

ECONOMIC VIOLENCE. WHICH ECONOMY LAW INSTRUMENTS ARE MORE EFFECTIVE¹

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Abstract:

The Council of Europe Convention on 11 May 2011 address the economic violence as one of the kind of violence a woman may face dealing with incomes from her work, access to labor market, establishment of enterprises, access to entrepreneurial activities and governance bodies.

The paper focuses on four typical situations of economic violence and subsequent risks for the woman and society and economy.

Economy law may propose the use of instruments to prevent or fight economic violence: from tax incentives, to woman enterprise incentives; from direct finance, to loans at discounted rates; from quota to the underrepresented gender to incentives to build educational and professional skills dedicated to woman in order to fill the gap and play at the same level.

Some of them have been already used with good kind of success, other not, but their common element is that there is a better and specific educational and training need for woman to prevent economic violence.

The paper will practically show some data in respect of certain instruments within the Italian legal framework.

Conclusion of the paper will address needs for a better and specific education and training before introducing new Economy law measures in the Italian legal framework, pursuant in some case to EU legislation.

Keywords: Economic violence. Economy law instruments. Entrepreneurial woman skills. Woman education and training needs.

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1. ECONOMIC VIOLENCE AND IMPACT ON WOMAN AND THE SOCIETY

1.1. Legal framework, definition and classification of economic violence

The Council of Europe Convention on preventing and combating violence against women and domestic violence of 11 May 2011 (the "Istanbul Conference") address the economic violence as one of the kind of violence a woman may face.

Economic violence may be defined as the violence which woman may face once dealing with incomes from their work, access to labor market, establishment of business, access to entrepreneurial activities and governance bodies or leading positions in a business.

Economic violence can be classified as a second tier violence against woman, within two different meanings: (i) although is not a direct violence physically hurting a woman, economic violence hinds a woman to take her free decisions whether or not leave the situation where she is a risk of additional injuries or worst being killed; (ii) economic violence may be considered on the other hand as a preliminary violence to psychologically justify subsequent kind of violence and finally compress woman to take free decision on her own professional life, which may bring to the difficulty or impossibility in the situation described above under (i) to leave it.

In this sense economic violence is a kind of subtile violence which, thanks also to prosperous cultural environments to woman economic discrimination, is not easily to perceive or at least to distinguish from other kind of violence once they are currently perpetrated. Badly, economic violence is a kind of permanent violence which once started always leads to a worst situation. Each discrimination, each economic violence gesture adds a single brick to the complex violent situation bringing down in a negative spiral the woman, preparing a fruitful ground for the next episode of economic violence or other kind of worst violence.

1.2. Impact on woman

As mentioned above economic violence generates two kind of risks for a woman involved.

A woman which is subject to economic violence faces (i) the risk of being regarded as a "*minus*" if compared with a men and consequently poor self-esteem, which leads to undeveloped skills, more ground for other kind of worst violence and (ii) the risk of not having any other chance than remaining within the violent situation, at risk of being harmed or worst badly injured or even killed.

If we focus on "poor self-esteem" the consequence is not only psychological (which per se is highly negative) but also lead a woman to undevelop her own skills, to avoid to pursue her dreams or what she likes to be or to give up what should be reasonably subsequent for the kind of received education in line with a proper professional growth.

1.3. Impact on the society

For any given society, economic violence is a pure loss.

Woman contribution to the growth of a better and peaceful society is fundamental.

Good work and business relationship are built in a better way once they involve woman which more easily and practically try to find a reasonable solution to most of disruptive situation where normally man would fight and take useless risks.

As we would point out in Paragraph 3.3, woman are less risk takers than men and are less keen to align themselves to mass though. Although this approach may seem to be based on stereotypes, it is the same approach that has been taken by European Banking Authority and European Securities and Markets Authority in a formal document addressed to European Union banks (see below).

But the impact on the society is not limited to the above. There is a certain kind of systemic risk in economic violence. If perpetrated at a single woman level, it gives ground and may seem possible towards different woman and furthermore even not directly hampered woman start behaving as they were victims of such violence, renouncing to their rights.

1.4. Impact on the economy

From society to economy the step is very close.

Woman contribution is necessary for a growing and sustainable economy. Such contribution must be equal to the contribution of man in terms of quality and quantity.

But the impact of economic violence may hamper such contribution.

Firstly economic violence is a loss of finance resources for growing economies as well as mature economies. Education costs. If a well educated woman faces difficulties in finding a job or has to fight against discrimination, culturally based stereotypes and unfit business organizational structures and fully

or partially gives up, this will be a loss of finance resources because money spent for her education will not be recovered by ordinary and progressive taxation on her revenues, which by the way finances education for the next generations.

