

EVOLVING LEGAL LANDSCAPE IN THE FIELD OF DOMESTIC ABUSE IN ITALY

Raffaella Sette¹

Abstract

Italy's slow path of recognizing violence against women legally began long before the implementation of the Istanbul Convention on preventing and combating violence against women and domestic violence (11th May 2011). In fact, starting from years 1968-1969, with the repeal of those articles of the Criminal Code providing regulations for the crimes of adultery committed by the wife and of concubinage committed by the husband, numerous goals had been reached until 2019 when the law regarding “Protection of victims of domestic and gender-based violence” was promulgated. This law accelerated the procedures for the adoption of measures to protect victims, strengthen penalties for some crimes linked to domestic abuse (for crimes of “abuses against family members and others cohabitants” and of stalking), revised some aggravating circumstances and created new types of crimes (the ones of “violation of measures of estrangement from home and prohibition of approaching locations frequented by the offended party”, of “forced and induced marriage”, and of “the illegal circulation of sexually-explicit images or videos” – the so-called revenge porn).

Regarding the interest of the legislator in the broad and multifaced phenomenon of domestic abuse, it is important to specify that Italy belongs to the group of the first countries which ratified the Istanbul Convention allowing, in this way, its entry into force on 1st August 2014. Therefore, legislative changes in Italy are particularly important since the law, apart from the desired deterrent effect, has also a communicative value, as to say that its purpose is to inform citizens about shared values in a specific social context.

However, responses to domestic abuse cannot be and should not be a narrow approach exclusively inspired by repressive logics because sometimes, these could be interpreted as linked to emergency circumstances attributed to situations of exception. Unfortunately, we know that domestic abuse events are not exceptional situations, but they are ongoing phenomena which, although extremely serious, takes on the characteristics of ordinariness and the period of Covid-19 lockdowns, without a doubt clearly highlighted all its seriousness.

Thus, in addition to the punishment, it is equally necessary to focus on the enforcement of the rules and as the Istanbul Convention states, on prevention, protection of victims and integrated public policies.

Therefore, the aim of this article is to show what Italy can still accomplish in this field, especially in the light of the judgement of the European Court of Human Rights of 27th May 2021 (Court's case-law 251: J.L. v. Italy – allegations of gang rape and acquittal of the presumed assailants). This sentence determined that it is essential that “Italian authorities

¹ Full Professor, Interdisciplinary Center for Victimology and Security – Department of Sociology and Business Law, University of Bologna, Italy. E-mail: raffaella.sette@unibo.it

should avoid repeat sexist stereotypes in the area of judicial decisions, minimize gender-based violence and expose women to secondary victimization using blaming and moralizing assertions aiming at discouraging victims' trust in justice".

Keywords: Italy, femicides, dark figure of crime, male-to-female violence, pandemic, Istanbul Convention, secondary victimization, European Court of Human Rights, electronic bracelet

INTRODUCTION

The first objective of this article is to draw on several sources to quantitatively describe the phenomenon of domestic abuse in Italy, considering this to be male-to-female intimate partner violence.

Within this description, some attention will be paid to the situation during the pandemic from March 2020 onwards.

Secondly, some of the most relevant legislative acts aimed at the phenomenon of domestic abuse will receive attention, taking into account that Italy's recognition of violence against women began long before the implementation of the Istanbul Convention (11th May 2011). Moreover, starting from these legislative acts, the author of this article will focus on crime prevention measures, as outlined in the National Strategic Plan on male-to-female violence, years 2021-2023. The aim of these measures is to make every effort to combat discrimination, gender stereotypes and sexism because they create favorable conditions for the perpetuation of male-to-female violence.

Thirdly, the author of this article will highlight that in addition to punishment, it is equally necessary to focus on prevention and the protection of victims. In fact, the analysis of a real case of secondary victimization will enable the author to reflect on the fact that laws alone are not enough.

Finally, the matter under discussion will refer to some critical issues and their possible solutions.

CHANGES IN THE PHENOMENON OF DOMESTIC VIOLENCE FROM 2006 TO 2019

As is now well known, the phenomenon of domestic violence is difficult to measure because it goes largely unreported. In fact, when it comes to violence committed inside families in a broad sense, these facts are usually much difficult to declare and report in comparison with other types of crimes, both because of the relationship between victims and their offenders, and also due to the complexity of emotional and psychological reactions that result from having suffered this kind of violence. Moreover, it is necessary to consider that, following these situations, women usually feel as they are alone in dealing with a drama which, if brought out, would upset the wellbeing of other loved ones.

Indeed, this type of violence is not the typical conflict between partners where the will, and above all, the possibility to engage in dialogue and communicate still exist. Violence, in contrast, is precisely the refusal to deal with conflict and the requested effort to achieve a compromise between different positions; violence is always the imposition of dominance of one partner over the other (Lambertini, 2019, p. 12).

Given its high dark figure, the author of this article will combine police crime statistics with victimization survey data and some information held by other sources (Sette, 2019, pp. 385-386) to understand the trend of this phenomenon. This is why the former, with the exception of homicides (their dark figure is very low), only consists of reported crimes. In particular, the author of the article will also use some data from reports published by ISTAT (Italian National Institute of Statistics) which has long been involved in measuring the phenomenon of violence

against women. In fact, ISTAT carried out two victimization surveys entirely and explicitly dedicated to violence against women (titled Survey of Women's Safety), one in 2006 and the other in 2014 (the survey started in 2019 is currently underway - Senato Italiano, 2018, p. 28). In addition, the author of the article will also use data from the "Information Framework on Violence Against Women" created collecting data from the following sources: police crime statistics, Parliamentary Commission Enquiry on femicides, Equal Opportunities Department, various ministries, regions, victims' assistance women's centers (CAV), women's shelters and other services, for example the national hotline service 1522. This framework was established after the entry into force of the Istanbul Convention on 1st August 2014, and the subsequent adoption by the Italian Government, of the three-year National Action Plan against gender-based violence.

To study the change over time of domestic abuse against women concerning the number of victims and the types of violence, the author of the article will start by analyzing data from the victimization survey of 2014 and making comparisons with the survey of 2006¹.

