



The calm after the storm? The tricky path to restoring the enjoyment of individual rights in Intimate Partner Violence cases

OÑATI SOCIO-LEGAL SERIES VOLUME 12, ISSUE 3 (2022), 443-477: NORM, NORMAL AND DISRUPTION: THE ROLE OF LAW, KNOWLEDGE AND TECHNOLOGIES IN NORMALISING SOCIAL LIFE

DOI LINK: [HTTPS://DOI.ORG/10.35295/OSLS.IISL/0000-0000-0000-1272](https://doi.org/10.35295/OSLS.IISL/0000-0000-0000-1272)

RECEIVED 7 APRIL 2021, ACCEPTED 9 FEBRUARY 2022, FIRST-ONLINE PUBLISHED 30 MARCH 2022, VERSION OF RECORD PUBLISHED 1 JUNE 2022

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Abstract

Intimate Partner Violence (IPV) is the main pathology that occurs within interpersonal relations, and women are the chief victims in an overwhelming majority of cases. At present, a well-established international legal framework is in place that defines IPV as violating internationally recognized human rights. However, the application of these standards has proven difficult because it requires multilayered arrangements to be effective. This paper investigates whether and how police authorities and the justice system – as parts of the victims’ support network – can assist victims in escaping from violence and restoring normality to their lives. The focus is on the gap between the law in the book and the law in action. To this end, the paper presents the findings of an Italian case study based on both document analysis and field research. The main aim is to bring to light organizational problems that can seriously jeopardize the effectiveness of systems to shield IPV victims and the full enjoyment of their individual rights.

Key words

Intimate Partner Violence; victim’s rights; gender-based violence; justice system; victim support organizations (VSOs)

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Resumen

La violencia de pareja es la principal patología en relaciones interpersonales, y las mujeres son las víctimas en una aplastante mayoría de los casos. En este momento, hay en vigor un marco jurídico internacional bien establecido, el cual define la violencia de pareja como violación de derechos humanos reconocidos a nivel internacional. Sin embargo, la aplicación de esos estándares ha demostrado ser difícil, porque, para su efectividad, se requieren acuerdos a distintos niveles. Este artículo investiga si las autoridades policiales y el sistema de justicia –como parte de la red de apoyo a las víctimas– pueden ayudar a las víctimas a escapar de la violencia y a restablecer la normalidad en sus vidas, y de qué manera. Nos centramos en la brecha entre el derecho en los libros y el derecho en acción. A este fin, el artículo presenta los hallazgos de un estudio de caso de Italia, basado tanto en análisis de documentos como en investigación de campo. El objetivo principal es arrojar luz sobre problemas organizacionales que pueden poner seriamente en peligro la efectividad de los sistemas que deben proteger a las víctimas y el pleno disfrute de los derechos personales de éstas.

Palabras clave

Violencia de pareja; derechos de la víctima; violencia basada en el género; sistema de justicia; organizaciones de apoyo a las víctimas

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1. Introduction

Intimate Partner Violence (IPV) is a label encompassing various abuses or assaults that occur in the context of an intimate relationship between current or former spouses as well as dating partners. IPV can vary with respect to the frequency and severity of violent episodes, which can range from a few incidents to long lasting and brutal attacks. Victims may be female or male; in most cases, though, women are the ones who are affected (Johnson 1995, 2008, Johnson and Ferraro 2000, Vlachová and BIASON 2004, Canu 2008, Johnson *et al.* 2014, Akhtar 2016, Bonewit and De Santis 2016, Pecorella and Farina 2018, Zara and Gino 2018).

As described in Section 3, conduct that may be termed IPV is so diffused and pervasive in some cultural and social contexts that it is perceived as acceptable and perhaps even *normal* (Meyersfeld 2008, Gracia 2014). However, this paper explains that – mainly in liberal-democratic countries – after almost 30 years of cultural and social struggle, political debate, and legal development, IPV represents the main social *pathology* that manifests within an individual's restricted circle of trust. In this context, *pathology* refers to – in a broad sense – the degeneration of the intimate relationship, which occurs in an asymmetrical relationship between the members of a couple with respect to the exercise of power, where violence is therefore used to control one of the partners without any possibility of negotiation. In explaining how IPV affects the ability of individuals to lead *normal* lives, we understand *normality* in a positive sense as the possibility of fully enjoying individual rights, both formally as a matter of law and in practice. Such normality is thus a prerequisite for civic cohabitation based on consolidated principles of gender equality and nonviolence.¹

In recent decades, various legal instruments have been developed at both supranational and national levels to define and address IPV as a violation of human rights (McQuigg 2016, Velcikova 2019, Prechal 2019). Section 4 describes this regulative evolution – the so-called *normativization* process (Nonet and Selznick 1978, Teubner 1983, Luhmann 1985, 2004, Sand 2008) – to demonstrate how the introduction of new legislation has contributed toward framing an evolving understanding of IPV, bringing it from the presumption of mere conflict inside the family context to the violation of criminal law and individual rights.²

Section 3 also points out, however, that for these provisions to be effective, a “public service” able to put in place complex, multilayered mechanisms is needed to ensure the following: 1) Violence is prevented from recurring. 2) Support and protection from secondary victimization during their path away from violence is provided to the victim, including all steps, from reporting in the presence of the police, to the reaffirmation of one's individual rights after participation in judicial proceedings arising from the issue at hand. 3) Foundations are set up to assist in normalcy in victims' lives, i.e., restore a life without violence.

¹The use of *normality* and *pathology* here are distinct from to a question of behavior imposition according to society's dominant vision (Foucault 1977, Canguilhem 1991, Campesi 2008).

²*Normativization* here refers to the regulatory process, by which new ideas and attitudes about gender-based inequality and violence have crystallized into recognized and settled legal principles and norms. These have formed the basis for an international normative framework that defines violence in intimate relations as illegal and as a practice that breaches internationally recognized human rights.

However, this institutional mechanism has proved notoriously difficult to run smoothly even when a proper regulatory framework is in place. Section 5 investigates this problem more closely by examining the roles played by the police authorities and the justice system within the victim support network, of which they are a part along with health and social services and victim support organizations (VSOs). This section explores how this institutional chain addresses the *normalization*³ path – i.e., how the relevant regulatory instruments are applied in practice – and identifies the gaps that emerge when switching from *the law on the book* to *the law in action* (Pound 1910, Kelsen 1941, Hart 1961, Luhmann 1985). To this end, we examine an Italian case study. This analysis, which takes an organizational perspective, aims to better understand how the system addresses the needs of victims throughout the judicial process and beyond. Moreover, it aims to identify factors capable of making the pathway out of violence challenging, long, and cumbersome, and which might thereby inhibit the victim's access to justice.

In conclusion, Sections 5 and 6 highlight organizational problems, particularly the lack of standardization in the degree of cooperation between institutions involved (March and Simon 1958, Thompson 1967, Mintzberg 1973, 1983, Lanzara 1983), capable of seriously undermining the effectiveness of the system of combating IPV and thus impeding victims' restoration of their individual rights.

2. Methodology

This study deals with the normative and institutional scaffolds developed at supranational and national levels to define and address IPV as a conduct that violates basic human rights. It aims to answer the following main research question: "Is the justice system – together with the other institutions involved in the victims' support network – able to effectively implement the legal framework in force and restore normality to victims' lives?" Multiple approaches were used to address this question, and the research method adopted was mixed because it combined both desk and empirical analysis.

We first deal with the fundamental problem of framing IPV as a social and cultural phenomenon in Section 3, by raising the question: "Can IPV be considered normal behavior from a cultural and social point of view, or should it be considered pathology of social relations?" To obtain as coherent an answer as possible, the scope of this work was limited to liberal-democratic social orders. The analysis carried out was based on two components: first, it relied on the results of previous research involving perception data, whereby it was possible to deduce the level of social acceptance and public acceptability of IPV and how this has evolved. Second, these findings were cross-referenced with philosophical and political studies that investigated the concept of violence and its use in the private sphere.

