



Prevention and repression of domestic violence in the jurisprudence of the Strasbourg Court

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Abstract

The issue of the prevention and repression of domestic violence against women – especially within the family and close relationships – is analysed with reference to the jurisprudence of the European Court of Human Rights (ECtHR) and its impact on the Italian legal system. In particular, this contribution examines the crucial role that an international court can play in guaranteeing women's rights, especially when such guarantees are inadequately provided by their own national institutions. The analysis is based on the “unique” characteristics of the system of protection established by the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which allows anyone who believes that their rights under the Convention have been violated to bring their case before the ECtHR. The Court can then determine the responsibility of their national State for breaching the obligations it has assumed by signing and ratifying the Convention.

Keywords: *Domestic violence; European Court of Human Rights (ECtHR); Gender-based violence; State responsibility; Istanbul Convention*

1. Domestic violence against women: responsibility, prevention, response, and actions

The jurisprudence of the Strasbourg Court on domestic violence will be examined in the light of the four key concepts highlighted in the title of this international conference – responsibility, prevention, response, actions – from the perspective of international law scholars.

It is now widely recognized that gender-based discrimination and violence against women remain among the most pervasive human rights violations in the world. A robust body of international instruments imposes obligations on States within the international community to take measures to prevent and respond to such violence. Notable examples include the Convention on the Elimination of All Forms of Discrimination against Women (adopted by the United Nations General Assembly on 18 December 1979) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). The Istanbul Convention was also ratified also by the European Union on 28 June 2023. Both Conventions were ratified by Italy without

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reservation. In the context of the European Union, important legal instruments include Directive 2012/29/EU of 25 October 2012 - transposed into Italian law by Legislative Decree No. 212 of 2015 - which establishes minimum standards on the rights, support, and protection of victims of crime and replacing Council framework Decision 2001/220/JHA; the recently adopted Directive 2024/1385/EU of 14 May 2024 on combating violence against women and domestic violence, which EU Member States must implement by 14 June 2027.

Perhaps less well known to non-experts is the role of the ECtHR, an international court accessible not only to States that have signed and ratified the European Convention on Human Rights (ECHR), but also to individuals. The Court provides a forum for individuals to seek recognition of violations of the rights guaranteed by the Convention or the unjustified restriction of the freedoms it protects, with the possibility of establishing the responsibility of their own national State for such violations.

What role can the ECtHR play in both preventing and repressing domestic violence, a specific form of gender-based violence that occurs in close relationships, whether family or cohabiting? This issue is particularly pressing given the cultural roots of intra-family violence, which remains “structural” in nature. Despite significant social progress, this form of violence persists at levels that are incompatible with the values of a modern society in which gender inequalities should no longer exist.

2. From the *Opuz* case to the most recent ECtHR jurisprudence

It is widely acknowledged that the ECHR makes no explicit reference to women’s rights, gender-based violence, or domestic violence.

However, as with other rights not explicitly mentioned in the Convention, the Strasbourg Court has brought gender-based violence within the scope of its protection through extensive and evolutionary interpretation. Depending on the gravity of the violation, such cases have been brought under Article 8 (*right to respect for private and family life*), Article 2 (*right to life*), and Article 3 (*prohibition of torture*) of the Convention. In addition, although less frequently in recent years, Article 14 (*prohibition of discrimination*) has also been invoked in these contexts (Di Stasi 2020: 1).

Looking at the evolution of the Strasbourg Court’s jurisprudence from a diachronic perspective, a notable trend emerges over the last fifteen years: the increasing reliance on Article 2 (*right to life*) and Article 3 (*prohibition of torture*) of the ECHR, either instead of or in addition to Article 8 (*right to respect for private and family life*), clearly reflecting the growing severity of domestic violence, which is increasingly characterised by more egregious acts. This evolution has occurred despite the proliferation of normative instruments at the international and European level over the last two decades. Many national legal systems have been forced to introduce legislative reforms as a result of important ECtHR judgments. For example, in 2019, Italy introduced the Codice Rosso (Red Code) to strengthen protection against domestic and gender-based violence, following the Court’s decision in the *Talpis v. Italy* case (see below).

In the process of shaping domestic violence legislation at the international, European, and national levels, the ECtHR appears to play a kind of anticipatory role, as its judgments often seem to pave the way for the adoption of subsequent international instruments and national legislation.

