



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

FIRST SECTION

CASE OF TALPIS v. ITALY

(Application no. 41237/14)

JUDGMENT
(Extracts)

*This version was rectified on 21 March 2017
under Rule 81 of the Rules of Court.*

STRASBOURG

2 March 2017

FINAL

18/09/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Talpis v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mirjana Lazarova Trajkovska, *President*,

Guido Raimondi,

Kristina Pardalos,

Linos-Alexandre Sicilianos,

Robert Spano,

Armen Harutyunyan,

Tim Eicke, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 24 and 31 January 2017,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 41237/14) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian and Moldovan national, Ms Elisaveta Talpis (“the applicant”), on 23 May 2014.

2. The applicant was represented by Ms S. Menichetti and Ms C. Carrano, lawyers practising in Rome¹. The Italian Government (“the Government”) were represented by their Agent, Mrs E. Spatafora.

3. The applicant complained, *inter alia*, of a failure by the Italian authorities to comply with their duty to protect her against the acts of domestic violence inflicted on her and that had led to an attempt to murder her and the death of her son.

4. On 26 August 2015 the application was communicated to the Government. The Romanian and Moldovan Governments did not exercise their right to intervene in the procedure (Article 36 § 1 of the Convention).

5. The Government objected on the grounds that the observations submitted by the applicant had reached the Court on 15 March 2016, which was after the time-limit of 9 March 2016 had expired. The Court observes, however, that the observations were sent on 9 March 2016, in accordance with Rule 38 § 2 of the Rules of Court.

¹ Rectified on 21 March 2017: the text read as follows: “The applicant was represented by Ms S. Menichetti, a lawyer practising in Rome.”

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1965 and lives in Remanzaccio.

7. The applicant married A.T., a Moldovan national, and two children were born of the marriage: a daughter in 1992 and a son in 1998.

8. The applicant alleged that after their marriage her husband had started beating her. However, in 2011 the applicant followed her husband to Italy in order to provide her children with the opportunity of a more serene future.

1. The first assault committed by A.T. against the applicant and her daughter

9. The applicant submitted that her husband, who was an alcoholic, had already been physically abusing her for a long time when, on 2 June 2012, she requested the intervention of the police after she and her daughter had been assaulted by A.T.

10. When the police arrived, A.T. had left the family home. He was found in the street in a state of intoxication, with scratches on the left side of his face. The police drew up a report of the incident. The report stated that the applicant had been beaten and bitten in the face and the left leg and that she had a number of bruises. The report also stated that the applicant's daughter had herself been hit after intervening to protect her mother and presented a neck injury caused by a fingernail and injuries to both arms. The applicant and her daughter were informed of their rights and expressed their intention to go to the hospital accident and emergency unit.

11. The applicant alleged that she had not, however, been informed of the possibility of lodging a complaint or contacting a shelter for battered women. She also submitted that she went to the accident and emergency unit in order to have her injuries recorded, but that after waiting for three hours she had decided to return home.

12. The Government, referring to the police report, submitted that there was no evidence that the applicant had gone to the accident and emergency unit.

2. The second assault committed by A.T. against the applicant

a) The applicant's version

13. The applicant submitted that after the assault on 2 June 2012 she had taken refuge in the cellar of her flat and started sleeping there.

14. She recounted the following events as follows. On 19 August 2012, after receiving a threatening telephone call from her husband, and fearing an

attack by him, she decided to leave the house. When she returned home, she found that the cellar door had been broken. She tried telephoning a friend to ask if she could stay the night with her, but no one answered her call. She then decided to go back to the cellar. A.T. attacked her there with a knife and forced her to follow him in order to have sexual relations with his friends. Hoping that she would be able to seek help once outside, she resigned herself to following him. She asked a police patrol in the street for help.

15. The police merely checked her and A.T.'s identity papers, and despite the applicant's assertions that she had been threatened and beaten by her husband, they invited her to go home without offering her help and told A.T. to keep away from her. A.T. was fined for unauthorised possession of a lethal weapon.

16. Shortly after she had returned home, the applicant called the emergency services and was taken to hospital. The doctors noted, among other things, that she suffered from cranial trauma, a head injury, multiple abrasions to her body and a bruise on her chest. It was deemed that her injuries would heal up within a week.

b) The Government's version

17. The Government indicated that, according to the incident report drawn up by the police, they had arrived at Leopardi Street shortly after midnight. The applicant informed them that she had been hit in the face. A.T. had given the police officers a knife. The applicant told the police that she wanted to go to hospital to have her injuries recorded. She had gone there and A.T. had returned home. The knife had been seized and the applicant fined for unauthorised possession of a lethal weapon.

3. The applicant's complaint

18. At the hospital the applicant spoke to a social worker and said that she refused to return home to her husband. She was then given shelter by an association for the protection of female victims of violence, IOTUNOIVOI ("the association").

19. The president of the women's shelter, accompanied by police officers, went to the cellar where the applicant had been living in order to fetch her clothes and personal effects.

20. From 20 August onwards A.T. began harassing the applicant by telephoning her and sending her insulting messages.

21. On 5 September 2012 the applicant lodged a complaint against her husband for bodily harm, ill-treatment and threats of violence, urging the authorities to take prompt action to protect her and her children and to prevent A.T. from approaching them. She stated that she had taken refuge in a women's shelter and that A.T. was harassing her by telephone.

22. A.T. was placed under judicial investigation on charges of ill-treating family members, inflicting grievous bodily harm and making threats. The police sent the criminal complaint to the prosecution on 9 October 2012.

23. On 15 October 2012 the prosecution, having regard to the applicant's requests for protection measures, ordered urgent investigative measures, in particular requesting the police to find potential witnesses, including the applicant's daughter.

24. The applicant was given shelter by the association for three months.

25. In a letter of 27 August 2012 the head of Udine social services informed the association that there were no resources available to take charge of the applicant or to find alternative accommodation for her.

26. The Government gave a different interpretation of that letter, saying that, as the applicant had not first been referred to the Udine social services, which cared for victims of violence in the context of another project, called "Zero tolerance", the latter could not pay the association's expenses. In their submission, female victims of violence could contact social services requesting assistance, which the applicant had not done.

27. On 4 December 2012 the applicant left the shelter to look for work.

28. She said that she had first slept in the street before being accommodated by a friend, and had subsequently found a job as an assistant nurse for elderly people and was then able to rent a flat. According to the applicant, A.T. had continued exerting psychological pressure on her to withdraw her complaint.

29. On 18 March 2013 the prosecution, finding that no investigative measure had been carried out, again asked the police to investigate the applicant's allegations rapidly.

30. On 4 April 2013, seven months after she had lodged her complaint, the applicant was questioned for the first time by the police. She altered her statements, mitigating the seriousness of her original allegations. Regarding the episode of June 2012 she stated that A.T. had unsuccessfully attempted to hit her and her daughter. With regard to the incident that had occurred in August 2012, she said that A.T. had hit her but had not threatened her with a knife. A.T. had, however, pretended to turn the knife on himself.

The applicant also stated that at the time she had not spoken very good Italian and had not been able to express herself properly. She also stated that A.T. had not forced her to have sex with other people and that she had returned to live at the family home. She said that when she had been living at the shelter provided by the association, she had not spoken to her husband on the telephone because she had been told not to. She stated that, barring her husband's alcoholism, the situation at home was calm. She concluded by saying that her husband was a good father and a good husband and that there had been no further episodes of violence.

31. The applicant submitted that she had altered her original statements because of the psychological pressure exerted on her by her husband.

32. On 30 May 2013 the Udine public prosecutor's office, after noting, firstly, that the applicant, who had been interviewed in April, had mitigated her allegations against her husband saying that he had not threatened her with a knife and that she had been misunderstood by an employee from the shelter where she had taken refuge and, secondly, that no other violent episode had occurred, asked the investigating judge to close the complaint lodged against A.T. for ill-treatment of family members. Regarding the offence of grievous bodily harm, the prosecuting authorities indicated that they intended to continue the investigations.

33. In a decision of 1 August 2013 the investigating judge discontinued the part of the complaint concerning the allegations of ill-treatment of family members and threats. He considered that the course of the events was unclear and that, with regard to the alleged ill-treatment, the offence had not been made out because, since the applicant had complained only about the incident of August 2012, the criterion of repeated episodes of violence was not satisfied.

34. With regard to the complaint of threats aggravated by the use of a weapon, the investigating judge noted that the applicant's statements were contradictory and that in the report drawn up by the hospital there was no reference to knife injuries.

35. With regard to the offence of causing bodily harm, the proceedings were continued before the magistrate. A.T. was committed for trial on 28 October 2013. The first hearing was held on 13 February 2014 and A.T. was ordered to pay a fine of 2,000 euros (EUR) on 1 October 2015.

4. The third assault by A.T., against the applicant and her son and the murder by A.T. of his son

36. It can be seen from the case file that on 18 November 2013 A.T. received notice of his committal for trial before the magistrate's court on 19 May 2014 for inflicting bodily harm on the applicant in August 2012.

37. In the night of 25 November 2013 the applicant sought the intervention of the police in connection with a dispute with her husband.

38. The police made the following findings in their report: on their arrival they saw that the bedroom door had been broken down and that the floor was strewn with bottles of alcohol. The applicant had stated that her husband was under the influence of alcohol and that she had decided to call for help because she thought he needed a doctor. She told them that she had lodged a complaint against her husband in the past, but that she had subsequently changed her allegations. The applicant's son had stated that his father had not been violent towards him. Neither the applicant nor her son had shown any traces of violence.

39. A.T. was taken to hospital in a state of intoxication. In the night he left the hospital and went to an amusement arcade.

40. While he was walking along the street he was arrested by the police for an identity check at 2.25 a.m.

41. The police report shows that A.T. was in a state of intoxication and had difficulty keeping his balance and that the police had let him go after stopping and fining him.

42. At 5 a.m. A.T. entered the family flat armed with a 12 cm kitchen knife with the intention of assaulting the applicant. The applicant's son attempted to stop him and was stabbed three times. He died of his wounds. The applicant tried to escape but A.T. succeeded in catching up with her in the street, where he stabbed her several times in the chest.

5. Criminal proceedings instituted against A.T. for grievous bodily harm

43. On 1 October 2015 A.T. was convicted by the magistrate's court of inflicting grievous bodily harm on the applicant, on account of the injuries he had inflicted on her during the incident in August 2012, and sentenced to a fine of EUR 2,000.

6. Criminal proceedings instituted against A.T. for the murder of his son, the attempted murder of the applicant and ill-treatment of the applicant

44. On an unspecified date in November 2013 the investigation into acts of ill-treatment was reopened.

45. A.T. asked to be tried in accordance with the summary procedure (*giudizio abbreviato*).

46. On 8 January 2015 A.T. was sentenced to life imprisonment by the Udine preliminary hearings judge for the murder of his son and the attempted murder of his wife and for the offences of ill-treatment of his wife and daughter and unauthorised possession of a prohibited weapon. He was also ordered to pay the applicant, who had applied to join the proceedings as a civil party, EUR 400,000 in damages.

