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**UIA COMMISSIONE FAMIGLIA**

**66th CONGRESS DAKAR**

**29 ottobre 2022**

**Avv. GIULIA FACCHINI**

## **DOMESTIC VIOLENCE**

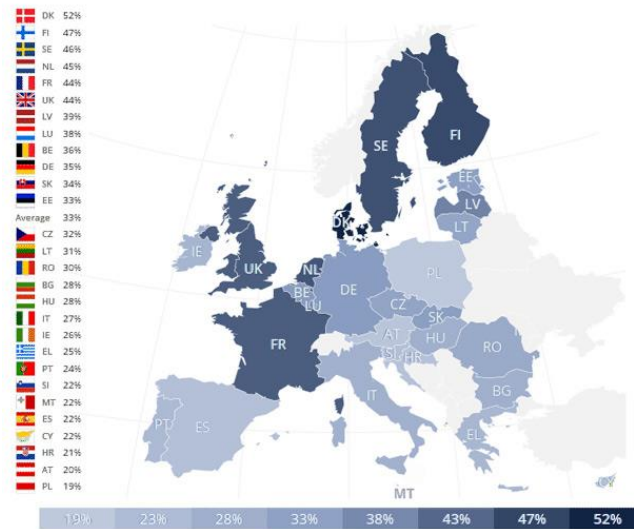
- Victim protection versus presumption of innocence: how to find the right balance
- Dealing with domestic violence in family courts and criminal court
- Provisional measures... are they provisional?



## FOREWORD

What's the situation about the domestic violence in Europe according to a survey made by the European Agency for fundamental rights? (survey made in 2016 on a sample of 42000 women)

1. Physical, sexual and psychological violence / Physical and/or sexual violence by a partner or a non-partner since the age of 15



© FRA - All rights reserved - Violence against women: an EU-wide survey | Yes | All - All

According to the infographic above it seems that there is more domestic violence in countries belonging to the north of Europe instead of the southern ones.

The authors of the survey surmise that the differences in data statistics do not concern domestic violence in itself, but the reporting made by the victims to the authorities, supposing then that in certain countries domestic violence is less reported and then less persecuted than in others,

For example according to the authors, in Italy victims willingly choose **not to report domestic violence** in awe of retaliation by the aggressor or either due to a certain psychological and physical subservience of the victim towards the author of the crime.



Form a survey made by the Italian Institute of statistics it results that women not reporting cases of domestic violence do so: <https://www.istat.it/it/violenza-sulle-donne/il-fenomeno/violenza-dentro-e-fuori-la-famiglia/consapevolezza-e-uscita-dalla-violenza>)

- because they cannot handle the situation on their own (39,6%)
- because the wounding were not severe (31,6%)
- because of fear (10,1%)
- because they are afraid of not to be believed, because of shame and awkwardness (7,1%)
- because lack of trust in the police (5,9%)
- **And in the case they were in a relationship because they loved their partner and they didn't want him to be arrested (13,8%).**

### **(SEVERE EMOTIONAL DEPENDENCY OF THE VICTIMS OF DOMESTIC VIOLENCE)**





Italy is one of the European countries reporting less domestic violence on women despite

- 91% of Italian people are aware domestic violence is a severe and widespread problem
- 6% of Italian women state to have been victims of domestic violence in the 12 months previously to the survey
- 39% of Italian women interviewed state to have a friend or a member of their family who is a victim of abuse by a violent partner
- A strong legal basis to oppose and prosecute domestic violence comes from the Istanbul Convention of 2011, ratified by Italy under the law n. 77 of 2013



## WHAT THE ITALIAN CRIMINAL LAW PROVISIONS ARE

According to the convention of Istanbul Italy has enacted the law named "**Red Code**" (Law n. 69/2019) *Changes to be made to the criminal code and the code of criminal procedure and other provisions to provide **protection to victims of domestic and gender violence.***"



The innovation made to the proceedings concerning domestic violence are:

1. Regarding criminal offences concerning domestic violence, stalking, sexual violence a very fast track for the starting of the criminal proceeding is provided, with the consequence that any provisional measure for the protection of the victims are granted faster .







2. the restriction order regarding the ban to approach the places where the victim is usually going to has been changed, in order to grant its effectiveness even with use of forms of remote control of the offender such as the electronic tag.
3. The crime of violence against family members and cohabiting partners has been included in the ones that entitle the Judge to take provisional measures against the offender for better protection of the victim. Such provisions are taken before the proceeding and according to evidence and clues of hazardouness of the offender according to very specific law provisions
4. In case of domestic violence provisional measures that can be taken there is the *warning*, that is a formal invitation to cease the violence and change course of action, made in oral form by the superintendent of the police and can be the basis for special surveillance that is another measure to be applied to the ones who received the warning and did not comply to it.





