

The Evolution of the Practice of the European Court of Human Rights in Domestic Violence Cases – A Comparative Overview

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*The issue of domestic violence has not always been at the forefront of legal analysis regarding the practice of the European Court of Human Rights (ECtHR). Reasons for the initial apparent lack of enthusiasm from scholars can be traced on the one hand to the fact that domestic violence occurs in an inherently private and personal legal relationship and on the other hand, because domestic competences by states are predominant. This paper aims at analysing the gradually solidifying practice of the ECtHR in the field of domestic violence by applying the method of comparative case studies. From early cases such as *Kontrová v. Slovakia* in 2007 and *Opuz v. Turkey* in 2009 to recent ones, such as *Volodina v. Russia* in 2019 and 2021, where stalking has been a major element of domestic violence and *Buturugă v. Romania* in 2020, where the Court has recognised cyberbullying as an act of violence against women and girls to *J.S. v. Slovakia* in 2026 where a context-sensitive approach was missing according to the Court. Through a legal analysis of the Court's findings and deductions from the ECtHR's reasoning, a generalised overview of the state's responsibilities and omissions takes form to ascertain in what way the Court's practice leaned towards and to observe whether technological advancements had manifested themselves in the Court's judgments.*

Keywords: domestic violence, European Court of Human Rights, obligations of domestic authorities, judicial practice

Introduction

The issue of domestic violence has not always been at the forefront of legal analysis regarding the practice of the European Court of Human Rights (ECtHR). Reasons for the apparent lack of enthusiasm from scholars can be traced on the one hand to the fact that domestic violence occurs in an inherently private and personal legal relationship and on the other hand, because domestic competences by states are even more predominant than in other areas of criminal law. Further

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aggravating the situation is the woefully large percentage of unreported instances of domestic violence, which can be caused by the fact that either the injured party is living in constant fear of the abuser, or being paralysed to stand up to the violator or the victim accusing herself of 'deserving' punishment, the latter of which derives from deep socio-cultural customs that have proven to be extremely difficult to root out.

Nonetheless, several articles of the European Convention on Human Rights (ECHR) can be invoked, such as the right to life (Article 2), prohibition of torture and inhuman or degrading treatment (Article 3), the right to respect for private and family life and correspondence (Article 8), and the prohibition of any form of discrimination (Article 14). The current article aims at analysing the gradually solidifying and expanding practice of the Court in the field of domestic violence by applying the method of comparative case studies. From early cases such as *Kontrova v. Slovakia* in 2007 and *Opuz v. Turkey* in 2009 the Court has taken great strides to develop regional human rights law in cases related to domestic violence. Recent cases, such as *Volodina v. Russia* in 2019, where stalking was accepted as a major element of domestic violence, the Court has established the fact that it contributes to psychological ill-treatment of the individual. Along with *Buturugă v. Romania* in 2020, where the Court has recognised cyberbullying as an act of violence against women and girls, which could take on a myriad of forms, including breaching the private correspondence of the victim and the ever-increasing instance of manipulation of not just data, but images and lately video footage as well. While in *J.S. v. Slovakia* the Court was missing a context-sensitive assessment of the case from the authorities.

Through a legal analysis of the Court's findings and deductions from the ECtHR's reasoning, a generalised overview of the state's responsibilities and omissions takes form. From police officers discrediting victims and witnesses, to simply not 'taking it seriously' when women file a complaint, a vast array of negligence can be observed from the part of the authorities. By taking their duties lightly, police authorities and prosecutors (and through attribution the State itself) have been regularly found to be responsible for not providing sufficient protection to those who are directly threatened by their husbands or domestic partners or for refusing to investigate criminal acts involving domestic violence properly.

Therefore, the present article aspires to find an answer to two primary questions. Firstly, (Q1) to what extent and in what way has the ECtHR interpreted and developed a common European understanding of domestic violence and states' obligations thereto? By this, clarity is needed in what way can the Court's practice be regarded as coherent, has there been development and if so, in what manner can it be traced. Secondly, (Q2) has the ECtHR managed to advance with the times and adapt its own practice in light of technological advancement? By this, it will be analysed if the text of the ECHR is adaptable in this regard and the practice of the ECtHR is sufficiently forward-leading and progressive by incorporating technological progress and the myriad new avenues through which certain domestic-violence conduct can be committed?

