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AN INTER-SYSTEMIC MODEL FOR PREVENTING REOFFENDING  
BY PERPETRATORS GUILTY OF SEXUAL ABUSE AND DOMESTIC VIOLENCE

## **CHARACTERISTICS OF THE CONSCIOUS PROJECT AND OPERATIONAL FIELD: REGULATORY PROFILES**

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The Conscious Project introduces a treatment and support model dedicated to perpetrators in the intramural and extramural premises and it builds an intersystemic network of cooperation aimed at reducing recidivism.

To understand the social impact and its cost, the data must certainly be considered: in the European Union 2 million women have suffered from physical or sexual violence, many times in adolescence. This shows that one in three women in the European Union has suffered from violence.

Precisely because of the number of perpetrators and taken into consideration the high rate of recidivism for the crimes in question, analysing the data of convictions, sentences already served and convicted persons who have served their sentences or are about to return to freedom, in the European context, there are about eight million men who risk repeating the same crime against a woman.

The construction of an intersystem model, which starts from a high level of specialization in order to avoid both the perpetration of a crime and its recurrence, starts with the identification of a path to prevent gender-based violence. It is precisely at this stage that information must certainly be shared between all the bodies and institutions operating in the sector.

The violent person and in any case, who could commit acts to the detriment of a woman must be able to undergo treatment precisely in the preceding phases.

Collaboration between the Public Prosecutor's Office; Judge for Preliminary Investigations; Judicial

authorities and lawyers will be able to allow an effective prevention system.

The crime victim must then receive adequate support and protection.

The built system provides for coordination and involvement of all support services, also to counter the phenomenon of secondary victimization.

The need to intervene directly to promote the rehabilitation of those guilty of violence must not be excluded.

Finally, coordination plans for the protection of minors will have to be established.

The Conscious Project and the creation of the intersystem model involved the following professionals:

- health workers, already with psychotherapeutic competence, because they are competent for the implementation of specialized treatments and who will have the opportunity to expand their knowledge and experience, integrating known methodologies, improving the offer and quality of social and health services dedicated to the fight against violence and the prevention of recidivism;
- penitentiary operators (agents of the Penitentiary Police, educators, Institute Management) and UEPE operators (External Criminal Execution Office) who, due to the specific functions assigned, are involved in the management of the perpetrators of sexual violence and domestic violence and with them are close contact;
- the surveillance judiciary because it has the function of supervising the correct execution of the sentence and grants and manages alternative sentences to detention, both for the final part of the sentence and before the start of its execution;
- lawyers involved in the defence of perpetrators of violence because they can play an important role in the decision of the judiciary to grant the subjects access to specialized therapeutic treatment, as an alternative measure to the sentence or ancillary to the assigned security measures. The awareness of the lawyer also represents a preferential channel for sending the treatment activities proposed by the project;
- the directors of prisons because they can replicate the service of treatment and benefit of inmates / perpetrators present in their prison homes and allow the continuation of treatment even outside the prison;
- the volunteers called to intervene for the social recovery of the perpetrator whose isolation constitutes a serious risk factor for recidivism and therefore promoters of the socio-cultural change necessary to avoid the social exclusion of perpetrators.

In summary, it will be possible to prevent the recidivism of sex offenders and perpetrators of domestic violence through a model of inter-systemic cooperation between socio-sanitary, legal-penitentiary

institutions.

The course aims first of all to increase professional skills (health personnel, prison, volunteer) for the subsequent implementation of the Treatment Program for perpetrators.

It is also necessary to develop in the local context an inter-institutional work model that is stable over time (Standardization of methods and procedures, economic and financial impact assessment - feasibility study for the transfer of the intersystem model).

Another crucial element is linked to the process of exclusion of the perpetrator, which instead increases the risk of recidivism, therefore it will be necessary to avoid that processes of exclusion contribute to favouring recidivism (activation of interventions on perpetrators, inside and outside the prison, for their social reintegration).

