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WOMEN LAWYERS' WORKING GROUP INSIDE D.I.RE
(WOMEN'S NETWORK AGAINST VIOLENCE)

Since the Nineties the women lawyers working in strict connection with the Italian informal network of Anti-violence Centers formed an own network with the aim to provide their professional support to women in a violent situation and to the Centre's consultants in order to have a cultural change in the judicial world regarding the perception and interpretation of violence against women. When "D.i.Re." was founded in 2009 the women lawyers network became the Women lawyers' working group inside "D.i.Re."

Working group on criminal matters

In 2008 the national network of lawyers of anti-violence centers conducted a research on the effectiveness of the intervention and protection system existing in Italian law on domestic violence, a phenomenon that in Italy is among the ones that restricts more women's rights.

In Italy, in fact, 69.7% of women aged 18 to 70 years regardless of culture, wealth and occupation have suffered violence by partners or former partners once in their life (ISTAT 2007). Recent statistics confirmed this trend: more than 50 women were killed by husbands or partners in first five months of 2011 (www.zeroviolenzadonna.it).

The number of complaints is still significantly lower than the reality of the phenomenon, which is still treated as mere marital or family conflicts regardless of the fact that internationally domestic violence is considered a violation of the human rights of women.

From experience gained over twenty years of work with women who suffered violence, it emerges the necessity to raise awareness and develop effective strategies to prevent and combat domestic violence and a national research has been presented reporting problematic issues relating the organization of criminal and civil courts which weaken the judicial action both for the aspect of the ascertainment of facts and for the protection of victims of violence.

The research involved first instance Courts and Prosecutors of the following judicial district: Milan, Rome, Naples, Florence, Bologna, Turin, Ferrara, Trento, Cosenza, Latin America, Santa Maria Capua Vetere, Arezzo, Bari, Catania, Palermo, Bolzano, Perugia, Ancona, Messina, Parma, Nuoro, Pescara, Monza, Trieste, Gorizia, Reggio Emilia, Tivoli and Velletri.

Firstly, the research revealed a general lack of specialization of operators: the lack of specific training, for example, is the source of the harmful practice of tentative of conciliation proposed by the police to the woman deposing the complaint.

In the criminal law it happens also that facts which are denounced by women who refer to the police office are minimized by the police officers who often try to dissuade them from submitting lawsuits against the violent partner and not rarely they inform him about the initiative to complain: it is self-evident the risk arising from this practice for the safety of women.

In case of complaint, if not adequately trained, police officers do not acquire analytical narrative of the usual violence suffered by the victim, do not verify the existence of circumstances which are essential for the reconstruction of the story (e. g. the presence of minor children during violent acts), they neglect the danger of stalking by former partners, discourage women from reporting acts of sexual violence if such acts date back long before or they are not supported by evidence.

In case of police intervention at the family home, police officers do not proceed to file complete and accurate reports of the intervention. If in case of police intervention the violence is still in action, police officers rarely proceed to arrest the violent subject.

A lack of specialization has been outlined also for judicial authorities.

First consequence is that Prosecutors rarely proceed for the crimes of art. 572 c.p. (criminal code) to hear directly the victim or to anticipate the cross examination, which is possible in cases, including assumption of witness by victims of sexual violence, maltreatments or trafficking in human beings.

In fact, it is not taken into consideration that the anticipation of the witness ensures to the victim to testify in the immediacy of the facts and avoids the victims to hold for years memories of traumatic events.

In Italy, only a few offices of Prosecutors include a department specifically devoted to dealing specifically with violence against women and vulnerable subjects and, in judging, sections dealing with maltreatment and sexual violence exist only in Milan and Bari.

Even if specific protection measures have been provided (art. 282 bis c.p.p. Criminal Procedure Code), they are rarely applied and completely ignored is the measure compelling the man who has been removed to pay a sum in order to ensure economical means to the family (art. 282 bis co.3 c.p.p.).

Also during the trial, issues relating a lack of specialization arise: for instance, the charged Prosecutor does not participate to the hearings, but lay magistrates, who do not know the cases.

Furthermore, there are not provisions ensuring protection against second victimization to victims who have to testify, out of best practices applied in some Courts and following the work of specialized lawyers of our network, as the utilization of a screen preventing the accused to see the victim.

Activities following the research of the Women lawyers' working group inside "D.i.Re."

The research was presented to the Higher Judicial Council, which on 8th July 2009, responding to our arguments, issued the first circular relating domestic violence which encourages studying meetings about gender based violence, suggests at the level of the judicial offices organization the specialization of judges, primarily in the offices of prosecutors, but also in those of the Courts, that deal exclusively or primarily with case of gender based violence.

