



**D.i.Re**

Donne in Rete contro la violenza

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**31 July 2023**

## 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 group of cases:**

***Talpis v. Italy* application n. 41237/14 and *J.L. v. Italy* application n. 5671/16**

### I. INTRODUCTION

This communication is a supplement and update to the submissions sent on July 18<sup>th</sup> 2022 and 19.10.2022 by the Association D.i.Re – *Donne in Rete contro la violenza* under Rule 9.2 of the Committee of Ministers<sup>1</sup>, and it addresses the general measures required for the implementation of the Talpis group of cases and the J.L. v. Italy judgment. It is drafted in response to the Action Report of the Italian government, published on July 6<sup>th</sup>, 2023.

### II. CASES SUMMARY

The **Talpis v Italy** group of cases<sup>2</sup> concerns violations of Articles 2 and 3 of the Convention because of the inertia of the authorities in handling the applicant's complaint

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<sup>1</sup> TALPIS [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016809e42c7](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809e42c7)

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016809f49df](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809f49df)

JL [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a76593](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a76593)

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a93735](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a93735)

<sup>2</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016808af6f9](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808af6f9)

concerning domestic violence inflicted on her by her husband in 2012, which led to an escalation of the violence that culminated in 2013 in the attempted murder of the applicant and the murder of her son. The case also concerns a violation of Article 14 taken together with Articles 2 and 3 because of the discriminatory aspect of the failings identified by the Court in the protection of women against domestic violence.

**The case J.L. v. Italy<sup>3</sup>** concerns criminal proceedings (2008 - 2015) against seven men who were charged with the gang rape of the applicant and were subsequently acquitted by Italian courts. 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. GENERAL MEASURES

The information provided in the action report submitted by the Italian authorities is similar to that provided by the Italian authorities on the implementation of the recommendations of the Committee of the Parties to the Istanbul Convention on 1 March 2023<sup>4</sup>. In that case, civil society replied with a [report<sup>5</sup>](#) by Italian women's NGOs<sup>6</sup> coordinated by D.i.Re (annex 1.).

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<sup>3</sup>[https://hudoc.echr.coe.int/#{%22fulltext%22:\[%225671/16%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-210299%22\]}](https://hudoc.echr.coe.int/#{%22fulltext%22:[%225671/16%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-210299%22]})

<sup>4</sup> <https://rm.coe.int/reporting-form-on-the-implementation-of-the-recommendations-addressed-/1680aa6950>

<sup>5</sup> <https://rm.coe.int/report-by-italian-women-s-ngos-on-the-recommendations-of-the-committee/1680aae279>

<sup>6</sup> D.i.Re - Donne in Rete contro la violenza, ActionAid Italia, Associazione Italiana Donne per lo Sviluppo – Aidos, Forum Associazione Donne Giuriste, Forum Italiano sulla Disabilità - FID, GIUdiT Associazione Giuriste d'Italia, **(15 experts)**

This contribution contains extracts from the NGOs' report (see below in *Italic*) which are relevant also in the context of the implementation of the *Talpis* group and *J.L.* judgment, referring to, *inter alia*, ineffective access to justice for domestic violence victims, and entrenched sexism; protection or restraining orders; absence of effective civil remedies against any state authority; issues related to risk assessment.

The April 2023 Report from Italian women's NGOs coordinated by D.i.Re - Donne in Rete contro la violenza found that “[..] *Despite an extensive legal framework, the Italian system hinders access to justice for survivors of violence against women and domestic violence. There are no mechanisms in place to evaluate the effectiveness of the Italian legislation. The set of rules and mechanisms that are in place fail to address the deeply entrenched sexism affecting the condition of women in general, and of those exposed to gender-based violence in particular.*