Secondly economic violence can be regarded as a loss of chance. Hampering through economic violence woman participation to the economic process in terms of not working, working as a no-skilled or poor-skilled employee (by the way more at risk of unemployment due to changes in the labor market and in industrial and commercial production and distribution processes), working in a job position which is personally perceived as not suitable or which is perceived as the consequence of discrimination, generates economic damages in terms of frustrated employees which slows working process, loss of exploitable blue ocean economic ideas (through the establishment of start-up and new businesses or new products and services design) and loss of the opportunity to change mentality in and approach to production and distribution processes.

2. ECONOMIC VIOLENCE SCHEMES

We have found four different economic violence schemes.

First scheme – Working denial

The *first scheme* is quite simple and common. The man partner of the woman or the original family of the woman denying or suggesting to avoid the woman to work on the basis that she has to take care of children or other family members or suggesting that some kind of professional activities will be time consuming in respect of family activities, such as houseworks.

This appear more as a psychological kind of violence, conditioning her will and weakening her possibilities in the future from a professional point of view. Normally these woman end before completing their secondary educational process or complete it but this is not suitable for searching a satisfactory job and finally give up.

Second scheme – Revenues or assets seized

The *second scheme* is more complex and violent. In this case the man partner of the woman or a man part of the original family (normally the father or an older brother) seizes incomes gained by the woman or obliges the woman to work for free in a family enterprise (in such case revenues for woman work are not currently paid and the example must be turned to monies that at harms length she would have gained if she was employed out of the family context).

This kind of economic violence is more visible as the woman involved has any or poor access to financial resources or this access is not proportional to the quantity or quality of her work or is conditional to the willing of the partner or the original family (i.e. the woman receives a certain sum of money, but this appears more as a “gift” than a salary). In any case the woman has any clue of financial situation of her family and the money received are only granted for basic and specific needs, hampering any possibility of savings for future expenses or other expenses such as leisure or cultural ones.

Sometimes this kind of violence has a legal impact as the woman is requested to issue personal guarantees on her personal assets for the benefit of lending entities and in the interest of the family business or the partner (in this case the woman faces the risk of being deprived of her assets as a consequence of lender actions) or worst the woman is formally appointed as the entrepreneur but in facto she is only a figurehead.

Third scheme – Heredity of the family business

In the *third scheme* although the woman has proper skills and attitudes to run the family business as an heir or potential heir, she has been convinced to build her educational career in a manner that she will be discriminated in the succession or notwithstanding she may be fit to take an executive role, man of the family are preferred to get it.

Again as the second scheme, this economical violence scheme does not spring out in one single episode, but grows little by little and finally at the end seems as the unavoidable reasonable consequence. It may even be as such, if one looks only at the end of the story but it would not be unavoidable if the woman involved was properly educated and involved in the family business from the beginning. But even proper education and knowledge of the family business sometimes are not considered enough to run it at the time of generational change, as men are preferred to woman. In certain situation the preferred man is the woman partner who becomes executive and takes an important role in lieu of the woman. There are many successful examples of this situation, but there are as well entire wasted assets by partners.

Fourth scheme – Access to governance bodies and executive roles

The woman has high relationship, educational and professional skills but has poor access to companies governance bodies and in particular to executive roles.

Although this is not perceived as a form of economic violence, this form of discrimination can be brought back to the broad definition of it, as it involves economic factors such as business, enterprises, companies ... decision making and executive roles.

Because this kind of economic violence involves woman with high education and professional skills, it is more addressed and contrasted by legal measures and at a cultural level context, although results at least in Italy are long to come if we move from top companies to medium - large companies.

3. ECONOMY LAW INSTRUMENTS

3.1 Economy law scope

Economy law under Italian legislation and in particular under the scope defined by the Minister of Education, University and Scientific Research, is the subject which studies public intervention legislation over production of goods and services and with particular focus on financial aspects of business. In broader terms, scope of Economy law covers some aspects of taxation or direct public intervention in the economy; banking, finance and insurance business from contractual law perspective, governance and organization as well as the authority intervention for prudential supervision; consumer protection; other business supervised by independent authorities; company governance and organization.

If one looks to Italian Economy law scope, contribution to prevent and fight economic violence may be deemed little if compared to Labor law or Criminal law.

However because Economy law deals with financial aspects of business, legal and economic instruments which can be classified under its scope, may be used to achieve economic violence prevention and contrast.

3.2 Italian economy law instruments promoting woman entrepreneurship

Law measures

Italian economy law main piece of legislation is represented by Law No 215 of 25 February 1992. Law 215/1992 proposes the use of legal and economic instruments to promote the role of woman in the economy, therefore, although this is not expressly stated in the law, trying to prevent or fight economic violence.

