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CHILDREN IN THE SHADOWS

Why the European Court of Human Rights fails children witnessing domestic
violence - and how to bring them into the spotlight

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Abstract

Domestic violence is a widespread human rights violation, leaving children not only as silent spectators but as hidden victims in the shadows. Despite mounting evidence that children who witness domestic violence suffer profound psychological, physical- sometimes as severe as for the parent or caregiver directly abused- their experiences often remain invisible in legal discourse. This thesis confronts that invisibility by examining how the European Court of Human Rights addresses children who witness domestic violence under Articles 3 (prohibition of torture), 8 (Right to respect for private and family life) and 14 (prohibition of discrimination) of the European Convention on Human Rights, and whether the Court's practice align with international and European children's rights instruments.

This thesis adopts a mixed-methods approach, combining a systematic mapping of 31 ECtHR judgments on domestic violence, sourced from the Court's "Key theme Article 2 domestic violence" document, with qualitative insights from expert interviews with Prof. Dr Ann Skelton, former Chair of the UN Committee on the Rights of the Child, and ECtHR Judge Georgios Serghides. The mapping, which appears to be the first focused specifically on children who witness domestic violence before the ECtHR, offers a structured view of how such children feature- or are overlooked- in the Court's reasoning. The findings reveal that children are present in 83.9% of the surveyed domestic violence cases, while the Court only found a violation for the child(ren) in 25.8% of the cases. The findings show that the children's rights and experiences often remain in the background, particularly when they are not applicants themselves. Overall, the research highlights significant gaps between the ECtHR's current jurisprudence and international standards, suggesting that further developments are needed to ensure children who witness domestic violence are fully recognised as rights-holders in European human rights law.

This thesis recommends that the European Court of Human Rights strengthen its protection for children who witness domestic violence by more consistently recognising the severe harm such children may suffer under Article 3 ECHR, including psychological trauma that can amount to inhuman or degrading treatment. It proposes that the Court should examine whether failing to protect these children could amount to age-based discrimination under Article 14, and more often treat violence committed in a child's presence as an aggravating factor, as required by the Istanbul Convention. It also encourages the Court to use its power to recharacterise legal issues so that cases are examined under all relevant Articles, including Articles 3, 8 and 14, to fully capture the unique harm faced by child witnesses. Moreover, it highlights the value of third-party interventions from child rights organisations to shed light on children's experiences and ensure child-sensitive reasoning. Finally, it urges deeper integration of international and European child rights standards, like the UNCRC and Istanbul Convention, into the Court's judgments. This thesis hopes to shine a light on the gaps that still leave these children in the shadows and aspires to contribute to the Court, scholars, practitioners, and NGOs working together to bring these children into the spotlight where they belong.

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Guided by the firm belief that a safe and secure childhood is essential to the advancement of Human Rights worldwide,

Astrid

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Table of abbreviations

Art - Article

UNCRC - United Nations Convention on the Rights of the Child

UNCRC Committee - United Nations Committee on the Rights of the Child

CoE - Council of Europe

ECOSOC - The UN Economic and Social Council

ECHR - European Convention on Human Rights

ECtHR - European Court of Human Rights

Para - Paragraph

UN - United Nations

1. Introduction

Domestic violence remains one of the most widespread forms of violence worldwide, with children often hidden in its shadows.¹ Recent systematic reviews estimate that 16.5 % of children globally witness domestic violence each year, exposing hundreds of millions of children to violence within their homes- places meant to provide safety and care.² In Europe alone, estimates indicate that between 12 and 26 million children live in households affected by domestic violence, while country-specific data show that up to one in four children may have witnessed physical assaults between parents during childhood.³ The World Health Organization warns that children exposed to intimate partner violence often experience consequences as severe as those directly abused, and thus need to be considered as child abuse.⁴

Children who witness domestic violence are not simply spectators of isolated incidents. To witness domestic violence as a child is to be present in spaces where the people one depends on most for care and protection become sources of fear and harm.⁵ Sometimes children hear screams and threats through thin walls; sometimes they see bruises, broken objects, or the silent aftermath of chaos. The harm is sometimes invisible but no less real- lodged in bodies that hold stress and trauma long after the violence subsides.⁶ The term “witnessing” thus encompasses not only observing violent acts but also hearing, sensing, or experiencing the constant fear, tension, and aftermath that violence leaves behind.⁷

When a child becomes an involuntary observer of violence, the harm is not only immediate but can be psychological, physical, and both deeply lasting.⁸ Research across disciplines-

¹ World Health Organization, *Violence Against Children in the European Union* (European Parliamentary Research Service 2024); Council of Europe, *Strategy for the Rights of the Child (2022–2027)* (Council of Europe Publishing 2022) 13; ECOSOC, ‘Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime’ (20 July 2005) UN Doc E/RES/2005/20 preamble.

² Tyson Whitten et al, ‘Global Prevalence of Childhood Exposure to Physical Violence within Domestic and Family Relationships in the General Population: A Systematic Review and Proportional Meta-Analysis’ (2024) 25 *Trauma, Violence, & Abuse* 1411, 1411, 1415-1416, 1421

³ Arta Dodaj, ‘Children Witnessing Domestic Violence: A Systematic Review’ (2020) 15 *Journal of Children’s Services* 161

⁴ WHO, ‘Child Maltreatment’ (19 September 2022)

<https://www.who.int/news-room/fact-sheets/detail/child-maltreatment>

⁵ Carolina Øverlien and Stephanie Holt, ‘European Research on Children, Adolescents and Domestic Violence: Impact, Interventions and Innovations’ (2019) 34 *Journal of Family Violence* 365

⁶ *ibid*

⁷ *ibid*

⁸ Carnevale et al, ‘Children Witnessing Domestic Violence in the Voice of Health and Social Professionals’ (2020) 17 *Int J Environ Res Public Health* 4463, 2.

including law, psychology, medicine, social work, neuroscience, and public health consistently shows that children who witness domestic violence endure profound and multifaceted harm. Many live in a state of hypervigilance, prone to anxiety, depression, and post-traumatic stress.⁹ Furthermore, this serious form of child maltreatment is capable of causing trauma, difficulties in learning and relationships, and long-term physical health problems.¹⁰ Some children express the trauma from witnessing domestic violence outwardly through aggression, bullying, or violent sibling dynamics.¹¹ Academically, these children often struggle to concentrate, perform poorly, and disengage from school.¹² Neurobiological studies show that chronic exposure to violence can alter children's brain development, affecting memory, learning, emotional regulation, and affect both cognitive and emotional functioning.¹³

Psychological trauma in children, like fear and stress from abuse or neglect, doesn't just stay in their minds- it affects their bodies too. The constant state of alarm can trigger physical reactions such as racing heartbeats, hormone imbalances, and bodily tension, which over time may cause real health problems like chronic pain, stomach issues, or other illnesses.¹⁴ Longitudinal studies have established strong correlations between children who witness domestic violence and chronic health problems including cancer, cardiovascular disease, diabetes,¹⁵ asthma, obesity, sleep disturbances, and unexplained pain.¹⁶ In other words, emotional wounds can become physical suffering because the mind and body are deeply connected. The World Health Organization warns that children exposed to intimate partner violence often experience consequences as severe as those directly abused, including higher risks of self-harm, substance use, and chronic illnesses in adulthood.¹⁷

The harm that flows from witnessing domestic violence does not look the same for all children but changes depending on their age and developmental stage¹⁷. Younger children

⁹ Dodaj (n 3)

¹⁰ Harrison, 'The Long-Term Effects of Domestic Violence on Children' (2021) 41 Children's Legal Rights Journal 63

¹¹ Lee et al, 'The Effect of Childhood IPV Exposure on Bullying' (2022) 37 Journal of Family Violence 1283; Piotrowski et al, 'Children Exposed to IPV: Sibling Aggression' (2021) 30 J Child Fam Stud 650, 653.

¹² Cage et al, 'The Effect of Exposure to IPV on Children's Academic Functioning' (2022) 37 J Fam Violence 1337, 1339.

¹³ Monica Calderaro et al, 'International Research on the Problems of Children in Cases of Witnessing Domestic Violence' (2025) 16(1) BRAIN Broad Research in Artificial Intelligence and Neuroscience; Bessel van der Kolk, *The Body Keeps the Score* (Penguin 2014) Part three: the minds of children

¹⁴ Bessel van der Kolk (n 13)

¹⁵ Calderaro et al (n 13)

¹⁶ Cage et al (n 12)

¹⁷ Calderaro and others (n 13)

often react with fear, confusion, or regressive behaviours, while school-aged children may struggle with anxiety, concentration, and social relationships, and adolescents can show externalising behaviours like aggression or delinquency, or turn inwards with depression and self-harm. Yet across these ages, a common thread is that the violence leaves deep imprints on how children perceive safety, trust, and themselves.¹⁸ Crucially, the consequences often do not end in childhood. Many children who grow up surrounded by domestic violence carry its echoes into adulthood, where the risks of becoming either victims or perpetrators of violence rise significantly, feeding into patterns of harm that pass silently between generations. It is in this intergenerational cycle that the invisible injuries of witnessing violence become a collective social wound, demanding both legal recognition and committed intervention.¹⁹

International and European human rights instruments increasingly recognise this reality. The ‘Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (hereafter Istanbul Convention)²⁰ explicitly identifies children who witness domestic violence as victims deserving protection, while the ‘UN Convention on the Rights of the Child’ (hereafter UNCRC)²¹ sets out obligations for states to shield children from all forms of violence and to respect their voices in decisions affecting them. The United Nations Economic and Social Council’s (hereafter ECOSOC)²² ‘Guidelines on Justice for Child Victims and Witnesses of Crime’ stress that children’s experiences must be treated with dignity, respect, and procedural safeguards.

Despite significant advances, children who witness domestic violence often remain invisible in legal and judicial processes, where such violence is still largely framed as an issue between adults. This invisibility risks leaving children without protection, remedies, or recognition as rights holders, perpetuating age-based discrimination and reinforcing the private nature of domestic violence.²³ Witnessing domestic violence as a child is not merely passive observation but constitutes a grave human rights violation demanding legal clarity and robust

¹⁸ *ibid*

¹⁹ *ibid*

²⁰ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereafter ‘Istanbul Convention’) (adopted 11 May 2011, entered into force 1 August 2014) CETS No 210, arts 26, 46

²¹ United Nations General Assembly (UNGA) *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 3

²² United Nations Economic and Social Council (ECOSOC) Resolution 2005/20 ‘Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime’ UN Doc E/RES/2005/20

²³ Dodaj (n 3)

protection under European human rights law.²⁴ Yet most existing research concentrates on psychological or social aspects, with little attention to the legal realities these children face. To my knowledge, no systematic mapping of European case-law specifically concerning children who witness domestic violence has been conducted, leaving a notable gap in both scholarship and practice.

This thesis focuses on that gap. The aim is to critically examine how the European Court of Human Rights (hereafter ECtHR or the Court) addresses the rights and protection needs of children who witness domestic violence, a group frequently invisible in legal proceedings despite their profound vulnerability and harm. It seeks to analyse the Court's interpretation and application of Articles 3, 8, of the European Convention of Human Rights (hereafter ECHR)²⁵ in such cases, assessing whether European human rights jurisprudence sufficiently aligns with the obligations set out in international and European child rights instruments, including the UN Convention on the Rights of the Child and the Istanbul Convention. Hence, this thesis will address the following research questions:

- (1) How does the European Court of Human Rights address children who witness domestic violence under Articles 3, 8, and 14 ECHR?
- (2) Is European human rights case-law adequate in relation to international and European child rights instruments?
- (3) How could protection for these children be strengthened under the ECHR, in light of evolving international and European human rights standards?

The methodology of this thesis combines systematic legal research with qualitative insights to map and critically analyse how the ECtHR engages with the rights of children who witness domestic violence. Central to my approach has been a systematic mapping of 31 judgments from the ECtHR concerning Articles 3, 8, and 14 of the European Convention on Human Rights, drawn from the European Court of Human Rights' official document 'Key theme Article 2 domestic violence'²⁶ (last updated 28 February 2025). This mapping provides a structured and empirical overview of how children's experiences as witnesses are (or are not)

²⁴ Daniela Baro, 'Children Witnessing Atrocities Against Parents or Caregivers: A Human Rights Perspective' (2006) 16 *Torture* 190

²⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (hereafter ECHR), opened for signature 4 November 1950, ETS No 5 (entered into force 3 September 1953).

²⁶ European Court of Human Rights, *Key Theme – Article 2 Domestic violence* (ECHR-KS, updated 28 February 2025)

addressed in the Court’s reasoning, revealing patterns, inconsistencies, and persistent gaps. To deepen this doctrinal study and add nuanced perspectives, I have conducted expert interviews with two distinguished figures. The first is Judge Georgios Serghides²⁷ of the ECtHR, whose extensive judicial career and academic contributions span comparative family law, international human rights, and European Convention jurisprudence. The second is Professor Doctor Ann Skelton²⁸, an internationally recognised authority on children’s rights and strategic litigation, who has served as Chairperson of the UN Committee on the Rights of the Child and whose career bridges both rigorous academic research and practical child-rights advocacy. Through this mixed-methods approach, the thesis seeks not only to document the current state of the European human rights law but also to critically interrogate how the Court might evolve to better protect children living in the shadow of domestic violence.

The significance of this thesis lies in filling a striking gap in legal scholarship and practice concerning children who witness domestic violence. Although the preamble to the Istanbul Convention acknowledges the growing body of ECtHR case-law as setting important standards in the field of violence against women, there remains a clear lack of systematic analysis focusing specifically on children as witnesses to such violence. As noted by Fenton-Glynn in the book ‘Children and the European Court of Human Rights’²⁹, there is hope that the Court will expand its case-law in this area in the future- a sentiment that underlines how underexplored this issue remains. Indeed, to my knowledge, this thesis represents the first systematic mapping of ECtHR jurisprudence on child witnesses of domestic violence, aiming to bring clarity and structure to a field where children are too often invisible in legal reasoning. Most existing research concentrates on the psychological, neurological or social consequences of witnessing violence, without linking these findings to the legal frameworks that should protect these children. By analysing 31 ECtHR cases and engaging with expert insights, this study makes a significant contribution to bridging that gap, highlighting both doctrinal shortcomings and opportunities for reform. My hope is that this work will help to ensure that children are no longer treated as figures in the shadows of adult narratives, but as rights-holders in their own right, deserving of the same legal recognition and protection as anyone else affected by domestic violence.

²⁷ European Court of Human Rights, ‘Judge Georgios Serghides’ (European Court of Human Rights, undated) <https://www.echr.coe.int/w/georgios-serghides> accessed 1 July 2025.

²⁸ Ann Skelton, ‘Ann Skelton - Profile’ (Leiden University, undated) <https://www.universiteitleiden.nl/en/staffmembers/ann-skelton#tab-2> accessed 1 July 2025.

²⁹ Claire Fenton-Glynn, *Children and the European Court of Human Rights* (OUP 2021) 1, ch 2

2. Children witnessing violence as an increasingly recognised harm in international and European human rights standards

2.1 Children as right- holders in UN instruments

The adoption of the United Nations Convention on the Rights of the Child (hereafter UNCRC) in 1989 is widely recognised as a landmark in international human rights law, fundamentally reshaping how law perceives children; children went from not only as passive recipients of adult protection, but as autonomous rights-holders with legal standing in their own right.³⁰ The UNCRC is the most universally ratified human rights treaty in history³¹ (all Member States of the United Nations (hereafter UN) have ratified the Convention except the United States³²), reflecting both the global consensus around the moral imperative to protect children and the evolving understanding of children’s agency and participation in society.³³ The UNCRC is crystallised around “provision, protection and participation”.³⁴ and is guided by four general principles that inform the interpretation and implementation of all UNCRC rights; 1) the best interest of the child, 2) the right not to be discriminated against, 3) the right to life and development and the 4) right to be heard.³⁵ Yet despite its binding obligations, the practical realisation of children’s rights remains uneven, revealing persistent gaps between the UNCRC’s aspirations and the lived realities of children worldwide.³⁶

In the context of children who witness domestic violence, understanding the UNCRC’s core rights becomes crucial for analysing whether the ECtHR case-law is adequate in relation to international child rights instruments. This chapter will therefore examine the key UNCRC provisions most relevant for such children: the right to non-discrimination in Article 2,³⁷ the

³⁰ Jaap E Doek, ‘The Human Rights of Children: An Introduction’ in Ursula Kilkelly and Ton Liefaard (eds), *International Human Rights of Children* (Springer 2019) 3.

³¹ John Tobin, *The UN Convention on the Rights of the Child: A Commentary* (OUP 2019) 1

³² Office of the United Nations High Commissioner for Human Rights, ‘Human Rights Indicators’ <<https://indicators.ohchr.org>> accessed 20 May 2025

³³ Ursula Kilkelly and Ton Liefaard, ‘International Human Rights of Children: Reflections on a Complex, Dynamic, and Relatively Young Area of Law’ in Ursula Kilkelly and Ton Liefaard (eds), *International Human Rights of Children* (Springer 2019) 617-619.

³⁴ Jaap (n 30) 13

³⁵ UN Committee on the Rights of the Child, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child* (2003) UN Doc UNCRC/GC/2003/5, para 12

³⁶ Kilkelly U and Liefaard T (eds), *International Human Rights of Children* (Springer 2019)

³⁷ UNCRC (n 21) art 2

principle of the child's best interests in Article 3,³⁸ the right to be heard under Article 12,³⁹ the protection from all forms of violence under Article 19,⁴⁰ as well as the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.⁴¹ The following sections therefore explore each of these rights in turn and then in the end discussing the UNCRC in relation to ECHR and ECtHR, laying the groundwork for a deeper analysis of how children's status as rights-holders intersects with European human rights protection.

2.1.1 Non- discrimination (Art 2 UNCRC)

Article 2 of the Convention on the Rights of the Child (UNCRC) is widely recognised as one of its four general principles, ensuring that all rights set out in the Convention apply to every child "without discrimination of any kind."⁴² The article is not only a stand-alone right but functions as an umbrella, safeguarding the equal enjoyment of all other rights enshrined in the UNCRC, free from discrimination.⁴³ This principle is crucial for transforming children's rights from abstract declarations into enforceable obligations that bind States Parties to secure equal respect and protection for all children under their jurisdiction.³

In order to understand and discuss Article 2 in this thesis, it is important to highlight the history of how the UNCRC was created. The drafting of Article 2 was strongly shaped by earlier human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, adopting a broad list of prohibited grounds including race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.⁴⁴ This continuity with earlier instruments was confirmed during the drafting process, which built on established human rights norms while also provoking debates over which grounds to include, such as political opinion and gendered language.⁴⁵ Notably, early drafts of the UNCRC were framed in

³⁸ *ibid* art 3

³⁹ *ibid* art 12

⁴⁰ *ibid* art 19

⁴¹ 1 ECOSOC Resolution 2005/20 'Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime' UN Doc E/RES/2005/20 (22 July 2005)

⁴² United Nations General Assembly (UNGA) *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 2; Gerison Lansdown, 'Article 2: The Right to Non-discrimination' in Ziba Vaghri and others (eds), *Monitoring State Compliance with the UN Convention on the Rights of the Child* (Springer 2022) 11-13

⁴³ Lansdown (n 42) 11-13

⁴⁴ Elaine E. Sutherland, 'Article 2 of the United Nations Convention on the Rights of the Child: Non-discrimination and Children's Rights' in Marit Skivenes and Karl Harald Søvig (eds), *Child Rights and International Discrimination Law: Implementing Article 2 of the UN Convention on the Rights of the Child* (Routledge 2019)

⁴⁵ *ibid*

masculine terms and only became gender-neutral at a late stage in the negotiations, following interventions from UNICEF.⁴⁶ This underlines that even instruments aimed at eliminating discrimination can replicate existing biases, and that the meaning of non-discrimination could (and should) continue to evolve through legal and social contestation.⁴⁷

Importantly, non-discrimination under art 2 UNCRC does not demand identical treatment for all children in all circumstances.⁴⁸ Instead, it requires that States Parties recognise the different situations children are in and the different treatments that might entail in order to achieve substantive equality.⁴⁹ The UNCRC Committee has clarified that States have a dual duty not only to refrain from discrimination but to actively dismantle structural inequalities that impede children's enjoyment of their rights.⁵⁰ The UNCRC Committee has clarified that States have a dual duty not only to refrain from discrimination but to actively dismantle structural inequalities that impede children's enjoyment of their rights.⁵¹ In practice, identical treatment can itself become discriminatory if it ignores the particular needs or vulnerabilities of certain groups of children. As expressed vividly, "no one would recommend the same shoe size for all children," highlighting that the essence of anti-discrimination law is about tailoring legal measures to fit children's varied realities.⁵²

A particularly complex issue under Article 2 is age-based discrimination. Although the UNCRC defines a child as every human being below the age of 18⁵³, age is notably absent from the list of prohibited grounds under Article 2(1).⁵⁴ This omission has drawn criticism because children often face distinct disadvantages precisely because of their age, both compared to adults and between different age groups of children themselves.⁵⁵ Age-based distinctions are not automatically wrongful under international law and may be justified if pursuing a legitimate aim in a proportionate way.⁵⁶ Yet, there remains a significant risk of

⁴⁶ *ibid* 24

⁴⁷ Katre Luhamaa, Marit Skivenes and Karl Harald Søvig, *Discriminating against Children* (Brill 2022) 3-17

⁴⁸ Sutherland (n 42) 28-29

⁴⁹ *ibid* 28-29

⁵⁰ Lansdown (n 42) 11-12

⁵¹ *ibid* 13- 15

⁵² Luhamaa & Skivenes & Søvig (n 45) 1-2

⁵³ UNCRC, (n 21) art 1

⁵⁴ Claire Breen, 'The Ageing of Article 2(1): The Child's Right to be Free from Age-Based Discrimination' in Marit Skivenes and Karl Harald Søvig (eds), *Child Rights and International Discrimination Law: Implementing Article 2 of the United Nations Convention on the Rights of the Child* (Routledge 2019)

⁵⁵ David Archard, 'Respecting Age: Discrimination against the Young and the Old' in Marit Skivenes and Karl Harald Søvig (eds), *Child Rights and International Discrimination Law: Implementing Article 2 of the United Nations Convention on the Rights of the Child* (Routledge 2019)

⁵⁶ *ibid*

indirect discrimination where blanket age thresholds unnecessarily restrict children’s rights, for example in access to justice or healthcare.⁵⁷ Increasingly, the UNCRC Committee is urging close scrutiny of such distinctions to ensure that age is not used as a covert ground for exclusion.⁵⁸

The relationship between Article 2 UNCRC and the European Convention on Human Rights (ECHR) introduces further complexity. While the ECHR does not contain a direct equivalent to Article 2 UNCRC, it embeds the principle of non-discrimination in Article 14 and Protocol No 12.⁵⁹ Over the years, the European Court of Human Rights (ECtHR) has shown growing willingness to incorporate children’s rights reasoning into its judgments, at times explicitly referencing the UNCRC.⁶⁰ Lux observes in her article ‘Recent Trends in the Argumentation of the European Court of Human Rights on Children’s Rights’, from 2025, that while references to children’s rights have become more frequent, the ECtHR still exhibits caution in integrating the UNCRC directly as a binding interpretative source, often relying on more general ECHR provisions like Articles 3, 8 and 14.⁶¹

From a legal-technical perspective, both the UNCRC Committee and the ECtHR accept that differential treatment is not inherently discriminatory if it pursues a legitimate aim and is proportionate.⁶² Recent scholars are emphasising that true non-discrimination demands tailored solutions sensitive to children’s evolving capacities and vulnerabilities, which resonates with the ECtHR’s reasoning under Article 14 ECHR, although the Court’s case-law still leaves gaps in fully articulating a child-focused understanding of non-discrimination.⁶³ The ongoing challenge is ensuring that both the UNCRC and ECHR systems effectively protect children against both overt and subtle forms of discrimination, bridging the gap between international rights and the lived realities of diverse childhoods.⁶⁴

⁵⁷ Breen (n 52)

⁵⁸ *ibid*

⁵⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) arts 14 and Protocol No. 12

⁶⁰ Ágnes Lux, ‘Recent Trends in the Argumentation of the European Court of Human Rights on Children’s Rights’ (2025) 10(1) *Public Governance, Administration and Finances Law Review* 103, 106–107.

