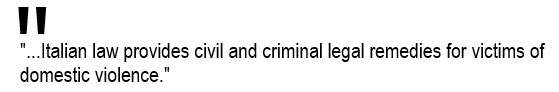
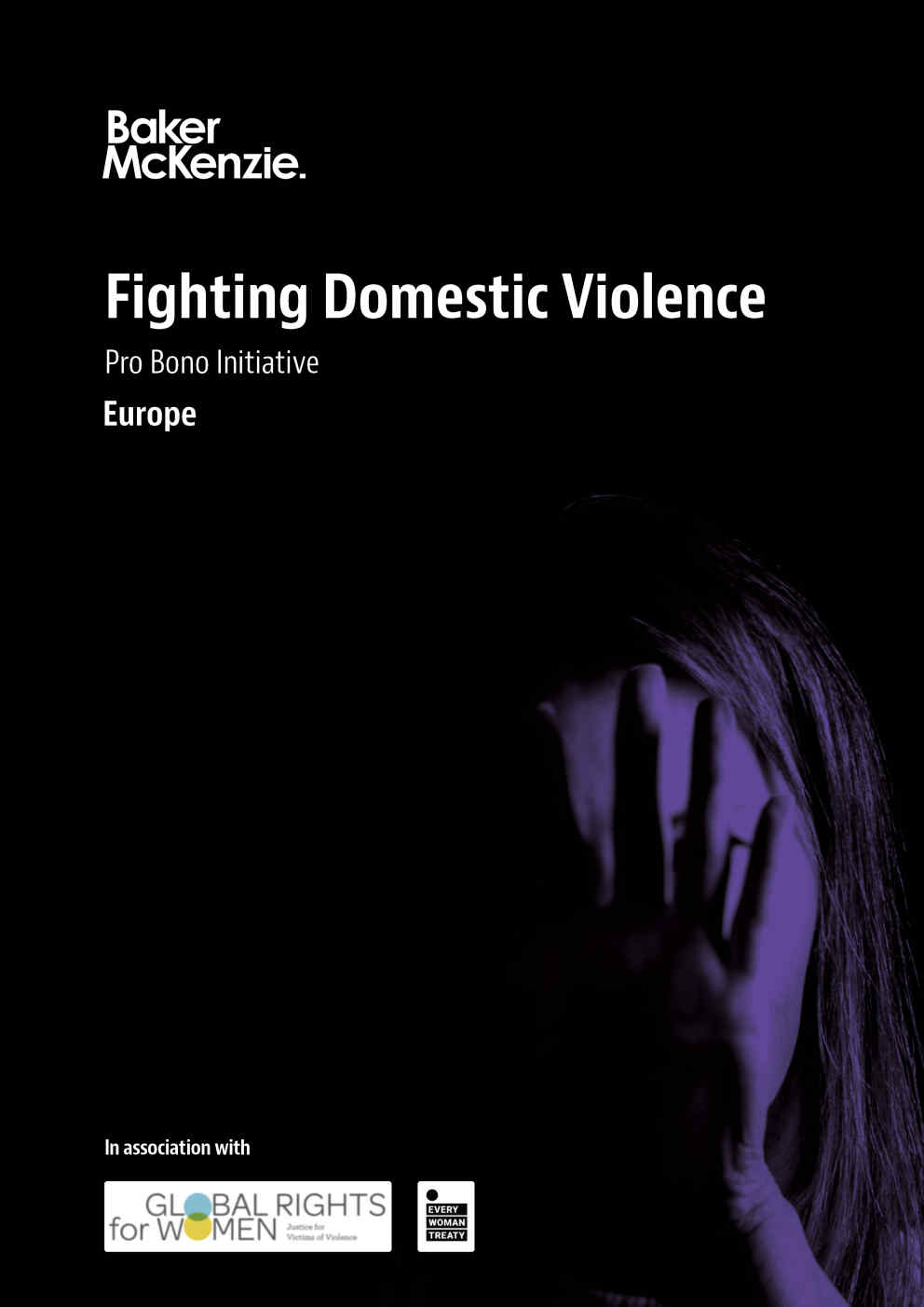
Fighting Domestic Violence - Italy

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**How to use and navigate this report**

# 1. Legal provisions

## 1.1 What are the relevant statutes and codes?

Italian Criminal Code, as amended by Law No. 69/2019 on the safeguard of the victims of domestic and gender violence.

Italian codes - such as the Criminal Code - are the most important collection of laws regulating a certain area, such as - in the instant case - the criminal area, but they are not the only source of law in criminal matter.

Law No. 77/2013, which implemented the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

Law No. 172/2012, which implemented the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

Legislative Decree No. 212/2015, which implemented Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

Legislative Decree is a primary source of law which has the same legal value as Law and the Italian Criminal Code.

## 1.2 What is the controlling case law?

Case law does not have binding effects in Italy, so there is no controlling case law.

Having said that, the Italian Supreme Court has issued a number of judgments against domestic violence. In Italy these judgments have no impact beyond the specific cases they relate to.