Then, we focused on the process of normativization or the normative evolution of IPV (Section 4). The purpose of this section was to show how new ideas and attitudes

³ Following the reasoning exposed about the concept of *normality* (see the footnote no. 1), *normalization* here is not used in the negative sense (Foucault 1977, Canguilhem, 1991, Campesi 2008) as a synonym of the processes of *homologation* or *conformism* but instead in a positive sense—i.e., as reflecting a mechanism composed of legal instruments, institutions, procedures, and tools designed to restore *normality* (meaning the enjoyment of individual rights in the intimate relationship) effectively.

regarding gender inequality that have emerged over the past three decades through social and political struggle have crystallized into recognized and established legal principles and norms that define IPV as illegal conduct. Here, this normative endeavor is analyzed through the lens of law; thus, both hard and soft legal sources were examined, along with relevant case law and legal doctrine.

The final part of this article (Sections 5 and 6) addresses the core of this study, namely, the effectiveness of the process of normalization of IPV from pathology to a new normality. In essence, this analysis aims to understand whether and to what extent institutions are able to use the available regulatory tools to combat IPV consistently, as well as identify the factors that play a role in this process. As our aim was to go beyond a mere theoretical analysis, we conducted a detailed exploration of an Italian case study.

A normative analysis was first conducted, together with an extensive review of the relevant literature, to provide a picture of the national legal and institutional context and its recent evolution. The results obtained through this desk research were then complemented with the findings resulting from an empirical study. The latter was conducted using a qualitative method, which relied on in-depth semistructured interviews, similar to the idea of a joint inquiry. This approach was chosen to facilitate dialogue between researchers and interviewees, to collect data on the development of known issues, and to uncover hidden problems.

Qualified VSO experts, the participants work in the field to assist victims. VSOs constitute the core of the territorial support network for women victims of violence.⁴ They usually are tertiary sector organizations that provide various services, often 24/7.⁵ Because of the wide range of services provided and the different types of expertise available in each VSO, different professionals have been involved – be they coordination and management staff, lawyers, or psychologists.

The research study was carried out in three stages. The first was devoted toward conducting a background analysis and exploratory interviews with territorial social services and VSO experts. The aim of this stage was to define the topics to be investigated and to obtain essential information for finetuning the research methodology.⁶ This

⁴ Services are provided in cooperation with other members of local anti-violence networks if present (68.5% of cases) or via bilateral protocols with organizations which support victims of violence against women (in 75.9% of cases where there is no network present in the territory). Data sourced from an ISTAT survey, carried out in cooperation with the Department for Equal Opportunities (DPO), the National Research Council (CNR) and the Regions, on Anti-Violence Centres (CAVs) providing support to abused women and their children (see <https://www.istat.it/it/archivio/234874>).

⁵ These include (a) essential assistance, such as reception, orientation, short- and long-term psychological counselling, and legal assistance; (b) support aimed at achieving financial independence; (c) sheltered accommodation; (d) emergency placement; (e) risk assessment, usually carried out according to standardized protocols – e.g., Spousal Assault Risk Assessment (SARA). The Canadian protocol (Kropp *et al.* 1994, 1995, 1999, Kropp and Hart 2000) was later revised in its screening version (SARA-S) and the later SARA-Plus and SURPLUS (Baldry and Roia 2011, Baldry and Duban 2016). In Italy, the State Police have implemented SARA-Plus. In the more than 10 years since its introduction, more than 3,000 law enforcement officers have been trained to use this risk assessment procedure. See: Polizia di Stato 2020.

⁶ Notably, this preliminary activity allowed us to exclude a methodological approach based on a structured questionnaire. VSOs are frequently asked to answer such questionnaires, and are very skeptical about their use. This tool is perceived negatively because it frames the respondent as a mere supplier of information

preliminary step was then concluded by drafting a semi structured interview script and identifying and selecting qualified experts to be interviewed. Respondents were selected through purposive sampling, a method used in qualitative research to identify subjects who have a high level of expertise and who are particularly expert or knowledgeable regarding the phenomenon of interest (Palinkas *et al.* 2015).⁷

The researchers' team carried out 17 interviews remotely.⁸ This sample allowed the obtainment of comprehensive geographical coverage and compliance with the criterion of redundancy of information, satisfied when no new information is received from new subjects. The interview outline consisted of 10 discussion points (two of which were optional) concerning problems affecting the protection of victims of intimate abuse, especially with respect to the working relationship between welfare and judicial offices. The questionnaire was also meant to determine the point of view of VSOs regarding the effect of the entry into force of the latest legislative reforms adopted in Italy.⁹

This activity allowed us to identify factors that deter victims from seeking a path out of violence and to detect issues resulting from the limited capacity of the system to address victims' needs. In this regard, it is worth mentioning that the findings presented below are not intended to be exhaustive or to provide a comprehensive overview of the background literature. They are only meant to articulate the issues raised by experts that they deem relevant based on their judgment and experience.

The results presented in the immediately preceding section are based on researcher elaboration of the information obtained via the interviews. To increase the internal validity of this research study, where deemed appropriate, these findings have been supplemented by data from reports issued by international organizations to assess the compliance of the Italian system with relevant international and supranational legislation. Moreover, to strengthen the organizational analysis and to enhance its soundness, references have been made to the documentation of localized judicial practices.

and not as a person able to dialogue, provide ideas, or demonstrate an interest with respect to the results obtained, which can enrich the overall reflection in a deeper way.

⁷ In the present case, purposive sampling was appropriate because the research is not designed to have statistical purposes but aims instead to expertly obtain as much qualified information as possible from subjects.

⁸ In line with the GDPR and as required by ethical procedures for academic research, respondents were duly informed about the research project's characteristics and purposes, their involvement, and how the information resulting from their contribution would be used. To this end, an Information Form was sent by email to all participants, together with a Consent Form. In particular, the latter document made it clear that all personal data would be subjected to pseudo-anonymization and treated – compatibly with the study's needs – as soon as possible for data processing purposes. At the beginning of each interview, participants were also informed of their right to refrain from participating in the study, to stop the interview and the recording, or to renounce participation in the research at any time. afterward. Consent to the recording of the interview was expressly requested and acquired before conducting interviews. In this regard, it should be noted that the respondents' participation in the study was exclusively voluntary, with no incentives of any kind.

⁹ Interviews were also meant to gather information about the specific problems generated by the COVID-19 epidemic with respect to the functioning of victim protection system. Of particular interest were any problems that had been aggravated by the health emergency. These results, however, are not presented in this paper. Please also note that the Activity Plan did not include issues concerning victims of foreign origin.

3. *Normality and pathology: The issue of Intimate Partner Violence*

The term IPV describes abuse that occurs within an intimate relationship and can manifest as any behavior that causes harm and the deprivation of dignity, liberty, and individual rights, including all forms of violence up to and including murder (Akhtar 2016, Zara and Gino 2018; see also Garcia-Moreno *et al.* 2012). The IPV label usually covers physical violence, sexual and psychological harassment, and economic abuse, as well as other expressions of coercive behavior meant to control a partner at an emotional level. These expressions may include isolation from family and other potential sources of support; destruction of property; control over access to money, personal items, food, transportation, or communication tools. In most cases, partner violence consists of a combination of assaults of different types and can escalate in severity. Violence can be perpetrated in mortifying ways, and its intensity is often not mitigated by extenuating circumstances such as (possible) pregnancy or the presence of minor children (Johnson 1995, 2008, Johnson and Ferraro 2000, Johnson *et al.* 2014, Bonewit and De Santis 2016, Pecorella and Farina 2018; see also EU Agency of Fundamental Rights [FRA] 2014, pp. 64–67, and EIGE 2019).

As mentioned in the introduction, IPV can affect both men and women, but overall, the most common forms of partner violence are committed by male partners against female partners (Johnson 1995, 2008, Johnson and Ferraro 2000, BIASON 2005, Canu 2008, Johnson *et al.* 2014, Akhtar 2016, Bonewit and De Santis 2016, Pecorella and Farina 2018, Zara and Gino 2018). This represents, in fact, the most widespread form of abuse against women throughout the world. In some social and political contexts, IPV is so pervasive that it is “seen as understandable or deserved” and thus “as less unjust and more admissible” (Gracia 2014) – in some way *almost normal* (Meyersfeld 2008). Our understanding, however, is that despite the wide diffusion and social acceptability of IPV in specific communities, IPV does not represent an ordinary condition in contemporary society. Instead, it is an intrusive occurrence that alters the dynamics underlying domestic cohabitation and forms an asymmetric relationship between the members of a couple that is designed to exercise control without margins for negotiation.

