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Meeting: 1377<sup>th</sup> meeting (June 2020) (DH)

Communication from an NGO (D.i.Re -Donne in Rete contro la violenza) (20/04/2020) in the case of Talpis v. Italy (Application No. 41237/14) (appendices in Italian are available at the Secretariat upon request)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1377<sup>e</sup> réunion (juin 2020) (DH)

Communication d'une ONG (D.i.Re -Donne in Rete contro la violenza) (20/04/2020) relative à l'affaire Talpis c. Italie (requête n° 41237/14) (des annexes en italien sont disponibles auprès du Secrétariat sur demande)  
**[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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**18 april 2020**

## COMMUNICATION

**In accordance with Rule 9.2. of the Rules of the Committee of Ministers  
regarding the supervision of the execution of judgments and of terms of  
friendly settlements by D.i.Re -Donne in Rete contro la violenza  
on the case *Talpis v Italy* (Application No. 41237/14)**

### Introduction

D.i.Re is a network of over 80 Italian women's non-governmental organizations running women's specialized services to combat and prevent domestic violence and violence against women in Italy. After coming into being as an informal network in 1990, it was officially established as an organization in 2008, with its office in Rome. Every year, our members give their support to thousands of victims of gender-based and domestic violence.

D.i.Re collaborates with other networks of women's associations at the national, European and international levels. It is Italy's focal point for "WAVE – Women Against Violence Europe", and a member of the "EWL – European Women's Lobby", of the international network "GNWS – Global Network of Women's Shelters" and of Euromed. It is accredited in the Italian Register of Recognised Associations against discrimination<sup>1</sup> and, since 2014, also in the integrated Civil Society Organizations System developed by the United Nations Department of Economic and Social Affairs.

D.i.Re has contributed to the Italian Shadow Reports to the CEDAW Committee since 2011. It coordinated and edited Italy's Beijing+20 Report in 2015<sup>2</sup> and the women's NGOs Shadow Report to the GREVIO Committee in 2018.<sup>3</sup> Very recently, it submitted a third-party intervention to the case *Kurt v Austria*, awaiting judgment before the European Court of Human Rights.<sup>4</sup>

<sup>1</sup> <http://www.unar.it/la-nostra-rete/associazioni/>

<sup>2</sup> [https://www.direcontrolaviolenza.it/wp-content/uploads/2014/08/Pechino2009\\_2014.doc\\_July-22\\_DEF-2.pdf](https://www.direcontrolaviolenza.it/wp-content/uploads/2014/08/Pechino2009_2014.doc_July-22_DEF-2.pdf)

<sup>3</sup> <https://www.direcontrolaviolenza.it/wp-content/uploads/2018/11/GREVIO.Report-inglese-finale.pdf>

<sup>4</sup> See annex 1

With this submission, we aim to provide additional information with regard to the enforcement of the judgement rendered in *Talpis v Italy*.<sup>5</sup> The case concerns violations of Articles 2 and 3 of the Convention because of the inertia of the authorities in handling the applicant's complaint concerning domestic violence inflicted on her by her husband in 2012, which led to an escalation of the violence that culminated in 2013 in the attempted murder of the applicant and the murder of her son.

The case also concerns a violation of Article 14 taken together with Articles 2 and 3 because of the discriminatory aspect of the failings identified by the Court in the protection of women against domestic violence.

## Executive Summary

1. **Individual measures:** since the Committee of Ministers last considered the case, an appeal of the sentence of the aggressor resulted in the sentence being shortened. The reasoning that was relied on for this decision demonstrated further discrimination, which is the subject of another pending application at the European Court of Human Rights.
2. **General measures**
  - 2.1 **Overview:** while Italy has taken various steps to address domestic violence, the issue remains of serious concern in a number of respects – notably in the lack of effective risk assessments and management procedures that are necessary to prevent domestic violence.
  - 2.2 The continuing problems are rooted in an **enduring culture of sexism and stereotypes**.
  - 2.3 **Law No. 69/2019:** whilst Italy has recently updated its legislative provisions to combat domestic violence, these laws are not properly applied and remain ineffective in practice.
  - 2.4 **Directive 2012/29/EU:** the absence of effective implementation of domestic violence protections was reflected in a recent infringement procedure brought against Italy for failing to properly implement this key directive.
  - 2.5 **Data:** existing data on femicide demonstrates the seriousness of this issue in Italy, whilst there is an absence of detailed data on key aspects of the problem necessary to carry out effective reforms.
  - 2.6 There continues to be a **lack of effective civil remedies** for the victims of domestic violence, both against state authorities that have failed in their duty to take the necessary preventive or protective measures; and against the perpetrators of the crimes.
3. **Recommendations:** as a result of the above, we put forward a series of measures necessary to advance the implementation of this case.

