

VIOLENCE AGAINST WOMEN - useful information

WHAT IS IT?

From the Istanbul Convention (2011):

1. the expression "violence against women" means a violation of human rights and a form of discrimination against women, including all acts of gender-based violence that cause or are likely to cause harm or suffering of a physical, sexual, psychological or economic nature, including threats to carry out such acts, coercion or arbitrary deprivation of liberty, whether in public or private life;
2. the term "domestic violence" means all acts of physical, sexual, psychological or economic violence that occur within the family or household or between current or former spouses or partners, regardless of whether the perpetrator of such acts shares or has shared the same residence with the victim;
3. the term "gender" refers to socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men;
4. the term "gender-based violence against women" means any violence directed against a woman for the fact of being a woman, or which affects women disproportionately;
5. "victim" means any person who suffers the acts or behaviors referred to in the previous paragraphs 1 and 2; the term "women" also includes girls under the age of 18.

DOMESTIC VIOLENCE

Domestic violence or violence between partners is the set of physical, psychological, economic or sexual violence which coexist or follow one another in a spiral (Baldry, 2008).

PSYCHOLOGICAL VIOLENCE

Comprehends:

- intimidating, threatening, harassing and denigrating attitudes on the part of the partner, as well as
- isolation tactics from friends, relatives, places, habits.

It can cause a process of real moral destruction that can lead women to lose their SELF-ESTEEM.

PHYSICAL VIOLENCE

The use of any act aimed at hurting or frightening the victim and in most cases causes injuries, and in general physical damage caused not accidentally and with different means. Physical aggression is not only violent action but also any physical contact or approach made to frighten and intimidate the victim.

SEXUAL VIOLENCE

Sexual violence is a crime committed by those who illicitly use their strength, their authority or a means of oppression, forcing through acts, prevarication or threats (explicit or implicit) to perform or undergo sexual acts against their will.

ECONOMIC VIOLENCE

The set of attitudes aimed at preventing the partner from being economically independent to be able to control her.

For example:

- prevent you from looking for work,
- salary deprivation or control,
- control of economic management in daily life.

STALKING (PERSECUTIVE ACTS)

It refers to a series of repeated persecutory acts which generate in the victim a state of anxiety and fear so strong as to force them to change their lifestyle habits.

It can be:

continuous phone calls, messages, cards, letters, stalking, requests for appointments, unwanted gifts, etc.

When persecution occurs through the use of the internet, email, social networks, etc. we talk about cyberstalking.

WITNESSED VIOLENCE

It occurs when children and minors witness violent conduct, of any type, against a reference figure, adult or minor.

Witnessing violence can generate a series of symptoms on a psychophysical level which include sleep or eating disorders as well as psychological trauma, with important short and long-term consequences.

We tend to think that very young children cannot be victims because they are not yet able to understand: in reality they too perceive and suffer from the climate of tension and fear that is established in the home and that their mother experiences.

DOMESTIC VIOLENCE: MEASURES /REMEDIES AS PART OF THE CRIMINAL LAW

SOURCES OF LEGISLATION REGARDING VIOLENCE

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the United Nations General Assembly on 18 December 1979 and ratified by Italy with law no. 132/1985

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), approved in Rome on 4 November 1950 by the Council of Europe, ratified by Italy with law no. 848/1955

The Council of Europe Convention on preventing and combating violence against women and domestic violence, approved in 2011, ratified by Italy with law no. 77/2013, which entered into force on 1 August 2014 (known as the Istanbul Convention for the name of the city where it was signed on 11 May 2011)

The Treaty on European Union (articles 2 and 3 § 3)

The Charter of Fundamental Rights (art. 21) and the Treaty on the Functioning of the European Union, for which the right to equal treatment and non-discrimination is a founding principle (art. 8)

Directive 2012/29/EU of 25 October 2012 which establishes minimum standards regarding the rights, assistance and protection of crime victims (implemented by Italy with Legislative Decree no. 212/2015, which entered into force on 20 January 2016) and that in nos. 17 and 18, provides definitions of gender violence and violence committed within the family.

Law no. 66/1996 norms against sexual violence.