As a disclaimer, it needs to be stated, that this paper will not cover gender-based violence in general, nor violence in the workplace or harassment but only tackle domestic violence where the partner (husband, wife or any long-standing current or former partner) has committed some form of physical and/or psychological violence including but not limited to sexual violence. The reason these acts fall under the purview of the ECHR and the ECtHR is because of an omission by the state: which can be a lack of normative background, institutional deficiencies or lack of professionalism by a state representative (usually police) rendering the intimate ‘indoor’ crime an omission attributable to the state.

The phenomenon of domestic violence

The phenomenon of domestic violence at first glance should not be a human rights matter, as it occurs in partnerships including marriage, where one party abuses their position and the trust such a partnership entails to exert control and dominate the other party. This inner circle of the family or partnership is where most harm can be done, exactly because of the trust it requires causes the other human being to ‘lower their shield’, expose their secrets, believe that the other party wants what is best for them, thus creating a vulnerability which the other party uses and abuses. Such a vulnerability, when coupled with the shame, self-blaming, sense of betrayal, fear and disbelief (by oneself, other family members, authorities) contributes significantly to underreporting. Underreporting by male victims is even greater due to the perceived shame, humiliation and fear of scorn by police and by the larger society forces silence. Statistics only underline these statements. A 2023 global survey of women who have suffered intimate partner physical or sexual violence – which is a narrower scope than the observed field of this paper – showed that intimate partner violence was prevalent in the extended European region with Türkiye (32%), Latvia (25%), the United Kingdom (24%) topping the charts, where women have experienced this phenomenon at least once in their lifetimes (Statista 2023). Perception – as evident by qualitative studies – depicts an even darker picture. As Vázquez et al. found in their 2021 study, 80% of women in Europe (EU survey not Council of Europe) have confessed to violence against women being commonplace in their country (VÁZQUEZ et al. 2021). These studies accentuate the systematic nature of the problem and the inestimable level of underreporting accompanying the phenomenon. Long-term health issues are also problematic even as these are more prevalent in women than men, whereas regarding men, victims belonging to the LGBTQ community fall victim more often than heterosexual men (ALEJO 2014: 93).

Several authors have defined domestic violence as a manifestation of ‘historically unequal power relations’ (BEK-PÓLTORAK 2025: 37). This however, is a simplified approach which neglects the complexity of the phenomenon by side-lining acts committed by former partners, domestic violence committed by women against men, LGBTQ victims, etc. As a result, this approach – although valid for the vast majority of instances – is overly simplistic and excludes several instances.

A common ‘lay’ criticism in a lot of such instances that is featured in the media is asking out loud, why victims do not take a stand and leave their abusers. At this point, it is noteworthy to re-iterate the findings of Burman and Chantler as they point out that class, race, cultural identification all contribute to women being unable to leave violent partners (BURMAN–CHANTLER 2005: 70–71). Another interesting phenomenon in domestic violence cases that differs from other areas of human rights is that there are not only negative obligations on the state’s side, i.e. refraining from violation and to establish a normative background that supports the fulfilment of the obligation but also a positive obligation of the state in providing effective remedy in case the victim’s fundamental rights have been violated by another human being (HASSELBACHER 2010: 192). As we are going to see in the case law section of the current study, this effective normative background, action by authorities and remedy by courts is what will stand in the centre of the ECtHR’s process in most cases.

Relevant provisions combating domestic violence under international law

Over the last decades, a robust normative background has emerged on the universal as well as on the regional level both of which are referenced regularly – and in increasing quantity by the European Court of Human Rights. These systems complement one another well with the regional protection of human rights providing a direct recourse for human rights violations for the individual.

On the international level the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) with its Optional Protocol from 2000 supplementing the provisions of the treaty and the 1993 establishment of the Office of the High Commissioner for Human Rights and the 2006 reorganisation of the Human Rights Committee into the Human Rights Council deserve special mention for laying the normative and institutional groundwork (RUDOLF–ERIKSSON 2007: 520). Of all the norms adopted by the United Nations, General Recommendation No. 19 deserves special mention for establishing a due diligence requirement for states in combating domestic violence along with the resounding work of the CEDAW Committee (HASSELBACHER 2010: 193, 197) all of which are regularly referenced by the ECtHR in its judgments.

