Violence against Women: Assessing Italy's Compliance with the OSCE Commitments and the Current International Legal Framework

Francesca Capone

Assistant Professor of Public International Law, Scuola Superiore Sant'Anna,
Pisa, Italy

f.capone@santannapisa.it

Abstract

Violence against women (VAW) represents a phenomenon that over the past decade has reached an unprecedented level in Italy. As a result this topic has been included amongst the key issues addressed by the Independent Evaluation Report on the occasion of the Italian OSCE Chairmanship 2018. Relying and building on the study conducted by this author in order to contribute to the Report, the present article provides an overview of the key findings of the research, discussing how and to what extent Italy's approach is in line with the OSCE commitments on VAW. This article aims at pointing out existing weaknesses and strengths of the Italian legal and policy framework as well as at identifying possible ways forward to bolster Italy's compliance with the OSCE commitments and the existing international and regional standards.

Keywords

Violence against women – OSCE commitments – Italy – Italian Chairmanship 2018 – Istanbul Convention

1 Introduction

Violence against women (VAW) represents a phenomenon that over the past decade has reached an unprecedented level globally,¹ and Italy is amongst

¹ At the global level it is estimated that one in every three women has been beaten, coerced into sex or abused in some other way, most often by someone she knew. WHO, *Global and*

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the countries most affected by it. The Italian National Institute for Statistics (ISTAT) has carried out two comprehensive studies, i.e. 'Violence against Women inside and outside the Family', published respectively in 2007 and 2015,² a third study is going to be completed by the end of 2018. The available and most recent data show that 6 million 788 thousand women in Italy, corresponding to 31,5% of Italian women between 16 and 70 years old, have experienced some form of gender based violence at some point in their lives.³ As a result, this topic has been included amongst the key issues addressed by the Independent Evaluation Report on the occasion of the Italian OSCE Chairmanship 2018. Relying and building on the study conducted by this author in order to contribute to the Report, the present article provides an overview of the key findings of the research, discussing how and to what extent Italy's approach is in line with the OSCE commitments and the international and regional legal standards on VAW.

As is well known, an important turning point is represented by the entry into force of the 2011 Council of Europe (CoE) Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter 'Istanbul Convention'), which defines violence against women as:

[...] a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.⁴

Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and non-Partner Sexual Violence, Geneva, 2013. Retrieved 18 February 2018, <https://www.who.int/reproductivehealth/publications/violence/9789241564625/en/>.

- 2 ISTAT, *La Violenza e i Maltrattamenti contro le Donne dentro e fuori la Famiglia*, Rome, 2007. Retrieved 18 February 2018, <http://www.istat.it/it/files/2011/07/testointegrale.pdf?title=Violenza+contro+le+donne++21%2Ffeb%2F2007+-+Testo+integrale.pdf> (hereinafter 'ISTAT Report 2007'); ISTAT, *La Violenza contro le Donne dentro e fuori la Famiglia*, Rome, 2015, p.1. Retrieved 18 February 2018, https://www.istat.it/it/files/2015/06/Violenze_contro_le_donne.pdf?title=Violenza+contro+le+donne+-+05%2Fgiu%2F2015+-+Testo+integrale.pdf, (hereinafter 'ISTAT Report 2015').

- 3 Ibid., pp. 3–5.

- 4 CoE, Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011, CETS No. 210, Art. 3(a). For an overview of the key tenets of the Istanbul Convention see F. Poggi, 'Violenza di Genere e Convenzione di Istanbul: Un' Analisi Concettuale', in *Diritti Umani e Diritto Internazionale*, 2017, no. 1, pp. 51–76; A. Powell and K. Webster, 'Cultures of Gendered Violence: An Integrative Review of Measures of Attitudinal Support for Violence against Women', in *Australia and New Zealand Journal of Criminology*, 2016, no. 51, pp. 40–57; O. Jurasz, 'The Istanbul Convention: A New Chapter in Preventing and Combating Violence

This broad definition of violence against women clearly underscores that, for the purpose of the Istanbul Convention, violence against women shall be understood to constitute a violation of human rights *and* a form of discrimination. This fully reflects the goal of the Istanbul Convention set out in Article 1(b) and represents a key tenet for States parties when implementing the relevant obligations.⁵ Not all OSCE's Participating States are parties to the Istanbul Convention, therefore it would not be possible to use the Convention as a benchmark for every State. However, in the case of Italy, which has ratified the Istanbul Convention on 27 June 2013 and is committed to fight violence against women in accordance with the definitions and the obligations provided for under this agreement, referring to the Istanbul Convention is crucial to outline the strengths and weaknesses of the Italian framework. For this reason, in the course of the present work, the OSCE human dimension commitments related to violence against women and the Istanbul Convention – as the most developed international legal instrument in this field – have been used as a yardstick against which measuring Italy's progress and the efforts undertaken, focussing in particular on the last five years. Building on these premises and after outlining in more detail the OSCE commitments in the field of violence against women, this article's main objective is to investigate how Italy is implementing its obligations to eliminate all forms of violence against women, prosecute the perpetrators, and protect victims of gender-based violence.

2 The OSCE Commitments on Violence against Women

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has identified the 'Prevention of Gender-Based Persecution, Violence and Exploitation' as one of the key commitments related to threats to human security.⁶ Such commitment has been spelled out in a number of OSCE's documents and decisions, briefly outlined in the present paragraph. The first document to

against Women,' in *Australian Law Journal*, no. 89(9), pp. 619–627; B.C. Meyersfeld, 'The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence: Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence', in *International Legal Materials*, 2012, no. 51(1), pp. 106–132.

- 5 Council of Europe, *Explanatory Report to the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence*, p. 7, para. 40, Retrieved 20 February 2018, <https://rm.coe.int/16800d383a>.
- 6 OSCE, *OSCE Human Dimension Commitments: Volume 1*, Thematic Compilation (third edition), 2012, p. 242. Retrieved 20 February 2018, <https://www.osce.org/odihr/76894?download=true>, (hereinafter '2012 OSCE Human Dimension Commitments').

consider is the 2004 OSCE Action Plan for the Promotion of Gender Equality,⁷ which built on the 2000 OSCE Action Plan for Gender Issues.⁸ The 2004 Action Plan was adopted in order to encourage 'gender awareness raising' and to promote equality in rights and full and equal participation of women and men in society. This is in line with the United Nations' (UN) declared goal to promote the practice of gender equality and 'gender-mainstreaming'.⁹ More in detail, the 2004 OSCE Action Plan for the Promotion of Gender Equality identifies the priorities of the OSCE in promoting gender equality, in the Organization as well as in all Participating States, and to ensure the monitoring of its implementation. With regard to the Participating States, the 2004 Action Plan clearly affirms that they 'bear the primary responsibility and are accountable to their citizens for the implementation of their commitments on equality of rights and equal opportunities for women and men'.¹⁰

The second relevant document is the 2005 OSCE Decision on Violence against Women.¹¹ It is worth stressing that in this Decision, besides reaffirming the key recommendations listed in the Action Plan, the OSCE also reinforced the focus on women victims of violence and urged the Participating States to, *inter alia*, ensure that all female victims of violence will be provided with full, equal and timely access to justice and effective remedies, medical and social assistance, including emergency assistance, confidential counselling, and shelter.¹²