Law no. 154/2001 Measures against violence in family relationships.

Law no. 38/2009 Urgent measures regarding public safety and combating sexual violence, as well as persecutory acts (stalking).

Law no. 172/2012 for the ratification and execution of the Council of Europe Convention for the protection of minors against sexual exploitation and abuse (so-called Lanzarote Convention), which also intervened in the field of abuse against family members and cohabitants and violence witnessed by minors.

Law no. 119/2013 Urgent provisions on safety and for the fight against gender violence (so-called law on femicide).

Law no. 4/2018 Amendments to the civil code, the penal code, the criminal procedure code and other provisions in favor of orphans for domestic crimes entered into force on 16 February 2018.

Law no. 69/2019 so-called "Red Code"

Law no. 4/2021 on ratification and implementation of the International Labor Organization Convention no. 190/2019 on the elimination of violence and harassment in the workplace, which came into force on 27 January 2021.

Law no. 7/2006 "Provisions concerning the prevention and prohibition of female genital mutilation practices"

WHAT IS DOMESTIC AND GENDER VIOLENCE?

Physical and psychological abuse are always condemned by law.

Since 2019 with law n. 69/2019, defined as the Red Code, an accelerated procedure is in force to prosecute crimes of violence, mistreatment and stalking committed against people belonging to the so-called vulnerable groups: women, minors, the elderly and the disabled.

No type of violence is permitted by our system.

It should therefore not be surprising if every form of mistreatment is punished by the legal system.

The problem is that many times we are afraid to report the abuse we have suffered.

First of all, a distinction must be made between forms of violence: not all, in fact, are punished in the same way.

Violence can be understood as the use of force to harm another person.

In this hypothesis, violence can give rise to the following crimes:

- beatings;
- personal injuries, which in turn are punished differently depending on the consequences reported by the victim.

Violence can also consist of repeated abuse, physical or psychological, towards a person living with someone or who is subjected to the authority of others (teachers, instructors, guardians, etc.): in such cases, violence repeated over time gives rise to the serious crime of mistreatment against family members or cohabitants (art. 572 of the criminal code).

Finally, violence can be of a sexual nature, i.e. when a person is forced to perform or undergo sexual acts (art. 609 bis of the criminal code)

By sexual acts, we do not only mean complete sexual intercourse, but any involvement of parts of the body that can be defined as erogenous zones.

WHO CAN MAKE A REPORT FOR THIS TYPE OF CRIME AND FOR HOW LONG?

Any offended person who feels like the victim of a crime can file a complaint with the competent authority (State Police, Carabinieri, Local Police, Financial Police) or through a lawyer.

Sexual violence can be reported by the victim within twelve months of the crime occurring.

If the victim of sexual violence is a minor or a cohabiting person (not necessarily the spouse), anyone can proceed to file a complaint, even the person who accidentally witnessed the crime, without time limits. In these cases, the crime can be prosecuted ex officio.

The crime of mistreatment against family members and cohabitants can be prosecuted ex officio, i.e. anyone can file a complaint with the police, even a person who is totally unrelated to the violence or to the family unit and without any time limit.

Once a complaint/complaint for violence has been filed, the police set to work to collect as much evidence as possible.

The judicial police who acquire the complaint from the offended person immediately report the facts to the public prosecutor, even orally, i.e. before sending him the usual written information (communication of news of crime).

With the reporting of the fact constituting the crime, the preliminary investigation phase begins, i.e. that period of time intended for investigations by the Public Prosecutor.

Once the crime has been reported, the Public Prosecutor must hear the offended person within three days.

This mandatory deadline can only be extended in the presence of essential needs for the protection of minors or the confidentiality of identities.

During preliminary investigations, the judicial police works to verify the validity of the crime report.

It will therefore be possible to hear the people informed about the facts, i.e. those who can testify in court, as well as the victim himself, who will be able to better specify the events he initially reported.

WHAT HAPPENS AFTER THE PUBLIC PROSECUTOR'S INVESTIGATIONS END?

