

No. 20-1034

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IN THE  
**Supreme Court of the United States**

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NARKIS ALIZA GOLAN,

*Petitioner,*

*v.*

ISACCO JACKY SAADA,

*Respondent.*

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*On Petition for a Writ of Certiorari to  
the United States Court of Appeals  
for the Second Circuit*

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**BRIEF FOR AMICI CURIAE  
ITALIAN ORGANIZATIONS ADVOCATING  
FOR VICTIMS OF DOMESTIC VIOLENCE  
IN SUPPORT OF PETITIONER**

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## INTERESTS OF AMICI CURIAE

Amici are eighty-three Italian organizations with extensive experience providing services to and advocating for victims of domestic violence in Italy. Based on first-hand experience gained over the course of many years, these amici possess invaluable insight into Italy's response to domestic violence, including its legal and enforcements systems, as well as cultural norms and societal attitudes. A list of amici appears in the Appendix to this brief. *See* App. 1a-6a.

Given that, as explained below, Italy's response to domestic violence is lacking in several critical ways, amici are certain that the ameliorative measures ordered by the district court will not provide B.A.S. the protection he needs. Amici therefore submit this brief in support of Petitioner Golan.<sup>1</sup>

## SUMMARY OF THE ARGUMENT

Domestic violence is inherently complex compared to other forms of violence. Not only are its victims often reluctant to report their abusers, but the cultural norms and societal attitudes play a crucial role in what counts as impermissible violence between

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<sup>1</sup> Pursuant to Rule 37.6, amici affirm that no counsel for a party authored this brief in whole or in part, and that no person other than amici, its members, or its counsel made a monetary contribution intended to fund the brief's preparation or submission. All parties were timely notified and consented in writing to the filing of this brief.

family members in the first place, and how a country responds to it. While any modern society considers certain acts, such as corporal punishment of women or children, or forced sex, criminal in other contexts, it may deem them acceptable if they happen at home, between members of a family.

Thus, for a country to provide effective protection to victims of domestic violence, there must be a proper recognition of the problem at the national level, leading to the adoption of laws specifically tailored to address it. In addition, there must also be implementation and proper enforcement of such laws at the local level, through the court system, state enforcement and social services agencies, which must all be trained to recognize and understand the problems and complexities of domestic violence, and be willing and equipped to help its victims.

In light of this inherent complexity of domestic violence, and of the crucial role played by the societal attitudes, the system for addressing it will necessarily vary from country to country, often dramatically so. A United States court of course would not automatically possess the nuanced understanding of the social attitudes and the legal system of another country necessary to craft ameliorative measures that will provide effective protection to a victim of domestic violence abroad. Moreover, even to attempt to gain such understanding would require investing extensive time and resources, which are simply not available within the confines of an expedited proceeding under the Hague Convention.

As this case demonstrates, although the district court spent nearly a year on its inquiry into the Italian legal system, it failed to gain adequate understanding of how the system for addressing domestic violence actually works—or rather does not work—there. In fact, experts agree that Italy’s system for protecting victims of domestic violence is presently severely lacking in multiple critical respects.

Specifically, an independent international body of experts tasked with assessing Italy’s response to domestic violence recently reported that: (i) the laws enacted to protect victims of domestic violence were not enforced; (ii) victims of domestic violence face extreme difficulties in obtaining and enforcing protective orders; (iii) lack of understanding and consideration of domestic violence by civil courts severely impacts custody and visitation proceedings; (iv) first responders are not assessing the risk to victims accurately, or at all, in most cases of domestic violence; (v) lack of understanding and consideration of domestic violence by civil courts in matters of custody and visitation; and (vi) cultural biases against women, particularly foreign women, hamper efforts to address domestic violence.

As a result, and as explained in detail below, the ameliorative measures ordered by the district court cannot and will not provide any effective protection from domestic violence to B.A.S.—the protection the district found is very much needed.

## ARGUMENT

### **I. Domestic Violence Is Inherently Complex, With The Cultural Norms And Societal Attitudes Playing A Crucial Role In Addressing It; A United States Court Cannot Gain A Sufficient Understanding Of The Inner Workings Of A Foreign Country To Fashion Effective Protective Measures In A Hague Convention Proceeding.**

Domestic violence is commonly defined as a pattern of control and intimidation in the context of an intimate relationship. Am. Psych. Assn., *Violence and the Family: Report of the APA Presidential Task Force on Violence and the Family* (1996); see also Zlatka Rakovec-Felser, *Domestic Violence and Abuse in Intimate Relationship from Public Health Perspective*, 2 Health Psych. Research 1821 (2014). This dynamic in a relationship is created and maintained through multiple vehicles of control across many areas of the victim's personal life, including physical abuse, sexual abuse, emotional abuse, psychological abuse, medical neglect, financial manipulation, legal manipulation, social isolation, threats to a child of the relationship, and threats to deploy others in service of the abuser's goals. See Zuzana Vasiliauskaitė & Robert Geffner, *Eight Types of Abuse: The Validation of Two Multidimensional Instruments of Intimate Partner Violence*, 62 *Psichologija* 56 (2020), (citing European Union Agency for Fundamental Rights (FRA), *Violence Against Women: An EU-wide survey—Main results* (Mar. 2014)); see also Delanie

Woodlock, *The Abuse of Technology in Domestic Violence and Stalking*, 23 *Viol. Against Women* 584, 585-602 (2017); *see also* Emma Katz & Anna Nikupeteri et al., *When Coercive Control Continues to Harm Children: Post-Separation Fathering, Stalking and Domestic Violence*, 29 *Child Abuse Rev.* 310 (2020) (showing that domestic violence perpetrators also use these same methods of control against their children after a victim ex-partner has separated from the abuser). Several of these vehicles for coercion and control can easily go unrecognized in the public sphere but are readily identifiable by professionals as markers of domestic violence. *See* Leslie M. Drozd, *Intimate Partner Violence and Custody Evaluation, Part I: Theoretical Framework, Forensic Model, And Assessment Issues*, 9 *J. of Child Custody*, 250, 255-256 (2012).