The first group of measures are direct co-financing of the State at 50% without obligation to reimburse in

small/medium enterprises (defined as enterprises with less than 50 employees, less than € 7 mln. of annual turnover and less than € 5 mln. of total assets) which (i) if they are represented by a single entrepreneur, the entrepreneur must be a woman; (ii) if they are represented by unlimited liability partnership or cooperatives at least the 60% of stakeholders or quotaholders must be woman who are by operation of law involved in company management; (iii) if they are represented by limited liability companies, partnership or joint-stock companies, 2/3 of paid-in capital must be at least held by woman and at least 2/3 of the board of directors must be composed of woman. These companies must invest in industry, commerce, handicraft, agriculture, services and tourism. Financing may go to start-ups, to acquire existing business and innovation projects. Woman must not be employee of any company participating in the financed company or enterprise capital. The remaining part of the expenditure may be financed by authorized lenders (banks and financial institution) at a facilitated fixed interest rate lower than market interest rate. The spread between two rates is covered by the State.

Another group of measures are direct to promote “smart & start” woman enterprises in the south of Italy. Smart because the enterprise must promote new business models in terms of organization and production and in such sense innovating old-fashion business models. Start because the enterprise must be a start-up in digital economy or scientific research. Again these kind of enterprises are co-financed by the State.

The third group of measures are tax incentives to enterprises established by woman, which may concur with the previous measures.

It is worth to note that the above are measures only at State level as each Italian Region may establish local measures in order to promote woman enterprises.

Establishing measures success rate

In general what public available data show² is that there is growth of woman enterprises faster than the growth of enterprises (+ 4.1% 2014/2016 if compared to 2012/2014 for woman enterprises against + 2.1%).

Woman enterprises in 2016 represent 21.8% of the total number of enterprises. More woman are joining together to run a business in cooperative companies (1/3 of total number of cooperatives are run by woman). Tourism sector is more impacted: 29.7% are woman enterprises. Woman enterprises growth exceed the average growth of 0.7%. If we limit the analysis to lodging and restaurant or similar business run by people of less than 35 years old, in 2016, 34.5% are woman enterprises.

What is not immediately available is the mortality rate of such kind of enterprises. Enterprises Birth and Mortality rate is calculated by each Italian province Chamber of Commerce enterprise register, however this statistic gives only the balance between new and death enterprises. In order to assess if enterprises run by woman have been more successful than enterprises run by man or better in order to assess if incentives were properly granted it would be interesting to have the following kind of rate: at 1, 5, 10 years from establishment how many enterprises are still up and running by the founding woman.

3.3 Italian economy law instruments promoting woman presence in governance bodies

Italian law measures

More interesting are economy law instruments obliging joint-stock companies per shares listed in Italian regulated markets authorized pursuant to Italian Legislative Decree No 58 of 24 February 1998 as amended from time to time and lastly transposing EU Directive 2014/64 of the European Parliament and of the Council of 15 May 2014 (so-called and hereinafter MiFID2) to grant a quota of at least 1/3 to the underrepresented gender (normally woman) (Law No 120 of 12 July 2011) or providing that EU banks shall promote diversity and inclusion, with particular reference to underrepresented gender (see Article 88(2), letter (a) of EU Directive 2013/36 of the European Parliament and of the Council of 26 June 2013, so-called and hereinafter CRD IV) to achieve prudential supervision targets. Although application of such EU measure is not compulsory and at the moment Italy has not enacted special legislation on such topic is interesting to understand rationale, scope and possible consequences of the application of such EU measure.

EU Banking measures to be transposed into Italian Law.

CRD IV provides that major banks must appoint within the board of directors a special committee that evaluates candidates suitable for executive and non executive roles. The nomination committee "shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target. The target, policy and its implementation shall be made public in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013".

However more interesting is "whereas" to CRD IV No 60 "The lack of monitoring by management bodies of management decisions is partly due to the phenomenon of 'groupthink'. This phenomenon is, inter alia, caused by a lack of diversity in the composition of management bodies. To facilitate independent opinions and critical challenge, management bodies of institutions should therefore be sufficiently diverse as regards age, gender, geographical provenance and educational and professional background to present a variety of views and experiences. Gender balance is of particular importance to ensure adequate representation of population. In particular, institutions not meeting a threshold for representation of the underrepresented gender should take appropriate action as a matter of priority ... More diverse management bodies should more effectively monitor management and therefore contribute to improved risk oversight and resilience of institutions. Therefore, diversity should be one of the criteria for the composition of management bodies. Diversity should also be addressed in institutions' recruitment policy more generally. Such a policy should, for instance, encourage institutions to select candidates from shortlists including both genders."

