

**STALKING AS A HUMAN RIGHTS
VIOLATION:
THE CASE OF THE RUSSIAN
FEDERATION**

by

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ABSTRACT

The goal of the present research is to answer the question of whether the phenomenon of stalking could and should be recognized not only as a form of violence against women but also as an independent human rights violation within international human rights law. The example of Russia, a legal order poorly developed in respect of combating violence against women, is used to stress the importance of stalking as an offence to be properly addressed by domestic legislations as well as to suggest particular measures for the future.

The author comes to the following conclusions: first, the recognition of stalking as a human rights violation is required on the international level to formulate clearly state positive obligations and call for introduction of stalking and its effective addressing within domestic legislations; second, in the near future only stalking committed by strangers stands real chances to be considered as an independent human rights violation while stalking committed by former intimate partners will remain under an umbrella term of domestic violence; third, the model of coercive control plays a key role in further development of legislation on combating violence against women as well as recognition of stalking on both international and domestic levels; fourth, the Russian legal framework is not yet prepared to implement the crime of stalking, due to systematic problems such as existing gender stereotypes, the lack of gender sensitive approach and, as well as the failure to comply with international positive obligations in respect of domestic violence.

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This research forms my attempt to critically evaluate international legal order through a prism of women rights to find a pathway for Russian domestic legal framework to take action and develop in combating violence against women. The year of 2022 for me as a human rights student and researcher, a member of international education community and a citizen of the Russian Federation was especially challenging but at the same time eye-opening in many aspects. At some point, considerable part of my research dedicated to Council of Europe: in particular, the European Court of Human Rights and the Istanbul Convention made me fear rather than hope for my country's future.

Nevertheless, I would like to express my gratitude to people who made the present research possible, who supported me through the academic year and encouraged my ideas and achievements. First of all, I would like to thank my supervisor, Prof. Mathias Möschel, not only for his valuable feedback on my thesis but for everything he did for me. I would also like to thank Alexey Dolzhikov, an Associate Professor of Saint-Petersburg State University, Vasily Lukashevich, CoE Directorate General Human Rights and the Rule of Law and a CEU Alumni as well as Professor and a former judge of the ECtHR, András Sajó, for their support and help with arranging my research visit to the ECtHR and the GREVIO Committee in Strasbourg which deepened and enriched my thesis significantly.

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INTRODUCTION

The phenomenon of stalking today gains more attention from the general public, media, states and the international community as a whole, but still remains a subject of misconceptions, whose seriousness is frequently underestimated.

The main question the paper poses could be formulated as “*Could and should stalking be recognized a human rights violation and what would that mean for the Russian legal order?*”

The paper consists of three chapters: the first chapter gives a relevant free from stereotypes overall picture of the phenomenon of stalking; the second chapter attempts to critically evaluate contemporary international human rights law as a tool of combating violence against women and its particular forms such as stalking; the third one assesses domestic responses to stalking and the outlook of Russian legal framework’ development in this regard.

The relevance of the paper is justified by a clear gap in research dedicated to particular forms of violence against women from the perspective of the international human rights law. The existing research remains mainly superficial, restricted to naming contemporary international law sources containing women rights, while I tried to elaborate on reasons, trends and timeline of the international human rights legal framework’s development precisely in respect of violence against women, including domestic violence and stalking. Moreover, there is also a clear lack of comprehensive and updated legal research on the very phenomenon of stalking as well as on domestic legislations’ response to it. There is also a dearth of research on combating violence against women within the Russian legal framework.

The present research advocates for further development of existing international legal framework in respect of stalking by recognizing it, both as a form of violence against women and as a human rights violation and heavily relying on the model of coercive control in cases of violence against women. It also stresses the urgent need of the Russian legal order’s development in combating violence against women.

Chapter 1. The perceptions on stalking

When it comes to stalking, difficulties appear at the initial stage of defining this phenomenon and distinguish it from related concepts mainly due to its quite controversial and highly complex nature. There is no universal definition of stalking up to date. Yet, many scholars outline two core elements of stalking which are: “unwanted attention that is repeated” or “a series of two or more unwanted, intrusive, frightening, and/or threatening behaviors”¹ (the repeated criterion) and its capability (or goal²) to make the victim (a reasonable person³) experience fear (the fear criterion)⁴. Some authors indeed when defining stalking name it “willful” behaviour⁵ and specifically claim that stalking “should be identified through intention, not just actions” as well as its severity assessment shall take the intention of a stalker into account⁶. Other scholars claim to present a separate legal definition of stalking⁷, however these do not differ substantially from the given general definitions.

Looking back at the history of this phenomenon, Lowney & Best⁸, generally supported by other authors, outline 3 relatively short successive stages of stalking evolving as a social construct: from 1980 to 1988 it was considered a “psychological rape” and “obsessive

¹ Kathleen A. Fox, Matt R. Nobles and Bonnie S. Fisher, "A multi-theoretical framework to assess gendered stalking victimization: The utility of self-control, social learning, and control balance theories" *Justice Quarterly* 33.2 (2016) 319,320-321

² Jane Monckton-Smith, Karolina Szymanska, Sue Haile, "Exploring the relationship between stalking and homicide" *Suzy Lamplugh Trust* (2017)

³ Stalking Prevention, Awareness, and Resource Center, *Responding to Stalking: a Guide for Victim Advocates* (SPARK, 2018) 4

⁴ Logan, T. K., Robert Walker, "Partner stalking: Psychological dominance or “business as usual”?" (2009) 247, 248, 254; Walker, Robert, et al, “*Partner stalking: How women respond, cope, and survive*” *British Journal of criminology* 56.2 (2006) 16

⁵ Sheridan Lorraine, Amy E. Lyndon, "The influence of prior relationship, gender, and fear on the consequences of stalking victimization" *Sex Roles* 66.5 (2021) 340,347; Frances L. Coleman, "Stalking behavior and the cycle of domestic violence" *Journal of Interpersonal Violence* 12.3 (1997) 420

⁶ Jane Monckton-Smith, Karolina Szymanska, Sue Haile, "Exploring the relationship between stalking and homicide" (2017)

⁷ Brian H. Spitzberg, William R. Cupach, "The state of the art of stalking: Taking stock of the emerging literature" *Aggression and violent Behavior* 12.1 (2007) 64,66; Frances L. Coleman, "Stalking behavior and the cycle of domestic violence" *Journal of Interpersonal Violence* 12.3 (1997) 420

⁸ Paul E. Mullen, Michele Pathé, Rosemary Purcell, *Stalkers and their victims*. (Cambridge University Press, 2000) 19-20

following”, “that were made manifest in various forms of sexual harassment and intrusiveness”; from 1988 to 1991 it evolved to “the harbinger of violence and often the product of mental disorder” aimed primarily at celebrities; from 1992 to 1994 it started being considered “a product of failed relationships and male violence” or “a form of domestic violence against women” and “a gender-based crime”⁹ which became so massive and frequent as to be called an epidemic. First successful policy campaigns for recognition and addressing of stalking by law were in fact also built upon “the reframing of stalking as a gendered crime”¹⁰ and “the bracketing of stalking with domestic violence”¹¹.

Despite the historical context, today the majority tend to think of stalking as a crime “mainly perpetrated by strangers [*men – auth.*] who are mentally disturbed and their pursuit [*of women – auth.*] usually leads to violent attacks and homicide”¹². To a great extent, this stereotype is a product of public culture and media.

First, indeed, it is well established by research that most stalkers are male and the absolute majority of victims are female (over 80% according to some authors)¹³. And I shall also note that for the purposes of the present study, stalking will be researched exclusively from this most common perspective and within the framework of a broader phenomenon of violence against women. However, in fact stalking can be committed by both men and women as well as appear within same-sex relationships.

Second, “while many stalkers suffer from personality disorders, only a minority is diagnosed with major mental illness”¹⁴. Third, the victim and the stalkers in terms of their

⁹ Jenny Korkodeilou, "Stalking victims, victims of sexual violence and criminal justice system responses: is there a difference or just 'business as usual'?" (2016) 16

¹⁰ *Id.* 17

¹¹ Paul E. Mullen, et al. *Stalkers and their victims*. (Cambridge University Press, 2000) 21

¹² Jenny Korkodeilou, "Stalking victims, victims of sexual violence and criminal justice system responses: is there a difference or just 'business as usual'?" (2016) 14

¹³ Lorraine Sheridan, Amy E. Lyndon, "The influence of prior relationship, gender, and fear on the consequences of stalking victimization" (2012) 340,341

¹⁴ Jenny Korkodeilou, "Stalking victims, victims of sexual violence and criminal justice system responses: is there a difference or just 'business as usual'?" (2016) 14

relationships may be either: (former) intimate partners, acquaintances, or strangers¹⁵. Most research finds that the absolute majority of stalking victims (up to 80%¹⁶) know their stalker in person. In most cases the stalker appears to be a (former) intimate partner, followed by acquaintances (colleagues, family members etc.), while stalking by a stranger is the least common scenario¹⁷.

The phenomenon of “partner stalking” which already drew attention of scholars is believed to be distinguished from ordinary stalking in several ways¹⁸. Namely, research confirms that stalking perpetrated by intimate partners usually leads to more severe and serious violence¹⁹. Despite this well-established fact, the same behavior is often considered as more serious when committed by a stranger from both a victim’s and third parties’ (including the law-enforcement agencies)²⁰. Some research proves that stalking-strangers are more likely to get arrested or convicted for the crime of stalking than intimate partner stalkers²¹. There are two main arguments capable to explain this paradox: first, for the victim “motives, and behaviors of stranger stalkers are unknown, making the situation harder to predict and control”²²; second and more important, the beliefs about the nature of stalking are greatly affected “by common socio-cultural expectations about gender roles and (patriarchal) beliefs and assumptions about what is normal and acceptable within relationships”²³. In case of intimate partner stalking, the stalker’s behavior is likely to be considered acceptable and

¹⁵ Heather C. Melton. "Stalking in the context of intimate partner abuse: in the victims' words" *Feminist Criminology* 2.4 (2007) 347

¹⁶ Brian H. Spitzberg, William R. Cupach, "The state of the art of stalking: Taking stock of the emerging literature" *Aggression and violent Behavior* 12.1 (2007)

¹⁷ Judith McFarlane, Jacquelyn C. Campbell, Kathy Watson, "Intimate partner stalking and femicide: Urgent implications for women's safety" *Behavioral sciences & the law* 20.1-2 (2002) 51,52; Laurence Miller, "Stalking: Patterns, motives, and intervention strategies" *Aggression and violent behavior* 17.6 (2012): 495,496

¹⁸ Logan, T. K., Robert Walker, "Partner stalking: Psychological dominance or “business as usual”?" *Trauma, Violence, & Abuse* 10.3 (2009) 247, 248

¹⁹ Judith McFarlane, Jacquelyn C. Campbell, Kathy Watson, "Intimate partner stalking and femicide: Urgent implications for women's safety" (2002) 51,53,66

²⁰ Adrian J. Scott, et al, "International perceptions of stalking and responsibility: The influence of prior relationship and severity of behavior" *Criminal Justice and Behavior* 41.2 (2014) 220,221

²¹ Id. 232

²² Id. 222

²³ Jenny Korkodeilou, *Victims of Stalking* (Springer International Publishing 2020) 15

justified by the romantic relationships with the victim as well as the women stalked are likely to face victim-blaming for maintaining such relationships with a stalker, provoking him to stalk and so on.

