often do not report abuse because they are afraid of having their children taken away from them, and that's exactly what happens

### **The delicate role of the social services**

In the aforementioned case, therefore, a woman stays with a violent man for fear of losing her children. Paradoxically, this is exactly what can happen when a woman reports domestic abuse. The woman in hospital has an interview with the hospital social worker and three days later the family court decides to take the children into care on the grounds that neither the father nor the mother protected their children from the father's abuse. The chil-

dren are placed in a care home and the social services arrange weekly interviews with the mother.

In the observations of the social worker's report, the judge explains, it was written that the child, who was under two years old, was continually seeking contact with the mother.

This was not the first time the family had had contact with the social services: some time previously one of the two children, who was still under one year of age, was taken to hospital. The social workers at the time recorded that the mother, who was always present in the ward, lived in such dire economic difficulties that she had to resort to Caritas, a church-run charity, to feed and clothe the family.

“The social work report describes the personal and family life of the mother, but inexplicably not the father”, reads the judgement. “Moreover, in the course of the stay in hospital, further investigation was made, on a psychological level, into the mother's relationship with her child, yet once again there was no mention of the father's relationship with the child”. The investigation went on to highlight how this investigation, “which was lacking in any medical or scientific evidence given to support its findings”, concluded that the mother, who was very young, demonstrated “parental immaturity”, and only managed to bring up her child thanks to the support of a family network.

The social work report goes on to state that, though there was no evidence of hostility towards the child, the mother did have a negative perception of her surrounding environment, but no effort was undertaken to comprehend that, aside from the material hardship,



Too often, no one puts a stop to the violence, nothing is done even when there is still time to act

this perception might have had something to do with the previous acts of violence at the hands of her partner. There was no mention at all of the father and his contribution – or lack of it – to bringing up the child.

This story is a casebook example of secondary victimisation at work, a mother's worst nightmare, that of losing her children, which provides another reason why women are so often reluctant to denounce domestic violence. A way to blackmail vulnerable women, with the threat of losing their children. The partner's threat to take away the children should have given the green light to the authorities for the activation of safeguards, underwritten by national and supranational legislation. “Instead, the woman was stereotyped as feckless, inadequate and incapable, hence unfit to be a mother,” concludes Judge Di Nicola.

With reference to these events, says Judge Di Nicola in her summing up, “Different government agencies – the police and social services – though appearing to act in the interests of the mother and her children had come to the conclusion that the victim, regardless of the fact that she had reported the crimes of mental and physical abuse her family had long suffered from, had colluded with her partner in concealing his behaviour and, furthermore, had not removed herself and her children from such conditions, thereby showing herself to be a bad mother and co-responsible for the crimes against her and her children”. This once again highlights the importance of greater awareness of the dynamics of domestic abuse.



The system that should, working together, protect and support abused women is still not fit for purpose

### **The importance of the net**

It is clear that awareness of the need to effectively combat domestic



abuse has increased in recent years; there have been many training courses on recent legislative initiatives and better liaison between different agencies. However, notwithstanding legal steps in the right direction, “the experience of women's centres dealing with gender abuse on a daily basis shows that the system to help women free themselves from violence still has a long way to go,” reflects Antonella Veltri, president of D.i.Re – Donne in rete contro la violenza.

“An important step,” she continues, “would involve training for the police and social services in order to create in male and female operators who meet the women at risk the necessary awareness and skills to be able to deal with such situations correctly: we still lack the right training needed to build a culture that can recognise violence against women and can act in a systemic way. It has become indispensable to prioritise training and not just in a piecemeal manner”.

So, if much has been done already, there is still much to be done as regards developing systematic training programmes across the board: “Training must never be neglected: in the forces of law and order it has been an important theme for a number of years, but we need to do more and all the agencies involved must pull their weight.

After many years in the police Alessandra Simone is now police chief in Savona. She has led various operations both against organised crime and crimes against the person. Among the posts held in a long career, she directed the ant-crime squad in Milan and introduced the Eva Protocol, an operational practice used by the police when dealing with domestic abuse and Zeus Protocol, which aimed at preventing recidivism for which it was awarded the Ambrogino d'Oro prize by the City of Milan. Both protocols have been



If just one of the links in the chain fails to function properly, the whole chain of support collapses

adopted by the police at national level.

“Intervention,” says Alessandra Simone, “has to be a truly unified chain of reception, where each of the actors covers a role fundamental to the whole. When something ceases to function correctly, in other words a woman at risk is not protected and supported, this means that one or more links in the chain have stopped working, and this is important because when this happens, we need to go right back along the chain to find out what has gone wrong”. Simone insists not just on training but also on prevention, so that the need for repression can be avoided. This requires real attention to detail and awareness by all the actors along the chain.

“When the links along the chain fail to communicate as they should,” she continues, “a situation of mistrust and danger results. I think of the reports one hears after the nth act of femicide, in which it transpires that the woman had asked for help but had not been listened to or believed. This is how mistrust is created”.

The chain functions well when there is real teamwork:

“The women's centres, lawyers, prosecutors, the courts, social workers, psychologists, doctors and other medical staff at emergency and casualty wards, not to mention the police. The

training programme must involve all the actors working in harmony together, also because in this way each part can understand the role they have to play. What is crucial is the interaction and mutual trust, everyone on the same page in perfect synergy”. It is a work of constant and uninterrupted effort requiring continual updating which must cover the entire territory: “In smaller towns and villages, contact with people is more direct and with the right



The social services should not be allowed to keep the contents of their reports secret. Transparency is key

kind of training the intervention can be immediate and effective,” concludes the police chief.

### **“Transparency is essential”, says the Authority on children's rights**

When young children are involved in situations of domestic violence, a particularly delicate role is that played by the social services. There have been too many distorted reports, cases such as the one described by judge Di Nicola Travaglini, in which unsubstantiated negative judgements on the mother risk causing irreparable damage and traumatic separations, without the role of violence being given its due weight. Carla Garlatti, the Authority on children's rights, makes this point clearly: “The key to everything is transparency: social services reports must not be hidden. What's more, the contents should not be merely evaluative but factual. The evaluation must be based on specific facts so as to enable the judge to understand whether their reasoning is correct and the facts reported relevant to the case. I put great emphasis on this point when I presided over custody litigations as a judge”.

In social services reports the evaluations tend to be highly subjective and difficult to verify. What should a judge do in this situation? “It is important that in every phase of the trial proceedings,” underlines Carla Garlatti, “the right to put the other side of the argument must be guaranteed. The judge has to grasp the objective factors on which social workers base their assumptions; these need to be corroborated and all the parties in court should have access to them. A particularly important moment in the hearing is the testimony of the minor from the age of 12 or even younger if sufficiently mature. And the minor must be



Minors of 12 and over must not just heard but listened to



listened to, not just heard”.

Garlatti also insists on training: “We should be investing more in professional training, in particular joint courses for the different professions and agencies that work closely with minors”. The two years of the pandemic have brought critical issues to the surface, but this – argues Garlatti – is an opportunity too good to miss: “The experience of the pandemic has made it clear that the whole system needs to be rethought, and not simply by increasing the number of social workers and reducing the use of short term contracts, but also by reversing the privatisation of the service, that is to say, reliance to external ‘expert witnesses’ to work with the courts, instead of professionals employed by the social services”.

For this reason, Garlatti is positive about the government's decision to increase spending for the social services in the budget for the years 2022-2026: local authorities in Italy can now employ one full-time social worker for every 4,000 residents, whereas previously the ratio was one social worker for every 6,500 residents. One of the major problems, in fact, is the high level of job insecurity, with the use of temporary contracts, which makes it difficult to guarantee continuity. Without this, there can be no efficient service for families in crisis.



These cases must be viewed through the lens of gender equality, to remove that inequality that is the real obstacle

### **The case of Benevento**

A chain with all the links in place, a support network where each part is working together in perfect order: this is the system that works for women who have suffered violence. From its launch in 2016, the network has been functioning well in Benevento: a round

table for the different agencies and a listening space in the examining prosecutor's office for victims of violence and vulnerable women, a multi-disciplinary degree course at the local university and in-service training sessions to improve liaison between different agents – police, social workers, courts etc. The chief prosecutor in Benevento, Aldo Policastro, reflecting on the project he did so much to bring to life and continues to support, underlines the crucial importance of specialisation for this type of crime. Specialisation has led to the development of another valuable instrument for protecting the safety of vulnerable women. “In the case of violence against women,” says Aldo Policastro, “Gender inequality is an obstacle that has to be removed. These situations have to be seen and read through the lens of gender”. At the first roundtable which began the Benevento experience, Policastro recalls, “it was strange to see all the different agents looking into each other's eyes for the first time. This is where it all began: the listening space project, the specific section dealing with gender violence in the magistrate's office, together with the interdisciplinary protocols and ongoing initiatives that enabled the team to keep focused. We now have a team of professionals working full time on the gender violence project which was set up to defend and give a space to vulnerable women,” says Aldo Policastro.

Carmen Festa, a psychologist, is responsible for the Eva women's centre in Benevento, and is one of the participants at the round table. “The biggest problem”, she says, “is a misunderstanding of the problem of violence due to prejudices against women. Women who may be problematic, women living in difficult circumstances, or perhaps migrant women. In my opinion the difficulty people have in believing women starts here”. A serious training programme can, however, help overcome the stereotypes and prejudices, which are often unconscious.

