

PAPER BY MARCELLA PIRRONE (ITALY):
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- I. Short presentation of my work in Italy and my international net-work on GBV (gender based violence): the “Daphne Protèger Project „ 2000 and the aim of the work-shop on GBV at the European Conference of EWLA (European Women Lawyers Association) in HELSINKI on the 6-8th of June 2003**
- II. How can we support the decision of a women to react against GBV?**
- III. Summary of the legal instruments currently applicable in Italy**

I). I am an Italian lawyer who has been working since 14 years on and against domestic violence and GBV. My work has always included an interdisciplinary approach and a constant and strong cooperation with feminist women groups and associations, who have given me the opportunity to widen my view and approach on GBV and consequently improve my assistance to the victims of GBV in the Courts and generally in front of the law. Living close to the Austrian and German boarder I have the chance to work with (and learn from) women of two different cultural and political areas (Italian – German); in particular I am a founding member (1989) and the legal adviser of the bilingual (Italian - German) Women Centre having a refuge for women and their children who want to escape violence (Centro Antiviolenza Casa delle Donne – Frauenhaus Merano – Italy), who is part of the Italian Network of Women Refuges as well as the Austrian one. On the same time I meet regularly since 1996 with the Group of Italian Women Laywers of the Women Refuges who strongly interacts with the Italian Parliament on all legislatives initiatives concerning GBV, as well as being founding member of the Italian Women Lawyers Association (GIUDIT- Giuriste d'Italia whose President is colleague Maria Virgilio) and the European Women Lawyers Association (EWLA).

The workshop on GBV I have the honor to moderate should give the chance to continue an interesting project “Daphne Protèger“ 2000 where I was part with another Italian colleague (Ms. Milli Virgilio) and a group of women lawyers of 5 different countries (Spain, Italy, Germany, Austria, Luxembourg); the project run under the financing of the European Union’s Initiative DAPHNE and the written result is a publication “Guide of good practices” against GBV by the Spanish association Themis, as well as a CD-rom which collects the legislation on GBV of the participant countries, as well as a comparative study of the practical application of legal measures, having always in mind the point of view of the positive results and advantages for the victims of GBV (for more information about that project go to www.ewla.org, under ewla.activities, under “Daphne project on Gender Violence” where you can also find the **whole legislation of Italy** and the other participating countries on gender violence, or ask for the cd-rom at Themis@retemail.es). The work-shop at the Ewla Helsinki congress shall hopefully be the occasion to widen that comparative study to three more different countries where the speakers will come from: Finland, Norway and Ireland and also discuss with lawyers of other different countries participating at the work-shop, with the aim for the near future to widen it, including more countries. I consider those occasions as precious moments of exchange with colleagues of other realities and I hope the result will be a better overlook of possible “good practices” which can be helpful for all of us who daily work and fight against GBV. Concluding about the results of above networking I attach to my paper following documents about GBV which might be of interest:

- 1) prof. Maria Virgilio’s article published in July 2002 in the Spanish “Revista Penal” on : “*Penal systems compared. Violence in the domestic and family circle*”;
- 2) a description of the Italian procedures characterized by a smiling (for good practices), indifferent or sad face (for bad practices);
- 3) list of “imperatives” formulated in 2001 by the group of women lawyers working on the project “Daphne Protèger“ for “good practices” in case of domestic and/or sexual violence against women in an effort to set out actions which favour women, in and outside the legal framework.

II. How can we support the decision of a woman to react against GBV?

The over 30 years experience of Women's Centres and Centres Against Violence all over the world prove the extent to which domestic violence is a genuine social trend all over the world and not an exceptional and isolated event. In fact, domestic violence is to be found in a relationship between a man and a woman characterised by a pattern of violent behaviour by the man with the aim of dominating and subjugating the woman and creating conditions which exclude any credible way out. In addition, the woman has to bear the burden of "saving the marriage" (or relationship), sacrificing the fundamental individual rights such as freedom, dignity and even her physical /mental health. One of the main benefits derived from the experience in Women's Centres was being perceived not only as a helper in dire circumstances (with the risk of reinforcing women's image of helplessness) but as a companion who helps to find a way to implement a strategy for living and not only surviving, based on the election of "being on the side of women who seek help, recognising that the responsibility for violence lies in whoever applies it and that violence against women is first and foremost a masculine problem".

