Psychological violence as a violation of the European Convention on Human Rights
Sweden’s obligations to protect women against psychological violence

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Summary

There is no individual criminal provision in Sweden’s criminal code today that criminalizes psychological violence, but instead, there are various penal laws that could include acts defined as psychological violence. However, recently there has been a proposal to adopt a new criminal provision specifically criminalizing psychological violence, which also is necessary to counteract men’s violence against women – as one of the objectives of gender equality policy. The purpose of this paper is to examine Sweden’s obligation to protect women against psychological violence in accordance with the European Convention on Human Rights, more specifically article 8. Firstly, by examining the extent of the protection against psychological violence included within the scope of Article 8 ECHR, and what states’ obligations are. Secondly, by examining the extent of and if Sweden’s present criminal provisions are sufficient to protect its inhabitants against psychological violence in accordance with Article 8 ECHR. Lastly, if the new criminal provision against psychological violence meets the requirements in Article 8 ECHR. Primary sources used to establish current law are legal texts, case law, preparatory work, and doctrine.

It finds that the European Court of Human Rights emphasized that all forms of domestic violence should be dealt with. This includes psychological violence in different forms including verbal abuse, threats, coercion, control, and digital violence. Furthermore, the present criminal code in Sweden does not provide proper or adequate protection against psychological violence as of today to protect against all its forms, which leads to the conclusion that it would be necessary to adopt the new provision on psychological abuse to comply with Sweden’s obligations under the European Convention on Human Rights.
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1. Introduction

1.1 Background

In the last decades, men’s violence against women has been a high-profile topic recognized as a widespread and complex social problem worldwide. Not only does it affect women, but it also affects children, both directly and indirectly as the violence can take on various forms.\(^1\) There are estimates that show that as much as about 30% of women worldwide have experienced physical and/or sexual violence in their lifetime\(^2\), and as much as about 43% of women in the EU have experienced some form of psychological violence by an intimate partner.\(^3\) Since the numbers are that high, there is no wonder that it can be considered a public health problem, a societal problem, and a violation of women’s human rights. Therefore, it can absolutely be necessary for states to have certain obligations upon them to protect women in the private sphere and to criminalize certain acts.\(^4\) While criminalizing certain acts would send a clear message that any form of domestic violence needs to be stopped, there is one thing that needs to be considered and that is that domestic violence can take on various natures if we are to have a criminal system covering all forms of domestic violence.

The different forms can be of a physical, sexual, emotional, economic, or psychological nature including threats of acts that influence another person, and behaviors that intimidate, frighten, hurt, blame, terrorize, manipulate, humiliate, injure, or wound someone.\(^5\) One common way to describe these behaviors is that it is more than just isolated incidents or specific violent acts it is a pattern of behavior in an intimate relationship used to maintain or gain power and control over one’s intimate partner.\(^6\) Since these acts rarely are isolated incidents, but more of a consistent behavior that usually escalates both in severity and frequency which in some cases leads to a serious physical injury or even death it can make it difficult for women to leave the perpetrator and result in a limitation of women’s lives.\(^7\) The consequences of all forms of violence against women can thus be severe and lead to both short- and long-term physical and psychological injuries, impacting women’s health and well-being throughout the rest of their lives – even long after the violence ended.\(^8\) Most women seeking mental health services have experienced some form of intimate partner violence, or more precise about two-thirds of those seeking help.\(^9\) That surely indicates the

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2. Ibid.
4. Ibid (n 1).
6. Ibid.
7. Ibid.
8. Ibid (n 1).
severity of the problem. Maybe it is the lack of knowledge about how it affects women or the various forms of violence but when women are seeking care many women find it to be unhelpful, harmful, or even retraumatizing.\textsuperscript{10}

The use of technology is a huge part of peoples’ lives today, which has led to a lot of positive changes in people’s lives. There are a lot of people using technology for example to reach out to and socialize with family and friends. Another positive thing is that it has made it easier for victims of violence to seek help, obtain information, gather evidence, and monitor perpetrators.\textsuperscript{11} But at the same time, it has also contributed to enhancing perpetrators’ capacity to use technology as a tool to further inflict pain or form of violence. For example, perpetrators can use smartphones, social media platforms, apps, and other internet-connected devices as a means of coercive control and do even more harm to the victims of abuse.\textsuperscript{12}

Official statistics often do not capture all forms of domestic violence, meaning that there are several unreported cases for example when it comes to psychological violence, digital violence, material violence, or economic violence.\textsuperscript{13} Since men’s violence against women can be considered a clear expression of inequality between men and women, ending men’s violence against women is one of the six sub-goals of the Swedish gender equality policy.\textsuperscript{14} There is no specific criminal provision that specifically criminalizes psychological violence in the current criminal code in Sweden. Instead, there is a collection of different provisions that could include various forms of psychological violence, such as the provision on assault, unlawful coercion, violations of integrity, unlawful harassment, unlawful threats, and molestation. However, there has recently been proposed to introduce a new criminal provision for psychological violence in a bill from 2022, proposing to introduce a new type of crime, \textit{psychological violence} in Chapter 3. Section 5a of the Swedish Penal Code (1962:700).\textsuperscript{15}

1.2 \textit{Purpose of the Thesis and research question}

Since psychological violence seems to be a topic of concern in Sweden with a new proposal for a penal law criminalizing psychological violence it seemed appropriate to investigate the matter a little further. Men’s violence against women has in recent years been a hot topic worldwide and a great deal has been done to combat domestic violence in Sweden's gender equality policy in order to move towards gender equality. Case law from the European Court of Human Rights (ECtHR) requires states to act against all forms of gender-based violence and has been a driving force in bringing women's rights forward and in the work to counteract gender-based discrimination.\textsuperscript{16} In addition to this, it has also acted as an inspiration for the Council of Europe’s legally binding

\begin{itemize}
\item \textsuperscript{10} Ibid.
\item \textsuperscript{12} Ibid.
\item \textsuperscript{13} Jämställdhetsmyndigheten, ’Fakta och statistik’ <https://jamstalldhetsmyndigheten.se/mans-vald-mot-kvinnor/fakta-och-statistik/> accessed on 21 May 2023.
\item \textsuperscript{14} Ibid.
\item \textsuperscript{15} DS 2022:18.
\end{itemize}
convention on violence against women and domestic violence, known as the Istanbul Convention. It is the most comprehensive international legal instrument that outlines binding obligations to states to prevent and combat violence against women and girls. The ECtHR, in its judgments, has acknowledged the importance of the convention and referred to the convention when deciding its cases.

The purpose of this thesis is to investigate if Sweden’s obligations to protect women against psychological violence are in accordance with the European Convention on Human Rights (ECHR). Article 8 on the right to respect for private and family life in the ECHR puts certain positive obligations upon states to protect individuals from other individuals in the private sphere. But, to what extent and which acts are of that level of violence for it to be protected under the convention? This thesis investigates the legal protection against psychological violence and the extent thereof under the European Convention on Human Rights, particularly Article 8 on the right to respect for private and family life. Furthermore, if the current criminal provisions in Sweden sufficiently meet these requirements, and lastly to what extent does the new criminal provision cover acts of psychological violence in accordance with article 8 ECHR?

In order to fulfill the purpose of the thesis, the following questions are addressed:

- To what extent is protection against psychological violence included within the scope of Article 8 ECHR, and what are states’ obligations?
- Is there sufficient protection against psychological violence in the Swedish criminal code today, in accordance with Article 8 ECHR?
- Does the new criminal provision against psychological violence meet the requirements in Article 8 ECHR?

1.3 Method and Materials

The thesis will mainly be carried out using the legal dogmatic method as it aims to establish current law to answer the research questions and examine psychological violence as a violation of international human rights law. The legal dogmatics method is based on the sources of law and consists of determining which legal rules exist (de lege lata) or should be enacted by the legislature (de lege ferenda) and specifying their content. In order to achieve the purpose of the thesis, the legal dogmatic method used has included both de lege lata and de lege ferenda. Primary sources used to establish current law are legal texts, case law, preparatory work, and doctrine.

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19 Buturugă v Romania, App no 56867/15 (ECtHR, 11 February 2020) [67].
20 Hajduová v Slovakia, App no 2660/03 (ECtHR, 30 November 2010) [45].
Even if there is no specific document in international law specifying the correct way and processes for making international law, there are starting points in the discussion of the sources of law. Article 38 of the Statute of the International Court of Justice (ICJ Statute) contains a listing of instruments that the Court may apply in deciding cases. The article reads as follows:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
b. international custom, as evidence of a general practice accepted as law;
c. the general principles of law recognized by civilized nations;
d. subject to the provisions of Article 59, judicial decisions, and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

According to this article, the primary sources of international human rights law are international conventions, customary international law, and general principles of law. Judicial decisions and the teachings of the most highly qualified publicists are used as a secondary source.

