



Scan to know paper details and
author's profile

Femicide in International Law and ECHR Jurisprudence

Elena Pîrău

ABSTRACT

Femicide, as a legal term, is not defined in international instruments. However, this crime is found in the criminal legislation of some countries. Many states have included femicide as either intentional homicide or serious intentional injury, often considering it as an aggravating circumstance of the offense. This study explores the concept of femicide, along with relevant provisions at the international and European levels. It also examines pertinent cases from the jurisprudence of the European Court of Human Rights concerning femicide.

Keywords: femicide, fundamental rights, gender, intersectionality, violence, domestic violence, positive obligations, family life, discrimination.

Classification: LCC Code: KJC979.D68

Language: English



Great Britain
Journals Press

LJP Copyright ID: 573336

Print ISSN: 2515-5784

Online ISSN: 2515-5792

London Journal of Research in Humanities & Social Science

Volume 24 | Issue 12 | Compilation 1.0



Femicide in International Law and ECHR Jurisprudence

Elena Pîrău

ABSTRACT

Femicide, as a legal term, is not defined in international instruments. However, this crime is found in the criminal legislation of some countries. Many states have included femicide as either intentional homicide or serious intentional injury, often considering it as an aggravating circumstance of the offense. This study explores the concept of femicide, along with relevant provisions at the international and European levels. It also examines pertinent cases from the jurisprudence of the European Court of Human Rights concerning femicide.

Keywords: femicide, fundamental rights, gender, intersectionality, violence, domestic violence, positive obligations, family life, discrimination.

Author: Legal Adviser in the Parliament of the Republic of Moldova, Chisinau, Republic of Moldova.

I. INTRODUCTION

Gender-related killings of women and girls, also referred to as femicide and feminicide, can broadly be defined as intentional killings committed on the grounds of gender-related factors. These can include the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour. Femicide represents the lethal end point of a continuum of multiple, overlapping and interconnected forms of gender-based violence. Such homicides usually follow prior experiences of physical, sexual or emotional abuse.¹

¹ UNODC, Gender-related killings of women and girls (femicide/feminicide), Global estimates of female intimate partner/family-related homicides in 2022, p. 9, <https://www.unwomen.org/sites/default/files/2023-11/gender-related-kil>

Femicide is escalating worldwide and often goes unpunished, exacerbating the marginalization and powerlessness of women. Globally, nearly 89,000 women and girls were killed intentionally in 2022, the highest yearly number recorded in the past two decades. Moreover, available data suggest that while the overall number of homicides globally has begun to fall in 2022 after a spike in 2021, the number of female homicides are not decreasing. Most killings of women and girls are gender motivated. In 2022, around 48,800 women and girls worldwide were killed by their intimate partners or other family members. This means that, on average, more than 133 women or girls were killed every day by someone in their own family. While most homicides worldwide are committed against men and boys (80% in 2022), women and girls are disproportionately affected by homicidal violence in the home: they represent approximately 53% of all victims of killings in the home and 66% of all victims of intimate partner killings.²

The Charter of the United Nations³ states that the peoples of the United Nations reaffirm their belief in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women.

Similarly, Article 2 of the Treaty on European Union⁴ outlines the values of respect for human dignity, freedom, democracy, equality, the rule of law, as well as respect for human rights, including the rights of persons belonging to minorities,

lings-of-women-and-girls-femicide-feminicide-global-estimates-2022-en.pdf.

² *Ibidem*, p. 5.

³ United Nations Charter, <https://www.un.org/en/about-us/un-charter/full-text>.

⁴ Treaty on European Union, Official Journal of the EU C326/13 of 26.10.2012, https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.001.02/DOC_1&format=PDF.

characterized by equality between women and men.

Declaration No. 19 of the Declarations annexed to the Final Act of the Intergovernmental Conference that adopted the Treaty of Lisbon states that, as part of the European Union's comprehensive efforts to eliminate inequalities between men and women, the EU will actively pursue, within the framework of its various policies, the fight against all forms of domestic violence. Member States are obligated to take all necessary measures to prevent and punish these criminal acts, as well as to provide assistance and protection to victims.

II. CHRONOLOGY AND EVOLUTION

The term "femicide" was first documented in John Corry's 1801 book *A Satirical View of London at the Commencement of the XIX Century*. In Corry's work, "femicide" was used to describe the murder of a woman. However, the term gained renewed prominence and a specific definition in the modern era in 1976, when expert and professor Diana E.H. Russell introduced it at the International Tribunal for Crimes Against Women. Professor Russell used "femicide" to highlight and address male violence and systemic discrimination against women. At its reintroduction, femicide was defined as "the killing of women by men motivated by hatred, contempt, pleasure, or a sense of ownership of women," and described as "the misogynistic killing of women by men."⁵

Marcela Lagarde took the notion of femicide proposed by Diana E.H. Russell and Jill Radford and developed it into the concept of feminicidio, rather than femicidio (which would be the literal translation). Lagarde argued that "feminicidio" more accurately reflects the gender-based reasons and social construction behind these murders, as well as the impunity often associated with them, compared to the term "femicide," which she believed might not fully capture these aspects. Lagarde employed the term „feminicidio" to

⁵ Canadian Femicide Observatory for Justice and Accountability, What is Femicide? - History of the Term Femicide, <https://femicideincanada.ca/what-is-femicide/history/>.

analyze the murders of women in Ciudad Juárez, Mexico.

In the international sphere, however, the terms "femicide" and "femicide" are often used interchangeably to address the same issue. In the Caribbean, there is no controversy over terminology, and "femicide" is used exclusively.⁶

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly.⁷ This Convention is the first international treaty to provide for gender equality. CEDAW sets out an international bill of rights for women and provides a comprehensive framework for governments to ensure equality and eliminate gender-based discrimination in various aspects of public and private life.

