



Domestic Violence, Family Crimes, Femicide.

A particular kind of *victimization*

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Family in Italian Law



- ▶ **Italian Constitution (art. 29.1)**

“The Republic recognises the rights of the family as a natural society founded on matrimony”

- ▶ **Italian Constitution (art. 2.1)**

“The Republic recognises and guarantees the inviolable rights of the person, as an individual and in the social groups where human personality is expressed”

Family in Italian Law



- ▶ **Italian Constitution (art. 30.3)**

“The law ensures to children born out of wedlock every form of legal and social protection, that is compatible with the rights of members of the legitimate family”

- ▶ **Italian Constitution (art. 31.1)**

“The Republic assists the formation of the family and the fulfilment of its duties, with particular consideration for large families, through economic measures and other benefits”

Family in Italian Law



► Protection of:

- Family founded on the matrimony
- Family not-founded on the matrimony (social groupes, safeguarded by Article 2 of Italian Constitution)
- Children born of married parentes
- Children born out of wedlock

Family in Italian Law



- ▶ *Family* is safeguarded also by EU Law and International Law:
 - Article 14 of Nice Charter (right to *education*);
 - Article 24 of Nice Charter (right to have *direct contacts with both parents*);
 - Article 33 of Nice Charter (protection of *family life*);
 - European Parliament Resolution of 14 march 1984, 1996 Hague Convention, Council Decision 2003/93/EC (19 December 2002) (protection of the *relationships between the members of the family*);
 - Article 8 ECHR (Right to respect for private and *family life*)

Family in Italian Law

In Italy, each rule violating EU Law or International Law, violates also Art. 117.1 of Constitution

Family is safeguarded by Italian Law and also EU and International Law

Rules violating rights of family, violate also Art. 117.1 of Constitution

Family in Italian Law

- ▶ If a crime is a fact violating, first of all, an interest of the Community ...
- ▶ If the *Family* is protected by National Law ...
- ▶ ... Italian Criminal Code provides some crimes against the family.



Family in Italian Law

- ▶ **Crimes against the Family (artt. 570–574bis Italian Criminal Code)**
 - Art. 570: violation of family assistance duties;
 - Art. 571: abuse of the means of correction;
 - Art. 572: mistreatment;
 - Art. 573: consensual child abduction;
 - Art. 574: child abduction;
 - Art. 574–bis: international child abduction



Family in Italian Law

- ▶ Art. 574-ter of Italian Criminal Code (introduced by Legislative Decree of January 19, 2017, n. 6).

Equivalence between marriage and same-sex civil union, for criminal law purposes.



Family in Italian Law

- ▶ **Beyond the crimes against the family ...**
 - Someone commits a crime against persons (*E.G.* homicide, physical injury, etc.): if the victim is a member of his family, the crime is aggravated.

(Common) Homicide	Killing a member of the family ...
21–24 years of imprisonment	Patricide, Matricide or Filicide: life sentence Mariticide or uxoricide: 24–30 years of imprisonment

Family in Italian Law

- ▶ **Beyond the crimes against the family ...**
 - Someone commits a crime against property (*E.G.* theft, fraud, etc.), if the victim is a member of his family, the crime:
 - ... is not punished, if it has been committed against the spouse (not legally separated), the parents and the convivent sisters or brothers;
 - ... is punished only in case of complaint, if it has been committed against the spouse legally separated, the not-convivent sisters or brothers or the convivent second degree uncles and nephew;
 - ... is always punished if it's about robbery, extortion and kidnapping of a person for the purpose of extortion.

(Art. 649 of Italian Criminal Code)

Family in Criminal Law

▶ Summarazing ...

