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COMMUNICATION

D.i.Re -Donne in Rete contro la violenza on the case *J. L. v Italy*

***(Application no. 5671/16)*¹**

1443rd meeting (September 2022) (DH)

under rule 9.2. of the Rules of the Committee of

Ministers regarding the supervision of the execution of

judgements and terms of friendly settlements

I. INTRODUCTION

This communication is a supplement to the submission sent on July 18th 2022 by the Association D.i.Re – *Donne in Rete contro la violenza* under rule 9.2 of the Committee of Ministers. It was drafted in response to the Action Report of the Italian government, belatedly published on August 9th 2022.

II. CASE SUMMARY

The case concerned criminal proceedings (2008 - 2015) against seven men who were charged with the gang rape of the applicant and were subsequently acquitted by Italian courts.

¹[https://hudoc.exec.coe.int/eng#{%22fulltext%22:\[%225671/16%22\],%22EXECDocumentTypeCollection%22:\[%22CEC%22\],%22EXECIdentifier%22:\[%22004-58375%22\]}](https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%225671/16%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECIdentifier%22:[%22004-58375%22]})

Given the wording of the Florence Court of Appeal judgment issued in 2015, the Court held that the applicant's rights and interests under Article 8 were not adequately protected. In particular, national authorities did not protect the applicant from secondary victimisation throughout the entire proceedings; here the wording of judgement played a key role, especially given their public nature.

Furthermore, the Court considered comments regarding the applicant's bisexuality, her relationships, and casual sexual relations before the events in question to be unjustified. In its language use and arguments, the Court of Appeal conveyed the prejudices still existing in Italian society about the role of women. Despite a satisfactory legislative framework, such stereotypes were likely to be an obstacle to providing effective protection for the rights of gender-based violence victims (a violation of Article 8 of the Convention).

III. STATUS OF IMPLEMENTATION

In August 2022, the Italian government [requested](#) the Committee of Ministers to end the supervision of the *J. L. v. Italy* case. In its view, several general and legislative measures were adopted so to counter violence against women and sexist stereotypes in the judicial culture; yet, the Italian system still hinders access to justice for survivors of domestic and gender-based violence, despite the extensive legal framework.

No evaluation mechanisms as to the effectiveness of the relevant legislation exist. Deeply entrenched sexism is not addressed by the set of rules and mechanisms in place; a fact that seriously affects both the condition of women in general and of those exposed to gender-based violence (GBV) in particular.

Within this context, it should be noted that the Italian government has not responded to the [requests set out by the Committee of Ministers during the 1383rd CM-DH meeting](#) (September 29th – October 01st 2020) as to the *Talpis v. Italy* group of cases yet. The Committee noted with concern that “*despite the wide range of measures already adopted, gender stereotypes continue to be present in Italian society; authorities are strongly encouraged to intensify their efforts to eradicate them and achieve changes in cultural behaviours, including by drawing inspiration from the Committee's Recommendation [CM/Rec\(2019\)1](#) on preventing and combating sexism; the authorities are invited to keep the Committee informed on the measures adopted and the progress achieved in this area*”. The deadline to provide such information was no later than March 31st 2021.

What's more, three more judgments of the European Court of Human Rights against Italy took place within a few months in 2022. Charges were all related to a lack of action or a passive attitude attributed to the Judiciary:

- April 7th 2022, [Landi v. Italy](#)²: the lack of protection led to the murder of a child by his abusive father, who had previously been reported to the police by the mother.
- June 16th 2022, [De Giorgi v. Italy](#)³: a woman reported her husband seven times for domestic violence against her and her children; the complaint was qualified as family conflict.
- July 7th 2022, [M.S. v. Italy](#)⁴: the applicant did not receive protection from the State despite several allegations of ill-treatment and injuries inflicted by her husband; moreover, many proceedings were time-barred due to delays in the investigations and procedural defaults.

In its action report⁵ the Italian Government argues that in the present case “*l’attention de la Cour s’est principalement portée sur la technique de motivation de la peine d’acquittement spécifique et sur le préjugé sexiste qui en découlerait, est absolument spécifique et s’est produit dans le contexte d’un système de protection des femmes contre la violence sexiste qui, au contraire, doit être considéré dans sa généralité comme absolument conforme à la Convention EDH*” and it mentions several criminal procedure articles related to the protection of vulnerable victims in criminal proceedings.