In 2014 the OSCE adopted another relevant decision, i.e. the Decision on Preventing and Combating Violence against Women.¹³ It is important to highlight

- 7 OSCE Permanent Council Decision No. 638–2004, *OSCE Action Plan for the Promotion of Gender Equality*, 2004, Retrieved 22 February 2018, <https://www.osce.org/mc/23295?download=true>, (hereinafter '2004 OSCE Action Plan on Gender Equality').
- 8 OSCE Permanent Council Decision No. 353/00, *Action Plan for Gender Issues*, 2000. Retrieved 22 February 2018, <https://www.osce.org/pc/26462?download=true>, (hereinafter '2000 OSCE Action Plan for Gender Issues').
- 9 In the words of the UN General Assembly '[m]ainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels'. Official Records of the General Assembly, Fifty-second Session, Supplement No. 3 (A/52/3/Rev.1), chapter IV, para. 4.
- 10 2004 OSCE Action Plan on Gender Equality, p. 8, para. 41.
- 11 OSCE Permanent Council Decision No.15/05, *Preventing and Combating Violence against Women*, 2005. Retrieved 22 February 2018, <https://www.osce.org/mc/17451?download=true>, (hereinafter '2005 OSCE Decision on Violence against Women').
- 12 2005 OSCE Decision on Violence against Women, p. 2, para. 4.
- 13 OSCE Permanent Council Decision No. 7/14, *Preventing and Combating Violence against Women*, 2014. Retrieved 22 February 2018, <https://www.osce.org/cio/130721?download=true>, (hereinafter '2014 OSCE Decision on Violence against Women').

that this document greatly contributed to clarify and systematize the approach followed by the Organization by calling on Participating States to implement five strands of action. The first strand of action tackles the domestic legal frameworks' compliance with the international legal instruments in place, in particular the Istanbul Convention.¹⁴ Furthermore, Participating States are requested to intensify the efforts undertaken to collect, maintain and make public reliable, comparable, disaggregated, and comprehensive evidence based data and statistics regarding all forms of violence against women.¹⁵ The second strand is represented by prevention, which encompasses the following crucial aspects: raising public awareness, develop programmes to work with the perpetrators during and after the sentence, prevent victims' secondary victimization. The third element highlighted in the Decision is protection, which focuses on support services for victims and victims' empowerment.¹⁶ The fourth strand is prosecution, which centres on enhancing the legal framework in order to strengthening criminalization, prosecution, punishment and victims' redress. The fifth and final strand focuses on the need to establish effective cooperation amongst all relevant national stakeholders involved in fighting violence against women. In particular the Decision encourages Participating States to achieve this goal through the adoption of comprehensive and coordinated national policies.¹⁷

Therefore, the OSCE commitments related to violence against women can be described as wide and comprehensive, focussing especially on the five core issues listed above. The emphasis is also placed on the necessity to punctually implement the obligations enshrined in the exiting international legal framework, which in 2004–2005 mainly revolved around the CEDAW, and in 2014, at least for the countries – like Italy – that ratified it, is predominantly centred on the Istanbul Convention.¹⁸ Consequently, prior to delve into Italy's compliance with the OSCE commitments, the following paragraph will provide a brief overview of the international legal framework set up to thwart violence against women.

3 A Glance at the International Legal Framework

As underscored above, the most recent and innovative legal instrument dealing with violence against women is represented by the Istanbul Convention,

¹⁴ Ibid., p. 2, para. 1.

¹⁵ Ibid.

¹⁶ Ibid., p. 3, para. 5.

¹⁷ Ibid., p. 4, para. 8.

¹⁸ The Istanbul Convention entered into force on 1 August 2014.

currently ratified by 30 States and signed also by the European Union (EU), which has not yet finalized its commitment to become a party to the Convention.¹⁹ The Istanbul Convention set forth obligations incumbent on States parties structured around four main pillars: (i) integrated policies, (ii) prevention of all forms of violence, (iii) protection of victims from further violence, and (iv) prosecution of perpetrators.²⁰ Under each pillar the Convention identifies and imposes a number of key obligations.²¹ Concerning the integrated policies, the Istanbul Convention leaves it up to each State to decide whether these policies would be laid out in several policy documents or just in one,²² for instance in the form of a national action plan (NAP) or strategy. Italy – alongside several parties to the Convention – in 2015 has adopted a NAP to lay down a progressively comprehensive national policy on violence against women covering 2015–2017.²³ In 2017 Italy restated its commitment by adopting a new strategic plan for 2017–2020.²⁴

The second pillar requests States parties to comply with the following actions: taking measures, including legislative ones, to prevent all forms of violence, address prejudice, traditions and practices contributing to violence; promoting awareness raising; educating and training professionals; setting up intervention and treatment programmes for perpetrators. Under the ‘protection pillar’, States shall adopt measures to ensure the protection of all victims from further violence; set up general and specialised support services,

- 19 European Parliament, Policy Department, *Violence against Women and the EU Accession to the Istanbul Convention*, 2017, pp. 84–92. Retrieved 25 February 2018, [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596815/IPOL_STU\(2017\)596815_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596815/IPOL_STU(2017)596815_EN.pdf), (hereinafter ‘EP Report Violence against Women 2017’). See also S. De Vido, ‘La Violenza di Genere contro le Donne nel Contesto della Famiglia: Sviluppi nell’Unione Europea alla Luce della Convenzione di Istanbul’, in *Federalismi*, 2017, no. 3(1), pp. 1–25.
- 20 Art. 1 Istanbul Convention.
- 21 A. Di Stefano, ‘Violenza contro le Donne e Violenza Domestica nella Nuova Convenzione del Consiglio d’ Europa’, in *Diritti Umani e Diritto Internazionale*, 2012, no. 6(1), pp. 169–180.
- 22 Art. 7(1) Istanbul Convention.
- 23 Prime Minister Decree, *Extraordinary National Action Plan against Sexual and Gender-based Violence, Covering the Period 2015–2017*. Retrieved 1 March 2018, <http://www.pariopportunita.gov.it/wp-content/uploads/2018/01/Piano-violenza-2015-2017.pdf>, (hereinafter ‘Extraordinary national action plan 2015–2017’ or ‘first NAP’).
- 24 *Extraordinary National Strategic Plan on Men’s Violence against Women, Covering the Period 2017–2020*. Retrieved 1 March 2018, <http://www.pariopportunita.gov.it/wp-content/uploads/2018/03/testo-piano-diramato-conferenza.pdf>. (hereinafter ‘Extraordinary National Strategic Plan 2017–2020’ or ‘second NAP’).

including safe shelters, helplines, assistance for complaints, etc...; and adopt legislative measures to ensure civil remedies.²⁵

Finally, the obligations concerning the prosecution of gender-based violence against women include: taking the necessary measures so that all forms of violence are criminalized and investigated without delay and that adequate and immediate protection is provided to victims; ensuring an assessment of risks for victims;²⁶ establishing emergency barring orders, restraining or protection orders; and *ex officio* investigation and prosecution of physical violence, sexual violence, forced marriage, FGM and forced abortion and forced sterilisation.²⁷ As is well known, the Istanbul Convention sets apart domestic violence as a specific form of violence that affects women disproportionately,²⁸ and has a negative impact also on the lives of child victims or witnesses.²⁹

Lastly, the far-reaching provisions of the Istanbul Convention are reinforced by the existence of a monitoring mechanism consisting of two distinct, but interacting, bodies. The independent expert body, i.e. the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), which is currently composed of 10 members; and a political body, the Committee of the Parties, which is composed of representatives of the States parties to the Istanbul Convention. Each State party to the Convention must appoint a coordinating body responsible for the application, monitoring and evaluation of policies and measures taken under the Convention.³⁰

25 EP Report Violence against Women 2017, pp. 43–44.

26 The assessments need to be carried out in relation to three matters: the lethality risk, the seriousness of the situation and the risk of repeated violence. Art. 51(1) Istanbul Convention.

