



INA VELESHNJA*

DENARD VESHI**

EMERGING DIMENSIONS AND LEGAL CHALLENGES IN DOMESTIC VIOLENCE: A COMPARATIVE ANALYSIS

SUMMARY: 1. Introduction. – 2. Defining Domestic Violence: Forms, Scope, and Implications. – 3. Comparative Analysis of Domestic Violence Legislation in European Countries. – 4. Digital and Physical Dimensions of Domestic Violence: Analyzing ECtHR Case Law on State Responsibility and Victim Protection. – 5. Conclusions.

1. *Introduction*

According to data from the World Bank and the World Health Organization, nearly one in three women globally has experienced domestic violence at some point in their lives. This violence is perpetrated by both intimate and non-intimate partners, with adolescent girls identified as being at greater risk of intimate partner violence compared to adult women¹. While the prevalence of domestic violence is well-documented, understanding the underlying causes and contributing factors remains a complex task, as this phenomenon is influenced by a multitude of individual, social, and economic variables. Domestic violence often arises from a combination of factors that create an environment conducive to abuse. For instance, excessive alcohol consumption is associated with a fivefold increase in the likelihood of domestic violence². Similarly, economic hardship and social instability exacerbate the risk of such

* Assistant lecturer and researcher at the University of Tirana, Faculty of Law, Albania.

** General Director of the School of Advocacy by the National Chamber of Advocacy in Tirana Albania, professor at the University college of Beder University and researcher, Tirana, Albania.

¹ World Bank, *Violence Against Women and Girls – What the Data Tell Us*, October 21, 2021: <https://genderdata.worldbank.org/en/data-stories/overview-of-gender-based-violence> last visited on December 8, 2024.

² *Ibidem*.

incidents. However, it is important to acknowledge that domestic violence can occur even in the absence of these factors, underscoring the multifaceted nature of this criminal phenomenon. Given the diversity in how domestic violence manifests and its varying underlying causes, this article seeks to contribute to academic literature by addressing a key research question: How do legal frameworks across selected European countries address the evolving dimensions of domestic violence, and what lessons can be drawn to inform future legislative practices? To explore this question, the study conducts a comparative analysis of the legal provisions addressing domestic violence in Austria, Bulgaria, Croatia, and Albania. These countries are categorized into three distinct groups based on their legislative approaches:

1. Countries that lack specific provisions in their Criminal Codes but have enacted dedicated legislation (*lex specialis*) on domestic violence, Austria and Bulgaria.
2. Countries that include provisions on domestic violence in both their Criminal Codes and specialized legislation, resulting in a more comprehensive legal framework, Albania.
3. Countries that address domestic violence solely through provisions in their Criminal Codes, Croatia.

The methodology behind the selection of these different jurisdictions, revolves around their nuanced legal response to the issues domestic violence issues. Since all of these jurisdictions are quite different from one another, they all showcase different responses to the new multifaceted dimensions of domestic violence. While Austria and Croatia provide for more modern approach on domestic violence, Albania and Bulgaria seem to showcase a serious legal vacuum in addressing the new forms of this criminal offense. All of these different jurisdictions highlight the various strategies lawmakers have undertaken in order to define domestic violence and its new forms. Austria and Croatia, are the two jurisdictions that seem to rely solely on a single piece of law. In Austria there is a specialised law concerning domestic violence, and in Croatia the respective legal basis lies within the provisions of the national Criminal Code. These two strategies feel insufficient in the face of the new and emerging directions of domestic violence. Bulgaria also relies heavily on a specialised law concerning domestic violence, however, the law seems outdated and not quite responsive to the new forms of domestic violence especially cyberviolence done by a family member to a family member and other forms like for example gaslighting. Albania is the only country that has dual legal provisions, on domestic violence, with the appropriate provisions in the Criminal Code and a specialised law that defines the acts that constitute violence, the members of the family, and the procedure in cases of demonstrated acts of violence against a family member. Nonetheless, both the article in the CC and the law, to address cyberviolence and emerging forms of psychological abuse, like gaslighting. This legal vacuum, creates serious issues for the protection of the victims' rights and the prosecution of perpetrators.

This comparative framework is designed to highlight alternative legislative perspectives employed by European nations to combat domestic violence. A key contribution of this article lies in its analysis of how these approaches align with international obligations. Nearly all the examined countries have ratified major international conventions, such as the The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic

Violence.³ They are also active members of international bodies like the UN Committee on the Elimination of Discrimination Against Women (CEDAW). Moreover, the article underscores the significance of international jurisprudence, particularly rulings by the European Court of Human Rights (ECtHR), in shaping national responses to domestic violence. By examining these rulings, the study highlights critical legal developments and emerging dimensions, including the role of technology in perpetuating abuse.

