



The Italian authorities did not act with the requisite promptness and diligence in dealing with acts of domestic violence and did not comply with their Convention obligations

In today's **Chamber judgment**¹ in the case of [M.S. v. Italy](#) (application no. 32715/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of the substantive aspect of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights in relation to the period from 19 January 2007 to 21 October 2008, and no violation of the substantive aspect of Article 3 of the Convention in relation to the period from 21 October 2008 to 5 January 2018;

a violation of the procedural aspect of Article 3 of the Convention.

The case concerned the domestic violence to which the applicant was subjected by her husband. The applicant complained, in particular, that the respondent State had failed to protect and assist her. She also alleged that the authorities had not acted with the requisite diligence and promptness, as the prosecution of several offences had become time-barred.

The Court could not accept that the purpose of effective protection against acts of ill-treatment, including domestic violence, was achieved where the criminal proceedings were discontinued on the grounds that the prosecution had become time-barred, where this occurred as a result of failings on the part of the authorities. Offences linked to domestic violence should be classified among the most serious offences. According to the Court's case-law, it was incompatible with the procedural obligations arising out of Article 3 for investigations into these offences to be terminated through statutory limitation resulting from the authorities' inactivity.

In the present case the Court considered that a situation in which the domestic authorities, firstly – on the basis of the mechanisms governing limitation periods in the national legal framework – had upheld a system in which statutory limitation was closely linked to the judicial action even after proceedings had commenced and, secondly, had prosecuted the case with a degree of judicial passivity incompatible with that framework, could not be deemed to satisfy the requirements of Article 3 of the Convention.

Principal facts

The applicant, Ms M.S., is an Italian national who was born in 1962. She is a lawyer by profession and lives in Tito (Italy). On 18 April 2004 she lodged a first criminal complaint alleging that she had been assaulted by her husband, D.P.

On 19 January 2007 D.P. went to Ms M.S.'s office to discuss their separation. The applicant was assisted by her brother-in-law, L.S., and by a colleague. During the discussion D.P. attempted to assault Ms M.S. and injured L.S. in the leg with a knife when the latter stepped in to defend her. The same evening Ms M.S. lodged a complaint at the *carabinieri* station. On 20 January 2007 the *carabinieri* informed the public prosecutor of the criminal offences of which D.P. was accused and

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

forwarded the records of the statements made by the applicant, the colleague who had been present during the attack and other witnesses, together with the medical certificate concerning L.S. The *carabinieri* continued to investigate the allegations made by the applicant in complaints lodged on 7 February, 24 March and 27 April 2007.

On 24 October 2007 the public prosecutor requested the investigating judge to commit D.P. for trial for the offences committed on 19 January 2007.

Seven years after the events, on 27 June 2014, the Potenza District Court found D.P. guilty as charged and sentenced him to one year's imprisonment for the injuries to L.S. and to one year's imprisonment for ill-treatment of the applicant. The judgment was lodged with the registry approximately nine months later, in March 2015. D.P. appealed on 23 May 2015.

In a judgment of 10 June 2016 the Court of Appeal ruled that prosecution of the offences with which D.P. was charged was time-barred.

Previously, on 7 February 2007, Ms M.S. had lodged a further complaint and had requested the judicial authority to intervene in order to put an end to D.P.'s harassment of her.

On 27 April 2007 the applicant lodged another criminal complaint, alleging that she had received threats from an unknown individual while D.P. was present, as well as anonymous telephone calls, and that one of her children had been followed by D.P. She asked the *carabinieri* to issue a warning to D.P. to stop harassing and following her.

On 16 June 2008 Ms M.S. lodged a complaint alleging that she was continuing to receive threats from D.P. On 19 September 2008 she lodged a further complaint with the *carabinieri* on the grounds that D.P. had threatened her verbally and physically. On 7 October 2008 the police were called following a report of an attack outside a bar. D.P. had struck Ms M.S. on the head and on other parts of her body using a stick. She was prescribed ten days' sick leave.

A new set of criminal proceedings was opened.

On 21 October 2008 the police requested the public prosecutor to order a precautionary measure, stressing that D.P. had behaved violently towards the applicant.

On 21 November 2008 the investigating judge issued a compulsory residence order in respect of D.P. On the morning of 20 February 2009 the judge declared the order to be ineffective as the limitation periods for the offences under the Code of Criminal Procedure had expired. The prosecutor therefore requested that the compulsory residence order be replaced by a prohibition on staying in the municipality of Potenza and a requirement to report to the police authority. The investigating judge ruled that the request was unfounded since no new facts had emerged suggesting that the specific reasons justifying the measure (which had been found to be ineffective) had become less valid. He therefore reclassified the prosecutor's request and issued an order prohibiting D.P. from staying in the municipality of Potenza but allowing him to attend the hearings.