Moreover, stalking by intimate partners often begins prior to the break-up period²⁴. This scenario probably most complicates the task of defining the concept of stalking and distinguishing it from related categories. Some authors in case of intimate partner stalking directly raise the questions of exact differences between “continuing abuse and harassment” and even “the validity of the construct of stalking” itself²⁵. For example, it is suggested that stalking should be considered a form of “intimate partner violence during the relationship”²⁶, or “extension of partner violence”²⁷ after the breakup. For similar reasons, stalking has been associated with intimate partner homicide and attempted homicide²⁸. Stalking may also be considered as a part of the general “cycle of (*domestic – auth.*) violence”²⁹ Moreover, intimate partner stalking can also be considered as a form of continuing coercive control³⁰. Yet, some authors challenge this theory³¹.

The distinction between violence and coercive control models seems to be of particular interest. There are several approaches to the concept of “coercive control” different in how they see the interconnection between physical violence, context and control and its gendered

²⁴ Walker, Robert, et al, “Partner stalking: How women respond, cope, and survive” *Springer Publishing Company* (2006) 6; Logan, T. K., Robert Walker, "Partner stalking: Psychological dominance or “business as usual”?" (2009) 247,361

²⁵ Id. 253

²⁶ Heather C. Melton, "Stalking in the context of intimate partner abuse: in the victims' words" (2007) 347,361

²⁷ Logan T. K., Jennifer Cole, "Exploring the intersection of partner stalking and sexual abuse" *Violence Against Women* 17.7 (2011) 904,904

²⁸ Judith McFarlane, Jacquelyn C. Campbell, Kathy Watson, "Intimate partner stalking and femicide: Urgent implications for women's safety" (2002); Kathryn E. Moracco, Carol W. Runyan, John D. Butts, "Femicide in North Carolina, 1991-1993: A statewide study of patterns and precursors." (1998)

²⁹ Frances L. Coleman, "Stalking behavior and the cycle of domestic violence" (1997) 420,430

³⁰ Evan Stark, "Looking beyond domestic violence: Policing coercive control" *Journal of police crisis negotiations* 12.2 (2012)

³¹ Jane Monckton-Smith, Karolina Szymanska, Sue Haile, "Exploring the relationship between stalking and homicide" (2017)

dimension³². In particular, Evan Stark, whose approach will be followed by the present work, indicates core disadvantages associated with approaching the domestic violence through a violence model as following: the violence model tends to focus on separate violent acts (and their severity or generally on physical violence) despite the fact that partner assaults are almost never isolated incidents and all “minor” acts only form a clear picture when considered altogether, “because the hallmarks of violence in abuse cases are its frequency and duration, not its severity. Thus, when the response is gauged to severe violent acts, most abuse goes either unrecognized or unpunished”³³ as they lack legal standing. Stark also argues that coercive control implies that “primarily male offenders exploit persistent sexual inequalities in the economy and in how roles and responsibilities are designated in the home and community to establish a formal regime of domination/subordination behind which they can protect and extend their privileged access to money, sex, leisure time, domestic service and other benefits”³⁴. Namely, coercive control tactics include isolation, degradation, monitoring and regulation of daily life, exploitation, intimidation and various forms of abuse³⁵. This switch from the question of violence to the question of discrimination, let it be made through a separate yet being discussed concept of coercive control, seems to be crucial for addressing stalking. But before further elaboration, I would like to outline some more preliminary findings on stalking.

Manifestations of stalking traditionally include: following and spying on the victim (surveillance); (physical) assaults; sending unwanted correspondence, gifts or other items; property damage or theft; phone calls; harassment; direct approaches toward the victim; threatening, “hiring private investigators, contacting the victim’s friends, family, neighbors, or

³² Sylvia Walby, Jude Towers, “Untangling the Concept of Coercive Control: Theorizing Domestic Violent Crime” *Criminology & Criminal Justice* 18.1 (2018) 7, 9

³³ Evan Stark, “Looking beyond domestic violence: Policing coercive control” (2012) 199, 201

³⁴ Id. 199, 206

³⁵ Id. 199, 201

co-workers”³⁶. Cyberstalking being a product of digitalization basically means “stalking that primarily takes place using technology implies such as social media, cell phones, messaging, and GPS tracking”³⁷ and may include a range of activities from identity theft to monitoring internet activities of the victim or distributing her stolen or previously taken private (intimate) images. Nowadays, stalking in most cases takes place both onsite and online³⁸. The list of activities which, taken together, may constitute stalking is not at all exclusive. Hence, some authors claim for a broader interpretation of stalking as to include, for example, “vexatious or baseless allegations or court action”³⁹. Stalking is a developing concept and alongside with already quite well recognized cyberstalking, its new forms emerge in doctrine, such as, proxy stalking (when a third party is used to stalk the victim)⁴⁰ or group stalking⁴¹, which do not make the task of identifying stalking in practice any easier.

Difficulties thus arise not only when defining stalking, but also when distinguishing it from related forms of violence against women: sexual harassment, the unwanted pursuit of intimacy, domestic violence, emotional and physical abuse and so on. From this perspective stalking, I believe, constitutes quite a unique phenomenon and differs by the following means. First of all, stalking “involves repeat victimization”⁴², it is not a single act but a pattern/campaign of behavior, a chain of actions. So, stalking does not simply consist of several

³⁶ Christopher Krebs et al, "The association between different types of intimate partner violence experienced by women" *Journal of Family Violence* 26.6 (2011) 487,489; Heather C. Melton, "Stalking in the context of intimate partner abuse: in the victims' words" (2007) 347,349; Laurence Miller, "Stalking: Patterns, motives, and intervention strategies" (2012) 495,496-497

³⁷ Andréa Becker, Jessie V. Ford, Timothy J. Valshtein, "Confusing stalking for romance: Examining the labeling and acceptability of men's (cyber) stalking of women" *Sex Roles* 85.1 (2021)

³⁸ Jane Monckton-Smith, Karolina Szymanska, Sue Haile, "Exploring the relationship between stalking and homicide" (2017)

³⁹ Ibid.

⁴⁰ Stalking Prevention, Awareness, and Resource Center, *Responding to Stalking: a Guide for Victim Advocates* (SPARK, 2018) 6

⁴¹ Lorraine P. Sheridan, David V. James, "Complaints of group-stalking ('gang-stalking'): An exploratory study of their nature and impact on complainants" *The Journal of Forensic Psychiatry & Psychology* 26.5 (2015); Lorraine Sheridan, David V. James, Jayden Roth, "The Phenomenology of Group Stalking ('Gang-Stalking'): A Content Analysis of Subjective Experiences" *International journal of environmental research and public health* 17.7 (2020)

⁴² Stalking Prevention, Awareness, and Resource Center, *Responding to Stalking: a Guide for Victim Advocates* (SPARK, 2018) 4

single acts, which “may be legal by themselves and appear harmless”⁴³, but their combination and cumulative effect shall be assessed to determine the nature of stalking and the “repetitiveness and persistence of the behavior as well as the motivational and situational context of the pursuit”⁴⁴. Some authors also stipulate that “unlike “traditional” crimes, its [stalking – auth.] perception and emotional reaction are highly subjective⁴⁵, among all due to high level of unpredictability of stalking, especially when committed by stranger, when “the victim does not know who is stalking her, how bad it will get, or when it will end”⁴⁶. Moreover, stalking often implies escalation over time⁴⁷. That is why stalking legislation is expected to “provide means for early intervention...before the behavior escalated”⁴⁸. To distinguish stalking from related forms of violence against women, the intent of the stalker (to pursue and distress, scare the victim), its severity (some threshold of violent behavior)⁴⁹ as well as generally “its duration, intensity, intrusion level, timing, and implicit and explicit threats”⁵⁰ might be taken into account as well as the behavior of the victim who often experience fear and tends to “ran and hide” from the stalker.

For effective addressing, it is crucial for stalking to be considered not just a crime, but also a broader phenomenon: a human rights violation affecting women disproportionately and thus a form of violence against women. Recognizing stalking as a human rights violation would imply international state positive obligations; recognizing stalking as a form of violence against women would shed light on the direct link between violence and discrimination against women.

⁴³ Id. 4

⁴⁴ Jenny Korkodeilou, *Victims of Stalking* (Springer International Publishing 2020) 18

⁴⁵ Kathleen A. Fox, Matt R. Nobles, Bonnie S. Fisher, "Method behind the madness: An examination of stalking measurements" *Aggression and violent behavior* 16.1 (2011) 74,75

⁴⁶ Laurence Miller, "Stalking: Patterns, motives, and intervention strategies" (2012) 495,502

⁴⁷ Linda Cox, Bette Speziale. "Survivors of stalking: Their voices and lived experiences" *Affilia* 24.1 (2009) 5,10

⁴⁸ Susan M. Dennison, Donald M. Thomson, "Criticisms or Plaudits for Stalking Laws? What Psycholegal Research Tells Us About Proscribing Stalking" *Psychology, Public Policy, and Law* 11.3 (2005) 384,385

⁴⁹ Brian H. Spitzberg, William R. Cupach, "The state of the art of stalking: Taking stock of the emerging literature" (2007) 64,66

⁵⁰ Logan, T. K., Robert Walker, "Partner stalking: Psychological dominance or “business as usual”?" (2009) 247, 256

If this link is acknowledged state positive obligations are not restricted to addressing separate episodes of violence against women, but imply addressing structural problems such as traditional or cultural stereotypes of gender roles, inequality of men and women throughout the history and require women empowerment.