While the primary focus of the article is on national legislative frameworks and case law, international strategies and regulations, international jurisprudence is also an integral part of the article. The ECtHR has made a number of landmark decisions concerning the new dimensions of domestic violence especially facilitated by technology. The article is organized as follows, with the first part focuses on the various forms of domestic violence and its implications, then a comparative legal analysis of legal framework of the countries studied for this article which are Austria, Bulgaria, Croatia and Albania and the newest developments of the international jurisprudence and new forms of domestic violence.

2. Defining Domestic Violence: Forms, Scope, and Implications

Domestic violence encompasses abusive behavior between individuals who share a familial or intimate relationship.⁴ These behaviors include physical, psychological, sexual, economic, emotional, and increasingly, technological abuse. The recognition of technological abuse, such as controlling a partner's devices, represents a critical development in international jurisprudence. For instance, in *Buturugă v. Romania*,⁵ the ECtHR established that such control constitutes a form of domestic violence, urging authorities to investigate these actions irrespective of direct connections to traditional definitions of the offense. This ruling highlights the evolving scope of domestic violence, which seeks to instill fear, shame, or psychological distress in victims. The ECtHR's landmark case, *Buturugă v. Romania*, proves to be a critical piece of jurisprudence concerning domestic abuse victims that experience a different medium of traditional forms of abuse. This case prompted for changes in the national legislation of Romania, provisioning technological abuse, that still constitutes domestic abuse.

Domestic violence affects individuals of all genders, ages, and socioeconomic backgrounds. Perpetrators can be broadly categorized into two groups: intimate partners (IPV) and non-intimate partners (NIPV). IPV involves violence perpetrated by a current or former intimate partner and encompasses all recognized forms of abuse. In contrast, NIPV refers to violence committed by individuals without a current or prior intimate relationship with the victim but with familial ties, thereby broadening the scope of perpetrators. This wide range of

³ Council of Europe, The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, 2014), ISBN 978-92-871-7990-6. November 2014, <https://www.refworld.org/reference/regionalreport/coe/2014/en/102469> (last visited on February 12th 2025).

⁴ <https://www.un.org/en/coronavirus/what-is-domestic-abuse#:~:text=Domestic%20abuse%2C%20also%20called%20%22domesticcontrol%20over%20an%20intimate%20partner> (last visited on December 8, 2024).

⁵ Judgement 11.02.2020 “Buturugă v. Romania”, European Court of Human Rights <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22002-12715%22%7D> last visited on December 8th 2024.

perpetrators reflects the complexities in legislating against domestic violence, legislating it through Criminal Codes or specialized laws. However, the inherent unpredictability of its forms and perpetrators often necessitates additional legal instruments to supplement existing frameworks. For domestic violence to be recognized legally, a familial relationship is typically required. However, the interpretation of “familial relationship” varies across jurisdictions. For instance, Albania’s Criminal Code, under Article 130/a, explicitly includes current or former intimate relationships, even in the absence of marriage or cohabitation.⁶ This expansive definition underscores the evolving understanding of relational dynamics in legal contexts and ensures broader protection for victims.

The *modus operandi* of domestic violence includes acts that harm the physical, psychological, psychosocial, sexual or economic integrity of the victim. Legislative frameworks often delineate specific offenses, but challenges persist in defining emerging forms of abuse. One such example is *gaslighting*, a psychological form of domestic violence involving manipulation that undermines the victim’s trust in their memory or perception of reality. Gaslighting represents a nuanced form of psychological violence, distinct from direct threats or intimidation. The subtlety of this abuse often leaves victims unaware of the violence they are subjected to, further complicating its recognition and prosecution. Despite its profound psychological impact, many legal systems, including Albania’s, lack explicit definitions for such forms of abuse, leaving judicial interpretation as the primary tool for addressing these cases.⁷ The inclusion of gaslighting within legal definitions of domestic violence is essential. As an emerging phenomenon, it exemplifies the evolving nature of abuse that current legal frameworks struggle to encompass. Codifying gaslighting as a form of domestic violence would align legislative practices with contemporary understandings of psychological abuse and provide a clearer basis for prosecution.⁸ Gaslighting, often manifested as a form of domestic abuse, serves as a means for perpetrators to exert power and control within intimate relationships, frequently achieving personal or material gains.⁹ Despite its significant psychological impact, gaslighting remains inadequately recognized and addressed by legal frameworks. It is frequently dismissed as a mere precursor to domestic violence rather than acknowledged as an independent manifestation of abuse. This narrow approach fails to account for the pervasive harm caused by gaslighting and undermines efforts to provide comprehensive protection for victims. In many jurisdictions across the world, gaslighting isn’t legally recognized and as mentioned above it’s considered just the precursor phase of the domestic abuse. However, if a perpetrator of domestic violence, uses subtle techniques into committing the crime, one of them being gaslighting, following this logic it is very hard to criminally charge and prosecute them. The victim of gaslighting often times has no idea, that an abuse is taking place, so official criminal complaints to authorities are

⁶ EURALIUS, Criminal Code of the Republic of Albania https://www.warnathgroup.com/wp-content/uploads/2017/11/Albania_CC_1995_am2015_en.pdf last visited on December 14th 2024.

