

Domestic Violence and Principles Introduced by Istanbul Convention

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ABSTRACT: On the issue of combating the insidious and dramatic phenomenon of family and gender violence, Istanbul Convention can be considered the first legally binding instrument in the international context. It introduces a system of rules aimed at protecting women and minors against all forms of violence, which is complete and attentive in terms of promoting the culture of equality, stigmatizing any discrimination based on sex. The objectives of the text have been summarized in the "3 P": "Prevention, Protection of Victims and Prosecution of Offenders". In each of these three areas (prevention, protection of victims, and prosecution of guilty) the Convention indicates various measures of a specific nature that States are called upon to implement.

KEYWORDS: Family Violence, Gender Violence, Prevention, Protection, Prosecution

Introduction

Dysfunctional and pathological behaviors present in family relationships are fully part of the phenomenon of domestic violence, which, according to art. 3 lett. b) of the Istanbul Convention, includes «all acts of physical, sexual, psychological or economic violence that occur within the family or family unit or between current or previous spouses or partners, regardless of whether deeds share or has shared the same residence with the victim».

Istanbul Convention (2011) was adopted by the Council of Europe on 7 April 2011 and opened for signature on 11 May 2011. Italy signed the Convention on 27 September 2012 and the Parliament authorized its ratification with Law 77/2013.

Domestic violence definition is a so-called gender neutral definition (Explanatory Report, April 12, 2011) that includes victims and perpetrators of violent conduct of both sexes, in fact the Convention introduces important innovations not only on the identification of precise actions to combat gender and domestic violence, but also with respect to its scope of application *rationae personae*: the safeguards contained therein are extended to all victims of domestic violence (art. 2 Istanbul Convention), among which are numbered above all children and, albeit rarely, also men.

On the issue of combating the insidious and dramatic phenomenon of family and gender violence, Istanbul Convention can be considered the first legally binding instrument in the international context. It introduces a system of rules aimed at the protection of women and minors against all forms of violence, which is complete and attentive also in terms of promoting the culture of equality, stigmatizing any discrimination based on sex.

The objectives of the text have been summarized in the "3 P": "Prevention, Protection of victims and Prosecution of Offenders"(Interim Report, Strasbourg, 27 May 2009, CAHVIO, 2009, 4 FIN, p. 6 par. 7), to which should be added a fourth P, that of integrated, holistic and coordinated policies, without which the measures to eliminate a such a deep-rooted and complex phenomenon would be unsuccessful and substantially useless.

In each of these three areas (prevention, protection of victims, and prosecution of offenders) the Convention indicates various measures of a specific nature that States are called upon to implement.

First area: Prevention

As regards the first area, that of prevention, it is really important that States take all necessary measures to promote a far-reaching change in the mentality of individuals at all levels, so that the goal of overcoming gender stereotypes (Istanbul Convention art. 12 par. 1) and raising public awareness of the problem of violence and the consequences it generates.

To this end, they must also take preventive measures to ward off violence from occurring, and take positive action to protect people in particularly vulnerable conditions, including pregnant women, mothers of children, children, people with disabilities, migrants, homosexuals, children and elderly (Explanatory Report, April 12, 2011, par. 87).

Another important requirement dictated by the drafters of the Convention is that which requires States to adopt programs and carry out activities aimed at increasing the level of autonomy and emancipation of women at all levels, including the economic and political one.

The goal of these programs is to reach «the hearts and minds of individuals» (Explanatory Report, April 12, 2011, par. 87) who, through their behavior, contribute to the persistence of violence against vulnerable individuals. This is a crucial step that first of all involves the theme of education: no prevention is possible if non-state actors and all segments of society are not included in awareness and information campaigns aimed at averting the danger that certain cultures, religions or traditions can be used to justify acts of violence perpetrated against human beings in a position of greater vulnerability (Istanbul Convention art. 12 par. 5). This implies that gradually the recovery paths aimed at the perpetrators of similar conducts can be accepted with greater availability, because - in a changed cultural scenario - it is highly probable that rehabilitation projects will stop being perceived as afflictive measures and are accepted as a concrete possibility to repair the wounds inflicted on loved ones and consequent social reintegration.

Second area: Protection

The second area of intervention introduced by the Istanbul Convention is that dedicated to protection and support measures in favor of and for victims and witnesses, who must be protected from possible retaliation and helped in the path of existential reconstruction (Explanatory Report, April 12, 2011, par. 110).

Given that the protection measures must be framed within the framework of the instruments for the protection of human rights, they must first of all be structured on an integrated approach that takes into account the relationship between victims, perpetrators of violent acts, children and the social context of reference; and secondly, avoiding secondary victimization.

To do this, it is necessary to ensure cooperation between all competent state bodies (judicial authorities, local and regional authorities, non-governmental organizations) and access to services for the protection of victims (legal, health, psychological, financial, employment services, accommodation, training and education) must be immediate and continuous over time, as well as unhooked and independent of the will of the same to bring criminal proceedings or testify against the perpetrator of the violence.