In 2014, 31.5% of women 16 to 70 years old (6 million 788 thousand) declared to have suffered from some form of physical or sexual violence in the course of their life. In this age group, 20.2% (4 million 353 thousand) suffered from physical violence, 21% (4 million 520 thousand) from sexual assaults, 5.4% (1 million 157 thousand) from the most serious forms of sexual assault (rape – 652 thousand; attempted rape (746 thousand). 13.6% of women in this age group (2 million 800 thousand) affirmed to have suffered from physical or sexual violence committed by partners or ex-partners, with 5.2% (855 thousand) committed by their current partner and 18.9% (2 million 44 thousand) by their ex-partner.

The comparison with data of 2006 shows significant signs of improvement. In fact, physical and sexual violence committed both by partners and ex-partners decreased and a reduction in sexual violence committed by non-partner.

However, aside from this positive aspect, there are two more negative ones because the general decrease did not reduce the most serious forms of violence (rapes, attempted rapes and femicides) and because the severity of violence increased. Indeed, even violence committed by partners resulting in personal injuries increased from 26.3% to 40.2%.

The number of women in fear of their lives doubled from 18.8% in 2006 to 34.5% in 2014. Moreover, violence committed by non-partner males was more serious.

In summary, although violence as a whole declined from 2006 to 2014, this trend, unfortunately, did not apply to the most serious forms, where the intensity increased (Senato Italiano, 2018, pp. 30-31).

In addition to physical and sexual violence, women suffer also from psychological and economic violence, in the form of humiliation, devaluation, intimidation and restriction to their access to their own or family money.

In 2014, 26.4% of women declared having suffered from psychological or economic violence committed by their current partners and 46.1% committed by their ex-partners. Psychological violence experienced a large drop compared to 2006 as did violence committed by current partners (it was 42.3% in 2006). In 2014, less severe forms of violence (cases not accompanied by physical or sexual violence) decreased (from 35.9% to 22.4%).

In relation to the most extreme form of violence i.e. as homicide, it should be noted above all that the crime of femicide does not exist within the Italian legal system because it contains the principle of absolute equality between people. This enshrines that the particular nature of the victim could not constitute a discriminatory criterion between men and women because this would entail breach of the article n°3 of the Constitution². On the contrary, a consequential norm would be necessary if the same types of violence or killings were committed by a woman against a man. This is not possible given that Italian law guarantees equal justice for every human being, irrespective of sex (Floris, 2013).

Therefore, the author of this article will use the word femicide to indicate the criminological and victimological phenomenon of the killing of a woman by a man for gender reasons, specifying that police crime statistics include in the category of "murders" all types of killings, detailing only some of them on the basis of the following motives: theft or burglary; mafia;

terrorism. Consequently, as stated above, figures presented below are obtained by a joint analysis of police crime statistics³ and data from the “Information Framework on Violence against Women⁴.”

Historical statistics of all murders committed show a decrease of 49% between 2006 and 2019 (from 630 to 315).

However, the number of male victims diminished over time (from 4.0 per 100 thousand men to 0.8) while the number of female victims did not decrease similarly (from 0.6 to 0.36 per 100 thousand women). This means that the different trends of murders of men and women have led to radical changes in the ratio between sexes. In the case of men, clear progress has been made, even if the homicide incidence rate is still much greater than that of women. In the case of women, which had a much more favorable situation, the decline over time has been much more slow, in fact coming to a halt.

Focusing on recent years, there were 133 women victims of femicides in 2018 (total number of murders: 311) and 111 in 2019 (total number of murders: 315).

Among these victims, only 15% had previously reported their aggressors (Agenzia Dire, 2021). Therefore, we should really question the reasons which led (and continue to lead) such a large number of women (85% of women fatalities) to not report.

Many of these reasons are by now well known, for example the sense of guilt, shame, lack of economic independence and distrust in the justice system. This latter should be connected to the analysis that will be made in a subsequent paragraph regarding secondary victimization.

However, we should also try to understand why 15% of women, in spite of having reported their aggressors, have been still killed. The author will make some inferences about this in a subsequent paragraph dealing with some critical issues.

Beyond the absolute number of murders, a further key statistic related to gender violence comes from the analysis of the victim-offender relationship. Among the 111 women killed in 2019, 88.3% were killed by a known person. In particular, 40.5% of them were killed by their current partner, 22.5% by a member of their families (children and parents included), 11.7% by an ex-partner, and 4.5% by an acquaintance (friends, colleagues, etc.). Thus in over half of all cases women were killed by their current or ex-partner and this trend has been increased since 2014; as follows: 54,7% in 2014, 54.9% in 2018 and 61.3% in 2019.

THE HIDDEN PANDEMIC OF DOMESTIC ABUSE (2020-2021)

Covid-19 pandemic is a global social fact whose consequences on people, communities and organizations have not yet been evaluated.

The intention of our government to protect our bodies from the coronavirus did not take account (at least at the beginning) one of the heinous consequences of the adopted restriction measures which was that in some cases women must have lived under one roof 24 hours a day with their abusers. As a result, a dramatic impact on the number of incidents of domestic violence and femicides was seen (Sette, Tuzza, 2021).

Prior to lockdown, during January and February 2020, the level of reports of stalking, abuse against family members and cohabitants, and sexual violence, in comparison to the same period of the previous year was fairly constant (January 2019/2020: 3,792/3,124; February 2019/2020: 3,001/2,957).

Predictably, during lockdown in March and April 2020, the number of reports decreased significantly both in comparison to the same period of 2019 (March 2019/2020: 3,317/2,302; April 2019/2020: 3,125/3,128) and to January and February 2020 (Ministero dell’Interno, 2020, p. 5). This is because people’s freedom of movement was restricted and women could not leave the home to seek help without arousing suspicion in their cohabitant partners.

In fact, during the following months of May and June 2020 (May: 3,128; June: 2,941), thanks to less restrictive measures, the number of reports of this kind of crimes increased, attesting similar values of the beginning of the year.