## 1. Individual Measures

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<sup>5</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016808af6f9](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808af6f9)

When the Committee of Ministers last considered this case in June 2018, the aggressor was awaiting an appeal of his sentence. The case was decided by the national appellate court in September 2018, leading to a 20-year imprisonment instead of the original life sentence. The reasoning adopted by the court excluded the applicability of familial relationship as an aggravating circumstance to the crime, on the basis that the child was not a biological one. The manifest discrimination showed by this judgement against adopted children and their parents is what is being challenged now with the filing of a new application at the European Court of Human Rights.<sup>6</sup>

## 2. General Measures

### 2.1 Overview of General measures

At the outset, it is worth underlining that, while Italy has taken various steps to address domestic violence, the issue remains of serious concern in a number of respects. Despite the fact that Italy has updated legislation in force, the protection of women remains problematic, as well as the general enforcement of the provisions themselves. The measures adopted so far fall short of being effective in practice, often resulting in mere declarations. One instance of this lacuna is Law No. 69/2019, that will be further addressed below.

Deep-rooted sexism, prejudice and discrimination against women, paired with inadequate training of law enforcement agencies and the judiciary, are the factors prevent existing laws from being effectively implemented.

The GREVIO first Baseline Evaluation Report underlines that the situation continues to raise concern.<sup>7</sup> It notices, for instance, that risk assessments are rarely undertaken by authorities at any stage of cases of domestic violence. *“Despite the development of a number of guidelines on risk assessment, GREVIO finds that risk assessment and management procedures are not systematically applied by all relevant statutory agencies at all the relevant stages of proceedings and are not part of a multiagency effort”*.<sup>8</sup> The serious shortcomings originally identified in the judgment of the European Court of Human Rights arose from the inertia of the authorities in addressing the applicant’s complaint, leading to a situation of impunity which was conducive to the repetition of violence. The continued failure of the authorities to apply risk assessments and management procedures indicates that the fundamental problems identified by the Court are not being addressed.

The European Court of Human Rights has condemned Italy in the case *V.C. v Italy* two years ago,<sup>9</sup> but no action plan has been submitted so far. In this case, as in Talpis case, Italian authorities did not consider the victim's vulnerability, underestimate the risk at stage and it all resulted in lack of law enforcement<sup>10</sup>.

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<sup>6</sup> Application No. 43488/18

<sup>7</sup> <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>

<sup>8</sup> Ibid, introduction p. 11

<sup>9</sup> <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%2254227/14%22%5D%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22:%5B%22001-180719%22%5D%7D>

<sup>10</sup> The case concerned a minor had been the victim of a child prostitution ring and gang rape. The Court held that there had been a violation of Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private life) of the Convention Convention, finding that the Italian authorities had not acted with the necessary diligence and had not taken all reasonable measures in good time to prevent the abuses suffered by the applicant. It noted in particular that, although the criminal courts had acted promptly, the Youth Court and the social services had not taken any immediate protective measures, even though they had known that the applicant (aged 15 at the time) was vulnerable and that proceedings concerning her sexual exploitation and an investigation into the gang rape were ongoing.

Another pending case, *J. L. v Italy*, specifically concerns discrimination, stereotypes and secondary victimisation.<sup>11</sup>

In another pending case, *Penati v Italy*<sup>12</sup> the applicant complained that Italian authorities did not take seriously the numerous complaints about stalking and harassment lodged by the victim against her former partner<sup>13</sup>.

As these cases demonstrate, *Talpis* is, unfortunately, not an exception.

We will now address specific issues that remain far from being solved.