Furthermore, for the support service to be adequate and effective, States must necessarily establish shelters and first aid centers for women and children who are victims of violence and activate telephone support lines that can operate 24 hours a day, seven days out of seven. The Convention also imposes an obligation on States parties to encourage reporting by witnesses (Istanbul Convention, art. 27), since according to the drafters of the Convention, reporting made by friends, relatives, teachers or neighbors helps to break the silence that often surrounds gender-based violence and domestic violence.

Third area: Prosecution of offenders

The third area, which is that relating to the prosecution of offenders, requires the signatories of the Convention to punish violent conduct with sanctions that are “effective, proportionate and dissuasive” (Eplanatory Report, April 12, 2011, art. 45, par. 1). The same may include deprivation of personal liberty, extradition, loss of parental responsibility, monitoring and observation of the person affected by the measure.

To make the third area concrete it would be necessary to implement global and integrated national policies, in order to act effectively to prevent and eliminate any form of violence in the family and for reasons related to gender. This holistic approach presupposes the creation of a body that guarantees the full and complete collaboration of all those involved in the network for the protection of vulnerable subjects (organizations and institutions, civil society, women's organizations, national and local authorities and regional), calling them to operate within a national action plan.

Criticalities emerged from GREVIO Report

Although Istanbul Convention is the most important instrument in international law to make human rights effective, there is no shortage of critical issues, as emerges from the first report published on 13 January 2020 by GREVIO delegation (Group of experts for monitoring the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence).

GREVIO report (Council of Europe 2020), in addition to the critical remarks that will be taken into account, also contains positive evaluations with respect to some legislative reforms that have allowed the introduction of concrete measures to put an end to violence against women, such as the 2009 legislation against stalking, or Law no. 119/2013, which established the obligation of the authorities to support and promote, in particular through the allocation of financial means, a vast network of victim assistance services. And two other texts were also the object of applause: Legislative Decree no. 80/2015, whose provisions provide for special paid leave for workers who are victims of gender-based violence, and Law no. 4/2018, which contains numerous measures to protect the orphans of a victim of domestic crime.

However - as already mentioned - in recognizing the progress made to concretely implement the principles contained in the Istanbul Convention in Italy, the report underlines that the cause of gender equality still encounters resistance in the country and that a worrying trend is emerging to reinterpret and redirect the notion of gender equality by bringing it back into the context of family policies and the protection of motherhood, thereby neglecting at the same time all the other areas in which the principle of equality would deserve to be affirmed and protected.

In the field of victim protection and assistance, the report believes that national authorities should primarily allocate adequate funding and develop solutions to provide a coordinated and interinstitutional response to violence, based on the strong involvement of local authorities and the participation of all the actors concerned, in particular female NGOs that offer shelters for victims.

Furthermore, those complementary measures, inspired by an approach based on human rights, aimed at filling the gaps in specialized support services for victims of sexual violence, have never been implemented, since the impulse actions indicated in the Convention and directed the establishment of more reception centers for victims of rape or sexual violence.

The report notes further legislative gaps, such as, for example, the absence of effective civil remedies against state authorities that have failed in their duty to take the necessary preventive or protective measures within their competences. Nor have effective decisions

been made on the exercise of the right of custody of children by the abusive parent, with respect to which - it does not seem superfluous to observe it - the best interests of the child in physical and mental integrity should always prevail. On this point, GREVIO expresses concern, given the tendency of the current system to expose both mothers who report and minors involved in similar events to secondary victimization.

If it is true that complaints of violence must be treated with great caution due to the growing and hateful phenomenon of false abuse used as an instrument of revenge against the ex-partner, it is equally true that the system must equip itself with all the tools to recognize the true from the false and grant all the necessary safeguards to the true cases.

Finally, with regard to the right to asylum, the report underlines that the absence of effective procedures for assessing vulnerabilities, which does not allow for the correct identification of victims, can lead to their expulsion or repatriation, in violation of the obligation to non-refoulement. Recent policies aimed at putting an end to rescues at sea and strengthening the deterrence of potential candidates for emigration, associated with the closure of Italian ports for ships carrying migrants rescued at sea, further increase the risk of rejection.

Conclusions

Intrafamilial violence and violence against women appears - in many ways - not only socially accepted, but also institutionalized as a form of expression of the domination of the male gender to be juxtaposed to the role of women still largely characterized by strong elements of social and economic subordination.

And it is here that the role of education goes beyond that of law, presenting itself as the only way to eradicate prejudices and cultural bottlenecks that still crowd various social segments and also the courtrooms, in which trials seem to be held against victims, guilty of having armed the hand of the executioner.

This must be overcome, and the courtrooms must be spaces of protection for victims, not places that do not give justice to those who suffer serious violations of human rights.

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