The listening space in the prosecutor's office allows women to

report violence and abuse in an environment which is safe and supportive. “At the beginning some people feared that the institutional context might be off-putting and intimidating, and discourage women from seeking help”, Carmen Festa continues, “instead we have found the opposite to be the case: the women who come here feel safe and protected. They often come here with their lawyers”. A specially trained section of the police force works side-by-side with the operators at the Eva women’s centre: the institutional space guarantees security and there is always someone available to talk with, who is not only sympathetic but also highly trained. “We have really stressed the importance of training for the police attached to the courts and other operators in particular as regards the need to learn how to listen,” she underlines. “We have also set up a collaboration with the local Sannio University in Benevento, who have started courses, and extra mural encounters with interested parties and the local public to raise awareness and cooperation”.

With the pandemic much of the work of the project went on hold, especially the part dealing with training and the inter departmental roundtable meetings. “We have continued the meetings online”, says Aldo Policastro, “but to function as a team you need contact, a direct rapport”. There is still a long way to go but the outlook is promising, as the psychologist concludes. “We’re finding more and more people with the right skills and professional background, because in recent years more opportunities for specific training have opened up. And even if, at times, the dialogue between different parts of the network can be difficult, the signs of progress are there for all to see”.



The biggest problem springs from prejudice: this is the reason why women are not believed









# #08

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## Women's Shelters

greece  
january 2020



From the north to the south of Italy to the heart of the battles for custody

# Secondary victimisation viewed by shelter operators

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**Simona Rossitto**

**B**attles with the ex-partner for custody of the children, police and social workers' lack of awareness or sympathy, problems with the court-appointed expert witnesses, the slow workings of the Italian judicial system, good laws disregarded or underutilised by poorly trained judges. In all these cases, connected to the wide spectrum of secondary victimisation, victims of male violence and abuse need help and support to interface with the institutions and re-establish the lost trust. Often, during legal battles which can last years, women feel isolated; this is why the operators at the women's shelters are so important. Women's shelters, whose existence is enshrined in both Italian law and the Istanbul Convention, support female victims of domestic and gender abuse and help them persevere when the secondary victimisation – by the courts in custody rulings or magistrate judgements or due to the incompetence of the law enforcement authorities – becomes impossible to bear.

## The norms

### Law 212/2015

This law requires governments to support women fleeing from domestic and gender abuse, through such measures as financing women's centres, and protecting the position of the plaintiff in cases of gender-based violence

### In Trieste, the case of the “alienating” woman

It's what emerges from a trip from the north to the south of Italy, from the periphery to the islands to the centre of Italy among the women's shelters. A journey through the voices and the testimony of the operators who, every day, have to deal with cases of victimisation. Let's begin in the north-east of the country, in Trieste. “In 2018 there began,” says Maria Grazia Appollonio, a psychologist and consultant for the GOAP shelter, “an alarming case, when a woman reported her husband for abuse. The children always confirmed the mother's account and as a result the court decided to authorise supervised visits. The children, however, were scared of their father and refused to see him. The man appealed to the civil court and requested the intervention of an expert witness. In the same period the criminal case against the father was still ongoing, though it was later dropped. Although the consultant wrote in her report that it was not possible to exclude the hypothesis that the children's refusal was linked to an experience, direct or indirect, of domestic violence, she nevertheless condemned the mother for alienating the children from the father, and went on to recommend that the children be removed from the mother and taken into care”. In the end the Appeal Court judge overturned this decision, but the suffering of the mother remains, as does the trauma of the children caused by being forcefully taken from her. In Trieste, Maria Grazia Appollonio continues, just like in the rest of Italy, even if the situation has improved compared to the past, the operators working with abused women have to deal with such cases of victimisation all the time. She goes on: “We have witnessed positive signs from the courts as regards mi-



Even if the situation is improving, reports of secondary victimisation are still a daily occurrence



nors. When we flag a case of domestic violence, the court puts in place the necessary protective measures to interrupt the rapport between father and children”. The main victims of secondary victimisation are women with children, Apollonio explains, who struggle to free themselves from domestic abuse; then, on the other side, there's the violent father who uses custody battles in the courts to blackmail his victim. The children, that is, become a means of blackmail.

But this is not the only scenario: reports of abuse are not always taken seriously by the police who judge the complainant to be untrustworthy. Thankfully, this is less common nowadays but it still happens. Regarding the magistrates: “There are many dismissals and acquittals, that are hard to understand; and women also have to bear the brunt of the snail's pace of the judicial process, that is to say, the time it takes from the three levels of justice to reach a final decision”.



It still happens that women who report domestic abuse are not taken seriously by the authorities

### **Veltri (D.i.Re):**

#### **«The two-parent ideology is applied uncritically»**

Putting great emphasis on training as a means to counter secondary violence, Antonella Veltri, president of D.i.Re – Donne in rete contro la violenza, that gathers together over 80 centres across the county, believes: “The level of training to understand the phenomenon of male violence is still insufficient: examining magistrates, the police, court appointed experts still operate on the basis of misogynistic and sexist stereotypes. Gender-based violence is rarely recognised as such; on the contrary it

gets downgraded to domestic squabbles. Even today women find it hard to be believed, hence the failure to apply Article 31 of the Istanbul Convention on child custody. The ideological interpretation of the two-parent concept often means that the violence inflicted on the mother is not taken into consideration as required by the Convention. In fact, after approval of Law 54 in 2006, the two-parent principle has been applied in a blindly uncritical manner, with the courts privileging 'friendly parent provision', ignoring allegations of violence, even when criminal cases are still ongoing”.

#### Istanbul Convention

Article 31 requires that in cases where custody and parental visiting rights are contested, episodes of violence must be taken into consideration

### Law on isolating men accused of gender abuse underenforced

Manuela Ulivi, president of the CADMI women's shelter in Milan, has brought out *La doppia violenza*, a guide on the question of how the courts deal with gender violence. She believes that one of the main problems is the confusion between cases of violence and cases of conflict.

She says: “This mainly happens when there are children involved. At this point the position of the woman and of the man is placed on the same level, without recognising that one party is the victim of, and the other responsible for violence. They are simply considered parents, each with an equal right in the legal battle they are engaged in”. Nowhere else in the criminal code can one find a situation in which the alleged criminal is treated better than the victim, as happens in crimes of domestic abuse. Just read the *Codice rosso*, the law passed to eradicate this type of crime, by privileging rapid inquiries and restrictive measures but that, on the other hand, provides the accused with a course of rehabilitation that effectively seems to give the person who commits a violent crime precedence, and this has turned out to be something of a boomerang”.

There are examples in rape trials, where the judges end up by putting the woman in the dock. “We have had a classic case, in which the wife accused her husband of rape”, says Manuela Ulivi, “where the judge of a lower court decided that there was no case to answer because the accused expected a sexual relation. There was also a recent decision involving a flight attendant where the court decided not to recognise the woman's accusation of rape, because she had not reacted quickly enough. When it comes down to it, the finger is always pointing at the victim.”

Lorena Pais, who works at the women's shelter in Milan adds, “In some cases, one has to wonder who gets the blame, for example when a woman is forced to leave her home, while the author of the violence remains in the family home, awaiting the outcome of the various stages of the justice system. This really shows how the system is warped.” Apropos of such cases, adds Manuela Ulivi, “the court could enforce Law 154 of 2001 which entails the removal from the home of the violent partner. An almost revolutionary law for its time, the first serious sign of interest on this issue. Sadly, it's a law that is seldom applied.”

#### **Law no. 154**

In compliance with the legal provision of 2001 which entails the exclusion of the violent partner from the family home, the judge can instruct the accused to leave the family home immediately and not return without the authority of the presiding judge

### **The need for reliable data on secondary victimisation**

The cases of secondary victimisation uncovered across Italy show little variation from one region to another. The environment, the social context, the modus vivendi may change but the song remains the same: the threat of blackmail over custody of the children, according to the operators working with the victims of abuse, is used to turn the woman into a victim for a second time.

“Custody of the children,” explains lawyer Elena Biaggioni, “is one of the key instruments in secondary victimisation because it is an issue that cannot be avoided, the most difficult as-



pect to unravel, the hardest to see and explain. It affects everything, given that it involves criminal, civil and family law, social services, expert witnesses, with a series of toing and froing between the various courts. The children of a domestic violence victim are also tied to the author of the violence. To make matters worse, motherhood in our country is put on a pedestal and everything the mother does is dissected and analysed, unlike the father whose every positive action, no matter how trivial, is lauded with praise.”

### The role of external expert witnesses

In certain cases, expert witnesses (in Italian CTU: *consulenti tecnici d'ufficio*) play a crucial role. A good example of this is the story of D. a married woman from the Marche, who presented herself at the offices of the Fondazione Pangea seeking help and describing a situation of verbal, psychological and economic abuse she and her children were subjected to by her husband. This notwithstanding, when the matter came to court the judge decided that the children could continue to see their father, something they categorically refused to do. The judge then nominated an expert witness, who presented a report accusing the wife of being obstructive and of isolating the children from the father. Her anxieties and fears were not taken into any consideration, and the children, their feelings totally ignored, were not allowed to give evidence in court. Moreover, as a result of all this, the mother was summoned to a series of supervised meetings. At this point the Fondazione Pangea requested an urgent intervention to safeguard the mother-children nuclear family. The expert witness' report was thrown out,



In Italy, motherhood is considered sacred: unlike fathers, mothers' lives are subject to rigorous scrutiny

a new consultancy requested and the supervised meetings suspended.

