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Monografie

Notizie

Autori

Redazione

Numeri precedenti

Links

Search

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A settant'anni dal *nomos della Terra*. Riflessioni sulla filosofia del diritto internazionale di Carl Schmitt

Victims of Domestic and Gender-Based Violence



PAOLA SECHI – Università di Sassari

Protecting Victims of Domestic and Gender-Based Violence: Strengths and Weaknesses of the so-Called «Red Code».

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Gli zuavi del Papa. 1860-1870.
La "Questione romana" e i Romani

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Particularities of Criminal Proceedings with Jury in pre-revolutionary
and contemporary Russia



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PROTECTING VICTIMS OF DOMESTIC AND GENDER-BASED VIOLENCE: STRENGTHS AND WEAKNESSES OF THE SO-CALLED «RED CODE»*

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CONTENTS: 1. [Introduction](#). – 2. [A new investigative protocol](#). – 3. [Protecting victims «through» criminal proceedings: changes in the precautionary field](#). – 4. [Domestic and gender-based violence: new crimes, more severe penalties](#). – 5. [Protection of domestic and gender-based violence victims «beyond» criminal proceedings](#). – 6. [Conclusion](#). – [Abstract](#).

1. – Introduction

Similarly to what has occurred at a supranational level, the awareness that not all those who have suffered a crime (victims) are equal has slowly made its way into the Italian criminal system[1]. Due to objective or subjective causes, some victims of crime are more exposed to the risk of repeated victimization, and to the danger of secondary victimization, deriving from their participation in criminal proceedings[2]. The *status* of «vulnerable victim» does not have defined boundaries, since it is a concept of relationships that is variable according to the type of threat taken into consideration. The extent of vulnerability changes depending on whether we look at it from a substantive criminal law perspective of protecting a person against the risks of primary victimization[3], or from a procedural point of view of defending victims from the dangers of secondary or repeated victimization[4]. On a different level, there is a distinction between an «endogenous» and an «exogenous» vulnerability. The first one is linked to the victim's subjective profile, relating to the physical or mental fragility of the affected person (for example minors and the mentally ill). «Objective» vulnerability arises from a criminal conduct likely to render the victim fragile (for example terrorism and domestic violence)[5].

If the notion of a vulnerable victim varies according to the aspects involved, the system must take specific measures.

This happened recently in Italy with the Law of 19 July 2019, No. 69, which sought to provide an answer to the need to fight domestic and gender-based violence[6].

One of the reasons that led the Italian legislator to intervene was the judgment of the European Court of Human Rights in *Talpis v. Italy* of 2 March 2017, in which the Strasbourg Court condemned Italy for violating the right to life and the prohibition of inhuman or degrading treatment, as well as the prohibition of discrimination because the Italian authorities in the case in question had not adopted the necessary and appropriate measures to protect a woman and her children who were victims of domestic violence committed by the woman's husband. The affair ended with the attempted murder against the applicant and the murder of her son. For the Strasbourg judges, the national authorities had to have taken into account «the victim's situation of extreme psychological, physical and material insecurity and vulnerability and, with the utmost expedition, assess the situation accordingly», offering her appropriate assistance[7]. However, in the instant case, even though investigations were instigated against the applicant's husband for the offences of family ill-treatment, bodily injury and threats of violence, no protection order was issued and the applicant was heard only seven months after lodging her complaint[8]. Such a delay resulted in a violation of art. 2 CEDU since it had deprived the complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of the man's acts of violence[9]. At the same time, there has been a violation of art. 3 CEDU, because of: 1) the seven months of official inertia before the instigation of criminal proceedings; 2) the three years of criminal proceedings for severe bodily injury after the applicant had lodged her complaint[10]. Finally, the Strasbourg Court concludes that there has been a violation of art. 14 CEDU taken in conjunction with articles 2 e 3 CEDU «since the Court considers that the violence perpetrated against the applicant must be regarded as based on her sex and accordingly as a form of discrimination against women»[11].

With a view to complying with the Strasbourg judgment, the new law introduces for the first time a sort of preferential path in preliminary investigations concerning crimes of domestic and gender-based violence: the purpose is to guarantee priority in conducting investigations and an immediate establishment of criminal proceedings in order to allow rapid intervention on a precautionary level[12].

In relation to substantive criminal law, the new provisions identify certain crimes and introduce new ones, namely the expression of physical, sexual and psychological violence that occur mainly, even if not exclusively, in close relationships. Specifically, the offences taken into consideration are ill-treatment against family members and cohabitants (art. 572 Italian Criminal Code); sexual violence, aggravated sexual violence and group sexual violence (art. 609-*bis*, 609-*ter* and 609-*octies* Italian Criminal Code); sexual acts with a minor (art. 609-*quater* Italian Criminal Code); corruption of a minor (art. 609-*quinquies* Italian Criminal Code); stalking (art. 612-*bis* Italian Criminal Code); illicit dissemination of sexually explicit images or videos (art. 612-*ter* Italian Criminal Code); personal injuries and deformation of the person's appearance through permanent injuries to the face (art. 583-*quinquies* Italian Criminal Code) where specific aggravating circumstances exist. Italian Law 69/2019 also introduces the crime of coercion or induction into marriage (art. 558-*bis* Italian Criminal Code) which, however, is not considered for the purpose of applying the specific procedural rules established by the law

itself, even though it is a crime in terms of gender-based violence. Other crimes that express such types of violence such as, for example, female genital mutilation, remain outside the scope of the new Law as well.