## 2.2. Enduring sexism and stereotypes

The cultural background and a deeply entrenched sexism seriously affect the condition of women in general, and of women exposed to gender-based violence (“GBV”) in particular. The inability on the part of authorities to recognize and to properly take into account the mechanisms of GBV prevents victims from obtaining protection. All too often, an awareness of these hindrances results in victims not seeking justice at all. Stereotypes remain an inescapable cause of secondary victimization, affecting all stages of institutional response, and their widespread diffusion and persistence is captured by a recent survey carried out by the Italian National Institute of Statistics.<sup>14</sup> Regrettably, the judiciary is not immune to this tendency.<sup>15</sup>

## 2.3 Critical issues about Law No. 69/2019, *Codice Rosso*

In 2019, new legislation was adopted specifically addressing the need for more effective protection of victims of domestic and gender-based violence.<sup>16</sup> The law was circulated as *Codice Rosso* (Red Code) to underline the emergency of the issue. Despite its specific focus, many of its aspects have been criticized. Concerns have been expressed by the Italian NGOs and the judiciary regarding the general lack of effectiveness of this law.<sup>17</sup> The GREVIO Baseline Report concurred in its findings.<sup>18</sup>

In general, while enshrining a comprehensive range of measures, many of them are hardly applicable or lack adequate funding. As an example, electronic bracelets, the use of which was repeatedly envisaged to ensure the protection of victims of stalking, are not in operation except in very small and insufficient numbers.<sup>19</sup>

Critical issues pointed out by NGOs and judicial actors include:

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<sup>11</sup> [https://hudoc.echr.coe.int/eng#{"appno":\["5671/16"\],"itemid":\["001-181092"\]}](https://hudoc.echr.coe.int/eng#{)

<sup>12</sup> no. 44166/15

<sup>13</sup> This case concerns the murder of the applicant’s eight-year-old son by his father during a “protected” meeting in the premises of the Social Welfare Department. The Court gave notice of the applications to the Italian Government and put questions to the parties under Article 2 (right to life) of the Convention.

<sup>14</sup> <https://www.istat.it/it/files//2019/11/Report-stereotipi-di-genere.pdf>

<sup>15</sup> A case with specific reference to discrimination, stereotypes and secondary victimization is pending in front of ECHR ([https://hudoc.echr.coe.int/eng#{"appno":\["5671/16"\],"itemid":\["001-181092"\]}](https://hudoc.echr.coe.int/eng#{))

<sup>16</sup> Law No. 69/2019

<sup>17</sup> <https://www.csm.it/documents/21768/92150/parere+violenza+domestica+e+di+genere+%28delibera+8+maggio+2019%29/2316fd0a-9463-aba9-9fe5-9e76026812e4>

<sup>18</sup> P. 12, 7-9

<sup>19</sup> <http://www.antigone.it/quindicesimo-rapporto-sulle-condizioni-di-detenzione/custodia-cautelare-e-braccialetti-elettronici/>

- the difficulty faced by judicial offices in respecting the timing of the cases: the law imposes stringent timeframes that are rarely met<sup>20</sup>;
- a general lack of adequate training for magistrates and law enforcement agencies, (no funds have been provided for specific training);
- lack of understanding of the cycle of violence and lack of risk assessment and evaluation. NGOs have particularly criticized the obligation to hear the victim within 3 days from the report/incident. First of all, the victim is not necessarily safe. No risk assessment is applied at this stage. The woman may still be at home with the perpetrator. Moreover, there is no understanding of the cycle of violence. The victim of violence at this point could minimize what occurred, withdraw the complaint, tell the bare minimum and this "second version" will forever undermine her reliability. Hearing the victim within 3 days from the incident or the report, should be limited to urgent cases where a protective measure is requested or needed or where the victim or her lawyer ask for it<sup>21</sup>.

The Ministry of Justice is monitoring the application of Law No. 69/2019<sup>22</sup>

## 2.4 Inadequate implementation of Directive 2012/29/EU

The inadequate implementation of Directive 2012/29/EU of the European Parliament and of the Council, establishing standards on the rights, support and protection of victims of crime, is another instance in which the Italian government demonstrates its incapability of meeting its obligations in terms of the protection of victims of gender-based violence. The Directive was formally implemented in December 2015, but it resulted in large part only in a sterile list of rights that lack effective application- meaning that the outcome was declaratory, rather than effective.