However, during lockdowns, the national hotline service 1522, which combats violence and stalking⁵, as long well as victims assistance women's centers and women's shelters continued to stay open, in compliance with health and hygiene rules⁶.

Generally in 2020, the use of 1522 increased by 79.5% in comparison to 2019, both via phone calls and chat messages (+71%).

The phone call boom was registered starting from the end of March 2020, with peaks in April (+176.9% in comparison to April 2019) and in May (+182.2% in comparison to May 2019). The types of violence notified to 1522 was above all the physical ones (in 47.9% of cases), but almost all women suffered from more than one kind of violence and, among them, the psychological ones come to light (50.5%).

In relation to previous years, the requests for help from young women up to the age of 24 (11.8% in 2020 but 9.8% in 2019) and by women over 55 (23.2% in 2020; 18.9% in 2019) increased.

In the first five months of 2020, 20,525 women approached CAVs, 8.6% of them suffered from violence that arose due to the pandemic situation (for example, the forced cohabitation with the offender, the abuser or due to the woman's loss of employment). Regarding women's shelters, 649 women were housed, 11.6% less than the first five months of 2019. These houses, in fact, encountered more difficulty than the CAVs in organizing women's hospitality and in finding new strategies (55.3% of cases). Regarding 6% of women hosted, the female staff indicated that the critical element was the pandemic situation from which violence has ensued.

Looking at murders committed from January to June 2020, the data highlight a general drop in comparison to the same period of 2019 (161 homicides in 2019, 131 in 2020). However, the number of women increases, from 56 to 59. This means that, as the total number of murders decreased by 19% and the percentage of female victims increased by 5%.

In particular, while in 2019 the female victims were 35% of the total victims of homicide, in 2020 the percentage grew to 45%. The same trend also concerns family (in a broad sense) homicides which, although declining (73 in 2019, 69 in 2020), shows an increase in the occurrence of female victims (from 45% to 53%) in comparison to the total number of victims (Ministero dell'Interno, 2021, pp. 10-11).

The relaxation of pandemic restrictions during 2021 have failed to improve this situation. In fact, on the occasion of celebrations on 25th November 2021, the Ministry of the Interior (pp. 2-3) published the data about murders committed from 1st January to 21st November 2021 which revealed, in comparison to the same period of the previous year, both a slight increase (+2%; from 257 to 263) in the general trend of the phenomenon and a more marked increase (+8%; from 101 to 109) in women killed. Family (in a broad sense) homicides have also increased (+5%; from 130 to 136) as well as the female victims of this crime (+7%; from 87 to 93).

THE LEGAL EVOLUTION IN THE FIELD OF DOMESTIC ABUSE

After having assessed some quantitative aspects of the phenomenon in Italy, without any pretensions of being exhaustive, the aim of this paragraph is to focus on just a few of the most relevant legislative acts which are particularly important within the phenomenon of domestic abuse. In fact, they both provide crucial information to continue fighting against these crimes and open the door to a reform of the law. This legislation contributes to lift the drama of violence against women from the private context of the relationships within the family, clearly stating that these facts are a public and not a private problem (Lambertini, 2019, p. 107). Therefore, legislative changes in Italy are particularly important as the law, apart from the desired deterrent effect, has also a communicative value, such that its purpose is to inform citizens about shared values in a specific social context.

Italy's slow journey to recognizing violence against women legally began long before the implementation of the Istanbul Convention on preventing and combating violence against women and domestic violence (11th May 2011).

In fact, starting from years 1968-1969, with the repeal of those articles of the Criminal Code providing regulations for the crimes of adultery committed by the wife and of concubinage

committed by the husband, numerous goals had been reached by 2019 when the law regarding “Protection of victims of domestic and gender-based violence” was promulgated.

The status of women in society radically changed when the reform of the family law (n°151/1975) was passed stipulating that men and women have equal rights and duties, abolishing both the marital responsibility on the wife and the function of the head of household (this latter will have remained only in the civil-status records until 1989).

Next, on 15th February 1996, the law n°66 titled “Rules to fight against sexual violence” was finally promulgated. This Act is a significant expression of the socio-cultural change of the concept of sexuality in today’s society (Gelmi, 2017). In fact, introducing a number of innovations, the aim of this reform was to protect the physical and moral integrity of people at particular risk of becoming victims of aggression and sexual violence.

The first reform revised the Criminal Code by moving crimes against sexual freedom from the offences against the collective interest of public morality to offences against personal freedom. In fact, the aim of the previous criminal law was not the protection of individuals seen as the holders of the right to sexual self-determination, but its purpose was to protect the social interest considering that it was essential to avoid the public impact created by the crime.

With the aim of ensuring a greater protection of victims, the second modification gathered together the crime of rape with the crime of lewd violent acts, creating the new offence of sexual violence.

The third variation increased the penalties, stipulating a minimum of 2 and a maximum of 10 years of imprisonment⁷, and introduced some aggravating circumstances which contribute to increase the penalty by up to one third (for example, if victims are under 18 or in cases in which facts are committed using weapons or when under the influence of alcohol, narcotics or drugs). Taking into account the alarming rise of cases of sexual violence, given the extraordinary urgency and need for instruments to provide greater protection to the community, the 23rd April 2009 law n°38⁸ was promulgated. This act was built on the following three thematic axes: public safety, the fight against sexual violence, and stalking. The first two axes completed/modified legal arrangements already existing in Italian law, whilst measures related to stalking constituted a novelty (Salsi, 2012).

Referring to the first two axes and with a particular interest in reinforcing the protection of victims, this law made the concession of penitentiary benefits (for example, jobs outside the prison, authorizations, and alternative measures to detention) more difficult for people convicted of some sexual crimes. As a result, these benefits could be granted only on the basis of the results of the scientific observation carried out in prison during at least one year.

The introduction of the crime of stalking in the Criminal Code⁹ is related to the creation of a new instrument of protection, the warning, with the aim of protecting victims in a more efficient and timely manner. Thanks to this legal arrangement, the intervention of law enforcement authorities could be quicker and more flexible than the intervention of the competent judicial authority. In fact, before bringing an action against the perpetrator, a stalking victim might go to police authorities and ask the Police Chief Constable (Questore) to warn them.