Finally, Italian Law 69/2019 aims to protect victims of domestic and gender violence even beyond criminal proceedings. In this regard, after the criminal proceedings specific psychological treatment is provided for the author of some of the aforementioned crimes in order to counter recidivism. The scope of preventive measures, operating before and independently of the establishment of criminal proceedings, has been extended.

The Italian legislator's goal is commendable, but it must be emphasized that Italian Law 69/2019 raises several problems.

In this paper I will try to draw attention to the positive and negative aspects of a law that aims to win the battle against the endemic phenomenon of domestic and gender-based violence.

2. – A new investigative protocol

Firstly, the law in question states that criminal police, after receiving a *notitia criminis* involving any of the offences referred to in art. 347 para. 3 Italian Criminal Procedure Code[[13](#)], shall inform the public prosecutor of it immediately, also orally. This introduces a priority criterion, in the sense that the new Law requires investigations for the aforementioned crimes be carried out with absolute speed (Article 347 para. 3 Italian Criminal Procedure Code). In this context, the criminal police must also proceed without delay to carry out the investigative actions delegated by the public prosecutor and, again without delay, make the records of the activities carried out available to him (art. 370 para. 2-*bis* and 2-*ter* Italian Criminal Procedure Code).

New aspects also concern the activity of the public prosecutor, who must gather information from the victim or from the person who submitted a report, complaint or petition for criminal proceedings within three days of the date in which the *notitia criminis* was entered in the dedicated register, unless there is an absolute need for the protection of minors or for confidentiality of investigations also in the interests of the victim (art. 362 para. 1-*ter* Italian Criminal Procedure Code)[[14](#)].

In particular, art. 362 para 1-*ter* of the Italian Criminal Procedure Code seeks to allow a rapid intervention on a precautionary level. However, the restriction of the public prosecutor's discretion with reference to the gathering of information in the established short term may give rise to difficulties in interpreting the scope of the duty in question, even if there is no procedural sanction in the event of non-compliance of the same.

First of all, it has been highlighted that the public prosecutor would seem to be bound to take information from the victim even where the latter had already been heard by criminal police at the time of filing the report or the complaint, with all the possible negative consequences in terms of secondary victimization[[15](#)].

However, some public prosecutors, who have published guidelines on the matter, consider that the victim of crime heard by criminal police before the formal registration of the *notitia criminis* should not be examined again

if certain conditions are met, namely if the criminal police have already gathered from the victim all the useful elements identified by the public prosecutor to allow him to make a quick decision on the protection of the affected person and on the development of the proceedings[16].

It has been argued that in those cases it is not only useless to rehear the victim after a few days, since it can be foreseen that the affected person will not be able to add anything to what was previously declared, but could also give rise to a pointless secondary victimization. It should be considered, in this regard, that the public prosecutor may avail himself of the criminal police for carrying out investigative activities and specifically delegated actions, including gathering the victim's statements pursuant to art. 370 Italian Criminal Procedure Code[17].

It has also been observed that the prosecutor should not hear the victim of crime in cases where the report of the crime appears to be manifestly unfounded or a condition of admissibility of the criminal proceedings is lacking (for example, when the complaint was submitted outside of time constraints)[18].

Besides, the new Law itself introduces exceptions to the aforementioned investigative protocol both when there is a need to protect minors, and when it is necessary to guarantee the confidentiality of investigations also with a view to protecting the victim.

In particular, with reference to minors, especially when they are very young, it will be necessary to preliminarily assess their ability to testify, considering the developmental stage of the child 's personality, with specific regard to cognitive abilities and the possible propensity to suggestion, both in general terms and towards specific people[19]. Therefore, those requirements might not allow compliance with the three-day deadline set by the Law.

As for the need to guarantee the confidentiality of investigations, also in order to protect the victim, there are different situations that may come into play: consider a case in which the report comes from a third person and the victim of crime is not available to make statements, or a case in which it is necessary to proceed with the summons at the domicile where the suspect could be, revealing the pending proceedings to the same[20].

With reference to the *vulnus* of the investigative secret, consider a case in which the crime emerged from the results of wiretapping: in these circumstances the gathering of the victim's statements could result in an inappropriate early discovery of proceedings[21].

The introduction of a fast path in taking charge of criminal proceedings for domestic and gender-based offences aims above all to allow swift intervention with a precautionary plan. Indeed, the criminal proceedings in question relate to crimes for which there is not only a high risk of reiteration of criminal conduct, but also a high danger of escalation, since the development of this category of crimes is likely in even more serious acts, up to murder. It is thus surprising that, considering the public prosecutor's duty to hear the victim within three days of entering the *notitia criminis* into the specific register, there is no deadline for the judge's decision with regard to a possible request for a precautionary measure by the same public prosecutor. It can be argued in this regard that it makes sense to provide for timely intervention by the public prosecutor only to the extent that it is followed by an equally timely

intervention by the preliminary investigations judge into precautionary function[22].