27 Art. 55 Istanbul Convention.

28 Art. 3(b) Istanbul Convention, defining domestic violence as ‘...all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim’.

29 See for instance Art. 56(2) Istanbul Convention. Furthermore, the Istanbul Convention includes specific provisions on various forms of violence against women, e.g. sexual violence (Article 36), forced marriage (Article 37), psychological violence (Article 33), stalking (Article 34), FGM (Article 38), forced abortion and forced sterilisation (Article 39).

30 Art. 10 Istanbul Convention. State parties are expected to report to GREVIO via the coordinating body. Italy, together with the Netherlands and Serbia, started the GREVIO’s country-by-country evaluation procedure in February 2018 and GREVIO will adopt its final report and conclusions on Italy – and the other countries in this slot – by January 2020. In Italy, the Department for Equal Opportunities – established within the Presidency of the Council of Ministers – acts as the coordinating body for the implementation of policies on violence against women and it is currently filling in the GREVIO questionnaire.

4 Assessment of Italy's Implementation of the OSCE Commitments and the Relevant International Obligations

In order to assess Italy's compliance with the five strands of action identified by the OSCE in the documents outlining its commitments on combating violence against women as well as with the current international legal obligations undertaken by Italy, the present section will provide a comprehensive and critical overview of the measures set up by Italy and the current status of their implementation.

4.1 *Domestic Legal Framework's Compliance with International Standards*

The first strand of the 2014 OSCE Decision on Violence against Women concerns Italy's abidance by the current international standards, which can be primarily assessed in light of the obligations stemming from the CEDAW and the Istanbul Convention. In order to strengthen its legal framework Italy has recently adopted three new laws, focussing respectively on transposing the Istanbul Convention into the Italian domestic system, compensating victims of violence against women and enhancing the rights of orphans of domestic violence crimes.

As a preliminary caveat, it is worth noting that Italy, which was the fifth State to ratify the Istanbul Convention (after Albania, Portugal, Turkey and Montenegro), adopted Decree Law No. 93/2013 implementing urgent measures establishing stricter criminal sanctions against perpetrators of 'particularly heinous events against women' only two months after ratification,³¹ perhaps missing out on the possibility to thoroughly reflect on the wide breadth of the Convention. The Decree was characterized by the clear rhetoric of emergency, with a strong focus on criminal repression, and these characteristics were maintained when the Decree was converted in Law.³² Concerning the criminal repression of acts of violence against women, Italy had already criminalized

Notably, the Department for Equal Opportunities has in practice little effectiveness, largely due to the failure of the President of the Council of Ministers to re-establish a Ministry with decision-making powers and sufficient resources. On this point see also Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Seventh Periodic Report of Italy*, CEDAW/C/ITA/CO/7, p. 6, para. 22, (hereinafter 'CEDAW Committee Concluding Observations 2017').

31 Law No. 77 of 27 June 2013 (G.U. No. 152 of 1 July 2013).

32 F. Staiano, 'The Italian Implementation of the Council of Europe Convention on Violence against Women and Victims' Right to Reparations', in *Italian Yearbook of International Law*, 2015, vol. 24, pp. 269–288.

several conducts, including stalking (Article 612-*bis* Italian Criminal Code) and psychological violence, which can be connected to several criminal offences.³³ Thus, the novelties introduced by Law No. 119/2013 mainly concern new aggravating circumstances in the Italian Criminal Code.³⁴ Notably, Article 55 of the Istanbul Convention affirms that States parties shall ensure that investigations into or prosecution of offences listed in the Convention are not wholly dependent upon a report or complaint filed by the victim and that the proceedings may continue even if the victim withdraws her or his statement or complaint. This provision has not been duly transposed in the Italian national legislation, with the exception of the cases envisaged by Article 612-*bis* paragraph 4.³⁵ This aspect is particularly relevant if analysed against the backdrop of the very low rate of proceedings initiated by the victims *ex parte*; in fact according to the ISTAT Report issued in 2015 only 11,8% of the Italian women who experienced some form of gender-based violence report it to the police.³⁶

Concerning the other three pillars of the Istanbul Convention, i.e. integrated policies, prevention of all forms of violence, and protection of victims from further violence, Law No. 119/2013 has introduced some changes to the existing framework. With regard to measures of prevention from further violence it is worth signalling that when a fact that is deemed to fall within the offences of battery or grievous bodily harm in a context of domestic violence is reported – *not anonymously* – to the law enforcement authorities, the *Questore*, also in the absence of a complaint, can caution the offender after collecting the necessary information from the investigative bodies and after hearing the persons informed of the facts. Moreover, the *Questore* may request the Prefect of the place of residence of the person to be cautioned a suspension of his/her driving license for a period from one to three months.³⁷

In relation to victims' protection the relevant measures include the obligation for law enforcement authorities, health facilities and public institutions to inform the victims of certain crimes – including sexual crimes and child pornography – of the presence of local anti-violence centres, or to put them

33 The Italian Parliament is currently discussing the introduction of three new provisions in its Criminal Code (Arts. 605-*bis*, *ter* and *quater*), which would criminalize forced marriage, compelled trips to conclude a marriage, and child marriage, respectively.

34 G. Pavich, 'Le Novità del Decreto Legge sulla Violenza di Genere: Cosa Cambia per i Reati con Vittime Vulnerabili', in *Diritto Penale Contemporaneo*, 2013, pp. 1–22.