We would like to clarify that we acknowledge the highly relativistic nature of the very concept of normal, which relies on the frequency of a given behavior and on moral agency – i.e., to act according to socially constructed ought-though (Bicchieri 2017). Hence, we are aware that the meaning attached to this notion closely depends on the historical, social, geographical, and political contexts, wherein these two components are embedded. This paper, however, aims to neither enter the ongoing debate about defining normality nor discuss whether violent relationship dynamics can be regarded as normal depending on specific scenarios wherein they occur. This work limits its scope to liberal-democratic social orders based on the acceptance of the universality of law and the renunciation of individual forms of privilege; thus, we assume that the informal fabric of human relations is (and must be) based on the rejection of violence. Then, having narrowed the space of our analysis to such a political and social environment, we argue that IPV is not a normal condition as it does not match either the statistical or the moral criteria that should define normal behavior.

Statistically, it is untenable to claim that resorting to violence is the dominant form of relationship dynamic in terms of frequency. This is hardly a reality even in cultural

settings that still have a stronger patriarchal imprint. Likewise, evaluation of the moral criterion results in a similar conclusion, as the establishment of social orders founded on the rule of law is strongly connected to the propensity toward stigmatization of violent behavior (Giddens 1995). Violence is commonly associated with the notion of violation (Jervis 1998) and is generally connected to a specific intrusive and harmful action, a means to an end that is perceived to be reprehensible or at least questionable. Therefore, the resolution of conflicts relies on common rules directed at minimizing the use of violence in interpersonal interactions. Moreover, generally networks of institutions are in charge both the enforcement of these rules and the judicial review of noncompliant practices (Pellicani 1998).

In the area of intra-couple violence, however, this general approach has long been frustrated. Before the late 20th century, in most legal systems, IPV was not addressed, and there was very little protection against it (Smith 2008). An overbearing and long lasting male-dominated mindset was heavily biased toward a traditional conception of what constituted a family, within which the female partner was not fully considered an equal. From a legal perspective, the female identity has been somewhat dependent upon and subsumed under the identity of the male partner, thus making it possible to rely on the notion of marital authority to invoke mitigating circumstances or even legal grounds for deviating from the general prohibition on violence between individuals.

Starting in the 1970s, however, policies, rules, and practices criminalizing this specific conduct have been gradually adopted, together with reforms aimed at tackling gender discrimination in law. These developments occurred in parallel with fierce political struggles carried out by civil rights and second-wave feminist movements that led to important changes in mass-culture views regarding domestic violence and gender-based discrimination. In this respect, research findings concerning public attitudes and beliefs toward violent and abusive relationships are telling. Empirical studies carried out since the 1970s suggest that the public tends to define “partner violence” broadly, such that it includes, for instance, acts of emotional abuse. They also show a marked tendency to believe that recourse to violence in the domestic sphere is not appropriate, with only a small and ever-decreasing segment considering this conduct justifiable under certain conditions (Carlson and Pollitz 2002). Furthermore, available data, such as those showing a growing trend toward reporting or those reflecting increased access to VSOs, should not be viewed as mere representation of the scale of the problem. This also provides a measure of the decreasing level of social acceptance and public acceptability of IPV by revealing the evolution of individuals’ attitudes toward normative behaviors and social expectations.

Taken as a whole, the foregoing reasoning suggests that IPV is not to be considered normal. After all, the very fact that violence is generally perpetrated behind closed doors suggests that this conduct is generally perceived contrary to common decency. IPV is instead to be understood as pathology of interpersonal relations, the degree of tolerability of which is directly proportional to the imbalance in political, institutional, and social power between the positions of women and men (Esquivel-Santoveña *et al.*

2013).¹⁰ The more this inequality is rooted in legal norms, social views, and cultural rules the likelier the use of violence in intimate relationships to be trivialized and accepted as tolerable behavior.

4. *Normativization: The regulative evolution in framing IPV as a human rights violation*

Decades of bottom-up cultural and social struggles have not only led civil society to recognize IPV as pathological behavior but also contributed to a process of normativization of this phenomenon. The new ideas and attitudes regarding gender inequality have been crystallized by international and national legal principles and norms that define violence in intimate relations as illegal.

Because of this regulatory effort, at present, a well-established international normative scaffold is in place that identifies IPV as a practice that breaches human rights (McQuigg 2016, Prechal 2019).¹¹ According to these standards, IPV cannot be legally justified by invoking grounds based on custom, tradition, or religion. Nonetheless, assessing IPV through the lens of human rights law is a recent achievement. This matter has long been regarded as a private concern or a family matter not requiring intervention by the criminal justice system. In the past, IPV was not recognized as a human rights violation, and sometimes, even a lack of understanding of this conduct as a crime was to blame. According to popular narratives, such as the traditional claim that “a man’s home is his castle,” even a murder that occurred within the home hardly justified legal intrusion into the private sphere of the perpetrator (McQuigg 2017). In Europe, the first domestic laws directly addressing partners’ violence were passed in the United Kingdom in the early 1980s. Before this, the attitude of authorities tended to be unhelpful and unresponsive when subjected to requests for assistance. Moreover, the overall approach of these authorities was mostly non-interventionist. Victims were encouraged to seek civil justice remedies at best.

The private–public divide that previously inhibited states from interfering in such a private sphere was gradually blurred by international and regional organizations and tribunals, which have strongly promoted the eradication of discrimination against women and the recognition of the State’s positive obligation to act against domestic violence, specifically by formally enshrining due diligence as an applicable standard for preventing and protecting women’s right to physical and psychological integrity (Velcikova 2019).¹²

In Europe, specifically, under the aegis of the Council of Europe (CoE), major steps have been taken to prevent and combat IPV [Rec(2002)5], the most important of which is currently the adoption of the 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence – commonly known as the Istanbul Convention

¹⁰ Research has established that there exists a direct and significant correlation between a country’s level of gender equality and its rate of domestic violence, such that countries with less gender equality experience higher rates of domestic violence.

¹¹ As an example, the protection from torture and inhuman or degrading treatment (art. 3 ECHR); the right to private and family life (art. 8 ECHR); and the right to life (art. 2 ECHR).

¹² General Recommendation No 19 (1993), Economic and Social Council Resolution 1984/14, A/RES/45/114 (1990), Declaration on the Elimination of Violence Against Women (1993).

(IC). This international agreement establishes an inextricable link between gender-based violence and gender equality, pointing at violence against women as “a manifestation of historically unequal power relations between women and men” and pointing toward achieving *de jure* and *de facto* equality as a vital cog in the prevention of violence against women. The IC is the first gender-specific legal instrument to operate at a regional level, which creates an ambitious and comprehensive legal framework to prevent violence, protect victims, and punish perpetrators. The Convention also includes provisions that elaborate further various aspects of gender discrimination, thereby addressing the causes of gender-based violence. Until today, the IC represents the benchmark for international standards in this field and is a landmark step in providing a unique and advanced set of provisions binding for ratifying states (De Vido 2017, Jones 2018). This system also involves a specific monitoring mechanism that allows for special inquiry procedures where such actions are required to prevent severe, massive, or persistent patterns of any acts of violence covered by the Convention (2011, art. 66).

Within the CoE legal landscape, the European Court for Human Rights (ECtHR) has also played a pivotal role by contributing to the establishment of the idea that authorities’ interference with private and family life may be necessary to protect individual rights and prevent crimes.¹³ Moreover, this court has found that State Parties have positive obligations to combat domestic violence and that judicial passivity in providing adequate protection reflects a discriminatory attitude toward victims on account of their gender and creates a climate conducive to domestic violence (Prechal 2019).¹⁴ The ECtHR has also pointed out that for the full *effet utile* of the European Convention on Human Rights to be realized, it is necessary to consider factual inequalities against women and the impacts these inequalities have on their lives, which involves the national authorities approaching the relevant cases as raising the specific problem of domestic violence.¹⁵

As far as the European Union (EU) is concerned, specific pieces of legislation focused on IPV victims have not yet been adopted. Nevertheless, this behavior has now been recognized as an extreme form of discrimination as well as a violation of human dignity that in its worst form violates the right to life. Victims of abuse in intimate relationships are covered by the general legal framework designed to protect all victims of crime, a framework that has steadily evolved since the late 1990s (Pemberton and Rasquete 2010)

¹³ See *Opuz v Turkey* (application no. 33401/02), ECtHR, 09/09/2009 § 144, and *Eremia and Others v the Republic of Moldova* (application no. 3564/11), ECtHR, 28/08/2013 § 52).