47. With regard to the ill-treatment, the preliminary hearings judge, after hearing witnesses and the applicant's daughter, considered that the applicant and her children had been living in a climate of violence. He found that A.T. had been habitually violent and held that, apart from the daily harassment suffered by the applicant, there had been four violent episodes. He added that A.T., at his trial, had confessed to experiencing feelings of hatred towards his wife. According to the preliminary hearings judge, the events of 25 November 2013 were the consequence of an attempt by the applicant to get away from A.T.

48. On 22 May 2015 A.T. appealed against the judgment.

It can be seen from the file that in a judgment of 26 February 2016 the judgment was upheld by the Court of Appeal. However, neither of the parties annexed the judgment to their observations.

II. RELEVANT DOMESTIC LAW AND PRACTICE

...

55. In its report entitled “Violence towards women” (2014) the National Statistics Institute (ISTAT) provided statistical data concerning violence towards women.

“Istat carried out the survey in 2014, on a sample of 24,000 women aged 16-70. The results are to be widely disseminated also among migrant women. Istat carried out the survey in 2014, on a sample of 24,000 women aged 16-70. Estimates indicate the most affected foreign women for citizenship: Romania, Ukraine, Albania, Morocco, Moldavia, China.

More specifically, according to the second Istat survey, 6,788,000 women have been victims of some forms of violence, either physical or sexual, during their life, that is 31.5% of women aged 16-70. 20.2% has been victim of physical violence; 21% of sexual violence and 5.4% of the most serious forms of sexual violence such as rape and attempted rape: 652,000 women have been victims of rape; and 746,000 have been victims of attempted rape.

Further, foreign women are victims of sexual or physical violence on a scale similar to Italian women's: 31.3% and 31.5%, respectively. However, physical violence is more frequent among the foreign women (25.7% vs. 19.6%), while sexual violence is more common among Italian women (21.5% vs. 16.2%). Specifically, foreign women are more exposed to rape and attempted rape (7.7% vs. 5.1%) with Moldavians (37.3%), Romanians (33.9%) and Ukrainians (33.2%) who are the most affected ones. As for the author, current and former partners are those who commit the most serious crimes. 62.7% of rapes is committed by the current or the former partner while the authors of sexual assault in the majority of cases are unknown (76.8%).

As for the age of the victim, 10.6% of women have been victims of sexual violence prior to the age of 16. Considering VAW-cases against women with children who have been witnessed violence, the rate of children witnessing VAW cases rises to 65.2% compared to the 2006 figure (= 60.3%).

As for women's status, women separated or divorced are those far more exposed to physical or sexual violence (51.4% vs. 31.5% relating to all other cases).

It remains of great concern the situation of women with disabilities or diseases. 36% of the women with bad health conditions and 36.6% of those with serious limitations have been victims of physical or sexual violence. The risk to be exposed to rape or attempted rape doubles compared to women without any health problems (10% vs. 4.7%).

On a positive note, compared to the previous edition-2006, sexual and physical violence cases result to be reduced from 13.3% to 11.3%. This is the result of an increased awareness of existing protection tools by women in the first place and the

public opinion at large, in addition to an overall social climate of condemnation and no mercy for such crimes.

More specifically, physical or sexual violence cases committed by a partner or a former partner is reduced (as for the former, from 5.1% to 4%; as for the latter, from 2.8% to 2%) as well as for cases of VAW perpetrated by non-partners (from 9% to 7.7%).

The decline is meaningful when considering cases among female students: it reduced from 17.1% to 11.9% in the event of former partners; from 5.3% to 2.4% in the event of current partner; and from 26.5% to 22%, in the event of a non-partner.

Significantly reduced are those cases of psychological violence committed by the current partner (from 42.3% to 26.4%), especially when they are not coupled with physical and sexual violence.

Women are far more aware that they have survived a crime (from 14.3% to 29.6% in case of violence by the partner) and it is reported far more often to the police (from 6.7% to 11.8%). More often, they talk about that with someone (from 67.8% to 75.9%) and look for professional help (from 2.4% to 4.9%). The same applies in the event of violence by a non-partner.

Compared to the 2006 edition, survivors are far more satisfied with the relevant work carried out by the police. In the event of violence from the current or the former partner, data show an increase from 9.9% to 28.5%.

Conversely, negative results emerge when considering cases of rape or attempted rape (1.2% in both editions).

The forms of violence are far more serious with an increase of those also victims of injuries (from 26.3% to 40.2% when the partner is the author); and an increased number of women that were fearing that their life was in danger (from 18.8% in 2006 to 34.5% in 2014). Also the forms of violence by a non-partner are more serious.

3, 466,000 women (=16.1%) have been victims of stalking during lifetime, of whom 1, 524,000 have been victims of their former partner; and 2,229,000 from other person that the former partner.”

III. RELEVANT INTERNATIONAL LAW

56. The relevant international law is partly described in the case of *Opuz v. Turkey* (no. 33401/02, §§ 72-82, ECHR 2009) and partly in the case of *Rumor v. Italy* (no. 72964/10, §§ 31-35, 27 May 2014).

57. At its 49th session, which was held from 11 to 29 July 2011, the Committee on the Elimination of Discrimination against Women (“the CEDAW Committee”) adopted its concluding comments on Italy, of which the passages relevant to the present case read as follows:-

“26. The Committee welcomes the adoption of the Act No. 11/2009 which introduced a crime of stalking and mandatory detention for perpetrator of acts of sexual violence, the National Action Plan to Combat Violence against Women and Stalking as well as the first comprehensive research on physical, sexual and psychological violence against women developed by the National Statistics Institute. However, it remains concerned about the high prevalence of violence against women and girls and the persistence of socio-cultural attitudes condoning domestic violence,

as well as lack of data on violence against immigrant, Roma and Sinti women and girls. The Committee is further concerned about the high number of women murdered by their partner or ex-partner (femicide), which may indicate a failure of the State party's authorities to adequately protect the women victims from their partners or ex-partners. In accordance with its general recommendation No. 19 on violence against women and the views adopted by the Committee under the Optional Protocol procedures, the Committee urges the State party to:

(a) put emphasis on comprehensive measures to address violence against women in the family and in society, including through addressing the specific needs of women made vulnerable by particular circumstances, such as Roma and Sinti, migrant and older women and women with disabilities;

(b) ensure that female victims of violence have immediate protection, including expulsion of perpetrator from the home, guarantee that they can stay in secure and well funded shelters, in all parts of the country, and that they have access to free legal aid, psycho-social counselling and adequate redress, including compensation;

(d) enhance the system of appropriate data collection on all forms of violence against women, including domestic violence, protection measures, prosecutions and sentences imposed on perpetrators and conduct appropriate surveys to assess the prevalence of violence experienced by women belonging to disadvantaged groups, such as Roma and Sinti, migrant and older women and women with disabilities;

(e) further pursue, in collaboration with a broad range of stakeholders, including women's and other civil society organizations, awareness-raising campaigns through the media and public education programmes to make violence against women socially unacceptable and disseminate information on available measures to prevent acts of violence against women among the general public;

(f) ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in a timely manner."

58. On 27 September 2012 the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) was signed. It was ratified by Italy on 10 September 2013 and came into force in that country on 1 August 2014. The passages of that Convention relevant to the present case are partly set out in the case of *Y. v. Slovenia* (no. 41107/10, § § 72, ECHR 2015 (extracts)). Furthermore, Article 3 of that Convention provides:

Article 3 – Definitions

"For the purpose of this Convention:

a "violence against women" is understood 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;

b “domestic violence” shall mean 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;

...”

59. The conclusions of the United Nations Special Rapporteur on violence against women, its causes and consequences, drawn up following his official visit to Italy (from 15 to 26 January 2012), read as follows:-

“VII. Conclusions and recommendations

91. Efforts have been made by the Government to address the issue of violence against women, including through the adoption of laws and policies and the establishment and merger of governmental bodies responsible for the promotion and protection of women’s rights. Yet these achievements have not led to a decrease in the femicide rate or translated into real improvements in the lives of many women and girls, particularly Roma and Sinti women, migrant women and women with disabilities.

92. Despite the challenges of the current political and economic situation, targeted and coordinated efforts in addressing violence against women, through practical and innovative use of limited resources, need to remain a priority. The high levels of domestic violence, which are contributing to rising levels of femicide, demand serious attention.

93. The Special Rapporteur would like to offer the Government the following recommendations.

A. Law and policy reforms

94. The Government should:

(a) Put in place a single dedicated governmental structure to deal exclusively with the issue of substantive gender equality broadly and violence against women in particular, to overcome duplication and lack of coordination;

(b) Expedite the creation of an independent national human rights institution with a section dedicated to women’s rights;

(c) Adopt a specific law on violence against women to address the current fragmentation which is occurring in practice due to the interpretation and implementation of the civil, criminal and procedures codes;

(d) Address the legal gap in the areas of child custody and include relevant provisions relating to protection of women who are the victims of domestic violence;

(e) Provide education and training to strengthen the skills of judges to effectively address cases of violence against women;

(f) Ensure the provision of quality, State-sponsored legal aid to women victims of violence as envisaged in the constitution and Law No. 154/200 on measures against violence in family relations;

(g) Promote existing alternative forms of detention, including house arrest and low-security establishments for women with children, having due regard to the largely non-violent nature of the crimes for which they are incarcerated and the best interest of children;

(h) Adopt a long-term, gender-sensitive and sustainable policy for social inclusion and empowerment of marginalized communities, with a particular focus on women's health, education, labour and security;

(i) Ensure the involvement of representatives of these communities, particularly women, in the design, development and implementation of policies which impact them;

(j) Ensure continued provision of quality education for all, including through a flexible application of the 30 per cent ceiling of non-Italian pupils per classroom, to allow for inclusive schools particularly in places where the population of non-Italians is high.

(k) Amend the "Security Package" laws generally, and the crime of irregular migration in particular, to ensure access of migrant women in irregular situations to the judiciary and law enforcement agencies, without fear of detention and deportation;

(l) Address the existing gender disparities in the public and private sectors by effectively implementing the measures provided by the Constitution and other legislation and policies to increase the number of women, including from marginalized groups, in the political, economic, social, cultural and judicial spheres;

(m) Continue to remove legal hurdles affecting the employment of women, which is exacerbated through the practice of signing blank resignations, and the lower positions and salary scale for women. Strengthen the social welfare system by removing impediments to the integration of women into the labour market;

(n) Ratify and implement the Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, International Labour Organization Convention No. 189 (2011) concerning decent work for domestic workers; the European Convention on the Compensation of Victims of Violent Crimes and the Council of Europe Convention on preventing and combating violence against women and domestic violence.