### **The story of A.: violence overlooked**

The role of expert witnesses, much discussed and queried by women's shelters and associations, emerges once again in another episode the Fondazione Pangea became involved in. A wife, we shall refer to as A., requested help after having suffered violence for a considerable time at the hands of her husband. The elder child was also involved in the case, as he too had witnessed, as well as suffered directly from, his father's violence. Following this report, the husband was found guilty of domestic abuse at a lower court, a decision later confirmed by the Court of Appeal.

“To be clear”, says Simona Lanzoni, vice president of Pangea Onlus, “the domestic abuse in this case predated the introduction of the so-called *Codice*

*Rosso* law, but continued after the law's approval”. However, neither the civil nor the family tribunal took into consideration the multiple episodes of violence suffered by the mother and her children and gave no weight to the criminal proceedings ongoing at the time.

And here we come to the role of the expert witnesses: A. was obliged to follow two guidance sessions together with the man who had abused her. The aim of the meetings, to be attended by both parties, was to evaluate their ability as parents and their ability to relate to each other as a couple, as well as their ability to relate to minors. The usual practice, Lanzoni specifies, “is for such meetings to take place in the presence of both parents, but



In civil law courts and cases involving minors, serious violent events suffered by women are often ignored

where one of the two parties has a record of violence, in other words, there is an aggressor and a victim, these meetings should not involve both partners at the same time. Nevertheless, expert witnesses ignore the above ruling and force the woman to face her abuser, thereby creating a reiteration of the trauma. The Istanbul Convention is quite clear on this point, prohibiting – in article 56 – direct contact between victims and the authors of violence”.

After the husband's two convictions for violence, the demonstrated risks for the children of further violence, the woman received notification that the younger child would be immediately taken into care by the social services and placed in a children's home. Furthermore, the decree stated that the father could visit the child whenever he wished and take her out of the home, without any time limitation, whereas the mother was only allowed to see her daughter under the supervision of an expert whose role was to observe the interaction. The Fondazione Pangea carried out a series of encounters with the mother to reconstruct the history of the violence, which was then presented to the court, in which: “the previous episodes of violence were illustrated and the reasons given why it was necessary to consider the context to understand the protective behaviours of the mother”. As a result, a new hearing was called and the court overturned the previous decision, thanks to which the child was allowed to return to her mother. “It was a hard fight all the way”, concludes Simona Lanzoni, “for something that should have been obvious from the outset.”



In cases of domestic abuse, the alleged victim and the author of the violence should not have meetings with court appointed expert witnesses at the same time

### **Victimisation set in stone**

In Rome the situation is the same as in the rest of the country,



according to Simona Ammerata, who is responsible for the women's shelter in Via Titano, in the Montesacro quarter of Rome, run by the Lucha y Siesta association. "The practice of secondary victimisation has become crystallised", she says. "Every time a woman reports violence, especially if it is a matter of domestic violence, when the case arrives at the court which deals with custody of the children the position of the woman and her aggressor is put on the same footing". As a result, measures are hardly ever taken to protect the woman and the children. "Secondary victimisation", Titano adds, "is evident not just from the lack of such measures of protection but also because the woman's life is subjected to microscopic inspection. This can lead to her custody of the children being suspended, or the children being taken into care while the case is under investigation. It is well-known that domestic abuse and violence produces psycho-physical damage to the women who suffer it, but what is worse is when the same violence is continued at an institutional level. Violence in a more pervasive and pernicious form, that comes from different fields and casts a critical and authoritarian eye over the woman and every detail of her life".



Frequently judges fail to issue the necessary cautionary measures and the plaintiff's life finishes up under the microscope

In Simona Ammerata's experience, court-appointed expert witnesses use different measures when evaluating mothers and fathers, and these are dense with stereotypes. For example, if a little girl goes out looking untidy, say her dress has a stain, in the company of her father, no one has anything to say about it, but if the same situation occurs with the mother, this

is judged as a lack of maternal care.

### **The Cooperativa E.v.a.: the courts hardening their position**

We go now to the south, to Campania. Lella Palladino, former president of the D.i.Re network, set up the E.v.a. cooperative in Campania in 1999, that runs a group of women's centres and shelters. Over her many years' experience, she has not seen any improvement, if anything things have got worse. "As regards secondary victimisation", she says, "there has been a change for the worse: after the Istanbul Convention and the normative reforms in Italy to combat gender and domestic violence, there was a backlash. The proposed law ("ddl Pillon") represents a patriarchal fight back against women trying to free themselves from violent men. So, in our experience, the courts have hardened their stance against women: 15-20 years ago, it was slightly less difficult for our lawyers to obtain exclusive custody for the mother than it is today. Now it's the hardest part of our work; in many cases the courts show little understanding of violence and its effects".

### **It's up to women to prove the violence**

Stereotypes and victimisation of women show little sign of disappearing also in Sicily. Maria-grazia Patronaggio, president of the Le Onde di Palermo association, explains:

"The women who come to our centre often speak of the difficulty of having to prove the violence inflicted on them and their children to social workers, police officers and judges, and women are often blamed for the children's reluctance to meet their father, because they are afraid".



It was less difficult for lawyers representing victims of domestic abuse to gain exclusive custody of the children for the mothers 15 years ago, than it is today

## **E. succeed in freeing herself from violence and now helps other victims do the same**

The difficulties in getting to the other end of the tunnel involving long confrontations with magistrates, lawyers, social workers, is well illustrated by the story of E. A story lasting many years that, even if she still has occasional problems with social workers, ended happily, thanks to the support of her family and the women's centres. E. met the man who became the father of her children in 2017. He was very keen for her to have a baby so, deciding to live her love story to the full, she became pregnant. A few months after the birth of their child, however, came the first serious episode of violence. She decided to leave and go into hiding, but her partner managed to find her and convince her to return, promising never to do it again.

“Cohabitation became a prison”, says E. “I had to ask permission to invite my parents to our house, show him the receipts to prove how much I'd spent, while he helped himself to my bank account”. Soon after the birth of their first child, her partner forced her to have violent sex and she became pregnant again. “Even if I am against abortion, I found it very difficult to accept this pregnancy”. E. kept the baby and her life went on, but after the nth violent fit of rage she decided to leave again with the children. The partner finds her and convinces her again to return. “For a while, as often happens in these situations, he behaves well”, E. recalls. “It was like a honeymoon, but then the abuse started again, even worse than before”. The man even installed CCTV cameras in the home to control his wife. After another outburst, E. finally decided to end the relationship for good. It was agreed that the father should still have the right to see his children, and one evening at the end of a visit, the father rang to say he would not be returning the children,

### **Experience**

At times women get blamed even when their children do not want to meet their father because they are afraid of him



who would sleep with him. She immediately went to the police who forced the father to return the children. On arrival he completely lost control and E. and the younger child ended up in hospital with cuts and bruises.

“Realising that he wouldn't stop even before the child was the trigger that finally made me decide to report him”. She reports him to the police and the *Codice Rosso* is activated. She tells her story to the authorities and, after some months, the man is no longer allowed to come within the vicinity of the woman and the children. This is followed

by the father losing any custody rights, but he can see the children under the supervision of the social services. E. does not have a very good opinion of social workers, who seem to take the man's side and fail to understand the difficulties the children have staying with their father. On at least one occasion the man

was left alone with the children – a clear example of secondary victimisation. “I have had a terrible experience with one social worker. Despite the fact that the child was crying she sent me away”. In the end the definitive judgement arrives, at last E. can feel safe. “I couldn't have done it without my parents and the women at the centre and the psychological support I've had”. Today E. is active in the centre, helping other women break free and not turn back: “I hope my story can be an example to all those women who find themselves in the same situation as I was. It's hard but if we can save one woman, we can save them all”.



Some women would never have freed themselves from situations of domestic violence without the help of their parents and the moral and psychological support of operators in the women's centres





SIAMO IL  
GRIDO DI  
QUELLE S...  
PIV' V...

8 MARZO  
SCIOPERO

LIBERE  
DI  
MUOVERCI  
LIBERE  
DI  
RESTARE



A large crowd of people is gathered in a city square, likely St. Peter's Square in Rome. In the background, the tall, fluted column of the Victor Emmanuel II Monument rises, topped with a statue. To the left, the ornate facade and bell tower of St. Peter's Basilica are visible. The crowd in the foreground is dense, with many people wearing face masks and holding up their hands or smartphones, suggesting a protest or a large public demonstration. The sky is overcast.

# #09

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## EU INITIATIVES

italy  
november 2021



## THE INSTRUMENTS

# European strategies and funds allocated to contrasting violence

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**Chiara Di Cristofaro**

In Article 8 of the Treaty on the Functioning of the European Union, it is stated that: “In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.” The European norms contrasting gender-based violence are thus firmly set on solid foundations, yet there remains the need for harmonisation across all member states, in order to ensure that the good intentions are turned into reality. On a global level the framework to which the aforementioned declaration refers stems from the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the United Nations General Assembly in 1979 and ratified by Italy in 1985, and the Istanbul Convention, approved in 2011 and ratified by Italy in 2013. The latter convention provides the first legally binding international instrument that defines the overall framework within which all member states must operate with regard to the protection of women victims of violence.

### Definitions

#### **ISTANBUL CONVENTION 2011**

The Council of Europe's Convention on Preventing and Combating Violence against Gender and Domestic Violence.

ce. Slightly over 10 years after the approval, in 2021 Turkey, the first country to sign, withdrew from the Convention. Azerbaijan and Russia are the only countries never to have signed. It was ratified by 34 out of 47 member states of the Council of Europe, who signed the Convention. The others signed but did not ratify, hence are not obliged to conform to its rules. This means that the EU has not as yet been able to ratify the accord, given that not all member states have done so; nevertheless, complete adherence to the treaty remains a priority for the Commission. In January 2021, faced with the continued refusal by certain member states to ratify the Istanbul Convention, the Commission proposed, with the European Parliament's approval, various measures to further the objectives of the treaty.

