

D.i.Re’s input to inform the Special Rapporteur on violence against women and girls’ report on the nexus between custody and guardianship cases, violence against women and violence against children, with a focus on the abuse of the concept of “parental alienation” and related or similar concepts

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Introduction/preamble

Despite an extensive legal framework, the Italian system hinders access to justice for survivors of domestic and gender-based violence.

There are no mechanisms in place to evaluate the effectiveness of the Italian legislation. The set of rules and mechanisms that are in place fail to address the deeply entrenched sexism affecting the condition of women in general, and of those exposed to gender-based violence (“GBV”) in particular.

Further, four judgments of the European Court of Human Rights against Italy took place within a few months in 2022. The charges were all related to a lack of appropriate action or the passive attitude attributed to the Italian Judiciary:

- 7 April 2022, [Landi v. Italy](#)²: the lack of protection from the State led to the murder of a child by his abusive father, who had previously been reported to the police by the mother.
- 16 June 2022, [De Giorgi v. Italy](#)³: a woman reported her husband seven times for domestic violence against her and her children; **the complaint was qualified by the Judiciary as family conflict.**

¹ D.i.Re is a network of over 80 Italian women’s non-governmental organizations running women’s specialized services to combat and prevent domestic violence and violence against women in Italy. It was officially established as an organization in 2008, with headquarters in Rome. Every year, our members provide support to thousands of victims of gender-based and domestic violence. D.i.Re collaborates with other networks of women’s associations at national, European and international levels. It is Italy’s focal point for “WAVE – Women Against Violence Europe” and a member of the “EWL –Women’s Lobby”, of the international network “GNWS – Global Network of Women’s Shelters” and Euomed. It is also in the integrated Civil Society Organizations System developed by the United Nations Department of Economic and Social Affairs. Document prepared by D.i.Re’s Lawyer network, specifically Barbara Aguglia, Elisa Battaglia, Elena Biaggioni, Marta Buti, Titti Carrano, Maria Letizia D’Urzo, Giovanna Fava, Maria Gianquinto, Sara Gini, Chiara Gravina, Silvia Lorenzino, Federica Lucchesi, Elisa Salvoni, Maria Tamma, Laura Tettamanti. English editing by Ruth Dewar.

² <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-216854%22%5D%7D>

³ <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22de%20giorgi%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22:%5B%22001-217718%22%5D%7D>

“On the one hand, the perpetrator of violence is investigated and convicted for his behaviour. On the other, he is considered an adequate parent, at the same level as the one who suffered the violence. Violent acts in civil and juvenile proceedings are not taken into account, and therefore there are no direct consequences on parenting. This cannot be countenanced within the same system. It is necessary to ensure that coordinated measures are taken”¹¹.

“Violence is not detected even when the mother reports child abuse. It is precisely in this area that the most drastic victimisation of women and minors takes place: proceedings relating to this abuse are in fact dismissed, on the grounds that the child is unreliable, and the mother is alienating. This is so, essentially because of the difficulties in ascertaining the facts reported with the consequent risk of the child being placed with the father”¹².

These critical issues were highlighted by GREVIO in its first baseline report on Italy¹³.

GREVIO stresses that the use of the concept of parental alienation and similar notions entails a great risk of not identifying and/or questioning violence against women and their children, because it ignores the gendered nature of violence.

The Supreme Court of Cassazione ruled clearly on the lack of scientific basis and credibility of court-appointed expert opinions, expert reports and other medical reports establishing a diagnosis of parental alienation syndrome ¹⁴. **Despite these rulings, lower courts frequently refer to concepts related to Pas.**

Training of the Judiciary

Specialized training on judicial bias concerning violence against women does not exist in Italy. Courses organized by *Scuola Superiore della Magistratura (Higher School of the Judiciary)* only focus on legal and technical aspects and are conducted without any reference to sexist prejudices, cultural background, or the Istanbul Convention and CEDAW. This is despite the fact that the Council of Europe and the European Union consider them essential, and despite the Committee of Ministers’ strong encouragement to authorities to intensify their efforts to eradicate sexist stereotypes¹⁵.