International conventions are legally binding upon contracting parties. States are therefore required to fulfill their obligations under international human rights law, just the same as their obligations in any other subject area of international law. International human rights law today primarily derives from international and regional treaties, and by accepting the terms, states accept legal constraints upon their treatment of individuals within their territory and subject to their jurisdiction. Treaties, conventions, charters, covenants, protocols, pacts, or statutes are different terms used for agreements between states.

Customary international law is binding upon all states with some limited exceptions, unlike treaties which only bind states through formal consent. Customary international law can be regional or global and comprises state practice; and opinion juris. This means that there must have been an extensive and consistent state practice and the belief that the practice is required by law. General principles of law can be seen as general notions that form part of a legal system and are applicable in various settings. These principles are less obvious than treaties and customs and are more open-ended. Their open-ended nature might not specify a certain outcome of a case but can be helpful in pointing in the right direction. General principles of law include notions of procedural fairness or equity. Another view is that they are applicable to international relations, for example, the principle that treaties are binding upon state parties.

Judicial decisions are a secondary source of international law, formally they don’t make the law and their decision are only binding on the parties to the particular case and can be discounted in

\[\text{\textsuperscript{22}} \text{Jan Klabbers, International law} \text{ (second edition, Cambridge University Press 2017) 25.}\]
\[\text{\textsuperscript{23}} \text{Statute of the International Court of Justice} \text{ (adopted 26 June 1945, entered into force 24 October 1945) 15 UNCIO 355 (ICJ Statute) art 38(1).}\]
\[\text{\textsuperscript{24}} \text{Ibid.}\]
\[\text{\textsuperscript{25}} \text{Vienna Convention on the Law of Treaties} \text{ (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT) art 34.}\]
\[\text{\textsuperscript{26}} \text{Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran and David J. Harris (red), International human rights law, (third edition, Oxford University Press 2018) 64.}\]
\[\text{\textsuperscript{27}} \text{Ibid 66-67.}\]
\[\text{\textsuperscript{28}} \text{Ibid 71-72.}\]
\[\text{\textsuperscript{29}} \text{Ibid (n 22) 38.}\]
\[\text{\textsuperscript{30}} \text{Ibid (n 26) 75.}\]
subsequent cases. This approach may be a little formalistic because the judicial interpretation and application of the primary sources help elucidate and develop international law.\textsuperscript{31} Besides the fact that judgments from the ECtHR legally bind member states parties to the present case\textsuperscript{32}, its judgments also refers in general to ‘elucidate, safeguard and develop the rules instituted by the Convention’ and raising the standards of protection and extending human rights.\textsuperscript{33}

Since the Istanbul Convention is the most comprehensive regarding women’s violence and case law from the European Court of Human Rights was the inspiration thereto, it seems to be appropriate to investigate what case law from the Court has to say about domestic violence. Therefore, this essay focuses on the scope of Article 8 and the Court's case law of domestic violence in violation of the article to answer the first research question. The second research question will be answered through a legal dogmatic approach by examining the current law in the following provisions: assault, unlawful coercion, unlawful threats, violations of integrity, unlawful harassment, and molestation. Lastly, the third research question will examine the proposal for the new penal law on psychological violence. Overall, to answer the research questions and the aim of the thesis the European Convention on Human Rights, the Istanbul Convention, case law from the European Court of Human Rights, and research reports concerning psychological violence will be used.

1.4 Delimitation

The essay has limited itself to the type of relationship violence perpetrated by men against women, a description of men’s violence against women is given in the introduction. In addition, delimitations have been made to psychological violence, therefore the focus has been on describing how the criminal provisions cover psychological violence and what types of violent acts are included in psychological violence. The focus will be on article 8 of the European Convention on Human Rights, the Court's interpretation of article 8 (right to respect for private and family life), the present Swedish criminal provisions covering different acts of psychological violence, and the new criminal provision on psychological violence. It is worth mentioning that the essay will not deep dive into the criteria of each criminal provision, but to answer the questions it is enough to find out if and to what extent acts of psychological violence are included in the criminal provisions.

The essay will focus on Article 8, even though there are cases where acts of domestic violence can fall under Articles 3, 8, and 14, and in some cases the articles combined.\textsuperscript{34} Acts that fall outside ill-treatment and the degree of seriousness required by Article 3 may, if they are harmful enough, fall under Article 8's right to private life.\textsuperscript{35} Acts that fall within the purpose of this thesis, which is psychological violence, have in many cases been seen to fall under Article 8.

\textsuperscript{31} Ibid 76.
\textsuperscript{32} Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 46(1).
\textsuperscript{33} Rantsev v Cyprus and Russia, App no 25965/04 (ECtHR, 7 January 2010) [197].
\textsuperscript{34} Eremia and Others v the Republic of Moldova, App no 3564/11 (ECtHR, 28 May 2013).
\textsuperscript{35} Wainwright v the United Kingdom, App no 12350/04 (ECtHR, 26 September 2006) [46]; Costello-Roberts v the United Kingdom, App no 13134/87 (ECtHR, 25 March 1993) [36].
Chapter 3 of The Swedish Penal Code on offenses against life and health including crimes that have physical integrity as a protective interest, in this thesis, the focus will mainly be on Chapter 4 on offenses against liberty and peace where crimes in different ways target someone's freedom in different respects or that violate purely personal interests that are not of an economic nature, and which can be summarized under the term peace.\footnote{SOU 1953:14 151.}

1.5 Structure

The essay is divided into five chapters, where the first chapter contains an introduction to the subject, the purpose of the thesis and research question, the choice of method and material, and delimitations. The second chapter starts off by defining domestic violence and psychological violence and then goes on to examine to what extent psychological abuse is protected under Article 8 ECHR, the scope of Article 8, and the Court's decision on domestic violence in case law from the European Court of Human Rights. The third chapter analyses the Swedish criminal provisions that exist today and how they can be applied to psychological abuse. Both the second and the third chapter involves different sections with subchapter that follow. The fourth chapter analyses the need to further criminalize psychological violence to fill any gaps in current legislation and the necessity of proper legislation as a means to further combat men’s violence against women. The concluding chapter will contain an analysis or discussion of the material presented throughout the essay to answer the research questions.
2. Domestic violence and the European Convention on Human Rights

2.1 Defining domestic violence and psychological violence

This chapter starts off by defining domestic violence and psychological violence by using one of the primary sources of international law. Since the Istanbul Convention is the most comprehensive legal document with a strong connection to ECtHR, it’s, therefore, most appropriate to use. Section 2.2 goes into the scope of Article 8, and which obligations states could be held accountable for according to the article. Lastly, section 2.3 gives an overview of how the Court has assessed these obligations in its case law, focusing foremost on Article 8.

2.1.1 Domestic Violence

Article 3 of the Istanbul Convention defines ‘violence against women’ and ‘domestic violence’ and reads as follows:

a “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

b “domestic violence” shall mean 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;

c “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;

d “gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;

e “victim” shall mean any natural person who is subject to the conduct specified in points a and b;

f “women” includes girls under the age of 18.37

Even though domestic violence can occur in a range of different kinds of relationships, this paper will focus on domestic violence committed by men against women. According to the article, violence against women is a violation of human rights and a form of discrimination against women regardless of whether the acts are occurring in public or private life. The acts described as domestic violence are all acts of physical, sexual, psychological, or economic violence within intimate relations.38

2.1.2 Psychological Violence

The Council of Europe has formulated the most comprehensive international legal instrument that exists today and describes different binding obligations to states to prevent and combat violence against women and girls.39 The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) entered into force in

37 Istanbul Convention (n 17) art 3.
38 Istanbul Convention (n 17) art 3.
39 Ibid (n 18).
Sweden has ratified the Istanbul convention that entered into force in 2014. This means that Sweden has an obligation to criminalize certain behaviors in its national legislation. Psychological violence is one of the main components of domestic violence and is defined in Istanbul Convention article 33: ‘Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats is criminalized.’

There are several acts included in psychological violence in intimate relationships and it can take various forms of expression or methods for example it can be financial control, verbal abuse, isolation, shaming, emotional blackmail, stalking, other forms of harassment, and exploiting the children to gain control over the other parent. It can also consist of threats that can be directed at children, pets, or close friends. By threatening, the perpetrator can direct the victim exactly where they want them. There can be threats of a direct nature, like threatening to kill the dog if the victim of abuse tells anyone, or of a more indirect nature and then convey a possible danger or a consequence of violence. This can also be through technology, using the internet, social media, or phones to leak intimate photos, spread rumors, threaten, stalk, control where someone is, with whom, using GPS, and so on.

