

THE CRIME OF MISTREATMENT IN THE FAMILY A COMPARISON BETWEEN ENGLAND AND ITALY

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Abstract:

The paper is mainly concerned with reflecting on the relationships criminally relevant, for the purpose of configuring incriminating case in Italian and English law. The study makes it possible to identify some critical points of the "new" mistreatment of family members and cohabitants. Also in the UK, there are several cases of domestic violence in which a person suffers violence from their partner by a family member. Attention to the victim has taken on a progressively increasing importance, both as a possible means of limiting criminal liability and in function of criminalization or, in any case, of widening the sphere of the criminally relevant. Moreover, the ongoing health emergency has had a strong impact on the mental health of families, increasing cases of depression and parental burnout: children and adolescents are at the expense of this, today exposed to a greater risk of maltreatment.

It is also curious to understand how this period of emergency phase that we are experiencing can drastically or not affect the occurrence of abusive conduct within Italian and even foreign families or other care or surveillance institutions.

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Key Words: Relationships Criminally Relevant, Domestic Violence, Maltreatment of The Family Member, surveillance institutions

Introduction

The crime of maltreatment against family members and cohabitants, the subject of this report, assumes different characteristics and connotations depending on the context in which the mistreatment takes place and according to who the active / passive subjects of this crime are. The paper is mainly concerned with reflecting on the relationships and relationships, criminally relevant, for the purpose of configuring this incriminating case.

The crime of ill-treatment is a crime in constant evolution.

The study also made it possible to identify some critical points of the "new" mistreatment of family members and cohabitants.

The Italian code does not contain a formal definition of family. It is not known whether this lacuna is the fruit of the wisdom of the legislator, in anticipation of evolution of the original institution, given that, as will be seen, "traditional" view of relationships family seems to have lost, over time, stability and strength of cohesion to characterize themselves, as a primordial cell for the concretization of sociality.

There is no doubt that the delimitation of criminally relevant family relationships for the purposes of art. 572 c.p. is affected by the systematic collocation of the law in the context of the title XI, specifically entitled "crimes against the family".

From the perspective of the regime authoritarian, the family played a role crucial for the pursuit of collective purposes. However, the Italian codicistic position has remained unchanged with respect to the original one.

Therefore, mistreatment formally still constitutes a crime against the family, in particular against family assistance. If one wanted to "contextualize" the recent legislative interventions on the subject of abuse in the family, the constant tendency towards a criminal law oriented not only and not so much to the construction of "author types", but also and above all to the enhancement of "Victim types" in relationships.

The Family Law Act 1996 (c 27) is an Act of Parliament of the United Kingdom governing divorce law and marriage. The law intends to modernize divorce and to shift slightly towards "no fault" divorce from the fault-based approach of the Matrimonial Causes Act 1973.

Attention to the victim has taken on a progressively increasing importance, of the criminally relevant.

This aspect was possible to deduce from the analysis of the individual relationships involving the subjects of the crime of ill-treatment, both private and public relationships (education, education, care, supervision, custody).

In Italian law, however, the more traditional constructions of the general theory of crime focus attention on the active subject, tending to marginalize the possible role of the victim on the side, both of the institutions of the general part, and of the description of the individual incriminating cases. Attention to the victim has taken on a progressively increasing importance, both as a possible means of limiting criminal liability and in function of criminalization or, in any case, of widening the sphere of the criminally relevant.

In conclusion, the home represents the most dangerous place where minor children "are often" systematic obliged spectators "of the manifestations of violence, including psychological ones.

1. **The Crime of Ill-treatment in Italian Criminal Law.**

The crime of ill-treatment of family members e cohabiting, in Italian law, assumes different characteristics and connotations depending on the context in which the conduct of the mistreatment takes place and depending on who the active / passive subjects of this crime are. The crime of ill-treatment is a crime in constant evolution.

The study makes it possible to identify some critical points of the "new" mistreatment of family members and cohabitants.