Domestic violence happens in the privacy of a home, between family members, over extended periods of time, and often leaves no visible marks or injuries. And while society may consider certain acts, such as corporal punishment of women or children, or forced sex, criminal in other contexts, it may deem them acceptable if they happen at home, between members of a family. *See* Steve Mulligan, *Redefining Domestic Violence: Using The Power And Control Paradigm For Domestic Violence Legislation*, 29 *Child Legal Rights J.* 33 (2009). This is what makes societal attitudes of particular importance to issues of domestic violence.



In fact, societal attitudes towards interfamilial relationships, and to the role of the wife in particular, is perhaps the most significant obstacle to the recognition of the acts of domestic violence by state agencies and to an effective system for protecting its victims. *See, e.g.*, Joan S. Meier, *Ending the Denial of Family Violence: An Empirical Analysis and Path Forward for Family Law*, The George Washington University Law School Public Law and Legal Theory Paper No. 2021-12 at p. 44 (2021) (explaining that some courts have discounted “survivors’ credibility as a function of lack of understanding of domestic violence and trauma, and implicit gender stereotypes.”); *see also* Bonnie E. Carlson & Alissa Pollitz Worden, *Public Opinion About Domestic Violence* (2001). To use just one stark example, while rape is criminalized in every state in the United States, twenty states still have “spousal exemptions for offenses that criminalize sexual conduct based on the victim’s lack of capacity to consent to that conduct.” *See* Teresa M. Garvey & Holly M. Fuhrman et al., *Charging Considerations in the Prosecution of Marital Rape*, 34 *Aequitas* 1, 2 (Sept. 2019). Thus, laws against rape are of little help to a wife who reports being raped by her husband if the society at large does not recognize spousal rape, instead believing that wives are obligated to submit to their husbands’ demands. Anjali Tripathi, *Marital Rape: Stripping the Sanctity of Matrimonial Relation, An International Analysis*, 4 *Sorbonne Student L. Rev.* 161 (2021).

Adding further complexity, victims are often reluctant to report domestic violence for a variety of reasons. Marsha Wolf & Uyen Ly et al., *Barriers to Seeking Police Help for Intimate Partner Violence*, 18 J. of Fam. Viol., 121-129 (2003); *see also* Leigh S. Goodmark, *Law is the Answer? Do We Know That For Sure? Questioning the Efficacy of Legal Interventions for Battered Women*, 23 Saint Louis University Public L. Rev. 7, 16 (2004); *see also, e.g.*, Joan S. Meier, *U.S. Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations: What do the Data Show?* 42 J. of Social Welfare and Fam. L. 1 (2020). For example, if a victim must continue living with her abuser, she will likely be afraid to report the abuse because it will inevitably lead to more abuse. *See* Sarah M. Buel, *Fifty Obstacles to Leaving, Aka, Why Abuse Victims Stay*, 28 The Colorado Lawyer 19 (Oct. 1999). Likewise, a stay-at-home mother may not want her husband to have a criminal record when that husband is the sole source of financial support for the family, and being accused of a crime would negatively impact his career and earning capacity. *See* Dan Harrington Conner, *Financial Freedom: Women, Money, and Domestic Abuse*, 20 Wm. & Mary J. of Women & L. 339 (2014). These are just a few illustrative examples that barely scratch the surface of the complexities involved in designing a system that can effectively address domestic violence.

It thus follows that, for a country to provide effective protection to victims of domestic violence, there must first be a proper recognition of the problem

at the national level, which would lead to the adoption of laws specifically tailored to address it. See Elizabeth M. Schneider, *Battered Women & Feminist Lawmaking* (2008); see also Susan Schechter, *Women and Male Violence: The Visions and Struggles of the Battered Women's Movement*, 2, 4 (1982). However, while that is necessary, it is also insufficient without implementation and proper enforcement at the local level, through the court system, state enforcement and social services agencies. These local officials—judges, police officers, prosecutors, social service workers—must be trained to recognize and understand the problems and complexities of domestic violence, be willing and equipped to help its victims and, perhaps most importantly, coordinate with one another. See, e.g., Elizabeth Lehmann, *One Family, One Judge, Ten Lawyers: The Need For Attorney Training In The New York Integrated Domestic Violence Courts*, 69 *Syracuse L. Rev.*, 635 (2019).

