

THE PASSIVITY OF ITALY IN COUNTERACTING DOMESTIC VIOLENCE: THE *TALPIS V. ITALY* CASE

Alessia Nicastro*

I. Introduction

On March 2017 the European Court of Human Rights (ECtHR or the Court) condemned Italy for the violation of Articles 2, 3, and 14 of the European Convention on Human Rights (ECHR) in the *Talpis v. Italy* decision². This was a case of domestic violence that tragically culminated in the death of the applicant's own son. For the first time, the Court condemned Italy, in a domestic violence case, for having discriminated against the applicant as a woman. In particular, the Court identified three violations of the ECHR. All of these three breaches have been traced back to only one but extremely significant element: the inertia of the Italian authorities – namely, the policemen and the judicial authorities who took charge of the case from the outset.

According to the Court, the involved authorities acted with such a long-lasting delay (i.e., passivity and underrating of potential danger) that they eventually contributed to the tragic development of the events. Notably, the Court held that this substantial inertia amounted to the authorities' failure to ensure the adequate protection that the applicant was legally entitled to receive, pursuant to the Convention's provisions. In fact, after suffering repeated acts of violence by her husband's hand, the applicant filed a formal complaint against him. Nonetheless, the remarkable delay of the authorities deprived it of any effects and thus has led to the infringement of Article 2 ECHR, which enshrines the right to life. Similarly, the Italian police's inactivity caused the lack of protection of the applicant, resulting in the violation of Article 3 ECHR. Finally, the Court stated that the – even involuntary – failure of a state to fulfil its obligations to protect victims of domestic violence results in an intrinsically discriminatory treatment. In the present case, this failure triggered the violation of Article 14 ECHR, read with Articles 2 and 3. On the same ground, the Court ascertained the violation of women's right to equal protection before the law.

The present contribution aims at shedding light on the Court's analysis of the state's obligations to prevent criminal acts by private parties, particularly in relation to domestic violence. A detailed examination of this case reveals that the protection of women victims of domestic violence has greatly benefited from the evolving interpretation of the ECHR thanks to the exegetical practice of the Court. In this regard, the *Talpis* decision is of paramount importance since it represents a crucial

* *Alessia Nicastro is currently a Master student of International Law at the Graduate Institute of Geneva, Switzerland. She graduated from the University of Florence (Italy) in 2020 with a Bachelor's Degree in Political Sciences and International Relations with highest honours.*

² *Talpis v. Italy*, Judgment, 2 March 2017, [2017] ECHR, at: <[https://hudoc.echr.coe.int/eng#{"fulltext":\["\"CASE%20OF%20TALPIS%20v.%20ITALY\""\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-171994"\]}](https://hudoc.echr.coe.int/eng#{)> (accessed 15 January 2021).

jurisprudential advancement of the Court on domestic violence. In addition, it is paradigmatic of how national authorities' usually deal with this matter. In fact, the *Talpis* case shows that the very roots of domestic violence are to be traced back to systematic social and cultural problems³ which can be found not only at the national but also at the international level. This significantly implies that violence against women is not purely a private question, but the result of a society that excludes and discriminates women as such, at the same time being unable to provide means of protection and prevention to such criminal acts.

Additionally, this case has the prizable role of underlining that the context in which the state's responsibility lies is no longer prevalently national (as it was in the past), but also European and international⁴. This ties states to the international community, requiring them to introduce legislative changes to guarantee the adequate protection of human rights. It follows that state's obligation to protect victims of domestic violence derive not only from the domestic but also from the international legal system. Likewise, the roots of violence against women trace back to women's historic discrimination. As such, it is to be considered not only a public health but also a human rights issue, being women and men equally subjects of law⁵. Consequently, cases of domestic violence need to be addressed also at the international law plane. In this sense, the *Talpis v. Italy* decision is extremely symbolic of the domestic violence problem, both at the national and international level. Importantly, it also shows that within the international community more needs to be done to effectively counteract it and to ensure that States comply with their obligations.

This article will firstly retrace the course of the events at the root of this ruling. Secondly, it will examine the Court's reasoning considering the relevant legal sources, both national and international. Subsequently, it will stress the most relevant differences and analogies with the previous jurisprudence of the Court in the area of domestic violence. Here, it will be crucial to analyse the two dissenting opinions attached to the judgement, by judges Spano and Eicke. These significantly mirror the position of the Italian authorities, and thus overtly conflicts with the general approach of the Court's majority. Lastly, it will reflect upon the relevance of this decision as highly symbolic not only of domestic violence cases *per se* but also of the state's responsibility to protect the victims. In fact, the *Talpis* judgment sharply emphasises the state's obligation to provide, and concretely apply, the adequate measures to counteract domestic violence. In particular, the main ground on which the decision relies on is that should the state had acted promptly to Ms Talpis complaint, the murder of the son could have been avoided.