This is a new prevention measure which should become fundamental in dissuading aggressors, inducing them to reflection and repentance before an eventual escalation of the crime could lead to activation of the criminal proceedings for stalking.

In other words, this Act is characterized by the purpose of discouraging, in the context of affective relationships, violent, or whatever particularly regrettable, behaviors that, if they are not yet offences against a person or property, could result in crimes causing more severe injuries. The violation of the warning automatically gives rise to a criminal proceeding and provides for aggravation of the penalty.

After a few years, on 27th June 2013 Italy appeared in the first group of countries which ratified the Istanbul Convention, thus allowing its entry into force on 1st August 2014.

Also in 2013, as previously occurred after a series of crimes that shocked public opinion and media, our Government thought it would be necessary to approve a law decree on femicide (n°93, which was then converted into law n°119/2013). The President of Italian Republic ratified it arguing that

a series of very serious and ruthlessness facts against women and the resulting social alarm require urgent actions with the objective of tightening criminal penalties for dissuading the authors of these facts, by introducing, in certain cases, some prevention measures aimed at protecting women in advance and all the victims of domestic abuse (Battaglia, 2013).

With this rule, the legislator did not directly intervene neither on the crime of homicide nor on the related aggravating circumstances, considering that it would be enough to modify the so-called “spy crimes” (for example, abuses against family members and other cohabitants, threats, stalking, and sexual violence) which are associated to the danger that these facts could lead to a more serious outcome.

The parts of the law that are more of interest here provide for an increase of the penalty for the abuses against family members and other cohabitants and for stalking, along with the obligation on the police authorities to arrest those engaged in committing these offences. Moreover, where the crime (in particular, the ones of violation of family care obligations, abuse of disciplinary procedures, child prostitution and child pornography) is detected when committed, and taking into account the danger for victims and/or the repetition of the offence, it is possible to order the urgent estrangement of the abuser from home and family with a prohibition on approaching protected persons or the obligation not to enter certain localities where protected persons reside or visit.

Even without penal action initiated against the abuser, the Police Chief Constable (Questore) could warn the perpetrator when police forces receive news, also sent by an anonymous person, regarding facts of beatings and personal injuries related to the phenomenon of domestic abuse. Finally, on 20th July 2019, law n°69, regarding “Protection of victims of domestic and gender-based violence”, better known as “Red Code”¹⁰, was approved. This law modified both the Criminal Code and the Code of Criminal Procedure.

Regarding the modifications to the Criminal Code, besides having tightened penalties for some types of domestic abuse offences¹¹, the law created new types of crimes (the ones of “violation of measures of estrangement from home and prohibition of approaching locations frequented by the offended party”, of “forced and induced marriage”, and of “the illegal circulation of sexually-explicit images or videos” – the so-called revenge porn).

Concerning the Code of Criminal Procedure, to accelerate investigations and proceedings, the law established a presumption of imperative urgency for the prosecution of this kind of crimes in comparison with other offences.

In terms of increasing of the safety of the victims by promoting the respect of estrangement measures, with this law, the judge can reinforce control procedures through the use of electronic devices, for example the electronic bracelet.

The law also imposes the obligation to inform victims, their lawyers, and finally the civil judge when their abusers are released from prison, escaped, or when other coercive measures are revoked/substituted.

Moreover, to reduce the recidivism, the law provides for those sex offenders definitely convicted to attend programs of psychological support and help. The positive evaluation of their results becomes a fundamental aspect to take into account when judicial and penitentiary authorities decide about the possibility of giving the convicted person some forms of benefits. Finally, as stated by Istanbul Convention, training is crucial for all professionals who, in various forms, come into contact with victims. In this sense, law n°69 provides for the provision of specific training for Police, Carabinieri and Penitentiary Police staff.

This professional training gives the opportunity to address the topic of crime prevention measures. These measures, even if not provided for by specific laws, are outlined in the National Strategic Plan on male-to-female violence, years 2021-2023, on the basis of legislative acts described above in this paragraph. This plan approved by the Government in November 2021 and to be implemented by means of networks composed on one hand by the Department of Equal Opportunities (Presidenza del Consiglio dei Ministri, 2021, pp. 26-34) and, on the other, in each case by other national administrations, regions, local authorities, for-profit organizations and NGOs. One of the intervention fields envisaged covers crime prevention

measures, which includes as priorities the specific areas of primary, secondary, and tertiary crime prevention.

The plan proposes primary crime prevention as a means to both raise awareness and to promote communication and as educational interventions aimed at the prevention of gender-based violence via changing gender stereotypes thereby fostering a culture of respect for the equality of men and women. In this way stigmatization of gender-based violence with regard to social models can be achieved. The target group of primary prevention are young people and, therefore, activities should be done in schools, training centers, universities, aggregation and venues for socializing, for example, sports and fitness centers, bars and nightclubs.

Secondary crime prevention activities take place in locations and specific situations where male-to-female violence is more common or related to bigger risk factors. In this sense, the target group is women, and the activities are divided into two areas. The first one covers the promotion of empowerment, financial autonomy, and the treatment of gender in labor market policies. The aim of the second area is to focus on the emergence of violence against women who are victims of multiple discrimination, migrant women, and female refugees seeking asylum.

Finally, tertiary crime prevention includes actions both to minimize recidivism of male abusers (adults and minors), for example setting out procedures to guarantee everyone, regardless of income, access to treatment programs, and to help children who witness domestic abuse.

Parallel to these three areas of crime prevention measures, the National Plan includes specific training for all the professionals who, in several respects, are involved in interactions with female victims of violence. The Plan also foresees monitoring and continuous evaluation via the adoption of a methodology based on quality standards and shared indicators in the long run.

WHEN THESE LAWS ARE NOT ENOUGH: THE PHENOMENON OF SECONDARY VICTIMIZATION

As briefly highlighted in the preceding paragraph, Italy has now adopted an excellent package of laws and also established a National Plan of intervention to combat domestic abuse.