B. Societal changes and awareness-raising initiatives

95. The Government should also:

(a) Continue to conduct awareness-raising campaigns aimed at eliminating;

(b) Strengthen the capacity of the National Racial Discrimination Office to put in place programmes to bring about change in society's perception of women who belong to marginalized communities and groups;

(c) Continue to conduct targeted sensitization campaigns, including with CSOs, to increase awareness on violence against women generally, and women from marginalized groups in particular;

(d) Train and sensitize the media on women's rights including on violence against women, in order to achieve a non-stereotyped representation of women and men in the national media.

C. Support services

96. The Government should further:

(a) Continue to take the necessary measures, including financial, to maintain existing and/or set-up new anti-violence shelters for the assistance and protection of women victims of violence;

(b) Ensure that shelters operate according to international and national human rights standards and that accountability mechanisms are put in place to monitor the support provided to women victims of violence;

(c) Enhance coordination and exchange of information among the judiciary, police and psychosocial and health operators who deal with violence against women;

(d) Recognize, encourage and support public-private partnerships with CSOs and higher learning institutions, to provide research and responses to addressing violence against women.”

60. A report by the non-governmental organisation WAVE (Women Against Violence Europe) on Italy was published in 2015. The part relevant to the present case reads as follows:

“In 2014, 681 women and 721 children were accommodated at 45 women’s shelters that are part of the national network *Associazione Nazionale Donne in Rete contro la violenza - D.i.R.e.*

In addition, there are three shelters for Black and Minority Ethnic (BME) women, migrant and asylum seeking women in the cities of Reggio Emilia, Imola and Modena, one shelter for girls and young women victims of forced marriage, and 12 shelters for victims of trafficking.

Women’s Centres

There are 140 women’s centres providing non-residential support to women survivors of any kind of violence in Italy; 113 of these centres are run by NGOs, 19 are run by the state, and 8 are run by faith-based organisations. While the exact number of such services is not known, there are several women’s centres for Black and Minority Ethnic (BME) women, as well as centres for women victims of trafficking. All the women’s centres provide information and advice, counselling, advocacy and practical support with access to social rights (i.e. housing, income, health care) and legal advice. Some only provide specialist support for children and family support, and cooperate with programmes for perpetrators of violence against women.

Women’s Networks

There is one national women’s network in Italy, called *Associazione Nazionale Donne in Rete contro la violenza - D.i.R.e.* The network includes 73 members, all women’s organisations running women’s shelters and anti-violence centres in Italy. Formed in 2008 and based in Rome, the network conduct activities in the areas of public awareness, lobbying and advocacy, training, research and networking. In 2014, the network received EUR 66,747 in funding from various private donors and foundations for specific projects, and EUR 20,000 in membership fees.

Policy & Funding

The Extraordinary Action Plan against gender and sexual violence in accordance with art.5 par. 1 Law Decree 14 August 2013 n.93 converted with amendments into Law 15 October 2013 n.119 (*Piano di Azione Straordinario contro la violenza sessuale e di genere ai sensi dell’art 5 comma 1 D.L. 14 Agosto 2013 n. 93 convertito con modifiche nella legge del 15 Ottobre 2013 n 119*) was launched in 2015 and

covers a three-year period [voir paragraphe 53 ci-dessus]. The Plan addresses rape and sexual assault only marginally, and it does not provide for adequate financing of existing services or to create new services in the many regions where these are inexistent. While forced and early marriage is mentioned in the Plan, no particular measures are included. Conceived as an extraordinary measure provided for in a law decree addressing other subjects, the Plan generally fails to address the structural characteristics of violence against women and gender-based violence. Measures and interventions included in the Plan do not consider women's shelters and anti-violence centres as key actors in providing specialist support to survivors of violence, with a gender perspective.

The Department for Equal Opportunities – Presidency of the Council of Ministers – acts as coordinating body for the implementation of policies on VAW. This body has in practice little effectiveness, largely due to the failure of the President of the Council of Ministers to appoint a Minister with decision-making.

There is currently no national monitoring body entrusted with the evaluation of national strategies on VAW in Italy, and women's organisations are rarely invited to conduct such evaluation. Nonetheless, in 2014, a coalition of Italian women's NGOs (among which D.i.R.e.) submitted a Shadow Report on the implementation of the Beijing Declaration and Platform for Action covering 2009-2014, and including review of national strategies on VAW.

In 2014, funding for governmental activities to combat VAW equalled EUR 7 million, while very little funding was provided for NGOs activities through local regional governments; detailed information on funding for NGOs activities is not available, due to the budget being decentralized. State funding for women's organisations providing support is exclusively project-based.

Prevention, Awareness-raising, Campaigning

The national women's network, along with most of the women's shelters and centres, and the national women's helpline conduct activities in the field of prevention, awareness-raising and campaigning; besides the national women's helpline (1522), none of them received funding to carry out these activities in 2014.

Training

Most of the women's shelters and centres conduct trainings with a number of target groups: police, judiciary, civil servants, health professionals, psychologists, social workers, education professionals, media, and others.”

THE LAW

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II. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

76. Relying on Articles 2, 3 and 8 of the Convention, the applicant complained that, owing to their complacency and indifference, the Italian authorities, despite having been alerted several times to her husband's

violence, had not taken the necessary measures to protect her and her son's life from the – in her view real and known – risk represented by her husband, and had not prevented the commission of other domestic violence. She alleged that the authorities had thus failed to comply with their positive obligation under the Convention.

77. The Court reiterates that since it is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by an applicant or a government. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties. In other words, a complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 43, ECHR 2012). Having regard to the circumstances complained of by the applicant and the manner in which her complaints were formulated, the Court will examine them under Articles 2 and 3 of the Convention (for a similar approach, see *E.M. v. Romania*, no. 43994/05, § 51, 30 October 2012; *Valiulienė v. Lithuania*, no. 33234/07, § 87, 26 March 2013; and *M.G. v. Turkey*, no. 646/10, § 62, 22 March 2016).

Those Articles provide:

Article 2

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

78. The Government disputed that argument.

A. The applicant's submissions

79. The applicant alleged that the failure by the authorities to comply with their obligation to protect her life and that of her son, who was killed by her husband, had resulted in a violation of Article 2 of the Convention. She submitted in that regard that the Italian authorities had failed to protect her son's right to life and that they had been negligent before the repeated violence, threats and injuries which she herself had endured.

80. She argued that the Italian authorities had tolerated *de facto* her husband's violence. In her submission, the police had known since June 2012 that she had been a victim of violence and should have known that there was a real and serious risk that A.T. would be violent towards her. According to the applicant, there had been clear signs of a continuing threat of danger to her, but the authorities had not taken the necessary measures

immediately after she had lodged her complaint and had thus left her alone and defenceless.

81. The applicant alleged, further, that, despite the hospital certificate of 19 August 2012 establishing that she had been beaten and threatened with a knife, that fact had not been taken seriously.

82. In the applicant's view, the only remedy available had been a criminal complaint and this had not been effective. She stated that she had lodged a complaint on 5 September 2012 and made a statement to the police in April 2013. She added that, during the seven months between lodging the complaint and giving her statement, no investigative steps had been taken and no witnesses heard. In March 2013 the public prosecutor had again had to ask the police to investigate (see paragraph 29 above).

83. The applicant complained of the authorities' complacency and stated that she had changed her version of the facts once she had been questioned by the police seven months after lodging her complaint. In her view, it was clear that the State had not protected her and that she had been abandoned by the authorities, who had not taken any measures to protect her despite her request. The applicant also stated that the Udine District Council, while aware of the difficult situation in which she found herself, had refused to help her and had stopped funding her accommodation at the shelter run by the association for the protection of battered women. In her submission, the authorities should have intervened of their own motion given the circumstances of the case and her vulnerability.

84. The applicant argued that, according to the Court's case-law, the positive obligations under Article 2 of the Convention imposed a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person and backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. She submitted that this could also imply in certain circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life was at risk from the criminal acts of another individual (she referred to *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports of Judgments and Decisions* 1998-VIII, cited in *Kontrová v. Slovakia*, no. 7510/04, § 49, 31 May 2007). She concluded that in the present case the Italian State had not taken the necessary measures to protect her life and that of her son.

85. Referring to the Court's case-law (*Opuz*, cited above, § 159), the applicant complained that she had also been subjected to inhuman and degrading treatment. She reiterated that she had lodged a complaint, supported by her medical case notes, in September 2012 and that, for seven months, the authorities had done nothing to protect her. She added that her husband had meanwhile succeeded in convincing her to come back and live with him.

86. In conclusion, the applicant submitted that the State had failed to comply with its positive obligations under Articles 2 and 3 of the Convention.

B. The Government's submissions

87. After stating the principles established in the Court's case-law, the Government submitted that not every claimed risk to life could entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising (they referred to *Opuz*, cited above, § 129). In their submission, it also had to be established that the authorities had known or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they had failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

88. Furthermore, the Government considered that the present case had to be distinguished from the case of *Opuz* (cited above). In their submission, in the present case the authorities had not known and could not have known that the applicant and her son's lives were at risk, as there had been no tangible evidence that their lives were in imminent danger. They pointed out that, after the two episodes of violence in June and August 2012 the applicant had found refuge in a victim support shelter and that she had subsequently found employment providing her with financial independence. In the Government's submission, the two episodes reported in June and August 2012 had appeared to be mere family rows. The Government submitted that the authorities had done everything in their power by fining A.T. for unauthorised possession of a lethal weapon, and that an investigation in respect of ill-treatment and bodily injury required that a complaint be lodged.

89. The Government also stated that the applicant had left the shelter where she had taken refuge and that when she had been questioned by the police in April 2013 she had changed her earlier statements. They observed that the authorities, before discontinuing the complaint of ill-treatment, had checked whether her version of the facts was accurate, whether there had been other events of that type and whether the applicant had been in a vulnerable situation capable of inducing her to change her statements. According to the Government, the applicant had then stated that there had been no further incident and that A.T. had calmed down.

90. In those circumstances the Government considered that an intervention by the authorities could have breached Article 8 of the Convention.

91. In their view, the time that elapsed between lodging the complaint and hearing the applicant had not had the effect of leaving the applicant

exposed to violence from A.T. The Government pointed out, further, that as no other request for intervention had been made, there had been no specific sign of real and immediate violence. They added that on the basis of the aforementioned factors the authorities had decided not to prosecute A.T. for ill-treatment of family members.

92. The Government submitted that the applicant had never shown that she had suffered continual abuse or violence or that she had lived in fear of being attacked. They observed, however, that during her interview with the police in April 2013 she had asserted that she was no longer being abused.

93. Consequently, the Government considered that the acts of violence allegedly suffered by the applicant could not be classified as inhuman or degrading treatment.