II. Legal Analysis

II.1 The Facts at the Origin of the Decision

³ M. Bertolino, 'Violenza e famiglia: Attualità di un fenomeno antico', 2015, in *Rivista italiana di diritto e procedura penale*, n. 4.

⁴ B. Nascimbene, 'Tutela dei diritti fondamentali e "violenza domestica". Gli obblighi dello Stato secondo la Corte CEDU', in *La legislazione penale*, 12 June 2018, p. 10.

⁵ J. Joachim, 'Shaping the human rights agenda: the case of violence against women', 2000, in *Gender politics in global governance*, edited by K. Meyer & E. Prugl E., Rowan and Little Field, Lanham, pp. 142-160.

As regards with the facts, it is strictly necessary to retrace the events as to the origin. The applicant of the present case is Elisaveta Talpis (E.T.), a Moldovan citizen living in Italy with her husband, Andrei Talpis (A.T.), and their daughter and son. After several episodes of domestic violence performed by A.T. against the applicant and her children, in August 2012 Ms. Talpis and her daughter went to the local hospital due to the serious wounds caused by A.T. The hospital personnel suggested the applicant to ask for help from a women's shelter, where she subsequently moved after a few days. She remained there until December 2012, when the shelter closed due to lack of public funds. In September 2012, during her stay in the protected context of the shelter, E.T. filed a formal complaint against her husband. On this occasion, she expressly asked the policemen to undertake measures that could shield her and her children from her husband's violence. In fact, pursuant to Art. 282-bis and -ter of the Italian criminal code, it would have been possible (and, one could add, opportune) to impose A.T. estrangement from his family house.

In spite of the seriousness of this case, and of several Prosecutor's requests, Ms. Talpis was interviewed by the police seven months later, in April 2013. At that time, a judicial investigation against A.T. was opened for ill-treatment and bodily harm. Although Italian authorities recognised that A.T.'s violent behaviour represented a considerable risk to the lives of his wife and children, they remained completely inactive and did not undertake any measure to defend the applicant from this risk. Consequently, they failed to adequately protect the applicant and her children, as demonstrated by the events that happened on the 25th of November 2013.

On this date, after a violent argument between the two spouses, Ms. Talpis called the police, describing her husband as very drunk – actually in a state of intoxication – and asked for help. When the police arrived, A.T., being dangerously drunk, was taken to the hospital. A few hours later, in the middle of the night, he left the hospital and was found by some policemen still drunk in the street. After asking him for his I.D., they simply urged him to go home. On arrival at home, he started to cruelly beat his wife and then tried to kill her with a knife. After waking up and realising the danger, the spouses' nineteen-year-old son immediately took to the defence of his mother and was stabbed to death by the father. Ms. Talpis survived, though seriously injured.

In May 2014 the applicant lodged a complaint to the ECtHR arguing the Italian authorities had failed to guarantee adequate protection to her and her children. According to her, by underestimating the seriousness of her husband's violence, they contributed to creating a favourable environment for it. As maintained by Ms. Talpis complain, the repeated violence of A.T. against his wife and children as well as the death of their son could have been partly avoided with a prompt and rapid response from the Italian authorities.

In her application, Ms. Talpis argued that Italy had violated Articles 2 (the right to life), 3 (prohibition of torture and degrading and inhuman treatment) and 14 (prohibition of discrimination) of the ECHR. Indeed, the Court found that the Italian authorities had disregarded their due diligence obligations laid down in the Convention and failed to adequately protect the applicant and her children from A.T.'s violence. Therefore, the Court stated that Italy violated all of the three

aforementioned articles. In January 2015, A.T. was sentenced to life imprisonment for the murder of his son and the attempted murder of his wife.⁶

II.2 The Legal Framework

The ECtHR identified the violation of three Articles of the Convention (2, 3 and 14) for the same reason, i.e., the passivity of the Italian authorities, who failed to protect the applicant and her children. The national authorities, though completely aware of the risk for Ms. Talpis, did not commence any investigation neither before nor after the applicant's interview, in April 2013. Moreover, the policemen remained completely inactive even after the applicant expressly requested protection measures for herself and her children in 2012. This omission appears even more alarming considering that the Prosecutor officially asked the local police to handle the case with urgency. Moreover, it was added that the national authorities failed to prevent the tragic happenings on the 25th of November 2013, which are the outcome of this faltering behaviour.