On the regional level, all three human rights regimes contain provisions to combat domestic violence, albeit the form these take and the approach these follow differs. The adoption of the Belém do Pará Convention in Latin America in 1994 took on a holistic approach early on with putting a focus on sexual violence as the most prevalent and heinous form of violence. The Belém do Pará Convention is a trailblazer with its early adoption and specialised sphere of action, showing strong commitment from Latin American states, although it can be ascertained that gender-based violence was already prevalent in the region to necessitate such a robust response (Convention of Belém do Pará 1994).

On the African side, the 2003 Maputo Protocol mandates state parties to adopt measures regarding discrimination and violence against women since the protocol came into effect in 2005 (Maputo Protocol 2003). While a major stepping stone *per se*, several African countries have stayed away from signature and/or ratification. Coupled with the already greatly limited access of nationals to turn to the African Court on Human and Peoples' Rights, the current system leaves a lot of room for improvement (VESA 2004: 358).

Undoubtedly the regional system with the most diverse case law underscored by the largest number of cases is that of the Council of Europe with the 1953 European Convention on Human Rights which created the European Court of Human Rights. As a major stepping stone, the 2011 adoption of the Istanbul Convention which does not only protect women from violence but specifically mandates protection from and prosecution of domestic violence and the work of the Group of Experts (GREVIO) are capable to define the obligations of states and nudge member countries towards a deeper understanding of the phenomenon along with concrete steps to be taken. Of the passages of the ECHR, four articles stand out as likely to be violated when domestic violence is committed, namely Article 2, the right to life, Article 3, the prohibition of torture and inhuman or degrading treatment, Article 8, the right to respect for private and family life and correspondence and Article 14, the prohibition of any form of discrimination (ECHR). As we will see in the subsequent section, violation of these articles individually or in conjunction will be the focal point of the Court's analyses concerning the cases brought before it. The cases in this paper were selected based on whether they highlighted a novel aspect that was not covered in previous judgments and made a significant contribution to the case law of the ECtHR. As a result, the selection will naturally be somewhat arbitrary and without claiming completeness.

Case law of the ECtHR

From the beginnings to Opuz v. Turkey (-2009)

The first cases that will later serve as reference points for the ECtHR's judgments came at a perilous moment, just as domestic violence and most states' ineffective approach to combating the phenomenon were loud not only in the media but in academia as well (DEMPSEY 2007: 920–921). In *Kontrová v. Slovakia* (2007) despite emergency calls by the victim, police inaction has led to the death of the applicant's children. Due to a lack of remedy the violation of Article 13 was pronounced (right to an effective remedy) and the death of the children meant a violation of Article 2 was also found to have occurred per the judgment. *Kontrová* was a landmark case in which the responsibility of the state was pronounced when police failed to respond properly after a complaint concerning domestic violence (*Kontrová* paras. 53–55; BRADLEY 2018: 128). The ECtHR also provided

a list of obligations for state authorities to carry out in the future in order to avert the outcome of the loss of life as well as their responsibility before the Court such as

‘accepting and duly registering the applicant’s criminal complaint; launching a criminal investigation and commencing criminal proceedings against the applicant’s husband immediately; keeping a proper record of the emergency calls [...] taking action if the perpetrator had a weapon and made a violent threat with it’ (Kontrová para. 53; ŠPREM 2023: 217).

Two years later in *Tomašić and Others v. Croatia* (2009) a baby and a mother were murdered by their father/husband after he was released from jail. The domestic court ordered psychiatric treatment for the perpetrator due to prior mental troubles and experts testifying of his lack of sound decision-making capabilities coupled with violent tendencies but these treatments stopped after his release. As it turned out, a lack of treatment by prison staff was already causing problems during incarceration with staff not having adequate means to control his behaviour. The case highlighted the positive obligation to take appropriate measures if the ‘authorities knew or ought to know’ of a ‘real and immediate risk to life’ (Tomašić para. 51).

The most notable case among the relatively early practice of the ECtHR is undoubtedly *Opuz v. Turkey* (2009). Labelled a ‘landmark’ (BRIDDICK 2024: 108) and a ‘milestone’ (HASSELBACHER 2010: 214; KHRYSŤOVA 2014: 117) by academia, its novelty and greatness lie in the fact that it declared gender violence as a form of discrimination (TOLBARU 2022: 155). While the *Opuz* reasoning demanded that the authorities take the ‘full picture’ into account when deciding on the vulnerability of the victim (*Opuz*, para. 126; ERBAŞ 2021: 9–10), it has led to divergent trails where in certain cases the ECtHR chambers have demanded that the applicants engage in a high-threshold proving of systematic discrimination, ill-treatment or general passivity by the authorities, whereas in others openly accessible data could be deemed sufficient by other chambers to substantiate the discriminatory practice of the domestic authorities (BRIDDICK 2024: 117).

