



**D.i.Re**

Donne in Rete contro la violenza

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Rome, 18/07/2022

## COMMUNICATION

**IN ACCORDANCE WITH RULE 9.2. OF THE RULES OF THE COMMITTEE OF  
MINISTERS REGARDING THE SUPERVISION**

**OF THE EXECUTION OF JUDGMENTS AND OF TERMS OF FRIENDLY  
SETTLEMENTS BY D.I.RE -DONNE IN RETE CONTRO LA VIOLENZA ON THE  
CASE**

**J. L. V ITALY (APPLICATION NO. 5671/16)<sup>1</sup>**

### **I. Introduction**

Through this Rule 9.2 submission, we aim to provide information concerning the individual and general measures required for the implementation of the judgement rendered in *J.L. v Italy*.

D.i.Re is a network of over 80 Italian women's non-governmental organisations running women's specialised services to combat and prevent domestic violence and violence against women in Italy. After becoming an informal network in 1990, it was officially established


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<https://hudoc.exec.coe.int/eng#%7B%22fulltext%22:%5B%225671/16%22%2C%22EXECDocumentTypeCollection%22:%5B%22CEC%22%2C%22EXECIdentifier%22:%5B%22004-58375%22%5D%7D>

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as an organisation in 2008, with headquarters in Rome. Every year, our members provide support to thousands of victims of gender-based and domestic violence.

D.i.Re collaborates with other networks of women's associations at national, European and international levels. It is Italy's focal point for "WAVE – Women Against Violence Europe" and a member of the "EWL – Women's Lobby", of the international network "GNWS – Global Network of Women's Shelters" and Euromed. It is accredited in the Italian Register of Recognised Associations against discrimination<sup>2</sup> and, since 2014, is also in the integrated Civil Society Organizations System developed by the United Nations Department of Economic and Social Affairs.

D.i.Re has contributed to the Italian Shadow Reports of the CEDAW Committee since 2011. It coordinated and edited Italy's Beijing+20 Report in 2015<sup>3</sup> and the women's NGOs Shadow Report to the GREVIO Committee in 2018.<sup>4</sup> Very recently, it submitted a third-party intervention to the case *Kurt v Austria*, awaiting judgment before the European Court of Human Rights.<sup>5</sup>

D.i.Re has also been involved in the enforcement procedure of the *Talpis v Italy* case under rule 9.2. of the rules of the Committee of Ministers.

## II. Case Description:

The case concerned criminal proceedings (between 2008 and 2015) against seven men who had been charged with gang rape of the applicant and had been acquitted by Italian courts. Given the wording of the Florence Court of Appeal's judgment issued in 2015, the Court held that the applicant's rights and interests under Article 8 had not been adequately protected. In particular, national authorities did not protect the applicant from secondary victimisation throughout the entire proceedings; considering its public function, the wording of the judgment played a vital role.

Among other points, comments regarding the applicant's bisexuality, her relationships and casual sexual relations prior to the events in question were considered unjustified by the Court. It stated also that the Court of Appeal's language and arguments conveyed prejudices regarding women's role in society. Despite a satisfactory legislative framework, such prejudices still persist in Italian society and are likely to be an obstacle to providing adequate protection for the rights of gender-based violence victims (violation of Article 8 of the Convention).

The Court was convinced that criminal proceedings and sanctions played a crucial role in the institutional response to gender-based violence and in combatting gender inequality. Therefore, it was essential for the judicial authorities to avoid: reproducing sexist

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<sup>2</sup> <http://www.unar.it/la-nostra-rete/associazioni/>

<sup>3</sup> [https://www.direcontrolaviolenza.it/wp-content/uploads/2014/08/Pechino2009\\_2014.doc\\_July-22\\_DEF-2.pdf](https://www.direcontrolaviolenza.it/wp-content/uploads/2014/08/Pechino2009_2014.doc_July-22_DEF-2.pdf)

<sup>4</sup> <https://www.direcontrolaviolenza.it/wp-content/uploads/2018/11/GREVIO.Report-inglese-finale.pdf>

stereotypes in court decisions, downplaying gender-based violence, and exposing women to secondary victimisation by making guilt-inducing and judgmental comments that were capable of discouraging victims' trust in the justice system.

