BREAKING THE SILENCE ON FEMI(NI)CIDE: RISK PATTERNS, INTERNATIONAL HUMAN RIGHTS LAW AND THE ROLE OF THE ECtHR

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I, the undersigned, **Ilaria Nilges**, candidate for the MA degree in Human Rights declare herewith that the present thesis titled "Breaking the silence on femi(ni)cide: risk patterns, international human rights law and the role of the ECtHR" is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography.

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ABSTRACT

This thesis explores the phenomenon of femi(ni)cide, the killing of women because of their gender, through a multidisciplinary lens, combining legal analysis with sociological insights.

The research begins by tracing the historical and conceptual evolution of the term femi(ni)cide, highlighting definitional issues and emphasising its significance as a global human rights issue. It challenges the notion that violent behaviour can be attributed to a single cause, instead framing femi(ni)cide as a structural phenomenon deeply embedded in all levels of society and social interactions.

The core of the thesis focuses on international legal responses to femi(ni)cide, particularly within the European human rights framework. Central to the analysis is the jurisprudence of the European Court of Human Rights (ECtHR), specifically how the Court interprets Article 2 (right to life) in cases involving domestic violence and femi(ni)cides. Through a close reading of landmark cases, the thesis critically evaluates the evolution and limitations of the Court's approach and its application of the *Osman* test when dealing with domestic violence cases.

By integrating legal frameworks with real-world case studies, this thesis aims to contribute to the discourse on how international human rights law and bodies, particularly the ECtHR, address femi(ni)cide and to advocate for stronger legal mechanisms to combat this pervasive form of gender-based violence.

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A tutte le donne che non hanno più una voce, non staremo in silenzio, ma faremo rumore anche per voi.

I dedicate this thesis to all the women in my life, who constantly show me what strength, joy, and unconditional support truly mean.

To my family, who have always accepted my *irrequietezza* -my restlessness and need to discover and experience the world- and who have supported and encouraged me without ever making me feel like that need was a burden.

To all my friends, scattered across the globe, I carry a part of each of you with me. Whether we've known each other forever or only shared a few nights in some sketchy hostel while travelling, whether we talk daily or only every once in a while. You and your stories are also part of the reason I chose this path and continue walking it with motivation.

To the new friendships made this year, thank you for the shared lunches, shared laughs and dreams, shared doubts and moments of crisis, but also for the shared achievements. We made it!

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Thank you to everyone who took part in the panel discussion *"She was killed because she was a woman | Femicide in Europe and the Italian context: exploring legal gaps and social roots."* The support was overwhelming and I felt very lucky, it reminded me of the value of collective dialogue. I hope the discussion gave something meaningful back to you, as it certainly did to me.

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INTRODUCTION

Femi(ni)cide remains one of the most extreme forms of violence against women globally.[2] Despite a growing awareness of the problem documented in recent years, international legal responses remain fragmented, with divergent definitions and approaches among human rights bodies. This thesis will explore how these bodies address the phenomenon of femi(ni)cide, analysing both legal frameworks and jurisprudence to understand the evolving approach of the European Court of Human Rights (ECtHR) and how states are held accountable for these crimes.

The first section of the research will provide a conceptual basis by examining the definitions and historical development of the term 'femi(ni)cide', as well as providing statistical data to illustrate the scale and urgency of the issue.

The second chapter will explore the risk factors associated with femi(ni)cide, adopting a multi-causal approach that considers individual, interpersonal, community and social dimensions, which influence both the occurrence of femi(ni)cide and state responses to it.[3] This approach challenges the notion that violent behaviour stems from a singular cause and instead frames femi(ni)cide as a structural phenomenon rooted in broader socio-cultural systems.

The focus of the third chapter will be on the analysis of international legal frameworks. The research will examine how key instruments of international human rights law, in particular the

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[2] Wania Pasinato and Thiago Pierobom De Ávila, 'Criminalization of Femicide in Latin America: Challenges of Legal Conceptualization' (2023) 71(1) Current Sociology pp. 60-77 <http://journals.sagepub.com/doi/10.1177/00113921221090252>.

[3] Shalva Weil, Consuelo Corradi and Marceline Naudi, 'Femicide Across Europe |Theory, Research and Prevention' [2018] Bristol University Press <https://doi.org/10.2307/j.ctv8xnfq2>.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the European Istanbul Convention, address gender-based violence and specifically femi(ni)cide.

The fourth chapter provides a legal analysis of the European Court of Human Rights (ECtHR)'s case law, focusing on the evolution of the '*Osman* test' and the Court's approach to state responsibility in cases of domestic violence and femi(ni)cide. The chapter is divided into three subsections, covering the period before, during, and after the landmark *Kurt v. Austria* (2021) Grand Chamber judgment. The chapter begins by introducing the *Osman* test and outlining its initial framework (4.1). It then examines the Court's application of this test, highlighting its limitations in addressing domestic violence. In particular, this section explores judicial critiques of the test's strict requirements of imminence and foreseeability, which often failed to capture the escalating nature of abuse and the structural inequalities underlying it (4.2). The next part analyses the impact of the Grand Chamber's ruling in *Kurt* (2021), focusing on the new guidelines it introduced and their influence on subsequent case law (4.3). Finally, the chapter looks at recent judgments from 2021 to 2024 to assess whether the ECtHR has fully transitioned from the traditional *Osman* framework to the more protective and victim-centred standard set out in *Kurt* (4.4). Throughout the chapter, connections will also be made between the ECtHR's reasonings and whether it (even indirectly) considers the risk factors outlined in Chapter 2.

To sum up, this thesis will be based on a legal analysis combined with case studies, drawing on court judgments and academic literature. The aim is to contribute to the debate on how international human rights law and in particular, ECtHR, addresses and combats femi(ni)cide.

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CHAPTER 1. WHAT IS FEMI(NI)CIDE?

Violence against women occurs in every country in the world and in every sphere of life. It ranges on a continuum from mild to severe, with the most extreme manifestation being femi(ni)cide.[4]

1.1 Definitions and general overview

The term 'femicide' was first used by Diana Russell to draw attention to the fact that when women are killed, they are killed because of their gender.[5] Although the term femicide was already used in the Anglo-Saxon world before Russell, it was her who placed it within the broader feminist discourse by adding a critical and political meaning to it.[6] Indeed, before her, the problem of the killings of women was not totally ignored, but it was referred to with gender-neutral terminology or even male-centred meanings such as 'lethal killings of women', 'female homicide', 'honour killing' or 'manslaughter'.[7] Therefore, before the coining of the term 'femicide', the special gender-related features of this social and deeply gendered phenomenon were not acknowledged through its terminology.[8]

Later on, in the early 1990s, Marcela Lagarde y de los Ríos, a Mexican feminist and anthropologist coined the term 'feminicide'.[9] She developed this new term following the

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[4] Janice Joseph, 'Victims of Femicide in Latin America: Legal and Criminal Justice Responses' (2017) 20 (1) Temida pp.3-21. <https://doiserbia.nb.rs/Article.aspx?ID=1450-66371701003J>.
[5] Pasinato and De Ávila (n 2).
[6] Weil, Corradi and Naudi (n 3).
[7] Weil, Corradi and Naudi (n 3).
[8] Weil, Corradi and Naudi (n 3). Sociology argues that without a 'term', you cannot find a 'solution'; specifically, it has been said that 'You can't mobilize against something with no name'. See: Consuelo Corradi and others, 'Theories of Femicide and Their Significance for Social Research' (2016) 64(7) Current Sociology pp.975-995. <https://journals.sagepub.com/doi/10.1177/0011392115622256>. [page 976].
[9] Weil, Corradi and Naudi (n 3); Pasinato and De Ávila (n 2).

increase in extreme violence against women and murders of women in Mexico, particularly in Ciudad Juarez.[10] Therefore 'feminicide' was developed in a more contextualised situation, and despite being a concept similar to 'femicide', it is not identical. Indeed, it adds a critical element of impunity due to state authorities failing to prosecute and punish perpetrators.[11] However, today both terms -femicide and feminicide- are often used interchangeably,[12] for this reason in this thesis the term femi(ni)cide will be the one used.

The complex and multifaced nature of femi(ni)cide has led several international organisations to attempt to categorise its various forms. Defining a clear categorisation is crucial to measuring femi(ni)cide more accurately, understanding its dynamics and analysing its different manifestations.[13] Both the World Health Organization (WHO)[14] and the United Nations (UN) have developed classification systems based on specific criteria, such as the nature of the act, the identity of the aggressor, the circumstances surrounding the crime, and the characteristics of the victim.

The WHO distinguishes four primary categories of femi(ni)cide: (1) Intimate femicide, indicating the killing of women by current or former partners. (2) Honour crimes, which are the murders justified by the perpetrator as a means to restore family honour or reputation. (3)

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[10] Ciudad Juárez became notorious for the disturbing pattern of systematic and large-scale killings of women between 1993 and 2005. The case *González et al v Mexico* (IACtHR), Series C No 205 (16 November 2009), (also known as the 'Cotton Field' case) led to a landmark decision by the Inter-American Court of Human Rights (IACtHR) in 2009. The IACtHR held Mexico responsible for failing to prevent, investigate and prosecute the disappearances and murders of three women whose bodies were discovered in a cotton field in 2001. With this decision, the IACtHR sent two critical messages: violence against women is a state matter, not just a private matter, and gender-based violence constitutes a violation of human rights. In particular, for the first time, the Court explicitly referred to these crimes as 'gender-based murders of women, also known as feminicide' [para. 143], officially recognising the work of sociologists and anthropologists around this term and notion.
[11] Weil, Corradi and Naudi (n 3).
[12] Weil, Corradi and Naudi (n 3).
[13] Weil, Corradi and Naudi (n 3).
[14] World Health Organization, 'Understanding and Addressing Violence against Women' (2012) <https://iris.who.int/bitstream/handle/10665/77421/WHO_RHR_12.38_eng.pdf?sequence=1> .