The inadequacy of its implementation was the object of a recent infringement procedure (No. 2019/2104) filed against Italy, where the lack of implementation of Articles 21 and 22 in particular, relating to vulnerable victims, was highlighted.<sup>23</sup> The Women's NGO report to the GREVIO Committee also mentioned this lacuna.<sup>24</sup>

## 2.5 Data

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<sup>20</sup> Cf. 14 (CSM note);

[https://milano.repubblica.it/cronaca/2019/09/02/news/la donna uccisa a milano quattro giorni prima c hiese aiuto si attivo il codice rosso-234975372/](https://milano.repubblica.it/cronaca/2019/09/02/news/la_donna_uccisa_a_milano_quattro_giorni_prima_c_hiese_aiuto_si_attivo_il_codice_rosso-234975372/); <http://www.rainews.it/dl/rainews/articoli/donna-uccisa-a-milano-da-ex-convivente-monta-la-polemica-su-codice-rosso-bdebf4fd-f867-4d13-8114-4b6061c99df4.html>;

[https://www.ilmessaggero.it/mind\\_the\\_gap/codice\\_rosso\\_procure\\_in\\_tilt\\_a\\_roma\\_25\\_denunce\\_al\\_giorno-4701076.html](https://www.ilmessaggero.it/mind_the_gap/codice_rosso_procure_in_tilt_a_roma_25_denunce_al_giorno-4701076.html); [https://www.corriere.it/cronache/19\\_marzo\\_19/magistrati-bocciano-codice-rosso-dannoso-sentire-vittime-entro-3-giorni-71a5f152-4a88-11e9-a7a3-5683e4dbacbc.shtml](https://www.corriere.it/cronache/19_marzo_19/magistrati-bocciano-codice-rosso-dannoso-sentire-vittime-entro-3-giorni-71a5f152-4a88-11e9-a7a3-5683e4dbacbc.shtml);

[https://www.agi.it/cronaca/denunciare\\_violenze\\_donne\\_dove\\_andare-7015975/news/2020-02-06/](https://www.agi.it/cronaca/denunciare_violenze_donne_dove_andare-7015975/news/2020-02-06/)

<sup>21</sup> See annex 2

<sup>22</sup> See annex 3

<sup>23</sup> <http://www.senato.it/leg/18/BGT/Schede/docnonleg/39034.htm>

<sup>24</sup> Cf. note 3

Whilst the existing data demonstrates how widespread and serious the issue of femicide is in Italy, there is a worrying lack of other detailed data necessary to addressing the problem.

### Existing data

Since 2000, 3.230 women have been killed in Italy, of which 2.355 in the family and 1,564 at the hands of their spouse / partner or former partner.<sup>25</sup> In 2018, the number of annual femicides increased: 142 women killed (+ 0,7%), 119 of which were in the family, with an increase of 6,3%.<sup>26</sup>

As of 31 December 2017, 281 anti-violence centres are active in Italy, which means that only 0,05 centres are available per 10,000 inhabitants, in plain disregard of the EG-TFV recommendation of 2008.<sup>27</sup> In the same year, 43.467 women turned to anti-violence centres and received support.

### Absence of key data

Despite the size of the issue, Italy does not possess a disaggregated and coordinated data collection system. In addition, all data available, including that of law enforcement agencies and the judiciary, is incomplete.<sup>28</sup>

In the Decision of the Committee of Ministers following its last consideration of this case<sup>29</sup>, the Committee invited the Italian authorities to provide “in a timely manner” detailed statistical information on a series of issues in order to properly assess the effectiveness of the measures taken by the Italian authorities to combat domestic violence.

- the criteria used by the competent authorities to respond to requests for preventive and protective measures, the average time to respond and to implement these measures and the number of measures adopted;
- the average length of investigations and criminal proceedings in relation to incidents of domestic violence and harassment;
- the number of such cases discontinued, and the number of convictions and acquittals handed down in relation to the complaints lodged.