¹⁴ See: *Eremia*, § 89; *Mudric v the Republic of Moldova*, (Application no. 74839/10), ECtHR, 16/10/2013, § 63; *T.M. and C.M. v the Republic of Moldova*, (Application no. 26608/11), ECtHR, 28/04/2014 § 62; *Talpis v Italy*, (Application no. 41237/14), ECtHR, 18/09/2017 § 145; and *Bălșan v Romania* (Application no. 49645/09), ECtHR, 23.05.2017 § 85); *Opuz*, §§ 192-98, and *Halime Kılıç v Turkey*, (Application no. 63034/11), ECtHR, 28 June 2016, §§ 117-18; *Volodina v Russia* (Application no. 41261/17), ECtHR, 09.07.2019, § 113; *Hajduová v Slovakia* (App no 2660/03), ECtHR, 30 November 2010. See also *X and Y v the Netherlands*, (Application no. 8978/80), ECtHR, 26 March 1985, §§ 22 and 23; *Costello-Roberts v the United Kingdom* (Application no. 247 C) 25 March 1993, § 36; *D.P. and J.C. v the United Kingdom*, (Application no. 38719/97), ECtHR, 10 October 2002, § 118, and *M.C. v Bulgaria* (Application no. 39272/98), §§ 150 and 152, ECHR 2003-XII. Most recently the Court’s judgment in the case of *A v Croatia*, no. 55164/08, § 60, 14 October 2010; *Valiuliene v Lithuania* App no 33234/17 (ECtHR 26 March 2013).

¹⁵ *Affaire Buturugă v Roumanie* (Requête no 56867/15) 11/06/2020 Key case point 79 and *Volodina v Russia*, Punto 111.

and has resulted in an overall strengthening of victims' rights in all EU Member States.¹⁶ The Directive 2012/29/EU¹⁷ – which is the cornerstone of the EU system of victim protection (Blázquez Peinado 2013, Civello Conigliaro 2012) – requires Member States to place the victim at the core of their justice systems (Rafaraci 2015, Gialuz 2015, Diamante 2016) and puts special emphasis on the needs of the most vulnerable, including victims of gender-based violence.¹⁸ At present, active protection of gender-based victims (especially victims of IPV) remains a high political priority throughout the EU, with institutions fully committed toward strengthening this matter further through a comprehensive and holistic approach.¹⁹

Of course, the path of normativization described above is not free of obstacles and setbacks. Although the relevant supranational legal scaffold is succeeding in its general goal of raising legal protection standards and bringing about a more victim-centered approach in criminal proceedings, current practices still do not live up to expectations. Further steps should be taken to improve the proper application of relevant legislation,²⁰ and attention should be paid to resource allocation, which can strongly affect the genuine enjoyment of basic rights (see GREVIO 2020a and COM/2020/188 final). The fundamental challenge to effective implementation of comprehensive policies, however, still lies in the reluctance to recognizing the structural link between gender inequality and violence against women. The gender-blind approach taken by some states in applying specific European standards, for example, draws attention away from enduring problems related to the safety of women, who are the predominant population group experiencing IPV, and also fails to recognize partner violence as social pathology that contributes to keeping women in a subordinate position (GREVIO 2020b). Even more worrying, however, is “the continued deliberate circulation of ingrained misconceptions about the [Istanbul] Convention” that has recently caused a backlash against advancing gender equality in Europe and led some conservative governments

¹⁶ This matter now rests on a broad legal framework: Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime; Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims; Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order and the Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters; Council Framework Decision 2008/947/JHA, which explicitly aims to improve monitoring of compliance with probation measures and alternative sanctions to prevent recidivism, thus paying due regard to the protection of victims society.

¹⁷ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

¹⁸ DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. See also: Scherrer *et al.* 2017, pp. 41–42.

¹⁹ See: Von der Leyen 2019, COM/2020/152 final, COM/2020/258 final, Von der Leyen and Šefčovič 2020, COM(2020) 690 final. In June 2017, the EU has signed the IC, signaling its intention to become a party to it. At the time of writing negotiations have not yet been concluded; nonetheless, this goal remains one of the priorities for the Gender Equality Strategy and is one of the Commission's commitments in its 2021 work program.

²⁰ Regarding this Directive, please note that the EU Commission has 21 ongoing infringement proceedings regarding incomplete transposition of the Victims' Rights Directive.

to take steps to leave the IC to protect traditional family values and gender roles (Prechal 2019, Brechenmacher 2020).

5. Normalization: An example of how institutions fight IPV, as illustrated by an Italian case study

Thanks to the long process of normativization still ongoing, IPV has been finally defined as a violation of individual human rights. Hard-fought principles and ideas regarding gender inequality and violence against women have been crystallized and codified within national legal systems, thus leading to significant advancement in legislation. This (progress) notwithstanding, IPV continues to be a criminal, social, cultural, and public health emergency. Even countries that have adopted stronger legislation in this area are not immune to this problem. The official statistics do not provide a complete picture of the magnitude of this phenomenon;²¹ nevertheless, they do reflect an alarming situation and show that institutions still struggle to develop effective solutions to address it (Shreeves and Prpic 2019).

Thus, efforts have been made to analyze this topic from many angles, especially in an attempt to better understand its causes, risk factors, and implications, as well as to identify reasons that deter victims from reporting crimes. Victims' decision to forego exercising their right to access justice is, in fact, rightly considered the first and most significant obstacle involved in addressing IPV as well as other crimes having a gender connotation or stemming from an abusive relationship that entails power differences between perpetrator and victim. Despite asking for help being the first step to be taken when seeking to break free from a pathological situation of violence, reporting rates remain low because most abused women willingly stay in violent relationships, usually for a very long time, and sometimes even when facing extreme consequences.

The question *Why didn't you leave?* has, therefore, guided considerable research in this area. This has brought to light a complex combination of gender imbalances, psychological dynamics, economic considerations, and cultural factors that underlie this choice and ultimately prevent victims from having access to justice.

Victims of IPV are recurrently deterred from taking legal action because of the psychological implications of this type of abuse. Years of systematic denigration in multiple forms can cause various health issues (e.g., Post-Traumatic Stress Disorder), habituation, or instill in victims the fear of being unable to rebuild their own lives. In this respect, the attitude of the public toward gender-related crimes could play a role. A social environment (sometimes including the family) that, whether implicitly or not, favors victim-blaming (Barnett 2001, Koepsell *et al.* 2006, Flood and Pease 2009, Gracia 2014)²² and places on the female partner the responsibility for violence discourages disclosing and reporting. Moreover, this attitude affects partners' expectations about their roles within the relationship, and in some cases, it can lead women to self-justify

²¹ In this respect, the lack of a shared understanding of what IPV entails, together with differences in the way data are collected on a domestic level pose a considerable obstacle to producing reliable analyses. See Shreeves and Prpic 2019.

²² Data collected by Eurobarometer (November 2016) reveals the public attitude towards gender-related crimes, showing that around 17% of EU citizens agree that victims themselves often provoke violence against women.

their situation and consider it inherent in their social role to suffer in silence (Miyaoi 2016, Shreeves and Prpic 2019).²³ Practical concerns also drive victims to remain silent and to give up their pursuit of justice. Before embarking on a path to overcome violence, IPV victims must carefully weigh any possible implications this may have for their daily life, especially if they have children to protect. For example, security plans, which are commonly used by the territorial support services to help victims avoid contact with their abusers, usually involve the relocation of the victim (sometimes to a protected dwelling) (Amato *et al.* 2020). This can involve the severing of social and family ties, facing legal complications related to child custody and even economic problems (both in the case of unemployed women thitherto economically dependent on their partners and in the cases of working women who have to quit their jobs to avoid being located by their abusers).

These concerns can be further exacerbated by severe disillusionment with institutions. As recent empirical analysis has shown, distrust in the judicial system and its ability to respond effectively to victims' needs discourages victims from pursuing justice. This has serious consequences for those who might prefer to stay in a known hell instead of embarking on a long and painful judicial journey, the outcome of which may be perceived to be distant and uncertain (Amato *et al.* 2020).

By achieving a better understanding of the reasons behind the choice to stay, this body of knowledge has provided key insights into how public awareness could be increased and how more effective protection policies could be designed. This knowledge has also provided valuable guidance for judicial actors when dealing with domestic abuse cases, especially IPV-related civil disputes that concern divorce or parental responsibility. Yet problems persist. Why?