The era of diversification (2010–2018)

The second era of the case law of the ECtHR marked a so-called ‘building’ phase where the Court has comfortably relied on previous case law so that it could focus on ancillary matters which have nonetheless been of utmost importance for the protection of and redress to victims. First among these new generation of cases was *Kalucza v. Hungary* (2012) where the victim has made numerous complaints against her abuse partner. While there were several civil cases pending to evict him from the flat they shared; the inaction by the authorities was what the Court found problematic, namely the fact that despite multiple direct pleas, no restraining order was issued enabling the perpetrator to continue his abusive and violent behaviour violating the victim’s right to privacy as enshrined in Article 8 of the ECHR. A further problematic point identified by the Court

was that authorities failed to give adequate reasoning as to why the restraining order was not issued, leading the ECtHR to the conclusion that there was no valid reason not to issue the restraining order other than the fact that the authorities had not treated the complaint with the seriousness it represented (Kalucza para. 65; LONDONO 2012: 347).

Rumor v. Italy (2014) took a vastly different turn than previous judgments. Here the victim was assaulted by the perpetrator (hit several times), threatened with a knife and scissors and locked in their shared flat. The Court found that ill-treatment by the authorities could not be substantiated as per Article 3 even though it is their duty to deter would-be perpetrators and punish the commission of crimes such as domestic violence (Rumor, para. 58). The ECtHR took a drastically different approach than the chamber in *Kontrová v. Slovakia*, when it espoused that it is no position to prescribe to authorities what they ought to do in a given scenario (Rumor, para. 59). The fact that the Court has not substantiated any violation – as the legal framework was in place and the authorities responded swiftly by freeing the victim and initiating a criminal process against the perpetrator – met with severe criticism from some scholars (MUJUZI 2016: 180). While others contemplated that the approach used by the Court is not sufficiently sensitive of the matter and had the Istanbul Convention came to effect by this point, the outcome of the case could have been different (MCQUIGG 2015: 1024). This latter thought was emphasised by McQuigg and Murphy who combined their critical remarks with the living instrument doctrine arguing that the Istanbul Convention could have been applied in the case as Italy has signed the Convention three years' prior (MURPHY 2019: 1354; MCQUIGG 2015: 1024). However, applying a treaty not yet in effect and calling on states to enforce it could be regarded as judicial activism and as such, could lead to valid criticism regarding the practice of the Court, especially as such actions can call into doubt whether the Court is applying existing law or future/desired norms with next to no legal basis at the time of the judgment.

A few years later, in *Bălșan v. Romania* (2017) the victim suffered repeated conjugal violence. While the normative framework – i.e. criminal law provisions – were in place, the authorities did not use them. Instead, police claimed that the applicant 'provoked' violence, a classic example of victim blaming. Due to the passivity of the authorities even after numerous complaints by the victim, the Court found that violations of Articles 3 and 14 did occur while at the same time it has admonished the general practice of local authorities (Bălșan para. 82). The ECtHR also found that as a result of the authorities tolerating domestic violence – which became well-known among the general population – the deterrent effect of criminal provisions has become negligible (Bălșan para. 87; MURPHY 2019: 1356; SPERLING–SUNDSTROM 2024: 126).

In the very same year in the *Talpis v. Italy* (2017) judgment, where the victim's alcoholic husband murdered his own son and attempted murder of herself, the Court found that there was an atmosphere of violence and that by discarding complaints the authorities encouraged increasing violence and that their attitude in doing so was discriminatory (Talpis, para. 141). Indeed, the failure of the police to take action led to impunity emboldening the perpetrator to commit murder (BRADLEY 2018: 128) and

