Introduction to *Violence Against Women under European Human Rights Law*

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# VIOLENCE AGAINST WOMEN UNDER HUMAN RIGHTS LAW: THE ONGOING NEED FOR FURTHER ACTION AND RESEARCH

As acknowledged by the preamble to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), “violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”. Indeed, violence against women is a widespread phenomenon with grave consequences for women’s health and life opportunities. It often cuts across social classes, ethnicity, race, and other social factors, occurring all around the world. Global statistics on violence against women tell a grim story. According to the United Nations, one in three women (or an estimated 736 million) globally have been subjected to physical and/or sexual intimate partner violence, non-partner sexual violence, or both at least once in their life, a figure that has remained stubbornly resistant to change and which does not even include the incidence of sexual harassment.1 Estimates show that in 2022, around 48,800 women and girls worldwide were killed by their intimate partners or other family members: on average, more than five women or girls are killed every hour by someone in their own family.2 A similar picture exists in Europe. A European Union (EU)-wide survey from 2014 showed that two in ten women have experienced physical and/or sexual violence by a partner while at least two women are killed every day in the EU by an inti-

1 UN Women, *Facts and figures: Ending violence against women*, [https://](https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures) [www .unwomen .org/ en/ what -we -do/ ending -violence -against -women/ facts -and](https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures)

[-figures](https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures) accessed 30 May 2024.

2 *Ibid.*

*1*

mate partner or family member.3 Data also shows that such violence is vastly under-reported.4

While much of this violence is experienced in the private sphere of the family and the home, it is hardly absent from the public sphere. Female polit- ical figures are routinely the target of sexism, misogyny, and violence, with figures indicating around 82 percent of female parliamentarians having expe- rienced remarks, gestures, and images of a sexist or humiliating sexual nature, threats, and mobbing, and 44 percent having received death, rape, assault, or abduction threats toward them or their families.5 In many cases, the source of these acts were their male colleagues in Parliament. Moreover, as the 2016 death of MP Jo Cox in the United Kingdom (UK) showed, female politicians are at heightened risk of violence when merely doing their jobs. A report on the Scottish Parliament, for example, found that while threats and abuse have risen for all MPs, female MPs were significantly more likely to receive death threats, received threats of a sexual nature when their male counterparts did not, and were afraid for their safety to the staggering figure of 90 percent.6

Female journalists are also at risk of violence, both offline and online, with a recent study indicating that 73 percent of women journalists had experienced online violence and 20 percent offline.7 We need only recall the fate of Maltese journalist Daphne Caruana Galizia, assassinated with a car bomb for her anti-corruption investigative work, to realize that sometimes this violence also turns deadly. However, we know there is a continuum of violence at play, with femicide the sad crescendo of escalating harassment, threats, and other acts of violence. As Caruana Galizia’s son has remarked, his mother was subjected to

3 European Union Agency for Fundamental Rights, *Violence against women: An EU-wide survey*, 2014, [https:// fra .europa .eu/ en/ publication/ 2014/ violence](https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report)

[-against -women -eu -wide -survey -main -results -report](https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report), p. 21; European Council, Council of the European Union, *Ending violence against women*, 21 March 2024, [https://www.consilium.europa.eu/en/infographics/figures-gender-based-violence/](https://www.consilium.europa.eu/en/infographics/figures-gender-based-violence/#0) [#0](https://www.consilium.europa.eu/en/infographics/figures-gender-based-violence/#0). See also the data in the *Gender Equality Index of the European Institute for Gender Equality*, <https://eige.europa.eu/gender-equality-index/2023> accessed 30 May 2024.

4 European Union Agency for Fundamental Rights, *Violence against women: An EU-wide survey*, p. 3.

5 UN Women, *Facts and figures*.

6 Louise Wilson, *Death threats sent to a third of MSPs*, Holyrood, 15 February 2021, [https://www.holyrood.com/news/view,death-threats-sent-to-third-of-msps](https://www.holyrood.com/news/view%2Cdeath-threats-sent-to-third-of-msps)

accessed 30 May 2024.

