
Vitulia Ivone is Associate Professor of Private Law at the School of Law of the Università di Salerno, where she teaches Civil Law and Fundamental Legal Concepts. Among her most recent books: *Profili di danno endofamiliare* (Giappichelli, 2020), *Domestic Violence against Women. International, European and Italian Perspectives* (with S. Negri) (Cedam - Wolters Kluwer, 2019), *Cultura como uma forma elevada do espírito. A valorização do património cultural de Benedetto Croce ao Art Bonus* (Brasil multicultural, 2019), *Somministrazione e permuta* (Giuffrè, 2017).

Contact: vituliaivone@unisa.it

Stefania Negri is Associate Professor of International Law at the School of Law of the Università di Salerno, where she teaches Public International Law and International Health and Environmental Law. Among her most recent books: *I principi generali del processo internazionale nella giurisprudenza della Corte internazionale di giustizia* (Edizioni Scientifiche Italiane, 2020), *Domestic Violence against Women. International, European and Italian Perspectives* (with V. Ivone) (Cedam - Wolters Kluwer, 2019), *Unione europea e salute. Principi, azioni, diritti e sicurezza* (with G. Di Federico) (Cedam-Wolters Kluwer, 2019), *Salute pubblica, sicurezza e diritti umani nel diritto internazionale* (Giappichelli, 2018).

Contact: snegri@unisa.it

THE “SHADOW PANDEMIC”: GENDER-BASED AND DOMESTIC VIOLENCE AGAINST WOMEN IN TIMES OF COVID-19¹

Vitulia Ivone

Università degli Studi di Salerno

Stefania Negri

Università degli Studi di Salerno

Abstract

In June 2020 UN Women warned of a “shadow pandemic” occurring alongside COVID-19: a rising tide of gender-based and domestic violence associated with public health measures restricting freedom of movement, such as compulsory home confinement, lockdown and curfew. International organizations raised the alarm about this mounting and under-reported wave of violence. They urged all States to adopt anti-COVID measures consistent with the principle of non-discrimination and internationally agreed standards of protection of women’s rights. International human rights bodies also issued repeated calls on States to comply with the obligations stemming from human rights treaties, especially due diligence obligations. The CEDAW Committee and GREVIO provided guidance on how to apply CEDAW and the Istanbul

1. Reception date: 12nd January 2021; acceptance date: 10th February 2021. This article is one of the results of the joint research project “Bilanciamento tra salute pubblica e diritti fondamentali nelle strategie di controllo della pandemia di Covid-19”, carried out within the Dipartimento di Scienze Giuridiche, Università degli Studi di Salerno. The article further develops some of the topics explored in the Authors’ book: Ivone, V. & S. Negri. (2019). *Domestic Violence against Women. International, European and Italian Perspectives*. Padova: CEDAM-Wolters Kluwer.

Convention in the context of the pandemic, issuing recommendations on actions to be taken. While both instruments provided solid legal bases to protect women from both pandemics, the Istanbul Convention undoubtedly offered the most suitable tools, as the practice of most European States, including Italy, revealed.

Keywords

Domestic violence against women, COVID-19 pandemic, CEDAW, Istanbul Convention, Italian Law.

Resumen

En junio de 2020, ONU Mujeres advirtió sobre una «pandemia en la sombra» que se producía junto con COVID-19: una marea creciente de violencia de género y doméstica asociada con medidas de salud pública restrictivas de la libertad de movimiento, como el confinamiento domiciliario obligatorio, el encierro y el toque de queda. Las organizaciones internacionales dieron la alarma sobre esta ola de violencia creciente y sub-reportada, instando a todos los Estados a adoptar medidas anti-COVID compatibles con el principio de no discriminación y los estándares de protección de los derechos de la mujer internacionalmente acordados. Los organismos internacionales de derechos humanos también hicieron repetidos llamamientos a los Estados para que cumplieran con las obligaciones derivadas de los tratados de derechos humanos, especialmente las obligaciones de diligencia debida. El Comité de la CEDAW y GREVIO proporcionaron orientación sobre cómo aplicar la CEDAW y el Convenio de Estambul en el contexto de la pandemia, emitiendo recomendaciones sobre las acciones a tomar. Si bien ambos tratados proporcionaron bases legales sólidas para proteger a las mujeres de ambas pandemias, el Convenio de Estambul ofreció sin duda las herramientas más adecuadas, como lo revela la práctica de la mayoría de los Estados europeos, incluida Italia.

Palabras clave

Violencia domestica contra la mujer, Pandemia de COVID-19, CIDCM, Convenio de Estambul, Derecho italiano.

Introduction

In June 2020 the Executive Director of UN Women warned of a “shadow pandemic” occurring alongside COVID-19: the global rise in gender-based and domestic violence associated with public health measures implemented by governments to curb the spread of the virus².

Indeed, when the COVID-19 pandemic was ravaging across the world, restrictive measures such as compulsory home confinement, lockdowns and curfews facilitated an upsurge of violence against women and girls, trapped at home with their abusers or unable to easily access safety and support services. In such dire circumstances, domestic and intimate partner violence remained widely under-reported, with less than 40 per cent of victims denouncing the crime, or calling for help at domestic violence help-lines and shelters, and less than 10 per cent seeking help from the police³. In practice, COVID-19 amplified existing trends in gender-based violence, confirming long-standing research findings that the risk of violence against women and children tends to increase in times of crisis, be it caused by economic uncertainty, civil unrest, disasters or pandemics (Peterman et al., 2020).