⁶¹ *ibid* 103

⁶² Lansdown (n 42) 14

⁶³ Lux (n 60) 105-107

⁶⁴ Lansdown (n 42)

2.1.2 Best interest of the child (Art 3 UNCRC)

Article 3 UNCRC is widely recognised as one of the Convention’s core principles, declaring that “in all actions concerning children,” the child’s best interests shall be “a primary consideration.”⁶⁵ This provision transformed international law’s understanding of children, shifting from viewing them simply as passive recipients of adult protection to recognising them as rights-holders whose interests deserve genuine legal weight and visibility.⁶⁶ Whereas earlier legal instruments largely framed children through the lens of vulnerability and dependence, Article 3 insists on individualised assessments that acknowledge each child’s unique circumstances and evolving capacities.⁶⁷

Within Article 3, two obligations stand out as especially relevant in understanding how law should protect children who witness domestic violence. First, Article 3(1) requires courts, legislatures, and administrative authorities to treat the child’s best interests as a primary consideration in every decision that affects them.⁶⁸ Second, Article 3(2) obliges States to secure the protection and care children need for their well-being, while balancing this with respect for the roles and duties of parents or guardians.⁶⁹

Many scholars agree that the adoption of the UNCRC was a turning point in international law, shifting the way children are seen- from vulnerable dependents needing protection, to individual rights-holders whose own views and interests deserve legal weight.⁷⁰ This entails that States cannot simply mention the child’s “best interests”- they are required to carry out careful, evidence-based assessments that look at each child’s physical safety, mental health, relationships, and wider social and cultural circumstances- and crucially, States must be able to show how these factors influenced their decisions.⁷¹ The obligation stems from the UNCRC Committee’s explanation in General Comment No. 14 that Article 3 has three

⁶⁵ UNCRC (n 21) art 3

⁶⁶ Elaine E Sutherland and Lesley-Anne Barnes Macfarlane, ‘Introduction’ in Elaine E Sutherland and Lesley-Anne Barnes Macfarlane (eds), *Article 3 of the United Nations Convention on the Rights of the Child* (Cambridge University Press 2016)

⁶⁷ Committee on the Rights of the Child (UNCRC Committee), General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1), UN Doc UNCRC/C/GC/14; Sutherland & Barnes Macfarlane (n 64)

⁶⁸ UNCRC (n 21) art 3(1)

⁶⁹ *ibid* art 3(2)

⁷⁰ Michael Freeman, *A Commentary on the United Nations Convention on the Rights of the Child, Article 3: The Best Interests of the Child* (Brill 2007) 1; Sutherland & Barnes Macfarlane (n 64)

⁷¹ John Eekelaar, ‘Two Dimensions of the Best Interests Principle: Decisions About Children and Decisions Affecting Children’ in Elaine E Sutherland and Lesley-Anne Barnes Macfarlane (eds), *Article 3 of the United Nations Convention on the Rights of the Child* (Cambridge University Press 2016)

functions: it is a substantive right in itself, a procedural rule requiring rigorous analysis, and a principle guiding how other rights in the Convention should be interpreted.⁷² Importantly, the principle of evolving capacities is central to this approach: what serves the best interests of a five-year-old child may be quite different from what is best for a seventeen-year-old approaching adulthood.⁷³

Although the European Convention on Human Rights (hereafter ECHR) does not contain a provision identical to Article 3 of the UNCRC, the European Court of Human Rights (hereafter ECtHR) has increasingly integrated the best interests principle into its case-law, particularly under Article 8 ECHR on private and family life.⁷⁴ In *Yousef v Netherlands*, the Court held that where parents' and children's Article 8 rights conflict, "the child's interests must be the paramount consideration."⁷⁵ Likewise, in *Neulinger and Shuruk v Switzerland*, it ruled that courts must conduct "an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature," to determine a child's best interests.⁷⁶ These judgments echo Article 3(1) UNCRC by recognising children's interests as crucial. However, unlike the UNCRC, the ECtHR typically treats best interests as only one factor in a balancing exercise and rarely imposes positive obligations or procedural safeguards to ensure children's views and welfare shape outcomes.⁷⁷ As a result, the ECtHR often falls short of fully protecting children as independent rights-holders, particularly in complex contexts such as domestic violence, where children's interests risk being overshadowed by adult rights claims.⁷⁸

2.1.3 The Right of the Child to Be Heard (Art 12 UNCRC)

At the heart of the UNCRC lies Article 12- a provision as revolutionary as it is deceptively simple. It declares that every child "capable of forming his or her own views" has the right to express those views freely, with their opinions afforded "due weight in accordance with the age and maturity of the child."⁷⁹ It is a legal recognition that children are not only objects of

⁷² UNCRC Committee, General Comment No. 14 (n 66); Sutherland & Barnes Macfarlane (n 64)

⁷³ UNCRC Committee, General Comment No. 14 (n 66); Sutherland & Barnes Macfarlane (n 64); Eekelaar (n 69)

⁷⁴ Freeman (n 68) 12-13

⁷⁵ *Yousef v Netherlands* App no. 33711/96 (ECtHR 5 November 2002) para 73, discussed in Freeman (n 68) 12-13.

⁷⁶ *Neulinger and Shuruk v. Switzerland* App no. 41615/07 (ECtHR 6 July 2010), para 139, discussed in Eekelaar (n 69)

⁷⁷ Freeman (n 68) 16-17; Eekelaar (n 69) 108-110

⁷⁸ Freeman (n 68) 14-17

⁷⁹ UNCRC (n 21) art 12 (1)

protection but individuals with voices that matter- a fundamental shift from a vision of childhood defined solely by vulnerability to one anchored in agency.⁸⁰ This right extends beyond a purely individual dimension, obliging States Parties to ensure that children are provided with opportunities to be heard in “any judicial or administrative proceedings affecting the child, either directly, or through a representative or an appropriate body...”⁸¹ The United Nations Committee on the Rights of the Child (the Committee) has firmly established Article 12 as one of the UNCRC’s four general principles, underscoring that the right to be heard is both a freestanding right and a means when considering all the other rights under the Convention.⁸²

Despite its clear wording, the practical implementation of Article 12 has encountered significant barriers. As noted by the UNCRC Committee, obstacles like traditional perceptions of childhood and institutional practices still impede children’s effective participation in decisions concerning them.⁸³ Children belonging to marginalised or disadvantaged groups, as well as younger children, face particular obstacles, making it essential that States adopt measures tailored to ensure their voices are not only heard but taken seriously.⁸⁴ Participation under Article 12 requires more than simply listening to children- it demands structures and processes that allow their views to influence outcomes meaningfully. The Committee emphasises that participation should be understood as an ongoing dialogue based on mutual respect, where children can learn how their views shape decisions.⁸⁵

Article 12 acquires particular urgency and complexity in contexts where children are victims of violence, including domestic violence- a sphere where power imbalances and emotional dependency often silence children’s voices. The UNCRC Committee emphasises that children who are victims or witnesses of violence must be enabled to express their views freely and safely in judicial and administrative proceedings, and that States Parties should consult children in developing laws, policies and measures to combat violence, ensuring

⁸⁰ United Nations Committee on the Rights of the Child, General Comment No 12 (2009) ‘The right of the child to be heard’ UNCRC/C/GC/12 para 1

⁸¹ UNCRC (n 21) art 12 (2)

⁸² UNCRC Committee General Comment No 12 (n 79) para 2

⁸³ *ibid* para 4

⁸⁴ *ibid* para 4

⁸⁵ *ibid* para 3

child-friendly procedures and confidential reporting channels so children can report maltreatment without fear of harm or retaliation.⁸⁶

Children's right to be heard has emerged as a significant procedural aspect in the ECtHR's case-law, reflecting both positive and negative obligations under Article 8 ECHR and closely tied to the guarantees of Article 12 UNCRC.⁸⁷ The ECtHR has stressed that decisions impacting children, especially in family law contexts, require a procedural framework ensuring that children's voices are genuinely considered, a duty falling within States' positive obligations.⁸⁸ In *M. and M. v Croatia*, the ECtHR explicitly referred to Article 12,⁸⁹ and found a breach of Article 8 because the domestic courts failed to hear a child directly in custody proceedings, despite her age and maturity, thus undermining procedural fairness and the child's right to participate in decisions profoundly affecting her life.⁹⁰

Similarly, in *C v Croatia*, the child was neither heard nor represented by a guardian ad litem, leading to a violation of Article 8, underscoring that procedural safeguards are indispensable even when children are indirectly represented.⁹¹ The Court's approach balances the child's right to express views under Article 12 UNCRC with protective considerations under Article 3 ECHR, acknowledging that direct involvement must be weighed against potential harm to the child, particularly in highly conflictual cases.⁹² The ECtHR thus emphasises that while children's participation is essential, it cannot be absolute but must be assessed case by case to avoid exposing them to additional trauma, aligning with the principle of the child's best interests.⁹³

It remains an open challenge to ensure that children's participatory rights under Article 12 UNCRC translate into concrete procedural guarantees before the ECtHR, particularly in domestic violence cases where children's own narratives may be crucial to identifying

⁸⁶ *ibid* para 62-63, 118-121

⁸⁷ Ursula Kilkelly, 'The CRC in Litigation Under the ECHR The CRC and the ECHR: The Contribution of the European Court of Human Rights to the Implementation of Article 12 of the CRC'

⁸⁸ European Court of Human Rights, *Guide on the case-law of the European Convention on Human Rights – Rights of the Child* (Council of Europe/European Court of Human Rights 31 August 2024) 13

⁸⁹ *M. and M. v. Croatia* App no 10161/13 (ECtHR, 3 September 2015), paras 94, 171

⁹⁰ *M. and M. v. Croatia* (n 88) paras 171–172, discussed in ECtHR *Guide on the case-law of the European Convention on Human Rights – Rights of the Child* (n 87) 12- 13

⁹¹ *C v. Croatia* App no 80117/13 (ECtHR, 8 October 2020) paras 77–82, discussed in ECtHR *Guide on the case-law of the European Convention on Human Rights – Rights of the Child* (n 87) 12- 13

⁹² ECtHR, *Guide on the case-law of the European Convention on Human Rights – Rights of the Child* (n 87) 58-59

⁹³ *ibid*

systemic failures in State protection.⁹⁴ As recent scholarship and reports from child-rights bodies stress, the full realisation of Article 12 UNCRC in the ECtHR's jurisprudence requires not only the acknowledgment of children's right to be heard but also practical procedural innovations to ensure that this hearing is safe, meaningful, and genuinely influential in the outcome of cases involving children witnessing domestic violence.⁹⁵

2.1.4 Protection from all forms of violence (Art 19 UNCRC)

Article 19 UNCRC is often described as a turning point in how international law understands violence against children, recognising it as a rights violation rather than a private issue and imposing clear duties on States to prevent and respond to harm.⁹⁶ As the UN Committee on the Rights of the Child has stressed (hereafter UNCRC Committee), “No violence against children is justifiable; all violence against children is preventable.”⁹⁷ The article requires the States to protect children from violence, abuse, neglect, and exploitation through legal and social measures, covering situations where children are cared for by parents or others. It refers to “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”⁹⁸ The UNCRC Committee makes it clear in General Comment No. 13 that Article 19 is not only about reacting when violence has already occurred- it demands proactive and systematic prevention, early detection, and supportive interventions.⁹⁹ Also scholars emphasise that real implementation of Article 19 requires more than laws on paper: needed is effective systems, public awareness to challenge harmful norms, and professional practice grounded in respect for children's rights. In this way, Article 19 makes clear that violence against children is never just a private matter but a serious human rights violation that States are obliged to prevent and address.¹⁰⁰

Within the European context, the Council of Europe has strongly aligned itself with the principles of Article 19 when explicitly referencing it (among other relevant UNCRC articles)

⁹⁴ Lux (n 60)

⁹⁵ Lux (n 60); Laura Lundy, ““Voice” is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child’ (2007) 33(6) *British Educational Research Journal* 927

⁹⁶ Michael Freeman, ‘Article 19’ in Michael Freeman (ed), *The Human Rights of Children: Selected Essays on Children's Rights* (Brill 2022) 103; Kirsten Sandberg, ‘Children's Right to Protection Under the CRC’ in Asgeir Falch-Eriksen and Elisabeth Backe-Hansen (eds), *Human Rights in Child Protection: Implications for Professional Practice and Policy* (Palgrave Macmillan 2018) 15–16; Christian Whalen, ‘Article 19: The Right to Protection from All Forms of Violence’ in Ziba Vaghri and others (eds), *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Springer 2022) 293–296.

⁹⁷ Committee on the Rights of the Child, General Comment No 13 (2011) CRC/C/GC/13, para 3(a)

⁹⁸ UNCRC (n 21) art 19

⁹⁹ UNCRC Committee General Comment No 13 (n 96) paras 3(a), 17–44

¹⁰⁰ Sandberg (n 95) 15-35

in its Strategy for the Rights of the Child 2022–2027.¹⁰¹ “Freedom from violence for all children”¹⁰² is at the heart of its priorities in the Strategy, stressing not only protection but also prevention and children’s meaningful participation in shaping the policies that affect them.¹⁰³

While the ECHR does not contain an article identical to Article 19 UNCRC, the ECtHR has developed case-law that addresses the duty of States to protect individuals, including children, from violence and abuse.¹⁰⁴ However, many scholars and practitioners point out that the Court’s reasoning often situates child protection within broader balancing exercises, weighing it against other rights or State resources, rather than treating it with the same child-centred and preventive focus as under the UNCRC.¹⁰⁵ This raises important questions about how fully European human rights law reflects the UNCRC’s vision of children as autonomous rights-holders deserving specific protections and procedures, especially in contexts like domestic violence, where children may be both direct victims and witnesses.³ These tensions are crucial to explore further, particularly given the growing recognition that children’s experiences of violence have profound and lasting consequences for their development, health, and rights.¹⁰⁶

2.1.5 Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime

ECOSOC Resolution 2005/20 adopted the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* and filled a previously noted gap in international standards regarding how justice systems should treat children exposed to crime, including those who witness domestic violence.¹⁰⁷ These guidelines recognise that child victims and witnesses are often extremely vulnerable and therefore require special protection and support, considering their age, maturity, and individual circumstances.¹⁰⁸ This is particularly relevant for children who witness domestic violence, as they frequently become key witnesses in proceedings where the violence occurs within their own family environment, yet simultaneously remain

¹⁰¹ Council of Europe, *Strategy for the Rights of the Child (2022-2027)* (March 2022) 13-19

¹⁰² *ibid* 10

¹⁰³ *ibid* 13-19

¹⁰⁴ Sandberg (n 95) 24-25

¹⁰⁵ Sandberg (n 95) 33-34; Whalen (n 95) 294–296

¹⁰⁶ UNCRC (n 21)

¹⁰⁷ 1 ECOSOC Resolution 2005/20 ‘Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime’ UN Doc E/RES/2005/20 (22 July 2005)

¹⁰⁸ ECOSOC Resolution 2005/20 (n 106) annex I, para 7

victims themselves due to the psychological harm and fear they endure.¹⁰⁹ The Resolution places strong emphasis on safeguarding the child's dignity, privacy, and right to be heard throughout legal processes.¹¹⁰ In this respect, it directly aligns with obligations under the UNCRC, especially Articles 3 and 39, which underscore the child's best interests and the right to recovery and reintegration.¹¹¹

The importance of the Guidelines for children who witness domestic violence cannot be overstated. These children often fall into a legal invisibility where domestic violence is seen primarily as an issue between adults, neglecting the harm suffered by child witnesses.¹¹² ECOSOC Resolution 2005/20 offers a framework that seeks to make children visible within justice processes, aiming to ensure that child witnesses are treated with dignity, compassion in accordance with UNCRC, as well as and provided with information, inter alia.¹¹³ It insists that professionals working with children must be trained to engage with them sensitively, and that child-friendly procedures should be adopted to reduce trauma during investigations and court hearings.¹¹⁴ Such standards are essential to prevent further harm to children who are already traumatised by having witnessed violence in their homes. However, despite its strong normative guidance, the Resolution itself does not create binding obligations, leaving states considerable discretion in its implementation, which risks uneven protection for child witnesses across jurisdictions.

2.1.6 The UNCRC in relation to the ECHR and the ECtHR

The relationship between the UNCRC and the European Convention on Human Rights (ECHR) is complex and dynamic. While the two instruments originate from different historical and institutional contexts- the UNCRC under the UN, and the ECHR within the Council of Europe (hereafter CoE)- their substantive norms increasingly intersect, particularly in cases involving children.¹¹⁵ Both Conventions are part of the international human rights framework, and the European Court of Human Rights (ECtHR) has, over time,

¹⁰⁹ Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Related Commentary (UNODC 2009)

¹¹⁰ ECOSOC Resolution 2005/20 (n 106) annex I, paras 8, 13

¹¹¹ UNCRC (n 21) arts 3, 39

¹¹² HB Handbook for Professionals and Policymakers on Justice in Matters involving Child Victims and Witnesses of Crime (United Nations 2010) 1–2, 90

¹¹³ ECOSOC Resolution 2005/20 (n 106); UN handbook (n 111) 1-3

¹¹⁴ UN handbook (n 111)

¹¹⁵ Vibeke Blaker Strand, 'Interpreting the ECHR in its Normative Environment: Interaction between the ECHR, the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child' (2020) 24 *International Journal of Human Rights* 979, 980–981.

begun to integrate UNCRC standards into its interpretation of the ECHR.¹¹⁶ This phenomenon, sometimes referred to as “systemic integration,”¹¹⁷ reflects the notion that international human rights instruments should be interpreted harmoniously, avoiding conflicting obligations and reinforcing the overall protection of rights.¹¹⁸ The ECtHR itself has emphasised that:

“The Convention cannot be interpreted in a vacuum but must be interpreted in harmony with the general principles of international law. Account should be taken, as indicated in Article 31 § 3 (c) of the Vienna Convention on the Law of Treaties (...), of ‘any relevant rules of international law applicable in the relations between the parties’, and in particular the rules concerning the international protection of human rights.”¹¹⁹

However, how much the UNCRC actually shapes ECtHR case-law remains debated. The recent qualitative and quantitative study *The Convention on the Rights of the Child’s Imprint on Judgments from the European Court of Human Rights: A Negligible Footprint?*¹²⁰ sheds further light on this debate, showing that while references to the UNCRC in ECtHR judgments have increased over time, especially in the past decade, the Convention’s influence often remains limited in practice. UNCRC is frequently cited in the background sections of judgments and seldom serves as a decisive legal basis for the Court’s reasoning or outcomes. However, the principle of the best interests of the child (Art 3 UNCRC) appears as the primary link through which the UNCRC indirectly informs the ECtHR’s interpretation of the ECHR, particularly in the context of states’ positive obligations under Article 8 ECHR.¹²¹ However, the authors observe that the UNCRC’s presence in ECtHR case-law is still characterised by a cautious and selective approach, suggesting that its imprint on the Court’s

¹¹⁶ Strand (n 115) 979, 979-981; Ursula Kilkelly, ‘The CRC in Litigation Under the ECHR The CRC and the ECHR: The Contribution of the European Court of Human Rights to the Implementation of Article 12 of the CRC’ in Ton Liefaard and Jaap E Doek (eds), *Litigating the Rights of the Child: The UN Convention on the Rights of the Child in Domestic and International Jurisprudence* (Springer 2015) 194

¹¹⁷ Strand (n 115) 979, 980

¹¹⁸ Strand (n 115) 979, 980

¹¹⁹ *Neulinger and Shuruk v. Switzerland* App no. 41615/07, Grand Chamber, (ECtHR 6 July 2010), para 131, discussed in Strand (n 115) 979, 980. See also: *Vienna Convention on the Law of Treaties*, adopted on 23 May 1969 (entry into force 27 January 1980)

¹²⁰ Trond Helland and Ragnhild Hollekim, ‘The Convention on the Rights of the Child’s Imprint on Judgments from the European Court of Human Rights: A Negligible Footprint?’ (2023) 41 *Nordic Journal of Human Rights* 213

¹²¹ *Harroudj v France* App No 43631/09 (ECtHR, 4 October 2012) para 42, discussed in Helland & Hollekim (n 120) 21.

jurisprudence remains modest.¹²² At the same time, they argue, based on their qualitative findings, that the UNCRC nonetheless plays an active role in the Court’s internal deliberations and contributes to developing the field of children’s rights within the ECtHR.¹²³

Still, there are important examples where the UNCRC has genuinely influenced how the Court interprets ECHR rights, especially when children are directly involved. In *Neulinger and Shuruk v Switzerland*, the Court held that Article 8 ECHR on family life must be read in the light of the international consensus of the best interests principle (found in Art 3 UNCRC).¹²⁴ This is an example of the important notion of “interpretive widening and thickening,” where treaties like the UNCRC help give more substance and nuance to ECHR rights, particularly in sensitive areas like domestic violence or migration, where children’s vulnerability is especially relevant.¹²⁵

2.2 Children as right-holders in the European Human Rights system

“The European Convention on Human Rights (ECHR) was not drafted with children, still less children’s rights, in mind.”¹²⁶ When the ECHR was drafted, children were mainly viewed as needing protection rather than as rights-holders in their own right.¹²⁷ However, the ECtHR has over the time built up significant case-law about children, touching on areas like justice, integrity and education.¹²⁸ Indeed, children’s rights have become increasingly intertwined with key Convention articles in the ECtHR case-law, allowing the Court to extend protection to children as rights holders.¹²⁹ Moreover, the ECtHR’s case-law operates as a “living instrument,” which “must be interpreted in the light of present-day conditions,”¹³⁰ - a doctrine of particular importance in light of children’s evolving social and legal status since the 1950s.¹³¹ The Court’s interpretative approach frequently draws on external instruments such as the UNCRC (discussed above), which although not incorporated directly into the

¹²² Helland & Hollekim (n 120) 226-233

¹²³ *ibid* 231-32

¹²⁴ *Neulinger and Shuruk v Switzerland* App no 41615/07, Grand Chamber, (ECtHR, 6 July 2010), para 135, discussed in Kilkelly, ‘The UNCRC in Litigation Under the ECHR’ in Ton Liefwaard and Jaap E Doek (eds), *Litigating the Rights of the Child: The UN Convention on the Rights of the Child in Domestic and International Jurisprudence* (Springer 2015) 194–195; see also ECtHR *Guide on Article 8 of the European Convention on Human Rights* (28 February 2025) 93–94.

¹²⁵ Strand (n 115) 981–985

¹²⁶ Claire Fenton-Glynn, *Children and the European Court of Human Rights* (OUP 2021) 1.