*The prevention and fight against violence against women are excluded from both the National Strategy for Gender Equality 2021-2026 and the National Recovery and Resilience Plan (PNRR). It is a decision that confines women's rights, including the right to live a life without violence, to policies and actions that are not integrated into the economic, social and cultural strategies and programs that regulate life in the country. Besides, there is a growing tendency to reinterpret and redefine gender equality policies in terms of family and maternity policies. In other words, the principle of equality is not fully integrated into government action as an essential and indispensable component in the implementation of every policy.”*

## **1. New Legislative measures and the so called Codice Rosso – Red Code**

Regarding the new legislative measures, the NGOs observe that: “*The Femicide Commission's analysis looked at the intervention of the judicial police in some cases that eventually resulted in femicide and identified some recurring critical issues*<sup>7</sup>. [..] *the limits identified in the action of the judicial police have a direct impact on the activity of the public prosecutor.”*

Furthermore, as regards the new Law no. 169/2019 on [Amendments to the Penal Code, Code of Criminal Procedure and other Provisions on the Protection of Victims of Domestic](#)

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<sup>7</sup> <https://www.senato.it/service/PDF/PDFServer/DF/366054.pdf>, pp. 46-59.

[and Gender Violence](#) (so called Red Code Law), it is noted that “*Training in both areas is crucial. Law 69/2019 provided for continuous training of law enforcement. Unfortunately, three years after the approval of Article 5 of Law 69/2019, no decree has been issued to set out the contents of the Law*<sup>8</sup>.”

## 2. Protection orders<sup>9</sup>

*Despite the existence of an articulated system of emergency barring, restraining and protection orders in both criminal and civil law, **several critical shortcomings in its implementation are still present**. In judicial practice more generally, there is excessive mistrust and a rather restrictive attitude in **both criminal and civil case law** in issuing the protection measures provided for, especially in the absence of physical injury. Application often still depends to a considerable extent on the sensitivity of the individual judges, so that according to women’s specialist services experience, the use of restraining or protective orders by the Italian judiciary has an uneven trend.*

***Restraining or protection orders provided by the Italian Code of Criminal Procedure (Art. 282-bis and Art. 282-ter) are not granted expeditiously as needed.** According to ISTAT data on 2021<sup>10</sup>, the time elapsed in order to obtain restraining or protection orders is:*

- *From 1 to 7 days: 17,4% of cases*
- *From 8 to 14 days: 17,7% of cases*
- *From 15 to 30 days: 20,3% of cases*
- *From 31 to 60 days: 15,8% of cases*
- *More than 2 months: 14% of cases.*

*The investigations necessary for the decision on issuing a precautionary measure should be carried out expeditiously. No time limits are currently set for the Public Prosecutor or the Preliminary Investigation Judge. Moreover, there is no obligation for the magistrate of the Public Prosecutor's Office to reply in writing to the victim in the case of a refusal to solicit the request for a precautionary measure. A rare and exceptional application is found in the*

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<sup>8</sup> Supra note 5

<sup>9</sup> Supra note 5

<sup>10</sup> <https://www.istat.it/it/files//2022/11/REPORT-UTENZA-CAV-2021.pdf>.

*provision of alimony provided for by Art. 282-bis, paragraph 3, of the Code of Criminal Procedure.*

*As for **emergency barring orders**, Article 384-bis of the Code of Criminal Procedure provides for the emergency removal from the family household. Such measures, however, **are seldom enforced by the police**. According to a 2022 report of the Ministry of Interior, the number of emergency barring orders for all violence against women related crimes issued had been:*

- 2014: 279
- 2015: 247
- 2016: 264
- 2017: 280
- 2018: 362
- 2019: 357
- 2020: 402
- 2021: 377
- 2022 (Jan-Sept): 285

***The main consequence is that in most situations, in order to find protection women are left with no choice but to leave their house, often with their children.***

*As for the **effective enforcement of protection orders**, at present, monitoring procedures by electronic or other technical means (so-called electronic bracelet) are not fully implemented.*

