

**GENDER-BASED
VIOLENCE
BETWEEN
NATIONAL
AND
SUPRANATIONAL
RESPONSES**

THE WAY FORWARD

edited by

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GENDER DISCRIMINATION AND VIOLENCE AGAINST WOMEN IN THE ITALIAN LEGAL FRAMEWORK

Marilisa D'Amico

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1. Introductory Remarks. Violence Against Women: a Social Emergency

One of the most relevant issues in present times in Italy is represented by violence against women.

Data are self-evident with this respect.

According to the most recent 2014 ISTAT data 31, 5 % of women between 16 and 70 years old state to have been victims of physical or sexual violence, 5, 4 % to have been raped or attempted raped.

Despite more recently intimate partner violence, violence perpetrated by ex-partners or by unknown perpetrators has reduced in numbers, violence against women in its most dangerous forms is progressively increased.

Not surprisingly, between 2006 and 2014, the number of women who feared for their lives almost doubled¹.

This is not data that relies on the victim's perception.

On the contrary, in the last years, before a trend of permanent decrease of cases where a victim is a man or a woman who has not been killed because she is a woman, the number of femicides has dramatically remained steady with 142 cases in 2018 (+0, 7%), among which 119 within family relations (+6, 3%)².

We are, therefore, witnessing a progressive increase of the most severe cases of violence against women, that might be linked and explained by taking into consideration two elements: first, women's autonomy; second, women's ability to escape the cycle of violence before it reaches its peak. These two factors, in fact, produce an even more striking opposite reaction of domination and possession.

Before this evidence, the first challenging question can be formulated as follows.

How can we explain that, in Italy, women are reaching high positions in a variety of sectors (just think for a moment to the Presidency of the Constitutional Court, which was composed only by men until 1996), even obtaining the approval of laws aimed at favoring a gender-balanced composition of public and political bodies, and that, at the same time, they are still victims of violence perpetrated by men?

Moreover, how we can explain violence, that in the majority of the cases manifests itself within family relations and that sees as its main character a man in a domestic environment?

Several are the analysis and the reasons behind such a scenario.

In my perspective, we cannot but start by looking at the history, our history, of women's rights: the origins of gender discrimination

¹ On this, particularly relevant are statistics provided in the Final Report issued by the Parliamentary Commission on Femicide and on every form of violence against women, approved on February, the 6th, 2018, 30.

² On it, see the data provided by EURES in its Report «Femicide and gender-based violence in Italy»; more statistics can also be found in the Report published by national police on the 22nd October 2019, «This is not love».

and its features, on the one hand, the delay in women's emancipation and empowerment, from the right to vote, on the other.

There is a very strong link between the evolution in women's role in contemporary societies, gender stereotypes, and gender discriminations, the so hard realization of the principle of equality between men, and women in all fields and violence.

A kind of violence where men seem to be willing to reclaim a superiority believed inherent and not questionable.

It comes therefore with no surprise that, in so many stories of violence, is the man who does not accept the woman's autonomy, her attempt of economic and professional empowerment, thought as if the woman was his possession, deserving to be humiliated and annihilated.

Unfortunately, the gender stereotype that depicts man as the smarter human being, the one that we carry in our DNA since ancient times, is still acting in our mind and in contemporary societies; it operates alongside the roman inheritance of a woman who is described as the owner, but only at home³.

Likewise, hard to remove are all those millennial truths that want women good and silent in their own homes: it is not without consequence that, until not so long ago, it was widespread the idea that women needed to "keep quiet".

And is Carol Gilligan, a prominent scholar of gender studies, to clearly explain in her paper «In a different voice»⁴, the need for women to start speaking up and to be heard⁵.

At the same time, we cannot forget that the 1948 Italian Constitution was negotiated and came into force in the context of a patriarchal society that, in its legal dimension, has been dismantled with difficulty, but that, maybe, the idea that men do not accept women

³ This aspect is particularly explored by E. Cantarella in her extensive academic and scientific production.

⁴ Reference is made to C. Gilligan, *In a different voice. Psychological Theory and Women's Development*, Harvard University Press, 1982.

⁵ Interesting and even worrisome framework even that realized during the middle-age. On it, see M. Benedetti, *Condannate al silenzio. Le eretiche medievali*, Mimesis, Milan-Udine, 2017, 7 ss.

not to be ready to respond to their commands is still, unfortunately, the dominant societal model.

Just think to the Family Law reform that only in 1975 realized the principle of equality between the sexes.

What's more, that in the labor market, gender differences are still marked by non-eradicated discriminations, especially in professional areas where gender stereotypes still play a major role; that in public institutions and politics only recently the numbers of women have slowly started to increase, thanks to Laws that demonstrate to slightly embracing the concept of 'equal democracy', as something needed for ensuring the quality of the functioning of the legal system as a whole.

An increase in numbers that, nevertheless, are not yet affecting the political agenda, that continues to witness a lack of gender-sensitive approach to fundamental rights and public policies at large and that in the context of violence against women demonstrates unfortunately all its criticisms and unsolved challenges.

2. *Discrimination and Gender: a Look to the Past*

As stated by Eva Cantarella⁶, writing about women in ancient times is hard, because it requires to unravel pages of silence⁷. A silence on women's condition, on very significant women, a silence based on the circumstance that, as it still happens nowadays, history has been written by men, talks about a society of men and that speaks mainly to men.

Looking at the past and the most relevant aspects of women's condition in the classical era are of key relevance in the perspective

⁶ See, in particular, E. Cantarella, *Gli amori degli altri. Tra cielo e terra, da Zeus a Cesare. La nave di Teseo*, Milan, 2018.

⁷ The theme of silence is recurrent in several studies of E. Cantarella, as in *Passato prossimo, Donne romane da Tacita a Sulpicia*, Feltrinelli, Milan, 2012, 7 ss. Particularly relevant is to highlight that it existed a god of silence which represented the duties of Roman women as the "word" was perceived as a men's prerogative.

of understanding the reasons behind the difficulty surrounding women's emancipation from their roles of mothers and wives.

The origin of gender discrimination is very ancient and goes back to ancient Greece, where it was strongly linked to sexual difference as it was described in the myths as a difference that relies on nature, as something that goes along with social and cultural elements.

The images portrayed by the Authors are very effective.

The first Greek poet who speaks about gender differences is Hesiod in his «Works and Days» when he describes the birth of the first woman, Pandora.

In his work, Hesiod tells us that Pandora was sent to the earth to punish men after Prometheus had stolen the fire to give it to men. Pandora, as her name explains⁸, received a gift from each god: from Hephaestus an aspect similar to the so-called 'virgin and caste'; from Aphrodite the ability to seduce, but it was Hermes who gave her an impudent mind, an ambiguous nature (see 'Theogony').

Hesiod narrates that before Epimetheus' vase, curious as every woman is, Pandora opened it and from the vase came out all the calamities of the world. After having closed the vase, the calamities were already gone and humanity did not rest anything but hope (*Elpis*).

An additional element featuring the myth deals with how Pandora was created. Conversely to Eva, Pandora was not born out of a male body. Pandora was built by Hephaestus, by hand, with water and earth: the word 'diversity' is not enough to describe female identity.

Pandora was different. Not surprisingly, Hesiod says that from her derives 'the gender (*genos*), the tribes (*phylai*) of women': women's *genos* is a separate gender, different from men's to the extent that, in Hesiod, women are bound to Pandora, they were born with her. Women reproduce themselves autonomously without any contribution by men.

