



Anti-violence law in Italy between reforms empowerment and self-criticism need

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Abstract

The contribution preliminarily outlines the evolution of Italy's anti-violence legislation, analyzing the various dimensions through which the Italian legal system has responded to the substantive and procedural challenges posed by gender-based violence against women. Within this framework, Law No. 69/2019 (the "Red Code") and Law No. 168/2023 represent only the most recent "islands" of a broader "legislative archipelago" in which, as emphasized by the Supreme Court, legal practitioners are called to navigate. The analysis encourages a focused reflection—free from purely theoretical digressions—on the structural limits of the legal system, emphasizing the need for institutional self-criticism repeatedly urged by the monitoring bodies of binding international conventions for Italy, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Istanbul Convention. Furthermore, the contribution examines the sanctions imposed on Italy by the European Court of Human Rights, highlighting the persistent shortcomings in the practical implementation of legislative provisions, especially with regard to the protection of victims exhibiting forms of discrimination intersecting with their gender.

The paper aims to demonstrate that, despite an extensive normative framework, a significant gap remains—documented by women's experiences and the data gathered by anti-violence centres—between the formal dimension of legal provisions and their actual effectiveness. Echoing the concerns expressed by the European Court of Human Rights, it advocates for systemic measures, including coordinated training and awareness initiatives jointly developed with civil society actors such as anti-violence centres, feminist shelters, and organizations promoting women's rights.

Keywords: *gender-based violence; anti-violence legal reforms; Italian legal system; Istanbul Convention implementation; victim protection; legislative effectiveness*

1. Introduction: Focus on anti-violence legislation in Italy.

The provisions introduced by law 24 November 2023, no. 168 "don't allow to understand the overall framework of measures that Italian legal system has got, after twenty years of

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continuous legislative production, but often without an organic perspective. It's useful to illustrate the different axes along with the response of the Italian legal system has unfolded to the problems of substantive and procedural law that the social issue of gender violence against women has raised over time, see law no. 168/2023, that constitutes only the last and most recent "island", of that "legislative archipelago" in which, according to the Supreme Court (United Sections ruling, 01. 20. 2016 no. 10959) (Boiano, 2023), the legal practitioner in Italy has to move (Michelagnoli, 2016). With Law 5 August 1981 no. 442 "repeal of the criminal relevance of the cause of honour", the Italian legislator had limited itself to formally expunging from regulations those provisions that legally sanctioned the social tolerability of gender violence against women, repealing the specific mitigating circumstances of murder and injuries, even aggravated, to the detriment of the spouse, daughter or sister or of anyone who is in an illegitimate carnal relationship with them due to "a state of anger determined by the offense caused to his or her family's honor" (article 587 of the criminal code) (Peroni, 2021; Demurtas & Taddei, 2023).

It was only in the aftermath of the action plan adopted in Beijing following the Fourth World Women's Conference (4-15 September 1995), that Italian Government undertook to outline an action for the prevention and repression of "violence in personal relationships", setting itself the priority objective of establishing a permanent observatory and a legislative introduction of urgent precautionary measures in the event of "domestic violence". With law 15 February 1996, no. 66 "Regulations against sexual violence", the incriminating cases of the offense against sexual freedom were finally placed among the crimes against the person, eighteen years after the popular initiative law (Virgilio, 1997).

The first reform, the result of a discussion with feminist anti-violence centres, was law 5 April 2001, no. 154, concerning "measures against family violence", for example the precautionary measure of family removal order (article 282-bis of the criminal code) and the protection from family abuse order (article 342-bis) (Di Lorenzo, 2016). Over the years, additions and modification to substantive and procedural criminal law have followed through legislative decrees, confirming the prevalence of an emergency reading of the issue, outside of a systemic framework, as well as interventions resulting from the alarm generated by the pressing case in the news: the decree-law 23 of February 2009, no. 11 converted by law 23 of April 2009, no. 38, introduced the crime of persecutory acts, configured in the penal code in article 612-bis, the specific precautionary measures of the ban on approaching the offended person (article 282-ter c.p.p.) and the atypical precautionary institution of the Police Commissioner's warning, burdening the police with the obligation to inform offended people about the anti-violence centers available in the area (Peccioli, 2016; Amoroso, 2016).