The project may well fall within the principles pursued by the so-called Red Code, in fact the law n. 69/2019 has a broad and heterogeneous content, from the substantial point of view: 1. the new offense pursuant to art. 612 *ter* of the Criminal Code, concerning the unlawful dissemination of sexually explicit images or videos in the absence of the consent of the interested party, also applicable to "subsequent distributors" where there is the purpose of harming the latter. This is a case that can be prosecuted with a half-year term, without prejudice to the connection with other offenses characterized by official prosecution, or in cases where one of the aggravating circumstances referred to in paragraph 4 of the aforementioned provision is configurable; the sanctioning limits (from one to six years) allow the application of cautionary measures; 2. the new offense pursuant to art. 387 bis of the Italian Criminal Code which penalizes the violation of the provisions related to the precautionary measures pursuant to art. 282 bis (removal from the family home), 282 *ter* (prohibition of approach and communication) or the violation of the order referred to in art. 384 bis cpp (urgent removal from the family home ordered by the judicial police); at present, therefore, the violation of these provisions, in addition to entailing the risk of aggravation of the measure previously ordered in the "presupposed" procedure, is characterized by autonomous criminal relevance. It is also recalled that it constitutes a crime pursuant to art. 388 *paragraph 2* of the Criminal Code also the conduct of those who evade the protection order pursuant to art. 342 *ter* of the Italian Civil Code or other provision of similar content taken in the procedure for the separation of the spouses or in the process of dissolution or cessation of the civil effects of the marriage; 3. the new offense pursuant to art. 558 *bis* of the Criminal Code which sanctions the coercion or induction to marriage or civil union through conduct of violence, threats, abuse or exploitation of the condition of inferiority or vulnerability (in the terms described by law), moreover with an extraterritoriality clause, falling within the also the conduct committed abroad by an Italian citizen or a foreigner residing in Italy or to the detriment of an Italian citizen or a foreigner residing in Italy is also punishable under national law; 4. the new offense pursuant to art. 583 *quinqüies* which sanctions intentional personal injuries with permanent deformation or scarring of the face (ed. Identity

murder); in this case, as is known, the innovation concerns only systematic and sanctioning aspects, since it is a matter of conduct previously sanctioned, albeit less severely, by *art. 583 paragraph 2 n. 4* of the Italian Criminal Code with consequent express repeal of this last provision; 5. the sanctioning limits of the cases referred to in Articles 572, 612 bis, 609 bis (and correlatively, 609 quater), 609 ter, 609 octies of the Italian Criminal Code: as regards specifically the provisions set forth in Articles 572, 612 bis, the anticipated increases in sentence determine the doubling of the terms of the phase of the precautionary measures; 6. they have also been introduced in the corpse of the new *art. 572 cp* aggravating circumstances (with a special effect) centred on the particular type of offended person (minor, pregnant woman, disabled person) or on the modalities of the fact (with the use of weapons); correlatively, *art. 61 n. 11 quinquies* of the Criminal Code, eliminating the corresponding provisions. It was also specified that the minor who witnesses the mistreatment is always considered an offended person. In terms of aggravating circumstances, there are also some clarifications in the identification of the offended persons referred to in *art. 577 cp*<sup>7</sup>. in the matter of sexual abuse not forced against a person of minor age (*art. 609 qua-ter* of the Italian Criminal Code), the change in the point of admissibility is noted, having been established as a general rule the admissibility of the office; the attention to the new aggravating circumstance introduced in the new *art. 609 quater*, in relation to the carrying out of sexual acts with a child under fourteen in exchange for money or other benefits. At present, therefore, the consummation of paid sexual acts can give rise to the case referred to in *art. 600 bis paragraph 2* where the minor is aged between fourteen and eighteen or the new aggravating circumstance referred to in *art. 609 quater* (a case that will obviously be contested, together with the aggravating circumstance, and characterized by official prosecution) where the minor has not reached the age of fourteen; 8. the *art. 165* of the Criminal Code on the subject of conditional suspension of the sentence, subject to the granting of the benefit, in the cases of contestation of *art. 572, 609 bis, 609 ter, 609 quater, 609 quinquies, 609 octies, 612 bis, 582 and 583 quinquies* in the cases aggravated by articles 576 first paragraph no. 2, 5, 5.1, and 577 paragraph 1 n. 1 and paragraph 2, to participate in recovery paths for violent / ill-treating subjects. As regards procedural changes, the main innovations are reported below. 9. the *art. 347 paragraph 3 cpp* with insertion of the cases referred to in Articles 572, 609 bis, 609 ter, 609 quater, 609 quinquies, 609 octies, 612 bis, 612 ter, 582 and 583 quinquies in the cases aggravated by articles 576 first paragraph no. 2, 5, 5.1, and 577 paragraph 1 no. 1 and paragraph 2 of the Criminal Code, in relation to which the communication by the judicial police must be given "immediately, also in oral form"; 10. the *art. 362 cpp* with the introduction of paragraph 1-ter which, in relation to the cases referred to in Articles 572, 609 bis, 609 ter, 609 quater, 609 quinquies, 609 octies, 612 bis, 612 ter, 582 and 583 quinquies in the cases aggravated by articles 576 first paragraph no. 2, 5, 5.1, and 577 paragraph 1 n. 1 and paragraph 2 of the Criminal Code requires the acquisition of sit by the offended person or by the person who submitted a complaint, complaint or request within three days from the registration of the crime report, "unless there are essential needs for the protection of minors under the age of eighteen or of the confidentiality of investigations, also in the interest of the injured party "; 11. the *art. 370* of the Italian