Moreover, modern feminists' views of equality are generally not restricted to non-discrimination, equality before law or sameness/difference model, rather they restore to broader concepts of "oppression and domination"⁵¹, require "liberation of women from patriarchy"⁵², "ending violation and abuse and second-class citizenship' of women because of their sex"⁵³ in social, political, economic and other spheres of life, so women are treated not just fair or equally to men but as humans with dignity. Stalking from this perspective also forms a particular "tool of dominance, oppression and social subjugation of women" by men in a context of "rape culture"⁵⁴ and broader gender inequality, "diminishing women's independence and their basic human right to a safe and autonomous life"⁵⁵. Therefore, to effectively address stalking it shall be recognized as both a form of violence against women and a human rights violation.

⁵¹ Alice Edwards. *Violence against women under international human rights law*. (Cambridge University Press, 2010) 145-146

⁵² Id. 163-164

⁵³ Id. 146

⁵⁴ Andréa Becker, Jessie V. Ford, Timothy J. Valshtein, "Confusing stalking for romance: Examining the labeling and acceptability of men's (cyber) stalking of women" (2021)

⁵⁵ Jenny Korkodeilou, *Victims of Stalking* (Springer International Publishing 2020) 171,180

Chapter 2. Stalking under contemporary international human rights law

2.1 International human rights law as a tool to combat violence against women

It is well acknowledged that violence against women is covered by general existing international civil and political rights such as “the rights to life, to security, to physical and psychological integrity, to a private life”⁵⁶, principle prohibitions of torture and slavery and some economic and cultural rights. For many years the goal was to provide women with equal rights to men. The Preamble of the Convention on the Elimination of All Forms of Discrimination against Women (hereafter the CEDAW) fairly states that despite the existence of various international instruments, “extensive discrimination against women continues to exist”⁵⁷ and today the substantial equality is called for achievement. Under this notion women’s rights need to be addressed specifically, taking into account the historical and cultural background, existing oppression of women, social stereotypes and day-to-day gender-based discrimination. From this broader perspective, there is a fairly recent tendency in international human rights law to consider violence against women more seriously and to create a comprehensive independent legal framework capable of effectively combating it.

This chapter attempts to critically evaluate contemporary international human rights law in respect of combating violence against women and also to find the place of stalking within it. Shall it in fact be considered a separate human rights violation under contemporary international human rights law? Under what reasoning? Despite women’s rights being addressed as well by Inter-American, African and other regional human rights frameworks⁵⁸, the research is restricted to those international instruments applicable to Russian Federation (the instruments

⁵⁶ Elisabeth Veronika Henn. *International Human Rights Law and Structural Discrimination*. (Springer Berlin Heidelberg, 2019) 85-86

⁵⁷ Convention on the Elimination of All Forms of Discrimination against Women 1979

⁵⁸ Convention on the Prevention of Violence against Women (Convention of Belém do Pará) 1994; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003

of the United Nations and the Council of Europe), or that were at least applicable before Russia's leaving the Council of Europe.

The development of the concept of women rights was to a great extent influenced by recognition of the direct link between violence and discrimination against women, briefly mentioned above. Recognizing violence against women as a form of discrimination against women, basically “transformed the CEDAW from an anti-discrimination treaty into a gender-based violence treaty⁵⁹, as “violence against women is no longer perceived as an individual criminal act but part of a systemic and political problem”⁶⁰ or even political violence, moreover, driven “by patriarchy, traditional and cultural stereotypes of women, rigid gender roles, poverty, and a lack of economic and political autonomy and empowerment for women”⁶¹. Therefore, the focus is shifted to the failure of states to comply with their obligations⁶². States today are required to interfere, take positive “structurally based solutions” and comprehensive measures⁶³.

Case law of the European Court of Human Rights (hereafter the ECtHR or the Court) also suggests gradual recognition of this gendered dimension by applying Article 14 of the European Convention on Human Rights⁶⁴ to cases of violence against women through cases such as first of all *Opuz v. Turkey*⁶⁵ (first domestic violence case where the Court recognized the discrimination and violation of Article 14 of the Convention and then consistently applied it in *B.S. v. Spain*⁶⁶, *Talpis v. Italy*⁶⁷ or *Volodina v. Russian Federation*⁶⁸).

⁵⁹ Alice Edwards. *Violence against women under international human rights law*. (Cambridge University Press, 2010) 180-181

⁶⁰ Id. 186

⁶¹ Id. 189

⁶² Elisabeth Veronika Henn. *International Human Rights Law and Structural Discrimination*. (Springer Berlin Heidelberg, 2019) 85

⁶³ Alice Edwards. *Violence against women under international human rights law*. (Cambridge University Press, 2010) 178

⁶⁴ European Convention on Human Rights 1953

⁶⁵ *Opuz v. Turkey* App no 33401/02 (ECHR, 9 June 2009)

⁶⁶ *B.S. v. Spain* App no 47159/08 (ECHR, 24 June 2012)

⁶⁷ *Talpis v. Italy* App no 41237/14 (ECHR, 18 September 2017)

⁶⁸ *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019)

As recently as 2013, the Court's cases contained no precise rhetoric of domestic violence. It was just "acts of violence by private individuals"⁶⁹ committed against other private individuals. Even when the term spontaneously appeared, nothing stood behind it: neither specified nature of domestic violence nor state positive obligations implied by it. It is worth mentioning here the concurring opinion of the Judge Pinto de Albuquerque who back in 2013 in the case *Valiulienė v. Lithuania* stated that "domestic violence has emerged as an autonomous human rights violation", stressing "the real and full meaning of violence in the domestic context" and "gendered understanding of violence"⁷⁰.

Apparently, the term domestic violence indeed eventually became the leading force of the considerable progress achieved by the Court in dealing with women's rights. More precisely, domestic violence was recognized as a separate human rights violation, (to a considerable extent, thanks to a concept of coercive control, explained in *Chapter 1*). Namely, in cases of domestic violence the Court: found that "the particular diligence needed in dealing with complaints concerning domestic violence"⁷¹. This "special diligence"⁷² is justified by "specific nature of domestic violence as recognized in the Preamble to the Istanbul Convention"⁷³ which lies in its lasting⁷⁴ character. Previously the Court considered it as the recurrence of successive episodes of violence, a climate of violence⁷⁵, a "continuous situation"⁷⁶. Today the ECtHR stresses that domestic violence can appear equally from a single incident or result from a long-standing "controlling or coercive behaviour"⁷⁷, meaning first "consecutive cycles of domestic

⁶⁹ *D.P. v. Lithuania* App no 27920/08 (ECHR, 22 October 2013); *Bevacqua and S. v. Bulgaria* App no 71127/01 (ECHR, 12 June 2008); *Rumor v Italy* App no 72964/10 (ECHR, 27 May 2014)

⁷⁰ *Valiulienė v. Lithuania* App no 33234/07 (ECHR, 26 March 2013)

⁷¹ *MG v Turkey* App no 646/10 (ECHR, 22 March 2016); *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019); *Barsova v. Russia* App no no. 20289/10 (ECHR, 22 October 2019)

⁷² *Tkheldze v. Georgia*, App no 33056/17 (ECHR, 8 July 2021) para 54; *A and B v. Georgia* App no 73975/16 (ECHR, 10 February 2022) para 47

⁷³ *Talpis v. Italy* App no 41237/14 (ECHR, 18 September 2017) para 129

⁷⁴ *A and B v. Georgia* App no 73975/16 (ECHR, 10 February 2022) para 47

⁷⁵ *Talpis v. Italy* App no 41237/14 (ECHR, 18 September 2017) para 126

⁷⁶ *A. v. Croatia* App no 55164/08 (ECHR, 14 October 2010) para 55

⁷⁷ *T. M. and C. M. v. the Republic of Moldova* App no 26608/11 (ECHR, 28 January 2014) para 47; *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019) para 81

violence, often with an increase in frequency, intensity and danger over time”⁷⁸; second – the “fear of further assaults can be sufficiently serious to cause victims of domestic violence to experience suffering and anxiety”⁷⁹ as “psychological impact forms an important aspect of domestic violence”⁸⁰. The Court returned to the coercive control model thus accessing the cumulative effect of violence suffered by the victim and not just its particular episodes⁸¹. The ECtHR also recognized “particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection”⁸² and recently even seemed to go as far as to recognize the particular vulnerability of victims of coercive control and not just domestic violence⁸³. The coercive control model therefore also plays a crucial role in development of international legal framework in respect of combating violence against women.

The special diligence implied the creation of a special test for domestic violence cases in *Kurt v. Austria*⁸⁴ which replaced a general *Osman* test⁸⁵. This new test requires that states respond immediately to allegations of domestic violence; the risk assessment shall be autonomous, proactive and comprehensive, taking into account “special context of domestic violence”; if the risk is indeed real and immediate “the authorities must take adequate and proportionate preventive operational measures to avert that risk”⁸⁶.

Thus through the notion of coercive control and with the influence of the Convention on Preventing and Combating Violence against Women (hereafter the Istanbul Convention)⁸⁷, “domestic violence” eventually became an umbrella term for the Court to deal with absolute

⁷⁸ *Kurt v. Austria* App no 62903/15 (ECHR, 15 June 2021) para 175; *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 10

⁷⁹ *Eremia v. the Republic of Moldova* App no. 3564/11 (ECHR 28 May 2013) para.54; *T.M. and C.M. v. the Republic of Moldova* App no 26608/11 (ECHR, 28 January 2014) para 41

⁸⁰ *Valiulienė v. Lithuania* App no 33234/07 (ECHR, 26 March 2013); *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019)

⁸¹ Evan Stark, "Looking beyond domestic violence: Policing coercive control" (2012) 199,204

⁸² *Bălșan v. Romania*, App no 49645/09 (ECHR, 23 May 2017) para 57

⁸³ *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 76

⁸⁴ *Kurt v. Austria* App no 62903/15 (ECHR, 15 June 2021) para 64-65

⁸⁵ *Osman v. the United Kingdom* App no 87/1997/871/1083 (ECHR, 28 October 1998) para 116

⁸⁶ *Y And Others v. Bulgaria* App no 9077/18 (ECHR, 22 March 2022) para 89

⁸⁷ Convention on Preventing and Combating Violence against Women 2011

majority of cases of violence against women committed by intimate partners⁸⁸ as “the forms of domestic violence” according to the Court include “stalking, verbal, psychological or economic violence, or any forms of controlling or coercive behaviour”⁸⁹ and there are many cases in which these forms of violence against women appear indeed and are named explicitly by the Court⁹⁰.