### **EU actions: the main directives**

In the absence of cross-country agreement on legislative harmonisation, which prevented the EU from ratifying the Istanbul Convention, a series of directives were approved obliging member states to carry out measures to combat violence against women, in line with the aim of gender equality. In directive 2012/29/EU, which establishes minimum norms regarding the rights of crime victims to support and protection (undersigned by Italy in 2015), no. 17 defines gender-based violence. It states: “Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.” This is followed by a description of the different types of secondary victimisation

#### **Financed projects**

##### **Italy**

«Never Again» aims to strengthen the system's response to the phenomenon of secondary victimisation, by proposing a nationwide awareness campaign and a training model for the police force, lawyers, magistrates and journalists.

women are subjected to. We should also keep in mind directive 2011/99/EU on unification of European protection, and directive 2010/41/EU on the application of the principle of equal treatment between women and men who are self-employed. Among the successful actions, the EU has set up instruments for the reciprocal recognition of protection measures: such as restriction or interdictions, issued in one member state, being recognised in another with the minimum of bureaucracy. As announced in the agenda for 2021, the Commission intends to present a new piece of legislation to counter gender and domestic violence. This proposal will aim to strengthen actions taken by member states, by guaranteeing a minimum level of protection throughout the EU, both online and offline.

### **Equality Strategy for 2020-2025**

The campaign against gender-based violence is among the main objectives of the EU Gender Equality Strategy 2020-2025, proposed by the Commission in 2020 and approved by the European Parliament at the beginning of 2021. On the occasion of the strategy's approval, the Commission repeated its commitment to “to prevent and combat gender-based violence, support and protect victims of such crimes, and hold perpetrators accountable for their abusive behaviour. The Gender Equality Strategy provides for an ambitious set of measures for ending gender-based violence against women and domestic violence.” The Commission goes on to underline that even if there is no one specific legal instrument at the present time that deals with the crimes of gender-based violence and domestic violence at EU level, this is-

#### **Financed projects**

##### **Germany**

A German project has fine tuned an orienteering map of the EU for front line social workers so that they can recognise and successfully deal with child or forced marriages. The EU Fem Roadmap is available online in 8 languages.



sue is the object of numerous directives and rulings, in particular in the sectors of cooperation in criminal law (especially, as regards crime prevention and the rights of crime victims), gender equality and asylum policy.

The phenomenon of gender-based violence, the document affirms, “remains one of our societies' biggest challenges and is deeply rooted in gender inequality. Gender-based violence, in all its forms, remains under-reported and overlooked, both inside and outside the EU. The EU will do all it can to prevent and combat gender-based violence, support and protect victims of such crimes, and hold perpetrators accountable for their abusive behaviour.”

The Commission intends in particular to present an initiative “with a view to extending the areas of crime where harmonisation is possible to specific forms of gender-based violence”, the so-called “Eurocrimes.” In addition, the Commission's focus on education and training remains high: “Effective prevention of violence is key. It involves educating boys and girls from an early age about gender equality and supporting the development of non-violent relationships. It also requires a multi-disciplinary approach among professionals and services including the criminal justice system, victim support services, perpetrator programmes and social and health services.”

The European Parliament approved the plan, describing it as ambitious yet, at the same time, expressing regret at the vagueness and the lack of specific objectives to be reached by 2025, as well the insufficient clarity as to how the strategy would be monitored. EU Parliament members forward a request for an EU directive to prevent and contrast gender-ba-

#### Financed projects

##### Hungary

The PIE4shelters aims to improve and extend the ability of services for the homeless to support women victims of domestic violence. The guide, based on the Psychologically Informed Environments approach, also promotes awareness of trauma with respect to gender.

sed violence in all its forms in times of crisis (such as the pandemic).

In September 2021, the Parliament asked the Commission to set out the legal ground rules so that gender-based violence could be numbered among EU Community crimes. This would allow legislators to define a common legal standard across all member states, and set minimum sanctions for gender crimes to be enforced throughout the EU. This would be a basic step towards the necessary process of harmonising norms.

### **Strategy concerning victims' rights 2020-2025**

Another important step was taken by the Commission in June 2020, with the first measure aimed at guaranteeing that all crime victims can fully exercise their rights, regardless of where the crime took place. Until 2025 the strategy will continue to carry out a series of actions with a dual objective: on the one hand, allow victims to report a crime, apply for damages and enable them to completely recover from the consequences of the crime suffered and, on the other, guarantee the full collaboration of all agents as regards the victim's rights. The Commission has stressed that, in consideration of the Covid-19 pandemic and successive restrictions on movement, which indirectly contributed to a rise in domestic violence and sexual abuse on children, cybercrime, crimes of racial hatred and xenophobia, it is most important that the network of protection of, and assistance to crime victims is sufficiently equipped to carry out its task, particularly in such crises.

Among the objectives to be assessed at the half way stage

#### **Financed projects**

##### **France**

The Cease project concentrates its work of combatting gender violence on companies, as a way to spread the message, given the role companies play in society and their capacity to mobilise support.

is the guarantee of effective communication with the victims and a safe haven, in which they may freely report their crimes, the latter a vital ingredient in the case of domestic violence. Another goal which requires much work is the protection and support for the most vulnerable: minors, the elderly, victims of gender and domestic abuse, racial hatred, homophobia, terrorist attacks and the disabled. Member states, says the Commission, will instruct national services specialising in providing support to give special attention to the most vulnerable, such as in the case of minors taken into care and safe houses for members of the LGBTI+ community. Moreover, access to criminal damages must be guaranteed, as well as coordination between all the relevant agencies, and a strengthening of victims' rights at international level.

### **Funding allocated**

The Commission manages EU funding in tandem with member states or executive partners. It is important to bear in mind that often the particular sector of intervention is not narrowly defined, but rather there is a series of objectives, actions and priorities that can be combined in different ways. The same line of finance can, therefore, support activities that have a variety of shapes, so it is advisable to evaluate them with attention, and also explore collateral sectors vis-à-vis gender-based violence per se.

On 25 November 2020, on the occasion of the presentation of the annual report for 2019 on the application of GAP 2 (Gender Action Plan), the EU Commission indicated that progress had been made towards the goal of guaranteeing at least 85%

#### **Financed projects**

##### **Croatia**

This project has set up a new national helpline to improve the protection and support of victims of violence. Moreover, training courses have been financed to improve the response of institutions and professionals to the needs of women victims of violence.



of the programmes promote gender equality as their main or one of the main objectives. The Commission estimates that, in 2019, a budget of €8.6 billion was assigned to financing development supported programmes having, as a main or significant objective, gender equality and female emancipation (equal to 56.95% of the total finance). Finance, specifically earmarked for programmes contrasting gender violence and promoting female emancipation amounted to €643 million (4.21% of the total). In 2019, 64.25% of the Commission's new cooperation for development programmes promoted female emancipation as a significant or main goal. The EU budget dedicated specifically to contrasting gender violence has grown over the years and, increasingly, even programmes in other sectors support projects and activities aiming at gender equality and integration or combating gender and domestic violence.

Specific finance for projects run by voluntary bodies or regional and local government initiatives whose aim is gender parity and integration are available under the title of Rights and Values Programme. This is the main programme dedicated to this issue and it has three specific aims: first, promote equality and rights; second, promote involvement and participation of citizens in the democratic life of the European Union, and finally contrast violence (Daphne section). To get an idea of the commitment, at the moment of writing there were diverse calls for over €30 million, destined to finance large-scale actions, across nations, and over a long time scale, to combat gender violence; work of prevention and combating the violence connected with certain practices, such as child and forced marriages; primary preventive actions against gender violence with

### Financed projects

#### Cyprus

This project has carried out a series of specialised training courses for the police on the workings and dynamics of domestic violence. The courses focus on how to respond to reports of violence from the victims and how to proceed correctly in their investigations

awareness raising interventions to overcome gender stereotypes; work to improve and bring up to date national statistics on violence against children; strengthening the work of supporting child victims of violence, upgrading systems for protecting minors at local and national level.

As regards interventions for asylum seekers and migrants, there is special attention on women and children: through the work of the Asylum and Migration Fund, the Commission encourages governments to underwrite measures to support the specific needs of women during the time it takes for their asylum applications to be processed, as well as actions to facilitate the entry of immigrant women into European society. Moreover, the fund supports attempts to protect vulnerable groups, such as female victims of violence within migrant or asylum-seeking groups.

Yet it is not only the specific programmes combating gender violence that matter. We know well, for example, how important autonomy and independence – also economic and financial – are in the process of breaking free from an abusive life situation. For this reason, it is worth remembering that even the activities in sectors apparently less directly connected with the issue of gender violence have an important role to play. Take research and innovation, for instance: the Commission introduced new measures to strengthen gender equality within the European Horizon programmes, with the possibility of requesting a plan for gender equality for those who wish to join the programme, and an initiative aimed at increasing the number of technological start-ups run by women. Financial resources have been made available to those wishing to carry

#### Financed projects

##### Belgium and Spain

Safercities is a crowd mapping site that allows users to identify, report and share directly online public places felt to be unsafe or dangerous and others perceived as safe and welcoming in six cities in Belgium and Spain.

out gender research. Moreover, there are diverse funding opportunities to increase management training and to promote a greater role for women in decision making.