Such rules were already extensively examined by the ECHR in its judgement in *J.L. v. Italy*⁶. They are irrelevant to the ability to identify violence, the eradication of stereotypes and prejudices that undermine judicial reasoning and equal access to justice for women and for women who experience or have experienced violence.

² [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-216854%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-216854%22]})

³ [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22de%20giorgi%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22\],%22itemid%22:\[%22001-217718%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22de%20giorgi%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22],%22itemid%22:[%22001-217718%22]})

⁴ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-218130%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-218130%22]})

⁵ [https://hudoc.exec.coe.int/ENG?i=DH-DD\(2022\)836F](https://hudoc.exec.coe.int/ENG?i=DH-DD(2022)836F)

⁶ « *Indépendamment de l’issue de la procédure, les mécanismes de protection prévus en droit interne doivent fonctionner en pratique dans des délais raisonnables permettant de conclure l’examen au fond des affaires concrètes qui sont soumises aux autorités (voir, parmi d’autres, M.N. c. Bulgarie, précité, §§ 46-49 et N.Ç. c. Turquie, n° 40591/11, § 96, 9 février 2021)* » (§118); « *Il s’ensuit que les autorités nationales n’ont pas protégé la requérante d’une victimisation secondaire durant toute la procédure, dont la rédaction de l’arrêt constitue une partie intégrante de la plus grande importance compte tenu notamment de son caractère public* » (§142) ; « *La Cour observe par ailleurs que le septième rapport sur l’Italie du Comité des Nations unies pour l’élimination de la discrimination à l’égard des femmes et le rapport du GREVIO, ont constaté la persistance de stéréotypes concernant le rôle des femmes et la résistance de la société italienne à la cause de l’égalité des sexes. En outre, tant ledit Comité des Nations unies que le GREVIO ont pointé du doigt le faible taux de poursuites pénales et de condamnations en Italie, ce qui représente à la fois la cause d’un manque de confiance des victimes dans le système de la justice pénale et la raison du faible taux de signalement de ce type de délits dans le pays (paragraphes 64-66 ci-dessus). Or, la Cour considère que le langage et les arguments utilisés par la cour d’appel véhiculent les préjugés sur le rôle de la femme qui existent dans la société italienne et qui sont susceptibles de faire obstacle à une protection effective des droits des victimes de violences de genre en dépit d’un cadre législatif satisfaisant (voir, mutatis mutandis, Carvalho Pinto de Sousa Morais, précité, § 54)* » (§ 140)

The government claims that adequate measures to overcome the critical issues identified by the Court are already in place. In doing so, it emphasizes two factors:

1. The prevalence of women in the Judiciary;
2. The training of the Judiciary.

These arguments are misleading and irrelevant to the decision issue.

The first argument is irrelevant as to its impact in terms of its ability to affect secondary victimization within the proceedings.

As to the second argument, we will show that the issue is not so much about general training but rather about specific training on judicial stereotypes and the dynamics of gender-based violence.

1. Prevalence of women in the Judiciary

In Italy, women only gained access to the Judiciary with Law No. 66 of February 9th 1963, 15 years after the Italian Constitution came into force.

Today the Judiciary has a higher proportion of women compared to men; this is positive in terms of equal access to the professions. However, it does not imply that all men and women in the Judiciary are aware of and apply internal rules from a human right and gender-sensitive perspective when dealing with gender-based violence cases. Furthermore, it discloses nothing about the persistence of prejudices and stereotypes that equally affect men and women.

Having a gendered perspective is still considered to be a violation of impartiality by the Judiciary (with a few exceptions). Judicial stereotypes and prejudices are still present and widespread⁷.

The ECHR and international treaties (Istanbul Convention, CEDAW Convention) repeatedly stressed that violence against women - including domestic violence - is a form of discrimination, whose root causes may only be addressed effectively when those responsible for its prevention understand its gender-related nature. Having women in the Judiciary is not a guarantee against sexist judicial stereotypes because women also hold sexist judicial stereotypes – as in the J.L case where the judges were all women and still made those statements.