Dowry-related murder, meaning the killings linked to dowry disputes, particularly prevalent in the Indian subcontinent. And lastly (4) Non-intimate femicide which encompasses all the killing of women by individuals with whom they have no intimate/family relationship.[15]

In 2012, alarmed by the global rise in femi(ni)cide and the widespread impunity surrounding it, the Academic Council of the United Nations System (ACUNS) organized the first Symposium on Femicide in Vienna.[16] The objective of this symposium was to push member states to adopt institutional measures aimed at improving femi(ni)cide prevention and strengthening legal protections for survivors of violence. As a result, the Vienna Declaration identified 11 distinct categories of femi(ni)cide: (1) Murder following domestic violence, (2) Torture and misogynistic massacres, (3) Assassination in the name of 'honour', (4) Targeted killings in the context of armed conflict, (5) Dowry-related murders, (6) Killings of women and girls based on their sexual orientation, (7) Systematic murders of Indigenous women, (8) Feticide and infanticide, (9) Deaths resulting from genital mutilation, (10) Murders linked to accusations of witchcraft, (11) Other gender-based killings associated with gangs, organized crime, drug trafficking, human trafficking, and armed conflict.[17]

Although these classifications help conceptualize and understand femi(ni)cide, limitations have been found.[18] One of the most significant limitations is that both WHO and UN categories fail to account for indirect forms of femi(ni)cide, such as, for example, women who die due to

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[15] World Health Organization (n 14).
[16] United Nations Office on Drugs and Crime (UNODC), 'DCN5: Symposium on Femicide: A Global Issue That Demands Action' <//www.unodc.org/unodc/en/ngos/DCN5-Symposium-on-femicide-a-global-issue-that-demands-action.html>.
[17] United Nations, 'Vienna Declaration on Femicide' in United Nations Economic and Social Council (UN 2013) <https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_22/_E-CN15-2013-NGO1/E-CN15-2013-NGO1_E.pdf>.
[18] European Institute for Gender Equality (EIGE), 'Defining and Identifying Feminicide: A Literature Review' <https://eige.europa.eu/publications-resources/publications/defining-and-identifying-femicide-literature-review>.

clandestine abortions or by suicide following prolonged domestic violence, coercion, or online abuse.[19] As for the latter, while these women may not be killed directly by an aggressor, their deaths are still a consequence of gender-based violence. However, such cases do not fit neatly into any of the existing categories, leaving them unrecognized in legal and statistical frameworks. Furthermore, the Vienna Declaration on Femicide has been criticised for using gender-neutral language when talking about perpetrators. While it is important to acknowledge that women can also be perpetrators of femi(ni)cide, particularly in cases of honour killings, where both male and female family members may be involved,[20] this framing has been argued to obscure the reality that the vast majority of femi(ni)cide perpetrators are men.[21]

Therefore, although these categorisations help to conceptualise and understand femi(ni)cide, the lack of a standardised and universally accepted classification presents significant challenges.

1.2 Limitation of data collection

Beyond definitional challenges, the lack of standardisation in the categorisation of femi(ni)cide has profound consequences on data collection. The issue of the 'dark figure of crime' (i.e. unreported or misclassified cases) further distorts statistical analyses, making it difficult to assess the true extent of the femi(ni)cide phenomenon. Without clear and consistent definitions, comparisons between countries remain unreliable, hampering even coordinated international efforts to combat it.[22] Thus, the absence of a universally accepted definition of femi(ni)cide not

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[19] Women Against Violence Europe (WAVE), 'WAVE Country Report 2023' <https://wave-network.org/wp-content/uploads/WAVE_CountryReport2023.pdf>.
[20] United Nations Office on Drugs and Crime (UNODC), 'Global Study on Homicide: Gender-Related Killing of Women and Girls' (2019) <https://www.unodc.org/documents/data-and-analysis/gsh/Booklet_5.pdf>.
[21] European Institute for Gender Equality (EIGE) (n 18).
[22] WAVE, 'WAVE Country Report 2023' <https://wave-network.org/wp content/uploads/WAVE_CountryReport2023.pdf>.

only undermines statistical reliability, but also hinders the development of effective policies and interventions to address it.[23]

In recent years, several international bodies have tried to collect and analyse data on femi(ni)cide, including the United Nations Office on Drugs and Crime (UNODC), Femicide Watch, Eurostat, the European Homicide Monitor (EHM), the European Women's Lobby and the European Institute for Gender Equality (EIGE).[24] Additionally, some European countries, including Italy, the United Kingdom, Spain and Serbia, have developed national databases with more detailed information on femi(ni)cide cases.[25]

These efforts revealed alarming statistics. In 2019, UNODC found that globally women accounted for 82% of intimate partner homicides and 64% of family-related homicides.[26] A more recent report in 2023 estimated that 85,000 women and girls were intentionally killed, which means that worldwide a woman or girl was killed every 10 minutes in that year.[27] In the EU, EIGE recorded 720 women killed by family members in seventeen of the member states in 2021.[28] While ISTAT reported that in Italy alone, between January and December 2024, 89 women were killed in family or intimate partner circumstances.[29] However, these figures represent only the tip of a massive iceberg. Indeed, it is important to recognise that for every woman killed, countless others suffer physical abuse, threats and intimidation, and many more are killed without their deaths being properly registered or recognised as femi(ni)cide.

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[23] Weil, Corradi and Naudi (n 3).
[24] Weil, Corradi and Naudi (n 3).
[25] Weil, Corradi and Naudi (n 3).
[26] UNODC (n 20).
[27] UN Women UNODC, 'Femicides in 2023. Global Estimates of Intimate Partner/Family Member Femicides' (2024) <https://www.unodc.org/documents/data-and-analysis/briefs/Femicide_Brief_2024.pdf>.
[28] EIGE, 'European Union | Violence | 2023 | Gender Equality Index' <https://eige.europa.eu/gender-equality-index/2023/domain/violence>.
[29] Dipartimento della pubblica sicurezza, 'Servizio Analisi Criminale' [2024] Ministro dell'interno <https://www.interno.gov.it/sites/default/files/2024-12/Settimanale_omicidi2122024.pdf> accessed 13 March 2025.

Schröttle and Meshkova (2018) found that data collection on femi(ni)cide generally relies on national crime statistics, police reports, court records, mortuary data and media sources.[30] However, these methods face common challenges, including a lack of information about the victim-offender relationship and inconsistencies with key parameters such as what is considered under the terminology 'intimate partner homicide'.[31] Additionally, many countries still do not define femi(ni)cide as a distinct category in legal or statistical frameworks.[32]

As for European countries that have developed national databases that also collect data around femi(ni)cides, there still is a lack of harmonisation that leads to gaps in comparability.[33] In the EU, in response to the challenges just discussed, the European Institute for Gender Equality (EIGE) built upon the Vienna Declaration's definition of femi(ni)cide,[34] and distinguished between a general definition and a statistical one, the latter narrowing the concept to intimate partner femi(ni)cide and deaths resulting from harmful practices.

EIGE's general definition:

> *The killing of women and girls on account of their gender, perpetrated or tolerated by both private and public actors. It covers, inter alia, the murder of a woman as a result of intimate partner violence, the torture and misogynistic slaying of women, the killing of women and girls in the name of so-called honor and other harmful-practice-related killings, the targeted killing of women and girls in the context of armed conflict, and*

[30] Weil, Corradi and Naudi (n 3).
[31] Heidi Stöckl and others, 'Issues in Measuring and Comparing the Incidence of Intimate Partner Homicide and Femicide - A Focus on Europe' [2020] Rivista Sperimentale di Freniatria 61 <https://www.medra.org/servlet/MRService?lang=ita&hdl=10.3280/RSF2020-001005>.
[32] Weil, Corradi and Naudi (n 3).
[33] European Institute for Gender Equality (ed), *Terminology and Indicators for Data Collection: Rape, Femicide and Intimate Partner Violence* (Publications Office 2017) < https://eige.europa.eu/publications-resources/publications/terminology-and-indicators-data-collection-rape-femicide-and-intimate-partner-violence-report>; EIGE, 'Understanding Intimate Partner Femicide in the European Union' (2017) <https://eige.europa.eu/publications-resources/publications/understanding-intimate-partner-femicide-european-union-essential-need-administrative-data-collection>.
[34] United Nations (n 17).

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cases of femicide connected with gangs, organized crime, drug dealers and trafficking in women and girls.[35]

EIGE's statistical definition*:*

The killing of a woman by an intimate partner and the death of a woman as a result of a practice that is harmful to women. 'Intimate partner' is understood as former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.[36]

While the broader conceptual definition covers the whole spectrum of gender-based killings, the statistical definition directly aims at intimate partner homicide and deaths caused by practices such as honour killings or deaths resulting from trafficking.[37] Despite these efforts towards standardisation, femi(ni)cide remains significantly underreported due to the failure of legal systems to integrate a gendered lens within prosecutions and statistical recording. As highlighted by multiple research,[38] coordinated and structured data gathering is what is needed to increase comparability across member states and strengthen worldwide action to fight femi(ni)cide.

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[35] EIGE, 'Femicide | European Institute for Gender Equality' (2017) <https://eige.europa.eu/publications-resources/thesaurus/terms/1192?language_content_entity=en>.
[36] EIGE (n 35).
[37] Consuelo Corradi, 'Femicide, Its Causes and Recent Trends: What Do We Know?' [2021] Directorate General for External Policies of the Union <https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/653655/EXPO_BRI(2021)653655_EN.pdf> .
[38] Weil, Corradi and Naudi (n 3); United Nations (n 20); Corradi (n 37); EIGE, 'Understanding Intimate Partner Femicide in the European Union' (n 33); EIGE, (n 18); WAVE (n 19).

CHAPTER 2. WHAT ARE THE RISK FACTORS?

When examining femi(ni)cide as a social phenomenon, research widely supports the ecological model as a way to understand the complex interplay of factors that contribute to gender-based violence.[39] One of the most comprehensive frameworks in this field is the multicausal model that was elaborated by Stout[40], used by Galtung[41], redefined by Corradi and also suggested by the UN entity for Gender Equality.[42] This model structures the explanation of femi(ni)cide across three interconnected levels: individual (micro level), interpersonal (meso level) and community (macro level). To these three levels, a fourth one was later added: the societal level, that looks at structural violence.[43]

This multicausal model, on one hand, challenges the idea that violent behaviour can be attributed to a single cause and encourages a broader analysis of socio-cultural influences, on the other hand, shows how femi(ni)cide is a structural phenomenon omnipresent at all levels of society and social interactions.

Understanding femi(ni)cide as the result of these multifaceted causes increases the complexity of the issue, but such an approach is essential. This is because these factors shape the attitudes and perceptions that directly influence public policies, and they also provide the foundation for being able to critically assess state actions and responses to such violence.[44]

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[39] Weil, Corradi and Naudi (n 3).
[40] Karen Stout, 'Intimate Femicide: An Ecological Analysis' (1992) 19 The Journal of Sociology & Social Welfare <https://scholarworks.wmich.edu/jssw/vol19/iss3/3> .
[41] Johan Galtung, *The Three 'Rs' after Violence: Reconstruction, Reconciliation, Resolution. Facing the Visible and Invisible Effects of War and Violence* (1998) <https://www.gernikagogoratuz.org/wp-content/uploads/2020/05/RG06completo.pdf>.
[42] Corradi and others (n 8).
[43] Corradi (n 37); World Health Organization (n 14).
[44] Weil, Corradi and Naudi (n 3).