To briefly review the relevant case law on this issue, we turn to the leading case decided by the ECtHR, *Opuz v. Turkey* (ric. 33401/02, Judgment 9/6/2009, paras. 72-86) which concerned fatal injuries inflicted on the mother of a woman by her ex-husband

(Londono 2009: 647; Viviani 2009: 671). In this landmark decision, the Court concluded that the mental and physical abuse inflicted constituted violations of Articles 2 and 3 of the ECHR, as Turkey had failed to implement an effective system of sanctions capable of punishing acts of violence and adequately protecting victims from serious violations of their personal integrity. With regard to Article 2, the ECtHR found that the authorities had failed to fulfil their positive obligation to protect the right to life by preventing and repressing crimes against individuals, despite being aware of a real and imminent risk at the time of the events. With regard to the violation of Article 2 of the ECHR, the judges, taking into account the seriousness of domestic violence, as demonstrated by references to the international practice of the United Nations and the Inter-American Court of Human Rights, stressed that in such cases the national authorities could not invoke the need not to interfere in private or family relations, since such interference was clearly necessary to protect the rights of others.

A violation of Article 3 was found because no action was taken despite the woman's repeated pleas for help until the ECtHR intervened by requesting information from the Turkish government.

Importantly, in the *Opuz* case, the ECtHR found for the first time a violation of Article 14 (*prohibition of discrimination*) in conjunction with Articles 2 and 3 of the Convention. The Court held that the State's failure, even if unintentional, to protect women who are victims of domestic violence constitutes a violation of their right to equal protection under the law. Furthermore, the judgement delivered in this case also acknowledged the obligation to initiate criminal proceedings even after the complaint has been withdrawn and against the victim's will, if justified by the seriousness of the offence, the injuries sustained, and the impact on minor children.

In a similar case, *A. v. Croatia* (ECtHR, Judgment of 14 October 2010, Application No. 55164/08), the Court found a violation of Article 8 of the Convention in the failure of the authorities to enforce court decisions to protect the applicant from her violent husband.

In *Valiulienė v. Lithuania* (ECtHR, Judgment of 26 March 2013, Application No. 33234/07), the Court condemned the respondent State for violating Article 3 by failing to adequately investigate reports of domestic violence, which included both psychological and physical abuse, as reported by the victim.

In *E.S. and Others v. Slovakia* (ECtHR, Sec. IV, Judgment of 15 September 2009, Application No. 8227/04), the Court found that the respondent State had violated both Article 3 and Article 8. In particular, the judgment highlighted the State's failure to prevent further violations of the rights of the applicant's wife and daughter, underlining the gravity of the alleged incidents and the established dangerousness of the perpetrator.

In its more recent decisions, the Court reiterated that the prohibition of inhuman or degrading treatment under the ECHR places an obligation on States parties to actively protect victims of domestic violence. This includes enacting and enforcing legislative measures to prevent such violence, and to hold perpetrators accountable.

In fact, according to the Court's jurisprudence, the fight against domestic violence, due to its specific characteristics, requires a *quid pluris* with respect to the general positive obligations (both substantive and procedural) incumbent on States that have ratified the Convention. These obligations include the establishment and enforcement of an adequate legal framework to ensure protection against acts of violence committed by private individuals, the establishment of an effective and independent system to identify the cause and perpetrator of a homicide, to sanction their actions and provide victims with appropriate

redress. In the context of domestic violence, these obligations take on a particularly preventive character. Given the unique circumstances in which such violence occurs, they must be accompanied by a standard of due diligence on the part of States, requiring the adoption of practical measures in addition to legislative and institutional responses.

Ultimately, prevention is the cornerstone of effective protection against domestic violence.

As a logical consequence of the binding nature of an international convention signed and ratified by States, such as the ECHR, the responsibility of the State and its institutions (including the judiciary) arises, with the primary obligation of the State to amend its legal system in order to protect essential, non-derogable rights (first and foremost Articles 2 and 3).

Moreover, even where a theoretically adequate national legal framework exists, the Court may find a violation of the Convention in the absence of effective measures. It is not enough, for example, to issue a protection order if its effective enforcement is not guaranteed.