7 UNESCO, *The chilling: Global trends in online violence against women journalists*, 2022, https://unesdoc.unesco.org/ark:/48223/pf0000377223 accessed 30 May 2024. See also Brodeală (ed.), Clark, and Horsley (2020), pp. 99–101.

three decades of “relentless harassment and threats characteristic of the vio- lence experienced by women journalists around the world” before her murder.8 The advent of technology has regrettably exacerbated and diversified the phenomenon of violence against women. The same EU-wide survey men- tioned above has shown that one in ten women in the EU has experienced cyber-harassment since the age of 15, including having received unwanted and/or offensive sexually explicit emails or SMS messages, or offensive and/or inappropriate advances on social networking websites.9 The Council of Europe’s Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the body tasked with monitoring the implementation of the Istanbul Convention, has highlighted various ways in which technology facilitates such violence. This can occur through: the use of specific technologies like spyware and tracking devices, activities that take place and are amplified online such as revenge porn, new forms of abuse like deepfake pornography, and the enabling by technology of existing forms of violence like harassment via social media.10 In other words, the rise of our tech-obsessed era has brought with it new forms of violence against women

while intensifying old ones.

Moreover, crisis compounds crisis. It quickly became commonplace to refer to the COVID-19 pandemic as a gendered pandemic, given that it exacerbated the incidence of violence against women and too often removed the already imperfect avenues to address it. Describing it as a “shadow pandemic”, the UN called on States to do more to combat the rise in violence against women exac- erbated by the security, health, and money worries, cramped living conditions, isolation with abusers, movement restrictions, and deserted public spaces that came with the pandemic response.11 The climate crisis also has a gendered

8 *Son of Daphne Caruana Galizia speaks up about violence against women journalists*, UN Human Rights Council 38th Special Session, 20 June 2018, [https://](https://ifex.org/son-of-daphne-caruana-galizia-speaks-up-about-violence-against-women-journalists/) [ifex.org/son-of-daphne-caruana-galizia-speaks-up-about-violence-against-women](https://ifex.org/son-of-daphne-caruana-galizia-speaks-up-about-violence-against-women-journalists/)

[-journalists/](https://ifex.org/son-of-daphne-caruana-galizia-speaks-up-about-violence-against-women-journalists/) accessed 30 May 2024. See also Brodeală (ed.), Clark, and Horsley (2020), p. 101.

9 European Union Agency for Fundamental Rights, *Violence against women: An EU-wide survey*, p. 104.

10 *The digital dimension of violence against women as addressed by the seven mechanisms of the EDVAW Platform*, Thematic paper adopted by the Platform of Independent Expert Mechanisms on Discrimination and Violence against Women (EDVAW Platform) at its 14th meeting on 17 November 2022, [https://rm](https://rm.coe.int/thematic-report-on-the-digital-dimension-of-violence-against-women-as-/1680a933ae)

[.coe.int/thematic-report-on-the-digital-dimension-of-violence-against-women-as-/](https://rm.coe.int/thematic-report-on-the-digital-dimension-of-violence-against-women-as-/1680a933ae) [1680a933ae](https://rm.coe.int/thematic-report-on-the-digital-dimension-of-violence-against-women-as-/1680a933ae) accessed 30 May 2024, p. 8.

11 UN Women, *The shadow pandemic: Violence against women during COVID-19*, [https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality](https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19)

impact, which manifests in the form of heightened rates of violence against women and girls. Migration and displacement, food insecurity, and resource scarcity directly increase the vulnerability of women and girls and expose them to the risk of sexual violence, trafficking, and early marriage.12 Last but not least, war and armed conflicts remain a reality whose toll is gendered. Russia’s war on Ukraine, for example, has caused unprecedented displacement, primar- ily affecting women and children. A study shows that many women refugees from Ukraine have faced robbery, rape, and other forms of abuse while fleeing, and continue to face risks of sexual violence, trafficking, and exploitation even after reaching places of refuge.13

The need for action to tackle violence against women is therefore stark. The law should play a central role as it can enable victims of violence to demand preventive measures, seek redress for the harm they have suffered, and even ensure non-repetition of their abuse. While many States have adopted specific legislation and policies to address different forms of violence against women, gaps—and particularly shortcomings in implementation—still remain. Efforts have been made at the international level to ensure a more coordinated and effective response by States to this pressing issue.

Starting from the early 1990s, legal documents at international level have sought to provide States with guidance in addressing this problem or to trigger their responsibility when failing to adequately protect women against vio- lence.14 The first legally binding international document on this topic was the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), which was adopted in 1994 to address this pressing issue on the American continent.15

In Europe, the European Court of Human Rights (ECtHR or Court) has played a pivotal role in acknowledging violence against women as a human

[-in-covid-19-response/violence-against-women-during-covid-19](https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19) accessed 30 May 2024.