Another interesting overview is offered by Simonides of

⁸ In ancient Greek, *Pan* means in fact 'everything', while *Doron*, 'present'.

Amorgos who shows very clearly the origin of female identity as something different and inferior to that of men.

Noteworthy is another aspect of the origin of gender differences in ancient Greek.

According to ancient Greek culture, women possessed a different mind from that of men, because women did not have the *logos*. The only intellect possessed by women was the *metis*. The *metis* was a type of intellect that recalls the myth of Metis, the first wife of Zeus, who was ingurgitated while pregnant on the assumption that her baby would have dethroned Zeus. Having eaten Metis, Zeus resulted in possessing both types of intellect and gave birth to Athena who was in fact born out of his mind.

There are profound differences between the Metis and the Logos: the former is a low intelligence, different from the great and bright Logos. The Metis does not classify, does not build categories, but, rather, is concrete, focused on a single case, on a specific problem; it is the result of experience and reflection and, more importantly, does never coherently reach goals.

But gender difference was not only described by poets.

The same conclusion and assumption were brought up by Greek tragedians.

It is very well known that Orestes in the Oresteia, after the killing of his mother, is not punished from the first tribunal in history, because he was considered the son of his father but not of his mother and this is because women's role in reproduction was at that time completely neglected.

The idea that women were not involved in reproduction was later on shared by philosophers and, in particular, by Aristotle.

According to Aristotle, there exist two types of love: *eros* and *filia*. And there are also different types of *filia*: that between equals, meaning friendship, and that between spouses, where women are considered to be inferior to men.

Even the description of the reproduction relies on a woman considered material, a passive and cold material, that has only the function of receiving men's seed, that only in itself generates life and warms it up.

This way Aristotle gives us a strong stereotype, that juxta-

poses women, made of cold material and passive entities, to men. Aristotle depicts women as the dark and men as light; women as material and men as spirit; women are the left hands, men right hands.

There is also another and completely different stream in the Greek world represented by Socrates and Aspasia who advocated for emancipated and empowered women, which nevertheless was not so significant⁹.

Several historical hypotheses claim the existence of matriarchal society in Greece and Rome.

Nevertheless, both societies, even with different features, were patriarchal and this contributed to the assumption that patriarchy is the only social organization.

Reasoning on Bachofen's theories, the author of the theories on matriarchy, it clearly emerges that sexual difference has over the centuries resulted in inferiority.

The origin of public institutions and even of public law is a "male" origin: a public sphere where women will be expelled for thousands of years until the last century when, starting with the recognition of the right to vote, women enter into the public sphere though remaining still emarginated and discriminated.

While in ancient Greece were born the first stereotypes on gender discriminations, the roman society expresses even better a social organization based on a patriarchal model, whose features we can find even today.

Roman women were forced to get married very early and their only function, as it is described by ceremonies and costumes, was to give birth.

The ancient world gives us therefore a patrimony where, in the Greek society, women played a mere natural role, is totally excluded from their sons' and daughters' education; and in the roman one, women were in charge of an educative role, as wives and mothers, contributing to absolve to a fundamental role: to forge their son as 'citizens'.

⁹ On this, see E. Cantarella, *L'ambiguo malanno. Condizione e immagine della donna nell'antichità greca e romana*, Feltrinelli, Milan, 2010.

To conclude on this, from the Greek society we derive the idea, still so severely widespread in contemporary societies, of the natural difference between men and women, that lies behind gender stereotypes and women's condition of inferiority¹⁰.

3. The Principle of Gender Equality within the Constitutional Legal Framework

Equality between men and women is solemnly enshrined in the Italian Constitution. Members of the Italian Constituent Assembly came to this conclusion after a debate from which it emerged, amongst other things, that «no democratic development, no substantial progress may occur in the life of a people if it is not accompanied by the full emancipation of women»¹¹.

Gender equality is proclaimed first and above all by Article 3 of the Italian Constitution, which, in establishing both the principle of formal equality and the principle of substantive equality, on the one hand, prohibits discrimination based on gender; while on the other, it legitimizes the adoption of positive measures aimed at removing

¹⁰ The unequal construction of family and social relationships continued to be investigated even in the nineteenth century, being at the center of formidable investigation. Among these, see especially the analysis presented by J.S. Mill in his *The Subjection of Women*. Of significance relevance might be recalled here the following extract: «[w]hen we consider the positive evil caused to the disqualified half of the human race [...] first in the loss of the most inspiring and elevating kind of personal enjoyment, and then in the weariness, disappointment, and profound dissatisfaction with life that are so often the substitute for it, one feels that among all the lessons that men need to learn for carrying on the struggle against the inevitable imperfections of their lot on earth, no lesson is more needed than not to add to the evils that nature inflicts by their jealous and prejudiced restrictions on one another. Their stupid fears only substitute other and worse evils for the ones that they are lazily anxious about; while every restraint on the freedom of conduct of any of their human fellow-creatures (otherwise than by making them responsible for any evil actually caused by their conduct) does its bit towards drying up the principal fountain of human happiness, and leaves our species less rich [...] in all that makes life valuable to the individual human being».

¹¹ T. Mattei, *Constitutional Assembly*, Session of the 18th March 1947.

barriers which de facto impede that men and women may participate equally in the political, economic and social life of the country.

But gender equality is further endorsed in the text of the Italian Constitution by additional specifications. Hence, Article 29 of the Constitution proclaims the moral and legal equality of spouses within the family.

Article 37 proclaims the equality of working men and women, providing, moreover, that the role of motherhood of the latter should be specifically safeguarded.

Article 51 provides that men and women have access on equal terms to public office and elected positions, and, as a result of the new law introduced by the Constitutional Act 1 of 2003, it now explicitly claims that through appropriate measures conditions of equality should be promoted de facto.

Finally, Article 117, paragraph 7, of the Constitution extends a similar obligation to the Regions, ruling that they must remove every obstacle that may prevent gender equality in social, cultural, and economic life as well as promote equal access for women and men to elective offices.

4. Gender Equality in the Public Sphere: a Focus on the Italian Case on Women's Political Representation

It must be mentioned that despite the existence of such a clear constitutional framework, in which equality between women and men may seem definitively enshrined, the absence of women from decision-making bodies is still today very evident¹².

The progress made so far on the path to gender equality has

¹² An insight into data is offered by the pioneering project launched by the Italian scholars "Le Costituzionaliste", which studies the presence of women in politically representative bodies at the national and regional level. The third intermediate 2020 Report, *Equilibri di genere e procedure di nomina. Terzo report intermedio*, might be read at the following link: <https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=43780>. Within the national context, a very recent overview is offered by M. D'Amico, *Una parità ambigua. Costituzione e diritti delle donne*, Raffaello Cortina Editore, Milan, 2020.

certainly been relevant: one need only think of the abolition of all the laws that placed women in an inferior position within the family unit¹³ and those that prevented the female gender from accessing high ranking public offices¹⁴.

Yet again, one may also think of the wavering fate of anti-discrimination laws that have been passed since the nineties by the legislator to achieve better gender representation in elected assemblies; processes that, among other things, led to the reform of Article 51 of the Italian Constitution.

Therefore, the regulatory framework has profoundly changed both at a national and regional level.

The case-law of the constitutional, civil and criminal courts have changed and important laws have been proposed and passed; political parties began to address the issue, in some cases even amending their statutes and increasing the number of female candidates.