The approach of the CEDAW Committee can be considered similar. While the Convention developed through General Recommendations No. 19 and No.35 so as to include gender-based violence “that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”⁹¹ and some specific forms of it, for example sexual harassment, yet restricted to acts at the workplace. Today the CEDAW Committee deals with many cases of intimate partner violence under the umbrella term of “domestic violence”⁹².

The CEDAW Committee does not use any specific test in cases of domestic violence. The authorities are merely required to intervene where they “are aware or should be aware of the risk of such violence”⁹³ (so is similar to the *Osman* test of the ECtHR). Moreover, the Committee assesses “the level of gender sensitivity applied in the handling of the author’s case by the authorities”⁹⁴. The specific nature of domestic violence or the coercive control concept, in particular, are not yet explicitly recognized by the Committee. However, in some cases the CEDAW Committee uses terms such as “the author’s vulnerable position and long-term

⁸⁸ *Bevacqua and S. v. Bulgaria* App no 71127/01 (ECHR, 12 June 2008); *Hajduova v. Slovakia* App no. 2660/03 (ECHR, 28 February 2011); *T. M. and C. M. v. the Republic of Moldova* App no 26608/11 (ECHR, 28 January 2014)

⁸⁹ *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019); *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021)

⁹⁰ *Kurt v. Austria* App no 62903/15 (ECHR, 15 June 2021); *Civek v Turkey* App no 55354/11 (ECHR, 23 February 2016); *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019)

⁹¹ CEDAW General Recommendation No. 19 1992

⁹² *X and Y v. Georgia* CEDAW/C/61/D/24/2009 [2015]; *V.K. v. Bulgaria* CEDAW/C/49/D/20/2008 [2011]; *Goekce v. Austria* CEDAW/C/39/D/5/2005 [2007]; *S.L. v Bulgaria* CEDAW/C/73/D/99/2016 [2019]; *J.I. v. Finland* CEDAW/C/69/D/103/2016 [2018]; *X. v. Timor-Leste* CEDAW/C/69/D/88/2015 [2018]

⁹³ *S.L. v Bulgaria* CEDAW/C/73/D/99/2016 [2019]; *J.I. v. Finland* CEDAW/C/69/D/103/2016 [2018]

⁹⁴ *O.G. v. Russia* CEDAW/C/68/D/91/2015 [2017] para 7.6; *S.T. v. Russia* CEDAW/C/68/D/65/2014 [2019] para 9.6

suffering”⁹⁵, “a pattern of action”⁹⁶ and in other cases the Committee does not discuss them at all or simply stresses “repeated acts of domestic violence”⁹⁷. Ultimately, there is no consistency or real evolution of the approach to be noted.

2.2 Applying a gendered dimension of violence against women to stalking

Both the ECtHR and the CEDAW Committee have analyzed cases of stalking, but so far only those committed by former intimate partners. In such cases to distinguish domestic violence from stalking (when committed by former intimate partners) is a difficult task partly because domestic violence is in itself a complicated phenomenon of many forms and variations. So, both the ECtHR and the CEDAW Committee recognize that “as long as the violence towards a former spouse or partner stems from that person being in a prior relationship with a perpetrator, the time that has elapsed since the end of the relationship is irrelevant, as is whether the persons concerned live together”⁹⁸.

At the same time, it seems that some cases of stalking by former intimate partners can be distinguished from cases of continuing domestic violence by ex-partners. In particular, this distinction can depend on the intent and actions of the perpetrator chasing the victim, actively trying to contact or reach her, breaking protection orders, for example, demanding that their relationship to continue⁹⁹. It can also depend on the side of the victim, in the sense of fear or real actions of running and hiding)¹⁰⁰; or rather be a combination of both factors¹⁰¹. In contrast, in cases of continuing domestic violence the chasing-running component seems to be absent and the violence happens occasionally when the parties meet¹⁰² (accidentally or as planned, for

⁹⁵ *S.L. v. Bulgaria* CEDAW/C/73/D/99/2016 [2019] para 7.11

⁹⁶ *Angela González Carreño v. Spain* CEDAW/C/58/D/47/2012 [2014] para 9.4

⁹⁷ *X and Y v. Georgia* CEDAW/C/61/D/24/2009 [2015] para 9.2

⁹⁸ *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 154; *O.G. v. Russia* CEDAW/C/68/D/91/2015 [2017]

⁹⁹ *O.G. v. Russia* CEDAW/C/68/D/91/2015 [2017] para 2.1

¹⁰⁰ *Fatma Yildirim v. Austria* CEDAW/C/39/D/6/2005 [2007]

¹⁰¹ *A. v. Croatia* app no 55164/08 (ECHR, 14 October 2010); *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019); *Tkheldze v. Georgia*, App no 33056/17 (ECHR, 8 July 2021)

¹⁰² *S.L. v. Bulgaria* CEDAW/C/73/D/99/2016 [2019]; *J.I. v. Finland* CEDAW/C/69/D/103/2016 [2018]; *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021)

example, when sharing child custody) and even if some element of stalking exists it does not become constituting (decisive) for further violence to occur. Indeed, in some cases to draw the line between domestic violence and stalking by former intimate partners can be especially difficult¹⁰³.

The Istanbul Convention is considered one of the most progressive regional instruments dedicated to women rights¹⁰⁴. Not only does the Convention “apply to all forms of violence against women and girls, including domestic violence”, but it explicitly names many particular forms of violence against women, including psychological and economic violence, sexual harassment and, most importantly for this work, Article 34 of the Convention addresses stalking. Stalking therein is defined as “the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety”¹⁰⁵. The Istanbul Convention, despite not being ratified by Russia, is frequently used by both the ECtHR¹⁰⁶ and the CEDAW Committee¹⁰⁷ including in cases against Russia to interpret state positive obligations. Eventually, with the influence of the Istanbul Convention (and under the further development of the coercive control model), stalking (first of all, where committed by strangers) can indeed make it into case law of the ECtHR (then maybe also the CEDAW Committee) as a separate legal concept. It is a different question whether it should?

Arguments here can be distinguished into theoretical and practical ones. In theory, if not identified and addressed separately cases of stalking will not be recognized significant as to require urgent state actions. For example, victims of stalking frequently fail to report their cases

¹⁰³ *X. and Y. v. Russia* CEDAW/C/73/D/100/2016 [2019]; *Angela González Carreño v. Spain* CEDAW/C/58/D/47/2012 [2014]

¹⁰⁴ Suzan van der Aa, "New trends in the criminalization of stalking in the EU member states" *European Journal on Criminal Policy and Research* 24.3 (2018) 315,316

¹⁰⁵ Council of Europe Convention on preventing and combating violence against women 2014, art 34

¹⁰⁶ *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019); *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021)

¹⁰⁷ *O.G. v. Russia* CEDAW/C/68/D/91/2015 [2017]

out of “uncertainty about whether what is occurring is, in fact, stalking”¹⁰⁸ as “stalking is minimized because society minimizes it”¹⁰⁹. On the domestic level, the legislators and law-enforcement agencies “often do not perceive stalking to be serious or dangerous”¹¹⁰. While the situation with domestic violence remained (and sometimes still remains) the same, it is exactly the attention of international bodies and international and local NGOs which raised attention and awareness on the problem to call for changes. Indeed, since the adoption of the Istanbul Convention and explicit recognition of stalking “the number of countries with dedicated legislation has increased substantially and some (online) sources report of the direct link between the criminalization of stalking and the obligation stipulated in article 34 of the Convention”¹¹¹.

From a practical point of view, the recognition of stalking as a separate human rights violation in case law is needed if the court needs to develop a special test for cases of stalking or some specific state positive obligations are to be formulated. As mentioned above, the test of special due diligence of the ECtHR highly relies on the coercive control model (the Court does not rely on personal/sexual relations between the parties to be a decisive feature but rather the character of violence: lasting and complex). Thus it does not seem that any different test or risk assessment is needed for cases of stalking, however the special due diligence test as well as recognition of particular vulnerability of victims of coercive control cases shall apply equally to cases of stalking by strangers and not be restricted to cases of violence by intimate partners.

Would positive obligations in cases of stalking make a difference and which obligations would we be speaking about specifically? The CEDAW Committee generally requires from

¹⁰⁸ Tim Boehnlein et al, "Responding to stalking victims: Perceptions, barriers, and directions for future research" *Journal of Family Violence* 35.7 (2020) 755,755

¹⁰⁹ Id. 758

¹¹⁰ Larsen Mandi, Corey Tax, and Shelly Botuck, "Standardizing practice at a victim services organization: A case analysis illustrating the role of evaluation" *Administration in Social Work* 33.4 (2009); Logan T. K., Lisa Shannon, and Jennifer Cole, "Stalking victimization in the context of intimate partner violence" *Violence and victims* 22.6 (2007)

¹¹¹ Suzan van der Aa, "New trends in the criminalization of stalking in the EU member states" (2018) 315,324

states to “adopt and implement constitutional and legislative measures to tackle gender-based violence against women committed by non-State actors, also in the private sphere”¹¹² as well as to “prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”¹¹³. As for the “special positive obligations” in cases of domestic violence, the CEDAW Committee only requires “criminal prosecution of domestic violence”¹¹⁴, recommends “to specifically criminalize gender-based violence, domestic violence and marital rape and to introduce the possibility of *ex officio* prosecution for all three offences”¹¹⁵ and stresses the importance of a comprehensive law on domestic violence and “a proper definition of domestic violence in legislation”¹¹⁶. The CEDAW Committee also requires states to ratify the Istanbul Convention as part of general measures.