In our view, to reverse this trend, a change of paradigm is needed in approaching this issue. The focus should be shifted from the question *Why didn't you leave?* to the more pressing concern *Why couldn't you leave?* Indeed, the actual barrier to restoring normality in victims' lives is a matter of not only whether the victim decides to leave but also whether the victim can get away safely. In other words, when assessing the circumstances behind the decision of the victim to stay or leave, emphasis should be placed on how the existing institutional and legal framework works in practice in order to be able to assess whether it makes it possible for victims to have real access to justice, redressal, and ultimately escape from violence.

To clarify why, against a sound regulatory and institutional environment, violence in intimate relationships continues to be a problem plaguing women, the following paragraphs present findings from an Italian case study.

5.1. *The case study*

Over the last few years, there has been a significant increase in the attention paid to IPV by Italian political agenda. A range of measures, action plans, and strategies have been taken to comply with the supranational legal framework and to create a broad set of

²³ A recent study conducted in 26 different States has shown that a growing number of women reject IPV. Nevertheless, many women continue to accept or justify violence inflicted upon them by intimate partners (Miyaoi 2016).

rules designed to strengthen the ability of the authorities to stop violence and ultimately make a clean break with the entrenched patriarchal mindset that continues to plague women.²⁴ Recent evaluations have determined that Italy's legal framework is robust and generally compliant with relevant supranational provisions, largely due to recent reforms that include a broad set of standards and mechanisms adopted to address violence against women. For example, Law No. 119/2013 has been welcomed for establishing a duty for authorities to support and promote an extensive network of support services for victims. The same can be said of Law No. 38/2009 on stalking, which is particularly innovative because it helps create widespread awareness of the seriousness of this criminal conduct and the need to provide protection to victims. Another law, no. 69 of 19 July 2019 – the so-called *Red Code* – was adopted to further strengthen the effectiveness of the judicial response to gender-based violence. According to this law, IPV cases must be processed by the courts as a matter of priority, and the investigation of such cases must be fast-tracked. This piece of legislation also provides for specific remedies in both civil and criminal matters.

In line with this normative trend, since 2009, the Judicial Council of Italy (JC; *Consiglio Superiore della Magistratura, CSM*) has begun to focus on gender-based and domestic violence and has adopted resolutions to improve the effectiveness of the judicial response in this area (Resolutions 8 July 2009, 30 July 2010 and 12 March 2014). The JC has also issued guidelines focusing on organizational and practical issues to promote the specialization of judges and prosecutors charged with handling these cases as well as priority criteria for the disposition of cases.²⁵

Despite the developments that have occurred *on the book*, it remains a challenge to ensure that the rules are applied effectively. A variety of shortcomings with respect to the timeliness and the quality of public action across the country have been pointed out. These include the following: a) the lack of a coordinated and coherent inter-institutional response to victims; b) overreliance on volunteer-based and informal local networks; c) a lack of guidance in interpreting the many ambiguities related to specific implementation measures;²⁶ d) the absence of organizational solutions and operational methods that can increase the effectiveness of judicial interventions. These factors will

²⁴ We refer here to: a) Law No. 38/2009 on stalking, which is aimed at enhancing awareness of the dangerousness of this criminal behavior and has emphasized the need to afford victims appropriate protection; b) Law No. 119/2013, which has established the duty to support and promote an extensive network of support services for victims, including by allocating them financial means; c) Law No. 69/2019 (known as the *Red Code*), which has introduced further measures to increase the effectiveness of the judicial response to violence against women and to improve victims' protection.

²⁵ See the CSM Resolution of 20 July 2017, which ordered a new monitoring of the organizational structure of judicial offices with the aim of verifying the degree of compliance with the recommendations established by previous resolutions. The new monitoring was also adopted in order to carry out a mapping of existing good practices and disseminate the most virtuous ones in terms of timeliness of judicial intervention, specialization of magistrates and law enforcement agencies, and inter-institutional cooperation. See also the 2018 CSM Guidelines on organization and good practices in dealing with gender-based and domestic violence (Delibera 9 maggio 2018).

²⁶ See Delibera 9 maggio 2018 above. Based on recent evaluations carried out by the European Commission, Italy appears to be among the 13 member states that have so far incompletely implemented EU regulations and are currently involved in infringement procedures that, if not resolved at the administrative stage, could be referred to the Court of Luxembourg. European Commission, Infringement procedure n. (2019)2104, letter of formal notice of the 25/5/2019. Please note that this case has been closed on the 18/02/2021.

likely have a detrimental effect on the proceedings and their eventual outcome, particularly in IPV-related civil cases, where the best interests of a child are at stake (e.g., those involving custody and visiting rights).

Evaluations also highlighted the existence of a strong resistance to the cause of gender equality and the tendency to “reinterpret and reorient this notion in terms of family and maternity policies” (GREVIO 2020b). Worryingly, enduring stereotypes still appear to characterize courts’ decisions in IPV cases, which show an inclination to “reduce violence in intimate relations to a conflict: to consider a priori both parties responsible for the violence (...), ignoring the power differential created by the use of violence itself.” In addition, it has also been noted that there is a “tendency to give credence to stereotypes and common beliefs that would consider an intimate relationship as intrinsically based on submission/overpowering, possessiveness; to suppose that a wife/partner heading towards separation is a woman bent on revenge, seeking to obtain damage and to punish the partner” (GREVIO 2020b, point 17).

Building on these findings, the following section will deepen the knowledge of the actual impact of the legislation and also explore the performance of the services provided by some of the actors taking part in the territorial victim support networks – i.e., the system of normalization. In particular, enduring problems affecting the organizational chain – VSOs, health and social services, police authorities, prosecution offices, and the court system – will be identified. Moreover, improvements that the entry into force of the Red Code might have brought about will be evaluated.

5.1.1. Before the police authority. The reporting stage

The initial phase of the procedure is considered the most critical segment of the victim’s escape from violence. Any error or omission at this early stage can not only lead to secondary victimization but also affect trial outcome. Investigations in gender-based violence are among the most complex. Therefore, police authorities should act promptly, apply specific expertise to support victims during the emergency, and properly gather evidence.

Under the current legal framework, when responding to an emergency call or formalizing a complaint, the police should first be able to identify the nature of the violence by assessing the dynamics of any violent acts as well as the means used by the offender. Possible risks should be immediately evaluated, preferably by the application of internationally recognized methodologies²⁷ to activate necessary protection procedures. For example, where no coercive measures have been taken against the offender, and there is a real risk of recidivism, solutions for the adequate protection of the abused person should be put in place. These could include temporary placement in a safe structure. Any attempt at mediation or reconciliation between the victim and offender should be strictly avoided, and when reporting the victims’ declarations, the qualification *domestic violence* should be used instead of *family dispute*, thus refraining from personal evaluations that might reflect prejudices and might minimize the request

²⁷ See, as an example, the Spousal Assault Risk Assessment (SARA) Protocol, later revised in the SARA-S, SARA-Plus, and SURPLUS formats; the current version of this protocol is Version 3 of the SARAv3. The Italian police implemented SARA-Plus and, in more than 10 years, more than 3,000 law enforcement officers were trained on this risk assessment procedure. See Polizia di Stato 2020.

for help. In addition, the police have essential information duties toward the victim about legal and practical aspects (e.g., the right to legal aid and the possibility for victims to contact specialized VSOs).

According to the opinions expressed by the experts interviewed, police officers are among the professionals who deal with the issues at stake in the best way and show a sensitive attitude. However, experts also stressed that this positive assessment refers to the work of individual police officers or departments and not to the institution. There is a profound lack of homogeneity in the application of the relevant provisions and consequently in the service quality provided at a territorial level. This seems to stem largely from the lack of standardized procedures as well as the lack of a systematic approach to the issues of job specialization and staff training.

Factors such as *the right place* and *the right person* can, regrettably, play an important role when formalizing a complaint. Police officers do not always seem able to actively help the victim go through a longstanding situation of violence and identify elements key to determining whether and how the reported incident is part of a history of abuse. Furthermore, poor knowledge of the nature of IPV and of typical abuser strategies might prevent the report from being written such as to bring out those aspects that could allow the investigating authority to conduct a proper investigation and lead to a possible indictment. For example, cases are sometimes dismissed because the abuser's misbehavior is considered unintentional or resulting from a family crisis.