4 new types of criminal offence has been added to the criminal code:

- a. the crime of “Revenge porn” illegal and unauthorised spreading of sexually explicit video without consent from the people shown in the video
- b. the crime of disfigurement of a person appearance made by permanent injuries to the complexion of the victim
- c. the crime of constraint or prompting someone to marriage
- d. the infringement of the provisional orders to leave the family’s house and the injunction not to approach the place where the offended one usually goes to

The punishment already provided by the criminal code has been made more severe



Some Italian districts as Piedmont (north west of Italy on the border with France) has adopted law which provides free legal assistance to women victims of violence, regardless their income and wealth, as opposed to free legal assistance provided by the state which is granted only to people whose personal income is lower than **11.528,41 €**



There are therefore lawyers who, provided that they took part in a special learning and training course, mainly practice as defenders for victims of violence. I let you surmise, as we are all old practitioners of the profession, how much alleged (but baseless) domestic violence our courts have to witness. 😞





## VIOLENCE AGAINST MEN A CASE WRAPPED IN SILENCE, LESS KNOWN AND REPORTED



As we all know, UN Objectives for sustainable development according to the Agenda 2030 aim to “eliminate every kind of **violence against women and girls** in public and private sector including sex trafficking and other form of exploitation ” but there is no provision regarding violence against men.

On domestic violence against men a certain silence looms even between us lawyers and that’s the reason I resolved to point out here the issue.





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On this topic **there are** so far very few statistics, but I want to share with you some information i managed to gather

- According to a survey made by the Italian university of Siena in 2012 over half of the people interviewed has been pushed, **shoved, scratched, bitten, had their hair torn, been hit by a thrown object, had their fingers crashed in a doorway and had been electrocuted.**
- according to a survey made by Strauss in 2008 it results women choose a passive aggressive attitude towards men, preferring to establish some form of control and manipulation , e.g. social isolation, while men usually resort to physical violence  
<https://www.osservatoriodiritti.it/2019/02/20/violenza-sugli-uomini/>
- Different kind of violence are used againt men according to the Italian Institute of Statistics: verbal abuse, stalking and physical violence  
<https://www.istat.it/it/violenza-sulle-donne/il-fenomeno/violenza-dentro-e-fuori-la-famiglia/consapevolezza-e-uscita-dalla-violenza>



- According to this magazine “victimology” which has interviewed only men the following results emerged:

[https://www.vittimologia.it/rivista/articolo\\_macri\\_et\\_al\\_2012-03.pdf](https://www.vittimologia.it/rivista/articolo_macri_et_al_2012-03.pdf)

A1. It has happened that a woman threatened to beat you	667	63.1%
A2. It has happened that a woman has thrown at you /or hit you with an object that could harm you	540	51.2%
A3. It has happened a woman pushed/yanked you, scratched you, pulled your hair, tripped you, hurting you or scaring you in the process	642	60.5%
A4. It has happened that a woman slapped you, kicked you, punched you or bit you	615	58.1%
A5. It has happened that a woman willingly tried to choke or strangle you, poison you or burn you	89	8.4%
A6. It has happened that a woman threatened to use weapons against you (gun , scissors, knives, razors ecc.)	249	23.5%
A.7 Different kind of violence of the afore mentioned ones	167	15.7%
A8. Never been victim of physical violence by any woman	-	-





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- Recently the Italian supreme Court has stated that the crime of domestic violence occurred in the case of a woman who approached a man folding her arms around his waist to pull him towards herself in order to press her knee on his genitals (Cass 29577/2021)
- **in Great Britain** the Ministry of Home Affairs has been tracking this situation **since 2005 up to nowaday** in England and Wales detecting that the gap between men and women victims of domestic violence **has reduced 7,9% of violence against women against 4,2% of violence against men**  
<https://www.osservatoriodiritti.it/2019/02/20/violenza-sugli-uomini/>
- In Germany in 2020 there has been almost 2000 request for help from men victim of domestic violence. A survey made in 2020 has pointed out that almost a man out of ten has been subjected to physical violence and a man out of 4 has been victim of psicological violence <https://dinellalex.com/la-violenza-contro-gli-uomini-un-fenomeno-avvolto-dal-silenzio-poco-conosciuto-e-denunciato/>



