



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning Communication No. 148/2019*,**

<i>Communication submitted by:</i>	A.F. (represented by counsel, M. Teresa Manente and M. Ilaria Boiano)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Italy
<i>Date of communication:</i>	16 August 2018 (initial submission)
<i>References:</i>	Decision taken pursuant to rule 69 of the Committee's rules of procedure, transmitted to the State party on 12 October 2018 (not issued in document form)
<i>Date of adoption of views:</i>	20 June 2022

1. The author of the communication is A.F., an Italian national, born in 1965. She claims to be a victim of violations by the State party of her rights under articles 2 (b)–(d) and (f); 5 (a) and 15 (1) of the Convention. The Optional Protocol entered into force for Italy on 22 September 2000. The author is represented by counsel.

Facts as submitted by the author¹

2.1 The author is a public officer in the municipality of Cagliari. She lives with her two daughters.

* Adopted by the Committee at its eighty-second session (13 June – 1 July 2022).

** The following members of the Committee participated in the examination of the present communication: Hiroko Akizuki, Tamader Al Rammah, Nicole Ameline, Marion Bethel, Leticia Bonifaz Alfonso, Louiza Chalal, Corinne Dettmeijer-Vermeulen, Náela Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Elgun Safarov, Natasha Stott Despoja, Franceline Toé-Bouda.

¹ The communication and the court decisions annexed thereto contain graphic and explicit details that are not reproduced in the present summary.



2.2 On 2 December 2008, the author was assaulted by her ex-husband. She called the police (Carabinieri) to intervene. At 11.35 a.m., two police officers (one of whom was C.C., the alleged perpetrator), arrived at her residence in response and found the author suffering from painful injuries to her hands. The officers advised her to go to the hospital to have those treated and to lodge a formal complaint at the Cagliari-Villanova police station against her ex-husband for domestic violence.²

2.3 On her arrival at the hospital, the author started receiving telephone calls from one of the police officers, who had been present in her home, C.C., on the pretext of asking for an update on her condition. He referred her to a female colleague who, he stated had been assigned to provide further support and accompany her during the process of lodging the complaint. However, he continued to call the author throughout the same afternoon and evening, asking her to accompany him for dinner that evening. The calls went on into the night, and when the author refused to respond to his calls, he appeared to become increasingly irritated.

2.4 On 3 December 2008, at noon, C.C. contacted the author again, asking to have a meeting with her at the author's residence, claiming to have information pertaining to the case against her ex-husband. Believing him, she agreed to receive him at her home the same day, as she was at home recuperating from her injuries and the trauma of the previous day's assault and was expecting a visit by medical personnel dispatched by her employer to assess her condition. Prior to this appointment, C.C. arrived at her home.

2.5 When C.C. entered the author's apartment, it became clear that he had lied about having information pertaining to the domestic assault case and began to talk about his personal life. He aggressively tried to embrace the author, without her consent. When the medical officer arrived, C.C. concealed himself from the medic's sight, in the author's kitchen, for the duration of the visit. When the medical officer left, the author returned inside and shut the door, still assuming that, despite C.C.'s inappropriate approach, being a police officer on duty, he did not present any real danger to her and that he would soon leave.

2.6 However, once she was inside, C.C. emerged from the kitchen and grabbed the author with force. She struggled to free herself and, when he released her, she fell on the sofa, exhausted from the struggle owing to her general condition. At that point, C.C. overpowered her, holding her down on the sofa, and subjected her to a painful sexual assault. The author begged him to stop. C.C. released her and apologized. He put on his jacket as if to leave, but said that he wanted to visit the author's daughter's bedroom before leaving. The author hoping he would leave more quickly if she agreed, led him to her daughter's room. However, once C.C. was upstairs and they came to the author's bedroom, he grabbed her again, pushed her onto her bed and raped her. Thereafter, he demanded that she bring him tissues with which to clean himself, which she did. He then got dressed and, after he had asked the author to check that there was no one on the street outside, which she did, he left.

2.7 Once C.C. had gone, the author picked up the bed sheets, pillowcases and tissues used by C.C. and put them in a plastic bag. At the suggestion of a friend, she attempted to entice C.C. back to her flat to have him arrested at the scene, but he refused to return, asking her not to disturb him at work. The author therefore abandoned the plan and did not contact him again.

² A formal complaint of physical violence and death threats.

2.8 On 4 December 2008, the author called a female friend and told her what had happened³. The friend took her to a gynaecologist, who examined her and confirmed that her injuries were consistent with non-consensual sexual intercourse. Given the amount of blood she had lost and her psychological state, she was hospitalized immediately thereafter. At the hospital the author was examined by Dr **omissis**, who later provided a medical report which was entered as evidence in the trial.

2.9 On 5 December 2008, the author requested a meeting with her lawyer and reported the rape by C.C. two days earlier.

2.10 Over the next several weeks, C.C. began to call the author from an unknown number, asking her to meet with him. Becoming increasingly scared by his persistence and fearing for her daughters' safety, she agreed to meet him. On 4 January 2009, the author met C.C. in a public bar and tried to explain the impact of his behaviour and asked him to leave her alone. C.C. dismissed the author's concerns, mentioning his recent promotion and his high-status connections, whom he claimed would protect him, implying his impunity as a warning.

2.11 After the meeting, C.C. continued to harass the author. On 18 January 2009, the author filed a criminal complaint against C.C. for rape and harassment. On 1 April 2010, after an investigation, C.C. was indicted for sexual violence and harassment. On 30 March 2011, a preliminary hearing was held at which the judge confirmed C.C.'s indictment.

2.12 Trial, before a three-judge panel was held at the Court of Cagliari. During the trial, two women who had had relationships with C.C. testified to his violent and aggressive behaviour towards them. Medical evidence⁴ and other witness testimonies⁵ were also put into evidence. DNA analysis of the samples collected by the author were confirmed to belong to C.C.⁶ Transcripts of over 60 text messages and telephone calls from C.C. to the author were also before the Court.

2.13 On 24 January 2015, the Court's decision, dated 10 December 2014, was handed down. The Court found the defence's arguments⁷ to lack credibility as they were nonlinear, fanciful, incoherent, based on generalized stereotypes and not supported by the evidence.⁸ In particular it found that phone records, clearly showed that it was C.C. who had compulsively contacted the author, the consistencies of several witness testimonies from the author's lawyer and doctors, whose reliability was not in doubt

³ She told her of the rape, that she felt ill, had pain in her abdomen and needed help.

⁴ Medical reports by the two gynaecologists, a report from the author's psychologist and hospital intake assessment report confirming internal injuries, bleeding, and bruising of the inside both knees as well as psychological distress and diagnosing PTSD

⁵ Including the friend contacted the day after the assault who accompanied the author to the gynaecologist's and her lawyer.

⁶ C.C.'s semen was found to be present.

⁷ The accused, in fact, was found during a telephone call to be saying that the author "was crazy", then that she was avenging herself for his leaving her. He also claimed that the case was a plot against him ordered by his colleagues, a thesis which was modified when he subsequently claimed that the author slandered him because he did not reciprocate the woman's interest in him. The accused also claimed that the author was paid by a colleague to slander him. A further explanation of the author's accusation mentioned by the accused was that she had lodged a complaint against him because, after sexual intercourse, he could not continue because he had to return to work., which were referred to by the Court as "imaginative excuses".