### III. TABLE OF CONTENTS

1. Connection with *Talpis v Italy* case: underestimating and making violence invisible;
2. Legislative references and judicial reform of the criminal process;
3. ISTAT data on stereotypes and prejudice; the latest and only report, 2019;
4. ISTAT data on sexual violence. The latest report, 2018;
5. Criminal trial archiving data;
6. Rulings on sexual assault/rape: discrepancy in pronouncements between trial courts and the Supreme Court;
7. Reports by the Parliamentary Commission of enquiry into femicide and all forms of gender-based violence;
8. Secondary victimisation/prejudices as a general problem in criminal proceedings;
9. Secondary victimisation/prejudices as a widespread problem in the civil process;
10. Role of the media: media harassment of victims;
11. Recommendations

### IV. INDIVIDUAL MEASURES

Despite the fact that the President of the Italian Republic Mattarella has publicly stated that violence against women is a failure of our society<sup>6</sup>, in both *J.L. v. Italy* and *Talpis v. Italy* cases there has been no assumption of responsibility by the institutions in charge (Government, Minister of Justice, Superior Council of the Magistracy) for the human rights violations suffered, nor a public apology to the applicants.

The comments regarding the applicant's bisexuality, her relationships and casual sexual relations prior to the events in question and the prejudicial language and arguments used by the court of appeal had a significantly negative psychological impact on the applicant and

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<sup>5</sup> See annex 1

<sup>6</sup> <https://www.quirinale.it/elementi/61255>

this bias against women not only retraumatized and stigmatized her, but also contributed to the failure to ensure justice for her.

The wording of this judgment remains accessible in the public sphere. While the words cannot be unsaid, we consider that the **relevant national authorities should issue a public statement of apology to the applicant**, thus providing a form of moral justice to the applicant and assuming responsibility for their actions.

## V. GENERAL MEASURES

### 1. Connection with *Talpis v Italy* case: underestimating and making violence invisible.

The *J.L. v. Italy* case presents some meaningful connections with the *Talpis v. Italy* case, which is under enhanced supervision by the Committee of Ministers<sup>7</sup>. The Italian government has not responded to the requests set out by the Committee of Ministers during the 1383rd CM-DH meeting (29<sup>th</sup> September – 01<sup>st</sup> October 2020) yet.

An excessive amount of prejudices and sexist stereotypes still exist in the judiciary, preventing the recognition of violence against women as well as sexual violence, with a consequent underestimation of the problem. In particular, ongoing and mandatory training of magistrates on the topic of gender discrimination and stereotyping in such contexts is lacking.

**The Parliamentary Commission of enquiry into femicide and all forms of gender-based violence (from now on: Senate Commission on Femicide) published a report on gender-based and domestic violence in the court system<sup>8</sup>.**

The Senate Commission on Femicide highlights poor and uneven specialisation of judges and prosecutors on gender-based violence; inadequate training of magistrates; and poor training of lawyers and psychologists<sup>9</sup>.

The Senate Commission on Femicide also identifies critical issues in civil courts, where cases of domestic violence arising during separation and cases where judges order a court appointed expert (CTU Consulente tecnico d'ufficio in Italian) are not quantified. The necessary correlation between civil and criminal proceedings is often missing<sup>10</sup>.

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<sup>7</sup><https://hudoc.exec.coe.int/eng#%7B%22fulltext%22%3A%22talpis%22%2C%22EXECDocumentTypeCollection%22%3A%22CEC%22%2C%22EXECIIdentifier%22%3A%22004-47825%22%7D>

<sup>8</sup> <http://senato.it/service/PDF/PDFServer/BGT/1300287.pdf>

<sup>9</sup> Data confirm a general underestimation of the need for psychologists' specialized forensic training and for adequate skills when working in the field of gender-based and domestic violence, where they carry out counselling and expert witness work in trials, both civil and criminal. Both lawyers and psychologists have only recently started to raise awareness of the mentioned issues and are extremely late in their training.

<sup>10</sup> Only in a few cases (31 %) does the judge in the civil proceeding acquire criminal records.

## 2. Legislative references and judicial reform of the criminal process

A criminal justice reform and a new law proposal, DDL 2530<sup>11</sup> are currently under discussion. Unfortunately, they address neither the issue of stereotypes and prejudices that impact women's access to justice nor the high number of dismissals. On the contrary, they show evident criticalities.

Firstly, it is to be considered that the current Italian criminal justice system foresees that a claim cannot be withdrawn when a victim reports sexual violence or rape.

Art 8 of DDL 2435 (criminal justice reform) as originally drafted by Lattanzi Commission<sup>12</sup> explicitly suggested to “reconsider the cases where the complaint cannot be withdrawn”<sup>13</sup> so as to favor and facilitate out-of-the-court dispute solutions and allow reparative justice. The only two crimes where a claim cannot be withdrawn are sexual violence and aggravated stalking. The draft article was dropped also following the intervention of D.i.Re<sup>14</sup>.