94. From a procedural point of view, the Government submitted that they had complied with their positive obligations under the Convention. They stated that, following the investigation, as the applicant had changed her statements, the prosecution had to request that the case be discontinued. They added that the proceedings relating to the offence of causing bodily injury had continued and that A.T. had been sentenced on 1 October 2015 to pay a fine of EUR 2,000.

C. The Court's assessment

1. Applicable principles

95. The Court will examine the complaints under Articles 2 and 3 of the Convention in the light of the converging principles deriving from both those provisions, principles which are well-established and have been summarised, *inter alia*, in the judgments *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, §§ 110 and 112-113, ECHR 2005-VII), and *Ramsahai and Others v. the Netherlands* ([GC], no. 52391/99, §§ 324-25, ECHR 2007-II).

96. The Court has already stated that, in interpreting Articles 2 and 3, it must be guided by the knowledge that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective.

97. It reiterates that Article 3, like Article 2, must be regarded as one of the most fundamental provisions of the Convention and as enshrining one of the core values of the democratic societies making up the Council of Europe (see *Soering v. the United Kingdom*, 7 July 1989, § 88, Series A no. 161). In contrast to the other provisions in the Convention, it is cast in absolute terms, without exception or proviso, or the possibility of derogation under Article 15 of the Convention (see *Pretty v. the United Kingdom*, no. 2346/02, § 49, ECHR 2002-III).

98. The Court also reiterates the general principles established in its case-law concerning domestic violence as laid down in *Opuz* (cited above, § 159, with the case-law references mentioned therein).

99. In that connection it reiterates that children and other vulnerable individuals – into which category fall victims of domestic violence – in particular are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see *Opuz*, cited above, § 159). It also observes that the positive obligations laid down in the first sentence of Article 2 of the Convention also require by implication that the State should set in place an efficient and independent judicial system by which the cause of a death can be established and the guilty parties punished. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. A requirement of promptness and reasonable expedition is implicit in that context (*ibid.*, §§ 150-51).

100. The Court has also previously held that the authorities' positive obligations – in some cases under Articles 2 or 3 and in other instances under Article 8 taken alone or in combination with Article 3 of the Convention – may include a duty to put in place and apply an adequate legal framework affording protection against acts of violence by private individuals (see, among other authorities, *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 65, 12 June 2008; *Sandra Janković v. Croatia*, no. 38478/05, § 45, 5 March 2009; *A. v. Croatia*, no. 55164/08, § 60, 14 October 2010; *Dorđević v. Croatia*, no. 41526/10, §§ 141-143, ECHR 2012; and *M. and M. v. Croatia*, no. 10161/13, § 136, ECHR 2015 (extracts)).

101. Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman*, cited above, § 115; *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 50, 15 January 2009; *Opuz*, cited above, § 128; *Mahmut Kaya v. Turkey*, no. 22535/93, § 85, ECHR 2000-III; and *Kılıç v. Turkey*, no. 22492/93, § 62, ECHR 2000-III).

Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established 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 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 (see *Keenan v. the United Kingdom*, no. 27229/95, §§ 89-90, ECHR 2001-III; *Gongadze v. Ukraine*, no. 34056/02, § 165, ECHR 2005-XI; and *Opuz*, cited above, §§ 129-30). Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention (see *Osman*, cited above, § 116, and *Opuz*, cited above, § 129).

102. The Court reiterates that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, even administered by private individuals.

103. Nevertheless, it is not the Court's role to replace the national authorities and to choose in their stead from among the wide range of possible measures that could be taken to secure compliance with their positive obligations under Article 3 of the Convention (see *Opuz*, cited above, § 165). Moreover, under Article 19 of the Convention and under the principle that the Convention is intended to guarantee not theoretical or illusory, but practical and effective rights, the Court has to ensure that a State's obligation to protect the rights of those under its jurisdiction is adequately discharged (see *Sandra Janković*, cited above, § 46, and *Hajduová v. Slovakia*, no. 2660/03, § 47, 30 November 2010). The question of the appropriateness of the authorities' response may raise a problem under the Convention (see *Bevacqua and S.*, cited above, § 79).

104. The positive obligation to protect a person's physical integrity extends to matters concerning the effectiveness of a criminal investigation, which cannot be considered to be limited solely to cases of ill-treatment by State agents (see *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII).

105. This aspect of the positive obligation does not necessarily require a conviction, but effective implementation of the law, particularly criminal, in order to secure the protection of the rights guaranteed by Article 3 of the Convention (see *M.G. v. Turkey*, cited above, § 80).

106. A requirement of promptness and reasonable expedition is implicit in the obligation to carry out an investigation. The protection machinery provided for in domestic law must operate in practice within a reasonable time such as to conclude the examination on the merits of specific cases

submitted to them (see *Opuz*, cited above, §§ 150-51). The State's obligation under Article 3 of the Convention will not be deemed to be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice, and that requires a prompt examination of the case without unnecessary delays.

2. *Application of the above-mentioned principles to the present case*

a) **Article 2**

107. The Court observes first of all that there is no doubt that Article 2 of the Convention applies to the situation arising as a result of the death of the applicant's son.

108. It notes subsequently that in the instant case the force used against the applicant was not in the event lethal. This does not, however, exclude in principle an examination of the complaints under Article 2, the text of which, read as a whole, demonstrates that it covers not only intentional killing but also situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 49-55, ECHR 2004-XI). The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports* 1998-III).

109. It is also necessary to bear in mind that, where the State's positive obligations to protect the right to life are concerned, it may be a question of recourse to lethal force by the police or of failure by the authorities to take protective measures to avoid a risk from the acts of third party (see, for example, *Osman*, cited above, §§ 115-22).

110. The Court considers that the applicant was the victim of inherently life-endangering conduct even though she ultimately survived her injuries (see *Camekan v. Turkey*, no. 54241/08, § 38, 28 January 2014). Article 2 of the Convention therefore applies in the present case in respect of the applicant herself as well.

111. Turning to the circumstances of the instant case, the Court notes that, following the violent acts perpetrated against her in June and August 2012, the applicant lodged a criminal complaint in respect of the abuse inflicted by A.T. (see paragraph 21 above). It observes that the applicant appended to her complaint a medical report drawn up after the assault and describing the physical injuries visible on her body (see paragraph 16 above). At that time she expressed her fears for her life and that of her daughter and requested the benefit of protective measures. Accordingly, the conduct of the domestic authorities must be assessed from that date onwards.

112. The Court notes that a judicial investigation was instituted against A.T. for ill-treatment of family members, inflicting grievous bodily harm and making threats. The police sent the applicant's complaint to the prosecution on 9 October 2012. On 15 October 2012 the prosecuting authorities, having regard to the applicant's request for protective measures, ordered urgent investigative measures to be carried out. In particular, they requested the police to check whether there had been witnesses, including the applicant's daughter. It notes that in the meantime the applicant had found refuge, through an association, in a shelter for victims of violence, where she stayed for three months.

113. The Court notes that no protection order was issued, that the prosecution reiterated its request to the police in March 2013, emphasising the urgency of the situation, and that the applicant was not heard until April 2013.

114. Whilst, in the context of domestic violence, protection measures are in principle intended to avoid a dangerous situation as quickly as possible, the Court notes that seven months elapsed before the applicant was heard. Such a delay could only serve to deprive the applicant of the immediate protection required by the situation. Admittedly, as submitted by the Government, during the period in question the applicant was not subjected to further physical acts of violence by A.T. However, the Court cannot disregard the fact that the applicant, who was being harassed by telephone, was living in fear while staying at the shelter.

115. In the view, the national authorities had a duty to take account of the unusual psychological, physical and material situation in which the applicant found herself and to assess the situation accordingly, providing her with appropriate support. That was not done in this case.

116. While it is true that, seven months later, in April 2013, the applicant changed some of her statements, which led the authorities to discontinue the case in part, the Court notes that proceedings for grievous bodily harm were still pending on that date. Yet, the authorities failed to conduct any assessment of the risks facing the applicant, including the risk of renewed assaults.

117. In the light of the foregoing, the Court considers that, by failing to act rapidly after the applicant had lodged her complaint, the national authorities deprived the complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of A.T.'s acts of violence against his wife and family (see *Halime Kılıç v. Turkey*, no. 63034/11, § 99, 28 June 2016).

118. Although the Government submitted that there had been no tangible evidence of an imminent danger to the applicant's life or that of her son, the Court considers that the authorities do not appear to have assessed the risks involved for the applicant as a result of A.T.'s behaviour.

119. It notes that the context of impunity referred to above (see paragraph 117) reached its peak during the tragic night of 25 November 2013. The Court observes in that connection that the police intervened twice that night. Having been called out by the applicant, the police first found the bedroom door broken and the floor strewn with bottles of alcohol. The applicant had informed them that her husband had been drinking and that she had decided to call them because she thought he needed a doctor. She had told them that she had lodged a complaint against her husband in the past, but that she had subsequently changed her statements. The couple's son had stated that his father was not violent towards him. Lastly, neither the applicant nor her son presented any traces of violence. A.T. had been taken to hospital in a state of intoxication but had subsequently checked himself out to go to an amusement arcade.

The police intervened a second time the same night when they stopped and fined A.T. during an identity check in the street. According to the police report, A.T. had been in a state of intoxication, had difficulty maintaining his balance and the police had let him go after fining him.

120. The Court notes that on neither occasion did the authorities take any specific measures to provide the applicant with adequate protection consonant with the seriousness of the situation, even though the violence inflicted on her by A.T. was known to the police as proceedings for inflicting grievous bodily harm on the applicant were still pending at the time (see paragraph 35 above).

121. The Court cannot speculate as to how events would have turned out if the authorities had adopted a different approach. It reiterates, however, that a failure to take reasonable measures which might realistically have altered the outcome or mitigated the harm is sufficient to engage the State's responsibility (see *E. and Others v. the United Kingdom*, no. 33218/96, § 99, 26 November 2002; *Opuz*, cited above § 136; and *Bljakaj and Others v. Croatia*, no. 74448/12, § 124, 18 September 2014).

122. In the Court's view, the risk of a real and immediate threat (see paragraph 99 above) must be assessed taking due account of the particular context of domestic violence. In such a situation it is not only a question of an obligation to afford general protection to society (see *Mastromatteo v. Italy* [GC], no. 37703/97, § 69, ECHR 2002-VIII; *Maiorano and Others v. Italy*, no. 28634/06, § 111, 15 December 2009; *Choreftakis and Choreftaki v. Greece*, no. 46846/08, § 50, 17 January 2012; and *Bljakaj*, cited above, § 121), but above all to take account of the recurrence of successive episodes of violence within the family unit. In that context the Court reiterates that the police had to intervene twice during the night of 25 November 2013: firstly when they inspected the damaged flat, and secondly when they stopped and fined A.T., who was in a state of intoxication. Having regard also to the fact that the police had been in a position to check, in real time, A.T.'s police record, the Court considers that

they should have known that the applicant's husband constituted a real risk to her, the imminent materialisation of which could not be excluded. It therefore concludes that the authorities 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.