12 UN Women, *Facts and figures*.

13 Sandra Pertek, Irina Kuznetsova, and Malgorzata Kot, 2022, *“Not a single safe place”: The Ukrainian refugees at risk: violence, trafficking and exploitation. Findings from Poland and Ukraine*, Research Report, University of Birmingham. [https://reliefweb.int/report/ukraine/not-single-safe-place-ukrainian-refugees-risk](https://reliefweb.int/report/ukraine/not-single-safe-place-ukrainian-refugees-risk-violence-trafficking-and-exploitation-findings-poland-and-ukraine)

[-violence -trafficking -and -exploitation -findings -poland -and -ukraine](https://reliefweb.int/report/ukraine/not-single-safe-place-ukrainian-refugees-risk-violence-trafficking-and-exploitation-findings-poland-and-ukraine) accessed 30 May 2024.

14 For developments at the UN level see McQuigg (2017), pp. 37–67. See, in particular, the 1992 General Recommendation No. 19 of the CEDAW Committee, the 1993 Declaration on the Elimination of Violence Against Women (DEVAW), and the 1995 Beijing Declaration and Platform for Action, strategic objective D1.

15 McQuigg (2017), pp. 31–3.

rights violation and developing a set of obligations that States must abide by under the European Convention on Human Rights (ECHR). As ECtHR President Síofra O’Leary has noted, the Court has been “extremely attentive” when confronted with cases of violence against women, being “conscious of the fact that the occupation by women of more equal and prominent roles in our societies has not been accompanied by a decrease in gender violence”.16 The important obligations imposed to European States by the ECtHR, together with other Council of Europe standards in this area, were further developed and systematized in the Istanbul Convention.17

The Istanbul Convention, adopted in 2011, is Europe’s first legally binding treaty on violence against women and domestic violence. Operating under four pillars (prevention, protection, prosecution, and policy integration), the Istanbul Convention is a far-reaching legal instrument which acknowledges violence against women as a widespread phenomenon and links it to broader gender inequalities in society.18 The Convention’s progressive framing is currently facing serious opposition from vocal anti-gender groups in Europe.19 These groups contest the Istanbul Convention due to its definition of gender as a social construct and reject the obligation it imposes on States to fight gender stereotypes, which, they argue, threatens the traditional family and gender roles and acts as a Trojan horse for ever-expanding LGBT+ rights. Some countries, such as Turkey, have even withdrawn from the treaty.20 Others encounter hurdles in its ratification, like, for example, Bulgaria, where the Constitutional Court has declared the Convention unconstitutional.21 The Istanbul Convention has also given rise to rigorous academic debate and anal- ysis. Recent scholarship provides in-depth commentary and critical analysis

16 *Exchange of views with the Gender Equality Commission (GEC)*, Speech by Síofra O’Leary, Strasbourg, 16 November 2023, [https:// prd -echr .coe .int/](https://prd-echr.coe.int/documents/d/echr/speech-20231116-oleary-exchange-views-gender-equality-commission-eng) [documents/ d/ echr/ speech -20231116 -oleary -exchange -views -gender -equality](https://prd-echr.coe.int/documents/d/echr/speech-20231116-oleary-exchange-views-gender-equality-commission-eng)

[-commission-eng](https://prd-echr.coe.int/documents/d/echr/speech-20231116-oleary-exchange-views-gender-equality-commission-eng) accessed 30 May 2024.

17 McQuigg (2017), pp. 22–31.

18 For a detailed commentary of the Istanbul Convention see De Vido and Frulli (2023).

19 The Istanbul Convention is particularly contested in Central and Eastern Europe. For a detailed analysis of the backlash against the Istanbul Convention in four Central and Eastern European countries see Krizsán and Roggeband (2021).