Even though the progress made and the results achieved cannot be certainly overlooked, there is still a long path ahead in that women still hold marginal roles in politics, in the economy as well as in the professions and are often almost absent from senior and top positions and decision-making bodies.

4.1. *The Constitutional Concept of 'Equal Democracy' and Its Relevance in the Path Towards Gender Equality*

In this ever-changing, but evolving, context the main obstacle still seems to consist of 'cultural' barriers. A turning point in this

¹³ On this, just think, for example, to the punishment by the law of the crime of adultery only if committed by the wife, that was declared not in compliance with the Constitution by the Constitutional Court in 1968, with judgment No. 126 of 1968.

¹⁴ Reference is made the historical judgment of the Italian Constitutional Court No. 33 of 1960. On the long path towards gender equality within the Italian constitutional law scenario, see *inter alia*, L. Carlassarre, *Il diritto alle pari opportunità a 60 anni dall'entrata in vigore della Carta costituzionale*, 2008, 1 ss. The PDF version is available here: http://www.csm.it/retePO/pdf/LORENZA_CARLASSARE.pdf.

respect is to be found in the elaboration of the principle of 'equal democracy', that forces traditional models to be reviewed.

For a long time, the approach as well as efforts to resolve the plight of the existing gender gap, have been based on the idea that the point at issue was a problem of women alone, and that the remedy was to rush to the rescue of 'vulnerable subjects'.

The so-called quotas, based on the U.S. model of *affirmative actions*, were intended, as a matter of fact, to protect vulnerable subjects by favoring them, with the goal of re-establishing equal starting opportunities¹⁵. By relying on 'quotas', women were asking for help and were helped paternalistically. For this reason, in Italy, men have made a mockery of quotas, women have often opposed them and now many women accept them with a certain feeling of resignation.

The concept of 'equal democracy' seeks to overcome the principle of meeting the needs of weaker subjects; on the contrary, it demands the fulfillment of the rights of an individual, the implementation of which contributes to the welfare of society as a whole. A society that is different from that of the liberal State, where women were excluded from the public sphere.

The evolution of the model of the State, therefore, can be evaluated also through the evolution of gender discrimination. The liberal State of the nineteenth century, which is founded on the rule of law and a purely formal concept of equality, constructs its own social structure starting from a rigid division between public life – which includes the working environment and political system – completely reserved for men, and private life, entirely delegated to women.

With the advent of social democracy in the twentieth century, a different concept of equality makes its way, namely substantive

¹⁵ On this, it remains of key relevance the study of B. Beccalli, *Donne in quota: è giusto riservare posti alle donne nel lavoro e nella politica?*, Feltrinelli, Milan, 1998. With a more specific regard to the constitutional transposition of the mechanism behind positive actions in the context of the Italian legal system, interlacing the analysis with a comparative perspective, see A. D'Aloia, *Eguaglianza sostanziale e diritto diseguale: contributo allo studio delle azioni positive nella prospettiva costituzionale*, Cedam, Padua, 2002.

equality. To implement this model it is not sufficient for the State to recognize abstract rights, but it should take charge of the remedy against discrimination with the appropriate tools by taking on an active positive role.

In this context, women begin to enter the job market as a 'weak group' and the State is primarily concerned with protecting them through a welfarist approach.

Progress within the milieu of politics has been even lengthier and more difficult; yet again, the process of inclusion of women has often undergone the typical framework of action aimed at protecting minorities or groups facing discrimination.

On the other hand, the objective of achieving 'equal democracy', as mentioned, reaches beyond these frameworks, proposing to build a model in which men and women participate fully in public and private life. If 'equal democracy' were established as a new constitutional model, there could be profound changes not only in the structure of rights but also in their content. Moreover, the experience of the democracies in northern Europe unequivocally demonstrates that where the full participation of women in public life is felt like a natural need of society it can act as a catalyst for an overall more equal social structure with positive repercussions also in other sectors.

Over the last years, we have witnessed an evolution of the cultural and scientific debate on the subject in Italy. Through the notion of equal opportunities and quotas as a means of helping the vulnerable, the idea that such measures are necessary for the realization of an 'equal democracy' is, in fact, gaining ground.

It should be remembered that the outcomes of scientific and cultural debate, which also arose from the latest Constitutional Law, that affected Article 51 of the Constitution, were adopted at the regulatory level also by the Regions, during the drafting of new regional statutes.

Of particular significance is what was prescribed in the Statute of the Lombardy Region, adopted in 2008. Article 11 of the Statute provides that: «the Region acknowledges, endorses and guarantees equal opportunities between women and men in every field, adopting policies, laws, affirmative actions, and initiatives to ensure and

promote ‘equal democracy’ in social, cultural, economic and political life».

It is a statement of the utmost importance. For the first time, in fact, the concept of ‘equal democracy’ is included in a legislative text. Moreover, if the debate that preceded the endorsement of this regulation is examined, it turns out that behind the resolution of the principle lies all the aforementioned conceptual evolution.

The stated purpose – as can be understood from the wording of the discourse given by the councilors who voted in favor of the Law – was precisely to overcome the traditional rationale, i.e. the idea that women are people in need and that equality, therefore, should stem from the demands of a vulnerable class.

Equal democracy, however, is instrumental in the functionality of the governing bodies themselves thus serving the interests of the general public¹⁶.

It is known that politics has unfortunately opposed the actual implementation of this principle, and it has been necessary, at times, to seek a judicial ruling to restore the principle as in the case of proceedings regarding the composition of the Regional Government of Lombardy.

The full realization of “equal democracy” may be seen as a long and wearying path, but one that can lead the country toward a major transformation.

4.2. An Insight Into the Italian Legislation on Equal Opportunities in the Political Sphere

To understand the reasons that stand behind women’s *status* in the Italian legal system and their not fully and not yet achieved equality, it is useful to investigate and even briefly recall the steps taken by the Italian legislator to implement the principle of equality between the sexes since the 1990s.

It was in the 1990s that the Italian legislator, faced with the severe under-representation of women in public institutions and,

¹⁶ On this, refer to M. D’Amico, *Il difficile cammino della democrazia paritaria*, Giappichelli, Turin, 2011.

more generally, in decision-making bodies, felt that it could no longer postpone regulatory interventions which, through the adoption of 'affirmative actions', were expressly aimed at implementing the principle of substantive equality.

It is in the sphere of political representation that the Italian Parliament for the first time tested the mechanism of 'quotas' as a means of favoring a rebalance of the representation of the sexes¹⁷.

Actually, these were not real 'quotas' because the Italian legislator does not reserve a proportion of seats in the legislative assemblies for women but only in the electoral lists. The idea, therefore, was to act upon the starting points, allowing also women to compete on a par with men in the electoral competition. It is worth pointing out, however, that the adoption of electoral lists with female reserved quotas cannot in any way affect the finish line, as it does not mean that women will automatically come out on top.

As a matter of fact, the first measures adopted by the legislator with Law No. 81 of 1993 and Law No. 277 of 1993, aimed at promoting women's political representation both in the national and in the local elections, were of different types.

About national elections, it was arranged that male and female candidates that were to be elected under the proportional representation (PR) voting system had to be listed alternately. By contrast, in the regional and local elections, it was prohibited for either gender to exceed two-thirds of places on the lists of candidates. This meant, therefore, a reserve of one-third for the less-represented gender. Now, clearly, in the latter case we are only dealing with a 'shortlist quota', free of discriminatory outcomes, as it is unable to guarantee any results, i.e. the winning of a seat. Through this mechanism, the legislator merely wanted to impose the presence of a definite number of women (at least one-third) on the electoral lists. Put simply, this measure, incidentally worded neutrally («*neither sex*»), was placed as a guarantee of suitability and not of eligibility of candidates, and did not in any way even out the chances between women and men in the electoral competition.

