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Domestic Violence and International Protection in European Asylum Law

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Abstract

This thesis examines the extent to which female survivors of domestic violence qualify for international protection under the Common European Asylum System (CEAS). Domestic violence remains one of the most prevalent forms of gender-based violence worldwide, affecting approximately one in three women, and in some cases compelling women to flee their countries of origin in search of asylum. Despite its broad recognition as a serious human rights violation, the treatment of domestic violence as a ground for international protection under international refugee law and European asylum law remains legally ambiguous and inconsistently applied. Employing a doctrinal legal methodology, complemented by relevant social science research, this study analyses the eligibility criteria for refugee status and subsidiary protection under the CEAS, with reference to applicable international and regional human rights instruments. The thesis argues that domestic violence constitutes a multifaceted violation of women's human rights, encompassing civil and political as well as socioeconomic rights. As such, female survivors of domestic violence meet the legal thresholds for international protection under both refugee status and subsidiary protection within the CEAS framework.

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This thesis is dedicated to my *Mama*, who taught me discipline and independence, and to my *Papa*, who taught me compassion and humanity. Thank you for all your support in helping Lisa and me become the first generation in our family to pursue higher education.

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This thesis is written in the hope for a future where women's oppression will no longer need to be studied. *Ni una menos*.

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1 Introduction

1.1 Contextual Overview: Domestic Violence and Asylum Law

Domestic violence persists as one of the most prevalent forms of gender-based violence worldwide, affecting one in three women, according to the World Health Organisation (WHO).¹ Furthermore, 26% of ever-married or partnered women aged 15 and older have experienced intimate partner violence at least once in their lifetime.² Domestic violence, therefore, continues to pose a serious threat to the lives of women in every state, across all communities, cultures, age groups, and socio-economic classes.³ Moreover, ongoing or threatened violence may compel women to leave their country of origin and seek asylum abroad.⁴

Despite the widespread recognition of domestic violence as a human rights violation, its treatment as a ground for asylum under international refugee and European asylum law remains ambiguous and inconsistently applied.⁵ Within the European Union (EU), the Common European Asylum System (CEAS), particularly the Qualification Directive (QD),⁶ provides the overarching framework for determining who qualifies for refugee status or subsidiary protection.⁷ However, the Refugee Convention⁸ does not codify gender-based persecution as a distinct ground for asylum.⁹ By contrast, the QD incorporates gender-specific considerations in defining acts of persecution under Article 9(2)(f) and in the interpretation of 'membership of a particular social group' under Article 10(1)(d). Nonetheless, there remains no uniform approach within the EU

¹ 'Violence Against Women Prevalence Estimates, 2018' (WHO, 2021) XVI, 33 <<https://iris.who.int/bitstream/handle/10665/341337/9789240022256-eng.pdf?sequence=1>> accessed 5 March 2025.

² Ibid 20.

³ 'Ending Violence Against Women and Girls' (UN) <<https://www.un.org/sustainabledevelopment/ending-violence-against-women-and-girls/>> accessed 25 April 2025.

⁴ Jane Freedman, *Gendering the International Asylum and Refugee Debate* (2nd edn, Palgrave Macmillan 2015) 45.

⁵ See Catherine Briddick, 'Resisting Domestic Violence' (2024) 36 IJRL 106, 109-113.

⁶ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection [2011] OJ L337/9 (QD).

⁷ 'Gender-based Violence within the Asylum Procedure: Analysis of the legal and policy framework at the international and national level in Croatia' (UNHCR, January 2025) 13 <<https://www.unhcr.org/hr/wp-content/uploads/sites/19/2025/04/Gender-based-violence-within-the-asylum-procedure.pdf>> accessed 15 July 2025.

⁸ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

⁹ See Heaven Crawley, 'Gender, "Refugee Women" and the Politics of Protection' in Claudia Mora and Nicola Piper (eds), *The Palgrave Handbook of Gender and Migration* (Springer International Publishing 2021) 359, 360; 'Gender-based Violence within the Asylum Procedure: Analysis of the legal and policy framework at the international and national level in Croatia' (UNHCR, January 2025) 5 <<https://www.unhcr.org/hr/wp-content/uploads/sites/19/2025/04/Gender-based-violence-within-the-asylum-procedure.pdf>> accessed 15 July 2025.

regarding how Member States grant international protection to survivors of gender-based violence, and in particular, domestic violence.¹⁰

1.2 Research Question and Scope

To remedy this fragmented recognition and promote consistency, it is necessary to clarify the requirements that the relevant legal framework sets out for affected individuals. Thus, this thesis seeks to answer the question: **To what extent do survivors of domestic violence qualify for international protection?** Specifically, I seek to elaborate on the links between human rights violations and international protection in the context of domestic violence. To this end, I will review the relevant criteria of the QD to identify whether survivors qualify for refugee status or subsidiary protection. I will draw on international and European human rights standards to determine when human rights violations reach the threshold of persecution. Apart from infringements of civil and political rights, I will also examine the often-neglected impact of socio-economic rights on the eligibility for international protection.¹¹

When defining the scope of this research, it is essential to consider the following points. While men can also be subject to domestic violence, women are disproportionately affected,¹² and the nature, severity, and consequences often differ significantly between male and female survivors.¹³ Trans and non-binary individuals may also experience domestic violence; however, corresponding data,¹⁴ as well as data on violence occurring in same-sex relationships, are very limited.¹⁵ This thesis therefore, exclusively covers female victims of domestic violence in heteronormative relationships and family settings, while recognising the broader spectrum of affected individuals. Moreover, it does not assess domestic violence against girls, as this would necessitate

¹⁰ 'Gender-based Violence within the Asylum Procedure: Analysis of the legal and policy framework at the international and national level in Croatia' (UNHCR, January 2025) 13 <<https://www.unhcr.org/hr/wp-content/uploads/sites/19/2025/04/Gender-based-violence-within-the-asylum-procedure.pdf>> accessed 15 July 2025; European Parliament Resolution 2015/2325(INI) of 8 March 2016 on the Situation of Women Refugees and Asylum Seekers in the EU [2016] OJ C50/25. Accordingly, recognition rates vary significantly across EU Member States, and gender-based violence is often not even acknowledged as a valid persecution ground.

¹¹ See Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (Cambridge University Press 2007) 152.

¹² Janet L Fanslow et al, 'Evidence of Gender Asymmetry in Intimate Partner Violence Experience at the Population-Level' (2023) 38(15-16) JIV 9159, 9175-9176.

¹³ Monika Schröttle, 'Kritische Anmerkungen zur These der Gendersymmetrie bei Gewalt in Paarbeziehungen', (2010) 2(1) GENDER 133, 135.

¹⁴ Sarah M Peitzmeier et al, 'Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-Analysis of Prevalence and Correlates.' (2020) 110(9) AJPH e1, e10.

¹⁵ Iris Stahlke, 'Häusliche Gewalt – Forschungsstand' in Andrea Behrmann et al (eds), *Handbuch Psychosoziale Prozessbegleitung* (Verlag Barbara Budrich 2022) 695, 695; Monika Schröttle, 'Kritische Anmerkungen zur These der Gendersymmetrie bei Gewalt in Paarbeziehungen', (2010) 2(1) GENDER 133, 142.

engagement with the broader framework of children’s rights, which falls beyond the focus of this study.

1.3 Methodology

I will employ a doctrinal approach, complemented by social science sources, to examine how survivors of domestic violence qualify for international protection under CEAS. The doctrinal analysis will encompass both hard and soft law relevant to the research question. To determine eligibility for protection under CEAS, I will refer to international and regional human rights standards. These include specific instruments addressing gender-based violence, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁶ and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention),¹⁷ as well as broader human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR),¹⁸ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),¹⁹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁰ the European Convention on Human Rights (ECHR)²¹ and the European Social Charter (ESC).²² Additionally, I will scrutinise the General Comments and Views issued under CEDAW, ICCPR, CAT, and ICESCR, as well as case law from the European Court of Human Rights (ECtHR).

The specific human rights standards I examine in my study build upon a discussion of equality, as it serves not only as a substantive right²³ but also as a foundational principle underpinning the protection of all human rights.²⁴ I address domestic violence within this understanding, providing the normative starting point for

¹⁶ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

¹⁷ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (opened for signature 11 May 2011, entered into force 1 August 2014) CETS No 210 (Istanbul Convention).

¹⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

¹⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT).

²⁰ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

²¹ Convention for the Protection of Human and Fundamental Freedoms (as amended, adopted 4 November 1950, entered into force 1 August 2021) ETC No 005 (ECHR).

²² European Social Charter (revised, opened for signature 3 May 1999, entered into force 1 July 1999) ETS No 163 (ESC).

²³ CCPR 'CCPR General Comment No 18: Non-Discrimination' (1994) UN Doc HRI/GEN/1/Rev.1 at 26 [1].

²⁴ CCPR 'CCPR General Comment No 18: Non-Discrimination' (21 November 1989) UN Doc CCPR/C/21/Rev.1/Add.1 [1]; see also Jarlath Clifford, 'Equality' in Dinah Shelton (ed) *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 420, 421; Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press 2024) 78–79.

the subsequent analysis of other human rights violations. As part of the analytical framework, I also analyse how state responsibility arises in the context of domestic violence. This is followed by an assessment of its impact on civil and political rights, which I limit to the rights to life, freedom from torture and ill-treatment, security and liberty, private and family life, a fair trial, and an effective remedy. While additional rights may also be implicated, my study revealed that these are particularly relevant in the context of gender-based persecution under refugee law. First, violations of the rights to life and freedom from torture are explicitly referenced in 'acts of persecution' under Article 9(1)(a) QD. Second, international and regional jurisprudence, along with various legal instruments, consistently highlight these rights in cases of gender-based violence committed by individuals.²⁵ Other rights, such as the right to be free from slavery and forced labour, lack a comparably extensive set of legal sources in the context of domestic violence and are therefore excluded from this analysis. With respect to socioeconomic rights, I confine my analysis to the rights to adequate housing and health. These rights, established through my comprehensive research of legal sources, emerge as the most evident and frequently affected in cases of domestic violence within the international and regional human rights context.

It is important to note, however, that the assessment of domestic violence cases depends heavily on the specific circumstances of each individual case, making it challenging to generalise which rights are affected and to what extent. To strengthen my legal analysis, I draw on sources from the social sciences. Such findings serve as a contextual tool, offering a deeper understanding of the dynamics and structures of domestic abuse and thus providing an informative basis for the application and interpretation of relevant human rights instruments. Social science theories are often analytically more nuanced than the abstractly formulated international provisions on violence against women, as they identify recurring patterns of domestic violence and capture motivations as well as behaviours of perpetrators with greater precision.

In the specific context of CEAS, I will analyse the QD criteria and relevant case law of the Court of Justice of the European Union (CJEU) on refugee status determination, supplemented by national jurisprudence from outside Europe on the Refugee Convention. Reference will also be made to ECtHR case law and decisions from other national jurisdictions interpreting relevant human rights provisions.

²⁵ See Ayşe Işıl Karakaş, 'An Overview of the European Court of Human Rights' Case Law on Domestic Violence as a Form of Gender-Based Discrimination' in Elena Brodeală, Ivana Jelić and Silvia Şuteu (eds), *Violence against Women under European Human Rights Law: From Supranational Standards to National Realities* (Edward Elgar Publishing 2024) 68, 81; Alda Maria Sousa Gant, 'Domestic Violence against Women as a Human Rights Violation' (2002) 3(3) *Revista do IBDH* 9, 21.

1.4 Structure

The thesis unfolds its central inquiry in a structured manner. The second chapter explores domestic violence as a human rights violation, assessing its impact on civil, political, and socio-economic rights. The third chapter then evaluates whether survivors of domestic violence may qualify for refugee status or subsidiary protection under CEAS. Finally, the thesis concludes by summarising the findings and highlighting the legal implications for the protection of survivors within the European Asylum framework.

2 Domestic Violence as a Human Rights Violation

Human rights serve as 'the benchmark of refugee protection',²⁶ providing the foundation for determining when an individual requires protection. Acts of persecution and serious harm are evaluated according to the nature and severity of human rights violations an asylum seeker would face in their country of origin.²⁷ Consequently, before assessing when domestic violence may justify international protection, it is necessary to establish how such violence constitutes a human rights violation. For decades, violence against women was confined to the private sphere and thus excluded from state responsibility due to the entrenched public-private divide.²⁸ By the 1990s, however, it had become firmly established on the human rights agenda. A key milestone was the adoption of the CEDAW Committee's General Recommendation No 19 (GR 19),²⁹ which explicitly recognised gender-based violence against women as a form of discrimination.³⁰ The Committee defines such violence as 'violence that is directed against a woman because she is a woman or that affects women disproportionately',³¹ with domestic violence constituting one of its manifestations.³² The Istanbul Convention is widely regarded as the most comprehensive legal framework on violence against women, setting out precise obligations in this regard.³³ Unlike CEDAW, the Istanbul Convention does not provide an individual complaint mechanism through its monitoring body,³⁴ hence its rights are not directly enforceable. Nonetheless, individuals may bring

²⁶ Vincent Chetail, 'Moving Towards an Integrated Approach of Refugee Law and Human Rights Law' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021) 203, 204.

²⁷ See Tamara Wood, 'The International and Regional Refugee Definitions Compared' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021) 626, 629; UNHCR 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees' (1 February 2019) UN Doc HCR/1P/4/Eng/REV.2 [51].

²⁸ Alda Maria Sousa Gant, 'Domestic Violence against Women as a Human Rights Violation' (2002) 3(3) *Revista do IBDH* 9, 15. Historically, international conventions had been shaped predominantly by male perspectives, which have influenced the scope and application of the rights they enshrined. Concurrently, women's experiences, often defined by socially prescribed roles of submission, were relegated to the domestic domain, thereby excluding them from public scrutiny and the legal sphere. See Jane Freedman, *Gendering the International Asylum and Refugee Debate* (2nd edn, Palgrave Macmillan London 2015) 74–78.

²⁹ CEDAW Committee 'General Recommendation No 19: Violence against women' (1992) UN Doc A/47/38.

³⁰ Sara de Vido, Micaela Frulli, 'Article 1: Purposes of the Convention' in Sara de Vido and Micaela Frulli (eds), *Preventing and Combating Violence Against Women and Domestic Violence: A Commentary to the Istanbul Convention* (Edward Elgar Publishing 2023) 87.

³¹ CEDAW Committee 'General Recommendation No. 19: Violence against Women' (1992) UN Doc A/47/38 [6].

³² Catherine Briddick, 'Resisting Domestic Violence' (2024) 36 *IJRL* 108, 116.

³³ Hilary Charlesworth, Christine Chinkin, 'Foreword' in Sara de Vido and Micaela Frulli (eds) *Preventing and Combating Violence Against Women and Domestic Violence: A Commentary to the Istanbul Convention* (Edward Elgar Publishing 2023) xxxiii; see also Catherine Briddick, 'Resisting Domestic Violence' (2024) 36 *IJRL* 106, 107.

³⁴ The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO).

claims to the ECtHR where the Convention frequently serves as an interpretative tool to clarify and reinforce ECHR obligations.³⁵ Building on CEDAW and GR 19,³⁶ it defines domestic violence as 'all acts of physical, sexual, psychological or economic violence within the family or domestic unit or between former or current spouses or partners, regardless of whether the perpetrator shares or has shared the same residence with the victim'.³⁷

This broad interpretation aligns with contemporary social science research on violence against women, particularly Evan Stark's concept of 'coercive control', developed in *Coercive Control: How Men Entrap Women in Personal Life*.³⁸ Stark argues that domestic violence extends beyond physical assault to include patterns of intimidation, isolation, and psychological manipulation aimed at restricting women's agency and autonomy.³⁹ This may involve deliberately restricting or withholding access to basic necessities such as money, housing, and essential care.⁴⁰ Understanding domestic violence as a sustained pattern of 'coercive control' helps legal analysis better reflect the complex nature and persistence of violence against women. In the context of human rights and asylum law, this approach supports recognising domestic violence as an infringement of multiple human rights, ranging from first-generation civil and political to second-generation social, economic, and cultural rights, commonly referenced in human rights instruments addressing gender-based violence.⁴¹

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³⁵ Martina Buscemi, 'Article 70A: Locating GREVIO in the Realm of International and Regional Human Rights Monitoring Mechanisms' in Sara De Vido and Micaela Frulli (eds), *Preventing and Combating Violence Against Women and Domestic Violence: A Commentary on the Istanbul Convention* (Edward Elgar Publishing 2023) 755, 761–762.