However, if more courts have decided a consistent line of cases in the same way, then the previous judgments are deemed to be highly persuasive (although not binding).

## 1.3 What are the specific parts of the court system that address domestic violence?

The criminal courts are entitled to address domestic violence.

## 1.4 What are potential causes of action?

Domestic violence triggers a number of different crimes under the Italian Criminal Code. Accordingly, an individual who is victim of domestic violence may report an accusation of crime before the judicial police or with the public prosecutor's office against the perpetrator, triggering the start of the investigations.

The victim may also request the public prosecutor to issue a restraining order or other urgent interim measures against the perpetrator pending the investigations. The restraining order will be issued if there are solid grounds (i.e.*,* serious evidence of guilt) supporting the accusation of crime and if not issuing it could harm the victim.

In the course of the criminal trial (or in separate civil court proceedings), the victim may also ask for the recovery of the damages suffered because of the violence.

# 2. Introduction: framework guiding domestic violence law

## 2.1 Are there civil and criminal legal remedies for domestic violence victims?

Yes, Italian law provides civil and criminal legal remedies for victims of domestic violence. The crime of domestic violence is the result of two different crimes: personal injury[1] and maltreatments against family members or cohabitants.[2] Also, depending on the factual circumstances, the domestic violence may trigger a number of additional crimes.

The victim has the right, but not the obligation, to pursue compensation via the criminal procedure. The majority of crimes against individuals will be prosecuted by the state (i.e. it will not be necessary for the victim to bring the case to trial).The victim may request compensation for any damage suffered (physical, mental, work-related, etc.). The victim may also decide to request damages and compensation before the civil court, but in general this would require a separate proceeding.

In 2019 the Italian legislator amended several provisions on the protection of victims of domestic and gender-based violence to include more forms of domestic violence, such as revenge porn.[3]

These amendments introduced: (i) the crime of revenge porn; [4] (ii) the crime of coercion or induction to marriage; [5] (iii) the crime of disfigurement; [6] and (iv) the crime of breach of the measures of expulsion from the family home and the prohibition of approaching places frequented by the injured person.[7]

## 2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

Protection from Domestic violence is not identified as a human right under Italian law but is recognized as such by the Italian Constitution[8] and by the European Convention on Human Rights (or Carta Europea dei Diritti dell’Uomo, “CEDU”).[9]

## 2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210)?

Italy signed the Istanbul Convention on September 27, 2012 and ratified it on June 27, 2013.[10]

## 2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?

The implementation of the convention ratified it exactly as set out in the convention, enabling a fast incorporation into the Italian system.

Subsequently, the government and Parliament passed further legislation,[11] which includes certain implementing measures, using a dual-track approach:

protection and prevention, through rules aimed at strengthening measures already in place

repealing and amending criminal laws that were not in compliance with the convention, including amendments that:

acknowledged the importance of so-called "witnessing violence." This is when children are witnesses of the violence being perpetrated by a family member against another family member, for example, by a spouse against the other spouse (intimate partner violence)

included two specific aggravating circumstances in the Italian criminal law body, in order to better protect victims of stalking

strengthened the rules against the crime of "femicide"

acknowledged the seriousness of sexual violence as a manifestation of dominion within relationships or as a stalking tool, following the end of a relationship

in line with the Istanbul Convention, aimed at ensuring greater protection for victims both in relation to hearings, which will be protected, and through a system guaranteeing transparency during ongoing investigations and legal proceedings, besides the obligation to inform victims about local support services

## 2.5 If it has not ratified or signed the Istanbul Convention, is it envisaged that your country will do so?

This is not applicable as Italy ratified the Istanbul Convention.

## 2.6 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

Italy ratified the 1979 Convention on June 10, 1985. [12] The Italian legislation does not include a specific reference to General Comment No. 35. However, it is worth noting that Italy recently introduced a number of laws aimed at fighting new methods of gender-based violence. By way of example, Law No. 69/2019 introduced new measures aimed at fighting gender-based violence by introducing a number of dispositions in the Italian Criminal Code for punishing new type of crimes, including: (i) violation of the measures of removal from the family home and the prohibition to approach the places frequented by the offended person;[13] (ii) coercion or induction into marriage;[14] (iii) revenge porn;[15] (iv) deformation of the person's appearance by permanent facial injuries.[16] Law No. 69/2019 further toughens the penalties for all gender-based crimes and establishes some additional measures to support the fight against the domestic violence (e.g., specific training for law enforcement agencies, simplification of some judicial procedures).

## 2.7 If the 1979 Convention has not been ratified or signed, is it envisaged that your country will do so?

This is not applicable as Italy ratified the 1979 Convention.

# 3. Similarities and differences in terminology

## 3.1 Domestic violence

The Italian legal definition of "domestic violence" replicates the Istanbul Convention, which states it is:

"All acts of physical, sexual, psychological 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 victim."