Secondly, the law proposal DDL 2530 aims, among other very positive amendments to GBV legislation, at changing the procedures for sexual violence and rape, introducing the possibility for the victim to request the Police to issue an administrative warning (ammonimento) instead of filing a complaint. Concretely, sexual offenders would receive an administrative warning instead of a criminal proceeding – something which clearly violates the Istanbul Convention. D.i.Re was auditioned and asked to drop the relevant article. DDL 2530, however, is still under discussion in the Senate<sup>15</sup>.

Moreover, the provision punishing sexual violence and rape in Italy is not based on consent, as correctly observed by the GREVIO experts who call for its amendment as a matter of urgency<sup>16</sup>. *Even the UN Special Rapporteur on violence against women in her 2021 report*

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<sup>11</sup> *Provisions for the Prevention and Counteraction of the Phenomenon of Violence against Women and Domestic Violence.*

<sup>12</sup> [https://www.giustizia.it/giustizia/it/mg\\_1\\_36\\_0.page?contentId=COS333721&previousPage=mg\\_1\\_8\\_1](https://www.giustizia.it/giustizia/it/mg_1_36_0.page?contentId=COS333721&previousPage=mg_1_8_1) Lattanzi Commission was established in 2021 by the Ministry of Justice to suggest reforms to the criminal justice system

<sup>13</sup> Full text available in <https://www.direcontrolaviolenza.it/riforma-processo-penale-correggere-urgentemente-le-modifiche-che-penalizzano-le-donne-che-hanno-subito-violenza/>

<sup>14</sup> <https://www.direcontrolaviolenza.it/riforma-processo-penale-correggere-urgentemente-le-modifiche-che-penalizzano-le-donne-che-hanno-subito-violenza/>

<sup>15</sup> <https://www.senato.it/leg/18/BGT/Schede/Ddliter/54763.htm> you can read D.i.Re's report on the Senate's website

<sup>16</sup> “It strongly encourages the Italian authorities to consider amending their legislation to base the offence of sexual violence on the notion of freely given consent as required by Article 36, paragraph 1, of the Istanbul Convention” - <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>

on sexual violence<sup>17</sup> recommends that the definition of rape should explicitly include lack of consent<sup>18</sup>.

In this regard, it is worth noting that the Supreme Court has long applied an interpretation of the issue of consent within rape and sexual violence consistent with the Istanbul Convention. Unfortunately, territorial courts often do not comply with this interpretation.

Had this interpretation been complied with, no need for a new law would have arisen. The actual problem is the strong presence and impact of prejudices and stereotypes affecting investigations and decisions on this topic. In Italy, judicial stereotyping is an issue still greatly underestimated<sup>19</sup>.

### **3. ISTAT data on stereotypes and prejudice; the latest and only report, 2019.**

The prejudice that holds women responsible for sexual violence persists. As much as 39.3 % of the population believes that a woman can escape sexual intercourse if she really does not want it. The percentage of those who think women can provoke sexual violence with the way they dress is also high (23.9 %). In addition, 15.1 % believes that a woman who experiences sexual violence when drunk or under the influence of drugs is at least partly responsible for it.

10.3 % of the population believes that accusations of sexual violence are often false (more men, 12.7 % than women, 7.9 %); 7.2 % thinks that “when faced with a sexual proposal, women often say no but actually mean yes”; 6.2 % states that non-promiscuous women are not raped. 1.9 % believes that there is no violence when a man forces his wife/partner to have sexual intercourse against her will<sup>20</sup>.

### **4. ISTAT data on sexual violence. The latest report, 2018**

The most recent available data on ISTAT's institutional website is from 2018; according to the report, there were 1,870 convictions in which the most serious crime was sexual violence. This includes 75 cases of group sexual violence. There was an increase when compared to the 1,697 cases of 2017. The average time between the date of the crime and the judgment in the first instance was respectively 32 and 46 months for sexual assault and

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<sup>17</sup> <https://www.ohchr.org/en/calls-for-input/2021/rape-grave-and-systematic-human-rights-violation-and-gender-based-violence>

<sup>18</sup> “Definitions of rape should explicitly include lack of consent and place it at its centre, stipulating that rape is any act of sexual penetration of a sexual nature by whatever means committed against a person who has not given consent”.