³⁶ Istanbul Convention, preamble; see also Council of Europe, 'Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence' (11 May 2011) CETS No 210 [40].

³⁷ Istanbul Convention, art 3(b).

³⁸ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007).

³⁹ *Ibid* 228–229.

⁴⁰ *Ibid* 271–272.

⁴¹ See UNGA Res 48/104 (20 December 1993) UN Doc A/RES/48/104, art 3; CEDAW Committee 'General Recommendation No 19: Violence against Women' (1992) UN Doc CEDAW/A/47/38 [7]; CEDAW Committee 'General Recommendation No 35 on Gender-based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35 [15].

⁴² Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007).

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Gender Inequality as the Foundation for Understanding Violence as a Human Rights Violation.

The very purpose of human rights is the realisation of equality for all individuals,⁴⁶ which, as noted above, constitutes a core principle embedded within the substance of every right.⁴⁷ Equality is often mistakenly understood as merely the right to non-discrimination. However, the two concepts must not be considered synonyms, as equality requires more than the absence of discrimination.⁴⁸ Beyond establishing formal equality⁴⁹, it also necessitates proactive measures to realise de facto equality.⁵⁰ Most human rights treaties contain a non-discrimination clause that includes 'sex' among the prohibited grounds.⁵¹ While some of these provisions constitute autonomous rights, others are subsidiary in character and may only be invoked in conjunction with another right.⁵² Although 'gender' is not explicitly mentioned, UN treaty bodies

⁴³ Ibid 228–229.

⁴⁴ Ibid 271–272.

⁴⁵ See UNGA Res 48/104 (20 December 1993) UN Doc A/RES/48/104, art 3; CEDAW Committee 'General Recommendation No 19: Violence against Women' (1992) UN Doc CEDAW/A/47/38 [7]; CEDAW Committee 'General Recommendation No 35 on Gender-based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35 [15].

⁴⁶ See Jarlath Clifford, 'Equality' in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 420, 432.

⁴⁷ See Chapter 1, 3.

⁴⁸ Jarlath Clifford, 'Equality' in Dinah Shelton (ed) *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 420, 427; see also CCPR 'CCPR General Comment No 18: Non-Discrimination' (21 November 1989) UN Doc CCPR/C/21/Rev.1/Add.1 [10].

⁴⁹ Formal equality entails treating individuals in the same way, irrespective of differences in their circumstances. See Jarlath Clifford, 'Equality' in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 420, 421.

⁵⁰ De facto equality or substantive equality takes into account informal barriers and structural disadvantages that affects certain groups and may require different or even preferential treatment of marginalised individuals to ensure a genuinely equal outcome. See Jarlath Clifford, 'Equality' in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 420, 421.

⁵¹ Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press 2024) 79. Those include, *inter alia*, Articles 1, 2 and 7 UDHR, Articles 2 (1), 3 and 26 ICCPR, Articles 2(2) and 3 ICESCR, Articles 1, 2 CEDAW, Article 14 ECHR, Article 1 Protocol No. 12 ECHR and Article 4 Istanbul Convention.

⁵² Daniel Moeckli, *Human Rights and Non-Discrimination in the 'War on Terror'* (Oxford University Press 2008) 63; William A Schabas, *The European Convention on Human Rights: A Commentary*

frequently interpret 'sex' broadly to encompass the concept of 'gender'.⁵³ Article 1 CEDAW provides an authoritative definition of discrimination against women, describing it as 'any distinction, exclusion or restriction on the basis of the aforementioned grounds which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'⁵⁴ The right to non-discrimination extends to direct and indirect forms of discrimination,⁵⁵ including their intersecting dimensions.⁵⁶

2.1 Domestic Violence as Expression of Structural Discrimination

As noted above, under international and regional human rights law, violence against women is generally considered a form of discrimination.⁵⁷ This legal understanding mirrors well-established insights from the social sciences. Scholars, such as Evan Stark, characterise domestic violence as a form of discrimination due to its roots in the socially embedded dominance of men over women.⁵⁸ Stark emphasises that domestic violence is fundamentally grounded in gender asymmetry, disproportionately

(Oxford University Press 2015) 562. Article 26 of the ICCPR constitutes an autonomous right, while Article 14 ECHR can only be invoked in connection with another Convention right.

⁵³ CEDAW Committee, 'General Recommendation No 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (16 December 2010) UN Doc CEDAW/C/GC/28 [5]. Accordingly, 'sex' is defined as 'biological differences between men and women', whereas 'gender' denotes 'socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women'.

⁵⁴ CEDAW, art 1.

⁵⁵ 'Direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure.' CEDAW Committee 'General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (16 December 2010) UN Doc CEDAW/C/GC/28 [16].

⁵⁶ CEDAW Committee, 'General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (16 December 2010) UN Doc CEDAW/C/GC/28 [18]; and CEDAW Committee 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35 [12]. Intersectionality recognises that multiple aspects of a person's identity (eg, race, gender, class, age and sexuality) overlap and interact to shape their unique experience of discrimination.

⁵⁷ CEDAW Committee 'General Recommendation No 19: Violence against Women' (1992) UN Doc CEDAW/A/47/38 [1]; CEDAW Committee 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35 [1]; Istanbul Convention, art 3(a). This has now attained the status of customary international law. See CEDAW Committee 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35 [2].

⁵⁸ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007) 171.

impacting women.⁵⁹ Stemming from structural, historically evolved power imbalances,⁶⁰ it reflects the patriarchal belief that women and men occupy fixed, complementary roles in the gender-binary society centred on the nuclear family.⁶¹ Within this framework, the man assumes the role of the family lead, exercising dominance and control, while the woman is relegated to a subordinate position.⁶² This socio-structural understanding informs contemporary international legal frameworks, which increasingly recognise violence against women as a systemic issue rather than a matter of isolated incidents.⁶³ This is evident, for example, in the preamble of the Istanbul Convention.⁶⁴ Likewise, the CEDAW Committee identifies traditional gender roles and hegemonic masculinity as key driving factors of gender-based violence.⁶⁵ Accordingly, such violence is not only a consequence of gender inequality but also a tool to sustain it.⁶⁶ International legal instruments affirm that domestic violence constitutes one of its most severe manifestations.⁶⁷ Moreover, it is important to highlight that certain groups of women experience an increased risk because of intersecting inequalities and persistent

⁵⁹ Some scholars, such as Murray Straus in 'Gender symmetry in Partner Violence: The Evidence, the Denial, and the Implications for Primary Prevention and Treatment' (2009) in Daniel J. Whitaker, John R. Lutzker (eds) *Preventing Partner Violence: Research and Evidence-Based Intervention Strategies* (American Psychological Association 2009), argue the contrary thesis of gender symmetry by claiming that women and men are equally affected by domestic violence. However, this theory finds little acceptance in social sciences (see Monika Schröttle, 'Kritische Anmerkungen zur These der Gendersymmetrie bei Gewalt in Paarbeziehungen', (2010) 2(1) GENDER, 133) as well as in the legal context, as UN human rights bodies classify domestic violence as gender-based violence against women, as suggested above.

⁶⁰ Janet Fanslow et al, 'Evidence of Gender Asymmetry in Intimate Partner Violence Experience at the Population-Level' (2023) 38(15-16) JIV 9159, 9162.

⁶¹ See Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990) 143 (discussing the biological sex as a political tool for the purpose of reproduction), 194 (describing the 'heterosexual matrix' as a social and cultural practice through which social gender and biological sex are naturalised. She explains that both are shaped by cultural norms and discursive practice. She refers to society's 'heterosexual contract' to describe the dominant way of thinking that biological sex and gender are cohesive (male/masculine or feminine/female) and that they are complementary and hierarchically organised).

⁶² Iris Stahlke, 'Häusliche Gewalt: Forschungsstand' in Andrea Behrmann et al (eds), *Handbuch Psychosoziale Prozessbegleitung* (Verlag Barbara Budrich 2022) 695, 709.

⁶³ CEDAW Committee 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35 [9].

⁶⁴ The Istanbul Convention explicitly acknowledges the 'structural nature of violence against women' identifying it as 'a manifestation of historically unequal power relations between women and men'. See Istanbul Convention, preamble.

⁶⁵ CEDAW Committee 'General Recommendation No 19: Violence against Women' (1992) UN Doc CEDAW/A/47/38 [11]; CEDAW Committee 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35 [19].

⁶⁶ Ibid [10]; Istanbul Convention, preamble; Council of Europe, 'Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence' (11 May 2011) CETS 210 [44].

⁶⁷ Council of Europe, 'Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence' (11 May 2011) CETS No 210 [1]; CEDAW Committee 'General Recommendation No 19: Violence against Women' (1992) UN Doc CEDAW/A/47/38 [23].

discriminatory attitudes.⁶⁸ For instance, rural women are more exposed to domestic violence due to conservative community beliefs,⁶⁹ while women with disabilities are often infantilised, denied autonomy, and subjected to harmful myths which increase their vulnerability to sexual abuse.⁷⁰

2.2 State Responsibility under Human Rights Law: When the State Becomes Complicit in Domestic Violence

Domestic violence is directly perpetrated by private actors, raising the question of when a state can be held responsible for resulting human rights violations. The International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA),⁷¹ particularly Articles 1 and 2, establish that states bear responsibility for internationally wrongful acts.⁷² Articles 5, 8, and 11 ARSIWA address conduct of private actors attributable to the state where individuals exercise governmental authority, act under the state's control or where the state adopts their conduct.⁷³ Although initially drafted for interstate relations, the ILC Commentary emphasises that these principles also apply to obligations toward individuals, providing a normative basis for state responsibility in human rights law.⁷⁴ In the specific context of domestic violence, state obligations are further defined under CEDAW and the Istanbul Convention. Articles 1-5 and 24 of CEDAW, together with GR 19 and General Recommendations No 35 (GR 35)⁷⁵ and 28 (GR 28),⁷⁶ outline the measures States must take to eliminate discrimination against women. Article 2 CEDAW requires states to condemn discrimination in all its forms⁷⁷ and to pursue policies eliminating it by all

⁶⁸ CEDAW Committee 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35 [12].

⁶⁹ CEDAW Committee 'General Recommendation No 19: Violence against Women' (1992) UN Doc CEDAW/A/47/38 [21]; CEDAW Committee 'General Recommendation No 34 on the Rights of Rural Women' (7 March 2016) UN Doc CEDAW/C/GC/34 [24].

⁷⁰ CRPD Committee 'General Comment No 3 on Women and Girls with Disabilities' (25 November 2016) UN Doc CRPD/C/GC/3 [29]–[30].

⁷¹ ILC 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/10, chp IV.E.1. (ARSIWA).

⁷² ARSIWA, art 1 and 2. Accordingly, international wrongful acts are acts or omissions of states that breach their international obligations and are attributable to them.

⁷³ Ibid arts 5, 8, 11.

⁷⁴ Fiona McKay, 'What Outcomes for Victims?' in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 922, 928; see also Dinah Shelton, Ariel Gould, 'Positive and Negative Obligations' in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 563, 563.

⁷⁵ CEDAW Committee 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35.

⁷⁶ CEDAW Committee 'General Recommendation No 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (2010) UN Doc CEDAW/C/GC/28.

⁷⁷ CEDAW Committee, 'General Recommendation No 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (2010) UN Doc CEDAW/C/GC/28 [15].

appropriate means,⁷⁸ with specific duties detailed in Articles 2(a)-(g).⁷⁹ Similarly, the opening clause of Article 4(2) Istanbul Convention mirrors this framework, establishing obligations to prevent discrimination and to enact legislative measures, supplemented by a non-exhaustive list of required actions.⁸⁰ GR 28 articulates a tripartite framework of state obligations: to respect, to protect, and to fulfil.⁸¹ While the Istanbul Convention does not explicitly adopt this terminology, several provisions, such as Article 5, delineate comparable state duties,⁸² effectively upholding the same tripartite structure. This framework will therefore underpin the analysis of human rights violations in the context of domestic violence. As the following section demonstrates, the tripartite obligations are not entirely distinct, as they overlap in certain areas.

2.2.1 Through Direct Perpetration (Duty to Respect)

Under the duty to respect, the State and its officials must not enact laws and policies or engage in actions that impede women's equal enjoyment of human rights.⁸³ Correspondingly, Article 5(1) of the Istanbul Convention imposes a negative obligation on State parties to refrain from acts of violence against women.⁸⁴ The CEDAW Committee further clarified that states must enact penal laws, train all relevant officials (law enforcement, judiciary, healthcare, and social services), and avoid conduct or biases that undermine these obligations.⁸⁵

2.2.2 Through State-Endorsed Harm (Duty to Protect)

The obligation to protect encompasses safeguarding women from discrimination committed by non-state actors.⁸⁶ Given the nature of domestic violence, this duty plays a central role in tackling it. Article 2(e) CEDAW elaborates this obligation, with the Committee clarifying that states may be held responsible for private conduct if they fail to exercise due diligence, that is, if they do not take appropriate measures to prevent,

⁷⁸ Ibid [24].

⁷⁹ Ibid [30].

⁸⁰ Lourdes Peroni, 'Article 4: Fundamental Rights, Equality and Non-discrimination' in Sara De Vido and Micaela Frulli (eds), *Preventing and Combating Violence Against Women and Domestic Violence: A Commentary on the Istanbul Convention* (Edward Elgar 2023) 123, 127–128.

⁸¹ Ibid 9.

⁸² See Alice Ollino, 'Article 5: State Obligations and Due Diligence' in Sara De Vido and Micaela Frulli (eds), *Preventing and Combating Violence against Women and Domestic Violence: Commentary on the Istanbul Convention* (Edward Elgar Publishing 2023) 136, 137.

⁸³ Committee on the Elimination of Discrimination against Women, 'General Recommendation No 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (2010) UN Doc CEDAW/C/GC/28 [9].

⁸⁴ Alice Ollino, 'Article 5: State Obligations and Due Diligence' in Sara De Vido and Micaela Frulli (eds), *Preventing and Combating Violence against Women and Domestic Violence: Commentary on the Istanbul Convention* (Edward Elgar Publishing 2023) 136, 137.

⁸⁵ See Christine Chinkin, Lisa Gormley, 'Violence against Women' in Patricia Schulz et al (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol: A Commentary* (2nd edn, Oxford University Press 2022) 627, 672–675; see also CEDAW, arts 2(b), (c), (d), (f), (g).

⁸⁶ Ibid 9.

investigate, prosecute, or provide redress for human rights violations.⁸⁷ Inaction or the inadequate response to known risks, the Committee further emphasised, constitutes tacit permission for gender-based violence.⁸⁸ In *Fatma Yildirim v Austria*,⁸⁹ it highlighted the dual nature of due diligence: (1) a general duty to adopt and enforce preventive laws and (2) a specific obligation to provide protective measures in individual cases.⁹⁰ CEDAW also requires not only establishing support services for survivors but implementing policies dismantling misogynistic stereotypes sustaining such violence.⁹¹ In *AT v Hungary (AT)*,⁹² the Committee found Hungary failed to protect the applicant from repeated battering and threats by her former husband, citing inadequate remedies,⁹³ the absence of restraining orders in national law,⁹⁴ and a lack of genuine commitment to safeguarding female survivors of domestic abuse.⁹⁵ Similarly, Article 5(2) Istanbul Convention imposes a due diligence obligation on state parties, further detailed in, for example, Articles 49, 50, and 53.⁹⁶ It incorporates the ECtHR standard from *Opuz v Turkey (Opuz)*,⁹⁷ which requires States to take 'preventive operational measures' when authorities knew or ought to have known a real and imminent risk,⁹⁸ aligning with the criteria endorsed by the CEDAW Committee.

2.2.3 Through the Denial of Rights (Duty to Fulfil)

States' obligation to fulfil requires them to take all necessary measures 'to ensure that women and men enjoy equal rights de jure and de facto'.⁹⁹ This entails facilitating

⁸⁷ CEDAW Committee 'General Recommendation No 19: Violence against women' (1992) UN Doc A/47/38 9.