Furthermore, access to the benefit of legal aid at state expense has been provided for all people offended by the crime of sexual violence regardless of income, as a tool to facilitate the possibility for offended people to make use of an experienced technical defense in the sector. The decree-law of 14 of August 2013 converted by law 15 of October 2013, no. 119, labeled by the press in the terms of the law "on femicide", is the first initiative taken after law 27 of June 2013, no. 77, ratifying the Council of Europe Convention for the prevention and the combat against women and domestic violence (later on the Istanbul Convention), that however didn't immediately, completely and coherently fulfill the obligations arising from the newly ratified international act (Tierney, 1982). Law no. 119/2013 introduced changes to the criminal code, to the code of criminal procedure, extended the warning and introduced the residence permit for non-European citizen victims of domestic violence. Criteria have been included for the priority treatment of

criminal proceedings for crimes of mistreatment, stalking, sexual violence and other spy crimes. Furthermore, the system of planning and management of protection measures has been outlined, committing the legal system to the adoption of a periodic national anti-violence plan with the provision on a regional basis of programmed financial resources, to strengthen the existing anti-violence centers and to increase their diffusion across the territory, in compliance with international qualitative and quantitative standards regarding the reception and support of women according to a gender and feminist approach (Di Nicola Travaglini & Menditti, 2019).

On 19 of July 2019, law no. 69 was approved and from the press was defined “red code”, borrowing the expression from the name of the emergency routes that give access to A and E, as it is aimed at giving a boost to speed in the handling of criminal proceedings in the matter through an accelerating deadline for the assumption of summary information from the offended person (within three days of the news of the crime). Law no. 69/2019 has also expanded the catalog of crimes affected by accelerated treatment in the trial phase pursuant to article 132-bis disp. Att. C.p.p. with new incriminating cases such as forced marriage (article 558-bis of the criminal code), the deformation of person’s appearance through face permanent injuries (article 583-quinquies of the criminal code), the illicit diffusion of sexually explicit images or videos (article 612-Ter criminal code), violation of precautionary measures and protection orders (article 387-bis criminal code). Law no. 69 also established that minors under the age of eighteen, witness of mistreatment, must be considered victims of the crime, thus codifying the so-called “witnessed violence” (Boiano & Condello, 2019). The interventions on the criminal procedure code are united by the aim of avoiding that any stagnation between acquisition of the news of the crime, its registrations and the start of preliminary investigations, could delay the adoption of measures to protect the persons offended by the crimes of mistreatment, sexual violence, persecutory acts and aggravated injuries committed in family contexts or within cohabitation relationships.

The aforementioned specific legislative interventions have been interspersed with further initiatives that, although not expressly dedicated to the issue of gender violence against women, have made changes to substantive criminal and procedural law relevant to the implementation of international obligations and European law. Furthermore, we recall the procedural reforms referred to in law 23 of June 2017, no. 103 (so-called “Orlando” reform) and Legislative Decree 10 of October 2022, no. 150 (so-called “Cartabia” reform). Meanwhile, in 2018 with the law of 16 of February no. 4, measures were introduced to support orphaned children following femicide, while, after the repeated condemnation by the Presidency of the council to pay compensation to victims of crimes for failure to transpose Council Directive 2004/80/EC of 29 of April 2004 relating to the compensation of crime victims, the European law 2015-2016, of 7 of July 2016, no. 122, regulated the compensation in favor of victims-resident or not in Italy-of malicious crimes committed with violence to the persons, as well as of the crime referred to in article 603 bis of criminal code. (Illicit intermediation and exploitation of labour), with the exclusion of the crimes referred to in articles 581 and 582 of the Criminal Code apply.