A widespread awareness of this “shadow pandemic” had already emerged in the acute phase of the global health emergency. Back in March 2020, the United Nations Special Rapporteur on violence against women had strongly recommended that States pay special attention to women and children victims of domestic violence during lockdowns, noting that their situation was even more critical

in a time when there are no or fewer shelters and help services available for victims; when it is difficult to access those that are still open; and when there is less community support; fewer police interventions and less access to justice as many courts are closed⁴.

2. UN Women, *Violence against women and girls: the shadow pandemic*, Statement by Phumzile Mlambo-Ngcuka, Executive Director of UN Women, 6 April 2020, available at <https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>.

3. See extensive report on the impact of COVID-19 on marginalized groups worldwide in Amnesty International, Report 2020/2021, *The State of the World's Human Rights*, 7 April 2021, available at <https://www.amnesty.org/en/documents/pol10/3202/2021/en/>.

4. UN Special Rapporteur on violence against women, *States must combat domestic violence in the context of COVID-19 lockdowns*, Statement of 27 March 2020, at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25749&LangID=E>.

In April 2020, the Secretary-General of the United Nations (UN) called for a global “domestic violence ceasefire” alongside his repeated appeals for a ceasefire in conflicts around the world⁵. He urged all governments to make the prevention and redress of violence against women a key part of their national response plans for COVID-19, recommending a number of concrete actions that States could take to mitigate the impact of the pandemic on vulnerable women. He also called upon States to consider shelters and helplines as an essential service for every country, to be supported by means of specific funding and broad efforts to increase awareness about their availability.

Despite the fact that the Secretary-General’s appeal was answered by 146 UN Member States and observers in a statement expressing strong support, the actual global response to the rising tide of domestic violence was rather disappointing. In several countries, States authorities generally failed to take adequate action to prevent such violence, prosecute perpetrators and grant survivors access to remedies. Some governments took emergency steps to assist survivors, while many others classified support for them, such as sexual and reproductive health and counselling services, as non-essential, leading to their suspension during lockdowns.

Other international and regional organizations—such as the World Health Organization⁶, other UN specialized agencies, the European Union (EU) and the Council of Europe (CoE)—as well as international human rights institutions, took important initiatives to collect information on the magnitude of the phenomenon, provide guidance to States and raise awareness about the specific impact of the pandemic and its consequences on women⁷.

In Europe, many actors raised the alarm, including the European Commission, the CoE Secretary General, the EU Commissioner for Equality, the European Parliament’s Committee on Women’s Rights and Gender Equality and the European Institute for Gender Equality⁸. By way of example, the European Commission urged EU Member

5. See at <https://www.un.org/en/un-coronavirus-communications-team/make-prevention-and-redress-violence-against-women-key-part>.

6. World Health Organization, *The rise and rise of interpersonal violence – an unintended impact of the COVID-19 response on families*, 2020, available at <https://www.euro.who.int/en/health-topics/diseaseprevention/violence-and-injuries/news/news/2020/6/the-rise-and-rise-of-interpersonal-violence-anunintended-impact-of-the-covid-19-response-on-families;COVID-19-and-violence-against-women-What-the-health-sector/system-can-do>, 26 March 2020, at <https://www.who.int/reproductivehealth/publications/emergencies/COVID-19-VAW-full-text.pdf>.

7. See, e.g., United Nations Office of the High Commissioner on Human Rights, *COVID-19 and Women’s Human Rights: Guidance*, 15 April 2020, at https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf; Statement by the UN Working Group on discrimination against women and girls, *Responses to the COVID-19 pandemic must not discount women and girls*, 20 April 2020, at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25808&LangID=E>.

8. See, among others, European Institute for Gender Equality, *Coronavirus puts women in the frontline*, 25 March 2020, at <https://eige.europa.eu/news/coronavirus-puts-women-frontline>; Council of Europe, *COVID-19 crisis: Secretary General*

States to guarantee that their emergency responses to the outbreak took account of the needs of groups in disadvantaged situations, such as victims of domestic violence, in line with their obligations under EU law. It similarly stressed the importance to allocate resources to relevant support and protection services, helplines and shelters⁹. Similar concerns and recommendations were expressed by the CoE Parliamentary Assembly's General Rapporteur on Violence against Women¹⁰.

Furthermore, a wide range of international human rights bodies issued (joint) statements and guidelines calling upon States to abide by the internationally agreed standards of protection of women's rights and prohibitions on gender-based discrimination and violence, as enshrined in international and regional human rights conventions¹¹. Particularly remarkable, among these guidance documents, were the recommendations formulated by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) and the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) to the effect that State authorities largely resort to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the CoE Convention against Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) as the appropriate legal tools to address the "shadow pandemic" while responding to the COVID-19 emergency.

Against this background, this paper will explore the relevance of these two Conventions and the relevant obligations stemming therefrom—especially positive and due diligence obligations which are crucial to contrasting domestic violence—in addressing the challenges posed by both pandemics. A special focus is dedicated to the Italian legislation and the specific tools tailored to protect women from domestic violence and abuse, which have represented an important asset in Italy's response to COVID-19.

concerned about increased risk of domestic violence, 30 March 2020, at <https://www.coe.int/en/web/portal/-/covid-19-crisis-secretary-general-concerned-about-increased-risk-of-domestic-violence>; Agence Europe, *Member States called upon to protect women, who are at greater risk from COVID-19 pandemic*, 30 March 2020, at <https://agenceurope.eu/en/bulletin/article/12457/17>; European Parliament News, *COVID-19: Stopping the rise in domestic violence during lockdown*, Press Release, 7 April 2020, at <https://www.europarl.europa.eu/news/en/press-room/202004061PR76610/covid-19-stopping-the-rise-in-domestic-violence-during-lockdown>.