As for domestic violence specific obligations developed by the ECtHR, states that usually the authorities are required to adopt criminal measures. However, “different legislative solutions in the sphere of criminal law may be able to satisfy this obligation ... domestic violence may be categorised in the domestic legal system as a separate offence or as an aggravating element of other offences”¹¹⁷. The ECtHR also stresses the importance of making a legal “distinction between domestic violence and violence committed by strangers”¹¹⁸. “The lack of a definition of “domestic violence” ... prevents the authorities from taking a comprehensive view of a continuum of violence and treating it as a single course of conduct rather than isolated incidents”¹¹⁹. The Court also requires criminal public proceedings to be available in cases of domestic violence as “the possibility to bring private prosecution

¹¹² *S.L. v. Bulgaria* CEDAW/C/73/D/99/2016 [2019]

¹¹³ *X. and Y. v. Russia* CEDAW/C/73/D/100/2016 [2019] para 9.3

¹¹⁴ *O.G. v. Russia* CEDAW/C/68/D/91/2015 [2017]

¹¹⁵ *S.L. v. Bulgaria* CEDAW/C/73/D/99/2016 [2019] para 7.8

¹¹⁶ *X. and Y. v. Russia* CEDAW/C/73/D/100/2016 [2019] para 9.7

¹¹⁷ *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 86

¹¹⁸ *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 87

¹¹⁹ *Galović v. Croatia* App no 45512/11 (ECHR, 31 August 2021) paras 117-119; *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 94

proceedings is not sufficient, as such proceedings require the victim's time and resources and cannot prevent the recurrence of similar incidents"¹²⁰ as well as put an excessive burden on the victim. When assessing state positive obligations under Art 14 of the Convention, the Court stressed the principal possibility of a conclusion that "the refusal to ratify the Istanbul Convention could be seen as lack of sufficient regard for the need to provide women with effective protection against domestic violence"¹²¹, but postponed it for future cases.

Generally domestic violence cases are ones where both the Court and the CEDAW Committee take a very progressive and far-reaching approach to general measures required. Namely, the ECtHR calls for mandatory training of law-enforcement agencies and special guidelines offered to them for cases of domestic violence; extra-judicial and judicial protective measures, (above all – "restraining orders", "protection orders" or "safety orders"), accurate collection of comprehensive statistics on domestic violence¹²².

Yet so far within the case law of the ECtHR, the CEDAW Committee some key obligations suggested by the Court remain recommendations rather than requirements as states enjoy considerable margin of appreciation on how to organize domestic legal orders and are to make final decisions on organization of domestic legal systems¹²³. There is also lack of consistency and clear guidelines because, as the ECtHR points it out, "the task is not to review domestic law in the abstract but to determine whether the way in which that law was applied to the applicant gave rise to a breach of the Convention" so the assessment happens on a case-by-

¹²⁰ *Bevacqua and S. v. Bulgaria* App no 71127/01 (ECHR, 12 June 2008) para 83; *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019) para 82

¹²¹ *Y And Others v. Bulgaria* App no 9077/18 (ECHR, 22 March 2022) para 130

¹²² *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021)

¹²³ *Hajduova v. Slovakia* App no. 2660/03 (ECHR, 28 February 2011) para 47; *Eremia v. the Republic of Moldova* App no 3564/11 (ECHR, 28 May 2013) paras 50,76; *Talpis v. Italy* App no 41237/14 (ECHR, 18 September 2017) para.103; *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019) para 79

case basis¹²⁴. Therefore, it is equally unclear whether separate comprehensive measures could be suggested for cases of stalking so far.

At the same time, when it comes to stalking-specific positive obligations of states, the Istanbul Convention calls for a criminalization of stalking, “while allowing flexibility where the legal system of a Party provides only for non-criminal sanctions in relation to stalking”¹²⁵. The GREVIO Committee also finds problematic the approach of states which “continue to rely on general criminal provisions, such as assault, threat or coercion, in combination with protection order schemes” as “as such provisions did not adequately cover the constituent elements of the offence of stalking as defined under Article 34 nor did they reflect the seriousness of this offence” and its specific “criminal nature”¹²⁶. The development of a proper definition of stalking and its criminalization within domestic legislations could and should be the first step of legal recognition of the problem and solving it. There are also other stalking-specific problems which might need special consideration under domestic legislations, for example, that “the experience of stalking victims shows that many stalkers do not confine their stalking activities to their actual victim but often target any number of individuals close to the victim”¹²⁷: intimate partners, family members, friends etc., thus such third parties shall also be effectively protected.

Other state positive obligations in cases of stalking do overlap with ones of domestic violence. These positive obligations shall be explicitly extended to stalking cases. For example, for an effective investigation in cases of stalking “a problem-solving approach”¹²⁸ shall be adopted, requiring above all proper identification of stalking cases. Thus, special guidelines,

¹²⁴ *Von Hannover v. Germany* (no. 2) App nos 40660/08 and 60641/08 (ECHR, 24 June 2012) para 116; *Perinçek v. Switzerland* App no 27510/08 (ECHR, 15 October 2015) para 136

¹²⁵ CoE Explanatory Report CETS 210 Violence against women and domestic violence (2014) para 186

¹²⁶ CoE Mid-term Horizontal Review of GREVIO baseline evaluation reports (2022) para 353

¹²⁷ CoE Mid-term Horizontal Review of GREVIO baseline evaluation reports (2022) para 185

¹²⁸ Neal Miller, "Stalking laws and implementation practices: A national review for policymakers and practitioners" *Institute for Law and Justice Domestic Violence Working Paper* (2001) 1,65

forms and trainings of law-enforcement agencies are required. Cooperation between law-enforcement agencies also poses a key positive obligation in cases of stalking, when victims often have to change their place of residence and move from one place to another in an attempt to run away from the perpetrator as well as accurate data collection on cases of stalking.

Moreover, cases of stalking form a promising chance to address cyberviolence against women on the international level, which is currently not addressed even by most progressive international instruments such as the Istanbul Convention. The existence of a relevant legal gap is also proved by the European Commission's new proposal of a Directive on combating violence against women and children¹²⁹. The Directive intends to “both complement and go beyond the EU's potential ratification of the Istanbul Convention”, “especially where it plans to criminalize various forms of cyber-violence against women, such as non-consensual sharing of intimate or manipulated material, cyber-stalking, cyber harassment, and cyber incitement to hatred”¹³⁰. The ECtHR has already recognized “acts of cyberviolence, cyberharassment and malicious impersonation...as forms of violence against women and children”¹³¹. However, cyberviolence also “falls to be considered as another facet of the complex phenomenon of domestic violence”¹³² as an umbrella term. Today stalking is rarely committed without cyberstalking¹³³ and cyberstalking activities range from gathering of private information to identity theft, hacking of network profiles or devices¹³⁴ or “revenge porn”; it could be claimed that cyberstalking is one of the main manifestation of cyberviolence and cases of stalking can be used to develop legislative framework and combat cyberviolence further, which case of *Volodina v. Russian Federation* (2) also illustrates. The case however was considered under

¹²⁹ Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence 2022/0066 (COD) 2022

¹³⁰ Mathias Möschel, “The European Union's Actions in the Domain of Combating Gender-Based Violence” 1,16

¹³¹ *Volodina v. Russian Federation* (No.2) App no 40419/19 (ECHR, 14 September 2021); *K.U. v. Finland* App no 2872/02 (ECHR, 2 September 2008) para 41

¹³² *Buturugă v. Romania* App no 56867/15 (ECHR, 10 February 2020) paras. 74, 78

¹³³ Cynthia Fraser et al, “The new age of stalking: Technological implications for stalking” *Juvenile and family court journal* 61.4 (2010) 39

¹³⁴ GREVIO General Recommendation No.1 on the Digital Dimension of Violence against Women 2021 para 41

Article 8 of the Convention and what is more important under the domestic violence framework. Thus, no specific positive obligations were discussed or offered by the Court for cases of cyberviolence, which seems to be an oversight and another negative consequence of using domestic violence as an umbrella term in all cases where intimate relationships between a victim and a perpetrator existed.

Separate addressing of stalking on the level of international human rights law could also unify various existing domestic legislations' approaches to stalking, some of which focus on the intent of stalker, others on his objective actions, psychological effect of stalking on the victim, the victim's objective actions and so on.

Yet, it seems that for the nearest future "domestic violence" will remain an umbrella term for cases of (ex-)intimate partner violence and stalking will not be properly distinguished and addressed; at least as long as there is no case of a particular gravity (or a considerable amount of cases) of stalking committed by strangers to push first of all the Court (and maybe later the Committee) to improve its approach to women rights protection further. The concept of coercive control seems as a key development within contemporary international human rights law capable of bringing attention to stalking and developing its legal agenda.

To conclude, back in 2008-2010 the ECtHR refrained from evaluating whether cases of domestic violence could reach the threshold of Article 3 of the Convention and simply addressed them under Article 8 and the notion of private life¹³⁵. Through the period of inconsistency (applying in parallel Article 8 to some cases of domestic violence and Article 3 to the others)¹³⁶, the Court came to applying Article 3 of the Convention to absolute majority of the domestic violence cases today and can even be considered close to treat domestic

¹³⁵ *Bevacqua and S. v. Bulgaria* App no 71127/01 (ECHR, 12 June 2008); *Hajduova v. Slovakia* App no. 2660/03 (ECHR, 28 February 2011); *A. v. Croatia* App no 55164/08 (ECHR, 14 October 2010)

¹³⁶ *Kalucza v. Hungary* App no 57693/10 (ECHR, 24 April 2012); *E.M. v. Romania* App no 43994/05 (ECHR, 30 October 2012); *Valiulienė v. Lithuania* App no 33234/07 (ECHR, 26 March 2013)

violence as a form of torture¹³⁷. There are indeed also positive general trends within international human rights law of paying closer attention to women rights, broadening their scope, strengthening approaches to combating violence against women with the understanding of its historical, cultural context and rhetoric of systematic discrimination as well as recognizing particular forms of violence against women and their interplay. There is a hope for diverse forms of violence against women to be internationally recognized further. Not only domestic violence, but psychological violence, economic violence, harassment out of a workplace context and of course stalking shall be properly addressed by legal means at the international level to be then implemented within domestic legislations: prevented, protected from, prosecuted and compensated for. In particular, when it comes to stalking, it shall be recognized both within and outside the context of intimate relations, (distinguished from domestic violence in the latter case) and in context of cyberviolence, relying on provisions of the Istanbul Convention, the existing case law of the ECtHR, the CEDAW Committee and other relevant international legal instruments.