Such implementation and enforcement continue to evolve through the present in the United States and abroad, as domestic violence was recognized as a significant problem only relatively recently. In the United States, domestic violence was recognized by the courts for the first time in the 1970s. By the mid-1990's, every state in the U.S. had enacted a civil protection order statute. See Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 *Yale J.L. & Feminism* 3, 10 (1999); see also Schneider, *supra*, at p. 3-5, 181-211. In 1994, the passage of the Violence Against Women Act

(“VAWA”) allowed for funding for improved law enforcement, prosecution, and victim services. VAWA also led to the development of civil orders of protection and domestic violence provisions in custody and visitation statutes, increased criminal penalties for domestic violence, and the adoption of mandatory arrest and no-drop policies. *See* Schechter, *supra*, at 157.

For example, New York, where the district court in this case is located, has specialized courts that handle domestic violence cases, known as “Integrated Domestic Violence” courts, with particularized training for the judges and staff members. *See* Rebecca Fialk & Tamara Mitchel, *Jurisprudence: Due Process Concerns for the Underrepresented Domestic Violence Victim*, 13 Buffalo Women’s L.J. 171, 172-173 (2004). In addition to the Integrated Domestic Violence courts, there are also family courts, which are designated to deal with various family-related issues, including issues of abuse. These family courts are empowered by the Family Court Act to award, without a hearing, on an *ex parte* basis, extraordinary measures. For example, Article 8, Section 842, of the New York Family Court Act allows a court to enter an order of protection which would not only direct that the alleged aggressor stay away from the victim, but even exclude such aggressor from his home upon an *ex parte* application by the victim. *See* N.Y. Fam. Ct. Act, art. 8 § 842. There are even instances where the orders of protection include the abuser being directed to stay away from his children. *Id.* Federal courts, on the other hand,

encounter and address these issues much more rarely, and typically only in the context of unrelated proceedings.

Nevertheless, this Court has recognized the prevalence of domestic violence in our society and the inherent value of an order of protection and enforcement to its holder. *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 760 (2005) (“Whether or not respondent had a right to enforce the restraining order, [such order] rendered certain otherwise lawful conduct by her husband both criminal and in contempt of court.”); *see also Georgia v. Randolph*, 547 U.S. 103, 126 (2006) (“Family disturbance calls . . . constitute the largest single category of calls received by police departments each year.”)

Recognizing this, New York has criminalized violations of orders of protection, including those issued by the family and civil courts. A reported violation of an order of protection requires an automatic arrest by the police and a speedy prosecution for criminal contempt, with a maximum incarceration sentence of seven years. *See* N.Y. Fam. Ct. Act § 846; *see also* N.Y. Penal Code § 215.51.

These mechanisms for addressing domestic violence did not come together overnight. Since the 1970s, New York’s and the United States’ legal systems, as well as the society at large, have continuously evolved in their understanding of the complexities of domestic violence, resulting in the correlating evolution of the laws and enforcement mechanisms.

In light of this inherent complexity of domestic violence, and of the crucial role played by the societal attitudes, the system for addressing it will vary from country to country, often dramatically so. A United States court of course would not automatically possess the nuanced understanding of the social attitudes and the legal system of another country that is required to direct ameliorative measures that will actually protect a victim of domestic violence abroad. Moreover, even to attempt to gain such understanding would require investing extensive time and resources, which are simply not available within the confines of an expedited Hague Convention proceeding. As this case demonstrates, in its cursory examination of Italy's legal system, the district court could not sufficiently appreciate its complexity or its cultural and social attitudes and norms. This lack of understanding resulted in the issuance of ameliorative measures that will not protect B.A.S.

Although the district court spent nearly a year on its inquiry into the Italian legal system, it did not actually investigate Italy's system sufficiently as a whole, including the enforceability of the relevant laws. The district court tasked one of the four Judges representing the United States on the International Hague Judges Network,<sup>2</sup> the Honorable Peter J. Messitte of the District of Maryland, with communi-

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<sup>2</sup> Network of judges from contracting states that act as a channel of communication with the Central Agency of their country and the judges of other contracting states in order to deal with issues arising from the Hague Convention.

cating with the Italian Central Authority regarding Italy's ability to enforce and monitor the ameliorative measures. In Judge Messitte's first communication to the Italian Central Authority on August 15, 2019, he stated, "the essential inquiry is whether, in your judgment, the Italian courts would be able to ensure that the undertakings that Judge Donnelly has prescribed in her Order would be implemented, monitored, and respected in Italian courts." *See* D. Ct. Dkt. 77, at p. 3.

In response, on October 4, 2019, the Italian Central Authority confirmed, *inter alia*, that with respect to order of protection, under Articles 342 (a) and (b) of the Italian Civil Code, Italian civil courts are vested with the power to issue orders temporarily excluding family members from the home where such family member was "responsible for causing serious psychological or physical harm to close relatives living with them." *See* D. Ct. Dkt. 85, at p. 2. The Italian Central Authority further detailed that such orders could include tailored protective measures and that the courts are able to involve social services, family mediators and specialization associations to undertake and support protective measures that are ordered. *Id.* Nowhere in the October 4, 2019, letter did the Italian Central Authority provide any details as to how orders of protection are enforced in Italy (including, what occurs if a civil order of protection is violated), the typical duration of protection orders, whether orders of protection can be extended and what circumstances must exist for such to occur, etc. Nor did the District Court's

follow-up letter, on October 11, 2019, request such information. *See* D. Ct. Dkt. 87.