According to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), States Parties condemn all forms of discrimination against women. The Convention establishes that States Parties to the International Covenants on Human Rights have an obligation to ensure the equal rights of men and women in the exercise of all economic, social, cultural, civil, and political rights. Discrimination against women undermines the principles of equal rights and respect for human dignity, hinders women's participation in political, social, economic, and cultural life on equal terms with men, and creates obstacles to the overall well-being of society and the family.

Article 15 of CEDAW specifically addresses the equality of women and men before the law, affirming that all individuals should be treated equally by the legal system.

⁶ Organization of American States Inter-American Commission of Women, Declaration on femicide, <https://www.oas.org/es/mesecvi/docs/declaracionfemicidio-en.pdf>.

⁷ Convention on the elimination of all forms of discrimination against women, Adopted and opened for signature by the General Assembly of the United Nations by Resolution 34/180 of 18 December 1979. Entered into force on 3 September 1981, in accordance with the provisions of Article 27 (1.). <https://anes.gov.ro/wp-content/uploads/2018/07/Conventia-asupra-eliminarii-tuturor-formelor-de-discriminare-fata-de-femei-cedaw.pdf>.

CEDAW identifies family violence as one of the most insidious forms of violence against women. It encompasses various types of violence, including battering, rape, other forms of sexual assault, as well as mental and emotional abuse. This violence is often perpetuated by traditional attitudes and societal norms that contribute to the marginalization and mistreatment of women within the family setting.

According to point 26 of General Recommendation No. 35 of the Committee on the Elimination of Discrimination against Women (CEDAW) on gender-based violence against women, updating General Recommendation No. 19⁸, all judicial bodies are mandated to avoid any act or practice of discrimination or gender-based violence against women. They must rigorously enforce criminal law provisions that punish such violence. Judicial procedures in cases involving allegations of gender-based violence against women must be impartial, fair, and free from gender stereotypes or discriminatory interpretations of legal provisions, including international law.

The recommendation emphasizes that applying preconceived and stereotypical notions of what constitutes gender-based violence against women, how women should respond to such violence, and the standard of proof needed to substantiate its occurrence can undermine women's rights to equality before the law, a fair trial, and effective remedy. Therefore, it calls for judicial systems to uphold these principles to ensure that women can access justice without encountering additional barriers or prejudices based on their gender.

On December 20, 1993, the Declaration on the Elimination of Violence against Women⁹ was adopted as an essential instrument for the protection of human rights. In this Declaration, the UN General Assembly recognized violence

⁸ General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN Doc. CEDAW/C/GC/35 <https://documents.un.org/doc/undoc/gen/n17/231/54/pdf/n1723154.pdf?token=SFO9zR85ZYTLxxJGRA&fe=true>.

⁹ Declaration on the Elimination of Violence against Women, Proclaimed by General Assembly resolution 48/104 of 20 December 1993.

against women as a violation of human rights. It asserts that violence against women constitutes a violation of women's fundamental rights and freedoms, significantly affecting or nullifying their ability to exercise these rights and freedoms.

The Declaration expresses concern over the long-standing failure to protect and promote women's rights in the context of violence, acknowledging that such violence constrains women's opportunities to fully participate in legal, social, political, and economic aspects of society. It underscores the need for concerted efforts to address and eliminate violence against women to ensure their equal access to opportunities and protection under the law.

Article 1 of the Declaration on the Elimination of Violence against Women defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women. This includes threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.

Article 2 of the Declaration on the Elimination of Violence against Women specifies that violence against women encompasses:

- *Violence in the Family:* This includes physical, sexual, and psychological violence occurring within the family, such as battering, sexual abuse of female children, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women.
- *Violence in the Community:* This covers physical, sexual, and psychological violence occurring in the broader community, including rape, sexual abuse, sexual harassment, and intimidation in workplaces, educational institutions, and other settings. It also includes trafficking in women and forced prostitution.
- *State-Tolerated Violence:* This involves physical, sexual, and psychological violence that is committed by or tolerated by the state, regardless of where it occurs.

According to Article 3 of the Declaration on the Elimination of Violence against Women, women are entitled to the equal exercise and protection of all human rights and fundamental freedoms in various fields, including political, economic, social, cultural, civil, and others. These rights include, among others:

- The right to life
- The right to equality
- The right to liberty and security of the person
- The right to equal protection under the law
- The right to be free from any form of discrimination
- The right to the highest attainable standard of physical and mental health
- The right to fair and favourable working conditions
- The right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment.

In 1995, the Beijing Declaration and Platform for Action¹⁰ was adopted at the Fourth World Conference on Women. This pivotal document addresses gender equality and women's empowerment globally.

Point 5 of Annex I of the Declaration highlights that inequalities between women and men have persisted and remain major obstacles, with some serious consequences for the well-being of all individuals.

Paragraph 9 of the Platform for Action specifically calls on states to ensure the full implementation of the human rights of women and girls, recognizing these rights as an integral and indivisible part of all human rights and fundamental freedoms.

The Beijing Declaration and Platform for Action affirm that women's rights are human rights, emphasizing that women's empowerment and full participation on an equal basis in all spheres of society—particularly in decision-making and access to power—are essential for achieving equality, development, and peace.

¹⁰ V, <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>.

The Declaration acknowledges that religion, thought, conscience, and belief can contribute positively to meeting the moral, ethical, and spiritual needs of both women and men, and help them realize their full potential in society. However, it also warns that any form of extremism can negatively impact women, potentially leading to violence and discrimination.