In fact, the GREVIO's (Groups of Expert on Action against Violence against Women and Domestic Violence) Evaluation Report on legislative and other measures implementing the provisions of the Istanbul Convention stated that a succession of legislative reforms has created an extensive set of rules and mechanisms reinforcing the authorities' ability to match their intentions with concrete actions to stop the violence. Some of these legislative initiatives were particularly innovative, such as the legislation of 2009 on stalking, which contributed to raising awareness of the dangers associated with this criminal behavior and the need to afford victims appropriate protection. More recently, law n°69 of 19th July 2019 (known as the Red Code) introduced further measures to increase the effectiveness of judicial responses to violence against women and improve victims' protection (GREVIO, 2020, p. 87).

However, it is not possible to solve this kind of problem only by referring issues to Courts, rather sometimes it is precisely these places from which victims wish to stay far away. In fact, obstacles which female victims of violence may face when entering into contact with formal agencies of social control are those reasons that, unfortunately, convince them to avoid the legal procedure.

These are situations of secondary victimization, in other words those conditions of additional suffering and outrage experienced by victims that are provoked by the lack of comprehension and attention to their claims by institutions due to an extreme routinization of the interventions, defined as the one-size-fits-all-approach (Fanci, 2011, p. 54).

The Recommendation Rec(2006)8¹² of the Committee of Ministers to Member States on assistance to crime victims defines secondary victimization as those situations in which the victimization occurs

“not as a direct result of the criminal act but through the response of institutions and individuals to the victim”.

“Secondary victimization may be caused, for instance, by repeated exposure of the victim to the perpetrator, repeated interrogation about the same facts, the use of inappropriate language or insensitive comments made by all those who come into contact with victims”¹³.

In fact, the difficulties which may occur during the application of laws can be also linked to the fact that professionals have not received adequate training and, because of this, they are not always able to recognize the global framework of the violence, thus demonstrating a lack of awareness of the devastating consequences stemming from it. Those who do not recognize the characteristics of gender-based violence, underestimating its risk factors, cannot protect victims adequately and may hinder access to the protection guaranteed by laws (Commissione Parlamentare d’inchiesta sui femminicidi, 2020, p. 7).

If the required institutional response is not always well aligned with law, the risk would be that abused women increase their degree of distrust in the justice system, distrust which could be the reason for not reporting crimes.

As a consequence of a secondary victimization experience, on 27th May 2021 Italy was condemned by the European Court of Human Rights (ECtHR) to pay EUR 12,000 in respect of non-pecuniary damage to compensate the applicant who was a woman raped in Florence in 2008 by a group of 7 men¹⁴. For this fact, the Court of Appeal of Florence, in 2015, acquitted the defendants claiming that this event was not a rape, but a mere “misinterpreted sexual intercourse”. As a result, the event, even if regrettable and “not exactly commendable for anyone”, had no criminal significance for the Court of Appeal. It is important to note that before the Court of First Instance had sentenced 6 out of 7 men to 4 years and 6 months’ imprisonment for gang rape taking into account the additional aggravating circumstance that the victim was drunk, namely that rapists abused her physical and psychological inferiority related to being under the effect of alcohol.

This case and the criminal proceedings had a significant media repercussion. The applicant created a blog on the Internet about the cause of gender equality and the fight against gender-based violence. On 5th August 2015 some female MPs sent a Parliamentary question to the President of the Council of Ministers and the Minister for Justice asking for some clarifications about the grounds of the Court of Appeal’s judgment and its compatibility with national and international laws protecting sexual abuse victims’ rights the fighting against gender-based violence. This Parliamentary question had never been examined¹⁵.

Thus, the victim filed an appeal with the ECtHR and alleged that the manner in which the Court of Appeal’s criminal proceedings had been conducted entailed a violation of article n°8 of the European Convention of Human Right (ECHR) (“Right to respect for private and family life”). However, she did not criticize the acquittal of the defendants.

The applicant explained that the proceedings as a whole were long and painful and considered that the judges of the Court of Appeal of Florence had overemphasized in an unjustifiable manner her way of life in seeking to undermine her credibility and minimize the fact of violence. In this sense, some circumstances, namely her sexual orientation, family life, clothing and artistic activities, had been considered crucial by the Court of Appeal in order to acquit the defendants. However, the victim claimed that national authorities were under an obligation to protect her as a woman had been sexually abused and, therefore, as a vulnerable person.

The ECtHR upheld the action brought by the applicant considering that

“the language and arguments used by the Court of Appeal conveyed prejudices existing in Italian society regarding the role of women and were likely to be an obstacle to providing effective protection for the rights of victims of gender-based violence, in spite of a satisfactory legislative framework”.

The ECtHR also declared that the emphasis placed by the Court of Appeal on some aspects of the private life of the applicant is incomprehensible because these aspects are completely insignificant both to assess her credibility and to determine the criminal liability of accused persons.

In the ECtHR's opinion, the positive obligations to protect presumed victims of gender-based violence impose

“a duty to protect their image, dignity and private life, including through the non-disclosure of personal information and data that were unrelated to the facts. This obligation was moreover inherent in the judicial function and arose from national law as well as from various international texts”.

Then, the judgement highlights that

“judges' entitlement to express themselves freely in decisions, which was a manifestation of the judiciary's discretionary powers and of the principle of judicial independence, was limited by the obligation to protect the image and private life of persons coming before the courts from any unjustified interference”.

The Court concluded that criminal proceedings and penalties played a crucial role in the institutional response to gender-based violence and in combatting gender inequality. It was therefore essential that the judicial authorities avoid reproducing sexist stereotypes in court decisions, avoid downplaying gender-based violence and avoid exposing women to secondary victimization by making guilt-infering and judgmental comments that were capable of undermining victims' trust in the justice system.

For all these reasons, it has been held that Italian authorities

“had not protected the applicant from secondary victimisation throughout the proceedings as a whole in which the wording of the judgment played a very important role, especially in view of its public character”.

Therefore, the ECtHR held by six votes to one¹⁶ that applicant's rights and interests under article n°8 of ECHR had been violated.