123. The Court reiterates that in domestic violence cases perpetrators' rights cannot supersede victims' human rights to life and to physical and psychological integrity (see *Opuz*, cited above, § 147). Furthermore, the State has a positive obligation to take preventive operational measures to protect an individual whose life is at risk.

124. In those circumstances the Court concludes that the authorities cannot be considered to have displayed due diligence. They therefore failed in their positive obligation to protect the right to life of the applicant and her son within the meaning of Article 2 of the Convention.

125. Having regard to the foregoing, the Court considers that the shortcomings observed above rendered the applicant's criminal complaint ineffective in the circumstances of the instant case. Accordingly, it rejects the preliminary objection raised by the Government on grounds of non-exhaustion of domestic remedies (see paragraph 68 above) and concludes that there has been a violation of Article 2 of the Convention.

b) Article 3

126. The Court considers that the applicant can be regarded as belonging to the category of "vulnerable persons" entitled to State protection (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI). In that connection it takes note of the acts of violence suffered by the applicant in the past. It also notes that the violent acts perpetrated against the applicant, manifesting themselves in physical injuries and psychological pressure, are sufficiently serious to be classified as ill-treatment within the meaning of Article 3 of the Convention. It must therefore be determined whether the domestic authorities acted in a manner such as to satisfy the requirements of that Article.

127. The Court has found, under Article 2 of the Convention (see paragraph 117 above) that, by failing to act rapidly after the applicant had lodged her complaint, the national authorities deprived the complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of A.T.'s acts of violence against his wife and family. It also notes that A.T. was convicted on 1 October 2015 of causing grievous bodily harm following the incident in August 2012, while in the meantime he had killed his son and attempted to murder the applicant and had also been sentenced on 8 January 2015, by the Udine preliminary hearings judge to life imprisonment for the murder of his son and the attempted murder of his wife, and for the offences of ill-treatment of the applicant and her daughter.

It was established that the applicant and her children had been living in a climate of violence (see paragraph 47 above).

128. The Court reiterates on this point that the mere passing of time can work to the detriment of the investigation, and even fatally jeopardise its chances of success (see *M.B. v. Romania*, no. 43982/06, § 64, 3 November 2011). It also observes that the passing of time will inevitably erode the amount and quality of the evidence available and that the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the complainants (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

129. The Court again emphasises that special diligence is required in dealing with domestic violence cases and considers that the specific nature of domestic violence as recognised in the Preamble to the Istanbul Convention (see paragraph 58 above) must be taken into account in the context of domestic proceedings.

It stresses in this regard that the Istanbul Convention imposes a duty on the States Parties to take “the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings”.

130. In that connection the Court also considers that, in judicial cases involving disputes relating to violence against women, the national authorities have a duty to examine the victim’s situation of extreme psychological, physical and material insecurity and vulnerability and, with the utmost expedition, to assess the situation accordingly. In the instant case there is no explanation for the authorities’ complacency for such a long period – seven months – before the instigation of criminal proceedings. Likewise, there is no explanation for why the criminal proceedings for grievous bodily harm, instituted after the applicant had lodged her complaint, lasted three years, ending on 1 October 2015.

131. Having regard to the findings in the present case, the Court considers that the manner in which the domestic authorities prosecuted the case is also a manifestation of that judicial complacency and cannot be deemed to satisfy the requirements of Article 3 of the Convention.

...

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 2 AND 3

133. Relying on Article 14 of the Convention taken in conjunction with Articles 2 and 3, the applicant submitted that the omissions by the Italian

authorities proved that she had been discriminated against as a woman and that the Italian legislation on domestic violence was inadequate.

Article 14 of the Convention provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. The parties’ submissions

134. Referring to all the domestic and international legislation she considered relevant in the instant case, the applicant relied on the conclusions of the United Nations Special Rapporteur, who urged Italy to eliminate stereotypical attitudes about the roles and responsibilities of women and men in the family, society and workplace.

135. The applicant alleged that she had not had the benefit of adequate legislative protection and that the authorities had failed to respond appropriately to her allegations of domestic violence. In her submission, that amounted to discriminatory treatment on grounds of sex.

136. Referring to the Court’s conclusion regarding Article 14 of the Convention taken in conjunction with Article 3 in the case of *T.M. and C.M. v. the Republic of Moldova* (no. 26608/11, §§ 49 and 62, 28 January 2014), the applicant requested the Court to conclude that there had been a violation of Article 14.

137. The Government submitted that there had not been discrimination on grounds of sex in the present case. Moreover, in their submission, the claim that discrimination was institutionalised by the criminal law or administrative or judicial practice did not stand up to close analysis.

138. They pointed out that the National Council of the Judiciary had adopted two resolutions – on 11 February 2009 and 18 March 2014 – requesting the heads of the judicial offices to organise their departments and specialise in this area in such a way as to be able to deal effectively with cases of domestic violence.

139. They added that the domestic law provided for a firm response to such acts of violence: the law on stalking ... contained provisions for combating violence against women.

B. The Court’s assessment

1. Admissibility

140. The Court, while observing that this complaint was never examined as such by the domestic courts, considers, in the light of the circumstances of the case, that it is so closely linked to the complaints examined above that

the outcome must be the same and the complaint accordingly declared admissible.

2. Merits

141. The Court reiterates that, according to its case-law, a State's failure to protect women against domestic violence breaches their right to equal protection before the law and that this failure does not need to be intentional (see *Opuz*, cited above, § 191). The Court has previously held that "the general and discriminatory judicial passivity [of the police] creating a climate that was conducive to domestic violence" amounted to a violation of Article 14 of the Convention (*ibid.*, §§ 191 et seq.). It also found that such discriminatory treatment occurred where it could be established that the authorities' actions were not a simple failure or delay in dealing with the violence in question, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the complainant as a woman (see *Eremia v. the Republic of Moldova*, no. 3564/11, § 89, 28 May 2013).

142. In the instant case the Court notes that the applicant was assaulted by A.T. on several occasions (see paragraphs 10, 16, 21 and 47 above) and that the authorities had been aware of this.

143. It observes that the authorities did not carry out any investigation in the seven months following the applicant's lodging of her complaint and that no measure of protection was implemented. Whilst, admittedly, the proceedings in respect of the applicant's complaint were discontinued approximately one year later, on account of her having changed her statements, the Court also notes that A.T. was convicted of grievous bodily harm three years later, on 1 October 2015, after killing his son and attempting to murder the applicant.

144. The authorities' complacency in the present case is particularly striking in that the prosecution had asked the police, who had remained inactive for six months, to take immediate action having regard to the applicant's request for protective measures. The Court reiterates in this connection the findings it has reached regarding the domestic authorities' failure to provide the applicant with effective protection and the impunity enjoyed by A.T. (see paragraph 117 above).

145. According to the Court, the combined effect of the above-mentioned factors shows that, by underestimating, through their complacency, the seriousness of the violent acts in question, the Italian authorities in effect condoned them. The applicant was therefore a victim of discrimination, as a woman, in breach of Article 14 of the Convention (see *T.M. and C.M. v. the Republic of Moldova*, cited above, § 62; *Eremia*, cited above, § 98; and *Mudric v. the Republic of Moldova*, no. 74839/10, § 63, 16 July 2013). Furthermore, the conclusions of the Special Rapporteur on violence against women, its causes and consequences, following his official visit to Italy (see 59 paragraph above), those of the CEDAW (see

paragraph 57 above) and those of the National Statistics Institute (see paragraph 55 above) demonstrate the extent of the problem of domestic violence in Italy and the discrimination suffered by women in this regard. The Court considers that the applicant provided prima facie evidence, backed up by undisputed statistical data, that domestic violence primarily affects women and that, despite the reforms implemented, a large number of women are murdered by their partners or former partners (femicide) and, secondly, that the socio-cultural attitudes of tolerance of domestic violence persist (see paragraph 57 and 59 above).

146. That prima facie evidence, which is undisputed by the Government, distinguishes the present case from that of *Rumor* (cited above, § 76), the circumstances of which were very different, and in which the Court had held that the legislative framework in Italy governing domestic violence had been effective in that case in punishing the perpetrator of the crime of which the applicant had been a victim and preventing the recurrence of violent attacks on her physical integrity and had accordingly held that there had been no violation of Article 3, taken alone or in conjunction with Article 14.

147. The Court reiterates that, having found that the criminal-law system in the present case had not had an adequate deterrent effect capable of effectively preventing the unlawful acts by A.T against the personal integrity of the applicant and of her son, it held that there had been a violation of the applicant's rights under Articles 2 and 3 of the Convention.

148. Having regard to its conclusions reached above (see paragraph 145), the Court considers that the violence perpetrated against the applicant must be regarded as based on her sex and accordingly as a form of discrimination against women.

149. Consequently, in the circumstances of the instant case, the Court concludes that there has been a violation of Article 14 of the Convention taken in conjunction with Articles 2 and 3 of the Convention.

...

FOR THESE REASONS, THE COURT

...

3. *Holds*, by six votes to one, that there has been a violation of Article 2 of the Convention on account of the murder of the applicant's son and the attempted murder of the applicant;
4. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention on account of the authorities' failure to comply with their

obligation to protect the applicant from the acts of domestic violence committed by A.T.;

...

6. *Holds*, by five votes to two, that there has been a violation of Article 14 of the Convention taken in conjunction with Articles 2 and 3;

...

Done in French, and notified in writing on 2 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Mirjana Lazarova Trajkovska
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) partly concurring, partly dissenting opinion of Judge Eicke;
- (b) partly dissenting opinion of Judge Spano.

M.L.T.
A.C.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE EICKE

I. Article 2 and/or 3 of the Convention

1. Having had the opportunity to read, in draft, the Partly Dissenting Opinion of Judge Spano in this Case, I agree with his expression of the applicable principles (as derived from *Opuz v. Turkey*, no. 33401/02, ECHR 2009, and *Osman v. the United Kingdom*, 28 October 1998, Reports 1998-VIII), as well as the identification of the two questions to be answered concerning the “immediacy of the risk” and “reality of the risk”: see Sections I and II of that Partly Dissenting Opinion. However, unlike him and not without considerable hesitation, I have reached a different conclusion on the application of those principles to the facts in the present case and have voted for a finding of a violation of Articles 2 and 3.