<sup>19</sup> Di Nicola, Judge of the Supreme Court, who wrote books and published several articles on prejudices and stereotypes <https://www.sistemapenale.it/it/opinioni/tribunale-roma-2021-pregiudizi-giudiziari-violenza-di-genere>

<sup>20</sup> <https://www.istat.it/it/archivio/235994>

gang sexual assault. In the same year, 8,605 people were investigated for sexual assault, and an additional 279 people were investigated for group sexual assault<sup>21</sup>.

## 5. Criminal trial archiving data

Data on proceedings are few, uneven, and difficult to read as they are not collected on a systematic basis and lack disaggregated analysis by gender. There are two reports in addition to the 2018 ISTAT report mentioned above. A survey referring to 2018, and the recent DDL 2530 mentioned above<sup>22</sup>. The latter document includes data from Minister of Justice for the years 2019/2021.

Both documents show that, as to rape and sexual assault crimes, the primary definition pattern is dismissal (likewise in ill-treatment and stalking cases). Available data (up to 2021) reveal that in about 50 % of cases, sexual assault and rape proceedings are dismissed before prosecution is exercised. Conviction rates are equally low, hovering around 1,000 convictions per year - compared with crime registry entries of more than 7,000.00 cases per year (2019, 2020, and 2021).

The issue regarding the high number of proceedings not ending in convictions was also raised by GREVIO in its first report on the implementation of Istanbul Convention in Italy<sup>23</sup>.

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<sup>21</sup> <https://www.istat.it/it/violenza-sulle-donne/il-fenomeno/violenza-dentro-e-fuori-la-famiglia/numero-delle-vittime-e-forme-di-violenza>

<sup>22</sup> <https://www.senato.it/service/PDF/PDFServer/BGT/01334668.pdf>

<sup>23</sup> GREVIO's first baseline report on the implementation of the Istanbul Convention in Italy: “[.] **GREVIO is concerned about this lack of emphasis on attempting to determine why a vast majority of reported cases of violence against women “fall out” of the legal system and do not end in a conviction.** While a criminal justice response is not the only one to be pursued in cases of violence against women and must be part of a comprehensive and integrated response across all the relevant areas of prevention, protection, prosecution and integrated policies (the four pillars of the convention), it is important to ensure accountability for criminal acts to build trust in the system and send the message that violence against women is not acceptable. Without a process that holds perpetrators to account, the violence is unlikely to stop, whether it be repeated/continued violence towards the original victim or a new victim. Prosecution and sanctions are, therefore, an essential part of the protection of women. Moreover, low conviction rates may lessen victims’ trust in the criminal justice system and thus contribute to low reporting rates. Law-enforcement agencies and the judiciary should seek an increase in crime reporting as their response becomes more effective and trusted, and judicial processes deliver sanctions that match the crime. To this end, a thorough examination of all possible ways to achieve a more focused, driven and outcome-based approach to perpetrators’ accountability is necessary”.

<https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>.

The critical evaluation called for by GREVIO's expert has not been carried out; this would help in understanding why there is such a gap between complaints and convictions.

## **6. Rulings on sexual assault/rape: discrepancy in pronouncements between trial courts and Supreme Court <sup>24</sup>**

The prosecution of the crime of sexual assault/rape endures bias in both investigations and judicial decisions. Decisions where prejudice and stereotypes are still explicit and unchallenged are increasingly in the news. Examples that have received media coverage include a case occurred in Ancona and a more recent one heard by the Busto Arsizio Court. Clearly, these are two examples of a broader reality of cases where stereotypes and prejudices against women are explicitly expressed in the rulings of territorial courts.

In the Ancona case, a woman reported a group sexual assault (gang rape), and in first instance the perpetrators were convicted. The Court of Appeal overturned the lower court's ruling with stereotyped arguments, focusing on the victim's physical appearance; it stated that the victim had *"a personality anything but feminine, on the opposite: rather masculine, which the photograph in the court file appears to confirm"* and that she was not attractive to the defendants. The defendant *"did not like"* the victim, to the extent that he registered her mobile phone number on his cell phone under the name "Beka Vikingo".

What is significant about this case is precisely the recurrence of prejudice and stereotypes and the use of rape myths in the decision. It is not an isolated example<sup>25</sup>; it shows how often the problem arises in the territorial courts, as opposed to a Supreme Court much more aligned with international paradigms on secondary victimisation<sup>26</sup>.