Family relationships aggravate the penalty for crimes against persons

Family relationships exclude the penalty for crimes against property, except violent crimes (robbery, extortion and kidnapping of a person for the purpose of extortion)

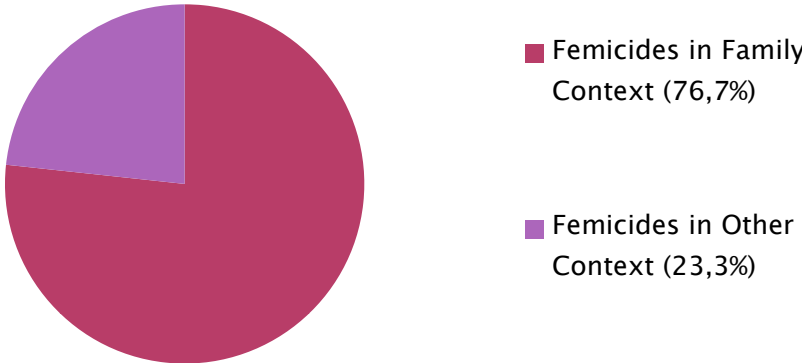


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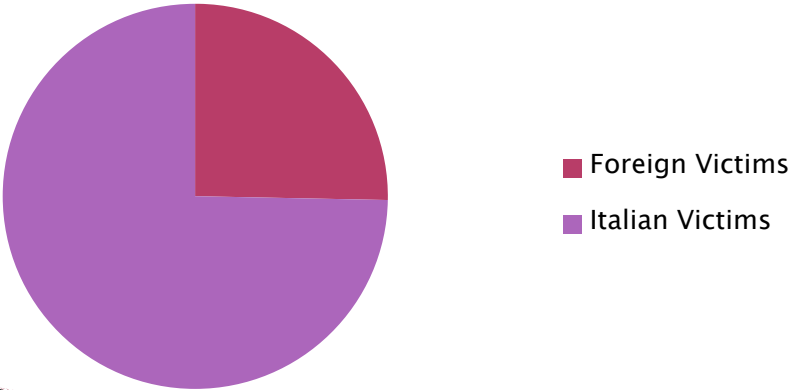


Femicide and Family Crimes

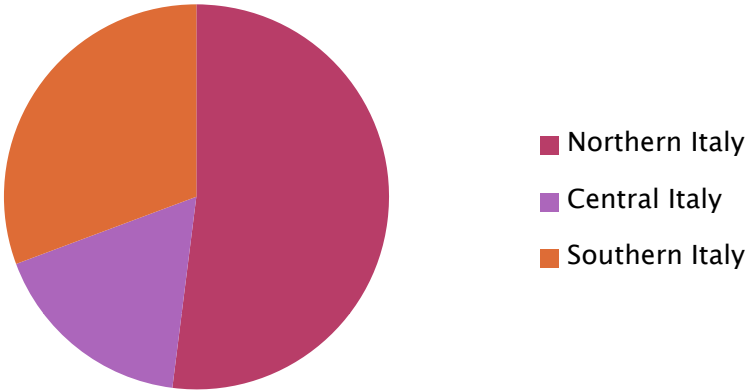
Femicides in Italy (2016)



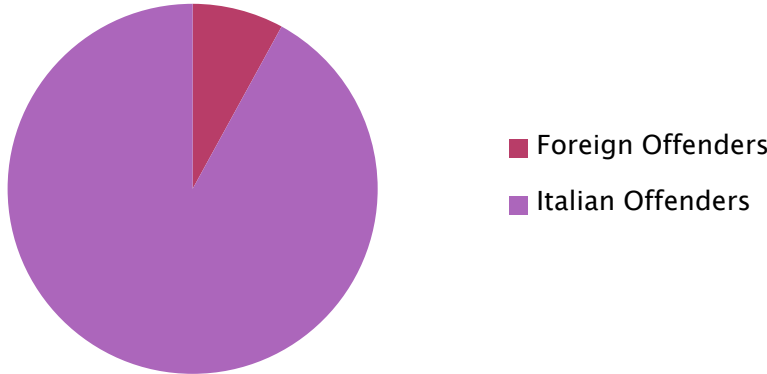
Victims



Area of committed crimes



Offenders



Source: EURES Report 2017

Femicide and Family Crimes



- ▶ The terme femicide is incorrect:
 - Art. 3 Italian Constitution: equality principle
 - It's impossible to punish in different ways a crime on the basis of victims' gender
 - Law October 15, 2013, n. 119 aimed at fighting gender-based violence, but not the femicide
 - Legislative Decree December 15, 2015, n. 212 aimed at safeguarding the weak victim, but not only the female victim
 - ... a man may be victim of gender-based violence or, generally, weak victim of anyone crime.

