

Elisa Baiocco¹
Sapienza University of Rome

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SECONDARY VICTIMIZATION IN ITALY: THE URGENT NEED FOR JUDGES, LAWYERS AND COURT-APPOINTED EXPERTS' EDUCATION ON GENDER-BASED VIOLENCE AGAINST WOMEN

ABSTRACT The article focuses on secondary victimization in Italy, showing that judges, lawyers, and court-appointed experts handling cases of gender-based violence against women are often not specialized in the issue, consequently causing secondary victimization episodes. Indeed, they rely on sexist stereotypes, such as “the perfect victim” one. This tends to question the reliability of victims’ declarations, minimizing domestic violence as couple conflict, restraining from issuing precautionary measures and investigating the intimate life of the victims of sexual violence. Moreover, women are considered children’s manipulators through references to the PAS, while the victim-centered approach has a number of flaws, such as victim-partner meetings being organized without an appropriate risk assessment and the fact that achieving civil remedies and claiming compensation is complicated.

The text examines secondary victimization through references to the 2020 GREVIO report, the 2018 Italian women’s NGOs report and two reports of the Italian Parliamentary Inquiry Committee on Femicide. After an analysis of the progress and the criticalities of the Italian policies focused on secondary victimization, the lack of education on gender-based violence against women of judges, lawyers, and court-appointed experts’ is studied. Then, these professionals’ actions leading to secondary victimization are discussed, also referring to emblematic European Court of Human Rights judgments.

Keywords: Italy, secondary victimization, education, judiciary, gender-based violence against women, stereotypes

1 E-mail: elisa.baiocco@uniroma1.it

INTRODUCTION

The year 2021 was the tenth anniversary of the Council of Europe's adoption of the *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (better known as the Istanbul Convention), and its opening to signing. It is time to evaluate the progress made in the prevention and fight against gender-based violence against women and the challenges that must still be addressed. In particular, the article focuses on the Italian case, referring to Italian policies and judicial system actions. Italy ratified the Convention without reservation through Law No. 77/2013; the legal instrument entered into force on August 1, 2014.

As will be shown in the article, one of the main criticalities of the Italian judicial system is the occurrence of secondary victimization episodes, which discourages victims from denouncing and undermines their trust in state actions aimed at preventing and combating gender-based violence against women. Secondary victimization episodes can be caused by judges, lawyers and court-appointed experts, these last ones being professionals (most times psychologists) that judges usually appoint in civil law cases of separation, divorce and/or children custody due to a violent relationship to investigate a particular issue, for instance assessing parental abilities of the parties.

With many improvements introduced after the ratification of the Istanbul Convention, can Italian policies avoid causing secondary victimization? And, most importantly, are legal operators and professionals who support judicial processes² dealing with cases of gender-based violence against women³ well-trained and specialized in the issue? Can they correctly apply

2 The expressions “legal (or judicial) professionals” and “legal (or judicial) operators” are used in the text to refer to judges and lawyers. Instead, professionals helping them or supporting judicial processes are court-appointed experts (*consulenti tecnici d'ufficio* in Italian, abbreviated in *CTUs*).

3 Regarding terminology, the article mainly uses the expression “gender-based violence against women”, following the definition provided by article 3.d of the Istanbul Convention, according to which it consists of “violence that is directed against a woman because she is a woman or that affects women disproportionately” (CoE 2011, 3). There are also other expressions in the text, such as “domestic violence”, which means “all acts of physical, sexual, psychological or economic violence that occur

Italian laws in cases with this type of violence, or do they follow sexist stereotypes and prejudices? What are the actions of the judicial operators and the court-appointed experts that result in problematic case law? The article will address these questions, finding the cause of secondary victimization primarily in magistrates, lawyers and court-appointed experts who lack specialization in gender-based violence against women. Consequently, this text aims to show that their education and training on the issue is a matter of urgency.

After analyzing the progress and criticalities of the Italian laws and policies (with a focus on secondary victimization), the lack of specialization of legal operators and professionals supporting judicial processes dealing with gender-based violence against women will be examined. Then, the actions of judges, lawyers, and court-appointed experts leading to secondary victimization will be studied, referring to emblematic rulings.

Before starting, since the text deals with laws, policies, and rulings, it is relevant to refer to the fact that Italian feminism is divided on whether the law can be an instrument of affirmation of feminist values. According to those who are not confident in law, feminism is “above the law”, having nothing to do with elaborating legal instruments. Similarly, tribunals reproduce not-favorable-to-women power relations (Boiano 2015, 53–58). Another group of Italian feminists considers law as a negotiation field in which the feminist movement and the institutions can create a cooperative dialogue to foster female freedom (*ibid.*, 59). A third way between these extremes is specific to the issue of gender-based violence against women and is represented by the possibility of influencing the process in a feminist way through a peculiar relationship established between the victim and her female lawyer.⁴ The former entrusts the latter, and the latter does not work in

within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim” (CoE 2011, 3) and “sexual violence”, implying rape. The other expressions to refer to gender-based violence against women in the paper (“gender-based violence and stalking”, “sexual and gender-based violence”, “men’s violence against women”) are the ones used by the Italian national plans on the issue.

4 As studied by the scholar Ilaria Boiano, in gender-based violence against women processes, the victims are able to describe better the aggressions endured when interrogated by women lawyers specialized in gender-ba-

a detached way but with the motivation to assist her. In this way, she manages to defend the appellant from the stereotypes of the “perfect victim”. Prejudices on how the victim should behave, too often, cause the judiciary to jeopardize the credibility of the declarations of those who suffered from gender-based violence against women (*ibid.*, 62, 63).