Psychological violence also consists of control and isolation, insults, humiliation, ridicule of their intimate partner, neglect, and subtle actions aimed at causing the abused person to start doubting their feelings and judgment, their own ability, and their self-worth. The violence can also manifest itself in the abuser neglecting the abused. The consequences for the victims of psychological abuse are often far-reaching and affect the victim’s self-confidence and sense of self-worth, harming the physical body as well as the soul or the dignity of the victim of violence. Another destructive consequence of psychological violence, is that it is combined with the hot and cold treatment. This means that the perpetrator alternates the use of violence with tenderness and love, making it unpredictable which makes it very difficult to resist. This alternation between violence and heat, creates highs and lows, which often leads to the victim's emotional bond with the abuser being strengthened, while self-confidence and self-esteem are negatively affected, leading it to be even harder for victims to get out of the relationship.

2.2 The scope of Article 8 - Right to respect for private and family Life

The first article of the European Convention on Human Rights (ECHR) states the following: ‘The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms

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40 Istanbul Convention (n 17).
42 Istanbul Convention (n 17) art 33.
44 Linn Moser Hällen (red.), Intersektionella perspektiv på våld i nära relationer, (Första upplagan, Liber, Stockholm 2021) 24–25.
46 Ibid (n 44).
47 Ibid (n 43).
defined in … this Convention’. This sets out an obligation to respect human rights among the contracting states, which means that Sweden, one of many states that has ratified the ECHR therefore must fulfill the obligations prescribed by the convention. This obligation extends to all forms of domestic violence, which includes physical, psychological, or verbal abuse. The right to respect for private and family life in Article 8 ECHR reads as follows:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Respect for private life means that states have a negative obligation to protect individuals against arbitrary action by the public authorities, which is the essential object of Article 8 ECHR, but there is also a positive obligation inherent in effective ‘respect’ for private life and these obligations may involve the adaption of measures in the sphere of the relations of individuals themselves. This means that States have both a negative obligation to protect their inhabitants’ right to privacy from interference or violations from the states, as well as a positive obligation to protect against all forms of domestic violence, including psychological violence.

The court recently highlighted the principle of subsidiarity, now inserted, and expressly provided for in the Preamble to the Convention since the entry into force of Protocol No. 15. The court emphasized that the principle ‘imposes a shared responsibility between the States Parties and the Court’ as regards to human rights protection, and the national authorities and courts must apply and interpret domestic law in a way that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto. States have an obligation to protect both the physical and moral integrity of a person from other individuals. This means that states in practice are to apply and maintain an adequate legal framework affording protection against acts of violence by private individuals.

2.3 Case-law from the European Court of Human Rights

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48 ECHR (n 32) art 1.
50 Opuz v. Turkey, App no 33401/02 (ECtHR, 9 June 2009) [132].
51 ECHR (n 32) art. 8.
52 Hajduová v Slovakia (n 20) [45].
53 Opuz v. Turkey (n 50) [132].
54 Grzęda v Poland, App no 43572/18 (ECtHR, 15 March 2022) [324].
55 A v Croatia, App no 55164/08 (ECtHR, 14 October 2010) [60].
There are several cases where the Court holds States responsible for protecting victims of domestic violence, especially when the authorities had known about the risk of violence and failed to enforce measures designed to protect victims of domestic violence.\textsuperscript{56} One of those cases is \textit{Hajduová v. Slovakia} where there had been a breach of the state’s positive obligations under Article 8 for not sufficiently protecting the wife from her violent husband. The domestic authorities had in this case failed to have the applicant’s husband, detained in an institution for psychiatric treatment after being diagnosed with a serious personality disorder following his criminal conviction for having abused and threatened her. The threats then repeatedly continued both against her and her lawyer.\textsuperscript{57} The Court stated that even though the threats had never materialized into concrete acts of physical violence, they had caused a well-founded fear that was enough to affect the applicant’s psychological integrity and well-being, giving rise to the state’s positive obligations under Article 8.\textsuperscript{58}

Another case where the authorities failed to fulfill their obligations in violation of Article 8 is \textit{Kalucza v. Hungary}.\textsuperscript{59} In this case, the applicant suffered through constant psychical and psychological violence, all while unwillingly living together with her violent common-law husband pending numerous civil disputes concerning the ownership of the flat. The applicant had lodged several criminal complaints for assault, and harassment, she had put in a request for a restraining order and brought numerous civil disputes to order his eviction from the flat.\textsuperscript{60} The Court concluded that there had been a violation of the state’s positive obligations under Article 8 and that the authorities had not taken sufficient measures for her effective protection considering the merits of the case and the prolonged time to decide on the cases concerning the apartment.\textsuperscript{61}

In \textit{B. v Moldova} the applicant where subjected to repeated physical, psychological, and sexual violence by her ex-husband in their apartment, where she unwillingly lived together with him. The applicant had reported him numerous times and asked for his eviction from their apartment without any luck.\textsuperscript{62} During this time, she suffered through repeatedly severe physical and psychological violence. The amount of fear, suffering, and anxiety she felt in her own home and the real possibility of ill-treatment she faced amounted to a violation of Article 3 of the Convention. The domestic courts should have been able to properly balance the two competing rights protected under the convention (the applicant’s right to not be subjected to ill-treatment and her ex-husband's right to use the apartment).\textsuperscript{63} The domestic authorities failed to properly comply with their positive obligations and failed to balance the rights involved and effectively forced the applicant to continue risking being subjected to violence or leaving her home, this amounted to a violation of Article 8.\textsuperscript{64}

\textsuperscript{56} \textit{Levchuk v. Ukraine}, App no 17496/19 (ECtHR, 3 September 2020); \textit{Bevacqua and S. v. Bulgaria}, App no 71127/01 (ECtHR, 12 June 2008); \textit{A v. Croatia} (n 55); \textit{Hajduová v. Slovakia} (n 20); \textit{Kalucza v. Hungary}, App no 57693/10 (ECtHR, 24 April 2012); \textit{B. v. Moldova}, App no 61382/09 (ECtHR, 16 July 2013).

\textsuperscript{57} \textit{Hajduová v Slovakia} (n 20) [6]-[13].

\textsuperscript{58} Ibid [49].

\textsuperscript{59} \textit{Kalucza v Hungary} (n 56).

\textsuperscript{60} Ibid [27]-[34].

\textsuperscript{61} Ibid [68]-[70].

\textsuperscript{62} \textit{B. v The Republic of Moldova} (n 56).

\textsuperscript{63} Ibid [58]-[61].

\textsuperscript{64} Ibid [75].
Levchuk v Ukraine is another case concerning the domestic authorities’ dismissal of an eviction claim brought by a woman against her ex-husband.\(^6\) In this case, the ex-husband had subjected the applicant to repeated psychological and physical violence she had suffered through in the presence of their minor children. The applicant claimed that the domestic judicial authorities had been excessively formalistic when deciding the case and had not conducted a comprehensive risk analysis of the future domestic violence, and psychological and physical violence faced by the applicant and her children. Giving her ex-husband a sense of impunity and exposing her and her children to an even greater risk of repeated domestic violence, psychological harassment, and assault. The Court noted that eviction is the most extreme measure of interference with one’s right to respect the home guaranteed by Article 8. It must be a fair balance between all the competing private interests at stake, interference by the national authorities with individual rights might be necessary in order to protect the health and rights of others.\(^66\) Due to the facts of the case, the dismissal of the woman's eviction claim against her ex-husband had not been in compliance with the State’s positive obligation to ensure the applicant’s effective protection from domestic violence, as he had repeatedly subjected her to psychological and physical violence in the presence of their minor children, was found to breach Article 8.\(^67\) Furthermore, the proceedings had lasted over two years at three levels of jurisdiction, during which the applicant and her children remained at risk of further violence. The fair balance between all the competing private interests at stake had therefore not been struck.\(^68\)

Bevacqua and S. v Bulgaria concerned the applicant and her child’s safety from the violence of the father of the child and ex-husband.\(^69\) In this case the applicant suffered through an extended custody proceeding of her child after the divorce from her violent ex-husband. This amounted to putting the applicant at further risk of harm. During this time the applicant had agreed to the ex-husband and father having contact with the child, but he refused to let the applicant have any contact with her son which led to the applicant recovering her son at the kindergarten leading to further threats and later the violent ex-husband went to her home recovering the child.\(^70\) After this incident, the applicant sought protection from a non-governmental organization assisting female victims of domestic violence and got to stay at a hostel in another town with her son for a few days. The ex-husband then reported her for abduction, which the police disbelieved and insisted that she could be prosecuted for abducting their son.\(^71\) The judicial courts failed to make an interim order concerning custody of the child, despite being requested by the applicant. Following this the applicant agreed to share custody with the father, switching with each other every two months to avoid prosecution.\(^72\) Following this agreement, the applicant was subjected to further violence by the ex-husband, for which he was never prosecuted or for the subsequent violence against her, even though she did get custody of the child eventually.\(^73\) The Court found a violation of private and family life under Article 8 of the Convention. Moreover, the domestic authorities failed to adopt interim custody measures without delay, which led to severe effects on the health of the applicant.