Indeed, performing this task correctly implies a professional approach free from stereotypes and clichés. However, the reality is that there are still too many cases wherein violence is belittled or framed as a mere family affair: women are still invited to "let it go" and "go back home and settle things with their partner." Prejudices difficult to eradicate and inadequate professional training can adversely affect the way risk assessment or data collection for the reporting is conducted. This can seriously jeopardize the safety of the victim as well as the effectiveness of the investigation process. Moreover, the risk of secondary victimization is higher when the victim is not properly taken care of or information is not competently provided.

5.1.2. Before the prosecution service

The national legal framework aims to ensure that timely and qualified public intervention is provided for victims of IPV who finally find the courage to seek help from competent authorities. Therefore, the relevant legislation attaches particular importance to the possibility of fast-tracking the handling of IPV cases, thereby avoiding moments of impasse in the acquisition and filing of complaints or during preliminary investigations. This is important because any delays might compromise the timeliness and effectiveness of precautionary or preventive protection measures.

In particular, the police are required to notify IPV cases to the public prosecutor without delay, both so that the investigation can start promptly and so that the victim can be protected.²⁸ For the sake of expediency, this notification may even be made orally, with written communication to promptly follow. The public prosecutor's office is then required to gather information from potential victims and decide how to proceed within

²⁸ Italian Code of Criminal Procedure, art 347, para 3, as amended by the Red Code.

three days of the receipt of a police report. Such deadlines may be extended only to keep the investigation confidential, to protect minors less than 18 years of age, or to protect some other interests of the victim. The police must then carry out an investigation and report the results to the public prosecutor without delay.

In general, VSOs have greatly appreciated the adoption of these measures. According to them, when deadlines are respected, victims feel that the system is running correctly and takes care of them appropriately. However, based on our interview data, this tight schedule is seldom respected in practice.

The perception that deadlines are not met is validated by recent evaluations carried out at the national level to assess the effects of the Red Code. It is further corroborated by the opinions of judicial professionals. This suggests that the institutional context within which these provisions are to be applied does not support the achievement of the legislation's goals. Although welcomed for its aims, this reform relies on mechanisms too rigid to be fully implemented and does not foresee new or increased burden with respect to public financing of the institutions involved. There is therefore a consensus among respondents that attempting to expedite prosecutorial activities at no extra cost risks making the regulatory effort ineffective because the ability to offer a rapid response to IPV cases is *de facto* strongly mitigated by the lack of additional resources for the prosecution service, which is already burdened by a heavy workload.

At a practical level, further difficulties arise because the rules providing for the expediting of judicial proceedings have a wide scope. The legislator had initially designed these measures to address victims of serious brutality, but the final version of the Red Code applies to a broader variety of crimes (e.g., cases of marginalization and harassment at work are included). For the prosecutor's office, this means that the duty to speed up procedures must be equally complied with, even when addressing cases wherefor there is no comparable urgency. Distinguishing between ongoing emergencies and past cases reported by women who have already stopped living with their abusive partners is not possible, at least in principle (Di Nicola Travaglini and Menditto 2020). Because of the considerable workload burdening the prosecutor's office, this task is therefore often delegated to the judicial police as the law permits it. However, without a protocol shared by law enforcement and the prosecution service, this delegation shifts a burdensome responsibility onto the police, who have to cope with demanding tasks despite lacking both resources and widespread training. Thus, delegation to the police is not considered a good solution by many professionals involved (Procura della Repubblica presso il Tribunale di Tivoli 2019c).

Respondents also pointed out that needing to meet tight deadlines might be detrimental to victims because the window to implement the safety plan can be too narrow. This is especially true when the nearby support network is inadequate or when safe accommodation is in short supply.

To handle this challenging situation, some prosecutor offices have implemented new practices toward solving these issues and ensuring better enforcement of current regulation. For example, in some judicial districts, the prosecutor's offices have issued internal instructions or guidelines and have given the police valuable guidance, particularly on conducting the victim's hearing. Some offices, in particular, have also prepared predefined interview scripts that include lists of questions that officers are

required to use when performing this task. In a few cases, special venues have been designed to meet victims and carry out the hearing.

However, it should be stressed that satisfactory implementation of the relevant provisions (when it occurs) is usually the result of a bottom-up approach. Such successes reflect good organizational choices made at the territorial level as well as the commitment, sacrifice, and professionalism of the authorities responsible for dealing with the specific crimes involved. At present, the situation in Italy is therefore characterized by a profound lack of homogeneity, with less well-equipped territories struggling to offer high levels of service.

5.1.3. Before the court system

Judicial experience and scientific knowledge both indicate that, for victims of IPV, attending the trial and giving testimony is one of the most delicate steps in the criminal proceedings. This is because reliving traumatic events suffered long ago may negatively affect the victim's ability to remember and explain the abuse, thereby undermining the strength of accusatory statements.²⁹ Therefore, this part of the criminal procedure, based mainly on oral evidence, is particularly challenging and requires a specialized approach. Judges should have the necessary skills to appreciate the psychological and emotional condition of victims, to understand nonverbal communication, and to conduct hearings with an empathetic, unbiased approach so that interactions are not uncomfortable or traumatic. Attaining such a result, however, is far from straightforward as it requires multilayered efforts transcending the development of specific training programs. Addressing the individual training needs of judges, although paramount, is truly not sufficient. What is also crucial is that judges work in an organizational setting that supports the specialized management of IPV as a criminal phenomenon to ensure the best possible judicial response, while avoiding unnecessary loss of time and resources.

In recent years, the JC has advanced the importance of ensuring priority and specialized handling of gender-based and domestic violence cases, also emphasizing the positive effects this approach would have in terms of the consistency and timeliness of judicial response. Accordingly, the JC has developed guidelines to promote organizational models consistent with these principles, to encourage synergic management of affairs by courts and prosecutors' offices, and to foster cooperation between the judiciary and external actors. These guidelines still seem poorly implemented at the territorial level, however. The latest available monitoring activity shows, in fact, that the organization of judicial offices in some courts is still largely inconsistent with the principle of specialization and ill-suited to prioritizing and speeding up the processing of IPV cases.³⁰

The problem of the low level of specialization of courts was raised repeatedly in our study and was found to be a key concern by the experts interviewed. Respondents emphasized that judges are the professionals with whom it is most difficult to interact

²⁹ Problems often emerge when taking witness testimonies from individuals belonging to the same family or circle of close acquaintances as the victim.

³⁰ The results of the last available monitoring activity show that out of 139 surveyed offices, only 23 had set up sections or formations of the courts to deal with this matter, and even fewer (nine) had adopted organizational modules for handling cases involving domestic violence or violence against women. Furthermore, in most (92%) cases, risk assessment criteria to prevent recidivism and the escalation of gender-based violence had not yet been implemented. See: CSM, *Delibera 9 maggio 2018*.

when dealing with IPV cases – as though they “do not share the same language.”³¹ Judges were perceived as insufficiently equipped to fully understand the consequences of IPV or to grasp the practical, social, and psychological effects resulting from the instability and insecurity victims experience while waiting for proceedings to be finalized. More importantly, judges were also perceived as struggling to appreciate the profound consequences resulting from long-term domestic abuse. The frequent use of questions such as “Why didn’t you just leave him?” and “If you were suffering, why did you take so long to ask for help?” have been considered to be indicative of this attitude.

Based on the experience of the respondents, the low degree of specialization of members of the judiciary involved at both the pre-trial and trial stages not only contributes to an increased risk of secondary victimization but also possibly influences the outcome of the judicial proceeding in various ways.

For example, experts pointed out that in the absence of specific training, even some procedural rules, which are, in principle, intended to reduce the risk of secondary victimization, could be misapplied and thus negatively affect the position of the victim and the outcome of the proceedings. This is the case of the so-called *incidente probatorio*, a particular procedural rule provided for in the Italian Code of Criminal Procedure, which allows the taking of evidence during the investigation stage if the victim is a vulnerable person (as in IPV cases). Here, the aim is to ensure the reliability of victims’ declarations while protecting them from the need to recall painful events during the main proceeding, which can take place long after the original report is made. To provide context, the beginning of the hearing phase usually starts 10–12 months after the report to the police has been filed. During this time, the victim might have already embarked on a painful process of self-reconstruction. Therefore, participating in the trial, confronting the abuser, interacting with public authorities, and even bearing witness are factors that can contribute to relapses into a state of deep distress.