The intervention of the Italian legislator in 2012 and then those that occurred subsequently with the legislative decree 14 August 2013, n. 93 ("Regulations regarding ill-treatment, sexual violence and persecutory acts"), converted with modifications, by law 15 October 2013, n. 119 (so-called law on femicide), the law of 19 July 2019, n. 69, which led to changes to the Italian criminal code, the Italian criminal procedure code and other provisions on the protection of victims of domestic and gender-based violence, have further amended the text of art. 572 c.p.¹

It is clear that the objective of the aforementioned reforms is to repress more harshly certain aspects of a crime that arouses a high and shared

1 ANTOLISEI F., Manual of criminal law. Special part, vol. I-II, XV ed., Edited by C.F. Grosso, Milan, Giuffrè, 2018, pp. 359 et seq.

social alarm, in consideration of the climate of oppression in which it engages, and the weak position of the taxable person. , especially with regard to abuse perpetrated within the family.

The aim of providing a more effective protection can be said to be achieved with respect to the possibility, thanks to the increase of the maximum penalty, for the crime in the simple form. In the same vein, the recent inclusion of ill-treatment committed against or in the presence of minors pursuant to art. 572, co. 2, c.p., together with the persecutory acts carried out against minors, women in pregnancy or disabled people pursuant to art. 3. L. February 5, 1992, n. 104, or committed with weapons or by a misrepresented person pursuant to art 612-bis, co. 3, c.p.²

Formally ill-treatment still constitutes a crime against the family, in particular against family assistance.

If one wanted to "contextualize" the recent Italian legislative interventions on the subject of abuse in the family, it should certainly highlight the constant trend towards a criminal law oriented not only and not so much to the construction of "author types", but also and above all to the enhancement of "victim types" in relationships.

The more traditional constructions of the general theory of crime focus attention on the active subject, tending to marginalize the possible role of the victim on the side, both of the institutions of the general part, and of the description of the individual incriminating cases.

2 BERTOLINO M., The family, families: new horizons of criminal protection, in Italian review of criminal law and procedure, 2008, pp. 584 and ss.

The protection orders are introduced by the l. n. 154/2001, which with articles 342 bis and 342 ter of the Italian Civil Code (with the related art.736 bis cpc) aims to provide a remedy also for those situations of abuse not leading to a judicial separation or divorce (not being applicable where, as we will see better later, a procedure of this kind), the family is no longer a "free zone" in which the interests of individuals are compressed in the name of the "best interests" of the group, but rather the place where each member can "better cultivate their individual interests in view of a more complete realization ". The institution of the order of protection against family abuse is, therefore, a flexible instrument, capable of adapting to very different situations, according to the prudent assessment of the judge and is perfectly consistent with the constitutional face of the family inspired by the values of equality moral and juridical in relations between spouses and with children.³

2. **Ill-treatment in English Criminal Law.**

Also in the UK there are several cases of domestic violence in which a person suffers violence from their partner by a family member.

Domestic violence can manifest itself in a number of ways, including:

Physical violence

Sexual abuse

3 BLAIOTTA R., Maltreatment in welfare institutions and constitutional duty of solidarity, in Criminal Cassation, 1996, pp. 516 and ss.

Harassment

Threats

Emotional abuse

Control behavior

Under the 1996 Family Law Act, the Court offers protection to victims of domestic violence from the abuser.

The Family Law Act 1996 (c 27) is an Act of Parliament of the United Kingdom governing divorce law and marriage. The law intends to modernize divorce and to shift slightly towards "no fault" divorce from the fault-based approach of the Matrimonial Causes Act 1973.

There are two types of "Orders": Non Molestation Order - to prevent violence, threats of violence or harassing, harassing and harassing behavior.

Occupation Order - to exclude someone from the family home or prevent them from approaching a specified distance from it.

Non Molestation order: This prevents someone from using or threatening or abusing a person or child or from harassing. That Order may also prevent someone from encouraging or suggesting to a third party to harass another.

Non-molestation orders are orders made by the courts to prohibit molestation of an associated person or a relevant child.

These orders can be obtained to prohibit behavior including:

persistent threats of violence

harassment

Violence

abuse

There is no specific definition of molestation. It can cover many forms of unwanted behavior, including harassing and pestering as well as physical violence. There is no need to prove actual violence. An application for a non-molestation order based on an association by civil partnership cannot be made more than three years after the termination of a civil partnership agreement made under the Civil Partnership Act 2004.