\(^{65}\) Levchuk v Ukraine (n 56).
\(^{66}\) Ibid [84].
\(^{67}\) Ibid [90].
\(^{68}\) Ibid.
\(^{69}\) Bevacqua and S. v Bulgaria (n 56).
\(^{70}\) Ibid [9]-[13].
\(^{71}\) Ibid [15]-[16].
\(^{72}\) Ibid [18].
\(^{73}\) Ibid [37]-[38].
and her son. The court concluded that the authorities had taken insufficient measures due to the reaction of the ex-husband's behavior.74

A v Croatia is another case where the applicant was subjected to repeated violent behavior by her mentally ill ex-husband.75 The applicant was often subjected to violence in front of their child and sometimes the violent behavior even turned towards the child. There were numerous proceedings against the mentally ill ex-husband, which resulted in protective measures prohibiting access to the applicant at a distance of less than one hundred meters for one year.76 The ex-husband continued harassing and stalking her and hired a private investigator to find out where she lived. The applicant then applied for an additional protective measure in the form of a prohibition on harassing and stalking a victim of violence. The request was dismissed on the grounds that she had not shown that there had been an immediate risk to her life.77 The Court noted the state's obligation under Article 8 to adopt adequate criminal-law protection for acts of violence against an applicant.78 The Court highlighted that there would be more effective protection if the domestic authorities could have viewed the situation as a whole, instead of multiple separate proceedings.79 The authorities failed to enforce protective measures addressing the ex-husband's psychiatric condition and protecting the applicant from further violence, which resulted in a violation of her right to respect for her private life for a prolonged period of time. The Court found that there had been a breach of Article 8.80

In the case of I.M. and Others v Italy the first applicant, a mother, and the second and third applicant, her children alleged that they had been the victims of domestic violence.81 They submitted a complaint that the Italian State allegedly had failed in their duty to assist and protect the mother and her children during the visitation or contact sessions with the father of the children, an alcoholic and drug addict accused of threatening behavior and ill-treatment during these contact sessions. Another complaint made by the mother was that she had been characterized as an “uncooperative parent” and accordingly had her parental responsibility suspended, for one sole reason, because she had sought to protect her children by alarming them of the risk to their safety.82 The Court held that there had been a violation of Article 8 (right to respect for private and family life) of the Convention in respect of both of the children, finding that the children had been forced since 2015 to meet their father in conditions that did not provide a protective environment and that, the authorities’ effort to maintain the contact between the children and their father despite or, disregarding the children’s best interest which was not being compelled to meet in such conditions.83 The Court also found that there had been a violation of Article 8 in respect of the mother of the children. The authorities had failed to examine the mother of the children's situation with care and instead decided to suspend her parental responsibility on the grounds that she allegedly had a hostile attitude to the contact and shared parenting with the children’s father, and

74 Ibid [84].
75 A v Croatia (n 56).
76 Ibid [31].
77 Ibid [35].
78 Ibid [67].
79 Ibid [76].
80 Ibid [79]-[80].
81 I.M. and Others v Italy, App no 25426/20 (ECtHR, 10 November 2022).
82 Ibid [76].
83 Ibid [123]-[126].
not taking into consideration all the relevant facts in the case.\footnote{136-141} The Court held that the Youth Court and the Court of Appeal had not provided sufficient and relevant reasons to justify their decision to suspend the applicant’s parental responsibility between May 2016 and May 2019.\footnote{140}

*Eremia and Others v the Republic of Moldova* the first applicant, the wife of a police officer, and the second and third applicant, their two daughters suffered from abuse from the husband and father by assaulting the wife and insulting the daughters.\footnote{34 [7]} The first applicant, the mother and wife complained of the Moldovan authorities’ failure to properly protect them from being victims of domestic violence by ignoring the husband and father's (a police officer's) abusive and violent behavior.\footnote{38} With respect to the first applicants' complaint the Court found that there had been a violation of Article 3 (prohibition of inhuman and degrading treatment) of the Convention by a failure to take effective measures against the husband and bring him to justice under appropriate legal provisions, the authorities had failed to protect the applicant from further domestic violence.\footnote{64-66} The second and third applicants, complained of a violation of Article 3 by being verbally assaulted by their father and witnessing the abuse inflicted by their father on their mother.\footnote{67} In this case the court decided to examine the complaint under Article 8 of the Convention.\footnote{68} With respect to the daughters the Court found that there had been a violation of Article 8 (right to respect for private and family life) of the Convention by not taking any action to protect them and prevent them from witnessing the reoccurring behavior of violence against their mother considering its psychological harm.\footnote{77-79} Lastly, the Court held that there had been a violation of Article 14 (prohibition of discrimination) of the Convention read in conjunction with Article 3.\footnote{90}

*Jankovic v Croatia* the applicant complained that the state had failed to protect her from acts of violence and of the length of the civil proceedings that she had initiated.\footnote{38478/05 (ECtHR, 5 March 2009) [3]} Despite the applicant's attempt to have the allegations of her being threatened and attacked by her flatmates investigated by the authorities, they had failed to ensure her proper protection.\footnote{19-24} The Court found that there had been a violation of Article 8 (right to respect for private life) of the Convention, on the basis that the authorities had failed to adequately protect the applicant from an attack on her physical integrity and of the manner in which the national criminal-law mechanisms had been implemented, which was contrary to the State’s positive obligations under Article 8.\footnote{58}

### 2.3.1 Cyberviolence

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\footnote{136-141} Ibid [136]-[141].
\footnote{140} Ibid [140].
\footnote{34} *Eremia and Others v the Republic of Moldova* (n 34) [7].
\footnote{38} Ibid [38].
\footnote{64-66} Ibid [64]-[66].
\footnote{67} Ibid [67].
\footnote{68} Ibid [68].
\footnote{77-79} Ibid [77]-[79].
\footnote{90} Ibid [90].
\footnote{38478/05 (ECtHR, 5 March 2009) [3]} *Jankovic v Croatia*, App no 38478/05 (ECtHR, 5 March 2009) [3].
\footnote{19-24} Ibid [19]-[24].
\footnote{58} Ibid [58].
States have a responsibility to protect individuals from domestic violence by third parties and a duty to protect the physical and moral integrity of an individual from other persons, including cyberbullying by a person’s intimate partner.\textsuperscript{96}

The case of \textit{Buturugâ v Romania} concerned domestic violence in the form of cyberviolence and violation of the confidentiality of electronic correspondence by her former husband.\textsuperscript{97} The applicant complained of the domestic authority’s ineffectiveness to carry out a criminal investigation into the domestic violence she claimed to have suffered through and of shortcomings in the system for protecting victims from this form of domestic violence. Furthermore, she complained that her personal safety had not been properly secured and criticized the authorities’ refusal to consider her complaint concerning her former husband’s breach of the confidentiality of her correspondence.\textsuperscript{98} He had wrongfully accessed her Facebook account, and copied private conversations, documents, and photographs, which the domestic authorities dismissed as unrelated to the other offenses of making threats and violence he stood accused for. In addition to this, it was irrelevant to the subject matter of the case, and the data published on social media networks were public.\textsuperscript{99}

In this case the Court found a violation of both Articles 3 and 8, by not fulfilling its positive obligations under those provisions. In its findings, the domestic authorities hadn’t addressed the criminal investigation as a whole, which raised the specific problem of domestic violence, and for that reason, they had failed to provide an appropriate response to the seriousness of the circumstances of the case and facts complained of by the applicant. The investigation into the acts of violence had been deficient, and the authorities had been given no consideration to the merits of the complaint regarding the violation of the confidentiality of correspondence, which was closely linked to the complaint of violence.\textsuperscript{100} The court also addressed the fact that cyberbullying was currently included in, and recognized as an aspect of violence against women and girls and that it could take on a variety of different forms, this including cyber breaches of privacy, intrusion into the victim’s computer, and the capture, sharing, and manipulation of data and images, including private data.\textsuperscript{101} The court emphasized the need to comprehensively address the phenomenon of domestic violence in all its forms.\textsuperscript{102} The Court found that the national authorities had been overly formalistic in dismissing the applicants’ allegations of cyberbullying and her request to have the family computer searched and that it could have any connection with the previous report of domestic violence she had already reported to them. The applicant had been obliged to submit a new complaint alleging a violation of the confidentiality of her correspondence. In dealing with it separately, the authorities had failed to take into consideration the various forms that domestic violence could take.\textsuperscript{103}