## 3.2 Stalking

Under Italian law, the definition of "stalking" is the conduct of anyone who, with repeated acts, threatens or harasses another individual in such a way as to cause a persistent and serious state of anxiety or fear or a well-founded fear for their safety or for the safety of a next of kin or of a person linked by an affective relationship or to force the individual to change their life habits.[17]

## 3.3 Harassment

There is no definition of "harassment" in the context of domestic violence under Italian law.

There is a definition of "harassment" and "sexual harassment" in the workplace under Italian legislation on equal opportunities and equal treatment of men and women in matters of employment and occupation.[18] In this context:

"harassment" means "any form of unwanted conduct carried out for reasons relating to sex with the purpose or effect of violating the dignity of a worker and creating an intimidating, hostile, humiliating or offensive environment"

"sexual harassment" means "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature carried out with the purpose or effect of violating the dignity of a worker and creating an intimidating, hostile, humiliating or offensive environment"

## 3.4 Victim

In Italy, the definition of "victim" laid down in the Istanbul Convention applies. Under the Istanbul Convention, victim means any natural person who is subject to:

an act of gender-based violence that results in, or is 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 life; and/or

an act of physical, sexual, psychological or economic violence that occurs 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 victim.

## 3.5 Abuser

There is no a specific definition of "abuser" under Italian law. That said, it is possible to consider an "abuser" to be the person who is found responsible for the commission of an act of domestic violence, stalking and/or harassment.

## 3.6 Civil protection order

Under Italian law, civil protection orders against domestic abuse are judicial measures by which the competent judge orders the cessation of a conduct that causes a serious prejudice to someone's physical or moral integrity or liberty.

## 3.7 Causes of action

Under Italian law, causes of action are the factual and legal grounds on which the plaintiff's right to a legal remedy in a court of law is based. In the context of domestic violence, the plaintiff would be the alleged victim.

## 3.8 Marital rape

"Marital rape" is a form of sexual violence committed by the offender against their spouse, even if separated or divorced.[19] Since it is a form of sexual violence committed against a current or former family member, it is considered a particularly serious crime that justifies an increase of the applicable sanction.

## 3.9 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

N/A

# 4. Protection for domestic violence victims and relief granted

## 4.1 Civil protection orders

## 4.1.1 Are there civil protection orders available to victims of domestic abuse?

Yes.[20] These orders can be granted to a partner (either married or not) who suffers severe prejudice to her/his physical or moral integrity or liberty because of the other partner's behavior.

Through these orders, the court must order the abuser: (i) to suspend the harmful behavior; and (ii) to move out of the family home.

Furthermore, if needed, the court may also order:

the abuser to stay away from those places frequented by the victim (i.e., workplace, parent's house, children's school, etc.)

the involvement of social services or organizations that support women and children that have been victims of domestic violence

the abuser to pay a regular amount to the victim who has been left without means of survival. The court can order such amount to be paid directly by the abuser's employer.

## 4.1.2 Who can petition for civil protection orders?

Civil protection orders may be petitioned by the abuser's partner (either married or not) and by all other people who are part of the family. Case law has construed the above-mentioned provisions in an extensive way allowing all those within the family or those living with the abuser who have been subject to domestic violence to petition civil protection orders. Legal assistance is not mandatory to petition civil protection orders.

## 4.1.3 Are there temporary custody of a child or child support orders?

Civil protection orders can also concern children and be issued to protect and support children when there is a situation of domestic violence. However, there are also specific orders for child protection.[21]

When one of the parents breaches their obligations toward their children or abuses their power causing great damage to their children, the court may provide for the parent to lose their parental responsibility and consequently order that parent to stay away from the child.

In other less severe cases, the court may issue various types of orders concerning the custody of the child, such as distancing the child from the parent or ordering the parent to stay away from the child.

## 4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

Please see section 4.1.3 above.

## 4.1.5 Are there any other types of emergency, preventive and civil protection orders?

There are no other types of emergency, preventive or civil protective orders.

## 4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

In children's cases, these orders may be requested by the non-abusing parent, by relatives (within the sixth degree of kinship) or by the public prosecutor.

## 4.1.7 Are there different types of civil protection orders, e.g., for a short- term period?

Please see above.

## 4.1.8 Are ex parte orders permitted without the aggressor being present?

Civil protection orders may be granted *ex parte,* but in this case a hearing must be scheduled within 15 days, during which the order will be either confirmed, amended or revoked.

## 4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

As mentioned above, civil protection orders have a wide range of applicability and so are issued in order to protect all those that are or could possibly be subject to the abuser's violence.

## 4.1.10 How long do the orders last?

The duration of an order is decided by the court itself but cannot last longer than one year. However, such term may be postponed if severe circumstances occur and is strictly necessary.

## 4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any relevant demographics information, e.g., police reports, convictions, etc.

Statistics concerning domestic violence are majorly concentrated on criminal proceedings and therefore not on civil protection orders and can be found at the following website <https://www.istat.it/it/violenza-sulle-donne/il-fenomeno>.