⁷ C. JOHNSTON et al., *Understanding Gaslighting: A Data-driven Analysis of Themes, Features, and Effects on Subjective Memory*, February 10, 2025, https://doi.org/10.31234/osf.io/ypc25_v2.

⁸ *Ibidem*.

⁹ L. DRAKE, H. PETERSON, C. VAN GOLDE, *Illuminating Gaslighting: A Comprehensive Interdisciplinary Review of Gaslighting Literature*, in *Journal of Family Violence*, 2025 (<https://doi.org/10.1007/s10896-025-00805-4>. Last visited on January 17th 2025).

underreported.¹⁰ Victims struggle to acknowledge the abuse, resulting in underreporting and a lack of legal repercussions for perpetrators.

Albania's Criminal Code acknowledges a broad range of familial relationships, including marital, cohabitational, kinship, and emotional ties, in its provisions on domestic violence. This comprehensive approach ensures legal protection for individuals.¹¹ However, the Albanian CC and the *lex specialis* on domestic violence, fails to adequately provision gaslighting as its own independent form of domestic violence, thus creating a significant legal vacuum for prosecution and protection for its victims. The absence of explicit definitions in most legal systems perpetuates underreporting and judicial oversight. Albanian law, despite its broad definition of psychological abuse, remains inadequate in prosecuting nuanced forms of manipulation like gaslighting. International best practices, such as explicit recognition in legal texts, should serve as a model for legislative reform. Another weakness that can be witnessed with the current legal provisions on domestic abuse in Albania and other countries, are the forms of cyber violence committed by a perpetrator that the victim has a familial relationship. As previously mentioned, the forms of cyber abuse are relatively new, and many jurisdictions around the world struggle to properly provision them in their respective criminal legislations. The new forms of cyberabuse can be associated with the increased role that technology has in our lives. Although the term cyberabuse is quite broad and includes a number of acts facilitated by technology, in the context of domestic violence the perpetrator is a family member that commits these acts for various purposes.¹² According to GREVIO experts¹³, cyberviolence includes technology-facilitated acts causing psychological and physical harm to victims.

It becomes especially concerning when cyberviolence is exerted towards victims that have or had familial relations. For example, ex partners that possess the victim's intimate images or videos, might post them online, in order to create psychological distress to their victims.¹⁴ Such actions constitute nonconsensual pornography, a criminal phenomenon that is slowly beginning to be recognized as part of criminal legislations around the world. When nonconsensual pornography is perpetrated by a former partner, then theoretically it should fall under the broad definition of domestic violence, however, since nonconsensual pornography is a very serious crime, various countries have stipulated it as an independent criminal offense. This course of action has given nonconsensual pornography more prevalence, as a standalone criminal offense. Social media serves as a powerful tool for abusers, who create fake profiles, engage in cyberbullying, and publicly shame their victims, highlighting the urgent need for legal recognition and prosecution of such behaviors. Additionally, digital surveillance technologies, including spyware and GPS trackers, enable abusers to monitor victims' movements and communications,

¹⁰ *Ibidem*.

¹¹ V. MEDVEDSKA, *Theoretical and Legal Aspect of Cyberviolence Against Women*, in *Law. Human. Environment*, 13, no. 2 2022, pp. 25-31.

¹² M. M. ROGERS et al., *Technology-Facilitated Abuse in Intimate Relationships: A Scoping Review*, in *Trauma, Violence & Abuse*, 24, no. 4, 2023, pp. 2210-2226.

¹³ GREVIO (Group of Experts on Action Against Violence Against Women and Domestic Violence), General Recommendations No. 1 on the Digital Dimension of Violence Against Women, October 21, 2021. <https://rm.coe.int/grevio-rec-no-on-digital-violence-against-women/1680a49147> last visited on January 21st 2025.