\textsuperscript{96} \textit{Buturugâ v Romania} (n 19) [74]-[78]-[79]; \textit{Volodina v. Russia} (no. 2), App no 40419/19 (ECtHR, 14 September 2021) [48]-[49].
\textsuperscript{97} \textit{Buturugâ v Romania} (n 19).
\textsuperscript{98} Ibid [43].
\textsuperscript{99} Ibid [11]-[21].
\textsuperscript{100} Ibid [79].
\textsuperscript{101} Ibid [74].
\textsuperscript{102} Ibid [76].
\textsuperscript{103} Ibid [78].
Another case concerning cyberviolence is Volodina v Russia (no.2) which is a case where the applicant faced repeated acts of cyberviolence by her former partner for at least three years by stalking and impersonating her and creating a fake social media, using her name and creating fake profiles online, personal details, and published her intimate photographs. In addition to this, he tracked her movement with the use of a GPS device by planting a GPS tracker in her handbag and sending her death threats via social media. This had led to interference with her enjoyment of her private life and caused anxiety, distress, and insecurity. She claimed that the authorities failed to protect her against repeated cyberviolence by her partner by not effectively investigating these allegations, and thus failed to protect her against repeated acts of cyber harassment. The Court found that the Russian authorities, in this case, had failed to comply with their obligations under Article 8 to protect the applicant from severe abuse. Thus, there had been a violation of Article 8 of the Convention. It noted, in particular, that, despite having the legal tools available to prosecute the applicant’s partner, the authorities had not carried out an effective investigation and had not considered at any point in time what could and should have been done to protect the applicant from recurrent online harassment and thus failed in their obligation to protect her against serious abuse.

104 Volodina v Russia (n 96) [6]-[20].
105 Ibid [11]-[13].
106 Ibid [50].
107 Ibid [33].
108 Ibid [61]-[68].
3 Swedish legislation

3.1 The present Criminal Code Against Domestic Violence

The first part of this chapter presents relevant provisions that criminalize acts that might be included in psychological violence using a legal dogmatic approach. This part addresses crimes against persons in the Swedish criminal code today, these are found in Chapter 3 (on offenses against life and health), and Chapter 4 (On offenses against liberty and peace). The provisions presented are those considered most relevant to acts of psychological violence, these are assault, unlawful coercion, violations of integrity, unlawful harassment, unlawful threats, and molestation. The second part of this chapter presents the new provision criminalizing psychological violence using a legal dogmatic approach. Of the crimes against the person, chapter 4 deals with offenses which, in various respects, are directed against the liberty of another person, or which violate other purely personal interests which are not of an economic nature, and which can be summarized as peace. It can also be said that the offenses concern acts that involve various kinds of violations of personal integrity.109

3.1.1 The provision of assault

The provision on assault in Chapter 3 on offenses against life and health, Section 5 of the Swedish criminal code reads as follows:

A person who inflicts bodily injury, illness or pain on another person or renders them helpless or in some other similar state is guilty of assault and is sentenced to imprisonment for at most two years or, if the offence is minor, to a fine or imprisonment for at most six months. Act 1998:393.

The provision does not define how acts considered to be assault can be committed, only that its acts inflicting bodily injury, illness, or pain. Acts such as poisoning and certain cases of omission may, if the omission is punishable, also fall under the scope of assault. According to the provision on assault, the term bodily injury does not refer to psychological violence. The term includes bodily injuries such as wounding, swelling, or broken bones as well as functional disorders of various kinds such as visual and hearing impairments.110 The term illness includes the infliction of physical illness, but also mental illness such as mental shock or neurosis.111 The act does not have to include pain for it to be assessed as assault. The term pain involves physical suffering not too insignificant. Minor bodily discomforts, such as discomfort caused by disturbing sounds, therefore fall outside the scope of the provision. Acts that involve milder violence that are not considered to be assault, can instead be assessed as molestation, or as insulting behavior.112 Assault could also be through psychological means, but not in cases when a person is trying to induce a psychological effect in the form of intimidation through psychological means.113 There must be an adequate causal link between the act and the effect in order to prove that the act caused the illness. Proving that the medically demonstrable effects originate from the violence may be possible in more serious forms

109 Ibid (n 36).
111 ibid 135.
112 Ibid 135.
113 Ibid 135.
of psychological violence, but difficult to prove in less serious forms of psychological violence or to prove the offender’s intent to commit the act. In less serious forms of psychological violence the chances of proving a causal link between the psychological violence and a medically demonstrable psychological effect are limited. The provisions’ intention was to include severe forms of psychological impact, if not assault it should be some form of breach of liberty or peace. There is no clear boundary set in the provision on where to draw the line, but rather it should come from the application of the law. This resulted in the judiciary being left to determine where the line is drawn and of what psychological influence can be considered maltreatment by the infliction of illness. The boundaries are still unclear and there are no guiding rulings of the Supreme Court where the assault clause has been applied to such cases.

3.1.2 Unlawful Coercion

The provision on unlawful coercion in Chapter 4 on offences against liberty and peace, Section 4 of the Swedish criminal code reads as follows:

A person who, by assault or otherwise by violence or by threat of a criminal act, coerces another person to do, submit to or omit to do something, is guilty of unlawful coercion and is sentenced to a fine or imprisonment for at most two years. A person who exercises coercion with such effect by threatening to bring a prosecution against or report another person for an offence or to give detrimental information about another person is also guilty of unlawful coercion, provided that the coercion is improper. If the offence is gross, the person is guilty of gross unlawful coercion and is sentenced to imprisonment for at least nine months and at most six years. When assessing whether the offence is gross, particular consideration is given to whether the act: 1. included violence of a serious kind; 2. included a threat that was substantially reinforced with the aid of a weapon, an explosive or a dummy weapon, or by allusion to a capacity for violence, or that was otherwise of a serious kind; or 3. was otherwise of a particularly ruthless or dangerous nature. Act 2017:332.

The provision constitutes a general rule to protect individuals’ freedom to act. The coercion itself is a punishable act. Unlawful coercion may include forcing someone to commit certain acts, or not to commit certain acts through assault, other violence (refers to physical or mild forms of use of force that do not fall under the assault provision), or threats. This is regardless of the nature of what has been forced. Unlawful coercion can thus exist when someone is forced to comply with a legal obligation or something that is legally indifferent. The provision also includes threatening to prosecute or report someone for a crime without having grounds for it, except in certain situations where it must be permissible to threaten with a police report or similar action. Whether the coercion is to be regarded improper relies on the purpose it is intended to achieve. Coercion considered to be unfair could for example be coercion with intent or with the aim of obtaining an unreasonable economic advantage. Coercion exercised by threatening action against another person, such as a relative, is also in most cases considered improper. Act involving torture into confession or other torture may be considered a serious offense. The torment and torture must be a
matter of physical or mental torment of greater intensity and longer duration. Confession means
that someone admits that he or she has committed a crime or something else that is generally
believed to constitute injustice.\textsuperscript{122}

3.1.3 Violations of the integrity

The provision on violations of the integrity in Chapter 4 on offences against liberty and peace,
Section 4a of the Swedish criminal code reads as follows:

A person who commits criminal acts under Chapter 3 or 4, Chapter 5, Section 1 or 2, Chapter 6 or 12 or
under Section 24 of the Non-Contact Orders Act (1988:688) against a person with whom they are or
have previously been in a close relationship is, if each of the acts was part of a repeated violation of the
person’s integrity and the acts were liable to severely damage the person’s self-esteem, guilty of gross
violation of integrity and is sentenced to imprisonment for at least one year and at most six years. If acts
REFERRED TO IN THE FIRST PARAGRAPH WERE COMMITTED BY A MAN AGAINST A WOMAN TO WHOM HE IS OR HAS BEEN
MARRIED, OR WITH WHOM HE IS OR HAS BEEN COHABITING UNDER CIRCUMSTANCES SIMILAR TO MARRIAGE, HE IS INSTEAD
GUilty OF GROSS VIOLATION OF A WOMAN’S INTEGRITY AND IS SENTENCED TO THE SAME PENALTY. ACT 2021:1108.