20 Güneş and Ezikoğlu (2023).

21 Smilova (2020); Ruzha Smilova, *Promoting “gender ideology”: Constitutional Court of Bulgaria declares Istanbul Convention unconstitutional*, Oxford Human Rights Hub (blog), 22 August 2018, [https:// ohrh .law .ox .ac .uk/](https://ohrh.law.ox.ac.uk/promoting-gender-ideology-constitutional-court-of-bulgaria-declares-istanbul-convention-unconstitutional/) [promoting -gender -ideology -constitutional -court -of -bulgaria -declares -istanbul](https://ohrh.law.ox.ac.uk/promoting-gender-ideology-constitutional-court-of-bulgaria-declares-istanbul-convention-unconstitutional/)

[-convention-unconstitutional/](https://ohrh.law.ox.ac.uk/promoting-gender-ideology-constitutional-court-of-bulgaria-declares-istanbul-convention-unconstitutional/) accessed 30 May 2024.

of this important document, situating it within the wider legal and political debates on violence against women.22

Existing academic books have also examined different facets of violence against women under other legal instruments of international and European human rights law. Alice Edwards provides an in-depth analysis of the merits and shortcomings of the legal mechanisms dealing with violence against women under the United Nations system.23 Maria Sjöholm looks at the extent to which international human rights law is equipped to address gender-based violence in the online space,24 while Angela Hefti addresses the understanding of and protection against femicide by analyzing this phenomenon not only under the inter-American, African, and UN human rights systems, as well as international criminal law, but also within the European human rights system.25 By doing so, she provides useful insights into the principles developed to protect women against femicide under the ECHR and the Istanbul Convention. In another important book, Sara De Vido looks at violence against women through the lens of the right to health and reproductive health under broader international human rights law.26 Moreover, Jonathan Herring complements these works by offering a comprehensive overview of the standards and norms meant to combat domestic abuse under European human rights law, particu- larly the ECHR and the Istanbul Convention.27 While Herring focuses on domestic abuse broadly defined (affecting all members of the family, including children, parents, and elders), he also discusses violence against women in the home.

Another branch of the literature complemented by this volume concerns the domestic implementation and effectiveness of human rights law in the field of gender-based violence. In a recent book, Jurgita Bukauskaite examines this topic through case studies on Lithuania and Ireland,28 while in an older, yet still very valuable work, Ronagh J.A. McQuigg focuses primarily on the UK.29 Furthermore, a key work in this area is Sally Engle Merry’s book *Human rights and gender violence: Translating international law into local justice*.30 Based on impressive anthropological research, Engle Merry looks at the actors

22 See e.g. De Vido and Frulli (2023); McQuigg (2017); Niemi, Peroni, and Stoyanova (2020).

23 Edwards (2011).

24 Sjöholm (2022).

25 Hefti (2022).

26 De Vido (2020).

27 Herring (2020).

28 Bukauskaite (2023).

29 McQuigg (2011).

30 Engle Merry (2009).

and process of “translating” UN international law norms into local contexts (particularly in Asia) and explores the conditions which should be met for this process to effectively address gender violence.

The extensive scholarly interest in the question of violence against women underscores the continued importance of robust academic engagement with this topic. As explained further on, this book builds upon and enhances exist- ing literature in several ways.

# VIOLENCE AGAINST WOMEN UNDER EUROPEAN HUMAN RIGHTS LAW: THE “WHY”, “WHAT”, AND “HOW” OF THIS BOOK

Violence against women, and particularly domestic abuse, has always been a pressing issue. Regrettably, it took the COVID-19 pandemic to bring the widespread issue of domestic violence to public attention more prominently and to initiate new discussions about the shortcomings of current legal responses in this area.31 In the wake of the pandemic, it has become especially important to provide an updated analysis of how well human rights law is equipped to address this serious problem, and especially domestic violence. This book aims to offer such analysis by approaching violence against women under European human rights law broadly understood.

This book builds on but goes beyond the existing literature in this area, covering material which is subject to less academic inquiry. In particular, it not only examines recent developments under the ECHR and looks for solu- tions to the recent domestic backlash against the Istanbul Convention, but also explores the issue of violence against women under EU law and the European Social Charter (ESC),32 two instruments that so far have received less attention in the literature. By doing this, the present book contributes to understanding the harmonization and fragmentation of European human rights law in the area of violence against women by comparing and contrasting the approach of these legal instruments to that of the ECHR and the Istanbul Convention, as discussed by previous scholarship. Moreover, the book offers an updated analysis and fresh insights into various questions related to violence against

31 See e.g. *Women’s rights and the COVID-19 pandemic*, Council of Europe website, [https:// www .coe .int/ en/ web/ genderequality/women -s -rights -and -covid](https://www.coe.int/en/web/genderequality/women-s-rights-and-covid-19)

[-19](https://www.coe.int/en/web/genderequality/women-s-rights-and-covid-19) accessed 30 May 2024.

