

**TEN POINTS OF LIGHT: AN INTERNATIONAL DEBATE ON HUMAN RIGHTS
PRIVACY PROTECTIONS TO PREVENT HUMAN INTERFERENCE
vs. DATA INTERFERENCE**

**Hosted by The Ved Nanda Center of International and Comparative Law
at the University of Denver Sturm College of Law
in conjunction with MYCY Radio “Emerging Voices”
in the UN Buffer Zone, Nicosia, Cyprus**

April 15, 2016

PREFACE

Ten transnational, multidisciplinary human rights legal scholars and researchers, medical and social sciences professionals explore tension in their nation over the power struggle for equal human rights privacy protections compared with recent protections to prevent abuse from unwanted data interference in cyberspace. The Proceeding Panelist Papers provide a narrow overview of current relevant law affecting abused women's international and national privacy rights and protections and a broad overview of recent applications of privacy law revealed by social and societal outcomes. The focal point of the Panelist Papers is intended first for policy makers and legislators to understand better their vital role to acknowledge the growing competition between human and data stakeholders for greater privacy rights and protections to prevent interference, human-human vs. data-human; and second, to fill the gap by creating better laws with civil remedies which effectuate adequate legal protections of privacy, especially for abused women, and long before violence erupts.

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INTRODUCTION

On April 15, 2016, a 60 minute transnational teleconference was conducted via SKYPE by ten multi-disciplinary, legal and medical, social science and non-governmental organization professionals who debated varying privacy rights and protections depending on how their nation define abuse. Panelists defined abuse as a silent form of privacy interference and a modern phenomenon that exists in a myriad of non-violent forms, like data interference. Panelist's explained and summarized how global tolerance of abuse adversely and disproportionately affects women, and why national tolerance of non-violent forms of abuse create a tension in the power struggle for legal privacy protections to prevent human-human interference vs. data-human interference. From their varying perspectives, Panelists define abuse as a common point where they intersect to play a vital role as professionals able to inform law makers how to create better laws which effectively fill the gap that allows unlawful, human-human and data-human interference of privacy to persist. This panel debate was broadcast simultaneously via MYCY Radio in the UN Buffer Zone, Cyprus and later presented for the Ten Points of Light event at the University of Denver Sturm College of Law.

Ten Points of Light is accredited by the Colorado Supreme Court for 1 General Continuing Education Credit and is available online via The Ved Nanda Center for International and Comparative Law at the University of Denver Sturm College of Law and One Woman At A Time (OWAAT) at www.owaat-cy.com.

On behalf of the Ten Points of Light Panel, I wish to thank the following individuals for hosting and facilitating this highly technical, international radio broadcast and Live event: Ved Nanda and Anne Aguirre, The Ved Nanda Center for International and Comparative Law at the University of Denver Sturm College of Law; Jessica Hogan and Wayne Rust, Information Technology Department Staff, University of Denver Sturm College of Law; Christina Demetriades, MYCY Producer and Host, "Emerging Voices", U.N. Buffer Zone, Cyprus; Magda Zenon and Natalie Konyalian, MYCY Radio Studio Producers, "Emerging Voices" Facilitators, U.N. Buffer Zone, Cyprus.

- Patricia M. Martin, Attorney At Law, P.C., Ten Points of Light Panel Chair
U.S. Fulbright Scholar to Cyprus 2014-2015
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PROCEEDINGS PANELIST PAPERS

I. Privacy Rights In An International Peacekeeping Zone

1. Has “The UN Buffer-Zone” Protected Citizens From Non-violent, Non-physical Abuse?

Christina Demetriades, “Emerging Voices” Producer
MYCY Radio Studio, UN Buffer Zone

Hello! I am Christina Demetriades, the regular host of ‘Emerging Voices’ on MYCYradio, broadcasting from the UN Buffer Zone at Ledra Palace, Nicosia, Cyprus. Thank you, dear Magda Zenon, for filling in for me today as I couldn’t be in the studio with our esteemed guests.

MYCYradio is literally situated in a ‘no-contact’ UN buffer zone, a ‘dead’ belt that cuts across the island of Cyprus, separating the Greek-Cypriot and Turkish-Cypriot communities for more than 40 years now. This buffer zone has been long monitored by the UN so as to avert a violent outbreak between these 2 communities, following the war and the invasion of Turkey in 1974.

There is a powerful symbolism to this UN Buffer Zone, in that this is a ‘no contact’ zone, a ceasefire, a ‘no violence’ zone. As such, the OWAAT project has come to provide a ‘buffer zone’ to abused women, empowering them to claim at court their human right to privacy and to secure emergency no-contact orders, when they feel their lives are being threatened.

Welcoming the OWAAT project to “Emerging Voices” for the third time today, we are excited to watch OWAAT’s progress and we are happy to see it ripple its benefits to other communities around the globe. When “Emerging Voices” first hosted Patricia Martin and members of the OWAAT team, including the University of Nicosia Law Clinic programme, in October 2014, they shared with us their vision of simplifying to an impressive extent the method by which abused women could claim from a court of justice the right to no contact by their abuser, and doing this without the help of a lawyer!