In order to promote female emancipation a new call has been issued, aimed specifically at working in the “blue economy” in the ambit of the European Maritime and Fisheries Fund from 2021 to 2027. A strategy for inclusion and diversity is also to be found in the Erasmus Project+, the aim of which is to tackle gender inequality in every sector of education and training, youth work and sport.

### **A look at national funds**

Structural funds represent the most important source of financial support for policies concerning gender equality in the EU, in particular in the case of the European Social Fund, which aims to promote women's integration in the labour market.

Among the various measures carried out in Italy, following the Covid 19 pandemic that considerably worsened the situation of women at risk, there are tax breaks for employers who take on a victim of abuse, who is inserted in the protection programmes, certified by the local social services or women's centre. Another much discussed intervention is the free allowance, the subsidy aimed at ensuring economic independence and emancipation for victims of abuse living in poverty, who are supported and followed by a women's centre. Single women or women with young children, attending a social services programme for victims of domestic violence, with the support of a certified women's centre are eligible to apply for this *reddito di libertà* (freedom income), amounting to up to €400

#### **Financed projects**

##### **Greece**

Partners in nine European countries have come together to develop and promote an innovative programme of preventive education based on experience, viz. the Cybersafe Toolkit, to tackle the problem of online violence against women and teenage girls between 13 and 16 years of age in the classroom.



per month per capita for a year. This subsidy may not be enough to live on; nevertheless, it contributes to the long and difficult process of achieving autonomy without which emancipation is impossible.

Another initiative worth noting is the *impresa donna*, a fund for women starting a business, which is part of the national plan for recovery and resilience (PNRR), under the aegis of the Ministry of Economic Development. This initiative aims to encourage female participation in the world of business, by providing support for the skills required to set up a business and the realisation of new ideas, through grants and low interest loans. In the same area there is also in the *fondo di garanzie* (guarantee fund), supporting small and medium sized businesses (PMI), with a specific section dedicated to companies run by women. This particular fund does not actually provide money but ensures access to credit without the need for further guarantees (hence without extra expenditure on sureties and insurance etc).

Finally, a sum of €300 million per year was introduced in the budget to support the work of women's centres and shelters. Besides funding at national level, individual regions can allocate funding to be spent on combating gender-based violence. One example was a proposal by the Campania Region in 2021. It provides financial help to cover the costs of medical and psychological care for victims of violence suffered on account of sexual orientation or gender, as well as help to cover the costs incurred through legal actions, including representation, advice, expert witnesses and so on.

### Financed projects

#### Finland

Doctors and nurses are trained to recognise the signs of violence to encourage women to open up and speak about their situation and report abuse. The trainees are then shown how to guide the victims towards finding support and practical assistance in the local area.





No se libraron

nos crecieron

**MUJER**  
22 años  
Asesinada de tres disparos. Se presume que ocurrió como represalia en contra de otras personas.  
Paraná, Entre Ríos - 2015

**E.R.D.E.**  
75 años  
Encontrada en un potrero. Le había estado desquiciada por algunas horas. Presentaba diagnóstico por salud mental.  
Loma Negra - 2018

**H.E.**  
26 años  
Asesinada, junto a su pareja, con arma de fuego.  
Paraná, Entre Ríos - 2018

**MUJER**  
18 años  
Asesinada por su pareja, quien le disparó en la cabeza.  
Paraná, Entre Ríos - 2015

**MUJER**  
28 años  
Asesinada por su pareja, quien le disparó en la cabeza.  
Paraná, Entre Ríos - 2015



# #10

## THE SITUATION IN EUROPE





Comparison with other countries

# Progress in Spain and the Northern European paradox

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**Livia Zancaner**

«From what we have learnt so far it is clear that, despite the progress in implementing the Convention across the continent there is still a long, hard road ahead». This is the conclusion of GREVIO – the independent expert body responsible for monitoring the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence – that in December 2020 published a mid term evaluation regarding 17 countries: Albania, Andorra Austria, Belgium, Denmark, Finland, France, Italy, Monaco, Malta, Montenegro, Holland, Portugal, Serbia, Spain Sweden and Turkey. This was a complete analysis, going into each and every article in depth, to assess the level of respect for the Istanbul Convention by the countries, who had ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence in 2011. Remember that the United Kingdom, which left the Euro-

## Report Card

### Spain passed

Thanks to the country's legal reforms. Denmark, Sweden, Norway, Finland and Iceland, with negative stereotypes of women and high rates of gender violence, all failed

pean Union on 31 January 2020, is the only country in Western Europe not to have ratified the Convention of Istanbul, though they signed it.

From a number of sources it appears that the country that has made most progress in this field is Spain, above all for the fact of their consolidated text on gender violence and for various good practices. In contrast Denmark, Sweden, Norway, Finland and Iceland, albeit at the top of world rankings with regard to gender equality, have very high rates of violence and women are continual victims of stereotypes and prejudices, when they report violence, in court and even within their own families. When it comes to safeguarding women's rights in cases of separation and child custody the experts' judgement is unequivocal: not one country comes out well.

In the end, after reading the documentation and listening to experts and other witnesses, the conclusion is that there is no virtuous state which could be used as a model.

“Generally speaking the laws are there, but continuous training, which is key to their effective implementation, still has not become structural. In countries where the liaison between experts from women's crisis centres and representatives of social and judicial institutions works well, the risks of secondary victimisation are taken seriously. But we see this phenomenon across all countries”, says Marcella Pirrone, a lawyer for the network D.i.Re. and the president of Wave – Women Against Violence in Europe.



The laws are already in place, but they won't be fully implemented without the correct training

### **Spain: advanced laws monitored by the UN**

Since 2004 Spain has been guided by the Ley orgánica 1/2004,

28 December, of Medidas de Protección Integral contra la Violencia de Género (comprehensive measures of protection against gender violence). This has become a point of reference at international level. Moreover in 2017 it was supplemented by a highly detailed and wide-ranging text with numerous further operative guidelines. The scope of this legislation includes not just the preventive, social, educational and support aspects, but it also impacts on the civil law governing the family and cohabitation sphere, where most aggressions take place, and, in particular, on punishment for crimes of violence. Let us turn now to the Report on Contrasting Gender Violence: a Comparative Perspective, approved by the Senate Commission of Enquiry into Femicide, published in September 2021. The commission analysed the laws of various European countries who signed the Istanbul Convention, among these France, Germany, Spain, Norway and Great Britain, and some non-European countries such as Kenya, India and Argentina. According to the findings, despite femicide being only an extremely small portion of the crimes of gender violence, it can be used as a fairly reliable indicator of the impact of government policies

contrasting this type of crime. In Spain, the report states, “the rate of femicide per one million women has been slowly but steadily declining in the last 20 years and, from a position not dissimilar to Italy's, has now stabilised at around 50% lower”. Gender violence, therefore, has been dealt with by Spanish lawmakers in a systematic and multi-disciplinary manner, and represents a help also in contrasting the use of stereotypes and se-



In Spain, the rate of femicide per million women has declined slowly but steadily over the last 20 years



condary victimisation.

Furthermore in 2021 the law for the global protection of children – infants and adolescents – came into force in Spain (Ley de Protección Integral de niños niñas y adolescentes). Article 11 provides that minors of all ages must always be heard, i.e., not just those who are 12 and over, as is the case in Italy. What is more, “public authorities will adopt necessary measures to avoid actions being undertaken on the basis of theories or criteria which have no scientific basis which presume the interference or manipulation of the adult, such as the so-called theory of parental alienation”. This law, before being passed in June 2020, was described as the “best in the world” by Luis Ernesto Pedernera Reyna, at the time president of the United Nations Committee on the Rights of the Child. 18 months later, however, in December 2021, certain experts from the United Nations, among whom the Special Rapporteur on violence against women Reem Alsalem, claimed that children in Spain were exposed to violence and sexual abuse by a judicial system, that was not capable of protecting them from violent fathers. Referring to a specific case where exclusive custody of the daughter had been awarded to the father, despite the fact that he had been accused of sexual abuse of the child in question, the UN wrote: “Notwithstanding the guidelines of the Convention on the Rights of the Child, the Spanish courts still rule that it is in the interests of the child to have contact with both parents, even if violent”. Hence, it continued, “the government must do more to protect minors from sexual abuse and domestic violence, by ensuring that the Spanish judicial system overcomes prejudice against women and adopts a sensible approach to questions of



The law in Spain requires that all the minors involved in custody cases must be heard in court, not only those of 12 years or over as in Italy

gender”. At the root of this miscarriage of justice, according to the experts, lie a number of widespread prejudices against women, whose testimony in court is considered less reliable than that of men, besides the application of “pseudo-scientific theories devoid of any basis”, such as the one known as “parental alienation”.

### **The Nordic paradox: the Amnesty report**

Iceland, Finland, Norway and Sweden were at the top of the league table in the Global Gender Gap Report, 2021, the index of the World Economic Forum, that evaluates gender equality on the basis of participation in the economy, education, health and politics. In the Gender Equality Index produced by the European Institute for Gender Equality Sweden, Denmark and Finland (Norway is not part of the EU) were among the most virtuous countries. Moreover Iceland in 1980 was the first country in the world to have a freely elected woman head of state, Vigdis Finnbogadóttir.

In spite of being a model in matters of gender equality, civil rights, welfare, and female participation in the social and political life of the country, these aforementioned countries still register an alarmingly high level of domestic violence, with deeply rooted prejudices and gender stereotypes across the board. This is the so-called “Nordic paradox”.