The second example is a case decided by the Court of Busto Arsizio<sup>27</sup>. Here, the dissent expressed by the woman was held to have come too late - the woman reacted after 20 to 30 seconds. An evaluation of the existence of violence based on the victim's subsequent behaviour and based on an "ideal" response still persists. Again, it shows a territorial court that does not conform to the principles repeatedly reiterated by the Supreme Court.

We only included cases that were commented in law journals to have a "legal" perspective on the incidence of stereotyping; the cases reported on the news are many more.

Both examples confirm the justice system's difficulty in getting rid of prejudices and stereotypes with particular reference to sexual violence. The persistent reference to an ideal

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<sup>24</sup> <https://www.sistemapenale.it/it/scheda/osservatorio-violenza-contro-le-donne-2020-1>

<sup>25</sup> Another case dealt with: <https://www.sistemapenale.it/it/scheda/cassazione-attendibilita-vittima-consenso-violenza-sessuale>

<sup>26</sup> An interesting analysis and sentence by the Court of Appeal and the Supreme Court can be found here: <https://www.questionegiustizia.it/articolo/a-margine-della-sentenza-di-cassazione-n-1568319-c-19-04-2019.php>.

<sup>27</sup> <https://www.sistemapenale.it/it/scheda/tribunale-busto-arsizio-2022-violenza-sessuale-dissenso-vittima>



victim or generally to rape myths is still rooted in legal practitioners and affects the entire justice system, judicial police, prosecutors and judges, lawyers and counsellors<sup>28</sup>.

## **7. Reports by the Parliamentary Commission of enquiry into femicide and all forms of gender-based violence<sup>29</sup>**

The Senate Commission on Femicide has published multiple reports, analysing the judicial system and the situation of existing anti-violence centres and shelters in Italy. It reaffirmed the importance of *"valuing a gendered, non-neutral, integrated approach that cross-culturally addresses economic, social and political gender inequalities, a cultural context in which violence against women is generated"*<sup>30</sup>;

### **A. The Senate Commission on Femicide, on November 18<sup>th</sup>, 2021, approved a report on the judicial response to femicide in Italy. Figures are disturbing:**

- In the two-year period 2017-18, 211 femicides occurred: 96 in 2017 and 115 in 2018.
- No differences emerge either at territorial level or regarding the characteristics of perpetrators and victims. Femicide, just like psychological, physical, and sexual violence, shows cross-cutting features.
- 78 % of victims and 78.1 % of perpetrators have Italian citizenship, while 21 % of victims and 18.8 % of perpetrators have foreign citizenship.
- Over half of the cases, women victims of femicide (57.4 %) were killed by their partner (husband, partner, boyfriend, lover), who in 77.9 % of the cases cohabited with the woman. 12.7 % were killed by their ex-partner<sup>31</sup>.
- 63 % of women did not report men's past violence to any person or authority; only 15 % of victims reported it.

Regarding the training of professionals (judges, prosecutors and lawyers), the document identifies a number of critical issues concerning especially:

- inadequate understanding of the specific dynamics of gender-based violence and the specific legal means available to combat it and protect victims;

<sup>28</sup> <https://www.questionegiustizia.it/articolo/la-corte-edu-alla-ricerca-dell-imparzialita-dei-giudici-davanti-alla-vittima-imperfetta>; [https://www.sistemapenale.it/pdf\\_contenuti/1606229037\\_biaggioni-2020a-consenso-delitti-liberta-sessuale-stereotipi.pdf](https://www.sistemapenale.it/pdf_contenuti/1606229037_biaggioni-2020a-consenso-delitti-liberta-sessuale-stereotipi.pdf)

<sup>29</sup> <https://www.senato.it/20301>

<sup>30</sup> <https://senato.it/service/PDF/PDFServer/DF/353297.pdf>

<sup>31</sup> *"What is impressive about men who kill women is the small number of those who feel remorse, even though the crime is so terrible that it often leaves their children orphans. The reasons for such behaviours can be found in the very declarations of the murderers during investigations and court hearings, where hate and disdain for the victim are palpable. They are part of a deeply-rooted culture according to which women must behave in a certain way, and when they do not abide, they must be corrected with violence until the extreme limit of death."* - <https://www.senato.it/service/PDF/PDFServer/DF/366054.pdf>

- an insufficient risk assessment of the situations, posing a risk to health and safety of women and their children;
- underestimation of the psychological and economic violence suffered and reported;
- the failure to frame femicide as the last step after previous, serious and repeated violence (also psychological);
- the widespread tendency of labelling (and thus, treating) domestic violence as a family conflict, which results in the violence being ‘obscured’. This compromises the possibility of violence being revealed, with the further serious effect of confirming in the perpetrator a sense of impunity and causing secondary victimisation effects on the woman who suffers the violence<sup>32</sup>.