2.1 Individuals – the micro level

This first level of analysis focuses on individual factors related to a person's psychological constitution, behavioural patterns and interactions at the micro level.[45] Therefore, at this level, violence against women may be triggered by the perpetrator's personal instability. While no single factor determines violent behaviour, certain risk elements significantly increase the likelihood of femi(ni)cide, both for perpetrators and victims.

For perpetrators, research have identified several individual risk factors that increase the likelihood of femi(ni)cide. For example, statistically, an unemployed man is more likely to resort to violence against the women around him to channel his frustration.[46] Mental health problems and untreated psychological issues are other significant risk factors. In cases of femi(ni)cide-suicide, for example, the perpetrator's inability to regulate emotions or cope with distress often leads to extreme actions.[47] Moreover, substance abuse, particularly alcohol and illicit drugs, further exacerbates violent tendencies by compromising judgement and reducing impulse control.[48] When combined with emotional instability, drug use can push an individual beyond rational control, leading to fatal outcomes.

Another key factor in understanding the roots of femi(ni)cide at the individual level is the intergenerational cycle of violence. It has been found that men who witnessed domestic abuse in their childhood are more likely to become perpetrators of violence themselves, suggesting that exposure to violence at a young age normalises aggression.[49]

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[45] Corradi and others (n 8).
[46] World Health Organization (n 14).
[47] Corradi (n 37).
[48] World Health Organization (n 14).
[49] Corradi (n 37).

For victims, some factors indicate an increased risk of being killed by their family or intimate partner. One of the strongest indicators is attempted strangulation.[50] Research shows that women who survive strangulation attempts are at a much higher risk of being murdered by the same partner later, as this type of violence often signals an escalation.[51] Another risk factor is the connection between rape and femi(ni)cide, especially in cases where victims are seen as having brought 'dishonour' upon themselves.[52] Thus, in some cultural contexts, rape survivors run the risk of being killed, by their perpetrators or even their own families, under the pretext of so-called honour killings.

2.2 Interpersonal – the meso level

According to data, femi(ni)cide is more likely to occur within family relationships, such as between husband and wife, father and daughter or brother and sister. Linking this to the WHO classification presented in Chapter 1, these types of femi(ni)cide would fall into the categories 'intimate femicide' or 'dowry-related homicide'.[53] Therefore, the meso level focuses on family and interpersonal networks, which shape power dynamics and influence patterns of violence.[54] Because such violence takes place within the private sphere, it is often perceived as a personal or private matter rather than a public issue, making it more difficult to intervene.

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At the interpersonal level, an history of prior violence is the most common risk factor, often accompanied by obsessive jealousy, coercive control over the victim's finances, social interactions and daily activities.[55] Thus, it is at this level that domestic violence is recognized

[50] Corradi (n 37).
[51] Corradi (n 37). [page 9].
[52] Corradi (n 37).
[53] World Health Organization (n 14).
[54] Corradi and others (n 8).
[55] Corradi (n 37).

as a continuum of violence characterised by escalation. In many cases, such controlling behaviours create an environment in which a woman's autonomy is severely restricted, increasing the risk of fatal violence. On the other hand, certain singular events can trigger extreme violence, such as a woman attempting to leave an abusive partner or the presence of a child from a previous relationship, which may provoke jealousy or resentment in the perpetrator.[56]

2.3 Community – macro level

Femi(ni)cide is also an event deeply rooted in the social structures of communities, where cultural, religious, traditional and patriarchal beliefs shape how men and women interact.[57] These norms and traditions often justify violence against women, making it seem acceptable or even necessary in certain situations. Thus, perpetrators may see their actions as aligned with the community's expectations, particularly when considering the maintenance of rigid gender roles and family honour.

At the community level, attitudes toward gender, violence and honour play a crucial role in shaping the risk of femi(ni)cide.[58] Indeed in societies where masculinity is linked to dominance and aggression, and where women are expected to be submissive, acts of violence end up to be normalised. In this regard, practices such as early or forced marriage, dowry traditions, and honour-based violence reinforce control over women's lives.[59] Thus, at the macro level, women who challenge traditions, by for example refusing an arranged marriage or leaving an

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[56] World Health Organization (n 14).
[57] Weil, Corradi and Naudi (n 3).
[58] Weil, Corradi and Naudi (n 3).
[59] Corradi (n 37).

abusive partner, may be seen as threats to the community's values, increasing their risk of being killed.[60]

In some cultures, femi(ni)cides extend beyond interpersonal violence. For example, in parts of India, sex-selective abortion reflects a broader culture of femi(ni)cide, where female lives are devalued from birth.[61] According to the WHO categorisation, such cases would fall under 'dowry-related crimes'.[62]

From these examples of cultural factors influencing the likelihood of a woman being murdered, it is evident that intersectionality plays a crucial role in understanding risk factors at the macro level. Being a woman intersects with other dimensions of identity such as race and ethnicity, sexual orientation, socio-economic status, educational level and membership in marginalised groups, including migrants or refugees.[63] These overlapping forms of disadvantage increase the risk of violence and limit access to protection or justice.[64]

2.4 Societal level

Finally, the risk factors of femi(ni)cide are also to be found at the societal or structural level. Indeed, the phenomenon is argued to be rooted in systematic gender inequalities and in the imbalance of power between men and women.[65] Societal norms prioritise male authority and heterosexual dominance, and they create a framework where violence is used to maintain

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[60] World Health Organization (n 14).
[61] Corradi (n 37).
[62] World Health Organization (n 14).
[63] Daniela Bandelli and Consuelo Corradi, 'Femicide: The Notion, Theories, and Challenges for Research', *Oxford Research Encyclopedia of Criminology and Criminal Justice* (2021) <https://oxfordre.com/criminology/display/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-590>.
[64] Bandelli and Corradi (n 63).
[65] Weil, Corradi and Naudi (n 3).

control over women. It is within this framework, specifically through terror, both physical and psychological, that women are undermined. Our current societal structure is built on the foundation of male supremacy where femi(ni)cide becomes not only a consequence but also a mechanism through which patriarchal power is asserted and maintained.[66] Accordingly, it has been argued that femi(ni)cide is not just an individual crime, but it is a symptom of deeper structural injustices that devalue women's lives and limit their autonomy.[67] Given the existence of this 'pattern of widespread violence against the female social group',[68] states should be held responsible for failing to address structural risks such as systemic gender-based violence.[69]

At the structural level, femi(ni)cide is perpetuated and reinforced in various spheres of society. Key indicators of this are the underrepresentation of women in positions of power and the inability of the state to address and end these gender inequalities. In this regard, it has been argued that state inaction not only allows femi(ni)cide to persist, but also perpetuates the conditions that foster it. Indeed institutional failures, lead to impunity, and when perpetrators do not fear consequences, they are more likely to commit acts of violence. [70] Therefore, weak justice systems, limited access to legal protection, insufficient public policies, coupled with lack of prevention and awareness-raising initiatives, all increase the risk of femi(ni)cide.[71]

In sum, understanding femi(ni)cide through a multicausal lens reveals that it is not an isolated act, but rather the result of a complex interaction of factors operating at the individual, interpersonal, community and societal levels. Each level introduces specific risks and

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[66] Corradi (n 37).
[67] Corradi and others (n 8).
[68] Angela Hefti, *Conceptualizing Femicide as a Human Rights Violation: State Responsibility Under International Law* (Edward Elgar Publishing 2022) <https://www.elgaronline.com/view/book/9781803920443/9781803920443.xml>. [p. 53].
[69] Hefti (n 68). For more on the relationship between femi(ni)cide and state responsibility, see Chapter 10, *No More Impunity: Femicide and State Responsibility*.
[70] Corradi (n 37).
[71] Corradi (n 37).

collectively constructs a system in which violence against women is not only possible, but is normalised and even instrumentalised as a tool of control and subordination. This framework should inform both the development of legislative measures and the mechanisms through which states are held accountable for preventing and addressing femi(ni)cide and, more broadly, domestic violence.

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CHAPTER 3. WHAT ARE THE INTERNATIONAL LEGAL RESPONSES?

Women's rights are established in various international and regional legal frameworks. At the global level, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) serves as a cornerstone for the protection and promotion of women's rights as it will be highlighted below (3.1).

At the regional level, one of the first and most influential legal responses specifically addressing violence against women (VAW) was adopted by the Inter-American System of Human Rights: the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994), widely known as the Convention of Belém do Pará.[72] This Convention was groundbreaking not only for being the first binding treaty of its kind, but also for eliminating the public-private divide in domestic violence, stating in its Art.3 that women have the right to live free from violence in both the public and private spheres.[73] It established comprehensive state obligations,[74] and it also laid the foundation for national legislation throughout Latin America and significantly influenced subsequent legal instruments.[75]

At the European level, two key mechanisms have been developed: the Istanbul Convention of the Council of Europe and, more recently, the EU Directive on Combating Violence Against Women and Domestic Violence, adopted in May 2024.[76] While the Istanbul Convention will be analysed in depth later in this chapter due to its particular relevance for this thesis, it is

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[72] Inter-American Court Of Human Rights (ed), 'Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem Do Para"' (Brill | Nijhoff 1998) < https://www.oas.org/en/mesecvi/docs/belemdopara-english.pdf>.
[73] Convention of Belem Do Para (n 72). [Art. 3].
[74] Convention of Belem Do Para (n 72). [See Articles 7 and 8].
[75] Hefti (n 68). [p.170].
[76] 'Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on Combating Violence against Women and Domestic Violence' <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401385>.

important to note the importance of the EU Directive 2024/1385 as a parallel development. The directive provides an ambitious framework, recognising online and offline violence against women and girls (VAWG) as violations of fundamental rights. A landmark move of this directive is its explicit mention of 'femicide'.[77] This is an entirely new development, as femmi(ni)cide was not mentioned directly in any of the previous treaties. This explicit reference appears as early as in paragraph 9, where the directive lists femi(ni)cide among other serious crimes such as rape, sexual abuse, forced abortion and cyber-violence. However, despite this recognition, femi(ni)cide remains limited to a single reference and there is no dedicated article outlining specific state obligations in relation to femi(ni)cide.