9. European Commission, *2021 Report on Gender Equality in the EU*, 2021, available at https://ec.europa.eu/info/sites/default/files/aid_development_cooperation_fundamental_rights/annual_report_ge_2021_en.pdf.

10. Council of Europe Parliamentary Assembly, *COVID-19: 'Put safety of women at the heart of all measures to tackle coronavirus' says Rapporteur*, 23 March 2020, at <https://pace.coe.int/en/news/7824/-put-safety-of-women-at-the-heart-of-all-measures-to-tackle-coronavirus-says-rapporteur>.

11. See United Nations Office of the High Commissioner of Human Rights, *Compilation of statements by human rights treaty bodies in the context of the COVID-19 pandemic*, September 2020; *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020, both available together with other relevant documents at <https://www.ohchr.org/EN/HRBodies/Pages/COVID-19-and-TreatyBodies.aspx>.

The United Nations Convention on the Elimination of All Forms of Discrimination against Women and Its Relevance in Preventing and Combating Domestic Violence in Times of Public Health Emergencies

When it was adopted in 1979, CEDAW¹² was the first global and comprehensive binding instrument aimed at achieving the elimination of all forms of sex- and gender-based discrimination against women¹³ through the promotion of gender equality and equality of rights and opportunities and the elimination of gender barriers (Freeman et al., 2012; Westendorp, 2012; Hellum et al., 2013; Zwingel, 2016). Although other important legal instruments have been approved over time both internationally and regionally, CEDAW still remains a fundamental pillar of the international legal landscape on women and gender-based discrimination.

Considered as a whole, CEDAW is not limited to guaranteeing equality before the law and equal protection by the law itself. It indicates a broad range of measures that States Parties should take to achieve substantial equality between women and men in all spheres of political, economic, social, and cultural life. In addition, it commits States Parties to take action to change social and cultural patterns of conduct based on prejudice and stereotyped roles for men and women¹⁴, while promoting principles of equality and non-discrimination in both public and private life. In essence, CEDAW requires States Parties to eradicate all forms of discrimination in the exercise of all civil, political, economic, social, and cultural rights. To this end, it also imposes positive obligations to change prejudicial social and institutional structures and models and to eliminate discrimination in political and public life in matters related to nationality, legal status, political participation, education, employment, healthcare, family and so on.

Beyond that, it is essential to stress that States Parties have to take action towards the achievement of equality not only in public life but also in private life, and particularly within the family. In this respect, under article 2 (e) the Parties commit to “take all appropriate measures to eliminate discrimination against women by any person, organi-

12. Adopted by UN General Assembly resolution 34/180 of 18 December 1979, opened for signature in New York on 1 March 1980, in force as 3 September 1981. CEDAW is binding on 189 States.

13. The Committee on the Elimination of Discrimination against Women explained that: “Although the Convention only refers to sex-based discrimination, interpreting article 1 together with articles 2 (f) and 5 (a) indicates that the Convention covers gender-based discrimination against women.” See General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010, para. 5.

14. See article 5.a CEDAW.

zation or enterprise”, meaning that they have positive obligations to protect individuals from violations committed by other individuals. This provision substantially lays on the concept of due diligence as specifically applied in the context of combating violence against women (Benninger-Budel, 2008); it expands the scope of the Convention beyond State responsibility for the conduct of public authorities alone. In this respect, the CEDAW Committee clarified in General Recommendation No. 19 on violence against women that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence”¹⁵. In General Recommendation No. 28 on core obligations stemming from CEDAW, the Committee confirmed that the obligation of due diligence underpins the Convention as a whole¹⁶. These important statements of principle set the scene for a more detailed consideration of the Convention’s relevance to the fight against gender-based violence and domestic violence against women.

Although CEDAW does not explicitly refer to gender-based violence or domestic violence—in fact, it doesn’t even mention the term “violence” throughout the whole text—it nonetheless contains several provisions that are relevant to this issue, for example, those dealing with particular forms of violence such as forced marriages and sexual exploitation¹⁷. Moreover, as clarified by the CEDAW Committee in the above-mentioned General Recommendation No. 28, the concept of sex discrimination has to be interpreted as encompassing violence against women, including family violence and intimate partner violence¹⁸.

A few General Recommendations focused on violence against women shed further light on State obligations with regard to the protection of women from abuse and violence, including domestic violence. In General Recommendation No. 12 of 1989 the Committee highlighted the obligation to protect women from violence in the family, workplace, or any other area of social life under articles 2, 5, 11, 12 and 16 of the Convention¹⁹.

In General Recommendation No. 19 of 1992, the Committee defined family violence as one of the most insidious forms of violence against women, which is prevalent in all societies²⁰. The Committee observed that

15. General Recommendation No. 19: Violence against women, CEDAW/C/GC/19, 1992, para. 19.

16. General Recommendation No. 28, para. 13.

17. See, respectively, art. 16, para. 1.b and art. 6 CEDAW.

18. General Recommendation No. 28, para. 19.

19. General Recommendation No. 12: Violence against women, 1989.

20. General Recommendation No. 19, para. 23.

within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which put women's health at risk and impair their ability to participate in family life and public life on a basis of equality²¹.