On the other hand, it must be remembered that in the Talpis case the Strasbourg Court sentenced Italy for violation of art. 3 CEDU also because of the length of criminal proceedings. In this regard, it should be noted that art. 132-*bis* of the implementing provisions of the Italian Criminal Procedure Code requires prioritising criminal proceedings concerning the crimes most often associated with instances of gender-based violence, i.e. ill-treatments, stalking and sexual violence. It has been highlighted by the Grevio Evaluation Report about Italy, published on 13 January 2020, that «however, the norm does not alter the general time limits which apply for concluding inquiries into criminal offences (18 months or 24 months in cases of aggravated sexual violence, sexual violence on children and gang rape) and no deadline applies to cases before the court of appeal and cassation»[23]. According to Grevio Report, «available data would indicate that the average duration of first-instance trials into gender-based violence-related cases is three years; however courts' practices vary considerably and delays in proceedings lead to significant numbers of cases being time-barred»[24]. These findings demand the introduction into the Italian system of fixed times for the duration of the various procedural stages.

3. – Protecting victims «through» criminal proceedings: changes in the precautionary field

Moving on to the analysis of the new provisions regarding precautionary measures, Law 69/2019 extends the possibility of control through electronic means or other technical devices (the so-called electronic bracelet) to the prohibition of approaching places attended by the victim (art. 282-*ter* Italian Criminal Procedure Code). However, the new Law does not regulate operational matters concerning the installation of electronic bracelets: these should work in a different way from those associated with house arrest, as they are installed on a free person and aim to warn of an excessive approach to the victim, who should also consent to the installation of a connected device on himself. Nothing is planned as regards the resources to be allocated for the implementation of the standards. On the contrary, art. 21 Law 69/2019 states that the implementation of the provisions contained in the law must not result in new or greater charges for public finances[25]. Well, it is known that the so-called «anti-stalker» variant of the electronic bracelet is a prototype supplied to very few criminal police forces and in a very small number of cases[26]. Hence, due to the express provision not to invest economic resources in the implementation of the Law, the innovation mentioned will have little or no practical impact, remaining nothing more than a media signal.

The new Law also intervenes on art. 275 para. 2-*bis* Italian Criminal Procedure Code allowing precautionary detention in prison with reference to the dissemination of sexually explicit images without consent, even if the sentence imposed as a result of the trial may not exceed three years of imprisonment.

Moreover, various information requirements are introduced to protect the victim on a precautionary level.

Specifically, it is stated that the decisions ordering the injunction to stay away from the family home (art. 282- *bis* Italian Criminal Procedure Code) and from the places attended by the victim (art. 282- *ter* Italian Criminal Procedure Code) are communicated, in addition to the latter and to the territorial social-assistance services, also to the victim's defence lawyer, where appointed (art. 282-*quater* Italian Criminal Procedure Code). The communication in question seeks to inform the victim of crime of the adoption and content of the aforementioned coercive measures in order to allow him to report any violations of the instructions given by the judge. In this regard, it may be useful to point out that a new crime has been introduced through art. 387- *bis* Italian Criminal Code which provides for imprisonment from six months to three years for those who violate the obligations imposed by the aforementioned precautionary measures[27]. However, it is a poorly effective provision for precautionary purposes, given that the extent of the punishment does not allow arrest *in flagrante delicto* or the application of precautionary measures. It will therefore be necessary to continue to rely on the provision of the Italian Criminal Procedure Code that allows an aggravation of the precautionary measure in place in the event of violations of the imposed obligations (art. 276 Italian Criminal Procedure Code)[28].

Withdrawal or substitution *in melius* of coercive precautionary measures applied in proceedings for crimes committed with violence against the victim shall be immediately communicated[29] by the criminal police to the social-assistance services and to the victim, as well as, where appointed, to his lawyer, while previously the communication was directed exclusively to the latter and, only in case of his absence, to the victim of crime. Again in this case, it is an obligation aimed to inform the victim of the crime of events that could endanger him, thus allowing the person concerned to protect himself in an extra-procedural way.

The immediate notification to the victims of crimes set out by the new Law and to their lawyer, where appointed, of the accused or convicted person's release or escape from detention, regardless of both the request of the victim and a real risk of harm to the offender which would result from such notification, is also finalized to those needs[30].

Another important duty to provide information, although not directly relevant to a precautionary plan, is that relating to victim support services, now included in the information that shall be given to all victims of crime upon the first contact with the proceeding authority (art. 90-*bis* Italian Criminal Procedure Code), even though such services are not yet fully regulated by law in the Italian legal system[31].

4. – Domestic and gender-based violence: new crimes, more severe penalties

Major innovations affect the substantive side of the criminal prosecution of domestic and gender-based violence: new criminal offences have been introduced, more severe penalties have been provided for some crimes, there have been some changes regarding aggravating circumstances, as well as an intervention on requirements for the prosecution of crimes of sexual violence and sexual acts with a minor.