Back in the studio in April 2015, Patricia and OWAAT joined “Emerging Voices” for a second time, together with one of their collaborator NGOs that work with abused women. This was indicative of the significant network of support that OWAAT managed to build in support of these women. This network is important in helping abused women to feel safe and empowered

to take action. In fact, OWAAT brought together an amazing array of professionals who believe in empowering women, in social justice and gender justice, and who are ready to offer their expertise to make this happen. OWAAT has revolutionized access to justice in Cyprus and holds promising potential for the end of women's silent domestic abuse.

Abuse transcends social strata – it can happen to the poorest or the richest individuals (mostly women), anywhere in the world. So this project sets a pioneering precedent to be followed in other communities where the judicial system can be improved in service of the citizens. As such, and by promoting gender equality socially and culturally in the long term, the OWAAT initiative is a catalyst for positive social transformation.

This project has become much more than a project, it has evolved into a movement for raising consciousness, for educating domestically abused women about their human rights and for showing them how to claim them from their local courts, themselves.

The OWAAT website, a free-access tool to anyone for self-help, simplified fill-in-the-blank application forms to no-contact, is available in English and in Greek and it's being translated into Russian and Arabic by volunteers. We can only imagine the potential this holds for so many abused women all over the world.

Not surprisingly, OWAAT was selected by Stephanie Williams, co-chair of the American Bar Association International Human Rights Committee as one of the top 16 Global Human Rights Causes To Support in 2016!

Closing, I would like to warmly thank Patricia Martin once again for being the soul of this revolutionary positive change, as well as the Denver University Sturm College of Law and the prestigious Ved Nanda Center for International and Comparative Law for organizing and hosting this Summit.

II. Privacy Rights and Protections In The U.S. and The Role of Congress

1. Has “Apple” Law Eclipsed Human-Human Privacy Rights Law?

Patricia M. Martin, Attorney At Law, P.C.

U. S. Fulbright Scholar to Cyprus, 2014-2015, Ten Points of Light Panel Chair
Denver, Colorado USA

All violence against women is abuse. All abuse is an interference of the privacy right to be left alone – no contact.

Today, before Congress 8,999 bills¹ and resolutions await a hearing; only 1 Bill aims to prevent abuse against American women; the Zero Tolerance for Domestic Abusers Act.² Introduced July 2015. No hearing is set. It has a 3% chance of enactment.³

Last March, The House Judiciary Committee held an impromptu hearing on Apple Corps federal right to privacy claim for all Apple’s cell phone consumers.⁴

A week later, House Bill “Protect Our Devices Act of 2016”⁵ was introduced. Apple’s privacy claim immediately caused a Congressional debate on interference of privacy versus protection of national security.

The issue wasn’t really over a Court Order for Apple to disable a function on one Iphone for the FBI investigations after San Bernardino shooters killed 14 innocent people and injured 24

¹ www.govtrack.us/, as of April 15, 2016.

² www.govtrack.us/ H.R. 3130: Zero Tolerance for Domestic Abusers Act. Introduced: Jul 21, 2015. Status: Referred to Committee on Jul 21, 2015.

³ www.govtrack.us/ H.R. 3130: Zero Tolerance for Domestic Abusers Act.

⁴ See at <https://judiciary.house.gov/hearing/the-encryption-tightrope-balancing-americans-security-and-privacy/>

⁵ www.govtrack.us/ H.R. 4839: Protect Our Devices Act of 2016. Introduced: Mar 22, 2016. Status: Referred to Committee on Mar 22, 2016.

others last December⁶ because the FBI has cracked iPhone encryptions before to solve big crimes, sometimes with Apple's help. This time Apple said "No."⁷

So is it fair trade between Congress and Apple to give Apple cell phone consumers more privacy rights by giving Americans, mostly women abused by cell phone consumers, less privacy rights?

Analysts call Apple "THE most profitable company in the S&P 500 with \$525 billion market cap."⁸ By stark comparison, in 2015, abused women cost Americans over \$8.3 billion per year; most are poor; can't afford attorneys⁹, as over 85% of interstate trafficking sex crimes affect abused women.¹⁰

But, women have that fact to trade with Congress to create better federal civil protections laws necessary to prevent abuse by abusive cell phone texters, like Cherelle Baldwin's ex-boyfriend she killed in self-defense the day he texted her, "doa status".¹¹ Baldwin had a civil protection order; it didn't work.

⁶ United States District Court For The Central District of California, In The Matter Of The Search Of An Apple iPhone Seized During The Execution Of A Search Warrant Of A Black Lexis 1S300 California License Plate, 35KGD203, Case # ED 15-045 1M Order Compelling Apple Inc. To Assist Agents In Search; *see at* <https://www.wired.com/2016/02/magistrate-orders-apple-to-help-fbi-hack-phone-of-san-bernardino-shooter/>.

⁷ *See at* <http://dailyfreepress.com/2016/04/14/apple-objects-to-order-to-assist-fbi/>.