that there is a chance that should the authorities have carried out a timely questioning, the serious bodily injury of the victim and death of her son could have been avoided (GOLDSCHIED 2018: 574). The Talpis judgment is noteworthy because it takes place in the same state – Italy – as the Rumor case, the conduct is not at all dissimilar, albeit the outcome is different. Here the authorities did not initiate an investigation nor did they protect the victim through a restraining order on the alleged perpetrator leading to a violation being substantiated by the ECtHR for Articles 2 and 3 (Talpis, paras. 145–146). Furthermore, the victim has provided evidence including statistical data that domestic violence was a widespread phenomenon in Italy (MURPHY 2019: 1356). As the Court noted, the authorities responding 7 months after the complaint was filed constitutes remarkable judicial passivity (Talpis, para. 141; CAPONE 2017: 43–44). In other words, the normative framework was there – especially since the Istanbul Convention came into effect during the various steps of the Italian legal process but authorities were either not prepared to use it or were not willing to engage in enforcing its provisions domestically.

The epoch of solidification and modernisation (2019–2026)

Volodina v. Russia (No. 1) (2019) is emblematic because of two reasons. The first is the plethora of acts constituting domestic violence such as repeated acts of stalking, kidnapping, threats, assaults by the former partner which highlighted a systemic lack of norms by Russia as domestic violence was not *ipso facto* recognised coupled with inadequate methods such as no restraining orders in the domestic legislation which the ECtHR regarded as omission by legislature that is attributable to the state under general rules of state responsibility in international law. The Court has re-iterated that it is the obligation of states to have adequate criminal provisions which provide recourse for the victims but also deterrence for the perpetrator which were missing in the present case (Volodina No. 1, 2019, paras. 57–58). The second facet why the Volodina (No. 1) is so remarkable as this was the instance where the ECtHR has elaborated in the criminalisation of psychological violence in the context of Articles 3 and 8 recognising the cumulative effects of psychological abuse which might reach the threshold to be criminalised (HEDLUND 2024: 19). Of course not necessarily every case of ‘psychological domestic warfare’ would be considered domestic violence as this would open unnecessary avenues for domestic strife and has the potential to label minor in-house quarrels as domestic violence, but according to the Court’s assessment, feelings of fear, anxiety and powerlessness, in combination with the perpetrator’s controlling and coercive conduct, constitute ‘inhuman treatment’ under Article 3 of the ECHR (Volodina No. 1, para. 75; HEDLUND 2024: 4).

The separate opinion of Judge Pinto de Albuquerque deserves special mention here. Judge de Albuquerque has raised the issue that, besides the violation of Article 3 of inhuman treatment, the question of torture also needs to be addressed as the severity of the act in question and indeed, several instances of prolonged domestic violence may meet the criteria for torture (Volodina No. 1, separate opinion of Judge Pinto de Albuquerque

para. 9; McQUIGG 2021: 163–164). Taking a deeper look at the judge’s arguments, while the factual threshold for torture can indeed be reached, the secondary argument that the ‘positive obligation to protect would be even more stringent’ is more akin to pressuring states into taking the issue seriously by coming to a more severe conclusion. ‘Educating or motivating’ states in this regard falls outside of the competencies of the court, and might be labelled excessive activism by the critiques of the ECtHR.

On a side note, Volodina No. 1 had an interesting effect on domestic norms. After decriminalising domestic violence in 2017 – save for the more violent forms resulting in broken bones and even more serious outcomes – the Volodina No. 1 judgment in 2019 has caused a new bill to be drafted but the compromise provision-draft was heavily criticised by both sides of the argument for either ‘attacking traditional family values’ or for ‘not encompassing all forms of domestic violence and not mandating prosecution of perpetrators’ (ROBERTS 2021: 338–339). Due to the domestic, political strife surrounding the draft, the momentum of the Volodina judgment was lost and Russian provisions on domestic violence were not amended. Nonetheless, at least the judgment contributed to the discussion being held on the societal level even if a concrete outcome was not reached.

A new tendency can be observed starting with *Tërshana v. Albania* (2020) where an acid attack against the victim by the former husband has occurred on the street. Here the Court found a substantial and procedural violation of the right to life in Article 2 of the ECHR. From a substantive standpoint, the Court observed that on the one hand, there is an effective criminal law framework in the state, while the authorities had no prior information of threats made against the victim, therefore they did not ‘ought to know or knew’ of a credible risk to the victim’s life (*Tërshana* paras. 150–151). However, the Court also found that a procedural violation of Article 2 did occur, as authorities did not acknowledge the fact that a case of gender-based violence occurred and the victim did not receive proper information regarding her case even after multiple queries (*Tërshana* paras. 157, 161). As the ECtHR has categorically iterated for posterity: ‘Violence against women was under-reported, under-investigated, under-prosecuted, and under-sentenced’ (*Tërshana* para. 156; ERBAŞ 2021: 11).