With reference to the new crimes, in addition to the aforementioned offence of violation of the obligations imposed by decisions ordering the injunction to stay away from the family home and from the places attended by the victim, other newly introduced criminal offences are the crime of coercion or induction to marriage (art. 558- *bis* Italian Criminal Code); the crime of deformation of the person's appearance by permanent lesions of the face (art. 583- *quinquies* Italian Criminal Code); the crime of unlawful dissemination of sexually explicit images or videos without the consent of the person portrayed (art. 612- *ter* Italian Criminal Code).

Through the crime of coercion or induction to marriage, both the compulsion with violence or threats, and the induction to marriage or civil union - based in the latter cases on the abuse of a dominant position or on the advantage of the victim's vulnerability - are punished: the penalty is imprisonment from one to five years[32]. The criminal proceedings are carried out in Italy even if the crime was committed abroad, provided that the victim or offender is a foreigner resident in Italy or an Italian citizen.

The new criminal offence seeks to counter so-called forced marriages, a plague that especially afflicts some countries of the developing world, but which can also be found more and more often in today's multicultural and multi-ethnic societies[33]. Art. 558-*bis* Italian Criminal Code, which also provides for two aggravating circumstances in cases where the acts were committed against children, are therefore welcomed, hoping that criminal protection will be increased in the future through prevention and monitoring of the phenomenon[34].

Furthermore, deformation of a person's appearance by means of permanent lesions to the face (Art. 583-*quinquies* Italian Criminal Code) has been established as an independent crime, no longer as an aggravated form of the crime of injury. In the basic cases, the rule in question punishes those who disfigure a person's face permanently with imprisonment from eight to fourteen years. In this regard, it was acknowledged that the crime of injury, even if aggravated, did not provide a satisfactory answer to the extremely serious impairment suffered by the victims of facial disfigurement[35].

Life imprisonment is envisaged when murder is the result of the commission of the crime in question.

Action is also taken in the penitentiary system (art. 4 -*bis* para. 1-*quater* and 1-*quinquies* Italian Law 26 July 1975, n. 354), allowing access to penitentiary benefits and alternative measures to detention for those convicted of the offence of deformation of appearance by permanent injury to the face only on the basis of scientific observation of their personality, collectively conducted for at least one year, also with the aid of experts. At the same time, the positive participation in specific rehabilitation programmes must be taken into account by the sentence supervision judge or court for the granting of «extramural measures».

On a repressive level, great importance has been given to the inclusion in the Italian Criminal Code of the crime of unlawful dissemination of sexually explicit images or videos without the consent of the portrayed person (Art. 612-*ter* Italian Criminal Code): whoever creates or subtracts images or videos and then disseminates them without the victim's consent is punished with imprisonment from one to six years; the same penalty is imposed on those

who, after having received the images or videos in question - therefore without having realized or subtracted them - spread them without the consent of the affected person, in order to harm the latter[36]. Art. 612-ter Italian Criminal Code is the punitive response to the phenomenon defined with the neologism «Revenge porn», coined in the Anglo-Saxon world to indicate non-consensual disclosure, inspired by vengeful purposes, of intimate images of the former partner[37]. This crime can be prosecuted subject to complaint, which may be withdrawn only before the proceeding authority. The offender is punished, basically, with imprisonment from one to six years, but the crime is aggravated if the victim is, or was, linked to the author by marriage or even simply by an affective relationship, or if the facts were committed through the use of computer or telematic means. Since the offensive power of so-called revenge porn is essentially based on the use of digital technologies, which make it at the same time very simple to implement (in fact, it only takes a few clicks to commit the crime), statistically the aggravated accusation will be much more likely than the basic one[38]. Furthermore, the penalty is increased from a third to a half if the facts were committed in damage to a person in a condition of physical or mental inferiority, or against a pregnant woman. In these cases, the proceedings are started without a need for complaint.

Italian Law 69/2019 does not specify which images or videos can be considered sexually explicit, therefore tacitly assigning this task to the courts. The explicit sexual connotation is not, however, the only requirement with reference to images or videos, in the sense that they must have been created in a confidential context, in which they would have remained without one of the above indicated criminal activities.

The judgment on the introduction of the crime in question is positive even if it must be understood that the criminal response is only one of the steps to be taken to effectively fight the phenomenon of so-called revenge porn. There are still other important issues to be addressed, such as, for example, the role of digital platforms in the dissemination of sexually explicit images published without consent (imposing, for instance, the immediate preventive blocking of harmful content, following the example of the Italian legislation against the cyber-bullying)[39]. In that area, possible paths of psychological support for victims of crime and, as a preventive measure, the implementation of digital education, especially among young people, seem to be crucial too. Finally, it should be noted that the crime in question is not among the cases that require the public prosecutor to hear the victim of the crime or the person who submitted a report, complaint or petition for criminal proceedings within three days of when the *notitia criminis* is entered in the dedicated register.

Italian Law 69/2019 also tightens the regulation of aggravating circumstances of various crimes of domestic and gender-based violence.

It can be highlighted, for example, that when the crime of ill-treatment against family members and cohabitants is committed in damage or in the presence of a minor, against a pregnant woman or a disabled person, there will be a special aggravating circumstance with an increase of up to half of the penalty.