35 A. Merli, 'Violenza di Genere e Femminicidio', in *Diritto Penale Contemporaneo*, 2015, vol. 1, pp. 1–59.

36 ISTAT Report 2015, p. 1.

37 Art. 3 Law No. 119/2013.

in contact with said centres *upon express request of the victim*.³⁸ Another important change is represented by the new Article 384-*bis* of the Italian Code of Criminal Procedure, which introduces the possibility for the criminal police, upon the public prosecutor's authorization, to adopt a precautionary measure – i.e. the urgent removal from the family house – against the person caught in the act of committing specific crimes (including sexual violence, sexual acts with a minor, corruption of a minor, group sexual violence), if there are well-grounded reasons to believe that the criminal behaviours might be reiterated, thus seriously endangering the victim's life or integrity.³⁹ Victims must be promptly informed if the urgent removal from the family house – or any other measures imposed on the abuser – is revoked or replaced.⁴⁰

With respect to foreign nationals Article 4 of Law No. 119/2013 modifies the Consolidated Text on Immigration (*Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*) by introducing Article 18-*bis*. The new provision establishes that a resident permit can be granted to victims of domestic violence when – in the course of police operations, investigations or a criminal proceeding concerning one of the offences punished under the Italian Criminal Code,⁴¹ or under Article 380 of the Italian Code of Criminal Procedure (arrest *in flagrante delicto*) – situations of violence against or abuse of a foreign national are ascertained and a concrete and present danger for his/her safety emerges as a consequence of his choice to escape said violence or of the declarations made during the preliminary investigations or trial.⁴² This provision has come under sharp scrutiny and was criticized by anti-violence organizations, lawyers, immigration experts and gender issues specialists because it links the issuance of a residence permit to the victim's willingness to lodge a formal complaint.⁴³

Finally, concerning the integrated policies, as mentioned above Italy is among the States parties to the Istanbul Convention that decided to implement this pillar through the adoption of a comprehensive national plan or strategy. Article 5 of Law No. 119/2013 specifically deals with the first of these

38 Art. 3(5) Law No. 119/2013.

39 Art. 2(d) Law No. 119/2013.

40 Art. 2(b) Law No. 119/2013, amending Art. 299 of the Italian Code of Criminal Procedure.

41 Art. 572 (Mistreatment of family members and co-habitants); Art. 582 (Bodily injury); Art. 583 (Aggravating circumstances); Art. 583-*bis* (FGM); Art. 605 (Kidnapping); Art. 612-*bis* (Stalking).

42 Art. 4(1) Law No. 119/2013.

43 CEDAW: Work in Progress, *CEDAW Shadow Report*, 2016/2017. Retrieved 10 March 2018, <http://www.aidos.it/wp-content/uploads/2017/06/ItalyCEDAWShadowReport.pdf>, (hereinafter 'CEDAW Shadow Report').

endeavours, i.e. the 2015–2017 extraordinary national action plan against sexual violence and gender-based violence, which *de facto* complements the provisions enshrined in the Law by focussing in particular on preventive and protective measures.

The second relevant law recently introduced in the Italian legal framework is Law No. 122 of 7 July 2016.⁴⁴ Until its adoption Italy was the only State party to the Istanbul Convention that did not comply with the requirement enshrined in Article 30(2),⁴⁵ establishing a subsidiary obligation for the State to compensate victims when the damage is not covered by other sources, such as the perpetrator, insurance or State-funded health and social provisions. Article 30(3) of the Convention, moreover, provides that such compensation should be granted ‘within a reasonable time’. Articles 11–14 of Law No. 122 of 7 July 2016 establish the (many) conditions to access the ‘reimbursement’,⁴⁶ in particular: the victim must qualify for legal aid (meaning that the determination of who can access the procedure is dependent on the social status of the victim); the submission of the request must take place within 60 days from the last documented attempt to obtain compensation from the perpetrators, the victim must not have benefitted from any other financial support granted by public *and/or* private actors. A Ministerial Decree determined the exact amount of the ‘reimbursements’,⁴⁷ establishing a ‘rate table’ that has been strongly criticized and does not match at all the compensation for damages awarded by national judicial bodies.⁴⁸

The third new piece of Italian legislation is Law No. 4/2018 dealing with orphans of domestic violence crimes. Law No. 4/2018 provides legal protection

44 Law No. 122 of 7 July 2016 (G.U. No.158 of 8 July 2016). The Law stems from Italy’s failure to comply not only with the Istanbul Convention, but also with Directive 2004/80/EC relating to compensation to crime victims, 2004, OJ L 261/15, Art. 12(1). Italy’s lack of compliance with the Directive has been ascertained also by the Court of Justice of the European Union (CJEU); see Case C-601/14 *European Commission v Italian Republic*, 2016, ECLI:EU:C:2016:759.

45 EP Report Violence against Women 2017, p. 59.

46 Notably, the Law uses the Italian term *indennizzo*, which does not exactly match the English word ‘compensation’. S. Sforza, ‘Indennizzo Irrisorio per la Vita di una Donna o per le Violenze di Genere Subite’, in *Dol’s Magazine*, 31 March 2017. Retrieved 11 March 2018, <http://www.dols.it/2017/11/03/indennizzo-irrisorio-per-la-vita-di-una-donna-o-per-le-violenze-di-genere-subite/>.

47 Ministry of Internal Affairs, Decree of 31 August 2017 (*Determinazione degli importi dell’indennizzo alle vittime dei reati intenzionali violenti*) (G.U. NO. 237 of 10 October 2017).

48 Ibid., Art. 1: murder EUR 7.200; murder committed by the partner or former partner EUR 8.200; sexual violence EUR 4.800; other relevant crimes EUR 3.000 to cover medical expenses.

and assistance to orphans who are victims of certain crimes and who, in addition to the harm suffered as a result of the crimes themselves, experience other highly adverse economic and practical consequences.⁴⁹ For the benefit of those belonging to this vulnerable category the Law has introduced important amendments to the Italian Civil Code, Criminal Code, Code of Criminal Procedure and other provisions. In particular it is worth stressing that Law No. 4/2018 extends the benefit of *pro bono* representation by a Government attorney for both criminal and civil procedures to minor children and adult sons and daughters of victims of domestic violence who are not financially self-sufficient, regardless of income.⁵⁰ The *pro bono* legal representation is envisaged when the beneficiaries become 'one-parent orphans' as a result of a homicide committed by the spouse of the deceased parent, regardless of whether the two were separated or divorced before the homicide took place, or even if their civil union had already ceased. Orphans are also eligible for *pro bono* representation when the person who committed the homicide was in an emotional relationship with the deceased and stably cohabiting with him or her. Furthermore, as stated in Article 5, the new Article 463-*bis* of the Italian Civil Code suspends the right of a married or legally separated spouse or member of a civil union who is under investigation for the manslaughter or tentative homicide of his or her partner to succeed the deceased until a temporary or permanent acquittal order is issued.⁵¹ Other relevant provisions include the incremental disbursement of funds allocated for scholarships for orphans who are victims of domestic violence crimes;⁵² the loss of housing benefits for the perpetrators;⁵³ and the possibility for the orphans to legally change their surname.⁵⁴

49 See Law No. 4 of 11 January 2018 (G.U. No. 26 of 1 February 2018).

50 Art. 4(1) Law No. 4/2018.

51 Art. 7 Law No. 4/2018. A suspension applies also to the right to claim pensions benefitting the married, legally separated, or divorced spouse, and the partner in a civil union, even if the civil union has ceased, when that party is accused of homicide. During the period of the suspension, minor children or adults who are not financially self-sufficient will receive the proceeds of those pensions without an obligation to return the amounts, even if an acquittal sentence is ultimately issued.

52 Art. 11(4) Law No. 4/2018. According to this provision the existing fund, which was originally established for victims of mafia crimes, extortion demands and usury, has been renamed to include among its beneficiaries also the children orphaned by domestic crimes.