In its judgement, the ECtHR referred to both the international and national legal framework as the legal basis of its findings.⁷ With respect to the international legal framework, the Court invoked first and foremost the European Convention of Human Rights, stipulated in 1950 and ratified by Italy in 1955. This Convention places upon all State parties both positive and negative obligations (thus, obligations of action and of omission) regarding the prevention and punishment of violence. Secondly, the Court referred to the 2011 concluding observations of the 49th session of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee⁸ and the Istanbul Convention, concluded in 2011 and ratified by Italy one year later.⁹ Both of these two documents establish the prohibition of gender-based discrimination and define the obligation of the states to ensure the protection of the victims of domestic violence.

With respect to the Italian legal system, the Court mentioned some important normative measures, such as Articles 282-bis and -ter, 572 and 582 of the Italian criminal code. All these provisions aim to ensure appropriate protection of the victims of domestic violence. Lastly, the Court relied on a report concerning the phenomenon of violence against women in Italy. The report was published in 2014 by ISTAT (the Italian National Statistical Institute). Even though this report lacks a legal status, it was a huge source of information for the Court, which largely took into account the data provided by it.

⁶ Criminal proceeding n. 8332/2013 R.G.N.R. Mod.21 of Prosecution of Udine Tribunal, decision n.8/2015, 8 January 2015.

⁷ *Talpis v. Italy*, at 55-75.

⁸ Concluding observations of CEDAW Committee, UN, 49th session, 11-29 July 2011, at: <<https://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ITA-CO-6.pdf>> (accessed 16 February 2021).

⁹ Convention on preventing and combating violence against women and domestic violence, Council of Europe, 11th May 2011. This convention has been ratified by Italy in 2013 and has entered into force in 2014, at: <<https://www.coe.int/it/web/conventions/full-list/-/conventions/rms/09000016806b0686>> (accessed 27 February 2021).

II.3 The Merits of the Decision

After rejecting both of the government's objections, the Court ruled on the merits. It found that Italy was responsible for the violation of Articles 2, 3 and 14 of the European Convention of Human Rights.

First, the Court stated that Article 2 enshrines a fundamental right, the right to life. As a consequence, public authorities of states members have the obligation to effectively protect all the individuals whose mental and physical integrity is threatened by criminal acts of third parties, as the Court previously affirmed in the *Luluyev v. Russia* case.¹⁰ This protection shall be ensured through both legislative and practical measures. In this sense, the Court underlined that a period of seven months passed from September 2012 (when E.T. filed a complaint against her husband) before the Italian authorities started to take action. This significant delay deprived the complaint of any efficacy. Indeed, it contributed to the emergence of a context of impunity that can be defined as favourable to A.T.'s violence on his wife. Furthermore, the Court decided that the Italian authorities did not correctly evaluate the risk suffered by Ms. Talpis. As a result of this negligence, the tragic events of 25th November 2013 happened. In fact, the Court found that the Italian authorities have not acted with the required due diligence to protect the applicant and her children.

With reference to the Italian authorities' obligations to protect the victims of violence (or threat thereof), the Court applied the so-called "Osman test". The latter was formulated by the Court in a previous case, *Osman v. United Kingdom* (1998)¹¹ on child abuses with the aim of assessing the potential responsibility of the English public authorities. In the *Osman* decision, the Court stated that, in specific circumstances, state's authorities have the obligation to adopt both legislative and practical measures to ensure protection of the victims of criminal acts committed by third parties. Thus, the "Osman test" was elaborated namely to identify these specific cases in which the state obligation arises. In this regard, it is vital to highlight that not all threats to a person's mental and physical integrity pose an obligation upon the authorities to take legal and practical measures to protect the victim. Instead, the obligation emerges only when those threats represent a 'real and imminent' risk for the victim's life.¹²

If in 1998 this criterion enabled the Court to exclude any responsibility from the British authorities, the opposite was true in the *Talpis* case. Here, in fact, the risk of the threat suffered by the applicant was evaluated by the Court as real and imminent not *ex post*, considering the facts of 25th November, but *ex ante*, in the light of the context of reiterated violence in which she had to live. In this context, the public authorities, from the very beginning, should have identified the latent danger that the applicant had to face. Therefore, the Court held that Italian authorities' conduct could be assessed as

¹⁰ 'Together with Article 3, Article 2 also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective'. *Luluyev v. Russia*, Judgement, 9th February 2007, [2008] ECHR, at 76, at: <[https://hudoc.echr.coe.int/eng#{"fulltext":\["luluyev"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-77926"\]}](https://hudoc.echr.coe.int/eng#{)> (accessed 15 March 2021).

¹¹ *Osman v. United Kingdom*, Judgement, 28th October 1998, [1998] ECHR, at: <<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-58257&filename=001-58257.pdf&TID=hhkgrkntio>> (accessed 10 February 2021).

¹² *Talpis v. Italy*, at 100.

largely below the required due diligence threshold, thereby supplementing the violation of Article 2 ECHR.