This lawyer-assisted relationship is extremely fruitful; however, intervention in the case of all judicial professionals is urgently needed. More in detail, legal operators and the professionals helping them should understand the complexity of the phenomena of gender-based violence against women and be able to put themselves in the shoes of the victims. They should apply the feminist methodology of listening to the concrete experiences lived by each woman without prejudices. Also, they should be aware that gender-based violence against women is a structural and pervasive manifestation of unbalanced power relations, so an assertion of male power over female subjects. In this context, this type of violence is not simply the outcome of a sudden raptus or a moment of madness but the result of the will to subjugate women. Interestingly, the belief that feminist judges will make the difference is supported by feminist judgment projects: collaborations between feminist legal scholars who rewrote selected legal decisions to show that the cases could have been decided differently if magistrates were loyal to concrete women’s lived experiences and not conditioned by gender stereotypes (Rackley, 2012).

sed violence against women, since they manage to ask the right questions. Indeed, these lawyers’ questions make it possible to reconstruct the control exercised by the violent man and the violation of the victim’s personal freedom in detail. For example, violent partners may force women to leave their job or interrupt contacts with their friends and family, thus inflicting not only physical, but also psychological and economic violence. Such suffering is not immediately denounced by women, because they usually become aware of them after talking with anti-violence centers operators. Moreover, women lawyers’ questions make the victims underline the psychological (not only physical) consequences of the violent relationship. These professionals also help women to reveal aggressions perpetrated without leaving signs on their bodies, proving that men did not exercise violence in an isolated way, but in a premeditated one (Boiano 2015, 247–255).

ITALIAN POLICIES RELATED TO GENDER-BASED VIOLENCE AGAINST WOMEN: PROGRESS AND CRITICALITIES

Italy started a path toward combating gender-based violence against women before the adoption of the Istanbul Convention, albeit in a delayed way and with many criticalities.⁵ However, policies contrasting this type of violence gained momentum with the process of ratification of the Istanbul Convention.⁶ Despite the progress of Italian legislation and public policies in the

5 As a proof, it was only in 1996 that Law No. 66/1996 defined sexual violence as a crime against the personal freedom, modifying the previous provision of the Italian Penal Code – considering this crime as a crime against the public morality (GREVIO 2020, 11). Then, measures aimed at strengthening the protection of the victims of domestic violence were adopted: despite being formulated in gender-neutral terms, Law No. 154/2001 introduced the possibility to impose restraining orders to the perpetrator of the crime in both the criminal and civil proceedings (GREVIO 2020, 11). Moreover, with the passing of time, new forms of violence were recognized: female genital mutilations were criminalized by Law No. 7/2006. In addition, Law No. 38/2009 criminalized stalking, establishing the possibility for the offended person to ask for a police warning even before or without starting a criminal suit against the alleged stalker (GREVIO 2020, 11, 12). Furthermore, in 2011, the *National Plan Against Gender-Based Violence and Stalking* was adopted. The intervention areas of the Plan were: 1) prevention, information, and sensibilization, 2) anti-violence centers and services for the victims, 3) education, 4) databases on gender-based violence and stalking (Italian Premiership 2011).

6 Indeed, Law No. 119/2013 aimed at bringing the Italian legislative framework in line with the Convention's requirements. It included measures prioritizing investigations and criminal proceedings regarding stalking, sexual and domestic violence. In addition, it established a new aggravating circumstance to be applied when crimes are committed against and/or in the presence of a child and the entitlement to a residence permit to the victims when they are foreign women, also introducing procedural guarantees during legal proceedings (GREVIO 2020, 12).

In 2015, the *Extraordinary Plan of Action against Sexual and Gender Violence 2015–2017* was adopted. This Plan was based on three levels: prevention (with actions in the field of communication, school education and education of operators of services for the victims) protection (aimed at providing risk assessment guidelines, rescue, social-working re-integration and violent men rehabilitation), and punishment (Italian Premiership 2015).

In 2017, there was the adoption of the *National Strategic Plan to Combat Men's Violence Against Women 2017–2020*, centered on the “four Ps” of the Istanbul Convention: prevention, protection, prosecution, and

field of gender-based violence against women, the system still shows some criticalities. These latter ones were analyzed by GREVIO, an independent human rights monitoring body mandated to assess the implementation of the Istanbul Convention, whose report about Italy was published on January 13, 2020. GREVIO's main concerns are related to the condition of victims of multiple discriminations⁷ and the lack of an institutionalized dialogue

integrated policies. It was the first Plan to set an assessment and evaluation mechanism. Moreover, it paid attention to the peculiar situation of migrant, refugee, and asylum-seeking women (Italian Premiership 2017). Under this plan's period Law No. 4/2018, establishing measures supporting children whose mothers died of domestic violence, and Law No. 69/2019 (also known as *Red Code*), dating back to 2019, were adopted (GREVIO 2020, 12). The latter, on the one hand, introduced the new crimes of forced marriage, deformation of one's face due to injuries, and revenge porn. On the other hand, it increased the sanctions for the crimes of stalking, sexual and domestic violence, also strengthening the punishments for aggravated circumstances (ibid., 12).

Then, the *National Strategic Plan to Combat Men's Violence Against Women 2021–2023* was adopted in 2021. It recognizes the important role of women's associations managing anti-violence centers, with the will to include them in the realization, monitoring and evaluation of the interventions of the Plan. The need for multi-level actions, namely at the state, regional and local levels is also stressed. This Plan is based on the pillars of prevention, protection, prosecution, assistance and promotion, this last one being related to monitoring and evaluation. Indeed, the triennium 2021–2023 is taken as a transition period to build an effective multi-level monitoring system. Moreover, the Plan aims to create a path of female economic empowerment and to combat intersectional discriminations (Italian Premiership 2021). Last but not least, relevant provisions were adopted in those years: Law No. 134/2021, reforming the penal process, established further protection measures for victims of domestic violence, and Law No. 53/2022 strengthened the system of collection of statistic data related to gender-based violence against women (Chamber of Deputies, 2022).

- 7 For instance, Law No 66/1996 misses intersectional references, since it does not take into account, for example, the particular condition of women with disabilities, only establishing a generic aggravation of the sentence in case the victim is disabled, independently of her sex (Women's NGOs 2018, 7). References to intersectional discriminations are also absent in the 2011 and 2015 plans. Furthermore, the 2017 Plan was criticized since the measures in favor of vulnerable women were fragmented and without concrete operational targets (GREVIO 2020, 16), and because the Plan missed concrete proposals related to women with disabilities (Women's NGOs 2018, 7).

between the Government and civil society, especially women's associations and NGOs⁸ (GREVIO 2020). The monitoring body also denounces the Italian tendency to toughen criminal laws without investing in prevention and protection (GREVIO 2020, 18). However, the criticality of the Italian legal and judicial system observed by GREVIO that mainly interests this article is secondary victimization. This last one implies that the institutions, after a denounce, make the victim live through the sufferance felt during the crime once again, with the effect of discouraging her from denouncing⁹ and blaming her rather than the aggressor (Parliamentary Inquiry Committee on Femicide and All Forms of Gender-based Violence 2022, 5). This means that women are victims twice: they are both subjected to violence and non-recognition of violence. So, "secondary victimization means the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim" (CoE 2006, par. 1.3). It is relevant here to remember that not making all the necessary efforts to avoid secondary victimization violates Article 18.3 of the Istanbul Convention (CoE 2011, 7).