The court can attach a power of arrest to one or more provisions of the order if violence has been used or threatened against the applicant or child, and there is a risk of significant harm from the perpetrator if the power of arrest is not attached immediately.

If a power of arrest is attached, a police officer may arrest the offender without a warrant if the order is breached. The offender must be brought before the court within 24 hours.

Extra protection is available from the police. If the order is violated it is a crime and the person can be arrested.

The Occupation Order: this Order establishes who can live in the family home and who must leave for a specific period of time.

The actual terms of the order may be far-reaching. For example, the ordinance can completely prevent a person from entering the house or prevent him from entering certain areas of the house. The ordinance can

also prevent those who have left the property from approaching the home.

If the house is rented, the court can transfer the rent in the name of those who remain, even if it is not initially in their name.

However, the Court may require the partner to make specific payments for a period of time, for example to pay the mortgage or rent.

To provide extra protection, an arrest power can be added to the order, which means that, in the event of a violation, the police can arrest without a warrant and arrest the person.

Orders last weeks, months or even years, depending on the severity of the harassment.

3. **Attention To the Victim As a Common Interest of English and Italian Law**

Attention to the victim has taken on a progressively increasing importance, both as a possible means of limiting criminal liability and in function of criminalization or, in any case, of widening the sphere of the criminally relevant.

This aspect was possible to deduce from the analysis of the individual relationships involving the subjects of the crime of ill-treatment, both private and public relationships (education, education, care, supervision, custody). It was also possible to deduce from the context in which the abusive conduct occurs, both in a purely family environment and in a

family environment, also analyzing the intensity of the relationship between the parties involved⁴.

Moreover, the ongoing health emergency has had a strong impact on the mental health of families, increasing cases of depression and parental burnout: children and adolescents are at the expense of this, today exposed to a greater risk of maltreatment.

The stress related to the health emergency, including loss of social contacts, fear of getting sick and economic worries, has contributed to increasing what is called parental burnout, a condition due to the imbalance between the numerous tasks associated with being a parent. especially during the pandemic, and the resources available to be able to fulfill their obligations. As demonstrated, it would often be parental burnout at the basis of cases of child maltreatment.

English law recognizes attention to the victim of domestic violence, understood as a pattern of controlling and aggressive behavior from one adult, towards another, within the context of an intimate or family relationship. There is no single act that qualifies as domestic violence. It can be extreme or subtle. The victim may have been putting up with this behavior for years, or it may have been triggered recently by some event in the violent person's life. The law surrounding Domestic Violence is governed by the Family Law Act 1996. Domestic Violence

4 CATULLO F.G., Interpretation of the notion of neighbor and family in criminal law, in *Family law in the new jurisprudential orientations*, vol. V, edited by P. Cendon, Milan, Giuffrè, 2006, pp. 4-8.

CAVALLO A., On the distinction between abuse of means of correction and mistreatment in the family, in the *Criminal Cassation. Monthly review of jurisprudence*, 2005, pp. 11 and ss.

can be: physical, sexual, psychological or emotional abuse financial abuse and social isolation actual or threatened and can happen once every so often or on a regular basis.

It can happen to anyone, and in all kinds of relationships - heterosexual, lesbian, gay, bisexual and transgender. People suffer domestic violence regardless of their social group, class, age, race, disability, sexuality or lifestyle. The abuse can begin at any time - in new relationships or after many years spent together⁵.

Domestic violence can affect children, both in the short and the long term; In some cases the children may be the victims of the violence themselves.

It is not restricted to women and children; men too are abused by their partners, both male and female.

All forms of abuse - psychological, economic, emotional and physical are hurtful and frightening, each in its own way. It is a sad reality that many people put up with domestic violence, often for years on end.

5 CIVOLI C., Criminal Law Treaty, vol. III, Milan, Pirola, 1913, pp. 454-455; The Family Law Act 1975 (Australia) (2018 Edition), CreateSpace Independent Publishing Platform (May 29, 2018) ; The Family Court Practice 2020.

CONCLUSION

In conclusion, the home represents the most dangerous place where minor children "are often" systematic obliged spectators "of the manifestations of violence, including psychological ones.

It is also curious to understand how this period of emergency phase that we are experiencing can drastically or not affect the occurrence of abusive conduct within Italian and even foreign families or other care or surveillance institutions.

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