Put simply, all that was confirmed to the district court by the Italian Central Authority with respect to orders of protection—the single most important undertaking directed in this case—was that orders of protection exist in Italy and may include additional protective measures, such as therapy and supervised visitation. The district court took no steps to inquire into the actual force and effect of the orders of protection in Italy, or the extent to which they are enforceable. Its cursory analysis failed to reveal that Italy’s system presently does not provide effective protection to victims of domestic violence.

## **II. Experts Agree That Italy’s System For Protecting Victims Of Domestic Violence Is Presently Inadequate**

From 2006 to 2008, Europe undertook a multi-national campaign to combat violence against women, including domestic violence. *See* Historical Background, Istanbul Convention, Action Against Violence Against Women and Domestic Violence (2021), <<https://www.coe.int/en/web/istanbul-convention/historical-background>>. The campaign brought to light the disparity in national responses to domestic violence and violence against women across Europe, emphasizing the need for a uniform response. *Id.* To this end, in December 2008, the Committee of Ministers, Council of Europe’s statutory decision-making body, created an expert group to prepare a draft



convention combatting and addressing gender-based violence against women in Europe. *Id.*

The Convention on Preventing and Combating Violence Against Women and Domestic Violence was adopted by the Council of Europe, Committee of Ministers, in April 2011. In May 2011, on the occasion of the 121st Session of the Committee of Ministers in Istanbul, it was opened for signature and named the “Istanbul Convention.” *See* App. 7a-66a. It was entered into force in April 2014. *Id.* To date, thirty-six countries, including Italy, have ratified the Istanbul Convention. *See* Country-Monitoring Work, Istanbul Convention, Action Against Violence Against Women and Domestic Violence (2021), <<https://www.coe.int/en/web/istanbul-convention/country-monitoring-work>>.

### **A. The Istanbul Convention**

The Istanbul Convention designated an independent group of experts—Group of Experts on Action Against Violence Against Women and Domestic Violence (“GREVIO”)—to monitor the implementation of the Istanbul Convention. *See* GREVIO, Istanbul Convention, Action Against Violence Against Women and Domestic Violence (2021), <<https://www.coe.int/en/web/istanbul-convention/grevio>>. GREVIO is tasked with investigating member countries and publishing reports evaluating legislative and other measures taken by the member countries to give effect to the provisions of the Istanbul Convention. *Id.* Where appropriate, GREVIO may adopt general recommendations on themes and

concepts of the Istanbul Convention. *Id.* In its assessment, GREVIO must “take into account a gender and geographical balance, as well as multidisciplinary expertise in the area of human rights, gender equality, violence against women and domestic violence or in the assistance to and protection of victims.” *Id.*

On January 13, 2020, GREVIO issued its first comprehensive assessment and report on Italy’s implementation of the Istanbul Convention. *See* Group of Experts on Action against Violence against Women and Domestic Violence, GREVIO’s (Baseline) Evaluation Report on Legislative and Other Measures Giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Italy (2020) (“GREVIO Report”), *see also* App. 67a-364a. The GREVIO Report found that Italy’s system for protecting victims of domestic violence was severely lacking in multiple critical respects and significant improvements were necessary:

Amid such progress, this report identifies areas where policies and measures are not attaining the expected outcome and provides guidance and concrete solutions to overcome such resistance. Moreover, the evaluation process registered disturbing signs that decision makers in Italy are considering introducing legislative changes which would erode the progress achieved and radically compromise Italy’s ability to

fully uphold the standards of the convention. GREVIO recalls the importance for the authorities to persist in their efforts to promote and foster a gendered understanding of violence against women as a violation of their human rights and violence which disproportionately affects women because they are women.

App. 315a-316a.

### **B. GREVIO Expressed Deep Concerns Regarding Italy's Response To Domestic Violence**

The GREVIO Report found several critical areas where the policies and measures in Italy were not attaining the expected outcomes, and thus provided recommendations and guidance to overcome these inadequacies. *See* App. 315a-316a. A common thread throughout the GREVIO Report is that none of these deficiencies would seem to be apparent based on the laws on the books, as the issues stem from how the laws are implemented (or not), how discretion throughout the system is used, social biases within the country, among many other variables. It is this multi-faceted and highly fact-specific inquiry that a Hague Convention Court cannot complete and yet, that is precisely what is needed in order to assure proper protection to B.A.S.

Specifically, the GREVIO Report found Italy's response to gender-based and domestic violence lacking in several critical ways, including most

significantly: (i) even when there are laws on the books directed at addressing domestic violence, in practice they are not enforced; (ii) victims of domestic violence face extreme difficulties in obtaining and enforcing protective orders; (iii) first responders are not assessing the risk to victims accurately, or at all, in most cases of domestic violence; (iv) lack of understanding and consideration of domestic violence by civil courts in matters of custody and visitation; and (v) cultural biases against women, particularly foreign women, hamper efforts to address domestic violence.

### **1. Even When Laws Directed At Addressing Domestic Violence Exist, They Are Not Enforced**

First, as a threshold matter, while Italy has laws on the books that could help protect victims of domestic violence, experts found that in practice, the implementation of these laws is wholly inadequate or completely nonexistent and, in many cases, serves only to further victimize women. This is a fundamental problem, which affects every aspect of Italy's system for addressing domestic violence, from the issuance and enforcement of orders of protection, to risk assessment performed—or not—by the first responders, to a victim's access to information and legal aid.