*Law 69/2019 had criminalised the violation of orders of removal from the family home and the prohibition to approach places frequented by the offended person (Article 387-bis). From August 9 2019 to September 30 2022 (3 years), **6.499 violations of restraining or protection orders had been reported**. The number is quite alarming, especially considering the fact that a violation of a protective measure is a strong indicator of a potentially high-risk situation. Another alarming data is the conviction rate. According to a report attached to Draft Law no. 2530, the number of convictions for the year 2019 were 8, for 2020 97, for 2021 105.*

*As for the **protection order provided by civil law** (Art. 342-bis and 342-ter of the Civil Code), a report of the Femicide Commission found that such provisions – during the three-*

year period 2016-2018 – **had a very limited application**. In the first place, in fact, only 35 courts (equal to 27 percent) keep a record of protective ordered applications and, out of these, only 21 were able to quantify the orders of protection requested and adopted in the three reference years. Overall, the 21 courts reported they requested 125 protection orders in 2016, 127 in 2017 and 149 in 2018. Even fewer requests were accepted: 40 in 2016, 53 in 2017 and 68 in 2018.<sup>11</sup>

Despite the fact that Articles 342-bis and 342-ter of the Civil Code provides that - in urgent cases - barring/restraining order may be issued by the judge *inaudita altera parte*, such option is rarely exercised. In most cases, civil courts apply the “ordinary” procedure according to which, after the filing of the request for the protection measure, the judge must set the hearing for the appearance of the parties, as well as the deadlines for notification of the case.

While data on emergency barring orders issued by law-enforcement officials are regularly provided by the Ministry of Interior. The available data by the Ministry of Justice refers to the number of **restraining or protection orders (criminal) granted at the national level**, but without reference to the related criminal offences. This makes it impossible any assessment on their application to violence against women related crimes.

### **3. Absence of effective civil remedies against any state authority**

With regards to the absence of effective civil remedies against any state authority that has failed in its duty to take the necessary preventive or protective measure within the scope of its powers, there are no new legislative developments. The lack of remedies was also recognized by the European Court on Human Rights in its recent *Landi v. Italy* judgement [§ 63]<sup>12</sup>.

### **4. Risk-assessment**

There is no formal, integrated risk assessment procedure in Italy. In criminal proceedings, risk assessment can and should be carried out first and foremost by law enforcement officers, but the ultimate assessment is the judge's responsibility.

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<sup>11</sup> <https://www.senato.it/service/PDF/PDFServer/DF/361580.pdf>

<sup>12</sup> *Landi c. Italie* requete n. 10929/19 <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-216854%22%7D>

*The lack of judicial training and organisation in risk assessment has been highlighted by the Femicide Commission in each of its reports<sup>13</sup>. These same critical issues were highlighted in a survey conducted by the lawyers of the D.i.Re on the secondary victimisation of women in the courts and the non-recognition of domestic violence in civil and juvenile courts<sup>14</sup>. The survey revealed a lack of any form of risk assessment in procedures of separation and regulation of custody and visit rights. [..]*

*The recent civil process reform introduced a new section on "Domestic and gender-based violence"<sup>15</sup>, with special provisions applying to proceedings involving family abuse or domestic or gender-based violence. This reform **has not included any provision for risk assessment**, in the same way as no specific assessment was introduced in the criminal justice system reform.*

### **5. Ex parte and ex officio prosecution and so Called Carabia Reform**

*One critical aspect of the criminal justice reform (so-called Cartabia Reform)<sup>16</sup>, amongst others, is that it binds the prosecution to a new criterion: the reasonable expectation of conviction (previously, the criterion for prosecution was linked to the ability to uphold the accusation in court).*

*The concern is that this new criterion will weaken the prosecution of gender-based violence against women. If criminal prosecution is bound to the prediction of conviction, and it is known that conviction rates for violence against women related crimes are alarmingly low [..], there is a great risk that prosecution will be discouraged in a circularly depressing mechanism. Therefore, it is of paramount importance that this new prosecution criterion will be closely monitored to assess its implications for violence against women related offences.*

*As for **physical violence** and in particular injuries (Art. 582 of the criminal code), ex parte prosecution was actually expanded. The criminal justice reform (the so-called Cartabia*

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<sup>13</sup> <https://www.senato.it/20301>.