“Nordic countries have frighteningly high levels of rape and gender violence, and the survivors of sexual violence are betrayed by the courts”, says Tina Marinari, who is responsible for Amnesty International campaigns in Italy. According to Amnesty's report on Denmark, Finland, Norway and Sweden, women and girls who report sexual abuse are often abandoned by the judicial system. In Norway, for instance, only one woman in 10 reports being raped and the majority of cases that are reported

### **Northern Countries**

**Advanced as regards gender equality, lagging behind on gender violence**

In Norway, only one woman in ten reports being raped, and 75-80% of the rapes that are reported fail to end in a conviction. In 2017 in Denmark only 890 rapes were reported to the police, yet the actual number is estimated to be in the region of 24,000

(75% to 80%) do not end in a conviction. In 2017 in Denmark, 890 cases of rape were reported, but a study carried out by a university in the south of the country estimated that the actual figure was closer to 24,000. In Finland, the yearly number of cases of sexual violence has been estimated at 50,000, yet in 2017 there were only 209 convictions for rape. Iceland, on the other hand, was reported to the European Court of Human Rights: the case originated when a woman denounced her former partner for violence, accompanying her report with photographs of bruising, medical reports and witness statements and so on. Nevertheless, the police decided not to proceed and the case was abandoned.

“From our research on the ground, involving interviews with 50 victims, 45 of whom were women, and local associations, we discovered that rape victims have to fight against stereotypes and false myths inside and outside the court room”, says

Tina Marinari. She continues:

“One victim of sexual violence was asked what she had done wrong to encourage that reaction. They asked if she had been drinking and whether she had done anything to stop her aggressor. In another case a

chief prosecutor had wondered whether it was possible to ruin the life of a male student, accused of sexual violence, for a silliness when he was under the influence of drink. Another woman told us about talking of the violence to her mother who answered, ‘Well, he taught you a good lesson’”.

“If we find such stereotypes in the home, in the courts and the police stations, it means the institutions haven't done their



Iceland has been reported to the European Court of Human Rights for a case of gender violence



job properly, given that all these countries have signed the Istanbul Convention, according to which the professionals whose role it is to deal with such situations have to be trained to work effectively”.

How can this gap between the avantgarde of gender equality and the backwardness of those involved in its implementation be explained? “The starting point”, according to Tina Marinari, “is the laws are inadequate. Sweden and Denmark modified the law on rape in 2018 and 2020, but when we did the research we found that in all four countries the law was based on force, not on consent”. Sweden and Denmark then introduced the concept of consent in the legislation on sexual violence, but inevitably, since it was believed for many years that it could only be rape if a woman reacted by screaming, resisting and crying, uprooting that culture is difficult. “Moreover, in all four countries we recorded considerable delays in undertaking investigations, not to mention a certain resistance on the part of the police. Many victims have complained about the lack of professionalism of the investigations, contaminated with various prejudices. In Denmark for example, the victims have the right to free legal representation and they can deliver their testimony via video in order to avoid meeting the accused. But all these guaranteed rights are not guaranteed sufficiently”.

Another problem is the long duration of the judicial process: a case of sexual abuse may take up to two-to-four years to arrive at a conclusion; this means that the plaintiff must relive the violence every time.

“These countries in other words, virtuous as regards equality,



The laws regarding sexual violence in Northern Europe are not as yet fit for purpose, being based on forced rather than consent

work and political participation when it comes to sexual violence are still in the Stone Age. The work of training and raising awareness in the personal and sexual sphere just has not been done”, concludes Marinari, observing that “regarding combating sexual violence a virtuous model to emulate has yet to exist”.

### **No means no: the rule of consent**

After their research in 2018, Amnesty carried out a survey also in Italy, finding evidence of the same problems as they found in northern Europe: strong prejudice in the courts and a slow judicial process that discourages women from reporting abuse. “Even in the debate today we are not able to get the concept of consent across: sex without consent is rape, as is written in article 36 of the Istanbul Convention”, says Tina Marinari. Even in Italy the matter of consent is ignored. Article 609 of the criminal code defines rape exclusively in terms of violence – violence or the threat of violence or coercion (“whoever with violence or the threat of violence or through the threat of authority forces someone to commit or submit to sexual acts is punished by six to 12 years imprisonment”).

Amnesty has launched the campaign #Iolochiedo to have the law modified. Today of the 31 signatories of the Istanbul Convention, only 13 apply the rule of consent in cases of rape: Slovenia, Belgium, Croatia, Cyprus, Malta, the UK, who signed but did not ratify the Convention, Germany, Denmark, Greece, Ireland, Iceland, Luxemburg and Sweden. Spain has begun the process of changing the law but has not as yet passed the legislation.

A particularly significant reform was adopted in Germany in 2016, taking their cue from the experience in the UK centred around the slogan “No Means No”. The Commission of Enquiry into Femicide reports that: “The onus of the criminal conduct ceases to be on violence or the threat of violence, as an instrument

**Istanbul Convention**

13

#### **Countries**

out of the 31 that ratified the convention have actually introduced the concept of consent in cases of sexual violence in their legal code. Even in Italy, there is no reference to consent in the current law

to force a subject to have sex and now focuses rather on the lack of consent of the partner. It is no longer necessary for the prosecution to demonstrate that the plaintiff was forced unwillingly to submit to the accused through violent constraint, because in judicial praxis this implied demonstrating an active and potentially effective reaction by the plaintiff, with respect to the violence or threat of violence suffered, with a reversal of roles in the trial process between the accused and the plaintiff". It is well to point out that still today many countries – probably the majority at world level – continue to maintain this distinction, once part of Italy's criminal code, between the crime of sexual violence (rape), understood as sexual penetration, and sexual abuse, used to prosecute other sexual acts forced on victims by means of violence or the threat of violence, or surprise.

A case which happened in 2016 in Spain, involving a group of young men and a minor and referred to as La Monada, provides a good example. The prosecutors made a distinction, based on Spanish law, between sexual assault perpetrated through violence and sexual assault perpetrated without consent on a victim who, at the time of the event, is incapable of expressing consent. When it became known that the men were accused of a lesser crime, i.e., not rape but sexual abuse, for which the five accused were sentenced to nine years in prison, there was a public outcry with thousands of women taking to the streets. There was also criticism of the decision from nearly all sides of the political spectrum, and in 2021 the Spanish Supreme Court amended the verdict.



Most countries continue to make a distinction between the crime of carnal violence and the crime of sexual aggression



### **Delays in reporting abuse and lack of training**

In December 2021, GREVIO, in their mid-term evaluation, commented: “as regards violence against women, there is insufficient training and specialisation and a lack of specific protocols in the police force”. This leads to failure to act or delays in opening investigations. Hence, the need to introduce or intensify compulsory training is evident in most countries, including Italy, Denmark, Belgium, Finland, France, Malta, Montenegro, Holland, Portugal, Serbia, Spain, Sweden and Turkey. The GREVIO report goes on: “This training should, amongst other aspects, instruct the police how to treat victims in such a way as to avoid secondary victimisation; make officers aware and sensitive to indications from women who find themselves in precarious situations”. In particular, the report found evidence of an incoherent use of protocols and guidelines, because the decisions on whether to proceed are often based on the subjective evaluation of individual officers or conditioned by gender stereotypes and patriarchal culture.

Delays in police response to reports of sexual abuse are evident, above all, in Belgium, Italy, France, Malta, Montenegro, Portugal, Spain, Sweden and Turkey. Often the reports of domestic abuse are downgraded by officers as private questions or run-of-the-mill family rows; they consequently see their role as one of peace-makers, bringing the two sides together, without the need to record the episode. In the case of Sweden, delays are linked to the authority's definition of priorities: victims of rape or domestic violence often have to wait months before any action is taken. In Portugal, GREVIO urges the authorities to identify where the delays and bottlenecks occur along the judicial chain in order to intervene effectively. In France and Portugal, the



Decisions taken by the police are too often based on individual intuition and gender prejudice

report found stereotypes connected with the idea of false accusations by women reporting sexual abuse. In numerous countries, including Belgium, France, Sweden and Turkey, lack of faith in the police is one of the major obstacles to women seeking help and justice; this diffidence is also fuelled by the low conviction rates for sexual offences. In Austria the report found an inadequate system of supervision of public prosecutors, with a consequent tendency not to open criminal proceedings in cases of domestic violence.

The GREVIO investigators, in line with article 15 of the Istanbul Convention, continually emphasised the need to guarantee training for police officers, lawyers, magistrates, doctors, nurses, midwives, psychologists, immigration officers, social workers, teachers and all other public service workers.

In Austria, for example, domestic violence is included in the two-year induction course for young police officers. Holland is praised for its “efforts made in the field of prevention, including a training module for midwives, courses for young health workers and work with young parents”, and a special mention goes also to Denmark. In Spain, many universities have introduced degree courses with specific emphasis on violence against women; in Sweden gender violence courses have become compulsory for certain types of degrees.

That said, Albania, Austria, Belgium, Denmark, Finland, France, Italy, Malta, Montenegro, Holland, Portugal, Serbia, Spain, Sweden and Turkey have all been urged by GREVIO to make gender-based violence courses systematic and compulsory. The situation in Malta is particularly alarming, given the levels of ongoing trials and guilty verdicts for all forms of gender-based abuse. Finally, the Senate Commission on Femicide opined that Italy is the “Cinderella” of Europe when it comes to professional training in this matter.