¹⁴ L. BAILEY et al., *The Networking of Abuse: Intimate Partner Violence and the Use of Social Technologies*, in *Criminal Justice and Behavior*, 51, no. 2, 2024, pp. 266-285.

leading to severe privacy violations and heightened psychological distress.¹⁵ Another emerging form of cyber abuse is economic control, where perpetrators restrict financial independence by digitally freezing bank accounts or interfering with online job applications, further entrenching victims in cycles of dependency and abuse.¹⁶

Cyberbullying and other forms of social media manipulation showcase how easy it is to commit these acts. Perpetrators usually use aliases or various programs for anonymity in order to conduct the abuse without being caught.¹⁷ Concerning digital surveillance, these actions constitute serious breaches of privacy laws, depending on the jurisdiction, and other times might also fall into cybercrime. Legislative frameworks need to explicitly categorize these acts as forms of domestic violence, when a familial relationship exists, ensuring that existing privacy and anti-stalking laws are applicable within domestic abuse contexts.¹⁸ Another underreported and often misunderstood form of domestic abuse, is the economic cyber abuse which constitutes access to financial resources through digital means, such as freezing bank accounts or sabotaging online job applications. Legally, such actions can be classified as economic coercion, which is increasingly recognized as a component of domestic violence. Laws addressing economic abuse must evolve to include technology-facilitated methods, ensuring victims have avenues for legal redress and financial independence.¹⁹ Economic digital coercion is so misunderstood and little reported that usually victims have trouble associating the abuse with the broader term of domestic abuse and subsequently following through with the appropriate authorities.²⁰

Similarly, with gaslighting, cyberviolence, none of the jurisdictions analyzed in this article have specific provisions addressing this issue, despite all of them having ratified the Istanbul Convention and adhering to the jurisprudence of the European Court of Human Rights (ECtHR). This gap underscores the persistent legal vacuum in addressing emerging forms of domestic violence, particularly those enabled by technological advancements or distinct forms of psychological abuse.

3. Comparative Analysis of Domestic Violence Legislation in European Countries

¹⁵ Federica Taccini and Stefania Mannarini, “Unveiling the Traumatic Impact of Cyber Dating Abuse and Offline Intimate Partner Violence: Exploring the Mediating Role of Adult Attachment,” *Scientific Reports* 14 (2024): <https://doi.org/10.1038/s41598-024-68759-z>

¹⁶ Tia Thomas. (2023). Economic Abuse in the Domestic Violence Context: Towards a Comprehensive Solution at the Federal and State Level. *Columbia Journal of Gender and Law*, 43(1), 98–133. <https://doi.org/10.52214/cjgl.v43i1.10715>

¹⁷ WithersWorldWide, “No Safety Net: Technology-Facilitated Domestic Abuse,” November 6, 2024. <https://www.withersworldwide.com/en-gb/insight/read/no-safety-net-technology-facilitated-domestic-abuse> last visited on January 24th 2025.

¹⁸ CrisisHouse, “The Role of Technology in Domestic Violence: Domestic Abuse and Cyberstalking,” July 20, 2023. <https://crisishouse.org/blog/the-role-of-technology-in-domestic-violence-digital-abuse-and-cyberstalking/> last visited on January 24th 2025.

¹⁹ Anastasia Powell et al., “Understanding the Impact of COVID-19 on Responses to Technology-Facilitated Coercive Control,” *Trends & Issues in Crime and Criminal Justice*, no. 698 (Canberra: Australian Institute of Criminology, 2024), <https://doi.org/10.52922/ti77505> last visited on January 24th 2025.

²⁰ Ibid

Austria provides an insightful case study due to the absence of a specific provision within its Criminal Code addressing domestic violence as a distinct offense. Instead, this issue is governed by the Protection Against Violence Act, which operates on the foundational principle: “Whoever strikes must leave.”²¹ This approach highlights the legislative emphasis on victim protection through the immediate physical removal of perpetrators from shared residences, irrespective of their identity or familial relationship with the victim. The law enforces this removal through three primary mechanisms: prohibiting entry into the shared residence or surrounding neighborhood, restricting access to designated areas or contact with the victim, and forbidding actions that infringe on the victim’s privacy. These measures reflect a proactive approach to minimizing the potential for continued abuse. However, in instances where violence persists despite these interventions, Austrian law includes additional provisions, such as protections against stalking and sanctions for the “continuous exercise of violence.”

The offense of “continuous exercise of violence” is particularly notable for its detailed analysis of persistent criminal behavior, allowing courts to impose aggravated penalties based on factors such as the victim’s age (e.g., under 14 years), the duration of the abuse, or its sexual nature. This demonstrates a commitment to addressing severe cases with heightened scrutiny and appropriate sanctions. The prescribed base penalty of three years for this offense is subject to further aggravation under the Austrian Criminal Code, showcasing the interplay between specialized laws and the general penal framework. Additionally, Austria’s recognition of “special offenders” as individuals committing violent acts against spouses, registered partners, or other familial relations underscores the nuanced consideration of relational dynamics within its legislative framework. While the absence of a dedicated domestic violence provision in the Criminal Code is unconventional, Austria’s reliance on specialized legislation ensures a victim-centered approach.