<sup>14</sup> <https://www.direcontrolaviolenza.it/nuova-ricerca-il-non-riconoscimento-della-violenza-domestica-nei-tribunali-civili-e-per-i-minorenni/>.

<sup>15</sup> Legislative Decree. 149/2022, so-called "Cartabia Reform".

<sup>16</sup> Legislative Decree 150/2022.

Reform<sup>17</sup>) made the offence of injuries up to 40 days punishable on complaint with no distinction in the case of injuries committed in a family or domestic context (prior to the reform, injuries between 20 and 40 days committed in a domestic context were *ex officio* punishable). The offences of harassment, private violence and kidnapping also became prosecutable *ex parte/on* complaint.

What is worrying is that extinguishing mechanisms such as reparation of damages (Art. 162 *ter c.p.p.*) are widely available and that restorative justice is made accessible for any type of crime, at any stage of the proceeding and trial with no exemption or attention paid to cases of male violence against women.

As far as the crime of **sexual violence** is concerned, **no legislative developments** have occurred neither in terms of prosecution nor with respect to consent-base definition.

## 6. National Strategic Plan on Male Violence against Women 2021-2023

[..] *The 2021-2023 National Strategic Plan on Male Violence against Women was adopted in the total absence of confrontation and participation of civil society.*

[..] *As with the previous National Plans, the 2021-2023 Plan envisages the drafting of an Executive Plan, which should outline the list of actions to be implemented, correlating them with priorities, responsibilities and resources. To date, such an Executive Plan has not been adopted. Apart from the indication of the period of validity (2021-2023), there are no indications regarding the timing of the implementation of the envisaged activities, nor the subjects who are responsible for implementing a given action and the administrative procedures to be activated. The objectives are stated in a generic way and, in some cases, specific activities are not clearly connected to them. There are no clear indications about the allocation of resources with respect to each of the intervention priorities and there is no link between the lines of action and the breakdown of the available financial resources. [..]*

## 7. Governance of the National Strategic Plan

*As for the “Governance Model” provided for in para. 4.1 of the Strategic Plan, it has to be noted that the National Steering Committee was established only in March 2022. The*

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<sup>17</sup> The reform aims at a more efficient and faster system with the target of a 25 per cent decrease in the length of proceedings, as stipulated in the National Recovery and Resilience Plan goals (explanatory memorandum).



*Observatory, the only governance body in which civil society is present, was established in April 2022.*

*The Observatory carries out functions of monitoring, analysis, study and proposal, also for the purpose of elaborating and implementing the National Strategic Plan against violence against women and domestic violence. The **Observatory** also carries out functions of support to the Department for Equal Opportunities in the preparation of the Plan.*

*The Observatory is chaired by the President of the Council of Ministers or by the political Authority delegated to equal opportunities. Bodies of the Observatory are: a) the President b) the Assembly c) the Technical-Scientific Committee. Women specialist services (WSS) are only included in the Observatory **Assembly**. Out of more than 30 actors (including representatives of Ministries and other institutions, trade unions, employers' organisations) represented in the Assembly, only 10 are designated by NGOs. Among those, only 3 represent WSS (D.i.Re, Differenza Donna, Telefono Rosa). **Once again, the role of anti-violence centres is weakened.***

*The appointment of the experts of the **Technical-Scientific Committee** also falls within the political decision-making power and there has not been a transparent process for the identification and appointment of the aforementioned experts. The appointment came shortly before the general election. No public information on the selection procedure was available and no informed participation was guaranteed. CVs of appointed experts are not available on the DEO website. [..]*

***No documents useful for the necessary assessment and monitoring of the implementation of the National Strategic Plan are available, nor have these been provided to the members of the Observatory.***

No plan is currently available for the coming three-year period.