This principle was emphasised in the *Buturugă v. Romania* judgment of 11 February 2020 (Application No. 56867/15). In this case, the ECtHR clarified that violence against women includes not only physical violence, but also psychological abuse, stalking, and cyber violence. The Court found that Article 3 and Article 8 (including confidentiality of correspondence) impose positive obligations on States to take both preventive and punitive measures, even in cases where women experience digital intrusions, such as unauthorised access to computers, social media accounts, or theft of intimate personal data and images.

In this ruling, the Court clarified that cases of domestic violence must be treated differently from other forms of violence, in line with the principles set out in the Istanbul Convention, and rejected the argument put forward by the national authorities regarding the “insufficient gravity” of the facts and the “weakness” of the victim’s reaction, which suggested that she had been negligent - also in terms of timing - in filing the complaints. According to the ECtHR, the national authorities failed to take into account the psychological impact of such forms of violence on women and the sense of isolation that leads victims to withdraw their complaints.

3. Case law concerning Italy

In the *Rumor v. Italy* case (Application No. 72964/10), decided on 27 May 2014, the ECtHR considered the complaint of domestic violence brought by an Italian citizen, Ms Giulia Rumor. Ms Rumor alleged that the national authorities had failed to protect and assist her following the violence she had suffered at the hands of her ex-partner, leaving her in a state of anxiety and fear, in violation of Article 3 of the Convention. She argued that the competent authorities had failed to respond to her situation and, invoking the combined application of Articles 3 and 14 ECHR, that these failures amounted to gender discrimination.

The applicant also claimed to be a secondary victim as a result of the actions (or lack thereof) of the national authorities in failing to assist, help, and protect her from the repeated violence inflicted by her ex-partner. She also argued that her right to information had been violated, as she had not been informed of the status of the criminal proceedings against her ex-partner, nor had she been informed when he was placed under house arrest. She claimed that she had been left in a vulnerable position and that the authorities had not provided her with adequate support or protection by failing to take the necessary measures to protect her from further assaults by her ex-partner. In contrast, the Government argued that the

competent national authorities had taken all reasonable steps to punish the perpetrator and to protect the applicant, particularly in view of the fact that her partner, who had been placed under house arrest, was still in detention and thus did not have freedom of movement. Furthermore, he had been placed in a secure rehabilitation facility, which was both safe and designed to support his rehabilitation, and he had agreed to undergo psychological therapy in a municipal centre.

The judgment in question is in line with the principles established in the aforementioned *Opuz* case.

The Court reiterated that “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.” Moreover, “... in accordance with 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” (para. 59).

The European judges further clarified that “The States’ positive obligations under Article 3 of the Convention include, on the one hand, setting up a legislative framework aimed at preventing and punishing ill-treatment by private individuals and, on the other hand, when aware of an imminent risk of ill-treatment of an identified individual or when ill-treatment has already occurred, applying the relevant laws in practice, thus affording protection to the victims and punishing those responsible for ill-treatment” (para. 63). In this particular case, the Court, in its examination of these obligations, found that the response of the national authorities was effective and in accordance with the due diligence required by Article 3 of the ECHR, since they had not remained passive (para. 64) and had established a legal framework that enabled them to take effective measures against persons accused of domestic violence, both to punish the perpetrator and to prevent further violent attacks on the victim’s physical integrity (para. 76). As regards the applicant’s claim that she had not been informed of the criminal proceedings against her violent husband, the Court held that the ECHR could not be interpreted as imposing a positive obligation on States to inform the victim of ill-treatment of the proceedings against the perpetrator or of any conditional release or transfer of residence. The Court also took into account the fact that the Italian legislation in force at the time provided that the victim was to be informed only if he or she had become a civil party to the proceedings, which the applicant had chosen not to do.

The ECtHR reached a contrary conclusion in its judgment of 2 March 2017 in *Talpis v. Italy*, Application No. 41337/14. In September 2012, Ms Elisaveta Talpis (of Moldovan and Romanian nationality), following further violence by her husband (of Moldovan nationality), filed a complaint for domestic violence, injuries, and threats, and at the same time requested the authorities to take urgent measures to protect her and her children. However, no protective measures or investigative action were taken until April 2013, when the applicant, after being interviewed by the police, changed her initial statements, downplaying the severity of the events and softening the accusations against her husband. On the basis of her revised account, and in the absence of any further acts of violence, the Public Prosecutor requested and obtained the closure of the case of domestic violence, while a trial was set for the charge of assault. A few days after receiving the summons to appear before the Justice of the Peace, the applicant’s husband killed her son and attempted to kill her. In 2015, the man was sentenced to life imprisonment for the murder of her son, the

attempted murder of his wife and domestic violence (under Article 572 of the Criminal Code). With regard to the sentence imposed, on 1 March 2018, the Court of Cassation overturned the aggressor's life sentence, noting the erroneous application of an aggravating circumstance, and referred the case back to the Venice Court of Appeal for a reassessment of the sentence (De Franceschi 2018).