The instruments mentioned above were drafted in different historical and political contexts and therefore vary significantly in their scope, applicability and understanding of VAWG. However, despite the overlapping of protections, none of these instruments comprehensively recognise femi(ni)cide as a distinct legal category, which continues to limit their effectiveness in fully safeguarding women's right to life. This chapter presents and critically analyses CEDAW and the Istanbul Convention, highlighting their achievements and current shortcomings in addressing the killing of women because they are women.

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3.1 CEDAW in the global context

At the global level the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[78] was the first major international instrument aimed at advancing

[77] Directive (EU) 2024/1385 (n 76). [para. 9].
[78] United Nations, 'Convention on the Elimination of All Forms of Discrimination against Women' (18 December 1979) <https://www.ohchr.org/sites/default/files/cedaw.pdf>.

the rights and protection of women and girls worldwide. However, as its name indicates, CEDAW primarily focuses on discrimination, addressing violence only indirectly.[79]

At the time of the CEDAW adoption, domestic violence was largely viewed as a private matter, therefore outside the scope of state intervention.[80] As a result, no explicit provisions on violence were included in the treaty text. Still, CEDAW made a groundbreaking contribution by recognizing that states could be responsible for acts committed by non-state actors such as private individuals. Art.2 outlines states' positive obligations to eliminate discrimination,[81] and General Recommendation No. 28 later specified that States should 'react actively against discrimination against women, regardless of whether such acts or omissions are perpetrated by the State or by private actors'.[82]

In regard to the recognition of violence against women and girls (VAWG) within the CEDAW framework the committee introduced it through its General Recommendation No. 19 (1992).[83] This recommendation stated that 'the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately', [84] therefore it established a correlation between discrimination and gender-based violence. More specifically this recommendation lists a series of actions that cause physical harm, but it goes beyond this considering also mental harm and the mere threat of harm to be sufficient to amount to gender-based violence.

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[79] Hefti (n 68).
[80] Hefti (n 68).
[81] United Nations (n 78). [Article 2].
[82] UN Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' <https://digitallibrary.un.org/record/711350>. [Para. 10]. As cited in Hefti (n 68) [page 117].
[83] UN Committee on the Elimination of Discrimination against Women, 'CEDAW General Recommendation No. 19: Violence against Women' (1992) < https://www.refworld.org/legal/resolution/cedaw/1992/en/96542>.
[84] CEDAW General Recommendation No. 19 (n 83). [Para. 6].

In 2017, General Recommendation No. 35 built upon this foundation, shifting the language from 'violence against women' to 'gender-based violence against women'.[85] This shift made explicit the structural and systematic nature of the issue.[86] Making the latter recommendation also more in line with the multicausal model presented in Chapter 2 as it considers gender-based violence a 'social, rather than an individual problem', rooted in societal norms which 'assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour'.[87] As for femi(ni)cide, Recommendation No. 35 only mentions it in terms of collecting data,[88] without acknowledging it as a serious human rights violation.

Although CEDAW is a binding treaty that has evolved to include gender-based violence, its limitations have been highlighted as it does not specifically address femi(ni)cide. Therefore, to date, no global treaty focuses exclusively on gender-based violence, let alone on femi(ni)cide as a distinct human rights violation.[89] Instead, recognition of violence against women has largely developed through soft law. Key milestones include the 1993 Declaration on the Elimination of Violence against Women (DEVAW),[90] which offered the first comprehensive definition of VAWG and called on states to act; and the Vienna World Conference on Human Rights the same year, where VAWG was officially recognised as a human rights violation,

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[85] UN Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19: Committee on the Elimination of Discrimination against Women' (2017) <https://brill.com/view/journals/hrlr/6/2/article-p279_279.xml>.
[86] Hefti (n 68). [page 115].
[87] CEDAW General Recommendation No. 35 (n 85). [Para. 9] as cited in Hefti (n 68) [page 115].
[88] CEDAW General Recommendation No. 35 (n 85). [Para. 34] as cited in Hefti (n 68) [page 115].
[89] Hefti (n 68).
[90] 'Declaration on the Elimination of Violence against Women' (*General Assembly resolution 48/104*, 20 December 1993) <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>.

leading to the creation of the UN Special Rapporteur on Violence against Women.[91] The 1995 Beijing Declaration and Platform for Action further urged states to prioritise the elimination of gender-based violence.[92] However, all these instruments are non-binding, lack enforceability, and still fail to explicitly address femi(ni)cide, limiting their impact on protecting women's right to life.

3.2 The Istanbul Convention in the European context

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention, represents a milestone in the protection of women's rights across Europe. Adopted in 2011 and entered into force in 2014, it is the first legally binding instrument in Europe dedicated exclusively to preventing gender-based violence, protecting victims, and prosecuting perpetrators.[93] As of 2025, the Convention has been ratified by 39 Council of Europe member states, along with the European Union.[94]

A crucial aspect about the Istanbul Convention is that it considers violence against women not only a criminal matter, but also a violation of human rights and a form of discrimination, thus aligning itself with the fundamental principles of the European Convention on Human Rights (ECHR). Although the European Court of Human Rights (ECtHR) has no direct jurisdiction over the Istanbul Convention, which means that victims cannot lodge complaints about violations of the Istanbul Convention directly before the ECtHR, the two are not

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[91] 'Special Rapporteur on Violence against Women and Girls' (*OHCHR*) <https://www.ohchr.org/en/special-procedures/sr-violence-against-women>.
[92] UN Women, *Beijing Declaration and Platform for Action: Beijing+5 Political Declaration and Outcome* (UN Women,2014) <https://www.icsspe.org/system/files/Beijing%20Declaration%20and%20Platform%20for%20Action.pdf>.
[93] Hefti (n 68).
[94] 'Key Facts about the Istanbul Convention - Istanbul Convention Action against Violence against Women and Domestic Violence - Www.Coe.Int' (*Istanbul Convention Action against violence against women and domestic violence*) <https://www.coe.int/en/web/istanbul-convention/key-facts> .

disconnected.[95] Indeed individuals can still use the Convention to substantiate claims related to gender-based violence under ECHR provisions, usually Article 2 (right to life), Article 3 (prohibition of torture), Article 8 (right to respect for private and family life) and, even if more rarely, Article 14 (prohibition of discrimination); and in such cases the Istanbul Convention serves as an important persuasive interpretative tool for the Court.[96]

Complementing this indirect legal influence, the Istanbul Convention established also a monitoring mechanism to ensure that states adhere to their obligations: the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO).[97] GREVIO conducts country-specific evaluations, issues thematic reports and launches special inquiries when necessary.[98] It also often submits third-party interventions to ECtHR in cases relevant to the scope of the Istanbul Convention. These mechanisms are essential for holding states accountable for failing to prevent VAWG.

The Convention, which has been phrased as the 'the most comprehensive victim supporting regional treaty that currently exists'[99] advocates for comprehensive and coordinated responses to gender-based violence. It obliges states to implement preventive measures, for example through education campaigns (Art.11), professional training (Art.15), and programs for perpetrators (Art.16). Meanwhile also ensuring accessible victim support services (Art.22), including shelters (Art.23), telephone helplines (Art.24), legal aid (Art.57), and assistance with housing and financial needs (Art.20).[100] Furthermore, it calls for the systematic collection of

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[95] Hefti (n 68).
[96] Hefti (n 68).
[97] Key Facts about the Istanbul Convention (n 94).
[98] Key Facts about the Istanbul Convention (n 94).
[99] Hefti (n 68). [p.128].
[100] 'Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence "Istanbul Convention" (12 April 2011) <https://rm.coe.int/168046031c>.

data (Chapter 2) and recognizes gender-based violence as a ground for asylum (Chapter 7), filling critical gaps in existing legal frameworks.[101]

Yet, despite its comprehensive approach, femi(ni)cide remains absent from the Convention's specific list of crimes. This failure to explicitly name it weakens the framework's ability to hold states accountable for systemic negligence in preventing such deaths and it weakens the policy responses to the most extreme form of GBV. However, despite not explicitly naming femi(ni)cide, the Istanbul Convention is still considered 'the major European convention that includes a framework to prevent femicide' by the Femicide Watch.[102]

Moreover, GREVIO in its 5th General Report (2023), dedicated an entire section to what it called *'*domestic homicide (femicide)*'*,[103] stressing that such killings are usually preceded by repeated patterns of physical, sexual, or psychological abuse. It also highlighted the importance of carrying out systematic risk assessments and risk management, as required by Article 51 of the Convention, to help identify and interrupt escalating violence before it leads to lethal outcomes (as already mentioned in Chapter 1.2).[104] GREVIO also pointed out that suicides linked to domestic violence are often overlooked in homicide reviews, even though they can also be seen as the final result of ongoing abuse.[105] Through this growing focus, it could be argued that GREVIO is actively shaping how the Convention should be interpreted to better address femi(ni)cide, even if the term is not explicitly mentioned in the legal text. And this

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[101] Istanbul Convention (n 100).
[102] Bandelli and Corradi (n 63) [page 5]. The Femicide Watch Platform (FWP) is a voluntary initiative promoted by the UN Studies Association (UNSA) Global Network and UNSA Vienna's Femicide Team. It curates and contextualizes global content on the prevention of femicide to inform stakeholders, identify trends, and address blind spots. 'Femi(Ni)Cide Watch Platform' <https://femicide-watch.org/node/920400>.
[103] Sara De Vido and Micaela Frulli (eds), 'GREVIO - Group of Experts on Action against Violence against Women and Domestic Violence', *Preventing and Combating Violence Against Women and Domestic Violence* (Edward Elgar Publishing 2023) <https://www.elgaronline.com/view/book/9781839107757/ch72.xml> . [p.34].
[104] De Vido and Frulli (n 103).
[105] De Vido and Frulli (n 103).

evolving interpretation could, in turn, also influence how the ECtHR engages with such cases and terminology in the future.

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CHAPTER 4. THE ECtHR APPROACH TO CASES OF FEMI(NI)CIDE

4.1 The ECtHR and the *Osman* Test

When a case of femi(ni)cide or domestic violence alleging a violation of the Right to Life is brought before the European Court of Human Rights (ECtHR), the Court typically applies the '*Osman* test'. The *Osman* test, established in *Osman v. the United Kingdom* (1998)[106] sets an important precedent in defining a state's positive obligation under Art.2 of the European Convention on Human Rights (ECHR) to protect individuals from foreseeable threats to their life. It establishes that state authorities must take preventive operational measures when they 'knew or ought to have known' of a real and immediate risk posed by the criminal acts of another person. The Court formulated this obligation in clear terms:

> *In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person [...] it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.*[107]

Thus, in its essence, the *Osman* test requires three elements to be proven to constitute a violation of Art.2: (1) that the authorities knew or should have known of the risk, (2) that the risk was real and immediate, and (3) that the authorities did not take reasonable steps to prevent the harm.