For example, despite the existence of the criminal laws requiring that claims of gender-based violence be prioritized in judicial investigations, the GREVIO Report found that there remain lengthy delays from

the reporting of violence to the time such report is prosecuted. *See* App. 264a-265a (*citing* Code of Criminal Procedure, Article 132-bis; Parliamentary Committee, Sul Femminicidio, Nonche Su Ogni Forma di Violenza di Genere, (2018), p. 165)). In fact, GREVIO found that the average duration for gender-violence related criminal cases in Italy is three years. *See* App. 264a-265a. These lengthy delays often result in offenses being time-barred from being prosecuted. *Id.*

The Committee of Ministers has been examining a horrific domestic violence case that occurred in Italy, *Talpis v. Italy*, in an attempt to ensure that Italy is taking the proper steps to mitigate the chance of such case happening again. In that case, a husband murdered his son and attempted to murder his wife. The findings of the Committee of Ministers' most recent report indicated, *inter alia*, that the Italian authorities were not cooperating by providing information related to whether the adopted measures have remedied the issues that arose in the case:

At the origin of the violations found lies the inadequacy of the immediate response given by law enforcement agencies and the judiciary to the applicant's report of domestic violence which deprived her of effective protection and paved the way to a tragic escalation of violence. Against this backdrop it is crucial that the Committee makes sure that the comprehensive legal framework put in place by Italy is applied in an

adequate, effective and timely manner and that tangible positive results are attained. It is regrettable that the authorities have only provided partial information in response to the Committee's last decision which does not allow fully to assess whether the adopted measures have remedied the shortcomings revealed by the judgment. It is therefore crucial that the authorities rapidly provide the comprehensive information and statistical data on the impact of the adopted measures as requested by the Committee.

*See Committee of Ministers Report on Talpis v. Italy* (2020) <<https://hudoc.exec.coe.int/eng?i=004-47825>>

Similarly, despite the Italian civil and criminal laws requiring law-enforcement officials, medical and social services, as well as public agencies to provide victims of domestic violence with information regarding support services available, the GREVIO Report found that the law was not systematically carried out and varied greatly among localities. *See* App. 197a-198a (*citing* Article 3, paragraph 5 of Italian Law No. 119/2013). Thus, the Report found that hardly any informative materials have been developed in Italy informing victims of domestic violence of the available services and legal help. *Id.*

Although the Italian Code of Criminal Procedure requires information be provided to victims at the first point of contact with prosecution authorities, *in the language of the victim*, the GREVIO Report

found that, in most cases, this information was not actually disseminated, and when it was, it was provided in the Italian language only, and generally failed to apprise the victims of their rights. *See* App. 198a-199a (*citing* Code of Criminal Procedure, Article 90-bis).

Likewise, while in theory there is legal aid available to women victims of domestic violence, experts noted that in practice, it is available only to very low-income women, *i.e.* those earning less than 12,000 euros per year. *See* App. 290a-291a. Even for such low-income individuals, the parameters on how aid is calculated and the courts' "varying sensitivities," including that the financial resources of the whole family be considered, result in legal aid either being denied completely or covering only a small fraction of the total costs. *Id.* Moreover, there are severe delays in the disbursement of legal aid when it is granted, making it at best unreliable, and more often entirely unavailable. *Id.*

## **2. Victims of Domestic Violence Face Extreme Difficulties In Obtaining And Enforcing Protective Orders**

GREVIO reported serious issues with Italy's issuance and enforcement of protective measures, including orders of protection. These orders are very difficult to obtain, and even when they are issued, their enforcement is severely lacking. This is perhaps the single most significant problem facing victims of domestic violence.

For instance, experts noted that there is no time limit on the issuance of an order of protection, whether in a criminal or civil court, which results in delays of many months and often years. *See App. 275a-276a.*

The data collected by GREVIO further indicates that victims' requests for protective measures in criminal courts are often disregarded and the risk posed to them by their perpetrators is underestimated. *See App. 276a.* In light of this underestimation of the risk posed to victims of further violence, courts are often reluctant to issue protective measures (particularly in cases where there is no proof of physical violence) or delay their issuance. *Id.*

Experts noted that time delays in issuances of orders of protection are even more severe in non-criminal proceedings. Notwithstanding the existence of laws intended to ensure prompt issuance of civil orders of protection, in practice, there are often months-long delays before a hearing on whether an order of protection should be issued can even be held. *See App. 277a-278a (citing Civil Code, Articles 342-bis and 342-ter).*

The uneven practices among the civil court judges in assessing the conditions under which orders of protection are being issued, especially the fact that some courts routinely attempt to seek a compromise between the victim and the perpetrator instead of taking a position on whether an order of protection should be issued, was of grave concern to GREVIO.



See App. 277a-279a. This practice, the Report noted, revealed a “severe misunderstanding of the dynamics of violence against women.” *Id*; see also Donne in Rete Control la Violence, Nuova Indagine. Il (non) Riconoscimento Della Violenza Domestica Nei Tribunali Civili e per i Minorenni (2021).