2. In relation to the question of *immediacy of the risk* Judge Spano focusses on the “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. He concludes that these lapses “challenge the possibilities of imminence of risk in this case” (§ 5). However, from the point of view of the relevant “agents of the State” to whom an imminent real risk must have been reasonably foreseeable, the evidence suggests that there were a number of relevant events during that period of time running right up to the end of 2013. These include:

a. 19 August 2012 to 4 December 2012, following the second alleged attack on the Applicant by her husband (potentially involving the use of a switch blade) and with the support and knowledge of the police and local social services, the Applicant resided at a shelter run by an association for the protection of women who have been victims of domestic violence (§§ 18-19 and 27);

b. The Applicant’s criminal complaint of 5 September 2012 was transmitted to the competent judicial authorities together with a request for the adoption of preventive measures aimed at protecting the Applicant;

c. 18 March 2013, the prosecutor, noting that, despite his orders of 15 October 2012 that investigative measures be taken urgently, none of the investigations had been concluded, again ordered the police to investigate the Applicant’s complaints as soon as possible (§ 29);

d. 4 April 2013, the Applicant was interviewed for the first time by the police (§ 30). While the Applicant, at this interview, modified her initial allegations, it is said as a result of psychological pressure by her husband (not an uncommon phenomenon in the context of domestic violence), she nevertheless confirmed that her husband’s alcoholism was at the heart of any problems there might have been at home;

e. 30 May 2013, the public prosecutor invited the preliminary investigations judge to close the investigation into the offence of domestic abuse but to maintain the investigation against the Applicant's husband for grievous bodily harm against the Applicant (§ 32);

f. 1 August 2013, the preliminary investigations judge closed the investigations into the offence of domestic abuse but referred the charge of causing bodily harm to the Justice of the Peace (§§ 33-34);

g. 28 October 2013, the Applicant's husband was committed for trial by the Justice of the Peace for causing bodily harm (with the first hearing fixed for 13 February 2014) (§ 35);

h. 18 November 2013, the Applicant's husband was notified of his trial date (19 May 2014) in relation to the attack on the Applicant of August 2012 (§ 36); and, finally

i. At an unspecified date in November 2013, the public prosecutor reopened the investigation against the Applicant's husband for the physical abuse of his wife (§ 44).

3. Taken together with the facts of the initial attacks on the Applicant by her husband (in June and August 2012), as recorded by the police, and the fact that both were apparently connected to (if not caused by) the husband's alcohol abuse, it appears to me not unreasonable to work on the basis that the police was or should have been aware that (a) the Applicant's husband had been and was again under investigation for repeated incidents of domestic abuse against the Applicant, (b) had been charged with causing physical harm to the Applicant in two separate instances, with trial dates notified on 28 October 2013 and 18 November 2013 (a week before the tragic events of 25 November 2013), and (c) the attacks in relation which the husband was subject to investigation and/or charge had occurred when the husband was severely drunk (if not as a result of his alcohol abuse).

4. It is with this in mind that one then has to look at the events of 24 and 25 November 2013.

5. The judgment, at § 38, explains that, on the evidence, the police recorded that when they arrived at the Applicant's home (one assumes on 24 November), having been called by her as a result of an argument between her and her husband:

a. They find the doors of the bedroom broken and the floor covered with empty alcohol bottles;

b. The Applicant confirmed to them that her husband was drunk and indicated that she had called help because she considered that he might need the help of a doctor; and

c. Reminded them of her criminal complaint (and the fact that she had since changed her complaint).

6. Thereafter, the Applicant's husband was taken to hospital in a state of intoxication (§ 39) but checked himself out again that same night.

7. It seems to me that the crucial question, therefore, is whether it can be said that the police officers who, at 2:25 am on 25 November 2013, stopped the Applicant's husband for an identity check and noted that he was (again) in a state of intoxication and had difficulties maintaining his balance, were or should have been aware (having checked his identity) of the above facts and circumstances. Should they at that stage, rather than merely give him a verbal warning, have come to the conclusion that, in his current state, he posed an imminent and real risk to the Applicant's physical integrity and/or life if he were allowed to return home (to the Applicant) in that state.

8. As indicated above and not without considerable hesitation, I have come to the conclusion that they should have known, when they stopped him and checked his identity at 2:25 am on 25 November 2013, of the existence of a real and immediate risk to the physical integrity and/or life of the Applicant (and her children) from the criminal acts of her husband and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

9. In saying that, I am, of course, conscious of (and agree with) the limitations identified in § 116 of *Osman* that:

“... bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention.”

10. However, for me, there is a crucial distinction between the present case and that of *Osman*. After all, unlike in *Osman*, the police in this case had the Applicant within their control little more than 2.5 hours before the deadly attack on his wife and son and at a time when the common (and possibly causative) factor in all his previous attacks (namely his alcohol abuse) was present and apparent to everyone, when they checked his identity (and, therefore, had or should have had access to the information relevant to the risk posed by him, especially when drunk) and proceeded to give him a verbal warning. After all, the evidence is that, when he was stopped by the police, he was so intoxicated that he was having difficulties to maintain his balance. This case is not, therefore, about additional (pro-active) steps the police might or should have taken (which might impose an impossible or disproportionate burden on the police) but about the decision(s) taken when he was already within their control.

11. In this different context, there also seems to be no obvious reason why any short-term preventative intervention by the police authorities,

whether in the form of an enforced return to hospital or otherwise, until (and only until) he was sober would have been inconsistent with his rights either under Article 5 or Article 8. In light of the particular circumstances of this case and my conclusions in relation to Article 2 (above) any such short-term (and effectively preventative) intervention may well have been capable of justification under Article 5 § 1; whether on the basis of securing fulfilment of “his obligation to keep the peace by not committing a specific and concrete offence” (see *Ostendorf v. Germany*, no. 15598/08, § 94, 7 March 2013) under Article 5 § 1(b), on the basis that it was “reasonably considered necessary to prevent his committing an offence” under Article 5 § 1(c) and/or on the basis of Article 5 § 1(e) (lawful arrest or detention of alcoholics “whose conduct and behaviour under the influence of alcohol pose a threat to public order or themselves, ... for the protection of the public or their own interests, such as their health or personal safety”); *Kharin v. Russia*, no. 37345/03, § 34, 3 February 2011, see also *Witold Litwa v. Poland*, no. 26629/95, § 62, ECHR 2000-III). This is, of course, particularly so where the obvious less restrictive alternative to such intervention was to allow him to return home (to the place where his previous attacks took place and where the victim of those attacks, the Applicant, was also resident and was known to be resident as a result of the earlier police intervention).

II. Article 14 read with Articles 2 and/or 3 of the Convention

12. Beyond the complaint under Articles 2 and/or 3 of the Convention, the Applicant further complained that “the unreasonable passivity of [the] authorities demonstrates that the regulatory and protection system provided is not sufficiently suitable in order to ensure the protection of a woman victim of domestic violence” (§124 of the Applicant’s Observations of 9 March 2016) and that, consequently, the ineffectiveness or lack of suitability of the domestic regulatory and protection system amounted to a violation of Article 14 read together with Articles 2 and/or 3. This complaint, therefore, was one of a systemic failure to protect women based on unlawful discrimination.

13. There is no doubt that gender based violence, including in particular domestic violence, continues to “reflect[.] and reinforce[...] inequalities between women and men and remains a major problem in the European Union. It is prevalent in all societies and is based on unequal power relations between women and men, which reinforce men’s dominance over women” (*European Institute for Gender Equality – EIGE in brief* (2016) at p. 8). The fact that gender based violence remains a major problem not only in the EU but also beyond not only lies at the heart of the on-going work of the EU Fundamental Rights Agency and the EIGE on combatting the underlying causes, both societal as well as legal, but, of course also led the

Council of Europe, in 2011, to adopt the Council of Europe Convention on preventing and combating violence (the “Istanbul Convention”). As § 5 of the Explanatory Report to the Istanbul Convention explains further:

“Violence against women is a worldwide phenomenon. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (hereafter CEDAW) in its general recommendation on violence against women No. 19 (1992) helped to ensure the recognition of gender-based violence against women as a form of discrimination against women. The United Nations General Assembly, in 1993, adopted a Declaration on the Elimination of Violence against Women that laid the foundation for international action on violence against women. In 1995, the Beijing Declaration and Platform for Action identified the eradication of violence against women as a strategic objective among other gender equality requirements. In 2006, the UN Secretary-General published his In-depth study on all forms of violence against women, in which he identified the manifestations and international legal frameworks relating to violence against women, and also compiled details of “promising practices” which have shown some success in addressing this issue.”

14. That said, I agree with the sentiment expressed in the opening sentence of Judge Spano’s Partly Dissenting Opinion: “the law has its limits, even human rights law”. This Court is, of course, a court of law and is therefore constrained to act within the limits of the law, the observance of which it is charged to ensure (Article 19), and on the basis of the evidence available to it. As a consequence, the role the Convention and this Court can play in addressing the issue of gender based violence is clearly delimited by the terms of the Convention and by this Court’s case law; a fact which is, of course, also reflected in the fact that *inter alia* the Council of Europe, the United Nations and the EU have concluded Conventions and policies, adopted legislation and created specialist agencies for the specific purpose of addressing this issue.

15. Turning to the applicable law, it was in its landmark judgment in *Opuz v. Turkey* (no. 33401/02, § 191, ECHR 2009), that this Court, drawing inspiration from the terms of CEDAW and the work of the CEDAW Committee, first recognised that a State’s failure to protect women against domestic violence is capable of breaching their right to equal protection of the law irrespective of whether this failure is intentional or not. On the facts of that case, the Court concluded that Turkey had breached the applicant’s rights under Article 14 read together with Articles 2 and 3 of the Convention as there was:

a. A “suggestion” that “domestic violence is tolerated by the authorities and that the remedies indicated by the Government do not function effectively” (§ 197);

b. A “prima facie indication” that “the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence” (§ 198); and

c. “general and discriminatory judicial passivity in Turkey [which], albeit unintentional, mainly affected women, the Court considers that the violence suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women” (§ 200).

16. Applying the approach identified in *Opuz*, the Court has since had occasion to consider whether other High Contracting Parties had acted in breach of Article 14 read with Articles 2 and/or 3 in the context of domestic violence.