It also considered that "lack of economic independence forces many women to stay in violent relationships" and that the "abrogation of their family responsibilities by men can be a form of violence, and coercion"²². The Committee recommended specific measures to overcome family violence, including criminal penalties and civil remedies; legislation to remove the defence of honour in regard to the assault or murder of a female family member; services to ensure the safety and security of victims; rehabilitation programs for perpetrators of domestic violence; support services for families where incest or sexual abuse has occurred. Moreover, the Committee recommended that States report regularly on the extent of domestic violence and sexual abuse, as well as on the preventive, punitive and remedial measures taken in response thereto²³. As mentioned above, the Committee also clarified that, under both general international law and specific human rights treaties, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and that they have to provide compensation accordingly²⁴.

In General Recommendation No. 35 of 2017 the Committee stated that "[t]he *opinio juris* and State practice suggest that the prohibition of gender-based violence against women has evolved into a principle of customary international law", noting that its previous General Recommendation No. 19 had been "a key catalyst for that process"²⁵. Concerning State responsibility for acts or omissions of non-State actors resulting in gender-based violence against women, the Committee reiterated that both general international law and treaty law engage the international responsibility of the State for acts or omissions of a private actor when the State fails to comply with due diligence obligations²⁶. Finally, the Committee recommended general legislative measures, as well as prevention, protection, prosecution and reparation measures. Particularly import-

21. *Ibidem*.

22. *Ibidem*.

23. *Ibidem*, para. 24, lett. (r) and (s).

24. See also CEDAW, Communication No. 47/2012, *Angela González Carreño v. Spain*, CEDAW/C/58/D/47/2012, 16 July 2014.

25. General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 26 July 2017, para. 2.

26. General Recommendation No. 35, para. 24.2.

ant were the recommendations calling upon States Parties to ensure that all forms of gender-based violence against women in all spheres are criminalized; to introduce or strengthen legal sanctions commensurate with the gravity of the offence, as well as civil remedies; to protect victims and survivors and guarantee that they have access to justice and to effective remedies (McQuigg, 2017; De Vido, 2018)²⁷.

When it comes to the application of CEDAW in times of emergencies—and hence its relevance to the prevention of violence associated with the COVID-19 pandemic—the first key aspect that deserves consideration is that the Convention does not contain any derogation or limitation clause that may allow even a temporary suspension of its protection regime. The impossibility for States—under no circumstances, including public health emergencies—to derogate from or limit women’s right to equality and non-discrimination are consistent with and support the customary status under international law of the principle of non-discrimination on the basis of sex, as well as of the prohibition of violence against women.

In April 2020, the CEDAW Committee issued a call for joint action and a Guidance Note on CEDAW and COVID-19. The Committee urged all States Parties to the Convention to comply with their obligation to ensure that measures taken to address the pandemic did not directly or indirectly discriminate against women and girls. It called upon governments to take action on several key issues, including addressing the disproportionate impact of the pandemic on women’s health; ensuring equal participation of women in decision-making; providing socio-economic support to women; and providing sexual and reproductive health services, including maternity care, as essential services. These guidelines also focused on protecting women and girls from gender-based violence, ensuring basic services and shelters for victims of violence; addressing discrimination against lesbian, bisexual and transgender women in access to health care; and ensuring that they have access to safe shelters and support services whenever exposed to gender-based violence during home confinement. In particular, the Committee articulated the due diligence obligation incumbent on States Parties in accordance with CEDAW in the context of the pandemic response:

States parties have a due diligence obligation to prevent and protect women from, and hold perpetrators accountable for, gender-based violence against women. They should ensure that women and girls who are victims or at risk

27. General Recommendation No. 35, paras. 29-30.

of gender-based violence, including those living in institutions, have effective access to justice, particularly to protection orders, medical and psycho-social assistance, shelters and rehabilitation programmes. National response plans to COVID-19 should prioritize availability of safe shelters, hotlines and remote psychological counselling services and inclusive and accessible specialised and effective security systems, including in rural communities, and address women's mental health issues, which stem from violence, social isolation and related depression. States parties should develop protocols for the care of women not admitted to such services due to their exposure to COVID-19, which includes safe quarantine and access to testing²⁸.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and Its Application in Times of Public Health Emergencies

On 7 April 2011 the CoE Committee of Ministers adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention²⁹, to complement European human rights law with a new dedicated binding instrument (Di Stefano, 2012; De Vido, 2016; Poggi, 2017; Niemi et al., 2020).

The Istanbul Convention is the most comprehensive international treaty on violence against women and domestic violence, which provides a complete and integrated regulatory framework to protect “any victim” of violence in “all circumstances”. In this respect, it is remarkable that article 2 encourages States Parties to apply the Convention to “all victims of domestic violence”, including, alongside women and girls, also men and boys, the elderly or other categories of victims of gender-based violence.

Violence against women and domestic violence are for the first time addressed as separate, though interrelated, issues. Under article 3, violence against women is defined as “a violation of human rights and a form of discrimination against women” encompassing

28. CEDAW Committee, *Guidance Note on CEDAW and COVID-19*, 22 April 2020, available at <https://www.ohchr.org/EN/HRBodies/CEDAW/pages/cedawindex.aspx>.

29. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS No. 210, Istanbul, 11 May 2011, in force as of 1 August 2014, ratified by 34 States.

all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life³⁰.

Domestic violence is defined as

all acts of physical, sexual, psycho-logical or economic violence that occur within the family or domestic unit, or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim³¹.