⁸⁸ CEDAW Committee 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35 [24].

⁸⁹ CEDAW Committee 'Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (thirty-ninth session) Communication No 6/2005' (1 October 2007) UN Doc CEDAW/C/39/D/6/2005 (*Fatma Yildirim v Austria*).

⁹⁰ *Ibid* [12.1.2]; Christine Chinkin, Lisa Gormley, 'Violence against Women' in Patricia Schulz et al (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford University Press 2022) 627, 670.

⁹¹ CEDAW Committee 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35 [31], [32].

⁹² CEDAW Committee 'Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women Communication No 2/2003, Ms AT v Hungary' (26 January 2005) UN Doc CEDAW/C/32/D/2/2003 (*AT v Hungary*).

⁹³ *Ibid* [9.3]–[9.5].

⁹⁴ *Ibid* [9.4].

⁹⁵ *Ibid* [9.3].

⁹⁶ Alice Ollino, 'Article 5: State Obligations and Due Diligence' in Sara De Vido and Micaela Frulli (eds), *Preventing and Combating Violence Against Women and Domestic Violence: A Commentary on the Istanbul Convention* (Edward Elgar 2023) 136, 142.

⁹⁷ *Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009).

⁹⁸ Council of Europe, 'Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence' (11 May 2011) CETS No 210 [58]; *Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009) [129].

⁹⁹ CEDAW Committee 'General Recommendation No 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (2010) UN Doc CEDAW/C/GC/28 [9].

and providing women's access to human rights and promoting substantive equality.¹⁰⁰ In addressing violence against women, states must adopt comprehensive laws and policies covering prevention, protection, prosecution, and redress, while also challenging societal prejudices through education.¹⁰¹ The Istanbul Convention reinforces these duties: Article 4(1) affirms the right for women to live free from violence,¹⁰² Article 5(2) provides for reparations and remedies, and Article 6 mandates the implementation of gender-sensitive policies.¹⁰³ Additional obligations appear in, *inter alia*, Articles 13, 14, 15, 20, and 23 Istanbul Convention.¹⁰⁴ Notably, in *AT*, the CEDAW Committee found Hungary breached its obligations by failing to provide an adequate support infrastructure, specifically a shelter for the applicant.¹⁰⁵

2.3 How Domestic Violence Infringes Civil and Political Rights

The following section examines how domestic violence impacts the rights to life, freedom from torture and other ill-treatment, security and liberty, private and family life, a fair trial, and an effective remedy.

2.3.1 Womanhood as a Life-Threatening Risk

Domestic violence frequently escalates to lethal outcomes, specifically the killing of a woman by a male partner or family member, a phenomenon commonly referred to as 'femicide'.¹⁰⁶ This includes both 'intimate partner killings' and 'honour killings',¹⁰⁷ though this distinction has been critically scrutinised due to its racialised dimensions and the shared underlying motives: the assertion of ownership over women.¹⁰⁸ The right

¹⁰⁰ Ibid [20].

¹⁰¹ Christine Chinkin, Lisa Gormley, 'Violence against Women' in Patricia Schulz et al (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol: A Commentary* (2nd Edition, Oxford University Press 2022) 627, 679; see also CEDAW, arts 2(c), (f).

¹⁰² Istanbul Convention, art 4(1).

¹⁰³ Ibid arts 5(2), 6.

¹⁰⁴ Ibid arts 13 (on awareness raising), 14 (on education), 15 (on training professionals), 20 (providing support services), 23 (on access to shelters).

¹⁰⁵ CEDAW Committee 'Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women Communication No 2/2003, Ms AT v Hungary' (26 January 2005) UN DocCEDAW/C/32/D/2/2003 (*AT v Hungary*) [9.3].

¹⁰⁶ See 'Five Essential Facts to Know about Femicide' (*UN Women*, 25 November 2024) <<https://www.unwomen.org/en/articles/explainer/five-essential-facts-to-know-about-femicide>> accessed 13 July 2025. The UN defines femicide 'as an intentional killing with a gender-related motivation. It is different from homicide, where the motivation may not be gender-related.' In other words, women are being killed because they are women.

¹⁰⁷ 'Honour killings' are understood as the murder of a woman or girl, typically by male relatives, on the alleged ground that she has brought dishonour upon the family, often for reasons such as seeking divorce or separation, or sexual activity, etc. See J Douglas Dailey, Raghu N Singh, 'Honor Killing' (*Britannica*, 3 August 2025) <<https://www.britannica.com/topic/honor-killing>> accessed 11 August 2025.

¹⁰⁸ See Ulrike Lembke, 'Institutioneller Rassismus und Strafverfolgung in Deutschland' in Deutsches Institut für Menschenrechte (ed) in *Rassismus in der Strafverfolgung. Von der*

to life is enshrined in Article 3 of the Universal Declaration of Human Rights (UDHR),¹⁰⁹ Article 6(1) ICCPR, and Article 3 ECHR. It encompasses two essential dimensions: the prohibition of arbitrary or unlawful deprivation of life by state actors (duty to respect) and the obligation to create and maintain conditions that protect human life.¹¹⁰ The latter includes the duty to prevent and punish unlawful killings by non-state actors (duty to fulfil and duty to protect).¹¹¹ In *Opuz*, the ECtHR found a violation of the right to life because the authorities, despite being aware of the serious threats, failed to act with due diligence: they did not take preventive measures against the applicant's former husband, who killed her mother,¹¹² and the subsequent investigation and prosecution were manifestly inadequate. Furthermore, the authorities dismissed the violence as a 'family matter', discontinued proceedings,¹¹³ and failed to respond promptly in pursuing justice for the killing,¹¹⁴ constituting an overall breach of the State's duties to protect and fulfil under Article 2 ECHR. The court further identified gender-based discrimination due to the Turkish authorities' persistent judicial inaction in addressing domestic violence, particularly against women.¹¹⁵

To conclude, domestic violence constitutes a violation of the right to life whenever the state, aware or ought to be aware of lethal risks, fails to take adequate measures to prevent, investigate, or punish such acts.

Notwendigkeit struktureller Veränderungen (2nd edn, 2023) 57, 66–68 <<https://www.institut-fuer-menschenrechte.de/publikationen/detail/rassismus-in-der-straefverfolgung-von-der-notwendigkeit-struktureller-veraenderungen>> accessed 11 August 2025. Ulrike Lembke critiques the 'orientalisation' of gender-based violence in Germany. So-called 'Honour killings', committed by non-white male perpetrators, are punished with particular severity as manifestations of a patriarchal 'foreign' culture, whereas white German men who kill their female partners, typically categorised as 'intimate partner killings', frequently benefit from judicial leniency.

¹⁰⁹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR), art 3.

¹¹⁰ William A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 122; Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, Oxford University Press 2013) 167.

¹¹¹ See Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, Oxford University Press 2013) 187–188.

¹¹² *Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009) [152]–[153].

¹¹³ *Ibid* [143].

¹¹⁴ *Ibid* [150]–[151].

¹¹⁵ *Ibid* [192]–[198]; see also Ayşe Işıl Karakaş, 'An Overview of the European Court of Human Rights' Case Law on Domestic Violence as a Form of Gender-Based Discrimination' in Elena Brodeală, Ivana Jelić and Silvia Şuteu (eds), *Violence against Women under European Human Rights Law: From Supranational Standards to National Realities* (Edward Elgar Publishing 2024) 68, 72–73. Specifically, it found a violation of Article 14 ECHR in conjunction with Articles 2 and 3 ECHR.

2.3.2 Domestic Abuse as Torture and Other Ill-Treatment

According to the CEDAW Committee, domestic violence 'may amount to torture or cruel, inhuman or degrading treatment in certain circumstances'.¹¹⁶ The prohibition of torture and other ill-treatment is articulated across several international legal instruments, including Article 5 UDHR, Article 7 ICCPR, Articles 1 and 16 CAT, and Article 3 ECHR. It is recognised as a jus cogens norm, a peremptory norm from which no derogation is permitted.¹¹⁷ Article 1 of the CAT¹¹⁸ sets out the authoritative definition of 'torture'.¹¹⁹ While no international convention provides a corresponding definition of 'ill-treatment', 'torture' is typically understood as its aggravated form.¹²⁰

The prohibition of torture and ill-treatment entails a minimum threshold of severity,¹²¹ encompassing grave physical and psychological suffering.¹²² In assessing whether the threshold is met, relevant indicators include 'the duration of the treatment, its physical or mental effects [...], the sex, age and state of health of the victim'.¹²³ Unlike the CAT, the ECHR and ICCPR do not draw a strict distinction between 'torture' and other forms of 'ill-treatment'.¹²⁴ Under the ICCPR, the classification of conduct as 'torture' depends on its nature, purpose, and severity.¹²⁵ Similarly, the ECtHR assesses

¹¹⁶ CEDAW Committee 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35 [16].

¹¹⁷ See Wiliam A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 168.

¹¹⁸ CAT, art 1. 'The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.'

¹¹⁹ Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, Oxford University Press 2013) 217.

¹²⁰ Ibid; Wiliam A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 174.

¹²¹ *Tunikova and Others v Russia* App nos 55974/16 and 3 others (ECtHR, 14 December 2021) [73]; *Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009) [158]; see also CCPR 'General Comment No 20: Article 7 (Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment)' (10 March 1992) UN Doc CCPR/C/GC/20 [4].

¹²² *Tunikova and Others v Russia* App nos 55974/16 and 3 others (ECtHR, 14 December 2021) [73]; *Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009) [158]; CCPR 'General Comment No 20: Article 7 (Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment)' (10 March 1992) UN Doc CCPR/C/GC/20 [5].

¹²³ *Selmouni v France* App no 25803/94 (ECtHR, 28 July 1999) [100]; see also Wiliam A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 171.

¹²⁴ See CCPR 'CCPR General Comment No 12: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)' (10 March 1992) UN Doc CCPR/C/GC/20 [4]; Wiliam A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 169; Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, Oxford University Press 2013) 228.

¹²⁵ CCPR 'CCPR General Comment No 12: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)' (10 March 1992) UN Doc CCPR/C/GC/20 [4].

both the severity of the act and its intended purpose.¹²⁶ In contrast, the CAT places less emphasis on the severity and instead focuses on the powerlessness of the victim in addition to the subjective elements of the perpetrator.¹²⁷ Domestic violence frequently reaches the threshold of severity as recognised not only by the CEDAW Committee but also the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, where it, for instance, results in (repeated) serious physical and psychological harm.¹²⁸ This is particularly evident in cases involving rape¹²⁹ and female genital mutilation.¹³⁰ In view of the specific purpose, reference can be made to Stark's analysis on 'coercive control' which reveals that men often employ domestic violence as a means of intimidation and isolation, with the aim to undermine women's self-determination.¹³¹ This aligns largely with the findings of the Special Rapporteur, who further identifies the purposes of eliciting information and punishment.¹³² Another key element of 'torture' is the involvement of a public official or person acting in an official capacity. 'Consent' or 'acquiescence' also refers to situations where the State permits acts of torture carried out by individuals, through direct approval or by failing to intervene.¹³³ The CAT Committee has invoked the due diligence standard, holding that states' inaction in such cases equals 'de facto permission'.¹³⁴ Against this backdrop, the Special Rapporteur has expressed concerns about states legitimising violence by not enacting penal laws criminalising, for instance, marital rape, as well as through discriminatory laws and judicial passivity (duties to respect, protect and fulfil).¹³⁵

Even where domestic violence does not meet the criteria of torture, it may still amount to ill-treatment. In its case law on domestic violence, the ECtHR has held that

¹²⁶ *Ilhan v Turkey* App no 22277/93 (ECtHR, 27 June 2000) [85]; see also William A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 176–177.

¹²⁷ Gerrit Zach, Moritz Birk, 'Article 16 Cruel, Inhuman or Degrading Treatment or Punishment' in Manfred Nowak, Moritz Birk and Giuliana Monina (eds), *The United Nations Convention Against Torture and its Optional Protocol: A Commentary* (2nd edn, Oxford University Press 2019) 442, 444.

¹²⁸ CCPR 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (5 January 2016) UN Doc A/HRC/31/57 [55].

¹²⁹ *Aydin v Turkey* App no 23178/94 (ECtHR, 25 September 1997) [86]; CAT Committee 'General Comment No 2: Implementation of Article 2 by States Parties' (24 January 2008) UN Doc CAT/C/GC/2 [18].

¹³⁰ CAT Committee 'General Comment No 2: Implementation of Article 2 by States Parties' (24 January 2008) UN Doc CAT/C/GC/2 [18], [22].

¹³¹ See 2.

¹³² CCPR 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (5 January 2016) UN Doc A/HRC/31/57 [55].

¹³³ Manfred Nowak, Moritz Birk and Giuliana Monina, *The United Nations Convention Against Torture and its Optional Protocol: A Commentary* (2nd edn, Oxford University Press 2019) 62.

¹³⁴ CAT Committee 'General Comment No 2: Implementation of Article 2 by State Parties' (24 January 2008) UN Doc CAT/C/GC/2 [18].

¹³⁵ CCPR 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (5 January 2016) UN Doc A/HRC/31/57 [55], [56].

repeated physical assault and bodily harm violate Article 3 ECHR,¹³⁶ as well as emotional torment, manifested through intense 'anguish and stress' and 'fear of further assaults'.¹³⁷ Under the CAT and ICCPR, there is no rigid distinction between 'cruel' and 'inhuman' acts.¹³⁸ By contrast, the ECtHR has found treatment to be 'inhuman' when it is deliberate or prolonged over a significant period of time.¹³⁹ Stark suggests that abuse is a purposeful component of a broader, systematic effort to subordinate women.¹⁴⁰ He notes that it often takes the form of a sustained pattern rather than isolated incidents,¹⁴¹ a finding that aligns with the ECtHR's understanding of inhuman treatment. In assessing whether treatment is 'degrading', the Court considers whether it was intended or had the effect of humiliating or debasing the victim.¹⁴² According to Stark, verbal degradation is a common tactic to intimidate victims,¹⁴³ which, in effect, must be regarded as contrary to Article 3 ECHR in numerous instances.

In short, whether domestic violence violates the prohibition of torture or other ill-treatment depends heavily on the perpetrator's intent and the severity of the abuse. The ECtHR's extensive case law under Article 3 ECHR covers a wide range of physical and psychological abuse of women. State responsibility arises under the same conditions as for the right to life, namely when the state possesses (actual or constructive) knowledge and fails to respond appropriately.

2.3.3 Personal Integrity of Domestic Violence Survivors under the Rights to Security

Article 9 of the ICCPR affirms the right to liberty and security of a person. While the right to liberty protects the individual from arbitrary arrests and detention,¹⁴⁴ its safeguards are not applicable to domestic violence cases, which involve protection from private acts rather than unlawful state custody. Importantly, the CCPR has interpreted the right to liberty separately from the right to personal security.¹⁴⁵ The distinction was

¹³⁶ See, eg, *Tunikova and Others v Russia* App nos 55974/16 and 3 others (ECtHR, 14 December 2021) [74]; *Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009) [161].

¹³⁷ *Tunikova and Others v Russia* App nos 55974/16 and 3 others (ECtHR, 14 December 2021) [75].

¹³⁸ Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, Oxford University Press 2013) 234.

¹³⁹ William A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 180.

¹⁴⁰ See Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007) 228–229.

¹⁴¹ *Ibid* 243–244.

¹⁴² *Ibid* 180–181.

¹⁴³ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007) 258–259.

¹⁴⁴ Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, Oxford University Press 2013) 341.

¹⁴⁵ *Ibid* 341–343.

clarified in *Delgado Páez v Colombia*,¹⁴⁶ where the CCPR held that physical assault and death threats by private actors violate the right to personal security if the state fails to exercise due diligence.¹⁴⁷ In essence, the right to security safeguards both the physical and mental integrity of a person, whether they are detained or at liberty.¹⁴⁸ With respect to domestic violence, the CCPR expressed concern over high numbers of reported cases, the absence of civil remedies, and support measures. It urged states to adopt comprehensive reforms, invoking the right to personal security under Article 9(1) to address structural deficiencies in the protection of women.¹⁴⁹

At first glance, the parallel provision in Article 5 ECHR might appear relevant.¹⁵⁰ However, the ECtHR has construed this provision primarily in relation to arbitrary deprivations of liberty by state agents and in limited contexts of gender-based violence, such as human trafficking.¹⁵¹ The notion of 'security of a person' has not received an autonomous interpretation.¹⁵² Instead, the ECtHR subsumes the protection of personal integrity under Article 8 ECHR.¹⁵³

Overall, domestic violence in all its forms routinely violates the physical and psychological integrity of women¹⁵⁴ and (absent state protection) typically constitutes a breach of the right to security.