¹¹ <https://www.senato.it/service/PDF/PDFServer/DF/372013.pdf>

¹² <https://www.senato.it/service/PDF/PDFServer/DF/372013.pdf>

¹³ <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>

¹⁴ Cfr. Corte di Cassazione sez. I civile **Ordinanza del 24/03/2022 n. 969. La Corte ritiene che** *“il richiamo alla sindrome d’alienazione parentale e ad ogni suo, più o meno evidente, anche inconsapevole, corollario, non può dirsi legittimo, costituendo il fondamento pseudoscientifico di provvedimenti gravemente incisivi sulla vita dei minori”*. Inoltre la Corte ha evidenziato che *“il diritto alla bigenitorialità è, anzitutto, un diritto del minore, prima ancora dei genitori, nel senso che esso deve essere declinato attraverso criteri e modalità concrete che siano dirette, in primis, a realizzare il miglior interesse del minore”*.

Besides the Supreme Court, the Minister of Health has also expressed its opposition to PAS, in response to a parliamentary question in 2020 (No. 4-02405) noted that *“ad oggi non è riconosciuta come disturbo psicopatologico dalla grande maggioranza della comunità scientifica e legale internazionale [...] Detta “sindrome” non risulta inserita in alcuna delle classificazioni in uso”*.

¹⁵ **Council of Europe documents on Higher Schools of the Judiciary:** [Sec. 56 e 57 Recommendation CM/Rec\(2010\)12](#) of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities; [Sec. 17, n. 4 Opinion no.10 \(2007\)](#) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society (CCJE: 2003, Op. n. 4); [Sec. 65-67 of Opinion no.10 of the Consultative Council of European Judges on the Council for the Judiciary at the service of society \(CCJE 2007\)](#)

European Union documents on Judiciary training: [Articles 82.1 \(c\) and 81.2 \(h\) of the Treaty on the Functioning of the European Union, at the outcome of the Lisbon Treaty; Resolution of the Council and the Representatives of the Governments of the Member States, meeting in the Council on the training of judges, prosecutors and judicial staff in the European Union \(2008/C 299/01\); Sec. 12.6 of the Stockholm Programme; Communication from the Commission, “Building trust in EU-wide justice: a new dimension to European judicial training \(COM: 2011, 551 final\)](#)

Magistrate training is not compulsory in Italy. The Commission on Femicide highlighted the poor and uneven specialization of judges and prosecutors on gender-based violence, as well as the poor training of lawyers and psychologists¹⁶.

As far as the training of police officers is concerned, and three years after the approval of Article 5 of Law 69/2019 (the so-called Red Code Law)¹⁷, no decree has been issued to set out the contents of the Law.

1. Intersectional violence

Victims of violence who lack a residence permit face additional difficulties. These victims cannot work, cannot enter into a rent contract, and experience financial insecurity that is frequently opposed to their abusive father/partner's working condition. In family court proceedings, the abuser's defense frequently uses this argument to argue that the mother is unable to adequately care for her children. Mothers are often placed in mother-child care facilities. Courts request an assessment of parenting capacity by social services and, more than in other cases, allocate custody of the child to social services with subsequent limitations on the mother's parental rights.

Secondary victimization becomes even more evident among trafficked women. Courts do not consider the vulnerability of victims of trafficking and migrant women when assessing their parental capacity for child custody proceedings.

The European Court of Human Rights sentenced Italy in *A. I. v. Italy* for failing to consider the foreign origin and vulnerability arising from trauma experienced by the applicant as a victim of human trafficking¹⁸.

Despite very little data available on this in Italy, abusive relations do exist also within lesbian couples.

Furthermore, lesbian couples with children face a very heterogeneous reality regarding the recognition of children born within a same-sex family¹⁹.

Violence against women with disabilities is a serious problem. The Observatory for Security against Discriminatory Acts (OSCAD) at the Ministry of Interior found, in the period from 1 October 2020 to 30 September 2022, 230 cases of ill-treatment against cohabitants or family members, 63 of which against minors; 50 cases of sexual violence, 9 of which against minor victims; 21 incidents of persecution (stalking), 3 of which against minors. Equally grave are stereotypes and prejudices against women with impairments who are considered as "dependent, childish, not credible and not deserving of respect"²⁰.

¹⁶ Data confirm a general underestimation of the need for specialized forensic training for psychologists, as well as the need for adequate skills when working in the field of gender-based and domestic violence. Here they carry out counselling and expert witness work in civil and criminal trials. Both lawyers and psychologists have only recently started to raise awareness of the mentioned issues and are extremely late in their training.

¹⁷ According to Article 5 l. 69/2019, specific training courses for State Police, Carabinieri and Prison Police personnel are to be provided.