32 The European Social Charter is a Council of Europe treaty adopted in 1961 that, as the name suggests, aims to protect social and economic rights. It comple- ments the European Convention on Human Rights, which focuses mostly on civil and political rights.

women under European human rights law. For example, it critically examines recent ECtHR case law, such as that on cyber-violence against women and the EU’s ratification of the Istanbul Convention.

In addition to offering an updated critical assessment of the main supra- national standards on violence against women under European human rights law, this book also examines the reception of, the links, and the gaps between these and national legal orders and realities, looking at countries such as Croatia, Russia, or the UK. In this sense, this volume offers valuable insights into the complex interplay between European human rights law and domestic legal orders in the field of violence against women and argues for enhanced cross-fertilization between various instruments and standards in this area.

The book’s holistic approach—covering EU law, the ESC, the ECHR, and the interplay between European human rights law and domestic legal orders— allows us to identify interpretive tools available to national and supranational bodies to ensure the highest possible standard of protection for women against violence. The volume’s pan-European focus is especially timely given the growing backlash against the implementation of the Istanbul Convention in different European countries. Understanding the extent to which obligations established under the Istanbul Convention also exist under other legal instru- ments of European human rights law is therefore important in responding to this backlash. Furthermore, the book contains one chapter looking at the prospects of resistance to this backlash at the domestic level to ensure effective protection for women against violence.

The book is very much informed by practical considerations, which is another key contribution to the existing literature. Chapters are written by academics at different stages of their career, including established scholars and early-career researchers, as well as by respected practitioners, namely a former president of the European Committee of Social Rights (ESCR), a former ECtHR judge, and a current Senior Policy Adviser to the UK’s Domestic Abuse Commissioner. Bringing together contributions by academics and practitioners goes beyond a mere juxtaposition of theoretical and practical insights. It forms a cohesive framework for not only critically assessing the current challenges in protecting women from violence under European human rights law, but also actively seeking concrete solutions for addressing them. By blending theoretical analysis with hands-on expertise, the book therefore adds a new multifaceted perspective to this important subject.

In terms of methodology and overall approach, the book makes the case for a rigorous engagement with legal doctrine, complemented by a nuanced understanding of the numerous factors underpinning the regulation and adju- dication of gender-based violence, and by an imaginative search for solutions. Accordingly, it adopts a critical approach in assessing the law and its social context, identifying gaps, inconsistencies, and future directions in enhancing

the mechanisms to prevent and combat gender-based violence under European human rights law. Several chapters emphasize the need for creative judicial interpretation, such as compounding treaty provisions or drawing from multi- ple international treaties to piece together an effective protective framework.

# FROM SUPRANATIONAL STANDARDS TO NATIONAL REALITIES: STRUCTURE AND CONTENT OF THE BOOK

The book is divided into two parts. Part I is dedicated to analyzing various supranational standards on violence against women under European human rights law looking at EU law, the ESC, and the ECHR. Part II then examines the interaction between European human rights law in this area and national legal orders and realities.

The book opens with a chapter by Mathias Möschel that focuses on the EU’s actions in combating gender-based violence. The chapter “argues that, despite its lack of fundamental rights pedigree, the EU has slowly but surely become a serious actor in this area”. In particular, the chapter highlights the role of the EU’s external actions and soft law in bringing gender-based violence to the international agenda. However, it shows that important limitations remain when it comes to hard law, including the case law of the Court of Justice of the EU. Möschel demonstrates that, until very recently, hard law interventions remained “scattered” and have not been gender-sensitive. While the EU’s June 2023 ratification of the Istanbul Convention, and the very recent adoption of the first European Union Directive on combating violence against women and domestic violence in May 2024,33 might remedy the situation, the chapter shows that the current legal and political landscape indicates that there are serious chances that the “patchwork approach will remain unchanged”. More precisely, while the recent directive on violence against women and domestic violence is a legally-binding instrument, it was the result of a compromise and therefore presents a number of shortcomings. The UN Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences, Ms. Reem Alsalem, has noted that the directive does not provide a definition of sexual assault and rape, “it uses terminology such as ‘sex’ and ‘gender’ in an inconsistent manner, and at times conflates the two, and also opens the door for using the pretext of ‘freedom of expression’ to limit the ability to prevent online violence against women and girls, including the non-consensual sharing

33 Mathias Möschel (2024), The EU’s new directive on combating gender-based violence (GBV), EU Law Live, Weekend Edition, No. 191, [https://eulawlive.com/](https://eulawlive.com/weekend-edition/weekend-edition-no191/) [weekend-edition/weekend-edition-no191/](https://eulawlive.com/weekend-edition/weekend-edition-no191/) accessed 4 September 2024.

of intimate images”.34 Moreover, as Möschel shows, an important obstacle to duly implementing the Istanbul Convention by the EU might have to do with the resistance to this Convention by some EU Member States such as Bulgaria, Poland, Hungary, and Croatia. It is for this reason that a case study into this resistance and possible ways to overcome it by looking at Croatia is provided in Part II of this book, which focuses on the interplay between European and national law in the field of violence against women.