⁸ Paul Ausick, Apple Most Profitable Company on Earth. Oct. 25, '15, Apple Most Profitable Company on Earth - Apple Inc. (NASDAQ:AAPL) - 24/7 Wall St., *see at* <http://247wallst.com/technology-3/2015/10/25/apple-most-profitable-company-on-earth/#ixzz47ASHOcNB>.

⁹ Mary Rothwell Davis, Dorchen A. Leidholdt, Charlotte A. Watson, Ed., Lawyer's Manual on Domestic Violence; Representing the Victim, 6 Ed (2015); *see at* https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=9&cad=rja&uact=8&ved=0ahUKEwif2vfzwrLMAhWGRCYKHRXBC6wQFghRMAg&url=https%3A%2F%2Fwww.nycourts.gov%2Fip%2Fwomeninthecourts%2Fpdfs%2FDV-Lawyers-Manual-Book.pdf&usq=AFQjCNGAD3yqroLSqwdjax1sDJxxDmJ_8Q&sig2=8gR0EmsQ1cliwCn5gM8fRA&bvm=bv.120853415,d.eWE.

¹⁰ Bureau of Justice Characteristics of Suspected Human ...www.bjs.gov/content/pub/.../cshti0810pr.cfm, Bureau of Justice Statistics, Apr 28, '11, stating "94% are female; see also Polaris Project, Human Trafficking Statistics 2010, stating 80% are women; *see also* 55 Little Known Facts about Human Trafficking, Jan 2, '11, *see at* www.facts.randomhistory.com/human-trafficking-facts.html.

¹¹ *See* <https://www.everipedia.com/cherelle-baldwin/>
www.democracynow.org/2016/3/31/breaking_cherelle_baldwin_not_guilty_in, Mar. 30, '16.

Abused women today are “on their own” vying for stronger enforcement of civil action privacy protections they can afford to access, and that work. While millions of poor abused women are ignored when the wolf is at their door,¹² Apple “cried wolf” once, and the U.S. House Judiciary Committee jumped to protect Apple’s presumption of federal privacy rights.¹³

In 2000, the U.S. Supreme Court in *U.S. v. Morrison*¹⁴ found “violence against women has no significant affect on interstate commerce.”¹⁵ In a 5-4 decision, the Court held unconstitutional the Violence Against Women’s Act of 1994¹⁶ (VAWA). When the Court cored out a part of VAWA, it was the heart part, where Congress granted women violence victims a right to file federal civil actions in federal courts and sue violators for money damages, plus attorney fees and costs.¹⁷

Interstate human trafficking was then,¹⁸ and still is a crime of violence against mostly women; a multi-billion dollar industry by off-the-radar operators who cross interstate lines every day, mostly via encrypted cell phones, like Apple’s.¹⁹ The iPhone wasn’t invented until 2007. Times have changed since 2000 when the Court cored out the heart of VAWA.

Apple, a rich corporation of shareholders, and abused women, millions of poor American citizens, stand at opposite ends of the economic spectrum. But, both have an equal stake that is

¹² Amy Goodman / Syndicated Columnist, Albuquerque Journal, revictimizes some domestic abuse victims, April 9th, 2016; see at <http://www.abqjournal.com/754112/opinion/system-revictimizes-some-domestic-abuse-victims.html>.

¹³ *Supra*. n. 4

¹⁴ *U.S. v. Morrison*, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658, 2000.

¹⁵ *Morrison* at 598, 613, stating “Gender-motivated crimes of violence are not, *in any sense of the phrase*, economic activity.” (Emphasis added.)

¹⁶ *Morrison* at 607.

¹⁷ *Id.* at 605; cf. 42 U. S. C. § 13981(b) & (c) The Violence Against Women Act of 1994 (VAWA) Pub.L. 103–322; 42 USC § 13701 Violence Against Women’s Reauthorization Act of 2013 Pub.L. 113–4.

¹⁸ Amanda Walker-Rodriguez and Rodney Hill, Human Sex Trafficking Federal Bureau of Investigation, Mar. ‘11 Report, stating “Not only is human sex trafficking slavery but it is big business. It is the fastest-growing business of organized crime and the third-largest criminal enterprise in the world.”

¹⁹ Mark Latonero, Ph.D., Investigator, The Rise of Cell Phones in Human Trafficking, Technology in Human Trafficking, USC Center on Communication, Leadership and Policy, 2015 Report, see at <http://technologyandtrafficking.usc.edu/the-rise-of-mobile-phones-in-human-trafficking/>.

a significant affect on interstate commerce – enough for Congress to use its exclusive power again to grant abused women the same civil right of access to federal courts and remedies as Apple.

Iphone encryptions get cracked by cops daily. So Congress should get cracking now and put the teeth back into VAWA²⁰, at least for sex trafficked women whose state privacy tort claims vary and winners don't get attorney's fees and costs.

The Victims of Trafficking and Violence Act of 2000, as amended,²¹ is tied to VAWA²², but neither federal law affords abused women access to a federal civil action right and remedies for compensatory damages to protect their privacy rights from abuse via encrypted cell phone consumers. As Cherelle Baldwin knows, civil protection orders aren't enough.²³

In conclusion, Congress should not allow one Iphone to eclipse protections for millions of abused women's privacy right to no contact.