## THERE IS A PROBLEM: IT'S DIFFICULT FOR A MAN TO RECOGNIZE HIMSELF AS A VICTIM

According to this interesting Swiss survey

[http://www.medecine.unige.ch/enseignement/apprentissage/module4/immersion/archives/2007\\_2008/travaux/08\\_r\\_hommes.pdf](http://www.medecine.unige.ch/enseignement/apprentissage/module4/immersion/archives/2007_2008/travaux/08_r_hommes.pdf):



*“To see himself as a man beaten or victim of domestic violence is particularly difficult for a man because it undermines his own identity as a strong caring man which he is granted by society.*

*Man has tendency to minimize or banalize the seriousness of violence enacted by his partner as in the following example “during the single acts of violence I was saying to myself she loses control and I try to avoid to answer her back. I know she will not kill me. I’ve never felt threatened in my life. The knife only helps her as a sign. She simply does not know how to communicate.” (Jules)*







The survey also states

- *From self-recognition to the public disclosure as a male victim of domestic violence there are still steps to be taken*
- *Mainly is the weight of shame that seal the silence and the isolation of these men, like a slab of concrete*
- *The weak man, abused by his spouse is in fact immediately stigmatized. Their shame results « from the contradiction between what they need to be socially acknowledged and the identity given to them »*



- Just like for women victims of violence *“the violence they have been subjected to damages their self esteem and make more vulnerable”*
- *The feelings of the man towards his spouse complicate the situation. He is in front of a loyalty conflict: break the silence to escape his condition is also to betray a loved one. Moreover guilt play a part in this silence. The man has the feeling to be stuck in this situation for his own inability to set limits to certain behaviours.*
- *Even if the consequences for the physical integrity of men are less life endangering the fact that women mainly resort to the use of knives is not to be dismissed as a not serious issue.*
- *According to the experience of the professionals involved and statements of witnesses physical evidence includes bruises (including shiner), wounds, scratches, bone fracture, internal injuries, burns, scalp detachment.*

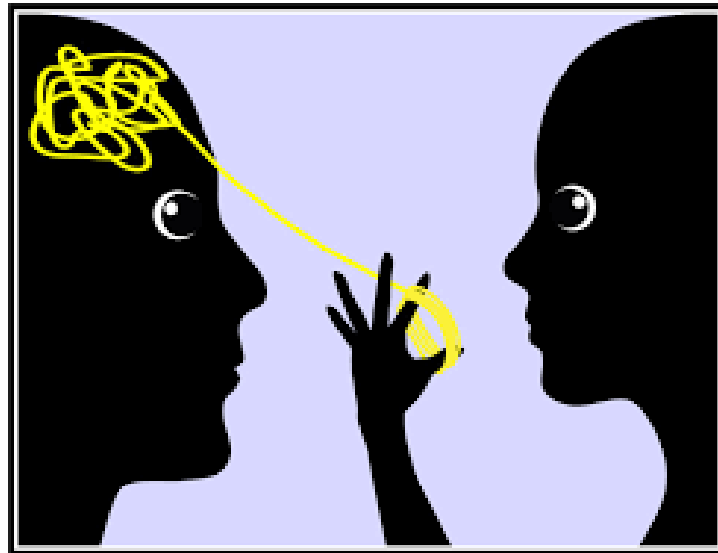


## GASLIGHTNING A PARTICULAR FORM OF PSICOLOGICAL VIOLENCE

- Psychological violence is a form of abuse made by **daily criticism, jokes made to undermine one self esteem, undirect offences, perennial** bad mood and dissatisfaction aimed to damage the personal equilibrium of the victim, making him/her feeling “wrong” but also subordinated/addicted to his/her torturer falsely seeing him/her as someone who helps his/her self improve
- Victims of such manipulation technique come to feel himself/herself guilty, the cruelty they are subjected to is a normal consequence of their inadequacy
- This perverse form of a partner destabilization is often known as Gaslighting (the name comes from a '40 movie being the tale of a man who enacted a diabolical manipulative plan made up by cunning persuasions and real actions like the tampering of the gaslights in the house then pretending nothing has happened thus convincing his wife not only she could not trust anymore her senses but that she was on the verge of madness)



## WHICH ARE THE TRAITS OF THE GASLIGHTING



- The typical symptom of someone affected by mental cruelty from his/her partner is a **perpetual state of emotional confusion and a kind of addiction to the abuse that prevents him/her to perceive what's going on as wrong.**
- The manipulator, also known as a “perverse narcissist” is **someone with a pronounced wickedness which impose a fake, unhealthy love, which imprison the partner in a unaffectionate and toxic relationship.** A real psychological massacre in which the victim involved sees him/herself inadequate, full of flaws and such condition leave him/her more vulnerable and easy prey to the galighter control.

