

Question 18

Therefore, the Legislator added:

- **article 351 paragraph 1-ter of the Criminal Procedure Code** (“in proceedings for the crimes envisaged by articles 572, 600, 600 bis, 600 ter, 600 quater, 600 quater 1, 600 quinquies, 601, 602, 609 bis, 609 quater, 609 quinquies , 609 octies, 609 undecies and 612 bis of the penal code, when the judicial police have to obtain summary information from minors, they make use of the assistance of an expert in child psychology or psychiatry, appointed by the public prosecutor. when he has to obtain summary information from an injured person, even an adult, in a particularly vulnerable condition. In any case, he ensures that the particularly vulnerable injured person, when requesting summary information, has no contact with the person being investigated and is not called several times to provide summary information, except for the absolute necessity for investigations”),
- **article 362 paragraph 1-bis of the Criminal Procedure Code** (“in proceedings for the crimes referred to in article 351, paragraph 1 ter, the public prosecutor, when must obtain information from minors, makes use of the help of an expert in child psychology or psychiatry. In the same way he provides when he has to obtain summary information from an offended person, even an adult, in a particularly vulnerable condition. In any case, it ensures that the particularly vulnerable offended person, when requesting summary information, has no contact with the person being investigated and is not called several times to provide summary information, save for the absolute necessity for the investigations”),
- **article 190 bis, paragraph 1 and 1-bis of the Criminal Procedure Code** (“In proceedings for some of the crimes indicated in article 51, paragraph 3 bis, when the examination of a witness or one of the persons indicated in article 210 is requested and they have already made statements during the “incidente probatorio” [392 ss.] or in cross-examination proceedings with the person against whom the same statements will be used or statements whose minutes have been acquired pursuant to article 238 [511 bis], the examination is admitted only if it concerns facts or circumstances other than those subject of the previous declarations or if the judge or some of the parties deem it necessary on the basis of specific needs. The same provision applies when proceeding for one of the crimes envisaged by articles 600 bis, first paragraph, 600 ter, 600 quater, even if relating to pornographic material referred to in article 600 quater 1(3), 600 quinquies, 609 bis, 609 ter, 609 quater, 609 quinquies and 609 octies of the penal code, if the requested examination concerns a witness under the age of eighteen(4) and, in any case, when the requested witness examination concerns an injured person in a particularly vulnerable condition”),
- **article 392, paragraph 1-bis Criminal Procedure Code** (“in proceedings for the crimes referred to in articles 572, 600, 600 bis, 600 ter and 600 quater, even if relating to pornographic material referred to in article 600 quater 1, 600 quinquies , 601, 602, 609 bis, 609 quater, 609 quinquies, 609 octies, 609 undecies and 612 bis of the penal code the public prosecutor, also at the request of the offended person, or the person

under investigation can request that the proceeding be proceeded with a “incidente probatorio” the testimony of a minor or of an injured person of legal age, even outside the hypotheses envisaged by paragraph 1. In any case, when the injured person is in a particularly vulnerable condition, the public prosecutor, even at the request of the same, or the person under investigation may request that the taking of his testimony be proceeded with probative evidence”),

- **article 398, paragraph 5-bis of the Criminal Procedure Code** (“in the case of investigations involving hypothetical crimes envisaged by articles 572, 600, 600 bis, 600 ter 600 quinquies, 601, 602, 609 bis, 609 ter, even if relating to the material pornography referred to in article 600 quater 1, 609 quater and 609 octies, 609 undecies and 612 bis of the penal code, the judge, where among the persons interested in taking evidence there are minors, with the order referred to in paragraph 2, establishes the place, time and particular methods by which to proceed with the protected hearing, when the needs for the protection of people make it necessary or appropriate. To this end, the hearing can also take place in a place other than the court, making use of the judge, where they exist, of specialized assistance structures or, failing that, at the home of the person interested in taking the evidence. The witness statements must be fully documented with phonographic or audiovisual means of reproduction. When there is an unavailability of reproduction tools or technical personnel, the forms of expertise or technical advice are provided. The minutes of the interrogation are also drawn up in summary form. The transcription of the reproduction is ordered only if requested by the parties”)
- and **article 472, paragraph 3 bis of the Criminal Procedure Code** (“the trial relating to the crimes envisaged by articles 600 600 bis, 600 ter, 600 quinquies, 601, 602, 609 bis , 609 ter, and 609 octies, of the penal code takes place behind closed doors; however, the offended person can request that even only part of it be proceeded behind closed doors. It always proceeds behind closed doors when the offended party is a minor. Questions about the private life or sexuality of the offended person are not allowed in these proceedings if they are not necessary for the reconstruction of the fact”).

Law 69/2019 (Codice Rosso) “Amendments to the penal code, the code of criminal procedure and other provisions regarding the protection of victims of domestic and gender violence” (recently integrated by **Law 122/2023** “Amendments to the legislative decree 20 February 2006, n. 106, concerning the powers of the Public Prosecutor in cases of violation of article 362, paragraph 1-ter, of the code of criminal procedure, regarding the obtaining of information from victims of domestic and gender violence”) provides for important changes to the penal code and the criminal procedure code which aim to protect victims, including minors, also in reference to crimes of sexual abuse and exploitation, guaranteeing among other things a faster implementation of investigations, increasing the penalties provided for certain crimes (for example the crimes of sexual assault and sexual acts with minors) and also implementing victims' information rights. Among the other innovations introduced, Law 69/2019 has introduced the aggravating circumstance of "having committed the act in the presence or to the detriment of a person under the age of eighteen" for all crimes against personal freedom (**art. 61 penal code**).

