

# **Report on the procedures of the civil court and the juvenile court concerning the custody of children in cases of domestic violence**

This report, drawn up by associations, experts of different territorial and regional realities - see the list at the end of the report - wants to highlight:

- a cultural delay and a lack of knowledge and ability to differentiate what is a conflictual relationship and what is a domestic violence of part by those working in civil and juvenile courts, including the judiciary, in the cases of separation and in the presence of children;
- the theme of the non-application of the Istanbul Convention in Italy on the issue of domestic violence and in particular of children witnessing violence in civil and juvenile judiciary;
- the lack of alignment and coordination between the civil and child courts with the criminal court;
- the re-victimization suffered by women in the judicial context due to cultural delay and the failure to adapt our legislative and judicial system to the Istanbul Convention;
- the role of the technical consultancy of the Office-CTU in civil and juvenile proceedings in case of separation.

## **INTRODUCTION**

Italy is part of the European Union that promoted:

### **The European Convention on the Exercise of Children's Rights**

Approved by the Council of Europe in Strasbourg on 25 January 1996 and ratified by Italy with the law of 20 March 2003 n. 77;

**The Charter of Fundamental Rights of the European Union**, proclaimed in Nice in 2000 and re-proclaimed in Strasbourg in 2007, with a reference to art. 24 to the right of the child.

Italy ratified on May 27th, 1991 with the n. 176 the **UN Convention on the Rights of the Child** (Convention on the Rights of the Child - CRC), approved by the United Nations General Assembly on November 20, 1989 in New York;

and ratified in 2013 the most recent **Council of Europe Convention on preventing and combating violence against women and domestic violence** (Istanbul Convention - CdI).

The statistics of the World Health Organization in 2013 and the European research data of the FRA in 2014<sup>1</sup> show that one woman in 3 has been exposed to physical and sexual violence.

These data are also confirmed by the ISTAT (Italian National Institute of Statistics) survey of 2015. In Italy in 2017, a woman has an average of about 1.26 children, an average that rises in women who are victims of violence and reaches 1.45 (hospital clinical data<sup>2</sup>).

---

<sup>1</sup> WHO, *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non partner sexual violence*, World Health Organization 2013.

FRA (European Union Agency for Fundamental Rights), *Violence against women: an EU-wide survey, Results at a glance* Luxembourg: Publications Office of the European Union, 2014.

<sup>2</sup> 2017 data of the center for the first assistance for women who are victims of violence at the Cardarelli Hospital in Naples.

Thus, both children as direct victims of violence and children as indirect victims are a consequence of the violence perpetrated on women by primary reference emotional figures, with a violent effect immediately multiplying on children.

Children, forced and passive spectators of violence on their mother, often suffer serious consequences on their psycho-physical health in the medium and long term, effects that can be overlapped with those determined by direct, scientifically proven and demonstrable violence.

Violence against women in the family environment therefore requires the assessment of witnessing violence as a detriment to the health and safety of the child in matters of custody.

The **CdI** ratified by Italy with the law 77/2013 intervenes:

- on the issue of children's rights with 6 articles that fill the limits - hypothesized by international conventions and by our civil code (articles 330, 333, 337 quater) - of shared custody,
- and on the general principle that the best custody doesn't aim to guarantee the dual parental responsibility but the safety and health of the child paired with these of non-abusive parent (i.e. the parent victim of violence).

The articles to which we refer are: art. 26, art. 31, art. 45; art.46, art.48, art. 56. These articles identify the conditions in which shared custody cannot have legal space, i.e. the conditions in which there is evidence of violence on the mother, because they could compromise the rights and safety of women and children; they indicate measures to protect children (up to the expiration of parental responsibility of the author of domestic violence). Furthermore, the prohibition on the use of mediation procedures (Article 48 of the **CdI**) is highlighted; recourse to mediation is provided in other international conventions (1996 Strasbourg Convention) but only in the cases of conflictual separations where domestic violence does not emerge.

**The CdI has thus outlined** - in a precise way and we would dare to say surgical- the civil journey in terms of dealing with custody and instruments of government of custody (which exclude mediation)

The experience of the various subjects that took part in writing this report points out that in Italy, the transposition of the provisions of the CdI, especially the aforementioned articles, is still late.

Nevertheless, the decision of the Court of Cassation in the United Sections of 29 January 2016 no. 10959 has ordered that the conventional rules (and specifically indicated the Istanbul Convention for gender-based violence) are subject to the criterion of conforming interpretation: "The conventional rules transposed through the ratification law are in fact subjected, also in light of the first paragraph of the article 117 of the Constitution, to the obligation of conforming interpretation that imposes, where the internal norm lends itself to different interpretations or to margins of uncertainty, to choose the one that allows the respect of the international obligations."

As evidence of the complete absence of changes (with respect to the indications of the CdI) in the court procedures, especially in civil and juvenile statistical data can be interpreted: shared custody (to which we add the 'innovative' provisions for custody with alternate residence<sup>3</sup>) maintain their usual and even slightly rising trend.

---

<sup>3</sup> E. Reale, *About the Guidelines of the Court of Brindisi, Family Section, on the topic of shared custody and alternate residence: a re-reading of the Resolution of the Council of Europe No. 2079 of 2 October 2015*, Riv. Persona e danno, 4.4.2017, Key editore

**The Council of Europe Resolution No. 2079 of 2 October 2015 proposes gender rebalancing in parental care.** In the resolution is stated that States are invited to introduce into their legislation the principle of alternate residence that can be provided with the exception of cases of domestic violence and other serious cases of prejudice of the minor and that the management of sharing must be related to the needs of the child, who always remains the center of this organization and should be listened to as such. This principle (distorted by a mechanical and arithmetic interpretation of the sharing of times and spaces of the minor between the two parents), today we find him in a bill (Pillon bill, from the name of the Italian senator who proposed it). The Pillon bill in Italy provides characters of automatism in the sharing of children for couples in separation who have been considered - by many institutions and movements - dangerous for the safety, protection and health of the minor. Among these principles there is also the obligatory recourse to family mediation violating, in the cases of domestic violence, as indicated by the **CdI**.

In 2015, according to ISTAT data<sup>4</sup>, separations with children in shared custody are about 89% of all separations with child custody sentences. Only 8.9% of children are entrusted exclusively to the mother. These data clash with those on the spread of male violence against women at home: 30% of women victims of physical and sexual violence in the couple relationship, but also between 40 and 50% of women victims of psychological violence.

The Istanbul Convention introduced a general principle that could not and should not be disregarded in the our system: violence against women violates the principle - duty of parents responsible for the care and development of children; so the parent who mistreated the mother cannot be called to share parental responsibilities as the norm of shared custody provides.

This principle contained in the Istanbul Convention is disregarded in Italy by the judicial world and this is extremely serious (more than the fact that it is disregarded by the other institutions); which would require a specific action of the legislator to insert articles 26, 31, 45, 46, 48 and 56 of the CdI within the civil code<sup>5</sup> as additions to the articles concerning the clauses impeding shared custody (articles 330, 333, 337 quater) and the so-called bi-parenting responsibility.

**We have evaluated** through the collection of partial qualitative data, in different areas of Italy (including Campania, Puglia, Basilicata, Tuscany, Lombardy and Veneto) that from August 2014, the same year the **CdI** has entered into force for the countries that have ratified it, therefore also for Italy, nothing has changed in the practices and procedures of the civil court and for children regarding the custody of minors in the so-called conflict separations that often hide - according to international studies - separations (requested more frequently by women) due to the violence and harassment suffered in the family cohabitation phase.