The Italian tendency to draw policies based on preserving the family, as underlined by GREVIO, causes secondary victimization (GREVIO 2020). An example of this is Draft Law Decree No. 735, proposed by senator Pillon in 2018 (which was never adopted due to the fall of the Government during discussions). The proposed piece of legislation referred to the so-called "parental alienation syndrome" (PAS), a pseudoscientific theory¹⁰ according

8 As an example, although the Italian anti-violence centers and women's NGOs had been contacted by the Government in the years between the 2011 Plan and the 2015 one, women's NGOs claimed the 2015 Plan took their advice into account minimally and weakened the role of anti-violence centers, without elaborating integrated and coordinated policies (Women's NGOs 2018, 3, 4). Similarly, women's NGOs argued that the 2017 Plan considered the specialized services provided by them only as complementary to state interventions and as a solution to emergencies (without a key role in the fields of prevention and education of operators providing help to victims of gender-based violence against women) (ibid., 4).

9 This definition is in line with judgment No. 35110 of the Italian Court of Cassation, United Sections.

10 The Italian Court of Cassation rejected the PAS as a pseudoscientific theory with ordinance No. 9691/2022.

to which women manipulate their children, influencing them toward refusing contact with their father (actually, children assisting to gender-based violence against women usually tend to reject the violent parent due to the suffered trauma). Also, this legal instrument foresaw compulsory mediation for spouses who wanted to separate or divorce, without exceptions for cases in which wives are victims of gender-based violence against women, thus violating Article 48 of the Istanbul Convention (GREVIO 2020, 19). Moreover, the proposed decree forced children to spend half their time with each parent, regardless of their will. So, the content of Draft Law Decree No. 735 was based on the premise that victims of gender-based violence against women's testimonies are unreliable and that the PAS exists (Women's NGOs 2018, 43). Policies like this prioritize conserving the parent-child relationship at all costs (even if the father is violent) rather than protecting women and children and eliminating gender inequalities. In this context, it appears relevant to point out that Italian laws normally establish the shared custody of the child after a separation or a divorce, except for the cases in which it is not in the minor's best interest. As shown in paragraph 4, domestic violence is often not considered a reason to restrict parental responsibilities (Parliamentary Inquiry Committee on Femicide and All Forms of Gender-based Violence 2022, 18).

In addition, when Italian laws aimed at protecting the victims of gender-based violence against women exist, sometimes they are not applied. This is the case of Law No. 154/2001, which foresees precautionary measures for the victims of domestic violence: in the penal field, the violent subject can be thrown out from the family house; in the civil field, the judge can issue protection orders forcing the violent man to stop the behaviors damaging the partner's physical and moral integrity, and throwing him out from the house with the prohibition of getting closer. However, the issuance of these measures is at the discretion of the judge in charge of the case (Women's NGOs 2018, 34, 35, 50), often not specialized in the issue. Similarly, the law forbids the collection of without-probative-value evidence related to the sexual history of the offended person (article 472, paragraph 3-bis of the Code of Criminal Procedure) and the lawyers' Code of Legal Ethics forces these professionals to avoid further humiliating the victim and morally evaluating his/her conduct. Despite this, victims of sexual violence are often

subjected to inappropriate questions during the process, being exposed to secondary victimization (GREVIO 2020, 75).

JUDGES, LAWYERS, AND COURT-APPOINTED EXPERTS' LACK OF EDUCATION ON GENDER-BASED VIOLENCE AGAINST WOMEN

A specific concerning point that leads to secondary victimization is the lack of specialized education and training in the field of gender-based violence against women of policemen, social and health services professionals and legal operators¹¹, thus violating article 15 of the Istanbul Convention, according to which State Parties have to provide professionals dealing with victims and perpetrators of gender-based violence against women with the adequate training (CoE 2011, 6). In particular, as claimed by GREVIO, women's NGOs and the Parliamentary Inquiry Committee on Femicide, legal operators and professionals supporting judicial processes' inability to understand the complexity of the issue results in a problematic case-law based on secondary victimization.

References to the need to provide professionals in touch with victims of gender-based violence against women with the appropriate education and training in order to avoid secondary victimization are present in many Italian policies. For example, the 2011 *National Plan Against Gender-Based Violence and Stalking* contemplated, among its objectives, the development of competent professional figures dealing with gender-based violence and stalking, also calling for educational events addressed to magistrates (Italian Premiership 2011, 6, 13). The *Extraordinary Plan of Action against Sexual and Gender Violence 2015–2017* referred to the need for systematic actions to destroy gender prejudices and stereotypes, also aiming at giving operators adequate education related to gender-based, domestic violence and stalking, but without insisting on legal operators (Italian Premiership 2015, 7, 20). Additionally, pillar 1.3 of the *National Strategic Plan to Combat Men's Violence Against Women 2017–2020* prevention axis consisted in properly

11 Courses on women and gender are sporadic in schools and universities. Only some post-degree masters are focused on the issue; this results in a general inability to understand gender-based violence against women (Women's NGOs 2018, 22).

educating operators of the public and private sectors dealing with victims and perpetrators of men's violence against women (Italian Premiership 2017, 19). In fact, the 2017 Plan called for education activities addressed, among other figures, to judges, lawyers, and court experts working in the civil, penal and juvenile sectors (*ibid.*, 10, 20). Plus, it wanted to strengthen the already-in-progress judges' educational activities and recommended the projection of new activities, making them aware of the risk of secondary victimization in judicial processes (*ibid.*, 22). Moreover, the Plan referred to the need to deepen the coverage of men's violence against women in some university courses (among which law) (*ibid.*, 19). This last proposal is also made by the *National Strategic Plan to Combat Men's Violence Against Women 2021–2023*, whose priority 1.6 of the prevention axis calls for the improvement of the competencies of the professional figures coping with men's violence against women (among whom legal professionals) (Italian Premiership 2021, 27, 33). In addition, this Plan foresees an education on the issue addressed to court-appointed experts, to prevent secondary victimization phenomena and to establish a court-appointed experts' register for those who are specialized in men's violence against women (*ibid.*, 49).