Following Möschel’s analysis of violence against women under EU law, in Chapter 2, Luis Jimena Quesada looks at the norms and standards meant to combat violence against women under the ESC. Building on his previous experience as member and president of the ECSR of the Council of Europe, Jimena Quesada offers a comprehensive analysis of the guarantees against gender-based violence under the ESC. He also examines the role of the ECSR in addressing gender-based violence under Article 16 of the ESC. He then further reflects on the synergies between the ESC and other relevant instruments, particularly the ECHR and the Istanbul Convention, in addition to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international standards. Overall, Jimena Quesada highlights the importance of cross-fertilization between these instruments to enhance protection against gender-based violence at both the European and international levels.

The following two chapters focus on violence against women under the ECHR. In contrast to the situation under EU law and the ESC, this is a broad and well-researched topic. Therefore, these chapters zoom in on violence against women in the home, a topic of utmost importance in the wake of the COVID-19 pandemic and the current rise of anti-gender actors. Chapter 3 is written by former ECtHR Turkish judge Ayşe Işıl Karakaş, who was sitting judge in the 2009 landmark case *Opuz v. Turkey*, in which the ECtHR found, for the first time, that domestic violence is a form of discrimination against women. The chapter provides an updated account of the developments that have taken place in the ECtHR case law since *Opuz* and reflects on the chal- lenges that remain in ensuring full protection against domestic violence under the ECHR.

Chapter 4 by Shazia Choudhry looks more closely at the question of domes- tic abuse in the case law of the ECtHR. In particular, the chapter explores how

34 *European directive on combating violence against women and domestic violence welcome but falls short of full potential, says UN expert*, Press Release, United Nations, 13 May 2024, [https://www.ohchr.org/en/press-releases/2024/05/](https://www.ohchr.org/en/press-releases/2024/05/european-directive-combating-violence-against-women-and-domestic-violence) [european -directive -combating -violence -against -women -and -domestic -violence](https://www.ohchr.org/en/press-releases/2024/05/european-directive-combating-violence-against-women-and-domestic-violence) accessed 30 May 2024.

the ECtHR has responded to the phenomenon of perpetrators using family law proceedings to continue their abuse after separation. It shows that progress in this area has been made, and complements the previous chapter of the book by further outlining the key principles developed by the ECtHR in this field. The chapter demonstrates, however, that challenges still remain and argues that the ECtHR’s approach could be improved by borrowing from the lauda- ble standards developed in this area by GREVIO, the body that monitors the implementation of the Istanbul Convention.

Part II then provides a critical analysis of the interplay between European legal instruments in the field of violence against women and national law. Continuing the discussion on domestic violence and the ECtHR, Part II opens with a chapter that takes Russia35 as a case study to unveil existing obstacles to litigating domestic violence and sex discrimination cases in Strasbourg. Based on rich socio-legal research in Russia and at the ECtHR, Valerie Sperling and Lisa McIntosh Sundstrom show that these obstacles are related to a combina- tion of international and domestic factors. These include the reluctance of the Court to rule on Article 14 of the ECHR on the right not to be discriminated against, its high threshold in matters of evidence, the lack of statistics that claimants could use to substantiate their claims, the shortage of feminist or human rights lawyers to take such cases internationally, and a lack of claimants “willing to endure the process”. The chapter calls for further reflection on finding solutions to overcome these barriers both domestically and internation- ally and ensure that cases of violence against women and gender equality more broadly are brought to courts and are duly considered.