With this in mind, respondents emphasized the importance of this procedural option and advocated for an increase in the use of the *incidente probatorio* as a general rule. However, they warned about potential problems that might arise from its misapplication in IPV proceedings. IPV is a form of violence that evolves over a very long period, during which moments of apparent calm alternate with episodes of violence. For that reason, victims usually do not have the ability to systematically recall all episodes, elements, and nuances that, taken together, might allow the authorities to qualify the relationship and its pathologies. Many abusive aspects may indeed only gradually re-emerge over time. It follows that in the absence of a complete understanding of the dynamics underlying IPV, an early hearing might crystallize a version of the facts that prevents authorities from grasping key details and correctly framing any second thoughts, hesitations, or contradictory statements by the victim.

More generally, respondents stressed that the lack of specialization of judges and therefore their limited capacity to understand what intimate violence entails is reflected in some interpretative biases that end up jeopardizing the position of the victim and the judicial resolution of the case.

³¹ Respondents consider this mainly due to the type of training judges receive, which focuses mainly on legal matters.

One such bias concerns the tendency to underestimate all forms of nonphysical violence. Psychological violence, for example, seems to be poorly affirmed by court decisions, not only because of the greater difficulty involved in collecting evidence that it exists but also because judges are perceived as inclined to consider it “less important” and underestimate its impact on the psychophysical health of the victim. In the experience of the respondents, convictions for cases of psychological violence were obtained only when the abuses were blatant (e.g., in cases where cameras were present in all rooms of a house, thereby allowing the perpetrator to observe the victim in real-time from a remote location).³²

Coupled with this, experts pointed out that the behavior of judges is still influenced by the disturbing and enduring tendency to mistake situations of abuse for family conflict incidents – a trend that seems to be, *inter alia*, confirmed in judicial practice. Recent studies focusing on court decisions regarding allegations of ill-treatment³³ found, indeed, that in cases where the victims were not reduced to a state of passive submission or where they gave proof of having reacted to the violence, the *conflict* outweighed the *violence*, and the qualification that the offending conduct was ill-treatment was set aside (Pecorella and Farina 2018).

In this respect, it is worth mentioning that such an overlap between situations of violence and conflict was found to be very clear, especially when looking at the mismatch in the treatment of cases coming from different contexts involving victims of IPV, namely, the criminal track (that considers the violence suffered), the civil track (that arranges separation from the spouse), and the procedure at the Juvenile Court (that is activated when the case involves children to be protected).

A specialized approach is considered crucial when dealing with civil proceedings involving divorce or the exercise of parental responsibility, which are connected to parallel criminal proceedings related to IPV. When it comes to these cases, courts have a duty to consider violence against women. Judges must be aware that when the situations they are dealing with exceed a mere intra-family conflict dynamic, however, alternative dispute resolution processes – such as mediation and conciliation – must be strictly prohibited. Furthermore, where the case at hand involves children, judges must duly consider abusive situations when determining custody and visitation rights, at least to establish whether and to what extent such abuse may justify limiting these privileges.³⁴

³² The GREVIO Report on Italy (GREVIO 2020b) highlighted the same approach, stressing that when there is no physical violence, “victims’ requests for safety measures remain unheeded and the risk they are exposed to is underestimated, leading to courts’ reluctance to issue precautionary measures”.

³³ Article 572 of the Criminal Code criminalizes “ill-treatment in the family,” which applies to the conduct of “anyone who mistreats a person of the family or in any case a cohabiting person, or a person under his authority or entrusted to him for reasons of education, training, care, supervision or custody, or for the exercise of a profession or art.” This offence is commonly interpreted as also applying to former spouses and partners regardless of cohabitation. For this offence, proceedings can be instituted *ex officio*, but according to relevant case law, ill treatment is categorized as a crime of a habitual nature. It follows that for violent behavior to qualify as ill treatment, the systematic nature of the violent conduct and the criminal intent of causing harm or violating the victim’s dignity must also be established.

³⁴ See: Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul), 2011, art. 31.

National law requires swift coordination between criminal and civil judicial authorities to avoid conflicting decision making. However, there is no consistent practice at territorial level,³⁵ and beyond formal compliance (if any), there does not seem to be a broad adherence to this rule in practice.

VSO experts have stressed that civil justice proceedings are carried out according to their own dynamics and usually disregard the parallel criminal case. For this reason, the parties are sometimes still referred to mediation. As far as the Juvenile Court's jurisdiction is concerned, the effects of this misalignment are even more worrying in their view. When it comes to the evaluation of parental responsibility, existing provisions should allow the best interests of the child to be prioritized over the principle of shared parenting, but in their experience, these are rarely applied.³⁶ There is still a general belief that "a violent man can be a good father." Consequently, responsibilities arising from violent actions tend to be separated from those arising from the paternal role. Thus, certain privileges, such as visitation or contact with the child, continue to be retained. This is true even in some particularly serious situations (e.g., when there is evidence of alcohol and drug addiction, physical abuse, or situations wherein children witness violence). Cases have been reported where meetings with minor children were arranged at detention facilities. Moreover, it seems that when assessments of parental responsibility are conducted, the traumatic effects suffered by abused women can affect the evaluation of her standing as a parent because certain behaviors are not appraised to be symptoms of a pathological situation. The abused mother may therefore run the risk of losing custody of her children or may obtain only shared custody with the abusive father.

5.2. Ephemeral vs. standardized systems of network cooperation

Along with the need for specialization, both in terms of professional training and organization, problems affecting the *system of normalization* are also closely linked to coordination between institutions.

In general, smooth, stable, and regulated cooperation between judicial actors (including the police, prosecution, and judges – dealing with either the pre-trial and trial stages) is critical toward achieving effective and lasting victim protection. On the one hand, prompt interaction between the police and the public prosecutor is necessary to make investigations more effective. At the same time, it enables rapid assessment of the abuser's conduct and its legal qualification, thus making it possible to take precautionary measures at the earliest possible stage. On the other hand, agreements between prosecutorial and judicial offices that operate in the same territory can lead to better case management. For example, shared planning and management of cases and the identification of common priorities can promote shorter processing times. Moreover, cooperation during the formation of hearing calendars can make it easier for the prosecutor assigned to the case to participate in the trial, facilitating more specialized management of cases.

³⁵ See: art. 64-bis C.P.P. This provision is aimed at improving the coordination already introduced by Law Decree no. 93/13 by widening the range of offences for which communication is required. See also: Ministero della Giustizia 2020.

³⁶ Also stressed in GREVIO 2020b.

Beyond cooperation among authorities belonging to the justice system, it is also critical to facilitate coordination between these and other public institutions and third sector actors (e.g., health and social services and VSOs), which belong to the territorial victim support networks. The needs of women sufferers of intimate abuse are complex and layered. No node in the network can be self-sufficient in meeting them. Standardizing network cooperation (March and Simon 1958, Thompson 1967, Mintzberg 1973, 1983) is thus essential toward developing a successful strategy against violence.

A striking example of how poor and makeshift coordination within a local support network can affect the normalization process is provided by one the most complex and delicate steps of the victim protection strategy – i.e., the implementation of a victim safety plan after the crime report is initially filed.

In Italy, in most cases, security plans almost entirely rely on removing victims (and their children, if any) from the family home. The removal of the abuser is indeed rarely used even if it would facilitate protection of the victim from further abuse and incur lower costs for public spending. At the same time, precautionary measures seem to be rarely adopted, and protection orders – e.g., emergency barring, restraining, and protection orders – take time to be enforced (from 15 days to 3 months).

It follows that it is critical for police to check the immediate availability of shelters or other safe accommodation when formalizing a complaint. Failing to take this step correctly likely jeopardizes the victim's position because her location may then remain known to the abuser.

However, several factors hamper the achievement of this task. There are practical problems concerning the availability of shelters, which, in Italy, is limited and covers only a small part of the domestic demand in terms of ratio of population.³⁷ There are also financial issues to be addressed that relate to the costs of providing safe accommodation for victims because these are borne by the municipalities where the victims live, which generally lack the necessary resources, especially small municipalities.

In essence, preventing the victim from being exposed to repeated victimization requires efficient and rapid communication among health and social services, police authorities, prosecution offices, and VSOs that run anti-violence centers and shelters at the local level and might already be familiar with the victim's personal situation. Collaboration among these institutions is pivotal as it facilitates the identification of emergency housing solutions and more generally permits faster implementation of a joint intervention project.