¹³⁷ *Bălșan v. Romania*, App no 49645/09 (ECHR, 23 May 2017); *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019); *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021)

Chapter 3. Domestic approaches to stalking: the case of the Russian Federation

3.1 Domestic response to cases of stalking

Laws criminalizing stalking as a separate offense emerged in various domestic legal orders to actually distinguish stalking from other forms “unwanted intrusive behaviors, such as harassment and intimidation”¹³⁸ and to tackle stalking-specific aspects. Stalking laws (under the coercive control behavior scheme) were also adopted as means for early intervention and thus to prevent severe or actual bodily harm¹³⁹ and to reclaim the seriousness of the offence of stalking so to decrease the reluctance of the law-enforcement agencies¹⁴⁰. Stalking laws thus can also “be an effective deterrent for some would-be stalkers”¹⁴¹. With adoption of stalking legislation, the number of victims of stalking restoring to police and the courts also increases significantly¹⁴².

Back in 1990 California became the first American state to “enact anti-stalking legislation making stalking a crime”¹⁴³, today stalking laws are adopted by all the states. The Californian case also encouraged foreign legislators (including Canada and Australia) to develop stalking laws¹⁴⁴. Those common law countries which originally tried to tackle stalking through harassment provisions, today also tend to change the approach and adopt special stalking legislation¹⁴⁵. A majority of the EU members have stalking laws in place¹⁴⁶ and the trend is expanding to Council of Europe member states with a great influence of the Istanbul Convention.

¹³⁸ Heng Choon Oliver Chan, Lorraine L. Sheridan. *Psycho-criminological approaches to stalking behavior: An international perspective.* (John Wiley & Sons, 2020) 13

¹³⁹ Susan M. Dennison, Donald M. Thomson, "Criticisms or Plaudits for Stalking Laws? What Psycholegal Research Tells Us About Proscribing Stalking" (2005) 384,385

¹⁴⁰ Stephen J. Morewitz. *Stalking and violence: New patterns of trauma and obsession.* (Springer Science & Business Media, 2003) 59

¹⁴¹ Id. 60

¹⁴² Id. 74

¹⁴³ Tracey B. Carter, "Local, state, and federal responses to stalking: Are anti-stalking laws effective" *Wm. & Mary J. Women & L.* 22 (2015) 333,358

¹⁴⁴ Suzan van der Aa, "New trends in the criminalization of stalking in the EU member states" (2018) 315,316

¹⁴⁵ Id.326

¹⁴⁶ Id.319

As was mentioned earlier, definitions of stalking still vary from one state to another as well as “the available sanctions for stalking vary widely throughout the jurisdictions”¹⁴⁷. However, if we take into account international standards and successful domestic experiences, a progressive definition of stalking can be formulated.

Namely, the GREVIO Committee recommends that: first, stalking laws shall focus on the intent of the perpetrator and rely on “a behaviour-based definition rather than on a result-based one”¹⁴⁸; second, the requirement for the victim to express her concerns that the conduct of the perpetrator is unwanted might be problematic¹⁴⁹; third, aggravated forms of stalking shall be covered by stalking laws¹⁵⁰. Revised American Model Stalking Code of 2007 suggests that: first, stalking laws shall “incorporate a general intent requirement instead of a specific intent requirement”¹⁵¹, meaning that stalker’s actions themselves shall be intentional but the particular intent of intimidating or assaulting the victim is not required. Second, the level of fear caused by the stalking behavior on the side of the victim shall be measured through a reasonable person test as if a reasonable person would fear for her safety and alternatively if a reasonable person would suffer other emotional distress¹⁵². The reasonable person test here is required so victims who “are, at least temporarily, able to withstand greater pressure”¹⁵³ also effectively protected by law. Third, the victim might experience fear not only for herself but also for third people who might be endangered by stalker’s behavior¹⁵⁴. Forth, the aggravated factors such as: if the perpetrator violated a protection order, “was convicted of stalking any person within the

¹⁴⁷ Susan M. Dennison, Donald M. Thomson, "Criticisms or Plaudits for Stalking Laws? What Psycholegal Research Tells Us About Proscribing Stalking" (2005) 384,387

¹⁴⁸ Mid-term Horizontal Review of GREVIO baseline evaluation reports 2022 para.352

¹⁴⁹ Mid-term Horizontal Review of GREVIO baseline evaluation reports 2022 para.354

¹⁵⁰ Id, para 356

¹⁵¹ The National Center for Victims of Crime, *The Model Stalking Code Revised. Responding to the New Realities of Stalking*. (National Center for Victims of Crime 2007) 34

¹⁵² Id. 34-35,39

¹⁵³ Anni Ropers et al, "German Anti-Stalking Legislation and Its Recent Changes" *German Law Journal* 21.4 (2020) 787,793

¹⁵⁴ The National Center for Victims of Crime, *The Model Stalking Code Revised. Responding to the New Realities of Stalking*. (National Center for Victims of Crime 2007) 24

previous 10 years”¹⁵⁵ or if the perpetrator restored to force or weapon or threatened to and if the victim is a minor. Fifth, the “course of conduct” shall be defined as “two or more acts”¹⁵⁶. Sixth, stalking laws shall include an open list of activities which constitute stalking behavior to guide law-enforcement agencies¹⁵⁷. Seventh, which I find crucial, stalking laws shall include a preface recalling “legislature’s intent to recognize stalking as a serious crime, encourage early intervention by the criminal justice system, and encompass a wide range of stalking behaviors in their stalking laws”¹⁵⁸ which can also reflect on the coercive control model as a prerequisite to properly address stalking. The doctrine also suggests for stalking laws to apply a “reasonable person” test to the intent of the perpetrator in cases of stalking¹⁵⁹ as well as to take into account the relationship between the victim and the perpetrator¹⁶⁰. Therefore, the following modern definition of stalking can be proposed:

“Stalking – is the course of unwanted threatening intentional conduct consisting of two or more episodes which would lead to the reasonable person feeling fear for her safety or safety of the third person or emotional distress, including but not restricted to the following actions: the list of examples stalking and cyberstalking activities... ”.

The following circumstances shall lead to aggravated penalties: if the victim is an ex-partner, (minor, disabled person etc.); if the protection order is violated; if within last 10 years the person was already convicted for stalking crime; if a stalker restores to violent behavior; if stalking led to severe consequences for the victim (serious psychological distress, victim had to change work place or living address...) etc.

¹⁵⁵ Id. 25

¹⁵⁶ Id. 44

¹⁵⁷ Id. 45

¹⁵⁸ Id. 25

¹⁵⁹ Susan M. Dennison, Donald M. Thomson, "Criticisms or Plaudits for Stalking Laws? What Psycholegal Research Tells Us About Proscribing Stalking" (2005) 384,403

¹⁶⁰ Id. 395

At the same time the question of how national legislations distinguish or interconnect crimes of domestic violence and stalking by former intimate partners is not yet actually addressed by the legal doctrine and further research is needed in that part.

The CEDAW Committee requires that states implement “eviction, protection, restraining or emergency barring orders against alleged perpetrators, including adequate sanctions for non-compliance”¹⁶¹. Article 53 of the Istanbul Convention “sets out the obligation to ensure that national legislation provides for restraining and/or protection orders for victims of all forms of violence”¹⁶², including stalking. ECtHR also indicates the need for implementation of such “immediate protection measures, known as “restraining orders”, “protection orders” or “safety orders”, which aim to prevent a recurrence of ...violence and protect the victim by requiring the perpetrator to leave the shared residence and refrain from approaching or contacting the victim”¹⁶³. Indeed, besides criminalization of stalking, stalking laws commonly provide for protection orders which might exist in both civil and criminal domains¹⁶⁴. There are also various national stalking laws’ specific inventions, for example some stalking laws provide that “for mental health treatment and psychological assessment for the stalkers”¹⁶⁵ or “periodic victim call-backs to check that the seriousness of the stalking behavior and threat has not escalated”¹⁶⁶.

¹⁶¹ General recommendation No.35 on gender-based violence against women, updating general recommendation No.19 2017 para. 40(b)

¹⁶² Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence 11.V.2011 2011 para.267

¹⁶³ *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 96

¹⁶⁴ Susan M. Dennison, Donald M. Thomson, "Criticisms or Plaudits for Stalking Laws? What Psycholegal Research Tells Us About Proscribing Stalking" (2005) 384,385

¹⁶⁵ Stephen J. Morewitz. Stalking and violence: New patterns of trauma and obsession. (*Springer Science & Business Media*, 2003), 60

¹⁶⁶ Neal Miller, "Stalking laws and implementation practices: A national review for policymakers and practitioners" (2001) 69

3.2 Case of the Russian Federation

“For over a decade, various UN bodies had expressed alarm over the high level of violence against women in Russia and had called upon Russia to bring its legislation into line with international standards”¹⁶⁷. Despite the issues of violence against women and domestic violence remaining “some of the most widely discussed social problems in Russian society”¹⁶⁸, the situation does not improve. To explain the situation in detail, several key-problems of the Russian legal framework might be outlined: 1) lack of understanding of the direct link between violence against women and discrimination; 2) non-compliance of Russia with its established international positive obligations: gender neutral legislation with no specific addressing of the problem of violence against women, including domestic violence; 3) lack of understanding of coercive control model.