Buturugă v. Romania (2020) that same year is among the first cases adjudicated by the Court where there is technological element. In the case there was an intrusion into private life, breaching online correspondence, and criminal acts have been committed in cyberspace while the authorities deemed the case not to merit a proper investigation. The Court not only substantiated a violation of Articles 3 and 8 of the ECHR but acknowledged the widening scope of the phenomenon as the authorities were aware, or should reasonably have been aware, of a ‘real and immediate risk of ill-treatment’ but failed to take appropriate measures that fell within their competence to prevent that risk of ill treatment (*Buturugă* para. 76). The ECtHR also acknowledged that actions carried out in cyberspace can also constitute domestic violence. The Court has also highlighted the multifaceted nature of the problem and the obligations of investigative authorities, therefore the Court examined whether effective measures were taken to protect the

privacy of the victim (ALASGAROVA 2026: 68–69). From the point of view of physical injuries, it was established that while authorities accepted the injuries on the body of the victim and the medical records, no effort was made to discern where the injuries came from, i.e. who was responsible for the act(s) in question (Buturugă paras. 67–68). Thus – per the Court’s findings – it is evident that the authorities have neglected their essential duties of diligence (GOLD 2020).

The second *Volodina v. Russia (No. 2)* (2021) case had relatively different focal points than the first *Volodina* case two years prior. In the present case the perpetrator impersonated the victim online using her image to do so while also conducting online surveillance the victim did not consent to, nor was she aware of this fact (*Volodina No. 2* para. 48). Here the Court came to the conclusion that albeit the criminal law provisions of the Russian code were on par with the state’s obligations under the ECHR, insufficient remedies were found in the criminal code (*Volodina No. 2* paras. 51–54). Specifically, the Russian system – according to the judgment – applied a rather arbitrary ‘interlocutory restraining or prohibition order’ which was entirely dependent on the assessment of the investigative authorities whether the circumstances were ‘extraordinary’ enough to warrant it (*Volodina No. 2* para. 60). As noted by Costello, the Court relies on the *Buturugă* judgment a year prior to emphasise the gender-sensitive approach it employs and expects state authorities to apply said approach in their conduct of the investigation and subsequent legal process while the Court noted the particularly underhanded and hard-to-detect nature of cyberstalking (*Volodina No. 2*, para. 48; COSTELLO 2021: 618–619).

Similarly to *Volodina No. 2*, in *M.Ş.D. v. Romania* (2025), the technological element was also present, when the perpetrator disseminated intimate photographs of the victim that she did not give her consent to her former partner resulting in online harassment causing a violation of the right to privacy under Article 8 of the ECHR (*M.Ş.D.* para. 60). Besides the online platform, the case is an almost classic display of authorities not taking the victim’s claims seriously even stipulating that it was the victim who disseminated intimate photos of herself (*M.Ş.D.* para. 104).

The brutal case of *X. v. Cyprus* (2025) includes a woman who was gang-raped by a group of 12 men with several of the perpetrators making a video recording of the event. In its decision establishing the responsibility of Cyprus for violation of Articles 3 and 8 of the ECHR, the Court relied heavily on the Istanbul Convention and the work of GREVIO, while citing the *Volodina No. 2* judgment as a reference point, thereby indicating how much of a cornerstone the latter decision had become in order to ascertain effective investigation standards (*X.* para. 89). The Court found that the authorities forced the victim to recount the events thus reliving the trauma while in other cases berated her for not providing all of the details of the act in question during certain stages of the process, meanwhile emphasising the lack of internal, bodily harm arising from the act in question and neglecting the psychological elements along with the humiliation and fear the victim suffered and constantly returning to accusations of false reporting thus putting pressure on the victim to doubt the veracity of the events (*X.* para. 95–96).

On a side note, the case only counts as domestic violence because the victim was engaged sexually and to some extent romantically with one of the perpetrators.