## 4.2 Steps for receiving a protective order

## 4.2.1 What documentation is needed to obtain a civil protection order?

A petition must be filed with the court of the place of residence of the petitioner. The judge may then request further documentation or evidence aimed at acquiring information including the income situation and standard of living, as well as personal and common properties of the parties.

## 4.2.2 Does the victim need to attend a hearing?

This is not mandatory provided the party's counsel attends the hearing.

## 4.2.3 Can you request remedies?

Yes. Please see sections 4.1 and 4.4.

## 4.2.4 Are there time limits?

Due to the nature of the remedies that can be sought, there must be current prejudice in order for the civil protection order to be effective. Otherwise, the victim would be able to seek damages by way of ordinary proceedings subject to statutory time limits.

## 4.2.5 Are there different rules in emergencies?

In emergency cases, the judge will proceed on the basis of perfunctory information and may issue the civil protection order immediately by setting the parties' hearing within a maximum delay of 15 days and allowing a maximum delay of 8 days to the petitioner for the notification to the other side. At the hearing, the judge will either confirm, modify or revoke the CPO.

## 4.3 Judicial discretion

## 4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

The judge must hear the parties involved and according to the judge's discretion, may request all the evidence they deem appropriate.[22] They can appoint the fiscal authority to investigate the revenues of the family, the family life and the property of the family.

In urgent cases, the judge may adopt a civil protection order from the preliminary information without acquiring the specific evidence referred to above and by fixing the hearing with the parties involved.

## 4.3.2 Are there age limits on who can obtain orders?

No, there are no age limits to obtain orders.

## 4.4 Restitution and remedies available to victims

## 4.4.1 Can victims obtain reimbursement for costs and restitution paid?

Yes, victims may obtain the payment of compensation, restitution, wages and/or profits lost ("Damages") as a consequence of a judgment that finds the perpetrator guilty of domestic violence acts. The Damages generally include any reintegration necessary to reinstate the situation prior to the criminal action. This means that victims may ask for both monetary damages (i.e., for any reduction of the victim's assets), assessed evaluating the resulting damage and any loss of profits, and nonmonetary damages (e.g., biological damage, moral damage or damage to a constitutionally protected interest).[23]

In order to obtain Damages, victims have two possibilities:

1. autonomous civil action

Victims may initiate an autonomous civil proceeding requesting the Damages derived from the domestic violence acts.

2. joint civil action

Victims may join a civil claim to the ongoing criminal proceedings (so-called *costituzione di parte civile*) where they directly request the assessment of Damages.

With specific regard to the above, it is important to note, however, that the autonomous civil action and the joint civil action in criminal proceedings may not be initiated simultaneously. The relationship between the two types of civil actions are tightly regulated by Italian laws with the aim of avoiding a double decision on the same matters. The general rule is that initiating one type of civil action excludes the possibility to proceed with the other.[24]

Victims, on top of the Damages (as outlined above), may also obtain the payment of costs related to the judgment. Following the principle of loss (*criterio della soccombenza*), the victory in any criminal law dispute also awards the payment of fees and expenses related to the judgment as paid by the victorious part, and they are consequently borne by the losing counterpart. These include the costs incurred by the winning party in the proceedings before the judicial authorities and typically include lawyers' fees and out-of-pocket expenses, such as the unified fee (so-called *contributo unificato*) and stamps for requesting certified copies.[25]

With regard to the above, please consider that it is also possible to obtain free attorney assistance (so-called *gratuito patrocinio*), if the requesting party has an income lower than EUR 11,369.24. However, victims of a number of criminal actions related to domestic violence, such as stalking, family abuse, female genital mutilation and others, may obtain this free-of-charge attorney assistance regardless of their income.[26]

## 4.4.2 Can they recover wages and profits lost?

Please see section 4.4.1.

## 4.4.3 Is a separate civil process required?

Please see section 4.4.1.

# 5. Prosecutorial considerations

## 5.1 Police procedures

## 5.1.1 When do the police get involved in domestic disputes or legal actions?

Depending on the seriousness of the behavior, the individual can apply for a warning at any police office. In this case, protection measures have a predetermined duration and are applied when there are situations of well-founded fear that have not yet resulted in criminal acts. However, when the situation is more serious and a crime has been committed, it is possible to file a complaint with the police, with a view to requesting the Public Prosecutor's Office to adopt a protection order.

The police must intervene when called to an "emergency intervention." In addition to compulsory arrest, the judicial police, if authorized by the public prosecutor, and in the case of flagrancy of serious offenses (including serious injuries, aggravated threats and violence), may apply the "precautionary" measure of emergency removal from the family home and the prohibition from approaching places frequented by the victim.

## 5.1.2 What circumstances effect law firm involvement?

A law firm can be involved if the victim of domestic violence decides to report an accusation of crime and turn to a lawyer. In addition, victims of domestic violence and family abuse are entitled to free legal aid regardless of their income.

