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OBSESSIVE JEALOUSY SUPPLIES THE MISTREATMENT CRIME

In those cases, and in particular contests, obsessive possessiveness toward their own partner may lead to commit a crime, the mistreatment crime, in order to safeguard the physical and psychic safety of who could be easily attacked. Note to the Court of Cassation, Crime Section VI, Sentence of 14th May 2015, n 20126

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Jealousy is that unbearable and harassing inquietude felt by who fear to lose, due to others, the loved one. Moreover, it is not the feeling to be important in the process, but the practical consequences, which can be the result of the excessive *resentment toward who is most considered from the loved person* [1]. In those cases, and in particular contests, the obsessive jealousy toward their partner can lead to commit a crime, the mistreatment crime, thought to safeguard the physical and mental safety of who can be easily attacked.

1. The case

With the sentence of the Court of Palermo, a man was charged for mistreatment crimes (art 572 p.c.) and persecution (art. 612 bis p.c.) for damaging his wife.

With a partial reform of the sentence of the Court, the Court of Palermo did absolve from the crime of mistreatment, the man, though confirming the crime of persecution, toward the same woman.

To sustain the decision, the judge revealed that, affirming the liability of the damaged person, from the probation elements, it emerged that the life of the couple was marked by many arguments, which were determined by the jealousy of the husband. Nonetheless, it said were missing the presuppositions for which were proven not only the frequency, resulting in only one proved episode of intimidation (of unusual violence, given that the accused person, was upset because he had been drinking, and extracting a gun, he threatened his wife, pointing the gun in her face, to the witnessing of his little daughter and mother-in-law), but also the subjective element, being not demonstrated the awareness of the accused person to cause to his wife a physical and mental upsetting.

Contrary to the sentence, the Prosecutor presented an objection to the Court of Palermo requesting for the cancellation in the absolving due to the lack, contradiction and illogicality of the motivation as well as for a wrong application of the law. The Public Prosecutor has highlighted the way the Court misinterpreted the process results and,

specifically, the declarations of the offended person and the heard witnesses, whom have referred major violent and intimidating behaviours actuated by the indicted towards his wife, due to the obsessive jealousy, integrating, since they were repeated and constant in time, the requisite of constancy.

It highlighted also, how this emergency cannot be contradicted by the circumstance that the woman may have endured for years the oppression and the physical as well as mental violence from her husband.

In light of the situation, the PP has clearly affirmed that the mistreatment crime may be integrated also by an act of disdain of the offended person revealing eventual periods of normalcy and accord between the couple and, also, the tolerability degree of the woman.

2. The mistreatment crime against the family and cohabitant

To have a better comprehension of the sentence, it is necessary to have a glimpse of the discipline of mistreatment crime among the family, according to the art 572cc.

The above-mentioned article does punish whoever, beyond the cases mentioned in art 571, *mistreat a component of their family or a cohabitant, or a person under their authority or under their custody for education, formation, care, custody or for a profession or art.*

This regulation is located in the version XI entitled “Of the crimes against family”, in particular in the VI’s head “of the crimes against the familiar assistance”. This choice does reflect the majority of political and moral concepts, which will for a particular safeguard of the family as a self-authority. Art 572 cc is not meant only for the family but also for people linked from other relationships, in case the degeneration of the use of measures does involve also people linked to the person with a relation of dependence or for the conduction of a profession or art. Nonetheless, it seems dominant the interest to the safeguard of the order of families.

The crime in question assumes the existence, between the parts, of a stable relation and of a family, being it natural or of common law, with links of mutual assistance and

protection that the authority has thought as to be protected. Even being necessary the existence of continuous relations between victim and accused, the cohabitation is not an essential assumption of mistreatment of crimes.

The juridical object of crime of which art 572cc, consists of the interest of the State to safeguard the family from the obsessive and violent behaviour and in the protection of the physic and mental safety of those indicated in the regulation examined.

The **objective element** of the crime consist in the obsessive behaviour, implemented for what concerned, against a familiar, so to modify the person, submitting them to disdain acts and continuous offences, able to determine in the offended person the growth and permanence of a moral suffering state and humiliation, not compatible with the normal life conditions.

It is, also, a **necessarily habitual crime** characterized for the existence of behaviours, which, whether are not for themselves, to concretize hypothesis of crime, assumes criminal relevance for their reiteration in time.

It characterizes for the subsistence of facts, commissive or omissive, which, considered on its own could not be punishable (infidelity acts, generic humiliation, etc.) so acts that are not attainable (insults, light threat, achievable with a complaint), though they find relevance for their reiteration in time.

The mistreatment crime in family does happen when there is a minimum of such behaviours, criminal or not, linked from the frequency and it can constitute also the prolongation of ex art 81 cc, such as in the case in which the reiteration is interrupted from a condemning sentence because of the vast amount of time that passes between the two hypothesis. The ratio of the criminal illegality is in the reiteration of the sentences that has been prolonged in time, also limited and in the persistence of the intention [2].