This is the first judgment delivered by a supranational European Court about judiciary sexist prejudices, which constitutes one of the major causes of inefficiency in the fight against male violence against women (Commissione Parlamentare d'Inchiesta sui femminicidi, 2020, p. 78). Although the path is uphill, the ECtHR judgment is a little, but important, step forward because it restates the need for a specific training for judiciary professionals in order to remove the use of sexist stereotypes and to prevent secondary victimization phenomena. In fact, judiciary professionals without this kind of training on gender-based violence are neither able to recognize nor to evaluate the gender aspect of violence. As a result, they minimize the disparity of power in such a context, complying with profound stereotypical perceptions.

It is necessary to guarantee adequate training to all professionals, including judges and lawyers, to enable them to properly classify the violence of some male behaviors as gender-based and to prevent them from continuing to label them as ordinary and legitimate behaviors or, at best, like a form of “old mindset” (Commissione Parlamentare d'Inchiesta sui femminicidi, 2020, p. 51).

Even though the Istanbul Convention, article n°15, requires to the signatories to “provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence”, unfortunately the Italian law of 2019, known as the Red Code, provides for a specific training for police force professionals only.

Finally, with reference to feedback relating to the effectiveness of crime prevention measures (when made public) it is to be evaluated by both monitoring actions taken under the aegis of the National Strategic Plan on male-to-female violence (synthetically described in the preceding paragraph), and the next GREVIO's Evaluation Report (which is expected to be published in June 2025¹⁷).

SOME MORE CRITICAL ISSUES AND POSSIBLE SOLUTIONS

In the preceding sections that analyzed domestic abuse from different point of view, besides the phenomenon of secondary victimization a number of more critical issues also emerged.

Consequently, the aim of this paragraph is to highlight them by means of a list drawn up to set out possible solutions.

The dark figure of crime:

The first critical issue concerns the significant but unquantified number of unreported domestic-abuse-related crimes. This includes the interrelated phenomena named by criminological and victimological literature-as “under-reporting” and “under-recording”.

“Under-reporting” represents the fact that people for various reasons do not always report an experienced crime to authorities. According to the Crime Survey for England and Wales 2018 (Office for National Statistics-UK, 2018), some reasons for not reporting to the police are: the police could not do anything, too trivial/not worth reporting, police not interested/bothered, private matter/dealt with by themselves, inconvenient to report, reported to other authorities, no loss/damage, fear of reprisal, offender not responsible for actions, dislike or fear of the police.

As seen above, being a victim is often accompanied by a sense of humiliation, of shame. In brief, underreporting has also to do with the phenomenon of secondary victimization.

Under-recording is the cause of under-reporting. “The under-recording of crime is more than a question of getting the statistics wrong. If an offence is not officially logged, it may not be investigated. And without a police inquiry there is no hope of finding the perpetrator and preventing other crimes” (Shaw, 2014).

One of the possible solutions to this problem could be “third-party reporting”. Third-party reporting is an alternative way for people to provide a formal report, without having to go directly to the police station or start a criminal investigation. “Instead, the report is taken and kept by a community organization that is separate from the police. The community organization provides a redacted copy of the report to the participating police force (redacted means a copy with all identifying information about the survivor/victim removed)”. This gives greater control over the process to the victims – they can provide more information about the incident itself to police, but without having to identify themselves or start a formal police investigation and criminal justice process until they are ready to do so (The Journey Project, 2021).

The fragmented nature of data:

In Italy, a data collection system coordinated by a central agency does not exist. In fact, to sketch out the phenomenon from a quantitative point of view, the author of this article had to combine police crime statistics with victimization survey data and some information held by other sources.

In fact, a national collection system of data about victims of violence who sought the assistance of health and social services does not exist. Even observatories on violence against women created as a result of regional laws or other protocols, with few exceptions, do not collect all the fundamental information, leaving aside, for example, the sex of all individuals involved or the perpetrator-victim relationship. Police forces and legal (penal and civil) sources are not complete. For example, they lack figures (or they are not disclosed) regarding estrangement orders and Questore’s warnings (Biaggioni & Pirrone, 2018, pp. 18-19).

However, the Istanbul Convention at chapter II “Integrated policies and data collection” pays particular attention to the importance of data that is recognized as an essential instrument to study root causes and effects, incidences and conviction rates of all forms of violence, as well as the efficacy of measures taken to implement the Convention.

It is therefore urgent that Italy should ensure that an integrated system of data collection is established to overcome the current fragmented and partial nature of information to prevent and combat domestic-abuse-related crimes and improve help and protection services to victims.

Women who were killed even if they had reported the violence before:

The author of this article highlighted above that among the victims of femicides, 15% of them had previously reported their aggressors. Obviously, in these cases, it is important to understand what did not work within the protection system.

In fact, it happens that complaints are closed without opening criminal proceedings, judicial offices encounter some difficulties in respecting the timing of the cases, controls through electronic bracelets are not particularly stringent or these devices are not available.

To be brief, leaving out the first two aspects, which are an index of judicial system inefficiencies, the author of this article would like to analyze some more details about controls carried out through electronic bracelets.

Those who are warned or ordered with an urgent estrangement are banned from approaching protected persons, obliging them to not enter certain localities where protected persons reside or visit. They are allocated electronic bracelets when possible and considered appropriate. Thus, for example, if a victim of stalking often visits her parents at a specific address, the stalker must stay away from that place. However, the victim is not adequately protected because the stalker could approach her in other places not affected by the prohibition this keeping her under surveillance. In this case the electronic bracelet would serve no purpose.

In fact, electronic bracelets are monitoring devices that track movements of those who wear them when they enter certain established exclusion zones.

Therefore, as already proposed by experts (Moscagiuro, 2021), victims should also wear an electronic device to detect the presence of the aggressor in their immediate proximity and send an alarm signal to the monitoring center. Devices worn by victims should also have an alarm button to push for directly calling police forces.

When violence hit same-sex couples:

In the previous paragraphs, the author of this article looked specifically and sometimes implicitly at violence committed by men against women, as they concern the most frequent scenarios. However, violence has a thousand faces, also like a rainbow (as the symbol of LGBTQ social movements - ArciLesbica & D.i.Re., 2016).