## 5.2 Standard of proof

## 5.2.1 Is proof required by any legal means?

As discussed above, under Italian law domestic violence offenses may trigger both criminal liability and civil liability. Depending on whether the case falls into the criminal law system or the civil law system, different standards of proof will apply. While in criminal proceedings prosecutors will be required to prove that the defendant is guilty "beyond any reasonable doubt," in civil law cases courts will apply the less strict standard of the "preponderance of evidence," i.e.,the claim is more likely than not to be true.

## 5.2.2 Are there any requirements regarding evidence and documents?

There are no specific requirements for evidence and documents. To prove facts of domestic violence, prosecutors may resort to all kinds of evidence, including witness statements, documentary evidence, real evidence (such as DNA tests, fingerprints) or medical examinations.

## 5.2.3 Is proof "beyond a reasonable doubt" required?

Please see section 5.2.1.

## 5.2.4 Is the standard of proof different for ex parte orders?

No, courts will apply the civil standard of the "preponderance of evidence."

## 5.3 Affirmative defenses

## 5.3.1 Are affirmative defenses available to the accused?

Yes, the defendant may attempt to be relieved of criminal charges or civil liability by invoking the so-called affirmative defenses. In particular, an "affirmative defense" refers to facts other than those relied on by the plaintiff or the prosecutor that, if found to be true, may exempt the defendant from criminal or civil liability, even if it is proven that the defendant committed the alleged acts.

## 5.3.2 Is willful intent required?

Yes. Willful intent is generally required for domestic violence offenses (e.g.,the crimes of maltreatment, stalking, sexual violence, coercion or induction to marriage or disfigurement all require willful intent as one of the elements that need to be met for the perpetrator to be held liable for their conduct).

## 5.3.3 Are false accusations punishable for the victim?

Yes. Whoever falsely accuses someone of a crime or simulates evidence of a crime against the alleged perpetrator before a prosecutor, the Italian Criminal Court or any other law authority to whom one may report the commission of a crime, may be found guilty of slander and be sentenced to imprisonment.[27]

## 5.3.4 How is consent discussed in the law?

Under Italian law, consent may be pleaded as an affirmative defense making lawful what would otherwise be unlawful conduct.

The subject of consent is widely discussed in relation to the crime of sexual violence. As a matter of fact, assessing whether the victim actually consented to sexual intercourse plays a key role in evaluating the conduct of the accused. In this regard, according to Italian case law:

Consent must be expressed freely and outwardly (whether verbally or nonverbally) and must continue throughout the whole duration of the sexual intercourse. Based on this, courts qualified as sexual violence the conduct of continuing sexual intercourse when the consent of the victim — albeit initially given — broke down during the intercourse.

Conversely, in order to qualify given conduct as unlawful due to lack of consent, the victim is not required to express their dissent throughout the entire duration of the sexual intercourse, it being sufficient that dissent is expressed at the beginning of the unlawful conduct.

The crime of sexual violence may occur not only in cases where the accused intruded in the personal sphere and sexual integrity of the victim in the presence of an express manifestation of dissent, but also if the unlawful conduct was adopted in the absence of the victim's consent, when the latter was unaware of the acts that were performed on their body. For instance, courts qualified as sexual violence the conduct of performing sexual acts on a sleeping person.

## 5.3.5 Is self-defense or insanity a defense?

Yes, both self-defense and insanity may in principle be regarded as defenses excluding or limiting liability for usually unlawful acts.

**Self-defense**

Victims of domestic violence may lawfully resort to the use of force to counter their abuser if they are forced to do so by the need to defend themselves or others against the actual danger of an unjust offense, provided that the defense is proportionate to the offense.[28]

**Insanity**

A person accused of domestic violence offenses may be relieved of criminal liability if they are found to have been insane at the time the offense was allegedly committed.[29]

## 5.4 Witness status

## 5.4.1 What is a witness's duty to testify honestly and completely?

Witnesses must testify honestly and completely. Anyone who, when appearing as a witness before a judicial authority or the International Criminal Court, declares something false or denies the truth, or hides —in whole or in part — what they know about the circumstances under investigation, will be punished by imprisonment from two to six years.[30]

## 5.4.2 Who may abstain from testifying in certain situations?

Close relatives of the offender are not compelled to testify.[31] However, they must testify when they have filed a complaint, lawsuit or petition, or when they or a close relative of theirs are offended by the crime. This also applies in the event that the relative status has been acquired by means of an adoption. The aforementioned right to abstain from testifying also applies in relation to facts that occurred or were known by the offender during their matrimonial cohabitation or as a result of a civil union between same-sex individuals to the following individuals: (i) anyone who, although not a spouse of the offender, cohabits or has cohabited with the offender; (ii) the divorced spouse of the offender; or (iii) the person against whom there has been a ruling of invalidation, cancellation or termination of the civil effects of marriage or civil union between same-sex individuals with the offender.

## 5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

Under certain circumstances, the individual may abstain from testifying if the conditions mentioned under section 5.4.2 are met.