In this judgment, the Strasbourg Court held the Italian authorities responsible for failing to protect the woman and her children who were victims of domestic violence by her husband, despite her having reported the abuse (Di Stasi 2025a; Gasparini 2019; Cerato 2018; Corti 2018; Nascimbene 2018; Tumminello 2018; Buscema 2017; Casiraghi 2017; Conti 2017; Macrì 2017; Nardone 2017; Peroni 2017; Trapella 2017; Van Leeuwen 2017; Pecorella 2016). The Court examined the question of the foreseeability, adequacy, and proportionality of the rules and measures adopted by the national authorities, and found a violation of two provisions of the ECHR, which constitute “core” (Conti 2017) rights enshrining the fundamental values of the Council of Europe's democratic societies. Also, the reference in para. 97 of the *Talpis* judgment to the absolute nature of the two rules and their non-derogability under Article 15 ECHR is crucial (Di Stasi 2025b: 16; Pustorino 2019: 87).

Specifically, the Court found a violation of Article 2, read in conjunction with Article 14, as the national authorities had failed to prevent the victim's death. Conversely, the Court found there was no need to examine the claims based on Articles 8 and 13 of the ECHR, which the applicant had invoked in support of her claims.

In the more recent cases of *Landi v. Italy* (ECtHR judgment of 7 April 2022, Application No. 10929/19), *De Giorgi v. Italy* (ECtHR judgment of 16 June 2022, Application No. 23735/19), *M.S. v. Italy* (ECtHR judgment of 7 July 2022, Application No. 32715/19), and *P.P. v. Italy* (ECtHR judgment of 13 February 2025, Application No. 64066/19), the ECtHR ruled on the inefficiency and delay of the response of the Italian authorities to the repeated appeals for help from women who were victims of domestic violence. In particular, in the *Landi* case, which concerned acts of violence culminating in the attempted murder of the applicant and the murder of her son, the Court found a violation of Article 2 of the ECHR. In the *De Giorgi*, *M.S.* and *P.P.* cases, the judges found that the Italian State had failed to fulfil its obligations in violation of Article 3 of the ECHR.

According to the principles laid down by the Grand Chamber in *Kurt v. Austria* (ECHR judgment of 15 June 2021, Application No. 62903/15), the Court criticised the Italian judiciary for failing to respond promptly to reports of domestic violence and not taking adequate and proportionate protective measures, despite being aware - or at least should have been aware - of the real and immediate risk of recurrent violent behaviour (and, in the *Landi* case, the risk to life of the applicant and her children). In order to avoid a violation of the cited Convention provisions, authorities must carry out a comprehensive, independent, proactive, and thorough risk assessment, taking into account the specific characteristics of domestic violence. In addition, where a real and immediate risk is identified, they must take preventive operational measures that are appropriate and proportionate to the level of risk identified.

The Court provided guidance on the elements indicating the existence of a repeated risk of violence, including the perpetrator's history of violent behaviour and failure to comply with the terms of a protection order, the escalation of violence posing a continuing threat to the health and safety of the victim, the victim's repeated requests for help by way of urgent appeals, as well as formal complaints and petitions addressed to the chief of police. Furthermore, in the *De Giorgi* and *M.S.* judgments, concerning the violation of Article 3

ECHR, the Court also framed the obligation to carry out effective investigations in cases of domestic violence in terms of due diligence, emphasising that the failure to carry out such investigations is tantamount to allowing acts of violence to go unpunished. The Court's reference to the substantial creation of a context of tolerance or acquiescence by the authorities towards acts of violence builds on its earlier findings in *Talpis v. Italy*, followed by the *Landi*, *De Giorgi* and *M.S.* judgments.