Despite this, the Parliamentary Inquiry Committee on Femicide and all forms of gender-based violence report related to the judicial reality and based on the triennium 2016–2018 depicts a problematic situation. In those years, the *Scuola Superiore della Magistratura* (the Italian body in charge of the education of the Italian judiciary) organized only six updating courses on gender-based violence against women, the majority dealing with the civil sector. These activities were primarily attended by women, who were 67% of the participants. Beyond these courses, in the same years, 25 initiatives on gender-based violence against women were organized at the local level, attended by 13% of the magistrates (Parliamentary Inquiry Committee on Femicide and All Forms of Gender-based Violence 2021, 28–30). In the same triennium, more than 100 courses on the same issue were organized for lawyers (mainly in the civil domain), but only 0.4% of them took part in these initiatives, 80% of the attendees being women (*ibid.*, 31). Furthermore, the Committee's report also highlights insufficient education on gender-based violence against women of psychologists who are often called in tribunals as court-appointed experts. Indeed, 8 regional Orders of Psychologists out of

17 who participated in the research¹² never organized specific courses in the triennium 2016–2018. Nationally, the events on gender-based violence against women for psychologists organized in 2016 were 8, 24 in 2017 and the same number in 2018. Moreover, only 9 regional Orders of Psychologists organized working groups on gender-based violence against women; of these 9, only 5 set working groups focused on forensic consultations (*ibid.*, 32, 33).

Due to legal operators' lack of education and training on gender-based violence against women, magistrates in charge of these cases are often not specialized in the issue (Parliamentary Inquiry Committee on Femicide and All Forms of Gender-based Violence 2021). Data on public prosecutor's offices for the triennium 2016–2018 are exemplificative: 10.1% of 138 public prosecutor's offices taking part in the mentioned parliamentary inquiry on the judicial reality answered not to have any magistrate specialized in gender-based violence against women. Differently, 77.5% of the offices declared to have a group of magistrates specialized in that field, together with other issues related to fragile subjects; only 12.3% of the offices argued to have a group of judges specialized only in gender-based violence against women. Despite this, in case a specialized judge was present (either only on that issue or together with other issues), the cases of gender-based violence against women were not always assigned to him/her in 20% of the offices. Sixty-two per cent of all the public prosecutor's offices, indeed, declared to equate gender-based violence against women to other issues in the distribution of the cases (*ibid.*, 5–8). Judges' lack of specialization in gender-based violence against women is combined with sexist stereotypes and prejudices, resulting in the tendency to question the truthfulness of the victims' declarations (Women's NGOs 2018). Analyzing many cases of gender-based violence against women decided by the Tribunal of Rome, the scholar Ilaria Boiano listed the most diffused stereotypes influencing the process. Some of them are the consideration of violence as isolated deviance of marginal subjects, the thought that a good mother would not denounce her children's father, the impossibility that a violent relationship lasted much time, the prejudice that a woman who is not able to protect herself cannot be a good mother, that an economically empowered and well-educated woman cannot be a victim

12 The total number of the regional Orders of Psychologists is 20.

of violence, that women provoke male violence and that a woman who is a victim of violence has psychological problems (Boiano 2015, 255–270).

Moreover, the court-appointed experts helping judges in civil law cases dealing with violent relationships leading to separation, divorce and children's custody are not always specialized in gender-based violence against women (Parliamentary Inquiry Committee on Femicide and All Forms of Gender-based Violence 2021). As proof, 95% of the 130 civil tribunals participating in the mentioned parliamentary inquiry declared not to be able to identify the number of cases in which judges asked for a court-appointed expert in the triennium 2016–2018, revealing scarce attention to the issue of gender-based violence against women. Moreover, in that triennium, only 29% of the civil tribunals prepared a standard question in lawsuits of gender-based violence against women, and only in one-third of the cases with the help of experts (Parliamentary Inquiry Committee on Femicide and All Forms of Gender-based Violence 2021, 15). Additionally, only 4.5% of the 110 tribunals taking into account court-appointed experts' general professionalism managed always to appoint someone specialized in gender-based violence against women, 21.8% of them reported it happened in most cases and 73.6% only sometimes (*ibid.*, 17). Furthermore, data on public prosecutor offices' expert appointments in 2016–2018 are also highly relevant: 25% of the offices chose the court-appointed expert from the experts' tribunal register, where there is no indication of one's specialization and only 18% of the offices assigned to the court-appointed expert a standard question to investigate on. In case the standard question was prepared, it was elaborated with the contribution of other specialists only in 7% of cases (*ibid.*, 8, 9).

The request to end the lack of education of all the professionals in touch with gender-based violence against women was made by GREVIO, Italian women NGOs and the Parliamentary Inquiry Committee on Femicide. GREVIO encourages Italy to expand the available education initiatives and to provide operators with compulsory training on all the forms of violence foreseen by the Istanbul Convention (GREVIO 2020, 40). In GREVIO's words, this training should address the following:

“(a) the referral to preventive intervention and treatment programmes in accordance with Article 16 of the Convention; (b) victims' right to civil law

remedies and compensation against the perpetrator and the State in accordance with Articles 29 and 30 of the Convention; (c) the need to recognize the harmful effects of violence on children and to ensure violence against women is taken into account in the determination of custody and visitation rights in accordance with Article 31 of the Convention; (d) the requirement that in proceedings on the various forms of violence covered by the Istanbul Convention, evidence relating to the sexual history and conduct of the victim which has no probative value is not permitted in accordance with Article 54 of the Convention; (e) the requirement to favour victims' access to protective measures during legal proceedings owing to the traumatizing nature of gender-based violence and the special needs of victims as witnesses in accordance with Article 56 of the Convention; and (f) the need to avoid placing an excessive burden on victims and their legal counsel when determining the conditions for accessing legal aid in accordance with Article 57 of the Convention. They should furthermore follow an approach based on the safety and respect for the human rights of the victim, as well as a gender-equality perspective, and aim to prevent secondary victimization and challenge professionals' own prejudices and assumptions which stand in the way of delivering effective support and protection for women victims of violence" (GREVIO 2020, 40).