Altogether different is the measure of the compulsory gender al-

¹⁷ On this, see G. Brunelli, *Donne e politica*, Il Mulino, Bologna, 2006.

ternation in the candidates' list required for the proportional retrieval of votes for the seats in the Chamber of Deputies, which could assure the result (i.e. the seat) through a strict *de facto* mechanism based on the ranking of candidates on the electoral list and could thus reflect a genuine 'quota'.

Overall, beyond the different technicalities mentioned, it should be preliminarily noted that using these measures the legislator opportunely decided to act extensively, at all levels of government, to bridge the number gap of the two sexes in elected assemblies.

The trend started in the 1990s had been subsequently followed in the years ahead, both at the national, regional, and local levels¹⁸.

This is not the place to fully investigate all the developments and the changes upheld by the legislator as to the efforts in increasing women's presence in political assemblies at the national, regional, and local levels.

Focusing on the current into force legislative regulations, it is worth recalling here Law No. 215 of 2012 concerning the local level of government. Law No. 215 of 2012 set out specific mechanisms. The law also intervenes on the composition of the local governing bodies, by requiring that municipal statutes intervene to assure the presence of both sexes.

Additional legislative developments worth mentioning are Law No. 56 of 2015 on metropolitan cities, Law No. 20 of 2016 as to Regional election, Law No. 65 of 2014 on the European Union Parliament election, and, certainly, the latest Law on the election of the Italian Parliament set out under Law No. 165 of 2017. Laws that, despite their differences, endorse an approach aimed at favoring a gender-balanced composition of the political assembly at issue.

Beyond the constitutional provisions and the efforts of the Constitutional Court, which will be further analyzed, together with the developments in promoting gender equality by the legislator, gender equality is not yet fully achieved.

An example might be offered by the numbers of women seated in the elective bodies, which clearly show the underrepresentation

¹⁸ See B. Pezzini, *Principio costituzionale di uguaglianza e differenza tra i sessi (a proposito della legge 125/1991 sulle azioni positive)*, in *Politica del diritto*, 1993.

of women in the Italian Parliament. Data that is not isolated as a similar trend is also traceable by looking at the composition of independent authorities and other institutional organisms.

As to the presence of women in the national Parliament following the latest 2018 election, there are now 334 elected women: 109 in the Senate and 225 in the Chamber of Deputies.

Data shows therefore a number of women that revolves around 34, 38% in the Senate and 31, 27% in the Chamber of Deputies. Numbers that clearly show the extent to which women's underrepresentation persist and how the not yet achieved gender equality still represents one of the main cause of gender-based violence. Nevertheless, these numbers did not impact on the composition of the Government, whose first composition saw only 6 women sitting as Ministers, while the actual composition can count on 8 women Ministers.

4.3. *The Constitutional Court's Case-Law on Women's Rights in Politics*

As mentioned, a key role in implementing the realization of the constitutional principle of gender equality, in politics especially, has been played over the years by the Italian Constitutional Court.

There are two judgments worth mentioning in the analysis at issue.

The very first judgment to be considered is No. 422 of 1995.

In this first judgment, the Constitutional Court held that in general and without exception, only the principle of formal equality must be applied in electoral matters. The consequence is that therefore any regulation aimed at introducing references to the 'sex' of representatives, even if formulated in neutral terms, should be considered in contrast with this principle.

The judgment was widely criticized¹⁹. The Constitutional Court, in fact, proceeds from a false 'historical' representation when it affirms that the applicability of the principle of substantive equality

¹⁹ Inter alia, see M. D'Amico, A. Concaro, *Donne e istituzioni politiche. Analisi critica e materiali di approfondimento*, Giappichelli, Turin, 2006.

should be excluded from the field of political rights. The Court seems to ignore the fact that at the time the Constitution came into force the issue of the low numbers of women in elected assemblies could not have been perceived as a constitutional issue, because women had not yet had the opportunity of becoming members of such assemblies.

Moreover, in judgment No. 422 of 1995, the Court stated that the measures enacted by the legislator would have directly led to a result, whereas, Law No. 81 of 1993 affects the candidates' suitability, not the eligibility, not to mention the fact that the Law uses a "neutral" wording, which does not refer to women or men but only to the notion of "sex".

Unfortunately, this aspect was not taken into adequate consideration by the Constitutional Court, which, conversely, enhances the "historical" intention of the legislator.

Judgment No. 422 of 1995 had a far-reaching impact in that the arguments endorsed by the Constitutional Court have not only cast aside the regulations that were the object of the question of constitutionality, but it also precluded further possibilities of legislative intervention to foster a gender-balanced within political bodies.

Following this first judgment, a second landmark case is represented by judgment No. 49 del 2003²⁰.

Before the analysis of the judgment, it has to be recalled that in the years following judgment No. 422 of 1995, the constitutional framework changed profoundly because of the coming into force of Constitutional Law No. 2 of 2001, whose Article 2 makes provisions for the Regions with Special Statutes providing that: «in order to achieve a more equal representation of the sexes» regional law «promotes equal opportunities for those standing in elections».

Regions with ordinary Statute likewise started being asked to act in compliance with these principles, according to the new text of Article 117, § 7, of the Italian Constitution.

²⁰ On it, for a comment, see L. Carlassare, *La parità di accesso alle cariche elettive nella sentenza n. 49: la fine di un equivoco*, in *Giurisprudenza costituzionale*, 2003, 364 ss.; A. Deffenu, *Parità fra i sessi in politica e controllo della Corte: un revirement circondato da limiti e precauzioni*, in *Le Regioni*, 2004, 918 ss.

In was also in these same years that the Italian Parliament commits to the process of passing constitutional Law, that came into force only in 2003, aimed at amending Article 51 of the Constitution, to make explicit the need to promote equal opportunities for those standing for elective offices and public offices.

These changes in the constitutional framework boosted policies that progressively promoted gender equality.

First off, Aosta Valley Region decided to introduce a legislative resolution according to which candidates' lists had to consist of «representatives of both sexes», under penalty of being declared null and void. The paradox was that the Italian Government, after having amended Article 51 of the Constitution, at the same time, decided to dispute the constitutionality of the Aosta Valley regional Law on the grounds of its presumed violation of the constitutional principle of equality.

However, this time, with judgment No. 49 of 2003, the Constitutional Court “saved” the Law, overruling its precedent of 1995, and affirmed that the resolution using a neutral reference («both sexes») by affecting only the way lists are made up – and not impacting on the electoral competition itself – would not be considered in breach of Articles 3 and 51 of the Italian Constitution.

Two further judgments contributed to better clarify the content of the new Article 51 of the Italian Constitution: judgment No. 39 of 2005 and judgment No. 4 of 2010²¹.

In particular, in judgment No. 4 of 2010, the Constitutional Court did not find any violation of the Constitution by the uphold law of Campania Region, that had introduced the mechanism of the double gender preference for the election of the members of the regional council. In stating that the legislative provisions were in compliance with the Constitution, the Constitutional Court stated that the double gender preference represents a legitimate mecha-

²¹ For a comment on the Constitutional Court's judgment, see L. Carlassare, *La legittimità della “preferenza di genere”: una nuova sconfitta della linea del Governo contro la parità*, in *Giurisprudenza costituzionale*, 2010, 81 ss.; S. Leone, *La preferenza di genere come strumento per ottenere, indirettamente ed eventualmente, il risultato di un'azione positiva*, in *Giurisprudenza costituzionale*, 2010, 93 ss.

nism to favor the gender-balanced composition of an elected body.