⁸ The alternative justifications for the facts presented by a doctor who testified on behalf of the accused (e.g. not having seen the bruises on the author stated that these were superficial, that the bruises would have been more defined as to the thumbs had force truly been used and that blood loss continuing after 36 hours was consistent with passionate love-making, which could also cause the knife like pains the author reported), was found to lack credibility.

and finding that the defendant had used the author's vulnerability and his position to victimize her. The Court therefore found that the facts alleged by the author were proven beyond reasonable doubt. C.C. was sentenced to six years' imprisonment for sexual violence against the author and was barred from public office in perpetuity. The charge of harassment was dropped prior to trial, as it had become statute barred. The Court ordered C.C. to pay 20,000 euros in compensation to the author, in addition to her legal costs.

2.14 C.C. appealed his conviction to the Regional Court of Cagliari, which was heard on 16 November 2015. C.C. requested a re-hearing of pleadings, arguing that the elements of the crime were not made out, on the basis that the relationship was consensual. He provided the following supporting arguments: a) that the biological analysis showed amino acids compatible with a condom having been used, which had not been declared by the author; b) that the author's credibility was undermined by the evidence⁹ c) that the hospital report, of 4 December 2008, could not unequivocally prove sexual violence, d) that the author had fabricated the rape story to protect her own reputation e) that the author's behaviour was not consistent with that of an abused woman¹⁰ and f) that the appellant was a respected police officer with a bright future and therefore would not have risked his career in this manner.

2.15 On 16 November 2015, the Regional Court ruled in C.C.'s favour, and he was acquitted of all charges. In the judgment, the judges found that the author's testimony regarding telephone evidence, her failure to alert the medical officer of C.C.'s presence, the fact that she had collected physical evidence and acted as a look-out on C.C.'s request, were incompatible with the allegation of rape. The judges accepted the defence's argument that the author had consented to sex with C.C. and had enjoyed "an afternoon of lightness or even joy" with him but then had become offended by C.C.'s lack of interest in pursuing further relations, that the author had contacted her friend to corroborate a narrative that would protect her reputation and pride and avenge C.C.'s rejection, the fact that evidence consistent with the use of a condom, which was never disclosed by the author indicated a lack of credibility, the author's exchanges with two persons by telephone after the rape gave the appearance of "mundane relations of friendship at a time when she should have been oppressed by perturbation" which it found to be objectively unreasonable, the author's account of C.C. asking her to check the street before he left was deemed not credible as the Court reasoned that only the author would have had an interest in ensuring that the neighbours, including her relatives, would not see C.C. leaving her home. The Court further considered it unreasonable that the author had not asked the medical officer for help while C.C. was present concluding that the author must therefore have been "pleased by the presence of the accused". The Court held that the author's lucid choices and behaviours were inconsistent with having been raped. The Court accepted C.C.'s arguments that the author, offended by C.C.'s lack of interest after consensual sexual intercourse had felt deceived and that C.C. had exploited her as a "disposable object of pleasure". The Court also considered that the author had visited the hospital on 4 December 2008, to protect her reputation and gain priority access to health services in order to take revenge on the accused who she felt had "abused her surrender to erotic passion at a

⁹ Such as the length of phonecalls, the timing of her account being inconsistent with phone records, some call logs had not been provided as she had changed phones, the fact that his texts could only have been directed to a willing partner, that the absence of sperm on the sheets despite its presence on the tissues undermined the author's account

¹⁰ i.e. the fact that she gathered evidence after C.C. left, met him at the bar, had frequent contacts with him, preserved phone records, helped him clean himself, checked there were no witnesses outside, didn't scream or draw attention, that she received messages at times she had stated she was with the doctor, that she was said to look very confident by a witness 15 days later

“juncture in life in which she was troubled”. The Court, also accepted that the medical findings could be interpreted as evidence of the “exuberance” of the accused and his “seductive ability”, and that the author’s accusations had been motivated by drama created to compensate for being seduced by the accused and then abandoned, as it noted had also happened with the man she later met.

2.16 The author challenged the Regional Court’s decision in the Supreme Court of Cassation, arguing that it was rendered in bad faith and without basis in law or in fact. In particular, the author claimed that the decision contained serious violations of the law as follows: (a) violation of the duty to provide reasonable grounds for the decision, incorrect application of article 609¹¹ bis of the penal code (on rape and sexual violence) and misrepresentation of the evidence; (b) incorrect application of article 609 bis of the penal code with regard to the subjective and objective elements of the accused’s conduct; (c) illogical and discriminatory justification of the appraisal of the author’s testimony as not credible; (d) violation of the right to a fair trial, owing to the secondary victimization the author suffered.

2.17 On 19 May 2017, the Supreme Court declared the author’s application for review inadmissible, as it did not find her arguments sufficient to justify the reconsideration of the contested decision, which it described as logical and therefore concluded that the author merely disagreed with the Court’s evaluation of facts and evidence, which was a matter outside the Supreme Court’s jurisdiction.

2.18 The author therefore claims that the stereotypes which formed the basis of the Regional Court’s decision were reinforced by the declaration of inadmissibility by the Supreme Court of Cassation, which instead of correcting discrimination against women, in conformity with the obligation under article 2 (d) of the Convention, compounded and endorsed it.

2.19 The author argues that these stereotypes were a result of the State party’s failure to implement measures to modify, transform and eliminate gender stereotyping by imposing mandatory training at all levels of the judiciary on the effect of such stereotypes on the impartial handling of gender based violence to ensure women’s equal access to justice and therefore failing to deal with cultural norms which impact internal legal culture and lead to negative impacts on interpreting subjective elements of criminal law. She therefore claims that it failed to protect her from discrimination by public authorities, including the judiciary and failed to exercise due diligence in punishing acts of violence against women, and in particular, rape.

Complaint

3.1 The author claims that she is a victim of discrimination within the meaning of article 1 of the Convention.

3.2 She claims that the decision of the Regional Court was based on gender stereotypes¹² and myths about rape and the expected behaviour of rape victims, which

¹¹ sexual violence (art. 609). Sexual acts coerced through violence, threats, or abuse of authority carry a prison sentence of five to 10 years.

¹² The complaint alleges gender-based stereotypes. The author therefore details the stereotypes which were relied upon and which led to the acquittal as the following: (a) a rape has standardized dynamics and can be ruled out when a condom is used; (b) a real victim of rape would not have interacted with third persons via telephone calls or; (c) a woman must foresee that insistent advances could be preliminary to a rape; (d) while a victim of rape must try to resist and escape in all possible ways, she is to be suspected of fabricating allegations of rape if she has the presence of mind to collect evidence after the assault (e) a single and “not very young” woman is inherently worried about her reputation, being compromised by a casual sexual relationship with a younger

resulted in a violation of her rights under articles 2 (b)–(d) and (f), 5 (a) and 15 (1) of the Convention.