Furthermore, a new additional paragraph in art. 572 Italian Criminal Code expressly qualifies the minor who witnesses ill-treatments as a victim of crime,

thereby giving express legal relief to the injury to psychic integrity suffered by minors who witness this type of crime.

As concerns requirements for prosecution, the deadline for submitting a complaint regarding crimes of sexual violence provided for in articles 609-*bis* and 609-*ter* Italian Criminal Code has increased from six months to one year, while the offence of sexual acts with minors set out in art. 609-*quater* Italian Criminal Code is now subject to *ex officio* prosecution (art. 609-*septies* Italian Criminal Code). The need to assign the victim of sexual violence more time in order to decide whether to submit a complaint or not is therefore recognised, as well as in reference to minors, considering the difficulty of submitting a complaint when children or young persons are involved in a pathological relationship with the offender, who could possibly even be their legal representative[40]. Regarding *ex parte* and *ex officio* prosecution, Grevio Report has however stated that Italian legislation is not yet fully compliant with art. 55 para. 1 of the Istanbul Convention which requires the Parties to ensure that investigations into or prosecution of a number of categories of offences «shall not be wholly dependant upon a report or a complaint filed by a victim (...), and that the proceedings may continue even if the victim withdraws her or his statement or complaint». Actually, in the Italian criminal system the crimes of simple bodily injury (art. 582 para. 2 Italian Criminal Code) and sexual violence (art. 609-*bis* Italian Criminal Code), where the violence is not qualified by one of the aggravating circumstances described in art. 609-*septies*, para. 2 Italian Criminal Code, are still prosecutable only upon a complaint of the victim[41].

5. – Protection of domestic and gender-based violence victims «beyond» criminal proceedings

That which the new Law provides on a procedural and sanctioning level has been briefly explained.

The protection of victims of domestic and gender-based violence cannot, however, be limited to the criminal process, but must be implemented on the one hand even after the conviction of the offender, and on the other hand before and independently of the establishment of criminal proceedings.

The crimes in question have a markedly cultural connotation; it follows that it is not realistic to address the phenomenon of domestic and gender-based violence as a whole without delving into an in-depth educational exploration, and with regard to persons convicted of crimes of this type, without providing for parallel re-educational work that finds its elective field in the enforcement phase of the conviction - aimed at the rehabilitation of the offender pursuant to art. 27 para. 3 of the Italian Constitution[42].

In this perspective, Italian Law 69/2019 intervenes on several rules. A provision has been inserted in art. 165 Italian Criminal Code, pursuant to which in cases of conviction for the crimes set out therein, the conditional suspension of the sentence is in any case subject to participation in specific recovery plans with institutions or associations dealing with prevention, psychological assistance and recovery of subjects convicted of the same offences. The new rule is very timely, even if the penalties provided for many of the crimes taken

into consideration by the article in question will make it difficult to reach a sentence of less than two years of imprisonment and, therefore, to grant conditional suspension of the sentence[43]. At the same time, art. 13-*bis* Italian Law 354/1975 (Penitentiary Law) provides that prisoners convicted of sexual offences, mistreatments against family members or cohabitants, deformation of the person's appearance through permanent injuries to the face and stalking may be allowed to follow rehabilitation courses in institutions or associations that deal with prevention, psychological assistance and recovery of persons convicted of the same crimes, organized by agreement between the aforementioned bodies or associations and the penitentiary institutions. The inadequacy of the sole criminal sanction to face the phenomenon of domestic and gender delinquency is therefore acknowledged, due to the complex personality of the convicts who often tend to deny or minimize the negative value of the committed facts, and to the high rate of recidivism. Although no participatory obligation is imposed on the authors of crimes indicated by the Law, in practice participation in such treatment will condition access to penitentiary benefits, given that participation in the same is taken into consideration for the purpose of granting the benefits provided for by art. 4-*bis* Italian Law 354/195, especially as regards convicts of sexual crimes against children. Failure to participate in the aforementioned treatment, although not constituting an element impeding the granting of penitentiary benefits, will impose a specific motivational obligation on that point to the sentence supervision judge or court[44].

Perpetrators' programmes are then welcomed, even if it should be borne in mind that they should «work in close co-operation with women's specialist services to ensure victims are adequately informed and protected»[45].

Finally, a form of protection for victims of domestic or gender-based violence, even outside the criminal proceedings and regardless of the beginning of the same, can be found in preventive measures, defined as *ante delictum* or *praetor delictum* measures, since they are applicable to a person considered socially dangerous due to suspicious conduct.

The new Law modifies the regulation of personal prevention measures applied by the judicial authority in order to minimize the danger related to the degeneration of close relationships by adding the crime of ill-treatment in the family to the list of criminal cases that indicate qualified dangerousness (article 4 para. 1 letter *i-ter* Italian Legislative Decree 6 September 2011, No 159) and providing for a ban on approaching persons to be protected, a prohibition that may be imposed by the measure of special surveillance (Article 8 para. 5 Italian Legislative Decree 159/2011).

6. – Conclusion

In summary, Italian Law 69/2019 can be considered a positive tool, although perfectible, to try to stem a phenomenon which requires a holistic approach.