Sexual and gender-based violence, including physical and psychological, trafficking in women and girls, and other forms of violence, including sexual exploitation, place girls and women at significant risk of physical and mental trauma.

The Beijing Declaration and Platform for Action establishes, for the first time, a comprehensive platform for action to combat violence against women. The Beijing Platform for Action marked a pivotal moment in the global recognition of women's rights, serving as a crucial agenda for women's empowerment. It highlighted critical issues related to gender equality and women's rights, with the aim of accelerating the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women.

The Platform sought to remove all obstacles to women's participation in both public and private life, ensuring their full and equal involvement in all spheres. This comprehensive approach aimed to address and eliminate barriers to women's work and overall participation in society.

In 2011, the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence,¹¹ commonly known as the Istanbul Convention, was signed in Istanbul. This Convention is the first instrument at European level to regulate and condemn violence against women and all forms of domestic violence.

The Istanbul Convention addresses all forms of violence against women and provides a detailed framework for preventing, prosecuting, and

¹¹Council of Europe Convention on preventing and combating violence against women and domestic violence, Official Journal of the European Union, L143 I/7 of 2.6.2023, [https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22023A0602\(01\)](https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22023A0602(01)).

eliminating such violence. It also focuses on protecting victims, ensuring their safety, and promoting their rights.

On April 24, 2024, the Directive (EU) of the European Parliament and of the Council on Combating Violence Against Women and Domestic Violence¹² was adopted. This directive represents the first comprehensive legal instrument at the EU level specifically designed to address violence against women and domestic violence. It aims to establish a unified and robust framework across member states to prevent, address, and combat these issues, ensuring greater protection and support for victims throughout the European Union.

III. THE CONCEPT OF FEMICIDE AND ITS CONCEPTUAL DELIMITATIONS

The concept of femicide and its conceptual delimitations are addressed within the framework of the Istanbul Convention. According to Article 1 of the Istanbul Convention, the Convention aims to:

- *Protect Women Against All Forms of Violence:* The Convention seeks to safeguard women from various forms of violence and to prevent, prosecute, and eliminate violence against women and domestic violence.
- *Eliminate Discrimination and Promote Equality:* It aims to contribute to the elimination of all forms of discrimination against women and to promote substantive equality between women and men, including through the empowerment of women.
- *Design a Comprehensive Framework:* The Convention calls for the development of a comprehensive framework, including policies and measures, for the protection and

assistance of all victims of violence against women and domestic violence.

- *Promote International Cooperation:* It seeks to foster international cooperation to combat violence against women and domestic violence.
- *Support Law Enforcement and Integrated Approaches:* The Convention provides support to government law enforcement organizations and agencies, encouraging them to cooperate effectively and adopt an integrated approach to the elimination of violence against women and domestic violence

Article 16 (3) of the Istanbul Convention emphasizes that the support for and the human rights of victims of violence against women and domestic violence are of paramount importance. It stipulates that, where appropriate, support programs for victims should be established and implemented in close coordination with specialist support services. This approach ensures that the assistance provided to victims is comprehensive and well-integrated with specialized services designed to meet their needs.

Article 18 (3) of the Istanbul Convention stipulates that parties to the Convention must ensure that measures taken under this chapter:

- *Are Based on a Gendered Understanding:* The measures should be grounded in a gendered perspective of violence against women and domestic violence, recognizing the specific ways in which such violence disproportionately affects women.
- *Focus on Human Rights and Victim Safety:* The measures must prioritize the human rights and safety of the victim, ensuring that their well-being and protection are central to the implementation of any actions or policies.

Article 3 of the Istanbul Convention defines "gender-based violence against women" as violence directed against a woman because she is a woman or that affects women disproportionately. This definition establishes that gender-based violence is rooted in the specific vulnerabilities and discrimination faced by women.

¹² Directive (EU) 2024/1385 of the European Parliament and of the Council of Europe Convention on preventing and combating violence against women and domestic violence, Official Journal of the European Union, L143 I/7 of 2.6.2023, [https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22023AO602\(01\).](https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22023AO602(01).) of 14 May 2024 on combating violence against women and domestic violence, OJ L, 2024/1385, 24.5.2024, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401385.

Consequently, femicide can be understood as a form of gender-based violence where the perpetrator targets and deprives the victim of life specifically because she is a woman. The gender of the victim is a crucial factor, indicating that the act of femicide is motivated by the victim's gender and the broader context of gender inequality.

It is important to note that not all homicides of women are classified as femicides. For an act to be considered femicide, it must involve a perpetrator whose actions are influenced by cultural patterns and misogynistic beliefs about male superiority and the inherent disrespect towards women and their lives.

Femicide is characterized by gender-related motives, where the aggressor's actions are driven by a belief in male dominance and a desire to uphold social structures that perpetuate female inferiority and oppression. These cultural elements and belief systems contribute to the perpetrator's justification for exerting control over women's lives and bodies, often viewing their violent actions as a means of punishment or enforcement of traditional gender roles.

Furthermore, these cultural patterns may lead the perpetrator to feel a sense of reinforcement or validation of their masculinity through such violent conduct. This reinforces the social order of gender-based power dynamics and oppression.¹³

UN General Assembly resolution A/RES/70/176¹⁴, adopted in 2016, calls on Member States to consider and utilize existing practical tools for addressing gender-related killings of women. Specifically, the resolution highlights the importance of referring to the Latin American Model Protocol for the Investigation of Gender-Related Killing of Women and the associated recommendations for the effective

¹³ Latin American Model Protocol for the investigation of gender-related killings of women (femicide/femicide), https://oig.cepal.org/sites/default/files/2014_latinamerican_protocolforinvestigationoffemicide_en.pdf.