53 Art. 12 Law No. 4/2018.

54 Art. 13 Law No. 4/2018.

4.2 Prevention

With regard to prevention – the second strand of action identified by the 2014 OSCE Decision on Preventing and Combating VAW – Italy has predominantly implemented its commitments in this area through the adoption of two extraordinary national action plans. The first NAP, established by Law No. 119/2013 and for which approximately EUR 10 million per year have been allocated, pursued several lines of action, covering: (i) communication/information to contrast gender stereotypes; (ii) education (encompassing both initiatives to educate children and adolescents as well as training for school teachers and school personnel); (iii) training for all the relevant stakeholders involved (focussing on three main areas: recognition of the signs of violence, assistance to the victims, and support throughout the transition from violence); (iv) risk assessment; (v) psychological and physical assistance to the victims; (vi) victim's reintegration in the society; (vii) rehabilitation of the perpetrators. The first NAP strived to outline, although not in detail, the functions and relative tasks of central administration, Regions, and local entities. In particular, what emerges quite strongly is the pivotal role attributed to the Italian Regions, which, following the Constitutional Reform of 2001 (*Riforma del Titolo v della Costituzione del 2001*), exercise legislative powers and jurisdiction on certain matters and incorporate in the regional legislations the principles stemming from European and international agreements. According to the allocation of tasks established by the 2015–2017 NAP, Italian Regions are in charge of, *inter alia*, providing the necessary training to the health operators; assisting victims' employment and social reintegration; attributing funding to and collecting reliable information about the safe shelters, i.e. anti-violence Centres and safe houses,⁵⁵ operating in each Region.⁵⁶

The second NAP was approved during the State-Regions Conference (*Conferenza Stato-Regioni*) held in November 2017. The new strategic plan enlarges the scope of envisaged actions by placing particular emphasis on aspects

55 The relevant definitions and the minimum requirements to establish anti-violence Centres and safe houses are spelled out in the Agreement, ex Art. 8 (6) of Law No. 131/2003, between the Government, the Regions, the Autonomous Provinces of Trento and Bolzano, the regional and local self-government units, Concerning the Minimum Requirements of anti-violence Centres and safe houses, according to Art. 3(4) D.P.C.M. of 24 July 2014. (Rep. Atti n. 146/CU) (15A01032) (G.U. No. 40 of 18 February 2015).

56 Extraordinary national action plan 2015–2017, p. 16. The management of the safe shelters is usually regulated through an agreement between women's NGOs or networks, the local authorities (*Enti locali*) and the consortium of municipalities (*Unione dei Comuni*).

underscored by the Istanbul Convention, but not duly addressed in the first NAP, such as victims' empowerment,⁵⁷ and the necessity to prevent victims' secondary victimisation, with a particular focus on the special needs of the 1,500 children orphaned by 'femicides' in the past 12 years, as reflected also in the recent legal development discussed in the previous paragraph.⁵⁸ The new national strategic plan revolves around three main axes – i.e. prevention, protection and support, prosecute and punish – and one transversal axis, named assistance and promotion. Concerning the first axis, the second NAP foresees a number of actions aimed at strengthening the protective measures in place and establishing new ones, especially with regard to women refugees, migrants and asylum seekers.⁵⁹ The 'prevention axis' focuses on the need to increase public opinion's knowledge of the causes and consequences of male violence against women. This is a crucial aspect tackling the systemic inequality between women and men, a disparity that is deeply rooted in the public perception and perpetuated through, *inter alia*, gender stereotypes, lack of equal opportunities, sexism in the public and private sectors.⁶⁰ Particular emphasis is placed also on the role of the Ministry of Education, University and Research (*MIUR*) by underscoring, for example, the importance of developing an *ad hoc* curriculum on VAW for the relevant Academic Departments, e.g. Law, Medicine, and Sociology.⁶¹

The second axis concerns the protection and support that must be granted to victims of violence, including child witnesses, and aims in particular at bolstering the role of local actors belonging to the so-called 'anti-violence network', especially anti-violence centres and safe houses, highlighting their essential contribution to achieve victims' recovery and reintegration in the society. The third axis pursues the purpose of strengthening three aspects of the existing legal framework, i.e. improving the risk assessment and the law enforcement agencies' capacity to intervene as promptly and effectively as possible; identifying and sharing best practices across the Italian Tribunals to increase the efficacy of judicial proceedings dealing with violence against women; and intensifying the focus on the persecution of crimes committed

57 This approach is also in line with the G7 'Roadmap for a Gender-responsive Economic Empowerment', 2017, Taormina.

58 Extraordinary National Strategic Plan 2017–2020, p. 25. See *infra* Sect. 3.1.3.

59 The second NAP envisages training activities for all the actors that, in various capacities, work with asylum seekers, refugees and migrants. Extraordinary National Strategic Plan 2017–2020, p. 19.

60 *Ibid.*, pp. 12–15.

61 *Ibid.*, p. 19.

against women refugees, migrants and asylums seekers.⁶² The fourth, transversal, axis focuses on the assistance and promotion of the NAP and it is also concerned with the evaluation of the measures adopted, an essential issue that was utterly neglected in the previous extraordinary national action plan.

Whereas the 2014 OSCE Decision on Preventing and Combating Violence against Women is silent on the issue of monitoring, the 2004 OSCE Action Plan for the Promotion of Gender Equality on the other hand strongly stressed the importance of establishing or strengthening existing mechanisms to monitor and oversee the implementation of the measures undertaken.⁶³ The establishment of national bodies or mechanisms to deal with the coordination, monitoring and implementation of the measures adopted by Italy to comply with its international obligations is recommended *and* required also by, respectively, the CEDAW Committee in its General Recommendation No. 35 and Article 10 of the Istanbul Convention.

Italy's 2015–2017 NAP foresaw the establishment of a National Observatory on violence,⁶⁴ set up only in November 2016, to monitor the implementation of the extraordinary national action plan, identify best practices and support the work of the so-called Control Room (*Cabina di Regia*). The *Cabina di Regia*, which is the inter-institutional team that coordinates the NAP, is presided by the Ministry for Constitutional Reforms and Relation with the Parliament and composed of representatives of other Ministries as well as of regional and local entities.⁶⁵ The first NAP conceived also the establishment of a national database (*banca dati*), operated and managed by ISTAT, aimed at collecting the relevant data on acts of violence against women perpetrated across the country and providing a more comprehensive picture of the relevant trends.⁶⁶

After the first NAP came to an end – even though a number of measures had not been implemented/completed yet and the effectiveness of the plan had not been assessed – the second one was approved and it is (still) about to

62 Ibid., p. 45. See also Senato della Repubblica, Camera dei Deputati, Documentazione per le Commissioni, Riunioni interparlamentari, *Le Donne Rifugiate e Richiedenti Asilo nell'UE* (FEMM), 2016. Retrieved 25 March 2018, <https://www.senato.it/service/PDF/PDFServer/BGT/00966319>.

63 2004 OSCE Action Plan on Gender Equality, p.10, para. 42.

64 Extraordinary national action plan 2015–2017, p. 8, para 3.1. The National Observatory is made of three Working Groups: on legislation, protection paths, and strategic framework.

