

# Violence Against Women



**Professor Dagmar Oberlies**, PhD, Germany

Dagmar Oberlies asked herself what she could offer to an European debate on violence against women. In spite of her participation in many discussions and conferences on this subject she finds it difficult to answer the question as to what she could contribute to actually changing the situation of women. There exist many different initiatives and projects working on the issues of violence at international, European and national levels. Many raise similar demands without relating themselves to one another. For these reasons Dagmar Oberlies favours a detailed comparative legal discussion of the demands which have been raised until now. She summarised the main demands:

- dovetailing of penal and civil law and police regulations in respect of the protection against domestic violence,
- protection against ongoing violence through court orders - e.g. forcing a perpetrator to leave a joint home after having perpetrated violence; court injunctions of restraint; training for violent men; the consideration of protection for women and children by decisions about warrants of custody;
- schooling of the different institutions which are involved, and the formation of special task forces;
- empowerment of victims of violence especially in relation to their situation in court and legal procedures,
- empowerment of the legal status of female migrants who have become victims of violence,
- development of different offers of state financed support for women and children who have been effected by violence.

A detailed legal discussion of the demands shows that the plausible suggestions require a high degree of exact definition. For example: a group of experts at the Council of Europe recommended that the victims be given the same procedural rights as the accused. In view of the status of the accused in a penal law trial his guilt has to be proved. This demand cannot apply to female victims. Women lawyers should not demand the same rights of the accused for women but the rights the women need - and at the same time women lawyers should not lose sight of the procedural guarantees for the accused. A further legal discussion is needed on a problem which Dagmar Oberlies describes as "protection contrary to the will of the afflicted person". Here she refers to demands e.g. of public prosecution as a rule, and the establishment of a right to attain court injunctions for third parties other than the afflicted person, for example for a welfare worker who could attain an injunction to protect the estate of an afflicted person. In Germany the debate on the "paternalist welfare concept" has parallel elements to the debate on marital rape in which penal prosecution has been made dependant upon a complaint for prosecution by the afflicted person. It will be difficult to reach a consensus. However, the questions should be the subject of an European discussion and not of an European decree. The demand for a right of information for the afflicted women when the perpetrator is re-leased from custody is also problematical. In the draft reform of the right to accessory

prosecution elaborated by the German Women Lawyers Association the distinction is made between the right of information as a rule, and the right of information upon application. In an European, detailed, legal debate on violence a consensus about the different demands is not necessary. But it is necessary to take the background of the manifold legal cultures into consideration as well as the diversity of feminist theory and experiences in Europe. Finally Dagmar Oberlies made concrete suggestions for a discussion towards reducing violence against women and children:

European benchmarking on 'best' concepts and practice in the field of violence against women. The European Women Lawyer Association could become the arena of this kind of useful competition.

The development of instruments of control in the sense of a "violence watch" is needed. "Violence watch" could be located in the European Women Lawyer Association. The development of criteria for the assessment and judgement of measures against violence from the member states and their organisations is necessary as is also data investigation, the evaluation of legislative measures, the assessment of social and administrative policy, monitoring of defaults and omissions.

The results should be published in the form of national evaluations and as European comparisons.

At the end of her contribution to the conference Dagmar Oberlies demanded to apply the same measure of efficiency to the work of the European Women Lawyer Association as would be expected from state activities. This demand to effectivity is emphasised by the necessity to withstand the temptation to repeat discussions upon the same subject in different contexts at the expense of the European Community. Dagmar Oberlies emphasised that it is not sufficient just to talk about violence since it is no longer necessary to break a taboo. Instead it is necessary to challenge national and international policymaking. The state institutions should find themselves under pressure to justify themselves if they do not succeed in reducing violence against women and children. The question is not one of state welfare for abused women but rather of sharing political power and social chances with the population group of women. Power is divisible, esteem is not.



**Helene Görtzen**, Sweden

In her contribution to the conference Helene Görtzen reported about her work as a police officer in the administrative region of Stockholm, Sweden. Since November 1996 she is one of the coordinators of a collective project with the name of "Operation Kvinnofrid". The name means "Peace for Women". The project consists of twelve regional and national governmental organisations, which have formed an alliance in the struggle against male violence towards women. Within the framework of this project the alliance has formulated principles and developed plans of action with the aim of creating publicity for the subject of male violence towards women. People should be encouraged to intervene when they become witnesses of acts of violence. Since an amendment to the Swedish penal code in 1998 the new offence of "grievous violation of the invulnerability of women / gross violation of a woman's integrity" has been introduced. This law also protects children and close relatives. Now the accused that have a close relationship to woman