[106] *Osman v the United Kingdom* [1998] ECtHR [GC] 23452/94.
[107] *Osman v. the United Kingdom* (n 106). [para. 116].

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Although initially developed in a very specific context, related to the failure of the police to prevent a teacher's fatal assault on the father of one of his students, the test has also been applied in cases dealing with domestic violence and femi(ni)cides. However, unlike in the *Osman v. UK* scenario, domestic violence rarely manifests as an isolated event. As discussed in Chapter 2, femi(ni)cides are more likely to occur when there is a history of prior violence and are strongly influenced by patriarchal and cultural structures of society.

Therefore, a strict interpretation of the 'real and immediate risk' as it is required by the standard *Osman* test has been subject to critiques due to its significant limitations when considering the nature of domestic violence and its continuum of violence, which often involves a series of coercion, intimidation, and escalating abuses.

The following case analysis demonstrates how the ECtHR has applied the *Osman* test over time, highlighting the evolution of the framework to better address the realities of domestic violence.

4.2 From 1998 to 2019

As mentioned, the *Osman* test stipulates that a state is in breach of its positive duties under Art.2 if the three conditions mentioned above can be proven.

Since the *Osman v. United Kingdom* (1998) judgment the ECtHR has been using the *Osman* test in multiple cases dealing with state authorities failing to fulfil their positive obligations to protect the right to life of individuals, including in cases of domestic violence and femi(ni)cide. However, critiques have been raised in relation to the application of the *Osman* test in its traditional form to such cases. Given the inherently escalating nature of domestic violence and the structural impunity surrounding femi(ni)cide, the *Osman* test's rigid focus on 'immediate'

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danger fails to capture the reality of these cases.[108] Indeed, in such contexts even if the risk to life does not appear to be 'immediate', there is a significant possibility that this could escalate at any point given the very nature of the type of violence taking place.

A key development in this area occurred with *Opuz v. Turkey* (2009),[109] a landmark case in which the Court ruled for the first time that domestic violence constitutes a form of gender-based discrimination, thus involving Art.14 together with Art.2 and 3.[110] This case concerned the killing of a woman's mother and the woman herself by her violent partner, despite repeated reports to the authorities. The ECtHR held Turkey responsible not only for failing to protect the victims' right to life and liberty from inhuman treatment, but also for systemic inaction rooted in gender bias.[111] *Opuz* thus represents a fundamental turning point in the Court's jurisprudence, as it explicitly linked an individual case of domestic violence, escalated to femi(ni)cide, to the broader structural patterns of discrimination, establishing an important precedent for state responsibility. However, the Court remains reluctant in always applying Art.14 in connection to domestic violence as will be better explained later.

Although the *Osman* test remained a reference point for state's positive obligations in *Opuz*, the test has subsequently been subject of judicial commentary and controversial discussions on its appropriateness in domestic violence cases. One of the first judges to comment on the *Osman* test was Judge Pinto de Albuquerque. In 2013 in *Valiuliene v. Lithuania*,[112] he used his concurring opinion to criticise the test, arguing that in domestic violence cases, any risk present

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[108] Ronagh McQuigg, 'The Osman Test in the Context of Domestic Abuse: Y and Others v Bulgaria.' (2022) 2022 European Human Rights Law Review 501 <https://pure.qub.ac.uk/en/publications/the-osman-test-in-the-context-of-domestic-abuse-y-and-others-v-bu>.
[109] *Opuz v. Turkey* [2009] ECtHR 33401/02.
[110] *Opuz v. Turkey* (n 109). [para. 116].
[111] *Opuz v. Turkey* (n 109). [para. 202].
[112] *Valiulienė v Lithuania* [2013] ECtHR 33234/07.

is already serious, even if it does not reach the threshold of imminence.[113] He emphasised that the demand for 'immediacy' in these cases is artificial and counterproductive, given the nature of domestic violence.[114] He developed this criticism further in *Volodina v. Russia* (2019),[115] where he wrote a separate opinion explaining why, in domestic violence situations, stipulating that authorities must act when there is an 'imminent risk' would be too late.[116] Indeed interpreting the concept of immediate literally, it would imply that the abuser is already in the vicinity of the victim, but in cases of possible femi(ni)cides or, more in general domestic violence, the perpetrator and the possible victims often already live in the same household. This raises two significant problems: firstly, any protective measures by the state would come too late. Secondly, it would provide a legitimate excuse for state inaction, since it is unreasonable to expect victims to be constantly accompanied by state agents ready to intervene.[117] Therefore, the judge concluded that the 'immediacy' requirement of the *Osman* test undermines effective protection in these cases of domestic violence.

Proceeding chronologically, a first shift in the Court's approach can be found in *Talpis v. Italy* (2017).[118] In this case, the Court found violations of Art.2, 3, and 14, demonstrating some willingness to adapt *Osman* to partially account for the nature of domestic violence. For example, in *Talpis*, the Court commented that 'national authorities have a duty to examine the victim's situation of extreme psychological, physical and material insecurity and vulnerability'.[119] Moreover, the ECtHR directly referred to the Istanbul Convention and also highlighted the structural and systemic nature that characterises femi(ni)cidial violence through

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[113] *Valiulienė v. Lithuania* (n 112). [Concurring Opinion of Judge Pinto De Albuquerque, para. 31].
[114] *Valiulienė v. Lithuania* (n 112). [Concurring Opinion of Judge Pinto De Albuquerque, para. 31].
[115] *Volodina v Russia* [2019] ECtHR 41261/17.
[116] *Volodina v. Russia* (n 115). [Separate Opinion of Judge Pinto De Albuquerque, para. 12].
[117] *Volodina v. Russia* (n 115). [Separate Opinion of Judge Pinto De Albuquerque, para. 12].
[118] *Talpis v Italy* [2017] ECtHR 41237/14. - In this case the ECtHR explicitly mentioned 'femicide' for the first time [para. 145], marking an important step in the evolution of its legal reasoning.
[119] *Talpis v. Italy* (n 118). [para. 130].

Art.14,[120] and by also stating that 'by underestimating, through their complacency, the seriousness of the violent acts in question, the Italian authorities in effect condoned them.'[121]

However, this approach faced criticism from Judge Spano in his partly dissenting opinion. He argued that in *Talpis*, the majority diluted the *Osman* standards and that the imminency requirements were not met.[122] He further argued that the test must be applied strictly across all contexts involving Art.2's preventive obligations, including in domestic violence cases. Judge Spano warned that lowering the threshold to accommodate domestic violence would impose 'unrealistic burdens on law enforcement authorities'.[123]

These debates highlight tensions within the ECtHR about how best to reconcile the strict application of *Osman* with the evolving understanding of domestic violence as a distinct human rights issue. This evolving perspective can be argued to be informed, in part, by the multicausal model of femi(ni)cide presented in Chapter 2, which views the phenomenon as driven by individual actions that occur in combination with structural inequalities, harmful gender norms, and state inaction, rather than isolated conflicts between two individuals.[124] However, as also reiterated by the Court itself, the ECHR is a 'living instrument' that must be interpreted in light of current conditions.[125] This principle implies that the interpretation of its provisions is not fixed but should evolve as necessary.

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[120] Hefti (n 68).
[121] *Talpis v. Italy* (n 118). [Para. 145].
[122] *Talpis v. Italy* (n 118). [Partially Dissenting Opinion of Judge Spano, para. 5].
[123] *Talpis v. Italy* (n 118). [Partially Dissenting Opinion of Judge Spano, para. 9].
[124] Corradi and Others (n 8).
[125] Council of Europe, 'The European Convention on Human Rights - A Living Instrument' <https://www.echr.coe.int/documents/d/echr/Convention_Instrument_ENG>.

4.3 2021: The Grand Chamber ruling and its impact in following cases

The evolution of the *Osman* test occurred when the case *Kurt v. Austria* (2019) was referred to the Grand Chamber (GC), which for the first time heard a case involving domestic violence.[126] The GC upheld the decision of the chamber and also found no violations of Art.2, but none the less in its examination created guidelines on how to apply the *Osman* test in contexts of domestic violence. Which is why *Kurt* is considered a landmark case.

Among the principles laid out in the judgment, the GC explicitly said that the idea of 'imminent' needs to be 'assessed taking due account of the particular context of domestic violence'.[127] And then proceeded to explain how to do that. It stated that, first of all, when a domestic violence incidence is reported, an imminent response is needed, due to the high chances of escalation. Secondly, it clarified that for authorities to be able to assess the nature of the risk, they need to carry out a lethality risk assessment, which has to be autonomous, proactive and comprehensive.[128] This approach is in line with the recommendations made by GREVIO in its intervention as a third party in the case in question, in which it emphasised that Article 51 of the Istanbul Convention requires authorities to carry out risk assessments using standardised tools with pre-established questions that must be systematically asked and answered by the competent authorities.[129] Moreover the GC stressed the importance of regular training for authorities dealing with victims to be able to understand the dynamics of domestic abuse.[130]

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[126] Ronagh McQuigg, 'The Evolving Jurisprudence of the European Court of Human Rights on Domestic Abuse' in Philip Czech and others (eds), *European Yearbook on Human Rights 2022* (1st edn, Intersentia 2022) <https://www.cambridge.org/core/product/identifier/9781839703447%23c7/type/book_part>.
[127] *Kurt v Austria* [2021] ECtHR [GC] 62903/15. [para. 164].
[128] *Kurt v Austria* (n 127). [para. 168].
[129] *Kurt v Austria* (n 127). [para. 140].
[130] *Kurt v Austria* (n 127). [para. 172].

Therefore, following such judgment, the application of the immediacy standard shifted away from incident-based situations, and obliged states to take into account the special nature of domestic violence cases.

However, unlike in *Opuz*, the Grand Chamber in *Kurt* refrained from addressing the gendered nature of violence and did not examine the case under Art.14, despite having the opportunity to do so. As highlighted by Hefti, this reflects a broader inconsistency in the Court's jurisprudence, where the high threshold of Art.14, which requires 'clear inequality treatment' in relation to another Convention right, often discourages its application.[131] Yet, given that the ECtHR has no direct jurisdiction over the Istanbul Convention, Art.14 remains the Court's most effective tool for addressing the structural and discriminatory dimensions of femi(ni)cide and gender-based violence, as it would allow for the recognition of the broader social context in which such violence occurs. [132]

The first domestic violence case to reach the ECtHR after the GC ruling was *Tkhelidze v. Georgia* (2021), in which the Court found a violation of Art.2, in this case in conjunction with Art.14.[133] However, *Tkhelidze* involved very serious failures, which means that probably a violation would have been found even under the traditional application of the *Osman* test.[134] A more clear impact of the GC ruling can be seen in *Y and Others v. Bulgaria* (2022)[135], *Gaidukevich v. Georgia* (2023)[136] and *Landi v. Italy* (2022).[137]

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[131] Hefti (n 68). [p. 132].
[132] Hefti (n 68).
[133] *Tkhelidze v Georgia* [2021] ECtHR 33056/17.
[134] McQuigg (n 108).
[135] *Y and Others v Bulgaria* [2022] ECtHR 9077/18.
[136] *Gaidukevich v Georgia* [2023] ECtHR 38650/18.
[137] *Landi c Italie* [2022] ECtHR 10929/19. Original version in French, English translation for the purpose of this thesis by the author.