Currently there are two main relevant policy documents adopted in Russia: the National Action Strategy for Women 2017-2022 and the Action Plan to implement the Strategy. Both “explicitly address the issue of violence against women, with special attention to domestic (“family”) violence and sexual violence”¹⁶⁹. While, the National Action Strategy for Women 2017-2022 in section 6.1 indeed reclaims that “due to commonly-held misconceptions and gender stereotypes present throughout the law enforcement and justice systems, police often do not see the need to intervene in what they consider ‘private matters’ and do not recognize domestic violence as meriting preventive measures or investigation”¹⁷⁰; both documents generally overlook violence against women as a direct result of existing social inequality and discrimination against women. Rather Russian legislator, shows a conservative trend, reflected

¹⁶⁷ *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019) para 105

¹⁶⁸ Elizabeth Duban, “Research on Preventing and Combating Violence against Women and Domestic Violence Including in Situations of Social Disadvantage in the Russian Federation” (2020) 1,12

¹⁶⁹ *Id.* 1,16

¹⁷⁰ The National Action Strategy for Women 2017-2022 2017, section 6.1

inter alia in a growing political influence of the Russian Orthodox Church¹⁷¹, which leads to a “stereotypical attitude to domestic violence as a “private and trivial matter”¹⁷². Russian legislator even shows a backlash against progressive approach toward violence against women, relying instead on the “traditional values” and “rigid gender roles”¹⁷³, as was highlighted by the ECtHR¹⁷⁴. The lack of gender-sensitive approach (of the law-enforcement agencies) and negative impact of gender stereotypes in Russia was also recalled by the CEDAW Committee¹⁷⁵, which relied in its assessment on state positive obligations deriving from Article 5 of the CEDAW. It reads as: “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women ...”¹⁷⁶.

Neither the National Action Strategy nor its Action plan contain definitions of “violence against women” or “domestic violence”. Moreover, “there is no state policy dedicated exclusively to violence against women or to domestic violence...there are no definitions of VAW or DV in Russian legislation”¹⁷⁷. Domestic violence acts are not criminalized as a separate offence “or an aggravating form of any other offences. Russian law does not contain any penalty-enhancing provisions relating to acts of domestic violence...”¹⁷⁸. It is also very illustrative that more than 50 drafts of the law on domestic violence were considered by the State Duma (the last one –in 2019) and none of them has been adopted in the end¹⁷⁹, which

¹⁷¹ Human Rights Watch, *I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia* (2018) 18

¹⁷² *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 101

¹⁷³ *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019) para 105

¹⁷⁴ *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019) para 105; *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 101

¹⁷⁵ *O.G. v. Russia* CEDAW/C/68/D/91/2015 [2017] para 7.6

¹⁷⁶ The Convention on the Elimination of All Forms of Discrimination against Women 1979 Article 5

¹⁷⁷ Elizabeth Duban, *Research on Preventing and Combating Violence against Women and Domestic Violence Including in Situations of Social Disadvantage in the Russian Federation* (2020) 1,16-17

¹⁷⁸ *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 87

¹⁷⁹ *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019) para 61

shows a great state resistance on the issue. Although even the latest 2019 draft law did not contain a proper definition of domestic violence¹⁸⁰, not to mention other forms of violence against women such as stalking.

At the same time, as was mentioned above, both ECtHR and the CEDAW Committee stressed the importance of proper definitions of domestic violence and its independent criminalization. The CEDAW Committee on several occasions specifically called for the Russian authorities to “adopt comprehensive legislation to prevent and address domestic violence, develop a national action plan on domestic violence and amend the Criminal Code to criminalize on all forms of domestic violence, including physical, sexual, economic and psychological”¹⁸¹. As well as the ECtHR consistently rejects the argument of the Russian Government “that the existing provisions of Russian law were capable of adequately covering the many forms which domestic violence takes”¹⁸². Even the widely-recognized domestic violence is not addressed and criminalized under Russian legal framework, let alone stalking. With the issue of stalking as a legal offence neither Russian legislator, nor law-enforcement agencies are familiar: they either turn a blind eye on it, trivialize it or even more seriously romanticize it.

The same need for clear definition and criminalization the GREVIO Committee explicitly stresses for stalking as general criminal provisions do not “adequately cover the constituent elements of the offence of stalking as defined under Article 34 nor do they reflect the seriousness of this offence”¹⁸³.

¹⁸⁰ For more information on the draft law see:

<http://council.gov.ru/media/files/rDb1bpYASUAxolgmPXEfKLUIq7JAARUS.pdf>

¹⁸¹ CEDAW Committee, *Concluding observations on the ninth periodic report of the Russian Federation*, (CEDAW/C/RUS/CO/9, 2021) para.24; *O.G. v. Russia* CEDAW/C/68/D/91/2015 [2017]; *X. and Y. v. Russia* CEDAW/C/73/D/100/2016 [2019]

¹⁸² *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 88; *Volodina v. Russian Federation* App no 41261/17 (ECHR, 9 July 2019) para 81

¹⁸³ Mid-term Horizontal Review of GREVIO baseline evaluation reports 2022 para 353

The existing provisions of Russian legislation which could possibly apply to cases of stalking include general offences such as: “Torment” (Article 117 of the Russian Criminal Code), “Attempted murder” (Articles 30 and 105), “Intentional infliction of light injury” (Article 115), “Intentional infliction of injury to health of average gravity” (Article 112), “Intentional infliction of light injury” (Article 115), “Sexual assault” (p.131), “Coercion to commit sexual acts” (Article 133) etc. These provisions require acts of physical violence and actual bodily harm thus undermining the preventive narrative of stalking laws and incapable of tackling stalking activities of less gravity but constant repetitive nature. In the absence of any alternative, domestic violence survivors as well as victims of other forms of violence against women have to rely on these gender-neutral provisions.

Before 2016, the offence of “Battery” (former Article 116 of the Russian Criminal Code) was the most common provision survivors of domestic violence relied on. In 2016, non-aggravated battery was decriminalized, but battery offences among “close persons” as well as people who “run a common household” was considered an aggravated form of battery and remained in the Criminal Code. “The legislator distinguished, for the first time in Russia’s post-Soviet history, between battery among non-family and domestic battery”¹⁸⁴, which was considered a big achievement for further development of domestic violence legal framework. However, after less than six months in 2017, this aggravated form of battery was decriminalized as well and today constitutes Article 6.1.1 “Battery” of the Russian Code of Administrative Offences. Human Rights Watch in its self-explanatory report on violence against women in Russia called “I could kill you and no one would stop me”, considered this “a green light for domestic violence”¹⁸⁵. Both the UN High Commissioner for Human Rights and the Council of Europe

¹⁸⁴ Human Rights Watch, *I Could Kill You and No One Would Stop Me. Weak State Response to Domestic Violence in Russia* (2018) 26

¹⁸⁵ *Id.* 3

Human Rights Commissioner claimed against it. Both the CEDAW Committee¹⁸⁶ and the ECtHR¹⁸⁷ raised their concerns.

Other provision of the Russian Criminal Code which do not imply the requirement of actual bodily harm such as “Death threats and threats of grave bodily harm” (Art. 119) or Articles 137-139 which protect private life, (prohibiting illegal collection or distribution of personal information), privacy of communication and sanctity of the home respectfully could possible apply in cases of stalking.

However, in practice they proved to be ineffective in both domestic violence and stalking cases¹⁸⁸ because they put an unbearable burden of proof of standing on the victims and because the understanding of a coercive control model is missing completely from Russian legal framework. Russian law still does not “take a comprehensive view of a continuum of violence ... as a single course of conduct rather than isolated incidents”¹⁸⁹. In cases of both domestic violence and stalking the separate insufficient incident will not be taken into account neither by police officers nor by the court, again until severe (physical) harm is committed.

Besides the lack of adequate criminal provisions, Russian legislation also does not offer even very minimum practical protection tools for the victims of stalking (and domestic violence) required and internationally recognized, namely, protection orders. The ECtHR notes that Russia “has remained among only a few member States whose national legislation does not provide victims of domestic violence with any equivalent or comparable measures of protection”¹⁹⁰. In 2018, the Russian legislator presented so called “new measure of restraint in

¹⁸⁶ CEDAW Committee, *Concluding observations on the ninth periodic report of the Russian Federation*, (CEDAW/C/RUS/CO/9, 2021) para 24

¹⁸⁷ *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 92

¹⁸⁸ Olga Ryzhova, Yulia Kornishina, "On Responsibility for Stalking in the Russian Federation and in Foreign Countries" [Ob otvet-stvennosti za stalking v Rossiyskoy Federatsii I zarubezhnykh stranakh] *The science. Society. State* 6.4(24) (2018)

¹⁸⁹ *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 94; *Galović v. Croatia* App no 45512/11 (ECHR, 31 August 2021) paras 117-19

¹⁹⁰ *Tunikova and Others v. Russian Federation* App nos 55974/16, 53118/17, 17484/18, 28011/19 (ECHR, 14 December 2021) para 96

criminal proceedings in the form of a court order prohibiting certain conduct”¹⁹¹ in Article 105.1 of the Code of Criminal Procedure as an alternative to protective orders. This measure was however highly criticized by the ECtHR as such orders do not offer urgent protection for the victims and remain conditional on existence of the criminal case¹⁹².

It might seem that this chapter rather analyzes Russian legal framework from the perspective of domestic violence than stalking. However, lack of any basic provisions on domestic violence and existing misconceptions on the link between violence against women and discrimination as well as the coercive control model, indicate a crucially low stage of Russian legal framework development. It seems that to address stalking effectively, significant systematic changes are required: from combating social stigma to adopting a gender-sensitive legislative approach. In the Russian context new policy documents, explicitly addressing structural inequalities and all forms of violence against women are needed; special legislation on domestic violence will be a next progressive step, even if domestic violence would still serve as an umbrella term. It is also urgent to implement the system of protection orders that is really accessible to victims as well as other international positive obligations Russian authorities shall comply with. This ranges from introduction of special guidelines and trainings to sufficient data collection for cases of violence against women. It seems that only when domestic violence law is drafted and implemented effectively, other forms of violence against women, including stalking, can be properly addressed.

At the same time, there are serious new obstacles for the legal framework on combating violence against women’ development in Russia. In 2022 Russia left the Council of Europe and the ECtHR. There is also a great increase in conservative attitudes of the Russian state authorities and a new wave of oppression against Russian NGOs (especially in the light of a so

¹⁹¹ *Volodina v. Russian Federation* (No.2) App no 40419/19 (ECHR, 14 September 2021) para 32

¹⁹² *Volodina v. Russian Federation* (No.2) App no 40419/19 (ECHR, 14 September 2021) para 59

called “foreign agents” legislation)¹⁹³. Not only this “foreign agents” legislation remains a subject of constant amendments tightening it (last amendments were adopted just on the 30th of June 2022)¹⁹⁴, it also directly affects women rights NGOs. For example, probably the most famous Russian NGO in the field called “ANNA – National Center for Prevention of Violence against women and children” is also targeted as a foreign agent today.