65 Ministry for Constitutional Reforms and Relation with the Parliament, Decree of 25 July 2016.

66 Extraordinary national action plan 2015–2017, pp. 11–12; Memorandum of Understanding between the Ministry for Constitutional Reforms and Relation with the Parliament and ISTAT, 25 November 2016.

take over. Notably, under the extraordinary national strategic plan the National Observatory on violence has been replaced by a Technical Support Committee, which is going to be in charge of the same tasks.⁶⁷ Furthermore, the fourth transversal axis of the second NAP envisages the adoption of measures aimed at reinforcing the collection of relevant data and assessment; as well as promoting a stricter and more efficient monitoring of the plan, combining a three steps evaluation, i.e. *ex ante*, *in itinere* and *ex post*,⁶⁸ and distributing tasks and responsibilities to all the relevant actors involved at the national, regional and local levels. The evaluation will be conducted by the Department for Equal Opportunities together with the Institute for Research on Population and Social Policies of the National Research Council and it will ascertain if and to what extent the measures envisaged by the NAP have been implemented and which results have been successfully achieved.⁶⁹ Lastly, it is worth stressing that the second NAP is not yet under implementation and that national NGOs, women's networks and Trade Unions are currently urging the Government and the Parliament to make available the resources destined to the enforcement of the plan.⁷⁰

The CEDAW Committee – in its Concluding Observations on the periodic reports submitted by Italy – welcomed the establishment of the National Observatory, now Technical Support Committee,⁷¹ but noted that Italy has not yet set up a national human rights institution, to be established in compliance with the principles relating to the status of national institutions (the Paris Principles), mandated to protect and promote all human rights,⁷² including women's rights.⁷³ The recommendation to create an independent national human rights institution with a section dedicated to women's rights was also made by the Special Rapporteur on violence against women, its causes and

67 Extraordinary National Strategic Plan 2017–2020, p. 38, para. 5.1.

68 Ibid., p. 35.

69 Ibid.

70 D.i.Re Donne in Rete contro la Violenza, 'Il Governo attui il Piano strategico per la lotta alla violenza maschile sulle donne', 23 March 2018. Retrieved 25 March 2018, <https://www.direcontrolaviolenza.it/sindacati-e-associazioni-il-governo-attui-il-piano-strategico-per-la-lotta-alla-violenza-maschile-sulle-donne/>.

71 CEDAW Committee Concluding Observations 2017, p. 8, para. 27.

72 Principles relating to the Status of National Institutions, GA Res. 48/134, A/RES/48/134 (20 December 1993).

73 CEDAW Committee Concluding Observations 2017, para. 24. See also CEDAW Shadow Report, p. 3.

consequences.⁷⁴ It is difficult to determine when and if Italy will comply with the commitment to set up an independent national human rights institution, however in the introductory statement before the UN CEDAW Committee, the Italian Representative affirmed that the draft legislation for the establishment of such body is currently under discussion and that an amended text has been submitted to the Inter-ministerial Committee for Human Rights.⁷⁵

4.3 Protection

According to the 2014 OSCE Decision on Preventing and Combating Violence against Women, States are encouraged to ensure that victims of all forms of violence against women receive timely and adequate information on available legal measures and support services, such as sexual violence crisis centres, shelters or other relevant structures, as well as healthcare, and to ensure that they are easily accessible. Furthermore, the OSCE commitments in this sphere also include the promotion of programmes and activities that empower and support women who have been victims of violence. Most of Italy's measures concerning victims' protection and support are primarily regulated through policy documents, in particular the extraordinary national action plan and the subsequent extraordinary national action strategy.

Concrete measures available to victims of gender-based violence seeking immediate assistance and advice include also the possibility to resort to a helpline, as set forth by the Istanbul Convention.⁷⁶ Since 2006, the Department for Equal Opportunities has made available the helpline 1522 – currently managed by a voluntary national association called *Telefono Rosa* – as a public service, in order to provide exclusive listening and support to women victims of violence, including stalking. The number is available 24/7, it is accessible from the entire national territory free of charge and the languages spoken are Italian, English, French, Spanish and Arabic.⁷⁷ The telephone operators dedicated to the service provide an initial response to the needs of victims of

74 Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to Italy, A/HRC/20/16/Add.2 (15 June 2012), para. 94(b), p. 22.

75 Introductory Statement, Address by Min. Plen. Fabrizio Petri, President of the Inter-ministerial Committee for Human Rights, On the Seventh Periodic Report of Italy Relating to the International Convention on the Elimination of All Forms of Discrimination against Women, Before UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), Geneva, 4 July 2017.

76 Art. 24 Istanbul Convention.

77 Notably, other countries offer this service in a larger number of languages. In Germany, for instance, the State helpline is available in German, English, French, Spanish, Russian, Turkish and 11 other languages. EP Report Violence against Women 2017, p. 31.

gender-based violence and stalking, offering useful information and guidance towards the public and private social and health services available in Italy. In particular the helpline tries to offer operational support for measures taken by local anti-violence networks as well as ensuring that the necessary communication channels are established between the central judicial, social, health, safety and public order administrative bodies.⁷⁸

According to Article 23 of the Istanbul Convention States parties shall also provide easily accessible shelters in sufficient numbers to offer assistance and safe accommodation to victims, especially women and their children. The Explanatory Report to the Istanbul Convention recommends that safe accommodation in specialized women's shelters should be made available in every region of each country, with one family place per 10.000 head of population.⁷⁹ In Italy – since the entry into force of Law 119/2013 and the beginning of the implementation of the first NAP – the number of shelters has significantly increased, although it is still far from the ideal number indicated in the Explanatory Report. In 2013 there were 188 anti-violence centres and 163 safe houses, as of October 2017 the shelters are 554 in total, 296 anti-violence centres and 258 safe houses.⁸⁰ In light of the deployment of further efforts and resources envisaged to support the new NAP, those numbers are likely to keep growing over the next three years, even though it is not yet clear how much funding will be specifically devoted to the shelters, nor how the Regions and the other local authorities involved intend to allocate them. Even though the minimum requirements to open and manage new shelters have been outlined in 2014, there is a lack of a stricter regulatory framework and transparency,⁸¹ which results in significant disparities across the Italian Regions.⁸² Another relevant issue is represented by the fact that foreign women without a residence permit find obstacles even to access anti-violence centres.⁸³ Since, according to Article 18-*bis*

78 R. Palmén et al., 'WAVE: Violence Against Women. Comparative Report: Italy, Spain and Turkey', 2016, p. 43. Retrieved 1 April 2018, <https://notus-asr.org/wp-content/uploads/2016/05/WAVECRFinal.pdf>.

79 Explanatory Report to the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence, p. 25, para. 135.

80 ISTAT, 2017, <https://www.istat.it/it/violenza-sulle-donne/il-contesto/politiche>. Retrieved 20 April 2018.

81 CEDAW Shadow Report, p. 26.

82 The regional and local disparities in the availability and quality of assistance and protection services, including shelters, for women who are victims of violence have been underscored also by the CEDAW Committee. CEDAW Committee Concluding Observations 2017, p. 8, para. 27(g).

83 CEDAW Shadow Report, p. 24.

of the Consolidated Text on Immigration, the issuance of the residential permit is subject to the victim's willingness to lodge a formal complaint, those who do not report the violence suffered cannot, in principle, access the services made available by the anti-violence Centres.