17. In relation to the Republic of Moldova, the Court found a breach of Article 14 read together with Articles 2 and/or 3 on the express basis that:

“... the authorities’ actions were not a simple failure or delay in dealing with violence against the first applicant, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman. The findings of the United Nations Special rapporteur on violence against women, its causes and consequences (see paragraph 37 above) only support the impression that the authorities do not fully appreciate the seriousness and extent of the problem of domestic violence in Moldova and its discriminatory effect on women. (see *Eremia v. the Republic of Moldova* (no. 3564/11, § 89, 28 May 2013), *Mudric v. the Republic of Moldova*, no. 74839/10, § 63, 16 July 2013 and *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 62, 7 January 2014; my emphasis)”

18. By contrast, when confronted with a similar complaint against Croatia, the Court, in its judgment in *A v. Croatia*, no. 55164/08, §§94-104, 14 October 2010, concluded that the complaint under Article 14 of the Convention was manifestly ill-founded; “the applicant has not produced sufficient prima facie evidence that the measures or practices adopted in Croatia in the context of domestic violence, or the effects of such measures or practices, are discriminatory” (§ 104). In reaching this conclusion, the Court identified the necessary evidential threshold for a finding of a violation of Article 14 in this context (by reference to and distinguishing the Court’s conclusion in *Opuz*):

“96. In support of these findings the Court relied on the Turkish Government’s recognition of the general attitude of the local authorities, such as the manner in which the women were treated at police stations when they reported domestic violence, and judicial passivity in providing effective protection to victims (see *Opuz*, cited above, § 192). Furthermore, the reports submitted indicated that when victims reported domestic violence to police stations, police officers did not investigate their complaints but sought to assume the role of mediator by trying to convince the victims to return home and drop their complaint. In this connection, police officers considered the problem as a family matter with which they could not interfere (see *Opuz*, cited above, §§ 92, 96, 102 and 195). The reports also showed that there were unreasonable delays in issuing injunctions and in serving injunctions on the aggressors, given the negative attitude of the police officers. Moreover, the perpetrators of domestic violence did not seem to receive dissuasive punishments, because the courts mitigated sentences on the grounds of custom, tradition or honour (see *Opuz*, cited above, §§ 91-93, 95, 101, 103, 106 and 196).

97. The Court notes at the outset that in the present case the applicant has not submitted any reports in respect of Croatia of the kind concerning Turkey in the *Opuz* case. There is not sufficient statistical or other information disclosing an appearance of discriminatory treatment of women who are victims of domestic violence on the part of the Croatian authorities such as the police, law-enforcement or health-care personnel, social services, prosecutors or judges of the courts of law. The applicant did not allege that any of the officials involved in the cases concerning the acts of violence against her had tried to dissuade her from pursuing the prosecution of B or giving evidence in the proceedings instituted against him, or that they had tried in any other manner to hamper her efforts to seek protection against B's violence.

...

101. The Court has already established that not all the sanctions and measures ordered or recommended in the context of these proceedings were complied with. While this failure appears problematic from the standpoint of Article 8 of the Convention, it does not in itself disclose an appearance of discrimination or discriminatory intent on the basis of gender in respect of the applicant."

19. This jurisprudence makes clear that:

a. The assessment under Article 14 read with Articles 2 and/or 3 was distinct from any analysis in relation to any alleged breach of the positive obligations under those Articles 2 and/or 3 in relation to the circumstances of the particular applicant;

b. Absent any evidence that the officers involved in the individual case were acting in a discriminatory manner or with discriminatory intent towards the particular applicant, of which there was no evidence in those cases and is no evidence in the present case, a breach of Article 14 would arise only where there were systemic failings which arose out of a clear and systemic (even if not intentional) failure of the national authorities to appreciate and address the seriousness and extent of the problem of domestic violence within their jurisdiction and its discriminatory effect on women; and

c. The failure to apply the "sanctions and measures" existing in national law in the circumstances of the particular case before the Court, while potentially problematic under Articles 2, 3 or 8 of the Convention, is not, in itself, sufficient to engage Article 14 of the Convention so as to shift the burden of proof to the respondent government to show that any difference in treatment is not discriminatory.

20. This is the context and background for the decision of this Court, as recently as 27 May 2014, in *Rumor v. Italy*, no. 72964/10. In that case, this Court was invited to consider the situation in Italy on the basis of a complaint by the applicant in that case that the "omissions and the inadequacy of the domestic legislative framework in combating domestic violence proved that she had been discriminated against on the basis of her gender" (§ 36). Having considered the applicant's complaint, the Court, however, concluded in unqualified terms that:

“... the 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. (§ 76)”

21. As a consequence, the question for the Court in the present case was not only (to us the language in *A v Croatia*) whether the Applicant had produced “sufficient statistical or other information disclosing an appearance of discriminatory treatment of women who are victims of domestic violence on the part of the authorities such as the police, law-enforcement or health-care personnel, social services, prosecutors or judges of the courts of law” but whether she had produced sufficient such evidence to justify a conclusion by this Court either that, in light of such further evidence, its decision in *Rumor* had been wrong (or, at the very least, premature) or that changes in the legislative and policy environment in Italy had changed sufficiently since 2014 to enable the Court to conclude that, whereas the Italian system was compliant with Article 14 then, it no longer was so compliant in 2017.

22. If one considers the material relied upon in the judgment (§§ 55-60) it becomes clear that, in fact, with one exception, none of the material relied upon post-dates the judgment in *Rumor* and is of such a nature as not to have been available either to the parties or to the Court in that case. The one document referred to that (just) post-dates the *Rumor* judgment is the Report “Violence against Women” (2014) of the National Statistics Bureau of Italy (ISTAT), quoted in § 55 of the judgment. While providing a (still) depressing picture as to the number of women who are victims of sexual or physical violence in Italy, most frequently at the hands of current or former partners, that Report provides little to no evidence to support the conclusion that there is “an appearance of discriminatory treatment of women who are victims of domestic violence on the part of the authorities such as the police, law-enforcement or health-care personnel, social services, prosecutors or judges of the courts of law”. For what it is worth, the Report, in fact, appears to record a reduction in the number of cases of physical or sexual violence committed by a partner or former partner and notes that, compared to the 2006 ISTAT report, there is an increased awareness that domestic violence is a crime and it is reported far more often to the police. The Report also notes that “survivors are far more satisfied with the relevant work carried out by the police. In the event of violence from the current or the former partner, data shows an increase from 9.9% to 28.5%”.

23. In any event, it seems to me that where the Court considers (as the majority in this case must be assumed to have considered) that there is sufficient evidence for it to reach the conclusion either that a prior decision was wrong or premature or that the legislative situation in a respondent State had changed sufficiently to now warrant a finding of a violation, it would be prudent for the Court to identify (both for the benefit of the

Respondent Government as well as for the Committee of Ministers who is charged with supervising the enforcement of this judgment).

a. Which of these conclusions it had reached; and

b. If the latter, which were the developments since the last judgment which meant that a system which had been compliant had now become deficient.

A mere assertion, as in § 147 of the judgment, that the factual circumstances in *Rumor* were “clearly” different to those of the present case seems to me neither capable of justifying the finding of a violation under Article 14 nor capable of explaining either why the conclusion in § 76 of *Rumor* had been mistaken or premature or what had changed since 2014 to justify the conclusion now that the Italian “legislative framework” had become deficient.

PARTLY DISSENTING OPINION OF JUDGE SPANO

I. Preliminary remarks

1. The law has its limits, even human rights law. When a claim is made that the State did not take reasonable steps to prevent the taking of life by another individual, tensions arise between the demands of justice for the relatives of victims and the imposition of unrealistic burdens on law enforcement agents governed by the rule of law. The judicial resolution of such disputes, arising as they do from tragic events, thus requires that a delicate balance be struck between these two conflicting interests based on the objective and dispassionate application of clear and foreseeable legal standards. As the Court's application of the settled principles under Article 2 of the Convention to the facts of the present case unduly strikes the balance in favour of the former, without adequately taking account of the latter, I respectfully dissent from the majority's finding of a violation of Article 2, as I will explain in more detail in Part II of this opinion. Also, and for the reasons elaborated in Part III below, I disagree with the Court's finding of a violation of Article 14 taken in conjunction with Articles 2 and 3 of the Convention.

II. The State's preventive obligation to protect life under Article 2 of the Convention – the Osman test and domestic violence

2. In the Court's case-law on domestic violence, notably the landmark *Opuz v. Turkey* judgment, the Court established that the positive obligation to protect the right to life under Article 2 of the Convention requires domestic authorities to display due diligence, for instance by taking preventive operational measures, in protecting an individual whose life is at risk. In *Osman v. the United Kingdom* and subsequently in *Opuz v. Turkey* the Court held that "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, 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" (see *Osman*, § 116, and *Opuz*, § 130; my emphasis).

3. It follows that in order for a finding of a violation of Article 2 to be properly substantiated in the present case, the *Osman* test must therefore be met. This begs the following question: did the national authorities know, or ought they to have known, that the lives of the applicant and her son were at *real and immediate risk* on 25 November 2013? The answer to this question

requires a fact-sensitive analysis of the two prongs of the *Osman test*, i.e. the *imminence* and *reality* of the risk as reasonably foreseen by agents of the State, as I will now explain.

4. On 2 June 2012, the police intervened on the applicant's request after she complained that her husband, A.T. had hit her and her daughter. On 19 August 2012, the applicant again sought police assistance after being physically assaulted by her husband. The applicant lodged a complaint against A.T. on 5 September 2012 for bodily harm, domestic abuse and threats. The final event, the fatal attack, then took place on 25 November 2013. On the evening in question, the police were called to the house by the applicant. Upon arrival, they noted a broken door and bottles on the floor. There were no signs of violence on either the applicant or her son, nor were such allegations made. Although the applicant mentioned that she had previously filed a complaint against her husband, she explained that she had subsequently modified her accusations and that she had sought help that evening believing that her husband's drunken state necessitated medical attention. The police duly took A.T. to a hospital, which he left the same evening. When he was stopped in the street by the police later that night, he made no threats of violence. Returning to the family home in the early hours of the morning, he carried out his fatal attack.

5. In determining the *immediacy of the risk*, it is crucial to note the lapses of time between the initial police intervention in June 2012, the August 2012 incident and the lodging of the complaint in September 2012, and between that time and the tragic events of 25 November 2013, a time lapse of over fourteen months. When contrasted with the close nexus in time and regularity of the violent acts in *Opuz v. Turkey*, which gave rise to the Court's finding of *constructive knowledge*, namely that the authorities *ought to have known* of a real and immediate risk under the *Osman test*, it is plain that the requisite timeframe allowing for a conclusion of immediacy is lacking in the present case. *Bljakaj and Others v. Croatia* presents a similar stark contrast and demonstrates the required extent of immediacy, with the perpetrator in that case making threats on the day before, morning of, and hour prior to, the fatal incident. It is worth noting that the Court's case-law in this regard falls in line with the requirements of the Istanbul Convention,¹ the Explanatory Report to which establishes that the term "immediate danger" refers to any situations of domestic violence in which harm is imminent or has already materialised and is likely to happen again.² The highlighted time lapses clearly challenge the possibilities of imminence of risk in this case.

¹ Council of Europe Convention on preventing and combating violence against women and domestic violence.

² Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para. 265.

6. Turning to the *reality of the risk*, besides their close nexus in time, the scale and regularity of the violent acts and the authorities' direct knowledge of them also formed the basis for the *Opuz* Court's finding of the existence of *constructive knowledge* under *Osman*. It goes without saying that the attacks of June and August 2012 and their impact on the applicant should in no way be underestimated, the Italian courts eventually convicting A.T. of the violence carried out on those occasions. Nonetheless, when contrasted with the gravity of the eight prior attacks identified in *Opuz*, involving repeated death threats and resulting in 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, who did not possess information on attacks and death threats on this scale. Similarly, in finding an Article 2 violation in *Kontrová v. Slovakia*, the Court highlighted the lack of action taken in respect of allegations that the applicant's husband had a shotgun and had made violent threats with it.