This broad definition covers various acts of violence irrespective of biological or legal family ties between the perpetrator and the victim. It mainly includes two types of violence: intimate-partner violence between current or former spouses or partners, and inter-generational violence, which typically occurs between parents and children. Being a gender-neutral definition, it encompasses victims and perpetrators of both sexes.

Equally innovative is the inclusion of a definition of the concept of "gender", appearing for the first time in the context of an international treaty, which refers to "the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men" (Niemi &Verdu Sanmartin, 2020). The Convention stresses the importance of interpreting "gender-based violence against women" as "violence that is directed against a woman because she is a woman or that affects women disproportionately" in both public and private spheres.

Article 5 of the Istanbul Convention requires States Parties to comply with both negative and positive obligations. Paragraph 2 sets out the obligation to exercise due diligence in relation to acts committed by non-state actors. In this case, the Parties are required to respond to all forms of violence falling under the scope of the Convention in a way that allows relevant authorities to diligently prevent, investigate, punish and provide reparation for such acts of violence (De Vido, 2014; Stoyonova, 2020).

With regard to violence perpetrated by non-state actors, article 12 requires States Parties to adopt all necessary and appropriate measures to prevent acts of violence by any natural or legal person. Other preventive measures are required to realize changes

30. Art. 3 (a) of the Istanbul Convention.

31. Art. 3 (b) of the Istanbul Convention.

in the social and cultural patterns of behaviour of women and men, with a view to eradicating prejudices, customs, traditions and all other practices based on the idea of the inferiority of women or on stereotyped roles for women and men. Particularly important are those provisions which impose an obligation of criminalization of a broad range of intentional offensive conducts, including psychological violence, stalking, physical violence, sexual violence and rape, forced marriage, female genital mutilation, forced abortion and forced sterilization, and sexual harassment³². This obligation aims at achieving a certain degree of harmonization of domestic criminal laws to facilitate action against crime at both the national and the international level, as well as to overcome the difficulties posed by lack of systematic application of national measures to combat violence against women and domestic violence and/or gaps in domestic legislation.

The Istanbul Convention pays special attention to the protection and support of victims. It sets out both general and more specific obligations concerning information, general and specialist support services, assistance in individual/collective complaints, shelters, telephone helplines, protection and support for child witnesses. It also requires that victims be provided with adequate civil law remedies against abusers³³, including those remedies which empower a civil law court to issue injunctions, emergency barring orders, as well as restraining and protection orders. Moreover, victims must be entitled to seek justice and compensation against State authorities if they fail to take preventive and protective measures in breach of their due diligence obligation³⁴.

In light of its innovative approach and of its full applicability also in times of emergency, the Istanbul Convention represents the most valuable tool to tackle gender-based and domestic violence also during public health crisis. It is especially noteworthy that in the early phases of the COVID-19 pandemic GREVIO's President issued a statement on the need to uphold the standards of the Istanbul Convention in the pandemic response³⁵. GREVIO called on all States Parties to do their utmost to ensure continuity in service provision and to keep offering support and protection to women and girls at risk of violence, with the involvement of all relevant actors, including law enforcement agencies, social services, the justice sector, specialist support services and all relevant ministries. On 20 April 2020, the Committee of the Parties of the Istanbul Convention

32. Arts. 33 to 40 of the Istanbul Convention.

33. Art. 29 (1), of the Istanbul Convention.

34. Art. 29 (2) of the Istanbul Convention.

35. '*For many women and children, the home is not a safe place*', Statement by the President of GREVIO, Marceline Naudi, on the need to uphold the standards of the Istanbul Convention in times of a pandemic, 24 March 2020, at <https://rm.coe.int/grevio-statement-covid-24-march-2020/pdfa/16809cf55e>.

adopted a Declaration on the implementation of the Convention during the COVID-19 pandemic³⁶. The Annex to the Declaration is particularly important because, upon consultation with GREVIO, the Committee provided guidance to States Parties on selected provisions of the Convention. With a focus on 14 specific articles concerning prevention, protection and prosecution, the Annex offered some examples of how governments could react to the rise in cases of violence against women during the COVID-19 pandemic while suggesting possible action and appropriate measures to be taken.

Domestic Violence in Italy and COVID-19

Italian Legislation on Family Violence

The regulation of family relations in Italy also includes rules on family violence: in the civil law sphere, the introduction of protection orders against family abuses, and in the criminal sphere, the precautionary measure of removal from the family home, which are important measures in responding to domestic abuse (Morani, 2003; Carrera, 2004; Di Lorenzo, 2007, 2016).

The legislation in question attributes to those who suffer abuse in the family and non-family context a tool that allows rapid and effective protection against the abuser's prejudicial behavior. Protection orders, even if enshrined in the Civil Code, require coordination with the principles of criminal and procedural law in view of their ability to limit the personal freedom of those against whom they are put in place. The legislator's aim was therefore to provide a series of precautionary measures intended to combat violence in family relationships, or situations of serious prejudice to the physical or moral integrity or freedom of a member of the family—regardless of marital status—attributable to another member of the same group.

The Italian legal system did not envisage measures aimed specifically and exclusively at combating violent behaviour towards women, nor did it establish specific aggravating circumstances when women are the victims of certain crimes. During the ratification of the Istanbul Convention, Legislature XVII was also characterized by the introduction of changes to the Criminal Code and criminal procedures to stiffen the penalties of some crimes, most often committed against women, and the promulgation of the extraordi-

36. Available at <https://rm.coe.int/declaration-of-the-committee-of-the-parties-to-the-istanbul-convention/1680a19c9f>.

nary action plan against gender-based violence and the provision of funding for victim support (Betti, 2013). On the civil law side, with Law no. 154 of 4 April 2001, precise protective measures were introduced aimed at suppressing this constantly spreading social phenomenon.