²⁰ 42 USC § 13701; *see also* 22 USC 7101. The Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386), the Trafficking Victims Protection Reauthorization Act of 2003 (H.R. 2620), the Trafficking Victims Protection Reauthorization Act of 2005 (H.R. 972), and the Trafficking Victims Protection Reauthorization Act of 2008 (H.R. 7311).

²¹ The Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386)

²² Trafficking Victims Protection Reauthorization Act of 2013 which was passed as an amendment to the Violence Against Women Act; *see also* Violence Against Women's Reauthorization Act of 2013, P.L. 113-4, Title XII—Trafficking Victims Protection Subtitle A—Combating International Trafficking in Person, §§ 1201, - 1203.

²³ *See* Jessica Lenahan (Gonzales) v. U.S.A., Case No. 12.626, Inter-Am. C.H.R., Report No. 80/11 (2011); *see also* *Castle Rock v. Gonzales*, 545 U.S. 748 (2005), where United States Supreme Court case in which the Court ruled, 7-2, that a town and its police department could not be sued under 42 U.S.C. § 1983 for failing to enforce a restraining order, which had led to the murder of a woman's three children by her estranged husband.

III. Privacy Law and Protections In The EU and The Role of the State

1. Has Google-Humans Trumped Human-Human Privacy Rights?

Dr. Aristoteles Constantinides, Assistant Professor of International Law
University of Cyprus, Nicosia, Cyprus

The panel revolves around the proper scope of the human right to privacy and whether the scope of the right does include, may include or should include protection from unwanted contact against women that does not amount to physical violence.

My task is to approach this question by reference to a landmark decision that was issued by the Court of Justice of the European Union in May 2014 in the case of Google Spain. That case concerned the claim by a Spanish man that some pages originally published in 1998 in a Spanish newspaper (and later republished on the internet) should be removed by the newspaper and by Google because they infringed his right to privacy by disclosing information about him that was no longer relevant to his situation.

The Court ruled that Google has to remove the links to those pages from its index. The Court thus held that in EU countries there is a "right to be forgotten", which applies specifically to search engines, and that people can therefore ask to be removed from – at least some – search indexes.

Can this ruling apply by analogy or in any other manner to non-violent abuse against women? Technically speaking, my answer would be in the negative. The reason is that in that judgment, the Court interpreted an EU Directive that specifically dealt with data protection. In particular, the Court decided that Google is a "data controller" within the meaning of the EU data protection directive; and "Data controllers" in the EU have special obligations, including the responsibility to remove data that is "inadequate, irrelevant or no longer relevant". Thus, in my understanding, in a technical sense this ruling cannot provide a precedent for protection outside the Directive's field of application. Put differently, *under EU law*, analogous protection for women from unwanted contact would require either some separate EU piece of legislation – such as the adoption of another Directive, specifically devoted to the field of women's rights – or the interpretation of a legal instrument devoted to human rights, which can then be applicable to our scenario. There can be no automatic or analogous extension of the protection under the Data Protection Directive to other fields that fall outside its scope.

Having said that, the ruling has arguably enriched the normative arsenal towards extending the scope of the right to private life under *international human rights law*. And to this I now turn.

For the purposes of our panel, the question is: does the scope of protection of the right to privacy cover the right of women to be free from unwanted contact by other individuals that does not amount to physical violence? I will approach this question from two angles.

The first angle is: who bears the obligation to respect the right to private life? And the second is: what is the substantive scope of the right to private life; does it include non-physical, non-violent abuses?

Starting with the first aspect: who bears the obligation to respect the right to private life? The answer here is: first and foremost, it is the state and all state organs. Human rights law has in principle vertical effect; that is, the obligations to respect, protect and fulfill the rights of individuals fall on the state and its organs. Yet, in some jurisdictions, most notably in a number of European countries, there seems to be space for horizontal application of human rights; the so-called third-party effect. This means that private individuals can, under certain circumstances, invoke direct application of constitutional human rights provisions against other private individuals. Importantly, Cyprus can be considered to be one of these countries, following a landmark decision issued by the Supreme Court of Cyprus in 2001 in the case of *Yiallouros v. Nicolaou*. This is well-known in Cyprus as a case of horizontal application of constitutionally guaranteed human rights. Importantly, that case was about the right to privacy and involved the telephone tapping of an individual by another individual. Can that judicial precedent be applied in the case of non-violent abuse against women? I think the case can certainly be made, but of course much depends on the facts of a particular case, the way it will be argued before the court as well as the bench that will decide it.

In any case, to avoid any judicial misgivings, there is an easier and more direct way things can be done. Cyprus, like any other state, can well legislate to specifically prohibit non-violent abuse against women that go beyond domestic violence or other forms of physical abuse. Cyprus has already adopted legislation against sexual harassment in the work place and generally follows legal developments in Europe. It is not a pioneer in that respect but it has a good record of following suit. There is nothing prohibiting a state from legislating to strengthen protection of women from non-violent non-physical abuse. In fact, recent decisions by the European Court of

Human Rights, to which other panelists have referred, as well as the ruling of the Court of Justice of the EU to which I referred earlier point to the direction of strengthening the right to privacy, which will only make it easier to expand the relevant legislative and judicial protection for women.