Contrary to the *Talpis* judgment, in more recent cases, the Court did not find a violation of Article 14 ECHR, concluding that the lack of protection for women victims of domestic violence does not constitute discriminatory treatment on grounds of sex. Applying the principles established in the landmark *Opuz v. Turkey* and *Volodina v. Russia* cases, the Court held that there was insufficient evidence of either a systemic failure of the Italian State to protect women victims of domestic violence (structural bias) or of specific discriminatory intent on the part of the investigating authorities involved (individual bias).

4. The European Court of Human Rights and the follow-up to the Istanbul Convention: the 5th General Report on GREVIO Activities

The intersection of sources imposing obligations on States with regard to responsibility, prevention, response, and actions against domestic violence is clearly evident in the Court's recent jurisprudence. This is reflected, for example, in several key passages of the *Talpis* judgment, which frequently refers to the obligations of States under the Istanbul Convention. This Convention, described as the first legally binding international instrument to establish a comprehensive legal framework for the protection of women against all forms of violence, fills gaps in the ECHR (subsequently filled by the Court's case-law), and strengthens the obligations of States to combat gender-based violence.

The Istanbul Convention established three basic pillars for its system of guarantees, commonly referred to as the three "P"s: *Prevention* (Chapter III), *Protection* (Chapter IV), and *Prosecution* (Chapter VI). These are complemented and strengthened by a series of political and social commitments in Chapter II, which emphasize the development of integrated strategies to combat and eliminate violence against women and domestic violence.

As is well known, Article 66 of the Istanbul Convention established the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). This independent body is composed of 15 impartial experts of high moral character with expertise in the field of violence against women.

The importance of the actions taken by the ECtHR is highlighted in the 5th General Report on the Activities of GREVIO. In particular, the latest GREVIO report, dated 15 October 2024, draws a close link with the ECtHR, which through its jurisprudence requires State parties to take preventive measures against domestic violence by assessing the real and immediate risks to life and physical integrity.

The report outlines the main objectives achieved through its actions and the ways in which it can engage with State parties to promote respect for due diligence as a parameter of the legitimacy of State behaviour and to enable verification of the level of compliance with obligations to prevent, protect, and repress acts of violence. It is important to note that since 2006, due diligence has been recognized in United Nations documents as a measure of State compliance with treaty obligations to protect victims of violence. This concept must be based on the principles of prevention, protection, investigation, punishment, and redress.

The report also highlights the importance of increased training for authorities to better address different forms of violence, including psychological violence and digital manifestations of violence. The monitoring carried out by GREVIO in 2023 also emphasised that separation from an abusive partner can increase risks for children. This highlights the importance of integrating dynamic risk assessments in custody and visitation procedures, which could be used to perpetrate post-separation violence, including through the abuse of legal processes. A better understanding of post-separation violence is therefore essential to ensure the safety of victims.

A special thematic section of the report focuses on “the role and importance of risk assessment and risk management in preventing and combating violence against women”. Risk assessment is an essential tool for authorities to prevent human rights violations, particularly domestic violence and gender-based violence, which disproportionately affect women and girls, and contributes to the protection of fundamental rights, such as the right to life and physical security. Article 51 of the Istanbul Convention emphasises the importance of this assessment, as do Articles 52 and 53 on injunctions and protection orders, and Article 31 on child custody.

5. Some final remarks

In conclusion, domestic violence is not only a particularly sensitive issue in terms of the violations perpetrated and the context in which they occur. The cultural roots of gender-based violence, and domestic violence in particular, have long been tolerated and underestimated as an expression of deeply rooted social customs. It is only in recent decades that there has been a growing awareness at the national and international level, particularly in Europe, of the need to combat violence against women within the framework of human rights, which has led to the introduction of specific and effective legislation (such as the Istanbul Convention).

The sensitivity of this issue is accentuated by the fact that it calls into question crucial elements in the delicate relationship between individuals - especially women subject to (primary and secondary) victimisation - and the State. This concerns full confidence in the work of law enforcement and the judiciary to protect, including preventively, the right to life and physical integrity.

Despite some differences in the jurisprudence examined, the cases cited highlight the sensitivity of issues relating to forms of violence against women in relation to other equally sensitive issues concerning the exercise of power by the judiciary and public authorities. The balance between them must be achieved with reference to before mentioned four key concepts: responsibility, prevention, response, and action.

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