The latest case in the practice of the ECtHR is *J.S. v. Slovakia* (2026) where physical and psychological attack was committed by the perpetrator coupled with death threats (J.S. para. 5). The cornerstone of the case was a procedural violation of Article 3 of the ECHR, namely whether a ‘gender-based violence perspective’ and a ‘context-sensitive assessment’ has been conducted by the authorities to which the Court answered in the negatory (J.S. para. 58, 63). Regarding the systematic nature of discrimination against women, the Court found that it is not sufficiently satisfactory in terms of the burden of proof to point at CEDAW reports in general. Statistical data and pinpointed evidence in the exact report needed to satisfy this threshold in the current case (J.S. paras. 72–73).

Comparative overview and discussion

Table 1: Comparative overview of the most relevant cases from the practice of the European Court of Human Rights regarding domestic violence

Case	Year of judgment	Relevant articles of the ECHR	Cause of violation	Technological aspects of the case
Kontrová v. Slovakia	2007	2, 13	inaction of authorities, lack of remedy	none
Tomašić and Others v. Croatia	2009	2	inaction by authorities in case of a direct threat to life that they ‘ought to know’ or ‘knew’ of	none
Opuz v. Turkey	2009	2, 3, 14	systematic discriminatory practice by the authorities	none
Kaluczka v. Hungary	2012	8	not issuing restraining orders	none
Rumor v. Italy	2014	3, 14	no violation – legal framework in place, swift response by the authorities	none
Bălșan v. Romania	2017	3, 14	not applying existing norms; victim blaming	none
Talpis v. Italy	2017	2, 3, 14	discarding complaints, discriminatory approach towards women	none
Volodina v. Russia (No. 1)	2019	3	threshold for psychological abuse to be criminalised	none
Buturuğă v. Romania	2020	3, 8	criminal acts in cyberspace did not merit proper investigation	cyberspace – digital invasion of privacy

Case	Year of judgment	Relevant articles of the ECHR	Cause of violation	Technological aspects of the case
Tërshana v. Albania	2020	2	authorities did not acknowledge gender-based violence; lack of information to victim	none
Volodina v. Russia (No. 2)	2021	8	omission of legislature in adopting norms required by the ECHR	online impersonation of the victim; intimate partner surveillance
M.Ş.D. v. Romania	2025	8	inadequate legal framework; failure to conduct prompt investigation	online harassment, dissemination of intimate pictures online
X. v. Cyprus	2025	3, 8	revictimisation, victim blaming, creating a gender-based stereotype hindering the effectiveness of reporting	none
J.S. v. Slovakia	2026	3, 14	failure to conduct a context-sensitive assessment and to take into account a gender-based violence perspective	none

Source: compiled by the author

During the first array of cases between 1997 and 2014, 22 cases of domestic violence were decided by the Court (CICHOWSKI 2016: 909). During the epoch that roughly corresponds with this timeframe, the ECtHR laid the groundwork for its future judgments with the *Kontrová*, *Tomašic* and *Opuz* judgments making general statements on the theoretical background on how it perceives domestic violence-related cases in *Opuz* that permeate nearly all future cases. During the following decade, clarifications needed to be made on how the states' obligations are shaping in terms of restraining orders and preventive measures in *Kaluczka v. Hungary*, victim blaming coming to the forefront in *Bălşan* while discrimination was further elaborated on in the *Talpis* decision. The more recent cases from the two *Volodinas* to *X. v. Cyprus* and *J.S. v. Slovakia* show that the Court expects States to adopt the Istanbul Convention and be mindful of GREVIO's work along with holding them to rising standards of adopting a 'context-sensitive assessment' and to take into account a 'gender-based violence perspective'.

The Court's practice has been remarkable even during the first one and a half decade of cases (CHOUDHRY 2016: 418). Since then, the decisions have become nuanced, intricate in how they build upon one another very much alike to a well-built house with bricks and foundations representing earlier cases. It is also worth noticing how the ECtHR is using a plethora of non-binding sources such as declarations, reports, guidelines