In contrast, Croatia integrates domestic violence into its Criminal Code under Article 179/a of Chapter XVIII, titled “Criminal Offenses Against Marriage, Family, and Children.”²² This provision criminalizes acts of domestic violence that provoke distress, instill fear, or degrade the victim, carrying penalties of up to three years of imprisonment. By encompassing both physical and verbal abuse, this article broadens the scope of criminal liability. Moreover, Croatia’s dual framework includes the Law on Protection Against Domestic Violence, which supplements the Criminal Code by addressing victim rights and prescribing additional measures for offenders. These measures include mandatory removal from shared residences, rehabilitation programs for substance-dependent individuals, and protective orders to prevent stalking. The integration of these mechanisms highlights Croatia’s comprehensive strategy to address both immediate and long-term impacts of domestic violence, ensuring flexibility in judicial responses.

Bulgaria adopts an approach similar to Austria by relying on specialized legislation rather than explicit provisions in its Criminal Code. Domestic violence is treated as an aggravating

²¹ Austria, “The Protection Against Violence Act”, <https://www.bundeskanzleramt.gv.at/en/agenda/women-and-equality/violence-against-women/domestic-violence.html> last visited on December 8th 2024.

²² Croatia “Criminal Code” https://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Criminal-Code.pdf last visited on December 14th 2024.

factor for other criminal offenses, such as abduction or unlawful detention. For instance, when committed within a family context, these offenses carry enhanced penalties ranging from seven to fifteen years of imprisonment. The Law on Protection Against Domestic Violence (PADVA) serves as Bulgaria's primary legislative framework, offering a detailed definition of domestic violence that includes physical, sexual, mental, emotional, and economic abuse, as well as restrictions on personal freedom and privacy.²³ This law reflects an expansive understanding of domestic violence, encompassing both traditional and non-physical forms of abuse. PADVA also outlines specific measures for offender accountability, such as removal from shared residences, restrictions on contact with the victim, and mandatory rehabilitation programs. The reliance on PADVA underscores Bulgaria's prioritization of victim protection while addressing the limitations of its Criminal Code.

Albania, by comparison, offers a consolidated framework that combines Criminal Code provisions and specialized legislation. Article 130/a of the Albanian Criminal Code explicitly criminalizes domestic violence, covering both physical and psychological abuse. This provision seeks to protect family members from harm, including physical assaults, threats of grievous injury, and actions causing significant psychological pressure. Albanian law defines victims broadly, including individuals in marital, cohabitative, kinship, or intimate relationships with the perpetrator. However, while the Criminal Code recognizes psychological abuse, it lacks specific guidelines for addressing modern forms of violence, such as cyberstalking, cyber harassment and gaslighting. This omission highlights a critical gap in Albania's legislative framework, particularly given the increasing prevalence of technology-facilitated abuse. Recent developments in European law, such as the 2024 amendments to the regulation on "Combating Violence Against Women and Domestic Violence," explicitly address cyber abuse, including the dissemination of intimate materials online to harass victims.²⁴ These forms of abuse, often perpetrated by current or former intimate partners, remain underexplored in Albania's legal provisions. Cases such as *Volodina v. Russia* and *Buturuga v. Romania* before the European Court of Human Rights (ECtHR) demonstrate the severe psychological consequences of cyber violence, reinforcing the need for legislative reform to address these emerging threats. In addition to its Criminal Code, Albania's Law No. 9669, "On Measures Against Domestic Violence," provides a complementary framework for victim protection. However, like the Criminal Code, it does not explicitly address technology-related abuse. This gap weakens the law's capacity to respond to contemporary manifestations of domestic violence.

A notable case illustrating these gaps is decision no. 30-2019-1722 of the Appeal's Court of General Jurisdiction in Tirana, where a perpetrator inflicted severe physical and psychological violence on their spouse, leading to a suicide attempt. The incident was prosecuted under Article 99, "Causing Suicide," but the sustained psychological abuse warranted additional charges under Article 130/a, "Domestic Violence." This case highlights the need for more comprehensive legal interpretations to address overlapping forms of abuse effectively. Compared to other

²³European Crime Prevention Network, "Bulgarian Policy on Domestic Violence" (<https://eucpn.org/document/bulgarian-policy-on-domestic-violence>. Last visited on December 14th 2024).

²⁴ A briefing of the Regulation can be accessed here: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739392/EPRS_BRI\(2023\)739392_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739392/EPRS_BRI(2023)739392_EN.pdf) last visited on December 14th 2024.

jurisdictions, Albania's inclusion of a wide range of familial relationships in its domestic violence legislation ensures broad victim protections. However, the absence of detailed provisions for psychological and cyber violence limits its responsiveness to evolving forms of abuse. By incorporating international best practices and aligning its laws with ECtHR jurisprudence, Albania can strengthen its legislative framework.