The case *Y and Others v. Bulgaria* (2022) concerned a woman who suffered threats and psychological abuse from her ex-partner, but there was no physical aggressions. Despite the issuing of a provisional protection order, one day the perpetrator followed the woman and shot her. In its reasoning, the Court conducted an analysis within the framework established by *Kurt*, systematically examining the authorities' response to the allegations of domestic violence.

First, it assessed whether the authorities had acted promptly in response to the victim's complaints. Although they initially took some actions, there were significant delays, such as the three-day delay in informing the enforcement department of the interim protection order.[138] The Court then examined whether an adequate investigation had been conducted, and found no indication of an autonomous, proactive and comprehensive investigation.[139] As for the key question of whether the authorities knew or ought to have known of a real and immediate risk to the victim's life, the Court concluded that if Bulgaria had properly followed the *Kurt* guidelines and conducted properly the risk assessment, the danger would have been evident, so the authorities should have known.[140]

This ruling demonstrates how the post-*Kurt* test provides a structured framework for assessing states' positive obligations in domestic violence cases. Furthermore, although we are not allowed to know, it could be argued that if this case had been analysed solely based on the traditional *Osman* test, no violation would have been found.[141] Although the perpetrator had a history of threats, he had never physically assaulted the victim before the deadly attack. Under the traditional *Osman* threshold, the Court could have determined that the risk was not real and sufficiently imminent because it was ‘only’ words, thus arguing that the authorities could not

[138] *Y and Others v. Bulgaria* (n 135). [para. 94].
[139] *Y and Others v. Bulgaria* (n 135). [para. 99].
[140] *Y and Others v. Bulgaria* (n 135). [para. 105].
[141] McQuigg (n 108).

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have known. However, applying *Kurt* and considering the specific nature of domestic violence, the Court took under consideration the possible escalation of violence and recognised that abuse is not limited to physical violence. The ECtHR emphasised that 'in the context of domestic violence, death threats should always be taken seriously'.[142] Therefore, in this situation the Court indirectly considered the meso level, meaning the power dynamics existing within the couple, when finding a violation of the right to life.

Similarities in the Court approach can be found in *Gaidukevich v. Georgia* (2023), a case concerning a woman, A.L., who was repeatedly verbally and physically abused by her partner. Over time, the woman contacted the police several times, who responded by sending patrols on thirteen occasions and issuing three restraining orders, but the situation still led her to commit suicide.[143]

Again, the Court examined the case following the principles set out in the *Kurt* judgment. But unlike *Y and Others*, in this case the Georgian authorities responded promptly. However, the Court went further in its analysis, pointing out that on several occasions A.L. withdrew her requests for help after requesting police intervention. In this context, the Court found that the authorities did not act autonomously and proactively (as set out in *Kurt*).[144] The Court reiterated that due to the unique dynamics of domestic violence, states have a duty to investigate such cases without relying solely on the victim's willingness to file a complaint or seek protection, as established also in Article 55(1) of the Istanbul Convention.[145] It emphasised that 'legislative framework must enable the authorities to investigate domestic violence cases of their own

[142] *Y and Others v. Bulgaria* (n 135). [para. 200].
[143] *Gaidukevich v. Georgia* (n 136).
[144] *Gaidukevich v. Georgia* (n 136). [para. 72].
[145] Istanbul Convention (n 100). [Article 55].

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motion as a matter of public interest'.[146] Consequently, the Court concluded that the state authorities had been negligent in their assessment of the situation and ruled that the their inaction had played a significant role in the tragic outcome, emphasising that systemic failures in addressing violence against women had already been recognised as a major problem in Georgia through previous rulings.[147]

In this case, the impact of the *Kurt* judgment is particularly evident in the way the Court assessed the State's duty to act preventively. A key factor was the fact that A.L.'s death was caused by suicide rather than direct murder by her abuser. Although we cannot know for sure in this case either, it is possible that under the traditional *Osman* test the Court would not have found a violation, as the authorities appeared to have taken all reasonable measures to protect A.L. (responding to emergency calls and ensuring compliance with restraining orders). In this context, the Court could have concluded that the authorities could not have foreseen that the situation would have led A.L. to commit suicide, especially without an analysis considering the specific dynamics and psychological impact of domestic violence. Moreover, since A.L. killed herself, the immediacy of the threat could have been considered insufficient under the standard *Osman* test.

Another example of the application of the principles of *Kurt* is in the case of *Landi v. Italy* (2022).[148] This case involved a woman who had suffered threats and abuses from her ex-partner, who had known mental health problems, specifically an obsessive-compulsive disorder, and an alcohol addiction.[149] Although there was a restraining order and criminal proceedings pending, his behaviour worsened and eventually led to her death.

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[146] *Gaidukevich v. Georgia* (n 136). [para. 71]
[147] In other cases such as in *Tkhelidze v Georgia* (n 133) or in A and B v. Georgia [2022] ECtHR 72975/16.
[148] *Landi c. Italie* (n 137).
[149] *Landi c. Italie* (n 137). [para. 6 and 7].

In line with the *Kurt* ruling, the ECtHR emphasized that authorities must act promptly and consider the specific nature of domestic violence. In deciding whether the authorities reacted within an acceptable time frame, the Court paid particular attention to the man's mental health,[150] which is a risk factor classifiable at the micro level. The carabinieri had warned the prosecutor about the man's dangerous behaviour, linking it to his mental health and criminal record. However, the Court found that although an investigation had been initiated and a psychological evaluation was also ordered, such evaluation never took place and no protective measures were taken.[151] Therefore, the ECtHR concluded that the authorities failed to take the necessary measures, despite them being aware of the man's mental condition. Thus, in this case the risk factor related to mental health partially informed the Court's reasoning.

So far, the Court in *Landi*, as in *Gaidukevich* and in *Y and others*, has followed *Kurt*'s fundamental principles. What is particularly interesting in *Landi* is the separate opinion written by Justice Sabato. He commented on how the Court was able to apply *Kurt* fairly, while also addressing the concerns raised earlier in *Talpis v. Italy* (2017) by Spano. In that case, judge Spano warned that lowering the 'immediacy' threshold could have put too much pressure on law enforcement.[152] In his opinion Judge Sabato agreed that the state's duty to protect people, must be based on clear legal standards and cannot be stretched too far. In this regard, however, he praised the Court in *Landi* for maintaining a good balance, clearly separating the idea of 'how immediate the danger was' (a concept taken up by *Osman*) from 'how quickly the authorities should act' (which *Kurt* helped explain).[153] In other words, in *Landi* the Court said

[150] *Landi c. Italie* (n 137). [para. 86].
[151] *Landi c. Italie* (n 137). [para. 86].
[152] *Talpis v. Italy* (n 118). [Partially Dissenting Opinion of Judge Spano, para. 9].
[153] *Landi c. Italie* (n 137). [Concurring Opinion of Judge Sabato, para. 7].

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that the State is responsible when it clearly fails to protect, but it did not require states to do more than 'the extent possible in a democratic state'.[154]

To sum up, with the Grand Chamber's judgment in *Kurt v. Austria* (2021), the ECtHR changed its approach, recognising the specific dynamics of domestic violence and reinforcing the positive obligations under Art.2 in such cases. This judgment marked a turning point, and its impact was highlighted in subsequent cases such as in *Y and others v. Bulgaria* (2022), *Gaidukevich v. Georgia* (2023) and *Landi v. Italy* (2022). These judgments show how the Court has begun to apply a more victim-sensitive approach, better adapted to the nature of domestic violence, moving beyond the limitations of the traditional *Osman* test.

4.4 From 2021 to 2024

Although the GC in *Kurt* articulated standards better suited to deal with domestic violence cases, *Osman* continues to be cited, both in judgments and also when the ECtHR asks questions to the parties in the communicated cases. This indicates that the transition from *Osman* to *Kurt* seems to not be consistent, nor has *Kurt* appeared to have entirely replaced *Osman* as the baseline test for assessing state responsibility in cases of femi(ni)cide or domestic violence.

For example, in *De Giorgi v. Italy* (2022),[155] the primary legal basis was Art.3 (prohibition of torture), rather than Art.2. Yet the Court explicitly invoked *Kurt* to assess the authorities' obligation to prevent further harm. The Court stated that it would 'refer at the outset to the principles set out in [*Kurt*] in the context of the examination of positive obligations under Art.3

[154] *Landi c. Italie* (n 137). [Concurring Opinion of Judge Sabato, para. 9].
[155] *De Giorgi c Italie* [2022] ECtHR 23735/19. Original version in French, English translation for the purpose of this thesis by the author.

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of the Convention and the obligation to take reasonable steps to avert a real and immediate risk of recurring violence'.[156] In the *De Giorgi* case, the applicant, a survivor of prolonged domestic violence, was not facing an imminent risk to life at the time of the proceedings. Nevertheless, the Court applied *Kurt* to evaluate the risk of recurring violence, expanding the Grand Chamber's reasoning beyond Art.2. This application demonstrates how the ECtHR has internalised a nuanced understanding of the nature of domestic violence, its risk factors and the idea of continuum of harm (theorised by the multicausal model at the interpersonal level). And this understanding is reflected in this judgment since the Court reasoned that the threshold of state obligation under Art.3 are still the same as under Art.2 when the harm, though not fatal, is nonetheless severe and ongoing.

When applying the *Kurt* framework in *De Giorgi*, the Court had to establish if the authorities should have known about the risk, and it did so by taking into account a number of factors, including the perpetrator's history of violent behaviour and failure to comply with the terms of a protection order.[157] This shows that the Court looked into the micro and macro risk factors. Ultimately, the authorities were found to have failed to adopt adequate protective measures, despite clear warning signs and recommendations from law enforcement. Therefore, the Court concluded that the risks of recurring violence were not properly assessed or considered,[158] leading to a failure to act with due diligence which amounted to a violation of Art.3.