## 5.4.4 What is the impact of domestic violence on witnesses who are children?

According to Italian law, there are special protections for child witnesses in criminal proceedings. The Criminal Procedure Code provides that if children who are minors are heard in a "probatory incident" in order to ensure protection. The minor is examined by the judge with the presence of the parent and/or an auxiliary who can ensure conditions of serenity throughout the proceedings.

## 5.4.6 What is the effect of a child victim on the charges against the offender?

Witnessing violence is considered an aggravating circumstance of the crime of mistreatment in the family.[32] If the abuser continuously mistreats their spouse or cohabitant in front of the children, causing them serious harm, the judge can force the abuser to leave the family home immediately.

In civil matters, the judge can order the forfeiture of the parent's authority and equally provide for the removal of the parent.

The judge can also order the intervention of social services, or a family mediation center, or anti-violence centers that support and receive women and children who are victims of abuse and mistreatment.

## 5.5 Penalties and sentencing; penalty enhancements

## 5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

Recently there have been many legislative interventions relating to the criminal response to domestic violence. In particular, Law No. 69/2019 introduced substantial amendments to the Italian Criminal Code. First, this newly enacted law punishes those who commit the crime of ill-treatment against family members and cohabitants.[33] Other amendments have been aimed at strengthening the penalties which is now imprisonment for three to seven years. Moreover, the above-mentioned law introduced four new crimes in the Italian Criminal Code:

The crime of deformation of the person's appearance by permanent injury to the face is punishable by imprisonment for eight to 14 years.[34] In cases where murder occurs because of the commission of this crime, the penalty is life imprisonment. The law further listed this new crime among violent intentional crimes under which the victim is entitled to compensation from the state.

The crime of unlawful distribution of sexually explicit images or videos without the consent of the represented (so-called revenge porn) is punishable by imprisonment for one to six years and a fine of EUR 5,000 to 15,000.[35] The penalty also applies to those who commit revenge porn by the further distribution of images or videos they have received or otherwise acquired, in order to harm the interested party. The offense is aggravated if the facts are committed within the context of an affective relationship — even if it has ceased, or in cases where the offense is committed with IT tools.

The crime of constriction or induction into marriage is punishable by imprisonment for one to five years.[36] The case is aggravated when the crime is committed to the detriment of minors and it is prosecuted when the act is committed abroad by or to the detriment of an Italian citizen or a non-citizen resident in Italy.

The crime of violation of the measures of removal from the family home and the prohibition from approaching places frequented by the injured party is punishable by imprisonment for six months to three years.[37]

In general terms, including when these crimes are committed in a domestic context, Italian criminal law punishes:

the crime of persecutory acts with imprisonment for one to six-and-a-half years.[38] The penalty is increased if the crime is committed by the spouse, even if separated or divorced, or by a person who is or has been linked by an intimate relationship to the victim or if the act is committed through an IT tool.

the crimes of sexual assault with imprisonment for six to twelve years.[39]

the crime of murder,[40] within the scope of which the aggravating circumstances of personal intimate relationships is envisaged,[41] with life imprisonment.

Having regard to the above and to the crime of ill-treatment against family members and cohabitants, it was introduced as a common aggravating circumstance, which is applicable in all cases where said crimes are committed to the detriment or in the presence of minors or a pregnant woman.[42]

## 5.5.2 Are there criminal penalties?

Yes, the Italian Criminal Code provides for the above-mentioned penalties.

## 5.5.3 What is the result of a violation of an existing order for protection?

A violation of an existing order of protection is punished with imprisonment of six months to three years.[43]

## 5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

Beyond the above-mentioned sanctions, the judge may also place a protection order against family abuse, which is issued when the conduct of the spouse or other cohabiting partner causes serious harm to the physical or moral integrity or freedom of the other spouse or partner.[44]

## 5.6 Post-release restrictions

## 5.6.1 Does the law notify the victim of the offender's release from custody?

Under Italian criminal procedural law, the victim of domestic violence or gender-based violence, with the help of the judicial police, is immediately notified of the release from prison and termination of custody of the offender or the convicted.

Moreover, the application, revocation or substitution of the precautionary measures applied in proceedings concerning crimes committed involving domestic violence, such as removal from the family home and prohibition from approaching places frequented by the victim, must be immediately notified by the judicial police to the social welfare services as well as to the victim and, where appointed, to their lawyer.[45]

# 6. Special issues

## 6.1 Battered woman syndrome

## 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered Woman Syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

Battered woman syndrome is a theory recognized in the field of psychology and criminal studies, but it is not automatically considered as a justification for crimes committed by women who suffered abuse: it depends on the circumstance in which the crime is being committed.

More often, in cases concerning homicide, what happens is that instead of being considered liable for voluntary homicide, the abused person who commits the crime is considered liable for negligent excess of self-defense. This means that the offense is recognized as punishable, but the penalty is lower because of the fact that all the circumstances of the previous abuse are being taken into account.

## 6.2 Domestic violence in the workplace

## 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

There are no specific provisions in this respect.