¹²⁷ *ibid*

¹²⁸ *ibid*

¹²⁹ European Court of Human Rights, *Guide on the case-law of the European Convention on Human Rights: Rights of the Child* (31 August 2024)

¹³⁰ *Tyrer v the United Kingdom* App no. 5856/72 (25 April 1978) para 31, discussed in Fenton-Glynn (n 126)

¹³¹ Fenton-Glynn (n 126)

Convention has become a persuasive authority that influences the Court’s understanding of positive obligations and developing consensus.¹³²

Despite growing recognition of children as rights holders, significant challenges remain in how the European Court of Human Rights approaches cases involving children exposed to violence. As Fenton-Glynn observes, “it is only in recent decades that child abuse and mistreatment – both inside and outside the home – has been recognised as a legal, rather than purely social problem,” and even today, violence against children continues to be treated inconsistently across Council of Europe member states.¹³³ The Court’s jurisprudence on violence often involves a delicate balance between States’ positive obligations under Articles 3 and 8 ECHR and respect for private and family life, with the margin of appreciation allowing states some flexibility in how they protect children while avoiding unwarranted interference in family autonomy.³

The doctrine of subsidiarity, now expressly enshrined in the Preamble via Protocol No. 15, requires national authorities to be the primary guarantors of human rights, leaving the ECtHR in a subsidiary role where it should intervene only where necessary.¹³⁴ Yet, as seen in cases like *Z and Others v. The United Kingdom* or *Opuz v Turkey*, the Court has recognised that systemic failures to protect children from violence, including when children witness domestic violence, can breach positive obligations even where domestic authorities claim broad discretion.¹³⁵

The concepts of positive and negative obligations are central to understanding how the ECtHR has approached the protection of children who witness domestic violence, reflecting a dual responsibility on states to both refrain from interference (negative obligations) and to actively secure rights through protective measures (positive obligations).¹³⁶ As Fenton-Glynn explains, the Court’s case-law under Articles 3 and 8 ECHR makes clear that violence against children can engage both types of obligations, requiring states not only to avoid direct harm

¹³² *ibid*

¹³³ Fenton-Glynn (n 126) 13

¹³⁴ Protocol No 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms (opened for signature 24 June 2013, entered into force 1 August 2021) Council of Europe Treaty Series No 213, Preamble; ECtHR *Guide on the case-law of the European Convention on Human Rights – Rights of the Child* (2024) 5; Fenton (n 126) 6-7

¹³⁵ *Z and Others v the United Kingdom* App no 29392/95 (ECtHR, 10 May 2001) para 73; *Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009) para 159; FRA-CoE Handbook (2022) 147.

¹³⁶ Ursula Kilkelly, ‘Protecting children’s rights under the ECHR: the role of positive obligations’ (2009) 61 NILQ 245

but also to prevent, investigate and punish violence inflicted by private actors, including within the home.¹³⁷

2.2.1 Resolution 1714 (2010): Recognising child witnesses of domestic violence as rights-holders

In 2010, the Parliamentary Assembly of the Council of Europe adopted Resolution 1714 on *Children Who Witness Domestic Violence* to address a significant gap in the recognition and protection of children exposed to violence in the home.¹³⁸ This resolution plays a notable role in acknowledging that witnessing domestic violence can constitute a form of psychological abuse against children, thus shifting them from the margins of legal protection to a more central position as independent rights holders, notably called "secondary victims".¹³⁹ The Resolution underlines that witnessing violence against one's mother can, in itself, have severe and lasting consequences on a child's development, identity, and well-being.¹⁴⁰ However, despite this rhetorical recognition, Resolution 1714 remains a non-binding instrument¹⁴¹, which inevitably raises questions about its practical impact in terms of enforceability and its ability to effect systemic change across the Council of Europe member states.

One key contribution of Resolution 1714 is its call for the development of a binding legal instrument focused on violence against women and domestic violence, explicitly including children who witness such violence.¹⁴² The ambition expressed in Resolution 1714 (2010) for a binding legal instrument addressing children witnessing domestic violence was later reflected in the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (Istanbul Convention) notably in Article 26, which recognises child witnesses as victims requiring support and protection.¹⁴³ In sum, Resolution 1714 (2010) represents a significant normative milestone, articulating the Council of Europe's vision for the protection of children witnessing domestic violence. Yet, its non-binding character, coupled with persistent gaps in ECtHR jurisprudence and national

¹³⁷ Fenton-Glynn (n 126) 11, 19-21

¹³⁸ Parliamentary Assembly of the Council of Europe (PACE), *Resolution 1714 (2010) on Children Who Witness Domestic Violence* (26 January 2010) para 1

¹³⁹ *ibid* para 5

¹⁴⁰ *ibid* para 1

¹⁴¹ *Resolution 1714* (n 138); Council of Europe Parliamentary Assembly, Recommendation 1905 (2010) 'Children who witness domestic violence'

¹⁴² Recommendation 1905 (n 141) para 3

¹⁴³ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (adopted 11 May 2011, entered into force 1 August 2014) CETS No 210, art 26

implementation, signals that further doctrinal and practical work remains essential to elevate these children from the shadows into full recognition as rights-holders and victims under European human rights law.

2.2.2 The Istanbul Convention: protecting child witnesses of domestic violence

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, known as the Istanbul Convention, sets “for the first time in Europe, legally-binding standards to prevent violence against women and domestic violence, protect its victims and punish the perpetrators.”¹⁴⁴ While its primary focus is on violence against women, the Convention is highly relevant for children who witness such violence, acknowledging that they too suffer significant harm.¹⁴⁵ The Council of Europe’s Explanatory Report¹⁴⁶ clarifies that witnessing domestic violence can be so traumatic that children are considered victims in their own right, even if they have not been subjected to direct physical harm.¹⁴⁷

The Convention defines domestic violence as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”¹⁴⁸ This broad definition is significant in relation to child witnesses since it encompasses situations where children are not themselves directly harmed but witness violence within the family. It is in this context that Article 26¹⁴⁹ acquires particular importance, as it explicitly recognises child witnesses of domestic violence as victims who have specific rights and needs;

“1 Parties shall take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the

¹⁴⁴ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Council of Europe Treaty Series No 210) para 21

¹⁴⁵ Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (opened for signature 11 May 2011, entered into force 1 August 2014) CETS No 210, Preamble, arts 26, 46

¹⁴⁶ CoE Explanatory Report, Istanbul Convention (n 145)

¹⁴⁷ *ibid* para 27

¹⁴⁸ Istanbul Convention (n 145) art 3 (b)

¹⁴⁹ *ibid* art 26

scope of this Convention.¹⁵⁰

2 Measures taken pursuant to this article shall include age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child”¹⁵¹

A crucial provision for understanding the Istanbul Convention’s practical consequences for children who witness domestic violence is Article 46, which enumerates aggravating circumstances to be considered in determining penalties for offences established under the Convention. Notably, Article 46(d) stipulates that committing an offence “against or in the presence of a child”¹⁵² constitutes an aggravating factor, acknowledging that children are not passive bystanders but direct victims of the psychological harm caused by witnessing violence.¹⁵³ This provision complements the obligations in Article 26, which explicitly recognises child witnesses as victims with distinct rights and support needs.¹⁵⁴ In addition, Article 46(b) lists as aggravating that “the offence, or related offences, were committed repeatedly,”¹⁵⁵ which is significant in domestic violence contexts where patterns of repeated abuse are common and can compound trauma for child witnesses.¹⁵⁶ Moreover, Article 46(h) provides for aggravated circumstances where “the offence resulted in severe physical or psychological harm for the victim,” a consideration relevant for children, as repeated witnessing of violence is strongly linked to serious psychological consequences.¹⁵⁷

Importantly, the CoE Explanatory Report clarifies that Article 46 aims to harmonise criminal law responses across States Parties and to ensure that offences committed in particularly harmful circumstances should be taken more seriously, thus reinforcing the Convention’s protective purpose.¹⁵⁸ This is especially relevant considering the ECtHR’s case-law, where the Court has recognised the psychological harm to children witnessing domestic violence, even though it has not always granted them victim status in their own right under the Convention, as illustrated in cases such as *Eremia v Moldova*.

¹⁵⁰ *ibid* art 26 (1)

¹⁵¹ *ibid* art 26 (2)

¹⁵² *ibid* art 46 (d)

¹⁵³ *ibid*

¹⁵⁴ *ibid* art 26

¹⁵⁵ *ibid* art 46 (h)

¹⁵⁶ Monica Calderaro et al, ‘International Research on the Problems of Children in Cases of Witnessing Domestic Violence’ (2025) 16(1) BRAIN Broad Research in Artificial Intelligence and Neuroscience 71

¹⁵⁷ *ibid*

¹⁵⁸ Istanbul Convention (n 145) Preamble, art 46

The Istanbul Convention is a treaty that creates legally binding obligations for States that have ratified it (it's open to States outside of the CoE as well), but it is not part of the European Convention on Human Rights (ECHR) itself.¹⁵⁹ Instead, the Istanbul Convention stands alongside the ECHR as a separate treaty within the Council of Europe's system.¹⁶⁰ This means that while the European Court of Human Rights (ECtHR) cannot directly apply the Istanbul Convention as hard law, it may still treat the Convention as persuasive authority when interpreting States' obligations under the ECHR, particularly in cases involving domestic violence.¹⁶¹ In legal terms, this reflects the ECtHR's method of interpreting the ECHR "in its normative environment," meaning the Court considers other international human rights treaties, like the Istanbul Convention, to clarify the content and scope of rights under the ECHR.¹⁶² For instance, the ECtHR has relied on standards from the Istanbul Convention when defining States' positive obligations under, for instance, Arts 2, 3 and 8 ECHR, which protect the right to life, the prohibition of inhuman or degrading treatment, and the right to respect for private and family life.¹⁶³

While the ECtHR cannot directly enforce the Istanbul Convention as binding law, its judgments show how the Convention increasingly acts as a substantive guide for defining the scope of States' positive obligations under the ECHR, particularly in the context of domestic violence.¹⁶⁴ An example of how the ECtHR uses the Istanbul Convention is *Bălșan v Romania*.¹⁶⁵ In this case, the Court noted that Romania had ratified the Istanbul Convention in 2016, which defines violence against women as discrimination and obliges States to protect victims through laws and effective measures.¹⁶⁶ Even so, the Romanian authorities treated Ms Bălșan's repeated assaults by her ex-husband as minor or provoked, imposed only small fines instead of criminal penalties, and ignored her requests for protective measures.¹⁶⁷ Referring to States' positive obligations under Article 3 ECHR, the Court used the standards of the Istanbul Convention to assess whether Romania had done enough.¹⁶⁸ Because the authorities

¹⁵⁹ Istanbul Convention (n 145) Preamble; CoE Explanatory Report, Istanbul Convention (n 145) para 6

¹⁶⁰ *ibid*

¹⁶¹ Strand (n 115)

¹⁶² This argumentation draws from discussion in Strand (n 115) regarding Report of the Study Group of the International Law Commission, Finalized by Martti Koskenniemi, *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law* (April 13 2006), UN Doc A/CN.4/L.682, 211 (para. 419) and 243—244 (paras. 479-480) and *Vienna Convention on the Law of Treaties*, adopted on 23 May 1969 (entry into force 27 January 1980).

¹⁶³ Strand (n 115)

¹⁶⁴ Costanza Nardocci, 'The Istanbul Convention: yes and nos' (2025) 26 ERA Forum 127

¹⁶⁵ *Bălșan v Romania* App no 49645/09 (ECtHR, 23 May 2017)

¹⁶⁶ *ibid* para 42

¹⁶⁷ *ibid* para 66–68

¹⁶⁸ *ibid* para 57, 67

failed to act properly, the Court found violations of Art 3 ECHR in conjunction with Art 14 ECHR, showing how the Istanbul Convention influences the Court's analysis.¹⁶⁹ Worth highlighting here is that children were present during incidents of violence, yet there is no mention of them in relation to the Istanbul Convention and its articles relating to the children.

¹⁷⁰ This case will therefore be discussed in depth in Chapter 3.

These insights underline why it is crucial to further examine the Istanbul Convention's relationship with both the ECHR and the ECtHR's evolving jurisprudence. While the Convention has become a significant interpretive tool for defining States' positive obligations under Articles 2, 3 and 8 ECHR, gaps remain, especially regarding how it addresses children who witness domestic violence and the intersectional vulnerabilities many victims face.¹⁷¹ Moreover, as the ECtHR increasingly applies the principle of systemic integration (interpreting the ECHR in light of other international treaties like the UNCRC) it becomes clear that future analysis should explore how the Istanbul Convention and the UNCRC can be read together to strengthen protection for all victims, including children, and to clarify whether they should be recognised as independent rights-holders under the ECHR.¹⁷² Understanding this interaction is essential for ensuring that the ECtHR's case-law not only responds to individual violations but also contributes to a broader, more inclusive framework of human rights protection in Europe.¹⁷³

¹⁶⁹ *ibid* para 67, 88.

¹⁷⁰ *ibid* para 6, 11, 12, 42

¹⁷¹ *Nardocci* (N 164) 127

¹⁷² *Strand* (n 115)

¹⁷³ *ibid*

3. The adequacy of the ECtHR’s jurisprudence on children witnessing domestic violence in relation to international and European and children’s rights instruments

Drawing from the systematic mapping of 31 ECtHR case-law concerning Articles 3, 8 and 14 ECHR- selected from the Court’s own thematic overview of domestic violence (updated to February 2025) - and enriched by qualitative insights from interviews with ECtHR Judge Georgios Serghides and Dr. Prof Skelton, the chapter examines, first, how the ECtHR addresses the situation of children who witness domestic violence under Articles 3, 8 and 14 ECHR. Secondly, it analyses whether European human rights case-law in this area is adequate when measured against the obligations and protective standards set out in international and European child rights instruments, such as the UN Convention on the Rights of the Child and the Istanbul Convention. This chapter situates the ECtHR’s case-law within broader legal and normative frameworks, exploring both the progress made and the limitations that continue to leave child witnesses at risk of invisibility within the Court’s doctrine.

3.1.1 Prohibition of torture - Article 3 ECHR

Article 3 ECHR enshrines one of the most fundamental guarantees of the Convention: that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”¹⁷⁴ The Court has emphasised that the prohibition of torture and ill-treatment is “closely bound up with respect for human dignity”.¹⁷⁵ This prohibition is absolute, allowing no derogation even in situations of, for instance, terrorism or national emergency.¹⁷⁶ However, not every unpleasant or harmful act falls within Article 3’s scope. Instead, for ill-treatment to engage Article 3, it must reach a minimum level of severity, assessed in light of all the circumstances of the case.¹⁷⁷

This notion of a minimum threshold is central in the Court’s jurisprudence and well-established in its case-law.¹⁷⁸ The Court considers factors such as the duration of the

¹⁷⁴ ECHR (n 25) art 3

¹⁷⁵ *Bouyid v Belgium* App no 23380/09 (ECtHR, 28 September 2015) para 81; discussed in European Court of Human Rights, *Guide on Article 3 of the European Convention on Human Rights: Prohibition of torture* (Council of Europe/ECtHR, updated 28 February 2025) 6

¹⁷⁶ ECtHR *Guide on Article 3* (n 174) 3

¹⁷⁷ *Muršić v. Croatia* App no 7334/13 (ECtHR, 20 October 2016) para 97, discussed in ECtHR *Guide on Article 3* (n 174) 6

¹⁷⁸ ECtHR *Guide on Article 3* (n 174) 6

treatment, the physical or psychological effects on the victim, their age, health, and vulnerability, and the broader context in which the ill-treatment occurred.¹⁷⁹ Importantly, acts falling below this threshold are not necessarily lawful, but they do not amount to a violation of Article 3.¹⁸⁰

Within the Court's jurisprudence, it is also crucial to distinguish torture from other forms of ill-treatment. The distinction is not only semantic but reflects the gravity of the conduct and carries different legal consequences under international law. Torture, as defined by both the Convention and the UN Convention Against Torture (UNCAT), involves "deliberate inhuman treatment causing very serious and cruel suffering"¹⁸¹, and usually includes a purposive element, such as extracting a confession, punishing, intimidating, or coercing the victim.¹⁸² It carries a heightened stigma as a jus cogens norm in international law, signifying an absolute and universally accepted prohibition.¹⁸³ In contrast, inhuman treatment involves severe suffering without necessarily the same intensity or purposive element, while degrading treatment humiliates or debases the victim but may involve less intense physical or mental harm.¹⁸⁴

An illustration of this differentiation appears in the landmark case *Ireland v United Kingdom*, where the Court ruled that five interrogation techniques (wall-standing, hooding, exposure to noise, sleep deprivation, and deprivation of food and drink) did not meet the threshold of torture, although they constituted inhuman and degrading treatment due to their significant physical and psychological impact.¹⁸⁵ This case has become foundational in illustrating the Court's approach to threshold analysis.¹⁸⁶

The Court has increasingly acknowledged that the threshold for Article 3 may be lower in cases involving children, recognising their unique vulnerability and developmental

¹⁷⁹ *Khlaifia and Others v. Italy* App no 16483/12 (ECtHR, 15 December 2016) para 160, discussed in ECtHR *Guide on Article 3*(n 174) 6-7; Fenton-Glynn (n 126) 20

¹⁸⁰ Veljko Vlašković, 'Children's Rights in the Council of Europe – Framework' in Anikó Raisz (ed), *Children's Rights in Regional Human Rights Systems* (Central European Academic Publishing 2024)

¹⁸¹ *Ireland v United Kingdom* App no 5310/71 (ECtHR, 18 January 1978) para 167; *Selmouni v France* App no 25803/94 (ECtHR, 28 July 1999) para 96; *Ilaşcu and Others v Moldova and Russia* App no 48787/99 (ECtHR, 8 July 2004) para 426, discussed in ECtHR *Guide on Article 3* (n 174) 7

¹⁸² ECtHR *Guide on Article 3*(n 174) 7-8

¹⁸³ *ibid*

¹⁸⁴ *ibid* 7-11

¹⁸⁵ *Ireland v United Kingdom* App no 5310/71 (ECtHR, 18 January 1978), discussed in ECtHR *Guide on Article 3*(n 174) 7, Fenton-Glynn (n 126) 20

¹⁸⁶ *ibid*

fragility.¹⁸⁷ This reflects broader shifts in international law and goes in line with the UN Convention on the Rights of the Child (UNCRC), which underscores that children require special protection.¹⁸⁸ This evolution is illustrated in *D.M.D. v Romania*, where the Court held that even “isolated and random”¹⁸⁹ acts of domestic violence could breach Article 3 when directed at a child, stressing that children’s “uniqueness- their potential and vulnerability, their dependence on adults- makes it imperative that they have more, not less, protection from violence.”¹⁹⁰ The judgment confirmed that children’s vulnerability can lower the threshold of severity under Article 3, bringing the Court’s reasoning closer to the standards set by the UNCRC.² Another landmark example in *Tyrer v United Kingdom*, where a 15-year-old boy was sentenced by a juvenile Court to corporal punishment by birching, which the Court deemed degrading because of its impact on human dignity and the State’s abuse of power, even though the punishment did not leave lasting physical injuries.¹⁹¹ However, the Court’s reasoning focused more on the nature of state punishment than the child’s age, illustrating doctrinal tensions around whether the Court sufficiently lowers the threshold for children.¹⁹²

This concern is echoed in critiques by scholars who argue that the Court maintains too high a threshold for recognising psychological harm, especially in children’s cases.¹⁹³ A striking example of this is *Costello-Roberts v United Kingdom*¹⁹⁴, where a seven-year-old boy was punished in school by receiving three whacks with a gym shoe, leaving no visible injuries but allegedly causing humiliation and distress. The Court held that the punishment did not cross the severity threshold under Article 3.¹⁹⁵ Critics argue that this demonstrates the Court’s struggle to incorporate the heightened susceptibility of children to psychological harm, risking the invisibility of less overt but equally damaging forms of abuse, such as emotional neglect or subtle violence.¹⁹⁶

¹⁸⁷ European Court of Human Rights, ECtHR *Guide on the case-law of the European Convention on Human Rights – Rights of the child* (31 August 2024)

¹⁸⁸ European Court of Human Rights, *Guide on the case-law of the European Convention on Human Rights – Rights of the child* (31 August 2024) 7; Veljko Vlašković, ‘Children’s Rights in the Council of Europe – Framework’ in Anikó Raisz (ed), *Children’s Rights in Regional Human Rights Systems* (CEU Press 2024) 46–47; Ursula Kilkelly, ‘Protecting Children’s Rights under the ECHR: The Role of Positive Obligations’ (2008) 61 NILQ 245, 247.

¹⁸⁹ Fenton-Glynn (n 126) 18

¹⁹⁰ *D.M.D. v Romania* App No 23022/13 (ECtHR, 3 October 2017), discussed in Fenton-Glynn (n 126) 18

¹⁹¹ *Tyrer v United Kingdom* App no 5856/72 (ECtHR, 25 April 1978) discussed in Fenton-Glynn (n 126) 12- 13

¹⁹² Fenton-Glynn (n 126) Chapter 2

¹⁹³ *ibid*

¹⁹⁴ *Costello-Roberts v United Kingdom* App No 13134/87 (ECtHR, 25 March 1993), discussed in Fenton-Glynn (n 126) 15-16

¹⁹⁵ *Costello-Roberts v United Kingdom* (n 195)

¹⁹⁶ *Costello-Roberts v United Kingdom* (n 195), discussed in Fenton-Glynn (n 126) 15-16

Alongside its absolute prohibition of torture and inhuman or degrading treatment, Article 3 ECHR imposes both negative and positive obligations on states. The negative obligation requires states not to inflict such treatment directly, whereas the positive dimension compels them to take practical steps to protect individuals, especially vulnerable persons like children, from harm inflicted by private actors.¹⁹⁷ A landmark case illustrating the Court's doctrine of positive obligations under Article 3 is *Z v United Kingdom*, where four children suffered severe neglect over several years, despite repeated concerns raised with the authorities.¹⁹⁸ The Court stressed that states must take "reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge," recognising that vulnerable individuals, including children, are entitled to heightened protection.¹⁹⁹ In this case, the authorities' failure to intervene in time was found to breach Article 3, establishing that the state has a duty not only to punish perpetrators but also to act proactively to prevent foreseeable harm.²⁰⁰

Although the European Court of Human Rights has started to recognise the particular harm suffered by children who witness violence in the home, this remains an underdeveloped area of its jurisprudence, especially under Article 3 ECHR.²⁰¹ Scholars have observed that the Court has so far primarily focused on direct violence against children- such as physical abuse or sexual violence- while only beginning to acknowledge the indirect harm suffered by children exposed to domestic violence.²⁰² Indeed, as Fenton-Glynn notes, there is an established body of case-law addressing violence against women, but the specific psychological and emotional impact on children as witnesses is still seldom analysed as a potential breach of Article 3.²⁰³ For instance, in *Eremia v Moldova*, the Court recognised that children suffered psychological harm from observing violence against their mother, but addressed these facts under Article 8 rather than treating such exposure itself as potentially amounting to inhuman or degrading treatment under Article 3.²⁰⁴ The ECtHR *Guide on Article 3* indeed confirms that when ill-treatment does not meet the minimum level of severity required under Article 3, it may still fall under Article 8, which protects physical and

¹⁹⁷ Fenton-Glynn (n 126) Chapter 2

¹⁹⁸ *Z v. United Kingdom App no 29392/95* (10 May 2001), discussed in Kilkelly (n 187) 258- 260 and in Fenton-Glynn (n 126) 20

¹⁹⁹ *Z v. United Kingdom App no 29392/95* (10 May 2001), para 73, discussed in Kilkelly (n 187) 258- 260 and in Fenton-Glynn (n 126) 20

²⁰⁰ Kilkelly (n 187) 258- 260; Fenton-Glynn (n 126) 20

²⁰¹ Fenton-Glynn (n 126) 45; ECtHR *Guide on Article 3* (n 174)

²⁰² Fenton-Glynn (n 126) 45

²⁰³ *ibid*

²⁰⁴ *Eremia v the Republic of Moldova App no 3564/11* (ECtHR, 28 May 2013), discussed in Fenton-Glynn (n 126) 45.

moral integrity as part of private life, highlighting the blurred boundaries between these rights.²⁰⁵

However, it has been argued that failing to examine the psychological harm to child witnesses under Article 3 risks perpetuating the invisibility of this specific form of harm within the Court's doctrine.²⁰⁶ This scholarly critique suggests that the Court maintains too high a threshold for recognising psychological harm, especially in cases involving children, potentially leaving significant suffering unaddressed under the Convention's most fundamental guarantees in Article 3.²⁰⁷ It is therefore important that this thesis further examine children witnessing domestic violence not only from the perspective of Article 8, which I will discuss in the following sub-chapter, but also in relation to the protection afforded by Article 3, to explore whether the current jurisprudence adequately reflects children's heightened vulnerability and the unique impact of such indirect violence.²⁰⁸ In the analysis chapter, I will return to cases like *Eremia v Moldova*²⁰⁹ to assess in more depth whether the Court's approach sufficiently protects children's rights under both articles (and Article 14) as well as in relation to international and European human rights standards.