3.3 The author claims that gender stereotyping impeded her access to justice and protection of her legal rights, thus exposing her to a secondary and continuous victimization. She invokes, therefore, a violation of the right to have an effective remedy, which is guaranteed under article 2 (b) and (c) of the Convention as the State party failed to adopt appropriate legislative and other measures which prohibit all discrimination against women, to protect the rights of women on an equal basis with men, and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

3.4 The author submits that the State party authorities have also violated her rights under article 2 (d) of the Convention, since judicial gender stereotyping compromised the impartiality of the judges of the Regional Court, who, by acquitting C.C., had allowed gender stereotypes to influence their understanding of facts. It therefore failed to ensure that its public authorities and institutions refrained from engaging in any act or practice of discrimination against women.

3.5 The author also claims that her rights under articles 2 (f) and 5 (a) of the Convention have been violated, since the State party failed to eliminate wrongful gender stereotyping. by failing to take all appropriate measures, including to modify or abolish existing laws, regulations, customs, social and cultural patterns and practices which constitute discrimination against women or that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. In particular, she points to the definition of rape in the State party's criminal legislation, which fails to place the lack of consent at its centre, fails to encompass a broad understanding of coercive circumstances and includes the requirement of force or violence, all of which call for interpretation by the judiciary, which does not receive mandatory training on gender-based violence, of a broad range of culturally subjective factors, which are heavily influenced by gender stereotypes

3.6 The author argues that her rights under article 15 (1) of the Convention have been violated, because the views of the judges of the Regional Court and the Supreme Court were based on gender stereotypes rather than on the independent assessment of facts and evidence. She was therefore not accorded access to the law on an equal basis with men.

3.7 The author further claims she has suffered harm and prejudice due to the excessive length of trial proceedings, revictimization due to the judiciary's reinforcement of gender stereotypes and pecuniary damages due to the loss of her job and legal expenses.¹³

State party observations on admissibility and the merits

4.1 On 11 March 2020, the State party provided its observations on the admissibility and merits of the author's communication.

man; (f) a mature woman should be inherently flattered by the advances of a younger man, and if she is refused by the same man, she is likely to take revenge for the refusal; (g) women are likely to fabricate false allegations of rape or violence to obtain priority access to health-care; (h) rape produces predictable and standard injuries to the victim's genitals.

¹³ Reference to the loss of job by the author appears for the first time in the remedies part of her communication and is not mentioned in the description of the facts.

4.2 The State party sets out the domestic legal framework, which is based on fundamental principles of democracy;¹⁴ the “personalistic principle”,¹⁵ solidarity; and equality,¹⁶ in particular between men and women,¹⁷; and, above all, the rule of law and the respect for human rights and fundamental freedoms as provided for both in domestic and international standards.¹⁸ It further cites the protection of the right to a defence¹⁹ and due process of law.²⁰

4.3 The State party further refers to the common core document, it has submitted under the treaty body reporting procedure, which provides a comprehensive framework of the domestic system, including safeguards and guarantees.

4.4 With regard to the allegations in the author’s communication, the State party refers to the Regional Court’s verdict, dated 16 November 2015. In that verdict the Court of Cassation of Cagliari (appeals court), overturned the Tribunal’s verdict, dated 10 December 2014, which declared C.C. guilty of²¹ violently forcing the author to submit to sexual acts and which sentenced him to serve a six-year detention penalty and to pay compensation for damages in favour of the author. The appeals court then acquitted C.C. “because the fact [underlying the criminal complaint] does not exist”.

4.5 The State Party refers to the Supreme Court’s appraisal of the author’s application for a review on the basis of its own jurisprudence, which affirms that the assessment of the judge is to be limited to examining the existence of logical argumentation of the challenged verdict. The Supreme Court has “repeatedly stated that in the matter of the reasoning of the verdict, the judge who overturns the first instance verdict, reaching an

¹⁴ As laid out in article 1 of the Constitution.

¹⁵ As laid out in article 2 of the Constitution.

¹⁶ As laid out in article 3 of the Constitution. From a constitutional standpoint, the general principle of equality between women and men is enshrined in article 3 of the (rigid) Constitution, which states “all citizens have equal social dignity and are equal before the law without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country”.

¹⁷ In addition, the State party cites article 1 of the Code on Equal Opportunities Between Women and Men (Legislative Decree 198/2006) which sets forth that: “Relevant provisions envisage measures, aimed at eliminating whatsoever distinction, exclusion or limitation based on sex, which might affect or hinder the enjoyment and exercise of human rights and fundamental freedoms” “in all spheres of life”. The State asserts that the Italian legal system seeks to ensure an effective framework of guarantees, to protect the fundamental rights of the individual fully and extensively, relying on a solid framework of rules, primarily of a constitutional nature, by which the respect for human rights is one of the main pillars.

¹⁸ The State party notes that its Constitution envisages the protection of all rights and fundamental freedoms included in relevant international standards, such as the European Convention on Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The protection and promotion of human rights, whether civil, political, economic, social, cultural, regarding freedom of expression, the fight against racism or the rights of the child and of women – constitute one of the fundamental pillars of both domestic and foreign Italian policies.

¹⁹ They are expressed, inter alia, by the “principle of the double level of adjudication”, which takes place, at the domestic level, through three possible levels of trial. Each stage constitutes a further level of judgement, overseeing the lower instance.

²⁰ With respect to the principle of “due process of law”, it claims that this has been implemented, at the constitutional level, by Act No. 2/1999, which entered into force on 7 January 2000, and which, by five new sections, integrated article 111 of the Constitution. Such amendments were inspired by the principle of “due process of law” stemming from the common law system with the aim of enhancing the accusatory model within the Italian legislative system.

²¹ Referred to in article 81 (609 bis) of the Penal Code.

acquittal, cannot limit itself to presenting critical notations of dissent regarding the challenged judgment, having rather to examine, albeit in summary, the evidentiary material examined by the first instance level judge, jointly with that of the second instance, to offer a new and comprehensive motivational structure that gives reason for its conclusions where these contrast with the first instance verdict”. As a consequence, a judge who completely overturns the first instance conviction is bound to outline the structural foundations supporting his or her alternative reasoning, as well as to specifically refute the most relevant arguments, at the first instance. She or he cannot merely impose her or his own assessment of the evidentiary material, on the basis of preference, to the one being challenged. Therefore, if the judge is converting the first instance conviction into an acquittal on the basis of a different assessment of the same evidentiary material, he or she is required to provide strong and precise reasoning for the differing conclusions so drawn

4.6 The State party notes the findings of the Supreme Court on the author’s application that, with regard to the assessment of the reliability of the author, the Regional Court, in overturning the assessment of the first instance judge, had comprehensively refuted, with reasonable, precise and logical arguments, the arguments made by the Tribunal. The Supreme Court concluded that the author’s claims were “completely generic” since her application did not indicate specific evidence, which had not been assessed or should have been otherwise assessed, and, in any case, was “manifestly unfounded”, in the light of the reasons for the present challenge.

