



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 205

March 2017

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***Talpis v. Italy* - 41237/14**

Judgment 2.3.2017 [Section I]

**Article 2**

**Positive obligations**

**Article 2-1**

**Life**

Failure to assess risk to life in time in domestic-violence case: *violation*

**Article 3**

**Effective investigation**

**Positive obligations**

Delays in mounting adequate response to acts of domestic violence: *violation*

**Article 14**

**Discrimination**

Shortcomings in protection of woman against domestic violence: *violation*

*Facts* – In June and August 2012 the police were called out twice to the applicant's home to deal with instances of domestic violence. Her husband was fined for unauthorised possession of a lethal weapon and a knife was seized. The applicant left the matrimonial home and was provided with accommodation by an association. On 5 September 2012 she lodged a criminal complaint for bodily injury, ill-treatment and threats of violence, and requested emergency protection measures.

During her first police interview in April 2013 the applicant altered her statements: she stated that she had been struck but not threatened and that she had since returned to the matrimonial home. In the light of those changes, which the applicant explained on pressure exerted by her husband, the investigation was partly discontinued (in respect of her complaint of ill-treatment and threats of violence) but continued in respect of her complaint of bodily injury (the husband was convicted in October 2015 and ordered to pay a fine).

On 25 November 2013 the police were called out for the third time. A door had been broken down and the floor was strewn with bottles of alcohol, but neither the applicant nor the couple's son showed any traces of violence: the applicant merely stated that her husband had been drinking and needed a doctor, adding that she had lodged a complaint

against him in the past but had since changed her allegations. The husband was taken to hospital. The same night he was fined for public drunkenness. He subsequently returned home armed with a kitchen knife, with which he stabbed the applicant several times. Their son had been killed while attempting to stop the attack.

In January 2015 the applicant's husband was sentenced to life imprisonment: in addition to murder and attempted murder, he was found guilty of ill-treatment after witnesses attested to previous acts of violence.

#### *Law*

Article 2: The State has a positive obligation to take preventive operational measures to protect an individual whose life is at risk. The existence of a real and immediate threat to life must be assessed with due regard to the specific context of domestic violence: the aim must not be only to protect society in general, but consideration must also be given to the occurrence of successive episodes of violence over time within the family unit. The national authorities should have had regard to the applicant's situation of great mental, physical and material insecurity and vulnerability and assessed the situation accordingly, providing her with appropriate support. In such a context the assailant's rights cannot prevail over the victims' rights to life and physical and mental integrity.

In the instant case, even though investigations were instigated against the applicant's husband for the offences of family ill-treatment, bodily injury and threats of violence, no protection order was issued and the applicant was not heard until September 2012, seven months after lodging her complaint.

Such a delay could only serve to deprive the applicant of the immediate protection necessitated by the situation. Although no further physical violence occurred during that period, the Court could not disregard the fact the applicant, who was being harassed by telephone, lived in great fear while staying at the reception centre.

Although it was true that the applicant had changed some of her statements during the police hearing thus causing the authorities to discontinue part of the investigation, the authorities had failed to conduct any assessment of the risks – including the risk of renewed violence – at a time when a prosecution was still under way for bodily injury. The Court therefore rejected the Government's argument that there had been no tangible evidence of an imminent danger to the applicant's life.

The authorities' delays had deprived the complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of the husband's acts of violence, which reached its peak during the tragic night of 25 November 2013.

During that night the police had nevertheless had to intervene twice, firstly when they inspected the devastated apartment, and secondly when they stopped and fined the applicant's husband for public drunkenness. On neither occasion did they make any particular attempt to provide the applicant with adequate protection consonant with the seriousness of the situation, even though they knew about the violence inflicted on her by her husband.

The Court could not speculate on how things would have turned out had the authorities adopted a different approach. However, the failure to implement reasonable measures that might realistically have changed the course of events or mitigated the damage caused was sufficient to engage the State's responsibility.

Having been in a position to check, in real time, the husband's police record, the security forces should have known that he constituted a real risk to her, the imminent materialisation of which could not be excluded. Accordingly, the authorities had failed to

use their powers to take measures which could reasonably have prevented, or at least mitigated, the materialisation of a real risk to the lives of the applicant and her son. By signally lacking in the requisite diligence, the authorities had failed to comply with their positive obligations.

*Conclusion:* violation (six votes to one).

Article 3: The applicant could be considered as belonging to the category of “vulnerable persons” entitled to State protection, in view, in particular, of the acts of violence which she had suffered in the past. Those violent acts, which had involved both physical injuries and psychological pressure, were sufficiently serious to be classified as ill-treatment within the meaning of Article 3 of the Convention.

Under the terms of the Council of Europe’s Convention on preventing and combating violence against women and domestic violence ([Istanbul Convention](#), which was ratified by Italy and came into force in 2014), special diligence is required in dealing with complaints concerning such violence. In that sphere it is incumbent on the national authorities to consider the victim’s situation of extreme mental, physical and material insecurity and vulnerability and, with the utmost expedition, to assess the situation accordingly.

The Court had noted under Article 2 that the authorities’ failure to take prompt action had voided the applicant’s complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of her husband’s acts of violence. In the present case there had been no explanation for the following delays: the seven months of official inertia before the instigation of criminal proceedings; and the three years of criminal proceedings for severe bodily injury after the applicant had lodged her complaint. This judicial inertia was utterly incompatible with the requirements of Article 3 of the Convention.

*Conclusion:* violation (unanimously).

Article 14 read in conjunction with Articles 2 and 3: The Court referred to its case-law on the gender- discrimination aspect of failures by the authorities to protect women against domestic violence.

The extent of the problem in Italy was highlighted by the conclusions of the United Nations [Special rapporteur on violence against women](#), its causes and consequences, following his official visit to Italy in 2012, by those of the Committee established under the Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#); 49<sup>th</sup> session, 2010), and also by those of the National Institute of Statistics ([ISTAT](#), 2014).

The applicant presented prima facie evidence in the form of statistical data demonstrating, first of all, that domestic violence primarily affects women and that despite the reforms implemented a large number of women were being murdered by their partners or former partners (femicide), and, secondly, that the socio-cultural attitudes of tolerance of domestic violence persisted. That prima facie evidence distinguished the present case from that of *Rumor v. Italy* ([72964/10](#), 27 May 2014), the circumstances of which were very different.

The Court had noted under Articles 2 and 3 the domestic authorities’ failure to provide the applicant with effective protection and the situation of impunity enjoyed by the perpetrator of the acts of violence. By underestimating, through their lack of response, the seriousness of those acts, the Italian authorities had effectively condoned them. The applicant had therefore been a victim of discrimination as a woman.

*Conclusion:* violation (five votes to two).

Article 41: EUR 30,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage rejected.

(See also *Opuz v. Turkey*, 33401/02, 9 June 2009, [Information Note 120](#); *M.G. v. Turkey*, 646/10, 22 March 2016, [Information Note 194](#); *Halime Kılıç v. Turkey*, 63034/11, 28 June 2016, [Information Note 198](#); see also the factsheet on [Domestic violence](#))

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