Second, the Court found in the same element – the Italian authorities’ inertia – a violation of Article 3 ECHR. The Court considered that Ms. Talpis has suffered such severe violence, both physical and psychological, that it could be regarded as inhuman and degrading treatment, which are expressly prohibited by Article 3. In this sense, the national authorities did not respect the obligation to guarantee the protection of the applicant, therefore violating Article 3. In addition, it should be highlighted that the 2011 Istanbul Convention requires all states parties to adopt all the necessary measures to guarantee the efficacy of judicial proceedings, without unjustified delay.

Interestingly, the Court insisted on the due diligence conditions required by the Istanbul Convention in cases of domestic violence in response to the two objections formulated by the Italian government. The first concerned Article 35 of the ECHR. According to the government, Ms. Talpis did not respect the term established by this provision, which obliges to bring the case before the ECtHR “within a period of four months from the date of which the final decision was taken”¹³. Italy claimed that more than six months were passed from the dismissal of her complaint before the Italian authorities. The second objection of the government was that the applicant failed to exhaust all domestic remedies¹⁴. These cases, in fact, are characterised by very specific features, such as an entrenched gender-based discrimination. Also, in the Court’s vision, women who are victims of domestic violence are ‘vulnerable person[s]’¹⁵, including Ms Talpis. As such, she had the right to obtain a special protection from state authorities. Therefore, given the long period of inactivity before hearing the applicant and before opening criminal proceedings against A.T., the Court found that Italy violated Article 3 ECHR on the procedural level, as it failed to comply with its obligation to protect the victim, and favoured A.T.’s violence.

Finally, the Court stated that Article 14 was also violated by the Italian authorities. Their consistent delay and passivity in conducting the investigations (thus, in ensuring effective protection) indirectly caused a gender-based discrimination against Ms. Talpis. The Court, in fact, stressed that state’s failure – even involuntary – to comply with its obligation to protect women from domestic violence resulted in a breach of their right to have equal protection before the law. In this sense, the applicant was treated in an intrinsically discriminatory manner which triggered the violation of Article 14 of ECHR. It can therefore be concluded that Ms. Talpis was discriminated against as a woman, both by her husband and by the local police.

II.4 The Dissenting and Partially Dissenting Opinions

Only one judge, Robert Spano completely disagreed with the Court’s majority. He formulated a dissenting opinion attached to the judgment, while the other judge, Tom Eicke has presented a partially dissenting one.

¹³ Article 35.1. “The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken.”

¹⁴ *Idem*, at 69.

¹⁵ *Idem*, at 99.

According to Judge Spano, the dissenting judge, it is strictly necessary for the Court to formulate its decision by balancing the interests of the victim with those of the public authority. In the present case, Judge Spano considers that the Court delivered a judgment more favourable to the former than to the latter, avoiding the effort to reach this necessary balance. This alleged failure of the Court should be seen in relation to the application of the so-called “Osman test”. In this regard, Judge Spano argued that the *Talpis* case did not meet the criteria established in the test. As mentioned above, the test establishes that the authorities’ obligation emerges if the risk for the victim is real and imminent¹⁶.

In his dissenting opinion, Judge Spano held that the risk for Ms. Talpis was not real nor imminent. With regard to the immediacy of the risk, this is challenged by the long lapses of time between the initial incidents (culminating in the lodging of her complaint on 5 September 2012) and the time of the tragic events of 25 November 2013. Regarding the reality of the risk, Judge Spano argued that this was not discernible by comparing the present case with a previous one, *Opuz v. Turkey*, on which the ECtHR pronounced in 2009. In the latter, the Court acknowledged that the Turkish authorities were aware of the risk to which the victim was exposed, as she had reported to the police eight assaults suffered at the hands of her spouse. For this reason, the risk could be reasonably evaluated as real. According to Judge Spano, by comparing this situation with the *Talpis* events, one can deduce the impossibility, for the Italian authorities, to develop a complete awareness of the riskiness related to A. T.’s conduct. In fact, Ms. Talpis did not file new complaints against her husband after September 2012, and later on she also reviewed her accusations. In this respect, Judge Spano argued that:

‘when contrasted with the gravity of the eight prior attacks identified in *Opuz*, involving repeated death threats and life-threatening injuries on several occasions, the constructive knowledge inevitably arising from such a course of events cannot be imputed to the authorities in the present case’.¹⁷

In the *Opuz* case, the Turkish authorities invited the applicant to consider the domestic violence episodes as a ‘family matter’.¹⁸ Fortunately, this did not happen in the *Talpis* case. Nonetheless, the Court considered the Italian authorities responsible for the lack of protection that should have been provided to the applicant.