If at the end of the investigations, the criminal responsibility of the person reported for violence is found to be well founded, then the public prosecutor will request the indictment of the accused, i.e. the celebration of the actual trial, within which the victim will be able to constitute a civil party for request compensation for damages through a lawyer who will be able to benefit from free legal aid.

Victims have access to legal aid regardless of their income when prosecuting crimes of family abuse, sexual violence, persecutory acts, as well as where committed against minors, for crimes of enslavement, child prostitution,

CAN THE OFFENDED PERSON REQUEST THE APPLICATION OF A PRECAUTIONARY MEASURE AGAINST THE MISTREATER?

The public prosecutor will be able to immediately assess whether the conditions exist to ask the judge to issue a precautionary measure, such as removal from the family home or a ban on approaching places frequented by the victim.

To prevent lengthy proceedings from nullifying a complaint for violence or worsening the situation of the victims, who often find themselves at the mercy of their tormentors despite the complaint (think of the woman who cannot leave home to escape her violent husband), the law has established some measures that the judge can adopt before even reaching a sentence.

Anyone who has filed a complaint for violence and wants to obtain protection immediately must ask for a precautionary measure to be applied.

If the conditions exist, the judicial authority can resort to precautionary measures:

- removal from the family home, if the victim and the accused live together under the same roof
- the ban on approaching places frequented by the victim, when there is a danger that the reported person will persecute the offended person

Precautionary measures, however, are ordered by the judge only if he believes that the conditions established by law are met.

In particular, the judge will grant one of the measures seen above only if he deems that there are serious indications of guilt against the accused person and if there is a danger that the person may repeat his illicit conduct.

The application of the precautionary measure, among other things, must be formally requested by the Public Prosecutor who is in charge of the investigation.

The judge for preliminary investigations cannot grant it if the request comes from a different person.

Therefore, to obtain immediate protection, it will be necessary to immediately attach in the complaint everything deemed useful to demonstrate the possibility that the violence is not an isolated event but could be repeated.

It should also be remembered that the violation of precautionary measures constitutes an independent crime, punished by Article 387 bis of the penal code. This rule was introduced precisely to strengthen the protection of victims even in cases where the provisions of the Red Code had been applied but were found to be ineffective in preventing new crimes.

DOMESTIC VIOLENCE MEASURES/REMEDIES UNDER CIVIL LAW

Let's define DOMESTIC VIOLENCE: it is represented by «all acts of physical, sexual, psychological or economic violence that occur within the family or household or between current or previous spouses or partners, regardless of whether the perpetrator such acts shares or has shared the same residence with the victim»

Let's define GENDER VIOLENCE: represented by «VIOLENCE AGAINST WOMEN» specifically: «any violence directed against a woman as such, or which affects women disproportionately», coming to represent a real form of discrimination.

Let's define FAMILY ABUSE: the abusive conduct cited by the law recalls a specific category of violent conduct, which deserves further specification, given the recurrence of the same in proceedings relating to minors.

Such conduct can therefore be both those committed against the partner and those committed against minors, even in the very recurrent form of so-called "assisted violence".

Separate mention, but still falling within the category of family abuse, deserve those cases in which the perpetrators of violence and/or abuse are the descendants against the ascendants" Children against parents and/or grandchildren against grandparents), cases in which, the above protection orders are enforceable.

THE IMPORTANCE OF CORRECT INFORMATION

More and more often we hear news of women who desist from asking for judicial protection due to the perception of a lack of promptness of the measures.

However, this is an incomplete and SERIOUSLY dangerous information. Even If it is true that the news often report that the victim "had approached the authorities.." it is also true that the media information should be completed by evaluating and highlighting in the specific case what went wrong in the intervention process. Therefore, avoiding leaving large gray areas in which the victims' sense of frustration and helplessness take root.

Controlling information, preventing it from remaining partial and becoming corollaries of inefficiency, is of fundamental importance, because mistrust in judicial instruments can create more victims among women resigned to the idea that "there is no point in reporting".

Inform in a widespread manner reaching all levels of citizens, from schools to hospitals, where victims can receive directions and information in the simplest and most detailed way possible to interrupt the cycle of domestic violence in which they find themselves.