We note that this information has not yet been provided to the Council of Europe, at least in a public document. Whilst it may be the case that the coronavirus crisis has recently weakened the government’s capacity to engage with the implementation monitoring process, we note that the Committee of Ministers had previously requested this information “in a timely manner” – and that 18

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<sup>25</sup> <https://www.eures.it/sintesi-femminicidio-e-violenza-di-genere-in-italia/>

<sup>26</sup> First GREVIO Baseline Report on Italy notices “ GREVIO notes that, in general, limited analysis is provided of the dynamics of the killings which could serve the purpose of understanding the risk factors and remedying gaps in institutional responses, having in mind that high rates of killings of women may indicate serious flaws in the system of protection, a lack of co-ordination in implementing measures related to the “4 Ps” of the convention, improper visitation and custody arrangements, and a widespread sexist and misogynist culture” p. 30

<sup>27</sup> <https://www.istat.it/it/files//2019/10/Report-Centri-antiviolenza-2017.pdf>

<sup>28</sup> First GREVIO Baseline Report on Italy p. 28 ss.

<sup>29</sup> CM Decision following the 1318th meeting, 5-7 June 2018 (DH), H46-12 Talpis v. Italy (Application No. 41237/14)

months passed in the absence of any crisis between July 2018 and the end of 2019, during which time this information was not provided.

## 2.6 Lack of effective remedies

GREVIO Baseline Report mentions the “*absence of effective civil remedies against any state authority that has failed in its duty to take the necessary preventive or protective measures within the scope of its powers, in accordance with the requirements of Article 29, paragraph 2, of the convention*”.<sup>30</sup> Access to compensation is also a very critical issue, about which a procedure is currently pending before the European Court of Justice.<sup>31</sup>

Lack of access to compensation for violent crimes is another failure of which the *Talpis* case is a clear demonstration. In addition to imprisonment, Mr Talpis was condemned to pay compensation amounting to 400,000 € – money that was never paid. Despite Mrs Talpis requesting access to the Victim Compensation Fund, established in pursuance to Council Directive 2004/80/EC, she was denied access to money on the basis that the Municipality had already borne the costs of the funeral.<sup>32</sup> Therefore, the State refused to pay the 7.200 € compensation.

Lack of effective civil remedies against State authorities as required by art. 29 Istanbul Convention is another serious concern. The Manduca case, taking place in Sicily, is a good example. Mrs **Manduca** was killed by her ex-husband in October 2007 in a small centre in the province of Catania, after unsuccessfully reaching out to the authorities twelve times. In 2017, her children were denied compensation by the Court of Appeals in Messina. The court held that the “crime was inevitable, as the man was determined to kill her”, and dismissed negligence in the prosecution of the case as a valid ground for appeal. Only recently did the Supreme Court overturn the decision, ruling for the initiation of a new trial.<sup>33</sup>

## 3. Recommendations

Considering the aforementioned issues, we call upon the Committee of Ministers to maintain the case of *Talpis v Italy* under the procedure of enhanced supervision.

We ask the Committee of Ministers to request the Italian Government to carry out the following actions:

- improve data collection in line with the requirements of Article 11 of the Istanbul Convention (gender-disaggregated data) and make them available to the civil society;
- ensure that risk assessment procedures are developed and applied to all stages by relevant professionals in contact with victims of gender-based violence;
- ensure with a specific law effective civil remedies against any state authority that has failed in its duty to take the necessary preventive or protective measures within the scope of its

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<sup>30</sup> GREVIO first baseline report – Executive summary p. 7

<sup>31</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62019CN0129:EN:PDF>

<sup>32</sup> See annex 4

<sup>33</sup> <https://www.news1news/a/2020/04/in-the-manduca-case-the-cassation-accepts-the-appeal-of-the-orphans-they-will-not-have-to-return-the-compensation.html>

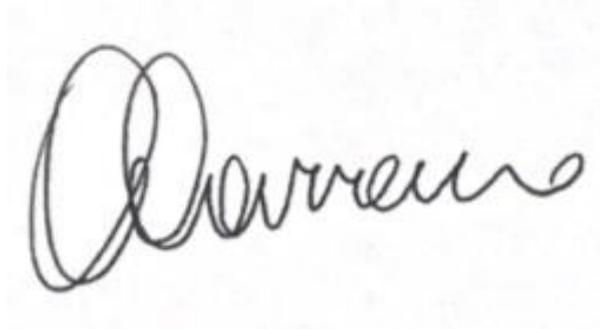
powers, in accordance with the requirements of Article 29, paragraph 2, of the Istanbul Convention;

- ensure adequate training of all professionals, including the understanding of the dynamics of gender-based violence and the challenge of prejudices and assumptions.
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