The Constitutional Court went even further affirming that: «the new constitutional framework is [...] inspired by the fundamental principle of the effective equality between the sexes in political representation [...] in the light of Article 3, § 2, of the Constitution».

This statement undoubtedly paves the way to the introduction of legislative measures which go beyond formal equality even in the context of political rights.

5. *Violence against Women: the Law Comes too Late*

Leaving aside the investigation into the developments of the Constitutional Court's case-law on gender equality in the context of women's political representation, another phenomenon where discrimination between men and women appears to be crucial, is that involving violence against women.

If violence against women is strongly linked to the violation of the principle of equality between men and women, it is also well-known the role of family relationships and of patriarchy in causing and increasing violence in the society at large.

In Italy, the path towards a society free from patriarchy has been long, even though neglected by constitutional principles aimed at safeguarding the principle of equality between men and women²².

In 1961, the Constitutional Court, after having recognized for the very first time the principle of equality between the sexes in public offices with the landmark judgment No. 33 of 1961, at the same time and conversely stated that it was constitutionally legitimate to only punish the adultery of the wife but not that of the husband.

²² A path that faced several resistances especially within the context of criminal law where, since from the beginning of the nineteenth century, it was established a system based on a double binary, imagining penalties differentiated on the basis of the gender of the perpetrator. On this, see A. Manna, *La donna nel diritto penale*, in *Indice Penale*, 2005, 851-888.

Nevertheless, some years after its first ruling, the Constitutional Court overturned its precedent with judgment No. 126 of 1968 acknowledging that the legislative choice of punishing only the wife but not the husband for having committed adultery was not in compliance with the principle of equality between the spouses as enshrined under Article 29 of the Italian Constitution and with the evolution of the society at large.

It was only in 1975 that the reform of family law, inspired by the constitutional principle set out under Article 29 of the Italian Constitution of equality within the family, finally came to light. Despite such an important step, there were still some elements in the enacted laws that were still based on a patriarchal concept of the relationship between men and women, especially about the phenomenon of violence against women within the family²³.

Unfortunately, we had to wait until Law No. 442 of 1981 to see the abrogation of two legal provisions clearly informed to a patriarchal conception of the relationship between men and women justifying violence against women.

The first, Article 554 of the Italian criminal code on the so-called shotgun wedding, according to which the perpetrator of sexual abuses to the detriment of a woman could go unpunished in case he decided to marry the woman victim of violence.

The second, Article 587, so-called murder to avenge honor, of the Italian criminal code, that prescribed at that time a very low punishment for the husband who would have found himself killing his wife after having discovered her adultery.

Moreover, it dates back to 1996 the very first turning point.

It was in fact with Law No. 66 of 1996, that, finally, the legislator qualified sexual violence as a crime against a human being.

²³ For a detailed insight see M. D'Amico, *La lunga strada della parità fra fatti, norme e principi giurisprudenziali*, in *Rivista dell'Associazione Italiana dei Costituzionalisti*, 2 ss.

Such a change of perspective is of key relevance as, during the fascist regime, violence was explicitly tolerated with the only exception of violence towards public morals.

The entry into force of the Italian Constitution was though not immediately enough to change the object protected under the legal provision for this last norm as for many other crimes.

But, in the case of violence, this lacking acknowledgment of the need to safeguard a human being against violent conducts was even more serious as impeded judges to make use of that legal provision to protect women victim of violence. And this, without considering that, especially within intimate relationships, violence against women was largely tolerated and even interpreted as a costume or a societal facet.

To sum up, on this last point, it is worth highlighting that the law was keeping on orienting the society in the light of a model that was very distant from the one enshrined in the Italian Constitution.

Among the institutional actors that understood the need to requalify sexual violence within the legal system as a form of violence against a human being, the Constitutional Court played a relevant role. In judgment No. 561 of 1987, the Constitutional Court stated that rape represents, within the criminal law system, the most serious violation of the fundamental right to sexual freedom, causing the violation of fundamental rights of freedom and dignity and even negatively impacting on intimate relationships.

Thanks to this new awareness towards the severity of such violations of the individual's intimate sphere, the Court finally defined sexuality as the essential way of expression of the human being, in so doing including this right within the inviolable rights protected under Article 2 of the Italian Constitution.

6. Legislative Responses towards Violence against Women in the Italian Legal System

6.1. The Italian Law against Stalking

In 2001, with Law No. 154 of 2001, which provides measures

against violence within family relations, the Italian legislator introduces the rule of the removal from family homes of the spouse or partner who threatens his wife or who abuses her²⁴.

Another step is then certainly represented by Law No. 7 of 2006 under which female genital mutilation has been recognized as a crime under Article 583-*bis* of the Italian criminal code.

Without any doubt, the Law that most importantly signed a turning point was Law No. 38 of 2009 on public security and fight against sexual violence and harassment, which introduced the crime of stalking under Article 612-*bis* of the Italian criminal code, punishing who, with several and reiterated conducts, i) causes a permanent and serious condition of anxiety and fear; ii) causes fear for his/her own personal safety, that of a relative or a loved one; iii) forces the victim to change his/her personal habits or lifestyle²⁵.

Article 612-*bis* of the criminal code also introduces a series of aggravating circumstances in the case the conduct is perpetrated by the spouse, even separated or divorced, or by a person who is or has been bound to the victim by an intimate relationship or in the case of acts committed using computer tools, or to the detriment of minors, of a pregnant or disabled woman, with arms or through misrepresentation of a person.

The peculiarity of the introduced crime suggests to focusing on another element, the so-called admonition.

Article 8 (Admonition) of the legislative decree No. 11 of 2009 states that, until the injured party brings a lawsuit, the latter might request to public authorities to expose the circumstances of the facts to obtain the admonition of the author of the conduct at issue.

²⁴ See F.M. Zanasi, *Violenza in famiglia e stalking. Dalle indagini difensive agli ordini di protezione*, Giuffrè, Milan, 2006.

²⁵ On the constitutional implications behind the introduction of the crime of stalking, see, among many others, A. Lollo, *Problemi di costituzionalità nell'applicazione della normativa sullo stalking?*, in *Rivista dell'Associazione Italiana dei Costituzionalisti*, 2010, 1 ss.; A. Valsecchi, *La Corte costituzionale fornisce alcune importanti coordinate per un'interpretazione costituzionalmente conforme del delitto di stalking*, in *www.penalecontemporaneo.it*, 2014, 1 ss.; B. Liberali, *Il reato di atti persecutori. Profili costituzionali, applicativi e comparati*, FrancoAngeli, Milan, 2012.

The police commissioner once gathered all the information from the investigative offices and whether he or she considers the claims of the injured party founded, admonishes orally the perpetrator with the invitation to refrain from acting in violation of the law.

The circumstance of having issued a preliminary admonition allows the crime of stalking punishable *ex officio*, also entailing a more severe sanction.

Despite such a law introduced the crime of stalking within the Italian legal system for the very first time, contributing to strengthening women's protection from violence, its formulation has at the same time raised some criticisms in terms of its compliance with the Constitution, later neglected by the Constitutional Court.