¹⁴ Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] 70/176. Taking action against gender-related killing of women and girls, <https://www.unodc.org/pdf/rddb/CCPCJ/2015/A-RES-70-176.pdf>.

investigation of femicide. These tools are designed to enhance the investigation and prosecution of gender-based violence, ensuring that femicide is properly identified and addressed.

The Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences¹⁵, outlines that gender-related killings can be categorized as either active (direct) or passive (indirect). This classification helps in understanding the various ways in which gender-based violence can lead to death, whether through direct acts of violence or through systemic neglect and indirect harm.

Direct Gender-Related Killings include:

- Killings resulting from intimate-partner violence
- Sorcery/witchcraft-related killings
- Honor-related killings
- Killings related to armed conflict
- Dowry-related killings
- Killings based on gender identity or sexual orientation
- Killings related to ethnic or indigenous identity

Indirect Gender-Related Killings encompass:

- Deaths resulting from poorly conducted or clandestine abortions
- Maternal mortality
- Deaths from harmful practices
- Deaths linked to human trafficking, drug dealing, organized crime, and gang-related activities
- Deaths of girls or women due to neglect, such as starvation or ill-treatment
- Deliberate acts or omissions by the State.

¹⁵ Human Rights Council Twentieth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. https://www.ohchr.org/sites/default/files/Documents/Issues/Women/A.HRC.20.16_En.pdf.

The Vienna Declaration on Femicide¹⁶ specifies various forms of femicide, defining it as the killing of women and girls specifically because of their gender. According to the Declaration, femicide can manifest in several forms, including:

- Murder resulting from intimate partner violence.
- Torture and misogynistic killing of women.
- Killings in the name of "honor".
- Targeted killings of women and girls in armed conflict.
- Dowry-related killings.
- Killings due to sexual orientation and gender identity.
- Killings of aboriginal and indigenous women and girls due to their gender.
- Female infanticide and gender-based sex-selective foeticide.
- Deaths resulting from genital mutilation.
- Killings based on accusations of witchcraft.
- Femicide associated with gangs, organized crime, drug trafficking, human trafficking, and the proliferation of small arms..

Article 1 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)¹⁷ defines violence against women as any act or conduct based on gender that results in death, physical, sexual, or psychological harm or suffering to women, whether in the public or private sphere.

The Convention further asserts that the violent death of women, including femicide or feminicide, is deeply rooted in the structural inequalities between men and women. Gender-based violence serves as an ongoing mechanism for the oppression of women. The patriarchal system

places men in a position of power over women, and social, cultural, and historical constructs reinforce the view of women as possessions or objects of domination. This systemic inequality is perpetuated through ideological and cultural systems that legitimize or normalize various forms of violence against women.

At its fourth meeting in Washington, D.C., on August 14 and 15, 2008, the Committee of Experts (CEVI) of the Mechanism to Follow Up on the Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará) recognized the serious problem of femicide in Latin America and the Caribbean. In their Declaration on Femicide, CEVI expressed concern about the increasing number of murders of women in the region.

According to this Declaration, femicide in Latin America and the Caribbean represents the most severe manifestation of discrimination and violence against women. Contributing factors include high rates of violence against women, their limited or nonexistent access to justice, prevalent impunity in cases of violence, and persistent discriminatory sociocultural patterns. These issues collectively contribute to the rising number of femicides in the region.

The statement from the Committee of Experts (CEVI) emphasizes that femicide is defined as the violent death of women that occurs due to their gender. This includes deaths within the family, domestic partnerships, or any other interpersonal relationships. Femicide can also occur in the community by any person, or it can be perpetrated or tolerated by the state or its agents through either action or omission.

Additionally, the statement notes that femicide victims can be women at various stages, situations, or circumstances in their lives. This broadens the understanding of femicide to encompass a range of contexts in which women might be targeted due to their gender.

Most femicides go unpunished as a result, among other things, of women's limited access to justice and of gender bias during judicial proceedings

¹⁶ Commission on Crime Prevention and Criminal Justice Twenty-second session Vienna, 22-26 April 2013 Item 7 of the provisional agenda* World crime trends and emerging issues and responses in the field of crime prevention and criminal justice, E/CN.15/2013/NGO/1, https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCP_CJ_22/_E-CN15-2013-NGO1/E-CN15-2013-NGO1_E.pdf.

¹⁷ Inter-American Model Law on the Prevention, Punishment and Eradication of the Gender-Related Killing of Women and Girls(Femicide/Feminicide), <https://www.oas.org/en/mesecvi/docs/LeyModeloFemicidio-EN.pdf>

and police and investigative work. Cases are either closed because of an alleged lack of evidence or punished as simple homicides with lesser penalties, in which the extenuating circumstance of “crime of passion” is frequently cited to diminish the perpetrator’s responsibility.¹⁸

The Latin American Model Protocol for the Investigation of Gender-Related Killings of Women (Femicide/Feminicide)¹⁹ categorizes femicides into several types:

- *Intimate Femicide*: The killing of a woman by a man with whom she had an intimate relationship, such as a husband, ex-husband, partner, boyfriend, or someone with whom she has a child. This also includes cases where a man kills a woman who refused to engage in an intimate relationship with him, such as a female friend or acquaintance.
- *Non-Intimate Femicide*: The killing of a woman by a man who is unknown to her and with whom she had no prior relationship. This includes murders resulting from sexual assaults by strangers or cases where a neighbour kills a female neighbour without any prior connection.
- *Child Femicide*: The killing of a girl under the age of 14 by a man who holds a position of responsibility, trust, or power over her, such as a caregiver or authority figure.
- *Family Femicide*: The killing of a woman by a family member, including those related by blood, marriage, or adoption.
- *Femicide Due to Association/Connection*: The killing of a woman who is an unintended victim “in the line of fire” when the perpetrator is targeting another woman. This might involve a friend, relative, mother, daughter, or a female stranger present at the scene.
- *Systematic Sexual Femicide*: The killing of women that involves kidnapping, torture, and/or rape. It has two manifestations:
- *Unorganized Systematic Sexual Femicide*: Women are killed following abduction, torture, and/or rape, typically by perpetrators acting independently.
- *Organized Systematic Sexual Femicide*: Involves an organized network of perpetrators who systematically abduct, torture, and/or rape women over an extended period.
- *Femicide Due to Prostitution or Stigmatized Occupations*: The killing of women involved in prostitution or other stigmatized occupations (e.g., strippers, servers, dancers) by one or more men. These crimes are often motivated by hate and misogyny towards the victim’s occupation.
- *Femicide Due to Trafficking*: The killing of women within the context of human trafficking, which includes activities such as recruitment, transportation, and exploitation, including forced prostitution, labor, or organ removal.
- *Femicide Due to Smuggling*: The killing of women in the context of migrant smuggling, where smuggling refers to illegal entry into a state for financial or material gain.
- *Transphobic Femicide*: The killing of a transgender or transsexual woman due to hatred or rejection of her gender identity or transsexual condition.
- *Lesbophobic Femicide*: The killing of a lesbian woman due to hatred or rejection of her sexual orientation.
- *Racist Femicide*: The killing of a woman motivated by hatred or rejection of her ethnic or racial origins or genetic features.
- *Femicide Due to Female Genital Mutilation*: The killing of a girl or woman as a result of undergoing genital mutilation.

¹⁸ Organization of American States Inter-American Commission of Women, Declaration on Femicide, <https://www.oas.org/es/mesecvi/docs/declaracionfemicidio-en.pdf>.

¹⁹ Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide), https://oig.cepal.org/sites/default/files/2014_latinamericanprotocolforinvestigationoffemicide_en.pdf.

According to point 18(d) and (e) of General Recommendation No. 33 on Women’s Access to Justice,²⁰ States are urged to enhance the quality

²⁰ Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women’s access to justice, adopted in 2015 (UN Doc. CEDAW/C/GC/33), https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal

of their justice systems by ensuring that remedies are timely and effective, and that they lead to sustainable, gender-sensitive dispute resolution for all women. These recommendations aim to improve the justice system's responsiveness to women's needs and ensure that legal processes uphold gender equality and non-discrimination. This includes:

- Implementing mechanisms to ensure that rules of evidence, investigations, and other legal procedures are impartial and free from gender stereotypes or prejudices.
- Providing equal access to justice and protection for women by addressing systemic barriers and promoting fair treatment within both legal and quasi-judicial settings.

In its Recommendation (2002)⁵ of 30 April 2002 on the Protection of Women Against Violence, the Committee of Ministers of the Council of Europe²¹ made several key recommendations for member States:

- *Obligation of Due Diligence:* Member States should exercise due diligence to prevent, investigate, and punish acts of violence, regardless of whether these acts are perpetrated by state or private individuals. This includes providing adequate protection to victims.
- *Penalization of Serious Violence:* Member States should penalize serious forms of violence against women, including sexual violence and rape, as well as abuse targeting vulnerable individuals such as pregnant women, those who are defenceless, ill, disabled, or dependent. Additionally, abuse of position by perpetrators should also be penalized.
- *Access to Justice:* Member States should ensure that all victims of violence have the ability to initiate legal proceedings. This includes making provisions for criminal

al/Download.aspx?symbolno=CEDAW%2FC%2FGC%2F33&Lang=en.

²¹ Case of Tkhelidze v. Georgia (Application no. 33056/17) Judgment, Strasbourg 8 July 2021 final o8/10/2021, [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-210854%22\]](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-210854%22]).

proceedings to be initiated by the public prosecutor and encouraging prosecutors to view violence against women as an aggravating factor in deciding whether to prosecute in the public interest.

- *Protection and Support for Victims:* Measures should be in place to protect victims effectively against threats and potential acts of revenge. Additionally, specific measures should be taken to safeguard children's rights during legal proceedings.

Belgium passed a historic law against femicide on June 29, 2023. In Malta, femicide as a distinct crime came into effect in June 2022. In North Macedonia, amendments to the Criminal Code in February 2023 introduced a new provision that defines the killing of a female person as an act of gender-based violence, classified as an aggravated crime under Article 123, Section 2, which addresses the killing of a woman or a girl under 18 years of age in the context of gender-based violence.

In the Republic of Moldova, the concept of femicide is explicitly defined in Law No. 45/2007 on the Prevention and Combating of Family Violence. This legislation is notable for incorporating femicide into its legal framework, reflecting a commitment to addressing and combating gender-based violence.

The law explicitly recognizes femicide as a distinct category of violence, reflecting a focused approach to tackling gender-based violence and ensuring that such acts are identified and addressed within the legal system.

In accordance with the provisions of Article 2 of Law no. 45/2007, femicide "is the most serious form of violence against women and girls, which involves death because of crimes of intentional murder, serious intentional injury to bodily integrity or health or family violence, or suicide as a result of determination, facilitation or family violence, committed due to gender bias".

This legal definition and the associated measures signify Moldova's commitment to recognizing and addressing femicide as a serious issue, providing a structured approach to protecting women from

gender-based violence and ensuring justice for victims.