Article 20 of Law 238/2021 adapts Italian legislation to Directive no. 2011/93/EU of European Parliament and of the Council, of 13 December 2011, relative to the fight against the abuse and sexual exploitation of minors e child pornography, making a series of important changes to the penal code (“1. The following amendments are made to the penal code: a) in article 600-quater: 1) after the second paragraph the following is added: «**Except for the cases referred to in the first paragraph, anyone who, through the use of the internet or other networks or means of communication, intentionally and without justified reason accesses pornographic material created using minors under the age of eighteen** is punished with imprisonment up to for two years and with a fine of no less than 1,000 euros”; 2) the heading is replaced by the following: «Possession of or access to pornographic material»; b) in article 602-ter, eighth paragraph, the following is added after letter c): «c-bis) if the fact causes danger to the minor's life»; c) in article 609-ter, first paragraph, after the number 5-sexies), the following is added: «5-septies) if the fact causes danger to the minor's life»; **d) in article 609-quater: 1) after the second paragraph the following is inserted: «Except for the cases provided for in the previous paragraphs, anyone who carries out sexual acts with a minor who has reached the age of fourteen, abusing the trust gained from the minor or the authority or influence exercised on the same due to his/her quality or 'office held or family, domestic, work, cohabitation or hospitality relationships, is punished with imprisonment of up to four years'**; 2) the third paragraph is replaced by the following: «The sentence has increased: 1) if the performance of sexual acts with the minor who has not reached the age of fourteen takes place in exchange for money or any other benefit, even if only promised; 2) if the crime is committed by several people together; 3) if the crime is committed by a person who is part of a criminal association and with the aim of facilitating its activity; 4) if the fact, due to the repetition of the conduct, causes serious harm to the minor; 5) if the fact causes danger to the minor's life"; e) in article 609-quinquies, third paragraph, the following is added after letter c):«c-bis) if the fact causes danger to the minor's life»; f) the following paragraph is added at the end to article 609-undecies: «The sentence has increased: 1) if the crime is committed by several people together; 2) if the crime is committed by a person who is part of a criminal association and with the aim of facilitating its activity; 3) if the fact, due to the repetition of the conduct, causes serious harm to the minor; 4) if the fact causes danger to the minor's life"».

The new **Section I of Chapter III of Title IVbis of Book II of the Code of Civil Procedure, introduced by the recent "Cartabia reform,"** is devoted entirely to domestic or gender-based violence; those provisions shall apply also to proceedings relating to children and attributed to the jurisdiction of Juvenile Court. “**Articles 473-bis**” and the following regulate the procedure in which family abuse or domestic or gender-based violence is committed by one party against the other or a minor, providing for (among the others): the procedure for coordination with other judicial authorities, including police; the abbreviation of the procedural deadlines; procedural and substantial provisions to avoid secondary victimization. Thus, the possibility for the judge to activate the "fast track" for proceedings with allegations of violence or abuse is regulated, even regardless of the need to trace the attached conduct back to specific criminal offenses. The aim is to verify, from the earliest stages of the trial, whether or not the allegations are well-founded, so that the adoption of measures, even provisional ones, does not take place with ritual formulas, but only after

ascertaining, even only at the *fumus* level, whether or not the allegation of violence is well-founded. If the allegation turns out to be well-founded even at the “*fumus*” level, the judge must take appropriate measures to protect the victim. As far as the preliminary investigation is concerned, the judge proceeds, without delay, even *ex officio*, to the free questioning of the parties on the alleged facts, availing himself, if necessary, of experts to protect the alleged victim and adopting the appropriate arrangements for the conduct of the hearing as a guarantee for the victim, or at the request of the victim. The free questioning of the parties will be of help to the judge because it will enable him to compare the different narratives and acquire additional elements to proceed with the preliminary investigation. The judge may conduct preliminary investigations "even outside the limits of admissibility established by the civil code" taking care to ensure the right to cross-examination. The Judge may hear the witnesses, acquire documents from public offices (e.g., the E.R.) or law enforcement offices (e.g. records of operators called to intervene at the scene), always respecting any investigative secrecy. The judge will always proceed personally to the hearing of the child, ensuring coordination with the criminal authority by acquiring, if necessary, the minutes and video recordings of the hearings that took place in the criminal context during the deposition (“*incidente probatorio*”), avoiding any direct contact between the child and the alleged perpetrator of violence and abuse and, above all, avoiding a duplication of activities. If at the end of the investigation, the judge recognizes the validity of the allegations, he adopts "the most suitable measures to protect the victim and the minor, including those measures provided for by article **473-bis.70**, and regulates the right of access identifying methods suitable for not compromising their safety" (see art. **473-bis.46** of the Code of Civil Procedure), or the protection orders that can be requested and issued even when cohabitation has already ceased. In fact, the protection is completed with the articles **473-bis.69** (“protection orders against family abuse”) and **473-bis.70**. In urgent cases, the judge, after taking summary information where necessary, may immediately adopt the protection order by setting a hearing for the parties to appear before him within a period not exceeding fifteen days and assigning the petitioner a period not exceeding eight days for the service of the application and decree. At the hearing, the judge shall confirm, modify or revoke the protection order.