In America<sup>6 7 8</sup>, data on judicial separations indicate the high presence of separations initiated due to domestic violence and researcher Janet R. Johnston was one of the first to note that

---

<sup>4</sup> <https://www.istat.it/it/archivio/192509>

<sup>5</sup> Cfr.; E. Reale et al. *Proposals for changes to the civil and criminal law on violence against women*. riv. Person and damage, 23.11. 2017, Key editore <https://www.personaedanno.it/articolo/proposte-di-modifica-all-ordinamento-civile-e-penale-in-tema-di-violenza-contro-le-donne>

<sup>6</sup> Peter Jaffe, et al, (2002), *ACCESS DENIED: The Barriers of Violence and Poverty for Abused Women and their Children After Separation*, The Centre for Children & Families in the Justice System of the London Family Court Clinic

<sup>7</sup> Jaffe, P. Crooks, C. V., & Poisson, S. E. (2003). *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*. *Juvenile and Family Court Journal*, 54(4), 57-67

**domestic violence problems should be considered the norm, not the exception, in litigation concerning custody of children<sup>9</sup>.**

Therefore, this report tries to outline how, within our civil judicial context, the process of secondary victimization takes shape, which originates in civil proceedings from the disavowal of violence, both when it is the object of specific complaints, and when it is not.

We have also noted that it is bad practice to almost never take into account women's complaints in cases where they are presents in the civil proceedings (whether they have had criminal outcomes or did not have them), due to the general prejudice against women. This prejudice attributes to women be carriers of manipulations and complaints of convenience to the detriment of their partners. In the case, for example, that a complaint has stored, the judges and the CTUs do not read the criminal documents to better understand the situation that determined both the allegation and the storage.

The judge, in civil matters, does not read the documents or does not take them into consideration, even when there are outcomes in the penal area, because there is a common sense, wrong principle, which is why a father is not considered an author of violence until he is convicted in the third degree of judgment (Court of Cassation). Until then the principle of innocence is valid with serious consequences of re-victimization of women and children, victims of direct violence and witnessing violence.

For this reason, we frequently find that, in the civil courts in Italy, are not taken into consideration: a precautionary measure and / or even a conviction at first instance or the risks and the concrete consequences of the re-victimization during a criminal procedure still in progress.

**Example**

An example of how the civil court or for minors does not take into account the criminal outcomes we find in this sentence issued by the Juvenile Court of Trieste in 2013:

Noting that (...) the criminal proceedings against Mr. AA ended with the conviction of Mr. AA by the GUP of Trieste on 16.12.2011 (attached) to the penalty of 6 months of imprisonment for the violation of Article 572 c.p., "Maltreatment in the family or towards children. Anyone, except in the cases indicated in the preceding article, mistreats a person in the family, or a minor in the fourteen years, or a person subjected to his authority, or entrusted to him for reasons of education, care, supervision or custody, or for the exercise of a profession or an art, is punished with imprisonment from one to five years".

Nevertheless, a considerable conflict between both parents was noted, which will be a safe source, if not limited, of profound discomfort and disturbance for the daughter, prescribing to the Mr. AA and Ms. BB to report with immediacy and of their own initiative to the Social Service of the Municipality of Trieste and to follow the indications in support of their parenting skills, under penalty of more serious limitations of their parental authority.

The objectives of criminal justice are not complementary to the objectives of civil justice that requires - especially with regard to children - stringent times and rapid decisions in their 'supreme interest' that in the light of the CdI is also to be protected by a father very likely maltreating.

<sup>8</sup> S. Meier, Research indicating that the majority of cases that go to court as "high conflict" contested custody cases have a history of domestic violence, George Washington University Law School

<sup>9</sup> Janet R. Johnston et al, *Allegations and Substantiations of Abuse in Custody-Disputing Families*, Family Court Review, Vol. 43, No. 2, April 2005, 284-294, p. 284.

That the objectives of the two procedures, criminal and civil, are different, it is reminded *ad abundantiam* by the Corte di Cassazione (see Box Pen, section III, sentence 5 May 2010, No. 29612), when it affirms: "**This Court has repeatedly stressed that in the criminal trial there is, in probationary matter, the rule of proof beyond reasonable doubt, where the different rule of the preponderance of evidence (or of the most probable) is in the civil trial "**

Within this framework it has been possible to evaluate how the civil court and that for children as a whole have in no way accepted the dictates of the Convention, so much so that only in a minority of cases appear signs of their modification to accept the requests - of protection for themselves and their children - of women victims of violence. Furthermore, there is also the continuation of stratified and inappropriate procedures (supported by real lobbies of consultants) that hinder the emergence of violence in our courts and penalize women victims of violence and their children.

Below we will proceed with a detailed analysis of the behavior of the civil court and for minors, broadly assessed on the basis of qualitative guidelines and estimates verified in the contexts represented by the subjects who signed this report. These guidelines and estimates are to be considered majority, ie, present in 70 to 80% of the cases handled by our courts, as can also be seen in the latest report by the Superior Council of the Judiciary on the practices of judicial sections on domestic violence<sup>10</sup>.

**In all the cases there is** an absolute lack by the investigating judge of a preliminary assessment, based on the reading of the documents of the case, on the presence of gender violence as identifiable by the articles: 33, 34, 35, 36 of the **CdI**. No procedure has yet been identified on the national territory to discriminate against the so-called cases of conflict between couples and those in which there is evidence of violence (complaints, reports, etc.).

In this regard, there is no good practice to include violence in the first assessment of the investigating judge (directly or with an expert on violence against women<sup>11</sup>) using a methodology used in other countries such as the Canadian model in force at the Australian courts PPP: (Potency, Pattern of violence and Primary perpetrator)<sup>12</sup>.

**In the vast majority of cases** the judge proceeds with delegated listening to the technical consultant invested, through the queries, of a decision-making task; in most cases, in fact, the questions of judges also include the request for an opinion about the best ways of children custody and about the measures to be taken towards the two parents.

---

<sup>10</sup> CSM ( Superior Council of the Magistrates) Report on: "Results of monitoring on the issue of gender violence, organizational solutions adopted by the judicial offices and statistical analysis of the collected data" Rome April 12-13, 2018

<sup>11</sup> An integration must also be made to art. 61 cpc when it comes to lists of experts from which to draw the names of the CTUs, these lists must also contain experts on gender violence against women.

<sup>12</sup> Family court of Australia , Family Violence Best Practice Principles, Fourth Edition. Commonwealth of Australia 2016.

[http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/family+violence/family-violence-best-practice-principles)

[publications/publications/family+violence/family-violence-best-practice-principles](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/family+violence/family-violence-best-practice-principles)

JAFFE P.G., JOHNSTON, J. R., CROOKS C.V., BALA N., *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, Family Court Review, vol. 46, issue 3, 2008,

## DISCUSSION

**Our analysis - on the behavior of the Judges of the civil court and on the office technical advice - include the following fields of investigation:**

- 1. the main questions of the judge**
- 2. the prevalent procedures and guidelines of the CTUs**
  - a. to. tests and profiles / personality diagnosis
  - b. parental evaluations
  - c. interview with minors
  - d. opinions and conclusions

Our report then continues with the qualitative analysis of these fields of investigation to detail and make visible immediately the process of concealment and denial of violence against women in our courts, as well as show the ongoing breach of the indications of the Istanbul Convention.

### **1. THE MOST COMMON QUESTIONS OF THE JUDGE**

**The judge's questions** vary around the following topics:

- **In all the cases followed by the extensor subjects of this report**, no question has ever been asked of the CTU to evaluate the distinction between violence and conflict (even where there are reports and technical reports of the health service or anti-violence centres) but the conflict (as it emerges in almost all cases) is always presumed by the judge; while for the statistics concerning the spread of violence against women, violence in so-called conflicting or highly conflicting separations should be presumed to the contrary.

We can bring (only for example how this presumption of conflict is misleading) the Australian research that has investigated since 2000 the presence of domestic violence in cases called high conflict, and it has been estimated that the separations contained between 50% and the 75% of cases have documented that violence has not been considered in the process. (An analysis of Family Court of Australia was found in 75% of judicial cases)<sup>13-14</sup>.