In Rome, Differenza Donna NGO has drafted a inter-institutional memorandum of common practices of intervention in case of domestic violence and stalking, with particular attention to the phenomenon of violence acted at the presence of children.

Working group on civil matters

On the basis of the survey carried out by the national network of lawyers of anti-violence centers, it appears that the civil right protection order against the perpetrator of violence is very rarely imposed by the courts throughout the Italian territory.

In nearly all Civil Courts, the protection orders introduced by Law 154/ 2001 are not issued in the case of severe danger of prejudice to family members, unless the perpetrator has been listened to by the judge. This has led the provision to be considered rather useless, as, if the perpetrator of violence is told beforehand that the victim has asked for a protection order, the victim is automatically placed in even greater danger.

The issue of protection orders is therefore numerically very low, when compared with the extent of the phenomenon of domestic violence, but the figure improves in a very small number of Courts where there are specialised magistrates.

What often occurs, is that during the separation phase, the terms indicating violence are frequently misinterpreted as meaning conflict, wherefore the gravity of the violent behaviour of the spouse from whom the victim is attempting separation is not recognised. The judge often invites the parties to attempt mediation, even if not in the sense of compulsory, professional mediation and the judicial authorities do not issue provisions aimed at avoiding the degeneration of the situation, so the violent partner only perceives the illegal nature of his conduct in a very limited manner.

One must also be aware of the widespread prejudice according to which women tend to over-dramatise situations in order to seize the family home, achieving legal assignment of the home by means of a protection order.

On the other hand the damage done to the children witnessing domestic violence, when the courts try to get the parents to come to a reconciliation “in the interests of the minors”, is almost always ignored by the courts who disregard that any form of dialogue in violent situations is impossible. Also in the Juvenile Courts it is preferred to order mothers with their children to move from home, thus depriving them of the right to remain in the family home in their customary environment.

Economic violence, perpetrated by the spouse during separation, is not recognised and women are left in situations of economic distress, without the State authorities intervening in their favour by advancing the payment of the maintenance cheque, inasmuch as the Public Authority could enforce payment from the debtor with far greater authority than the impoverished spouse.

Lastly, one must draw attention to the fact that the introduction of Law n. 54/2006 regarding the granting of joint custody of the offspring to both parents can greatly impede the exit of women from situations of domestic violence. The violent ex-partner, who refuses to accept the choice of the woman to separate, as he would thereby lose his control over her, can use joint custody of the children to exercise an indirect form of violence upon her: obsessively contradicting all the mother's decisions regarding the minors, stating that the mother is not acting in their best interests, preventing her from choosing her domicile in a place far from the residence of the father, insisting on arguing about everything, even at a distance, via exhausting e-mails, phone-calls, SMS, which the woman cannot refuse, as she could be accused of alienating the relationship of the child with the other parent (PAS). On the doubtful scientific fundament of this “syndrome” see below.

Successive activity planned after the survey

The Italian Superior Council of Magistrates, after receiving the national survey from the network of women lawyers of the D.i.Re. Association, issued an initial document on the 8th July 2009, on the subject of domestic violence, in which Judicial Offices are invited to promote study meetings on the subject of Domestic Violence, in order to achieve a constructive exchange of ideas between the various Judicial Offices, promoting professional exchanges, courses on this theme and the promotion of the best practices of the Offices. The network of the D.i.Re. women lawyers is going to monitor the enforcement of the provisions against stalking and their actual impact on the direct or indirect persecution ex-partners undergo at all levels, including the civil code aspects.

Meeting with psychology experts on the subject of custody of children exposed to violence

The National Network of Lawyers, worried about the spread in the courts and in the parliamentary debate of the so-called Parental alienation syndrome, usually used to discredit women who have reported violence against their children acted by partners, is currently engaged in training sessions and exchange of experience about custody and Pas, in order to develop a common strategy to raise awareness on the lack of scientific grounds of such “syndrome”. Further field of monitoring of the Network is the implementation of the legislation on stalking, recently introduced.

In March 2011, the D.i.Re. group of legal consultants organized a day/seminar of self-training with two psychology experts, Doctor Elvira Reale, from Naples and Prof. Patrizia Romito, from the University of Trieste, to debate on all the different positions of the judicial world regarding custody of children in the cases of fathers who are violent directly with the children or their mother. The meeting was extremely productive and provided the legal consultants of the Centres with valuable insights and technical solutions, to be used in the Law Courts, to protect both the mothers and their children. The group wishes to continue exchanging information on this subject, chiefly in order not to be caught off-guard by eventual proposals of legislation on shared custody, which would only make the condition of women in violent situations worse. The group's activity meshes in extremely well with that of another working group who are confronting the theme within the European Wave association, with whom they are in constant and regular contact.