3.1.2 Right to respect for private and family life - Article 8 ECHR

Article 8 of the ECHR states that "everyone has the right to respect for his private and family life, his home and his correspondence"²¹⁰, and has gradually become central in the Court's jurisprudence concerning children.²¹¹ The text of Article 8 is structured in two paragraphs: the first guarantees the right itself, while the second allows interference only if it is lawful, pursues legitimate aims, and is necessary in a democratic society.²¹² This article, though framed broadly, holds particular significance for children because it encompasses not only physical integrity but also psychological and moral dimensions, including identity, personal development, and family relationships.²¹³

²⁰⁵ ECtHR *Guide on Article 3* (n 174) 11

²⁰⁶ Fenton-Glynn (n 126) 45

²⁰⁷ Fenton-Glynn (n 126) Chapter 2

²⁰⁸ Fenton-Glynn (n 126) 45

²⁰⁹ *Eremia v Moldova* (n 203)

²¹⁰ *Convention for the Protection of Human Rights and Fundamental Freedoms* (European Convention on Human Rights, as amended) art 8(1)

²¹¹ European Court of Human Rights (ECtHR), *Guide on Article 8* (n 123) 7-8, 93-118

²¹² ECHR (n 25) art 8; ECtHR *Guide on Article 8* (n 123) 7-16

²¹³ Fenton-Glynn (n 126) Chapter 8

The ECtHR's jurisprudence has increasingly evolved from a largely adult-focused understanding of Article 8 toward a more child-sensitive reading, acknowledging that domestic violence within the family sphere, even when not directly targeting the child, may disrupt a child's private and family life²¹⁴, as seen in *Eremia v Moldova*, where the Court held that children witnessing violence against their mother suffered interference with their private life under Article 8.²¹⁵

However, this protective stance coexists with the Court's cautious approach to interference in family life, rooted in the traditional respect for family autonomy under Article 8.²¹⁶ As noted in the travaux préparatoires, Article 8 was conceived partly to shield the family from undue state intrusion, a notion that historically preserved parental rights and decision-making authority, sometimes at the expense of recognising children as independent rights holders.²¹⁷ This tension between safeguarding family privacy and protecting children's rights underpins much of the Court's reasoning in domestic violence contexts.²¹⁸

An important feature of Article 8 is the Court's dual recognition of negative and positive obligations. While the State must refrain from arbitrary interference in private life, it is equally required to adopt measures that secure respect for individuals' rights, including protection from harm inflicted by private actors.²¹⁹ In cases of domestic violence, this positive obligation demands that authorities establish adequate legal frameworks and practical measures to protect children from physical or psychological harm, even if the violence is directed at another family member.²²⁰ An example of how this positive obligation operates in practice is *Osman v United Kingdom*, where the Court emphasised that States may be required to take preventive operational measures to protect individuals whose lives are at risk from the acts of others, provided the authorities knew or ought to have known of a real and immediate risk to life from the criminal acts of a third party.²²¹

Although Article 8 ECHR does not expressly mention children, it has become an essential provision in safeguarding their interests where domestic violence occurs within the family

²¹⁴ Fenton-Glynn (n 126) Chapter 8

²¹⁵ *Eremia v the Republic of Moldova* (n 203); ECtHR *Guide on Article 8* (n 123) 24

²¹⁶ Fenton-Glynn (n 126) Chapter 8

²¹⁷ *ibid*

²¹⁸ *ibid*

²¹⁹ ECtHR *Guide on Article 8* (n 123) 8–11

²²⁰ Kil Kelly (n 187)

²²¹ *Osman v United Kingdom* App no 87/1997/871/1083 (ECtHR, 28 October 1998), discussed in ECtHR *Guide on Article 8* (n 123) 9

sphere, recognising that such violence, even when not physically directed at the child, can profoundly disturb a child's private and family life.²²² The Court has increasingly accepted that witnessing domestic violence can amount to an interference with a child's right to private life, but the jurisprudence remains limited and not yet systematically developed in this regard.²²³ Notably, the Court acknowledged in *Eremia v Moldova*²²⁴ that children's exposure to violence against their mother constituted an interference with their private life under Article 8, though the harm was considered under this provision rather than under the absolute protection of Article 3, signalling the Court's cautious approach.²²⁵ Scholarly analyses and official guides stress that Article 8 imposes positive obligations on states to protect children from harm inflicted by private individuals, including domestic violence, by ensuring effective legal frameworks and preventive measures, but highlight that the ECtHR has so far offered only sporadic guidance specifically addressing children as witnesses rather than direct victims.²²⁶

Authors like Kilkelly and CoE reports²²⁷ underscore that while Article 8 encompasses psychological integrity, the Court's reasoning still largely reflects an adult-centric lens, leaving gaps in how indirect victimisation of children is legally framed and remedied under the Convention. Thus, despite some significant progress, there remains a lack of consistent jurisprudence clearly defining the scope of Article 8 protection for children exposed to domestic violence, which scholars argue leaves their specific vulnerabilities insufficiently addressed within the Court's current case-law.²²⁸

3.1.3 Prohibition of discrimination - Article 14 ECHR

Article 14 of the ECHR enshrines the principle that the rights and freedoms defined in the Convention shall be secured "without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."²²⁹ This provision does not create a stand-alone right to equality, but rather operates in conjunction with other substantive rights

²²² ECtHR *Guide on Article 8* (n 123)

²²³ *ibid*

²²⁴ *Eremia v Moldova* (n 203)

²²⁵ *Eremia v Moldova* (n 203); ECtHR *Guide on Article 8* (n 123)

²²⁶ Fenton-Glynn (n 126) 45

²²⁷ FRA and Council of Europe, *Handbook on European Law relating to the Rights of the Child* (2022) 147–148 (fra-coe-2022-handbook-child-rights_en.pdf); Kilkelly (n 187) 248–251.

²²⁸ Lux (n 60)

²²⁹ ECHR (n 25) art 14; ECtHR *Guide on Article 14* (n 228) 6

of the Convention, meaning that it prohibits discrimination only in the enjoyment of those rights.²³⁰ The ECtHR has affirmed through its case-law that Article 14 is fundamental, reflecting the rule of law, and “values of tolerance and social peace”.²³¹

In the context of children who witness domestic violence, Article 14 becomes relevant because discrimination may occur not only through direct acts of violence but also through failures to protect or differences in how states respond to such children’s needs compared to other victims.²³² Scholars have highlighted that the intersection of discrimination and violence is critical, since failing to recognise the specific vulnerabilities of certain groups of children, such as those witnessing domestic violence, may perpetuate systemic inequality and invisibility.²³³

A core aspect of Article 14 is the Court’s test for determining whether discrimination has occurred. This requires to first examine whether “there has been a difference in treatment between persons in analogous or relevantly similar situations - or a failure to treat differently persons in relevantly different situations”.²³⁴ If such differences exist, the Court then examines whether they pursued a legitimate and if the “means employed” were “reasonably proportionate to the aim pursued”.²³⁵ In discrimination cases, the burden of proof usually lies on the applicant (the principle of *affirmanti incumbit probatio*).²³⁶ However, the burden of proof can be reversed and shifted to the State, especially where relevant information lies primarily within the knowledge of the authorities.²³⁷

Discrimination may be direct, such as explicit differential treatment based on a protected ground, or indirect, where neutral measures disproportionately disadvantage a particular group.²³⁸ The ECtHR has also recognised discrimination by association, which occurs where an individual is treated less favourably due to their relationship with another person

²³⁰ ECtHR *Guide on Article 14* (n 288), 6-9

²³¹ *S.A.S. v France* App no 43835/11, Grand Chamber, (ECtHR, 1 July 2014) para 149; ECtHR *Guide on Article 14* (n 228) 6-9

²³² European Court of Human Rights, *Key Theme – Article 14 Discrimination through violence* (n 26); Martin Kornel, ‘Non-Discrimination of Children’ in Anikó Raisz (ed), *Children’s Rights in Regional Human Rights Systems* (Central European Academic Publishing 2023); Szilárd Sztranyiczki, ‘Protection Against Violence’ in Anikó Raisz (ed), *Children’s Rights in Regional Human Rights Systems* (Central European Academic Publishing 2023)

²³³ Martin Kornel, ‘Non-Discrimination of Children’ in Anikó Raisz (ed), *Children’s Rights in Regional Human Rights Systems* (Council of Europe 2023)

²³⁴ ECtHR *Guide on Article 14* (228) 16-17

²³⁵ *ibid* 16-17

²³⁶ *ibid* 22

²³⁷ *ibid* 14- 22

²³⁸ *ibid* 12-13

possessing a protected characteristic.²³⁹ This could be interesting to look further into in this thesis in the analysis- in the context of children exposed to domestic violence, who might suffer discrimination either as direct victims or through association with a non-abusive parent or caregiver who belongs to a vulnerable group.

An illustrative example is the landmark case-law *Opuz v Turkey*, where the Court found that Turkish authorities' failures to prevent domestic violence against a woman and her mother were not only violations of Articles 2 and 3 but also discriminatory under Article 14, given that the systemic passivity was linked to the victims' gender.²⁴⁰ Although the applicants were adult women, the Court in this case importantly linked discriminatory state inaction with gender-based violence, setting a significant precedent²⁴¹ that could equally apply to children witnessing such violence. Worth highlighting here is that there were children present in the case, witnessing domestic violence. They are usually not discussed though, hence this case will be examined thoroughly in the analysis chapter where the children witnessing the domestic violence will be in focus.

Similarly, in *Eremia v Moldova*²⁴², the Court considered that the authorities' inaction in the face of domestic violence inflicted upon a woman constituted discrimination under Article 14 in conjunction with Article 3.²⁴³ Notably, the Court recorded that the applicant's children were themselves suffering distress from witnessing the violence, though their harm was assessed primarily under Article 8 rather than as a separate violation under Article 14.²⁴⁴ This illustrates the Court's ongoing hesitancy to address the indirect victimisation of children under the anti-discrimination lens, leaving a gap in jurisprudence which scholars and child rights experts criticise as failing to recognise children's unique vulnerability and the discriminatory impact of domestic violence on their well-being and development.²⁴⁵

It is evidently observed among scholars that the Court has yet to robustly integrate children's status as indirect victims of violence into its Article 14 jurisprudence. Commentators have noted that discrimination claims concerning children in domestic violence contexts often remain underdeveloped, largely because Courts and States tend to overlook the structural and

²³⁹ *ibid* 12-13

²⁴⁰ *Opuz v Turkey* (n 135) para 200; ECtHR *Key Theme - Discrimination through violence* (n 232) 4

²⁴¹ *Opuz v Turkey* (n 135); ECtHR *Guide on Article 14* (n 228)

²⁴² *Eremia v Moldova* (n 203)

²⁴³ *Eremia v Moldova* (n 203); ECtHR *Guide on Article 14* (n 228)

²⁴⁴ *Eremia v Moldova* (n 203); ECtHR *Guide on Article 14* (n 228) 29, 50

²⁴⁵ Kornel (n 232); Sztranyiczki (n 232)

intersectional dimensions of such children's vulnerability.²⁴⁶ Hence, there remains a risk that, without recognising these dynamics under Article 14, children who witness violence will continue to experience "invisible harm" excluded from the full protection of the Convention's anti-discrimination guarantees.²⁴⁷

This chapter therefore identifies a critical dimension of my thesis: exploring whether the ECtHR's approach under Article 14 sufficiently protects children who witness domestic violence from discriminatory treatment or omission by the state, particularly in light of broader European and international child rights standards. It will be necessary to examine not only the Court's willingness to apply Article 14 to indirect victimisation but also how the principle of non-discrimination can serve as a tool to expose and rectify systemic failures that disproportionately affect this uniquely vulnerable group of children. As noted- in the subsequent analysis chapter, I will revisit landmark cases like *Opuz v Turkey*²⁴⁸ and *Eremia v Moldova*²⁴⁹ to assess in greater depth how Article 14 might be interpreted to advance a more child-focused protection regime consistent with the UNCRC and evolving European human rights law.

3.2 Children in focus: analysis on ECtHR's domestic violence case-law (Arts 3,8 and 14 ECHR)

3.2.1 Children are present, but in the shadows of the adults

The systematic mapping on the domestic violence jurisprudence of the ECtHR (see Appendix 1, where all 31 cases are systematic and thoroughly examined)²⁵⁰ reveals a striking paradox: children are frequently present in these cases, yet their rights remain in the shadows of an adult-centric framework. In principle, the Court recognizes that children affected by domestic abuse are "particularly vulnerable" individuals entitled to State protection. In practice, however, ECtHR case-law has largely treated domestic violence as a problem between adults, with child witnesses and indirect victims relegated to the background. This section examines how children's rights are framed - or overlooked - in the Court's domestic violence decisions, drawing on a structural analysis of the case-law, illustrative examples, and commentary. It

²⁴⁶ Kornel (n 232)

²⁴⁷ Kornel (n 232)

²⁴⁸ *Opuz v Turkey* (n 135)

²⁴⁹ *Eremia v Moldova* (n 203)

²⁵⁰ See Appendix I (Systematic mapping of ECtHR domestic violence case-law).

finds a persistent tension between the presence of children in these cases and the Court’s focus on adult victims. The result is that children appear throughout the jurisprudence, yet rarely as central rights-holders- a form of *legal invisibility* that Chapter 1 identified as deeply problematic given the severe harm children suffer by witnessing domestic violence.

Presence of children in domestic violence case-law. The systematic mapping of 31 ECtHR judgments on domestic violence (see Appendix 1) confirms that children are overwhelmingly present in these cases, though usually not as primary actors. In 80% of the surveyed judgments, one or more children featured in the facts - typically as sons or daughters of the abused partner. By contrast, children appeared as applicants (bringing claims in their own name) in only about one-third of the cases. In other words, while domestic violence before the Court in a majority of the cases unfolds within a family setting where children are *de facto* victims or witnesses, those children are *formal* rights claimants in a minority of the cases. This disparity is visualized in Figure 1 below, which shows the proportion of domestic violence cases involving children.

Children present in the domestic violence case? (from systematic mapping of 31 ECtHR case-law)

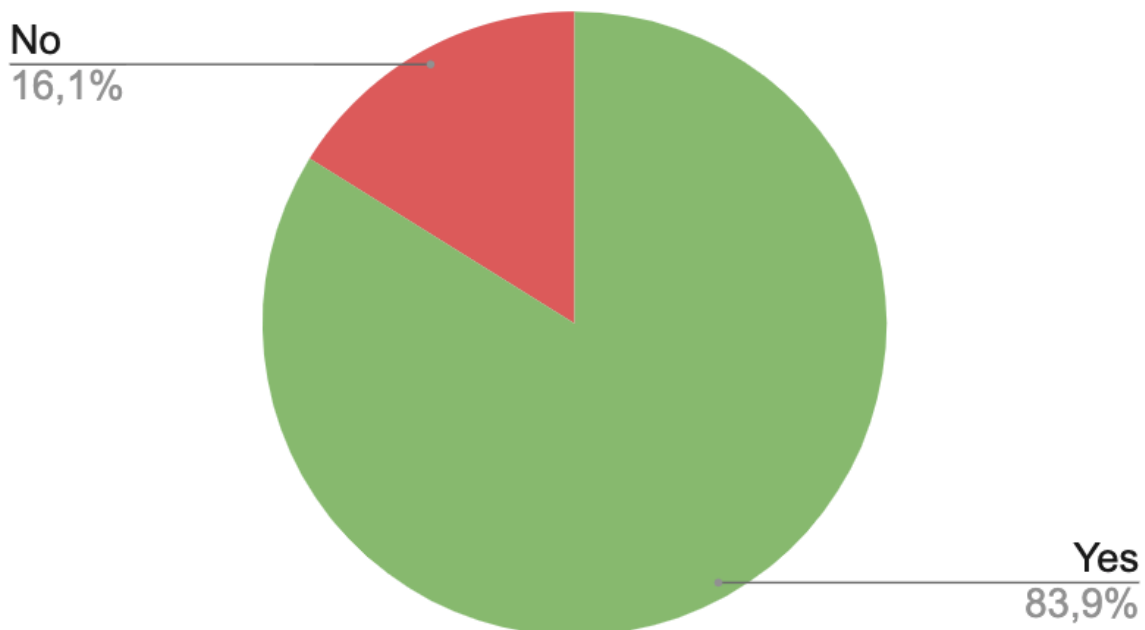


Figure 1: Children’s Presence in ECtHR Domestic Violence Cases (2008–2025). Among the surveyed domestic violence judgments, 83.9% involved children in the factual background, while only 16.1% did not. (Source: Author’s case-law mapping, Appendix 1).

In addition, Figure 2 below illustrates how rarely the ECtHR finds a violation in respect of the child's own rights, even where children are present. Only 25.8% of the surveyed cases resulted in a finding of a violation concerning the child, while in 74.2% no such violation was established.

Did the Court judge a violation for child(ren)?

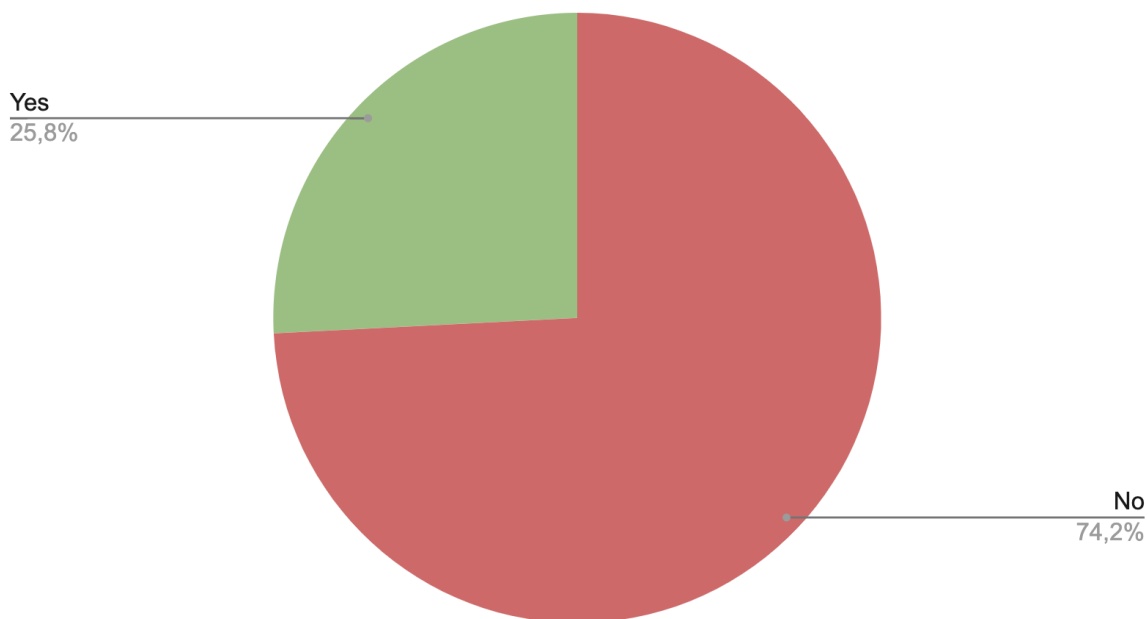


Figure 2: ECtHR Findings of Violation in Domestic Violence Cases Involving Children. (Source: Author's case-law mapping, Appendix 1).

From background to foreground: when children become visible. Only in exceptional instances has the ECtHR squarely addressed a child's situation in a domestic violence case - typically when the child is an applicant. Two instructive examples are *M. and M. v Croatia*²⁵¹ and *D.M.D. v Romania*²⁵². In *M. and M. v Croatia*, a 9-year-old girl and her mother brought proceedings after the girl had been physically and psychologically abused by her father (the mother's ex-husband). Here the child was not merely a witness to spousal abuse; she herself endured direct harm. The Court's judgment, notably, gave substantial attention to the child's experiences. It found that Croatian authorities had failed to hear the child's views and to protect her from further abuse, amounting to a violation of the State's positive obligations under Article 8 ECHR. Crucially, the Court explicitly referred to the UNCRC affirming that

²⁵¹ *M and M v Croatia* App no 10161/13 (ECtHR, 3 September 2015); Appendix 1

²⁵² *D.M.D. v Romania* App no 23022/13 (ECtHR, 3 October 2017); Appendix 1

the child's best interests must be a primary consideration in domestic violence proceedings and that children have a right to be heard in matters affecting them. The judgment cited UNCRC Articles 3 and 12 and criticized the domestic courts for "*failing to sufficiently involve the child in the decision-making process,*" thereby neglecting procedural safeguards owed to children. This marked a rare instance of the ECtHR adopting a child-sensitive lens in domestic violence cases mainly between adults: the girl was treated as an autonomous rights-holder whose personal welfare and opinion deserved direct judicial regard. The outcome was also child-focused - the Court not only faulted the authorities for how they handled the mother's complaints, but also for not ensuring the *daughter's* safety and well-being in the aftermath.

Similarly, in *D.M.D. v Romania*²⁵³ a boy who had been severely abused by his father (in the presence of his mother) was the sole applicant before the ECtHR. The Court again shifted into a more child-centric mode of analysis. It held that the State's protracted failure to effectively investigate and prosecute the father's assaults violated the procedural limb of Article 3 (the duty to investigate inhuman or degrading treatment) in respect of the child. Notably, the judgment went beyond generic terms to acknowledge the psychological harm the boy suffered: the domestic courts had found that the violence caused the child serious trauma and attachment disorders. The ECtHR affirmed that authorities must react with special diligence when the person harmed is a child. It referenced the *best interests of the child* principle and Article 19 UNCRC, underlining that children have an independent right to freedom from violence. The Court's reasoning in *D.M.D. v Romania*²⁵⁴ thus treated the young applicant as a direct victim of a human rights violation, not merely as a footnote to an adult's story. In both *M. and M. v Croatia*²⁵⁵ and *D.M.D. v Romania*, one sees how the Court's stance changes once a child is before it as 1) an applicant, 2) especially as a solo applicant independent from parent and 3) when the child has been physically abused as well.