## The Gaslighte is a mental manipulator

- The cruel manipolator is devoid of feelings, unable to live in a real and sincere way the experience of love and whose megalomania, absence of empathy and interest towards others, the total denial of the other's identity, the cold emotional distance all so often just disguise frustration, personal dissatisfactions or betrayals.
- The request for help from the manipulated person always comes late because in the perverse net of that sick relationship an almost total addiction is made up, followed by an irrational idealization of the partner.
- Not rarely normal behaviour suitable to a "sane" relationship is alternated with a cold detached attitude not only made by reproaches to diminish the partner and which can include "the punishment of silence"
- In the malicious entrapment brought up by the mental cruelty the personality, the emotions and rational perception of the victim are nullified **as if the victim would be depleted of her/his energies, as he/she was trapped in a state of eternal sleep which it removes her/him further from reality.**







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## CONNECTIONS BETWEEN THE CRIMINAL PROCEEDING FOR DOMESTIC VIOLENCE AND THE CIVIL PROCEEDING FOR SEPARATION-END OF COHABITATION -DIVORCE

Under article 64 bis of implementing provisions of the criminal procedure code is ruled the mandatory communication of every provisional measure, order, ordinance or sentence to the Civil Court.

- ✓ According to the aforementioned article the following acts must be communicated ... *« copy of orders that issue precautionary measures against the offender, their replacement and their withdrawal*
- ✓ *the notice of the end of the preliminary investigation*
- ✓ *The filing of the charges to archive*
- ✓ *The sentence ending the proceeding whoever is the accused"*

Let's take look at a provisional measure adopted by the criminal court

N. [REDACTED] R.G. notizie di reato  
N. [REDACTED] R.G. G.I.P.



TRIBUNALE DI TORINO  
SEZIONE DEI GIUDICI PER LE INDAGINI PRELIMINARI

ORDINANZA DI APPLICAZIONE DI MISURE CAUTELARI  
(artt. 272 e ss., 282 bis, 282 ter c.p.p.)

Il Giudice per le Indagini Preliminari,  
letta la richiesta di applicazione della misura cautelare dell'allontanamento dalla casa familiare con divieto di avvicinamento ai luoghi frequentati dalla persona offesa presentata in data 20.3.2020 dal P.M. dott. [REDACTED] confronti di:

[REDACTED], nata a [REDACTED] il [REDACTED] res. in [REDACTED]  
elettivamente domiciliata presso lo studio del difensore  
difesa di fiducia dall'avv. [REDACTED]

Visti gli artt. 282 bis, 282 ter e 272 e segg. c.p.p.,

P.Q.M.

APPLICA a [REDACTED], sopra generalizzata, in relazione ad entrambi i reati contestati, **le misure cautelari dell'allontanamento dalla casa familiare e del divieto di avvicinamento ai luoghi frequentati dalla persona offesa** [REDACTED]

Ordina all'indagata di **lasciare immediatamente la casa familiare**, sita in [REDACTED] e di **NON** accedervi senza l'autorizzazione del Giudice che procede.

Ordina alla predetta di **NON avvicinarsi a** [REDACTED] e alla minore [REDACTED] e di **NON comunicare** con qualsiasi mezzo, anche telefonico, con gli stessi.

Avvisa l'indagata che, in caso di trasgressione alle prescrizioni imposte e ricorrendo gli altri presupposti previsti dall'art. 276 c.p.p., la misura potrà essere sostituita con altra maggiormente afflittiva.





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## CRIMINAL COURT OF TURIN

### PRELIMINARY INVESTIGATION SECTION

### ORDER OF RECAUTIONARY MEASURES

*(Under articles 272, 282 bis and 282 ter Criminal Proceeding Code)*

The Judge,

seen the request for a provisional measure concerning the order to abandon and leave the family home and not to come close to the places where the offeded person usually goes to filed by the prosecutor the day xxxx

According to articles 282 bis, 282 ter, 272 and following of Criminal Proceeding Code

### ISSUE THE FOLLOWING ORDER

To xxxxx charged of the crimes of xxxxx to abandon and leave the familiy house and not to come close to places where the offeded person usually goes

The woman xxxxxx is hereby ordered to immediately leave the family house and NOT come back without a proper authorization from this Judge.

Also order xxxxxx NOT to come close to xxxxxx and the child XXXX and NOT to communicate by any means with them.