Criminal Code with the introduction of paragraphs 2 bis and 2 ter, with provision for the judicial police to urgently deal with the proxies of the investigating AG in relation to the cases referred to in point 9; 12. the art. 90 *ter cpp*, with the introduction of paragraph 1 bis according to which, where one proceeds for any of the crimes referred to in the previous points, the communications referred to in paragraph 1 in the point of evasion or release of the suspect-defendant-convicted in the case of execution of detention security measures, they are always carried out to the injured person and to the defender, regardless of whether they have made a request to do so; 13. the art. 282 *quater cpp* providing that the communications cited therein relating to the application of the precautionary measures pursuant to art. 282 *bis* and 282 *ter* of the Italian Criminal Code are carried out not only to the injured person but also to his or her defence counsel, if appointed; 14. the art. 299 paragraph 2 bis *cpp* providing that notices of revocation or replacement of precautionary measures are always made to the injured party as well as to his or her lawyer, if appointed; 15. the art. 659 *cpp* with the inclusion of paragraph 1 bis according to which, where following a provision of the supervisory judge, the release of a convicted person for any of the crimes referred to in n. 9), the prosecutor who oversees the execution must notify the injured person and, if appointed, his / her defence counsel by means of the judicial police; 16. *the art. 275 paragraph 2 bis cpp* introducing the case referred to in art. 612 *ter* of the Criminal Code, among those in the presence of which custodial precautionary measures can also be applied as an exception to the penalty prognosis not exceeding three years of imprisonment; 17. finally, the amendment to art. 13 *bis* of the law 26.7.1975, n. 354 with expansion of the hypotheses of psychological treatment for the perpetrators of the crimes in question. This is the area in which to operate with the intersystem model created with the CONSCIOUS Project. In the operational context, the judicial police operator will also avoid any dissuasive attitude with respect to the formalization of the complaint or tending to delay the formalization of the deed (for example, waiting for medical reports, previous or in progress). If the woman shows an attitude of uncertainty regarding the possible presentation of complaints, she may be invited to go to the nearest anti-violence centre; the operators of these centres have no reporting obligations even for prosecutable crimes of office being a service of public need; this solution is obviously not feasible where the judicial police operator has clear evidence of the existence of offenses that can be prosecuted *ex officio*: in this case the obligation to act is independent of the victim's adhesion, as repeatedly emphasized by the jurisprudence ECHR (see for example the sentence 2.3.2017 rec. 41237/14, *Talpis vs Italy* ", as well as judgment 9 June 2009, appeal no. 33401/02, *Opuz vs Turkey*). The operators will invite the victim to proceed with the narration spontaneously regarding the facts of hypothesized criminal relevance that they intend to report; once this first phase has been completed, they will proceed to focus attention on the data of main probative interest, drawing inspiration from the first statements provided. obviously the victim is not required to report the exact date - unless the victim has clear memories, for example because they are linked to recurrences or particular events - but to place such actions in time also with indicative indications; of absolute importance is also the clarification on the recurrence and frequency of attacks, especially in relation to crimes having connotations of habituality and