These cases, however, remain exceptions that prove the rule. The overwhelming majority of ECtHR domestic violence judgments involve children who are not applicants - and in those, the child fades into the background of the legal narrative. A recent example is *Giuliano Germano v Italy* (2023).²⁵⁶ In that case, a father (Mr. G.) complained that the imposition of a police "caution" against him (a warning issued due to his abusive behavior) violated his

²⁵³ *D.M.D. v Romania* (n 252)

²⁵⁴ *ibid*

²⁵⁵ *M. and M. v Croatia* (n 251)

²⁵⁶ *Giuliano Germano v Italy* App no 10794/12 (ECtHR, 22 June 2023)

rights under Article 8 ECHR. The context was a domestic dispute: Mr. G. had physically assaulted his estranged wife in front of their young daughter, causing the child significant distress (she was dragged away crying and later refused to visit her father due to fear). Despite these grave facts, the child's perspective in *Giuliano Germano v Italy*²⁵⁷ was almost entirely absent from the Court's reasoning. The applicant was the perpetrator, not the victims, and the judgment accordingly focused on whether the measures against the father were procedurally and substantively justified. In a unanimous decision, the Court found Italy in violation of Article 8 – essentially upholding the father's claim that the authorities had not afforded him adequate due process before restricting his contact with his family. The child's suffering and her interest in being protected from further trauma received only a cursory mention as background facts. Tellingly, a detailed account of the child's trauma appeared *only* in a concurring opinion, where a judge lamented the lack of attention to the daughter's plight. The contrast with *M. and M.* could not be starker: in *Giuliano Germano*, the child was present in the story but invisible in the judgment's analysis. The case underscores how the Court's adult-centric lens can lead to anomalous outcomes²⁵⁸ - here, an abusive father's rights were vindicated while the child victim's ordeal went virtually unaddressed. As discussed in Chapter 1 & 2 scholar observes, the Court's jurisprudence still reflects an adult-centric lens, leaving gaps in how indirect victimisation of children is legally framed and remedied. The systematic mapping confirms this: children's interests, when they are not formally before the Court, too often become collateral considerations at best.

Opuz v Turkey: setting a precedent of invisibility. The marginalization of children's rights can be found in the domestic violence landmark case *Opuz v Turkey*.²⁵⁹ The case is widely regarded as a legal breakthrough on several fronts. As noted by Celorio and Abdel-Monem, it was the first time the ECtHR explicitly recognized domestic violence as a form of gender-based discrimination and held a State accountable under ECHR for failing to protect a woman against her abusive husband, despite the abuse being perpetrated by a private actor.²⁶⁰ The ECtHR found violations of Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), and 14 (non-discrimination) of the Convention.²⁶¹ This marked a shift

²⁵⁷ *Giuliano Germano v Italy* (n 256)

²⁵⁸ Kilkelly (n 187) 248–251; Lux (n 60); Fenton-Glynn (n 126)

²⁵⁹ *Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009)

²⁶⁰ Celorio, Introductory Note to the European Court of Human Rights: *Opuz v. Turkey* (2009) 48 ILM 907; Abdel-Monem, “*Opuz v. Turkey*: Europe's Landmark Judgment on Violence Against Women” (2009) 17 Hum Rts Brief 29.

²⁶¹ *Opuz v Turkey* (n 259)

in the Court's approach, moving from viewing domestic violence solely as a private matter to recognizing it as a systemic issue intertwined with gender inequality.²⁶²

The facts of the case²⁶³ is that Ms. Nahide Opuz suffered years of brutal violence from her husband, H.O., who not only physically assaulted her repeatedly but also threatened her life and the lives of her family. The violence escalated over several incidents between 1995 and 2002, culminating in the murder of Ms. Opuz's mother, who was shot dead by H.O. in broad daylight after numerous previous threats and assaults. The Turkish authorities were repeatedly notified of H.O.'s violence and threats; nonetheless, they failed to take adequate protective measures, allowing the pattern of abuse to continue largely unchecked.²⁶⁴

Importantly, Ms. Opuz also had three children who lived through this. They were present during some of the violent incidents, such as when the father assaulted their mother with a knife and the children ran to their grandmother to inform her about this. The grandmother that the children ultimately lost because their father shot her.²⁶⁵ Yet, despite the obvious impact on these children, the Court's landmark judgment practically ignored their existence in its legal assessment. This invisibility of the children has been highlighted by scholars as one of the case's significant shortcomings. As Londono observes, *Opuz v Turkey*²⁶⁶ represented a crucial step forward in connecting domestic violence with discrimination under Article 14, but it still fell short of articulating how such violence also violates children's rights as independent rights holders under the ECHR.²⁶⁷

The Court framed and adjudicated the case entirely as a failure to protect the adult victims- the applicant and her mother.²⁶⁸ In its lengthy reasoning on Articles 2, 3, and 14, the Court never addressed whether the authorities' inaction also violated any obligation towards the children in the household. While the judgment briefly mentions the children in the facts- for instance, noting that H.O. threatened Ms. *Opuz v Turkey*²⁶⁹ that he would kill her and her children if she persisted in pressing charges- this did not translate into any analysis of potential violations of the children's rights.²⁷⁰ There was no discussion of Article 8 (family

²⁶² Londono, "Developing Human Rights Principles in Cases of Gender-based Violence" (2009) 9 HRLR 657

²⁶³ *Opuz v Turkey* (n 259)

²⁶⁴ *ibid*

²⁶⁵ *ibid*

²⁶⁶ *ibid*

²⁶⁷ Londono (n 251)

²⁶⁸ *Opuz v Turkey* (n 259)

²⁶⁹ *ibid*

²⁷⁰ *ibid*

life) from the children’s perspective, nor of Article 3 in relation to the fear, trauma, and psychological harm the children suffered from witnessing their mother’s abuse and grandmother’s murder.²⁷¹

Instead, the focus remained firmly on the State’s duty to protect women from domestic violence as a systemic, gendered phenomenon. The Court went to great lengths to discuss Turkey’s failure to address violence against women as a structural problem, citing statistics on violence against women and finding a violation of Article 14 in conjunction with Articles 2 and 3.²⁷² Scholars such as Sękowska-Kozłowska emphasize that *Opuz v Turkey*²⁷³ laid the groundwork for understanding domestic violence not merely as isolated acts but as part of broader structural discrimination, a perspective that has since been developed further in cases like *Volodina v. Russia*.²⁷⁴ However, as several commentators note, the judgment reflects an unresolved tension: while breaking new ground in recognizing gender-based structural discrimination, it simultaneously reveals the ECtHR’s tendency to focus on adult victims, leaving children’s specific rights and experiences in the shadows.²⁷⁵

Rosa Celorio’s commentary underlines that the Court in *Opuz v Turkey*²⁷⁶ even acknowledged that domestic violence has “innocent casualties such as children”²⁷⁷ and stressed the need for State vigilance.²⁷⁸ Yet, the judgment itself does not follow through on this insight with a legal analysis of how witnessing such violence might breach children’s rights under Articles 3 or 8 ECHR. Worth highlighting as well is the choice of words from the Court- calling the children casualties really implies a perspective that does not view children as right- holders of their own. In effect, the children remained legally invisible, treated as mere background to the mother’s and grandmother’s suffering rather than as individuals entitled to protection in their own right. The case thus stands as both a landmark and a cautionary tale: legal progress on one front should not obscure the simultaneous necessity to protect and recognize the rights of child witnesses to domestic violence.

²⁷¹ *ibid*

²⁷² *Opuz v Turkey* (n 135); Sękowska-Kozłowska, “Proving Domestic Violence as Gender Structural Discrimination” (2024) *Int J Semiot Law* 37:1725

²⁷³ *Opuz v Turkey* (n 135)

²⁷⁴ Sękowska-Kozłowska (n 272); Fenton-Glyn (n 126) 18

²⁷⁵ Londono (n 251); Celorio (n 260)

²⁷⁶ *Opuz v Turkey* (n 135)

²⁷⁷ *ibid* 132

²⁷⁸ Celorio (n 260)

The *Opuz v Turkey*²⁷⁹ judgment thereby set a template that subsequent cases followed. It demonstrated that the *Convention* could be applied to domestic abuse, but it did so through an adult-centric paradigm.²⁸⁰ In the words of ECtHR Judge Serghides, the Court's approach in such cases has often meant that children receive only a "theoretical, meaningless and empty declaration"²⁸¹ of protection while real remedies focus on the adults. In fact, *Opuz v Turkey*²⁸² did not even go so far as to give an "empty declaration" for the children - it simply omitted them. The legacy is evident: in later cases like *Kurt v Austria* (2021)²⁸³, the Grand Chamber acknowledged that "the mental strain of having to witness violence against [one's] mother should not be underestimated"²⁸⁴, yet it still evaluated the State's duty primarily through the lens of risk to the mother's life. In *Kurt v Austria*²⁸⁵, a mother alleged that authorities' failure to act led to her husband murdering their son. The Court found no violation of Article 2 (right to life) in respect of the child's death, reasoning that the risk to the child had not been sufficiently apparent- effectively viewing the situation from the adult's standpoint and the State's knowledge, rather than the child's right to life. Thus, even when children become tragically central (as direct victims of lethal violence), the Court's analysis often remains filtered through an adult-oriented framework of duties and risks. Given that all Convention rights apply to "everyone"²⁸⁶ -children included- the expectation is that the Court should interpret and apply those rights in a manner cognizant of children's distinct experiences and vulnerabilities.

Towards a child-centered approach. The structural invisibility of children in ECtHR case-law has not gone unnoticed, and there are growing calls to reframe the Court's approach. In her expert interview for this thesis, Prof. Dr. Skelton stressed that legal systems must recognise the harm to children who witness domestic violence as a "violation in its own right"²⁸⁷. Under the UNCRC, States are obliged to protect children from "all forms of violence" (Article 19) and to consider the child's best interests (Article 3) in all actions concerning them. Prof. Dr. Skelton argues that these provisions should be used to interpret Convention obligations in domestic violence cases - effectively expanding the understanding of Article 8 and Article 3

²⁷⁹ *Opuz v Turkey* (n 135)

²⁸⁰ *Sękowska-Kozłowska* (n 272)

²⁸¹ *Savinovskikh and Others v Russia* App no 4693/20 (ECtHR, 19 January 2021) Partly Dissenting Opinion of Judge Serghide

²⁸² *Opuz v Turkey* (n 135)

²⁸³ *Kurt v Austria* App no 62903/15, Grand Chamber, (ECtHR, 15 June 2021)

²⁸⁴ *ibid* para 206

²⁸⁵ *ibid*

²⁸⁶ ECHR (n 25) art 1

²⁸⁷ Interview with Prof. Dr. Skelton (25 June 2025)

ECHR to “encompass the indirect forms of violence such as witnessing domestic violence”.²⁸⁸ Significantly, she cautions against relying solely on the nebulous concept of “best interests” as a substitute for concrete rights. Instead, courts should explicitly characterize the act of a child witnessing domestic violence as violence under Art 19 UNCRC.²⁸⁹

3.2.2 A living instrument falling short? The ECtHR’s narrow approach to children’s psychological harm under Article 3 ECHR

The systematic mapping of the 31 ECtHR domestic violence²⁹⁰ from cases reveals the Court’s cautious approach to children’s suffering under Article 3. Children were involved in 25 of these cases (about 80%), yet in only 11 of these cases did the judgments acknowledge the child’s psychological harm *in any way*. Only 5 cases (20% of those involving children) led to a finding of an Article 3 violation- and in all these 5 cases- the child was a direct victim of physical violence.²⁹¹ This stark quantitative trend is illustrated in the pie chart below, underscoring a significant gap in protection: the Court has often failed to recognize or remedy the suffering of children who witness violence, as opposed to those who endure direct physical abuse.

The mapping confirms that the ECtHR has generally been willing to find an Article 3 violation only when the child was the direct victim of severe abuse or the sole/primary applicant. For example, in *E.S. and Others v Slovakia*²⁹², a mother and her three children were all applicants in a domestic violence case. The children were subjected to physical and psychological ill-treatment by their father, and one daughter sexually abused. The Court held that all four applicants- including the children- had been subjected to inhuman and degrading treatment, resulting in a violation of Article 3.²⁹³ In *D.M.D. v Romania*²⁹⁴, a 3-year-old boy who was physically and mentally abused by his father was the sole applicant- the Court emphatically found a breach of Article 3 (procedural limb) due to the authorities’ ineffective investigation of the abuse.²⁹⁵ In *T.M. and C.M. v Republic of Moldova*²⁹⁶, a mother and her

²⁸⁸ *ibid*

²⁸⁹ *ibid*

²⁹⁰ Appendix 1

²⁹¹ Appendix 1

²⁹² *E.S. and Others v Slovakia* App no 8227/04 (ECtHR, 15 December 2009)

²⁹³ *ibid*

²⁹⁴ *D.M.D. v Romania* (n 252)

²⁹⁵ *ibid*

²⁹⁶ *T.M. and C.M. v Republic of Moldova* App no 26608/11 (ECtHR, 28 January 2014).

young daughter were co-applicants alleging domestic violence; the Court acknowledged the daughter's suffering, noting expert evidence of the child's anxiety and emotional distress, and found that even witnessing the repeated abuse of her mother met the Article 3 threshold in light of the child's young age.²⁹⁷ Notably, the *T.M. and C.M.* judgment held that the child had suffered ill-treatment "beyond the minimum severity" required by Article 3, considering she both witnessed violence and was herself directly threatened—therefore the state's failure to protect her amounted to an Article 3 violation (alongside the mother's claims).²⁹⁸ In a recent example, *A.E. v Bulgaria*²⁹⁹, a 15-year-old girl had been repeatedly beaten by an adult family member; the Court found a violation of Article 3 on the grounds that authorities failed to provide adequate protection, emphasizing the girl's extreme vulnerability as a child.³⁰⁰ These cases highlight a common feature: the child was treated as a direct victim of violence, not merely a bystander. Indeed, the Court has established that "isolated and random"³⁰¹ acts of domestic violence can breach Article 3 when directed at a child, given children's unique vulnerability. The Court has explicitly recognized children's unique vulnerability and developmental fragility in regards to Article 3 ECHR. In practice, however, drawing from the systematic mapping- it is evident that this principle has been realized mainly in cases of physical violence against the child.

The Court has indeed shown marked reluctance to extend Article 3 to children who only witness domestic violence without being directly attacked. The mapping data show that in case after case involving children's exposure to parental abuse, the Court either confines its analysis to Article 8 (the right to family life) or requires an exceptionally high threshold of harm to engage Article 3.³⁰² An example of this is *M. and M. v Croatia*³⁰³. In that case, a nine-year-old girl, who was herself an applicant before the Court together with her mother, had been living with her father after her parents' divorce but wished to live with her mother. She alleged that her father physically and psychologically abused her, including choking, threats, insults, forced feeding, and controlling her contact with her mother. She was examined multiple times by psychiatrists and psychologists and diagnosed with trauma, fear of her father, depression, anxiety, PTSD, and self-harming behavior. She repeatedly expressed her wish to live with her mother in forensic interviews, therapy sessions, and even a school

²⁹⁷ *T.M. and C.M. v Republic of Moldova* (n 296)

²⁹⁸ *ibid*

²⁹⁹ *A.E. v Bulgaria* App no 53891/20 (ECtHR, 23 May 2023).

³⁰⁰ ECtHR *Guide on the case-law of the European Convention on Human Rights – Rights of the Child* (n 87)

³⁰¹ *Sękowska-Kozłowska* (n 272); *Fenton-Glynn* (n 126) 18

³⁰² See Appendix 1

³⁰³ *M. and M. v Croatia* App no 10161/13 (ECtHR, 3 September 2015)

essay, and was involved in both criminal and custody proceedings before eventually gaining applicant status before the Court.³⁰⁴ The Court acknowledged the child's young age and the degrading nature of the situation; however, the majority stopped short of a clear substantive finding that the girl herself suffered "inhuman or degrading treatment." Instead, the Court addressed the failings under Article 8 (holding that the authorities' handling of custody and protection measures breached the family life rights of mother and child) and only found a procedural violation of Article 3 for the lack of an effective investigation.³⁰⁵ In other words, the child's suffering was legally cognizable only through Article 8, and Article 3 was not applied to its full substantive extent.³⁰⁶

This cautious stance appears even in recent Grand Chamber jurisprudence. An example of this is in *Kurt v Austria*³⁰⁷, which concerned a father's fatal violence against his child. The father shot the child while his sibling witnessed the shooting- the Grand Chamber noted in the facts that "His sister B., who had witnessed her brother being shot, was not injured."³⁰⁸ The Grand Chamber pointed out that even when children are not the primary targets of domestic violence, "the mental strain of having to witness violence against their mother should not be underestimated."³⁰⁹ However, despite this recognition of secondary trauma, the Court in *Kurt* ultimately found no violation of the Convention in respect of the surviving children's suffering, focusing instead on the state's obligations under Article 2 (right to life) and concluding that the risk to the children had not been sufficiently real and immediate.³¹⁰ Worth noting however is that only the mother was an applicant, not the sibling. However, when the Grand Chamber highlighted the Istanbul Convention, it did not acknowledge the sibling neither in relation to Article 46 (d)³¹¹ which states that the circumstance is aggravated if it was committed "against or in the presence of a child"³¹², nor Article 46(h) which provides for aggravated circumstances where "the offence resulted in severe physical or psychological harm for the victim,". This could be seen as a missed opportunity in highlighting the psychological harm inflicted on the sibling who witnessed her brother being shot by her father.

³⁰⁴ *ibid*

³⁰⁵ *ibid*

³⁰⁶ Appendix 1

³⁰⁷ *Kurt v Austria* (n 283)

³⁰⁸ *ibid* para 35

³⁰⁹ *ibid* para 206

³¹⁰ *ibid*

³¹¹ Istanbul Convention (n 20) 46 (b)

³¹² *ibid* art 46 (d)

This jurisprudence exposes a troubling inconsistency. On one hand, the Court has lowered the Article 3 threshold for children in theory, recognising that a child’s vulnerability means lesser harm can be inhuman or degrading.³¹³ On the other hand, in practice the Court often fails to apply that lowered threshold to psychological and emotional harm.³¹⁴ Scholars have observed that the ECtHR maintains too high a bar for recognizing purely psychological abuse of children, resulting in a form of invisibility for subtler forms of maltreatment.³¹⁵ A frequently cited example is *Costello-Roberts v United Kingdom*³¹⁶, where a seven-year-old’s degrading punishment at school (which caused him fear and humiliation but left no physical injury) was held not to meet the severity threshold of Article 3. The *Costello-Roberts* approach, though decades old, still echoes in the Court’s more recent treatment of children’s psychological suffering.³¹⁷ For instance, in *M. and M. v Croatia*³¹⁸, the majority’s reluctance to fully credit the child’s trauma under Article 3 reflects a continuing skepticism towards “invisible” harms.³¹⁹ The net effect is that children who endure intense fear, anxiety and long-term trauma from witnessing domestic violence often receive less formal protection under Article 3 than children (or adults) who suffer comparable physical injuries.³²⁰ This outcome is doctrinally incongruous and arguably at odds with modern understandings of trauma: as highlighted earlier in this thesis, psychological abuse can be equally as damaging as physical abuse, especially for children.³²¹ Yet the ECtHR’s case-law reveals a cautious, piecemeal recognition of this reality- leading to inconsistent protection.³²²

From a broader child-rights perspective, the Court’s reticence to classify witnessed domestic violence as “inhuman or degrading treatment” is increasingly viewed as a legal gap.³²³ International standards suggest that children’s exposure to domestic violence is itself a form of violence against the child. Notably, Article 19 of the UN Convention on the Rights of the Child (UNCRC) requires States to protect children from “all forms of physical or mental violence.”³²⁴ In the interview with Prof. Dr. Skelton advocated for exactly this approach: legal

³¹³ ECtHR *Guide on the case-law of the European Convention on Human Rights – Rights of the Child* (n 87) 52

³¹⁴ See Appendix 1

³¹⁵ Lux (n 60) 103; Fenton- Glynn (n 126) 45

³¹⁶ *Costello-Roberts v United Kingdom* App no 13134/87 (ECtHR, 25 March 1993)

³¹⁷ Global Partnership to End Violence Against Children, *Research Summary: Ending corporal punishment in schools to transform education for all children* (May 2023)

³¹⁸ *M. and M. v Croatia* (n 251)

³¹⁹ Fenton-Glynn (n 126) 15-16, 45

³²⁰ Lux (n 60)

³²¹ Dodaj (n 3); Harrison (n 10), Calderaro et al (n 13); Bessel van der Kolk (n 13)

³²² Lux (n 60)

³²³ Fenton- Glynn (n 126) 45

³²⁴ UNCRC (n 21) art 19

systems should explicitly treat a child witnessing domestic abuse as experiencing violence in their own right. In her words:

“Violence against children [should be interpreted] as encompassing the indirect forms of violence such as witnessing domestic violence... Under the UNCRC, it would mean expanding the interpretation of Article 19 - and I think Article 3 [ECHR] could also be read together with Article 19.”³²⁵

She emphasizes that relying solely on a child’s “best interests” (Article 3 UNCRC) is insufficient; the harm of witnessing abuse must be legally recognized as violence *per se*.³²⁶ In practical terms, she suggests that a clear judicial declaration is needed. Such a declaration, she notes, “places the child at the centre of the decision, and it considerably expands the idea of violence against children.”³²⁷

This view aligns with the growing consensus in child psychology and international law that children’s exposure to domestic violence causes direct harm.³²⁸ It also resonates with the ECtHR’s own recognition (in *Kurt* and elsewhere) that the mental suffering of child witnesses is real and ought not be underestimated.³²⁹ The logical next step- urged by Prof. Dr. Skelton and others- is for the Court to align its Article 3 doctrine with these insights.³³⁰ As this thesis argued in Chapters 1 and 2, the ECtHR’s cautious stance has led to a doctrinal stagnation in the face of evolving child-rights norms. Drawing from the systematic mapping and previous research it can be noted that despite the living nature of the Convention, the Court has been slow to update its interpretation of Article 3 in line with present-day understandings of children’s vulnerability, particularly regarding psychological trauma.³³¹

Encouragingly, voices within the Court itself have begun calling for a more progressive approach. In *Volodina v Russia*³³², a domestic violence case (without child applicants), ECtHR Judge Serghides, whom I also had an interview with for this analysis,³³³ penned a separate opinion that resonates with the need for doctrinal evolution. Citing the Convention’s

³²⁵ Interview with Prof. Dr. Skelton (25 June 2025)

³²⁶ *ibid*

³²⁷ *ibid*

³²⁸ Dodaj (n 3); Harrison (n 10), Calderaro et al (n 13); Bessel van der Kolk (n 13); Lux (n 60)

³²⁹ *Kurt v Austria* (n 283)

³³⁰ Interview with Prof. Dr. Skelton (25 June 2025)

³³¹ Appendix 1; Lux (n 60)

³³² *Volodina v Russia* App no 41261/17 (ECtHR, 9 July 2019) (Separate Opinion of Judge Serghides).

³³³ Interview with ECtHR Judge Serghides (9 June 2025)

“living instrument” doctrine, Judge Serghides reminded that the Court must interpret Article 3 in light of contemporary standards, which demand “greater firmness in assessing breaches of fundamental values.”³³⁴ He quoted the Court’s own precedent in *Selmouni v France*³³⁵; “the increasingly high standard being required in the area of the protection of human rights... requires greater firmness in assessing breaches”- to argue that mistreatment once seen as merely “degrading” could warrant being reclassified as “torture” in the future.³³⁶ While Serghides’s remarks addressed the misclassification of extremely severe abuse, the underlying principle is broadly applicable: the Court should not cling to outdated thresholds when evolving knowledge calls for a stronger stance. In *Volodina v Russia*³³⁷, Judge Serghides criticized the majority for not fully vindicating the applicant’s rights—by classifying the proven domestic abuse too mildly, the Court “did not provide the applicant with the effective protection required by Article 3.”³³⁸ This critique rings especially true for cases of child witnesses. One can analogize: by treating children’s profound emotional suffering as falling outside Article 3 (or only triggering procedural obligations), the Court similarly fails to provide effective protection. The effectiveness principle that Serghides championed- that Convention rights must be practical and not illusory- demands that Article 3 be interpreted dynamically to cover new understandings of harm. Today, we understand that a child’s psychological trauma from witnessing a parent’s abuse is not “less real” than physical harm; the ECtHR’s doctrine should boldly reflect that reality.