Most critically, experts found that the *only* mechanism for enforcing a protective order is for the victim to report a violation by filing a complaint with criminal agencies, which the agencies may elect to prosecute (or often not). See App. 277a-279a. GREVIO delivered a withering criticism of this practice:

GREVIO doubts that placing the burden on the victim to file a complaint when there is a breach of a protection order is an appropriate solution to dealing with the risks these situations generally entail. Many victims may not want their partner or former partner to have a criminal record. Moreover, the lack of an automatic reaction on the part of statutory agencies to violation of protection orders sends the message that infringements are tolerated. Once the offender realizes he can get away with his misbehaviour, the deterrent potential of protection orders is significantly diminished. This can not only provoke future violations, but it can also seriously discourage the victim, who should not be left alone in having to ensure that protection orders are enforced.

And, even if a prosecutor does move forward with the case, experts found that there is significant delay in time, often up to three years, between the report of the violation and criminal charges, further underscoring the practical lack of enforceability for the Italian orders of protection. *See* App. 264a-265a (*citing* Parliamentary Committee, Sul Femminicidio, Nonché Su Ogni Forma di Violenza di Genere, (2018), p. 165).

The number of orders of protection that were issued in Italy (in the few courts that tracked such information) were staggeringly low, likely due to its ineffective response to violations of orders of protection. Upon review of a three-year period in time in Italy, the Parliamentary Committee of Italy reported that across 21 courts (the only courts with sufficient information available to quantify the numbers of orders of protection requested and granted) in 2016, there were 125 orders of protection requested, and only 40 granted; in 2017, 127 were requested and only 53 granted; and in 2018, 149 requested, and only 68 granted. *See* Parliamentary Committee, Sul Femminicidio, Nonché Su Ogni Forma di Violenza di Genere, Violence, n.4 (2021).

### **3. Lack of Understanding And Consideration Of Domestic Violence By Civil Courts Severely Impacts Custody And Visitation Proceedings**

GREVIO identified a general lack of understanding of violence against women and its consequences on children in Italian civil courts. *See* App. 236a-

237a (*citing* High Judiciary Council, Risoluzione Sulle Linee Guida in Tema di Organizzazione e Buone Prassi Per la Trattazione dei Procedimenti Relativi a Reati di Violenza di Genere e Domestica (2018), at ¶ 7.6; Implementation of the Istanbul Convention in Italy, Shadow Report of Women’s NGOs (2018), p. 42); *see also* Donne in Rete Control la Violenza, Nuova Indagine. Il (non) Riconoscimento Della Violenza Domestica Nei Tribunali Civili e per i Minorenni (2021).

Because of this, civil courts often rely upon the conclusions of court-appointed experts; however, these conclusions most often relate only to the instances of violence between the victim and the perpetrator, and not the impact of the violence upon the children. *See* App. 236a-237a.

Experts noted that claims of abuse are often dismissed on the grounds of “parental alienation syndrome,” where mothers are blamed for their children’s reluctance to have visitation with their fathers under the notion that mothers are poisoning the children’s views of their fathers with false information. *Id.* This concept of “parental alienation syndrome,” which is widely adopted in Italy, leads to violence against women and their children either going undetected by civil courts and court-appointed experts or simply being ignored. *See* App. 237a-238a. Additionally, children are at times required by civil courts to undergo psychological treatment to recover from “parental alienation,” instead of receiving the proper services needed for the witnessing of violence between their parents. *See* App. 238a-239a.

Worse, civil courts in Italy do not take into consideration violence against women when dealing with issues of custody and visitation. *See* App. 196a-197a. In Italy, the law establishes a default presumption of shared (equal) custody in cases of separation or divorce. *See* App. 234a-235a (*citing* Law No. 54/2006). Accordingly, shared custody is applied in 90% of such cases. *See* App. 234a-235a. There is currently no obligation under the applicable laws that courts take into account the occurrence of domestic violence in the determination of custody. *Id.*; *see also* App. 28a.

Once again, there are Italian laws requiring civil courts to consider the best interests of the child in awarding custody and that criminal courts advise the civil courts of a criminal proceeding involving a crime of ill-treatment, aggravated sexual violence and/or stalking committed against a child or by the parent of a child against the other parent. *See* Articles 330, 333 & 337 of the Civil Code; *see also* Law No. 93/2013. However, GREVIO found that in practice, even these laws are rarely used to protect children who have witnessed violence against their mothers, even in cases where the violence has led to sentencing and/or other measures, including protection orders, against the perpetrator. *See* App. 235a-236a.

GREVIO gathered ample information suggesting that civil courts often force victims to meet with their violent partners—regardless of the claims made against the violent partners—and not come out until an agreement is reached. *See* App. 237a-238a. GREVIO noted that such practice of the civil

courts is defective because, in cases of domestic violence, there is an imbalance of power impairing the ability of reaching a fairly negotiated and mutually acceptable agreement. *See* App. 238a.