Same-sex intimate partner violence, or involving transgender persons, can take the same forms of facts regarding male violence against women. However, domestic abuse in these contexts may take also particular characteristics as, for example, homophobic, transphobic and biphobic slurs, offences or humiliations, blackmailing (or threat of blackmailing) associated with the “outing” of the partner who has not yet disclosed their sexual orientation risking rejection from family, friends, colleagues or employers.

Some of the critical issues analyzed in this article related to facts where aggressors are men and victims are women could be exaggerated in the case of same-sex couples. For example, collected data on domestic abuse focus on heterosexual relationships and, particularly, on heterosexual women; not all CAVs provide assistance to lesbian or transgender women who are exiting from violence; CAVs assisting abused men are smaller in number in comparison with those assisting abused heterosexual women; the idea that domestic abuse concerns only heterosexual couples can take professionals by surprise when facing facts regarding same-sex couples.

Therefore, all recommendations on the better training of professionals who deal with victims or perpetrators of all acts of domestic abuse have to be particularly addressed to remain open to and study same-sex couple violence.

CONCLUSION

Data and analysis presented above have clearly showed that issues regarding victims of domestic abuse cannot be separated from the fact that the mere punishment of perpetrators is not enough to limit the phenomenon. The criminal justice system alone cannot counteract the spread of domestic violence and, for this reason, there is a need for a real “victim care system”. Victims need to be protected from re-victimization and need support. A comprehensive and

effective victim protection policy must work in parallel with criminal justice procedures and go beyond them.

This approach would not only heal the “wounds” left in victims and their loved ones, but also aims to relieve society as a whole.

In other words, it is necessary to recognize the feelings of those who suffer from many forms of behavior linked to domestic abuse to provide effective care and protection for victims. Only by being conscious of the perception of the injustice suffered by victims will it be possible to take appropriate action, because any jurisdiction over domestic abuse must be aware of the dynamics and complexity of such acts.

REFERENCES

Agenzia Dire (22/11/2021)., *Violenza sulle donne, l'85% delle donne non aveva denunciato. Il magistrato: 'Sfiducia nel sistema giudiziario'*. Roma. Retrieved from www.dire.it

ArciLesbica & D.i.Re. (a cura di) (2016). *La violenza ha mille volti. Anche Arcobaleno*. Florida. Edizioni Epsil.

Battaglia, S. (2013). *Legge sul femminicidio: modifiche normative e questioni connesse*. Retrieved from <https://www.altalex.com/documents/news/2013/11/26/legge-sul-femminicidio-modifiche-normative-e-questioni-connesse>

Biaggioni, E., & Pirrone, M. (2018). *L'attuazione della Convenzione di Istanbul in Italia. Rapporto delle associazioni di donne*. Retrieved from <https://www.direcontrolaviolenza.it/wp-content/uploads/2019/02/Rapporto-ombra-GREVIO.pdf>

Commissione Parlamentare d'inchiesta sui femminicidi (2020). *La risposta giudiziaria ai femminicidi in Italia*. Roma. Senato della Repubblica Italiana.

Fanci, G. (2011). *La vittimizzazione secondaria: ambiti di ricerca, teorizzazioni e scenari*. *Rivista di Criminologia, Vittimologia e Sicurezza*. V(3), 53-66.

Floris, B. (2013). *Luci ed ombre del femminicidio*. Retrieved from <https://www.filodiritto.com/luci-ed-ombre-del-femminicidio>

Gelmi, N. (2017). *La violenza sessuale*. Retrieved from <https://www.diritto.it/la-violenza-sessuale/>

GREVIO (2020). *Baseline Evaluation Report – Italy*. Strasbourg. Council of Europe.

Lambertini, L. (ed.) (2019). *La responsabilità della violenza. Un modello di intervento socioeducativo nel contrasto alla violenza contro le donne*. Bologna. il Mulino.

Ministero dell'Interno – Dipartimento della Pubblica Sicurezza – Direzione Centrale della Polizia Criminale (2020). *Violenza di genere e omicidi volontari con vittime donne. Gennaio-Giugno 2020*. Roma.

Ministero dell'Interno – Dipartimento della Pubblica Sicurezza – Direzione Centrale della Polizia Criminale (2021). *Omicidi volontari. Gennaio-Novembre 2021*. Roma.

Moscagiuro, G. (2021). *Il tracciamento di prossimità*. Retrieved from <https://www.studiocataldi.it/articoli/42696-il-tracciamento-di-prossimita.asp>

Office for National Statistics-UK (2018). *Reasons for not reporting crime to the police, year ending March 2018 Crime Survey for England and Wales*. Retrieved from <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/adhocs/010096reasonsfornotreportingcrimetothepoliceyearendingmarch2018crimesurveyforenglandandwales>

Presidenza del Consiglio dei Ministri – Dipartimento Pari Opportunità (2021). *Piano Strategico Nazionale sulla violenza maschile contro le donne, 2021-2023*. Roma. Retrieved from <https://www.pariopportunita.gov.it/politiche-e-attivita/violenza-di-genere/piano-strategico-nazionale-sulla-violenza-maschile-contro-le-donne-2021-2023/>

Salsi, G. (2012). Stalking: una ricerca sull'ammonimento del Questore nella provincia di Bologna in riferimento alla Legge 38/2009. *Rivista di Criminologia, Vittimologia e Sicurezza*. VI(1), 39-57.

Senato della Repubblica Italiana-Commissione Parlamentare di inchiesta sul femminicidio (2018). *Relazione finale*. Roma.

Sette, R. (2019). Criminalità e sicurezza in Europa attraverso statistiche e indagini di vittimizzazione (pp. 385-405). In A. Balloni, R. Bisi & R. Sette. *Criminologia e psicopatologia forense*. Milano. Wolters Kluwer.

Sette, R. & Tuzza, S. (2021). Controllo sociale e nuove forme di (auto)sorveglianza ai tempi del coronavirus (pp. 235-244). In Favretto A.R., Maturo A. & Tomelleri S. *L'impatto sociale del Covid-19*. Milano. FrancoAngeli.