## **8. Assessment on the use of resources**

*[..] Despite the transfer to the Regions of the resources intended to strengthen the intervention systems had been implemented (albeit with delay and without considering the harmonisation with the timing of the preparation of the regional budgets), no information is currently available on regional programming. In addition, there is an uneven situation with respect to their use, as also noted by the Report from the Ministry to the Parliament of 30*

June 2022, which analyses the use of resources on the allocation of funds to the Regions pursuant to articles 5 and 5-bis for the years 2017-2021. [..]

The 2022 Budget Act abolished the requirement for the Minister Delegate for Equal Opportunities to report annually to parliament on the implementation of the plan. Thus, parliamentary supervision of the implementation of the plan is removed, which results in a loss of transparency.

[..] *Despite the steady increase over the years, the resources allocated are still largely inadequate. It is estimated that the budget for 2022 provided each anti-violence centre with about 39.000 euros and each shelter with about 36.000 euros<sup>18</sup>.*

## 9. Data collection and research [..] Law 53 of 2022 on gender data collection

[..] *the law:*

- *does not clearly identify the data sources;*
- *does not define "how" the different subjects must collect the data, thus not guaranteeing either the standardisation or harmonisation of the data collected;*
- *despite the commitment provided for in the law, the National Institute of Statistics (ISTAT), the Ministries of Interior, Justice and Health, must process and disseminate disaggregated data by gender, ...but not by gender and disability;*
- *does not provide any type of financial support to the subjects responsible for the implementation of the various data collection systems, which should flow into the single integrated system;*
- *enhanced the collection of statistical data on gender-based violence in criminal justice only. Despite the fact that the Femicide Commission has repeatedly stressed the complete lack of data on civil cases, there is **no provision in the law for any survey regarding violence in civil proceedings.***

*As of today, there are no signs of the implementation of the integrated data collection system.*

[..]

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<sup>18</sup> [Decreto del Presidente del Consiglio dei Ministri, 2 settembre 2022, Ripartizione delle risorse del «Fondo per le politiche relative ai diritti e alle pari opportunità» - Annualità 2022.](#)

## 10. Data by law-enforcement agencies and the judiciary

*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 data on sexual violence<sup>19</sup>. A survey referring to 2018, and the recent Draft Law 2530<sup>20</sup> [..]. The latter document includes data from the Minister of Justice for the years 2019/2021. Both documents show that for crimes related to violence against women the **primary definition pattern is dismissal**. Available data (up to 2021) reveal that in **about 50% of cases** of rape and sexual assault, ill-treatment, stalking, forced marriage and illicit diffusion of sexually explicit images or videos without the consent of the persons **are dismissed before prosecution is exercised**. **Conviction rates are equally low**. For the crimes of rape and sexual assault, there are approximately around 1,000 convictions per year - compared with crime registry entries of more than 7,000.00 cases per year (2019, 2020, and 2021). For the crime of ill-treatment, convictions are around 2,500-3,000 per year - compared with crime registry entries of more than 37,000 cases per year (2019, 2020, and 2021).*

### IV. ADDITIONAL OBSERVATIONS

1. **J.L. v. Italy:** Sexist stereotypes in jurisprudence and lack of consent-based definition of sexist violence
  - **Prejudice, stereotypes and sexism in Courts decisions (sexual harassment and femicide)**

Sexism and victimizing language are a tenacious problem in Italy. Recent court rulings<sup>21</sup> confirm that the activities envisaged by the government in the Action Report have not been adequate to challenge the persistent and invasive judicial stereotypes that prevent the recognition of male violence against women in judicial proceedings (annex 2 and 3).