3.2.3 Children’s right to private life under Article 8 ECHR: progress and persistent gaps

The systematic mapping of 31 ECtHR judgments on domestic violence confirms that Article 8 ECHR has increasingly become a relevant lens for analysing children’s suffering as witnesses to abuse in the family sphere.³³⁹ Yet among these 31 cases, only *Eremia and Others v Moldova*³⁴⁰ explicitly acknowledged a violation of children’s right to respect for private life because of the trauma of witnessing their mother’s abuse, revealing a persistent scarcity of judgments that treat child witnesses as rights-holders in their own right.³⁴¹ This gap aligns

³³⁴ *Volodina v Russia* (n 332) (Separate Opinion of Judge Serghides).

³³⁵ *Selmouni v France* App no 25803/94 (ECtHR, 28 July 1999)

³³⁶ *Volodina v Russia* (n 332) (Separate Opinion of Judge Serghides).

³³⁷ *ibid*

³³⁸ *ibid*

³³⁹ Appendix 1

³⁴⁰ *Eremia and Others v Moldova* (n 204)

³⁴¹ *Eremia and Others v Moldova* (n 204); *Appendix 1*; Niels Hedlund, ‘The ECHR and the Positive Obligation to Criminalise Domestic Psychological Violence’ (2024) 24 *Human Rights Law Review* ngae019

with patterns identified in prior research, where the Court often leaves children in the shadows when they are not direct victims of violence.³⁴² As discussed in Chapters 1 and 2, this invisibility conflicts with evidence that witnessing domestic violence can gravely affect children’s psychological integrity, family life, and personal development.⁴ The ECtHR Court’s cautious approach reflects an ongoing tension under Article 8 between protecting private and family life and respecting family autonomy.³⁴³

*Eremia and Others v Moldova*³⁴⁴ is a landmark in this context. The case involved a Moldovan woman and her two minor daughters who endured repeated violence by the husband and father, a police officer, despite protection orders. The daughters witnessed both physical violence and severe psychological abuse against their mother, leaving them in a constant state of fear and anxiety. Despite the domestic law criminalising family violence, the authorities failed to enforce protective measures effectively. The ECtHR found that Moldova had violated Article 8 by failing to protect the daughters’ right to respect for private life, stressing that “the psychological well-being of the children had been adversely affected by witnessing their mother being physically and verbally abused.”³⁴⁵ This is significant because it demonstrates the Court’s willingness to recognise children as victims of rights violations under Article 8, even when they are not the direct targets of violence.³⁴⁶

However, scholarly commentary points out that *Eremia and Others v Moldova*³⁴⁷ remains limited in scope. Zimmermann³⁴⁸ argues that although the Court acknowledges children’s suffering, it frames the harm under Article 8 rather than Article 3, thus avoiding a finding of inhuman or degrading treatment for child witnesses.³⁴⁹ Such cautious categorisation arguably diminishes the perceived severity of harm, reflecting the Court’s reluctance to escalate the classification of violence when the child is not the victim of physical violence.³⁵⁰ Similarly, Hedlund underscores that psychological violence often falls below criminal thresholds, leaving significant gaps in protection for children who endure such indirect harm.³⁵¹ This

³⁴² Fenton-glynn (n 126)

³⁴³ ECtHR *Guide on Article 8* (n 123)

³⁴⁴ *Eremia and Others v Moldova* (n 204);

³⁴⁵ *ibid* paras 12-14

³⁴⁶ *Eremia and Others v Moldova* (n 204); *Hedlund* (n 341)

³⁴⁷ *Eremia and Others v Moldova* (n 204)

³⁴⁸ N Zimmermann, ‘Beyond Crisis: Vulnerability and the ECtHR’ (2023) 24 *Human Rights Review* 193

³⁴⁹ Fenton-Glynn (n 126) 37, 45

³⁵⁰ *ibid*

³⁵¹ *Hedlund* (n 341)

cautious approach mirrors trends observed in the broader mapping of ECtHR case law where indirect victims, such as child witnesses, are rarely granted robust remedies.³⁵²

Thus, while *Eremia* represents progress in recognising child witnesses as rights holders under Article 8, it also exposes persistent gaps. The judgment underscores the need for the ECtHR to develop a more child-centred interpretation of Article 8, integrating insights from international child rights instruments and responding adequately to the profound harm that witnessing domestic violence inflicts.³⁵³ Such an approach would be crucial to ensure that Article 8 functions not only as a shield against State interference but also as a robust tool for the proactive protection of children's rights.³⁵⁴

3.2.4 Children's (in)visibility under Article 14 ECHR: structural discrimination in ECtHR domestic violence case-law

Domestic violence against women has increasingly been recognised as a form of discrimination under the ECHR, engaging Article 14's guarantee of equal enjoyment of Convention rights without discrimination.³⁵⁵ In cases of domestic abuse, the Court has frequently combined Article 14 with substantive rights, such as Article 3's prohibition of inhuman or degrading treatment, to argue that systemic failings form part of a pattern of discrimination, often on grounds of sex.³⁵⁶ However, when it comes to children who witness domestic violence, the application of Article 14 has been markedly limited, as seen in the systematic mapping of this thesis.³⁵⁷ This is a critical gap because children in abusive households are not only bystanders- they can suffer deep psychological harm and are rights-holders in need of equal protection.³⁵⁸ Article 14 ECHR is highly relevant: it can expose structural patterns by which child victims are rendered "invisible" and ensure that States' obligations to protect individuals from abuse are fulfilled without discrimination on grounds such as age or family status.³⁵⁹ This section examines how the ECtHR has addressed (or failed to address) the discrimination and invisibility of children who witness domestic violence, highlighting structural shortcomings in the jurisprudence and the need for a more

³⁵² Appendix 1

³⁵³ Hedlund (n 341)

³⁵⁴ *ibid*

³⁵⁵ ECtHR *Guide on Article 14* (n 228); ECtHR *Key Theme – Article 14 Discrimination through violence* (n 228); Sztranyiczki (n 232)

³⁵⁶ ECtHR *Key Theme – Article 14 Discrimination through violence* (n 228); ECtHR *Guide on Article 14* (n 228)

³⁵⁷ Appendix 1

³⁵⁸ Dodaj (n 3)

³⁵⁹ ECHR *Guide on Article 14* (n 228); Kornel (n 232); ECtHR, *Key Theme – Article 14 Discrimination through violence* (n 232)

robust Article 14 analysis to vindicate children’s rights in these contexts. It builds on the findings of a systemic case-law mapping of ECtHR judgments, illustrative case examples, expert commentary, and the Court’s own doctrines, to demonstrate that children’s experiences have too often been sidelined - a trend that, while might be in the beginning to shift, demands urgent scholarly and legal attention.

The systematic mapping of the 31 case-laws³⁶⁰ confirms a persistent reluctance to treat children’s exposure to domestic abuse as an Article 14 issue. In the vast majority of cases where children were either applicants or directly affected, the Court addressed their situation, if at all, under Articles 3 or 8, and rarely found (or even examined) a violation of Article 14 on their behalf.³⁶¹ Patterns emerge of children’s claims being subsumed under those of their parents or deemed unnecessary to examine once a primary violation is found. For instance, in *T.M. and C.M. v Moldova*³⁶², a case brought by a mother (T.M.) and her daughter (C.M.), the Court recognized serious failings by Moldovan authorities. It found that both mother and child had suffered violations of Article 3 due to the State’s inaction: notably, the daughter had been physically pushed and emotionally traumatized when her father assaulted the mother in her presence.³⁶³ This was a positive step – the Court treated a child’s experience of physical violence and witnessing domestic violence as reaching the Article 3 threshold of inhuman treatment.

However, when it came to Article 14, the Court’s approach was strikingly uneven. The mother’s complaint under Article 14 (that the State’s failure to protect was driven by discriminatory attitudes toward domestic violence) was upheld: the Court, referring to its reasoning in *Eremia v Moldova* and *Opuz*³⁶⁴, held that *T.M. and C.M. v Moldova* had been discriminated against on grounds of sex, violating Article 14 read with Article 3.³⁶⁵ In contrast, the daughter C.M.’s Article 14 claim was not examined at all. The judgment records that the child’s discrimination complaint under Art 14 (whether under Article 3 or 8) was “admissible in principle” but did “not raise a separate issue” beyond the Article 3 violation already found, and therefore the Court declined to consider it separately.³⁶⁶ In other words, despite the child having *independently* suffered harm, the Court did not investigate whether

³⁶⁰ Appendix 1

³⁶¹ Appendix 1

³⁶² *T.M. and C.M. v the Republic of Moldova*, App No 26608/11 (ECtHR, 28 January 2014).

³⁶³ *ibid*

³⁶⁴ *Eremia v Republic of Moldova* (n 204); *Opuz v Turkey* (n 135)

³⁶⁵ *T.M. and C.M. v. the Republic of Moldova* (n 296)

³⁶⁶ *ibid* para 52

her treatment by the authorities (or the legal system's failure to protect her) amounted to discrimination based on age or any other status.³⁶⁷ This outcome exposes a structural problem: the Court presumed that the issues in the child's case mirrored those in the mother's, thereby conflating the two and overlooking potential age-based discrimination - namely, the possibility that the legal system's response systematically deprioritized or ignored the child's victimhood *because* she was a child.³⁶⁸ By failing to articulate any comparator or ground, the Court missed an opportunity to develop equality jurisprudence for child victims. Age could be considered "other status" protected under Article 14, and one could argue (as child-rights advocates have) that children exposed to domestic violence face a double vulnerability - as victims of abuse and as minors often overlooked by adult-centric protection frameworks.³⁶⁹ The *T.M. and C.M.* judgment leaves this dimension unexplored. In stark relief, the mother's suffering was framed as a violation compounded by discrimination, whereas the child's suffering was framed as regrettable but not a product of systemic bias warranting a separate analysis.³⁷⁰

An important distinction arises between cases where a child is a sole applicant and those where the child appears as a co-applicant with a parent, significantly influencing whether the Court engages with Article 14 analysis.³⁷¹ In *A.E. v Bulgaria*³⁷², the child applicant, who was the sole victim of psychological and physical domestic violence, obtained a finding of discrimination under Article 14 in conjunction with Article 3, revealing that the Court is more willing to recognise discrimination where the child stands as an independent legal subject. This contrasts sharply with cases like *M. and M. v Croatia*³⁷³, where a child was a co-applicant alongside a parent, and the Court examined only violations under Articles 3 and 8, declining to assess whether the child had been subject to discriminatory treatment based on age. The difference in outcome suggests that children's procedural status strongly shapes their legal visibility: when children litigate independently, the Court is forced to examine their victimhood as distinct and autonomous, whereas when joined with adult claims, children's experiences are often overshadowed by the narrative of the adult victim.³⁷⁴ Judge

³⁶⁷ *ibid*

³⁶⁸ Dodaj (n 3)

³⁶⁹ ECHR *Guide on Article 14* (n 228); Kornel (n 232); ECtHR *Key Theme – Article 14 Discrimination through violence* (n 232); Sztranyiczki (n 232)

³⁷⁰ *T.M. and C.M. v. the Republic of Moldova* (n 296)

³⁷¹ Appendix 1

³⁷² *A.E. v Bulgaria* App no 53891/20 (ECtHR, 23 May 2023) paras 91–93; ECtHR *Key Theme Domestic Violence* (n 26)

³⁷³ *M. and M. v. Croatia* App no 10161/13 (ECtHR, 3 September 2015)

³⁷⁴ *M. and M. v. Croatia* (n 251); Lux (n 60)

Serghides has objected to this practice of omitting separate examination of children’s discrimination claims, warning that refusing to analyse complaints under Article 14 deprives children of justice and hinders the development of child-sensitive jurisprudence.³⁷⁵ The approach also neglects principles under the UNCRC, which demand that children be treated as rights holders whose best interests and right to participate in proceedings should be central in any assessment of human rights violations.³⁷⁶

Beyond individual cases, the Court’s approach contributes to structural discrimination against children who witness domestic violence, effectively rendering them less worthy of legal protection under equality principles. The systemic mapping reveals that States often fail to tailor protective measures to the specific vulnerabilities of child witnesses, instead designing interventions primarily for adult women victims (which is very good, but it needs to be applied to children as well). The risk is that children’s unique harms- such as developmental trauma, long-term psychological consequences, and difficulties accessing justice- remain unaddressed because they are not seen as separate discrimination issues.³⁷⁷ Third-party interventions have proven crucial for breaking this invisibility, as seen in *A.E. v Bulgaria*³⁷⁸, where the National Network for Children intervened to highlight the barriers faced by minors in pursuing justice, such as dependency on adults to initiate proceedings and the heightened trauma experienced by child victims.³⁷⁹ Such interventions have pressured the Court to consider child-specific contexts, although this remains the exception rather than the rule- this is the only case out of the 31 cases in the systematic mapping where a Third-party intervention highlighted the children.³⁸⁰ Experts argue that only a consistent integration of the UNCRC and instruments like the Istanbul Convention into Article 14 analysis can ensure that children witnessing domestic violence are recognised as independent victims deserving of equal protection and remedies.³⁸¹ Without this shift, the legal framework risks perpetuating a systemic bias that leaves these children in the shadows of adult-focused protection measures.³⁸²

³⁷⁵ *Adamčo v. Slovakia* App no 47468/20 (ECtHR, 20 December 2024) Partly Dissenting Opinion of Judge Serghides

³⁷⁶ Interview with Prof. Dr. Skelton (25 June 2025)

³⁷⁷ Lux (n 60); Calderaro and others (n 13)

³⁷⁸ *A.E. v. Bulgaria* (n 372)

³⁷⁹ *A.E. v. Bulgaria* (n 372); ECtHR *Key Theme Domestic Violence* (n 26)

³⁸⁰ Appendix 1

³⁸¹ Istanbul Convention (n 20) art 26; UNCRC (n 21) Arts 3, 19; Lux (n 60) 111

³⁸² Lux (n 60)

3.2.5 Persistent gaps between international and European Human Rights standards and ECtHR practice

The systematic mapping of the ECtHR's domestic violence case law reveals a persistent gap between international and European child rights standards and the Court's actual practice regarding children who witness domestic violence.³⁸³ Despite the Court's explicit commitment to the Vienna Convention on the Law of Treaties³⁸⁴, ("any relevant rules of international law applicable in the relations between the parties", and in particular the rules concerning the international protection of human rights"³⁸⁵), the Court seldom integrates these instruments into its legal reasoning where children witness domestic violence. The UNCRC was only referred to in 6 of the 25 case-law involving children, and the Istanbul Convention was mentioned 10 times (however almost exclusively in regards to the adult applicant).³⁸⁶

Cases like *Bălșan v Romania*³⁸⁷ illustrate this problematic trend. The judgment acknowledged Romania's failure to protect a mother from domestic violence, engaging Article 3, but entirely omitted discussion of the two children who had witnessed the violence, despite Romania's ratification of the Istanbul Convention.³⁸⁸ This omission conflicts with the Istanbul Convention's Article 26³⁸⁹, which demands that child witnesses be treated as victims with specific rights and supports, as well as the Istanbul Convention 46(d) that states that committing an offence "against or in the presence of a child"³⁹⁰ is an aggravating circumstance. Likewise, in *Malagić v Croatia*³⁹¹, the Court found no violation of Article 8, even though the applicant's children lived with their father when the applicant (the mother) alleged that he threatened to take children away or kill her if she reported him.³⁹² Although the Istanbul Convention was mentioned in general, no analysis addressed the harm suffered by the children.³⁹³ Such silence contrasts sharply with the UNCRC's Articles 19 and 3, which require states to protect children from all forms of violence and consider their best interests as

³⁸³ Appendix 1

³⁸⁴ *Vienna Convention on the Law of Treaties* (n 119)

³⁸⁵ *Neulinger and Shuruk v. Switzerland* (n 76) para 131, discussed in Strand (n 115) 979, 980. See also: *Vienna Convention on the Law of Treaties* (n 119)

³⁸⁶ Appendix 1

³⁸⁷ *Bălșan v Romania* (n 165)

³⁸⁸ *ibid*

³⁸⁹ Istanbul Convention (n 20) Art 26

³⁹⁰ *ibid* Art 46 (d)

³⁹¹ *Malagić v Croatia* App no 29417/17 (ECtHR, 17 November 2022)

³⁹² *ibid*

³⁹³ *ibid*

a primary concern.³⁹⁴ The ECOSOC *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*³⁹⁵ emphasise that children who witness crimes like domestic violence are extremely vulnerable and must be treated as rights-holders. The Council of Europe Resolution 1714 (2010) explicitly recognises witnessing domestic violence as psychological abuse and urges states to treat child witnesses as victims entitled to protection and remedies.³⁹⁶ Yet, the ECtHR rarely cites these standards or evaluates whether children’s rights were independently violated, as seen in the systematic mapping. In fact, the CoE Resolution and the ECOSOC Guidelines were not mentioned one single time throughout the 31 cases examined.³⁹⁷

*Vieru v the Republic of Moldova*³⁹⁸ starkly illustrates this gap. The applicant alleged that Moldovan authorities failed to protect his sister, who ultimately died after falling from a fifth-floor in the presence of her husband (the children's father), after amid repeated domestic violence.³⁹⁹ The Court found violations of Articles 2, 3 and 14 ECHR in relation to the State’s failure to prevent and investigate the domestic violence. However, despite explicit evidence that the couple’s children witnessed repeated violence, including letting their father into the apartment before the mother’s fall, the judgment does not mention the children as potential victims.⁴⁰⁰ There is no analysis of whether witnessing these events affected the children psychologically. Nor does the judgment reference the UNCRC, the ECOSOC Guidelines, or Istanbul Convention provisions on child witnesses.⁴⁰¹ This omission confirms earlier critiques that the ECtHR remains “adult-centric,” focusing on direct victims while ignoring the profound impact on child witnesses.⁴⁰²

Prof. Dr. Skelton⁴⁰³, in her interview, argued that “legal systems could consider interpreting violence against children as encompassing the indirect forms of violence such as witnessing domestic violence,” suggesting that Article 19 CRC should be expanded to cover situations with children witnessing domestic violence. Prof. Dr. Skelton further noted that relying solely on “best interests” is insufficient and that children’s status as victims under Article 19 must

³⁹⁴ UNCRC (n 21)

³⁹⁵ ECOSOC, ‘Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime’ (n 22)

³⁹⁶ PACE Resolution 1714 (n 138)

³⁹⁷ Appendix 1

³⁹⁸ *Vieru v Republic of Moldova* App no 17106/18 (ECtHR, 19 November 2024)

³⁹⁹ *ibid*

⁴⁰⁰ *ibid*

⁴⁰¹ Appendix 1

⁴⁰² Fenton-Glynn (n 126) 45

⁴⁰³ Interview with Prof. Dr. Skelton (25 June 2025)

be firmly recognised.⁴⁰⁴ Her insights highlight the gap between international standards and the Court's reluctance to explicitly classify children who witness domestic violence as victims.

⁴⁰⁴ *ibid*

4. Closing the gaps: recommendations on how the protection for children witnessing domestic violence can be better aligned with international and European human rights standards

This chapter explores how the ECtHR could better protect children who witness domestic violence by more consistently applying Article 3, recognising age-based discrimination under Article 14, integrating international standards, and using its power to recharacterise legal issues, to ensure child witnesses are put in the spotlight rather than being in the shadows.

First, drawing from this analysis, it seems clear that the ECtHR could consider developing a more consistent approach to recognising that children who witness domestic violence may suffer harm severe enough to fall within the scope of Article 3 ECHR. Research has shown that witnessing abuse can have profound psychological and even physical consequences for children, comparable in some cases to direct violence.⁴⁰⁵ In judgments like *M. and M. v. Croatia*⁴⁰⁶, the Court has accepted that domestic violence can amount to “degrading treatment” where a child is exposed to repeated violence. However, my findings indicate that such reasoning remains the exception rather than the rule, and the Court tends to focus more on victims of physical violence under Article 3. In light of the UNCRC Article 19, which calls for protection from *all* forms of violence,⁴⁰⁷ the Court could be encouraged to examine more systematically whether witnessing domestic violence reaches the threshold of inhuman or degrading treatment, even when the child is not physically harmed. This would, in my view, better reflect the living instrument doctrine and evolving understandings of children’s vulnerability.

A further area where the Court could expand its reasoning is in the use of Article 14 ECHR, in conjunction with Articles 3 and 8, to address possible discrimination on grounds of age. My mapping shows that children who witness violence are often treated collateral in the domestic violence- the children are in the shadows- despite suffering distinct harm. In *T.M. and C.M. v. Moldova*⁴⁰⁸ for instance, the mother’s discrimination claim succeeded under Article 14, but the child’s separate situation was not analysed. This pattern suggests that children’s unique position as witnesses remains invisible in much of the Court’s jurisprudence. Drawing on this analysis, it seems reasonable to propose that the Court could

⁴⁰⁵ Dodaj (n 3)

⁴⁰⁶ *M. and M. v. Croatia* (n 251)

⁴⁰⁷ UNCRC (n 21) art 19

⁴⁰⁸ *T.M. and C.M. v. Moldova* (n 296).

examine more actively whether failing to protect child witnesses amounts to discrimination based on age, particularly given international standards such as the Istanbul Convention and the UNCRC. Recognising children as a specific group under Article 14 could help ensure that legal protection is not unevenly distributed.

Another insight emerging from this research is the importance of considering aggravating circumstances in domestic violence cases where children are present. Article 46 (d) of the Istanbul Convention⁴⁰⁹ explicitly states that committing violence “in the presence of a child” should be treated as an aggravating factor. However, my review indicates that the ECtHR integrates this principle into its reasoning, especially where the child is not an applicant. Drawing from this analysis, one could suggest that the Court might highlight in its judgments that the presence of a child during domestic violence should influence assessments of the severity of State failures to protect. For example, in cases like *Volodina v. Russia*⁴¹⁰, the factual background involved significant trauma for children witnessing abuse and the Istanbul Convention was mentioned in the Court’s legal reasoning- however Article 46 (d) was not brought up. Integrating the Istanbul Convention’s approach could help signal the gravity of such contexts and promote harmonisation between European and broader international human rights standards.

Furthermore, the Court could use the master of characterisation⁴¹¹ to a greater extent (especially for examining Articles 3 and 14 ECHR as discussed above). This principle means the European Court of Human Rights (ECtHR) has sole authority to define the legal nature of the facts and issues in a case, meaning it can examine complaints under different Convention articles than those invoked by the applicant if it considers this legally appropriate. My mapping identified several situations where the Court confined itself to Article 8, focusing on family life, despite facts suggesting potential inhuman or degrading treatment under Article 3. From this perspective, it seems reasonable to propose that the Court could, in appropriate cases, consider re-framing issues to include both Articles 3 and 8, and possibly Article 14 in conjunction with the other Articles, and thereby providing fuller protection for child witnesses.

⁴⁰⁹ Istanbul Convention (n 20) art 46 (d).

⁴¹⁰ *Volodina v. Russia* (n 332).