On 10 April 2015, some six years later, the District Court found D.P. guilty as charged and sentenced him to sixteen months' imprisonment, suspended. However, the court ruled that prosecution of the ill-treatment offences was time-barred.

Following an appeal by D.P. the Court of Appeal held on 10 March 2016 that the ill-treatment offences, among others, were time-barred. It sentenced D.P. to one year and one month's imprisonment only in relation to the injuries caused to the applicant by the attack with a stick. D.P. lodged an appeal on points of law which was dismissed by the Court of Cassation on 22 January 2018.

In the meantime, on 26 May 2010, Ms M.S. lodged a further complaint, alleging that she was being threatened and being harassed continually. Another complaint was lodged on 27 May 2010, in which

the applicant alleged that she had been followed and threatened by D.P. This was supplemented by a complaint lodged on 2 August 2010 designed to provide the police with an overview of the facts.

On 7 September 2010 Ms M.S. lodged another complaint, in which she alleged that a van had started to follow her while she was driving. An investigation was opened. On 7 May 2012 the applicant again lodged a complaint alleging that D.P. was continuing to threaten and follow her.

On 11 June 2012 D.P. was reprimanded by the police and requested to behave in a law-abiding manner. He was warned that he could be referred to the judicial authorities in the event of a recurrence.

In a judgment handed down on 5 November 2020, eight years after the proceedings had begun, the District Court sentenced D.P. to three years' imprisonment for harassment and acquitted him on a charge of extortion.

On 12 July 2013 Ms M.S. lodged a complaint alleging that she had been harassed by her former husband by telephone and had been followed while driving home. She stated that, despite the fact that the police had issued her ex-husband with a warning on 11 June 2012 to desist from his behaviour, she felt herself to be in danger.

On 16 July 2013 the applicant asked for a protective measure to be applied.

On 17 January 2017 D.P. was committed for trial on harassment charges in connection with events occurring between 4 and 20 November 2013. The proceedings are still pending.

Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life) and 13 (right to an effective remedy), the applicant alleged that the Italian authorities, despite being alerted on several occasions to her husband's violent behaviour, had not taken the necessary and appropriate steps to protect her against a real and known danger and had not prevented further domestic violence from occurring. She observed that several sets of proceedings had been terminated as being time-barred on account of their length and that some were still pending. In the applicant's view, the authorities had thus failed to comply with their positive obligations under the Convention.

The application was lodged with the European Court of Human Rights on 5 January 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Péter **Paczolay** (Hungary),
Alena **Poláčková** (Slovakia),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),
Davor **Derenčinović** (Croatia),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

Article 3

The Court observed at the outset that, from an overall point of view, the Italian legal framework was adequate to afford protection against acts of violence by private individuals.

The Court noted that the police had responded without delay to the complaints lodged by the applicant from January 2007 onwards and had intervened during the violent incidents.

However, the Court made a distinction between two separate periods.

The Court noted that during the first period, from 19 January 2007 to 21 October 2008, the authorities had failed in their duty to carry out an immediate and proactive assessment of the risk of a recurrence of the violence against the applicant and to take preventive operational measures to mitigate that risk. No measures had been taken by the authorities over a period of approximately thirteen months. D.P. had not been arrested, nor had any precautionary or protective measures been ordered in spite of a knife attack and the various complaints of ill-treatment, harassment and threats. No risk assessment had been made until a precautionary measure had been requested, that is to say, thirteen months after the first complaint, although there had been signs of an escalation of D.P.'s violent behaviour. His committal for trial had been requested ten months after the attack, and the preliminary hearing had taken place nineteen months later. In the Court's view, throughout this lengthy period the risks of recurring violence had not been properly assessed or taken into consideration.

With regard to the second period, from 21 October 2008 until the lodging of the application with the Court in 2019, the Court considered that the authorities had carried out an autonomous, proactive and comprehensive risk assessment. The police officers had not merely relied on the applicant's account of events but had based their assessment on several other factors and items of evidence. They had heard evidence from the persons directly involved, that is, from the applicant and the persons indicated by her, her parents and the witnesses to the violent incidents, and had drawn up detailed records of their statements. In particular, the police officers had taken account of the fact that the applicant was very frightened and that threats had been made against her. They had expressly noted a number of other relevant risk factors, namely the previously reported violent acts and the escalation of the violent behaviour, and also the stress factors affecting the household at the relevant time. They had applied for a protective measure which was ordered by the investigating judge. The risks of a recurrence of the violence had been properly taken into consideration. The Court also noted that the public prosecutors had initiated three sets of criminal proceedings against D.P. concerning the offences of which he was suspected.