Femicide and Family Crimes

- ▶ **Law October 15, 2013, n. 119**
 - Crime of mistreatment and crimes against life or personal freedom are aggravated if they are committed in the presence or against a minor or a pregnant woman;
 - Crime of stalking is aggravated if it is committed by the spouse (the former spouse, also) or the partner (the former partner, also).



Femicide and Family Crimes

▶ Law October 15, 2013, n. 119

- Prevention of Family Crimes (and, generally, of crimes against gender-based crimes), through the involvement of the Police (however ... *Talpis v. Italy*)
- Involvement of the Victim in the proceeding aimed at applying precautionary measures for violent crimes (however ... inefficient criminal mediation, also in certain cases of violent crimes)
- Urgent removal from family house of the Offender
- Protected hearing of particularly weak victim of mistreatment or crimes against (personal and sexual) freedom



Femicide and Family Crimes

- ▶ **Law October 15, 2013, n. 119**
 - Protection of Foreign Victims of Domestic Violence
 - Project of financing anti-violence centers (art. 9, Directive 2012/29/UE)
 - **Extraordinary action plan against the gender-based violence**, aimed at informing and raising awareness of the occurrence of this form of violence



Family Crimes and Weak Victims

- ▶ Legislative Decree December 15, 2015, n. 212
 - Provision of guarantees to particularly weak victim:
 - during the preliminary investigation (*E.G.* in meetings before investigative authorities or public prosecutor (s.i.t.) or in *incidente probatorio* (= gathering of evidences during the investigation stage));
 - during the debate (protected hearing of all weak victims: see also l. n. 119/2013)



Family Crimes and Weak Victims

▶ Who is the Weak Victim???

- Criteria useful to identify the *weak victim* have been drafted by Article 90–quater of Italian Code of Criminal Procedure, introduced by Legislative Decree December 15, 2015, n. 212;
- Indicative criteria: on the basis of the facts and the principal features of the victim and the offender, the judge is free to establish if it's about a weak victim or not.



Family Crimes and Weak Victims

▶ What criteria???

- Age
- Psychic Infirmity
- Type of offence
- Principal features of the fact (the motive, the factual circumstances, the violent conduct, etc.)
- Relationships between the victim and the offender (*E.G.* Family relationship)



Family Crimes and Weak Victims

- ▶ Article 90–quater criteria are **indicatives**:
 - Not all minors must be considered *weak victims*: probably he is such the 8 years old son suffering the sexual intercourse of his father, but not the 17 years old guy suffering the theft of his bicycle;
 - Not all women must be considered *weak victims*: probably she is such the wife suffering the continuous mistreatment of her husband, but not the woman suffering the damage to her car in a parking lot.



Family Crimes and Weak Victims

- ▶ How does the Judge make a decision on the weakness of the victim?
 - On the basis of all elements offered him by all parties
 - On the basis of his direct contact with the victim
 - On the basis of the report of victims' suffering



Family Crimes and Weak Victims

- ▶ **Dark Figure of Crime** (= the gap between reported and unreported crimes, but also the gap between really occurred reported crimes and unreally occurred reported crimes).
- ▶ **Family Crimes** have the most relevant dark figure:
 - A lot of victims don't report crimes really occurred;
 - Someone reports crimes not occurred (False Victims).



Family Crimes and Weak Victims

- ▶ **The different points of view of the parties:**
 - *E.G.* a case of International Child Abduction ...