Additionally, the Court, when examining the state obligation to conduct an effective investigation, stressed that due diligence is required in dealing with cases of domestic violence, and the specific nature of domestic violence must be taken into account during domestic

[156] *De Giorgi c. Italie* (n 155). [para. 70].
[157] *De Giorgi c. Italie* (n 155). [para. 76].
[158] *De Giorgi c. Italie* (n 155). [para. 77].

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proceedings.[159] Therefore, the *De Giorgi* case shows clearly how significantly the ECtHR's reasoning has evolved since its earlier, more rigid application of the 'immediacy' requirement under the traditional *Osman* test, particularly if compared to the cases examined between 1998 and 2021 that were presented in the previous section (4.2).

However, this evolution is not consistent across the Court's case law. In a more recent case, *Vieru v. Romania* (2024),[160] the Court did not apply *Kurt* despite clear indications that the case involved longstanding domestic violence. This case was about a woman who continued to suffer abuse even after divorcing her husband, and eventually died after falling from her fifth-floor apartment during another episode of violence. Her abuser, who was present at the time and had a history of breaching protection orders, was also known to abuse alcohol. In this case the applicant claimed that the State failed to protect the woman and to properly investigate her death.

In *Vieru* the Court, rather than applying the *Kurt* principles, it focused on procedural issues and criticized the authorities for pursuing an investigation under Article 150 of the Romanian Criminal Code (incitement to suicide), which was argued to be ill-suited to the domestic violence context.[161] The Court noted that the authorities should have considered the possibility of a gender-motivated crime and emphasized that investigations into such cases must be carried out with particular diligence.[162] However, the Court limited its analysis to the procedural limb of Art.2, stating that 'in the absence of an effective investigation into the […] death and of any other factual elements it is not possible to discern without speculation if her death had resulted

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[159] *De Giorgi c. Italie* (n 155). [para. 81].
[160] *Vieru v the Republic of Moldova* [2024] ECtHR 17106/18.
[161] *Vieru v. the Republic of Moldova* (n 160). [para. 91].
[162] *Vieru v. the Republic of Moldova* (n 160). [para. 92].

from an accident, a suicide, a crime or a gender-motivated crime'[163] While it did find a violation of Art. 3 on substantive grounds and of Art.14 read in conjunction with Art.2 and 3, it did not engage with *Kurt* when addressing the state obligations under Art.2.

This failed occasion to use *Kurt* in relation to the substantive aspects of Art.2 was pointed out by judges Krenc and Sârcu in their partially dissenting opinion. They argued that the facts of the case (marked by ongoing abuse even post-divorce) should have led to an examination under the substantive part of Art.2.[164] Referring to *Kurt* and the Explanatory Report to Article 52 of the Istanbul Convention, the two dissenting judges also asserted that the victim's death must be understood in the context of persistent domestic violence. Specifically, they emphasized that a pattern of ongoing abuse renders the danger 'immediate' and that domestic violence often correlates with psychological harm to the survivor, which can result in suicide risk.[165] This partially dissenting opinion showed how the ECtHR 'has missed an opportunity to deal with the issue of suicide as it arises in the context of proven domestic violence and to reiterate the corresponding obligations on the authorities set out in [Kurt]'.[166] Judges Krenc and Sârcu ended by saying 'by bracketing out the question of suicide from the phenomenon of domestic violence, the present judgment is fraught with the risk of failing to consider that phenomenon as a whole, including in its most serious forms'.[167] This opinion of the two judges emphasises the persistent lack of legal and statistical frameworks to adequately consider indirect forms of femi(ni)cide, such as suicides following prolonged domestic violence; a gap that was already highlighted in the first chapter (1.2) when discussing the limitations of the classification and definition of femi(ni)cide.

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[163] *Vieru v. the Republic of Moldova* (n 160). [para. 97].
[164] *Vieru v. the Republic of Moldova* (n 160). [Partly Dissenting Opinion of Judges Krenc and Sârcu, para. 1].
[165] *Vieru v. the Republic of Moldova* (n 160). [Partly Dissenting Opinion of Judges Krenc and Sârcu, para. 6].
[166] *Vieru v. the Republic of Moldova* (n 160). [Partly Dissenting Opinion of Judges Krenc and Sârcu, para. 9].
[167] *Vieru v. the Republic of Moldova* (n 160). [Partly Dissenting Opinion of Judges Krenc and Sârcu, para.9].

Furthermore, inconsistencies persist in the Court's approach even at the stage of communication. For example, in *Maria Latus v. Moldova* (Application no. 15233/24),[168] communicated in December 2024, the Court posed questions to the parties only referencing the *Osman* standards. This exclusive reliance on *Osman*, without any mention of the more recent reasoning in *Kurt*, in a way suggests a tendency to apply the general standard meanwhile overlooking the specific context of domestic violence.

To conclude, this chapter has presented the controversies surrounding the application of the *Osman* test in cases of domestic violence and femi(ni)cide, particularly because of the distinct nature of these crimes. With the Grand Chamber's judgment in *Kurt v. Austria* (2021), the ECtHR changed its approach, recognising the specific dynamics of domestic violence and reinforcing the positive obligations under Art.2 in such cases. This judgment marked a turning point, however when looking at recent case law, this change (*Osman-Kurt*) has not been consistently applied and the Court still relies on the traditional *Osman* test in some cases.

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[168] *Latus v The Republic of Moldova,* No 15233/24, Communicated on 11 December 2024.

CONCLUSION

As outlined in Chapter 2, femi(ni)cides are not isolated events, but they rather are the outcome of a complex interplay of factors operating at multiple levels. While the analysis of ECtHR case law conducted in Chapter 4 reveals that the Court has made progress in recognizing state obligations by also considering some of the risk factors in its reasoning, its approach remains arguably partial and inconsistent.

At the individual level, the Court often considers micro-level risk factors when assessing whether state authorities should have known about the risk. In *Talpis v. Italy* (2017),[169] for instance, the Court referenced the perpetrator's alcohol abuse, while in *Landi v. Italy* (2022),[170] it pointed to the psychological problems of the aggressor being underlooked by the state authorities. These examples show that the Court is, to some extent, aware of individual-level indicators of danger. However, the lack of corresponding action at the national level, as evidenced by the inaction of local authorities in these cases, suggests that such risk factors are not yet properly understood or operationalised by domestic institutions. This often results in authorities failing to treat these warning signs as indicators of serious, escalating risk, pointing to a deeper institutional unpreparedness. This issue also clashes with the obligations set out in the Istanbul Convention, especially Art.15, which requires member states to provide systematic professional training to all relevant professionals.[171]

The meso or interpersonal level is where it can be argued that the Court has made the most visible progress since the Grand Chamber judgment in *Kurt v. Austria* (2021).[172] As examined,

[169] *Talpis v. Italy* (n 118).
[170] *Landi c. Italie* (n 137).
[171] Istanbul Convention (n 100).
[172] *Kurt v Austria* (n 127).

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the Court has since then recognized the ongoing, cumulative and peculiar nature of domestic violence, referenced as a 'continuum of violence', which demands proactive and independent state action. For instance, in *Gaidukevich v. Georgia* (2023) and *Landi v. Italy* (2022), the Court acknowledged the significance of controlling behaviour, emphasizing that domestic violence requires an official response, independent of the victim's cooperation.[173]

At the Community level, the Court doesn't seem to have been considering how traditions, cultural norms, or religious beliefs may influence the actions of perpetrators in its reasoning. However, this may reflect a limitation in the scope of the landmark cases analysed in this thesis. Although the selected cases are from different countries, they may not be countries where practices such as dowry-related violence or so-called honour killings are most common.[174]

Despite the evolution of the Court presented in Chapter 4, the ECtHR's engagement with the societal level, where structural violence and systemic gender inequality are considered, remains limited. While the ECtHR does hold states accountable when their legislative frameworks are inadequate, its analysis often stops there. The Court has made important steps recognising states' obligations under Articles 2, 3, and occasionally 8 of the Convention. However, its reluctance to examine certain cases also under Art.14, the non-discrimination clause, represents a significant shortcoming.[175] This omission becomes especially problematic when viewed in

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[173] *Gaidukevich v Georgia* (n136) [para. 71]; *Landi c Italie* (n 137) [para. 92].

[174] For more on dowry-related violence, honour killings and countries where such practices are more common, see Corradi (n 37) [page 6].

[175] On this point, it is important to recognise that, although the Court's limited commitment to Article 14 represents a significant gap in its approach to cases of domestic violence and femi(ni)cide, its overall case law in this area nevertheless reflects an advanced standard of protection. This level of protection remains only an aspiration in other areas of discrimination, such as racial or ethnic discrimination, where the Court's approach continues to fall significantly behind. For further discussion on this issue see Mathias Möschel, 'Is the European Court of Human Rights' Case Law on Anti-Roma Violence "beyond Reasonable Doubt"?' (2012), 12(3), Human Rights Law Review, pp. 479-507. and Rory O'Connell, 'Cinderella Comes to the Ball: Article 14 and the Right to Non-Discrimination in the ECHR' (2009), Legal Studies, pp. 211-229.

light of the broader structural context of gender-based violence. As discussed earlier, the societal structure within which femi(ni)cide occurs is deeply embedded in patriarchal norms, which not only tolerate but often sustain violence against women. Therefore, the ECtHR's failure to use Art.14, even when not invoked by the applicant, means avoiding to recognise and name this reality. As a result, it reduces femi(ni)cides and the correlated human rights violations to isolated state failures rather than recognising them as manifestations of a systemic and structural problem. The Court's silence towards Art.14 sends a message that domestic violence is not necessarily a gendered phenomenon, despite its own jurisprudence (such as in *Opuz v. Turkey*)[176] indirectly recognizing it as such.

Thus, while the ECtHR has evolved from the restrictive *Osman* test to a more victim-centred approach post-*Kurt*, this transformation appears to be incomplete. The Court still occasionally refers to the *Osman* framework and remains hesitant to fully embrace the discriminatory and structural dimensions of domestic violence. Until Article 14 becomes a consistent part of the Court's analysis in these cases, the full picture of state responsibility and the systemic nature of femi(ni)cide will remain unscrutinised.

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[176] *Opuz v. Turkey* (n 109).

BIBLIOGRAPHY

'Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence "Istanbul Convention" <https://rm.coe.int/168046031c> accessed 19 May 2025.

'Declaration on the Elimination of Violence against Women' (*General Assembly resolution 48/104*, 20 December 1993) <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women> accessed 19 May 2025.

'Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on Combating Violence against Women and Domestic Violence' <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401385> accessed 19 may 2025.

'Femi(Ni)Cide Watch Platform' <https://femicide-watch.org/node/920400> accessed 9 June 2025.

'Key Facts about the Istanbul Convention - Istanbul Convention Action against Violence against Women and Domestic Violence - Www.Coe.Int' (*Istanbul Convention Action against violence against women and domestic violence*) <https://www.coe.int/en/web/istanbul-convention/key-facts> accessed 30 April 2025.

'Special Rapporteur on Violence against Women and Girls' (*OHCHR*) <https://www.ohchr.org/en/special-procedures/sr-violence-against-women> accessed 19 May 2025.

Bandelli D and Corradi C, 'Femicide: The Notion, Theories, and Challenges for Research', *Oxford Research Encyclopedia of Criminology and Criminal Justice* (2021) <https://oxfordre.com/criminology/display/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-590> accessed 30 April 2025.

Corradi C and Others, 'Theories of Femicide and Their Significance for Social Research' (2016) 64 Current Sociology 975 <https://journals.sagepub.com/doi/10.1177/0011392115622256> accessed 17 March 2025.

Corradi C, 'Femicide, Its Causes and Recent Trends: What Do We Know?' [2021] Directorate General for External Policies of the Union <https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/653655/EXPO_BRI(2021)653655_EN.pdf> accessed 17 January 2025.

Council of Europe, 'The European Convention on Human Rights - A Living Instrument' <https://www.echr.coe.int/documents/d/echr/Convention_Instrument_ENG> accessed 25 May 2025.

De Vido S and Frulli M (eds), 'GREVIO - Group of Experts on Action against Violence against Women and Domestic Violence', *Preventing and Combating Violence Against Women and Domestic Violence* (Edward Elgar Publishing 2023) <https://www.elgaronline.com/view/book/9781839107757/ch72.xml> accessed 16 January 2025.

CEU eTD Collection

Dipartimento della pubblica sicurezza, 'Servizio Analisi Criminale' [2024] Ministro dell'interno <https://www.interno.gov.it/sites/default/files/2024-12/Settimanale_omicidi2122024.pdf> accessed 13 March 2025.

European Institute for Gender Equality (ed), *Terminology and Indicators for Data Collection: Rape, Femicide and Intimate Partner Violence* (Publications Office 2017) < https://eige.europa.eu/publications-resources/publications/terminology-and-indicators-data-collection-rape-femicide-and-intimate-partner-violence-report> accessed 12 March 2025.

European Institute for Gender Equality (EIGE), 'Defining and Identifying Feminicide: A Literature Review' <https://eige.europa.eu/publications-resources/publications/defining-and-identifying-femicide-literature-review> accessed 13 March 2025.

European Institute for Gender Equality (EIGE), 'European Union | Violence | 2023 | Gender Equality Index' <https://eige.europa.eu/gender-equality-index/2023/domain/violence> accessed 12 March 2025.

European Institute for Gender Equality (EIGE), 'Femicide | European Institute for Gender Equality' (2017) <https://eige.europa.eu/publications-resources/thesaurus/terms/1192?language_content_entity=en> accessed 2 February 2025.

European Institute for Gender Equality (EIGE), 'Understanding Intimate Partner Femicide in the European Union' <https://eige.europa.eu/publications-resources/publications/understanding-intimate-partner-femicide-european-union-essential-need-administrative-data-collection> accessed 2 February 2025.

Galtung Johan, *The Three 'Rs' after Violence: Reconstruction, Reconciliation, Resolution. Facing the Visible and Invisible Effects of War and Violence* (1998) <https://www.gernikagogoratuz.org/wp-content/uploads/2020/05/RG06completo.pdf> accessed 18 March 2025.

Hefti A, *Conceptualizing Femicide as a Human Rights Violation: State Responsibility Under International Law* (Edward Elgar Publishing 2022) <https://www.elgaronline.com/view/book/9781803920443/9781803920443.xml> accessed 30 January 2025.

Inter-American Court Of Human Right (ed), 'Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem Do Para"' (Brill | Nijhoff 1998) < https://www.oas.org/en/mesecvi/docs/belemdopara-english.pdf> accessed 12 March 2025.

Joseph Janice, 'Victims of Femicide in Latin America: Legal and Criminal Justice Responses' (2017) 20 Temida 3 <https://doiserbia.nb.rs/Article.aspx?ID=1450-66371701003J> accessed 16 January 2025.

McQuigg R, 'The Evolving Jurisprudence of the European Court of Human Rights on Domestic Abuse' in Philip Czech and others (eds), *European Yearbook on Human Rights 2022* (1st edn, Intersentia 2022) <https://www.cambridge.org/core/product/identifier/9781839703447%23c7/type/book_part> accessed 18 March 2025.

CEU eTD Collection

McQuigg R, 'The Osman Test in the Context of Domestic Abuse: Y and Others v Bulgaria.' (2022) 2022 European Human Rights Law Review 501 <https://pure.qub.ac.uk/en/publications/the-osman-test-in-the-context-of-domestic-abuse-y-and-others-v-bu> accessed 2 April 2025.

Möschel M, 'Is the European Court of Human Rights' Case Law on Anti-Roma Violence "beyond Reasonable Doubt"?' (2012) 12 Human Rights Law Review 479 <http://www.scopus.com/inward/record.url?scp=84867604119&partnerID=8YFLogxK> accessed 12 June 2025.

O'Connell R, 'Cinderella Comes to the Ball: Article 14 and the Right to Non-Discrimination in the ECHR' (2009) 2009 Legal Studies 211 <http://onlinelibrary.wiley.com/doi/10.1111/j.1748-121X.2009.00119.x/full> accessed 12 June 2025.

Pasinato W and De Ávila TP, 'Criminalization of Femicide in Latin America: Challenges of Legal Conceptualization' (2023) 71 Current Sociology 60 <http://journals.sagepub.com/doi/10.1177/00113921221090252> accessed 16 January 2025.

Stöckl H and others, 'Issues in Measuring and Comparing the Incidence of Intimate Partner Homicide and Femicide - A Focus on Europe' [2020] Rivista Sperimentale di Freniatria 61 <https://www.medra.org/servlet/MRService?lang=ita&hdl=10.3280/RSF2020-001005> accessed 16 March 2025.

Stout K, 'Intimate Femicide: An Ecological Analysis' (1992) 19 The Journal of Sociology & Social Welfare <https://scholarworks.wmich.edu/jssw/vol19/iss3/3> accessed 18 March 2025.

United Nations Committee on the Elimination of Discrimination against Women, 'CEDAW General Recommendation No. 19: Violence against Women' (*Refworld*, 1992) <https://www.refworld.org/legal/resolution/cedaw/1992/en/96542> accessed 30 April 2025.

United Nations Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19: Committee on the Elimination of Discrimination against Women' (2017) 6 International Human Rights Law Review 279 <https://brill.com/view/journals/hrlr/6/2/article-p279_279.xml> accessed 2 February 2025.

United Nations Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' <https://digitallibrary.un.org/record/711350> accessed 30 April 2025.

United Nations Office on Drugs and Crime (UNODC) and United Nations Women (UN Women), 'Femicides in 2023. Global Estimates of Intimate Partner/Family Member Femicides' (2024) <https://www.unodc.org/documents/data-and-analysis/briefs/Femicide_Brief_2024.pdf> accessed 16 March 2025.

United Nations Office on Drugs and Crime (UNODC), 'DCN5: Symposium on Femicide: A Global Issue That Demands Action' (*United Nations : Office on Drugs and Crime*) <//www.unodc.org/unodc/en/ngos/DCN5-Symposium-on-femicide-a-global-issue-that-demands-action.html> accessed 3 February 2025.

CEU eTD Collection

United Nations Office on Drugs and Crime, 'Global Study on Homicide: Gender-Related Killing of Women and Girls' <https://www.unodc.org/documents/data-and-analysis/gsh/Booklet_5.pdf> accessed 18 March 2025.

United Nations Women, *Beijing Declaration and Platform for Action: Beijing+5 Political Declaration and Outcome* (UN Women 2014) <https://www.icsspe.org/system/files/Beijing%20Declaration%20and%20Platform%20for%20Action.pdf> accessed 19 May 2025.

United Nations, 'Convention on the Elimination of All Forms of Discrimination against Women' (18 December 1979) <https://www.ohchr.org/sites/default/files/cedaw.pdf> accessed 30 April 2025.

United Nations, 'Vienna Declaration on Femicide' in United Nations Economic and Social Council (UN 2013) <https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_22/_E-CN15-2013-NGO1/E-CN15-2013-NGO1_E.pdf> accessed 12 March 2025.

United Nations, 'World Crime Trends and Emerging Issues and Responses in the Field of Crime Prevention and Criminal Justice' in United Nations, *Report of the Commission on Crime Prevention and Criminal Justice on the Twenty-Fourth Session (5 December 2014 and 18-22 May 2015)* (UN 2015) <https://www.un-ilibrary.org/content/books/9789210577342c007> accessed 15 March 2025.

Weil S, Corradi C and Naudi M, 'Femicide Across Europe |Theory, Research and Prevention' [2018] Bristol University Press <https://doi.org/10.2307/j.ctv8xnfq2> accessed 16 January 2025.

Women Against Violence Europe (WAVE), 'WAVE Country Report 2023' <https://wave-network.org/wp-content/uploads/WAVE_CountryReport2023.pdf> accessed 13 March 2025.

World Health Organization, 'Understanding and Addressing Violence against Women' (2012) <https://iris.who.int/bitstream/handle/10665/77421/WHO_RHR_12.38_eng.pdf?sequence=1> accessed 3 February 2025.

Case Law:

A and B v. Georgia [2022] ECtHR 72975/16

De Giorgi c Italie [2022] ECtHR 23735/19

Gaidukevich v Georgia [2023] ECtHR 38650/18

González et al v Mexico (IACtHR)

Kurt v Austria [2021] ECtHR 62903/15.

Landi c Italie [2022] ECtHR 10929/19

Latus v The Republic of Moldova No 15233/24 Communicated on 11 December 2024

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Opuz v Turkey [2009] ECtHR 33401/02

Osman v the United Kingdom [1998] ECtHR [GC] 23452/94

Talpis v Italy [2017] ECtHR 41237/14

Tkhelidze v Georgia [2021] ECtHR 33056/17

Valiulienė v Lithuania [2013] ECtHR 33234/07

Vieru v the Republic of Moldova [2024] ECtHR 17106/18

Volodina v Russia [2019] ECtHR 41261/17

Y and Others v Bulgaria [2022] ECtHR 9077/18

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