IV. JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

In its jurisprudence, the European Court of Human Rights (ECtHR) established that the State's positive obligation is to prevent the risk of recurrent violence in the context of domestic abuse.

The European Court of Human Rights has articulated several key points regarding the State's positive obligations under Article 3 of the European Convention on Human Rights²², particularly in the context of domestic violence:

1. *Positive Obligation to Prevent Violence*: The State has a positive obligation to prevent recurrent violence in cases of domestic abuse. This obligation entails:
 - *Immediate Response*: The State must respond promptly to complaints of domestic violence. This includes processing such complaints with a high degree of diligence.
 - *Risk Assessment*: Authorities are required to undertake an autonomous, proactive, and comprehensive risk assessment to evaluate the threat of further violence.
2. *Preventive and Protective Measures*: Once a risk to a victim has been identified, the State must take preventive and protective measures that are:
 - *Adequate and Proportionate*: The measures should be suitable and proportional to the identified risk.
 - *Timely Implementation*: Actions must be implemented as quickly as possible to ensure effective protection for the victim.
3. *Coordination Between Authorities*: A proper preventive response often necessitates coordination among various authorities. This collaborative approach is crucial for effectively

addressing and mitigating the risks of domestic violence.

In its jurisprudence, the European Court of Human Rights has analysed violence against women under Articles 3 and 14 of the European Convention on Human Rights²³.

Article 3 of the European Convention on Human Rights (ECHR) is a fundamental provision that enshrines the prohibition of torture and inhuman or degrading treatment or punishment.

On the other hand, Article 14 – prohibition of discrimination, provides that the enjoyment of the rights and freedoms set forth in this 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.

*The Opuz v. Turkey case*²⁴ was crucial in the drafting and realization of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention).

In this case, the European Court of Human Rights found that Turkey violated the applicant's rights under Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment. The Court highlighted the Turkish authorities' failure to prevent and protect the applicant from domestic violence, despite repeated pleas for help. This decision underscored the importance of a proactive and effective approach in safeguarding victims of domestic violence and had a significant impact on the development of international norms concerning women's rights and violence prevention.

²² Kurt v. Austria [GC], no. 62903/15, § 190, 15 June 2021, [https://hudoc.echr.coe.int/eng#/{%22itemid%22:\[%22002-13298%22\]}](https://hudoc.echr.coe.int/eng#/{%22itemid%22:[%22002-13298%22]}).

²³ European Convention on Human Rights, https://70.coe.int/pdf/convention_eng.pdf.

²⁴ Case of Opuz v. Turkey (Application no. 33401/02) Judgment Strasbourg 9 June 2009 final 09/09/2009, [https://hudoc.echr.coe.int/fre#/{%22itemid%22:\[%22001-92945%22\]}](https://hudoc.echr.coe.int/fre#/{%22itemid%22:[%22001-92945%22]}).

*Case of Tunikova and others v. Russia.*²⁵ The Court has acknowledged that, in addition to physical injuries, psychological impact forms an important aspect of domestic violence. In the present case, the four applicants suffered physical violence from their partners and (former) spouses, which was documented in medical records and police reports. The dismissive attitude of the authorities, who failed to provide any protection despite urgent requests for help, exacerbated the applicant's feelings of anxiety and helplessness caused by the threatening behaviour of the perpetrators. The unpredictable escalation of violence and the uncertainty about their safety increased the applicant's vulnerability, leaving them in a constant state of fear and emotional and psychological distress. The Court concluded that these psychological aspects were sufficiently serious to qualify, by themselves, as treatment falling within the scope of Article 3 of the Convention. There has therefore been a violation of Article 3 of the Convention under its substantive and procedural limbs.

*Case of Tkheidze v. Georgia.*²⁶ Court finds that the law-enforcement authorities demonstrated a persistent failure to take steps that could have had a real prospect of altering the tragic outcome or mitigating the harm. M.T. and the applicant sought police assistance multiple times due to the violent behaviour of L.M. Towards M.T. In their statements, they consistently described L.M.'s aggressive actions, exacerbated by alcohol and mental instability, including pathological jealousy and anger management issues. L.M. also had a criminal history and substance abuse problems known to the police. Despite this, the authorities failed to act effectively, reflecting broader systemic issues in addressing domestic violence. The European Court of Human Rights found that this negligence contributed to a climate where violence against women thrived, violating the

²⁵ Case of Tunikova and others v. Russia (Applications nos. 55974/16 and 3 others, strasbourg 14 December 2021 final 14/03/2022, [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-213869%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-213869%22]})).

²⁶ Case of Tkheidze v. Georgia (Application no. 33056/17 Judgment Strasbourg 8 July 2021 final 08/10/2021, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-210854%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-210854%22]})).

rights of the applicant and her daughter to equal protection under the law.

In flagrant disregard for the panoply of various protective measures that were directly available to them, the authorities failed to display special diligence to prevent gender-based violence against the applicant's daughter, which culminated in her death. When assessed against the similar findings of the international and national monitoring bodies, the Court finds that the police inaction in the present case could be considered a systemic failure. The respondent State has thus breached its substantive positive obligations under Article 2 of the Convention read in conjunction with Article 14.

*Case of Luca v. the Republic of Moldova.*²⁷ The Court therefore finds that the Moldovan authorities failed in their duty to conduct an immediate and proactive assessment of the risk of recurrent violence against the applicant, and to implement operational and preventive measures to mitigate that risk, protect the applicant, and condemn the perpetrator's conduct. Despite their initial prompt reaction, they subsequently failed to mount a proper preventive response in a coordinated manner among multiple authorities. They remained passive in the face of the serious risk of ill-treatment to the applicant, and through their inaction and failure to take deterrent measures, allowed the perpetrator to continue assaulting and harassing the applicant without intervention.