In Judge Spano’s opinion, the Court placed on the Italian authorities too heavy a burden in the attempt to provide compensation to Ms. Talpis. In fact, the aggression of A.T. against his wife and his son was not the result of constantly repeated threats of violence but of a ‘volatile and unpredictable

¹⁶ ‘In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person (see paragraph 115 above), it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk’. *Osman v. United Kingdom*, at 116, at: <<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-58257&filename=001-58257.pdf&TID=hhkgrkntio>> (accessed 15 January 2021).

¹⁷ *Talpis v. Italy*, 2nd March 2017, [2017] ECHR, partially dissenting opinion of judge Spano at 6.

¹⁸ *Opuz v. Turkey*, Judgement, 9th June 2009, [2009] ECHR, at 195, at: <[https://hudoc.echr.coe.int/tur#{"itemid":\["001-92945"\]}](https://hudoc.echr.coe.int/tur#{)> (accessed 10 January 2021).

human behaviour'.¹⁹ Since it was impossible for the Italian authorities to know about the riskiness of A.T., they could not be blamed for their inertia. In light of these elements, Judge Spano concluded that the Court failed to correctly apply the criteria established by the “Osman test”.

In fact, according to him, there is a clear limit to be respected regarding the interpretation and application of Article 2 ECHR; a limit that the Court has deliberately ignored. This limit provides that the positive obligations derived from Article 2, can be extended only to protect the victim of an unpredictable aggression. However, no unrealistic obligations should be placed on the police. Moreover, the dissenting judge also contested the violation of Article 14 ECHR. He noted that the ‘impugned failings were not rooted in the discriminatory intent of the authorities but rather in pure passivity’,²⁰ implying that the inertia of Italian authorities was not serious enough to integrate a discrimination against the applicant as a woman. Consequently, one might ask what the necessary elements to show a discrimination are. Is it essential for a discrimination to be explicit, or could it be hidden in the passivity and delays of the authorities?

On the same line of thought as Judge Spano, Judge Tim Eicke agreed that there was no evidence for a gender-based discrimination in the behaviour of the Italian authorities. As the applicant did not report any further violence to the police after September 2012, the authorities had no reason to act. As before, one shall ask whether it is essential for a threat of domestic violence to be frequently repeated to justify a possible intervention by the police. Certainly, one shall conclude that discrimination against women is so embedded in our society that it can take on several and different forms – and not all of them are explicit nor immediately visible.

According to both Judge Spano and Judge Eicke, no violation of Article 14 was committed. The failure of Italy to protect the victim should not be traced back to a discriminative behaviour of the authorities, but to their inertia. The latter, however, is not a sufficient element to identify discrimination against women, nor in the present case nor at a systemic level in the Italian legal system. This position clearly reflects the one of the national authorities and the Italian government defence. The latter denies the state positive duty to protect Ms Talpis due to the lack of enough elements that could prove the dangerousness of the situation. For this reason, the present case is also emblematic of Italian authorities’ approach to domestic violence cases.

II.5 Analysing the Decision: A Multifaceted Discrimination

Regarding Article 14 ECHR, Dr. Lourdes Peroni²¹ emphasises that both Judge Spano and Judge Eicke seemed to require a high level of a threat’s seriousness (thus, a higher threshold) to identify a discriminatory attitude in violation of Article 14. Nonetheless, it is important to note that the majority of the *Talpis*’ judges did not individuate a specific threshold in order to find a discrimination, implying

¹⁹ ‘His (A.T.) lethal attack that evening, predicated as it was on volatile and unpredictable human behaviour rather than ongoing and repeated direct or indirect threats to life, could not in my view have been reasonably foreseen by the police.’ *Talpis v. Italy*, 2nd March 2017, [2017] ECHR, partially dissenting opinion of judge Spano at 11.

²⁰ *Ibid*, at 21.

²¹ L. Peroni, ‘Talpis v. Italy: elements to show an article 14 violation in domestic cases’, 2017, in *Strasbourg Observer*, at: <<https://strasbourgobservers.com/2017/04/19/talpis-v-italy-elements-to-show-an-article-14-violation-in-domestic-violence-cases/>> (accessed 26 January 2021).

that every situation might be different but discriminatory as well. Even though in previous cases of domestic violence regarding the Moldovan state²² the Court demanded very serious evidence against the national authorities, according to Peroni this does not mean that similar factors are always necessary to detect a discrimination. In this regard, the author mentioned the *Rumor v. Italy* judgment.²³ Here, a similar situation was assessed by the Strasbourg Court, without however finding a discriminatory conduct in the Italian authorities' passivity. The applicant, Ms. Rumor, was a victim of domestic violence and in her application, she claimed that a violation of Articles 3 and 14 ECHR was committed by the Italian authorities. In spite of the similarity with the *Talpis* case, the Court here stated that no responsibility could be alleged to the national authorities, and that the risk she suffered was not sufficient to trigger the national authorities' responsibility. This comparative example shows that every case is different, and that the Court would have no reason to limit the situations' range in which a discrimination could be found.