- **In all cases**, therefore, the questions always presuppose only the existence of conflict and introduce the prospect of a mediation to be done also in the course of consulting by the same CTU, to resolve the conflict. The questions then focus on issues shared with a specific class of professionals (psychologists, child psychiatrists) that in Italy have formed a very cohesive group, a real lobby that launched in 2012 its own guidelines contained in the Milan protocol<sup>15</sup>

---

<sup>13</sup> Moloney, L. et al. (2007) *Allegations of family violence and child abuse in family law children's proceedings*, Research Paper No. 15, May 2007.

<sup>14</sup> Braaf, R., & Sneddon, C. (2007). *Family Law Act reform: The potential for screening and risk assessment for family violence* (Issues Paper No. 12)

Cleak et al. (2014) *Efficacy of family mediation and the role of family violence: study protocol*, BMC Public Health 2014

<sup>15</sup> [http://www.psicologiagiuridica.eu/phocadownload/didattica/protocollo\\_milano.pdf](http://www.psicologiagiuridica.eu/phocadownload/didattica/protocollo_milano.pdf)

(with relapse into other technical documents<sup>16</sup>), today a point of reference for many Italian professionals and courts.

- The type of questions is as follows:

- 1) accurate observation and psych diagnostic evaluation of the personality structure of the parents, presence or absence of pathologies;
- 2) assessment of the conditions of distress of children, and investigation of the context of life;
- 3) assessment of current relationships among family members and of the extended family too;
- 4) possible existence of prejudicial behaviors or attitudes on the part of parental figures with reference to conditioning behavior (with the specification or not of a parental alienation, PAS, AP or other similar constructs);
- 5) evaluations on the best custody, even in the external environment (family home), if resistance is found to modify the conflict with penalization (exclusion from parental responsibility) of the parent who does not respect the criterion of facilitating the access of the child to the other parent;
- 6) identification of an appropriate or necessary therapeutic and / or educational program for all interested parties; identification of bodies and / or structures appointed to implement this program in the medium to long term, or, instrumentally, in a shorter term; eventual scheduling of visits by children with the non-custodial parent (the father generally) and experimentation with the modalities of placement and visit deemed appropriate in the interest of children.

- **In all cases**, no reference to domestic and/or assisted violence is found among the questions. Moreover when the *incipit* of the story in a judicial context (always evaluated as that of conflict) is the request on the part, of a father who complains about the injury of the right of access, we have a premise to the questions like the following:

*" noted that the situation of ... daughter of the parties in question, needs further investigation, because of the findings made by the respondent that shows a concrete attitude excluding on the part of the applicant, thus interfering in the father-daughter relationship thus interfering in the father-daughter relationship also with the perspective to negatively affect the future evolution of this relationship "*

As clearly emerges from the examination of these prototypes of questions, the only evaluation that emerges, impeding fostering, is not domestic violence but the behavior of a parent, almost always the mother, characterised by 'conditioning or manipulation' (PAS - Parental Alienation Syndrome or AP - Parental Alienation - that have been disregarded as scientifically valid constructs by the international scientific community and our health ministry).

**The manipulation or conditioning appears to be the main and perverse instrument used in the concealment and denial of violence when a minor refuses to meet the father: his report will not be considered valid and it will oppose the assessment that the child is conditioned to refuse the father, whatever his concrete and direct experience of that father and his violence has been.**

---

<sup>16</sup> The same group of experts in systemic-relational orientation has launched other widespread documents on the defense of the bi-parenting right, riding on theories like the PAS and not considering in any way violence against women: that is: " *The pronouncement of psychologists and Forensic psychiatrists on the subject of obstacles to the right to bi-parenting* "of 21 October 2012; and the Civitanova charter of 2013: "*legal guidelines for the application of judicial decisions regarding the protection of the relational rights of the child*".

In conclusion this type of **questions of Judges** is aligned to a psychological knowledge shared by the experts who make **the technical consultancy of the Office - the CTUs**. **Both of them (Judges and CTUs)** adhere to the perspective inherent in the guidelines, contained in the Milan Protocol, which exclude the reference to domestic violence and take the moves only from the right to bi-parenting, thus becoming instruments of serious secondary victimisation.

**There is therefore a need that the questions of the judges (in case it is necessary to resort to a Technical Consultancy) are reformulated in their usual system to embrace the occurrences of violence as defined by the CdI in Articles: 33, 34, 35, 36.**

**There is also the need for some changes to be made in the civil code (with regard to the choice of CTUs with expertise in this specific field) to articles: 61, 116, 191 of the Code of Civil Procedure.**

## **2. PROCEDURES AND PREVALENT ORIENTATIONS OF CTUs (technical consultancy of the Office)**

- **The procedures of the CTUs** in most of the cases detected by the realities of the relationship, follow the criteria of the Milan protocol.

Although it is clear in the Milan protocol that it applies to cases of conflict, no CTU implements a preliminary distinction between conflict and violence before using the indications contained in the protocol, acting (as did the judge in asking the questions) in a context in which it is assumed **that there is no violence**<sup>17</sup>

The Milan protocol is supported **by a pronouncement of about 70 experts**<sup>18</sup> in the evaluation of custody (much listened to in our courts) in which the reasons for refusal of a child to a father are systematically mystified as a feature of highly conflicting relationships, without making any differentiation between violence and conflict:

*"The phenomenon of the child disputed and" deployed "in defense of one parent against the other is, unfortunately, very frequent in separations characterized by a high conflict in which the partners, also because of their personality characteristics, fail to developing the separative event in an evolutionary and reflective way".*

It is clear that this approach resolves the conflict and therefore also the submerged violence in a question of personality characteristics, preventing that fundamental reading of violence which is the abuse of power of one partner over another.

**The Milan protocol itself is not applicable to cases of domestic violence because it is based on systemic-relational theories (but also psycho-dynamic) that do not provide for a disparity of position between the two individuals of the couple, as the CdI indicates that happens in domestic violence. In fact, it explores the context by placing victim and executioner on the same level with all the methodological errors that derive both in assessing personality profiles and parenting skills, and using methods of direct confrontation between victims and perpetrators absolutely inadvisable in domestic violence (joint interviews, cooperation in tests, etc. etc.).**

---

<sup>17</sup> Only the Guidelines of the Order of Psychologists of Lazio for listening to the minor in separations and divorces, which still resume the lines of the Milan Protocol, refer to domestic violence but only with regard to the non-application of joint interviews in cases of serious violence.

<sup>18</sup> *The pronouncement of psychologists and Forensic psychiatrists on the subject of obstacles to the right to bi-parenting* "of 21 October 2012.



**a. Personality tests and profiles / diagnosis**

**In all cases the CTUs use two types of tests** to assess personality profiles from which they also infer parenting skills. The tests used are projective and not projective<sup>19</sup>. Among the projective test always present we have the Rorschach test (free interpretation of unstructured images, ink spots), the TAT, the thematic ‘appercezione’ test (free interpretation of structured images), the drawing.

As a non-projective test, the one most frequently used, is the Minnesota Multiphasic Personality Inventory (MMPI) of Hathaway and McKinley which is a multiple choice questionnaire related to experiences, physical conditions, habits, attitudes and recurring thoughts of the subject.

These tests do not have the capacity to evaluate the situational condition of the subject (the tests that measure the reactions to traumas are more appropriate) and create a confusion between what is a basic personality profile and what is a current condition in which a person as a response to a trauma.

The National Council of Juvenile and Family Court Judges states that tests, including projective ones, cannot be valid to indicate the victim's basic personality profile that is obviously veiled by the traumatic experience experienced. It states that in determining the relevance and reliability of psychological tests, the following must be considered:

"In general, the use of psychological tests is not appropriate in situations of domestic violence. Tests can inappropriately diagnose the normal response of the non-abusive parent to violence as a demonstration of illness or personal dysfunction, shifting attention away from behavior of aggression and coercion of the abusive parent "<sup>20</sup>.