The 2014 OSCE Decision on Preventing and Combating Violence against Women includes amongst the measures of protection and support also concerted actions to achieve victims' empowerment.⁸⁴ Such measures are mentioned in the extraordinary national strategy,⁸⁵ and the relevant institutional actors that should contribute to enhance victims' empowerment have been, by and large, identified and listed in the strategy.⁸⁶ Nonetheless, the second NAP is very vague when it comes to explain what kind of actions are envisaged, what is the timeline and how and to what extent the different actors involved are expected to cooperate.

4.4 *Prosecution*

One of the most important elements in combatting violence against women – as highlighted in the 2014 OSCE Decision on Preventing and Combating Violence against Women – is the prosecution and punishment of perpetrators.⁸⁷ The same approach is reflected also in the obligations enshrined in the Istanbul Convention. As mentioned above, with the exception of forced marriage, Italy has already criminalized all the forms of violence against women identified by the Convention. Notably, in order to effectively enhance accountability, reinforcing and amending the criminal provisions is necessary, but not sufficient as the Istanbul Convention places on the States parties the duty to implement positive obligations, encompassing measures taken to exercise 'due diligence' to prevent, investigate, punish and provide reparation for any acts of violence perpetrated by non-State actors and covered by the Convention, as required by Article 5(2).

This is in line with the approach adopted over the years by the European Court of Human Rights (ECtHR), which has dealt with a number of cases concerning VAW – and in particular domestic violence – stressing the existence and the relevance of State's positive obligations towards the victims.⁸⁸ Recently

84 2014 OSCE Decision on Violence against Women, p. 4, para. 5.

85 Extraordinary National Strategic Plan 2017–2020, p. 29.

86 Ibid.

87 2014 OSCE Decision on Violence against Women, p. 4, para. 7.

88 See for instance *Opuz v Turkey* Application No.33401/02, Judgment, 9 June 2009; *Ebcin v Turkey* Application No. 19506/05, Judgment, 1 February 2011; *Ranstsev v Cyprus and Russia* Application No. 25965/04, Judgment, 7 January 2010. See L. Grans, 'The Istanbul

two important cases against Italy have been brought before the ECtHR, both of them addressing domestic violence crimes and issued respectively in 2014 and 2017. Without lingering on those cases, which have already been scrutinized and commented upon,⁸⁹ what is relevant to stress for the purpose of this analysis is that in the first case, *Rumor v Italy*⁹⁰ – based on the applicant's complaint that the authorities had failed to support her following a serious incident of domestic violence against her or to protect her from further violence – the ECtHR weighed on the soundness of the Italian legal framework prior to the entry into force of the Istanbul Convention, concluding that:

[t]he authorities had put in place a legislative framework allowing them to take measures against persons accused of domestic violence and that that framework was *effective in punishing the perpetrator of the crime of which the applicant was victim and preventing the recurrence of violent attacks* against her physical integrity.⁹¹

The Court, therefore, held that there had been no violation of the European Convention on Human Rights (ECHR), in particular Article 3 (prohibition of inhuman or degrading treatment), either taken alone or in conjunction with Article 14 (prohibition of discrimination). In *Talpis v Italy* – issued after the entry into force of the Istanbul Convention, which was used by the Court as a key instrument to interpret positive legal obligations deriving from the rights enshrined in the ECHR – the Court reached a completely different conclusion.⁹² In this specific case, Ms Talpis reported the violent behaviour of her husband to the police authorities, but they only responded seven months later and this delay resulted in the murder of the applicant's son. Thus, the focus of the judgment on this occasion was not the Italian legal framework itself, but rather how the authorities intervened and conducted the criminal proceedings, which

Convention and the Positive Obligation to Prevent Violence', in *Human Rights Law Review*, 2018, no. 18(1), pp.133–155; S. De Vido, 'States' Positive Obligations to Eradicate Domestic Violence: The Politics of Relevance in the Interpretation of the European Convention on Human Rights', in *ESIL Reflections*, no. 6(6), pp. 1–11.

89 R.J.A. McQuigg, 'Domestic Violence as a Human Rights Issue: Rumor v. Italy', in *European Journal of International Law*, 2016, no. 26(4), pp. 1009–1025; M. Buscemi, 'La Protezione delle Vittime di Violenza Domestica davanti alla Corte Europea dei Diritti dell'Uomo. Alcune Osservazioni a Margine del Caso Talpis C. Italia', in *Osservatorio sulle Fonti*, 2017, no. 3, pp. 1–26.

90 *Rumor v Italy* Application No. 72964/10, Judgment, 27 May 2014.

91 *Ibid.*, para 76, (emphasis added). See McQuigg, *supra* note 89, pp. 1013–1014.

92 *Talpis v Italy* Application No. 41237/14, Judgment, 2 March 2017.

according to the Court pointed to a 'judicial passivity' incompatible with the positive obligations under Article 2 and Article 3 of the ECHR.⁹³ Moreover, the Court found that there had been a violation of Article 14 of the Convention (in conjunction with Articles 2 and 3), due to existing societal discrimination and high levels of domestic violence, *de facto* endorsed by the Italian authorities due to a discriminatory failing in the system.⁹⁴ In addition to the criticalities underscored in the previous section with regard to the legal framework enacted so far, the findings of the ECtHR confirm that Italy – as a State party to the Istanbul Convention and the ECHR – in order to pursue its international commitments is called to implement positive obligations. This means that the measures envisaged under Italy's domestic laws and concerning the criminalization and prosecution of the relevant conducts as well as the right to a remedy and reparation for the victims, must not only be in place, but also enforced in a prompt and effective way.

4.5 *Partnership*

As already mentioned, the 2014 OSCE Decision on Preventing and Combating Violence against Women encourages Participating States to develop comprehensive and coordinated national policies to thwart all forms of violence against women. According to the OSCE commitments, such policies shall encompass all relevant actors, including law enforcement and the justice sector, parliaments, national human rights institutions, healthcare and social services as well as civil society organizations.⁹⁵ Besides the measures envisaged in the extraordinary national strategic plan in order to bolster the cooperation of all the actors involved in the anti-violence networks,⁹⁶ it is worth placing emphasis on the recent adoption of a much awaited set of guidelines, drafted by the National Observatory on violence, that will inform and facilitate the work of all the health sector' stakeholders that play a role in supporting and assisting women victims of violence as well as their children.⁹⁷ The guidelines conceive

93 Ibid., paras 130–132.

94 Ibid., para. 145. On this point see also the Partially Dissenting Opinion of Judge Spano, para. 23, according to whom '...there is insufficient evidence of institutional discrimination in Italy to ground a finding of an Article 14 violation'.

95 2014 OSCE Decision on Violence against Women, p. 4, para. 8.

96 Extraordinary National Strategic Plan 2017–2020, p. 14, 21, 39, 44 etc... See also Art. 1(124) Law No. 107 of 13 July 2015 (G.U. No. 162 of 15 July 2015).

97 D.P.C.M Decree of 27 November 2017 (G.U. No. 24 of 30 January 2018) (*Linee guida di indirizzo e orientamento per le Aziende sanitarie e ospedaliere in tema di soccorso e assistenza socio-sanitaria alle donne vittime di violenza e alle/ai loro eventuali figlie/i vittime di violenza assistita*).

training activities for all the health professionals who come into contact with the victims and aim to establish an integrated response by coordinating and channelling the interventions and the expertise of all the relevant actors, who need to improve the level and quality of interaction with the local anti-violence networks.⁹⁸

5 Key Findings of the Assessment and Ways Forward

The analysis presented in the previous paragraphs shows that Italy has put in place a number of legislative and policy measures to enhance its level of compliance with the OSCE commitments related to violence against women as well as with the existing international legal framework. The key findings of the assessment carried out in the present article can be more efficiently summarised in relation to each of the five strands of action identified by the 2014 OSCE Decision on Preventing and Combating Violence against Women.