Moreover, and of even greater concern, the GREVIO Report found that when there is a parallel criminal proceeding, victims are often pressured by civil courts to drop criminal claims against the perpetrator because such claims thwart the family's efforts to reach an agreement on custody and visitation. *See* App. 237a-238a. In fact, there is a widespread practice by civil courts considering women who raise issue of domestic violence as a reason for not wanting to attend such settlement meeting, to be an "uncooperative parent" and thus an "unfit mother" who deserves to be sanctioned. *See* App. 238a-239a. This can lead to an array of consequences for victims including mandatory therapy to enhance parenting skills or, in worst cases, a limitation or deprivation of parental rights. *Id.*

#### **4. First Responders Are Not Assessing The Risk To Victims Accurately In Most Cases Of Domestic Violence**

The GREVIO Report found that, in many cases of gender-based violence, risk assessments are either omitted entirely by professionals and officials or, in the cases of police officers, the assessment of risk is based upon the officer's own experience and knowledge and not based upon a structured or standardized approach. *See* App. 271a-272a. In fact, the GREVIO Report noted that, in 2018, less than

20% of prosecutorial offices and only 8% of adjudicating offices have adopted risk-assessment criteria to enable law-enforcement agencies, prosecuting authorities and criminal or civil courts to prevent reoffending and the escalation of violence. *Id.* It was also found that when risk assessment is completed, it is not part of a multiagency effort and is not communicated to any other agencies involved. *Id.*

Women’s organizations reported to GREVIO that information provided in police reports is often incomplete, vague and lacking evidence with sufficient probative value supporting the implementation of protective measures, such as orders of protection. *See* App. 262a. Many of these reports stigmatize women. *Id.* Additionally, experts found that in some cases, police officers responding to reports of domestic violence on the scene consider the violence to be a “family quarrel,” and they try to reconcile the couple, instead of taking steps to protect the victim and support prosecutors in the collection of evidence. *Id.*; *see also* Implementation of the Istanbul Convention in Italy, Shadow Report of Women’s NGOs (2018), at p. 8.

### **5. Persistent Cultural Biases Against Women, Particularly Foreign Women, Further Impact Victims Of Domestic Violence**

Cultural biases against women, particularly foreign women, continue to impact Italy’s ability to protect women against domestic violence. Italy is admittedly still grappling with the issue of equality

between men and women. *See* App. 111a. Progress in this area has been hindered by a lack of gender equality policies being integrated at the national level. *Id.* Financial inequality is particularly rampant in Italy with single women having 25% less economic resources as compared to men and married women having less than 50%. *Id.* (*citing* Giovanni D'Alessio, *Gender Wealth Gap in Italy* (2018)). 40% of married women are unemployed and those that are employed, earn less than their husbands and experience discrimination in the workplace. *Id.*

In addition, GREVIO found that there was a tendency to reinterpret gender-equality policies in terms of family and motherhood policies, and that women's exposure to violence within families is often overlooked. *See* App. 113a. This has resulted in certain governmental agencies placing the protection of the family unit above the elimination of discrimination against women. *Id.*

This widely-held view of women and the family unit is showing up in recent pieces of proposed legislation. In fact, recently, parliament in Italy submitted a draft law, that, had it been approved, would have required mediation in custody settings and that women be held responsible for children's "alienation" towards their fathers by a restriction of their parental rights. *See* App. 113a-114a. While the law was not adopted, GREVIO found it particularly concerning that such a law would even be contemplated in light of its terms running contrary to the express terms of the Istanbul Convention prohibiting

compulsory alternative dispute resolution processes. *Id.* (citing Istanbul Convention, Article 48).

Foreign victims of domestic violence are at an even greater disadvantage in the Italian judicial system. *Supra* II(1); *see also* App. 197a-199a (citing Code of Criminal Procedure, Article 90-bis).

**III. Because Italy Currently Lacks An Effective System For Protecting Victims Of Domestic Violence, The Ameliorative Measures Ordered By The District Court Cannot And Will Not Protect B.A.S.**

The district court conditioned B.A.S.'s return to Italy upon compliance with the following ameliorative measures, as set forth in its May 5, 2020 Order (the "Order"): (i) confirmation of an order issued on December 12, 2019 by the Italian court overseeing custody directing, *inter alia*, that Respondent not go near Ms. Golan and B.A.S. and a directive that the Italian social services oversee Respondent's parenting classes and behavioral and psychoeducational therapy (see D. Ct. Dkt. 108, at p. 6); (ii) confirmation that on January 31, 2020, the Italian criminal court dismissed the charges Respondent brought against Ms. Golan in connection with B.A.S.'s removal from Italy and Respondent signed a statement agreeing not to pursue future criminal or civil actions against Ms. Golan which was submitted to the Italian court (see D. Ct. Dkt. 108, at p. 6); and (iii) a directive that prior to B.A.S.'s return to Italy, Respondent must pay Ms. Golan a year's worth of expenses, which the District Court concluded to be



\$150,000, to ensure B.A.S.’s “safe and comfortable return to Italy. . . as well as. . .Ms. Golan’s interim stability pending the Italian custody proceeding.”<sup>3</sup>

In essence, there are two most important measures geared toward ensuring B.A.S.’s safety in Italy: (a) the issuance of a protective order in Italy for Ms. Golan and B.A.S., and (b) an award of \$150,000 to ensure that B.A.S. and the mother have access to money while the Italian courts address custody and other issues in the parties’ divorce. For the reasons set forth above, in practice these “ameliorative” measures will provide no protection to B.A.S. in Italy.