"Personality tests (such as the Minnesota Multiphasic Personality Inventory - MMPI-2, but not limited to projective tests such as TAT and Rorschach) are not evaluated in light of the psychic outcomes of violence such as those of a DPTS (post -traumatic stress), the MMPI-2 in fact includes many questions that in a woman mistreated (if the answers are given accurately) will help to provide high scores in some scales that evaluate paranoia or other disorders such as questions about the perception of being followed, the responsibility of your state referred to third parties. Maltreated women tend to have very high scores on MMPI for anger, alienation and confusion, and rather high scores for paranoia and fear, with low scores for integrity and force of the ego. It has been observed that the results of the tests are sometimes used successfully by a violent person to discredit the words of a woman who suffered the abuse, even if there is independent evidence of its violent behavior "<sup>21</sup>.

<sup>19</sup> We remember the difference between a projective test and a non-projective test: the projective test is organized on ambiguous, unstructured stimuli to which the subject responds "projecting" the characteristics of his psychological functioning; the non-projective test, on the other hand, is organized with structured material, which can be understood by the subject who is usually asked to respond in a binary form to a question

<sup>20</sup> DALTON C. ET AL., *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide*, National Council of Juvenile and Family Court Judges, 20-21, 2004, revised 2006; [http://www.ncjfcj.org/sites/default/files/navigating\\_cust.pdf](http://www.ncjfcj.org/sites/default/files/navigating_cust.pdf)

<sup>21</sup> POPE H.S., BUTCHER J.N. E SEELEN J., *The MMPI, MMPI-2 & MMPI-A in Court: A Practical Guide for Expert Witnesses and Attorneys (2nd ed.)*, 2000

These tests are also used incorrectly to obtain assessments on parental skills compared to the indications of the A.A.C.A.P. (American Academy Child and Adolescent Psychiatry)<sup>22</sup>.

Many of the results of these projective tests that do not hesitate in most cases in anything pathological, are used as a cudgel against the woman to confirm the parental inability deduced of elsewhere: the prejudices of the CTU, elements of the interviews and above all behaviors of failure to comply (on the part of women victims ) with CTU proposals to mediate and share parental responsibilities even with abusive partners.

**In short, the diagnoses in most cases do not detect any pathology but only dysfunctionality. For the abused mothers, however, there are many possible psychological codings that attest to their personal and relational dysfunctionality and that mark them as anxious, hyper- protective mothers, or in case of sexual abuse as mothers who operate an anxious misunderstanding and see abuse where there are not. The CTU in these cases states that: 'It is due to their anxious character or due to unresolved problems with their sexuality'!**

Excerpt from some CTUs: "Mrs. B. presents strong introversion and affective egocentrism with an attention to the surrounding surface world and adherence to stereotypes with essentially defensive purposes. There are unresolved problematic issues concerning the sentimental-sexual sphere".

"Ms F. has a poorly structured personality characterized by massive depressive-abandoning attitudes. It is not always able to cope with the frustrations and difficulties of life and often is not able to find adequate and compensatory answers often resorting to a narcissistic and anti- depressive mental functioning absolutely inadequate for the management of children ".

"Mrs R. is a woman in need of affection and attention from others, dependent and in need of care. It emerges that she denies negative feelings towards others that actually exist, with a general concern about its efficiency; there is also a tendency not to be particularly sensitive to the ideas of others, often irritable, with precise opinions to be defended vigorously, as happens in the interview. There is also a difficulty in tolerating frustrations, preferring action to reflection; a woman who is characterized by a strong control on the emotional sphere, with difficulties in relationships interpersonal and lack of energy in dealing with the environment, also because of the lack of self- confidence".

In most cases the personality profiles of mothers who hesitate from counseling are always lacking without being pathological and the tests serve only to support the preliminary rulings of the CTU on the shortcomings of women also taken from the interviews. In the individual and couple interviews, in fact, the women victims claim to have been mistreated and that the cause of the end of the relationship was just the maltreating behavior of the partner. These statements in a systemic relational logic (which looks at the couple as co-responsible for the dynamics that are created in it, and therefore also in the violence) or psychodynamic (which looks at intrapsychic factors with little relation to external stressors such as violence) they pose negatively for the woman (victim) because they would show her affective immaturity, self-centered and closed in her own experiences with the inability to grasp the needs of others (her children) and perspectives different from her own as that of mediation with the violent partner. Often women are charged with the inability to work out the mourning that the end of

---

<sup>22</sup> *Practice Parameters for Child Custody Evaluation*, C.8 (pag. 65S). Psychological tests, such as the Minnesota Multiphasic Inventory, the Thematic Apperception Test or the Rorschach are not designed for use in parenting assessments

the relationship would entail and for this reason they would be inclined to keep up the conflict.

Excerpt from a CTU: "The father stigmatizes the mother with the technical definition of "malevolent mother".

The mother stigmatises the father considered aggressive and dangerous for himself and for the children ... in the individual interview did not emerge any idea of possible opening to the presence of the other in the life of the children ... Not having yet overcome the prejudice about the dangerousness of her ex-husband can not see in him aspects, which are still present, of effective fatherhood ".

Yet another CTU: "the first report of stalking and the subsequent denunciation for suspected sexual abuse cannot be considered a root cause of separation, which dates back to the previous era, the complaints are rather in course of a separation in particular in the moment in which the definitiveness of the same obliges the protagonists to a painful work of elaboration of mourning and personal experiences of failure ".

It is clear that if a woman, victim of violence, arrives at a CTU, she first wants to clarify what determined her decision to separate and ask for exclusive custody, but this does not concern the CTU that is oriented to deny violence, to consider that the complaints and the narratives of the violence respond to other goals or to intra-psychic problems of women and are therefore instrumental at the conscious or unconscious level.

For example, we report in the conclusion of a CTU this statement: "*Ms R. has psychologically conditioned, directly / indirectly and voluntarily or involuntarily, the child to erase the father figure*".

In some verbal warnings of presidents of the court section or in public appeals such as that of the head of the Udine prosecutor, dott. Biancardi in 2013, there is an indication *contra legem* not to report the crimes that take place in the family because this would harm children<sup>23</sup>. This fallacious and illegitimate principle is also present in some CTUs, where clear indications have been found to dissuade women to file complaints or to cultivate them.

#### **From some CTUs:**

"The couple needs to be initiated as soon as possible to a path of support and enhancement of parenting skills, the latter in fact, although sufficient and adequate in terms of care and physical care, have appeared lacking on the side of understanding and attention to the emotional needs of the children, this also because of the current high conflict heightened by the criminal proceedings of the affair that prevent "an adequate and fruitful" communication of the parental couple, even with regard to the needs of children".

"The same CTP of the lady ... informs the CTU that his assisted has not proposed opposition to the PM's request for dismissal of the criminal proceedings that sees her as party offended against Mr. B. These positions of Ms...are an opportunity to open up to a more vital and constructive perspective, which will be in favor of the relationship with itself and, above all, with the daughters".

---

<sup>23</sup>From the Venetian Messenger, local news, 23.10.13: "*Even if you think you're right - said the chief prosecutor of Udine -, you should avoid taking the road of criminal complaints*"

## b. Evaluations of parenting

- **In all the cases that have been followed by CTUs**, as far as parenting is concerned, attention is focused on relational behaviors being consulted. The CTUs only seek to discriminate against the behaviors that are resistant to the interaction with the partner and the behaviors that prevent one parent from accessing the child to the other partner.
- The inability that the CTU constantly report in women, when unrecognized victims of domestic violence, is given by "the conduct aimed at obstructing the exercise of the right to bi-parent hood that are reprehensible and can sometimes configure a mistreatment towards children"<sup>24</sup>.

From excerpts of CTU: "In the case of Ms ..., in the current condition found, it emerges the tendency not to favor **access to the father** and his reference network, not to structure a collaborative relationship in terms of co-parenting requirement envisaged between the competences of parenting ("**criterio dell'accesso**", Cigoli et al.)".