#### **B. The latest work of the Senate Commission on Femicide pays great attention to the secondary victimisation of women in courts.**

The survey examines 1,411 court proceedings in the period 2020-2021, registered in 2017 in both civil and juvenile matters. Therefore, the examination includes separations and decisions on parental responsibility.

*“On one hand the perpetrator of violence is investigated and convicted his behaviour; on the other hand, he is considered an adequate parent, at the same level as the one who suffered the violence. Violent acts in civil and juvenile proceedings are not ascertained, and no direct consequences on parenting exist. This cannot be tolerated within the same system. It is necessary to ensure that coordinated measures are taken”.*

*Many of the judgments analysed (separations, divorces, parental responsibility cases) include situations where women/mothers are victimized for the second time - not by the abuser but by the system, and thus by the State: “Violence in the family and in intimate relations is certainly neither an isolated nor a sporadic phenomenon. As many as 34.7 % of proceedings include allegations of violence, while 5.8 % combine allegations of violence and dysfunctionality. Out of the 2,089 judicial separation proceedings involving children considered, a total of 724 cases are relevant to the survey as there are allegations of violence and/or parental dysfunctionality”.*

*“Violence is not detected even when the mother reports child abuse. It is precisely in this area that the most drastic victimisation of women and minors takes place: proceedings relating to this abuse are in fact dismissed, on the grounds that the child is unreliable and the mother is alienating. This is so, essentially because of the difficulties in ascertaining the facts reported with the consequent risk of the child being placed with the father”<sup>33</sup>.*

<sup>32</sup> <https://www.senato.it/service/PDF/PDFServer/DF/366054.pdf>

<sup>33</sup> <https://www.senato.it/service/PDF/PDFServer/DF/372013.pdf>

This falls within the context of technical expertise (court-appointed experts). Finally, the report gives an account of a significant limitation of the system: “Often, consultants are not chosen from registers and do not have specific training on gender-based violence issues. There is no adequate preparation, no knowledge of the phenomenon. Therefore, the damage is immeasurable”. This practice also enables the perpetuation of stereotypes and violence from generation to generation.

The critical aspects identified by the Senate Commission on Femicide concerning the lack of training of court-appointed experts are confirmed by a recent study by the University of Trieste<sup>34</sup> and a survey conducted by the lawyers of the D.i.Re Association on the secondary victimisation of women in courts and the non-recognition of domestic violence in civil and juvenile courts<sup>35</sup>.

The survey shows that Italian legislation is not applied according to the Istanbul Convention and that, in all considered cases, the Convention is never mentioned in court orders or decisions. It shows also that, in Civil Courts, violence is hardly mentioned, conflict continues to be referred to. In almost all cases examined, shared custody is ordered even when allegations and evidence of violence are provided. CTU often disguise violence and engage in mediation, which is explicitly prohibited by Istanbul Convention in domestic violence cases and results in secondary victimization. Finally, Civil Courts and Juvenile Courts do not use risk assessment tools.

## 8. Secondary victimisation/prejudices as a general problem in criminal proceedings

The report of the Senate Commission on Femicide mentioned above confirms the presence of prejudice and stereotypes in judicial decisions<sup>36</sup>. From page 83 onwards, the persistent representation of violence in the language of sentencing<sup>37</sup> becomes emblematic through the files examined.

Further examples are two court rulings related to **jealousy** which echoed in the media: two feminicides, one in Bologna and one in Genoa. In both cases, the defendant was granted general attenuating circumstances on the grounds of “jealousy”<sup>38</sup>

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<sup>34</sup> <https://www.sistemapenale.it/it/scheda/osservatorio-violenza-contro-le-donne-2021-3>

<sup>35</sup> [https://www.direcontrolaviolenza.it/wp-content/uploads/2021/07/D.i.Re\\_Il-non-riconoscimento-della-violenza-domestica\\_compressed.pdf](https://www.direcontrolaviolenza.it/wp-content/uploads/2021/07/D.i.Re_Il-non-riconoscimento-della-violenza-domestica_compressed.pdf)