A composite picture of interventions emerges, in which the legislator’s favorite area remains criminal law, with the formulation of new crimes, a progressive increase in penalties and further declination through the aggravating circumstances of the specificities of illicit conduct. Another context of constant change was the criminal procedural context integrated by provisions aimed at implementing the right of access to justice, considered

internationally to be the essential prerequisite for women to be guaranteed a life free from violence in practice (Cedaw Committee, General Recommendation no. 33 on women's access to justice, 2015), to be configured according to a multidimensional scheme, with a prohibition on alternative methods such as mediation and conciliation or other institutions that may involve contact between the victim and the perpetrator of the crime (article 48 Istanbul Convention). Starting from law no. 69/2019, the prevention and administrative measures have also been redesigned; the suspension of the sentence conditional on access to dedicated recovery paths was envisaged, while with the "Cartabia" reform specific provisions were introduced which ensure a timely response from the civil judge based on the principle of the most extensive and rapid protection in the event of "allegations of violence" (Razzi, 2023), as well as further criminal procedural changes, including restorative justice institutions, a field of investigations and reflection still open, also in light of the delays in the implementation of the system of necessary services.

2. The new provisions of law no. 168/2023.

Law no. 168/2023 is made up of nineteen articles that contain amendments to the Criminal Code, criminal procedure code, prevention and administrative measures. The general purposes of the law are the prompt handling of cases, the adequacy of protection before, during and after criminal proceedings, without neglecting the implementation issues of the recovery paths for perpetrators of violence. Furthermore, indications relating to the specialization of offices and the training of operators, including the judiciary, are introduced, as well as the possibility of requesting, if the victim is in need, an advance payment of compensation paid by the State.

The legislator has provided for a strengthening of measures regarding warning and information to victims of gender violence. In detail, the article 1 of the aforementioned law provides that "in the cases referred to in articles 581, 582, 610, 612, second paragraph, 612-bis, 612-Ter, 614 and 635, committed or attempted, of the penal code, in the context of domestic violence, the police commissioner, even in the absence of a complaint, can proceed having obtained the necessary information from the investigative bodies and having heard the people informed of the facts, at the warning of the author of the fact". A significant innovation concerns the duties of the police in cases in which they have news of crimes committed in the context of domestic violence as amended by the co. 5 of the Legislative Decree No. 93/2013 (converted, with amendments, into Law no. 119/2013). This rule in fact provides that: "The measures referred to in paragraph 1 of article 11 of the legislative decree of 23 of February 2009, no. 11, converted, with amendments, by law 23 of April 2009, no. 38, are also applied in cases in which the police, health facilities and public institutions receive from the victim news of crimes referred to in articles 581, 582, 610, 612, second paragraph, 614 and 635 of the penal code in the scope of domestic violence referred to in paragraph 1 of this article".

This provision therefore provides that, in the event that Police Force receives from the victim a report of a crime relating to the hypotheses referred to in articles 581, 582, 610, 612, second paragraph, 614 and 635 of the penal code committed in the context of domestic violence, they are obliged to provide the victim with all information relating to the anti-violence centers present in the area and, in particular, in the victim's area of residence. Other innovations that impact on the activity of the police force can be found in articles 10 and 12 of law no. 168/2023. Article 10, entitled "Deferred arrest in flagrante delicto", inserts the art. into the Code of Criminal Procedure 382 bis, rule according to

which: "in the cases referred to in articles 387 bis, 572 and 612 bis of the Criminal Code, anyone who, on the basis of video-photographic documentation or all type of materials legitimately obtained from computer or telematic communication, from from which the fact emerges, is the perpetrator, provided that the arrest is carried out no later than the time necessary for his identification and, in any case, within forty eight hours of the fact".

Therefore, on the basis of this new regulatory provision, if the offended person, victim of domestic violence, promptly goes to the police to report crimes referred to in the articles 387 bis, 572 and 612 bis of the Criminal Code whose existence emerges from video-photographic documentation, the police forces can proceed the perpetrator of the aforementioned crimes within forty eight hours from the moment of the commission of the crime, being able to speak, in these cases, of deferred flagrancy. Article 12 of law no. 168/2023 modifies numerous rules of the Code of Criminal Procedure, including art. 275 bis of the Code of Criminal Procedure, dedicated to the regulation of precautionary measures for which the application of the electronic bracelet is envisaged. In detail, paragraph 1 of the art. is amended 276 bis c.p.p., the current wording of which provides that: "In ordering the measure of house arrest also as a substitute for precautionary custody in prison, the judge, unless he deems them unnecessary in relation to the nature and degree of the precautionary needs to be satisfied in the specific case, prescribes control procedures using electronic means or other technical tools, subject to verification of the relative technical feasibility by the judicial police". The modification made by the Legislator is therefore aimed at preventing precautionary measures such as house arrest or the ban on approaching the offended person from not being effectively monitored due to the lack of control tools such as the "electronic bracelet"; it is for this purpose that the Legislator had provided for a "preventive assessment", delegated to the judicial police, aimed at verifying the actual availability and functioning of these control tools (Kelly & Dubois, 2008; Pietrobelli, Gadda, & Misiti, 2020; Inverno, 2008; Scheeringa & Zeanah, 1995).