"There is a constant act of denial of the paternal role on the part of the lady ..."

It is clear that the victims of violence cannot mainly meet **the criterion of access or friendly parenting** and are forced (more or less under 'blackmail') to adapt to avoid losing the right to parenting.

- But it is not only necessary to respond to the access criterion, but also to visibly show forms of sharing and positive disposition to the relationship with the ex-partner (for example, also the way to greet the partner is observed).

From excerpts of CTU "the lady will remain motionless throughout the duration of the meeting immediately moving away at the end of the same, taking with her children without any nod greeting to her husband and without ever addressing him, behaving as if he did not exist"

To our question "why did you not say goodbye?" The lady replied: "I greeted in general, the doctor perhaps expected me to give him his hand, what did he expect?"

In this context the current or previous complaints are not well assessed. A woman who is a victim of violence if she does not want to lose her children's custody must renounce to report her partner when undergoing counseling (whatever has happened) and must be available to stop previous complaints. The indications of CTUs are implicitly and explicitly oriented to deterrence to prosecute / cultivate criminal charges during counseling or civil proceedings, perceived both by the CTU and by the judges as impeding the pacification of what is presumed to be only a family conflict.

**There is often the attempt by CTUs to persuade women resistant to mediation to find an agreement for shared custody, to change their position and beliefs, denying the experiences of abuse and violence suffered by them or their children.**

From excerpts of CTU - Mrs. F. *"if it is ascertained, said the expert, that her husband did not have really negative attitudes changes his position towards her husband? R. if elsewhere it ensures that my husband has not done nothing I would not change my position because I'm*

<sup>24</sup> The pronouncement of psychologists and Forensic psychiatrists on the subject of obstacles to the right to bi-parenting "of 21 October 2012

*sure of what I saw and nobody was there with me to see ... " - Ms. G. "The belief of Mrs. G. remains, said the expert, on the danger of Mr. L. who has left no margin for any mediation between the parties, despite the attempts made for which remains the only solution that entrust to thirds of children ...*

In the evaluation of parenting, the behavior of the child also has great weight. If the child obstinately rejects the father, the meetings with the father, or if he shows signs of disease, everything will be imputed to the maternal conduct and its inability to favor the restoration or the construction of the bond with the father.

**All parental competence is measured around the principle of friendly parenting, available to the partnership of the other, something that women victims of abuse and violence can not guarantee, so in the majority of cases are penalised.**

**The criterion of *friendly parent provision*<sup>25</sup> creates a vicious circle:** if a battered woman denounces the partner, the complaints are considered in themselves (by judges and CTUs) as a symptom of a war to destroy the partner with repercussions on the children. The paradox is therefore that the reports of violence presented in the civil court to support the request for exclusive custody or the decadence of paternal responsibility, become for themselves the main obstacle to obtaining such measures!

**The principle of friendly parenting contrasts with the legitimate request of women to protect themselves and their children from violence. This principle should be dismissed in judicial practices within our courts because in contrast to the Convention and with our penal code.**

### c. Interview with children

**The interviews with children in almost all cases** are not evaluated with respect to what they actually reported, but are reinterpreted in light of their alleged need (considered coinciding with the supreme interest of the child) that is to have equal relations with the two parents . All minors who complain about their father's conduct or are not represented by the CTUs to the judge, who has delegated them, or is considered in the worst case (when the child's refusal is more structured and decisive, less prone to modification) influence, manipulation and conscious conditioning of the alienating parent, which in the cases of domestic violence is represented by the mother.

From an excerpt of a CTU: "During the interviews, in fact, it was found that children, moreover, under the influence of the mother and through the experience of a conflict of loyalty, reject the relationship with the father as they sacrifice access to the paternal, to his old and new world, convinced that any rapprochement in that direction becomes a betrayal of the mother"

In any case, when the minor speaks of violence and abuse attributable to the father, the responses of the CTU are mediated by interpretations that empty the violence of its own and original

<sup>25</sup> This principle was quashed by the Australian courts because it created considerable problems for the legal system as a whole, "*Family Law legislation Amendment (Family Violence and Other Measures) Bill 2011*". In Australia, today, the goodwill shown in favoring contacts with the other parent is no longer in the legal system as a parameter for assessing parental skills in the event of a child custody dispute.

meaning. In the CTU we see an emptying of meaning of domestic violence that is not reported as authentic and genuine feeling of the minor but as a symptom and attestation once more of the conflict of the couple and most of the time as maternal manipulation. **In this way falls every prerogative of listening that the various Convention and laws have assured to children in the processes that concern them.**

When the child expresses refusal by confirming through his direct experience and his experience of fear the domestic violence that he suffered generally as a witness<sup>26</sup>, in most cases, the CTU, adhering to the Milan Protocol, talk about conditioning of the mother on the child for personal relationship problems with the partner. In these cases the woman is pushed (under the implied threat of judiciously losing the relationship with her children) to press the children to meet / get closer to the fathers, given the undisputed value of the principle of bi-parenting on all other values ( as Health & Safety).

**In a large percentage of cases (about half of the cases referring to a mother's conditioning) CTUs resort to the inappropriate interpretation of the Parental Alienation Syndrome, or parental alienation (AP), not recognized by the scientific community as a real syndrome, on which our Minister of Health, our Corte di Cassazione and above all the ONU report<sup>27</sup>.**

The Pas or AP (parental alienation) is supported by the psychologists of the Milan Protocol and used in various ways in their CTU reports. To date we still have another product by one of the psychologists adhering to the Milan protocol that comes to define the treatment necessary for the presumed / non-existent syndrome of parental alienation; the treatment has the name "REFARE- Reconnecting Family Relationships Program"<sup>28</sup> and is defined as "a psychological treatment of health, developed ad hoc for cases of Parental Alienation, which aims to rebalance the relationship between the rejected parent and son, following a civil dispute of marital separation ". This is a further dangerous escalation of the psychological lobby to

---

<sup>26</sup> But not only as a witness, we know in fact from the international statistics that exists and it is well documented an overlapping between domestic violence on the mother and direct physical, psychological and sexual violence against children.

<sup>27</sup> - **Italian Government response to the UN investigation on gender violence in Italy**

*Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo Addendum Mission to Italy: comments by the State on the report of the Special Rapporteur*, 2012, para 145 [www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add6\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add6_en.pdf)

- **Italian Minister of Health's reply to the parliamentary question on the PAS n. 2-01706 del 16 ottobre 2012 seduta n.704, avanzata dall'On. Antonio Borghesi**

[http://www.antoniorborghesi.it/index.php?option=com\\_content&task=view&id=537&Itemid=1](http://www.antoniorborghesi.it/index.php?option=com_content&task=view&id=537&Itemid=1)

- **Document of AEN (Asociación Española de Psiquiatría)**

([http://www.aen.es/docs/Pronunciamento\\_SAP.pdf](http://www.aen.es/docs/Pronunciamento_SAP.pdf))

- *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) DSMV V dell'APA (American Psychiatric Association)*

- **APA (American Psychological Association) 2008. Statement on Parental Alienation Syndrome.**

(<http://www.apa.org/news/press/releases/2008/01/pas-syndrome.aspx>)

- **Prof Mencacci C. President of the Italian Psychiatric Society**

(<http://rassegnastampa.unipi.it/rasseгна/archivio/2012/10/15SIB1075.PDF>)

- **Rivista Update, dell'Istituto di Ricerca dei Procuratori Americani (APRI)**, agenzia dell'Associazione Nazionale degli Avvocati Americani ([http://www.ndaa.org/ncpca\\_update\\_v16\\_no6.html](http://www.ndaa.org/ncpca_update_v16_no6.html))

- **Judgment of the Italian Supreme Court** (Cass. Pen. n. 7041 del 20/03/2013).