In conclusion, Austria, Croatia, Bulgaria, and Albania illustrate diverse legislative approaches to domestic violence, shaped by varying priorities and legal traditions. Austria and Bulgaria emphasize specialized laws, while Croatia and Albania integrate domestic violence into their Criminal Codes. Although each framework has merits, addressing emerging forms of abuse, particularly cyber violence, remains a shared challenge. These comparative insights underscore the necessity of continual legislative evolution to combat domestic violence effectively. When considering what the best approach is between having a *lex specialis* governing a specific issue versus a more general provision, legal practitioners are divided. Some of the most positive aspects in having a *lex specialis* governing the issue of domestic violence, is the clarity and precision which can be laid out only in a specialized law as opposed to just a general provision in the CC of a country. By being so specialised, it is also easier for the competent authorities to take appropriate measures in order to prosecute the perpetrators and at the same time protect the rights of their victims.²⁵

In conclusion for this part of the article, various jurisdictions around the world have adopted various legal responses to domestic violence. Some countries have followed the approach of having a general provision in their specific Criminal Codes and not taking further actions on this matter and other have opted for a specialised law, or both. In our opinion the methodology used by countries that have adopted both a *lex specialis* and a general provision in their respective CC, concerning domestic abuse, have followed the most comprehensive methodology to response to a multifaceted criminal offense. Domestic abuse has evolved significantly, throughout the years, also helped by technology, thus legislators around the world need to draft solid legal basis in order to fully encompass the various angles of this criminal offense.

4. *Digital and Physical Dimensions of Domestic Violence: Analyzing ECtHR Case Law on State Responsibility and Victim Protection*

Domestic violence is a complex criminal offense that manifests in various forms, often extending beyond physical abuse. Its methods of perpetration frequently encompass unanticipated dimensions, underscoring the necessity for national authorities to implement targeted preventive measures. These measures must take into account the specific relationship between the victim and the perpetrator, the means of commission, and distinctive attributes of the offender, including the increasing role of technology. The widespread use of social media and digital platforms has given rise to new forms of domestic violence, leading to severe

²⁵ S. POLI, *Lex Specialis: Legal Concept Explained*, Vintti, 28 December 2023 (<https://www.vintti.com/blog/lex-specialis-legal-concept-explained>. Last time accessed 21 January 2025).

consequences for victims. Digital media amplifies existing dynamics and creates new avenues for perpetrator to inflict harm on their victims.²⁶ The integration of technology into daily life has facilitated the rise of cyber violence, a variant of psychological abuse. Two significant cases—*Khadija Ismayilova v. Azerbaijan* and *Volodina v. Russia*—illustrate this phenomenon. In this case, the applicant, *Khadija Ismayilova v. Azerbaijan*, was subjected to threats involving the release of intimate photographs taken without her consent during private moments with her partner.²⁷ This form of abuse represents a novel dimension of domestic violence, highlighting the role of technology in enabling psychological harm. The European Court of Human Rights (ECtHR) concluded that such acts amount to a profound violation of human dignity.

Similarly, in the case of *Volodina v. Russia*, her former partner secretly filmed and photographed her, subsequently posting the material online to harass and stalk her.²⁸ Motivated by jealousy and a desire for revenge after the end of their relationship, the perpetrator's actions caused significant distress, forcing Ms. Volodina to change her identity and residence. The ECtHR criticized the state's failure to protect the victim, underscoring the insufficiency of measures to combat cyber violence. Both cases underline the increasing prevalence of cyber violence as a form of domestic abuse. The ECtHR held that such failures by the state constitute violations of Article 8 of the European Convention on Human Rights (ECHR), which guarantees the right to private and family life. Traditional forms of domestic violence involving physical abuse remain pervasive and often lead to devastating outcomes.

A significant case before the European Court of Human Rights (ECtHR) is *Buturugă v. Romania*.²⁹ In this case, the perpetrator of domestic abuse not only inflicted physical harm on his wife but also engaged in persistent cyber harassment. The perpetrator exercised complete control over all the applicant's digital devices, subjecting her to continuous online and offline harassment. Despite the applicant's repeated complaints to national authorities, no effective actions were taken to protect her well-being. The national authorities dismissed the claims of cyber violence, arguing that such acts were not covered under Romania's domestic violence laws. The ECtHR concluded that the national authorities had failed to conduct a thorough investigation and take appropriate measures in response to the applicant's claims of domestic violence.

This case is particularly significant for the impact it had on the national legislation on domestic violence in Romania. The legislative changes were made in order to reflect a broader understanding of domestic violence, within the context of the Romanian society and in alignment within the ECtHR guidelines, stressing the need for comprehensive legal protection for victims of both online and offline domestic abuse.³⁰ The following cases illustrate the

²⁶ M. DRAGIEWICZ et al., *Technology Facilitated Coercive Control: Domestic Violence and the Competing Roles of Digital Media Platforms*, in *Feminist Media Studies*, 18, no. 4, 2018.