Women's NGOs recommend giving more relevance to the 2017 Plan request to include education related to all forms of gender-based violence against women in university courses, such as, among others, law (Women's NGOs 2018, 22, 23). The 2021 Parliamentary Inquiry Committee on Femicide and all forms of gender-based violence report, beyond highlighting the lack of specialization of the legal professionals handling gender-based violence against women cases, also underlines that the most virtuous courts and judicial offices should have a driving effect on the others. Plus, it requests the legislator to strengthen positive models and grant the necessary education and training to all the professionals in touch with gender-based violence against women (Parliamentary Inquiry Committee on Femicide and All Forms of Gender-based Violence 2021, 34, 35). In addition, the Parliamentary Inquiry Committee on Femicide and all forms of gender-based violence report related to domestic violence invites the legislator and the other relevant institutions to plan compulsory courses teaching how to recognize

the indexes of this type of violence addressed to all the operators in touch with this reality, among whom legal operators. The Committee also calls for establishing domestic-violence-specialized professionals' lists so that these specialists can be contacted in case of violence allegations. Furthermore, education courses attended together by judges, lawyers, police officers, social services, health professionals and anti-violence centers operators (in order to share knowledge on how to identify domestic violence indexes) should be envisaged (Parliamentary Inquiry Committee on Femicide and All Forms of Gender-based Violence 2022, 96, 97).

THE ACTIONS OF THE ITALIAN JUDICIAL SYSTEM RELATED TO SECONDARY VICTIMIZATION

Judges, lawyers and court-appointed experts' lack of education, training, and specialization in gender-based violence against women and the diffusion of stereotypes and prejudices on female victims of violence lead to judicial decisions minimizing the suffered violence, jeopardizing women's parental abilities and investigating into their sexual life. Moreover, the judicial system is not inspired by a victim-centered approach: the necessary precautionary measures are often not issued, and women face difficulties achieving civil remedies and claiming compensation. This paragraph focuses on the actions of the judicial system leading to secondary victimization, studying the just mentioned problems in detail. Moreover, it reports some emblematic judgments issued by the European Court of Human Rights highlighting the difficulties Italy faces in preventing and combating gender-based violence against women and secondary victimization.

In Italy, secondary victimization episodes often occur in domestic violence cases, with the consequent minimization of the aggressions. Indeed, courts tend to condemn perpetrators of this type of violence for the crime of "ill-treatment in the family", according to Article 572 of the Criminal Code, only if the violent behavior is proven to be systematic – an aspect which is not contemplated in the Istanbul Convention. If this requirement fails to be demonstrated, the aggressors are tried for minor crimes such as the battery, bodily harm and threat (GREVIO 2020, 13). In particular, courts tend not to recognize the habituality of the ill-treatment when repeated violence

is committed in a short time, when happening at the end of a relationship (in case previous episodes do not exist) and/or when the victim is not passive. In this last case, rulings refer to couple conflicts, not to gender-based violence against women (*ibid.*). This is highly concerning because women who do not fit the stereotype of submissive slaves who tolerate gender-based violence against women for a considerable period are not worthy of the qualification of victims; in GREVIO's words: "this sort of interpretation can overshadow the nature of domestic violence against women as a violation of their human rights which society should not tolerate on any account" (*ibid.*, 14). Given this, prejudices about victims' passivity foster secondary victimization since women who differ from these stereotypes are not taken seriously. Moreover, reducing gender-based violence against women to a conflict means considering a relationship based on possession and submission as a rule, "ignoring the power differential created by the use of violence itself" (*ibid.*).

In addition, secondary victimization is also widespread in civil law cases of separation, divorce and/or child custody due to a violent relationship. In these cases, judges tend to rely on court-appointed experts' conclusions and/or on the reports of the social services in deciding the cases. Court-appointed experts, as argued above, are often not specialized in the issue, and social services tend to minimize gender-based violence against women, fail to detect assisted violence (Women's NGOs 2018, 28, 29), and blame women for the deterioration of the violent father-son relationship, thus carrying out episodes of secondary victimization (GREVIO 2020, 54, 55).

In light of this and of the widespread sexist prejudices embedded in society, court-appointed experts often refer to conflicts between wife and husband rather than gender-based violence against women. Moreover, their conclusions seem to propose that the violent behavior of a parent against the other does not negatively impact the offspring, thus distinguishing between being a violent husband and a bad father (GREVIO 2020; Women's NGOs 2018). Even more dramatically, court-appointed experts' considerations often rely on the PAS, making it more challenging to detect gender-based violence against women (GREVIO 2020, 59, 60) and questioning women's ability to be good mothers, with the possibility to see their custody rights jeopardized (Women's NGOs 2018). This fosters secondary victimization since women are not considered victims but children's manipulators;

consequently, the former are influenced toward retiring criminal accuses against their violent husbands, looking for a pacific agreement regarding custody and visitation in the child's best interest. This pacific compromise is the solution toward which court-appointed experts tend to push the victims of gender-based violence against women (Women's NGOs 2018, 42). To the same aim (finding a child custody and visitation agreement), civil courts often require victims to meet their partners without an appropriate risk assessment, thus constituting a sort of mandatory mediation, contrary to article 48 of the Istanbul Convention¹³ (GREVIO 2020, 60). If a woman victim of gender-based violence against women refuses to attend meetings, civil courts often deem her an unfit mother (*ibid.*, 60, 66, 67), implementing secondary victimization. Plus, as outlined in paragraph 2, domestic violence is often not considered a reason to restrict parental responsibilities (Parliamentary Inquiry Committee on Femicide and All Forms of Gender-based Violence 2022, 18) because there is a problematic conviction that a man who exercises violence against his partner can still be a good parent. This is a wrong perception since violent behaviors negatively affect children's growth, with the risk that children introject distorting parental models and replicate violence against their future family (*ibid.*, 6). Emblematic of this under-evaluation is the decision No. 460/16 of the Tribunal of Rome, establishing that a violent man, held responsible for the separation, did not lose his children's custody (it would not have happened in case he had exercised violence against them) (Women's NGOs 2018, 33, 34). Worryingly, there is a lack of cooperation between civil, penal, and juvenile tribunals (Parliamentary Inquiry Committee on Femicide and All Forms of Gender-based Violence 2021),¹⁴ so judges establishing visitation and custody rights do not