<sup>36</sup> <https://www.senato.it/service/PDF/PDFServer/DF/366054.pdf>

<sup>37</sup> “Often, the man's past violent conduct toward the woman is defined as ‘a stormy, tumultuous, turbulent, difficult, unstable, uneasy relationship, characterised by domestic strife, far from happy’, even in the face of previous complaints of severe ill-treatment of the victim. Similarly, in some judgements, femicide is characterised as an impulse moved by feelings, concerning which emotional language is often used. There is also frequent use of highly victimising language against elderly mothers killed by their children, who are described as symbiotic or oppressive” (ibid)

<sup>38</sup> Taken from: [https://www.questionegiustizia.it/articolo/femminicidi-di-bologna-e-genova-perche-quelle-sentenze-potrebbero-sbagliare\\_15-04-2019.php](https://www.questionegiustizia.it/articolo/femminicidi-di-bologna-e-genova-perche-quelle-sentenze-potrebbero-sbagliare_15-04-2019.php)

*From the Bologna judgement*

*“According to the expert, the defendant had no structural psychiatric disorders or clear signs of personality disorder. Life experiences may have amplified the personality trait of jealousy and distrust towards women. At the same time, they may have reinforced, in his perception, the fear of possible imminent abandonment or betrayal to the point of having to be reassured by a figure such as a fortune-teller. However, there were no signs of pathology; the homicide was triggered by a growing feeling of helplessness and the inability to accept the end of the relationship. There were no signs of mental illness impairing the capacity for self-determination.*

*In the end, the murder was the result of a disturbed state of mind tormented by doubt and worn out by previous life experiences<sup>39</sup>; this resulted in an angry reaction to the woman’s shutting down attitude.”*

*And from the one in Genoa:*

*“Angela (the victim, ed.) had an affair with Luis in November, so much so that her husband returned to Ecuador. At the same time, she reported her lover for serious ill-treatments against her. During her husband's absence, she continued her relationship with Luis, who also moved into her house; and yet at the same time, she did everything in her power to get her husband to return to Italy. The day before P.'s came back, she had Luis change the lock on the house door; Luis was still sleeping in the house with her during the night. A few hours later she wrote resentful and contemptuous messages to her lover and accused him of stealing a mobile phone. It is also credible that Angela, as described by the defendant, in those few hours that they spent together after disembarking from the plane, told him that she loved him and, immediately afterwards, that she found him disgusting, declaring that she was ready to change but at the same time getting completely drunk and showing that she was unable to break off the relationship with Luis and this, despite the fact that she had evident marks of the recent beatings she received from her lover. (...)*

*P. (the defendant - husband of the victim, ed.) did not act under the impulse of jealousy for its own sake, due to his inability to accept that his wife might prefer another man to him. **He reacted to the woman's inconsistent and contradictory behaviour, which deluded and disillusioned him at the same time**, inducing him to come out of the voluntary isolation into which he had retreated precisely to leave room for her choices, with the promise of a future together, and all in vain”.*

## **9. Secondary victimisation/prejudices as a general problem in the civil process**

Signatory states of the Istanbul Convention are required to prevent secondary victimisation under article 18. The Italian state can be said to have failed at it. Unfortunately, this is a widespread phenomenon that takes place not only in criminal proceedings for sexual

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<sup>39</sup>The Court explained earlier that the defendant had been cheated on by his wife and later by a second partner, with whom he had also cohabited.

violence or rape, but also in civil proceedings. Two recent judgments have particularly stigmatized this phenomenon.

A first example comes from the Supreme Court in United Sections n. 35110 of 17<sup>th</sup> November 2021<sup>40</sup>. The Supreme Court claimed that the state of abandonment of a child in no case can be based on the state of subjection the mother lives in as a result of the repeated and serious violence suffered by her partner. It also considered it necessary to report how, on the whole, the suspension of the woman's parental responsibility for her children and the adoption procedure opened as to the applicant's daughter are clearly a form of 'secondary victimisation'. This was in clear violation of the 'international provisions on preventing and combating violence against women and domestic violence', contained in the Istanbul Convention of 11<sup>th</sup> May 2011 (Article 18). The Court therefore emphasized how, in every judicial procedure, the situation of a victim of violence must be assessed more carefully, given the new consideration of the victim's position in the panorama of fundamental rights, both national and supranational.

On 20<sup>th</sup> January 2022, the European Court of Human Rights condemned Italy for violating Article 8 of the ECHR (right to respect for private and family life). The Court declared a minor adoptable without considering other, less drastic solutions - which would have made it possible to safeguard the very close relationship with the mother, a victim of serious ill-treatment in the family (E.C. C. ECHR, 20<sup>th</sup> January 2022, D.M. and N. v. Italy, appeal 60083/19)<sup>41</sup>.