²⁷ European Court of Human Rights, Judgement in *Khadija Ismayilova v. Azerbaijan*, April 10, 2019. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-188993%22%7D> last visited on December 14th 2024.

²⁸ European Court of Human Rights, Judgement in *Volodina v. Russia*, July 9, 2019. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-194321%22%7D> last visited December 14th 2024.

²⁹ European Court of Human Rights, Judgement in *Buturugă v. Romania*, February 11, 2020. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22002-12715%22%7D> last visited on January 17th 2025.

³⁰ L. GABRIELA NITOIU, *Cyber-Violence Impact of Buturugă Case Versus Romania on National Law*, in *Bulletin of Transilvania, University of Braşov. Series VII: Social Sciences and Law*, 2023.

consequences of inadequate state responses to physical violence within domestic contexts: In the *Kurt v. Austria* case, the perpetrator persistently abused his spouse and children. Despite a restraining order issued against him, he fatally attacked his minor son and subsequently committed suicide three days later.³¹ The applicant contended that the authorities should have detained the perpetrator to prevent the tragedy. The ECtHR established two primary obligations for state authorities in such situations: Authorities must promptly respond to allegations of domestic violence to mitigate further harm and offer victims necessary support; State agencies must proactively and independently assess the likelihood of harm to family members, drawing on both victim testimony and contextual evidence.

These standards were previously articulated in the landmark case *Osman v. the United Kingdom*, where the Court emphasized the importance of proportional and preventive measures in cases of foreseeable risks stemming from domestic violence.³² In the *A and B v. Georgia* case involved a police officer who physically and psychologically abused his partner, culminating in her murder using his service weapon.³³ Despite numerous complaints lodged by the victim, authorities failed to act, largely due to the perpetrator's professional status. The victim's daughter subsequently filed a complaint with the ECtHR, arguing that the state's failure to intervene violated her mother's rights. The ECtHR found that the state had negligently disregarded the victim's complaints, deeming domestic violence a "normal element of married life." The Court ruled that this inaction, coupled with the perpetrator's abuse of his position, violated Article 2 (the right to life) of the ECHR.

Domestic violence cases often intersect with issues of substance abuse, further complicating state responses, as demonstrated in *Talpis v. Italy*. The applicant faced prolonged abuse from her spouse, who had a severe alcohol addiction. The violence escalated to the point where the perpetrator killed their son and severely injured the applicant during a confrontation. Despite repeated reports to the police, authorities failed to intervene effectively, dismissing the perpetrator as a non-threatening individual. The ECtHR determined that the state's inaction constituted a violation of Article 2. The Court clarified that alcohol dependency does not diminish the responsibility or danger posed by the abuser. Rather, it often exacerbates violent tendencies. The ruling emphasized that immediate danger refers to harm that has already occurred and is likely to recur, necessitating timely and decisive interventions.

The cases examined highlight several critical aspects of state responsibility in addressing domestic violence. Domestic violence now extends beyond physical harm, encompassing psychological and cyber dimensions, which require states to adapt their legal frameworks and enforcement mechanisms. Authorities must independently assess the risk posed by perpetrators, considering all available evidence, including patterns of abuse and victims' fears. Timely action is essential to prevent further harm and to support victims in escaping cycles of abuse. Systemic

³¹ European Court of Human Rights, Judgement in *Kurt v. Austria*, June 15, 2021.

[https://hudoc.echr.coe.int/#{%22itemid%22:\[%22001-210463%22\]}](https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-210463%22]}) last visited on December 14th 2024.

³² European Court of Human Rights, Judgment in *Osman v. The United Kingdom*, October 28, 1998.

[https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-58257%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58257%22]}) last visited on December 14th 2024.

³³ European Court of Human Rights, Judgment in *A and B v. Georgia*, May 10, 2022.

[https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-215716%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-215716%22]}) last visited on December 14th 2024.

negligence, bias, or indifference, as seen in cases like A and B v. Georgia, highlight the need for impartial enforcement of domestic violence laws.

The ECtHR's jurisprudence underscores the urgent need for comprehensive and proactive measures to address domestic violence in all its forms, ensuring the protection of victims' fundamental rights under the ECHR. The ECtHR concluded that the applicant's claims were well-founded, highlighting that the state had failed to provide adequate and effective protection for the victim of domestic violence. The perpetrator exploited his official status to subject the victim and her family to prolonged abuse and terror, ultimately leading to her death. This negligence by the Georgian authorities resulted in a failure to implement legal procedures for investigating and prosecuting the perpetrator and safeguarding the victim's rights, thereby constituting a violation of Article 2 of the ECHR (the right to life). Another notable case addressed by the ECtHR is *Talpis v. Italy*.³⁴ In this instance, the applicant was married to A.T., a Moldovan national, with whom she had two children. Their marital life was fraught with challenges due to A.T.'s severe alcoholism. Under the influence of alcohol, A.T. became both physically and psychologically abusive toward his family. Despite the applicant and her children lodging numerous reports with the police, no substantive action was taken to prevent the violence, as authorities dismissed A.T. as merely an alcohol consumer who did not pose an immediate or serious threat.