4.7 With respect to the renewal of the evidence, the State party refers to jurisprudence, which obliges the judge to renew the evidence acquisition and to hear the witnesses again, where the judge’s assessment of their reliability differs from that of the Tribunal,²² only if the judge is overturning an acquittal verdict but does not apply when the Court is requested to reverse a conviction.

4.8 The State party therefore argues that the Court’s perspective of the right to review the oral evidence is in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms and the Constitution,²³ as developed with a view to strengthening procedural safeguards and not from an accusatory perspective against the defendant following the European Court of Human Rights decision in *Dan v. the Republic of Moldova* and subsequent verdicts. In the event that a conviction is overturned, the normal rules for the renewal²⁴ apply, so that the judge may, also ex officio, hear evidence afresh, should she or he consider the renewal of the oral evidence absolutely necessary.

4.9 Furthermore, the State party cites the decision of the Supreme Court that, with regard to the appeal lodged with it, it cannot allow grounds that conflict with the principle of self-sufficiency and which are generic in claiming that there was a defect of reasoning, either by merely reporting excerpts from single passages of oral evidence, as extrapolated from the overall content of the trial transcript in order to draw strength from the reliance on paraphrased excerpts of the evidence, or by proceeding with attaching, en bloc and without any distinctions, the transcript of the trial in its entirety for a full reading by the Supreme Court.

²² Pursuant to article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights by its verdict 5 July 2011 concerning the case of *Dan v. Moldova*, which held that a new hearing applies only in the event of *reformatio in peius* of the previous verdict.

²³ See article 111 (3) of the Constitution.

²⁴ Pursuant to article 603 (3) of the Penal Code.

4.10 The State party quotes the Supreme Court's appraisal of the author's claims, regarding the declarations made by the witnesses, including those of the accused's previous intimate partners, stating that her "claims fall within the censure of generality and lack of respect for the principle of self-sufficiency". In particular, the State party notes the Supreme Court's assessment that the motivation and reasoning by the Regional Court regarding the evidence concerning the use of a condom by the defendant, an element put forward by the defendant's legal team as the basis for its thesis of consensual sexual intercourse, is reasonable and logical and based on a comprehensive evaluation of the results from the forensic testing on the collected material.

4.11 Against this background, recalling the Committee's general recommendations, especially general recommendation No. 19 (1992) on violence against women, as supplemented by general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 and general recommendation No. 33 (2015) on women's access to justice, as well as the case law of the European Court of Human Rights, in particular its verdict in *E.B. v. Romania*, the State party stresses its full respect for the Convention, which is enacted in articles 3 and 111 of the Constitution, and the Istanbul Convention on preventing and combating violence against women and domestic violence, with regard to the positive obligation to put in place an adequate penal system.

4.12 The State party specifies the protections in place pursuant to provisions of the Penal Code, cited by the author. It refers to article 609 bis (as amended) of the Penal Code,²⁵ which envisages that "whoever, with violence or threat or through abuse of authority, forces someone to commit or suffer sexual acts is punished with imprisonment from 6 to 12 years".²⁶ The State party claims the effectiveness of those provisions is evidenced in the case law of the Court of Cassation, which, since the introduction of the new legislation in 1996, has rigorously implemented the spirit of those amendments.

4.13 The State party recalls its most recent periodic report to the Committee, in which it elaborated upon significant legislative developments, including Law Decree 11/2009, converted into Act No. 38/2009, which introduced the crime of stalking. In line with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the State party states that its domestic law is aimed at ensuring greater protection for victims, both in relation to hearings and through a system guaranteeing transparency during ongoing investigations and legal proceedings, in addition to the obligation to inform victims about local support services. Furthermore, the law provides for legal aid for female victims of domestic violence whose income exceeds the income limits fixed by national legislation. More generally, on the protection of victims, Legislative Decree 9/2015, transposing Directive 2011/99/EU, on the Order of European Protection, aims at ensuring the mutual recognition of the effects of the protection measures for the victims of crime when adopted by the judicial authorities from European Union member States. Within this framework, the Supreme Court has stressed that consent to sexual acts between spouses

²⁵ By an act dated 15 February 1996, the penal conduct under reference falls within the category of crimes against the person (namely crimes against personal freedom).

²⁶ As amended by Act No. 66/1996, by which the legislator places all the relevant conducts harmful to the protected legal asset on par, punishing them in a much more severe manner (whereas the original provisions of the penal code distinguished between two distinct criminal conducts falling within book II, title IX, chapter I of the Penal Code, under the heading "Of crimes against sexual freedom", within the category of "Crimes against morality"). Since the introduction of the new legislation in 1996, the Court of Cassation has promptly intervened with regard to article 609 bis of the Penal Code.

or partners is essential: should it fail, the conduct will be prosecuted. By Law Decree 93/2013, the seriousness of sexual violence as manifestation of dominion within relationships or as a stalking tool following the end of a relationship, which are treated equally, has been further acknowledged.²⁷

4.14 On a more specific note, the State party notes that, in the light of the Convention and the Committee's general recommendation No. 33, in July 2019, the Parliament adopted the so-called Red Code (Act No. 69/2019),²⁸ in which a preferential and urgent judicial pathway is envisaged that includes the right to be heard by the public prosecutor within three days of the registration of a *notitia criminis*. The State party provides details on its National Strategic Plan on Male Violence against Women for 2017–2020, which is aimed at strengthening the investigation, monitoring and assessment of violence against women, including data collection nationwide. Under the Plan, multilevel governance is promoted, and responsibility is assigned at the national, regional, and local levels. In order to translate the Plan into concrete actions, an associated Operational Plan was adopted in November 2018, which included a significant increase in the resources allocated to the Department for Equal Opportunities for both 2018 and 2019. The State party also refers to an integrated data system on violence against women,²⁹ the development of a system for the issuance of police warnings by the Ministry of the Interior, the expansion of the definition of related crimes,³⁰ information for victims on social care-related prevention programmes, supportive interventions,³¹ training for police forces³² and the judiciary,³³ and further research³⁴ and education.³⁵ In addition, the State party refers to its commitment,

²⁷ See CEDAW/C/ITA/7, para. 57.

²⁸ In accordance with the so-called Red Code, in September 2019, the Anti-Crime Central Directorate issued a circular on new operational practices in connection with violence against women. Many awareness-raising campaigns have been launched, which have led to an increase in the number of cases reported. Between July 2016 and July 2019, 106,000 complaints were recorded, with the highest number recorded on the International Day for the Elimination of Violence against Women. In 2018, 83 police stations planned relevant conferences and other events.

²⁹ In 2017, the National Institute of Statistics and the Department for Equal Opportunities signed a memorandum of understanding on establishing an integrated data system on violence against women. The system has been online since 25 November 2017 and is regularly updated. It is available at www.istat.it/it/violenza-sulle-donne.

³⁰ Act No. 119/2013, which addresses both stalking and gender-based violence, strengthens the system for the issuance of police warnings and contains provisions on the possibility of banning an offender from owning a gun, disqualifying an offender's driving licence and using electronic tags.

³¹ In November 2018, following the signing of a specific memorandum of understanding between the Department of Public Security and the Department for Equal Opportunities, two new soundproofed interview rooms have been set up, in addition to the existing 53, at Italian police stations, and more will be provided in the coming months. Portable kits will be soon made available to ensure "protected listening" outside police stations.