⁴¹¹ ECtHR *Guide on Article 8* (n 123).

My research also underlines the value of third-party interventions by children's rights organisations. In *A.E. v. Bulgaria*⁴¹², for instance, the National Network for Children provided essential information about the specific challenges faced by child victims in pursuing justice. Yet, many domestic violence cases involving child witnesses proceed without such specialised input. Drawing from this, it seems worth proposing that the Court could encourage or even invite interventions from child-focused NGOs, especially in cases touching on complex psychological harm or structural issues. My recommendation is also directly to Child rights NGOs to engage further in this topic as this-party interventions.

Finally, the Court's practice could benefit from greater integration of international standards, such as the UNCRC and the Istanbul Convention, into its reasoning. Both instruments emphasise the rights of children exposed to violence and the need for child-sensitive procedures. Drawing from this analysis, it seems fair to propose that the ECtHR could more frequently cite and rely on these instruments when interpreting Articles 3, 8, and 14, thereby ensuring that the Convention remains responsive to contemporary child rights standards as well as being more in line with the *Vienna Convention on the Law of Treaties*.⁴¹³

In conclusion, the Court has made significant progress in recognising the harm faced by children in domestic violence contexts. However, my analysis suggests that several gaps remain. Through a more consistent application of Article 3, broader use of Article 14, integration of aggravating factors under Article 46 of the Istanbul Convention, proactive characterisation of legal issues, and support for third-party interventions, the ECtHR could further strengthen protection for child witnesses. These steps would, in my view, help bring the Court's jurisprudence into closer alignment with evolving international and European human rights standards and ensure that children who witness domestic violence are no longer left in the shadows.

⁴¹² *A.E. v. Bulgaria* (n 372).

⁴¹³ *Vienna Convention on the Law of Treaties* (n 119).

5. Conclusion

This thesis has shown that while the European Court of Human Rights increasingly recognises children who witness domestic violence as vulnerable individuals under Articles 3, 8 and 14 ECHR, it still largely keeps them in the shadows by rarely granting them explicit victim status or engaging deeply with their distinct harm and rights. My analysis indicates that the Court's case-law remains only partially adequate when measured against international and European child rights standards like the UNCRC and the Istanbul Convention, which demand more child-centred reasoning and stronger procedural safeguards.

To bring these children into the spotlight, the Court could develop a more consistent approach to treating witnessing violence as a form of inhuman or degrading treatment, ensure children's participatory rights under Article 12 UNCRC are meaningfully reflected in proceedings, and integrate instruments like the Istanbul Convention more directly into its proportionality analyses and positive obligations. Only then can the Court truly break the pattern of invisibility highlighted in this study, and fulfil its role as a living instrument capable of protecting the rights of those who, for too long, have remained unseen. Fenton-Glynn (n 126)⁴¹⁴ ends her chapter in the book *Children and the European Court of Human Rights* with: "Hopefully, in future editions of this book there will be more to say on this topic, as the Court expands its case-law in this area. I can only agree.

CHILDREN IN THE SHADOWS deserve to be brought fully into the spotlight.

*"No violence against children is justifiable;
all violence against children is preventable"*⁴¹⁵

⁴¹⁴ Fenton-Glynn (n 126) 45.

⁴¹⁵ Committee on the Rights of the Child, General Comment No 13 (2011) UNCRC/C/GC/13, para 3(a)

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Case name & citation	Articles examined by the Court	Children present?	Child Applicant?	How the child(ren) were involved	Harm to adult applicant	Judgment outcome by the Court	References to the following international or europena human rights instruments: UNCRC Art 2, Art 3, Art 12, Art 19, ECOSOC Resolution 2005/20, UNCRC, UNCRC Committee Istanbul Convention or CoE Resolution 1714 (2010)?	Did the Court judge a violation for child(ren)? If yes: what violation?	Third-party intervention? If yes- any references to children?	Did the Court describe the children's psychological harm in any way? If so, how?	If opinions (concurring/dissenting/separate): are childrens harm adressed?
Opuz v. Turkey, App No. 33401/02 (ECtHR, 9 June 2009)	Arts 2, 3, 14 ECHR	Yes	No	Applicant's three children factually present in family context [8]. Children witnessed repeated violence and threats against applicant and her mother, including knife attacks, beatings, threats with firearms, threats with a vehicle, and eventual murder of applicant's mother [9-54]. One child ran to inform grandmother after applicant was stabbed [37].	Applicant suffered repeated assaults, including severe beatings, knife attacks, and threats over several years, leading to multiple injuries and psychological harm [10, 13, 20, 23, 37]. Her mother was eventually murdered by applicant's husband [53-54].	Unanimously: Violation of Article 2 of the Convention in respect of the death of the applicant's mother Violation of Article 3 of the Convention in respect of the authorities' failure to protect the applicant against domestic violence perpetrated by her former husband Violation of Article 14 of the Convention read in conjunction with Articles 2 and 3	No	No	Yes. Interights intervened [5]; no references to children in their submissions.	No	-
Bevacqua and S. v. Bulgaria, App No. 71127/01 (ECtHR, 12 June 2008)	Arts 6 §1, 8 ECHR	Yes	Yes (co-applicant with mother)	Applicant's minor son S. factually present in family context [5]. Child repeatedly seized by either parent during the custody conflict, including by physical force [67]. Child witnessed father's violent acts against mother, causing distress [13, 22, 72, 79]. Child questioned about preference to live with mother or father during police-facilitated meeting [18]. Child expressed fear of father and preference to live with mother in expert opinion during custody proceedings [33]. Child not separately an applicant in own name but application submitted jointly by mother on his behalf [5].	Mother suffered repeated physical assaults by husband, including hitting and bruising her face and body [13-14, 22, 38]. Authorities delayed ruling on interim custody, prolonging conflict and distress [8, 10, 21, 25-31, 76].	by six votes to one: violation of Article 8 of the Convention, in respect of the failure to adopt interim custody measures without delay and failure to protect applicants against Mr N.'s violent behaviour [84]. Unanimously: No violation of Article 6 § 1	No	Yes. Violation of Article 8 found jointly in respect of mother and child due to lack of timely interim custody measures and insufficient State protection from domestic violence affecting the child's private and family life [84].	No	Yes. Court noted the child, three years old at the time, was adversely affected psychologically by repeated conflict and violent incidents witnessed between parents [72]. Child reported fear of father due to violent behaviour and expressed preference to live with mother [33, 79]. Psychotherapist's written opinion described mother's strong emotional upset and implicitly child's distress [29].	Yes, but only indirectly. Judge Maruste mentions the child's situation but does not consider the harm serious enough to justify a violation.
E.S. and Others v. Slovakia, App No. 8227/04 (ECtHR, 15 September 2009)	Arts 3, 8 ECHR	Yes	Yes (co-applicants with mother)	Applicant's three children factually present in family context [5]. Children subjected to physical and psychological ill-treatment by their father, and one daughter sexually abused [6, 9, 13]. Contact with their father had adverse effect on their health and development [13]. Children forced to leave home, family, and friends; two children had to change schools [10].	Adult applicant subjected to physical and psychological ill-treatment by husband and forced to leave home [6, 8, 10]. Requested court order excluding husband from apartment for protection but request rejected, lived separately in precarious conditions [10-12]. Eventually granted exclusive tenancy of apartment after prolonged proceedings [19].	Unanimously: All four applicants were victims of violations under both Article 3 and Article 8	UNCRC Article 19 (protection of all forms of violence) [14, 35].	Yes. Court found violation of Article 3 and Article 8 of the Convention in respect of the children for failure to protect them from ill-treatment by their father [40].	No	Yes. Expert opinion stated contact with father had adverse effect on children's health and development [13]. Court described the children as having suffered physical and psychological ill-treatment due to their father's behaviour [9, 13, 15].	No
A. v. Croatia, App No. 55164/08 (ECtHR, 14 October 2010)	Arts 2, 3, 8, 13, 14 ECHR	Yes	No	Applicant's minor daughter witnessed repeated verbal and physical abuse of the applicant by the child's father [10]. The child's father also used inappropriate language towards the minor daughter and on several occasions punched and kicked her [10]. Contact between the child's father and the minor daughter was ordered under supervision, later prohibited, then reinstated for supervised meetings [38-40].	Applicant subjected to repeated physical assaults, threats, and stalking by her former husband [7-8, 10, 20, 29-31]. Sustained injuries and lived in fear, forced to hide in shelters and at secret addresses [8, 36-37].	Violation of Art. 8 ECHR (Unanimously)	No	No	No	No	-
Hajduová v. Slovakia, App No. 2660/03 (ECtHR, 30 November 2010)	Arts 8 ECHR	Yes	No	Applicant's children factually present in family context [6]. Applicant and her children moved out of the family home due to fear for safety after violence and threats by applicant's former husband [6]. Court noted the complaint included failure to protect applicant, her children, and her lawyer from further threats [42].	Applicant subjected to verbal and physical attack by former husband, causing minor injury and fear for life and safety [6]. Applicant threatened repeatedly by former husband after his release, causing fear and distress [11, 48-49].	Violation of Art. 8 ECHR (Unanimously)	No	No	No	No	-
Kaluza v. Hungary, App No. 57693/10 (ECtHR, 24 April 2012)	Arts 8 ECHR	Yes	No	Applicant lived with former husband together with her children during renovations [8].	Applicant suffered repeated physical assaults resulting in injuries including contusions, broken finger, and concussion, was forced to live with violent former partner against her will, faced slow or ineffective protection from authorities [14, 16, 23, 60-70].	Violation of Art. 8 ECHR (Unanimously)	No	No	No	No	-
Valulienė v. Lithuania, App No. 33234/07 (ECtHR, 26 March 2013)	Arts 3, 8 ECHR	No	No	No children mentioned.	-	-	-	-	-	-	-
Eremia v. Republic of Moldova, App No. 3564/11 (ECtHR, 28 May 2013)	Art 3, 8, 14 ECHR	Yes	Yes (co-applicants with mother)	Children are daughters of the mother applicant [7]. Children witnessed repeated violence and threats against mother, including physical assaults and verbal abuse [7-10, 11, 16, 18, 74]. Children verbally abused by father [7, 16, 74]. Domestic court found children's psychological well-being adversely affected by witnessing father's violence [11, 74, 77]. Children not physically assaulted but recognized as victims of domestic violence for purposes of criminal proceedings [23, 25].	Mother (applicant) subjected to repeated physical assaults by husband, including punching, near-suffocation causing loss of voice, simulated strangling, and threats to kill [7, 9, 10, 13, 18]. Mother (applicant) suffered fear, anxiety, and psychological distress amounting to inhuman treatment [54].	Unanimously: Violation of Article 3 of the Convention in respect of the mother for failure to protect her from domestic violence [66]. Violation of Article 8 of the Convention in respect of the daughters for failure to protect their private and family life from harm caused by witnessing domestic violence [77-79]. Violation of Article 14 of the Convention read in conjunction with Article 3 in respect of the mother due to discriminatory attitude and condoning of domestic violence [90]. No separate examination of Article 14 read in conjunction with Article 8 [91].	No	Yes. Violation of Article 8 of the Convention in respect of the daughters due to witnessing repeated domestic violence and suffering psychological harm [79].	Yes, by the Equal Rights Trust [5]. No references specifically to children in third-party intervention.	Yes. Court noted that the children's psychological well-being was adversely affected by repeatedly witnessing violence against their mother in the family home [11, 74, 77]. Domestic court established that such exposure caused stress and psychological suffering for the children [11].	-

Case name & citation	Articles examined by the Court	Children present?	Child Applicant?	How the child(ren) were involved	Harm to adult applicant	Judgment outcome by the Court	References to the following international or european human rights instruments: UNCRC Art 2, Art 3, Art 12, Art 19, ECOSOC Resolution 2005/20, UNCRC, UNCRC Committee Istanbul Convention or CoE Resolution 1714 (2010)?	Did the Court judge a violation for child(ren)? If yes: what violation?	Third-party intervention? If yes- any references to children?	Did the Court describe the children's psychological harm in any way? If so, how?	If opinions (concurring/dissenting/separate): are childrens harm addressed?
B. v. the Republic of Moldova, App No. 61382/09 (ECtHR, 16 July 2013)	Arts 3, 8 ECHR	Yes	Yes (co-applicant with mother)	Three applicants: mother and her two children [1, 5] Mother alleged she was subjected to violence from former husband, and children witnessed such violence and were affected by it [3] Children lived in same apartment as parents [5-7] Courts found father insulted mother in front of children [12] Children confirmed mother's testimony in domestic court and asked for father's eviction [13] Mother requested protection order for herself and children, citing risk of further violence and authorities' inability or unwillingness to ensure physical and psychological safety [17] Domestic court refused to evict father, stating it had not been established that father had applied physical and/or psychological violence against the children [18] Children were applicants but their complaints declared inadmissible by the ECtHR for failure to exhaust domestic remedies [33, 64]	Mother subjected to repeated violence, insults, threats, and attempted rape by former husband [7-9, 16] Ongoing fear and anxiety from living with aggressor despite protection orders [16-19, 57-58]	Unanimously: Violation of Article 3 for failure to protect mother Violation of Article 8 for failure to protect mother's private life and integrity Children's complaints inadmissible	No	No. The Court rejected the sons' complaints for failure to exhaust domestic remedies and did not judge any violation concerning the children [33, 64]	No	No	-
Mudric v. Republic of Moldova, App No. 74839/10 (ECtHR, 16 July 2013)	Art 3, 14 ECHR	No	No	N/A – No children involved.	-	-	-	-	-	-	-
T.M. and C.M. v. Republic of Moldova, App No. 26608/11 (ECtHR, 28 January 2014)	Art 3, 8, 14 (in conjunction with arts 3, 8) ECHR	Yes	Yes (co-applicant with mother)	The child was the second applicant [5] The child suffered bruises to right hand after father pushed her to the ground [8] The child witnessed violence and verbal abuse against mother [41] Psychological report confirmed the child suffered anxiety and emotional distress due to father's violence [14] The child factually present in family context and subject of protection orders [13, 22]	Mother suffered repeated physical assaults, including punches causing facial injuries and bruises [8, 10] Mother suffered psychological harm and fear of further violence due to father's continued presence and threats [41] Mother forced to seek refuge outside home due to fear for safety [16, 41]	Unanimously: Violation of Article 3 of the Convention Violation of Article 14 of the Convention taken in conjunction with Article 3 in respect of the mother No need to examine mother's complaint under Article 14 taken in conjunction with Article 8, or the child's complaints under Article 14 taken in conjunction with Articles 3 and 8	No	Yes. Violation of Article 3 of the Convention in respect of the child, considering physical assault, witnessing violence against mother, and psychological harm suffered [41, 49] "In view of the manner in which the authorities had handled the case, notably the authorities' knowledge of the risk of further domestic violence by M. M. and their failure to take effective measures against him during several months, the Court finds that the State failed to observe its positive obligations under Article 3 of the Convention. There has, accordingly, been a violation of that provision." [49]	No	Yes. Psychological report confirmed the child suffered anxiety and emotional distress due to father's violence and recommended no contact with him [14] Court noted the child suffered suffering beyond the minimum threshold under Article 3 due to witnessing violence against mother and experiencing direct violence, considering her young age [41] Authorities acknowledged the child had been damaged psychologically as a result of violence by father [16]	-
M. and M. v. Croatia, App No. 10161/13 (ECtHR, 3 September 2015)	Arts 3, 8 ECHR	Yes	Yes (first applicant, second mother)	Child was applicant herself [1] (Her mother was the second applicant) Child lived with father after parents' divorce, wished to live with mother [5-10; 15; 19-23; 27-29; 33-34] Child alleged father physically and psychologically abused her, including hitting, squeezing her throat, threats, insults, forced feeding, controlling contact with mother [12-15; 19-23; 28-29; 33-34] Child examined multiple times by psychiatrists and psychologists, diagnosed with trauma, fear of father, depressive symptoms, anxiety, post-traumatic stress, self-harm behaviour [19-23; 25; 34] Child repeatedly expressed wish to live with mother, including in forensic interviews, therapy sessions, and a school essay [15; 19-23; 27-29; 33-34] Child involved in criminal and custody proceedings [21-81] Child eventually granted applicant status before Court together with mother [1]	Mother alleged domestic authorities failed to protect her child from violence by child's father and failed to ensure mother's contact and relationship with child [3, 150]	Five votes to two, that there has been a violation of Article 3 of the Convention as regards the first applicant on account of the breach of the State's procedural obligation to conduct an effective investigation into the allegations of ill-treatment Unanimously, that there has been no violation of Article 3 of the Convention as regards the first applicant on account of the breach of the State's positive obligation to protect her from ill-treatment; unanimously, that there has been no violation of Article 8 of the Convention as regards the second applicant on account of the breach of the State's positive obligation to protect the first applicant from ill-treatment, unanimously, that there has been a violation of Article 8 of the Convention as regards the first applicant's right to respect for her private and family life on account of the protracted character of the custody proceedings and her non-involvement in the decision-making process; unanimously, that there has been a violation of Article 8 of the Convention as regards the second applicant's right to respect for family life on account of the protracted character of the custody proceedings;	UNCRC: The Court expressly mentions that Article 3 of the UNCRC requires that the child's best interests be a primary consideration in all actions concerning them, including judicial proceedings. [94-97] The Court refers to Article 12 of the UNCRC, which guarantees the child's right to express views freely in all matters affecting them and for those views to be given due weight, especially in judicial proceedings. [94-97] Istanbul Convention (CoE) Art. 46 [86] The text of Article 46 is quoted under "Relevant International Law." It provides that offences committed against or in the presence of a child shall be considered aggravating circumstances in sentencing. The Court cites it as part of the international context but does not apply it in its legal analysis.	Yes. Violation of Article 8 of the Convention in respect of the child, as authorities failed to protect child's relationship with mother and failed to sufficiently address allegations of violence by father	No	Yes. Child described as afraid of father, suffering anxiety, depressive affect, neuroticism, strong inferiority complex, hypersensitivity, post-traumatic stress symptoms, self-harm, and emotional trauma from long-standing conflict and alleged abuse [19-23, 20, 23, 28-30, 34]	Children's harm is addressed in the dissenting opinion, although the judges ultimately found no violation of Article 8 because, in their view, the authorities sufficiently investigated and acted on the child's allegations.
M.G. v. Turkey, App No. 646/10 (ECtHR, 22 March 2016) (Information Note on the Court's case-law 194)	Art 3, 14 (in conjunction with Art 3) ECHR	Yes	No	Applicant's children factually present in family context [first page of facts] Protection measures included injunction banning father from approaching or disturbing applicant or her children, including communication [first page of facts]	Applicant suffered physical injuries, major depressive disorder, and chronic post-traumatic stress as result of domestic violence by husband [second page, Article 3 analysis] Applicant lived in fear, stayed in shelter for two and a half years [second page, Article 3 analysis]	Unanimously: Violation of Article 3 Violation of Article 14 of the Convention read in conjunction with Article 3 in respect of discriminatory lack of access to protection measures for divorced women	Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence)	No	No	No	-

Case name & citation	Articles examined by the Court	Children present?	Child Applicant?	How the child(ren) were involved	Harm to adult applicant	Judgment outcome by the Court	References to the following international or europena human rights instruments: UNCRC Art 2, Art 3, Art 12, Art 19, ECOSOC Resolution 2005/20, UNCRC, UNCR Committee Istanbul Convention or CoE Resolution 1714 (2010)?	Did the Court judge a violation for child(ren)? If yes: what violation?	Third-party Intervention? If yes- any references to children?	Did the Court describe the children's psychological harm in any way? If so, how?	If opinions (concurring/ dissenting/ separte): are childrens harm adressed?
Bălsan v. Romania, App No. 49645/09 (ECHR, 23 May 2017)	Arts 3, 14 (in conjunction with art 3) ECHR	Yes	No	Applicant had four children with her husband [6]. Husband was violent towards applicant and their children on numerous occasions throughout the marriage [6]. Physical assaults against applicant occurred in the presence of their children on 24 June, and 3 and 8 September 2007 [11]. Applicant alleged repeated assaults by husband often occurred in presence of their children [12]. Husband told children not to speak about incidents [13]. One adult daughter testified at trial that father used to hit mother and the children many times and that she personally witnessed violence even after leaving the family home [25]. Another adult daughter retracted earlier statement given under threats from father denying violence [25].	Applicant was repeatedly physically assaulted by her husband, suffering bruises, facial trauma, contusions, and injuries requiring up to ten days of medical care [8-9]. Husband threatened to kill her [13, 17]. Violence continued despite divorce and despite applicant's complaints to authorities [30, 69]. Authorities imposed only administrative fines on husband, failing to provide protection [66-69].	Unanimously: Violation of Article 3 Violation of Article 14 of the Convention read in conjunction with Article 3 in respect of gender-based discrimination in handling domestic violence complaints [89].	Istanbul Convention (CoE) Art. 26: no mention of Art. 26 specifically; however, Istanbul Convention mentioned generally as relevant international standard defining violence against women as a form of discrimination [42, 79].	No	No	No	-
Ž.B. v. Croatia, App No. 47666/13 (ECHR, 11 July 2017)	Arts 3, 8 ECHR	No	No	N/A – Not mentioned in the judgment.	-	-	-	-	-	-	-
D.M.D. v. Romania, App No. 23022/13 (ECHR, 3 October 2017)	Arts 3, 6 § 1 ECHR	Yes	Yes (only applicant)	Applicant was a child, victim of physical and verbal abuse by father between 2002 and 2004 [5, 13] Applicant included in psychological counselling programme since 2004 due to trauma caused by father's violence [5] Applicant interviewed by court and described abuse: beatings, being locked in dark room, water thrown on him, threats, fear of meeting father [10] Domestic courts acknowledged that father's acts caused childhood attachment troubles in the applicant [13] Child only applicant before the ECHR [1, 3]	No adult applicant; harm concerned the child applicant only.	By majority: Violation of the procedural limb of Article 3 of the Convention in respect of the authorities' failure to conduct an effective investigation into domestic violence against the child [53] By four votes against 3: Violation of Article 6 § 1 of the Convention in respect of denial of justice regarding compensation for the child victim [69]	UNCRC Art 3 (best interests of the child) – [29, 61] UNCRC Art 19 (protection from all forms of violence) – [30, 32] UN CRC Committee – [31, 32] Istanbul Convention (CoE) not cited by article number but Istanbul Convention referred to [27]	Yes. Violation of the procedural limb of Article 3 of the Convention for ineffective investigation into ill-treatment suffered by the child applicant [53] Yes. Violation of Article 6 § 1 of the Convention for denial of justice due to failure to examine compensation claim for the child victim [69]	No	Yes. Court noted applicant suffered trauma due to father's abusive behaviour, including childhood attachment troubles [7, 10, 13, 11] Domestic courts and psychological reports described child's fear, distress, attachment issues, and significant mental suffering [10, 13, 45, 47]	Yes. Judges De Gaetano, Pinto de Albuquerque, and Motoc (joint partly concurring opinion) mention the applicant's "Calvary" as a child, his vulnerability, and psychological harm [25-26 separate opinions]. They agree there were violations but believe the case should also have been examined under Article 8 to reflect the child's right to private and family life.
Volodina v. Russia, App No. 41261/17 (ECHR, 9 July 2019) Note: The applicant was represented by Ms Vanessa Kogan, who was Director of Stichting Justice Initiative [2]. Stichting Justice Initiative is described as "a human-rights organisation based in Utrecht, the Netherlands." [2]	Arts 3, 14 ECHR	Yes	No	Applicant's son (and the mother) threatened with death by her former partner if applicant did not return to live with him [9]; No indication that the son was directly harmed or witnessed violence	Applicant subjected to repeated physical assaults causing bruises and risk of miscarriage, suffered forced abortion, threats of death, abduction, stalking, GPS tracking, and online publication of private photos, leading to serious psychological trauma [8-36, 74-75].	Unanimously: Violation of Article 3 Violation of Article 14 of the Convention, taken in conjunction with Article 3	Istanbul Convention (CoE) no reference to specific articles 26 or 46, but Istanbul Convention discussed generally as international standard [45, 60, 84]	No	Yes. Equal Rights Trust intervened [5]. No references to children in third-party submissions [entire third-party submissions section].	No	No
Buturugă v. Romania, App No. 56867/15 (ECHR, 11 February 2020)	Art 3, 8 ECHR	Yes	No	Applicant's daughter questioned by police as witness about violence applicant suffered [14] Daughter not applicant herself and no allegations of violence against her	Applicant subjected to repeated physical violence and death threats by former husband during marriage, including threats to kill her by throwing her off a balcony, assault with an axe, physical injuries requiring medical treatment [6-8] Applicant's electronic communications accessed without permission by former husband, private conversations, documents and photographs copied [11, 77]	Unanimously: Violation of Articles 3 and 8 of the Convention on account of the failure to comply with the positive obligations arising from these provisions	No	No	No	No	No
Volodina v. Russia (No. 2), App No. 40419/19 (ECHR, 14 September 2021)	Art 8 ECHR	Yes	No	Applicant's twelve-year-old son factually present in family context [6] Classmates of applicant's son and his class teacher added as friends to applicant's hacked social media account where her personal details and intimate photographs were uploaded [6]	Applicant subjected to cyberviolence by former partner, including publication of intimate photographs without consent, impersonation on social media, tracking via GPS device, and death threats [6-11]	Unanimously: Violation of Article 3	No	No	No	No	No