and other soft law documents reflecting the emergence and dissemination of recent normative development (DEMİR 2021: 90). A long-standing criticism from certain parts of academia stems from the perception that reliance on soft law blurs the line between progressive norm seeking on the one hand and hard law defining the exact contents of states' obligations on the other (RACHOVITSA 2015: 880). While this is true in some cases, such direct formulations either remain as separate opinions for the time being (see for instance Judge Pinto de Albuquerque's separate opinion in Volodina No. 1) or are substantiated by hard law in the judgments themselves (*J.S. v. Slovakia*). On a more technical note about the sources, publicly available quantitative data is becoming ever more important in the evaluation of the ECtHR to determine the systematic nature of domestic violence where the victim needs to prove the systematic nature of the problem due to the burden of proof being on them as applicants (SĘKOWSKA-KOZŁOWSKA 2024: 1728–1729). There is a major conundrum, however, namely that while in race- or homophobia-motivated cases, the reasons of the perpetrator can be relatively easily deduced, the gender-based violence in a domestic setting is much harder to ascertain as a significant portion of the authorities treat these cases as inter-personal conflicts, where the authorities should not intervene (SPERLING–SUNDSTROM 2024: 125).

Last but not least, as Devaney points out, the most visible tool of domestic violence is direct punishment of the perpetrator and the acknowledgment of the wrongdoing along with compensation for the victims. Criminal law, however, is only one tool to remedy the phenomenon of domestic violence and while other methods might be more humane, cost-effective or simply efficient, the punitive aspect as a last resort must not be neglected either as it serves as the last recourse for victims (DEVANEY 2014: 484).

In order to answer the second research question on the technological elements, i.e. new technologies, platforms and methods of committing domestic violence, it can be surmised that these are present either as tools or platforms (Buturugă, Volodina No. 2, *M.Ş.D*) but not as means or foundationally new *modus operandi*. This might change however, as with the dominance of artificial intelligence seeping into numerous aspects of daily lives as well as the possibilities it holds, it is likely a matter of time before artificial intelligence-related cases make it to the Court. With the time it takes for cases to reach the level of ECtHR and artificial intelligence becoming prevalent since 2023, it will take an estimated 1–3 years before the first cases are visible. At that moment, the Court will need to assess how it understands domestic violence from an artificial intelligence perspective.

As per the assessment of the case law of the ECtHR, the protection awarded by the Court is robust albeit with minor inconsistencies (RISTIK 2020: 83). The Council of Europe system and its challenges – numerous challenges such as the ever-increasing number of cases, recurring cases where the state has not remedied the systematic violation, positive subsidiarity and many others still – is a well-functioning system that serves hundreds of millions when their human rights have been violated (KRENC 2025: 14–16).

Conclusions

The phenomenon of domestic violence can be regarded as widespread in all Council of Europe member states as the systematic nature of these acts and authorities' regular blunders or mishandlings of such situations lie consistently at the focal point of the Court's analysis of a given case. It can be ascertained, however, that States and their authorities operate by different level of 'awareness' in how much they emphasise victim-centred and gender-sensitive investigative techniques or are aware of the high level of underreporting in the territory under their sovereignty. The speciality of domestic violence cases can be traced to the fact that compared to other human rights enshrined in the ECHR such as freedom of speech or the right to property, the state in the case of domestic violence is not the direct violator of rights but is supposed to ensure a 'secondary' set of norms: protection, prevention, investigation and access to justice for the victims. While domestic violence can take on many forms including physical and psychological violence, the Court focuses on the former as well as on the acts of authorities due to the fact that physical evidence is easier to obtain and also because in many cases, the victims themselves might not be aware of the phenomenon if only the psychological elements manifest themselves in the commission of domestic violence.

The practice of the ECtHR serves as a valid tool for interpreting the Convention not only for incorporating modern approaches in combating domestic violence and by pointing out systematic errors that might arise but by treating the European Convention on Human Rights as a living instrument that can be developed as underlying societal shifts occur and as novel legal provisions are adopted on the universal, regional and domestic level. The decisions of the ECtHR can be a catalyst for decision-making process regarding domestic violence, but initiative remains on the State-level and as such political will is required for meaningful change to be felt. Expectations have changed from the Court's point of view towards states, however, as what is required of them has become more nuanced in later years as seen in *X. v. Cyprus* where systematic errors were pointed out in creating a system where gender-based victimisation and usage of stereotypes has hindered the effectiveness of reporting and investigating mechanisms. Or as it can be observed in the fresh *J.S. v. Slovakia* case, where the ECtHR has found that a 'context-sensitive assessment' by authorities was the proper content of the obligation placed on authorities. This shows development not in the Convention itself, not even a landmark or fundamental revision of existing obligation by the Court, but merely a slight adjustment as societal demands and understanding of official duties are evolving over time.

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