³² All forces participate in relevant training. For example, at the Superior Institute of Investigative Techniques in Velletri, some 300 Carabinieri officials from the provincial investigative units in the national network for monitoring gender-based violence have received training since 2014. In parallel, e-learning modules on violence against women and prevention have been developed.

³³ In recent years, the Superior School for the Judiciary has held specific refresher courses on gender-based violence, which include a focus on obligations under the Convention.

³⁴ Following the signing of a memorandum of understanding with the Department for Equal Opportunities, the forensic science laboratory of the Carabinieri, which includes a section on harassment-related offences, has been tasked with research and advisory services.

³⁵ The Ministry of Education organizes activities aimed at combating all forms of violence and discrimination, including competitions for schools. In order to foster reflection among the younger generations on violence against women, it is key to foster an understanding of equality and mutual respect. The Ministry promoted a project with Telefono Rosa, a national association that provides support to women who are victims of stalking or violence, that provided students with training on the association's activities.

outlined in its most recent submission to the Committee (July 2017),³⁶ to ensuring an integrated protection system for victims that is focused on preventing secondary revictimization and acknowledged the importance of increasing the adoption in all the main provinces of relevant memorandums of understanding, signed by judicial authorities, especially Attorney General's Offices, with other key stakeholders, in particular at the local level.

4.15 The State party affirms that, in order to strengthen the protection of victims, the Department for Justice Affairs of the Ministry of Justice, through the Directorate-General for Criminal Justice, established, on 29 November 2018, a coordinating committee to create an integrated network of assistance services for victims of crime, involving the participation of the main institutions³⁷ responsible for the protection of the rights of victims and long-established professionals in the field. The aim of the coordinating committee is to help to set up an integrated assistance network that will accompany the victim from the first contact with the authorities through to the compensation phase and raise awareness of and share information on victims' rights, including among the general public. The work of the coordinating committee will serve as a step towards the establishment of a permanent national coordinating body for victim support services with broader and strengthened competences, which will serve also as the point of reference with respect to the European Union for transnational issues, in accordance with international recommendations and European best practices.

4.16 In the light of the above, the State party argues that contrary to the allegations made in the author's communication, no stereotyped treatment, especially from a judicial standpoint, can be found at all, and it reaffirms its commitment to full collaboration with the Committee and other United Nations treaty bodies, as well as with all other relevant human rights mechanisms.

Author's comments on the State party's observations on admissibility and the merits

5.1 The author provided comments on the State party's observations on 30 July 2020.

5.2 The author notes that the State party provided no challenge to the admissibility of the communication and therefore requests that the admissibility of her communication be recognized as fully established.

5.3 On the merits, the author asserts that she is not attempting to have the criminal liability of the accused for rape relitigated and refutes the claim that her disagreement lies with the assessment of facts and evidence in the criminal proceedings that form the basis of her complaint but rather wishes to address the impact of gender-based and sexist stereotypes, myths and misconceptions about rape and rape victims on her fundamental rights, which made up the grounds for the judgment of acquittal of the accused.

5.4 She further claims that the Supreme Court of Cassation contributed to the violation of her fundamental rights as a victim of sexual and gender-based violence when it did not censor as illogical or illegal the decision issued by the Regional Court, which was grounded in sexist stereotypes, myths and misconceptions about rape and rape victims. The final decision of the Supreme Court of Cassation should have

³⁶ Available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ITA/INT_CEDAW_AIS_ITA_28017_E.pdf.

³⁷ Those institutions include the Ministry of Justice, the Ministry of the Interior, the State-Regions Conference, the National Bar Association, the Conference of Italian University Directors, the Donors and Foundations Networks in Europe, the Department of Juvenile Justice, the Directorate-General for Civil Justice and the Directorate-General for the Coordination of Cohesion Policies.

condemned such a decision as being contrary to Italian law with respect to the constitutional principle of equality and to the international principles and rights enshrined in the Convention and reflected in the Committee's general recommendations.

5.5 The author notes that, in its observations, the State party merely described the legislative reforms aimed at preventing and punishing all forms of sexual and gender-based violence that had been adopted in recent years, without submitting any substantial legal arguments that would serve to rebut the accusation that the multiple sexist stereotypes that had underpinned the acquittal decision had had an impact on her fundamental rights as a woman who was a victim of rape.

5.6 Regarding the effectiveness and efficacy of the Italian legal system and the legal tools that were cited, the author refers to the gap that exists between the Italian legal system as formally defined by law and public policies and its concrete implementation of those principles, which is compromised precisely by the pervasive and widespread sexist culture that remains embedded at the social and political level, as denounced in the reports submitted by Italian civil society organizations during the last reporting cycle. Unfortunately, such discriminatory thinking still influences the legislative and judicial branches of government and has not been seriously addressed by the State party in terms of legislative or policy changes that prioritize the elimination of discrimination and stereotypes.

5.7 The author asserts that judicial stereotyping remains a central issue, as stressed by the parliamentary commission of inquiry on femicide and all forms of violence against women, which called upon the National Institute of Statistics to investigate the impact of gender stereotypes on women, while in 2019 the General Prosecutor before the Court of Cassation had highlighted the worrying increase in femicide in Italy.

5.8 In response to the call of the commission of inquiry, the National Institute of Statistics investigated the nature and extent of sexist stereotypes in Italy, confirming that they are pervasive and prevent women from asking for help, thereby blocking their access to effective remedies and justice: in particular, the author provides the following assessment of the National Institute of Statistics dated 25 November 2019:

"The prejudice persists that assigns responsibility to the woman who suffers sexual violence. A full 39.3 per cent of the population believes that a woman is able to avoid having sexual intercourse if she really doesn't want to. The percentage of those who think that women can provoke sexual violence by how they dress is also high (23.9 per cent). Also, 15.1 per cent hold the opinion that a woman who suffers sexual violence when affected by alcohol or drugs is at least partially responsible."

5.9 The author notes that the impact of such sexist stereotypes on the judiciary is well documented by Paola Di Nicola, an author and judge, who has collected examples of judgments in cases of sexual and gender-based violence issued by Italian courts that demonstrate the serious impact of prejudices and stereotypes on women's rights. Furthermore, the author states that, despite the State party's denial of the problem of sexist judicial stereotyping, in 2019, the Department for Equal Opportunities funded an ongoing research project on eliminating gender-based stereotypes and prejudices in the judiciary and law enforcement, coordinated by Professor Flaminia Saccà of the University of Tuscia and the women's rights organization *Differenza Donna*, which is entirely devoted to investigating sexist stereotyping by the judiciary, law enforcement agencies and media professionals in cases of sexual and gender-based violence and to designing specific training courses to eradicate such sexist stereotypes.

5.10 With regard to the specific instances of stereotyping, the author reaffirms that the reliance on stereotypes led to the violation of her right to an effective remedy, guaranteed under article 2 (b) and (c) of the Convention, under which States parties have an implied obligation to provide effective remedies to women whose human rights have been violated. The right to an effective remedy applies to violations of all human rights.