From the structural point of view, this measure produced variegated and flexible protection orders instrumental to the consequences of abuse on both a personal level (consider, for instance, the order for the removal of the perpetrator of abuse from the family home or the prohibition to approach places normally frequented by the victim), and the family level (in particular, the order to periodically make payments to cohabiters) and, therefore, potentially able to provide—if translated into prudent, yet effective provisions—the protection required according to the specific case.

However, the clear generality of these assumptions identified by law—serious prejudices to life, to the physical health and safety of the family member, to mental health and freedom—conversely points to the underlying risk of such methodology. Also from the procedural point of view, the adoption of agile forms—aimed at speedy decisions and effective implementation—appear not to affect the principles of the right to be heard and the right to a fair hearing by limiting their scope, given that under the right conditions, the court, dealing with summary proceedings of a substantially precautionary nature, can take measures that affect the fundamental rights of the person, recognized and guaranteed by the Constitutional Charter, such as personal freedom, freedom of movement and residence, but also private property.

Furthermore, legal practitioners have appreciated the decision to clearly separate the actionability of the private remedy from the criminal repression of abusive conduct constituting a crime, which has certainly made it easier to resort to protection orders, preventing the inevitable complications (originally emerging in the first application) linked to the potential difficulty of qualifying the behavior as a crime, and the risk of overlapping measures or, even worse, the simultaneous refusal of protection (Paladini, 2010; Amalfitano, 2011).

When the spouse's or partner's conduct is a cause of serious prejudice to the physical or moral integrity or the spouse's or partner's freedom, the court, at the request of the party, may adopt by decree one or more of the provisions referred to in article 342-ter of the Civil Code. The original formulation of the law—superseded by entry into force of Law no. 304 of 6 November 2003—made the issuing of a protection order subject to there not being a basis for prosecuting the family member's violent conduct *ex officio*³⁷.

37. By Law no. 304 of 6 November 2003, article 342-*bis* of the Civil Code was modified with regard to protection orders against family abuses. The law foresees that the court, at the request of a party, may adopt measures aimed at ending preju-

Currently, even if the person concerned is indictable for an offense, this does not preclude a protection order under the Civil Code. Therefore, the response of the legal system to domestic violence is two-fold: a civil type intervention alongside a criminal one when violence is more serious, regardless of (and even against) the will of the injured person. However, while the civil court's decision has a predetermined final deadline (unless extended), this is not the case for the criminal court's decision.

With regard to the civil aspect, this was affirmed with the inclusion—in Book 1 of the Civil Code—of a new title (IX-*bis*) “Protection orders against family abuse”, consisting of articles 342-*bis* and 342-*ter* aimed at offering articulated and incisive forms of intervention in all those pathological situations of conflict or family abuse that by reason of current law are unable to determine a settlement in legal separation or divorce proceedings.

Despite these laws, domestic violence in Italy has not ceased to be an emergency and is perpetuated within affective relationships that degenerate, resulting in acts of aggression that often lead to the victim's death.

The Red Code

The Italian Council of Ministers in November 2018 gave the greenlight to the Codice Rosso (Red Code), establishing a preferential track for victims of violence, guaranteeing the speedy adoption of precautionary or preventive measures.

The draft law proposes amending article 347 of the Italian Code of Criminal Procedure establishing the obligation of the judicial police to immediately communicate to the Public Prosecutor the news of crimes if concerning mistreatment, sexual violence, stalking, and aggravated injuries committed in the family or cohabitation context, without discretion on the existence of urgency. In cases of this kind, in fact, the passing of time can further aggravate an already compromised situation: the objective is therefore to allow the timely start of the procedure, so as to be able to adopt any “protection or non-access” measures as soon as possible.

Another central point of the legislative provision is the modification of article 362 of the Italian Code of Criminal Procedure envisaging that in cases of domestic and gender-based violence the Public Prosecutor will hear the victim of the crime within

dicial conduct through the removal of the spouse or other cohabitant from the family home who causes serious damage to the physical or moral integrity or the freedom of the other spouse or cohabitant. With the change introduced, the request to obtain a protection order can be presented even in the event of an indictable offense.

three days of the start of the procedure, unless there are essential requirements to protect the confidentiality of investigations, also in the interests of the victim.

With this provision, the notion of “particular vulnerability” of the person, introduced by the legislative decree on victims of crime (no. 212/2015), is overcome, to always allow the timely provision of information by victims in all proceedings for these serious crimes. Moreover, in this way, the Public Prosecutor is able to immediately assess the possible existence of precautionary needs, in the event that these emerged during the hearing.

The provision foresees, through an integration of article 370 of the Italian Code of Criminal Procedure, the obligation for the judicial police to give priority to conducting investigations delegated by the Public Prosecutor—without any possibility of assessing the existence of urgency—when it comes to crimes of abuse, sexual violence, stalking, and aggravated injuries committed in the family or cohabitation context. At the same time, the results of the investigation carried out must be documented and transmitted in an equally timely manner to the Public Prosecutor.