2. Has “Access To Court For Women Victims of Violence-Harassment” Worked?

Dr. Anna Plevri, Attorney, Lecturer, Department of Law
University of Nicosia, Cyprus

Domestic violence, violence against women and abuse in general are actually "hidden crimes".

In Cyprus, victims of domestic violence are 80% women. Under Cypriot law, there are provisions regarding domestic violence in the Law 119 (I) of 2000. In article 3 of the above law there is a definition of “violence”. The Council of Europe Convention on preventing and repression violence against women and domestic violence signed in Istanbul on 2011.

Cyprus has recently signed the Convention on June of 2015, but has not yet ratified or enacted it. The ratification of the Convention by a Member State means the incorporation of the Convention into the national law of that State and furthermore the need of establishment of new or changing existing structures in order the provisions of the Convention to be implemented.

Under the Convention, "violence against women" is understood as a violation of human rights, and a form of discrimination against women means all acts of a gender violence that have resulted or may result in, physical, sexual, psychological or economic harm or suffering to women, including threats to commit such acts, pressure or deprivation of freedom, whether in public or private life.

Cyprus, as a member state of the United Nations and in the spirit and guiding principles of the Convention of Istanbul, has undertaken commitments for achieving the victim's access to justice by promoting awareness of their rights and available legal remedies and effective accessibility to justice.

When it comes to “Access to court for women Victims of Violence or Harassment” issue, I would like to emphasize the following points: It is well known that in Cyprus there is no prohibition on self-representation in court. So, it is possible for a person to become self-represented litigant in court. There is also no prohibition on submitting personally an application for judicial protection.

The right to become self-represented litigant in court and the right to personally submit the application to the competent Court for judicial protection is of a great importance, especially in cases of abused women.

Even though in Cyprus there is no prohibition on self-representation in court, unfortunately the fact is that women are being denied rights by court's clerk registry to file themselves for divorce, restraining orders etc., if they haven't used specific forms which are provided from the clerk registry. This one is a discrimination and violation of the right of access to court for women who are victims of violence or harassment. Attorneys should not be granted special rights over self-represented women litigants, when attorney's in Cyprus do not always use forms from the court to make court filings.

These important but unpleasant facts have been recently reported by me to the Cypriot Ministry of Justice, since no law in Cyprus supports this conduct at the court house by court registrars and no law in Cyprus states that only the forms a court clerk provides may be filed.

Furthermore, in my report to the Ministry of Justice, I have suggested as highly useful to lead abused women through its website and /or through the Court services or through the Prosecutor's Office in order women, a) to be aware of their human and civil rights, b) to know how to represent themselves in court, c) how to self-help, and d) how to apply to restrictive orders based on the protection of fundamental human rights of access to justice, human dignity and protection of rights and legal relationships.

Under these conditions, I strongly believe and recommended to the Cypriot Ministry of Justice to adopt relative legislation and specifically the right of a person, as an abused woman or man to represent herself/himself in court, to become self-represented litigant and to be given the possibility to request restraining order.

This will prevent (further) abuse and further violations of the human right to access justice. In addition this goal can be achieved by the legislative recognition that this person has the right to fill by hand concrete forms available both in print and electronically by the competent court and / or the Ministry of Justice and / or by other bodies and the person will submit these forms to the competent Court.

In conclusion, I suggest that there should be an explicit legislation in Cyprus concerning this matter and that the Ministry of Justice should encourage the Courts of Cyprus to provide printed as well as online "Forms of Self-help" and completing instructions to those who have suffered any form of violence and require relevant help, even if there is no physical evidence of violence. Victims should be able to print out, complete, sign and submit these forms electronically or by hand in any competent court of Cyprus.

3. Has Property Trumped Human Privacy Right Protection Order Enforcement?

Dr. Athanasia Hadjigeorgiou, Professor of International Human Rights Law
University of Central Lancashire, UK at UCLAN, Cyprus

How does your nation define abuse and the right of an abused wife to have exclusive use of the matrimonial home under Cypriot Law? In answering the question we have been set, I start from the premise that the most accurate way of describing how Cyprus has defined abuse is by examining how it has responded to it. What I will be focusing on in particular is the way and extent to which Cyprus has protected the family home of a woman who has been abused by her husband. Essentially, the question we are faced with in such cases is the following: What protections does the state provide to a woman who has been either physically or verbally abused by her husband, whom she is currently sharing the matrimonial home with?

At a first glance, the state seems to be offering adequate protections to the abused wife. As soon as the woman files for divorce in the Cypriot family courts, she is entitled to submit an application for exclusive use of the matrimonial home. All she has to prove in her application is that she or her children are in some danger of violence, whether physical or verbal. It is not necessary for her to have complained about her husband to the police before she filed for divorce. And, it is also not necessary for him to have a violent criminal record (although, of course, if such factors are present, they are supporting evidence of the woman's application). This application is treated by the family courts as urgent and, when successful, the order requiring the husband to leave the matrimonial home is granted almost immediately.