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<sup>19</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>20</sup> Draft Law 2530 on Provisions for the Prevention and Counteraction of the Phenomenon of Violence against Women and Domestic Violence, <https://www.senato.it/service/PDF/PDFServer/BGT/01334668.pdf>

<sup>21</sup> <https://www.theguardian.com/world/2023/jul/13/fury-italy-school-caretaker-cleared-groping-assault- lasted-seconds> and

annex

- a. The first case concerns an alleged sexual harassment of a 17-year-old student by a school caretaker. The man had put his hands down the girl's trousers, touched her bottom and pulled her knickers<sup>22</sup>. According to the territorial Court in Roma (the President was a woman) the incident fell within the scope of sexual assault. However, the defendant was acquitted as the Court did not consider there was “libidinous intent”. The Court found margin of doubts on the “voluntary nature of the violation of the girl’s sexual freedom ... considering the very nature of touching the buttocks, for a certainly minimal time, given that the whole action is concentrated in a handful of seconds.”.
- b. Another case<sup>23</sup> concerns an alleged sexual harassment in the workplace. A woman is hired as an employee in a museum in Rome. She accused her manager of harassing her. The territorial Court in Rome, again, acquitted him, and the decision's motivation stated: “in the light of all the considerations made here, it cannot be excluded that the victim, **probably moved by complexes of a psychological nature about her physical appearance (in particular her weight) unconsciously revisited the defendant's attitude towards her** to the point of considering herself physically assaulted”. Witnesses considered that the accused was ‘just joking’.
- c. A last case worth mentioning is a judgment on a femicide case by the Assize Court in Busto Arsizio<sup>24</sup>. The defendant murdered a woman he had had an affair with and worked together with in the pornography industry. He hit her head with a hammer then slit her throat with a knife. He then tried to get rid of the dead body by cutting it into pieces, removing skin parts to take off the tattoos, burning it and finally packing it in four plastic bags and dumping it in a ditch. The motivations behind the judgment caused quite an outrage. Throughout the sentence the defendant is often portrayed as ‘**much in love**’; on the contrary, the victim is portrayed as young and uninhibited, she is stimulating, she uses him. The ruling reads “*he realized that young and uninhibited CM had in some way used him in order to pursue her*”.

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<sup>22</sup> Supra

<sup>23</sup> <https://www.open.online/2023/07/25/roma-giudice-assolve-accusa-molestie-complessi-donna/>

<sup>24</sup> Full judgment in Italian in annex;

*personal and professional interest and used him, triggering the killing action” (p. 25).*

The victim is only described from the defendant’s point of view, and mostly objectivated (*“the stimulating beloved woman”*. p. 26).

These three recent cases among others (and together with those mentioned in previous submissions and many others) show how judicial stereotypes, victim blaming, minimizing remarks, sexist remarks, still inform judicial decisions.

#### - **Consent-based definition of sexual violence**

According to the Report from Italian women’s NGOs coordinated by D.i.Re - Donne in Rete contro la violenza, *“The provision punishing/criminalizing sexual violence and rape in Italy (Art. 609 bis c.p.) is not based on consent, as correctly observed by the GREVIO experts who called for its amendment as a matter of urgency<sup>25</sup>. Even the UN Special Rapporteur on violence against women in her 2021 report on sexual violence<sup>26</sup> recommends that the definition of rape should explicitly include lack of consent<sup>27</sup>.*

*In this regard, it is worth noting that the Italian 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>28</sup>.*

*A bill was proposed in 2021 to amend Article 609 bis of the Criminal Code to include the absence of consent<sup>29</sup>, but it was not even debated.*

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<sup>25</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>

<sup>26</sup> <https://www.ohchr.org/en/calls-for-input/2021/rape-grave-and-systematic-human-rights-violation-and-gender-based-violence>

<sup>27</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>28</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>29</sup> [https://www.senato.it/leg/18/BGT/Schede/Ddliter/testi/54613\\_testi.htm](https://www.senato.it/leg/18/BGT/Schede/Ddliter/testi/54613_testi.htm).