In this regard, in the Italian legal system a complete discipline on an effective support network for victims of crime before, during and after criminal proceedings is still lacking. Victim support services are essential to eliminate or

reduce the risks of primary and secondary victimization. In this perspective, the establishment of victim support and assistance facilities operating independently of criminal proceedings would also allow the pursuit of aims of general interest, in terms of repression of domestic and gender-based crimes, encouraging the collaboration of victims with state bodies and, therefore, the propensity to report the suffered crime[46].

On the other hand, the training of practitioners seems to be crucial in the field of domestic and gender-based violence. The importance of training derives from the fact that the victim of crime, especially a particularly vulnerable one, if not treated in criminal proceedings in a manner appropriate to his situation, may be exposed to secondary victimization, with negative effects also on the proper conduct of criminal proceedings: we can mention, for example, the need for the vulnerable victim's hearing to be carried out by professionals with sensitivity, background and experience regarding contacts and relations with a vulnerable person, in order not to influence his answers and successfully obtain reliable statements. From a different point of view, we may consider the need, in the presence of a crime report, to assess the existence of precautionary requirements regarding the probability the suspect or the accused reiterates the criminal behaviour in order to apply a restriction measure of freedom proportionate and adequate to the specific case.

As for compensation, awareness on the dynamics and traumatic consequences of the crimes in question seem to be essential as well[47].

Italian Law 69/2019 provides that, within twelve months of its entry into force, specific compulsory courses are organized for personnel performing public security and criminal police functions, in order to prevent and prosecute the crimes set out in the same law, as well as courses for penitentiary police that intervene in the prison treatment of the authors convicted of those crimes.

However, gender-sensitive training programmes are essential for all professionals involved in criminal proceedings, that is to say, in addition to police officers, for public prosecutors, judges and lawyers, revealing itself indispensable also for those providing victim support, because inadequately trained operators may not be able to fully respond to the needs of the victims[48].

Last but not least, training should also be included in education programmes, in cooperation with schools and universities, to fight a type of violence that needs not only a repressive but also an educational and cultural action in order to be overcome[49].

Abstract

Le vittime di violenza domestica e di genere rappresentano una categoria di persone offese dal reato con specifiche esigenze di protezione, a causa dell'elevato rischio di vittimizzazione secondaria e ripetuta. Nel sistema italiano sono state introdotte recentemente nuove garanzie per queste tipologie di vittime tramite la L. 19 Luglio 2019, n. 69. Nel presente lavoro si porranno in evidenza i punti di forza e di debolezza di un provvedimento normativo che investe diversi rami dell'ordinamento al fine di combattere un fenomeno che, per poter essere sconfitto, richiede un approccio «olistico».

Per la pubblicazione degli articoli della sezione “Contributi” si è applicato, in maniera rigorosa, il procedimento di peer review. Ogni articolo è stato valutato positivamente da due referees, che hanno operato con il sistema del double-blind.

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[1] See Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. Directive 2012/29/UE was implemented in Italy with Legislative Decree 15 December 2015, n. 212. As regards international texts focused on specific forms of crime and correlatively on particular types of victims, see Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention, 11 May 2011) ratified by Italy under Law 27 June 2013, No. 77; Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention, 25 October 2007), ratified by Italy under Law 1 October 2012, n. 172.

[2] See M. BOUCHARD, *Sulla vulnerabilità nel processo penale. Breve guida giuridico-filosofica sulla vulnerabilità della vittima di reato*, in *Diritto Penale e Uomo* 12, 2019, 12.

[3] Primary victimization derives directly from the commission of the crime.

[4] M. GIALUZZI, *Lo statuto europeo delle vittime vulnerabili*, in S. ALLEGREZZA – H. BELLUTA – M. GIALUZZI – L. LUPÁRIA, *Lo scudo e la spada. Esigenze di protezione e poteri delle vittime nel processo penale tra Europa e Italia*, Torino 2012, 62.

[5] See S. VAN DER AALST, *Variable vulnerabilities? Comparing the rights of adult vulnerable suspects and vulnerable victims under EU law*, in *New Journal of European Criminal Law* 7(1), 2016, 49; M. VENTUROLI, *La vittima nel sistema penale: dall'oblio al protagonismo?*, Napoli 2015, 99.

[6] According to the Istanbul Convention, domestic violence includes «all acts of physical, sexual, psychological or economic violence that occur within the family or domestic units or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim» (art. 3 lett. b). Gender-based violence concerns all acts causing «physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life» (art. 3 lett. a). About Italian Law 69/2019 see L. ALGERI, *Il c.d. Codice rosso: tempi rapidi per la tutela delle vittime di violenza domestica e di genere*, in *Diritto Penale e Processo* 2019, 1363.

[7] European Court of Human Rights, 2 March 2017, *Talpis v. Italy*, para. 130.

[8] See European Court of Human Rights, 2 March 2017, *Talpis v. Italy*, para. 113-114.

[9] European Court of Human Rights, 2 March 2017, *Talpis v. Italy*, para. 117 and 125.

[10] European Court of Human Rights, 2 March 2017, *Talpis v. Italy*, para. 130.

