**DOMESTIC VIOLENCE: MEASURES /REMEDIES AS PART OF THE CRIMINAL LAW**

SOURCES OF LEGISLATION REGARDING VIOLENCE

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the United Nations General Assembly on 18 December 1979 and ratified by Italy with law no. 132/1985

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), approved in Rome on 4 November 1950 by the Council of Europe, ratified by Italy with law no. 848/1955

The Council of Europe Convention on preventing and combating violence against women and domestic violence, approved in 2011, ratified by Italy with law no. 77/2013, which entered into force on 1 August 2014 (known as the Istanbul Convention for the name of the city where it was signed on 11 May 2011)

The Treaty on European Union (articles 2 and 3 § 3)

The Charter of Fundamental Rights (art. 21) and the Treaty on the Functioning of the European Union, for which the right to equal treatment and non-discrimination is a founding principle (art. 8)

Directive 2012/29/EU of 25 October 2012 which establishes minimum standards regarding the rights, assistance and protection of crime victims (implemented by Italy with Legislative Decree no. 212/2015, which entered into force on 20 January 2016) and that in nos. 17 and 18, provides definitions of gender violence and violence committed within the family.

Law no. 66/1996 norms against sexual violence.

Law no. 154/2001 Measures against violence in family relationships.

Law no. 38/2009 Urgent measures regarding public safety and combating sexual violence, as well as persecutory acts (stalking).

Law no. 172/2012 for the ratification and execution of the Council of Europe Convention for the protection of minors against sexual exploitation and abuse (so-called Lanzarote Convention), which also intervened in the field of abuse against family members and cohabitants and violence witnessed by minors.

Law no. 119/2013 Urgent provisions on safety and for the fight against gender violence (so-called law on femicide).

Law no. 4/2018 Amendments to the civil code, the penal code, the criminal procedure code and other provisions in favor of orphans for domestic crimes entered into force on 16 February 2018.

Law no. 69/2019 so-called “Red Code”

Law no. 4/2021 on ratification and implementation of the International Labor Organization Convention no. 190/2019 on the elimination of violence and harassment in the workplace, which came into force on 27 January 2021.

Law no. 7/2006 "Provisions concerning the prevention and prohibition of female genital mutilation practices"

WHAT IS DOMESTIC AND GENDER VIOLENCE?

Physical and psychological abuse are always condemned by law.

Since 2019 with law n. 69/2019, defined as the Red Code, an accelerated procedure is in force to prosecute crimes of violence, mistreatment and stalking committed against people belonging to the so-called vulnerable groups: women, minors, the elderly and the disabled.

No type of violence is permitted by our system.

It should therefore not be surprising if every form of mistreatment is punished by the legal system.

The problem is that many times we are afraid to report the abuse we have suffered.

First of all, a distinction must be made between forms of violence: not all, in fact, are punished in the same way.

Violence can be understood as the use of force to harm another person.

In this hypothesis, violence can give rise to the following crimes:

* beatings;
* personal injuries, which in turn are punished differently depending on the consequences reported by the victim.

 Violence can also consist of repeated abuse, physical or psychological, towards a person living with someone or who is subjected to the authority of others (teachers, instructors, guardians, etc.): in such cases, violence repeated over time gives rise to the serious crime of mistreatment against family members or cohabitants (art. 572 of the criminal code).

Finally, violence can be of a sexual nature, i.e. when a person is forced to perform or undergo sexual acts (art. 609 bis of the criminal code)

By sexual acts, we do not only mean complete sexual intercourse, but any involvement of parts of the body that can be defined as erogenous zones.

WHO CAN MAKE A REPORT FOR THIS TYPE OF CRIME AND FOR HOW LONG?

Any offended person who feels like the victim of a crime can file a complaint with the competent authority (State Police, Carabinieri, Local Police, Financial Police) or through a lawyer.

Sexual violence can be reported by the victim within twelve months of the crime occurring.

If the victim of sexual violence is a minor or a cohabiting person (not necessarily the spouse), anyone can proceed to file a complaint, even the person who accidentally witnessed the crime, without time limits. In these cases, the crime can be prosecuted ex officio.

The crime of mistreatment against family members and cohabitants can be prosecuted ex officio, i.e. anyone can file a complaint with the police, even a person who is totally unrelated to the violence or to the family unit and without any time limit.

Once a complaint/complaint for violence has been filed, the police set to work to collect as much evidence as possible.

The judicial police who acquire the complaint from the offended person immediately report the facts to the public prosecutor, even orally, i.e. before sending him the usual written information (communication of news of crime).

With the reporting of the fact constituting the crime, the preliminary investigation phase begins, i.e. that period of time intended for investigations by the Public Prosecutor.

Once the crime has been reported, the Public Prosecutor must hear the offended person within three days.

This mandatory deadline can only be extended in the presence of essential needs for the protection of minors or the confidentiality of identities.

During preliminary investigations, the judicial police works to verify the validity of the crime report.

It will therefore be possible to hear the people informed about the facts, i.e. those who can testify in court, as well as the victim himself, who will be able to better specify the events he initially reported.

WHAT HAPPENS AFTER THE PUBLIC PROSECUTOR'S INVESTIGATIONS END?

If at the end of the investigations, the criminal responsibility of the person reported for violence is found to be well founded, then the public prosecutor will request the indictment of the accused, i.e. the celebration of the actual trial, within which the victim will be able to constitute a civil party for request compensation for damages through a lawyer who will be able to benefit from free legal aid.

Victims have access to legal aid regardless of their income when prosecuting crimes of family abuse, sexual violence, persecutory acts, as well as where committed against minors, for crimes of enslavement, child prostitution,

CAN THE OFFENDED PERSON REQUEST THE APPLICATION OF A PRECAUTIONARY MEASURE AGAINST THE MISTREATER?

The public prosecutor will be able to immediately assess whether the conditions exist to ask the judge to issue a precautionary measure, such as removal from the family home or a ban on approaching places frequented by the victim.

To prevent lengthy proceedings from nullifying a complaint for violence or worsening the situation of the victims, who often find themselves at the mercy of their tormentors despite the complaint (think of the woman who cannot leave home to escape her violent husband), the law has established some measures that the judge can adopt before even reaching a sentence.

Anyone who has filed a complaint for violence and wants to obtain protection immediately must ask for a precautionary measure to be applied.

If the conditions exist, the judicial authority can resort to precautionary measures:

* removal from the family home, if the victim and the accused live together under the same roof
* the ban on approaching places frequented by the victim, when there is a danger that the reported person will persecute the offended person

Precautionary measures, however, are ordered by the judge only if he believes that the conditions established by law are met.

In particular, the judge will grant one of the measures seen above only if he deems that there are serious indications of guilt against the accused person and if there is a danger that the person may repeat his illicit conduct.

The application of the precautionary measure, among other things, must be formally requested by the Public Prosecutor who is in charge of the investigation.

The judge for preliminary investigations cannot grant it if the request comes from a different person.

Therefore, to obtain immediate protection, it will be necessary to immediately attach in the complaint everything deemed useful to demonstrate the possibility that the violence is not an isolated event but could be repeated.

It should also be remembered that the violation of precautionary measures constitutes an independent crime, punished by Article 387 bis of the penal code. This rule was introduced precisely to strengthen the protection of victims even in cases where the provisions of the Red Code had been applied but were found to be ineffective in preventing new crimes.