In other words, it introduces a presumption of urgency for these types of offenses for which the police must immediately communicate the event to the Public Prosecutor to promptly start the proceedings and enable adopting ‘protection or non-access measures’ before the acts of violence have irreparable consequences. The provision also foresees in these cases compulsory and specific training for police and penitentiary police officers, including specific courses at the respective training institutes, ensuring uniformity aimed at those performing public security and judicial police functions.

This regulatory intervention is part of a broader action plan to combat violence against women that the government is implementing together with the Department of Equal Opportunities. Indeed, the Government has announced the establishment of an inter-ministerial control center to follow up on planned interventions in an organic manner, as well as the forthcoming establishment of an ad hoc fund for victims of violence and the creation of territorial anti-violence centers for emergency interventions.

Anti-violence centers will provide the first legal and psychological support with the possibility of hosting women victims of violence in the intermediate phase, that is, from the decision to report to the time of the anti-violence center taking charge. However, despite the noble intentions of the Codice Rosso, there has been no lack of criticism. In fact, there are those who contest the fact that the measures contained in the text already exist and are to be found precisely in Law no. 119 of 2013, known as the femicide law³⁸.

38. In fact, the femicide law has amended article 132 of the Italian Criminal Code, introducing the obligation to give absolute priority in the formation of hearing lists and in proceedings to crimes of abuse in the family, stalking, sexual

Moreover, the certainty that the current economic crisis does not enable setting up an ad hoc fund for the victims of violence leads to arguing that this is only a cosmetic measure, which in no way takes a step forward in the tough battle against domestic violence.

Covid-19 and the Protection of Victims of Domestic Abuse

Normally, women and children find too many obstacles in their path from both the police and professionals, as well as in terms of the social and healthcare sector, due to poor preparation and training on the phenomenon of violence, but above all the Italian cultural substratum, characterized by profound sexist stereotypes and inequality between the genders, as well as prejudices against women who report violence and still tend not to be believed.

The general situation in Italy is characterized by an endemic spread of sexism and misogyny on several levels: from communication to the media, from politics to language, to social media reactions. In Italy from years happen the general problem of access to justice for women victims of violence, critical issues in criminal proceedings, but especially in the civil sphere, the increasingly devastating interpretation of legislation on child custody in cases of violence. The analysis of the situation in times of Covid-19, highlights the specific problems related to the adequacy of interventions on their behalf, the lack of protection of girls and women with disabilities, and accessibility to services and justice.

The dizzying increase in cases of domestic violence in the lockdown period imposed by the pandemic has highlighted the need to adopt a gender approach in vocational courses and include ad hoc educational paths for all orders and degrees in education and training. Training (contents, incisiveness) is a priority issue. The recognition that the regulatory efforts—that surely have been undertaken—are not sufficient to significantly affect the reality of the still-pervasive violence emerges with evident clarity.

With regard to sexual violence, to be acknowledged is that in Italy all hospitals provide for securing evidence, and all anti-violence centers offer consultancy and support services, but evidence on the emergence of the phenomenon remains very low due to the judicial paths that are still too inadequate in providing a satisfactory response.

violence, sexual acts with children and sexual violence in groups. Thus, at least on paper, a fast track to protect women already exists; the problem is that it is difficult to apply.

Concluding Remarks

Although increases in interpersonal violence during times of crisis are well documented, the COVID-19 pandemic has represented the “perfect storm”, with people compelled to remain at home during lockdowns and curfews, and health and social services hampered by the disruptive effects of the emergency.

Public health measures restricting freedom of movement, implemented by most States to tackle the unprecedented global crisis caused by the COVID-19 pandemic, indirectly contributed to a worldwide mounting wave of violence against women, which remained to a large extent silent and unanswered. In fact, as reported by Amnesty International³⁹, the response provided by public authorities across countries was rather ineffective and overall unsatisfactory. Despite repeated appeals by international organizations and human rights institutions, urging governments to prioritize preventive and protective measures and ensure funding and availability of health and social services in support of victims, the “shadow pandemic” spread unabated.

To mitigate the adverse impact of COVID-19 on women, human rights bodies insisted on the need that national responses to the pandemic abide by internationally agreed standards of non-discrimination and protection of women’s rights, as set by dedicated human rights treaties. In particular, the CEDAW Committee and GREVIO provided guidance to States Parties on how to apply CEDAW and the Istanbul Convention in the context of the pandemic, also issuing policy recommendations on actions to be taken to achieve the best possible results.

Both CEDAW and the Istanbul Convention—as extensively interpreted by their monitoring bodies—provided a solid legal basis to adopt targeted preventive and protective measures to address the tide of domestic violence that rose during the acute phase of the pandemic. Undoubtedly, the multifarious tools designed by the Istanbul Convention represented an added value. As reported in a study carried out for the European Parliament, all EU Member States (Parties to the Convention) adopted appropriate measures of response: nearly all conducted awareness-raising campaigns on where to get help; some developed temporary help points in supermarkets and pharmacies or innovative apps or online means of alerting the police; some classified hotlines and shelters as essential services, enabling them to continue to provide assistance; some provided additional funding for these services or expanded capacity by converting empty

39. See Amnesty International 2020/2021 Report, *supra* note 3.

tourist accommodation into shelters. A few countries also introduced comprehensive action plans⁴⁰. In practice, the Istanbul Convention directly contributed to the creation of services for victims in a number of countries, and States that had ratified it—like Italy⁴¹—implemented more measures during the pandemic than those that had not, suggesting greater political awareness and readiness to respond to violence against women.