Contrary to the authorities' assessment, A.T. was, in fact, a highly violent individual who repeatedly posed a tangible and escalating danger to his family. On some occasions, he forcibly compelled his wife to engage in sexual acts with his friends. In one particularly tragic incident, A.T. entered their home armed with a knife and attempted to kill the applicant. In the process, he murdered their son, who tried to intervene, and inflicted severe injuries on the applicant. A.T. was subsequently sentenced to life imprisonment for the murder of his son, the grievous injury of his wife, and the abuse inflicted on his wife and daughter. In its ruling, the ECtHR recognized that the applicant had endured prolonged domestic violence at the hands of A.T. She had repeatedly informed the police of her fear for her own life and the lives of her children, stemming from A.T.'s continuous threats and violent behavior. The Court found that A.T.'s actions demonstrated a clear, significant, and immediate danger to his family members. According to the Court, "immediate danger" refers to harm that has already occurred once and is highly likely to recur, while the "real" nature of the threat is evidenced by the perpetrator's repeated attacks over time.

Furthermore, the Court rejected the notion that A.T.'s alcoholism mitigated his responsibility or reduced the danger he posed. On the contrary, alcohol in his case acted as a primary driver of his violent behavior. Consequently, the ECtHR ruled that the Italian authorities' failure to take decisive and preventive action constituted a violation of Article 2 of the ECHR in this case as well.

To summarize, all of the cases presented above showcase the diverse forms domestic abuse can manifest facilitated by various factors. The jurisprudence selected also reveals that often times, national authorities neglect or delay their response to these perpetrators, often time considering them not an immediate danger or not part of the abuse per se, if the abuse has been

³⁴ European Court of Human Rights, Judgement in *Talpis v. Italy*, September 18, 2017.

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-171994%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-171994%22]}) last visited on December 14th 2024.

done only through psychological or technological means. Thus, it is important, for jurisdictions such as Albania to take lessons from this vast international jurisprudence, in order to, not only update the existing legal basis on domestic violence but to also offer an effective, appropriate and proportional response to offenders and their victims. By legally codifying the new forms of abuse, updating the existing legal basis and helping victims, a state can ensure that they are exercising all of their international and national obligations towards victims of domestic abuse.

5. Conclusion

Domestic violence is a multifaceted criminal offense that transcends boundaries of gender, age, and socioeconomic status, manifesting in physical, psychological, economic, and increasingly digital forms. This study highlights the varied legislative responses across Austria, Bulgaria, Croatia, and Albania, illustrating diverse approaches to addressing domestic violence. While Austria and Bulgaria emphasize specialized laws, Croatia integrates domestic violence provisions within their Criminal Codes and Albania has chosen the dual method of integrating a specialised law on domestic violence and an appropriate criminal offense in the CC, creating frameworks with differing degrees of comprehensiveness.

The comparative analysis reveals critical gaps in existing legal systems, particularly regarding the recognition and prosecution of emerging forms of abuse, such as gaslighting and cyber violence. Despite advancements in international jurisprudence, including landmark rulings by the European Court of Human Rights (ECtHR), national frameworks often struggle to adapt to these new dimensions of domestic violence. Cases such as *Buturugă v. Romania* and *Volodina v. Russia* underscore the urgent need for states to incorporate technology-facilitated abuse into their legal definitions and enforcement strategies.

National legal systems must evolve to address emerging forms of abuse by explicitly defining and incorporating psychological abuse, gaslighting, and cyber violence into legislative frameworks. Such codification is essential to align with contemporary societal dynamics and international legal obligations. Additionally, strengthening risk assessment mechanisms is crucial to proactively evaluate threats, prevent recurring abuse, and ensure victims' safety from foreseeable harm. Legislative measures should also be designed with a victim-centered approach, prioritizing immediate protection orders, accessible support services, and comprehensive long-term rehabilitation programs. By implementing these strategies, legal systems can provide more effective protection and support for victims while adapting to the complexities of modern abuse. In conclusion, the article emphasizes the necessity of implementing risk assessment mechanisms and proactive state interventions to prevent recurrent harm. By addressing these gaps, legal systems can better protect victims and hold perpetrators accountable, ultimately contributing to a more equitable and effective response to domestic violence in all its forms.