HOW TO BREAK THE CYCLE OF DOMESTIC VIOLENCE?

First of all, it is good to dispel the myth or stereotype that "the only place where violence can be ascertained is the Criminal Court". Correct information must also be able to illustrate remedies other than just the criminal court to which to turn.

Finally, the recent reform of the family proceedings has detached the scope of application of the protection against domestic violence from the commission and verification of the specific crime, enhancing the peculiar function of the family judge who must ascertain the violence, not the crime, there can be violence even in the absence of criminally relevant conduct that can be blamed on the perpetrator.

This is one of the fundamental steps of the new regulatory framework which allows the judge to ascertain violence in the preliminary phase of the proceedings, so as to interrupt the cycle of violence as soon as possible.

WHEN IS THE CIVIL JUDGE ASKED TO DETERMINE THE EXISTENCE OF VIOLENT CONDUCT?

Let's remember that in addition to the protection orders, already regulated before the reform by the articles. 342 bis and ter of the Civil Code, and subsequently reorganized and introduced into the procedural discipline by art. 473 bis n. 69 et seq. CPC, there are also civil proceedings for separation/divorce with or without children, in addition to proceedings for the custody of children born to unmarried couples.

However, in the context of such proceedings before the civil judge where violent conduct is alleged, there is now recognized ample possibility of managing the time of the proceedings in which it is possible to implement a "preferential lane" for which the following is implemented:

- Shortening of procedural deadlines
- Attribution of broad official powers to the judge (instructors and otherwise) to allow the family judge to promptly ascertain the violence
- Assumption of temporary and urgent measures

The recent procedural-civil reform introduced the section "On domestic and gender violence" allows a more immediate response to the request for protection thanks to the following new elements:

1. ANTICIPATING THE ALERT THRESHOLD
2. PROVISION OF A PREFERENTIAL LANE FOR PROCEEDINGS WITH ALLEGATIONS OF VIOLENCE
3. ASSESSMENT OF VIOLENCE IN THE PRELIMINARY PHASE OF THE PROCEDURE
4. ALLOCATION OF BROAD POWERS OF OFFICE TO THE JUDGE (INSTRUCTORS AND OTHERS)

WHAT ARE PROTECTION ORDERS AGAINST FAMILY ABUSE AND WHEN IT IS POSSIBLE TO ASK FOR/OBTAIN THEM

Protection orders are precautionary measures granted at the request of a party on the assumption of the likelihood of the danger to which the victim is subjected (spouse or ex-spouse, cohabitant more uxorious or ex-cohabitant, civil union, cohabitants in various capacities such as parents/children).

The law therefore prescribes that "when the conduct of the spouse or partner or other cohabitant causes serious damage to the physical or moral integrity or to the freedom of the other, the judge, upon request of a party, may adopt by decree one or more of the measures referred to in article 473 bis 70 CPC.

Attention should be made that the assumption of cohabitation is no longer a necessary condition:

The same measures can be adopted if the precautionary conditions are met, even when cohabitation has "ceased": a significant new element that redefines the conditions of protection orders:

- request by one of the sides;
- serious damage to physical or moral integrity or freedom;
- cohabitation, but also EX COhabitation (spouse, cohabitant more uxorious, civil union, cohabitants in various capacities such as parents/children)

FURTHER INNOVATION FROM THE RECENT REFORM CONCERNS THE POSSIBILITY OF REQUESTING PROTECTION ORDERS EVEN IN COURTS OF MERIT

Protection orders find, in fact, full and legitimate entry into the proceedings on the merits, as the family judge, in proceedings in which violence has been alleged, is well able to issue the most appropriate measures for the protection of the minor and the victim, including measures having the same content as those referred to in the art. 473-bis.70 c.p.c.a protection orders.

Therefore, the appeal to obtain Protection Orders can be proposed both at a time before the treatment of the so-called merit case (separation, divorce, or the regulation of custody of minors born to an unmarried couple) but also during the above-mentioned proceedings, in front of the judge conducting them who can take them on as a precautionary measure following a summary investigation and with the use of investigative powers, including unofficial ones.