Nevertheless, this legal protection from abusive husbands and fathers suffers from two significant drawbacks. The first is that the Court's order requiring the husband to stay away from the matrimonial home only has effect until the issuance of the divorce. Cypriot law states that the parties have up to the three years from the time the divorce is issued to start the process of dividing up their common assets. Thus, if the matrimonial home is jointly owned by the now ex-husband and wife and even in cases of abuse where an order for exclusive use has been made, the man is entitled to return to the house as soon as the divorce has been finalised. Then, he can remain there until either the parties or the Court decide, sometimes years later who should have exclusive ownership of the property.

What this means in practice is that the issuance of the divorce essentially forces the abused woman who is concerned about her well-being to abandon her home. Rather paradoxically, she remains safer if she stays married to him.

The second hurdle that prevents abused women from having exclusive use of the matrimonial home is a presumption adopted by the family courts. If the woman who has been abused decides to temporarily leave the matrimonial home in order to protect herself, she has to go to a particular safe house that the state has established for such cases. If she doesn't, and decides instead to go to her parents' house for example, the Court's presumption is that she left her husband and her matrimonial home for other reasons. Now, the burden of proof shifts to her who has to convince the Court that the reason she left in the first place is her husband's abusive behaviour. Problematically, if she fails to prove that, she also loses the right to have exclusive use of the matrimonial home, because by leaving it she sent the message that she doesn't want it anymore. The effects of this presumption become even more unfair when one considers that there is only one such safe house in the whole of the country, and its existence is not well-known among laypeople.

Ultimately, protections for the exclusive use of the matrimonial home are available to women who have been abused in Cyprus. It is necessary however, to revisit the two main problems of the law applied by the family courts in order to ensure the woman's consistent protection by the state for however long she needs it.

It is only by taking such action that the Cypriot state will be completely in line with its legal obligations under the European Convention of Human Rights.

4. Has ECtHR Defined Privacy Rights Protections When Abuse Is “Impossible To Prove?”

Dina Kapardis, LL.M. – International Human Rights
University of Central Lancashire, UK at UCLAN, Cyprus

The European Court of Human Rights (ECtHR), applying The Convention for the Protection of Human Rights and Fundamental freedoms (the Convention) or degrading treatment upheld in cases where evidence of abuse may be considered difficult or even impossible to prove. Both cases involve the rape of young girls.

In the first case, *M.C. v. Bulgaria* (no 39272/98) 4 December 2003, the applicant, aged 14 was raped by two men. The victim cried during and after being raped and was later taken to hospital by her mother where the medical examination showed that her hymen had been torn. However, because it could not be established that she had resisted or called for help during the rapes the perpetrators were not prosecuted.

Under Articles 3 and 8 of the Convention, Member States have a positive obligation to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution. The ECtHR in this case found a violation of both Article 3 (prohibition of degrading treatment) and Article 8 (the right to respect for private life). Victims of sexual abuse, especially minors may not actively resist out of fear of further violence, because they do not have the physical strength, or for psychological reasons by submitting passively or dissociating themselves from the brutal violence inflicted upon them. The Court stressed that States had an obligation to prosecute any non-consensual sexual act, even in cases where the victim had not resisted physically. Subsequently, the Court found both the investigation procedure in the case and Bulgarian law to be defective.

In the second case, *M.G.C v. Romania* (no.61495/11) 15 March 2016, the applicant who was 11 years old at the time, alleged that she had been raped repeatedly between August 2008 and February 2009 at a neighbouring family’s home where she went to play with two girls of the same age.

The applicant alleged that the Romanian authorities had breached their positive obligation to protect I will refer to 2 cases in which the European Court of Human Rights (ECtHR) has in fact ruled that the right to privacy is to be protected and the prohibition of inhuman the applicant from inhuman or degrading treatment and to protect the applicant’s right

to respect for her private life. In particular, since the crime of rape required a lack of consent on the victim's part, the applicant complained that in the absence of any traces of violence on her body, and because of the Romanian authorities' refusal to take into consideration that her attitude to the events was a direct result of her young age, it had been impossible for the applicant to prove her lack of consent. The applicant emphasized that the domestic courts had attributed greater importance to the forensic findings stating that the applicant had no signs of violence on her body and had completely disregarded the findings of her psychiatric evaluation.

In addition, the domestic courts failed to demonstrate a child-sensitive approach in analyzing the facts of the case and held against the applicant facts that were in reality consistent with a child's possible reaction to a traumatic event such as not telling her parents.

The European Court subsequently ruled that as in the similar case of *M.C. v. Bulgaria*, the authorities failed to sufficiently investigate the surrounding circumstances, due to the fact that they did not take into account the particular vulnerability of young persons and the special psychological factors involved in cases concerning the rape of minors.

The European Court of Human Rights in both these cases involving minors, has defined that while in practice it may, in certain cases, be *difficult* to prove a lack of consent in the absence of 'direct' proof of rape such as traces of violence or direct witnesses, the authorities are nevertheless obligated to explore all the facts and include in their assessment all the surrounding circumstances.

