

D.i.Re's input to the addendum to the report of the Special Rapporteur on violence against women and girls to the HRC on the concept of consent in relation to violence against women and girls

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D.i.Re welcomes a specific report on the concept of consent in relation to VAWG.

We feel that the recent focus on consent too often ends up framing violence as a misunderstanding rather than qualifying it as an act of power and violence against women and girls. A report from this Special Rapporteur will offer insights, guidance and recommendations.

As D.i.Re we will only contribute to the topic 'legislation and jurisprudence' with some observations from the [NGOs report to GREVIO](#) and [NGOs' report to the Committee of the Party](#).

In Italy² 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 urgency³.

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 underestimated⁴.

A bill was proposed in February 2024 to amend Article 609 bis of the Criminal Code to include the absence of consent⁵. The analysis process started in November 2024 in the Justice Commission and it is not known when it will make it to the Parliament plenary chamber.

¹ D.i.Re is a network of over 80 Italian women's non-governmental organizations running women's specialized services to combat and prevent domestic violence and violence against women in Italy. It was officially established as an organization 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 also in the integrated Civil Society Organizations System developed by the United Nations Department of Economic and Social Affairs.

² For an extensive analysis of European legislation on sexual violence and rape and consent, see https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/757618/EPRS_IDA%282024%29757618_EN.pdf

³ "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>

⁴ 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>

⁵ <https://www.camera.it/leg19/126?leg=19&idDocumento=1693>

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 the following recommendations:

- Amending the definition of all sexual offences involving victims capable of giving legal consent, to include consent as the defining element.
- Where consent is raised as a defense, the burden of proof should not be on the victim to show that she communicated an unequivocal lack of consent but must shift to the accused who, in relying on the defense, must substantiate a well-founded belief in affirmative consent; and
- removing the requirement in defining elements of sexual crimes for the victim to prove penetration, force or violence, unless the same is required to establish an additional or aggravating offence.

None of these recommendations were implemented so far.

Roma, 30th January 2025