It is, indeed, a common practice in Italian jurisprudence to consider a mother who has suffered violence as unfit (and, above all, with no hope of recovering her parental capacity). An example of this approach can be found in a recent judgment of the Civil Supreme Court. The father, alcohol addicted, had violently abused his wife - even in the presence of the child; the child was declared adoptable (Civil Supreme Court, Section I, Judgment No. 3546 of 4<sup>th</sup> February 2022)<sup>42</sup>.

The language and judicial argumentation do not diverge from the widespread stereotypes still present in Italian society.

## 10. Role of the media: media harassment of victims

Media reporting of sexual violence and rape is often dramatically stereotyped and conveys prejudices and rape myths. At least two recent cases can be mentioned as examples. In the first case, two US girls, who were studying in Italy, reported rape by members of the police force, Carabinieri. Media coverage of the assault has long insisted that the two girls had been drinking<sup>43</sup>; it was even claimed that they had a legal insurance for the eventuality of

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<sup>40</sup> <https://www.retedafne.it/wp-content/uploads/2021/12/Cass.-Civ.-S.U.-17.11.2021-n.-35110.pdf>

<sup>41</sup> <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-215179%22%5D%7D>

<sup>42</sup> Civil Supreme Court, section I, Judgement no. 3546, 4th February 2022, in *Leggi d'Italia*.

<sup>43</sup> <https://www.corriere.it/cronache/17-settembre-07/firenze-denuncia-due-studentesse-americane-siamo-state-violentate-due-carabinieri-a68fd6f4-9403-11e7-9209-90423dcf26d8.shtml>

rape<sup>44</sup>; part of the questions asked by lawyers in court were fully reported (250 questions, later reduced to one third, in 12 hours of witness examination).

In the second and most recent case, the son of a well-known politician was charged with rape; it was another example of how media have conveyed stereotypical messages. In particular, the prominent politician released a video about his son's affair where he blamed the victim because she reported 'late' and stayed on holiday<sup>45</sup>. The facts date back to 2019, and the trial just started.

A widespread problem of online hatred towards women adds to the media portrayal of sexual violence and rape biased by prejudice. Women in Italy are steadily the primary target of online hate. A VOX mapping carried out each year regularly has women as the number one online hatred targets<sup>46</sup> (one exception in 2019, when Salvini's right-wing was in power and migrants held the top place).

## VI. CONCLUSIONS AND RECOMMENDATIONS

Considering the issues above, we call upon the Committee of Ministers to maintain the case of *J. L. v Italy* under the procedure of enhanced supervision and to schedule the case for examination in March 2023.

We ask the Committee of Ministers to request the Italian Government carry out the following actions:

1. Call on the Italian authorities to issue a public apology to the applicant and to ensure that the applicant J.L.<sup>47</sup> receives a public apology from the authorities involved in the violation of her rights as well.
2. Ensure adequate training of all professionals, including an understanding of the dynamics of gender-based violence to overcome widespread prejudices and stereotypes;
3. Ensure that training is not restricted to technical, legal or psychological knowledge but also includes the mechanisms of male violence against women and the stereotypes and prejudices that undermine judicial decisions and access to justice for women;
4. Ensure that adequate training sub 2 and 3 is provided to public officials involved in or contributing to the violations of the applicant's rights and her re – traumatising;
5. Improve data collection in line with the requirements of Article 11 of the Istanbul Convention (gender-disaggregated data); make it mandatory also to civil family

<sup>44</sup> <https://www.lastampa.it/cronaca/2017/09/09/news/ecco-perche-in-italia-si-e-parlato-di-assicurazione-anti-stupro-1.34416754/>

<sup>45</sup> <https://www.ilpost.it/2021/04/20/video-beppe-ciro-grillo-stupro-di-gruppo/> <https://www.ilpost.it/2021/04/21/perche-non-hai-denunciato-prima/>

<sup>46</sup> <http://www.voxdiritti.it/mappa-dellintolleranza-6-misoginia/>

<sup>47</sup> Talpis and her family should receive similar apologies

- proceedings, and make it available to civil society with particular reference to judicial data;
6. Carry out a critical/independent analysis and evaluation into the reasons why the numbers of dismissed cases are so high and the conviction rates so low;
  7. Ensure that risk assessment procedures are developed and applied at all stages by relevant professionals in contact with gender-based violence victims;
  8. Provide mandatory consultation with independent specialised women's services when minimum standards are designed, monitored, evaluated and implemented.

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