13 Indeed, Article 48.1 recites: "Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention" (CoE 2011, 13).

14 On this point, it is relevant to report that only 31.5% of the 130 civil tribunals taking part in the above mentioned parliamentary inquiry related to the 2016–2018 period declared to have acquired the acts of penal tribunals in case the parties were also protagonists of penal proceedings for domestic violence (Parliamentary Inquiry Committee on Femicide and All Forms of Gender-based Violence 2021, 18). Another parliamentary inquiry, related to the separation processes of couples with minor

take into account pending penal processes for ill-treatment in the presence of children, precautionary measures issued by penal or civil tribunals, and verdicts for ill-treatment (Women's NGOs 2018, 41). Plus, juvenile courts are not always informed about pending criminal procedures against a violent parent (GREVIO 2020, 59, 60). Moreover, in some civil and juvenile processes, the minor is not heard because he/she is believed to be manipulated by the mother and unable to express his/her ideas (Parliamentary Inquiry Committee on Femicide and all Forms of Gender-based Violence 2021, 18, 19).

Additionally, when a mediation with the violent man is found, it may be risky for the woman and/or her offspring to meet him. An example is Federico Bakarat's infanticide. In this case, a man used to call, threaten with death, and offend his ex-partner, Antonella Penati, because she did not allow him to meet their son alone due to his unstable behavior.¹⁵ The man, who had also once been physically violent regarding Ms Penati, used to suddenly present himself in front of the family house, making the woman constantly anxious. Despite the many demands for enhanced protection measures for her and her son, the father-son meetings continued regularly in the presence of social services. During one of these meetings, the father killed his son in a moment of distraction of the social operator (ECtHR 2021b, par. 6–84). Ms Penati started a penal proceeding against three social assistants, alleged not to have put in place the necessary precautions to avoid infanticide.¹⁶

children brought before 16 Italian tribunals in the period from March to May 2017, found that the acts of penal processes were not acquired *ex officio* in 95.9% of the times, even in the case allegations of violence were present. Similarly, the acts of the juvenile processes were not acquired *ex officio* in 96% of the cases (Parliamentary Inquiry Committee on Femicide and All Forms of Gender-based Violence 2022, 31).

¹⁵ In particular, once he had threatened to kidnap the child and go to Egypt. Moreover, he was addicted to cannabis, had previous criminal charges and provoked agitation on the child after the meetings. In 2006, a psychological assessment diagnosed him with a personality disorder (ECtHR 2021b).

¹⁶ The process ended with an absolution, so Ms Penati brought the case to the attention of the European Court of Human Rights that concluded that the Italian courts had conducted the investigations with the diligence and the promptness required by Article 2 of the European Convention of Human Rights safeguarding the right to life (ECtHR 2021b).

Moreover, magistrates can also give for granted parental inabilities of women. It happened to a woman victim of ill-treatment who, asking social services for help, was placed with her daughter in a group home. After some time there, the tribunal declared the minor had to be given in adoption, basing the decision on the reports of the social services and of the group home workers. Despite recognizing the intense mother-daughter bond, these documents referred to the sexual life of the woman, her unstable way of living and the worrying sexualized behavior of the minor. As repeatedly asked by the mother, the tribunal did not order an assessment of her parental abilities and her daughter's psychological health status without investigating the truthfulness of the declarations of the social services (ECtHR 2022). In 2022, the European Court of Human Rights sanctioned the Italian authorities for violating the applicant's right to respect for her family life (contemplated in Article 8 of the Convention) unjustifiably. More in detail, the State did not consider the woman's vulnerable status as a victim of gender-based violence against women and did not carry out all the needed investigations before giving up her daughter for adoption (ECtHR 2022, par. 82–91).

Additionally, the lack of sensibility of legal operators toward gender-based violence against women is reflected in the absence of a victim-centered approach. Indeed, magistrates often do not properly understand gender-based violence against women (GREVIO 2020, 39). For example, even if the law establishes, as mentioned in paragraph 2, the possibility of releasing precautionary measures to protect the victims, in some tribunals, it takes so much time to issue precautionary provisions that it seems more convenient to directly ask for them during the separation process (Women's NGOs 2018, 34, 35, 50). If the judge deems the measure urgent, he/she can release it without convening the parties (in many tribunals, it happens only in cases of proven physical violence, disregarding psychological or economic violence). However, most times, a judge does not consider the provisions urgent and sets a hearing with both the victim of gender-based violence against women and her partner, with the former having to notify it to the latter. The time between the notification and the hearing is extremely risky for women discouraged from pursuing this action. Moreover, at the hearing, the judge tries to mediate and to achieve the spontaneous throw-out of the violent man from the family house. If the spontaneous solution is not found and the protection order is issued, it is valid

for one year maximum, prolongable only for serious reasons, with the burden of proof on the victim of gender-based violence against women (ibid., 34–36).

An example of the criticalities of this system is the condemnation of the European Court of Human Rights in the case *Talpis v. Italy*, decided in 2017. Some years before, the applicant, Elizaveta Talpis, filed a complaint with the Italian authorities, having been a victim of domestic violence. A few months later, she moved to a shelter managed by an association protecting women from violence, then being forced to leave it. When, after a very long time from the presentation of the complaint (seven months), the police heard her, she minimized the abuses suffered (lately confessing she had been pressured to do so by her husband). In light of her hearing declarations, the Public Prosecutor investigated the minor crime of bodily harm. One night Ms Talpis called the police that found her husband drunk and brought him to the hospital. After his release, the police found him on the street, still drunk. At 5 a.m., he returned home and tried to stab his wife, killing their son, who tried to defend his mother. Then, the man stabbed Ms Talpis, who survived (ECtHR 2017). The Court established Italy violated the following provisions of the European Convention of Human Rights: Article 2 (safeguarding the right to life), Article 3 (prohibiting torture, inhuman or degrading treatment), and Article 14 (prohibiting discrimination), this last one in combination with article 2 and 3 (ECtHR 2017). In particular, regarding Article 2, the Court applied the “Osman test”, implying that States are responsible for not having enacted protective measures in case they “knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party”¹⁷ (ECtHR 1998, par.