permanence; • the context in which the unlawful conduct was carried out (public, private, in the presence of third parties, etc.): • in the case of conduct repeated over time, the victim will be asked whether there has been a progressive aggravation of the attacks; he will also ask himself if he has previously filed a complaint-lawsuit, or, if not, he will ask the reasons for this omitted activation: • with regard to family history, the victim will be asked to provide information on the person reported / accused, in particular specifying; the work placement, the state of physical and mental health (in this context, specifying whether the aforementioned has ever attempted or threatened suicide), any addiction to alcohol or drugs, any previous marital or cohabitation relationships, the nature of the relationships between the aforementioned and the family of origin, the relationship with their children; the party will also be asked to report on previous or current monitoring by the social services and the degree of compliance with any measures adopted. The complaint-lawsuit must faithfully reflect the statements made by the person [it represents, indeed, the opportunity, where possible and deemed useful, to "register" the complaint, if collected orally]. It is therefore necessary to report the expressions used as closely as possible; where the complainant reports that she has been the recipient of insulting words, they must be indicated without reluctance, since it is one of the consuming methods of the crimes which are supposed to be consumed. To allow an adequate assessment in terms of reliability, genuineness, verifiability of the complaint-lawsuit, and also in relation to the new communication obligations introduced by the legislator: - in the event that one or more of the crimes referred to in *Articles 572, 609 bis, 609 ter, 609 quater, 609 quinquies, 609 octies, 612 bis, 612 ter, 582-583 quinquies* in the aggravated cases referred to in *Articles 576 paragraph 1 nn. 2, 5, 5. 1 and 577 paragraph 1 n. 1 and paragraph 2 of the Criminal Code*, the injured person must be asked whether civil separation proceedings or lawsuits relating to minor children or in any case relating to the exercise of parental responsibility are in progress, specifying which is the civil or juvenile judicial authority of reference ; and this because the new art. 64 bis disp.act. cpp provides for the obligation to transmit to these authorities a copy of the application orders of precautionary measures possibly issued in the criminal proceedings or a copy of the notice of conclusion of the investigations, or of other defining measures (archiving decree or sentences); the injured person will also be asked to specify whether he has autonomous sources of income, also for the purposes of art. 282 bis paragraph 3 cpp; - in the event that the case referred to in art. 572 of the Italian Criminal Code, the offended person must be asked whether the alleged criminal conduct was carried out in the presence of children of minor age. To this end, it is recalled that any positive response not only determines an aggravation of sanctions but also entails the attribution of the qualification of offended person to the minor who has witnessed such violence. Therefore, the offended persons must be indicated not only by the subject directly affected by the violence reported but also by the minor victims of "assisted violence". Once the drafting of the complaint-lawsuit has been completed, and therefore the reference framework has been outlined, the offended person must be given the notices referred to in art. 90 bis cpp, in the current formulation, as per integrated and already submitted models; we will also provide the contact details of the anti-violence centres in the area or in any case of the

public or private services to which you can contact for assistance purposes. These documents will be delivered to the injured person not only in cases of filing of complaints-complaints but also in any other case in which it is assumed that one or more of the crimes in question are committed, regardless of the genetic modality of the procedure. The victim will also be asked to provide their contact details in order to allow the notifications required by law. In particular, pursuant to art. 154, 157 paragraphs 1, 2, 3, 4 and 8 of the Code of Criminal Procedure, the party will be asked to indicate the house of residence, the place of work, the place where he has a temporary residence or other address, specifying that in case of failure to find, notifications will be made by depositing in the municipal house (or in the registry of the judicial office, where the aforementioned places are unknown). Telephone numbers and e-mail addresses will also be requested in order to facilitate the aforementioned communications, clearly representing that speed in defining criminal proceedings is conditioned by the timeliness of notifications. Where for the safety of the offended person it is appropriate not to disclose such data, it will be clearly notified in the CNR in order to allow the prosecutor to conceal such indications by affixing omissions. The injured person must also be verbally warned that he has the right to appoint a defender, at the same time representing that legal aid is provided for at the expense of the State and therefore that the costs are borne by the State. The judicial police will also verify that the victim can leave the office without running risks; in the same perspective, it will verify how the victim intends to ensure immediate protection for himself and for any minor children present. The assessment of the risk of recidivism is an absolutely central issue, in relation to which it is necessary to provide the judicial police with tools and guidelines. This verification has unavoidable connotations, having been clearly evoked both by the Istanbul Convention (see in particular art. on the other hand, it is absolutely necessary that this assessment is carried out on the basis of parameters listed in advance and of deemed reliability in the light of the indications coming from the sciences of the sector. The methodologies on the subject are decidedly varied. The police force also appear to have adopted diversified methods. Moreover, there is no trace of these operating methods in the documents transmitted up to now and this requires the adoption of indications that are both prescriptive, but at the same time inspired by operational uniformity.

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