2.3.4 Abuse Leading to Privacy Violations and Inequality in Family Matters Before the Courts

Since domestic violence arises within the private sphere, those affected often have no safe refuge, facing abuse in their own homes or immediate surroundings. Article 23 ICCPR and Article 16(3) UDHR emphasise the role of the family as a 'fundamental

¹⁴⁶ CCPR 'Communication No 195/1985 W Delgado Páez v Colombia (Views adopted on 12 July 1990, at the Thirty-Ninth Session)' (12 July 1990) UN Doc CCPR/C/39/D/195/1985 (*Delgado Páez v Colombia*).

¹⁴⁷ Ibid [5.5]—[5.6]; Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, Oxford University Press 2013) 341—342. In that case, the Colombian authorities did not take any adequate protective measures despite ongoing threats to the applicant's safety, demonstrating that state responsibility extends beyond detention scenarios.

¹⁴⁸ CCPR 'General Comment No 35 Article 9 (Liberty and Security of Person)' (16 December 2014) UN Doc CCPR/C/GC/35 [9]; see also Danielle Anne Pamplona, 'Article 3: The Right to Life, Liberty and Security' in Humberto Cantú Rivera (ed), *The Universal Declaration of Human Rights: A Commentary* (Brill Nijhoff 2023) 56, 68.

¹⁴⁹ CCPR 'Concluding Observations of the Human Rights Committee: Poland' (29 July 1999) UN Doc CCPR/C/79/Add.110 [14]; see also Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, Oxford University Press 2013) 344.

¹⁵⁰ See William A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 220.

¹⁵¹ Ibid 229.

¹⁵² See Ibid 228—229.

¹⁵³ See Chapter 2, 4.4.

¹⁵⁴ See the beginning of Chapter 2, where I defined the scope of domestic violence.

group unit of society' and place it under special protection of the state.¹⁵⁵ Moreover, Article 17(1) ICCPR prohibits unlawful or arbitrary interference with an individual's privacy, family, home, or correspondence.¹⁵⁶ The precise scope of 'privacy' under Article 17 has not been fully articulated by the CCPR.¹⁵⁷ The Committee, however, developed a practical understanding of 'privacy' by ruling on specific types of violations, including within the domestic realm, rather than offering a comprehensive definition. Therefore, 'privacy' must be interpreted on a case-by-case basis, considering the given context.¹⁵⁸ Article 17(2) imposes a duty on the state to respect and protect this right.¹⁵⁹ The CCPR has not yet applied this provision in the specific context of gender-based violence. However, the Committee suggests a gender-sensitive interpretation in relation to violations committed by private actors.¹⁶⁰

Jurisprudence under Article 8 ECHR offers a clearer perspective on domestic violence cases. Like Article 17 ICCPR, the provision encompasses the duty to respect and protect in paragraph 2.¹⁶¹ The notions of 'private' and 'family life' are not sharply delineated under Article 8 ECHR.¹⁶² The ECtHR has acknowledged that 'private life' resists an exhaustive definition.¹⁶³ At its core, the right is grounded in the principles of personal autonomy and quality of life, aiming to secure personal development and relationships from interference. The scope of 'private life' extends across three key domains: inner, social, and public.¹⁶⁴ Covering intimate and personal relationships, the right also ensures the protection of an individual's physical and psychological integrity.¹⁶⁵ In exercising due diligence, states must pay particular attention to vulnerable individuals.¹⁶⁶ These principles have been applied to cases of domestic

¹⁵⁵ ICCPR, art 23; UDHR, art 16(3).

¹⁵⁶ ICCPR, art 17(1).

¹⁵⁷ Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, Oxford University Press 2013) 534.

¹⁵⁸ *Ibid* 561.

¹⁵⁹ CCPR 'CCPR General Comment No 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation' (8 April 1988) UN Doc HRI/GEN/1/Rev.1 at 21 [1]; [Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, Oxford University Press 2013) 540–541.

¹⁶⁰ CCPR 'CCPR General Comment No 28: Article 3 (The Equality of Rights Between Men and Women)' (29 March 2000) UN Doc CCPR/C/21/Rev1/Add10 [20].

¹⁶¹ William A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 366, 368.

¹⁶² *Ibid* 366–367.

¹⁶³ *Ibid* 369.

¹⁶⁴ *Ibid* 370. The inner sphere refers to the most intimate and personal aspects of an individual's life, *inter alia*, their thoughts, emotions, feelings and private communication. The social sphere involves relationships and interactions with others, reflecting how individuals connect and share with their social circle. Lastly, the public sphere covers aspects of a person's life that are more visible to others, such as their public image or reputation.

¹⁶⁵ *Bevacqua and S v Bulgaria* App no 71127/01 (ECtHR, 12 June 2008) [65]; *Kalucza v Hungary* App no 57693/10 (ECtHR, 24 April 2012) [59]; see also William A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 370.

¹⁶⁶ *Bevacqua and S v Bulgaria* App no 71127/01 (ECtHR, 12 June 2008) [64].

abuse: in *Bevacqua v Bulgaria*,¹⁶⁷ the Court considered the authorities' failure to issue interim custody and to intervene effectively in a situation where a woman was repeatedly assaulted by her husband. Despite the need to verify facts, the domestic court's failure to prioritise protective action breached the applicant's right to private and family life.¹⁶⁸ Similarly, in *Kalucza v Hungary (Kalucza)*,¹⁶⁹ a survivor of domestic abuse was forced to share a residence with her violent ex-partner due to the authorities' inaction. Restraining orders were dismissed without proper justification, and proceedings regarding the living arrangement were unreasonably delayed, resulting in a violation of Article 8 ECHR.¹⁷⁰ Furthermore, the ECtHR has held that cyberstalking can violate the right to 'private life'.¹⁷¹

Moreover, the right to 'family life' safeguards the ability of individuals to live together and foster meaningful familial relationships.¹⁷² This right inherently presupposes the existence of a 'family',¹⁷³ with the notion interpreted broadly, extending beyond the heteronormative model and not contingent on conditions such as marriage. The Court's focus lies on the existence of an intimate and genuine familial relationship.¹⁷⁴ However, this right may be subject to restrictions under certain circumstances, where separating family members is deemed necessary and proportionate.¹⁷⁵ The Court emphasised that the best interest of the child poses the primary consideration in this regard.¹⁷⁶ Additionally, national authorities must consider all aspects of the family's situation and balance the interests of the parties involved, the children's as well as the parents' rights.¹⁷⁷ In *IM and Others v Italy*, the ECtHR held that suspending the mother's parental authority was unjustified, as it ignored the context of domestic abuse and the ongoing criminal case against the father. The Court noted GREVIO's criticism of Italian courts for failing to apply Article 31 Istanbul Convention, which requires that decisions on custody and visitation rights consider incidents of

¹⁶⁷ *Bevacqua and S v Bulgaria* App no 71127/01 (ECtHR, 12 June 2008).

¹⁶⁸ *Ibid* [69]–[84].

¹⁶⁹ *Kalucza v Hungary* App no 57693/10 (ECtHR, 24 April 2012).

¹⁷⁰ *Ibid* [61]–[70].

¹⁷¹ *Buturugă v Romania* App no 56867/15 (ECtHR, 10 February 2020) [79]; see also Ayşe Işıl Karakaş, 'An Overview of the European Court of Human Rights' Case Law on Domestic Violence as a Form of Gender-Based Discrimination' in Elena Brodeală, Ivana Jelić and Silvia Şuteu (eds), *Violence against Women under European Human Rights Law: From Supranational Standards to National Realities* (Edward Elgar Publishing 2024) 68, 76–77. The applicant experiences cyberviolence by her former partner, who accessed her digital accounts without consent and duplicated sensitive private material.

¹⁷² 'Guide on Article 8 of the European Convention on Human Rights' (Council of Europe, 2025) [334] <https://ks.echr.coe.int/documents/d/echr-ks/guide_art_8_eng> accessed 6 August 2025.

¹⁷³ *Ibid* [343].

¹⁷⁴ William A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 389.

¹⁷⁵ *Ibid* 391.

¹⁷⁶ *IM and Others v Italy* App no 25426/20 (ECtHR, 10 November 2022) [105].

¹⁷⁷ *Ibid* [108].

domestic violence. It shared GREVIO's concern that women reporting abuse are often perceived as unreliable, disadvantaging them in custody rulings, and ultimately found a violation of Article 8 ECHR.¹⁷⁸ Specifically, Article 16 CEDAW enshrines the principle of equality in all matters relating to family life.¹⁷⁹ The provision sets out a non-exhaustive list of specific rights and duties¹⁸⁰ during marriage, its dissolution, and for parents.¹⁸¹ Cases where violence does not justify divorce are particularly problematic.¹⁸² As in *Kalucza*, the applicant in *AT* was unable to obtain an order preventing her ex-husband from residing in their shared home.¹⁸³ The CEDAW Committee found that the Hungarian authorities not only violated Articles 2(a), (b), (e) and 5, but also, in conjunction with Article 16 of CEDAW, underscoring the state's responsibility to ensure women's safety in the family setting.¹⁸⁴

When determining the scope of the right to privacy, including under the ICCPR, reference can be made to the comprehensive ECtHR jurisprudence and principles articulated in CEDAW and the Istanbul Convention, as international obligations must be interpreted consistently due to the principle of systemic integration (Article 31(3)(c) 1969 Vienna Convention on the Law of Treaties).¹⁸⁵ In sum, the right to private and family life is violated when women are exposed to abuse within the home or family environment without protection or when the authorities disregard abuse in decisions affecting custody, residence, or parental rights.

2.3.5 Court-Imposed Barriers to Women's Access to Justice

The CEDAW Committee has stressed that women regularly encounter numerous barriers in their pursuit of justice.¹⁸⁶ It identified components of access, including justiciability (the ability to claim rights as legal entitlements); availability of judicial bodies and mechanisms to address violations; physical, social, and financial accessibility, particularly for marginalised groups; good quality, requiring independent, impartial, and competent judicial bodies; and accountability, through effective

¹⁷⁸ Ibid [136]–[141].

¹⁷⁹ Ruth Halperin-Kaddari and Marsha A Freeman, 'Article 16' in Patricia Schulz et al (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol: A Commentary* (2nd edn, Oxford University Press 2022) 577, 580; CEDAW, art 16.

¹⁸⁰ Ibid 608–609.

¹⁸¹ CEDAW, arts 16(1)(c) and (d).

¹⁸² CEDAW Committee 'Concluding Observations on the Combined Second and Third Periodic Reports of Timor-Leste' (24 November 2015) UN Doc CEDAW/C/TLS/CO/2-3 [38(c)]; see also Ruth Halperin-Kaddari and Marsha A Freeman, 'Article 16' in Patricia Schulz et al (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol: A Commentary* (2nd edn, Oxford University Press 2022) 577, 598.

¹⁸³ *AT v Hungary* (26 January 2005) Communication No 2/2003 CEDAW/C/32/D/2/2003 [2.4].

¹⁸⁴ Ibid [9.6].

¹⁸⁵ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1115 UNTS 331, art 31(3)(c).

¹⁸⁶ Ibid [3].

oversight.¹⁸⁷ Ensuring fair trial guarantees, particularly equality before the law and access to effective remedies, is essential to fully realise women’s human rights.¹⁸⁸ Article 14 of the ICCPR and Article 6 of the ECHR protect the right to a fair trial,¹⁸⁹ a procedural safeguard essential to uphold the rule of law.¹⁹⁰ Central to this right is the principle of equality before courts and tribunals, which ensures equal access, equality of arms, and non-discriminatory treatment.¹⁹¹ This principle is also reflected in Article 15 of CEDAW, which specifically addresses legal equality between women and men.¹⁹² Article 14(1) ICCPR and Article 6(1) ECHR require a fair and public hearing by a competent, independent, and impartial tribunal established by law, applicable in both criminal and civil proceedings.¹⁹³ Judicial impartiality is a cornerstone of fair trial rights and is absolute in character:¹⁹⁴ judges must be free from bias or prejudice and refrain from conduct that favours one party over another.¹⁹⁵ In practice, this principle is often compromised by deeply rooted gender bias, particularly in family court proceedings. Allegations of domestic abuse are often dismissed when raised for the first time during custody proceedings, casting doubts on the survivor’s credibility. This allows male abusers to manipulate legal processes to retain control not only over their children but also their former partner, perpetuating patterns of coercion and harm under the guise of legal authority.¹⁹⁶ Judges frequently invoke the pseudoscientific ‘Parental Alienation

¹⁸⁷ CEDAW Committee ‘General Recommendation No 33 on Women’s Access to Justice’ (3 August 2015) UN Doc CEDAW/C/GC/33 [1], [14].

¹⁸⁸ Ibid [1]; CCPR ‘General Comment No 32 Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial’ (23 August 2007) UN Doc CCPR/C/GC/32 [2].

¹⁸⁹ ICCPR, art 14; ECHR, art 6.

¹⁹⁰ CCPR ‘General Comment No 32 Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial’ (23 August 2007) UN Doc CCPR/C/GC/32 [2].

¹⁹¹ Ibid [8].

¹⁹² CEDAW, art 15.

¹⁹³ CCPR ‘General Comment No 32 Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial’ (23 August 2007) UN Doc CCPR/C/GC/32 [3]; William A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 270–271.

¹⁹⁴ CCPR ‘Communication No. 263/1987 M Gonzalez del Rio v Peru (Views adopted on 28 October 1992, Forty-Sixth Session)’ (28 October 1992) UN Doc CCPR/C/46/D/263/1987 (*Gonzalez del Rio v Peru*) [5.2].

¹⁹⁵ CCPR ‘General Comment No 32 Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial’ (23 August 2007) UN Doc CCPR/C/GC/32 [21]; see also *Micallef v Malta* App no 17056/06 (ECtHR, 15 October 2009) [93]; William A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 295.

¹⁹⁶ Sarah Learmonth et al, ‘The Pathologising of Women Survivors of Male Violence by Family Court Experts – April 2022’ (*Women’s Resource Centre*, April 2022) 3–4 <<https://www.wrc.org.uk/blog/pathologising-women-survivors>> accessed 24 July 2025.

Syndrome' (PAS),¹⁹⁷ propagated by men's rights activists,¹⁹⁸ to discredit mothers who survived domestic violence. Abusive fathers often exploit this framing, presenting their former partner's emotional distress and trauma as evidence of mental instability, resulting in custody decisions in their favour or the removal of protective measures.¹⁹⁹

Simply put, the indiscriminate application of the PAS in care proceedings involving survivors of domestic violence (or other trivialisations of violence against women) contradicts the principles of equality before the court as well as the duties to respect, protect, and fulfil. Similarly, the right to fair trial is violated in civil and criminal proceedings when survivors of abuse face bias or discrimination, particularly when gender prejudice results in dismissed allegations or undermined credibility.

Closely related is the right to an effective remedy, a core procedural guarantee enabling individuals to seek redress for violations of their rights. It is enshrined as a subsidiary right in Article 2(3) ICCPR and Article 13 ECHR,²⁰⁰ and is also recognised in Article 2 CEDAW. As established above, states are obligated to conduct prompt and diligent investigations into alleged human rights violations (duty to protect and fulfil).²⁰¹ The CCPR emphasised that a failure to do so may constitute a separate human rights violation.²⁰² Similarly, the ECtHR held that investigations must be 'capable of leading to the identification and punishment of those responsible'.²⁰³ Remedies must be enforceable and may be provided in different forms.²⁰⁴ The ECtHR further emphasised

¹⁹⁷ 'Parental alienation' refers to a theory suggesting that one parent (typically the mother) manipulates the child into unjustified fear or hostility toward the other parent, often amidst custody disputes. Although widely criticised for lacking empirical validity, it is still invoked in family courts to challenge the credibility of abuse allegations. See Sarah Learmonth et al, 'The Pathologising of Women Survivors of Male Violence by Family Court Experts - April 2022' (*Women's Resource Centre*, April 2022) 4–5 <<https://www.wrc.org.uk/blog/pathologising-women-survivors>> accessed 24 July 2025.