Hence, the Judiciary must interpret national legislation by the ECHR, the Istanbul Convention and the CEDAW. Within the Judiciary, applying a gender perspective is not an individual choice of the

⁷ Di Nicola Travaglini, P. & Menditto, F. (2020). *Codice rosso. Il contrasto alla violenza di genere: dalle fonti sovranazionali agli strumenti applicativi*. Giuffrè.

judge nor a breach of impartiality, but rather a binding obligation deriving from international conventions and sources. Adopting a gender-oriented perspective in all matters related to domestic violence implies placing VAW on a continuum that encompasses both interpersonal **and structural violence**, and considering the discriminatory nature of the forms of violence. Adopting a gendered perspective implies, above all, considering the dynamics of violence: fear, intimidation, control, threats, isolation, shame, minimization, blame, economic dependence, social pressure, lack of support services and the **re-victimization operated by social institutions and judicial authorities**. This rarely happens in Italian court rulings⁸. The lack of specific training of the Judiciary is certainly one cause.

2. Training of the Judiciary

Specialized training on judicial bias concerning violence against women (including sexual violence) does not exist in Italy. Courses organized by *Scuola Superiore della Magistratura (Higher School of the Judiciary)* only focus on legal and technical aspects without any reference to sexist prejudices, cultural background, or the Istanbul Convention and CEDAW - despite the Council of Europe and the European Union consider them essential, and despite the Committee of Ministers' strong encouragement to authorities to intensify their efforts to eradicate sexist stereotypes.

Specifically, the guidelines and recommendations included in the following documents are not applied:

a) Council of Europe documents on Higher Schools of the Judiciary

- [Sec. 56 e 57 Recommendation CM/Rec\(2010\)12](#) of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities
- Sec. 17, n. 4 Opinion no.10 (2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society (CCJE: 2003, Op. n. 4)
- [Sec. 65-67 of Opinion no.10 of the Consultative Council of European Judges on the Council for the Judiciary at the service of society \(CCJE 2007\)](#)

b) European Union documents on Judiciary training

- [Articles 82.1 \(c\) and 81.2 \(h\) of the Treaty on the Functioning of the European Union, at the outcome of the Lisbon Treaty](#)

⁸ Di Nicola Travaglini, P. & Menditto, F. (2020). Ibid.

- [Resolution of the Council and the Representatives of the Governments of the Member States, meeting in the Council on the training of judges, prosecutors and judicial staff in the European Union \(2008/C 299/01\)](#)
- [Sec. 12.6 of the Stockholm Programme](#)
- [Communication from the Commission, “Building trust in EU-wide justice: a new dimension to European judicial training \(COM: 2011, 551 final\)](#)

Magistrates’ training is not compulsory; at their discretion, each year magistrates may ask to attend four courses held by the Higher School of the Judiciary on any topic.

The training courses on violence against women (both civil and criminal, juvenile and labour) that the Higher School offers are negligible in comparison with the total number of courses. Approximately 100 courses are held each year; four (at most) focus on gender-based violence and are delivered on November, 25th (as stated by the Italian government in the action report). Thus, only about 400 out of 9000 magistrates receive training on gender-based violence every year – and none of them on judicial prejudices against women.

Holding such training exclusively on the International Day for the Elimination of Violence against Women is a clear indicator that the topic is not being systematically and structurally considered and addressed.

The Senate Commission on Femicide highlighted the poor and uneven specialization of judges and prosecutors on gender-based violence; the inadequate training of magistrates; and the poor training of lawyers and psychologists⁹, as already mentioned in our previous submission¹⁰.

No training or courses for magistrates or executive officers (separate and different from those for the training of the general Judiciary) cover the subject of gender-based violence offences or judicial bias. At most, individual lectures on the subject are provided for trainee magistrates.

On one hand, no reference to training on gender-based violence in the Higher School annual reports is present (please refer to the annex).

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

¹⁰ <http://senato.it/service/PDF/PDFServer/BGT/1300287.pdf>

On the other hand, as far as training of police officers is concerned, three years after the approval of Article 5 of Law 69/2019 (the so-called Red Code Law)¹¹, no decree has been issued to set out its contents yet.

Courses offered by *Accademia della Crusca*¹² also proved futile for the cultural and interpretative purposes of interest here.

Lastly, outcomes of the limited training provided to magistrates are not monitored.

3. Persistence and prevalence of sexist prejudices and cultural stereotypes in the Judiciary

The persistence, prevalence and relevance of prejudices and cultural stereotypes in the Judiciary are widely evidenced by daily occurrences of judgements. A recent [judgement of the Turin Court of Appeal](#) is relevant in this context; this was also widely reported in the media.