3. The limits of the order and self-criticism need.

The common denominator of the legislative interventions that have followed one another over the years, except in the case of law no. 119/2013 and the restorative justice services outlined by Legislative Decree no. 150/2022, is the financial invariance clause, a political choice that certainly represents one of the substantial limits that most affects the concrete operation of the institutes introduced or reformed (Boiano, 2023).

Despite, in fact, the composite compendium of legislative provisions described above and considered abstractly suitable as a whole to guarantee a response compliant with the obligations of international law and European law (Cedaw Committee-Concluding observations on the eight report of Italy, of February 2024), from the experience of women, as documented by anti-violence centers and feminist shelters, a deep distance emerges between the formal plan of the institutes introduced and the substantial plan of their effectiveness and efficacy. In fact, on the one hand, there's an overall underestimation of the precautionary needs in criminal proceedings that arise from women's complaints for one or more forms of gender violence, with the effect of compromising the legal system's ability to ensure that the offended persons from the crime the "primary" protection, namely that set of measures useful to protect against the repetition by the suspect/ accused of further violent conduct. On the other hand, it is necessary to guarantee adequate protection "internal" to the process against "secondary and repeated victimisation, intimidation and

retaliation, including the risk of emotional or psychological harm, and to safeguard the dignity of the victim during interrogation or testimonies" (Art. 18, Directive 2019/29/EU).

The distance between the formal legislative plan and the substantial plan of the implementation of the provisions introduced has been highlighted over the years as a problematic profile of the Italian legal system by the monitoring committees of the international conventions binding for Italy, such as the Convention for the elimination of any form of discrimination against women (CEDAW) and the Istanbul convention (this is what emerges from GREVIO's Basic Evaluation Report on the legislative and other measures to be adopted to give effect to the provisions of the Convention of the Council of Europe on preventing and combatting violence against women and domestic violence) (GRETA, 2020). This gap has received many criticism: firstly the extraordinary commission of the Senate for human rights in 2012 and then the parliamentary commission of inquiry of the Senate on femicide as well as on every form of gender violence, over the years have highlighted the application problems and shortcomings of the law on violence against women, highlighting the secondary victimization of women as a widespread problem both in criminal trials and in civil proceedings relating to parental responsibility (Sanlorenzo, 2021). The Italian legal system (Serban, 2023a) was then repeatedly scrutinized by the European Court of Human Rights, that, following the appeals of women and their families, found serious and widespread problems of effectiveness in the application practice of the various provisions introduced, especially with regard to protection in cases of gender violence, in violation of article 14 of the Convention.

The decision of the European Court and of the CEDAW Committee, clearly highlighting the gaps in the legal system and the violations committed by the authorities in individual cases, have, in any case, certainly contributed to the most recent legislative reforms, also giving a signal in terms of social reparation towards the direct victim of the violation. They also promoted a path of awareness and self-criticism among legal practitioners; however, the level of ascertainment of the individual responsibilities of those who, representing the internal authorities, produced ascertained violations is unsatisfactory, if not even consistent with a substantial impunity which undermines social trust in the effectiveness of the measures envisaged by the Legislator.