<sup>28</sup> **REFARE – Reconnecting Family Relationships Program** of Marco Pingitore

<https://www.marcopingitore.it/refare-program-alienazione-parentale/2203/#refare>

safeguard bi-parenting, without examining the frequent cases in which the rejected parent is the author of domestic violence and therefore also of violence assisted by children.

- **In all the cases in these CTUs there is no reference to witnessing or direct violence to frame the child's refusal of the father.** The interpretative approach of the reported minor in these CTUs translates into an objective misrepresentation with serious consequences on the decisions of the judge. Here are some concrete examples of these misrepresentations taken from expert opinions on custody:

- *"my father beats me often, with very strong beatings and without reason ... when he is nervous"* The interpretation of the CTU, not accompanied by the minor's report (the records are in the proceedings but obviously do not come to the reading of the judge who reads only the report of the CTU in civil) is textual: *"strict and normative educational methods"*;

**Outcome: shared custody.**

- *Again: "my father washes me when I'm with him but puts a finger inside the plaice with a lot of soap and it hurts me ... I tell him... no no ... and I cry every time he says sorry ... sorry I will not do it anymore and then he forgets- ... "He is scordarello" .. "The CTU's interpretation:" clumsy practices "*;

**Outcome: filing of the complaint made by the mother blamed for excessive protection and anxious misunderstanding.**

*"I want to be with my mother, because it is not that I hate my father to death or loath him. I did not talk to him when he was at home I could not stand him because he not only beat my mother, but also me and my brother, sometimes he beat me even for things I had not done and I was sick ... it was that he knew I had not done anything but he beat me the same ... now in these meetings I no longer hate like before" (this 16 years old teenage girl has been living in a family home for the past two years away from his father and his mother, both decayed as a parental authority, after a complaint of the mother to father for abuse on his daughter and with hospital reports proving the mistreatment).*

**Outcome: the girl expressed her desire to be with the mother of which she tells the CTU: "good, in everything is close to me"; but the CTU indicates that the best custody is to father, totally ignoring what is clearly expressed by the minor; as a consequence of the CTU, this assignment to the father, contrary to the will of the minor of 16 years, was ordered in the sentence of judge.**

#### d. Final opinions

- **The final opinions in the CTUs are never calibrated on the discrepancy between conflict and violence. They are therefore mainly oriented towards shared custody, the freedom of access of fathers to their children, and also paradoxically, for a limited number of cases, to exclusive custody to maltreating partner, when women resist, to protect their children, to mediation and to friendly parenting.**
- The CTUs conclusions report their observations on personality profiles and parental skills measured on the dominant criterion of access, which is increasingly less favorable to women for the reasons we have said, as women are offended by a violent behavior on the part of the partner and less available to the interaction, moreover considering (unlike the CTU and the judge) that protecting the children from the violent partner is part of their parental competence. Since there are no pathologies to detect obstacles to recovery pathways, the

CTUs almost always end with an opinion on shared custody accompanied by a package of measures to reinforce co-parenting.

These shared custody measures are proposed, even though there remains a conflict that does not tend to decrease; when the conflict is assessed as practiced by both parents, the proposed measures of both psychotherapy support and mediation will be equally arranged for both.

*Examples*

*From a report of CTU: "On the basis of what is observed and written above it is considered essential that spouses undertake a **rapid psychotherapeutic path to resize personality characteristics that clash with their parenting ability, associated with a path of mediation of the fundamental conflict to ensure the bi-parenting to both children.** If these paths cannot be guaranteed by social services, and therefore monitored directly, it is advised that the social services are to monitor whether the spouses will comply with what is indicated, whether they go to an ASL, a UOMI or private individuals, since the CTU has some doubts regarding the adherence to the indicated routes, if shared by the Judge "*

*From another report of CTU: "**A resentment that persists further between former spouses is certainly a factor of great psychopathological risk for S. and so it is essential to think of a common path where the parties are committed to work in the perspective of a peaceful recovery of the father / son relationships and if they do not feel capable, to be helped by a personal psychologist, but it is unthinkable that in the face of the risk of psychopathology for a child do not activate in this sense and therefore the limitations of parental responsibility that this Juvenile Court should decree upon the outcome of a failure of the aforementioned path would be fully justified**".*

**In all the CTUs there is** always the reference to measures that provide for the mediation that in the case of domestic violence is not feasible because it exposes the woman and the children to a security risk **as indicated by the art. 48 of the CdI** which explicitly prohibits the use of alternative methods of conflict resolution (mediation or other).

**In contrast to the CdI**, when women, victims of violence, do not accept (or do not accept in the right ways) the mediation and the establishment of free and unprotected father-son relationships, and talk to the CTU about the risks that children might run with the father for the dangerousness of the relationship shown in the past, are excluded from parental responsibility and the children are given in custody, without ifs and buts, to the father whatever has been his previous behavior.

*Example*

*From an excerpt of CTU: The skills and parenting skills of Mr. ... they are sufficiently adequate and can benefit from adequate support. The skills and parenting skills of Ms ... they are absolutely inadequate **and cannot benefit from adequate support because they were lived by the lady as imposed, useless and substantially rejected by her.***

*- in this case we also report the sentence of the judge as a model of that practice that wants the transfer in sentence of the conclusions and conclusions of the CTU: Given the favorable opinion of the PMM, **declares A.F. lapsed from parental responsibility on her minor children and revokes the decadence of the responsibility of the father to whom the children are given in custody** "(in presence of criminal proceedings of the father for mistreatment )*



In the case in which there is a refusal of children to the relationship with the father and considers the active mother responsible for this refusal, given also his statements about the danger of the father-child relationship, especially if there are also reports / suspicions of sexual abuse (diagnosis of parental alienation, pas conditioning or other), **the CTU's proposal is: the removal from the mother as a conditioning parent, the transit to a structure where to make the deconditioning, and then super-exclusive custody to the father**

#### *Examples*

*From an excerpt of CTU: Mrs. G. in the last meeting, despite our attempt to reassure her about his legitimate concerns of mother, he firmly reiterated that he disagreed with any kind of restoration in the father-daughter relationship, reaffirming everything that the girls would have told. Actually we believe it is possible to work to lower the level of conflict between the parents only on the condition that the current family structure revolves creating a right distance, even physical between parents and daughters in order to start a new therapeutic process that involves the whole family and should include:*

- temporary assignment of children to social services and inclusion in a family home; with free access to the father and protected meetings for the mother in a second phase;*
- a path of family mediation between parents;*
- Individual paths of parenting support for both parents.*

*We quote this other court ruling at the outcome of a CTU as a paradoxical sentence of the inversion of the roles between victim and executioner (case of a mother who reported her husband for mistreatment, and children undergoing counseling reveal to the CTU of Immediately the CTU informs the judge and places the girls who were with the mother separated from the father, in the family house assuming a parental alienation behavior on the maternal side!) "In light of the improvement of the father's relationship with the daughters and of the progressive acquisition of the father's awareness of his parental deficiencies (the daughters had accused the father of abuse!) of the suffering of the daughters and the need to support their individual path of care in the interest of girls, in order to accompany them in a path of reparation for the damage suffered (by him !!!), it seems appropriate to dispose of the placement of children currently resident in the family home at the paternal home ".*

*And again the provisions on the victim mother: "The meetings of children with the mother instead they will continue to be regulated exclusively with protected methods and observed with the right to suspend in the event of injury. It is not appropriate to issue a provision for the revocation of parental responsibility with respect to the mother of minors, taking into account that if it is true, serious parental inadequacies can be found (at the beginning the woman, like all the victims, opposed father-daughter contacts) , however, the mother has shown, especially in recent times, to begin to understand her responsibility for the serious family events that occurred and in the etiology of the discomfort of her daughters, as evidenced by the fact that she started an individual psychotherapeutic treatment and in place of the hearing confirmed his adherence to a possible placement of minors with his father ".*