In order to achieve the **psychological element** of the crime it is sufficient the general malice, as conscience and will to subdue the passive subject to the offensive behaviour, not being prerequisite that the agent is moved by the specific intention to mistreat.

It is sufficient the awareness of the agent to persist in an oppressive activity toward the partner [3].

The subjective element that unifies the single episode is made up of a unitary malice that denotes a serious intention to dishearten and overpower the victim linking the episodes to the moral and material sphere of the passive subject.

The malice of the mistreatment crime in the family does not request the representation and organization of major acts able to cause physical other than mental suffering to the victim, being, instead, sufficient to the conscience and will persist in an oppressive activity, already presented previously, suitable to damage the victim's personality[4].

The legislator identifies the typical action through the locution “**mistreat**”. This expression has been criticized for its vagueness in the meaning. It is, therefore, a word that already in the common language identifies a behaviour prolonged in time: beside, the title of crime is plural, where instead elsewhere(art 727 cc) the legislator has used the same term in a singular way, affirming in both cases that he has made a conscious choice.

It has to be underlined how, recently, the 1.1 October 2012, n. 17, has changed the art 572 cc, adding to it the following changes:

- Firstly, it extended the application in this case to the cohabitation case and, consequently, it modified the signature of the article from mistreatment in the family, to *mistreatment against family and cohabitant*;
- Secondly, it made possible that the damage toward a minor of fourteen years old constitutes aggravating factor;
- Last, it enlarged the duration of the punishment foreseen (paragraph I: reclusion from two to six years, paragraph 3: from four to nine years for serious personal damages, reclusion from seven to fifteen years for very serious damages, reclusion from twelve to twenty-four years if from it derives the death of the person).

The crime in question has official prosecution and it is included in the competence of the Court of a single judge.

Therefore, it is the regular feature, seen as unavoidable to integrate in the crime, to be

recognized from the Court of Appeal as inconsistent and, on the contrary, it has considered to be only one and insufficient episode.

3. The decision

According to the judges of legitimacy, the decision of the Court of Appeal, which considered as not recognizable the assumptions of mistreatment crime on the basis for which the “life as a couple” was “marked from the strong jealousy of the husband and from the fight originated for these reasons”, at least in the terms in which it had been expressed, it settles on a discontinuous level against the consolidated teaching of the Court of Cassation.

In fact, it cannot not be considered the principle according to which the mistreatment crime is integrated not only from the struck, injuries, insults, threats or limitations, but also from the acts of psychological oppression that end up in a prolonged moral suffering [5].

Also, it integrates the objective element of the mistreatment crime in the family (art 572 cc), the fulfilling of acts, more or less illegal, of oppressive nature who determines mental and physical sufferings, realized in second moments, without being necessary that they are realized for a prolonged time, being, instead, sufficient the repetition, even for a limited time[6].

Accurately, so, the Court revealed how the constant harassment to the wife with continuous obsessive and maniacal behaviours, inspired by a morbid obsession, and able to provoke directly important limitations and conditioning the daily life and the work choices, other than an intolerable state of anxiousness, realizes the situation of constant psychological oppression sanctioned by the particular incriminated case of art 572 cc, as expression of abuse of power and source of an intense and persistent moral sufferance.

The behaviours held censorial, according to the court, are, for example:

- The perseverant contestation of inexistent betrayals, the incessant search of leads of extramarital relations with the constant check of the partner’s phone to look at the

conversations;

- The check of when she comes back home and the constant control of every movement;
- The repetitive insults with smutty words relating the hypothesis of the unfaithfulness (in this case, “*bitch*”, “*whore*”);
- The major prospected doubts regarding the effective fatherhood of children with consequent reiteration of requests of DNA test;
- The pressure to the offended person in order to make her give up her job (in this case, flight attendant job considered from the man as not conform to “good women”);

Are of no matter the hypothetical affirmations concerning a reunion of the two, or the periods of “normalcy” between the couple.

Recently the supreme Court of Cassation has also clarified that “*in order to configure the crime of mistreatment in the family, it has not significance that the harmful acts have alternated to periods of normality in the behaviour of the agent and according to the parents, since, given the habitual nature of the crime in object, the duration time between a series and the other, of harmful episodes, does not make it less the existence of the illicit. The behaviour can include, then, break moments*”[7].

4. Conclusions

In the protecting logic of the legislator, in light of the *ratio* of the incriminating norm, it cannot not be like that. The safeguard given to the partner, being it spouse or cohabitant, have to be able to find a result in a system that not only look at the mental protection of the person, but also to the moral and psychological one. Obsessive and maniacal behaviours, so, result of a morbid obsession, able to revolutionize the life of the partner, obviously does implement the situation of constant psychological oppression sanctioned by the particular case incriminating of the art 572cc, as expression of an evident show of abuse of power and source of an intense and persistent moral sufferance.