Both Judge Spano and Judge Eicke contended that the inertia of Italian authorities was not enough to find a gender-based discrimination, neither in this specific case nor in the Italian system. However, as van Leeuwen²⁴ illustrated, the two judges' opinions clearly show the lack of a gender-perspective, which is crucially needed in dealing with domestic violence cases. According to the author, the two judges did not take into account the context and various aspects of this phenomenon. By focusing on these lapses of time, Spano appeared to embrace an incident-based understanding of domestic violence. This has the clear shortcoming of excluding the systemic (thus, particularly alarming) nature of the domestic violence phenomenon, and overlooks the continuum of fear and abuse status in which the violence takes place. Moreover, van Leeuwen emphasised a precise factor: 'this understanding of (direct) discrimination is very limited and does not do justice to the different forms of discrimination that exist, including indirect - systemic -, and intersectional discrimination'.²⁵ All of which could simultaneously be at work in the case at hand'.

These words are extremely significant because, at a closer look, one could argue that Ms. Talpis was victim of various intersecting forms of discrimination. First, she was discriminated as a woman, both by her husband and the public authorities (who underestimated the risk of her case). Secondly, she was discriminated as a Moldovan woman. In this regard, General Recommendation n. 35 of the CEDAW Committee acknowledged 'varying and intersecting forms of discrimination against women'²⁶, including those based on nationality. Recalling to this document, Associate Professor of

²² *Eremia v. the Republic of Moldova*, Judgement, 28 May 2013 [2014], ECHR, at: [https://hudoc.echr.coe.int/fre#{"fulltext":\["Eremia%20v.%20the%20Republic%20of%20Moldova"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-119968"\]}](https://hudoc.echr.coe.int/fre#{) (accessed 15 January 2021) and also *T.M., C.M. v. Moldova*, 28 January 2014 [2014], ECHR, at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805a32bd> (accessed 15 January 2021).

²³ *Rumor v. Italy*, Judgement, 27 May 2014 [2014], ECHR, at: [https://hudoc.echr.coe.int/tur#{"fulltext":\["rumor"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-146235"\]}](https://hudoc.echr.coe.int/tur#{) (accessed 16 January 2021).

²⁴ F. Van Leeuwen, 'The 'limits of human rights law': dissenting androcentric voices in *Talpis v. Italy*', in *Strasbourg Observers*, 29 May 2017, at: www.strasbourgobservers.com/2017/05/30/the-limits-of-human-rights-law-dissenting-androcentric-voices-in-talpis-v-italy/ (accessed 26 January 2021).

²⁵ *Ibid.*

²⁶ CEDAW Committee, General Recommendation No. 35, 2017, para. 12.

international law De Vido²⁷ has argued that the *Talpis* case perfectly demonstrated that, as the CEDAW General Recommendation n. 35 specified, ‘the prohibition of gender-based violence against women has evolved into a principle of customary international law’²⁸ and, as such, it is binding on all states, beyond any national border. As a consequence, it is crucially important to recognise that, in the present case, violence against women was a form of gender-based discrimination, as Ms. Talpis faced attempted murder because she was a woman.

II.6 Violence against Women, Domestic Violence

In the present case, the ECtHR specifically addressed three elements: violence against women (in particular domestic violence), and the violation of the prohibition of discrimination. Importantly, the *Talpis* decision arouses some important questions in each of these elements.

First, with regard to the violence against women, one can underline that in its decision on the *Talpis* case, the Court adopted a different approach in defining this phenomenon. This change can be best noticed in relation to the previous Italian case on domestic violence, *Rumor v. Italy* (2014). In its decision in the latter, the Court stated that the intervention of Italian authorities resulted in being timely, prompt and effective. Coherently, the Court did not highlight any deficiency, neither in the *Rumor* case nor at the systemic level, with regard to the Italian law. Therefore, the Court here seemed to have established a lower threshold - than that adopted in the *Talpis* case - concerning the due diligence of the state authorities derived from Article 2 ECHR.

Moreover, in the *Rumor* case, the ECtHR excluded any responsibility from the national authorities, stating that both the frequency and the regularity of the threats (formulated to the victim by her husband) were absent. Yet, in the *Talpis* case, the Court implicitly held that these two elements – frequency and regularity – could not be regarded as indispensable conditions to assess the state’s responsibility. In fact, it stated that a threat is considered as such even when it is not accompanied by arms or physical violence. Also, a threat is to be deemed serious even if it is only expressed against the victim one time. In fact, in the *Talpis* judgement, the Court seems reasonable to consider that a context of violence is such, and therefore alarming, even after a single episode of physical and verbal violence takes place. In this sense, the *Talpis* judgment is a significant development in the Court’s case law on violence against women.