¹⁹⁸ Gabriela Keller, 'Väterrechtler auf dem Vormarsch' (*Correctiv*, 19 September 2023) <<https://correctiv.org/aktuelles/haeusliche-gewalt/2023/09/19/die-netzwerke-der-vaeterrechtler/>> accessed 11 August 2025.

¹⁹⁹ Ibid 4.

²⁰⁰ See Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (3rd edn, Oxford University Press 2013) 867, 869–870; William A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 551.

²⁰¹ See Chapter 2, 3.2 and 3.3.

²⁰² CCPR 'General Comment No 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add. 13 [15]; see also Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (3rd edn, Oxford University Press 2013) 871.

²⁰³ *Husayn (Abu Zubaydah) v Poland* App no 7511/13 (ECtHR, 24 July 2014); see also William A Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 552.

²⁰⁴ CCPR 'General Comment No 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add. 13 [16] (restitution, rehabilitation and measures of satisfaction. Measures of satisfaction are 'public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations').

that Article 13 ECHR guarantees access to a domestic remedy where an individual presents an 'arguable claim' of a Convention violation.²⁰⁵ In *Kontrová v Slovakia*, the ECtHR examined a case where a woman, repeatedly abused and threatened by her husband, and who later killed their two children, claimed the authorities failed to protect her and her family.²⁰⁶ The Court held that Slovakia violated her right to an effective remedy under Article 13 by failing to provide adequate legal means to seek compensation for the non-pecuniary damage resulting from the state's inaction to protect her children under Article 2 ECHR. The remedies suggested by the government, criminal proceedings, and protection measures were either inadequate or not available in her circumstances,²⁰⁷ ultimately violating the state's duties to protect and fulfil.

Briefly, the right to an effective remedy is violated in cases of domestic abuse where the state fails to conduct prompt and diligent investigations, provide enforceable and accessible legal remedies, or otherwise ensure victims can obtain redress for harms resulting from the breach of their rights.

2.4 The Socioeconomic Dimensions of Domestic Violence

Having examined the impact of domestic violence on first-generation rights, attention will now be directed to socio-economic rights, in particular the rights to health and adequate housing.

2.4.1 Physical and Mental Health Implications of Domestic Abuse

The right to health is protected under a wide range of human rights instruments. Article 12 ICESCR guarantees the 'right to the highest attainable standard of physical and mental health,²⁰⁸ which the CESCR interprets in line with the WHO's multidimensional definition of health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.'²⁰⁹ Importantly, the scope of Article 12 ICESCR encompasses not only access to medical care but also essential prerequisites of health, such as water, sanitation, food, housing, a healthy environment, and health-related information.²¹⁰ This list is non-exhaustive and can encompass additional social factors, such as gender inequality and violence, that significantly affect health outcomes.²¹¹ A parallel provision in Article 12 CEDAW reinforces this

²⁰⁵ See *Kontrová v Slovakia* App no 7510/04 (ECtHR, 31 May 2007) [62]. Such a claim does not need to be proven right on the outset but must be credible and sufficiently serious to warrant judicial review.

²⁰⁶ *Ibid* [7]–[14].

²⁰⁷ *Kontrová v Slovakia* App no 7510/04 (ECtHR, 31 May 2007) [60]–[65].

²⁰⁸ ICESCR, art 12.

²⁰⁹ CESCR 'CESCR General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)' (11 August 2000) Un Doc E/C.12/2000/4 [2].

²¹⁰ *Ibid* [4].

²¹¹ *Ibid* [10]–[11].

understanding by requiring the elimination of discrimination against women in the field of health care.²¹² The CEDAW Committee likewise adopts a holistic approach, extending beyond the literal wording of the provision to address socioeconomic and gender-related determinants that impact women’s health.²¹³ Article 12 ICESCR covers freedoms, such as control over one’s body from non-consensual medical treatment, and entitlements,²¹⁴ including access to an available and acceptable health care system of good quality.²¹⁵ The CESCR has stressed that, despite the concept of progressive realisation, states have an immediate obligation to guarantee the enjoyment of the right to health without discrimination²¹⁶ and to provide its essential baseline, including access to facilities, services, and shelters.²¹⁷ Domestic violence may violate the right to health in multiple respects. Where the state knows or ought to have known of the threat of domestic violence in a particular case and fails to act with due diligence, it breaches its obligations under the right to health. Specifically, where the state fails to adequately address root causes of domestic violence,²¹⁸ which constitute essential determinants of women’s health, reflecting a failure to respect, protect, and fulfil the right. Access to health care is compromised where shelters or emergency services are unavailable, or where survivors face physical or economic barriers (for instance, where the relationship between perpetrator and victim is marked by financial control or economic dependence).²¹⁹ This is also true where services are unacceptable or of poor quality due to the lack of gender-sensitivity among health care professionals who reinforce harmful stereotypes or even re-traumatise survivors of domestic violence. This can also be derived from Article 20(2) Istanbul Convention, which requires states to establish a practical and functioning support system for health care and other social services that adequately responds to the needs of affected women.²²⁰

²¹² CEDAW Committee ‘CEDAW General Recommendation No 24: Article 12 of the Convention (Women and Health)’ (1999) UN Doc A/54/38/Rev.1 at 3 [2].

²¹³ Ibid 463–466.

²¹⁴ Ibid [8].

²¹⁵ Ibid [12].

²¹⁶ CESCR ‘CESCR General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)’ (11 August 2000) UN Doc E/C.12/2000/4 [30] (original spelling retained). Progressive realisation allows states to implement rights over time but requires them to move as expeditiously and effectively as possible toward their full realisation. See CESCR ‘CESCR General Comment No 3: The Nature of States Parties’ Obligations (Art 2, Para 1, of the Covenant)’ (14 December 1990) UN Doc E/1991/23 [9].

²¹⁷ Ibid [43].

²¹⁸ See Chapter 2, 2, where I discussed root causes of violence against women, such as male dominance and female submission.

²¹⁹ Financial control was briefly introduced in Chapter 2 as one aspect of domestic violence, discussed within Stark’s concept of coercive control.

²²⁰ See Istanbul Convention, art 20(2). More support obligations are laid down in Articles 21–25.

Within the ESC framework, Article 11 ESC articulates the right to health.²²¹ Although the provision has not been applied in the context of gender-based violence,²²² the principle of systemic integration requires that it be understood consistently with the corresponding and comprehensive norms of the ICESCR and CEDAW.²²³

2.4.2 Lack of Women’s Shelters as a Violation of the Right to Adequate Housing

Closely linked to the right to health is the right to adequate housing, as exemplified by the inclusion of shelter provision as a minimum core obligation under Article 12 ICESCR.²²⁴ Rooted in Article 11’s guarantee of an adequate standard of living, the ICESCR offers the most comprehensive framework on the right to housing compared to other covenants.²²⁵ Since Article 11 addresses subsistence,²²⁶ it plays a crucial role in promoting social equality and eradicating poverty. This right is defined broadly as going beyond ‘having a roof over one’s head [...] [, instead,] it should be seen as the right to live somewhere in security, peace and dignity.’²²⁷ Beyond safeguarding against forced evictions and arbitrary home interferences,²²⁸ the right encompasses, *inter alia*, security of tenure, availability of services, facilities, and infrastructure, affordability, and accessibility (particularly for vulnerable groups). The state is required to ensure the fulfilment of these entitlements as minimum core obligations²²⁹ and to provide immediate, non-discriminatory access to the right.²³⁰ This right, together with the guarantee of basic health care, also falls within the scope of social security under Article 9 ICESCR²³¹, which provides the material basis for realising Articles 11 and 12

²²¹ Karin Lukas, *The Revised European Social Charter: An Article by Article Commentary* (Edward Elgar Publishing 2021) 160.

²²² See Luis Jimena Quesada, ‘Protection against Gender-Based Violence under the European Social Charter’ in Elena Brodeală, Ivana Jelić and Silvia Șuteu (eds), *Violence against Women under European Human Rights Law: From Supranational Standards to National Realities* (Edward Elgar Publishing 2024) 52, 57; Karin Lukas, *The Revised European Social Charter: An Article by Article Commentary* (Edward Elgar Publishing 2021) 218.

²²³ See Chapter 2, 4.4.

²²⁴ See Chapter 2, 5.1.

²²⁵ *Ibid.*

²²⁶ See Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford University Press 2014) 863.

²²⁷ *Ibid* [7].

²²⁸ *Ibid* [9]; ‘The Right to Adequate Housing: Fact Sheet No. 21/Rev.1’ (UN, 2014) 3 <<https://unhabitat.org/the-right-to-adequate-housingq-fact-sheet-no-21rev1>> accessed 1 August 2025.

²²⁹ ‘The Right to Adequate Housing: Fact Sheet No. 21/Rev.1’ (UN, 2014) 3–4 <<https://unhabitat.org/the-right-to-adequate-housingq-fact-sheet-no-21rev1>> accessed 1 August 2025.

²³⁰ *Ibid* 7.

²³¹ CESCR ‘Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’ (14 July 2016) UN Doc E/C.12/GBR/CO/6 [59].

ICESCR.²³² However, as this thesis focusses only on health and housing (as a form of social assistance) and Articles 11 and 12 offer more specific protections, I will not further examine the impact of domestic violence on the broader right to social security.

The UN has stressed that domestic violence is a leading cause of women's homelessness, specifically when survivors lack access to social assistance. The threat of homelessness often becomes a powerful barrier to leaving abusive environments.²³³ For example, the CESCR has expressed concern about austerity measures adopted in the United Kingdom, which contributed to homelessness among female survivors of domestic abuse.²³⁴ This highlights how survivors may lack legal security of tenure, where housing is owned solely by the abuser or jointly and legal remedies are ineffective or inaccessible. As a marginalised group, survivors of domestic violence must be able to access safe and appropriate housing through emergency shelters or transitional housing. Reference can be made to Article 14(2) CEDAW, which obliges states to ensure adequate living conditions for rural women, with special attention to housing.²³⁵ This underscores the responsibility of states to provide particularly vulnerable women with access to decent living conditions and affirms housing as a vital component in achieving gender equality. This mandate is made explicit in Article 23 Istanbul Convention, requiring states to establish adequate shelters 'in sufficient numbers [...] and to reach out pro-actively to victims'.²³⁶ Further issues regarding affordability and availability were addressed above.²³⁷

In the European context, the right to adequate housing is also enshrined in Article 31 ESC. However, the monitoring body of the ESC, the Committee of the European Social Charter (ECSR), has primarily addressed socio-economic deprivations in the context of domestic violence under Article 16 ESC,²³⁸ which guarantees the right of the

²³² See Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford University Press 2014) 611.

²³³ 'The Right to Adequate Housing: Fact Sheet No. 21/Rev.1' (UN, 2014) 18 <<https://unhabitat.org/the-right-to-adequate-housing-fact-sheet-no-21rev1>> accessed 1 August 2025.

²³⁴ CESCR 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6 [51].

²³⁵ CEDAW, art 14(2)(h). CEDAW does not include a standalone provision on housing, yet the CEDAW Committee has interpreted Article 13 as encompassing aspects of women's right to housing, albeit in a more limited scope than the CESCR's reading of Article 11 ICESCR (see Beate Rudolf, 'Article 13' in Patricia Schulz et al (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (2nd ed, Oxford University Press 2022) 487, 489, 500–501).

²³⁶ Istanbul Convention, art 23.

²³⁷ See Chapter 2, 5.1.

²³⁸ Luis Jimena Quesada, 'Protection against Gender-Based Violence under the European Social Charter' in Elena Brodeală, Ivana Jelić and Silvia Șuteu (eds), *Violence against Women under European Human Rights Law: From Supranational Standards to National Realities* (Edward Elgar

family to social, legal, and economic protection. The provision is broadly drafted²³⁹ and extends beyond the state's duty to protect women from gender-based violence and provide remedies and compensation²⁴⁰ encompassing social and economic measures,²⁴¹ such as family housing and other social services.²⁴² The Committee has specifically addressed the lack of adequate emergency housing for survivors of domestic violence within the scope of Article 16 ESC.²⁴³ In interpreting the scope of the provision, the Committee frequently refers to the Istanbul Convention, ECHR, CEDAW, ICESCR, and other human rights treaties,²⁴⁴ emphasising that its application must remain consistent with parallel norms in these treaties.²⁴⁵ Since no collective complaint concerning gender-based violence has yet been brought to the ECSR,²⁴⁶ the legal sources concerning the aforementioned rights appear to be more comprehensive, so that no further examination is undertaken here.

Publishing 2024) 52, 57; Karin Lukas, *The Revised European Social Charter: An Article by Article Commentary* (Edward Elgar Publishing 2021) 218.

²³⁹ Karin Lukas, *The Revised European Social Charter: An Article by Article Commentary* (Edward Elgar Publishing 2021) 214.

²⁴⁰ *Ibid* 220; Luis Jimena Quesada, 'Protection against Gender-Based Violence under the European Social Charter' in Elena Brodeală, Ivana Jelić and Silvia Şuteu (eds), *Violence against Women under European Human Rights Law: From Supranational Standards to National Realities* (Edward Elgar Publishing 2024) 52, 56.

²⁴¹ Luis Jimena Quesada, 'Protection against Gender-Based Violence under the European Social Charter' in Elena Brodeală, Ivana Jelić and Silvia Şuteu (eds), *Violence against Women under European Human Rights Law: From Supranational Standards to National Realities* (Edward Elgar Publishing 2024) 52, 57.

²⁴² *Ibid*; Karin Lukas, *The Revised European Social Charter: An Article by Article Commentary* (Edward Elgar Publishing 2021) 216.

²⁴³ See, eg, ECSR, 'Conclusions of the European Committee of Social Rights 2019 concerning Spain (Thematic group Children, Families and Migrants)' (2019) 24 <<https://www.coe.int/en/web/european-social-charter/spain>> accessed 25 August 2025; ECSR, '8th National Report on the implementation of the European Social Charter submitted by the Government of Malta' (2015) 21 <<https://www.coe.int/en/web/european-social-charter/malta>> accessed 25 August 2025.

²⁴⁴ Luis Jimena Quesada, 'Protection against Gender-Based Violence under the European Social Charter' in Elena Brodeală, Ivana Jelić and Silvia Şuteu (eds), *Violence against Women under European Human Rights Law: From Supranational Standards to National Realities* (Edward Elgar Publishing 2024) 52, 58.

²⁴⁵ See also the last sentence of Chapter 2, 5.1, where I refer to systemic integration.

²⁴⁶ Luis Jimena Quesada, 'Protection against Gender-Based Violence under the European Social Charter' in Elena Brodeală, Ivana Jelić and Silvia Şuteu (eds), *Violence against Women under European Human Rights Law: From Supranational Standards to National Realities* (Edward Elgar Publishing 2024) 52, 59.

3 International Protection of Domestic Violence Survivors under CEAS

Having examined the human rights infringements commonly faced by survivors of domestic violence, it is important to consider the circumstances under which they may qualify for international protection under CEAS. The QD provides for two distinct forms of protection: refugee status and subsidiary protection.²⁴⁷ More recently, on 14 May 2024, Regulation (EU) 2024/1437 of the European Parliament and of the Council was adopted as part of the 'New Migration and Asylum Pact', replacing the previous Directive. This Regulation will take effect on 1 July 2026, aiming to harmonise eligibility criteria across EU Member States, ensure equal treatment, and reduce secondary movements.²⁴⁸ However, future legislative changes will not be taken into account when examining the eligibility criteria for international protection of domestic violence survivors, as this thesis focuses solely on the currently applicable framework.

3.1 Are Domestic Violence Survivors Refugees?

Article 2(d) of the QD²⁴⁹ substantially reflects the definition of 'refugee' established by the Refugee Convention²⁵⁰ and sets out the corresponding criteria for recognition. To qualify as a refugee, an individual must be a third-country national, as EU citizens do not fall within the geographical scope of the QD. The person must be outside the country of origin and not be excluded from protection for reasons specified in Article 12 QD,²⁵¹ such as having committed a listed serious crime or being guilty of acts contrary to the purposes and principles of the United Nations.²⁵² The same applies where the individual has already received protection or assistance from a United Nations agency other than the United Nations High Commissioner for Refugees (UNHCR) or where

²⁴⁷ Boldizsár Nagy, 'Qualifying for International Protection in the EU' in Evangelia Tsourdi and Philippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar Publishing 2022) 168, 168.