At present, in Italy, only rare examples of standardized models of network cooperation can be found. Among these, the Tivoli Public Prosecutor's Office is the best-known example and likely the best practice at the national level. Over the past five years, this office has shown commitment toward dealing with gender-based violence, and under existing legislation and in the absence of additional resources, it has promoted the adoption of effective organizational arrangements and cooperation protocols in the

³⁷ On this point, some experts pointed out further problems concerning the lack of a single legal framework regarding the access to the shelters on the national territory. In particular, experts have stressed that some shelters do not allow access of male minors over 14 years old, and this limitation can seriously compromise the implementation of safety plans involving victims who are the mothers of male children.

territory. The office defined an organizational project based on the principle of specialization (Procura della Repubblica presso il Tribunale di Tivoli 2017). Specific working groups were set up, and priority criteria and operational arrangements for case management were defined (e.g., a dossier labeling system was created). Attention was also paid to collaboration with police authorities. Then, investigative protocols and good practices relating to gender-based violence were put in place to ensure the timely transmission of crime reports and a guarantee of absolute priority of investigative acts (Procura della Repubblica presso il Tribunale di Tivoli 2019a). Moreover, guidelines were adopted with reference to the role of the public prosecutor in IPV-related divorce and children custody proceedings (Procura della Repubblica presso il Tribunale di Tivoli 2019b).

Regarding cooperation between the justice system and other members of the local victim support network, a memorandum of understanding was recently signed to facilitate the work of all actors involved and to improve the overall service provided to the victim (Procura della Repubblica presso il Tribunale di Tivoli 2016). Within the framework of this collaboration, one significant result was the setting up of a Victims Assistance and Support Center for the victims of crime, which aims to facilitate the definition of medium- and long-term support projects, thanks to the joint work of socio-territorial services, law enforcement agencies, and anti-violence centers (Procura della Repubblica presso il Tribunale di Tivoli 2019d). This service is made available in a venue provided by the prosecutor's office, but is, however, separate from the judicial premises of that office, allowing for confidential meetings. Perhaps most importantly, it is specifically designed to welcome victims.

Reports on the implementation of these initiatives show encouraging results. The solutions adopted have fostered a general awareness of the issue on the part of all the actors involved and have increased specialist knowledge and the level of work specialization. Significant new attention is being paid to the specific nature of IPV and the promotion of teamwork, which has allowed the development of arrangements that increase service quality for IPV victims.

Regrettably, this successful example of standardized cooperation, remains an outlier in the national landscape. Although recent regulatory and strategic developments have moved toward a greater and stronger multiagency effort, internal and external cooperation of all parties remains mostly loose, sporadic, and reliant on a bottom-up approach even when appropriate protocols are already in place.

In essence, despite the robust regulatory environment and the increasing attention paid to IPV in the Italian political agenda, ensuring the effective application of all relevant rules remains a challenge. This is largely due to the absence of a general organizational framework able to facilitate the effective implementation of relevant legislation. Notably, although the adoption of specific arrangements and operational models for the organization chain of the victims' support network have long been promoted on paper, practitioners often face IPV with ineffective approaches. The process of normalization in Italy is still heavily reliant on ephemeral organization setups (Lanzara 1983). This is true both with respect to the internal functioning of the single institutions/bodies participating in the different stages of the support and judicial procedures and with respect to cooperative arrangements between these institutions.

The creation and functioning of an integrated victim support system that is organized, stable, widespread, and long lasting appears largely reliant on the application of the principles of specialization and standardization. However, to date, a fully articulated plan for organizational change guided by such criteria has yet to be implemented.

6. *Normalized (in the end): What normality is restored after the storm? An organizational problem*

IPV is a widespread phenomenon and worldwide statistics are alarming. The number of women killed on an annual basis by partners or former partners is very worrying; however, even more disturbing is the percentage of victims who do not report, who do not seek help, and who may not even talk about the violence they suffer.

IPV is so pervasive in specific territories as to be considered as a factor embedded in the fabric of social relations. Despite this, violence between partners cannot be considered *normality*. IPV is, in fact, a pathology of interpersonal relations that disrupts victims' sense of normalcy and the more accepted it is as tolerable behavior the more obnoxious the preconceptions about gender inequality ingrained in society.

The long process of *normativization* of this phenomenon has finally led to an understanding that IPV represents a violation of individual human rights, in respect of which the State has positive obligations. Indeed, institutions are charged with addressing IPV cases when relationships between partners escalate (or are likely to escalate) into situations of systemic violence and/or when the basic principles whereupon civil partnership is based are threatened or disrupted.

Against this background, this paper attempted to assess whether and how police authorities, prosecutorial offices, and the court system – together with other institutions participating in victim support networks – can face this situation by facilitating the effective implementation of directives set by legislation into force. With this objective in mind, we analyzed Italy as a case study.

In Italy, the national legal framework has recently made significant progress with respect to gender-based and domestic violence. A series of reforms has been formalized into legislation to reinforce the substantive and procedural protection mechanisms required by supranational legislation. Likewise, the JC's resolutions were issued to encourage the adoption of new operational procedures and organizational settings in order to implement existing regulatory approaches more effectively. Against this backdrop, however, the analysis of the domestic normalization process has highlighted how the ideals pursued by existing legal tools are rarely achieved in practice, especially when the preconditions necessary for these measures to be effective are not addressed. The national legal framework is undoubtedly heading in the right direction but with little (if any) thought given to how and by what means this destination should be achieved, thus suggesting that IPV is not yet truly perceived as a political, social, and cultural priority. For example, the latest reforms have certainly brought improvements, addressing the issue of "speeding up" the steps involved in obtaining a police report and conducting preliminary investigations. However, they have failed to account for the prerequisites needed for these measures to be effective. In a system such as the Italian one, where the length of proceedings is a longstanding problem, this gap inevitably leads to knock-on effects on the already heavy demands placed on judicial offices. In terms of vocational

training, there exist some interesting developments regarding centralized and decentralized training, but there is still a long way to go in terms of professionalization training related to gender issues, especially in the judiciary. A certain reluctance to recognize the link between gender inequality and violence against women remains as does a deep-rooted “family-oriented” social context, wherein violence in intimate relationships is not always fully perceived as a violation of individual rights.

Taken together, these limitations deeply affect the capacity of the victim support network, including police authorities and the justice system, to take care of victims’ needs. This research study has brought to light various shortcomings that undermine the resilience of the victim support network and fuel a feeling of distrust toward justice institutions, thereby discouraging the genuine enjoyment of the right of access to justice. The many problems identified here seems largely related to the limited ability of prosecutors and judges to understand IPV and its dynamics. It is notable that the judiciary is perceived as the most difficult component of the territorial victim support network to work with because it is less inclined to *recognize* and *weigh* the profound effects of IPV, especially where they differ from physical abuse. Even the legal tools aimed at mitigating the risk of secondary victimization can be potentially detrimental to the victim if they are applied without understanding the case, its underlying dynamics, and the victim’s psychological, physical, and emotional state in full. One of the trickiest consequences of judges’ attitude toward IPV-related cases has been identified as part of the recurrent overlap between violence and conflict situations, the effects of which are amplified by the misalignment among the criminal, civil, and Juvenile Court’s case tracks.

Overall, this research study highlighted how the *process of normalization* is weakened by various problems that stem from the lack of a standardization approach within the justice system and beyond. On the one hand, the lack of a systemic and inter-sectorial approach pertaining to the specialization and training of professionals is one of the factors inhibiting cultural development in this field, which overall proves to be slow and patchy throughout the country. Moreover, inconsistencies in the conduct of investigations and judicial proceedings, combined with misalignments among the orientations of institutional actors involved in the chain of services at the territorial level, also play important roles.

The goal of restoring normality to the lives of IPV victims can be achieved via timely actions performed within a well-structured multiagency framework designed to protect victims from the beginning of the reporting stage to the end of the judicial proceedings and in accordance with standardized cooperation, procedures, and practices. However, in the current Italian landscape, the existing framework relies on ephemeral cooperation among actors. The outcome therefore relies on the human factor as well as it does on the skills and dedication of individual professionals. This certainly shows signs of cultural change in civil society; but, the overall picture, on the other hand, reveals the potential for failure of the IPV victim support system.

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