Here we report what was theorized in the paper of Civitanova<sup>29</sup> by the group of technicians of custody that today in Italy (as we have already said) constitute for our courts the referents for disputes of custody *"In the event that a parent obstructs and / or opposes the exercise of the minor's right to bi-parenting must be promptly reported to the Judicial Authority, which may implement administrative, civil, possibly also sanctions, penalties, such interventions must be*

<sup>29</sup> [https://www.ausl.bologna.it/asl-bologna/dipartimenti-territoriali-1/dipartimento-di-cure-primarie/il-faro/centro-doc/centro-di-documentazione/per-i-professionisti/area-sociale/carata%20civitanova%201.12.12.pdf/attachment\\_download/file](https://www.ausl.bologna.it/asl-bologna/dipartimenti-territoriali-1/dipartimento-di-cure-primarie/il-faro/centro-doc/centro-di-documentazione/per-i-professionisti/area-sociale/carata%20civitanova%201.12.12.pdf/attachment_download/file)

*timely in order to prevent the situation from becoming rooted and stabilized. In case they have been arranged neutral meetings between one of the parents and the son / daughter, any difficulties and wastes will have to be addressed not through coercive measures against the latter but by adopting prescriptions and / or sanctions also punitive to load of the parent who refuses to cooperate and facilitate the passage of the son/daughter to the other parent " .*

### ***Final testimony of a mother in front of the CTU in the parental meeting called 'restitution'***

In the face of everything we turn the statements of a mother put on record in a meeting 'restitution', meetings that the CTUs do with the parental couple before closing the consultation in the last attempt to find a mediation agreement. This is the case of a battered mother who in the process of separation received the confidences of her daughters about her father's behavior of sexual abuse. Due to the mother's resistant attitude, which can be seen in the statements below, the CTU has requested the placement of the girls in the family home.

*"I believe in my daughter R. her revelations have always been spontaneous and according to times not preordained, accompanied by emotions: either suffering (for ill-treatment) or nostalgia for sexual games.*

*I have no reason to blame my husband for things he did not do. My separation proves it: I separated consensually even if I was mistreated by him, because I thought, after several failed attempts, that this was the best solution for everyone. One does not accuse a husband, father of his own daughters, if one does not think that there is a very high stakes: the health or the life of the daughters themselves. I have chosen to be on their side, not to be intimidated, even if I know that I will have to pay a high price: I depend on my husband economically and are in some way subject to him, at any time I can even find myself without financial support. No one can think that I have decided such a serious thing, for rancor, or to keep my daughters all for me. No mother would be able to give such suffering to a child! No mother would induce her daughter to tell stories like this destabilizing!*

*Or at least not me. For me too, this experience is traumatic, because I could not or would not have thought of my husband. However, there are records filed and anyone will listen to them, can judge the spontaneity and truthfulness of the stories.*

*The difficulty of assuming a position*

- *On one side there are the little girls who ask me to see their father, saying, however, like R., that they are ready to be beaten again because what the father does is right, or that they miss his father because only he knows how to make pampering and special games, including that of the pea. What should I do? Adhere to their requests and give them back a relationship with their father that could be devastating for them?*
- *On the other side there is a father who asks to see the girls, who has not seen them for many months, but a father who does not admit his faults, who is not willing: to change, to undergo, for the good of girls, to a treatment, to repair the damage done, to admit that he was the first to suffer violence from his father as a child. What guarantees are there in re-entrusting the girls to this father who evidently thinks that those educational systems, beatings and anything else are right, and that it is normal to involve the girls in those games? As a mother, as a housewife, who has no psychological knowledge, I say "No" to the possibility of reuniting girls with their father, not even to protected visits, because I know that seeing the father, intimidating them, and it would re-enter into the logic of silence, while they still need to speak; because I feel, I understand that other things have not told me and above all the smallest is still silent.*

*From this point of view of a mother, I see only the maintenance of father-daughter separation, as protection of my daughters, together with the continuation of the psychological treatment of R., and the beginning of a treatment also for G, for the time necessary that the technicians will say. Is another hypothesis possible? Then if I ask myself, or if you ask me: is there anything that could make me change my mind, and show me the things I feel differently?*

*I Answer yes, and it could only be the Court of Children, to which I turned first, when I had even more suspicion and less certainties of today, to make me change my mind.*

*But the Tribunal should assume the full responsibility by affirming, in official acts and without a shadow of doubt, that:*

- *the beatings suffered, the violent practices of cleaning, which have caused fear, crying and pain in my daughters, are parental behaviors admissible that do not create damages and prejudices against children;*
- *that letting a father's daughters play with father penis is not a sexual abuse, but a normal game or common educational practice;*
- *that all these things, sexual games, beatings and violent cleaning, have not had and will have absolutely no results and consequences on the health of girls in the future"*

## CONCLUSIONS

In light of this partial case study on the guidelines of our courts in different regions (Campania, Lombardy, Puglia, Basilicata, Tuscany, Veneto) we believe that it is necessary to introduce, as a good practice within judicial separations and litigation for custody, a selection of cases of violence from those referring to a general conflict and that this initial assessment must be the responsibility of the investigating judge.

**Where domestic violence emerges, the investigating judge can take on the task of reaching a decision, which will have to take place in the Istanbul Convention (protection of the victim mother and child couple) by listening directly to the parties including children, even with the help of a technician, or to delegate a deepening of the situation to a CTU.**

**The new measures to be eliminated/introduced under the Istanbul Convention:**

- The measure to be excluded from the start in the event that there is domestic violence is **shared custody.**
- **To be evaluated accordingly the most appropriate measures to protect women and children in the regulation of fathers-children visits** (from 'no contact', to protected visits), bearing in mind that the best interest of the child is his safety and his health together to the safety / health of the victim parent.
- **To be eliminated as a positive evaluation of parenting skills** (in case of dispute for the custody of a minor) 'good will shown' in favoring contacts with the other parent; in other words, **the criterion of access and friendly parenting must be eliminated**, as a criterion of good parenting competence.
- **To eliminate questions of judges** that refer to a preliminary ruling on conflicts of couple , bi-parenting and that indicate procedures for the mediation of the couple;

- **To declare contrary to the Istanbul Convention** the methodologies currently used in our tribunals based on relational and psycho-dynamic systemic theories or others that explicitly link to:
  - *the Milan Protocol,*
  - *the pronouncement of the forensic psychologists and psychiatry experts on the obstacles to the right to the double-entitlement and on their overcoming of 21 October 2012,*
  - *the Guidelines of the Order of Psychologists of Lazio for listening to the minor in separations and divorces, and similar guidelines from other regions,*
  - *the Civitanova Charter containing the legal guidelines for the application of judicial decisions regarding the protection of the child's relational rights, - the guidelines of the family of the court of Brindisi on the shared residence,*
  - *any type of mediation or treatment aimed at recovering the relationship of the parental couple in the course of CTU (which is in any case excluded from the Deontological Guidelines for the forensic psychologist, art.16)*
  - *any type of psychological construct who silent women and children on violence conditions*
  - *the treatment on children and the rejected parent (REFARE - Reconnecting Family Relationships Program).*

**In the case then** of delegation to a technician, the consultants' questions and procedures must be reviewed and the protocols used up to now (such as the Milan protocol and the other related guidelines) will not be applied and the CTUs must be selected by an list ( ad hoc) of experts on the issue of violence against women.