Through the sentence of the Turin Court of Appeal, Criminal Section IV, March 31st 2022 (dep. April 20th 2022), no. 2277, the defendant was acquitted of the crime of rape against a woman, overturning the ruling of the first instance.

“Two opposing versions of the facts are provided: the one by the victim and the one by the defendant; the Court’s decision unfolds as an alternative narrative to the victim’s statements. No explicit references assessing either the credibility of the victim or the reliability of her statements are made. Rather, subjective assertions and evaluations are reported; probably what the Court considers as maxims of experience, which are, however, never made explicit”; “The reasoning reveals that the conduct of the victim of rape needs to match a typical or ideal behaviour of a rape victim, thereby departing, inter alia, from the Supreme Court’s constant ruling that consent by the victim cannot be inferred from her conduct following the violence”¹³.

The CEDAW Committee’s recent view on an Italian case also sheds light on the pernicious influences of stereotypes on judicial decisions.

¹¹ According to Article 5 l. 69/2019, specific training courses for State Police, Carabinieri and Prison Police personnel are to be provided.

¹² A society of scholars of Italian linguistics and philology. It is one of the most important research institutions of the Italian language.

¹³ <https://www.sistemapenale.it/it/scheda/vittima-violenza-sessuale-pregiudizio-scarsa-attendibilita-persona-offesa?out=print>;
<https://www.sistemapenale.it/it/scheda/osservatorio-violenza-contro-le-donne-2020-1>

On June 20th 2022 the CEDAW Committee in *A.F. v. Italy* (148/2019) found that the Italian State violated Articles 2, 3, 5 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women. The case was about a woman who reported her former husband for assault. C.C., the police officer in charge of the investigation, showed up at her flat falsely claiming to have information about her case - and raped her.

“The Committee’s admonition is clear: whoever judges a case of sexual violence is culturally and legally bound to challenge the automatic assessment mechanisms derived from a thousand-year-old cultural system, aware of everyone’s cognitive pollution, so that facts and evidence can be assessed rigorously and objectively”; “The Committee’s decision, which should be read together with the ECHR’s ruling in J.L. v. Italy, has deflagrating historical and legal value because, beyond the case examined, it challenges every judge to unhinge convictions, unquestioned to date, such as the principle of impartiality on which stereotypes act towards both women victims of gender-based violence and, equally and oppositely, men perpetrators”¹⁴.

IV. CONCLUSIONS AND RECOMMENDATIONS

Documents and evidence provided so far show that the two factors stressed in the State’s action – the prevalence of women in the Judiciary and the general training of the Judiciary - is not adequate nor relevant in the present case.

As stated at the beginning of this supplementary submission, the issue is not so much general training but rather specific training on the dynamics of gender-based violence and judicial stereotypes.

Prejudices and sexist stereotypes still exist in the Judiciary, preventing the detection of violence against women and sexual violence, with a consequent underestimation of the problem. Ongoing and mandatory training of magistrates on gender discrimination and stereotyping in such contexts is lacking.

Therefore, we refer to and insist on conclusions and recommendations expressed in D.i.Re’s submission on July 18th 2022.

We call upon the Committee of Ministers to keep the case of *J. L. v Italy* under the procedure of enhanced supervision and to schedule the case for examination in March 2023.

¹⁴ <https://www.sistemapenale.it/it/scheda/osservatorio-violenza-contro-le-donne-2022-3-caso-af-contro-italia-comitato-cedaw>

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

- Calling on Italian authorities to issue a public apology to the applicant and ensuring that the applicant J.L.¹⁵ receives a public apology from the authorities involved in the violation of her rights;
- Ensuring adequate training of all professionals, including an understanding of the dynamics of gender-based violence to overcome widespread prejudices and stereotypes;
- Ensuring 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 women's access to justice;
- Ensuring that adequate training is provided to public officials involved in or contributing to the violations of the applicant's rights and her re-traumatisation;
- Improving data collection in line with the requirements of Article 11 of the Istanbul Convention (gender-disaggregated data); making it mandatory also to civil family proceedings, and making it available to a civil society with particular reference to judicial data;
- Carrying 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;
- Ensuring that risk assessment procedures are developed and applied at all stages by relevant professionals in contact with gender-based violence victims;
- Providing mandatory consultation with independent specialized women's services when minimum standards are designed, monitored, evaluated and implemented.

Antonella Veltri, President



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¹⁵ Talpis and her family should receive similar apologies.