¹⁸ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-208880%22%7D> The case concerned the inability of the applicant, a Nigerian refugee the mother of two children who had been a victim of trafficking and was in a vulnerable position, to enjoy access rights owing to a court-ordered prohibition on contact, in a situation where the proceedings concerning the children's eligibility for adoption had remained pending for over three years.

¹⁹ only some of the couples (married or not) who have carried out assisted procreation together have obtained recognition by the Italian State of the second mother (the so-called 'social' or 'intended' mother), while another significant proportion of the couples have not yet obtained it, with the result that the children are the children of the biological mother only, even though they are brought up by both mothers

²⁰ <https://www.interno.gov.it/it/notizie/donne-disabilita-vittime-violenza-nel-report-oscad-fenomeno-poco-raccontato>

2. Professionals

Italian law allows a judge to use expert opinions when deciding on custody or visitation rights. There is a general trend to medicalize the judicial process by involving social workers, psychologists, and court-appointed technical consultants (CTU). The victim of violence and the perpetrator are put on the same level and there is frequently an actual reversal of the evidential framework: that is, the woman who becomes blamed for everything.

The aforementioned survey of D.i.Re 's lawyers demonstrated that in almost all cases, the questions that CTUs are asked to answer are standardized and not defined according to the individual case being examined. The queries do not mention violence (as many as 94% of cases do not include any questions on violence suffered and/or witnessed). CTUs do not have any specialization or training on the topic of GBV²¹ and are expensive to engage²².

The survey shows that Italian legislation is not applied according to the Istanbul Convention and that, in all considered cases, the Convention is never mentioned in court orders or decisions. It shows also that, in Civil Courts, violence is rarely mentioned and instead the issue of conflict continues to be referred to. In almost all cases examined, shared custody is ordered even when allegations and evidence of violence are provided. CTUs often disguise the issue of violence and engage in mediation processes that end in secondary victimization. Finally, Civil Courts and Juvenile Courts do not use risk assessment tools.

Research by the University of Trieste shows that the training process of CTUs surveyed is fragmented and diversified. The requirements to serve as a CTU are both general and different from court to court. Specifically, the importance of the father figure for the healthy development of the child is highlighted from the CTU accounts, an importance that lies in what the father symbolically represents rather than in his actual behaviors. The CTU interviews conducted during the research also revealed significant misogynistic biases about women and stereotypes that lead to the devaluation of victims' accounts of domestic violence²³.

In all cases, the court, after acquiring the CTU report, adopts in its ruling (final or interlocutory) the CTU's suggestions, with no critical evaluation of the CTU report. In the absence of a critical analysis of this report, the ruling transforms into one with the sole purpose of achieving shared parenting.

Untrained professionals and services that are unable to recognize GBV turn places of supposed care into places of secondary victimization²⁴.

Social and health care professionals who are in charge of case assessments are biased by stereotypes and insufficiently trained.

In Italy, there are 46,784 social workers²⁵ whose professional training rarely includes the ability to recognize violence.

3. Consequences

²¹ <https://www.direcontrolaviolenza.it/nuova-ricerca-il-non-riconoscimento-della-violenza-domestica-nei-tribunali-civili-e-per-i-minorenni/>

²² <https://www.direcontrolaviolenza.it/nuova-ricerca-il-non-riconoscimento-della-violenza-domestica-nei-tribunali-civili-e-per-i-minorenni/>

²³ <https://www.sistemapenale.it/it/scheda/osservatorio-violenza-contro-le-donne-2021-3>

²⁴ See "la responsabilità della violenza" a cura di Letizia Lambertini, modello socioeducativo sviluppato a partire dal 2014 sull'esperienza dei Servizi Sociali per l'Unione Valli del Reno Lavino e Samoggia.

²⁵ <https://cnoas.org/wp-content/uploads/2022/10/2022-Assistenti-sociali-iscritti-allAlbo-professionale-al-30-settembre.pdf>

Despite the fact that the Italian legal system provides for the forfeiture²⁶ and suspension/limitation²⁷ of parental responsibility, there are very few cases where the abusive parent is disqualified from parental responsibility.

Again, the issue is the failure of the system to acknowledge that violence is a factor in the case: as long as violence is ignored, any claim to limitation and/or forfeiture of parental responsibility or sole custody is considered unfounded and illegitimate. The traditional family perspective prevails time and time again, permeating decision-making and subtly infiltrating custody and/or parental responsibility proceedings²⁸.