**In summary, should be considered contrary to the Istanbul convention: all types of guidelines, indications, theories agreed among private subjects outside real scientific and democratic contexts (with a broad representative participation), not subject to valid consensus conferences; in fact they proceed from a single option: the exclusive hypothesis of couple conflict in cases of separation and custody of minors, which results in the totality of cases as penalties for women victims of domestic violence.**

**The judges' questions should therefore change their sign and be oriented towards viewing violence against women and children, in the presence of formalized or non-formal complaints with the following procedures:**

- the evaluation (in-depth with direct listening to women and children victims) of the quantity / quality of violence suffered or of the risk of family violence and / or future abuse; assessment of the damage that children have suffered or are at risk of suffering;
- the evaluation of the proceedings with particular reference to reports from the anti-violence centers,
- the evaluation of the psychic status of the victims as an effect of the traumas suffered through tests able to highlight the quantity and the impact of the trauma with the exclusion of any projective or non-projective test on the personality profile. The victim woman must be diagnosed exclusively with reactive diagnoses (specifically the PTSD, the post-traumatic stress disorder) that take into account the stressful event as a cause of the difficulties. These difficulties related to violence are responses to them and therefore have a transitory character and are not part of personality profiles and disorders.
- the evaluation of the methods by which to guarantee the physical and emotional safety of the child and of the person who has reported violence (protected visits, no contact with the

abuser, revocation / suspension of parental responsibility)

- No evaluation of parenting skills because violence clearly **defines that the abuser / maltreating the woman is not a good father** because he exposes the children to the psychological damage ascertained by all the international health organizations, and because the woman as a victim needs to be helped to support the children, subjected, as witnesses of violence, at an evolutionary risk both psychological and behavioral.
- No evaluation on psychotherapeutic interventions for women, on custody minors to third parties or to family home. The call for anti-violence centers is admitted for any proposals for support to mothers and children.
- Evaluation of the abuser's ability (paid the bill with justice) to understand the damages caused to the victims, to repair the damages with compensation forms foreseen by our code, and to access a path of personal support as foreseen by the art. 16 of the Istanbul Convention.

### The CTU's new procedures

#### **CTU procedures must be based on the following methodological principles:**

- not use for the victims (women and children) of the projective and non-projective personality tests, the exclusive use of tests that measure the reaction to trauma and represent the entity and the consequences on health;
- no use of theories on the refusal of the child (to contact with the father) who deny domestic violence and attribute to mother the responsibility of the child's refusal behavior (conditioning, PAS, AP and others);
- respect for victims' security in interviews (no joint listening procedure and contacts between victims and authors);
- acquisition of the victim's report without recourse to psychological interpretations that modify the meaning of the words and involve inappropriate judgments of violence event's undervaluation, and responsibility attribution to the victims;
- no use of mediation and other similar techniques and practices of direct comparison ( such as co-parenting, etc. .);
- no use of parenting profiles including the 'access criterion or friendly parenting' ;
- introduce assessment of the risk of injury and lethality and assessment of the risk of recurrence of new violence according to internationally-coded scales;
- give priority to the measures of no contact father-child until safety for women and children is not guaranteed.

### **In support of these good practices it will also be possible to integrate the current rules of the civil code with the articles of the Istanbul Convention:**

- **Art. 330 and 333 c.c.** Transposition according to the law 119/13 of registered offences of domestic violence authors with minor children for the application of measures such as the loss of parental responsibility and other.  
The civil court learned the information of the criminal proceedings, must be able to assess these evidence (before they reach the third degree of judgment) as a conduct prejudicial to children according to Articles 26 and 31 of the **CdI**, also without recourse to a CTU aimed at examining the 'parental skills' of victims and perpetrators of violence.

- **Article 337 quater c.c.** In any case (also in those where there are not: a precautionary order, an indictment, a formalized criminal complaint, etc.) is valid the principle of the evaluation of the behavior prejudicial to minors, derived from the objective condition of children witnesses of violence domestic against mothers. In all these cases the civil court of custody must apply the articles 26 and 31 of the **CdI**<sup>30</sup>.
- **Paragraph 2 Art. 337 octies c.c.** Must be inserted, in compliance with the art. 48 of the **CdI**, the prohibition of any attempt at mediation in the event of domestic violence.
- **Article 61 of the Code of Civil Procedure** (Technical Consultant). Must include, among the technical consultants, figures specialized in violence against women. The judge, if he considers the use of consultants necessary, must be assisted by experts in this field.
- **Article 116 cpc.** (Evaluation of proof) in cases of domestic and sexual violence on adult and underage women (provided for by articles 33, 34, 35, 36 of law 77/13), the certifications of the Anti-violence Centers (produced on request and informed consent of the woman) are to be accepted by the judge instructor as evidence.

**Welcoming the analysis of the CSM** (Superior Council of the Magistrates) presented in Rome on April 12-13, 2018 (Results of monitoring on the issue of gender violence, organizational solutions adopted by the judicial offices and statistical analysis of the collected data) identifies the need to specialize judicial offices, prosecutors and courts on gender violence in order to obtain a better protection and prevention response.

Regarding the courts, the data collected by the CSM say that only in 6% of cases *there are organizational modules for the management of cases of domestic violence and / or violence against women; and only in 17% of cases are sections or specialized colleges for the treatment of domestic violence and / or against women.*

*For prosecutor's offices, only in 31% of cases are sections or colleges specialized in domestic violence and / or against women; then only in 19% of the cases were criteria of prognostic assessment of the risk to prevent the recidivism and escalation of violence by the police and / or criminal and civil judges and / or prosecutors.*

Finally, there is the problem of legal aid at the expense of the state, which in civil matters is not guaranteed to victims of violence. It often happens that women who do not have their own resources, when they flee from the violent partner and take refuge with their family members, they see contested by the state their declaration on lack of personal resources (according to the criteria). The state in fact assesses as personal resources those of the family in which the woman fleeing from her violent husband has temporarily taken refuge This leads to a

---

<sup>30</sup> In this regard, we report again what the Court of Cassation affirmed (**Cass. Pen, section III, sentence 5 May 2010, No. 29612**): This court has repeatedly stressed that in the criminal proceedings there is, in probationary matters, the rule of proof beyond reasonable doubt, **while in the civil proceedings there is the different rule of preponderance of evidence or of the most probable that does not.** Civil justice can therefore move correctly in the best interests of the child, its security and its health more freely having only the need to acquire documents and evidence of prejudicial behavior even if not branded as a crime in the third degree of criminal justice. Precisely because of this greater freedom of the civil court it is necessary to put in place methodologies suitable for the courts respecting the dictates of the Conventions, international indications and national laws on the issue of gender violence, and respect for the victims in general and respect for the minor, of his listening and his interest

reduction of their full right to be represented in the judicial paths for separation and custody of children.

Date 20.2.2019

**Signatories:**

**Elvira Reale**, psychologist, Head of center for women victims of violence, Cartdarelli Hospital, Naples, **and report editor**;

**Rosa di Matteo**, president of the Association Arcidonna onlus and the anti-violence center AURORA, municipality of Naples;

**Giovanna Cacciapuoti**, lawyer, women's health association, Naples;

**Stefania Cantatore**, president of UDI (Italian Women Union), Naples;

**Ida Grimaldi**, Cassation Lawyer of the Court of Vicenza, Institutional Representative of the Italian Law Office;

**Angela Lacitignola** president, Anti-violence Center Break the Silence- Ass. South East Women, Martina Franca, Taranto;

**Sofia Lombardi**, lawyer, women's health association, Naples;

**Chiara Lo Scalzo**, Blogger of 'the ricciocorno schiattoso';

**Andrea Mazzeo**, Specialist in psychiatry, Lecce , Puglia

**Antonella Penati**, president of the association 'Federico nel cuore'; Milan

**Ivana Enrica Pipponzi**, lawyer of the Court of Potenza, Regional Councilor for Equality of Basilicata.

**Annamaria Raimondi**, lawyer, president of the Women's Health Association, Naples;

**Giulia Sannolla** - Anti-Violence Referent Officer Welfare Department Puglia Region (Ta)

**Vittoria Sardelli**, psychologist; ASL Napoli 1

**Silvana Ventura**, psychologist, ASL Napoli 1;

**Filomena Zaccaria**, lawyer. - anti-violence center "Let's break the silence" - Martina Franca

*Attached 1: Appendix on Exemplary Testimonies*