[11] European Court of Human Rights, 2 March 2017, *Talpis v. Italy*, para 148.

[12] See S. RECCHIONE, *Codice Rosso. Come cambia la tutela delle vittime di violenza domestica e di genere con la legge 69/2019*, in <https://www.ilpenalista.it>, 26 luglio 2019, 2.

[13] In addition to the crimes already referred to in art. 407 para. 2 lett. a), numbers 1-6 Italian Criminal Procedure Code, the offences taken into consideration are: ill-treatment against family members and cohabitants (art. 572 Italian Criminal Code); sexual violence, aggravated sexual violence and group sexual violence (art. 609-bis, 609-ter and 609-octies Italian Criminal Code); sexual acts with a minor (art. 609-quater Italian Criminal Code); corruption of a minor (art. 609-quinquies Italian Criminal Code); stalking (art. 612-bis Italian Criminal Code); illicit dissemination of sexually explicit images or videos (art. 612-ter Italian Criminal Code); personal injuries and deformation of the person's appearance through permanent injuries to the face (art. 583-quinquies Italian Criminal Code) where specific aggravating circumstances exist.

[14] The duty to hear the victim or person who reported a crime concerns proceedings for the aforementioned offences, with the exception of the crime of unlawful dissemination of sexually explicit images or videos. The list of crimes for which there is an obligation to hear the victim also lacks the crime of attempted murder, which in some cases can be expression of domestic or gender-based violence. On the other hand, some of the crimes referred to in art. 362 para. 1-ter Italian Criminal Procedure Code give rise to a «presumed vulnerability» of child victims which, consequently, must be heard with the aid of an expert in child psychology and psychiatry. The same expert help shall be used when summary information must be gathered from a victim with specific protection needs, irrespective of his age (art. 362 para. 1-bis Italian Criminal Procedure Code).

[15] CONSIGLIO SUPERIORE DELLA MAGISTRATURA, *Parere sul Disegno di legge relativo a: "Modifiche al Codice Penale, al Codice di Procedura Penale e altre disposizioni in materia di tutela delle vittime di violenza domestica e di genere (A.S. 1200)"*, (8 May 2019), in <https://www.csm.it>, para. 5.

[16] PROCURA DELLA REPUBBLICA PRESSO IL TRIBUNALE DI GELA, *Direttiva del Procuratore – Linee Guida in materia di tutela delle vittime di violenza domestica e di genere – L. 19 Luglio 2019 n. 69 - Modifiche al Codice Penale, al Codice di Procedura Penale e altre disposizioni in materia di tutela delle vittime di violenza domestica e di genere*, (8 August 2019), in <https://www.ordineavvocatigela.it>, 12; PROCURA DELLA REPUBBLICA PRESSO IL TRIBUNALE DI VARESE, *Direttive interpretative e organizzative conseguenti all'entrata in vigore della legge 19 Luglio 2019 n. 69 c.d Codice Rosso*, (11 August 2019), in <https://www.sistemapenale.it>, 25 November 2019, 4; PROCURA DELLA REPUBBLICA PRESSO IL TRIBUNALE DI SASSARI, *Protocollo organizzativo e investigativo integrato per l'attuazione della Legge 19 Luglio 2019, n. 69: "Codice Rosso"*, (28 October 2019), in <https://www.sistemapenale.it>, 20 November 2019, 11.

[17] CORTE SUPREMA DI CASSAZIONE, UFFICIO DEL MASSIMARIO E DEL RUOLO, *Relazione su novità normativa, Legge 19 Luglio 2019, n. 69, Modifiche al Codice Penale, al Codice di Procedura Penale e altre disposizioni in materia di tutela delle vittime di violenza domestica e di genere*, 27 October 2019, n. 62, in <https://www.sistemapenale.it>, 20 November 2019, para. 2.3.

[18] CORTE SUPREMA DI CASSAZIONE, UFFICIO DEL MASSIMARIO E DEL RUOLO, *Relazione su novità normativa*, cit., para. 2.3

[19] See CORTE SUPREMA DI CASSAZIONE, UFFICIO DEL MASSIMARIO E DEL RUOLO, *Relazione su novità normativa*, cit., para. 2.4.

[20] PROCURA DELLA REPUBBLICA PRESSO IL TRIBUNALE DI TIVOLI, *Prime linee guida per l'applicazione della legge "Modifiche al Codice Penale, al Codice di procedura penale e altre disposizioni in materia di tutela delle vittime di violenza domestica e di genere"*, 31 July 2019, in <http://www.giurisprudenzapenale.com>, 5 August 2019, 29.

[21] See CORTE SUPREMA DI CASSAZIONE, UFFICIO DEL MASSIMARIO E DEL RUOLO, *Relazione su novità normativa*, para. 2.4.

[22] See F. FILICE, *La violenza di genere*, Milano 2019, 61.

[23] See GREVIO's (Baseline) *Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*, GREVIO/Inf(2019)18, Adopted on 15 November 2019, Published on 13 January 2020, 69.

[24] See GREVIO'. (Baseline) *Evaluation Report*, cit., 69.