5.11 Italian authorities also violated the rights of the author under article 2 (d), under which States parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation. Stereotypes and judicial stereotyping compromised the impartiality of the judges in their decision of acquittal and influenced their understanding of the facts, with the resulting secondary victimization of the author, who was denied access to justice and to an effective remedy because of her status as a woman who was a victim of rape.

5.12 Despite the fact that a more gender-sensitive framework has been progressively applied in addressing rape and sexual violence in Italian statutes and legal precedent, as confirmed by the State party in its observations, sexist stereotypes are still very widespread in Italian culture and undermine the effectiveness of existing law, slow the evolution of case law and hinder women's access to justice in cases of gender-based violence.

5.13 Italian authorities also violated article 5 (a) of the Convention, which contains key provisions on stereotyping.

5.14 Stereotyping affected the judges' views about the author's credibility, in violation of the right of men and women to equality before the law under article 15 of the Convention. The author cites the Committee's jurisprudence in *Vertido v. Philippines* (CEDAW/C/46/D/18/2008), stressing that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general.

5.15 The author reiterates that the State party failed in its obligation to ensure that women are protected against discrimination by public authorities, including the judiciary, and it failed to exercise due diligence in punishing acts of violence against women, in particular, rape. In particular the author notes that the legislation under which C.C. was indicted, failed to focus on the issue of consent and rather refers to violence, threat and the use of force and abuse of authority all of which are very broad terms necessarily subject to open interpretation and also provide for a statute of limitations which lapsed before her case was decided, denying her justice for this crime, despite having reported the harassment at the same time as the rape.

5.16 The author concludes that proceedings in the court of appeal which led to the defendant's acquittal was a violation by the State party of its positive obligations under articles 2 (b)–(d) and (f), 5 (a) and 15 (1) of the Convention, causing the author moral and social damage and prejudices, owing in particular to the excessive duration of the trial proceedings and revictimization through the gender based stereotypes and misconceptions relied upon in the judgment. The author has also suffered pecuniary damages due to the loss of her job and the legal costs that she was forced to pay in attempting to vindicate the rights that had been violated.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's assertion that she has exhausted all domestic remedies. It also notes that the State party does not challenge the admissibility of the communication on the grounds of non-exhaustion of domestic remedies. Accordingly, the Committee does not consider itself precluded by the requirements of article 4 (1) of the Optional Protocol from considering the merits.

6.4 The Committee notes the State party's argument that the communication is inadmissible because the author is seeking a review of the domestic courts' assessment of the facts and evidence, and that those courts had made an exhaustive assessment of the evidence. The Committee also notes the author's claim that the legal proceedings conducted in her case were imbued with gender stereotypes regarding the behaviour to be expected of women and of female rape victims, which distorted the judge's discernment and resulted in a decision based on preconceived beliefs and myths rather than facts, which contrasted with the leniency that the judge showed towards the accused in accepting his statements. The Committee further notes the author's claim that the judicial authorities favoured certain forensic evidence, namely regarding the use of a condom, based on which the author was found not to be credible, which led to a failure to accept her allegations, even though they were supported by medical evidence. The Committee recalls that it is generally for the decision-making authorities of States parties to the Convention to evaluate the facts and evidence and the application of national law in a particular case, unless it can be established that the evaluation was conducted in a manner that was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice. In the present case, taking into account the fact that the author challenges the basis of the conclusion of the domestic authorities rather than merely the outcome on the grounds of a denial of justice owing to gender-based discrimination, the Committee considers that it is not precluded from examining the present communication to determine whether there was any violation of the rights recognized under the Convention in the judicial process conducted in the domestic courts in relation to the assessment of gender-based violence alleged by the author.

6.5 The Committee considers that the author's allegations under 2 (b)–(d) and (f), 5 (a) and 15 (1) of the Convention have been sufficiently substantiated for the purposes of admissibility, and therefore declares the communication admissible under those articles and proceeds to examine it on the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information placed at its disposal by the author and the State party, in accordance with the provisions of article 7 (1) of the Optional Protocol.

7.2. The Committee notes the author's claims that, as a victim of domestic violence, she suffered a sexual assault and rape when a State-appointed representative, a police officer, on official duty, to whom she had looked for protection, took advantage of her physical and emotional vulnerability in the immediate aftermath of a violent assault,

while in hospital and when she was recuperating at home, to use his power and authority, on false pretences, to harass her, sexually assault and rape her in her home. She further states that his harassment continued after the rape and that he used his position and connections to intimidate and threaten her. She then lived through a trial in which he was found guilty, only to see him acquitted on appeal on the basis of the evidence that he presented, which had been dismissed as imaginative and illogical excuses by the lower court and she submits, based on gender stereotypes, that she had had a consensual relationship with him, as evidenced by the use of a condom and her extensive internal injuries, and that, after their interaction, she had been rejected by him and, as a result, she had become vengeful and decided to fabricate a rape allegation, in order to save her honour and to access services. She claims that the Court accepted the accused's version of events without question based on the Court's own gendered assumptions about the way that she should have behaved as a rape victim and the way that women behave when rejected. She also claims that this is clearly shown by the failure of the appeal court to provide well-supported reasons for its reversal of the conviction. She asserts that the approval by the Supreme Court of Cassation of the appeal court's flawed approach further indicates the extent of these deeply entrenched gender stereotypes. She concludes that the organs of the State failed to protect her as a victim of domestic violence and failed to provide her with an effective remedy for these violations by allowing structural deficiencies in the judicial system and failing to address its obligations under the convention, resulting in her repeated traumatization.

7.3 The Committee notes the State party's references to extensive initiatives and corrective actions, including details of the implementation of its commitments under the Constitution and international human rights treaties, including the Convention. It also notes that the State party quotes the decision of the Supreme Court of Cassation in which the author's application for review was denied on the basis that the author had provided only general statements and excerpts of the transcript to undermine the appeal court's decision. Furthermore, the Committee notes the State party's citation of the decision of the Supreme Court of Cassation to reject the author's challenge, endorsing the Regional Court's reliance on the forensic evidence regarding the use of a condom as a logical and sufficient basis upon which to cast serious doubt on the author's credibility and yet not sufficient to trigger the duty to rehear testimony.

7.4 The Committee must therefore determine whether the State party's judicial organs, in particular the Regional Court and the Supreme Court of Cassation, relied on gender-based myths and misconceptions about rape, victims of rape and women in general and whether such reliance led to the discriminatory treatment of the author and her evidence, amounting to a violation of the rights of the author and a breach by the State party of its obligations, under articles 2 (b), (c) and (f) and 5 (a) of the Convention. The issues before the Committee are limited to the foregoing. The Committee emphasizes that it does not replace the domestic authorities in the assessment of the facts, nor does it decide on the alleged perpetrator's criminal responsibility.