In view of the manner in which the authorities handled the applicant's reports of domestic violence – notably their failure to conduct an effective investigation of credible claims of psychological violence and of physical violence and to ensure the prosecution and punishment of the perpetrator without undue delay – the Court finds that the State has failed to discharge its duty to conduct an effective investigation into the circumstances surrounding the ill-treatment suffered by the applicant. There has therefore

²⁷ Case of Luca v. the Republic of Moldova, (Application no. 55351/17) Judgment, Strasbourg 17 October 2023 final 17/01/2024, [https://hudoc.echr.coe.int/#%22itemid%22:\[%22001-228151%22\]}](https://hudoc.echr.coe.int/#%22itemid%22:[%22001-228151%22]}).

been a violation of Article 3 of the Convention under its substantive and procedural limbs.

In the Court's opinion, the combination of the above factors clearly demonstrates that the authorities' actions were not simply an isolated failure or delay in dealing with violence against the applicant, but in fact condoned the violence, reflecting a discriminatory attitude towards the applicant as a woman. Given that a criminal conviction based on the same facts followed five years later, it appears that at the time of the events, protection measures were rejected by using discriminatory statements and reasons. The above considerations, taken as a whole, led to the conclusion that in the circumstances of the present case there has been a breach of Article 14 of the Convention read in conjunction with Article 3.

*Case of Yazgül Yılmaz v. Turkey.*²⁸ A sixteen-year-old girl was taken into custody on suspicion of assisting an illegal organisation. A medical and gynaecological examination was requested by the police superintendent responsible for juveniles in order to establish whether there was evidence of assault committed during the police custody and to check if her hymen was broken. The examination request was not signed by the applicant. The next day she was remanded in custody and criminal proceedings were brought against her; then in October 2002 she was acquitted and released. Shortly afterwards, the applicant, suffering from psychological problems, underwent various medical examinations. Two medical reports concluded that she was suffering from post-traumatic stress and depression. In December 2004 she filed a complaint for abuse of authority against the doctors who had examined her in police custody. No disciplinary proceedings were opened and in March 2005 the public prosecutor's office discontinued the proceedings. A challenge by the applicant was dismissed by the assize court.

²⁸ Case of Yazgül Yılmaz v. Turkey - 36369/06 Judgment 1.2.2011 [Section II], [https://hudoc.echr.coe.int/tkp197/view.asp#{%22fulltext%22:\[%22Yazg%C3%BCl%20Y%C4%81lmaz%20v.%20Turkey%22\],%22itemid%22:\[%22002-598%22\]}](https://hudoc.echr.coe.int/tkp197/view.asp#{%22fulltext%22:[%22Yazg%C3%BCl%20Y%C4%81lmaz%20v.%20Turkey%22],%22itemid%22:[%22002-598%22]}).

The Court considers that the lack of fundamental guarantees during the applicant's police custody, in the conditions described above, placed her in a state of deep suffering. She believes, moreover, that the authorities who decided to subject this minor to a gynaecological check-up could not ignore its psychological consequences. Given that this examination necessarily caused her a sense of extreme anxiety, taking into account her age and her status as an unaccompanied minor, she meets the necessary threshold to qualify as degrading treatment. 54. There has therefore been a violation of Article 3 of the Convention in this respect.

*Case of B.S. v. Spain.*²⁹ The Court considers that where the State authorities investigate violent incidents, they have an additional obligation to take all reasonable measures to identify whether there were racist motives and to establish whether or not ethnic hatred or prejudice may have played a role in the events.

Furthermore, the authorities' duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 3 of the Convention but may also be seen as implicit in their responsibilities under Article 14 of the Convention to secure respect without discrimination for the fundamental value enshrined in Article 3.

The Court considers that the decisions made by the domestic courts failed to take account of the applicant's particular vulnerability inherent in her position as an African woman working as a prostitute. The authorities thus failed to comply with their duty under Article 14 of the Convention taken in conjunction with Article 3 to take all possible steps to ascertain whether or not a discriminatory attitude might have played a role in the events. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 3 in its procedural aspect.

²⁹ Case of B.S. v. Spain (Application no. 47159/08) Judgment [Extracts] Strasbourg 24 July 2012 final 24/10/2012, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-112459%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-112459%22]}).

V. CONCLUSION

Globally, the prevalence of different manifestations of gender-related killings is reaching alarming proportions. Culturally and socially embedded, these manifestations continue to be accepted, tolerated or justified—with impunity as the norm. States' responsibility to act with due diligence in the promotion and protection of women's rights, is largely lacking as regards the killing of women.³⁰

The general concept of femicide pertains to the killing of a woman or girl due to her gender. Recognizing femicide as one of the most severe forms of violence against women in international law aims primarily to ensure the highest level of protection for women. It represents a societal response to prevalent phenomena where women fall victim to acts of violence rooted in misogynistic attitudes, prejudices, superstitions, and stereotypes.

Preventing and combating violence against women and domestic violence requires evidence-based policymaking. The systematic collection of comparable data from all relevant administrative sources is essential in this regard, as is gathering information on the prevalence of all forms of violence against women.