The provision on violations of integrity consists of several criminal acts and it is required that
several criminal acts are up to the court's assessment at the same time and that there is a connection
between these acts. These acts must be included in one of the descriptions of offenses mentioned
in the provision, but there is no need for the acts to be of the same type just that they are a repeated
violation. The acts must also have taken place within a certain limited time period. The acts must
be directed against the same person, whom they are or have been in a close relationship with. The
second paragraph applies if an offender is a man and the victim a woman to whom he or she is or
has been married, or with whom he lives or has lived together in marriage-like conditions, in which
case the offense is assessed as a gross violation of a woman's integrity and not as a gross violation
of integrity. The acts mentioned in the provision are all punishable separately and are individual
acts committed by the offender, but when assessed in its context and with a special element that
gives the crime its disturbing character. The acts are assessed as a single entity and are held together
by the fact that each of the charged acts was part of a repeated violation of the victim's integrity
and that the acts were likely to seriously damage the person's self-esteem.\textsuperscript{123} Repeated violation
refers to acts aimed at personal integrity and that occur repeatedly, allowing the circumstances of
the individual case to be taken into account and the whole situation of the victim.\textsuperscript{124} The wording
of the penal provision states that the description of the offense does not refer to a perduing offense,
i.e. an act that continues. Instead, it is assumed that the question is about multiple acts and that each
of these acts in itself constitutes a crime.\textsuperscript{125}

3.1.4 Unlawful Harassment

The provision on unlawful harassment in Chapter 4 on offences against liberty and peace, Section
4b of the Swedish criminal code reads as follows:

\textsuperscript{122} Ibid 162.
\textsuperscript{123} Ibid (114) 75.
\textsuperscript{124} Ibid 80.
\textsuperscript{125} Ibid 75.
A person who harasses another person by means of criminal acts that constitute: 1. assault under Chapter 3, Section 5 or attempting to commit such an offence that is not minor; 2. unlawful coercion under Chapter 4, Section 4, first paragraph; 3. making an unlawful threat under Chapter 4, Section 5, first paragraph; 4. violation of the privacy of the home under Chapter 4, Section 6, first paragraph, or unlawful intrusion under Chapter 4, Section 6, second paragraph; 5. intrusive photography under Chapter 4, Section 6a; 6. unlawful identity use under Chapter 4, Section 6b; 7. unlawful breach of privacy under Chapter 4, Section 6c; 8. molestation under Chapter 4, Section 7; 9. encouraging suicide or negligently encouraging suicide under Chapter 4, Section 7a; 10. defamation or gross defamation under Chapter 5, Section 1 or 2. 11. sexual molestation of a child under Chapter 6, Section 10, first paragraph, or sexual molestation under Chapter 6, Section 10, second paragraph; 12. damage to property under Chapter 12, Section 1 or attempting to commit such an offence; 13. minor damage under Chapter 12, Section 2; or 14. breach of a non-contact order with electronic monitoring or breach of a non-contact order under Section 24 of the NonContact Orders Act (1988:688), is, if each of the acts was part of a repeated violation of the person’s integrity, guilty of unlawful harassment and is sentenced to imprisonment for at most four years. Act 2022:1043.

Liability under the provision requires that the offender has pursued the same person through certain criminal acts that are specified in the provision. Criminal liability also requires that each of these acts was part of a repeated violation of the person’s privacy.126 The assessment of the repeated violation of the person's privacy must be carried out in the same way as in the case of violations of integrity, the provision of unlawful persecution is thus created by the perpetrator committing repeated or several criminal acts against one and the same person. Persecution refers to someone who repeatedly seeks contact with another person against their will, in a manner that becomes very intrusive or otherwise embarrassing, and that someone repeatedly attacks, torments, terrorizes, or exposes another person to discomfort, for example by committing crimes against them.127 Thus, there are several different offenses that must be considered by the court at the same time. Liability presupposes intent, but it is only the facts on which the court bases its assessment that the acts were part of a repeated violation of the person’s integrity that need to be covered by the intent. No purpose for the person to be persecuted is required.128 Even in the case of this offense, it may be acceptable, for conviction, to add, in addition to certain detailed and time-bound acts, acts of a similar nature committed during a certain period of time and where it is kept more openly the exact time, place and perhaps even procedure for each act.129 If the conditions exist to convict for both a violation of peace and unlawful persecution, the starting point is that the court should judge for the former crime.130 If the offender pursues the injured party by committing already punishable offenses, the psychological suffering of such a systematic procedure may be taken into account when assessing whether each of the acts has been part of a repeated violation of the victim's integrity.131

Circumstances that lie outside the charged acts may be important for whether the acts taken together are to be assessed as unlawful persecution, which means that the isolated acts must therefore always be seen in the light of the circumstances in which they took place. This means that it is possible to take into account the plaintiff's entire situation in the event of unlawful persecution. However, in order for this to be possible, the offender must, just as in the case of a violation of peace, have

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126 Prop. 2010/11:45 76.
127 ibid 72.
128 ibid 76-77.
129 ibid 77.
130 ibid 68-70.
131 Ibid (n 15) 199-200.
committed several criminal acts. As such, therefore, psychological violence is not criminalized by the provision of unlawful stalking.\(^{132}\)

3.1.5 Unlawful Threats

The provision on unlawful threats in Chapter 4 on offenses against liberty and peace, Section 5 of the Swedish criminal code reads as follows:

A person who threatens another person with a criminal act in a manner that is liable to occasion serious fear in the person threatened for the safety of their own or someone else’s person, property, liberty or peace is guilty of making an unlawful threat and is sentenced to a fine or imprisonment for at most one year. If the offence is gross, the person is guilty of making a gross unlawful threat and is sentenced to imprisonment for at least nine months and at most four years. When assessing whether the offence is gross, particular consideration is given to: 1. whether the threat was substantially reinforced with the aid of a weapon, an explosive or a dummy weapon, or by allusion to a capacity for violence, or was otherwise of a serious kind; or 2. whether the act was otherwise of a particularly ruthless or dangerous nature. Act 2018:1745.

The threat is described in the provision as someone raising a weapon against another person or threatening another person with a criminal act, therefore it is a precondition that the threat relates to a criminal act. Threats that fall outside of the criminal offense may fall under the scope of molestation instead.\(^{133}\) The threat does not have to provoke fear in the threatened person, and the offender does not need to have intended for the threat to be carried out in order for the act to be punishable as an unlawful threat. The exception would be when it is obvious that the threat is not serious. The threat is not required to be directly directed at the person in question, even statements of action against a third person fall under the provision if the threat somehow came to the attention of the threatened person.\(^{134}\) For threats to be classified as aggravated, they must differ significantly from threats in general. For example, repeated serious threats or threats directed at a person in a defenseless position.\(^{135}\)

3.1.6 Molestation

The provision on molestation in Chapter 4 on offenses against liberty and peace, Section 7 of the Swedish criminal code reads as follows:

A person who physically molests another person or subjects another person to disturbing contact or other ruthless conduct, is, if the act is liable to noticeably violate that person’s peace, guilty of molestation and is sentenced to a fine or imprisonment for at most one year. Act 2017:1136.

The provision covers two intentional acts. Intent is required for the inadmissible provision to be applied. One is when someone physically molestes someone else, this could for example be, deliberately pushing or hooking another person or tugging or tearing at someone’s clothes. The other one is that someone molests someone else through other reckless behavior, this could for
example be shootings, stone throwing, or noise. Other ruthless conduct refers to a significant violation of peace which, according to ordinary values, can be said to constitute a violation. For example, disturbing someone through repeated phone calls, sending letters or postcards on several occasions, or harassing someone in some other similar way.\textsuperscript{136} An overall assessment is required, and the circumstances of the individual case determine whether it constitutes molestation.\textsuperscript{137}

3.2 The new penal law criminalizing psychological violence

Some concluding remarks of the previous section, as one can tell there is no specific provision criminalizing psychological violence, nor is it included in the provisions. There are however some acts included that one could use for a specific offense, but that takes some form of action, which excludes controlling acts or manipulation that are included in psychological violence. This means that Sweden does not have a criminal provision that covers this form of violence as of today. This leads to examining the proposal on the new provision in the Swedish criminal code on psychological violence which reads as follows:

\textsuperscript{136} Ibid (n 36) 169.  
\textsuperscript{137} Prop. 2016/17:222 63.  
\textsuperscript{138} Ibid (n 15) 385.  
\textsuperscript{139} Ibid (n 15) 385.  
\textsuperscript{140} Ibid 387.

The provision sets out criminal liability for anyone who subjects a person to repeated acts against the same person that are degrading, humiliating, or otherwise offensive or to exercise undue control over another person by restricting another's personal freedom of action. Criminal liability requires that the acts were likely to seriously damage the person's self-esteem. The purpose of introducing a specific offense against psychological violence is to strengthen criminal law protection in the best possible way. Psychological violence does not refer to individual events, but a relationship and an attitude that affects the self-image of the victim. It is always a question of abuse of power against the victim. The cases in which psychological violence leads to medically demonstrable effects that constitute illness within the meaning of Chapter 3. Section 5 of the Penal Code is still to be assessed as assault.\textsuperscript{139} The range of penalties ranges from imprisonment for a minimum of 14 days to imprisonment for a maximum of four years.\textsuperscript{140} This means that it does not matter whether or not the victim themselves or the perpetrator considers the acts to be degrading, humiliating, or similarly offensive, thus their perception of the behavior is irrelevant. Nor does it require any intent to offend. Criminal liability is intended to cover cases where the offender has clearly treated the victim worse than others through, for example, psychological abuse,
verbal abuse, emotional abuse, or emotional neglect. Acts that appear harmless in isolation can together form such a pattern of vulnerability and thus reach the level of punishment.