More specifically, it was referred a question of constitutional legitimacy of Article 612-bis of the Italian criminal code claiming the violation of Article 25, § 2, of the Italian Constitution because, first, the legal provision would not have fully defined the minimum of intrusiveness in terms of its temporal duration, second, the norm would have not specified the significance of the state of permanent anxiety and fear.

In judgment No. 172 of 2014, the Constitutional Court rejected the question of constitutionality, stating that the principle of legal certainty of criminal law provisions has to be evaluated by way of overall scrutiny of all the elements featuring the conduct and not focusing separately on each of them individually.

Besides, the Constitutional Court pointed out the need for the legislator to describe cases that fully reflect reality.

With specific reference to the crime of stalking, according to the Constitutional Court, Article 612-bis of the criminal code has to be regarded and interpreted as a specification of the conducts of threat and harassment that are already regulated within the criminal code under Articles 612 and 660 and that both benefit from a long and consistent interpretative tradition, that confirms their adhesion to acts and conducts truly respondent to the reality of current and actual situations.

It is also noteworthy that the Constitutional Court highlights the circumstance related to the reasons that stood behind the in-

roduction of the crime of stalking, meaning the intention of intervening in an area lacking specific rules where women (even though not exclusively) are disproportionately affected by acts such as those covered under the new crime of stalking.

Article 612-*bis* of the criminal code, therefore, does nothing more than specifying the two other above-mentioned conducts, asking for their reiteration over time and the recurrence of at least one of the events considered above.

As to the reiteration aspect, the Court clarified that it must be taken into account at least two conducts, whereas for the identification of one of the three events it is requested for the judge to evaluate the already existing situation suffered by the injured party and that caused by the conducts criminally sanctionable on a case by case investigation.

On a last note, it worth focusing on the increased penalty under Article 612-*bis* of the criminal code in the case the conduct at issue were performed online or using electronic devices or systems.

In these cases, despite the lack of an explicit provision on this point, it is correct to speak of cyberstalking as a new form of stalking.

Again, once more concerning the use of informatics tools, there is a new provision introduced by the so-called Red Code, under Law No. 69 of 2019²⁶, which introduces a new crime that is incorporated into the criminal code right after Article 612-*bis*, meaning the illegitimate spread of sexual images or videos, that is now prohibited under Article 612-*ter* and that seems to take into proper account the actual means of communications.

²⁶ For an overall examination of the new Law, see B. Pezzini, A. Lorenzetti (edited by), *La violenza di genere dal Codice Rocco al Codice Rosso. Un itinerario di riflessione*, Giappichelli, Turin, 2020; N. Triggiani, *L'ultimo tassello nel percorso legislativo di contrasto alla violenza domestica e di genere: la legge "Codice Rosso", tra effettive innovazioni e novità solo apparenti - The last step in the legislative process to fight domestic and gender-based violence: an introduction to the "Codice Rosso" ("Code red" law), between actual innovations and apparent novelties*, in *Processo penale e Giustizia*, 2020.

6.2. *The so-called «Red Code»*

The Italian legislator, on its side, has promptly responded to Law No. 119 del 2013, on measures to tackle violence against women, implementing all those mechanisms to protect and support women victims of violence and making more effective the repressive systems relying on already existing norms of the Italian criminal code (Articles 572, 609-bis and 612-bis).

In the constitutional law perspective, it is also interesting recalling that the President of the Italian Republic, Giorgio Napolitano, while enacting the legislative decree No. 119 of 2013 had rightly observed that the succession of serious and heinous events to the detriment of women and the subsequent social alarm provoked by this situation required urgent legislative measures with the purpose of aggravating penalties for those responsible for these actions.

More recently, with Law No. 161 of 2017, the Italian legislator modified the system of preventive measures regulated under the legislative decree No. 159 of 2011 (so called «Anti-Mafia Code»), widening those entitled to preventive measures, both personal and patrimonial, who are supposed to limit socially dangerous people in their movements, financial capabilities and social relations, by including among the indicators of danger even those persons charged with the crime set forth under Article 612-*bis* of the criminal code.

It is even worth highlight two additional legislative interventions: Law No. 4 of 2018 that modified the criminal code and other rules to the benefit of the orphans of crimes committed within domestic relations and, more specifically, Article 11 that envisaged the extension of the revolving fund for solidarity for the victims of Mafia-related crimes, extorsions, exploitations even to the benefit of orphans of domestic violence-related crimes²⁷.

²⁷ Investigates the status of Italian Law under the perspective of its sensitivity towards gender-based violence prior to the enactment of the so-called Red Codem F. Basile, *Violenza sulle donne e legge penale: a che punto siamo?*, in *Criminalia*, 2018, 463 ss.

As to non-criminal law system provisions, it is worth mentioning Article 24 of the legislative decree No. 180 of 2015, that provides for working people, including those entitled with ongoing and coordinated collaborations, to benefit from systems of protection following episodes of gender violence, that allows them to be exempted from work for a maximum of 90 days within three years.

A last intervention, very relevant and even problematic, is represented by the already mentioned Law No. 69 of 2019 (so called Red Code), that amends the criminal code, the code of criminal law procedure and other additional legal provisions on the safeguard of victims of gender-based violence and domestic violence.

The Law introduces a judiciary fast track for victims of domestic violence and gender-based violence, who had to be heard by the public prosecutor within three days as to impede the ongoing investigations. The 2013 Law on femicide had actually already introduced a similar mechanism for the victims of harassments, sexual violence and stalking, but limited to the procedural phase following the conclusion of the investigations.

The Red Code, instead, gives priority to these crimes even during the investigation procedures with the ultimate goal of avoiding that, in between the charge and the beginning of the trial, women should be forced to stay at home exposing themselves to additional episodes of violence.

Article 5 of the so called Red Code takes then into proper account the need to train police officers and, departing from Article 15 of the Istanbul Convention, which provides that «Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation».

Nevertheless, despite the relevance of such legislative intervention that would like to respond and assist the victim left alone, literature has pointed out that the novelties introduced by the so called Red Code are actually hidden the risk that, before an increasing number of warnings and without an adequate staff, it could re-

sult highly difficult to distinguish among cases those that truly deserve to be prioritized.

Judiciary sources are in fact in line with this assumption. District Attorney's offices have in fact been literally submerged by warnings of abuses, violent conduct and stalking of various nature.

However, within this framework, it is even possible to read a positive. Being the phenomenon of gender-based violence generally featured by a significant quote of submerged, the Red Code could have possibly reversed this trend allowing the phenomenon to unveil itself.

Alongside the above mentioned legislative reforms enacted at the national level, in the last years even Regions started playing a key role in implementing legislative protection for victims of gender-based violence in their fields of competences. Some Regions (as Campania Region with Regional Law No. 34 of 2017 on measures to favor the autonomy of women victim of gender-based violence and their children and the rehabilitation of perpetrators of acts of violence; Regional Law No. 6 of 2014 of Emilia Romagna that establishes a general framework on equality and gender discrimination; Regional Law No. 17 of 2000 of Friuli-Venezia Giulia, updated by Law No. 38 of 2017 on the establishment of anti-violence centers for women) have in fact introduced new path of psychological assistance for male perpetrators.

Lastly, to conclude, it is worth underline some of the judgments that allowed over the last years to enhance the gender-sensitive perspective the legislative framework enacted by the Italian legislator to the benefit of the victims of gender-based violence.

A first judgment was issued by the Court of Cassation, No. 10959 of January 26th of 2016.