²⁴⁸ Boldizsár Nagy, 'The Qualification Regulation: a mixed bag, inherited from 2016.' (*EU Migration Law Blog*, 17 October 2024) <<https://eumigrationlawblog.eu/the-qualification-regulation-a-mixed-bag-inherited-from-2016/>> accessed 10 July 2025. The new regulation clarifies that the protection of gender includes 'gender identity' and 'gender expression'. In assessing the availability of an internal protection alternative, states must take into account 'gender', 'gender identity', and 'sexual orientation'. It further provides that applicants cannot reasonably be expected to change their behaviour, beliefs, or identity in order to avoid persecution. Moreover, it now states that protection applies not only to those who actually possess the characteristic, but also to individuals perceived as having it, provided the group is regarded as distinct, among other textual amendments.

²⁴⁹ QD, art 2(d).

²⁵⁰ Boldizsár Nagy, 'Qualifying for International Protection in the EU' in Evangelia Tsourdi and Philippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar Publishing 2022) 168, 171.

²⁵¹ QD, art 2(d).

²⁵² QD, art 12(2)(a)–(c).

they have been recognised by the authorities of another country, enjoying the same rights and obligations as citizens.²⁵³

3.1.1 Credible Fear as the Basis for Protection and How It Is Determined

The defining feature of refugee status is the presence of a 'well-founded fear of persecution' on the part of the asylum seeker.²⁵⁴ According to the UNHCR, this fear comprises both an objective and a subjective component; accordingly, the 'frame of mind must be supported by an objective situation.'²⁵⁵ Article 4 QD articulates the relevant standards for this assessment. Paragraph 1 imposes a duty of cooperation: the applicant must substantiate their well-founded fear of persecution, while the determining authority must assess all important elements of the application. According to Paragraph 2, these include the applicant's statements and any documentation available to them. The assessment must be carried out on an individual basis in line with Article 4(3) QD, considering, *inter alia*, all relevant facts about the country of origin as well as the applicant's individual circumstances.²⁵⁶ This evaluation is prospective in nature, focusing on whether the applicant would face a reasonable possibility of harm upon return to their country of origin.²⁵⁷ Evidence of past persecution, serious harm, or threats thereof is a strong indicator of 'well-founded fear'.²⁵⁸

In the context of gender-based persecution, the UNHCR has issued important Guidelines on International Protection No 1,²⁵⁹ which offer detailed recommendations on how to assess asylum claims involving women and girls. These guidelines emphasise the importance of gathering and applying gender-sensitive country of origin information in the evaluation process. Such information should address 'the position of women before the law, the political rights of women, the social and economic rights of women, the cultural and social mores of the country and consequences for non-adherence, the

²⁵³ QD, art 12(1)(a)–(b).

²⁵⁴ James C Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge University Press 2014) 91.

²⁵⁵ UNHCR 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees' (1 February 2019) UN Doc HCR/1P/4/Eng/REV.2 [37]–[38]. This is a view, however, not uncontested: Michelle Foster and James C Hathaway argue that 'well-founded fear' is solely an objective standard, with no requirement for subjective fear (see James C Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge University Press 2014) 92–93).

²⁵⁶ QD, art 4(1)–(3); see also UNHCR 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees' (1 February 2019) UN Doc HCR/1P/4/Eng/REV.2 [41]–[42].

²⁵⁷ See Boldizsár Nagy, 'Qualifying for International Protection in the EU' in Evangelia Tsourdi and Philippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar Publishing 2022) 168, 172.

²⁵⁸ QD, art 4(4).

²⁵⁹ UNHCR 'Guidelines on International Protection No 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees' (7 May 2002) UN Doc HCR/GIP/02/01.

prevalence of such harmful traditional practices, the incidence and forms of reported violence against women, the protection available to them, [as well as] any penalties imposed on those who perpetrate the violence'.²⁶⁰ Correspondingly, Article 10(3)(b) of the Asylum Procedures Directive²⁶¹ requires EU Member States to obtain current, reliable information from bodies such as the European Union Agency for Asylum (EUAA), UNHCR, and other international human rights organisations, ensuring it is accessible to officials reviewing asylum claims.²⁶² In *AH and FN v Bundesamt für Fremdwesen und Asyl (AH)*,²⁶³ involving two Afghan women seeking protection in Austria, the CJEU referred to the findings of the EUAA's 'Country Guidance: Afghanistan' and the UNHCR's 'Statement on the Concept of Persecution on Cumulative Grounds in Light of the Current Situation for Women and Girls in Afghanistan'.²⁶⁴ The CJEU held that Afghan women and girls generally have a 'well-founded fear of persecution' under the Taliban regime, given enforced gender-segregation and severe restrictions on fundamental rights in all areas of life post-2021.²⁶⁵ Derived from this, in cases of domestic violence, it is essential to consider not only the prevalence of gender-based violence in the country of origin, but also how entrenched misogynistic attitudes contribute to its normalisation and influence law enforcement practices as well as the authorities' (un)willingness to offer effective protection to female survivors.

3.1.2 Defining Persecution under CEAS: Human Rights at the Core

Unlike the Refugee Convention, the QD provides a legal definition of 'persecution'.²⁶⁶ To qualify as 'persecution', an act must either '(a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned

²⁶⁰ Ibid [36]; see also Case C-621/21 *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* [2024] ECLI:EU:C:2024:47 [61]; Joined Cases C-608/22 and C-609/22 *AH, FN, v Bundesamt für Fremdwesen und Asyl* [2024] ECLI:EU:C:2024:828 [53]; Case C-646/21 *K, L v Staatssecretaris van Justitie en Veiligheid* [2024] ECLI:EU:C:2024:487 [61].

²⁶¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection [2013] OJ L180/60.

²⁶² Joined Cases C-608/22 and C-609/22 *AH, FN, v Bundesamt für Fremdwesen und Asyl* [2024] ECLI:EU:C:2024:828; Case C-646/21 *K, L v Staatssecretaris van Justitie en Veiligheid* [2024] ECLI:EU:C:2024:487 [60].

²⁶³ Joined Cases C-608/22 and C-609/22 *AH, FN, v Bundesamt für Fremdwesen und Asyl* [2024] ECLI:EU:C:2024:828.

²⁶⁴ Ibid [56].

²⁶⁵ Ibid. In this case, the authorities may refrain from conducting an individual assessment due to the acute situation for women and girls in Afghanistan. See *ibid* [57].

²⁶⁶ Boldizsár Nagy, 'Qualifying for international protection in the EU' in Evangelia Tsourdi and Philippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar Publishing 2022) 168, 173.

in point (a).²⁶⁷ Article 9(2) of the QD provides a non-exhaustive list of acts that must be taken into account by competent authorities, including physical, sexual, and psychological violence, discriminatory practices, and gender-related harm.²⁶⁸ In *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet (WS)*,²⁶⁹ the CJEU clarified that the assessment of persecution under the Directive must reference CEDAW provisions and the Istanbul Convention.²⁷⁰ These instruments qualify as ‘other relevant treaties’ pursuant to Article 78(1) of the Treaty on the Functioning of the European Union (TFEU),²⁷¹ which the CEAS must respect. This remains the case even where individual Member States, such as Bulgaria in *WS*, have not ratified the Istanbul Convention, given that the EU acceded to the Convention in 2023.²⁷² Specifically, Article 60(1) of the Istanbul Convention requires states ‘to ensure that gender-based violence against women may be recognised as a form of persecution’.²⁷³ This understanding therefore guides the interpretation of the QD-related provisions as well as the principles established by CEDAW, but also other human rights treaties, such as the ICCPR and ICESCR. This is because Article 78(1) TFEU expresses a general commitment to ensuring that CEAS upholds principles of international law relevant to asylum.²⁷⁴

3.1.2.1 Severe Violation of Fundamental Human Rights

The assessment under Article 9(1)(a) QD follows two steps: determining whether a basic human right has been violated and whether the violation is sufficiently serious.²⁷⁵

3.1.2.1.1 What are Basic Human Rights?

Firstly, the question arises as to what constitutes ‘basic human rights’ within the meaning of Article 9(1)(a) QD and whether this notion extends to the human rights impacted by domestic violence discussed above.²⁷⁶ The provision itself does not provide a legal definition²⁷⁷ but explicitly refers to non-derogable rights under Article 15(2)

²⁶⁷ QD, art 9(1).

²⁶⁸ See QD, art. 9(2). The notion ‘inter alia’ indicates that the list is merely illustrative.

²⁶⁹ Case C-621/21 *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* [2024] ECLI:EU:C:2024:47.

²⁷⁰ *Ibid* [44]–[46].

²⁷¹ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 78(1).

²⁷² *Ibid* [46]–[47].

²⁷³ Istanbul Convention, art 60(1).

²⁷⁴ See Daniel Thym, in Hermann-Josef Blanke and Stelio Mangiameli (eds), *Treaty on the Functioning of the European Union: A Commentary* (Springer 2021) 1467, 1473.

²⁷⁵ European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 49 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025.

²⁷⁶ See Chapter 2, 4 and 5.

²⁷⁷ European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 50

ECHR,²⁷⁸ namely the right to life (Article 2), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3), and the prohibition of slavery and forced labour (Article 4).²⁷⁹ Having addressed the real and serious risk to life faced by female survivors of domestic violence,²⁸⁰ the right to life becomes a decisive factor in establishing an act of persecution. Furthermore, I have explained how Article 3 ECHR, alongside further provisions on the prohibition of torture and other ill-treatment, relate to domestic violence cases.²⁸¹ Notably, the CJEU made a generalised determination on the nature of gender-based violence in *WS*, holding that 'acts of violence to which a woman risks being exposed because of the alleged transgression of cultural, religious or traditional norms [that] are not likely to result in her death [...] must be classified as torture or inhuman or degrading treatment or punishment'.²⁸² Although this statement was made in the context of the 'real risk of serious harm' assessment for the purposes of subsidiary protection, its reasoning must equally inform the examination of the severity of harm under Article 9(1)(a) QD. This is because the criteria 'real risk of serious harm' and 'well-founded fear' are substantively consistent.²⁸³ Further details will follow in the analysis on subsidiary protection.²⁸⁴

Moreover, additional rights might also be affected. A possible violation of the prohibition of slavery and forced labour was excluded from the scope of analysis.²⁸⁵ Based on the wording, Article 9(1)(a) QD does not limit its scope exclusively to non-derogable rights.²⁸⁶ The question of which rights should be regarded as of fundamental importance and the criteria by which such determinations are made is subject to scholarly and judicial debate. To this end, scholar James Hathaway has once proposed a hierarchy of human rights based on the obligations they impose on signatory states, distinguishing between those requiring immediate compliance and those subject to

<<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025.

²⁷⁸ QD, art 9(1)(a).

²⁷⁹ ECHR, art 15(2).

²⁸⁰ See Chapter 2, 4.1.

²⁸¹ See Chapter 2, 4.2.

²⁸² *Ibid* [77].

²⁸³ Boldizsár Nagy, 'Qualifying for international protection in the EU' in Evangelia Tsourdi and Philippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar Publishing 2022) 168, 187.

²⁸⁴ See Chapter 3, 2.2.

²⁸⁵ See Chapter 2, 4.

²⁸⁶ Boldizsár Nagy, 'Qualifying for International Protection in the EU' in Evangelia Tsourdi and Philippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar Publishing 2022) 168, 173; see also European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 50 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025.

progressive realisation.²⁸⁷ At the top are non-derogable civil and political rights,²⁸⁸ the violation of which invariably constitutes persecution.²⁸⁹ Next are derogable civil and political rights,²⁹⁰ whose breach entails state responsibility unless justified by strict, non-discriminatory emergency measures.²⁹¹ Socio-economic rights occupy the lowest tier,²⁹² though their severe denial may amount to persecution in individual cases.²⁹³ Hathaway, together with Michelle Foster, now rejects the concept of a normative hierarchy between first- and second-generation rights, arguing that their inherent universality, interdependence, and indivisibility preclude any assumption of unequal value. They further affirm that the principle of progressive realisation reflects the practical complexity of implementing socioeconomic rights rather than indicating any lesser importance. Crucially, they recognise that the denial of socioeconomic rights often lies at the core of refugee applications.²⁹⁴ To assess whether harm amounts to persecution, they propose a more flexible three-step framework: (1) whether the harm falls within the scope of a widely accepted international human rights norm; (2) whether the breach is nonetheless permitted under a lawful limitation or derogation clause; and (3) whether the harm, even if unjustified is so marginal as to fall below a *de minimis* threshold, unless it forms part of a broader pattern of cumulative discriminatory mistreatment.²⁹⁵ The latter point will be explored below in the context of the required severity of human rights violations. Moreover, the wording and *telos* of Article 9(1)(a) QD suggest that violations of derogable rights, their nature and gravity, must be comparable to those of non-derogable rights.²⁹⁶ The drafters of the QD underscored the importance of specific rights enshrined in the CFREU in recital 16 in order 'to ensure full respect for human dignity and the right to asylum', including respect for private and family life (Article 7),

²⁸⁷ Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (Cambridge University Press 2007), 113–115; see also James C Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd edn, Cambridge University Press 2014) 203.

²⁸⁸ Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (Cambridge University Press 2007) 114; James C Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd edn, Cambridge University Press 2014) 202.

²⁸⁹ Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (Cambridge University Press 2007) 114.

²⁹⁰ *Ibid*; see also James C Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd edn, Cambridge University Press 2014) 203.

²⁹¹ Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (Cambridge University Press 2007) 115.

²⁹² *Ibid*; James C Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd edn, Cambridge University Press 2014) 203. This reasoning rested on the premise that they are subject to only progressive realisation and are not immediately bidding in their full scope.

²⁹³ Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (Cambridge University Press 2007) 115–116.

²⁹⁴ James C Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd edn, Cambridge University Press 2014) 203–204.

²⁹⁵ *Ibid* [204]–[206].

²⁹⁶ See European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 50 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025.

non-discrimination (Article 21), social security and social assistance (Article 34) and health care (Article 35).²⁹⁷ Another key indicator is the extent to which the right is indispensable for protecting human dignity.²⁹⁸

Current refugee and asylum case law, along with international and regional human rights standards, notably recognise the rights to liberty and security, as well as the right to family life, as 'basic human rights' in this sense. These rights enjoy broad recognition, as they are enshrined in various legal instruments, yet they remain subject to lawful and proportionate restrictions. Notably, Article 8(2) ECHR has a more narrowly defined set of legitimate aims for limitations than other qualified rights in the ECHR,²⁹⁹ reflecting the heightened importance the Convention places on privacy and family ties. Jurisprudence relating to Article 1(A)(2) Refugee Convention confirms the fundamental nature of the right to security, protecting the physical and mental integrity of a person. In *Cheung v Canada (Minister of Employment and Immigration)*,³⁰⁰ the right was affirmed as a fundamental human right with reference to Article 3 UDHR.³⁰¹ Within the UDHR framework, the right to security and liberty is enshrined alongside the right to life in Article 3, thereby highlighting their close interconnection. As the paramount human right,³⁰² the right to life is also the one most intimately tied to human dignity. Moreover, the right of women to live free from violence, much like the principle of equality and non-discrimination, is not only a distinct entitlement but also an overarching principle underpinning the entire Istanbul Convention. Article 4(1) of the Convention explicitly recognises this under the heading of 'fundamental rights', supporting its status as a basic human right through systematic interpretation. Article 16(1) UDHR and 23 ICCPR emphasise the family as a vital institution essential to the well-being of society, thereby conferring upon it a special legal status distinct from other forms of cohabitation.³⁰³ In the case of *Minister voor Immigratie en Asiel v X, Y, and Z*,³⁰⁴ the CJEU affirmed that the right to respect for private and family life constitutes a fundamental right.³⁰⁵ In

²⁹⁷ Ibid 50–51.

²⁹⁸ Ibid 51.

²⁹⁹ See Chapter 2, 4.3 and 4.4.