Regarding the first period, the Court considered that the authorities had failed in their positive obligation under Article 3 to protect the applicant against the domestic violence committed by D.P., and held that there had been a violation of the substantive aspect of Article 3 of the Convention.

As to the second period, the Court took the view that the authorities had complied with their positive obligation under Article 3 to protect the applicant against the domestic violence committed by D.P., and held that there had been no violation of Article 3 of the Convention in respect of that period.

The Court reiterated that, among the factors characterising an effective investigation for the purposes of Article 3 of the Convention, the fact that the prosecution was not subject to statutory limitation was of paramount importance. Furthermore, it had previously held that amnesties and pardons should not be tolerated in cases concerning torture or ill-treatment inflicted by State agents. That principle had also been extended to acts of violence committed by private individuals.

The Court considered that offences linked to domestic violence, even when committed by private individuals, should be classified among the most serious offences. According to the Court's case-law, it was incompatible with the procedural obligations arising out of Article 3 for investigations into such offences to be terminated through statutory limitation resulting from the authorities' inactivity.

The Court observed that the judicial authorities had opened four investigations into the applicant's allegations of assault, harassment, threats and ill-treatment. With regard to the first investigation, concerning the attack of January 2007, the judgment had been delivered in June 2014, seven years

after the events. In June 2016 the Court of Appeal had ruled that prosecution of the offences with which D.P. was charged was time-barred. As to the second investigation, concerning the complaints lodged between February 2007 and October 2008 and the injuries sustained in the attack of October 2008, the Court noted that judgment had been given in April 2015 and that D.P. had been convicted only in relation to the injuries inflicted on the applicant, as the ill-treatment offences had become time-barred. In March 2016 the Court of Appeal had declared the remaining offences, with the exception of the injury-related offence, time-barred. As to the third investigation, concerning the complaints lodged in 2010, the Court noted that the District Court had delivered its judgment on 5 November 2020, ten years after the events. Lastly, with regard to the final investigation concerning harassment in relation to the complaints made in 2013, the proceedings were still pending before the District Court.

In the particular circumstances of the case, the Italian authorities could not be said to have acted with sufficient promptness or reasonable diligence. As a result of that failing, D.P. had been able to operate with near-total impunity.

In the present case the Court considered that a situation in which the domestic authorities, firstly – on the basis of the mechanisms governing limitation periods in the national legal framework – had upheld a system in which statutory limitation was closely linked to the judicial action even after proceedings had commenced and, secondly, had prosecuted the case with a degree of judicial passivity incompatible with that framework, could not be deemed to satisfy the requirements of Article 3 of the Convention. The Court found a violation of the procedural aspect of Article 3.

[Article 14 taken in conjunction with Article 3](#)

The Court took note of the fact that since 2017 and the adoption of the judgment in [Talpis v. Italy](#), Italy had taken steps to implement the Istanbul Convention, thereby demonstrating a genuine political commitment to preventing and tackling violence against women. As of 2008, a series of successive legislation had already been adopted. The Court stressed that some of the events in the present case predated those reforms.

The Court was not satisfied that the applicant had produced prima facie evidence of widespread passivity on the part of the judicial authorities when it came to providing effective protection to women who were victims of domestic violence, or evidence of discrimination in the measures or practices adopted by the authorities in her case.

Likewise, the applicant did not allege that the investigators had sought to dissuade her from bringing proceedings against D.P. or testifying against him, or that they had attempted in any way to hinder her in bringing the complaints by which she sought protection against the alleged violence.

The Court saw no evidence to demonstrate that the authorities dealing with the applicant's case had acted in a discriminatory manner, or with discriminatory intent, towards her.

The Court concluded that the failings complained of in the present case stemming from the authorities' failure to act, while undoubtedly reprehensible and contrary to Article 3 of the Convention, could not be deemed in themselves to disclose a discriminatory attitude on the part of the authorities. This complaint was therefore rejected as being manifestly ill-founded.

[Just satisfaction \(Article 41\)](#)

The Court held that Italy was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 18.95 in respect of costs and expenses.

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.