7. The majority argues that the authorities failed to carry out an adequate risk assessment both on the night in question and during the preceding months, whereby the context of impunity eventually culminated in the fatal attack (see paragraphs 118-119). Having dealt with the former issue, the question in respect of the latter then arises: can investigative passivity give rise to constructive knowledge?

8. In *Opuz v. Turkey*, the Government had argued that there was no tangible evidence that the applicant's mother's life was in imminent danger. However, the Court found that it was not apparent that the authorities had assessed the threat posed by the perpetrator and only then concluded that his detention was a disproportionate step in the circumstances; rather, the authorities failed to address the issues at all (see *Opuz*, § 147). Despite the victim's complaint that the perpetrator had been harassing her, wandering around her property and carrying knives and guns, the police and prosecuting authorities failed either to place him in detention or to take other appropriate action in respect of the allegation that he had a shotgun and had made violent threats with it. Thus inactivity of the sort demonstrated in the present case, and the results thereof, do not of themselves create constructive knowledge such as to trigger an obligation under Article 2 (although it will usually, and in the present case does, give rise to an Article 3 violation in the domestic violence context). What is ultimately required is a set of facts rendering untenable the claim that the authorities did not know, or could not have known, of a real and immediate risk to life.

9. Consequently, although the majority finds that the nature of the act in August 2012 and the pending status of its inquiry in November 2013, along with the facts during the tragic evening, are sufficient to establish constructive knowledge of a real and immediate risk to the lives of the applicant and her son, the *Osman* test, as applied on the facts, the crux of the Article 2 substantive claim, is not made out. Regardless of how the

judgment frames it, the *Osman* test continues to apply in the same way here as in other contexts triggering the State's Article 2 preventive obligation; the Court's domestic violence case-law has continued to apply a strict *Osman* test without any alterations. Diluting the *Osman* standard, to take account of the nature of different types of fatal criminal offences between individuals, will simply impose an unrealistic burden on law enforcement authorities. Again, the law, even human rights law, has its limits.

10. Furthermore, and importantly, the applicable principles, as summarised at §§ 129-130 of *Opuz v. Turkey*, are not fully reflected in the majority's judgment which, in particular, fails to take account of the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the Court being required to interpret the scope of the Article 2 positive obligation in a way which does not impose an impossible or disproportionate burden on the authorities. Indeed, "the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention", is a particularly relevant consideration in cases such as these (see *Opuz*, § 129).

11. It is unclear what Convention-compliant measures the police could have taken on the night in question to avoid the ultimate tragic outcome. Despite finding, in paragraph 122 of the judgment, that possible measures were in existence at the relevant time, the majority fails both to specify the minutiae as well as to explain the feasibility of maintaining adherence to due process and Convention guarantees in the deployment of such measures. In the absence of any evidence or allegations of violence, the police lacked sufficient grounds to detain A.T. His 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.

12. Judge Eicke argues in his partly concurring, partly dissenting opinion, that there seems to be no obvious reason why any short-term preventative intervention by the police authorities, whether in the form of an enforced return to hospital or otherwise, until (and only until) the applicant's husband was sober would have been inconsistent with his rights either under Article 5 or Article 8 of the Convention. However, in my view the Court should be very careful in making findings on the possible legality of hypothetical police measures under Article 5 when such arguments have neither been raised before it nor the domestic courts.

13. Importantly, it has in no way been demonstrated before this Court that the arrest or detention of A.T. on 25 November 2013 could have been lawful under Article 5 § 1 (c), since, in the terms of that provision, there was

no reasonable suspicion of him having committed an offence. Nor could his arrest or detention have been reasonably considered necessary to prevent his committing an offence, since, as was apparent both from the situation as seen by the police and from the exchanges with the applicant and her son, no threats had been made and no actual violence had occurred. On what basis, then, could he have been detained, arrested or held at a hospital against his will, bearing in mind that having a “reasonable suspicion” presupposes the existence of facts or information which would satisfy an objective observer that he may have committed an offence and that there can clearly not be a “reasonable suspicion” if the acts or facts held against him, such as being drunk at home, did not constitute a crime at the time when they occurred?

14. The fact remains that, tragically, on 25 November 2013 the police did all they could by physically removing him from the premises in taking him to hospital, but they could not have kept him there by force. Furthermore, unlike Judge Eicke, I am unable to accept that the facts surrounding the police intervention on the street at 2.25 am on the night in question provided the police with any actionable information, even when reasonably viewed in context with other available information, about a real and immediate risk to the lives of the applicant and her children. In fact, with the exception of the drunken state of the applicant’s husband, which alone does not suffice for these purposes, there were no comments, threats or other behavioural signs that could have justified the deployment by the police of operational measures of arrest or detention at that point.

15. In short, the doctrine of positive obligations cannot remedy all human rights violations occurring in the private sphere if due process considerations, also worthy of Convention protection, are not to be rendered obsolete. In other words, it is true that the States are under a Convention-based positive obligation effectively to combat domestic violence. But that fight, like any other campaign by Government to safeguard the lives and protect the physical integrity of its citizens, must be fought within the boundaries of the law, not outside them.

16. Finally, it is all too easy to review tragic circumstances with the benefit of hindsight and impute responsibility where, on an objective and dispassionate analysis, there can be none. There is a limit on how far positive obligations under Article 2 can extend to shield victims from unforeseen attacks without imposing unrealistic obligations on the police accurately to forecast human behaviour and to act on those prognostications by unduly restricting other Convention rights. Although it may be tempting to dilute legal concepts such as the *Osman* test when faced with heart-rending facts and give solace to individuals in situations such as that of the applicant, there are reasons why the threshold under the Convention is set high, and, in my view, why it must continue to remain so. Even in the field

of domestic violence the ends cannot justify the means in a democratic society governed by the rule of law.

III. Systemic gender discrimination under Article 14 of the Convention

17. Judge Eicke and I are in agreement that a case for a violation of Article 14 of the Convention, taken in conjunction with Article 2 and 3, has not been made out on the facts and the materials before the Court and I largely agree with his reasoning in his separate opinion. I would only like to highlight the following elements.

18. The Court has previously concluded, in the landmark *Opuz* judgment, that general discriminatory judicial passivity creating a climate conducive to domestic violence entails a violation of Article 14 of the Convention, read in conjunction with Articles 2 and 3 (see *Opuz*, §§ 198 and 202). It has further stated that this conclusion will be reached where the actions of the authorities are not a simple failure or delay in dealing with violence, but amount to repeatedly condoning such violence and reflect a discriminatory attitude towards an applicant as a woman (see *Eremia v. the Republic of Moldova*, § 89). Having regard to this high threshold and the previous findings made under this provision with respect to Italy in the case of *Rumor v. Italy*, I cannot subscribe to the majority's findings that the inaction of the authorities, as manifested in the present case, reflects systemic gender-based discrimination, since there is insufficient evidence to show general and discriminatory passivity of the kind previously established in the Court's case-law.

19. The Court in *Opuz* made clear the elements tending to show an Article 14 violation in this sphere. It made reference to the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors. In particular, it noted the manner in which female victims were treated at police stations, with reports indicating that when they reported domestic violence, police officers tried to persuade them to return home and drop their complaint, seeing the problem as a family matter with which they could not interfere. The perpetrators of domestic violence did not seem to receive dissuasive punishments, with the courts mitigating sentences on the grounds of custom, tradition or "honour". These findings were confirmed in *Halime Kılıç v. Turkey*, the Court highlighting the wilful refusal of the authorities to accept the seriousness of the incidents of domestic violence. In regularly turning a blind eye to the repeated acts of violence and death threats, the authorities had created a climate that was conducive to domestic violence. In both cases, the Court found that the inactivity, delays and, in particular, attempts to dissuade women from lodging complaints that characterised the treatment of domestic violence claims in Turkey stemmed directly from the discriminatory attitudes of the authorities.

20. In contrast, and more in line with the facts of the present case, in *A. v. Croatia*, no. 55164/08, § 97, 14 October 2010, the Court concluded that there was insufficient statistical or other information disclosing an appearance of discriminatory treatment of female victims of domestic violence on the part of authorities such as the police, law enforcement or healthcare personnel, social services, prosecutors or judges. The applicant did not allege that any officials had tried to dissuade her from pursuing the prosecution of the aggressor or giving evidence against him, or that they had tried in any other manner to hamper her efforts to seek protection against his violence. The Court thus declared the applicant's complaint under Article 14 inadmissible, since she had failed to provide sufficient evidence that the practices adopted in Croatia as regards domestic violence were discriminatory.

21. Importantly, the Court has previously found that where the legislative framework cannot be said to be discriminatory, even if not all the sanctions and measures ordered or recommended are in fact complied with, this failure "does not in itself disclose an appearance of discrimination or discriminatory intent on the basis of gender" (see *A. v. Croatia*, § 101). Thus societal discrimination and high levels of domestic violence, as referenced by the judgment at paragraph 146, are not, in and of themselves, enough to ground a finding of an Article 14 violation; it is the legislative framework and its application by the national authorities that falls to be considered. In this regard, both in its substantive consideration of Articles 2 and 3 as well as in the Article 14 context, the judgment fails to take proper account of the Court's finding in *Rumor v. Italy*, in the context of Article 3, that "the 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" (see *Rumor v. Italy*, § 76). Although, as the judgment notes, that case may have concerned a different set of facts, the system at issue is the same. Since the impugned failings were not rooted in the discriminatory intent of the authorities but rather in pure passivity, they do not provide grounds for departure from the Article 14 conclusions previously drawn in respect of Italy.

22. The international materials on which the majority relies in its finding of an Article 14 violation also fail to point to a discriminatory failing in the system. Although the *2010 CEDAW Concluding Observations* (see paragraph 57 of the judgment) noted that the increasing rate of femicides may lead one to think that the Italian authorities are not sufficiently protecting women, the UN Special Rapporteur concluded in 2012 that the legal framework in Italy "largely provides for sufficient protection for violence against women" (see paragraph 68 of the report cited by the majority at paragraph 59 of the judgment). Where the Court has previously

relied on international reports in this sphere, the criticisms therein have undoubtedly been more unequivocal. For instance, in *Mudric v. the Republic of Moldova*, the Court was of the view that the findings of the Special Rapporteur supported “the impression that the authorities do not fully appreciate the seriousness and extent of the problem of domestic violence and its discriminatory effect on women” (see *Mudric*, § 63).

23. Ultimately, the finding in *Rumor* combined with the *Opuz* threshold makes it clear that there is insufficient evidence of institutional discrimination in Italy to ground a finding of an Article 14 violation. The relevant framework is still one that is effective, regardless of whether all the measures it provides for were, in the instant case, deployed (see *A. v. Croatia*, § 101).