*The CEDAW Committee's recent view on an Italian case also brings to light the pernicious influences of stereotypes on judicial decisions. The CEDAW Committee found in A.F. v. Italy (148/2019), on 20 June 2022, that the Italian State had violated Articles 2, 3, 5 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women in the case of a woman who, the day after her ex-husband had assaulted her, reported that she had been raped precisely by the police officer in charge of the investigation, C.C., who showed up at her flat claiming falsely to have information about her case. In its view, the CEDAW Committee adopted recommendations.*

*At present, no state action, follow up or updates have been reported.”*

## **2. On the Observatory on Male Violence against Women at the Ministry of Justice**

The Action Report refers to it between pages 16 to 21. However, the Observatory was actually only announced and no information is available on its work or composition (there is only a [press release](#) on the Ministry's website). The Observatory is an inter-institutional body with no participation of civil society and particularly of associations involved in combating violence against women in the judicial sphere. It is one of many measures announced for 25 November, whose practical implementation remains to be verified.

## **3. Draft Law approved by the Council of the Ministers on 7<sup>th</sup> June 2023**

The action report mentions a Bill approved by the Council of Ministers aimed at introducing new legislation to combat violence against women and domestic violence. However, it must be noted that this draft law [*disegno di legge (DDL)*] has not yet been scheduled in Parliament for debate.

This draft law replicates Draft Law 2530 of the last parliamentary term, a Bill that was already debated in the parliamentary committee (Commissione Giustizia), where NGOs suggested amendments and observations which were not even considered in the new draft<sup>30</sup>.

Moreover, the Bill introduces an increased use of the “*police caution*” (even for sexual violence!). The same measure (police caution) has recently undergone a Judgement by the European Court, which held that it violated Article 8 of the Convention (Giuliano Germano

v. *Italy Application no. 10794/12*)<sup>31</sup>. In our previous submission we described how such a measure applied to sexual violence would violate the Istanbul Convention.

#### 4. Public call for funding

Regarding the issue of funding for information and awareness raising initiatives regarding the prevention of domestic violence, State Action Report describes a specific call for funding created last year (annex 8 of the State's Action Report). The call was indeed published in April 2022 with May 2022 as deadline for applications. Unfortunately, a year later the results are not yet available, and funds are far from being allocated. An example that emphasizes the gap between the state's claims from its actual implementation.

### 11. CONCLUSIONS and RECOMMENDATIONS

Considering the issues above, we call upon the Committee of Ministers to maintain the Group Cases *Talpis v. Italy* and the case of *J. L. v Italy* under the procedure of enhanced supervision. All measures in the action report are announcements, good intentions, promises that have yet to be implemented, let alone assessed for effectiveness.

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 applicants and to ensure that the applicant *J.L.* and other applicants from the group, receive 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.

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<sup>31</sup> Art 8 • Private and family life • Police caution imposed on the applicant in stalking-prevention proceedings without adequate legal protection against abuse • No time-limit for the effects of the caution and no right to obtain its review or revocation • Applicant's exclusion from decision-making process to a significant degree in the absence of demonstrated reasons of urgency • Insufficient judicial review by the judicial authorities of the factual foundation and of the legality, necessity and proportionality of the measure • Absence of relevant and sufficient reasons • Insufficient procedural safeguards

3. 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 proceedings, and make it available to civil society with reference to judicial data.
4. Carry out a critical/independent analysis and evaluation into the reasons why the number of dismissed cases is so high and the conviction rates are so low.
5. Ensure that risk assessment procedures are developed and applied at all stages by relevant professionals in contact with gender-based violence victims.
6. Carry out mandatory consultation with independent specialized women's services when minimum standards are designed, monitored, evaluated, and implemented.
7. Establish a monitoring and evaluating system on the impact of newly introduced legislation and the operation of the two observatories.

Antonella Veltri, President



Concetta Carrano, Esq.



Elena Biaggioni, Esq.



Annex:

1. [Report](#) by Italian women's NGO coordinated by D.i.Re
2. Judgment 06.07.23 Tribunale of Rome
3. Judgment 1/23 RG Court of Assize of Busto Arsizio 12.06.23
4. Rassegna stampa sentenza 10 sec. e articolo del NYtimes in PDF