To conclude, the situation in Russia in respect of combating violence against women remains horrifying. The Russian legal framework is so to say not ready yet for introduction of a separate offence of stalking and a long way is ahead to develop and implement effectively domestic violence law. Russia shall first adopt a coercive control model to the problem of violence against women and comply with its existing international positive obligations.

A hope for positive changes always remains: the topic of domestic violence is still in the center of Russian social dispute, great advocacy efforts are put by Russian and international NGOs on a daily basis and before the CEDAW Committee women in Russia can still claim violations of their rights. The CEDAW Committee in this regard has the potential to become an effective tool of combating violence against women in Russia, but under the condition that it takes a more proactive and straightforward approach recognizing the coercive control model explicitly as well as various forms of violence against women, including stalking.

¹⁹³ To learn more about the content and effects of the foreign agents legislation, see, for example: Alexandra V. Orlova, "Foreign Agents, Sovereignty, and Political Pluralism: How the Russian Foreign Agents Law Is Shaping Civil Society" (2019); Mercedes Malcomson, "So Whose Agents Are We? Defining (International) Human Rights in the Shadow of the " Foreign Agents" Law in Russia" (2020)

¹⁹⁴ For details please follow: <http://duma.gov.ru/news/54760/> (accessed on 23rd August 2022)

CONCLUSION

This research forms an author's attempt to critically evaluate international human rights law and the Russian legal framework from the standpoint of combating violence against women and in particular stalking. The paper stresses importance of recognizing stalking not only as a form of violence against women, but a human rights violation. To achieve this goal the coercive control model shall be acknowledged and develop further, including where it highlights a direct link between violence and discrimination against women. The coercive control model seems to be a pathway for both international human rights law and domestic legislations to address stalking properly as well as to generally develop further in combating violence against women.

At the same time, it seems that in the nearest future only stalking committed by strangers stand real chances to be considered as an independent human rights violation while stalking committed by former intimate partners will remain under an umbrella term of domestic violence. Likewise, the Russian legal framework is not yet prepared to implement the crime of stalking, first systematic policy problems shall be addressed and existing international positive obligations in respect of domestic violence shall be complied with.

In the future, the present research could be developed as to compare and evaluate different domestic approaches to stalking in more detail with a particular focus on successful practices and new solutions offered. Also, the problem of distinguishing stalking from domestic violence, harassment and general criminal provisions on both international and domestic levels requires an in-depth analysis. The new circumstances of Russia leaving the Council of Europe and its remaining state positive obligations shall be further research on as well.

BIBLIOGRAPHY

1. Barysheva, Ksenia A. "Prosecution as a new type of criminally punishable act." *Gaps in Russian legislation. Law Journal* 8 (2016): 178-182;
2. Becker, Andréa, Jessie V. Ford, and Timothy J. Valshtein. "Confusing stalking for romance: Examining the labeling and acceptability of men's (cyber) stalking of women." *Sex Roles* 85.1 (2021): 73-87;
3. Boehnlein, Tim, et al. "Responding to stalking victims: Perceptions, barriers, and directions for future research." *Journal of Family Violence* 35.7 (2020): 755-768;
4. Carter, Tracey B. "Local, state, and federal responses to stalking: Are anti-stalking laws effective." *Wm. & Mary J. Women & L.* 22 (2015): 333;
5. Coleman, Frances L. "Stalking behavior and the cycle of domestic violence." *Journal of Interpersonal Violence* 12.3 (1997): 420-432;
6. Cox, Linda, and Bette Speziale. "Survivors of stalking: Their voices and lived experiences." *Affilia* 24.1 (2009): 5-18;
7. Chan, Heng Choon Oliver, and Lorraine L. Sheridan. *Psycho-criminological approaches to stalking behavior: An international perspective*. John Wiley & Sons, 2020: 432;
8. Dennison, Susan M., and Donald M. Thomson. "Criticisms or Plaudits for Stalking Laws? What Psycholegal Research Tells Us About Proscribing Stalking." *Psychology, Public Policy, and Law* 11.3 (2005): 384;
9. Duban Elizabeth, *Research on Preventing and Combating Violence against Women and Domestic Violence Including in Situations of Social Disadvantage in the Russian Federation*, 2020: 85;
10. Edwards, Alice. *Violence against women under international human rights law*. Cambridge University Press, 2010: 375;
11. Fox, Kathleen A., Matt R. Nobles, and Bonnie S. Fisher. "Method behind the madness: An examination of stalking measurements." *Aggression and violent behavior* 16.1 (2011): 74-84;
12. Fox Kathleen A., Nobles Matt R., Fisher Bonnie S. "A multi-theoretical framework to assess gendered stalking victimization: The utility of self-control, social learning, and control balance theories" *Justice Quarterly* 33.2 (2016): 319-347;
13. Fraser, Cynthia, et al. "The new age of stalking: Technological implications for stalking." *Juvenile and family court journal* 61.4 (2010): 39-55;

14. Henn, Elisabeth Veronika. *International Human Rights Law and Structural Discrimination*. Springer Berlin Heidelberg, 2019: 240;
15. Korkodeilou, Jenny. "Stalking victims, victims of sexual violence and criminal justice system responses: is there a difference or just 'business as usual'?" *British Journal of Criminology* 56.2 (2016): 256-273;
16. Korkodeilou, Jenny. *Victims of Stalking*. Springer International Publishing, 2020: 192;
17. Krebs, Christopher, et al. "The association between different types of intimate partner violence experienced by women." *Journal of Family Violence* 26.6 (2011): 487-500;
18. Larsen, Mandi, Corey Tax, and Shelly Botuck. "Standardizing practice at a victim services organization: A case analysis illustrating the role of evaluation." *Administration in Social Work* 33.4 (2009): 439-449;
19. Logan, T. K., Jennifer Cole. "Exploring the intersection of partner stalking and sexual abuse." *Violence Against Women* 17.7 (2011): 904-924;
20. Logan, T. K., Lisa Shannon, and Jennifer Cole. "Stalking victimization in the context of intimate partner violence." *Violence and Victims* 22.6 (2007): 669-683;
21. Logan, T. K., Robert Walker. "Partner stalking: Psychological dominance or 'business as usual'?" *Trauma, Violence, & Abuse* 10.3 (2009): 247-270;
22. Malcomson, Mercedes. "'So Whose Agents Are We?' Defining (International) Human Rights in the Shadow of the 'Foreign Agents' Law in Russia." *Birkbeck L. Rev.* 7 (2020): 122;
23. Mathias Möschel, *The European Union's Actions in the Domain of Combating Gender-Based Violence* (2022): 1-17;
24. McFarlane, Judith, Jacquelyn C. Campbell, and Kathy Watson. "Intimate partner stalking and femicide: Urgent implications for women's safety." *Behavioral sciences & the law* 20.1-2 (2002): 51-68;
25. Melton, Heather C. "Stalking in the context of intimate partner abuse: in the victims' words." *Feminist Criminology* 2.4 (2007): 347-363;
26. Miller, Laurence. "Stalking: Patterns, motives, and intervention strategies." *Aggression and violent behavior* 17.6 (2012): 495-506;
27. Miller, Neal. "Stalking laws and implementation practices: A national review for policymakers and practitioners." *Institute for Law and Justice Domestic Violence Working Paper* (2001): 325;
28. Monckton-Smith Jane, Szymanska Karolina and Haile Sue. "Exploring the relationship between stalking and homicide" *Suzy Lamplugh Trust* (2017): 12;

29. Moracco, Kathryn E., Carol W. Runyan, and John D. Butts. "Femicide in North Carolina, 1991-1993: A statewide study of patterns and precursors." *Homicide Studies* 2.4 (1998): 422-446;
30. Morewitz, Stephen J. *Stalking and violence: New patterns of trauma and obsession*. Springer Science & Business Media, 2003: 150;
31. Mullen, Paul E., et al. *Stalkers and their victims*. Cambridge University Press, 2000: 310;
32. Orlova, Alexandra V. "Foreign Agents, Sovereignty, and Political Pluralism: How the Russian Foreign Agents Law Is Shaping Civil Society." *Penn St. JL & Int'l Aff.* 7 (2019): 382;
33. Ropers, Anni, et al. "German Anti-Stalking Legislation and Its Recent Changes." *German Law Journal* 21.4 (2020): 787-798;
34. Ryzhova Olga, Yulia Kornishina. "On Responsibility for Stalking in the Russian Federation and in Foreign Countries." *The science. Society. State* 6.4(24) (2018): 49-55;
35. Scott, Adrian J., et al. "International perceptions of stalking and responsibility: The influence of prior relationship and severity of behavior." *Criminal Justice and Behavior* 41.2 (2014): 220-236;
36. Sheridan, Lorraine, Amy E. Lyndon. "The influence of prior relationship, gender, and fear on the consequences of stalking victimization." *Sex Roles* 66.5 (2012): 340-350;
37. Sheridan, Lorraine P., David V. James. "Complaints of group-stalking ('gang-stalking'): An exploratory study of their nature and impact on complainants." *The Journal of Forensic Psychiatry & Psychology* 26.5 (2015): 601-623;
38. Sheridan, Lorraine, David V. James, Jayden Roth. "The Phenomenology of Group Stalking ('Gang-Stalking'): A Content Analysis of Subjective Experiences." *International journal of environmental research and public health* 17.7 (2020): 2506;
39. Spitzberg, Brian H., and William R. Cupach. "The state of the art of stalking: Taking stock of the emerging literature." *Aggression and violent Behavior* 12.1 (2007): 64-86;
40. Stark, Evan. "Looking beyond domestic violence: Policing coercive control." *Journal of police crisis negotiations* 12.2 (2012): 199-217;
41. Van der Aa, Suzan. "New trends in the criminalization of stalking in the EU member states." *European Journal on Criminal Policy and Research* 24.3 (2018): 315-333;

42. Walby Sylvia, and Jude Towers. "Untangling the Concept of Coercive Control: Theorizing Domestic Violent Crime" *Criminology & Criminal Justice* 18. 1 (2018): 7-28;
43. Walker Robert, et al. *Partner stalking: How women respond, cope, and survive*. Springer Publishing Company, 2006: 368.