WORK CITED

1. United Nations Charter, <https://www.un.org/en/about-us/un-charter/full-text>.
2. Organization of American States Inter-American Commission of women, Declaration on femicide, https://www.oas.org/es/mese_cvi/docs/declaracionfemicidio-en.pdf.
3. Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide), https://oig.cepal.org/sites/default/files/2014_latinamericanprotocolforinvestigationoffemicide_en.pdf.
4. Treaty on European Union, Official Journal of the EU C326/13 of 26.10.2012, https://eur-lex.europa.eu/resource.html?uri=cellar:2bf14obf-a3f8-4ab2-b506-fd71826e6da6.0001.02/DOC_1&format=PDF.
5. European Convention on Human Rights, https://70.coe.int/pdf/convention_eng.pdf.
6. Convention on the elimination of all forms of discrimination against women, Adopted and opened for signature by the General Assembly of the United Nations by Resolution 34/180 of 18 December 1979. Entered into force on 3 September 1981, in accordance with the provisions of Article 27(1), <https://anes.gov.ro/wp-content/uploads/2018/07/Conven-tia-asupra-eliminarii-tuturor-formelor-de-discriminare-fata-de-femei-cedaw.pdf>.
7. Council of Europe Convention on preventing and combating violence against women and domestic violence, Official Journal of the European Union, L143 I/7 of 2.6.2023, [https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22023A0602\(01\)](https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22023A0602(01)).
8. Declaration on the Elimination of Violence against Women, Proclaimed by General Assembly resolution 48/104 of 20 December 1993.
9. Beijing Declaration and Platform for Action, Adopted at the 16th plenary meeting, on 15 September 1995; for the discussion, see chapter V, <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>.
10. Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, OJ L, 2024/1385, 24.5.2024, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401385.
11. Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] 70/176. Taking action against gender-related killing of women and girls, <https://www.unodc.org/pdf/rddb/CCPCJ/2015/A-RES-70-176.pdf>.
12. UNODC, Gender-related killings of women and girls (femicide/feminicide), Global estimates of female intimate partner/family-related homicides in 2022, p. 5, https://www.unwomen.org/sites/default/files/2023-11/documents/Issues/Women/A.HRC.20.16_En.pdf.

³⁰ Human Rights Council Twentieth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. https://www.ohchr.org/sites/default/files/Documents/Issues/Women/A.HRC.20.16_En.pdf.

der-related-killings-of-women-and-girls-femicide-feminicide-global-estimates-2022-en.pdf.

13. Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women's access to justice, adopted in 2015 (UN Doc. CEDAW/C/GC/33), https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CEDAW%2FC%2FGC%2F33&Lang=en.
14. Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN Doc. CEDAW/C/GC/35. <https://documents.un.org/doc/undoc/gen/n17/231/54/pdf/n1723154.pdf?token=SF09zR85ZYTLxxJGRA&fe=true>.
15. Human Rights Council Twentieth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo https://www.ohchr.org/sites/default/files/Documents/Issues/Women/A.HRC.20.16_En.pdf.
16. Commission on Crime Prevention and Criminal Justice Twenty-second session Vienna, 22-26 April 2013 Item 7 of the provisional agenda, World crime trends and emerging issues and responses in the field of crime prevention and criminal justice, E/CN.15/2013/NGO/1, https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_22/_E-CN15-2013-NGO1/E-CN15-2013-NGO1_E.pdf.
17. Law No. 45 of 03-01-2007 regarding the prevention and combating of family violence Published: 03-18-2008 in the Official Gazette No. 55-56 art. 178, https://www.legis.md/cautare/getResults?doc_id=141510&lang=ro#.
18. Case of Kurt v. Austria [GC], no. 62903/15, § 190, 15 June 2021, [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22002-13298%22\]}](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22002-13298%22]}).
19. Case of Tunikova and others v. Russia (Applications nos. 55974/16 and 3 others, Judgment Strasbourg, 14 December 2021, final 14/03/2022, [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-213869%22\]}](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-213869%22]}).
20. Case of Tkhelidze v. Georgia (Application no. 33056/17), Judgment Strasbourg, 8 July 2021, final 08/10/2021, [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-210854%22\]}](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-210854%22]}).
21. Case of Luca v. the Republic of Moldova, (Application no. 55351/17) Judgment Strasbourg, 17 October 2023, final 17/01/2024, [https://hudoc.echr.coe.int/#%22itemid%22:\[%22001-228151%22\]}](https://hudoc.echr.coe.int/#%22itemid%22:[%22001-228151%22]}).
22. [https://hudoc.echr.coe.int/tkp197/view.asp#%22fulltext%22:\[%22Yazg%C3%BCl%20Yilmaz%20Turkey%22\],%22itemid%22:\[%22002-598%22\]}](https://hudoc.echr.coe.int/tkp197/view.asp#%22fulltext%22:[%22Yazg%C3%BCl%20Yilmaz%22],%22itemid%22:[%22002-598%22]}).
23. Case of Yazgül Yilmaz v. Turkey - 36369/06 Judgment 1.2.2011 [Section II], [https://hudoc.echr.coe.int/tkp197/view.asp#%22fulltext%22:\[%22Yazg%C3%BCl%20Y%C4%BCilmaz%20v.%20Turkey%22\],%22itemid%22:\[%22002-598%22\]}](https://hudoc.echr.coe.int/tkp197/view.asp#%22fulltext%22:[%22Yazg%C3%BCl%20Y%C4%BCilmaz%20v.%20Turkey%22],%22itemid%22:[%22002-598%22]}).
24. Case of B.S. v. Spain (Application no. 47159/08) Judgment [Extracts] Strasbourg 24 July 2012, final 24/10/2012, [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-112459%22\]}](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-112459%22]}).
25. Case of Opuz v. Turkey (Application no. 33401/02) Judgment Strasbourg 9 June 2009 final 09/09/2009, [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-92945%22\]}](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-92945%22]}).
26. What is Femicide? - History of the Term Femicide, Canadian Femicide Observatory for Justice and Accountability, <https://femicideincanada.ca/what-is-femicide/history/>.
27. <https://www.oas.org>.