If a Member State closes a rape investigation on the premise of insufficient proof of physical force without also considering whether the victim was subjected to forceful circumstances, then that Member State has failed to meet its obligations under the European Convention on Human Rights.

5. Has Anti-stalking Criminal Law Protected Humans-Human Privacy Rights?

Rossella Sala, LLM Candidate

Youth Ambassador at The ONE Campaign, UNICEF, Trento, Italy

The answer is yes. The Italian anti-stalking law does ensure victim protection both from a criminal and civil law perspective; however the question remains whether legal rules are effectively enforced by the police and public institutions.

I will now try to summarize the content of article 612 of the Italian criminal code, which was introduced in 2009 and reformed through a legislative decree in 2013. I will also give an overview of the protection measures connected to the crime of stalking.

The Italian anti-stalking law criminalizes the act of “anyone who, repeatedly, threatens or harasses someone in such a way as to cause in them a serious and constant state of anxiety or fear, causing a well- founded fear for one’s own safety and forcing them to alter their life habits”. The penalty (six months to four years imprisonment) is increased if the offense is committed by a spouse, a former spouse or a partner of the victim, if it is committed using weapons, if it is directed against a minor, a pregnant woman or a person with disabilities. This crime is only punishable upon complaint of the victim, unless the offense is committed against a minor or a person with disabilities or when the fact is connected with a more serious offense.

It is important to note that stalking complaints cannot be withdrawn if the crime is committed through repeated and serious threats; this additional provision was introduced in 2013 to protect victims from pressures and threats aimed at having them withdraw the stalking complaint.

If she/he does not wish to present a complaint, the offended person can request that the offender receive a preliminary warning -a preliminary provision adopted by the local Public Security Authority, consisting in an oral admonition to the perpetrator urging him to discontinue his persecutory behaviour and abide by the law. If the offender reiterates his conduct after receiving the warning the crime is prosecuted ex officio, even in the absence of a complaint by the victim.

In the context of the anti-stalking law, several protection measures were set forth with an aim to prevent perpetrators from contacting the victim.

When a victim presents a complaint, the Public Prosecutor and the Criminal Investigation Department -the public authorities in charge of handling the case- can decide to adopt two

preventive measures: a barring order (order to immediately leave and stay away from the family home), and a prohibition to come into the proximity of the places usually frequented by the offended party or by her close relatives. In the most serious cases, these preventive measures can include preventive imprisonment or house arrest. After presenting a complaint the victim can request for a medical consultation, and she can access free legal aid regardless of her income.

In addition to this, the department of criminal investigation can also issue an urgent barring order including the prohibition to go near the places frequented by the offended person, if the offender is caught in flagrante delicto and there is a well-grounded risk that the criminal conduct will repeatedly occur, endangering the life and physical or psychological integrity of the victim.

In the framework of a legislative reform to contrast family abuse which came into force in 2001, a civil law remedy was also introduced to ensure domestic violence victims' right to privacy. These protection measures are issued by the civil judge who can order the perpetrator to interrupt his violent behaviour, remove him from the victim's home and prevent him from going near it or near the places usually frequented by her. It is possible for the judge to also order the payment of alimony to the victim if, as a result of the enforcement of the measures, she and other family members are left without means to support themselves.

Finally, police officers and public authorities have a duty to inform victims of the possibility to resort to the local Anti-Violence Centers (AVC) and must put them in touch with such centers if so requested. AVC are safe spaces where victims can obtain psychological, legal and logistic support -in case they fear to return home.

In conclusion, the legal framework adopted by Italy to protect abused women appears to be adequate and well-conceived. What is left to do now is ensure such provisions are fully understood and implemented by the police and law enforcement bodies.

IV. Privacy Rights and The Role of Medical, Psychological and Social Services Providers

1. Has Non-physical Abuse Escaped Medical Diagnosis In Women Patients?

Hava Scwab, 3rd Year, St. George's University of London Medical School at UNIC Cyprus, Internal Med/Psychiatrics, Athalass Hospital Clinical Research, Mobil Medical Unit, Cyprus

Before I answer that question let me express abuse in medical terms. It's called NAI (Non accidental injury) and it is defined as any abuse purposefully inflicted on a person, physical or emotional. The WHO (World Health Organization) has created a classification system called the ICD-10 (the International Classification of Diseases) and psychological abuse is in the WHO's ICD-10. Non-physical abuse has its very own code of T74.3 and it's placed under the category of maltreatment syndromes. So we are talking about a real diagnosis here that can be expressed in medical terms and billed for insurance purposes, written in patient notes, etc.

So the answer is yes, absolutely, 100%! Non-physical abuse escapes medical diagnosis in women patients in Cyprus. I mean there's no question about it. And it's not just a problem in Cyprus it's a global issue. All doctors must make a special effort to not only pick up on the emotional abuse but to actually do something about it. Say something! It's really easy to make excuses like it's not my field of expertise, or "I'm so busy I have no time to do a psychological examination on every woman who like she's in trouble." Look, when it comes down to it the most qualified person to diagnose these issues is the one who picks up on them.