17 Scholar Sara De Vido argues that, in this ruling, the Court seems to have adopted the revised version of the “Osman test” proposed by the ECtHR Judge De Albuquerque in the *Valulienė* case (De Vido 2017):

“If a State knows or ought to know that a segment of its population, such as women, is subject to repeated violence and fails to prevent harm from befalling the members of that group of people when they face a *present (but not yet imminent)* risk, the State can be found responsible by omission for the resulting human rights violations” (ECtHR 2013, par. 30; emphasis added).

Given the structural pervasiveness of gender-based violence against women, the Judge changed the requirement of imminency with that of presence.

116). In addition, regarding Article 14, the Court argued that the repeated authorities' tolerance of the violent gender-based episodes was discrimination against the applicant as a woman, also mentioning the high rates of domestic violence in Italy (De Vido 2017, 12, 13).

Moreover, victims of gender-based violence against women suffering damage caused by an unjust judicial sentence, a negligent judicial decision or a denial of justice face difficulties in achieving civil remedies, in violation of Article 29 of the Istanbul Convention¹⁸ (GREVIO 2020, 57). Plus, victims are also discouraged from claiming compensation from the perpetrator due to high evidentiary thresholds, costs and delays of the processes characterizing civil courts and the obligation to become party to the proceeding in penal tribunals. Frequently, victims renounce to ask for compensation because it makes the judiciary question the reliability of their declarations rather than focusing on the offense committed by men – *de facto* violating Article 30 of the Istanbul Convention¹⁹ (ibid., 58). In this context, “under the enduring stereotype that a ‘reliable’ victim is fragile, remissive and unwilling to pursue compensation, victims are met with disbelief and subjected to frequent secondary victimization” (ibid.). Indeed, when a victim brings a civil action or has a separation, divorce or child custody pending proceeding, her declaration reliability is questioned because she is seen as a manipulator who wants advantages from the separation (Women’s NGOs 2018, 37). This shifts the attention from the responsibilities of the perpetrator of the crimes to the good faith of the victim, judging her intentions and putting in place secondary victimization.

18 Article 29 recites:

“1. Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrator. 2. Parties shall take the necessary legislative or other measures to provide victims, in accordance with the general principles of international law, with adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers” (CoE 2011, 9).

19 Article 30.1 recites: “Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention” (CoE 2011, 9).

In this context, victims' declarations are often questioned also by the staff of general services,²⁰ lacking preparation for gender-based violence against women and embedded in a sexist cultural substratum (GREVIO 2020, 48). The staff of these services also tend to pressure women to file a criminal complaint, presuming their readiness (ibid., 49). This hides the prejudice that "a victimized woman who does not file a complaint is not deemed credible and/or is seen as insufficiently 'deserving' of help" (ibid.).

Furthermore, secondary victimization is particularly alarming in sexual violence cases because investigations often focus on the sexual history of the raped person in order to understand whether she is a victim or not. Despite the provisions forbidding to request the victim to disclose her sexual history underlined in paragraph 2, these practices are widespread (ibid., 75).

In this context, the European Court of Human Rights ruling *J. L. v. Italy*, dating back to 2021, is worth being analyzed in detail. Indeed, precisely on the tenth anniversary of the adoption of the Istanbul Convention, Italy was condemned for secondary victimization.

In this case, J.L., a student of art and theatre at the time of the facts, was forced to have many sexual intercourses with a group of men after a party in Florence. The episode occurred in the car of one of them (L.L.), known by the victim because she had acted under his direction in a short film and had had sex with him around a month and a half before the facts. J.L. did not epitomize the stereotyped representation of the sexual-violence victim, whose credibility is not questioned (Bouchard 2021). Indeed, during the night, L.L. and his friends offered her alcohol, so she got drunk, danced and had oral sex with one of L.L.'s friends in the bathroom. Moreover, she differed from the "idealized" victim of gender-based violence against women because she could not resist the sexual encounters at first since she was confused due to intoxication.

Additionally, the declaration of the appellant and the accused differed on whether the sexual acts were consensual. In order to convince the judge of J.L.'s consent, the defendants' lawyers asked her questions about her per-

20 General services are those offered by public authorities: social services, health services, legal aid and victim support. Another relevant concern related to these services is their unequal distribution: many are present in the North and in the Centre of Italy, few in the South (GREVIO 2020, 48).

sonal life without a nexus with the facts under examination, such as her family and sentimental situation and her sexual experiences. The tribunal's president often stopped the lawyers' inappropriate questions and set various short breaks to make the appellant recover from her emotions. The process ended with the absolution of the group for the crime of sexual violence and their condemnation for having induced a person in physical and psychological inferiority to have sex (ECtHR 2021a, par. 4–34).

Then, the Florence appeal court absolved the accused, considering the victim's consent not altered, in the light of her “non-linear life” (ECtHR 2021a, par. 46; translated by the author). Indeed, in the court's opinion, she had shown to be a fragile woman and an uninhibited subject, able to manage her bisexuality and have occasional sexual encounters. The court also read the applicant's contacts with an anti-violence center after the facts as the demonstration of her disapproval for not having reacted during the intercourses. This, together with her participation in the laboratory “Sex in transition” in Serbia 20 days after the facts and the role of a prostitute exposed to violence played in L.L.'s short film, testified to her ambivalent attitude toward sex (ECtHR 2021a, par. 37–47). In these passages, judges deduced the offended person's characteristics from her lifestyle and artistic choices, linking her conduct to her attitudes: this is how logic based on stereotypes works (Benevieri 2021, 10–12).