Thereafter, Chapter 6 by Raluca Bercea examines the role of the ECtHR in exposing legal formalism as an obstacle to adequately addressing domestic violence at the national level. The chapter looks at domestic violence cases that were first adjudicated at the national level before subsequently reaching the ECtHR. It reviews cases from countries such as Austria, Bulgaria, Croatia, Georgia, Italy, Romania, Slovakia, Turkey, and the UK. In particular, Bercea shows that legal formalism, which acts as a hurdle to duly dealing with domes- tic violence cases, manifests itself in two ways. First, through lawmakers

35 Although since 15 March 2022, Russia is no longer a member of the Council of Europe and party to the ECHR, it remains an illustrative case study for the anal- ysis of this chapter. As Sperling and McIntosh Sundstrom explain, there are gen- erally very few cases in which the Court has found violations of Article 14 on sex discrimination. This is not only true for small countries, which generally have few cases before the Strasbourg Court, but also for the country having generated the most cases, namely Russia. Hence, Russia serves as a case study to understand the paucity of gender equality and domestic violence cases before the ECtHR.

failing to (adequately) take into account the political, social, and economic context of the country when drafting or designing legal norms. This often renders these norms unsuitable for addressing domestic violence. Second, through the mechanical application and/or interpretation of the relevant legal norms in a way that ignores their ultimate purpose. Bercea highlights the con- tribution of the ECtHR in uncovering the deficiencies caused by legal formal- ism at the local level. This chapter therefore advocates for enhanced dialogue and cooperation between domestic legal systems and the ECtHR to better protect women against violence. This effort should hopefully lead to a broader change of legal culture, moving from legal formalism to more contextual and teleological approaches to making, enforcing, and interpreting law.

Chapter 7 by Josipa Šarić takes Croatia as a case study from Central and Eastern Europe to discuss the backlash against the Istanbul Convention at the local level. While the human rights standards analyzed in this book have the potential to address various aspects of violence against women, the Istanbul Convention remains the most comprehensive legal document on this topic in Europe. Yet, as previously explained, its implementation is stalled by resist- ance from conservative groups. Further analysis of the most effective ways of overcoming such resistance therefore remains necessary. By focusing on the Croatian case, Šarić’s chapter reflects on the possible means to counter the contestation of the Istanbul Convention. Based on rigorous socio-legal analysis, she argues in particular that women’s groups (could) play a key role in countering attacks by the anti-gender movement and contribute to the effec- tive implementation of the Istanbul Convention at the local level in Croatia and elsewhere. The book therefore calls for further reflection on how best to ensure that the norms in the Istanbul Convention, and potentially in other legal instruments analyzed here, are better received at the local level.

Finally, the book concludes with Chapter 8 by Aleisha Ebrahimi on the relevance of European human rights law in the English Family Court system in cases of domestic abuse against women. It innovatively examines the United Kingdom’s recent Domestic Abuse Act 2021 through a European human rights lens, demonstrating the potential benefits of English courts applying and bor- rowing from supranational standards and thereby filling in some of the gaps outstanding in the UK’s legislative framework. The chapter shows that the UK is a seemingly paradoxical example of a country with progressive legislation coexisting with important shortcomings, especially when it comes to imple- mentation. Addressing these shortcomings could be achieved through greater incorporation of European human rights standards. Yet, in the UK context, such incorporation might not be straightforward given the country’s increas- ingly skeptical stance toward the ECHR and international law more broadly. It is also noteworthy that the UK only ratified the Istanbul Convention in November 2022, more than a decade after the adoption of this important instru-

ment. These internal dynamics and particularities make the UK a valuable case study to close the book’s reflection on the interplay between European human rights law and national domestic orders in the field of violence against women.

Overall, this book sheds light on the progress and challenges to establishing a comprehensive and effective legal framework on preventing and combating violence against women under European human rights law. It shows that approaches to violence against women still vary between different legal instru- ments, leaving significant gaps in protection. It argues for further harmoniza- tion and coordination among these instruments to better address this pressing problem. Furthermore, the book emphasizes the need for heightened scrutiny concerning the implementation of European human rights law at the domes- tic level. It delves into the challenges of countering anti-gender forces and addressing the backlash against the strides made in tackling violence against women. By weaving together these threads and bringing in fresh perspectives from both academics and practitioners, the book underscores the imperative of a cohesive and proactive legal strategy to address violence against women within the European legal landscape. Furthermore, by linking theoretical perspectives with practical reflections gained from real-world experience, the book highlights the significance of considering these two dimensions together. It is therefore our modest hope that this volume and its collaborative effort between academics and practitioners will not only contribute to academic debates on violence against women under European human rights law, but also help inform and guide the activists and practitioners engaged in litigation and legal change in this area.

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