[25] Therefore, the concerned administrations shall see to the relative fulfilments with the available human, instrumental and financial resources.

[26] See F. FILICE, *La violenza di genere*, cit., 69.

[27] The crime of violating the injunction to stay away from the family home and from the places attended by the victim implements art. 53 para. 3 Istanbul Convention, which requests the Parties to take the necessary legislative or other measures to ensure that any breaches of restraining or protection orders «shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions».

[28] See CORTE SUPREMA DI CASSAZIONE, UFFICIO DEL MASSIMARIO E DEL RUOLO, *Relazione su novità normativa*, cit., para. 3.

[29] With the exception of the obligation to appear before the criminal police and prohibition to leave the country.

[30] See art. 90-ter para.1-bis, Italian Criminal Procedure Code; article 15 Law 69/2019. Art. 659 Italian Criminal Procedure Code imposes that release, following a decision by the sentence supervision judge, of the person convicted of the crimes therein set out is immediately

communicated by the public prosecutor to the victim and, where appointed, to his lawyer. The offence referred to in art. 612-ter Italian Criminal Code (unlawful dissemination of sexually explicit images or videos without the consent of the portrayed person) is excluded from the scope of the rule in question, as well as from that of art. 90-ter Italian Criminal Procedure Code.

[31] See RETE DAFNE ITALIA, *Proposta di istituzione di un Servizio Nazionale di assistenza per le vittime di reato*, in <https://www.dirittopenaleuomo.org>, 13 November 2019.

[32] The provision implements art. 37 para. 1 Istanbul Convention, which requires the signatory States «to take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised». Directive 2012/29/EU includes forced marriages in the gender-based violence notion (Whereas 17).

[33] See G. PAVICH, *Le modifiche al Codice Penale*, in *Codice Rosso. L. n. 69/2019*, edited by A. Marandola – G. Pavich, Milano 2019, 16; G. PEPÈ, *I matrimoni forzati presto previsti come reato anche in Italia?*, in <https://www.dirittopenalecontemporaneo.it>, 20 May 2019, 1.

[34] See GREVIO's (Baseline) *Evaluation Report*, cit., 63.

[35] Victims of the crime provided for by art. 583-quinquies Italian Criminal Code shall have the right to compensation by the Italian State when the offender does not have sufficient resources to compensate the damage or cannot be identified (Law 7 July 2016, n. 122, as modified by Law 20 November 2017, n. 167).

[36] Art. 612-ter Italian Criminal Code applies only when the fact does not constitute a more serious crime (e.g. production and dissemination of child pornography images, punished with prison sentence up to twelve years).

[37] G.M. CALETTI, "Revenge Porn": *prime considerazioni in vista dell'introduzione dell'art. 612-ter c.p.: una fattispecie "esemplare", ma davvero efficace?*, in <https://www.dirittopenalecontemporaneo.it>, 29 April 2019, 1.

[38] See N. AMORE, *La tutela penale della riservatezza sessuale nella società digitale. Contesto e contenuto del nuovo cybercrime disciplinato dall'art. 612-ter c.p.*, in <http://www.lageislazionepenale.eu>, 20 gennaio 2020, 28; G.M. CALETTI, "Revenge Porn": *prime considerazioni*, cit., 3.

[39] See art. 2 l. 29 May 2017, No. 71; See N. AMORE, *La tutela penale della riservatezza sessuale nella società digitale*, cit., 34; G.M. CALETTI, "Revenge Porn": *prime considerazioni*, cit., 3.

[40] See S. RECCHIONE, *Codice Rosso*, cit., 9.

[41] See GREVIO's (Baseline) *Evaluation Report*, cit., 76.

[42] See F. FILICE, *La violenza di genere*, cit., 88.

[43] The costs of participation in the recovery courses referred to in art. 165 Italian Criminal Code shall be charged to the sentenced person. This discipline could conflict with the Constitutional principle of equality (art. 3 Italian Constitution) since the author of crime who does not have the means to pay the aforementioned expenses shall be obliged to serve his sentence.

[44] Such discipline has been extended only to some of the crimes falling into the category of crimes of domestic or gender violence.

[45] See GREVIO's (Baseline) *Evaluation Report*, cit., 43.

[46] See EUROPEAN COMMISSION, *Strengthening Victims' Rights: from Compensation to Reparation. For a New EU Victims' Rights Strategy 2020-2025*, March 2019, 31-32.

[47] See EUROPEAN COMMISSION, *Strengthening Victims' Rights*, cit., 32, with reference to gender-based violence cases: «The amount of compensation should reflect the wide-ranging and long-term harm of gender-based violence, going beyond potential medical and therapy costs, to also cover loss of earnings and broader psychological damage. Compensation should serve as a means for re-building an independent and violence-free life of dignity».

[48] Art. 25 Directive 2012/29/EU; Art. 15 Istanbul Convention. See See GREVIO's (Baseline) *Evaluation Report*, cit., 40.

[49] Art. 26 Directive 2012/29/EU; art. 14 Istanbul Convention. See *European Parliament Resolution of 30 May 2018 on the Implementation of Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime*, 9, point 33; GREVIO's (Baseline) *Evaluation Report*, cit., 36.