There is no specific method or planning necessary for it to be considered psychological violence. What is required is either that the acts were degrading, humiliating, or otherwise offensive or that the offender exercised undue control by restricting personal agency. The type of offense thus consists of two distinct modes of conduct, each of which is sufficient for criminal liability. What the two acts have in common is that they are actions that lead to a form of psychological suffering and mental deprivation of liberty. What happens is that the victim breaks down mentally rather than physically. The overriding protective interests are mental health and personal integrity. The offender and the victim do not have to be related, but it can be punitive if it is a relative, and if the acts are committed against both partner and child, it is to be viewed as two crimes. Criminal liability requires that the offender has committed the acts with at least an indifference intent. All forms of intent are applicable, so there is no need or requirement for the offender to have a specific motive or purpose. But, in some cases where such a motive or purpose has existed, it may affect the concrete penalty value in a more stringent direction.

3.2.1 Violent acts that can fall under the provision of psychological violence

The provision is meant to cover psychological violence and some of the behaviors included could be for example gaslighting, aggressive and condescending statements, contacting the victims' friends and spreading false rumors, embarrassing others in front of mutual friends or in public places, being treated poorly at the workplace, hearing various degrading slurs, being forced to eat cold food, going to the bathroom at certain times, being forced to wipe yourself with a dirty cloth after showering, being told that you are a whore or otherwise worth lesser and other taunts. The offender may also ridicule the victim in front of others. The victims' boundaries are crossed, and their self-esteem typically breaks down. It could also be non-criminal threatening acts threats, such as threatening to take your life if the other does something that is deemed unacceptable according to the abuser, or threats to reveal something personal or sensitive or do something unpleasant or unwelcome with a pet or the children (non-criminal). For example, refusing to take the dog out for an evening walk and thus making it impossible for one’s partner to go to AW.

Isolating the victim from friends and family, men who exploit their superiority and force women to do all housework, children being ignored, neglecting the needs of the child, or children being blamed for various problems, such as the family having poor finances and thus perhaps problems finding housing or drawn into the parents' conflicts. Favor one child over another, one child being treated “like air”, not being allowed to eat with the family or get a weekly allowance, and other

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141 Ibid 387.
142 Ibid 388.
143 Ibid 386.
144 Ibid 395.
145 Ibid 395.
146 Ibid 388.
147 Ibid 389.
148 Ibid 388.
emotional neglect of one child.\textsuperscript{149} Also non-criminal threats, for example, indicate that the child would be excluded from the family community, not remain in the home, or other reprisals. Concerning cases that are disability-related it could consist of acts that deliberately make it difficult for the other person to live their life on equal terms with others, like moving the walker away, removing the batteries from the hearing aid, or not helping with toilet visits.\textsuperscript{150}

Any form of control that interferes with a person's personal integrity and restricts everyone’s right to self-determination and freedom of action is subjected to criminal liability. It may, for example, consist of not allowing the victim to move freely, whom the victim spends time with, clothing choices, only being allowed to go to the doctor with someone else like a relative, being forced to have an abortion, monitoring someone with GPS through their phone, monitor phone calls by requiring the speakerphone to be on for all calls or monitor texts, social media or bank accounts.\textsuperscript{151} Technology can also be used for control for example to repeatedly text, call, insult, harass, blackmail, threaten, disseminate images, videos, and intimate messages, or purely spread rumors, using fake profiles to stalk the victim online, install apps to monitor the victims' whereabouts, not allowing social media or requiring passwords. Even behind, latent threats, which are not expressed, but which still would lead to the individual feeling threatened, where there is a tacit understanding of unspoken rules, and such control may be punishable under the new provision.\textsuperscript{152} Like being excluded from the family community for norm-breaking behavior for example by engaging in a sexual relationship with someone to whom they are not married, feeling forced to remain in a marriage against their will, not being allowed to socialize with friends, being forced to stay home all the time to take care of housework, being forced to come home immediately after school and not being able to participate in school trips or excursions. Not being allowed to express your opinions, choose your clothes, being in places deemed inappropriate, being prevented from studying further after compulsory school and not being able to look for work.\textsuperscript{153} There are even cases where undue control is exercised where the context is so obvious that no threats or even implied threats need to be expressed because the pressure is so strong anyway where the individual freedom of action is restricted for example being forced to maintain honor standards within families. So-called post-violence can also affect a person's lifestyle patterns and mean that the perpetrator exercises undue control by restricting personal freedom of action.\textsuperscript{154}

For example, the offender may stay at a previously vulnerable partner's home or workplace, drive a car back and forth outside the home, look through the windows, appear in places where the victim usually is, or follow the victim. Financial control can take the form of preventing the victim from looking for work or participating in work, taking complete control of the other's finances, or simply pouring out pocket money. It can also be to force or manipulate the victim to apply for loans, which in the long run can lead to over-indebtedness. Control with intent to harm or to gain oneself, for example, financial advantage would normally be inappropriate, as would if the victim's children or pets were exploited as part of the exercise of control.\textsuperscript{155} The acts must together form an abusive or controlling pattern of actions and it must be a question of actions that mean that the victim lives

\textsuperscript{149} Ibid 389.
\textsuperscript{150} Ibid 389.
\textsuperscript{151} Ibid 390.
\textsuperscript{152} Ibid. 391.
\textsuperscript{153} Ibid 391.
\textsuperscript{154} Ibid 391.
\textsuperscript{155} Ibid 392.
under what can be described as a violent regime. In this assessment, it is important what type of acts are involved, their intensity, and how they relate to each other in terms of time. However, it does not have to be the same type of deed. The number of occasions that must be present for repeated acts must be assessed on the basis of the nature of the acts. The more serious the individual acts, the fewer it takes to constitute repeated acts. The acts must have been carried out over a certain period of time. Relatively milder control or less abusive acts used consistently and over a long period of time, can have as intrusive an effect on the victim's life situation as more serious acts over a shorter period of time. One thing that should also be considered is vulnerability as that could make the person sensitive to both abusive patterns of action and undue control, for example, if a person has previously been abused, or if a sibling has previously been forced into marriage, or subjected to conversion attempts, or lacks networks outside the family, or one who does not master the language or lacks knowledge of the country's laws. Such circumstances as those mentioned above may therefore affect the assessment of whether an abusive pattern of conduct in the individual case is likely to lead to serious damage to self-esteem.

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156 Ibid 393.
157 Ibid 394.
4 Analysis

This paper has examined the obligations of states to protect women from domestic violence in the form of psychological violence which goes under Article 1 of the ECHR with a duty to protect every person within a state’s jurisdiction and this includes the protection of the right to private and family life in accordance with Article 8. 158 Men’s violence against women can come in different forms and is considered a worldwide societal problem. 159 It is clear that there is a common goal to combat this widespread problem in society. To do this, there need to be an understanding of the issue and implement proper legal provision criminalizing abusive behaviors. 160

According to the Istanbul Convention violence against women is seen as a violation of human rights and a form of gender-based discrimination, regardless of if the acts occur in the public or private sphere. 161 Psychological violence is one of the main components of domestic violence and states must take necessary measures to criminalize intentional acts of seriously impairing a person’s psychological integrity through coercion or threats. 162 Even though Article 8 ECHR’s essential object was a negative obligation to protect individuals from the state, there is also a positive obligation to protect its individuals from other individuals – even in the private sphere, and make sure there exists proper legal protection in order to do so. 163 The Court has also acknowledged the issue of domestic violence as a general problem, and that it can take various forms including psychological violence or verbal abuse. 164

States also have an obligation to enforce proper measures designed to protect victims of domestic violence, this could mean weighing the balance between the protective interests appropriately, in a timely manner, and as a whole. The domestic authorities need to take into consideration all relevant factors of the case, in its context. States also need to consider the seriousness of domestic violence and ensure proper protection. 165 In regard to cases concerning domestic violence, states have an obligation to make sure that certain acts are criminalized and protect their inhabitants against other individuals even in the private sphere. According to case law, they have an obligation to intervene in cases that affect the physical and moral integrity of an individual, and that all forms of domestic violence should be dealt with. 166 The court has mentioned psychological violence, digital violence, or verbal abuse as a form of domestic violence, which means that this might be included in cases in the future.