³⁰⁰ *Cheung v. Canada (Minister of Employment and Immigration)* [1993] 2 F.C. 314 (C.A.) (this case involved a woman at risk of forced sterilisation in China due to the one-child policy).

³⁰¹ Ibid (reasoning 'Persecution').

³⁰² See Danielle Anne Pamplona, 'Article 3: The Right to Life, Liberty and Security' in Humberto Cantú Rivera (ed), *The Universal Declaration of Human Rights: A Commentary* (Brill Nijhoff 2023) 56, 61–62.

³⁰³ See 2.4.4.

³⁰⁴ Joined Cases C-199/12 to C-201/12 *Minister voor Immigratie en Asiel v X, Y, and Z* [2013] ECLI:EU:C:2013:720 (this ruling arose in the context of three homosexual men seeking international protection in the Netherlands).

³⁰⁵ Ibid [54]; see also European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 51 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025.

safeguarding physical and psychological integrity,³⁰⁶ it intersects substantially with the fundamental right to security. As the right to privacy encompasses various spheres³⁰⁷ of an individual's life, it is integral to a person's identity. These spheres reflect the degree of intimacy and personal significance and are therefore determined by their proximity to human dignity. Familial relationships form some of the most intimate and influential bonds in a person's life. They play a vital role in establishing emotional security, health, and overall well-being, serving as a foundation for personal development.

As previously noted, the right to a fair trial and the closely related right to an effective remedy are of utmost importance for the rule of law and are therefore inalienable in a democratic constitutional state.³⁰⁸ In *Kudla v Poland*, the ECtHR emphasised that 'Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights'.³⁰⁹ On that account, fair trial rights and the right to effective remedy are considered 'not only [...] fundamental [...] but also [...] essential pre-requisite[s] for the protection and promotion of all other rights' within the Inter-American system.³¹⁰ Crucially, in their absence, all other human rights lose their substantive meaning. In the context of defendants' rights in criminal proceedings, the ECtHR has further underscored a crucial interplay between Article 6 and Article 3 of the ECHR.³¹¹ As a result, fair trial rights as well as the right to an effective remedy are also to be understood as 'basic human rights' within the meaning of Article 9(1)(a) QD.

In the context of socio-economic rights deprivation, the UNHCR draws a distinction between 'refugees' and 'economic migrants'. On this basis, 'economic migrants', whose movements are primarily motivated by personal reasons or purely economic considerations, do not qualify as refugees.³¹² This understanding was upheld

³⁰⁶ See Chapter, 4.4.

³⁰⁷ Ibid.

³⁰⁸ See Chapter 2, 4.5.

³⁰⁹ *Kudla v Poland* App no 30210/96 (ECtHR, 26 October 2000) [157].

³¹⁰ Isamu Carlos Shibayama et al, 'Report No. 26/20. Case 12.545. Merits' (*IACHR*, 22 April 2020) 13 <https://www.oas.org/en/iachr/decisions/2020/US_12.545_EN.PDF> accessed 11 August 2025.

³¹¹ *Salduz v Turkey* App no 36391/02 (ECtHR, 27 November 2008) [54]. The Court concluded that 'access to legal advice is a fundamental safeguard against ill-treatment.'

³¹² UNHCR 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees' (1 February 2019) UN Doc HCR/1P/4/Eng/REV.2 [62]. Michelle Foster challenges this distinction in Michelle Foster, *International Refugee Law and Socio-Economic Rights* (Cambridge University Press 2007) 238–247. Accordingly, the use of the notion of 'economic migrant' often results in wrongly excluding people whose severe socio-economic deprivation is tied to persecution.

by the CJEU in *Secretary of State for the Home Department v OA (OA)*.³¹³ However, this does not preclude socio-economic rights from being considered as fundamental under the criteria outlined above.³¹⁴ On the contrary, national courts increasingly refer to socio-economic deprivations in assessing violations of fundamental human rights. In *Chen Shi Hai v The Minister for Immigration and Multicultural Affairs*,³¹⁵ the High Court of Australia held that, alongside the denial of food and medical care, the denial of access to shelter as a basic necessity 'involve[s] such a significant departure from the standards of the civilized world as to constitute persecution'³¹⁶ and affirmed the right to shelter is a universally recognised basic human right.³¹⁷ Similarly, the South African Constitutional Court emphasised in *Government of the Republic of South Africa and Others v Grootboom and Others*³¹⁸ that deprivations of basic survival needs, including access to shelter, directly threaten human dignity.³¹⁹ Accordingly, the right to adequate housing significantly impacts a person's physical and mental integrity and is thus intrinsically connected to the fundamental rights to security and privacy. States' failure to address homelessness may even be linked to a violation of the right to life³²⁰ and the right to be free from torture and other ill-treatment.³²¹ In *El Ayoubi and El Azouan Azouz*,³²² the CCPR recognised the right to adequate housing as a fundamental human right.³²³ Complementing this, the ECtHR has recognised that the deprivation of social assistance could, in certain circumstances, it has not yet defined, so undermine human dignity as to amount to a prohibited act under Article 3 ECHR.³²⁴ Moreover, Human rights treaty bodies have taken an unequivocal position on the right to the highest attainable standard of health. In particular, the CESCR³²⁵ and CEDAW have affirmed that the right to health constitutes a fundamental human right in its own regard.³²⁶

³¹³ Case C-255/19 *Secretary of State for the Home Department v. OA* [2021] ECLI:EU:C:2021:36 [49]. The Court stated that 'mere economic hardship cannot, as a general rule, be classified as "persecution"'.
³¹⁴ See above, where I discussed how to determine a 'basic human right'.

³¹⁵ *Chen Shi Hai v The Minister for Immigration and Multicultural Affairs* [2000] HCA 19, 201 CLR 293.

³¹⁶ *Ibid* [29] (original spelling retained).

³¹⁷ *Ibid* [55].

³¹⁸ *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19.

³¹⁹ *Ibid* [23], [44], [83].

³²⁰ CCPR 'General Comment No 36 Article 6 on Right to Life' (3 September 2019) UN Doc CCPR/C/GC/36 [26].

³²¹ See *MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011) [263].

³²² CESCR 'Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning Communication No 54/2018' (23 March 2021) UN Doc E/C.12/69/D/54/2018 (*El Ayoubi and El Azouan Azouz*).

³²³ *Ibid* [11.1].

³²⁴ *Budina v Russia* App no 45603/05 (ECtHR, 18 June 2009).

³²⁵ CESCR 'CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)' (11 August 2000) UN Doc E/C.12/2000/4 [1].

³²⁶ CEDAW Committee 'CEDAW General Recommendation No 24: Article 12 of the Convention (Women and Health)' (1999) UN Doc A/54/38/Rev.1, chap. I [1].

In summary, the rights examined qualify as 'basic human rights' within the meaning of Article 9(1)(a) QD, as supported by both international and national jurisprudence. Accordingly, the determination of 'persecution' in cases of domestic violence hinges decisively on the gravity of the human rights violations in the individual case.

3.1.2.1.2 What Level of Infringement is Considered 'Severe'?

Scholarly literature and case law uniformly affirm that the severity threshold is deemed automatically satisfied in instances involving violations of non-derogable rights.³²⁷ Meaningfully, where domestic violence constitutes torture, inhuman or degrading treatment or punishment under Article 4 CFREU and Article 3 ECHR,³²⁸ or where 'the woman runs the real risk of being killed by a member of her family'³²⁹ in violation of Article 2 CFREU and Article 2 ECHR, the threshold is considered met. Regarding derogable rights, the severity of the act may derive from its 'nature', (qualitative element) or from its 'repetition' (quantitative element).³³⁰ The assessment must consider all relevant circumstances of the individual case.³³¹ With respect to physical integrity, protected by, *inter alia*, the rights to security and private life, (repeated) beatings and other forms of physical violence are consistently recognised as acts of persecution.³³² Intimate partner violence, in all its manifestations, often results in serious long-term psychological and physical harm, with profound and lasting adverse effects on the well-being of those affected.³³³ Taken together with the principles

³²⁷ See European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 53, 56 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025; Joined Cases C-608/22 and C-609/22 *AH, FN, v Bundesamt für Fremdwesen und Asyl* [2024] ECLI:EU:C:2024:828 [43]; see also James C Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd edn, Cambridge University Press 2014) 208–209, 211.

³²⁸ Joined Cases C-608/22 and C-609/22 *AH, FN, v Bundesamt für Fremdwesen und Asyl* [2024] ECLI:EU:C:2024:828 [43].

³²⁹ Case C-621/21 *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* [2024] ECLI:EU:C:2024:47 [76].

³³⁰ European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 55 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025; see also Joined Cases C-199/12 to C-201/12 *Minister voor Immigratie en Asiel v X, Y, and Z* [2013] ECLI:EU:C:2013:720 [65]–[66].

³³¹ European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 57 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025.

³³² James C Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd edn, Cambridge University Press 2014) 225; 'Interpretation of Convention Refugee and Person in Need of Protection in the Case Law' (*Immigration and Refugee Board of Canada*, 31 December 2020) 15 <<https://www.irb-cisr.gc.ca/en/legal-policy/legal-concepts/Pages/RefDef.aspx>> accessed 13 August 2025.

³³³ Iris Stahlke, *Häusliche Gewalt: Forschungsstand* in Andrea Behrmann et al (eds), *Handbuch Psychosoziale Prozessbegleitung* (Verlag Barbara Budrich 2022) 695, 707–708.

established in the Istanbul Convention and CEDAW,³³⁴ this suggests that the infliction of physical and psychological harm as an integral part of domestic violence (in the absence of any state protection), by its very nature, constitutes a serious violation of the right to security.³³⁵ According to Foster and Hathaway, an independent sufficiently severe violation of the fundamental right to family life may arise in cases where a mother fears losing custody of her children as a result of discriminatory family laws, including those based on fundamentalist religious doctrines.³³⁶ In the context of deprivations of socioeconomic rights, the key considerations in determining the severity of human rights infringements include, among others, whether even minimal access to essential needs is denied, whether the deprivation is deliberately or systematically imposed, or whether the anticipated harm indicates an intentional denial of these rights.³³⁷

In the examples cited, the severity of the violations of basic human rights is difficult to dispute. Nevertheless, it must be reiterated that any evaluation remains contingent upon the particular facts of the individual case. Ultimately, the requirements of Article 9(1)(a) QD do not need to be conclusively determined if the conditions for the persecutory act under Article 9(1)(b) QD are satisfied.

3.1.2.2 Alternative Conduct: Compounded Discrimination as Persecution

Article 9(1)(b) QD addresses cumulative harm arising from multiple measures, each of which, taken individually, may not amount to persecution under Article 9(1)(a) QD. Central to this assessment is the gravity of harm resulting from the combined effect of all acts to which the applicant is likely to be exposed upon return.³³⁸ 'Measures' within the meaning of Article 9(1)(b) QD also encompass acts that do not, on their own, amount to human rights violations, such as instances of (minor) discriminatory treatment.³³⁹ According to the UNHCR, such acts can 'give rise to a reasonable fear of

³³⁴ In particular, that gender-based violence against women constitutes discrimination, that domestic violence represents one of its gravest manifestations, and that women have the right to be free from violence as affirmed in Article 4(1) Istanbul Convention. See Chapter 2, 2. and 3.3.

³³⁵ See 2.

³³⁶ James C Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd edn, Cambridge University Press 2014) 282.

³³⁷ See *ibid* 228, 236.

³³⁸ European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 60 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025; UNHCR 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees' (1 February 2019) UN Doc HCR/1P/4/Eng/REV.2 [53].

³³⁹ European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 61 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025; see also UNHCR 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees' (1 February 2019) UN Doc HCR/1P/4/Eng/REV.2 [54].

persecution' particularly when they form part of a broader pattern of successive or interrelated discriminatory measures.³⁴⁰ The resulting cumulative harm must be sufficiently serious to meet the standard set out in Article 9(1)(a) QD.³⁴¹ This also correlates with step (3) in Foster's and Hathaway's analytical framework.³⁴² In *AH*, the CJEU held that even if the Taliban gender-segregation policies, comprising deprivations of both first- and second-generation rights, do not individually fall within the scope of 9(1)(a) QD, they collectively attain a comparable level of severity under Article 9(1)(b) QD.³⁴³

As explained above, all potential human rights violations faced by female survivors of domestic violence typically carry a discriminatory, gender-specific dimension, falling within the illustrative example of a persecutory act stipulated in Article 9(2)(f) QD. In many cases, survivors are also denied state protection from violence perpetrated by their (former) husbands, male partners, or family members, whether due to ingrained prejudice or deliberate hostility toward women.³⁴⁴ Acts of physical, mental, and sexual violence are expressly listed in Article 9(2)(a) QD as further examples of persecution. These are often compounded by the absence of effective access to legal remedies, both for the criminal prosecution of the perpetrators and for preventive measures intended to guard against further violence.³⁴⁵ In individual cases, the denial of justice and or the failure to provide protective and preventive measures by state officials, judicial bodies or legislators may themselves constitute inherently discriminatory measures pursuant to Article 9(2)(b) QD. Based on the wording, Article 9(2)(d) may also be relevant in individual cases where survivors are denied access to court, or where male perpetrators receive unduly lenient sentences or no criminal punishment at all compared to similar cases, reflecting the gender bias within the judicial system. The combined effect of several of these acts, given their profound

³⁴⁰ UNHCR 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees' (1 February 2019) UN Doc HCR/1P/4/Eng/REV.2 [55].

³⁴¹ European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 61 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025.

³⁴² See Chapter 3, 1.2.1.1.

³⁴³ Joined Cases C-608/22 and C-609/22 *AH, FN, v Bundesamt für Fremdwesen und Asyl* [2024] ECLI:EU:C:2024:828 [44], [46]. Measures included, in addition to the denial of partaking in political life and access to occupation, the lack of any legal protection from gender-based and domestic violence, among other restrictions.

³⁴⁴ See, eg, *Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009) [143], [192]–[198].

³⁴⁵ See, eg, CEDAW Committee 'Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women Communication No 2/2003, Ms AT v Hungary' (26 January 2005) UN Doc CEDAW/C/32/D/2/2003 (*AT v Hungary*) [9.3].

impact on the women concerned,³⁴⁶ is likely to meet the threshold of severity required pursuant to Article 9(1)(b) QD.

3.1.3 Persecution May Be Carried Out by Private Actors

Under Article 6 QD, actors of persecution or serious harm include not only the state and entities exercising state authority but also non-State actors.³⁴⁷ In the case of private actors, persecution is recognised when a state, quasi-state authorities, or international organisations are either unwilling or unable to provide protection.³⁴⁸ A lack of willingness is evident when the State is either directly responsible for acts of persecution, or when it explicitly or implicitly condones, encourages or tacitly approves the persecutory acts.³⁴⁹ Protection must be both effective and non-temporary in nature. This requirement is satisfied where the relevant actors 'take reasonable steps to prevent the persecution [...] by, inter alia, operating an effective legal system for the detection, prosecution and punishment of [persecutory] acts [...] and when the applicant has access to such protection.'³⁵⁰ In *OA*,³⁵¹ the CJEU specifically emphasised the need for measures ensuring the security of a person.³⁵² In cases of domestic violence, a lack of willingness can be demonstrated if the state has failed to fulfil its duty of due diligence as this, according to the CEDAW Committee, effectively amounts to tacit permission for violent acts committed by non-state actors.³⁵³ This unwillingness is particularly apparent where the state of origin does not criminalise gender-based violence.³⁵⁴ Alternatively, the applicant must prove that the State was unable to provide adequate protection in their individual case.

³⁴⁶ See Chapter 3, 1.2.1.2, where I emphasised the long-lasting effects on women who experience domestic violence.

³⁴⁷ See European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 114–118 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025.

³⁴⁸ *Ibid* 126.

³⁴⁹ European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 127 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025.

³⁵⁰ QD, art 7(2); see also Case C-621/21 *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* [2024] ECLI:EU:C:2024:47 [65].

³⁵¹ Case C-255/12 *Secretary of State for the Home Department v OA* [2021] ECLI:EU:C:2021:36.

³⁵² *Ibid* [52] (the Court held that the provision of social assistance and financial aid alone cannot be regarded as sufficient protection); see also European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 127 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025.

³⁵³ See Chapter 2, 3.2.