In this context, the lawyers who consider the precious experience of the Women's Centres play a crucial role in the preparation of an analysis taking into account the particular complexities of domestic violence experienced in extreme loneliness, shame, feelings of loss of self, guilt and a quasi-magical expectation of justice. It is obvious that the decision of a woman to break through this violent circle is particularly delicate and complex from all viewpoints (psychological, economical, legal and logistical) because it entails a gamble, i.e. risking the chances of escaping violence. At a time like this, the decision of leaving the partner - a violent and usually persecutory man - requires the immediate intervention of a number of legal instruments for it to be materialized in a safe and irreversible manner. Said tools should be adapted to the urgency of the situation in order to create points of clarity, in the absence of which we run the risk of making this escape more confusing and difficult if not entirely impossible.

III. Summary of the legal instruments currently applicable in Italy when a person wants to escape violence

In a very summarised way I will analyse the applicable legal instruments, emphasising how the fragmentation of Italian jurisdictional competencies, together with the lack of specific instruments as well as a substantial lack of knowledge of domestic violence (and of violence against women), produce legal difficulties and uncertainties to stop said violence.

I suggest to integrate the information of this paper with the one of the attached papers (and the Italian legislation in the web.site given above) in order to have a more general view of it;

CIVIL LAW INSTRUMENTS:

a) Judicial file of separation (and divorce): the procedural periods are absolutely inadequate, due to the times, cost of a suit and the court decision on the family dwelling which "follows" the custody of children when they are of minor age (and the ensuing "battle to the death" to obtain it even when the parents never cared for them).

b) Recourse to the Court for Minors in case of couples without marriages: the intrinsic limits to the competencies of these Courts do not allow them to decide on crucial issues such as financial arrangements, determination of the use of the family dwelling and of restraining orders on the violent party.

c) The civil aspects of the Law n. 154 dated 4.4.2001 "*Measures against violence in family relations*"

The Law n. 154/2001 concerns basically the penal and civil areas. The Women's Centres see with great interest the measure which does not make protection for women dependent on the obligation to file a penal report, but allow a person in a situation of violence to ask for a so-called "protection order" at the civil Court. A further positive innovation is that of extending restraining or interdiction orders

from the family house to the remaining places frequently visited by the person in danger, such as the workplace, houses of relatives, etc. In addition, the draft law mentions the physical integrity in general ("serious damages to physical or moral integrity, or freedom") and that the subjects under protection should not only be the "core family" (spouse, children) but also the remaining members of the household. A final (and very important) innovation is that which imposes the payment of a subsidy for the dwellers lacking

adequate means. This measure aims to counteract the all too frequent lack of economic means inherent in domestic violence situations over a long period of time.

The most relevant innovations in the civil area are the introduction of special measures like the banishment order, which is well known in other legal systems (Austria, Germany, France Turkey) and introduces in our system the **only "specific" instrument against domestic violence**. In fact, if a spouse or a household resident maintains a behaviour which causes serious damages to the physical or moral integrity of another, or his/her freedom, the latter may request the Civil Court to order – even "*inaudita altera parte*" in urgent cases - the following in addition to the immediate termination of said behaviour:

- a restraining order, forbidding the offender to stay away from the family dwelling and to get close to the places usually visited by the victim (i.d. work, relatives, school children etc.);
- request in case the intervention of social services or a family reception centre;
- when required, to order the payment of a subsidy to the family house residents who are deprived of means, including direct payment by the employer of the offending party.

The duration of this measure cannot exceed 6 months, unless extended for serious reasons and as long as strictly necessary. The essential part of these measures, i.e., the execution of the civil order, establishes that the judge "*will determine the modes of application of the measures in the same decision. In the event of objections, the judge will order the appropriate measures for the application of the decision, including the assistance of public law enforcers and official health services*". Anyone who knows the crude facts around domestic violence will appreciate the frequent application of this measure and the importance of an instrument making it applicable. The experiences in countries where similar measures have been implemented demonstrates that if these are not applied or executed efficiently they will cease to be ordered, leading to a further frustration for women suffering violence. The Law mentions the possibility that the judge dictates the intervention of a "family- mediation": fortunately this has been very rarely adopted in the first 2 years practice as in fact it is common international culture on family mediation that it can not be applied if there is violence from one against the other. The trend to introduce/force family mediation in legal systems also in cases where it is not possible arises out of a legal policy well known to jurists which, in gender conflicts, jurisdiction and judicial rulings on conflicts of interests are kept separate, favouring control groups external to the jurisdiction. There is a trend in legislation reforms to administrate and deliver conflicts in social areas in detriment of the equality of jurisdictional guarantees in defence. In this sense, the Italian sociologist Tamar Pitch outlines how in this matter "*juridical issues are redefined as social, psychological and health-related issues, and become matters relating not to "public" law but to "private" relationships*". And, I add, become matters which can be neutralised and rearranged in the interests of higher principles of an abstract nature, such as "the unity of the family", rather than the fundamental human rights of the involved woman.