7.5 The Committee recalls that women face many difficulties in gaining access to justice because of direct and indirect discrimination, as defined in paragraph 16 of general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention. Such inequality is apparent not only in the discriminatory content and/or impact of laws, regulations, procedures, customs, and practices, but also in the lack of capacity and awareness of judicial and quasi-judicial institutions to adequately address violations of women's human rights. In its general recommendation No. 28, the Committee, therefore, notes that judicial institutions must apply the principle of substantive or de facto equality as embodied in the Convention, and interpret laws, including national, religious and customary laws, in line with that

obligation. Article 15 of the Convention encompasses obligations for States parties to ensure that women enjoy substantive equality with men in all areas of the law. It further recalls that stereotyping and gender bias in the judicial system have far-reaching consequences for women's full enjoyment of their human rights. They impede women's access to justice in all areas of law and may have a particular impact on women victims and survivors of violence. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. Often, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women's voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws. This has far-reaching consequences, for example, in criminal law, where it results in perpetrators not being held legally accountable for violations of women's rights, thereby upholding a culture of impunity. In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the revictimization of complainants. Judges, magistrates and adjudicators are not the only actors in the justice system who apply, reinforce and perpetuate stereotypes. Prosecutors, law enforcement officials and other actors often allow stereotypes to influence investigations and trials, especially in cases of gender-based violence, with stereotypes undermining the claims of the victim/survivor and simultaneously supporting the defence advanced by the alleged perpetrator. Stereotyping can, therefore, permeate both the investigation and trial phases and shape the final judgment.³⁸

7.6 The Committee recalls that, under article 2 (a) of the Convention, States parties have an obligation to ensure the practical realization of the principle of equality of men and women, and that, under articles 2 (f) and 5, States parties have an obligation to take all appropriate measures to modify or abolish not only existing laws and regulations but also customs and practices that constitute discrimination against women. Furthermore, the acts or omissions of private actors empowered by the law of that State to exercise elements of governmental authority, including private bodies providing public services, such as health care or education, or operating places of detention, are considered acts attributable to the State itself.³⁹ According to articles 2 (d) and (f) and 5 (a), all judicial bodies are required to refrain from engaging in any act or practice of discrimination or gender-based violence against women and to strictly apply all criminal law provisions punishing such violence, ensuring that all legal procedures in cases involving allegations of gender-based violence against women are impartial, fair and unaffected by gender stereotypes or the discriminatory interpretation of legal provisions, including international law.⁴⁰ The application of preconceived and stereotypical notions of what constitutes gender-based violence against women, what women's responses to such violence should be and the standard of proof required to substantiate its occurrence can affect women's rights to equality before the law, a fair trial and effective remedy, as established in articles 2 and 15 of the Convention.⁴¹ Women should be able to rely on a justice system free from myths and stereotypes and on a judiciary whose impartiality is not compromised by these biased assumptions. Eliminating judicial stereotyping in the justice system is a crucial step towards ensuring

³⁸ General recommendation No. 33 (2015) on women's access to justice, paras. 22, 26 and 27.

³⁹ General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, para. 24 (a).

⁴⁰ *Vertido v. Philippines* (CEDAW/C/46/D/18/2008), para. 8.9 (b); *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 8.3; and general recommendation No. 33, paras. 18 (e), 26 and 29.

⁴¹ See general recommendation No. 33.

equality and justice for victims and survivors. Discrimination against women is based on their sex and gender. Gender refers to socially constructed identities, attributes and roles for women and men and the cultural meaning imposed by society on biological differences, which are constantly reproduced by the justice system and its institutions. Under article 5 (a) of the Convention, States parties have an obligation to expose and remove the underlying social and cultural barriers, including gender stereotypes, that prevent women from exercising and claiming their rights and impede their access to effective remedies.

7.7 With regard to the author's claim in relation to article 2 (c), the Committee, while acknowledging that the text of the Convention does not expressly provide for a right to a remedy, considers that such a right is implied in the Convention, in particular in article 2 (c), by which States parties are required to establish legal protection for the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination. The Committee notes the undisputed fact that the case remained at the trial court level from 2009 to 2014, as a result of which the charge of harassment had to be dropped as it had become statute barred. It considers that, for a remedy to be effective, adjudication of a case involving rape and sexual offences claims should be dealt with in a fair, impartial, timely and expeditious manner.

7.8 The Committee therefore turns to the reasoning underpinning the Court of Appeal's decision to reverse the conviction of the alleged perpetrator. The Committee notes that the Regional Court considered that the court of appeal criticized the lower court for omitting or not evaluating exculpatory evidence. The Court noted that the forensic evidence, requested by the defence had shown traces of a compound found in lubricants used in condoms, which the author had not confirmed and on which the court had found her evidence reticent. It conceded that the defence expert witness had stated that the results did not affirm or exclude the use of a condom with certainty that the substance could unequivocally be attributed to the use of a condom and that the expert had provided a possible alternative of substances in food preparation.

7.9 The Committee notes that the appeal court criticized the lower court for having not examined this evidence in depth stating only that the alleged use of a condom had not been confirmed. The appeal court very thoroughly went through this forensic evidence on the basis that even if it could not be conclusive, it found the interconnectedness of this evidence with other proof raised a serious doubt as to the author's assertions. In doing so it made various assumptions about the tissues being clean and C.C. not leaving the house with soiled clothing on, even though this does provide an alternative explanation as to why he may indeed have had a reason to ask the author to check that there was no one on the street outside before he left). The Court continued to run through the author's evidence finding alternative justifications for each of her assertions. The condom evidence in particular was relied on to conclude that the use of a condom excludes the possibility of a lack of consent as if C.C. had taken a moment to focus on putting a condom on, there would have been a moment in which a real rape victim would certainly have escaped. Also, the fact that despite bruising on the inside of both of the author's knees, it found that the absence of a detailed explanation by the author of the exact nature of the violent force used to hold her down, it could only conclude that, in accordance with the defence's submission, this bruising could be explained by exuberance in a consensual encounter. It dismissed all of the expert evidence of the hospital, the gynaecologist, the psychologist, the lawyer and other witnesses as not reliable based on the fact that they were all based on the version of events provided by the author after she has "taken the decision to incriminate C.C. and done cynically within the legal deadline. The medical evidence was subjected to a

search for an alternative explanation which aligned with the defence, which was that her significant internal injuries were consistent with consensual sex as in a non-consensual situation it would not be possible to achieve the deeper penetration that such injuries indicate.

7.10 The Court of appeal also examined phone records and dismisses the harassment as being concentrated on certain dates and actually the 60 contacts were found to be “diluted” over a month and a half. It also noted that the author had failed to mention her hospital trip in a SMS shortly after and interpreted this to mean that she was not in any distress.

7.11 It concluded that the author’s lucid choices and behaviours, were not indicative of someone who had been raped, her failure to alert the medical officer of C.C.’s presence indicated that she “was pleased by the presence of the accused”. It found it suspicious that the author had collected physical evidence after the assault and had tried to catch the accused in a trap. The Court argued that a single and “not very young” woman would be inherently worried about her reputation, that as this could be compromised by a casual sexual relationship with a younger man, which she should be flattered by and that it is to be expected that such a women would become vengeful in the event of his rejection. It inferred that while the author had appreciated “an afternoon of lightness or even joy”, she had subsequently felt deceived that C.C. had exploited her as a “disposable pleasure object”, abusing “her surrender to erotic passion at a juncture in life in which she was troubled”. The Court also asserted that a woman might fabricate allegations of rape to mete out revenge or to obtain priority access to health-care services and found this the more likely narrative than the author’s claims. Lastly, the Court accepted the defence’s narrative that the hospital report, documenting extensive damage to the author’s uterus, was evidence of the “exuberance” of the accused and his “seductive ability”, rather than proving the rape.