Second, it is crucial to highlight that a large part of the ECtHR’s jurisprudence concerning violence against women has dealt with domestic violence episodes. The term "domestic violence" refers to violence perpetrated by a member of the family, regardless of the place where it is performed and what form it takes. In that sense, at the international law level, the discrepancy between international provisions and their effective implementation to protect the victims is still notable. Likewise, although domestic Italian law provides for appropriate legal means to protect victims of violence, these are often not applied in a timely manner because national authorities frequently underestimate the seriousness of violent acts.

²⁷ S. De Vido, ‘The Prohibition of Violence Against Women as Customary International Law? Remarks on the CEDAW General Recommendation No. 35’, in *Diritti umani e diritto internazionale*, 2/2018, p. 385.

²⁸ CEDAW Committee, General Recommendation No. 35, 2017, para. 3.

It is also interesting to note that the Court's ruling does not consider the specific nature of a threat arising from domestic violence. Domestic violence differs from other criminal acts of third parties for two reasons. First, its higher degree of predictability, demonstrated by the high rate of repetition. Second, by the endemic presence of an uncertain evidence framework about the aggressor's guilt.²⁹ Indeed, victims of domestic violence, as "vulnerable people", are often prone to mitigate the tenor of their accusations because they are under threat of the spouse, but this does not make the threat *per se* less serious, nor the obligation of the authorities less real. On the contrary, a more serious obligation to investigate should be placed on them, and that seems to be absent in the present case. Importantly, Buscemi³⁰, Research Fellow in International Legal and Historical Studies at University of Milan, underlined a crucial aspect of the *Talpis* judgement: the Court failed to stress the importance of public and social welfare services to victims of domestic violence. A possible call for such measures would have been appropriate to provide adequate protection and avoid the risk of future criminal acts.

Third and last, in regard to discrimination against women, the Court recalled that the failure - even involuntary - of a state to comply with its obligation to protect women from domestic violence results in a discrimination. Specifically, it is a breach of women's right to have equal protection before the law. In the present case, the Court had already found the violation of Articles 2 and 3 in the 'generalized and discriminatory passivity of the police' which had generated a 'climate favourable to the repetition of violence'.³¹ This same conduct also constitutes a violation of Article 14 of the ECHR.

The inertia of the authorities was also found in the timing of the trial against A.T. The man was convicted three years after the events, that is, when he had already committed other, more serious crimes such as the murder of his son. Evidently, the police's inaction prevented the applicant from obtaining effective and timely protection. For these reasons, she is a victim of gender-based discrimination. In addition, incontrovertible statistical data (which was not contested by the Italian government), such as the ISTAT Report of 2014, show that in Italy the problem of domestic violence mainly affects women, and that a socio-cultural orientation of tolerance towards these phenomena persists. In the light of these observations, one can contend that the authorities' inaction was sufficient to trigger, according to the Court, the violation of Articles 2, 3 and 14. Therefore, there was no need to prove an active, discriminatory conduct. In the present case, as De Vido³² perfectly pointed out, the acts of the Italian authorities are the reflection of a general and systematic practice of tolerance towards episodes of domestic violence.

II.7 The Italian Context

The Court's decision on the present case is particularly relevant not only at the international but also at the national level. Although the normative provisions of the ECHR do not produce direct effects

²⁹ On this point, see 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*, n. 3/2017, p. 14, at: <<https://www.osservatoriosullefonti.it/mobile-note-e-commenti/note-e-commenti-n-3-2017/1121-la-protezione-delle-vittime-di-violenza-domestica-davanti-alla-corte-europea-dei-diritti-dell-uomo-alcune-osservazioni-a-margine-del-caso-talpis-c-italia/file>> (accessed 26 January 2021).

³⁰ *Idem*, p. 15.

³¹ *Talpis v. Italy*, at. 127.

³² S. De Vido, 'The ECtHR *Talpis v. Italy* Judgment Challenging the Osman Test through the Council of Europe Istanbul Convention?' In *Ricerche giuridiche*, vol. 6, 2/2017.

in the national legal systems of the state parties, they protect and enhance the fundamental rights and freedoms of all persons, as specified by the Italian Constitutional Court³³. Regarding the effects of the judgments delivered by the ECHR, it has been noted that the decision taken by the ECtHR on a specific case, although it does not have a direct impact on domestic law, ‘potentially speaks to all forty-seven contracting orders’ and it is also able to trigger a system of ‘multilevel protections’³⁴ such as the one constituted by the different courts of ECHR signatories.