Therefore, alongside systemic initiatives, including training and awareness-raising planned together with civil society (in particular anti-violence centers and feminist shelters, organizations promoting women's rights) that law no. 168/2023 doesn't adequately valorize and that instead would be desirable to actively involve, the need arises to ensure effective and accessible internal accountability mechanisms, from disciplinary and self-control measures to criminal investigations into the omissions reported (or ascertained before international bodies) of those acting as representatives of the authorities, as well as accelerating the establishment of an independent human rights monitoring authority with specific expertise on gender-based violence against women, as lastly recommended by the CEDAW Committee; this is also in consideration of the fact that the most recent initiatives for monitoring the legal system, such as for example the commission, are dedicated to a prevalent, certainly meritorious, work of documenting violations and of bad practices that limit women's access to justice, providing the legislator with a panorama of corrective measures to new adopted, but don't outline or recommend a sanctioning or remedial response to the violations that emerged in the concrete cases under investigation (Tumminiello, 2021; Cardinale, 2021; Fullone, 2021).

4. Conclusion: The Historical and Contemporary Context: Brief Notes

Historians and writers have explored the phenomenon of gender-based violence (Serban, 2023b) since ancient times, leaving evidence of it imprinted in countless texts across centuries and cultures. In every era and at every latitude, femicide has remained tragically relevant—a persistent and dramatic constant extending into the contemporary age, even in the Western world, which has so masterfully celebrated “gentle love.”

From forced marriages and domestic abuse in Venice, the “Queen of the Seas,” to rapes in Bourbon Sicily; from violence against women in Byzantine and ancient Rome, to the witch hunts of the Middle Ages; from the persecution of women in France and Germany to psychological abuse and crimes in the Duchy of Milan, and to the violated women and “evil spirits” of Florence—these accounts illustrate the historical continuity of violence. Femicide and threats against women have afflicted Eastern Europe and even the most remote societies, bearing witness to deep-rooted stereotypes and prejudices that, transformed into structural discrimination, persist to this day.

When such attitudes evolve into obsession, they often culminate in lethal outcomes: men killing women who defy them—who reject their authority, excel in study, work, or sport, or expose their fragility by refusing to conform to their dominance. Indeed, if “homo homini lupus,” one can also say, with tragic accuracy, “homo mulieri lupus.”

The murder of a woman, yesterday like today, is the tragic outcome of a sick obsession that germinates and takes shape in the attackers head when thoughts become action and frustration turns into violence. The germ of wickedness that characterizes these gruesome events, has never been eradicated throughout centuries, evidences are found in ancient Rome too, as amply demonstrated. Every year, on August 15th, Italian Ministry of the Interior, publishes all data relating to its activities, the annual trend of crimes and a focus on gender violence.

The data relating the numbers of feminicides in Italy from 2021 to 2024, speak of a massacre, genocidal numbers (ISTAT, 2024). During 2021 there were 119 victims of murder, almost the 90% victims of feminicide; during 2022 there were 126 murders of women, the 92,7% of them killed by men. During 2023, 120 female victims, 62 killed by partners or by ex-partners. From the first of January to 18 of August 2024, there were 62 women who were victims of feminicides (Ministero dell’Interno, 2024). So from the first of January 2021 to 18 of August, 427 feminicides took place in Italy, 427 women are no more among us, 427 broken lives because of men. We remember them through a story, unfortunately true. Few people know that the 25 of November is the day in which Institutions invite us to reflect about the atrocious phenomenon of feminicides; this date was chosen by the UN in 1999. During 1960, in Dominican Republic, three women were murdered: Patria, Minerva and Maria Teresa. They were killed because of fight against the authoritarian regime of Rafael Trujillo, dictator from 1930 to 1961.

During his charge, he repressed all forms of opposition he also encouraged gender violence. Trujillo became infatuated and obsessed with Minerva Mirabel converted in his victim. Minerva and her sisters tried to stop his power and they adopted a code name for their clandestine activity: “Mariposas”, a Spanish word meaning “butterflies”. The dictator declared that the presence of the three women hindered the exercise of his power. He gave a public speech and to its end the chilling discovery: in a desert and remote street, the “Mariposas” were found dead after a brutal beating. This assassination disturbed people, probably awakened their conscience, as consequence the end of dictatorship. The story of Mirabel represents the symbol of women's resistance against a corrupt and bloody regime

and can demonstrate how a butterfly flapping wing is able to oppose the storm (BariSeraNews, 2022).

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