J.L. brought the case to the attention of the European Court of Human Rights, which found that the content of the appeal court's judicial decision violated the right to respect for the personal life of the victim, protected by Article 8 of the Convention. The Court held that the appellant's behaviors of that night and her relations with the accused could be investigated to assess her credibility, but references could not be made to her familial, sentimental and sexual history, her artistic choices, her sexual orientation and the way she was dressed. Strasbourg judges deemed unjustified the appellate court's references to the appellant's red underwear, her bisexuality and her previous-to-the-facts sexual intercourses. Also, the considerations of her ambivalence toward sex²¹ and the references

21 Interestingly, the ECtHR noted that the appeal court did not refer (rightly) to the fact L.L. directed the short film to deduce his attitude toward sex. This is another proof that the process was against the victim, rather than her aggressors.

to her “non-linear” life were inappropriate²² (ECtHR 2021a, par. 117–143). The Italian judges have evaluated the victim’s credibility and formulated a moral condemnation of her lifestyle, unacceptably following their biases about the “perfect victim” in deciding the case (Bouchard 2021, 14). Indeed, stereotypes on how a victim of gender-based violence against women should behave and react drove the judicial proceedings, which followed the stereotypical definition of “normal” and “credible” behavior (Benevieri 2021, 7–10). These prejudices are well-grounded in Italian public opinion (ISTAT 2019)²³. The Italian authorities did not protect the appellant from secondary victimization: as if she was the accused rather than her aggressors.

CONCLUSIVE OBSERVATIONS

In conclusion, GREVIO, women’s NGOs and the Parliamentary Inquiry Committee on Femicide show that Italian legal professionals and operators supporting judicial processes often cannot understand the complexity of gender-based violence against women, causing secondary victimization episodes. In the lack of specialized education, magistrates, lawyers, and court-appointed experts rely on sexist stereotypes and prejudices, such as the “perfect victim”.

As analyzed in the article, Italian legislation in the field of gender-based violence against women has positively evolved after the ratification of the Istanbul Convention, despite many criticalities. However, existing laws are not concretely applied by magistrates, as denounced by GREVIO and wom-

22 Similar arguments were brought by the ECtHR in the case *D.M. and N. v. Italy* (already analyzed in this article): the Strasbourg judges pointed out that references to the sexual life of the appellant, in particular her decision not to use contraceptives in order to get pregnant, were highly inappropriate and without any link to the assessment of her parental abilities (ECtHR 2022, par. 88).

23 As showed by the ISTAT data, in 2018 39.3% of the Italians thought a woman could avoid an unwanted sexual intercourse. According to 23.9% of the population, moreover, a woman could provoke sexual violence with her way of dressing. Furthermore, in 2018, 15.1% of the Italians considered a woman victim of sexual aggressions partly responsible if she took alcohol or drugs. Last but not least, for 10.3% of the population the accuses of sexual violence are often false.

en's NGOs. This is, as previously analyzed, the case of the unrecognition of domestic violence, minimized as couple conflict, and of the difficulties in obtaining the issuance of precautionary protective measures. Also, the prohibition to investigate the intimate life of the victim of sexual violence is often disappplied. Additionally, legal operators and professionals supporting judicial processes' lack of specialized education on gender-based violence against women results in references to the PAS, evaluations of women as unfit mothers or children's manipulators, organization of victim-partner meetings without an appropriate risk assessment, lacking cooperation between civil, penal and juvenile tribunals and the tendency not to hear the minor, difficulties in achieving civil remedies and claiming compensation.

For these problems to be solved, the judges, lawyers, and court-appointed experts handling gender-based violence against women cases must be sensitized and educated on the issue. This way, sexist stereotypes will be destroyed, and secondary victimization episodes will not occur anymore. In fact, victims' reliability will not be questioned based on what they did or did not do, and women's concrete lived experiences will be heard with respect. This is of pivotal importance to put women in an adequate condition to denounce. In fact, gender-based violence against women in Italy is under-reported because female subjects are scared to be exposed to secondary victimization, not being believed and helped. Their fears are well-grounded: Italy is characterized by low sentencing rates. Convicting violent men would give an important message to women, who could trust the system and report more (GREVIO 2020, 70). Judges, lawyers and court-appointed experts' education and training on the issue of gender-based violence against women would be the first step in inverting this alarming process.

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Sekundarna viktimizacija u Italiji: zašto je neophodno obrazovanje sudija, advokata i sudskih eksperata o rodno zasnovanom nasilju prema ženama

Eliza Bajoko

Univerzitet La Sapijenca u Rimu

Sažetak: Članak se fokusira na sekundarnu viktimizaciju u Italiji i pokazuje da sudije, advokati i sudski eksperti i ekspertkinje koji rade na slučajevima rodno zasnovanog nasilja prema ženama često nisu specijalizovani za ovaj oblik nasilja, što prouzrokuje sekundarnu viktimizaciju. Eksperti svoje sudove često zasnivaju na seksističkim stereotipima poput stereotipa o „savršenoj žrtvi”, i na osnovu njih dovode u pitanje pouzdanost izjava žrtve koja je preživela nasilje, minimizuju nasilje u porodici kao partnerski konflikt, izbegavaju izricanje preventivnih mera i ispituju intimni život žrtava seksualnog nasilja. Pored toga, žene se često posmatraju kao manipulatorke nad decom, i to preko pozivanja na takozvani „sindrom otuđenja od roditelja”, dok u ovim procesima i postupcima zvaničnih organa nedostaje pristup usmeren na žrtvu: susreti između žrtve i njenog partnera se organizuju bez odgovarajuće procene rizika, dok se pravni lekovi žrtvama nasilja ne obezbeđuju i dodatno je otežano dobijanje odgovarajuće nadoknade.

U tekstu se ispituje sekundarna viktimizacija pozivanjem na GREVIO izveštaj iz 2020. godine, izveštaj italijanskih ženskih nevladinih organizacija iz 2018. godine, i na izveštaje dve italijanske parlamentarne komisije. Ispituju se i relevantni slučajevi pred Evropskim sudom za ljudska prava. Glavna teza članka je da je nužno feminističko obrazovanje i obuka italijanskih sudija, advokata i drugih sudskih eksperata i ekspertkinja koji se bave slučajevima rodno zasnovanog nasilja prema ženama.

Ključne reči: Italija, sekundarna viktimizacija, feminističko obrazovanje, pravosuđe, rodno zasnovano nasilje prema ženama, stereotipi