All these facts considered, one shall conclude that the applicant was undoubtedly victim of a gender-based discrimination, and for this reason, this case can be regarded as highly symbolic of multiple cases of domestic violence. Different aspects should be taken into account to analyse such an emblematic case. First, violence against women is often motivated by a gender-based discrimination. In this sense, sometimes women can be hurt or beaten, raped, or even killed simply because they are women, meaning that they are perceived as the lesser gender. This perspective clearly indicates a gender-based discrimination. Secondly, in many cases in Western countries, foreign women are more likely to be ill-treated. This is an additional, but still significant, discrimination of a racist nature: women may suffer violence simply because of their nationality, their religion or their skin’s colour. Third, it is essential to consider the attitude of the police authorities in facing domestic violence cases. In general, the women’s position is undermined, and the risk to their life is not carefully examined, but rather underestimated. Thus, the damages caused by violence are not prevented.

The analysis of statistical data on this subject confirms the above-mentioned elements. Regarding the Italian situation on violence against women, the 2014 ISTAT Report illustrated that foreign women suffer physical and psychological violence more than Italian women. As an example, foreign women are more often victims of rape or attempted rape comparing to Italian women (7,7% against 5,1%). Further, it is interesting how the ISTAT Report underlined a consistent improvement in the diffusion of violence against women. In fact, according to it, in the last five years physical or sexual violence in Italy has decreased from 13,3% to 11,3%. Both physical and sexual violence from partners or ex-partners are reduced (from 5,1% to 4% physical and from 2,8% to 2% sexual). Also, psychological violence from the partner is declining, from 42,3% to 26,4%. Lastly, compared to 2006, the victims are more satisfied with the work of policemen and legal authorities.

All of this data demonstrates a high degree of information on local shelters for victims of violence, and a better capacity of women to fight this phenomenon. Some reasons may be found in a more intense sharing of experiences, or a better functioning of these local shelters, but also in the increase of requests of assistance to the police. Those factors are rare between victims of domestic violence, and even rarer between foreign women. Foreign women, in fact, may have some additional difficulties as they may not speak or understand fluently the Italian language or know the legal system and its procedures. In fact, Ms. Talpis certainly was in a bad condition when she arrived at the hospital in August 2012. Only on that day, she was made aware by the hospital’s staff of the possibility of asking for help from a local shelter for women. The degree of these shelters’ activities is directly proportionate to the possibility for women to escape the dangerous consequences of domestic violence.

³³ Italian Constitutional Court, judgement n. 348/2007, 22 October 2007, at: <<http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2007&numero=348>> (accessed 16 January 2021)

³⁴ *Idem*, at 4.

Thus, remarkably, the *Talpis* judgment takes on great importance as it shows the essential relevance of adequately addressing domestic violence, where multiple discrimination factors may add up and lead to tragic outcomes.

III. Conclusions

The *Talpis* case evidenced a culpable delay (i.e., danger underrating and passivity) of the Italian authorities in addressing domestic violence. The European Court of Human Rights explained why this inertia caused a violation of Articles 2, 3 and 14 of the European Convention on Human Rights. Most importantly, the Court stated that the applicant suffered a gender-based discrimination indirectly emerging from the behaviour of national authorities, who failed to meet their due diligence obligations deriving from the ECHR. In fact, the Italian authorities did not ensure adequate protection to the applicant and her children.

The *Talpis* decision also illustrates how the situation for women may be influenced by concurring factors of discrimination, which act in synergy and easily lead to tragic events. Indeed, one should consider here that not only the applicant was a female victim of domestic violence but also that she is a foreign woman. As such, the present case can be regarded as highly emblematic of the condition of women victims of domestic violence in their dealing with legal authorities. Moreover, gender- and racism-based discriminations may crucially influence the development of various circumstances involving domestic violence. This development may be even overstretched by the national authorities' action, as the *Talpis* case illustrates. As such, authorities' action can only be counterbalanced by international mechanisms devoted to human rights protection.

Furthermore, the *Talpis v. Italy* judgment represents a turning point in the case law of the ECHR concerning domestic violence. The Court's case-law on this matter has not always been uniform, but it has undoubtedly moved in the direction of granting increasing legal protection to women who are victims of domestic violence. This has been done through the condemnation of states parties which have not acted in a timely manner or have not taken adequate measures to prevent violent acts from taking place. Indeed, there has been a progressive advance in the ECHR's case law, from the *Rumor* judgement to the *Talpis* one. The present case is crucially relevant because, through it, the ECtHR indirectly underlined the seriousness of the problem of domestic violence in Italy and the discrimination suffered by women. In fact, the ECtHR's judges have highlighted the importance of the ECHR provisions, in particular the right to life, the prohibition of torture and inhuman or degrading treatment and of any kind of discrimination. The failure of the authorities to protect the applicant and the delay in the investigation activities constituted a violation of the rules and principles that the ECHR enshrines.