³⁵⁴ See Chapter 2, 4.2.

3.1.4 Persecuted for Being a Woman: Gender as Distinctive Marker?

Article 2(d), read in conjunction with 10(1) QD, requires that persecution be linked to one of the grounds exhaustively enumerated therein. In *WS*, the CJEU held that women, who are exposed to domestic violence in their country of origin by reason of their gender, are members of a 'particular social group'.³⁵⁵ Article 10(1)(d) QD specifies the criteria for determining what qualifies as "membership of a particular social group".³⁵⁶ On that basis the CJEU concluded, with reference to Article 60(2) Istanbul Convention,³⁵⁷ that 'being female constitutes an innate characteristic'³⁵⁸ and that 'women [who] have escaped from a forced marriage or, [...] married women, [who] have left their homes, may be regarded as [having] a "common background that cannot be changed"'.³⁵⁹ It further held that women possess a distinct identity when prevailing social, moral, or legal norms in their country of origin lead the surrounding community to view them as different. This is also the case when women share another common attribute that, within the context of those norms, sets them apart in the perception of society.³⁶⁰ In this respect, the Court also emphasised that the ground for persecution under Article 10(1) QD must be determined independently of the act of persecution in Article 9 QD. Consequently, in the case of female survivors fleeing domestic violence, it is sufficient that they are women or, by virtue of their common background, women who have left their homes.

Article 2(d), alongside Article 9(3) QD, requires a nexus between the grounds of persecution and the acts of persecution or the absence of protection against such acts.³⁶¹ Regarding the conduct of private actors, the CJEU rejected a cumulative requirement, clarifying that either the acts of persecution or the absence of protection must be rooted in one of the prohibited grounds.³⁶² This requirement is readily met in the context of domestic violence as the persecutory acts are typically rooted in gender-based discrimination, which is prevalent in all societies, cultures, and communities (albeit to varying degrees) and is therefore based on the prohibited ground 'membership of a

³⁵⁵ Case C-621/21 *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* [2024] ECLI:EU:C:2024:47 [57].

³⁵⁶ QD, art 10(1)(d); see also Case C-621/21 *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* [2024] ECLI:EU:C:2024:47 [40].

³⁵⁷ Case C-621/21 *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* [2024] ECLI:EU:C:2024:47 [48].

³⁵⁸ *Ibid* [49].

³⁵⁹ *Ibid* [51].

³⁶⁰ *Ibid* [52]–[53].

³⁶¹ European Union Agency for Asylum, *Judicial Analysis on Qualification for International Protection (Directive 2011/95/EU)* (2nd edn, January 2023) 87 <<https://euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu>> accessed 7 August 2025.

³⁶² Case C-621/21 *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* [2024] ECLI:EU:C:2024:47 [67].

particular social group' in line with the *WS* ruling. Otherwise, this requirement is met where the state fails to provide effective protection in the form of shelter, transitional housing, social assistance, and legal remedies due to misogynistic biases against female survivors of domestic violence.³⁶³

3.2 Subsidiary Protection as the Final Avenue

Where the criteria for refugee status are not fulfilled, consideration must instead be given to subsidiary protection under Article 2(f) QD.³⁶⁴ As in the case of refugee protection, the requirements of third-country nationality, alienage, and the absence of exclusionary grounds must be satisfied.³⁶⁵ The threshold for exclusion in Article 17 QD, however, is lower than that under Article 12 QD. Thus, Article 17(1)(b) provides for exclusion on the basis of 'serious crimes' with fewer conditions than Article 12(2)(b),³⁶⁶ which concerns serious 'non-political' crimes.³⁶⁷ Additionally, exclusion is envisaged under Article 12(1)(d) where the applicant 'constitutes a danger to the community or to the security of the Member State in which he or she is present'.³⁶⁸

The decisive criterion for qualifying for subsidiary protection is whether there are substantial grounds for believing that the person concerned, if returned to their country of origin, would face a real risk of suffering serious harm in accordance with Article 15 QD. Importantly, the same rules apply to the assessment as for refugee protection regarding the standard and burden of proof, as well as the evidence considerations outlined in Article 4 QD.³⁶⁹ In the context of domestic violence, the forms of serious harm under Article 15 QD that may be particularly relevant include 'the death penalty or execution' (paragraph a) or 'torture or degrading treatment or punishment of an applicant' (paragraph b), which is substantially linked to Article 4 CFREU and Article 3 ECHR.³⁷⁰ According to the CJEU, Article 15 QD applies whether the serious harm is inflicted by the state or by a private actor.³⁷¹

³⁶³ See Chapter 2, where I discussed how domestic violence constitutes a human rights violation.

³⁶⁴ Boldizsár Nagy, 'Qualifying for international protection in the EU' in Evangelia Tsourdi and Philippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar Publishing 2022) 168, 185.

³⁶⁵ QD, art 2(f).

³⁶⁶ QD, art 17(1)(b).

³⁶⁷ QD, art 12(2)(b).

³⁶⁸ QD, art 12(1)(d).

³⁶⁹ See Chapter 3, 1.1.

³⁷⁰ Case C-353/16 *MP v Secretary of State for the Home Department* [2018] ECLI:EU:C:2018:276 [36]–[37].

³⁷¹ Case C-621/21 *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* [2024] ECLI:EU:C:2024:47 [75].

3.2.1 Recognising Femicide as 'Execution' under Article 15(a) QD

In *WS*, the Court held that 'execution' in Article 15(a) QD also encompasses situations where a woman faces the real risk of becoming a victim of femicide at the hands of a male partner or family member.³⁷² In such cases, the threshold of 'serious harm' must be regarded as satisfied.

3.2.2 Domestic Violence as Two-Dimensional 'Serious Harm' under Article 15(b) QD

Applying Article 15(b) QD in the context of domestic violence requires a distinction between two aspects: first, violence that in itself amounts to torture or ill-treatment, and second, socio-economic consequences of domestic violence, which constitute such treatment. As noted in *WS*, the CJEU explicitly recognised domestic violence, without qualification, as prohibited treatment under Article 3 ECHR.³⁷³ This conclusion is persuasive when viewed in light of the social science sources discussed above. Scholars accentuate that violence against women perpetrated by men is particularly grave, as it is systemic in nature, rooted in structural inequalities, and serves both as a manifestation and deliberate instrument of women's oppression.³⁷⁴ Consequently, it cannot be equated with situational, even if severe, forms of violence, as it must invariably be understood within its structural context.

As noted above, domestic violence may be accompanied by the deprivation of socioeconomic rights.³⁷⁵ The CJEU has considered such deprivations, albeit in a different context, within the framework of Article 3 ECHR. For example, in *Budina v Russia (Budina)*,³⁷⁶ the Court stressed that when an individual is placed in a situation of such precarity that their human dignity is imperilled, and the state responds with indifference, this may constitute prohibited treatment under Article 3 ECHR.³⁷⁷ Building on this reasoning, the Court in *MSS v Belgium and Greece (MSS)* found a violation of Article 3 ECHR, where an asylum seeker was deprived for months of the most basic necessities, such as food, sanitation, and accommodation, without any prospect of improvement.³⁷⁸ This aligns with the position of Foster and Hathaway, who argue that the denial of even

³⁷² *Ibid* [76].

³⁷³ Case C-621/21 *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* [2024] ECLI:EU:C:2024:47 [77].

³⁷⁴ See Janet Fanslow et al, 'Evidence of Gender Asymmetry in Intimate Partner Violence Experience at the Population-Level' (2023) 38(15-16) *JIV* 9159, 9162; Iris Stahlke, 'Häusliche Gewalt: Forschungsstand' in Andrea Behrmann et al (eds), *Handbuch Psychosoziale Prozessbegleitung* (Verlag Barbara Budrich 2022) 695, 709; Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007) 171.

³⁷⁵ See Chapter 2, 5.

³⁷⁶ *Budina v Russia* App no 45603/05 (ECtHR, 18 June 2009).

³⁷⁷ *Ibid*.

³⁷⁸ *MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011) 253, 254, 263–264.

minimal access to essential needs is sufficiently severe to justify protection.³⁷⁹ Another important finding in *MSS* was the Court's observation that 'the obligation to provide accommodation and decent material conditions to impoverished asylum-seekers has now entered into positive law [...] Greek authorities are bound to comply with [...] [the] Council Directive 2003/9/EC laying down minimum standards for the reception of asylum-seekers in the member States'.³⁸⁰ By contrast, in the earlier case of *Müslim v Turkey (Müslim)*, no such legal obligation was incumbent on the state,³⁸¹ which would have raised state responsibility under Article 3 ECHR. More broadly, this and other case law indicate that there is a high threshold for socio-economic deprivations to constitute torture or other ill-treatment. In *Müslim*, the Court found that no provision of the Convention establishes a general obligation on states to provide refugees with financial assistance.³⁸² Similarly, in the earlier case of *Chapman v United Kingdom*, the Court confirmed that the Convention does not include 'a right to be provided with a home'.³⁸³ As demonstrated in *MSS*, the ECtHR places particular emphasis on vulnerability when assessing if socio-economic deprivations reach the minimum threshold under Article 3 ECHR.³⁸⁴ Professor Lieneke Slingenbergh asserts, based on a comprehensive analysis of relevant ECtHR case law, that the Court conceptualises vulnerability in terms of the individual's dependency on the state, leaving the person with no alternative means of support or recourse.³⁸⁵ The ECtHR explicitly expressed this, for instance, in *Budina*.³⁸⁶

³⁷⁹ James C Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd ed, Cambridge University Press 2014) 228, 236.

³⁸⁰ *MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011) [250]; Lieneke Slingenbergh 'The Right Not to be Dominated: The Case Law of the European Court of Human Rights on Migrants' Destitution' (2019) 19(2) HRL Rev 291, 302.

³⁸¹ *Müslim v Turkey* App no 53566/99 (ECtHR, 26 April 2005) [85]; Lieneke Slingenbergh 'The Right Not to be Dominated: The Case Law of the European Court of Human Rights on Migrants' Destitution' (2019) 19(2) HRL Rev 291, 301–302.

³⁸² *Müslim v Turkey* App no 53566/99 (ECtHR, 26 April 2005) [85].

³⁸³ *Chapman v The United Kingdom* App no 27238/95 (ECtHR, 18 January 2001) [99].

³⁸⁴ *MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011) 251 ('The Court attaches considerable importance to the applicant's status as an asylum-seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection'); Lieneke Slingenbergh 'The Right Not to be Dominated: The Case Law of the European Court of Human Rights on Migrants' Destitution' (2019) 19(2) HRL Rev 291, 302.

³⁸⁵ Lieneke Slingenbergh 'The Right Not to be Dominated: The Case Law of the European Court of Human Rights on Migrants' Destitution' (2019) 19(2) HRL Rev 291, 303–304.

³⁸⁶ *Budina v Russia* App no 45603/05 (ECtHR, 18 June 2009) ('The Court cannot exclude that State responsibility could arise for "treatment" where an applicant, in circumstances wholly dependent on State support, found herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity').

The applicant's vulnerability was also decisive in finding a violation of Article 3 ECHR in the cases of *Rahimi v Greece*³⁸⁷ and *Shioshvili and Others v Russia*.³⁸⁸

Survivors of domestic violence frequently face profound dependency and a lack of viable alternatives, both socially and economically. This dependency often arises because abusive partners or family members exert control over key resources, including finances, housing,³⁸⁹ and access to social support networks,³⁹⁰ leaving victims unable to secure their basic needs independently. When domestic violence leads to the loss of secure accommodation (for example, if the housing was shared with the abusive partner or family member) without access to emergency or transitional housing and any other form of state support, survivors are placed in a state of extreme precarity. This structural dependency not only exacerbates the immediate harm caused by physical and psychological abuse but also magnifies the risk of prolonged inhuman or degrading treatment, as victims may lack the means to escape the abusive environment or access alternative sources of support. In this context, socioeconomic deprivation becomes both a direct consequence of the abuse and a mechanism through which the abuse is sustained, thereby regularly reaching the threshold necessary to constitute a violation of Article 3 ECHR.

³⁸⁷ *Rahimi v Greece* App no 8687/08 (ECtHR 5 April 2011) [62], [87]; Lieneke Slingenbergh 'The Right Not to be Dominated: The Case Law of the European Court of Human Rights on Migrants' Destitution' (2019) 19(2) HRL Rev 291305–306. This case concerned an unaccompanied minor seeking asylum in Greece, who was initially detained and later released, without being provided accommodation or other form of assistance.

³⁸⁸ *Shioshvili and Others v Russia* App no 19356/07 (ECtHR 20 December 2016) [83], [86]; Lieneke Slingenbergh 'The Right Not to be Dominated: The Case Law of the European Court of Human Rights on Migrants' Destitution' (2019) 19(2) HRL Rev 291305–306. A pregnant Georgian woman and her four children were subjected to collective expulsion from Russia. Prior to their expulsion, they had been confined in inadequate accommodation and exposed to poor living conditions without any support.

³⁸⁹ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007) 271–272.

³⁹⁰ Iris Stahlke, 'Häusliche Gewalt Forschungsstand' in Andrea Behrman et al (eds), *Handbuch Psychosoziale Prozessbegleitung* (Verlag Barbara Budrich 2022) 695, 710.

4 Conclusion

This thesis set out to answer the research question: **To what extent do survivors of domestic violence qualify for international protection?** By analysing domestic violence as a human rights violation and assessing its treatment under the CEAS, this study demonstrated that such claims frequently reach the threshold of persecution or serious harm under the QD and therefore provide a legal basis for international protection status.

In chapter 2, this study traced the complex web of the rights infringed by domestic violence, encompassing civil and political rights, such as the rights to life, freedom from torture and other ill-treatment, security, family and private life, a fair trial and an effective remedy, as well as socio-economic rights, such as the rights to health and adequate housing. These were examined in light of international and European human rights standards and guided particularly by the progressive principles set out in CEDAW and the Istanbul Convention. I have substantiated that human rights violations arise from a state's failure to exercise due diligence, as well as administrative and legislative practices or omissions that trivialise domestic violence to the detriment of female survivors. At the core of these violations lies structural gender-based discrimination against women, reflected not only in the perpetration of domestic violence but also in a state's inadequate response.

The thesis, as shown in chapter 3, elaborated how these systemic violations can ground eligibility for both refugee and subsidiary protection status, drawing on CJEU case law, case law of jurisdictions outside of Europe on the Refugee Convention, as well as ECtHR and national jurisprudence on relevant human rights provisions. The findings suggest that survivors of domestic violence are not marginal to the European asylum framework but rather fall squarely within its scope. Specifically, the CJEU's decision in *WS* set an important precedent by recognising women exposed to domestic violence as 'a particular social group', thereby affirming the legitimacy of their claims.³⁹¹

At the same time, this study underscored that the recognition of socioeconomic deprivations, such as the lack of secure housing, access to proper health care and other social services, remains somewhat underdeveloped compared to the recognition of civil and political rights. This is problematic, given that socioeconomic factors are integral to the lived experience of domestic violence survivors and to the severity of harm they face. Significant gaps therefore remain in theorising and applying the interplay between

³⁹¹ See Silvia Steininger, 'The CJEU's Feminist Turn? Gender-based Persecution as a Ground for Protection' (*Verfassungsblog*, 20 February 2024) <<https://verfassungsblog.de/the-cjeus-feminist-turn/>> accessed 18 August 2025.

socio-economic rights and international protection in the context of gender-based persecution. Furthermore, while this research primarily focused on women in heteronormative relationships and family settings, future research should expand to include children and LGBTQI+ survivors, whose experience of domestic violence often intersects with other forms of discrimination and vulnerability. As the new EU Migration and Asylum Pact enters into force in 2026, future scholarship will be necessary to assess how harmonisation efforts impact the recognition of gender-based persecution in practice.

Within the broader field of scholarship, this thesis positions itself at the intersection of human rights law and asylum law, contributing to the growing recognition that domestic violence must be understood not as a private misfortune but as a matter of international protection. It builds upon and extends existing debates by integrating socio-economic rights into the analysis of persecution, thereby challenging narrow hierarchies of rights often applied in asylum law. In doing so, the thesis consolidates emerging legal standards and identifies directions for future research, ultimately reaffirming that female survivors of domestic violence qualify for international protection under the CEAS.

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