Case name & citation	Articles examined by the Court	Children present?	Child Applicant?	How the child(ren) were involved	Harm to adult applicant	Judgment outcome by the Court	References to the following international or europa human rights instruments: UNCRC Art 2, Art 3, Art 12, Art 19, ECOSOC Resolution 2005/20, UNCRC, UNCRC Committee Istanbul Convention or CoE Resolution 1714 (2010)?	Did the Court judge a violation for child(ren)? If yes: what violation?	Third-party intervention? If yes- any references to children?	Did the Court describe the children's psychological harm in any way? If so, how?	If opinions (concurring/ dissenting/ separte): are childrens harm adressed?
De Giorgi v. Italy, App No. 23735/19 (ECtHR, 16 June 2022)	Art 3 ECHR	Yes	No	Applicant and her husband have three children [page 2] Children factually present in family context [page 2] Applicant alleged her husband ill-treated the children [page 2] On several occasions, applicant complained of controlling and coercive behaviour by her husband. This included monitoring her movements, harassment in front of her home, and threats to kill her in front of the children [page 3] Social services filed a report in February 2018 stating the children were in distress, during civil proceedings for judicial separation [page 2] The report was added to a criminal investigation file but no investigation was carried out into alleged ill-treatment against the children [page 2] The Court said the authorities failed to conduct a risk assessment focused on domestic violence and specifically on the situation of the applicant and her children [page 1][page 3] No protective measures were adopted despite the risks to the applicant and her children [page 3]	Applicant was struck on the head with a motorcycle helmet, causing head injury and hospitalization. [page 2] Applicant faced threats to kill, stalking, monitoring, harassment, theft of mail, and interference with her private life by her husband [page 2-3] Applicant felt anxiety and helplessness because the authorities failed to protect her [page 3]	Violation of Article 3 of the Convention in respect of both the substantive and procedural limbs [page 3]	Istanbul Convention (Council of Europe) referenced [page 3]	No	No	Yes. Children described as "in distress" in social services report from February 2018 [page 2] Court referred to real and immediate risk of ill-treatment affecting applicant and her children, but gave no further detail about psychological harm specifically to the children [page 3]	N/A
J.I. v. Croatia, App No. 35898/16 (ECtHR, 8 September 2022)	Art 3 ECHR	No	-	-	-	-	-	-	Yes. European Roma Rights Centre intervened [1, 74-79]	-	-
I.M. and Others v. Italy, App No. 25426/20 (ECtHR, 10 November 2022)	Art 8 ECHR	Yes	Yes (co-applicant with mother)	Children lived with their mother and did not live with their violent father during proceedings [p. 1-2]. Father was violent, aggressive, and had substance abuse problems [p. 1-2]. Children were forced to meet their father regularly in unsafe, public places without protection [p. 1-2]. Children witnessed violence against their mother and suffered direct aggression from their father during visits [p. 2]. Authorities ignored warnings about the father's aggression and continued visits for about three years [p. 1-2]. Children's psychological and emotional health was harmed by these visits [p. 2]. Court awarded the children EUR 7,000 for non-pecuniary damage [p. 3].	Mother subjected to violence by children's father, who was a drug addict and alcoholic [p. 1] Mother lost parental responsibility for nearly three years, depriving her of rights to decide in children's interests [p. 2] Domestic courts disregarded domestic violence and father's aggression in decisions about parental responsibility [p. 2]	Unanimously: Violation of Article 8 of the Convention in respect of the mother's right to respect for family life Violation of Article 8 of the Convention in respect of the children's right to respect for family life [pp. 2-3]	UNCRC Art 3 (best interest of the child): yes, general reference to best interests of the child as paramount consideration [p. 2] Istanbul Convention (CoE) Art. 26, Art. 46: no specific articles cited, but GREVIO's concerns are referenced regarding systemic practice against women raising domestic violence [p. 2]	Yes. Violation of Article 8 for failing to protect the children's right to respect for family life, as they were forced over a period of about three years to meet their violent father in unsafe conditions, damaging their psychological and emotional balance [p. 2]	GREVIO's concerns discussed, but no formal third-party intervention in the case record as summarized [p. 2]	Yes. Court found that sessions "upset the children's psychological and emotional balance," and criticised the domestic authorities for failing to assess risk or prioritise the children's best interests [p. 2]	No
Malagić v. Croatia, App No. 29417/17 (ECtHR, 17 November 2022)	Art 8 ECHR	Yes	No	Children lived with both parents until parents' separation [5-6] Father prohibited from approaching children during initial restraining measure [9] One child told applicant that father might be near, making applicant fear breach of restraining order [16] Children stayed with father at times; father refused applicant telephone contact with them [18] Applicant alleged father threatened to take children away or kill her if she reported him [10] Children mentioned in allegations of father's violent and controlling behaviour [10-18] Authorities found father behaved adequately towards children during certain inquiries [25]	Applicant alleged repeated physical violence, sexual violence including forced intercourse with foreign objects, threats of killing her, coercion to satisfy sexual desires in exchange for money, threats to take away her children, and ongoing harassment and intimidation including incidents suggesting stalking [10-12, 17, 22, 23]	By four votes against three: No violation of Article 8	Istanbul Convention referenced in the judgment and quoted in detail [43, 42, 76] However, not arts 26 and 26	No	No	No	No

Case name & citation	Articles examined by the Court	Children present?	Child Applicant?	How the child(ren) were involved	Harm to adult applicant	Judgment outcome by the Court	References to the following international or europea human rights instruments: UNCRC Art 2, Art 3, Art 12, Art 19, ECOSOC Resolution 2005/20, UNCRC, UNCRC Committee Istanbul Convention or CoE Resolution 1714 (2010)?	Did the Court judge a violation for child(ren)? If yes: what violation?	Third-party Intervention? If yes- any references to children?	Did the Court describe the children's psychological harm in any way? If so, how?	If opinions (concurring/dissenting/separate): are children harm adressed?
Ghișoia v. Romania, App No. 40228/20 (ECHR, 20 December 2022)	Arts 3, 8 ECHR	Yes	Yes (only applicant)	Applicant was a child, born in 2006, living with his father after parents' divorce [1, 4] Child spent 2016 winter holidays at mother's sister's home with mother's new family [5] Child alleged that mother's new husband slapped him in face and shouted at him for making noise which woke baby [6, 14] Child refused further contact with mother after incident [7] Child reported previous incident in France where mother's husband slapped him for being too loud [14] Child underwent psychological assessments revealing emotional distress, anger towards mother and mother's husband [30-35]	Not applicable; applicant was a child	Application declared inadmissible as manifestly ill-founded under Article 35 §§ 3(a) and 4 of the Convention [65]	United Nations Convention on the Rights of the Child (UNCRC) [9, 25, 40]	No	No	Yes. Child expressed strong anger and desire for separation from mother and her husband, wishing stepfather to "serve a lifetime prison sentence" [30] Child showed emotional instability, anguish, feelings of rejection, tendency to isolate himself, and aversion towards mother's husband [30-35] Psychological report noted child did not show typical aspirations for his age and preferred to be alone [32] Child repeated slapping allegations during psychological sessions, wanted mother to admit it happened [34] Psychologist concluded child caught in parental conflict, contributing to emotional instability [35]	-
A.E. v. Bulgaria, App No. 53891/20 (ECHR, 23 May 2023)	Art 3, Art 14 (in conjunction with Art 3) ECHR	Yes	Yes (only applicant)	Applicant was a minor aged 15 at the time of the events [2, 5] Applicant entered intimate relationship with 23-year-old man [5] Applicant lived intermittently with the man, who regularly beat her [5-6, 11-12] Applicant sustained multiple bruises and injuries documented in medical report [7-9] Applicant was considered at risk of sexual exploitation and domestic violence; social services involved since January 2019 [16-18] Social services placed applicant in crisis centre for child victims of violence [25] Applicant sustained multiple physical injuries from beatings including haematomas on face, neck, limbs; subjected to choking, kicks, blows causing pain, suffering and serious fear [6-9, 12, 24]	N/A	Unanimously: Violation of Article 3 of the Convention in its procedural and substantive aspects in respect of the failure to provide adequate protection and effective investigation into domestic violence inflicted on the applicant Violation of Article 14 of the Convention taken in conjunction with Article 3 due to discriminatory failure of authorities to adequately address domestic violence against the female minor applicant	UNCRC [30]	Yes. The Court judged a violation of Article 3 (both substantive and procedural) due to failure to protect the child applicant from domestic violence and to investigate effectively Yes. The Court judged a violation of Article 14 taken with Article 3 due to discriminatory failure to protect the child applicant as a girl victim of domestic violence	Yes. National Network for Children intervened as third party [1] Referred specifically to difficulties faced by child victims in pursuing private prosecutions and vulnerability of minors in domestic violence contexts [81-83]	Yes. The Court held that due to her age (15), vulnerability, and dependency on the perpetrator, the applicant was likely to have experienced serious intimidation, distress and psychological suffering in addition to physical pain [91]	-
Giuliano Germano v. Italy, App No. 10794/12 (ECHR, 22 June 2023)	Art 8 ECHR	Yes	No	Applicant's daughter left the family home with her mother when the parents separated [5] Applicant's wife reported several phone calls by the applicant to the daughter's babysitter to obtain information about the wife's private life [7] Domestic authorities considered context of pending judicial separation and episodes related to custody of the daughter when assessing seriousness of applicant's conduct [10] In September 2009, following a heated argument between the parents concerning the child (who was present), the applicant shouted, put his hands around the mother's neck in a gesture of strangling, and dragged the child away in tears because she did not want to sleep at her father's home [Concurring opinion, p. 23-24 judgment PDF] Daughter subsequently told her mother she no longer wanted to go to her father's because "he says terrible things about [the mother] and insults [her]" [Concurring opinion, p. 23-24 judgment PDF]	Applicant subjected to police caution for stalking-prevention without being heard beforehand [9-10, 12-14] Police caution potentially impacted applicant's family life, including contacts with his daughter, social relations, and reputation [77-79]	Unanimously: Violation of Article 8 of the Convention in respect of lack of adequate legal protection against abuse in the imposition of the police caution Violation of Article 8 of the Convention in respect of insufficient procedural safeguards and lack of possibility to seek review or revocation of the police caution		No	No	No. The Court did not describe psychological harm to the child in the main judgment text [entire judgment text] Concurring opinion stated child was in tears during incident with father, did not want to sleep at father's home, and later reported not wanting to see father because of insults and terrible things he said about the mother [Concurring opinion, p. 23-24 judgment PDF]	Yes. Judge Sabato agreed with the finding of a violation of Article 8 but felt the judgment underestimated the domestic violence context [Concurring Opinion of Judge Sabato, p. 25-26 PDF]. Recalled that the child witnessed a violent incident where the father shouted, grabbed the mother by the neck, and dragged the child away crying because she refused to stay at his home [Concurring Opinion of Judge Sabato, p. 25]. Noted that the child later told her mother she did not want to visit her father because he insulted her mother and said terrible things about her [Concurring Opinion of Judge Sabato, p. 25]. Stressed that the domestic authorities did not act arbitrarily given the evidence of violence in the family environment, which also affected the child [Concurring Opinion of Judge Sabato, p. 25-26]. Emphasised the need to consider the child's perspective and safety in cases involving domestic violence and police cautions [Concurring Opinion of Judge Sabato, p. 26].

Case name & citation	Articles examined by the Court	Children present?	Child Applicant?	How the child(ren) were involved	Harm to adult applicant	Judgment outcome by the Court	References to the following international or europaen human rights instruments: UNCRC Art 2, Art 3, Art 12, Art 19, ECOSOC Resolution 2005/20, UNCRC, UNCRC Committee Istanbul Convention or CoE Resolution 1714 (2010)?	Did the Court judge a violation for child(ren)? If yes: what violation?	Third-party Intervention? If yes- any references to children?	Did the Court describe the children's psychological harm in any way? If so, how?	If opinions (concurring/ dissenting/ separte): are childrens harm adressed?
Luca v. the Republic of Moldova, App No. 55351/17 (ECtHR, 17 October 2023)	Art 3, Art 8, Art 14 (in conjunction with Art 3) ECHR	Yes	No	Applicant and children lived apart for several years due to applicant working abroad [5] Children witnessed psychological and physical violence by their father against the applicant, including negative statements about her and manipulation to make children hostile to her [6][10] Applicant sought protection order including for children due to violence witnessed and suffered [8] Court granted protection order prohibiting father's contact with applicant and children for ninety days [9] Father breached protection order and took children to live with him [10][28] Children exposed to psychological pressure from father and developed negative attitudes towards applicant [10][28-30][38] Children refused contact with applicant despite court orders, expressing hostile views about her and declining gifts [38] Criminal proceedings initiated against father for psychological violence against children (isolation, intimidation) [44] Criminal case on psychological violence against children discontinued after experts found no symptoms of mental trauma [45] Children ultimately awarded to live with father in divorce proceedings [41]	Applicant subjected to physical violence including beatings resulting in concussion and bruises [14] Psychological abuse including harassment, isolation, disconnection of utilities, and manipulation of children against applicant [6][10][17] Prolonged inability to maintain contact with her children [81][87]	Unanimously: Violation of Article 3 of the Convention under its substantive and procedural limbs in respect of domestic authorities' failure to protect applicant from domestic violence Violation of Article 8 of the Convention in respect of authorities' failure to take prompt measures to support applicant in maintaining contact with her children Violation of Article 14 of the Convention read in conjunction with Article 3 due to discriminatory attitude of domestic authorities towards applicant as a woman in handling domestic violence	No	No	No	Yes. Children described as having developed negative attitudes towards the applicant, refusing contact and gifts, and expressing hostility towards her [38] Investigation concluded children showed no symptoms of mental trauma or its consequences after expert assessments [45]	-
Bizdiga v. the Republic of Moldova, App No. 15646/18 (ECtHR, 17 October 2023)	Arts 6 § 1, 8 ECHR	Yes	No	Parents had one child born in March 2015 [5] Mother left the family home with the child in November 2015 [5] Child lived with the mother after parents' separation [7] Domestic violence allegations included claims that child witnessed repeated violent behaviour by father, creating risks for child and mother [10] Child protection authority imposed limited contact schedule due to applicant's violent behaviour posing risk to child and mother [10, 13] Court proceedings concerned father's contact rights and request for transfer of custody of child [25]	Applicant's access to a court for determining custody rights was denied [26-28] Applicant's contact rights with his son were restricted through a limited schedule decided without proper procedural safeguards [8-20, 59-69] Mother suffered psychological harm from physical and psychological violence by the applicant, including threats of death and threats to abduct the child [10] Domestic violence protection order was issued against applicant due to repeated violent behaviour towards mother, posing risk to her safety [6, 10]	Unanimously: Violation of Article 6 of the Convention Violation of Article 8 of the Convention	Istanbul Convention (CoE) Article 31 referred to in relation to domestic violence and its relevance to decisions on custody and contact rights [33]	No	No	No	-
Vieru v. the Republic of Moldova, App No. 17106/18 (ECtHR, 19 November 2024)	Arts 2, 3, 14 (in conjunction with 2 and 3) ECHR	Yes	No	Applicant's sister's two children factually present in family context [7] Children witnessed physical and psychological violence against mother since 2012 [7] Older child confirmed witnessing violence between parents but not being directly subjected to father's violence [7] Younger child present during father's violent attack on mother on 3 February 2015, from which mother fled to police station [15] Children let father into mother's apartment on night of 22-23 August 2016, facilitating his access before mother's fall from fifth floor [30] Father argued in court that there was no need for protection order concerning the children as he had taken care of them in the past [31] Protection orders repeatedly issued included orders to stay away from both mother and children [8, 16, 19, 22, 26, 32] Children not applicants themselves.	Applicant's sister subjected to repeated physical, psychological, sexual, and economic violence by husband from 2012, including threats of gang rape and drowning, beatings with fists, kicks, strangulation, stabbing with scissors, and cigarette burns [14, 15] Violence continued after divorce in 2014 despite protection orders [5, 7, 15, 20, 23, 25] Sister sustained multiple physical injuries from assaults and lived in constant fear [7, 12, 14, 17, 20, 23] Sister fell from fifth floor on 22 August 2016 and died from injuries on 12 October 2016 [5] Sister felt threatened by husband and his mother even while in hospital after fall [30]	Unanimously: violation of Article 2 under its procedural limb; by five votes to two, that the Court will not examine the complaint under the substantive aspect of Article 2 of the Convention; unanimously, that there has been a violation of Article 3 under its substantive and procedural limbs unanimously, that there has been a violation of Article 14 of the Convention read in conjunction with Articles 2 and 3 of the Convention	Istanbul Convention (CoE) Art. 46 (aggravating circumstances) referred to in GREVIO report presented in the judgement, where GREVIO encouraged Moldova to treat violence against former spouses, partners, family members, or cohabitants as aggravating circumstances in crimes of violence against women [58, 223]	No	No	No	-
Hasmik Khachatryan v. Armenia, App No. 11829/16 (ECtHR, 12 December 2024)	Art 3 ECHR	Yes	No	Applicant's two children factually present in family context [5] One child, daughter, had a disability which led to increased family stress and contributed to violence against applicant [7] Children witnessed applicant being beaten on multiple occasions [8-10, 41] Daughter mentioned as injured (scratches on her face) which triggered violent incident [8] Applicant's daughter and son lived partly with applicant and partly with paternal family during separation [41, 47] After separation, applicant not allowed to take son with her and was prevented from contacting him [41, 47]	Applicant severely beaten multiple times by former spouse causing concussion, nasal fracture, eardrum rupture, multiple wounds, burns with cigarette, severe psychological suffering and fear of further violence [8-10, 21, 30, 41]	Unanimously: violation of Article 3 of the Convention under its substantive and procedural limbs	Istanbul Convention (CoE) Art. 46 → yes, mentioned as relevant aggravating circumstance but only under Art 46 (a) the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority; (b) the offence, or related offences, were committed repeatedly; Court notes Armenia had not ratified it [75, 76]	No	No	No	-
H.W. v. France, App No. 13805/21 (ECtHR, 23 January 2025)	Art 8 ECHR	No	No	N/A – No children mentioned anywhere in the judgment.	-	-	-	-	-	-	-

Interview questions

for Master's Thesis on children who witness domestic violence and the ECtHR

With: **Prof. Dr. A.M Skelton**

Date sent: **9 June 2025**, date received: **25 June 2025**

From: **Astrid Othelius, Law Faculty- University of Strasbourg**

Programme: *European Master's in Human Rights and Democratisation (EMA), Global Campus of Human Rights*

Note: The interview is conducted solely for the purpose of Astrid Othelius' Master's thesis. The responses will be used exclusively within the academic scope of this research, and the interviewee's name will only be included with explicit consent.

1. In what ways do you think legal systems should address the harm experienced by children who witness domestic violence? How can child rights strategic litigation (CRSL) be used to strengthen legal recognition and redress for this form of harm?
2. What strategies or litigation choices do you see as most effective within CRSL when seeking to centre children's experiences in cases where they are not direct applicants, such as children who witness domestic violence?
3. In your view, what are some of the main challenges or difficult balances when trying to centre children's rights in strategic litigation, especially in relation to participation, protection, and psychological impact (both short-term and long-term)?
4. How would you assess the current potential and limitations of the ECtHR as a forum for child rights strategic litigation - both when children are applicants and when they are not applicants but still directly affected, such as in cases of witnessing domestic violence?
5. In your view, what does a child rights-consistent remedy look like in the context of CRSL - both when the child is an applicant and when the child is not formally part of the proceedings but is directly affected?
6. What role can NGOs, legal advocates, or children's rights organisations play through CRSL in advancing the rights of children who witness domestic violence before the ECtHR?
7. Are there other jurisdictions or human rights systems you think the ECtHR could learn from when it comes to addressing children's rights more meaningfully - especially in complex cases like domestic violence?
8. What would you like to see change in how regional courts like the ECtHR approach children's rights in the next 10 years, particularly through the lens of strategic litigation?

Interview questions

for Master's Thesis on children who witness domestic violence and the ECtHR

With: **ECtHR Judge Georgios Serghides**

Date: **10 June 2025**

From: **Astrid Othelius, Law Faculty- University of Strasbourg**

Programme: *European Master's in Human Rights and Democratisation (EMA), Global Campus of Human Rights*

Note: The interview is conducted solely for the purpose of Astrid Othelius' Master's thesis. The responses will be used exclusively within the academic scope of this research, and the interviewee's name will only be included with explicit consent.

1. From your perspective as a judge, how would you describe the Court's current approach to cases involving children who witness domestic violence?
2. To what extent are child witnesses treated as independent victims, especially when they are not applicants themselves? How can the Court better reflect their rights and experiences in such cases?
3. How do you see the Court's responsibility when it comes to children who witness domestic violence but are not an applicant—especially in helping them understand that they may have rights under the Convention?
3. The Istanbul Convention explicitly recognises child witnesses of domestic violence as victims. Given that it is not legally binding in the ECtHR, how much weight do you think the convention—and other soft law instruments—should have in the Court's reasoning?
4. To what extent do you think the ECtHR should take international child rights norms—such as the UN Convention on the Rights of the Child—into account when interpreting the European Convention on Human Rights?"
6. What are some of the limitations or challenges you see in strengthening the ECtHR's approach to children's rights in domestic violence cases?
7. What possibilities do you see for expanding the Court's use of positive obligations under Articles 3 and 8 to better protect child witnesses?
8. In your view, what does an effective remedy look like for a child who has witnessed violence at home, and are there ways the Court could be more child-sensitive in its remedial reasoning?
9. Do you believe that strategic litigation, especially child rights-oriented cases, can play a transformative role in shaping ECtHR jurisprudence? If so, what would you advise those preparing such cases?
10. Looking ahead, what kinds of changes would you like to see in how children's rights are understood and protected within the Court or in the broader European legal system?