### **Fostering and adoption: a system full of holes**

“Sadly, the monitoring work carried out by GREVIO throughout Europe and beyond, has revealed severe lacunae in the judicial framework and practice when it comes to the obligation to guarantee the safety of women and child victims and to protect their custody and visitation rights, as stated in article 31 of the Istanbul Convention”, says Simona Lanzoni, vice president of GREVIO, as well as vice president of the Fondazione Pangea Onlus. In particular, in Albania, Belgium, Italy, Monaco and Turkey, there was an absence of any explicit reference to domestic violence as a legal criterion to be taken into consideration in court decisions on custody and visitation rights. “Often the professionals involved are untrained and unaware of the pernicious effects of domestic violence on young children, who then find themselves hostage to an abusive and controlling parent”, Simona Lanzoni explains. In the monitoring of Italy and Malta, GREVIO found a lack of consultation between civil and criminal courts in cases dealing with child custody and visitation rights, even where criminal charges are pending on the children's father. Italy, Montenegro and Portugal have problems with consultations and coordination between the different agencies and professionals involved in child protection, such as the police, doctors, teachers and women's organisations. “One of the great problems at the heart of custody and fostering concerns the rights of the abusing father to visit his children, and here we find a total lack of any risk assessment”, says the vice president of GREVIO, “especially in France, Italy, Holland, Mon-



There is a serious and widespread lack of awareness on the pernicious effects on young children of the domestic violence they are hostage to



tenegro, Portugal, and Denmark”. Other critical areas regarded the venue and personnel responsible for supervising visits. In France and Andorra, for example, these places were better equipped to deal with conflictual relations than with violent ones. Even in Spain, examples of prejudice were found among the personnel dealing with supervised visits towards the victims of domestic violence. Another worrying area of concern is the lack of obligatory notification of the judicial authorities when violent incidents occur during the visits.

“This is why it is so important for the authorities to introduce procedural guarantees that the parental visits do not coincide, as well as separate waiting rooms in the court houses and these procedures should be monitored carefully”, underlines Simona Lanzoni. Perhaps surprisingly, one of the countries where GRE-VIO has expressed most concern is Denmark, where the woman is forced to participate in mediation with her ex-partner through a series of joint meetings, even when the couple's former relationship was marred by violence.

In Spain and France, on the other hand, according to the Senate Commission's report into Femicide, family mediation is interpreted in a restrictive manner, as envisioned in the Istanbul Convention, by deciding to not to embark on such encounters where there has been gender violence. Correct mediation can only be established between two subjects who are on an equal footing, whereas the use of mediation in a context of disparity and violence can only lead to reproducing the same unacceptable dynamic, thereby giving a basically oppressive si-



One of the problems in cases of custody and the visiting rights of an abusive parent is a lack of risk evaluation

tuation a patina of legality. Finally, Spain and Norway emerge as the two countries with the best coordination between civil and criminal law.

### European Parliament resolution

In the resolution approved in 2021, the European Parliament, expressing concern “for the notable disparity between member states on the issue of gender-based violence”, recommended the setting up of courts and specialised sections, and specific training for the professionals involved in combating domestic violence. A certain concern was expressed by members of the European Parliament about the influence of prejudice and gender stereotypes, which often lead to a failure to deal with this grave problem adequately. Strasbourg then called on all member states to adopt “legislative and other necessary measures to guarantee that the episodes of domestic violence are taken into consideration when dealing with fostering and visitation rights in relation to minors, so that exercise of whatsoever right to visit or custody does not prejudice the rights of the victim or her children”. The European Parliament has strongly condemned the application of non-scientific ideas and theories to cases of parental custody and visitation rights, and has urged all member states to discourage recourse to or even altogether remove the co-called “syndrome of parental alienation” (along with analogous concepts and terms, based on gender stereotypes) from their legal code and judicial practice. In the words of the European Parliament: “The interests of the minor must be given precedence”.



Mediation can only have a positive outcome if the parties involved are on an equal footing





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EUROPE'S  
JUDGEMENT



THE COURT OF HUMAN RIGHTS, GREVIO AND EIGE

# Italy is promoted for the norms but failed for their practical application

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**Simona Rossitto and Chiara Di Cristofaro**

Italy passes the European test for the regulations on gender-based violence, support for the children of the victims of femicide and certain procedures adopted by the police, but fails for the practical application of said regulations and for the persistence of patriarchal attitudes which underlie secondary victimisation. This is what emerges from the decisions and reports of official bodies, such as GREVIO (the independent expert body responsible for monitoring the implementation of the Council of Europe Convention on Preventing and Combating Gender Violence), the European Court for Human Rights and EIGE (the European Institute for Gender Equality). To be brief, much has been done but much more still needs to be done.

An ever increasingly important role in recognising the responsibilities of governments in tackling gender violence has been assumed by the European Court. “The work of Strasbourg is most important, also because”, says Titti Carrano, a lawyer

## Gre vio

GREVIO is a group of independent experts attached to the Council of Europe that monitor the application of the Istanbul Convention

representing the network D.i.Re. – Donne in Rete contro la violenza, who followed the Talpis case, among others, for which Italy was condemned in 2017, “even if the European Convention on Human Rights and Fundamental Liberties does not make any specific reference to women, the Court is making appreciable inroads into this area”. Indeed, it recognises the extent of the phenomenon of domestic violence, and the discriminatory subtext often behind the inaction of the authorities, which can only be understood from a gender perspective.

### **Italy under surveillance after the Talpis case**

In the Talpis case, Italy was condemned for the inability of the authorities to prevent the husband from attempting to kill his wife and killing the son, who had intervened to defend his mother. Following the sentence Italy was placed under special surveillance: the Committee of Ministers of the Council of Europe issued their findings in October 2020 and, though praising the notable progress made by the authorities in preventing and combating violence, expressed their overall dissatisfaction with Italy. This executive body underlined the crucial importance of an adequate, effective and rapid response by the police and the magistrates to acts of domestic violence in order to protect the victims and to guarantee their access to the support and assistance they need. The Committee of Ministers went on to condemn the deplorable failure of the Italian government to provide in full all the information requested, which left the Committee unable to judge whether the measures put in place



The Court of Human Rights in Strasbourg has made appreciable progress in furthering the legal rights of victims of domestic violence

**TITTI CARRANO — LAWYER**



have actually remediated the failings hitherto condemned. “Thus”, the Committee continues, “it is of fundamental importance that the authorities rapidly supply all the statistical data on the impact of the measures adopted as requested.

Italy should have complied with this sentence by 31 March, 2021, but at the time of writing still had not done so.

### **Italy under surveillance again in the Fortezza da Basso case**

In the Talpis case, says Titti Carrano, “there are numerous aspects that are linked to secondary victimisation, and sexist stereotypes common in Italian society, as already pointed out by GREVIO. Yet Italy is not the only country to be subjected to scrutiny by Strasburg on the question of gender-based violence. Take the Kurt case in Austria: Mrs Kurt had filed for divorce from her husband, a man who had been prohibited by the court from approaching the vicinity of his wife after various episodes of violence. In March 2012, while the divorce case was still in progress, the husband turned up at the son's school and asked the teacher, who was not aware of the family's circumstances, if he could have a word with his son. Not seeing the boy return the teacher went to look for him and found the boy's body, in the school basement, shot by his father, who subsequently committed suicide.

Mrs Kurt, who maintained that after she had reported her husband to the police for violence, he should have been placed in preventive custody, initiated a legal battle without



The Talpis case revealed many aspects of secondary victimisation, in particular the failure of the Italian authorities to protect a woman at risk

success in all three levels of the Austrian judicial system, so she took the case to the Court in Strasbourg. In this case, the European Court of Human Rights decided that the Austrian authorities had adopted all the measures at their disposal. The Court's decision however was accompanied by a “dissenting opinion”, as not all were in agreement with the majority of the judges who saw no recognisable risk to the child's life.

### **Borgna: “There is also the option to appeal to the CEDAW”**

After the three levels of justice in one's own country and an appeal to Strasbourg, there is another avenue that victims of violence can explore, that is recourse to the CEDAW, which has only been taken by one person from Italy, some 10 years ago. Giulia Borgna, a lawyer based in Rome and an expert in international law, explains: “As regards the elimination of discrimination and violence against women a fundamental role is played by the Convention for the Elimination of Violence against Women, adopted under the aegis of the United Nations in 1979”.

The activation of the Convention, Borgna continues, “is overseen by the CEDAW Committee, which can receive and examine individual communications. In detail, the communications can be presented by individuals or groups of individuals, who believe their rights, guaranteed by the Convention, have been violated by member states that have ratified the so-called Optional Protocol, including Italy”. What is interesting is that not only individuals have the right to apply, but also groups of individuals; this opens the door to organisations from civil society and, in particular, women's support organisations, who play a key role in holding member states to their obligations under

### **The Kurt Case**

In 2019, the judges of the European Court of Human Rights declared, albeit with a minority in dissent, that the Austrian authorities' measures to prevent gender violence could not be held co-responsible for the death of Mrs Kurt's son

the Convention.

The cases the Committee have been most frequently called to act upon, Borgna adds, “are episodes of gender-based and domestic violence, stemming from, or exacerbated by critical gaps and inefficiencies in the agencies, whose role it is to defend women and children. In these cases, the Committee has frequently underscored the fact that negative gender stereotypes are not only the cause of violence in the domestic ambit, but can also be controlling factors in the feeble official response of the authorities, leading to grave forms of secondary victimisation. Should the CEDAW committee accept the communication, which is usually the case, highly detailed recommendations follow, instructing the agencies in violation of the Convention how to remedy the discrimination suffered by the complainant(s) through specific actions and/or to introduce safeguards in the internal legal system to ensure women's rights in the public and private sphere”. The mechanism of individual communications, Giulia Borgna continues, “before the CEDAW Committee, is a powerful tool for protecting women's rights, whose potential has so far only been partly exploited, at least as regards Italy. Albeit not binding, the Committee's decisions do have the weight of strong recommendations”.