It is axiomatic that orders of protection are protective only if there is strict enforcement and swift con-

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<sup>3</sup> These measures are typical of the ameliorative measures ordered in this type of proceedings by the United States courts. *See, e.g., Sabogal v. Velarde*, 106 F. Supp. 3d 689, 710 (D. Md. 2015) (directing the father to have temporary order granting him custody be vacated upon mother and child’s return and that father pay mother and child’s relocation and living expenses during pendency of custody action); *see also Rial v. Rijo*, 2010 WL 1643995, \*3 (S.D.N.Y. 2010) (undertakings found to be sufficient where father agreed to rent an apartment for the mother and child, not to press charges for child abduction, to seek dismissal of previously filed charges, and to pay child support to the mother); *Krefter v. Wills*, 623 F. Supp.2d 125, 138 (D. Mass. 2009) (ameliorative measures included that the father pay for plane tickets back to Germany for the mother and child, pay three months of child support in advance of the return, procure suitable housing for mother and child and that the parties use reasonable efforts to schedule the German custody proceedings).

sequences for any violation. The GREVIO Report confirmed that in Italy, with respect to orders of protection—civil or criminal—there is no automatic response to violations. See App. 277a-279a. In fact, here, Ms. Golan’s only remedy for a violation of the civil order of protection is to file a complaint with the criminal court and wait for the criminal prosecutor to decide whether to take action. *Id.* Such wait could last up to three years. See App. 264a-265a (citing Parliamentary Committee, *Sul Femminicidio, Nonché Su Ogni Forma di Violenza di Genere* (2018), at p. 165). Respondent thus would have ample time to continue abusing Ms. Golan, and through her B.A.S., without consequence to him, but with potentially catastrophic consequences to both Ms. Golan and B.A.S.

As GREVIO explained, Italy’s lack of automatic response to violations completely diminishes any protective value of the civil order of protection now in effect in this case. As detailed above, the only mechanism for enforcement of a protective order is through filing a criminal complaint, which is prosecuted—or more often not—in the discretion of the prosecutor, which often takes years to prosecute even when it is prosecuted, often resulting in the underlying violation being time-barred from prosecution. *Supra* II(2); see also App. 264a-265a.

Additionally, in the event of violations, police responses to domestic violence situations in Italy is often severely lacking and the police consider the scene a “family quarrel,” attempting to reconcile the couple rather than recognize the violence. See App.

262a. In fact, this precise scenario occurred in this case when the police were called to an altercation between Ms. Golan and Respondent, and yet, despite numerous indicia of domestic violence, the police did not arrest anyone and left the scene with Ms. Golan having to remain with Respondent. See D. Ct. Dkt. 58, at pp. 10-11. This systemic failure from law enforcement to identify indicia of domestic violence is precisely one of the reasons Ms. Golan and B.A.S. will not be protected upon their return.

In addition to the lack of enforceability, the order of protection in this case was issued only for one year from the time of Ms. Golan's return to Italy. This means that in one year, Ms. Golan will likely have to seek a new order (and that's assuming that it is not altered, removed or otherwise negotiated away earlier than in a year, which it likely will). As detailed above, the process to obtain a new order of protection is difficult, extremely uncertain, and, in any event, often takes years. *Supra* II(2); see also App. 264a-265a (citing Parliamentary Committee, *Sul Femminicidio, Nonche Su Ogni Forma di Violenza di Genere* (2018), p. 165).

Moreover, as explained above, Italian civil courts do not take into consideration violence against women when dealing with issues of custody and visitation. *Supra* II(3); see also App. 196a-197a; 234a-236a. Even more troubling, Italian civil courts routinely seek a compromise between the victim and the perpetrator with respect to orders of protection in the context of a custody proceeding, which often results in the victim losing the order of protection. See

App. 237a-238a, 277a-279a; see also see also Donne in Rete Control la Violence, Nuova Indagine. Il (non) Riconoscimento Della Violenza Domestica Nei Tribunali Civili e per i Minorenni (2021).

Furthermore, as detailed above, there is a widespread practice by the Italian civil courts to consider women who raise issues of domestic violence to be an “uncooperative parent,” a parent “alienating” the children from the father, and thus an “unfit mother.” Supra II(3); see also App. 238a-239a.

Finally, there is also the problem of affording legal representation. Supra II(1). As explained above, legal aid is only available to women with financial resources available to them of 12,000 euros or less. See App. 290a-291a. The Italian courts have discretion to include resources of a victim outside of her regular income when calculating whether she qualifies for legal aid. As noted above, Italian courts can take account even the value of free housing provided to the victim by a family member to help her shelter from her abuser. *Id.* In this case, Respondent was directed to pay Ms. Golan the sum of \$150,000. It is highly possible that such lump sum will disqualify Ms. Golan from legal aid, forcing her to spend down the funds intended to cover her and B.A.S.’s living expenses. Thus, this protective measure ordered by the district court may in fact leave Ms. Golan less protected under the Italian law than she would have been without it. The district court, unfortunately, was not aware of these complexities, thus issuing orders which are at best entirely ineffective.

## CONCLUSION

For the foregoing reasons, United States courts do not possess the nuanced understanding of another country necessary to craft effective ameliorative measures that would ensure safety of victims of domestic violence abroad. Gaining such understanding would require extensive time and resources far in excess of what is possible in an expedited Hague Convention proceeding. Reflecting such lack of understanding, the ameliorative measures ordered by the district court in this case will not protect B.A.S. Thus, the Court should dispose of the requirement that ameliorative measures be considered following a finding of grave risk of harm.

Respectfully submitted,

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