European Banking Authority together with European Securities and Markets Authority implementing "Whereas" No 60 to CRD IV issued "Joint Guidelines implementing CRD IV and MiFID2"³ of 26

² Unioncamere, 2016 Report on "Imprenditoria femminile nel turismo", 27 October 2017; Censis – ConfCommercio, 2014 – 2016 Report on "Donne al lavoro, la scelta di fare impresa".

³

<https://www.eba.europa.eu/documents/10180/1972984/Joint+ESMA+and+EBA+Guidelines+on+the+assessment>

September 2017 entering into force on 30 June 2018 and currently under Italian Minister of Economy and Finance transposition. Paragraph No 3 and preparation works identify as one of the reasons of 2008 banking sector crisis weakness of bank governance bodies due to lack of diversity and the lack of independence of mind as two of the reasons why the crisis occurred. Therefore the need to have diversity in board of directors and executive roles as well as for “management and supervisory functions where a sufficiently large management body exists” and controlling functions, provided that for small entities the target may be reached through quality instead of quantity (i.e. one experienced woman against more woman with less experience in the management body) (Paragraph No 105) “to achieve a variety of views and experiences and to facilitate independent opinions and sound decision-making within the management body” (Paragraph No 104) which has been defined as “Independence of mind” a psychological behavior that allows a person with “courage, conviction and strength effectively assess and challenge the proposed decisions of other members of the management body; being able to ask questions to the members of the management body in its management function; and being able to resist <group-think>” (Paragraph No 82).

Establishing measures success rate

EU Banking measures are too young to be evaluated. However there are strong expectations on the implementation of such measures.

Law 120/2011 application is monitored by the Italian Securities and Exchange Commission (CONSOB). The 2016 Annual Report (<http://www.consob.it/web/area-pubblica/relazione-annuale>) of 8 May 2017 shows that the 1/3 target has been reached in 2016 (31,6% of the number of directors corresponding to 701 woman), with 226 listed companies with at least 1 woman in the board (cover ratio of 99.1% of overall listed companies).

Based on 2015 data, the educational level is high with graduate level of woman at 88.9% against man at 84.5%, post graduate (master or Ph.D) level of woman at 29.7% against man at 16.7%, with an average age of 50.9 years old for woman against 58.9 for man. Woman directors have more a professional and academic background than a managing background (respectively 33.2% against 16.6% for professional; 12.2% against 6.4% for academic; 54.1% against 76.5% for managers; 0.5 % each for others. Very interesting is the rate of family links with controlling shareholders (director could also be the controlling shareholder): 13.1% of family linked woman against 16.9% of man.

Based again on 2016 data there is a growth of interlocking ratio for woman (i.e. the same director member of one or more different listed company boards or board of statutory auditors) as pointed out by Assonime the association of listed companies⁴. It means that listed companies prefer to have in their board of directors more experienced woman part of other listed companies board of directors. But it could also mean that unless a growing request there is a lack of woman which are willing to be involved or do not have proper skills.

4. CONCLUSIONS: FOSTERING EFFECTIVENESS OF ECONOMY LAW INSTRUMENTS TO STOP ECONOMIC VIOLENCE TOWARDS WOMAN

The overall picture of Italian economy law instruments which may be used to stop economic violence is good.

All instruments may be used and may be asked by woman to get out of dangerous situation as well to promote themselves as entrepreneurs.

However companies and enterprises are small and the risk is that although they received direct or tax incentives they are unable to resist to a market crisis.

There is a lack of education dedicated to woman who may wish to become entrepreneur and therefore do not fall into the four risky situations.

Based on temporary results of a field research secondary school girls lack of knowledge about their rights within special legislation aiming to improve woman participation in the economy and in governance bodies and therefore are unable to properly build their c.v. in the light of it.

+of+suitability+of+members+of+the+management+body+and+key+function+holders+%28EBA-GL-2017-12%29.pdf

⁴Assonime 2017 Report in

http://www.assonime.it/_layouts/15/Assonime.CustomAction/GetPdfToUrl.aspx?PathPdf=http://www.assonime.it/attivita-editoriale/studi/Documents/Note%20e%20Studi%202%202018.pdf

The lack of a better and specific education and training is more evident if one looks to the legislation granting quota to the underrepresented gender (i.e. woman) as more woman managers are needed in order to balance the proportion with man managers which normally are executives.

This gap will be more evident once gender diversity obligation in board of directors, managing and supervisory bodies and functions will be applicable to any supervised banking and investment firm entity (more or less 1000 entities in Italy).

Therefore in order to foster effectiveness of economy law measures to contribute the stop to economic violence against woman quick and high level investments must go in the direction of increasing managing skills of woman through proper executive business administration education.