The Court of Cassation stated that the rule of the code of criminal procedure which imposes that the notice of the dismissal of the investigation procedures should be notified to the injured party, meaning to the victim of violence, should be applied even to stalking related acts and harassment set forth under Articles 612-bis and 572 of the criminal code because the expression 'violence against a human being' should be interpreted in the light of the concept of gender-based violence as it results from international human rights law and European Union law.

In other words, the Supreme Court endorsed the approach of the Istanbul Convention, by embracing a comprehensive notion of gender-based violence, that aims at protecting the victim of violence who decided to bring the case to courts even in case the criminal proceedings won't take place following the dismissal of the charge. From this viewpoint, it is also relevant to underline that there are cases where, due to reasons that cannot be explored here, women revoke their claims against the perpetrators or rewrite previous statements, therefore forcing public prosecutors to dismiss a claim or, even before, to not be able to prosecute perpetrators. Here is why it is particularly important that women are well aware of their actions when they bring a charge of violence before public prosecutors.

A second very significant judgment concerns the preventive measures under the so called Anti-Mafia Code, that showed a great ability to enhance the existing legal framework in a gender-sensitive perspective.

In a judgment held by a Milan Court, the judge extended, by means of interpretation, the individuals entitled to benefit from preventive measures, including, within the range of dangerous conducts, even those related to stalking-related crimes set forth under Article 612-bis.

On October 10th 2018, the Tribunal of Milan, in the person of Judge Fabio Roia, applied the measure of special surveillance to a man charged with the crime of stalking before the issuing of any judgment.

In that case, the judge highlighted that the crime of stalking represents a conduct that is particularly insidious for the victim, in that the conduct of the agent goes well beyond "simple" threats or isolated episodes of violence, but, on the contrary, it is featured by a series of actions that provokes a real sense of terror in the victim's perspective who is forced to completely change her lifestyle and habits and who is in a constant state of anxiety for herself and her loved ones.

It is also relevant to note that, in this case, the Tribunal did not limit itself to recall the crime at stake, but it also emphasized the reasons why a preventive measure has to be considered needed and

adequate in a specific situation even in presence of an already enacted precautionary measure.

With regard to the organization of judicial offices, a positive note comes from the presence of an increasing number of specialized judges in the field of gender-based violence.

From this perspective, the Tribunal of Milan under the Presidency of Judge Roberto Bichi and the Attorney Office guided by Dr. Francesco Greco undoubtedly constitutes a virtuous model²⁸.

To conclude, it might be interesting mentioning, at the outset, two recent judgments of the Italian Constitutional Court on prostitution²⁹, No. 141 of 2019 that allows us to better understand the cultural background of reference when it comes down to analyse these phenomena.

The question of constitutional legitimacy has been brought to the Court by the City of Bari's Court of Appeal.

According to the Court of Appeal, since female prostitution might also be the expression of a free choice of women and of their freedom of economic enterprise, it has to be declared unconstitutional the legal provision that prohibits the prostitute to engage someone who promotes her because, in doing so, she would make him criminally liable.

In the background, the negative response of the Constitutional Court that sees no aspects of constitutional illegitimacy there is an understanding of the notion of gender-based violence that is based on its psychological and even economic dimensions, characterized by pressures and coercion that recalls, from my perspective, the inclusive approach of the Istanbul Convention.

The key point of the judgment of the Constitutional Court lies, in fact, in the following extract.

In the Constitutional Court's words, when it comes to prostitu-

²⁸ For a deeper investigation into the topic at issue, refer to F. Roia, *Crimini contro le donne. Politiche, leggi, buone pratiche*, FrancoAngeli, Milan, 2017.

²⁹ On this judgment of the Italian Constitutional Court, see B. Liberali, *Dignità umana e libertà sessuale nella prostituzione libera e consapevole: interpretazione evolutiva o anacronismo legislativo?*, in *Rivista italiana di diritto e procedura penale*, 2019, 1670 ss.

tion, «the dividing line between genuinely free decisions and decisions that are not so is already fluid on a theoretical level [...]».

Moreover, even on practical level, according to the Court, «there are also concerns about protection of the very people who prostitute themselves – in theory – as a result of a free and conscious (at least initially) choice. This is in consideration of the dangers to which they are exposed in the pursuit of their activity: dangers connected to their entry into a circuit from which it will then be difficult to voluntarily leave, given the ease with which they can suffer undue pressure and blackmail, as well as connected to the risks for their physical safety and health, which they inevitably run when they are isolated with the customer (risk of physical violence, coercion to perform unwanted sex acts, contagion resulting from unprotected sex and so on)».

7. A Form of Violence: Sexist Communication

As enshrined in the Istanbul Convention, language, communication and images that violate women's dignity have to be considered a form of violence and of incitement to violence against women. From this point of view, a research conducted by the Italian association VOX-Diritti, that mapped discriminatory tweets, underlines the extent to which women are the most targeted category³⁰.

Data also show an increase in online hate against women when the media report news of femicides.

Moreover, the results of the latest investigation underlines a dramatic increase also in antisemitic tweets and, not surprisingly, the victim of hate speech and online hatred is mainly a woman,

³⁰ Reference is made to the project launched by the Italian Association «VOX-Diritti», named «The Map of Intolerance», that right now in 2020 is coming out with its fourth edition. The aim of the project is to map and subsequently analyse discriminatory tweets all over the Italian territory with the ultimate goal of investigating the level and severity of hate spread all over the country against vulnerable categories and groups. All the details regarding the Association and the project, can be find at the following link: <http://www.voxdiritti.it/la-nuova-mappa-dellintolleranza-4/>.

Liliana Segre, who receives over the last months an average of two hundreds racial tweets per day; insults that have severely increased when she has been nominated President of the so-called «Segre Commission», institutionalized in order to rule, study and undertake actions to tackle all forms of discrimination.

As rightly stated by the honorable Lucia Annibali, on her side as well symbol of the fight against women, being disfigured by her ex-partner, it cannot be possible anymore to diminish or reduce racial or homophobic speeches to some sort of bizarre language.

This happens even more in the political debate and this is particularly dangerous the approach frequently manifested by members of the national Government who, in a way completely inconsistent with all the above mentioned provisions to safeguard women against violence, are used to making use of sexist language to insult and diminish women. To speak the truth, sexist attacks women from all political parties with no exclusion³¹.

There is a “pyramid” of hate and this pyramid hits disproportionately women.

According to the «Jo Cox Commission» on hate, intolerance, xenophobia and racism, there is a pyramid whose foundations are made by stereotypes, false representations, insults and hostile languages, and at its top discriminations and, therefore, languages and hate crimes.

In this context, sexist hate speech can be regarded as the product of a society still anchored to gender stereotypes, which reflect a story telling often violent, depicted by the media and by the most recent social networks.

However, hate speech might same time even contribute to justify the increase in violent conducts against women.

In the light of the high percentage of crimes against women, I strongly believe that all the legislative measures aimed at preventing and punishing hate speech against women require to be monitored in a way that reproduces what happened already with respect to the crime of incitement to commit acts of violence or that of commit-

³¹ See XVIII legislature, Chamber of Deputies, Report of the Assembly, No. 215 of Thursday the 25th July 2019.

ting crimes for racial, ethnic, religious or anti-semitic reasons, including negationism³² and with regard to what will likely to result whether a new law punishing homophobic speeches and acts of violence will come into force³³.

Although freedom of speech has been defined as the «angular stone of our constitutional system»³⁴ by the Constitutional Court, I do not interpret the Italian Constitution in a way consistent the constitutionality of massive spread of hate speeches especially those shared by means of posts on social networks.