## 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

There are no specific provisions in this respect.

## 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

There are no specific provisions in this respect.

## 6.3 Immigration

## 6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents from using immigration laws to perpetrate domestic violence against their spouse?

There are no specific provisions in this respect.

## 6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

Yes, a residence permit of one year can be issued for humanitarian reasons where law-enforcement authorities or social services ascertain a situation of violence against a foreign national, threatening his or her safety.[46] A permit is valid for one year and can be renewed if the dangerous conditions that caused it to be issued persist. Italy implemented Section 59, paragraph 1, of the 2011 Istanbul Convention requiring that victims of domestic violence be provided with autonomous residence permits in the event of particularly difficult circumstances.[47]

## 6.3.3 Does domestic violence law discuss asylum accessibility?

Italian law[48] describes the relevance of gender to substantiate asylum claims and expressly recognizes female genital mutilation as grounds for the recognition of refugee status.

Moreover, Italian law explicitly refers to "acts of physical or psychological violence including sexual violence" as grounds for the recognition of refugee status.[49]

Finally, express reference is made to "humanitarian protection status"[50] to describe the type of protection to be granted to foreign citizens seeking asylum who do not qualify for refugee status under the terms of the 1951 UN Refugee Convention but still require protection. In this respect, the Italian authorities (i.e., the police) could issue a residency permit for such foreign citizens with the prioritization of cases involving people with specific needs, including survivors of gender-based violence, and for women seeking asylum to be interviewed, as much as possible, by female interviewers and interpreters.

## 6.4 Armed forces

## 6.4.1 Can a victim seek a military protective order if the abuser is in active military?

There is no specific military law in this respect. Armed forces personnel are subject to ordinary laws; hence, there are no military protective orders for victims of abusers in the active military.

## 6.5 Child custody and child/spousal support

## 6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

No, there are no special rules to determine custody or visitation of children in domestic violence cases.

Therefore, the general rule will apply. Thus, the judge will take into account the "best interests of the child".[51]

## 6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

The judge can consider the testimonies of the other spouse when considering custody.

As regards the child, the judge can consider the testimonies of the children when considering custody depending on the age of the children.[52]

Hence, if the children are more than 12 years old, their testimonies must be considered. Otherwise, if the children are younger than 12 years old, their testimonies can be considered only if the judge deems that the children are capable of judgment.

## 6.6 Housing rights of domestic violence victims

## 6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

Landlords may not force a tenant to move out if the tenant is the victim of domestic violence. Domestic violence suffered by a tenant is not a legitimate ground to terminate a lease against the tenant.

On the other hand, if the landlord is the victim of domestic violence — and, therefore, needs to exit the dwelling to escape violence, thus needing new accommodation — then the landlord may terminate any residential lease they might have entered into in relation to their premises based on the fact that the landlord needs such (previously leased) premises for their own current residential use.[53] However, such termination may occur only at the first or second expiration date of the lease (i.e., not at any time during the lease).

## 6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

A tenant under a residential lease may terminate the lease on "serious grounds",[54] by serving a six-month advance notice to the landlord. Domestic violence would qualify as a serious ground for termination.

## 6.6.3 Can an order exclude the abuser from the residence?

Yes, the judge can order the abuser to stop the violence and can exclude the abuser from the place of residence.[55]

In addition, if needed, the judge may also forbid the abuser from approaching those places usually attended by the victim of domestic violence (for example, their place of work, the dwelling of the victim's parents, their children's school, etc.).

Such restraining orders cannot exceed one year, but can be extended upon at the request of the victim for serious reasons and for the time strictly necessary.

## 6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

An abuser that owns in whole or in part the property that is used as the family residence may not be forbidden by means of a court order to alienate or mortgage the property as a direct consequence of their violent domestic behavior.

However, within the context of a legal separation, divorce or termination of a "civil partnership," the spouse or the partner (whether or not a victim of domestic violence) may obtain the right to enjoy the family residence by means of a court decision[56]. The court order granting such right of enjoyment of the family residence can be recorded with the Real Estate Registry for the purposes of enforceability vis-à-vis any third parties acquiring any real estate right over the family residence (including a new owner).

If duly recorded with the Real Estate Registry, the court order granting the right of enjoyment of the family residence is enforceable vis-à-vis third parties (as said, including a new owner) so long as the family residence is assigned to the spouse. If not recorded, the right of enjoyment of the family residence is enforceable vis-à-vis any third party acquiring real estate rights over the relevant property only (i) if the property was acquired through a contract entered into after the date of issuance of the court order and (ii) for nine years starting from the date of same court order.

# 7. Endnotes

[1]    Section 582 and following of the Italian Criminal Code

[2]    Section 572 of the Italian Criminal Code

[3]    On July 25, 2019, the Italian legislator issued Law No. 69/2019. This law amended the Italian Criminal Code, the Criminal Procedure Code and other provisions.