Concerning the first strand of action, i.e. the domestic framework's compliance with the international legal standards, Italy has ratified both the CEDAW and the Istanbul Convention and has adopted new laws to fulfil its international obligations. The legislative effort to transpose the Istanbul Convention's obligations into the Italian domestic framework through the adoption of Law No. 119/2013 has been praised by the CEDAW Committee in its Concluding Observations on the periodic report submitted by Italy.⁹⁹ Nonetheless, the current legislation is particularly concerned with the criminal repression of acts of violence against women, whereas other important aspects – such as prevention and protection – are not enshrined in the existing legal framework, but rather in policy documents. Full compliance with the Istanbul Convention could be achieved, by, *inter alia*, expediting the criminalization of child marriages and forced marriages, making investigations into or prosecution of the offences listed under the Convention not wholly dependent upon a report or complaint filed by a victim, duly implementing the provisions of Chapter VII on Migrants and Asylum Seekers, and guaranteeing adequate and prompt State's compensation to victims of violence against women.¹⁰⁰

98 Ibid., according to the guidelines doctors, nurses etc... must resort to the 'Brief Risk Assessment for the Emergency Department – DA5' in order to assess the condition of the victim/patient and decide which steps implement and which actor alert.

99 CEDAW Committee Concluding Observations 2017, p. 8, para. 27.

100 EP Report Violence against Women 2017, p. 60. For instance in Belgium financial assistance is granted to victims with serious physical and psychological injuries as a result of

Under the strand dealing with the domestic framework's compliance with international standards, the 2014 OSCE Decision also requires States to intensify the efforts undertaken to collect, maintain and make publicly reliable, comparable, disaggregated, and comprehensive evidence based data and statistics regarding all forms of violence against women. Italy so far has implemented this commitment by establishing – as foreseen by the first NAP – a national database (*banca dati*), operated and managed by ISTAT. The database collects and analyses aggregated data provided by different stakeholders, including *Telefono Rosa* and the actors belonging to the local anti-violence networks.

With regard to the second strand, i.e. prevention, the relevant measures are primarily outlined in the two national plans adopted by Italy. At the time of writing the extraordinary national strategic plan 2017–2020 has not been enacted yet and it is not clear if and how the funds, EUR 35,4 million, will be allocated, distributed and which key priorities will be identified and implemented under each pillar. In addition to the lack of implementation, two aspects seem particularly underdeveloped in the plan, i.e. combating gender stereotypes and developing measures aimed at changing the perpetrators' behaviour. With regard to the first aspect, the second NAP envisages detailed actions only in relation to the mass media,¹⁰¹ whereas other areas of intervention – in particular within the education sector – are not adequately outlined. Moreover, in relation to the actions aimed at avoiding repetition of offences, it should be underscored that the extraordinary national strategic plan 2017–2020 does not foresee specific measures, but it delegates to the Ministry of Justice the tasks of cooperating with Universities and Research Centres to single out risk factors, identify best practices, and stipulating agreements with Regions and local authorities to implement actions targeting detainees.¹⁰² It follows that this particular aspect – crucial to strengthening prevention – is not fully in line with the obligation to establish preventative intervention and treatment programmes for perpetrators set forth also by Article 16 of the Istanbul Convention. Furthermore, as already stressed above, Italy has not yet set up a National Human Rights Institution, to be established in compliance with the principles relating to the status of national institutions (the Paris Principles), mandated to protect and promote all human rights, including women's rights. As a transversal issue, the creation of a national human rights institution will have a positive impact on all the five strands of action identified by the OSCE, and in

the violence, and this is not limited to certain crimes, like in the case of the Italian legislation, but it includes all forms of violence against women.

101 Extraordinary National Strategic Plan 2017–2020, p. 23.

102 Extraordinary National Strategic Plan 2017–2020, p. 33.

particular on measures of prevention and protection that are 'softer', since they are not enshrined in the Italian legal framework, but only in policy documents.

When it comes to protection, as discussed above, such measures under the OSCE commitments encompass timely and adequate information on available legal actions and support services, adequate access to said services and the implementation of programmes and activities that empower women who have been victims of violence. Italy's approach with regard to this strand of action has been rather proactive over the past few years, since information concerning the use of the helpline are duly monitored and collected and the number of shelters has significantly increased. Two major concerns remain: first, as underlined also by the CEDAW Committee in its Concluding Observations on the periodic report submitted by Italy,¹⁰³ there are still significant regional and local disparities in the availability and quality of assistance and protection services, including shelters. Second, Regions allocate the resources earmarked for shelters and other support services according to their own laws and regulations, thus meaning that the approach, besides not being homogenous, in some instances may lack transparency.

The OSCE commitments concerning the fourth strand, i.e. prosecution, explicitly refer to the development and 'effective implementation' of legislation that criminalizes violence against women and that provides for preventative and protective measures.¹⁰⁴ In other words, the OSCE commitments underscore that not only Participating States need to have in place an adequate legal framework, but they must also enact it in an effective way. Such approach, restated by the ECtHR in the *Talpis* case, recognizes clearly the role that legislative, administrative and policy frameworks can play in implicitly condoning domestic violence, and thus stresses the urge to focus on State's positive obligations in order to *proactively* prevent and respond to every possible form of violence against women.¹⁰⁵

Finally, with regard to the fifth strand, i.e. partnership, the national action plans adopted by Italy, as well as the guidelines that target all the professionals working in the health sector, revolve around the clear aim of strengthening cooperation amongst the actors involved in combating VAW, in line with the 2014 OSCE Decision on Preventing and Combating Violence against Women.¹⁰⁶ Given the number of actors taking part in the various phases and efforts,

103 CEDAW Committee Concluding Observations 2017, p. 8, para. 27.

104 2014 OSCE Decision on Violence against Women, p. 4, para. 7.

105 F. De Londras and K. Dzehtsiarou, *Great Debates on the European Convention on Human Rights*, Palgrave Great Debates in Law, London, 2018, p. 145.

106 2014 OSCE Decision on Violence against Women, p. 4, para. 8.

it is obvious that excellent coordination and communication are needed in order to enact effective multi-agency interventions, sensibly manage the existing resources, and provide adequate and prompt assistance to the victims. As already stressed in relation to other strands of action, the main challenge is represented by the effective implementation of the envisaged measures. In fact, the new national strategic plan has been adopted, but not yet enacted, whereas the guidelines must be implemented within one year from their publication in the *Gazzetta Ufficiale*, i.e. by February 2019. At the time of writing it is, hence, impossible to provide a clear assessment of how the issue of partnership has been concretely put into effect, nonetheless, it is trivial to observe that the prompt implementation of the newly adopted guidelines dedicated to professionals working in the health sector would mark another, and much needed, step in the right direction.