The Italian Constitution has its roots in the need to react towards a past of violence and discrimination, as it is demonstrated by the attention payed by the framers to the drafting of Articles 2 and 3 of the Constitution.

The safeguard of inviolable rights of the human being and the principle of equality should therefore enlighten the actions aimed at containing violence against women, contributing to strengthen measures to tackle hate and discrimination.

8. Implementing Laws: the Role of Anti-Violence Centers

On a last note, a focus should be dedicated to the support that has to be devoted to women wishing to escape the circuit of violence.

In Italy, social movements and NGOs in the field of violence

³² See Article 604-*bis* of the Italian criminal code. This Article is included in a Section of the Italian criminal code, introduced by Article 2 of D.lgs. No. 21 of 2018, entitled «Disposizioni di attuazione del principio di delega della riserva di codice nella materia penale a norma dell'articolo 1, comma 85, lettera q), della legge 23 giugno 2017, n. 103».

³³ There are actually several legislative proposals under parliamentary examination. Among these, reference can be made here to: A.C. No. 107 of the 23rd March 2018 Boldrini and Speranza; A.C. No. 2171 of the 14th October 2019 Perantoni and others; A.C. n. 2255 of the 4th November 2019 Bartolozzi and others; A.C. No. 868 del 4 luglio 2018 Scalfarotto and others; A.C. No. 569 of the 2nd May 2018 Zan and others.

³⁴ See, on this, the Constitutional Court, judgment No. 84 of 1969.

against women represent a very strong reality and, alongside centers affiliated to hospitals with the intention to ensure a protection right after the emergency (see the «Soccorso Violenza Sessuale e Domestica» of the hospital «Policlinico» of the City of Milan), it should be underlined that exist several anti-violence centers that can operate jointly or as isolated unit³⁵.

A good example is offered by the D.I.Re Network (Donne in rete contro la violenza), founded in 2008 with the aim of regrouping non-institutional anti-violence centers managed by women that counts nowadays 80 centers and that sees an increasing number of calls that in 2017 reached 14.000 calls from harassed and abused women.

The support offered by these anti-violence centers cannot be underestimated, because if it is true that there is a greater awareness on the side of women victims of violence, the percentage of women who decide to avoid speaking up, according to the last 2014 ISTAT inquiry by was 23 %.

It is often the sense of guilt, that attains women victims of violence, which causes a tendency to minimize the abuses, and here is where the role of anti-violence centers becomes irreplaceable.

The woman who chooses to turn to an anti-violence center knows that, under the guarantee of the anonymity, she will be able to count on a space of protection. This is even more truth if we think that often women, who are not ready yet to leave the perpetrator but are induced to bring a charge against him from external reasons, are at risk of going backwards even changing the description of the circumstances of the facts before judges, with the ultimate consequence of reinforcing their bond to the perpetrators and their feeling of inadequacy.

Due to this reason, a private anti-violence center, that takes care of the woman for the entire duration of the path and that is able to support her and to send her to shelters and safe houses without never forcing her, is undeniable.

On this, it should be noted that, in Italy, the essential role of a

³⁵ An interest perspective and analysis is offered by M. Ulivi, *Vive e libere*, Edizioni San Paolo, Milan, 2019.

network of social services incurs in the obligation to bring a case to Courts when operators very dangerous discover circumstances or situations that see minors involved.

Besides this specific aspect, which differs private anti-violence centers from the public social services, it is even the 2020 GREVIO's Report on Italy³⁶ that emphasizes the role of NGOs and invites Italy to guarantee a better funding system even in term of their temporal duration.

Without an organic funding system, it is obviously more difficult to allow the exit of the woman from the circuit of violence with the consequence of weakening the victim pushing her once again close to the spiral of violence or, even worse, to high risk situations.

Not surprisingly, this was actually what happened in the *Talpis v. Italy* case at the center of the landmark judgment of the European Court of Human Rights that condemned Italy for having omitted to properly and adequately protect a victim of domestic violence and her children. The applicant had turned to an anti-violence center, whose funds were nevertheless terminated and that had not the chance to assist her for more than three months.

Following her exit from the safe house, the applicant stated to have been looking for independent housing, without going back to her home and her husband, and for a job, but after four months (and seven months from her claim to the national authorities), finally called by the police, she withdrew her previous claims. She will later explained in her application before the European Court of Human Rights to have behaved this way because she was under psychological pressure by her husband.

It is so clear then, the severe consequences that derive from the termination of funds and of path of support that is so important for the safety of the woman victim of violence and of the minors.

In this perspective, it is therefore of fundamental importance the existence of a mutual exchange between public institutions and private associations in the name of the support of women victims of violence by means of an approach based on a reciprocal integration

³⁶ The GREVIO's Full Report can be read here: <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>.

of competences and measures of protection, together with an effective funding supply in the long period.

Keeping in mind this specific aspect of the concrete implications of violence against women is essential for the purpose of enforcing women's rights and their protection ensuring a stronger support of the victims of gender-based violence by public institutions, the media and the public opinion without leaving aside the precious patrimony gathered by the reality of associations and NGOs.

9. Concluding Remarks in the Light of the Covid-19 Health Emergency

If there is something that still needs to be addressed, even at the outset of this analysis, is the impact of the health emergency related to the Covid-19 Pandemic on violence against women³⁷.

It comes with no surprise that, in a context where women have generally and negatively been affected by the outbreak of the Pandemic, violence against women made no exception.

Looking at the national level, Italy saw an increase in episodes of domestic violence especially during lockdown months when women were forced to stay at home exposed to domestic violence and without possibilities to escape violent intimate-partner relationships.

Despite the national difficulties in gathering data, as likewise repeatedly stated by the already mentioned 2020 GREVIO's Report, the increase of conducts of domestic violence has been reported taking into consideration the number of calls to helplines that has been registered in the Spring 2020.

The number of calls to 1522 helpline between March and June 2020 has in fact reached a pick of 119, 6% with respect to same months of 2019.

³⁷ More generally, on the relationship between the impact of the Covid-19 Pandemic, fundamental rights and women's rights, see M. D'Amico, *Emergenza, diritti, discriminazioni*, in *Rivista del "Gruppo di Pisa"*, 2020, 1 ss.

According to the data gathered by ISTAT, there have been 5.031 calls to 1522 with an increase of 73 % compared to 2019 and 2.013 women victims of domestic violence asked for support, 59 % more than in 2019.

More broadly, several consequences followed the isolation suffered by women during lockdown months.

First of all, there has been a serious risk of a restart of hidden or silent violence, not brought by women to the attention of public authorities, especially in family context where children are involved.

A second aspect that also needs to be considered deals with the safeguard of women's reproductive rights, negatively affected during lockdown months.

Women suffered from serious and persistent difficulties in having access to voluntary termination of pregnancy following a highly dangerous trend to undermine Law No. 194 of 1978 and to endanger the right of women to self-determination in reproductive choices.

Within the current scenario, Italy is at the present moment once again in the midst of a second wave of the Covid-19 Pandemic.

It is difficult to predict whether the experience, if any, collected during the first wave of the Covid-19 Pandemic will be of any help in reinforcing the assistance and support to the benefit of women victims of domestic violence, even envisioning new measures and strategies for preventing violence.

Beyond the Pandemic reality, the hope is that Italy will follow the GREVIO's Report and will fruitfully implement its system of protection towards all forms of gender-based violence and in favor of all women without discrimination of any sort.