The Supreme Court of Cassazione reaffirmed that the best interests of the child shall prevail over the right to bigenitoriality claimed by the individual parent²⁹. It also stated that the grave traumas that may result from removing the child from the mother, who is deemed to be uncooperative, cannot be ignored, without violating Article 8 CEdu³⁰.

4. Data

Law n. 53, of 5 May 2022³¹ enhanced the collection of statistical data on gender-based violence in criminal justice only. Despite the fact that the Femicide Commission has repeatedly stressed the complete lack of data on civil cases, there is no provision in the law for any survey regarding violence in civil proceedings.

5. Good practice

In Italy there are many experiences of inter-institutional Protocols/Tables that aim to share training and best practices in GBV proceedings. These are initiatives that can lead to good results, the operation of which too often depends on the initiative of better-trained individuals. Turnover of professionals across sectors can undermine the functioning of these good practices. Evaluation of the impact of these protocols is lacking.

The advocacy work of the WSS and lawyers at national and international levels is particularly significant.

6. Recommendations

Best recommendations can be found in GREVIO first baseline report on Italy:

1. Consider amending the Italian legislation to explicitly recognise the need to take into account incidents of violence covered by the scope of the Istanbul Convention in the determination of custody and visitation rights of children;

²⁶Art. 330 civil code

²⁷Art. 333 civil code

²⁸ <https://www.direcontrolaviolenza.it/nuova-ricerca-il-non-riconoscimento-della-violenza-domestica-nei-tribunali-civili-e-per-i-minorenni/>

²⁹ Corte Cassazione **ord. 6 luglio 2022, n. 21425**, overturning the father's custody of the daughters on the grounds that the judges did not assess the consequences on the lives of the two minor daughters of the couple, deprived ex abrupto of their mother figure they had always lived with while peacefully cultivating their own interests as children.

³⁰ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-218130%22%5D%7D> A.I. v. Italy

³¹ <https://www.gazzettaufficiale.it/showNewsDetail?id=4952&backTo=archivio&anno=2022&provenienza=archivio>

2. Take measures to incorporate a systematic process for screening cases related to the determination of custody and visitation rights to determine whether violence has been an issue in the relationship and whether it has been reported;
3. Duly investigate any report of violence by improving co-operation with criminal courts and any relevant body, including, but not limited to, law-enforcement agencies, health and education authorities, and specialist women's support services;
4. Incorporate risk-assessment procedures in the determination of custody and visitation rights in order to determine the best interest of the child;
5. Ensure that only those professionals, particularly psychologists and child psychiatrists, who are attuned to the issue of violence against women and the requirements of the Istanbul Convention, can be appointed by courts to provide advice on issues of custody and visitation in situations of violence against women;
6. Ban the use by court-appointed experts, social workers and courts of concepts related to "parental alienation", as well as any other approach or principle, such as the "friendly parent provision", which tend to consider mothers who invoke the violence as "unco-operative" and "unfit" as a parent, and to blame them for the poor relationship between a violent parent and his children;
7. Abandon the practice of imposing upon the victim and her children the obligation to attend joint meetings with the perpetrator for the purposes of reaching an agreement on custody and visitation, which is tantamount to mandatory mediation;
8. Build safeguards into court procedures, such as offering parents separate appointments and creating separate waiting areas in courts, to take into account the imbalance of power between the victim and the perpetrator and to prevent the risk of revictimisation;
9. ensure an appropriate use of the legal provisions which allow reducing, lifting and/or subjecting to safeguards the perpetrator's custody and visitation rights whenever a situation of violence is ascertained and promote the determination of custody and visitation rights on a provisional basis until all reported facts of violence against women are properly assessed.
10. A resolution by the Human Rights Council and consequently by the United Nations General Assembly urging United Nations Member States to adopt or strengthen laws to consider domestic violence and abuse in the determination of custody and visitation rights and to prohibit the use of PA and similar concepts.

Such measures should be accompanied by the provision of appropriate training taking into account Istanbul Convention, CEDAW and CEDU human rights principles.

The recent civil process reform³² introduced some of the above-mentioned recommendations in a new section on "Domestic and gender-based violence", with special provisions applying to proceedings involving family abuse or domestic or gender-based violence.

This reform has not included any provision for risk assessment. Many of the provisions will enter into force in 2023, so at this time is impossible to assess their effectiveness.

Progress in this field should be measured by data and analyses of case law illustrating how family courts consider incidents of violence and how they motivate their decisions on custody and visitation rights.

³²<https://www.gazzettaufficiale.it/eli/id/2022/10/17/22G00158/sg>