The Court has also stressed that domestic authorities need to take into consideration the various forms that domestic violence could take. This could be in the forms of cyberviolence, harassment, stalking, controlling behavior, threats, invasion of privacy, and the need to address these acts as a whole. States have therefore an obligation to carry out an effective investigation regarding

158 See section 2.2.
159 See section 1.1.
160 See section 1.1.
161 See section 2.1; subchapter 2.1.1.
162 See section 2.1; subchapter 2.1.2.
163 See section 2.2.
164 See section 2.2.
165 See section 2.3.
166 See section 2.3; subchapter 2.3.1.
allegations of domestic violence to protect against serious abuse.\textsuperscript{167} This could be interpreted that there isn't a need for physical requirements for it to be considered a violation of the convention and women's rights. All forms of domestic violence should be adequately protected, to be able to ensure equality in the private sphere between the sexes. Even such acts that are targeting the victim's self-esteem, self-worth, and psychological integrity. Sweden has ratified both the Istanbul Convention and ECHR and therefore is bound by consent.\textsuperscript{168} Judgments of the EctHR might only legally bind the states concerned in the case, but it is also considered to 'elucidate, safeguard and develop the rules instituted by the Convention' and raise the standards of protection and extending human rights.\textsuperscript{169} This means that case law from the ECtHR can work as a tool to develop the rules instituted by the Convention. States can, therefore, need to oblige with the Court's decisions. This can be seen as necessary since our knowledge of domestic violence expands and evolves over time to properly follow through on its positive obligations to protect individuals from other individuals. This includes verbal abuse, psychological abuse, threats, coercive control, or technological.\textsuperscript{170}

At the present time in place, there is no specific criminal provision in the Swedish criminal code criminalizing psychological violence.\textsuperscript{171} This form of violence is not just constituting one act, or several criminal acts put together but a consistent behavior gaining power and control over someone through coercive control and threats as one of the main components of psychological violence. The criminal provisions in the legal system are aimed at already existing criminal acts, that put together could constitute, for example, a violation of integrity or unlawful harassment. It is true that assault, violation of integrity, unlawful harassment, unlawful threats, unlawful coercion, and molestation could include acts of intentional conduct that seriously impair a person's psychological integrity, but these are one or more incidents.\textsuperscript{172} Violations of integrity consist of different acts of crime already criminalized, while psychological violence is a prolonged form of violence with more of a consistent nature. The provision on assault could include more serious forms of psychological violence but there is no specifically drawn line and no cases to use as guidance. Probably one reason why it’s not brought up under the provision. Since the ECtHR has mentioned psychological violence as one of the forms of domestic violence and stressed the need to combat/counteract all forms of domestic violence, it could be interpreted to include a special provision on these kinds of violence and eventually, maybe this will be addressed in its case law. But for now, it is needed that the domestic authorities can interpret the situation as a whole to detect these kinds of violent acts and properly protect women in the private sphere. To sufficiently do so, it is necessary to adopt a new penal law on psychological violence in Sweden since the present criminal code is not adequate to address this issue.\textsuperscript{173}

There are several arguments that would indicate that Sweden should expand the legislation on psychological violence. For one men's violence against women is considered to be a violation of women’s human rights and a huge obstacle in gender equality work. The damage to women’s well-being, and physical and psychological health is severe and can be long-term which makes it a complex societal problem in need of interference on a political level to implement the laws

\textsuperscript{167} See section 2.3; subchapter 2.3.1.  
\textsuperscript{168} See section 2.1; see section 2.3.  
\textsuperscript{169} See section 1.3.  
\textsuperscript{170} See section 2.1.  
\textsuperscript{171} See section 1.1.  
\textsuperscript{172} See section 3.1; subchapters.  
\textsuperscript{173} See section 3.1; subchapters.
necessary to combat this ongoing issue. Therefore, it is necessary to criminalize certain acts as a means to be able to combat this type of violence even if it happens in the private sphere. The damage can be huge not only for women who experience this kind of violence but also for children and society as a whole.\textsuperscript{174} Since the ECtHR has been a driving force in the works for equality, gender-based discrimination, and women’s human rights and an inspiration to the Istanbul Convention, and as Sweden ratified both the ECHR and the Istanbul Convention, they are bound to ensure that proper legislation is available to its inhabitants.\textsuperscript{175}

The new criminal provision would meet the requirements in Article 8 ECHR according to the judgments from the ECtHR. But since it is not in force at the moment it is hard to tell how it would work in practice. However, it is clear that it is intended to cover all the acts of psychological violence and the power imbalances between men and women.\textsuperscript{176} The provision includes all the acts that would constitute what can define as psychological violence. For example, emotional neglect, threats that are non-criminal but could indicate that the person would be excluded from the family community if it were to pursue a certain relationship or acted in a way that would be considered norm breaking. This is a form of control that interferes with a person’s personal integrity and restricts each person’s right to self-determination and freedom of action and therefore subjected to criminal liability under the provision. Also included in the provision is technology facilitated abuse, such as blackmail, leaking intimate photos, spreading rumors online, or stalking the victim through the phone’s GPS. Another form of control is to not being able to choose your clothes, going places, pursue goals and dreams such as education or work choices and isolating the victim from family and friends among others.\textsuperscript{177} This provision would therefore be sufficient as it is protecting the person against all forms of psychological violence and personal integrity in accordance with Article 8.\textsuperscript{178}

\textsuperscript{174} See section 1.1.
\textsuperscript{175} See section 2.1; see section 2.2.
\textsuperscript{176} See section 3.2.
\textsuperscript{177} See section 3.2.1.
\textsuperscript{178} See section 2.1.
5 Conclusion

The European Court of Human Rights has expressed the need to combat all forms of domestic violence, and this includes psychological violence, which can also occur in the digital arena as well as in real life in person. There is as much as 43% of women in the EU have experienced some form of psychological violence by an intimate partner and it can have a huge impact and devastating effects on the victims’ health, self-esteem, and self-worth. This is a strong and clear reason that it must be dealt with and combat all forms of domestic violence including psychological violence. Since there is no criminal provision against psychological violence in the Swedish Criminal Code at the moment, therefore, this new provision must come into force, to adequately protect women and girls, as it is clear that the damage can be huge and that it causes a lot of suffering for not only women who experience this kind of violence but children as well and society as a whole.

Psychological violence is the most common form of violence and a part of the process. There are several acts included in psychological violence and the main components are about power and control through isolating and monitoring the victim. Even if there are several provisions today that could include some of the acts included in psychological violence it is still not enough and a lot of the time this kind of violence falls outside of the provisions. This means that there is no protection for psychological violence in Sweden’s criminal code as of today, but it might be in the near future. Criminalizing psychological violence would send a clear message that these kinds of violence are not accepted in our society, and in doing so it would contribute to Sweden’s gender equality policy. Since Sweden has ratified the Istanbul Convention, which clearly defines psychological violence as one of the forms of domestic violence it is necessary to make sure that proper legislation exists in the Swedish criminal code. Sweden has also ratified the ECHR and even though it can’t be bound by the ECTHR judgments in cases where they are not involved, it can still be seen as a means to evolve how Article 8 should be interpreted and what is included in states' positive obligations to protect its inhabitants. It is also a means to evolve human rights.

The new penal law proposed in Sweden is formulated as directed at a person, which is different from violations of integrity that specifically mention someone close. The consequences of this kind of violence can be severe and are an attack on the victim's self-esteem and self-worth. The focus up to date has mainly been on the physical (visible) violence and left out the psychological violence. This new penal law might also help get to the root of the problem before it gets to physical violence. There is also no adequate help for women who experienced abuse. By not criminalizing psychological violence men can continue with their abuse and get away with it. Women need to be protected by law at this point as it is an ongoing issue. Since it is already hard for women to leave the perpetrator, it is much harder when society and the domestic authorities cannot act to protect her. This could also lead to a wider perspective of the subject and society's willingness to stand up for this kind of violence and easier for women to get proper help.

This thesis and its research questions have been able to be answered throughout its course. However, since the new proposal is not in force yet, there is no existing case law from the Swedish courts concerning how it works in practice, or how the judges decide in the different cases. This means that it is necessary to look at it in future research as it would be good to examine the law in practice.
This paper concludes with the following remarks. Men's violence against women is an ongoing worldwide complex social problem, also known as a violation of women's human rights and a public health problem. Since psychological violence is a tool to exercise power and control over a victim and there is no proper protection in the Swedish legal system for this kind of violence as of today, and as the ECtHR has expressed the necessity to combat all forms of domestic violence including psychological and digital violence, it is absolutely necessary and this new proposal to criminalize psychological violence would fill this gap.
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