DOMESTIC VIOLENCE MEASURES/REMEDIES UNDER CIVIL LAW

Let’s define DOMESTIC VIOLENCE: it is represented by «all acts of physical, sexual, psychological or economic violence that occur within the family or household or between current or previous spouses or partners, regardless of whether the perpetrator such acts shares or has shared the same residence with the victim"

Let’s define GENDER VIOLENCE: represented by «VIOLENCE AGAINST WOMEN» specifically: «any violence directed against a woman as such, or which affects women disproportionately», coming to represent a real form of discrimination.

Let's define FAMILY ABUSE: the abusive conduct cited by the law recalls a specific category of violent conduct, which deserves further specification, given the recurrence of the same in proceedings relating to minors.

Such conduct can therefore be both those committed against the partner and those committed against minors, even in the very recurrent form of so-called "assisted violence".

Separate mention, but still falling within the category of family abuse, deserve those cases in which the perpetrators of violence and/or abuse are the descendants against the ascendants" Children against parents and/or grandchildren against grandparents), cases in which, the above protection orders are enforceable.

THE IMPORTANCE OF CORRECT INFORMATION

More and more often we hear news of women who desist from asking for judicial protection due to the perception of a lack of promptness of the measures.

However, this is an incomplete and SERIOUSLY dangerous information.

Even If it is true that the news often report that the victim "had approached the authorities.." it is also true that the media information should be completed by evaluating and highlighting in the specific case what went wrong in the intervention process. Therefore, avoiding leaving large gray areas in which the victims' sense of frustration and helplessness take root.

Controlling information, preventing it from remaining partial and becoming corollaries of inefficiency, is of fundamental importance, because mistrust in judicial instruments can create more victims among women resigned to the idea that "there is no point in reporting".

Inform in a widespread manner reaching all levels of citizens, from schools to hospitals, where victims can receive directions and information in the simplest and most detailed way possible to interrupt the cycle of domestic violence in which they find themselves.

HOW TO BREAK THE CYCLE OF DOMESTIC VIOLENCE?

First of all, it is good to dispel the myth or stereotype that "the only place where violence can be ascertained is the Criminal Court". Correct information must also be able to illustrate remedies other than just the criminal court to which to turn.

Finally, the recent reform of the family proceedings has detached the scope of application of the protection against domestic violence from the commission and verification of the specific crime, enhancing the peculiar function of the family judge who must ascertain the violence, not the crime, there can be violence even in the absence of criminally relevant conduct that can be blamed on the perpetrator.

This is one of the fundamental steps of the new regulatory framework which allows the judge to ascertain violence in the preliminary phase of the proceedings, so as to interrupt the cycle of violence as soon as possible.

WHEN IS THE CIVIL JUDGE ASKED TO DETERMINE THE EXISTENCE OF VIOLENT CONDUCT?

Let's remember that in addition to the protection orders, already regulated before the reform by the articles. 342 bis and ter of the Civil Code, and subsequently reorganized and introduced into the procedural discipline by art. 473 bis n. 69 et seq. CPC, there are also civil proceedings for separation/divorce with or without children, in addition to proceedings for the custody of children born to unmarried couples.

However, in the context of such proceedings before the civil judge where violent conduct is alleged, there is now recognized ample possibility of managing the time of the proceedings in which it is possible to implement a "preferential lane" for which the following is implemented:

Shortening of procedural deadlines

Attribution of broad official powers to the judge (instructors and otherwise) to allow the family judge to promptly ascertain the violence

Assumption of temporary and urgent measures

The recent procedural-civil reform introduced the section "On domestic and gender violence" allows a more immediate response to the request for protection thanks to the following new elements:

1. ANTICIPATING THE ALERT THRESHOLD
2. PROVISION OF A PREFERENTIAL LANE FOR PROCEEDINGS WITH ALLEGATIONS OF VIOLENCE
3. ASSESSMENT OF VIOLENCE IN THE PRELIMINARY PHASE OF THE PROCEDURE
4. ALLOCATION OF BROAD POWERS OF OFFICE TO THE JUDGE (INSTRUCTORS AND OTHERS)

WHAT ARE PROTECTION ORDERS AGAINST FAMILY ABUSE AND WHEN IT IS POSSIBLE TO ASK FOR/OBTAIN THEM

Protection orders are precautionary measures granted at the request of a party on the assumption of the likelihood of the danger to which the victim is subjected (spouse or ex-spouse, cohabitant more uxorious or ex-cohabitant, civil union, cohabitants in various capacities such as parents/children).

The law therefore prescribes that "when the conduct of the spouse or partner or other cohabitant causes serious damage to the physical or moral integrity or to the freedom of the other, the judge, upon request of a party, may adopt by decree one or more of the measures referred to in article 473 bis 70 CPC.

Attention should be made that the assumption of cohabitation is no longer a necessary condition:

The same measures can be adopted if the precautionary conditions are met, even when cohabitation has “ceased": a significant new element that redefines the conditions of protection orders:

- request by one of the sides;

- serious damage to physical or moral integrity or freedom;

- cohabitation, but also EX COhabitation (spouse, cohabitant more uxorious, civil union, cohabitants in various capacities such as parents/children)

FURTHER INNOVATION FROM THE RECENT REFORM CONCERNS THE POSSIBILITY OF REQUESTING PROTECTION ORDERS EVEN IN COURTS OF MERIT

Protection orders find, in fact, full and legitimate entry into the proceedings on the merits, as the family judge, in proceedings in which violence has been alleged, is well able to issue the most appropriate measures for the protection of the minor and the victim, including measures having the same content as those referred to in the art. 473-bis.70 c.p.c.a protection orders.

Therefore, the appeal to obtain Protection Orders can be proposed both at a time before the treatment of the so-called merit case (separation, divorce, or the regulation of custody of minors born to an unmarried couple) but also during the above-mentioned proceedings, in front of the judge conducting them who can take them on as a precautionary measure following a summary investigation and with the use of investigative powers, including unofficial ones.