Shaw, D. (2014). Police fail to record one in five of all crimes reported to them, says report. BBC News Uk. Retrieved from: <https://www.bbc.co.uk/news/uk-30081682>

The Journey Project (2021). *Third-party reporting*. Retrieved from <https://publiclegalinfo.com/third-party-reporting/?lang=fr>

Victim Support (2011). *Left in the Dark. Why Victims of Crime Need to Be Kept Informed?*, Retrieved from: <https://www.victimsupport.org.uk/wp-content/uploads/documents/files/Left%20in%20the%20dark%20-%20why%20victims%20of%20crime%20need%20to%20be%20kept%20informed.pdf>

ADDITIONAL READING

Bisi, R. (2013). Una ricerca sulla violenza di genere nell'Ateneo bolognese. *Rivista di Criminologia, Vittimologia e Sicurezza*. VII(2), 120-134.

Brollo, M., & Pagani, L. (2013). Le soglie invalicabili: la sicurezza di genere. *Rivista di Criminologia, Vittimologia e Sicurezza*. VII(2), 27-37.

Cocchiara, M.A. (ed.) (2014). *Violenza di genere, politica e istituzioni*. Milano. Giuffrè.

Consiglio Superiore della Magistratura (CSM) (2020). *Esiti del monitoraggio effettuato dal Gruppo di lavoro sull'applicazione delle "Linee guida in tema di trattazione di procedimenti relativi a reati di violenza di genere e domestica" negli uffici di merito nel periodo d'emergenza sanitaria*. Roma.

Karadole, C. (2012). Femicidio. La forma più estrema di violenza contro le donne. *Rivista di Criminologia, Vittimologia e Sicurezza*. VI(1), 16-38.

ISTAT (2017). *Le vittime di omicidio*. Roma, Italy. Retrieved from https://www.istat.it/it/files/2018/11/Report_Vittime-omicidi.pdf

Senato della Repubblica Italiana-Commissione Parlamentare di inchiesta sul femminicidio (2021). *Contrasto alla violenza di genere: una prospettiva comparata*. Roma.

Senato della Repubblica Italiana-Commissione Parlamentare di inchiesta sul femminicidio (2021b). *Rapporto sulla violenza di genere e domestica nella realtà giudiziaria*. Roma.

Sette, R. (2013). Incontri e riflessioni con studentesse universitarie in Europa. *Rivista di Criminologia, Vittimologia e Sicurezza*. VII(2), 120-134.

Sette, R. (2019). Omicidio passionale: casi a confronto (pp. 196-203). In A. Balloni, R. Bisi & R. Sette. *Criminologia applicata*. Milano. Wolters Kluwer-Cedam.

Sette, R. (2020). Family Violence: Not Only Women (pp. 28-41). In A. Balloni & R. Sette. *Handbook of Research on Trends and Issues in Crime Prevention, Rehabilitation, and Victim Support*. Hershey, Pennsylvania. IGI Global.

ENDNOTES

¹ <https://www.istat.it/it/violenza-sulle-donne/il-fenomeno/violenza-dentro-e-fuori-la-famiglia/numero-delle-vittime-e-forme-di-violenza>

² Art. 3 - All citizens have equal social status and are equal before the law, without regard to their sex, race, language, religion, political opinions, and personal or social conditions. It is the duty of the Republic to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organization of the country.

³ <https://dati.istat.it>

⁴ <https://www.istat.it/it/violenza-sulle-donne/il-fenomeno/omicidi-di-donne>

⁵ 1522 is a public service promoted by the Department for Equal Opportunities (The Presidency of the Council of Ministers). The number, free to call, is active 24hours a day and helps victims of violence and stalking in any form with trained experts who can help and give them support (<https://www.1522.eu>).

⁶ <https://www.istat.it/it/violenza-sulle-donne/speciale-covid-19>

⁷ Penalties increased again in 2019 from a minimum of 6 and a maximum of 12 years of imprisonment.

⁸ <https://leg16.camera.it/561?appro=684>

⁹ Stipulating originally a minimum of 6 months and a maximum of 4 years of imprisonment, penalties then increased from a minimum of 1 year and a maximum of 6 years and 6 months of imprisonment.

10

https://www.giustizia.it/giustizia/it/mg_1_12_1.page?facetNode_1=0_15&facetNode_2=4_14_0&contentId=SPS306452&previousPage=mg_1_12

¹¹ The abuses against family members and other cohabitants, stalking, sexual violence, sexual violence committed in groups, sexual acts with minors, homicide aggravated by the intimate relationship.

¹² Council Of Europe 2008. Rec (2006)8. *On assistance to Crime Victims*. https://www.euromed-justice.eu/en/system/files/20100716095543_22.RecommendationRec_2006_8onassistancetocrimevictims.doc.pdf

¹³ <https://eige.europa.eu/thesaurus/terms/1358?lang=en>

¹⁴ J.L. v. Italy – 5671/16. Judgement 27.05.2021. Retrieved from: <https://hudoc.echr.coe.int/fre#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%225671/16%22%5D,%22documentcollectionid%22:%5B%22CLIN%22%5D,%22itemid%22:%5B%22002-13282%22%5D%7D>

¹⁵ <https://penaledp.it/app/uploads/2021/07/Corte-e.d.u.-27-marzo-2021-J.L.-c.-Italia.pdf>

¹⁶ The judge Krzysztof Wojtyczek expressed a dissenting opinion separately. He argued that “In the framework of a liberal democracy, criminal law must always remain a measure of last resort [...]. Even if criminal law is an essential tool to combat violence, its role in fighting against inequalities must not be exaggerated. In the current case, the Court continues to express its choice in favor of a punitive culture as the main instrument for fighting against many violations to human rights [...]. The approach taken amplifies “the illiberal wind blowing in Strasbourg”.

¹⁷ <https://rm.coe.int/provisional-timetable-for-the-1st-thematic-evaluation-round-procedure-/1680aa0e4c>