The charged person it s' here personally admonished that the infringement of the order may lead to more restrictive injuntions and cautionary measures under article 276 of Criminal Procedure Code



## THE ISSUES PROPOSED FOR DISCUSSION

- Protection for the victims and presumption of innocence



As we said before the criminal law requires a duty of cooperation between the criminal court who according to the Red Code must immediately open the case and take the provisional measures that are deemed necessary and the “Family Court” who is due to be informed of every relevant fact in the criminal proceeding. **The family court can take as well provisional measures in order to protect victims of domestic violence.**

I’m referring in particular to the proceeding ex art. 342 bis of the Civil code which states as follow:

*“When the behaviour of the spouse or of the cohabiting partner is reason to cause severe damage to physical or psychological/moral integrity of the other one or to the freedom to the other spouse or cohabiting partner the Judge [when the fact is not punishable under the criminal law ] can take one or more of the provisional measures under article 342ter”.*





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*Under article 342 bis the Judge can issue an order toward the spouse or the cohabiting partner who took the harmful behaviour*

- ❖ *to immediately cease the conduct*
- ❖ *to abandon the family house prescribing also*
  - ✓ *not to come close to the places the plaintiff usually goes*
  - ✓ *to such as the workplace,*
  - ✓ *the household/domicile of the family of origin, the household/domicile of the relatives*
  - ✓ *and close to the places of education of the children of the couple,*
  - ✓ *unless they must attend the same places for work needs.*
- ❖ *The Judge can also order, when needed, the intervention of the local social service or a centre for family conflict resolution and of an association with statutory purpose the help and reception of women and children or other kind of victims of abuse and mistreatment*



## FROM THE ECONOMIC POINT THE LAW PROVIDES



- ❖ *the compulsory payment of an allowance in favor of the cohabiting victim that as a results of the provisonary measure under catch 1 have lost financial means to sustain themselves, stating also amount and time of payment*
- ❖ *Order to the employer of the debtor to pay the amount of the allowance directly to the entitled one, deducting it from the wage that is due to the recipient of the payment order*
- ❖ *With the same decree the Judge in the case of the afore catches also settle the **duration of the protection order** to be run from its first execution*
- ❖ *The order of protecion can not last more tha 6 months and can be extended by request of the plaintiff only when there are compelling reason and only for a limited time.*
- ❖ *With the decre issuing the order the Judge settle how it should be executed. Whenever difficulties or disputes should arise regarding the execution of the order the same Judge shall issue another decree for the order to be enforced, including the intervention of the police and of a medical officer when needed.*





## **THE DIFFICULT CHOICES OF A LAWYER WHEN ASSISTING/COUNSELING A VICTIM OF VIOLENCE**



The lawyer defending the victim of domestic violence must think thoroughly what line of defence to choose, if to file the claim mainly to the criminal court, hoping the provisional order to abandon the family home will be issued in short time or to file a claim to the civil court calculating the time and chances of success of the two different accesses to justice.



## HOW TO FIND THE RIGHT EQUILIBRIUM TO PROVIDE PROTECTION FROM DOMESTIC VIOLENCE CHOOSING BETWEEN THE FAMILY COURT AND THE CRIMINAL COURT?



This one is the 100 point question.

There is always the risk that the decision of the criminal court and the family court can be conflicting with one another, especially when both have request an appraisal by a professional with psychological skills regarding the situation in which the domestic violence case has arose.

Despite the fact the appraisal have different object of investigation

- in the criminal case the charged person can be object of appraisal about his capability of thinking and reasonig as for his social dangerousness
- in the civil proceeding case both parents can be examined only on their ability to be a sound parent

It often happens that the two different reports can be cause for confusion and problems.





With the latest reform of the civil procedure-riforma cartabia- approved under the recovery plan requirements and deemed to be effective from June 2023 a new set of rules has been added to the civil procedure code which states

- The halving of the times for every act from the parties and the judge
- new form of protection/provisional measure even by impulse of the court and before the establishment of the debate between the parties
- Greater power to the judge who may also take evidence even outside the cases provided by the law, granted the right to debate and to proof otherwise to both parties
- When scheduling the time of the first appearance of both parties in court the family judge may also ask the criminal court information about the pending of proceedings related to the abuse and violence cases described by the plaintiff, or if they are already settled and the communication of every deed of the proceedings not deemed secret under article 329 of Criminal Procedure code.





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## PROVISIONAL MEASURES ARE RELAY PROVISIONAL?

It may depend, what is certain that when both the criminal proceeding and the civil proceeding are filed both judges have the tendency to wait for the orders and decision of the other court.

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