they have assaulted are not longer charged with the single, isolated acts of violence against the women. The physical and mental injuries a perpetrator caused will be punished by terms of imprisonment between six months and six years if the perpetrator is married to the injured woman or lives in an marriage-like relationship, if he repeatedly used violence, and if his acts were inclined to cause serious damage to the self-consciousness and integrity of the woman, or the child or other relatives, closely related person. Essential to the improvement of the situation of female victims of violence is according to Helene Görtzen the attitude towards violence of the individual police officer, and the kind of support that he or she receives from their superiors. The police officers are the ones who ask the first questions at the scene of the crime and draw attention to the possibilities of professional support available for the victims. For this reason in Stockholm the comprehensive training program was implemented not only for the police but also for employees in other fields of social and health work, and of schooling. Since 1992 twenty multi-professional groups of trained public servants have been established which meet on a regular basis for training and for exchange of experiences and results. Already since 1991 alarm equipment are available in every Swedish police station, which is available to the free use of threatened women. In especially dangerous cases a female police officer can be placed at disposal for a certain period of time as an escort to threatened women. These measures, and especially the support and co-operation between police officers and social workers led to a change in the attitudes towards violence. Helene Görtzen is convinced that this a precondition to eradicating male violence against women.



**Marcella Pirrone**, Italy

Marcella Pirrone asked questions and defined some new starting points for the discussion on violence against women. Based upon her long experience as a lawyeress (solicitoress and practising barristeress) she is first of all concerned with the procedures that women after they endured violence have to undergo if they decide to make use of institutional means to achieve protection and justice for themselves. In this respect the situation in the different European states differs only slightly from that one in Italy. The inadequacies of court proceedings

make it often impossible for women who have suffered violence to face the perpetrator in the courtroom, and, most of all, to accept the find-ings of the court since these are usually received by the women as negative for themselves. Marcella Pirrone enumerates the reasons:

- the duration of the trial,
- the small scope of action of the joint plaintiff, and additionally regular offers to the accused to settle the case out of court by which the victim has no possibility to take influence.
- The cultural background which - for the women - makes an encounter with authorities and with the legal system to an encounter with patriarchal archetypes who are alien to them them-selves.
- The financial difficulties to the women to gain their rights. Women's centres have coined the term "economic violence" for this.

Further on Marcella Pirrone reported about the state of legislation in Italy. Especially significant is the amendment of the penal law against sexual

violence in 1996 in Italy which at last superseded the laws created in 1933. The basic intention of the amendment law is that it no longer focussed on offences against morals but on offences against persons. Sexual violence is defined as every kind of act which has a sexual character and is done against the will of the person concerned. The resulting advantage is that more space is given to the personal and individual perception of the crime. The consideration whether or not penetration took place during the act(s) of violence has become redundant. The relatively new law contains a disadvantage caused by the introduction of a hypotheses of "diminished culpability" which allows the courts too much leeway. The - also among feminists - controversial question was / maybe still is if the offences / crimes should be subject to direct proceedings from the department of public prosecution (official offence) or if the female victim should be given the freedom and autonomy to decide about bringing charges in so that the offence would only be prosecuted upon application ( private prosecution cases ). A compromise was created: in Italy an application from the injured person is necessary to initiate a prosecution ( private prosecution cases ) but if the application is given once it cannot be recalled. As further issues she wanted to be discussed at the conference Marcella Pirrone referred to the considerations of Italian feminist lawyers - for example:

- The demand for a "diritto leggero". This might be roughly translated, explained as 'light law' as means to counter the imposition of alien norms upon women through typically patriarchal language and value judgements in the prevailing formulations of existing legislature.
- The women lawyers of several women's centres in Italy have initiated a draft law which they describe as "signpost law". "Per il vantaggio delle donne" intends to open the way for women to civil law suit through which violent men can be removed from the common dwelling, additionally to the instrument of penal law. Through contacts between women parliamentarians and practitioners it was possible to develop a practicable draft law which concretely implements the signpost function.
- The depreciation of women was pointed out which becomes obvious when important legal instruments are not applicable in court cases on violence but are applicable in court cases about bankruptcy.
- Another problem arises by the "too much effect" which takes place when so much discussion about violence takes place that specialist knowledge about violence is not as such appreciated but likely to be disqualified as being not "objective".
- The discussions on rehabilitating the violent men creates the danger that men compete against the women's projects for the small financial resources available in the field of anti-violence-measures.

Finally Marcella Pirrone expressed some wishes for the future:

- exchange of knowledge and experiences, and
- a collective effort in training, publicity, and cultural activities by institutionally and autonomously organised women's projects as well as
- collective research projects.