PENAL LAW INSTRUMENTS

For the legislative definitions of legally relevant violence in the Italian Penal Code see attached article of prof. Virgilio.

It is known that penal instruments are applied after many episodes of unreported violence; in fact, the occasional violent action does most of the time not lead to lawsuits. Instead, women request this procedure in an effort to take action to neutralise the escalation of violence and due to fears about her own safety and that of their children they are compelled to file a lawsuit, not in order to request severe penalties, but because they want a third party to intervene (the State) which is regarded as

endowed with authority and power to stop a deeply unfair situation. Penal intervention is requested not to suppress but to inhibit.

In what concerns the penal framework, unfortunately in Italy we are witnesses to an extremely low implementation of available resources. The multiple reasons for this can be summarised in the fact that domestic violence is largely unknown to the judicial hierarchy (for instance there is a clear "lack of zeal" by security forces when initiating legal proceedings, dealing with the offences as "frivolous" infringements with the ensuing faulty prosecution).

Also the use of **cautionary and personal restriction measures** (measures established in the penal proceedings code, such as cautionary custody and home arrest, or the obligation of reporting to the judiciary police at given intervals) are only occasionally for the following reasons:

- they are not definitive measure because they are stipulated for provisional periods. On the other hand and similarly to the remainder of penal cautionary measures, they are necessarily linked to a criminal lawsuit which, due to the current structure of the Italian penal system, does not guarantee any degree of protection for the women who report violent behaviour. Frequently women are reluctant to seek said measures because their physical safety would be in jeopardy.

In any event, these instruments allow to immediately achieve two important goals when applied in a well-prepared context and with greater attention. These are to restrain the (sometimes dream-like) sense of impunity of the attacker which translates into an exaggerated guarantee for violent male behaviour. This is the perception of both men ("*go to the police if you like, they'll take no notice of you*") as well as women.

The second objective, derived from the first, is that it could prevent the recurrence of violent behaviour, usually against the same victim. This implies a significant effect of producing safety. However, there is a further effect which is of great importance for abused women: it allows them to gain a little time and peace of mind (as well as safety) to decide what to do and how to proceed in many areas. Women who went through that experience know full well the importance of that space.

The penal aspects of the Law n. 154 dated 4.4.2001 "*Measures against violence in family relations*" (for more comments on it read attached article by prof. Virgilio)

Together with the above mentioned cautionary measure, the draft introduces a specific measure in the case of having to protect the physical integrity of domestic violence victims, i.e., the possibility for the judge to issue a restraining or interdiction order barring the offender from the family dwelling and the remaining places frequently visited by the victim. In addition, the judge can impose the payment of a subsidy for the dwellers of the house who, due to the cautionary measures, lack sufficient income.

There is not yet an organic statistic on the one and a half year application of the Law n. 154/2001. But from a comparative exchange organized by the Italian Women Lawyers Association (GIUDIT) and by the Group of Italian Women Lawyers of the Women Refuges it can be said that certainly the law has been applied mostly in those places where there are active women centres and that the majority of the women who are advised prefer the civil law instrument, as it allows them to have the "control" about the whole *iter* (times, moment of intervention, types of measures): this is fundamental for an application which is really for the advantage of the involved women, for her safety, instead of becoming an instrument which risks to be – even if applied in "good faith" – even more dangerous than the situation it wants to stop. Because in all matters of GBV all people intervening against it do have to keep in mind that it is primarily the involved adult woman who knows what is best for her, what really helps her and what resources she can count on.

A very important first "symbolic and cultural" effect of this law can be already seen in general where for the first time in Italy people see that the perpetrator of violence has to take immediate unpleasant consequences of his behaviour and is going to be blamed for it by society and its legal system.