Today, against the backdrop of a resurgence in COVID-19 cases in many countries and the prospect of further lockdowns, governments should learn lessons from what happened in 2020 and look forward through a gender lens. This approach would allow States to be better prepared for future emergencies and avoid that other “shadow pandemics” occur again.

References

- Amalfitano, C. (2011). L'azione dell'Unione europea per la tutela delle vittime di reato. *Diritto dell'Unione europea*, 16(3), 643-682.
- Benninger-Budel C. (Ed.). (2008). *Due Diligence and Its Application to Protect Women from Violence*. Leiden-Boston: Martinus Nijhoff Publishers.
- Betti, L. (2013). *Femminicidio: Italia tra Convenzione di Istanbul e raccomandazioni CE-DAW*. www.articolo21.org
- Carrera, L. (2004). Violenza domestica e ordini di protezione contro gli abusi familiari. *Famiglia e diritto*, 4, 388-400.
- De Vido, S. (2014). States' due diligence obligations to protect women from violence. A European perspective in light of the 2011. *CoE Istanbul Convention, European Yearbook on Human Rights*, 15, 365-382.
- De Vido, S. (2016). *Donne, violenza e diritto internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011*. Milano: Mimesis.

40. European Parliament, *Tackling violence against women and domestic violence in Europe. The added value of the Istanbul Convention and remaining challenges*, October 2020, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658648/IPOL_STU\(2020\)658648_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658648/IPOL_STU(2020)658648_EN.pdf).

41. See the Report drafted by the Italian Senate's Parliamentary Commission investigating cases of femicide and other forms of gender-based violence concerning measures to be adopted to tackle violence against women during the pandemic, which was unanimously approved by the Senate on 8 April 2020: Commissione parlamentare di inchiesta sul femminicidio, nonché su ogni forma di violenza di genere, *Relazione su "Misure per rispondere alle problematiche delle donne vittime di violenza dei centri antiviolenza, delle case rifugio e degli sportelli antiviolenza e antitratto nella situazione di emergenza epidemiologica da COVID-19"*, available at <https://www.senato.it/service/PDF/PDFServer/BGT/1149433.pdf>.

- De Vido, S. (2018). The Prohibition of Violence Against Women as Customary International Law? Remarks on the CEDAW General Recommendation. *Diritti umani e diritto internazionale*, 12(2), 379-396.
- Di Lorenzo, G. (2007). La convivenza tra familiari nella disciplina civilistica degli ordini di protezione. *Famiglia, persone e successioni*, 606-613.
- Di Lorenzo, G. (2016). Gli ordini di protezione contro gli abusi familiari. In G. Bonilini (Ed.), *Trattato di diritto di famiglia*, 4, 4243-4265.
- Di Stefano, A. (2012). Violenza contro le donne e violenza domestica nella nuova Convenzione del Consiglio d'Europa. *Diritti umani e diritto internazionale*, 6(1), 169-176.
- Freeman, M.A., C. Chinkin, B. Rudolf (Eds.). (2012). *The UN Convention on Elimination of All Forms of Discrimination against Women. A Commentary*. Oxford: Oxford University Press.
- Hellum, A. & H. Sinding Aasen (Eds.). (2013). *Women's Human Rights: CEDAW in International, Regional and National Law*. Cambridge: Cambridge University Press.
- McQuigg, R.J.A. (2017). The CEDAW Committee and Gender-Based Violence against Women: General Recommendation . *International Human Rights Law Review*, 6(2), 263-278.
- Morani, G. (2003). La nuova normativa di protezione a favore del familiare più debole contro gli abusi nelle relazioni domestiche. *Giurisprudenza di merito*, 4, 835-842.
- Niemi J. & A. Verdu Sanmarti. (2020). The Concepts of Gender and Violence in the Istanbul Convention in J. Niemi, L. Peroni & V. Stoyanova (Eds.), *International Law and Violence Against Women. Europe and the Istanbul Convention* (pp. 77-94).
- Niemi J., L. Peroni & V. Stoyanova. (2020). The Istanbul Convention as a Response to Violence against Women in Europe in J. Niemi, L. Peroni & V. Stoyanova (Eds.), *International Law and Violence Against Women. Europe and the Istanbul Convention*, (pp. 1-21).
- Paladini, M. (2010). Gli ordini di protezione contro gli abusi familiari: misure “anticipatorie” dei provvedimenti provvisori nella separazione personale? *Famiglia, persona e successioni*, 6 (8/9), 566-577.
- Peterman, A., Potts, A., O'Donnell, M., Thompson, K., Shah, N., Oertelt-Prigione, S., van Gelder, N. (2020). Pandemics and Violence Against Women and Children, Center for Global Development Working Paper 528. <https://www.cgdev.org/sites/default/files/pandemics-and-vawg-april2.pdf>.

- Poggi, F. (2017). Violenza di genere e Convenzione di Istanbul: un'analisi concettuale, *Diritti umani e diritto internazionale*, 11(1), 51-76.
- Stoyanova V. (2020). Due Diligence versus Positive Obligations: Critical Reflections on the Council of Europe Convention on Violence against Women. In J. Niemi, L. Peroni & V. Stoyanova (Eds.), *International Law and Violence Against Women. Europe and the Istanbul Convention*, 95-129.
- Westendorp, I. (2012). *The Women's Convention Turned 30: Achievements, Setbacks and Prospects*. Cambridge: Intersentia.
- Zwingel, S. (2016). *Translating International Women's Rights: The CEDAW Convention in Context*. Basingstoke: Palgrave Macmillan.