7.12 The court, despite its many misgivings about the author’s evidence, even conceding at times that she had not been questioned on certain elements, did not deem it important to re-hear evidence or give the author the opportunity to respond to its questions. It dismissed the lower court’s concerns as to the inconsistencies in C.C.’s evidence by stating that he lied to protect himself in the face of proceedings.

7.13 The Supreme Court found these arguments to be logical while noting that in accordance with jurisprudence, its assessment of the legality of the decision was limited to whether there was a logical apparatus in the decision in relation to the different elements of the contested judgement and that it was not in a position to verify the inherent appropriateness and matching argumentation of which the judge made use. It states that it cannot superimpose a new evaluation but must only test that the reasoning relied on by the appeal court remains within the limits of plausible compatibility.

7.14 The Committee notes that the State party echoes the Supreme Court’s endorsement of the reasoning of the Regional Court.

7.15 The Committee further notes the striking difference between the treatment of the author’s evidence in contrast to that of the accused by the Regional Court, as endorsed by the Supreme Court of Cassation, and by the State party. In particular the author’s “radical”, and “absurd” account, in which she had “lied” and what it labelled “profound contradiction”, while, in contrast, the accused, “cannot be blamed for his divergent explanations, as he had become aware of the charges against him and therefore had the pressing need to defend himself from criminal and disciplinary proceedings”. The Committee also notes that the psychologist’s diagnosis of the author’s state in relation to the incident and her symptoms, as consistent with post-traumatic stress disorder were dismissed as merely natural consequences of the “drama in the life of a woman who

was already exhausted by a turbulent marital separation” and who had “succumbed, in a moment of weakness, to the seduction of the carabinieri”.

7.16 The Committee finds that the Court’s decision to overturn C.C.’s conviction for lack of evidence to prove the elements of the crime charged, despite significant forensic, medical and testimonial evidence, could only be attributable to deeply ingrained gender stereotypes leading to greater probative weight being attributed to the accused’s narrative, which was clearly preferred, without any critical examination of the defence’s submissions, without any re-examination or rehearing of evidence to allow the witnesses to explain any perceived inconsistencies. The Committee finds that this decision does not follow a logical line of reasoning when measured against any objective criteria and fails to meet the procedural obligations of the State party. It finds that the Supreme Court limited itself to a superficial assessment of whether all evidence was mentioned in a logical sequence regardless of the flaws in the analysis and weighing of the evidence itself and chose to dismiss other grounds as not being based on curated excerpts.

7.17 The Committee concludes that the treatment of the author before the appeal court and compounded at the Supreme Court level failed to ensure de facto equality between the author as a victim of gender based violence, it belies a clear lack of understanding of the gendered constructs of violence against women, the concept of coercive control, the implications and intricacies of the abuse of authority, including the use and abuse of trust, the impact of exposure to consecutive traumas, complex post-traumatic symptoms, including disassociation and memory loss, and the specific vulnerabilities and needs of victims of domestic abuse.

7.18 The Committee notes the State party’s claims that significant efforts are being made to implement initiatives on gender equality but underlines that without acknowledging that these damaging stereotypes exist, and taking determined actions to remedy unconscious bias, no such provisions can be relied upon to change the reality for women, who are disproportionately victims of violence and abuse, which can leave scars (sometimes invisible) for life and intergenerationally. The Committee therefore concludes that the Regional Court’s decision to overturn the conviction was based on distorted perceptions and preconceived beliefs and myths rather than relevant facts, which caused the Regional Court and the Supreme Court of Cassation to misinterpret or misapply laws, thereby undermining the impartiality and integrity of the justice system and producing a miscarriage of justice and the revictimization of the author.

7.19 It also finds that these stereotypes are allowed to flourish where legislation does not clearly identify consent as the defining and central element. Failure to do so led to a dissection of the author’s life, morals, communications, injuries, marital and relationship status, age and numerous other factors to be repeatedly poured over to the degree that she faced a level of scrutiny that was not applied to C.C. and, leaving the proceedings vulnerable to contrasting and damaging interpretations based on cultural norms and preconceptions that denied her equal access to justice and not only failed to protect her but repeatedly subjected her to discrimination and re-traumatization.

8. Consequently, acting under article 7 (3) of the Optional Protocol, the Committee is of the view that the facts before it reveal a violation of the rights of the author under articles 2 (b)–(d) and (f), 3, 5 and 15 of the Convention.

9. The Committee makes the following recommendations to the State party:

(a) Concerning the author of the communication: the author of the communication has suffered moral and social damage and prejudices by the failure of authorities to provide redress and protection to a victim of domestic violence, the

excessive duration of the trial proceedings, and by being subjected to revictimization through the stereotypes and gender-based myths relied upon in the Regional Court's judgment, as well as the Supreme Court's acceptance of those stereotypes. The author has also suffered pecuniary damages due to the loss of her job, and therefore the State party is to provide appropriate compensation commensurate with the gravity of the violations of her rights; and

(b) In general to:

(i) Take effective measures to ensure that court proceedings involving sexual offences are pursued without undue delay;

(ii) Ensure that all legal proceedings involving sexual offences are impartial, fair, and not affected by prejudices or gender stereotypes. To achieve this, a wide range of corrective measures are needed, targeting all levels of the legal system, including:

a. Providing appropriate and regular capacity building on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular on general recommendations No. 19, 35 and 33, for judges, lawyers, and law enforcement personnel;

b. providing appropriate capacity building programs for judges, lawyers, law enforcement officers, medical personnel, and all other relevant stakeholders, to explain the legal, cultural and social dimensions of violence against women and gender discrimination; and

c. Developing, implementing, and monitoring strategies for eliminating gender stereotyping in cases of gender-based violence that include: highlighting the harms of judicial gender stereotyping through evidence-based research and identifying best practices; advocating for legal and policy reforms; monitoring and analysis of precedents and trends in judicial reasoning; allowing for challenges to individual incidents of judicial gender stereotyping; and improve oversight capacity.

(iii) Introducing concrete legislative measures to ensure that the burden of proof is not unduly onerous or vague, leading to overly broad or far-reaching interpretation, including:

a. Amending the definition of all sexual offences involving victims capable of giving legal consent, to include consent as the defining element;

b. Where consent is raised as a defence, the burden of proof should not be on the victim to show that she communicated an unequivocal lack of consent but must shift to the accused who, in relying on the defence, must substantiate a well-founded belief in affirmative consent.; and

c. removing the requirement in defining elements of sexual crimes for the victim to prove penetration, force or violence, unless the same is required to establish an additional or aggravating offence.

10. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State party is also requested to publish the Committee's views and recommendations

and to have them translated into Italian and widely distributed in order to reach all relevant sectors of society.