[4]   Section 612-*ter* of the Italian Criminal Code

[5]    Section 558-*bis* of the Italian Criminal Code

[6]   Section 583-*quinquies* of the Italian Criminal Code

[7]    Section 387-*bis* of the Italian Criminal Code

[8]    According to the nature of the domestic violence different constitutional rights may be infringed, specifically: Section 2 of the Italian Constitution (the Republic recognizes and guarantees the inviolable rights of the person, that works as a general clause and is therefore always triggered); Section 3 of the Italian Constitution (principle of equality); Section 13 of the Italian Constitution (inviolability of human freedom); Section 15 of the Italian Constitution (freedom and confidentiality of correspondence); Section 19 of the Italian Constitution (religious freedom and liberty of conscience); Section 32 of the Italian Constitution (right to health and to the integrity of the person); Section 29 of the Italian Constitution (moral and legal equality of the spouses); Section 37 of the Italian Constitution (rights of working women).

[9]    With reference to CEDU, Section 1 (Sections 2-18) specifically concerns the rights and freedoms of people. Please see below some specific sections that may be relevant in a case of domestic violence: Section 1 (Obligation to respect Human Rights); Section 2 (Right to life); Section 3 (Prohibition of torture); Section 4 (Prohibition of slavery and forced labour); Section 5 (Right to liberty and security); Section 9 (Freedom of thought, conscience and religion). Also, Section 5 (Equality between spouses) of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Section 1 (General prohibition of discrimination) of Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

[10]   Law No. 77/2013.

[11]    Law-Decree No. 93/2013, which has been converted into law, with amendments, by means of Law No. 119/2013.

[12]   Law No. 132/1985.

[13]    Section 387-*bis* of the Italian Criminal Code.

[14]   Section 558-*bis* of the Italian Criminal Code.

[15]    Section 612-*ter* of the Italian Criminal Code.

[16]   Section 583-*quinquies* of the Italian Criminal Code.

[17]    Section 612-*bis* of the Italian Criminal Code.

[18]    Section 26 of Legislative Decree No. 198/2006.

[19]   Section 609-*ter* of the Italian Criminal Code.

[20]   Civil protection orders were introduced in 2001 and are regulated from a substantive point of view by Section 342-*bis* and 342-*ter* of the Italian Civil Code and from a procedural point of view by Section 736-*bis* of the Italian Code of Civil Procedure.

[21]    Regulated by Sections 330-333 of the Italian Civil Code.

[22]    Section 736-*bis* of the Italian Code of Civil Procedure.

[23]   Section 185 of the Italian Criminal Code.

[24]    Section 75 of the Italian Code of Criminal Procedure.

[25]  Section 535 of the Italian Code of Criminal Procedure.

[26]  Section 76, paragraph 4-ter, Presidential Decree No. 115/2002.

[27]    Section 368 of the Italian Criminal Code.

[28]    Section 52 of the Italian Criminal Code.

[29]  Section 88 of the Italian Criminal Code.

[30]    Section 372 of the Italian Criminal Code.

[31]   Section 199 of the Italian Code of Criminal Procedure.

[32]   Section 572 of the Italian Criminal Code.

[33]    Section 572 of the Italian Criminal Code

[34]   Section 583-*quinquies* of the Italian Criminal Code.

[35]   Section 612-*ter* of the Italian Criminal Code.

[36]    Section 558-*bis* of the Italian Criminal Code.

[37]   Section 387-*bis* of the Italian Criminal Code.

[38]    Section 612-*bis* of the Italian Criminal Code.

[39]    Section 609-*bis* and subsequent Sections of the Italian Criminal Code.

[40]   Section 575 of the Italian Criminal Code.

[41]    Section 577 of the Italian Criminal Code.

[42]   Section 61, No. 11-*quinquies* of Law-Decree No. 93/2013 — which was converted into Law No. 119/2013.

[43]   Section 387-*bis* of the Italian Criminal Code.

[44]    Section 342-*ter* of the Italian Civil Code.

[45]    Section 299 of the Italian Code of Criminal Procedure.

[46]    Section 18-*bis* of Legislative Decree No. 286/98.

[47]    Section 18-*bis* of Legislative Decree No. 286/98.

[48]    In particular Legislative Decree No. 18/2014, through which Italy implemented the EU Asylum Qualification Directive 2011/95/EC.

[49]    Section 7, paragraph 2a, of the Legislative Decree No. 251/2007, through which Italy implemented Directive 2004/83/EU.

[50]  Section 5, paragraph 5, item 6, of Legislative Decree No. 286/1998.

[51]    Section 337-*ter* of the Italian Civil Code.

[52]    Section 316, paragraph 3, of the Italian Civil Code.

[53]   Sections 2 and 3 Law No. 431/1998.

[54]   Section 3, paragraph 6, of Law No. 431/1998.

[55]   Sections 342-*bis* and 342-*ter* of the Italian Civil Code, and Section 282-*bis* of the Italian Criminal Code.

[56]   Section 6, paragraph 6 of Law No. 989/1970 and/or Section 337-*sexies* of the Italian Civil Code.

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