### **Cedaw**

This Convention considers discriminatory against women every distinction based on sex that compromises or cancels the recognition, enjoyment, or exercise by women of their human rights and fundamental liberties. The CEDAW Committee monitors the application of the Convention

### **GREVIO: Italy has to do more**

A chiaroscuro photograph of the Italian response to gender violence comes, besides the decisions from Strasburg, from the GREVIO report. This report from 2020, urges the Italian authorities to adopt further measures to protect women from gender violence. Although welcoming the adoption of new norms, such as the law on stalking, the law on paid furlough for victims of abuse and support for the children of victims



of femicide, the report indicates there is still much to be done. Among the most serious weaknesses are the lack of coordination and cooperation between the different agencies, and the tendency of the system to subject the mothers who report their husbands for abuse (also to protect their children) to a second victimisation. Turning to the wide range of secondary victimisation, the report notes that, as regards protection and assistance, the national authorities should prioritise the release of sufficient funds and come up with solutions that would enable the creation of a coordinated interagency response, based on the strong involvement of local authorities and the active participation of all the interested parties, in particular, women's NGOs that offer a place of safety for those at risk. Finally, there is an urgent need to adopt other complementary measures, inspired by basic human rights, to fill the gaps left by the services that ostensibly ought to provide specific assistance and support for the victims of violence, such as the setting up of safe and welcoming shelters for victims of rape and sexual violence.



The new norms are a step in the right direction, such as those on stalking and on the support offered to the children of femicide victims

**GREVIO**

### **The case of Clara Ceccarelli**

“Examples of secondary victimisation”, says Simona Lanzoni, vice president of GREVIO, “are many and wide-ranging. From its perspective, the Istanbul Convention puts victim's rights at the heart of the response to gender-based and domestic violence and secondary victimisation. Individual states do not always manage to coordinate their response to violence, and their failure to enforce the law means that women

and their children at risk have to suffer the consequences, even with their lives. It seems absurd that, even today, women and their children can lose their lives because public employees have not listened to and acted upon their reports of domestic violence”.

A number of recent cases are emblematic of the failures still too often found in the official response to violence. This is the story of Clara Ceccarelli, who died in Genova in February 2021. She tried to report her ex-partner at the height of the lockdown, but nothing was done to stop the man from stabbing her 100 times. Clara, acting on a presentiment, had chosen, and put aside funds for, a tutor to look after her disabled son in the event of her death, as well as making financial arrangements for her own funeral, so as not to leave the expense for others.



The Istanbul Convention puts the issue of rights at the centre of the response to give to those who suffer violence, in order to avoid secondary victimisation

**SIMONA LANZONI — GREVIO**

### **The Paitoni case and a filicide that could have been avoided**

Illustrating the serious and at times fatal breakdowns in the system, is the Paitoni case which, at the beginning of 2022, culminated in the death of seven-year-old Daniele Paitoni and the attempted murder of his mother, Silvia, at the hand of the boy's father, who was in the process of separating from his wife. On more than one occasion Silvia Gaggini had gone to the police to report the domestic violence of her partner, Davide Paitoni who, only a few days before the murder, had tried

to kill a colleague.

“These are certainly extreme cases of secondary victimisation”, comments Simona Lanzoni, “but they must make us stop to think. Article 5 of the Istanbul Convention requires national governments to put in place all possible measures to avoid the recurrence of such events, by guaranteeing protection for those at risk and punishing the perpetrators. Article 29 refers to the complaints procedures in civil cases. In particular, the second paragraph requires the state to implement legislative measures in line with the general principles of international law to ensure commensurate damages for the victims in cases where public agencies have failed in their duty to activate measures of prevention and protection for those in need. In GREVIO's final report on Italy in 2020, the Council of Europe calls on the country to continue and complete the work of honouring its obligations under the Convention. Meanwhile women continue to pay with their lives”.

### **Focus of EIGE on the role of the police**

Another important observation point on Italy is the EIGE – European Institute for Gender Equality. The role of this agency is to promote gender equality both inside and outside the European Union. The EIGE's particular focus is on the evaluation and management of risk on the part of the forces of law and order, with respect to the danger of secondary victimisation. Within this framework, the Institute has published a definitive work, entitled *A guide to risk assessment and risk management of intimate partner violence against women for police*.



The government should adopt measures to fully compensate those who have suffered violence as an indirect result of official neglect or incompetence

**ISTANBUL CONVENTION — ART. 29**



This describes how the police utilise a variety of instruments to evaluate risk in the various EU member states and points out three areas in general need of improvement. First, the need to transfer the emphasis from predicting risk to tackling the specific risks women face from a violent partner, in other words preventing the violence. Second, the risk evaluation of the potential victims themselves must be taken seriously: recent research indicates that the evaluation of the risk by the potential victim is an important source of information that must be systematically recorded and taken into consideration. According to EIGE, this type of information is collected in the process of risk evaluation in the member states, but what is unclear is to what extent the evaluation of the women at risk contributes to the final overall assessment: that is to say, whether the risk is classed by the police as standard, medium or high. A delicate question, given the difficulties women have even today in getting their points of view taken seriously.



A properly trained police force is capable of understanding the gender dynamics of violence

The third aspect that needs to be reconsidered, according to the EIGE, is the risks linked to psychological violence and coercive and controlling behaviours. The studies have brought to light a close link between the perpetration of physical violence and psychological abuse, including emotional and verbal. As recommended by the Council of Europe, member states could take advantage of the development of an evaluation and risk management that reflects the risk of psychological violence. Reformulating the instruments and practice of

risk evaluation by taking into account the factor of coercive control should help the police identify and manage in a more effective way “the models of dangerous behaviours that precede domestic killing”.

### **Gender approach and the central role of the victim**

According to analysis carried out by the EIGE, there are two guiding principles to be highlighted with regard to secondary victimisation. The first is the approach based on gender: police officers, when properly trained, are able to understand the dynamics of the abusive partner and can thus develop intervention strategies that will guarantee the safety of the victim of physical and psychological violence. The adoption then of an approach that designates the central role to the victim that underpins the second principle, allows the police to gauge accurately the risks the woman is exposed to, in that moment, and act accordingly, in a way that is respectful, professional and non-discriminatory.

So, it is widely recognised that training is the key to eliminating secondary victimisation. The report also examines the main instruments used by the authorities, assessing their effectiveness and supplying a set of targeted instruments that, the EIGE hopes, will be adopted throughout Europe, and monitored at regular intervals to assess whether there is room for further improvement.

In 2019 the EIGE carried out a wide-ranging survey, analysing the tools used to evaluate and manage risk adopted throughout Europe with reference not only to the police, but also the justice system, women's centres and shelters run by



An approach that puts the victim at the centre allows the authorities to evaluate possible dangers correctly

women's groups and all the other actors involved. In their conclusions they underlined the fact that “efficient risk evaluation and the procedures used to manage the question of domestic abuse can contribute to a better protection of vulnerable women and their children from further victimisation”.

For the EIGE, the development of a legal framework which is more specialised throughout, at national, European Union and international level should produce a more efficient system, leading to increased protection for the victims of violence. A research effort is needed to enable the authorities to select the most effective and appropriate instruments to meet the needs of every member state. It is also crucial that, “the police officers who are called upon to apply the procedures receive a high level of specialised training. And equally important that cultural awareness is an integral part of the course so that officers understand the different points of view and circumstances of people of different ages, abilities, social class, religious and ethnic backgrounds and sexual orientation. This will help create a more understanding but at the same time more targeted service that will be far better equipped to meet the needs of vulnerable women from across all sections of society.



Italian magistrates do not officially apply a codified evaluation procedure of risk evaluation

### **Italy: good policies, poor practice**

As regards the situation in Italy, the EIGE highlights the fact that, in some court cases involving gender violence, tried and tested methods of risk evaluation have been used (police and carabinieri, casualty wards and women's centres), while, in other cases, risk evaluation has been conducted on the basis



of the official mandate of the body involved, or in accordance with specific legal dispositions (magistrates, social services, and child protection agencies). Among these methods the EIGE committee cites the Eva Protocol, used to by the police to analyse violent incidents; hospital casualty wards refer to “the national guidelines on aid and social and medical assistance for women victims of violence”, while women's centres follow the indications contained the State-Region Accord, on the minimum requirements for women's centres and other voluntary associations active in this area (2014). The women's centres, moreover, use a specific set of instruments, for instance, questionnaires, interviews or other proven strategies.

The Committee notes that the magistrates are not, at the present time, officially applying a codified risk prevention procedure, nor systematically applying a single agreed code for evaluating risk, even if across both criminal and civil law courts, judges and public prosecutors carry out an evaluation of the potential risk to the public in order to decide whether to remand the alleged author of the violence in custody or grant bail. The EIGE investigators conclude: “Despite the fact that risk evaluation has been integrated into domestic legislation and policy for some time, and ever more institutions, both public and private, are referring to it, the evidence gathered by the Committee suggests that its effective application in the Italian context

has not yet been achieved”. Once again, therefore, there are norms and directives but their application has not kept pace.



Greater harmonisation is needed in the practice of evaluation and management of risk

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