Mother: “I carried my daughter to Germany because her father is a violent man. In Germany my daughter will have a better future than in Italy”

Father: “My daughter loves me; I’ve never beaten her, in fact there aren’t complaints against me. In Italy she will have a very good future with me”.



Family Crimes and Weak Victims

- ▶ In the mother's opinion, the daughter isn't a victim of International Child Abduction (in her opinion, the crime hasn't been committed).
- ▶ In the father's opinion, the daughter is a weak victim: the mother violated her right to have direct contacts with both the parents and prevented the relationship with the father.
- ▶ If the judge hears the father first, probably he will qualify the daughter as "weak victim"; if the judge hears the mother first, probably he come to the opposite conclusion.

Family Crimes and Weak Victims

► Summarizing ...

Art. 90-quater of Italian Code of Criminal Procedure is aimed at safeguarding the *weak victims* through indicative criteria for their identification.

On the basis of the evidence of the facts, the victims' report and the direct contact with the victim, the Judge establishes if it's about a weak victim or not.

If there is a weak victim, the Judge applies the guarantees provided by Legislative Decree 212/2015

BUT ...

Family Crimes and Weak Victims

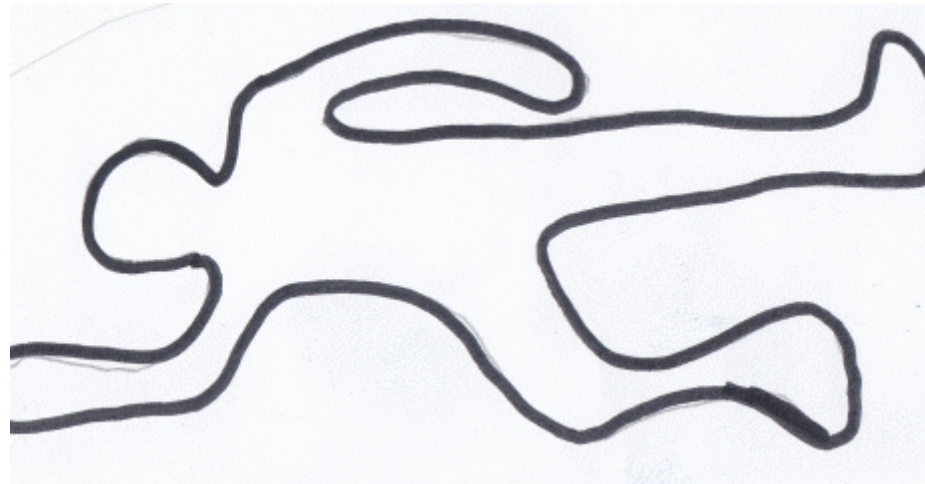
False Victims and the different points of view of the parties may confuse the Judge ...

The Judge may apply the guarantees provided by Article 90-quater to not-weak victims or to false victims ... or he may not apply these guarantees to weak victims, with the result of not-protecting them.

Family Crimes and Weak Victims

▶ What guarantees???

- Victim is both a qualified witness and a rights' owner.
- The most important guarantee is against **secondary victimization**.



Family Crimes and Weak Victims

- ▶ **Secondary Victimization:** frequent phenomenon in Family Crimes. The report of the violence suffered results in additional trauma both due to the stress of remembering the crime, and the blaming-victim attitude of the Community.
- ▶ (Also) for this reason, Law 119/2013 and Legislative Decree 212/2015 provide the protected hearing of weak victims.



Family Crimes and Weak Victims

▶ Which future???

- Directive 29/2012/UE is aimed at safeguarding the person who has been most affected by the crime, *i.e.* the weak victim;
- Article 90–quater of Italian Code of Criminal Procedure drafted a set of indicative criteria to identify a weak victim;
- In case of error of the Judge in identifying the weak victim, there aren't remedies. A possible reform of Article 90–quater should at least provide for the intervention of an expert assisting the doubtful Judge in understanding who is the asserted victim and what are her relationship with the other parties, and if her report of the crime is true or false.

The end

Thanks to all of you!