If a doctor sees someone with a cancer are they going to just sit idly by twiddle their thumbs and say "oh it's not my field of expertise. "NO! You are a doctor; you diagnose the problem and if you don't feel qualified to treat them refer your patient to someone else who is more eligible to help them. A doctor's job is to look after the patient's physical and emotional well-being because the two are intimately intertwined. Without emotional health there is no physical health.

Also, if these problems are not picked up on early on it's the patient's life that is in danger; they may come back in a few weeks or months with physical signs of "non-accidental injury." Or they may even not be alive. Doctors have these blinders on where we only look at physical signs of illness like broken bones and bruises, but by the time these physical signs of abuse are present it may be too late to act.

As a future doctor I see that patients trust doctors with the most sensitive information. We are not ashamed to ask about patients last menstrual period, a patient's bowel habits. How on earth are we too afraid to ask about their home life? It's so simple. Just ask is everything ok at home? I mean, it's insane to see how much goes under the radar. It's not even just verbal cues. There are non-verbal cues that are subtle but easy to pick up on.

In my studies in Cyprus I have the experience of being in clinics where the main language is Greek. I don't speak Greek. And, I don't always have a translator with me, so a lot of the time I have no understanding of what the patient is telling the doctor. But, I can tell that something is off just by a patient's body language. The way they sit next to their husband. The way they look at him before talking. It's not rocket science for god's sake, that if you see something, then say something. Write a note about it in the patient's file. Contact a social worker.

To summarize, I know I'm not a doctor yet, but, I'm not afraid to say that I see signs of non-physical abuse when I'm in the hospital and in clinics which go unreported and undocumented. I'm not saying it's my field of expertise, or even my place to comment on the situation. But, I contacted three doctors, two pediatricians and one psychiatrist. All three felt it wasn't their field of expertise and didn't feel that they were qualified to discuss the issue. So, here I am saying it's a real issue in the medical field and I can't stay silent on the issue.

2. Has “Grooming” Evolved Socially As Non-physical, Non-Violent Abuse?

Katrina Andreou, Graduate, British Psychology Center, Social Science, Child Protection, University of Hertfordshire, St Albans, UK, Cyprus

I will be talking to you today about Grooming. Grooming is a precursor for unwanted forms of contact, non-physical abuse to person of all ages, not just children. Grooming has been a focal point of my career in Child Protection in the UK, and as a volunteer CP advisor in Cyprus.

Grooming includes an entire set of behaviors *leading up to abuse*. A “Groomer” targets vulnerable persons, the “Groomee” and engages contact with them in a subtle, befriending, manipulative manner so the Groomee, and their families, are unaware they will be soon be enslaved both for sexual or violent purposes, and for the Groomers’ profit.

In Cyprus, unwanted contact, non-violent forms of abuse, like Grooming, of persons over the age of 18 is not legally recognized. Hence, Grooming is not part of my nations’ legislative policy, nor are there civil protections in Cyprus to prevent Grooming, and indeed any form of unwanted non-physical contact. Nor does there exist in Cyprus any consciousness of what grooming is as unwanted contact by law enforcement or social care departments.

The whole issue of privacy, as a right of all persons to no contact means “NO Contact” of any form on any platform, is not a focal issue. Yet, in Cyprus, unwanted contact, which is not violent, is tolerated.

How does Grooming become a form of acceptable contact? First, because Grooming is a very subtle crime conducted by a very manipulative process. Grooming is aimed at very vulnerable, isolated minds and impoverished people everywhere, including people in Cyprus. Groomers are Human Smugglers and sophisticated human sex traffickers. They are a specific type of offender, clever at finding people’s vulnerabilities, honing in and taking full advantage of them. Groomers groom humans as commodities for their own monetary profit purposes. They are highly skilled at enticement tactics which attract vulnerable families into choosing this for their children or family members, person to person, in cyberspace, online and offline. It refers to a set of behaviors and approaches, not just aimed at Minors or young children who are not the only vulnerable persons, or the Groomee.

Groomers aim their target contacts with persons who are vulnerable due to many other factors apart from their age, like politically vulnerable nations isolated by geography, economic status or family circumstances.

Human slavery is documented in deprived regions in villages in Nigeria, Ghana or India where families will and want to sell their daughters to smugglers believing they are saving her from certain death by poverty to a life which will at least enable her to work. Dividends from her sale will go to feeding other children in the family. Because of isolation, families do not know their daughter will soon be forced into domestic and/or sexual slavery, will have no access to her own identification, and be abandoned of travel documentation.

Developing countries define Grooming legally as criminal conduct. In Cyprus, it has to be documented, visible violence or rape – that is abuse. It must be violent and physically evident. And, that's how grooming is undetected. It's ignored and largely misunderstood. Grooming is still very much synonymous with children, but this is not the reality.

Abuse in my nation has a definition and cultural understanding couched in well media covered terms like “Domestic Violence” which everyone is comfortable with since the term is the acceptable, somewhat trendy concept covered and repeated in the media.

The laws in Cyprus are often ratified but not signed. Whether signed or not, are not necessarily enforced or reinforced. In this way, Cyprus mirrors many countries in a tokenistic, insincere set of gestures, never backed up in action.

Cyprus has an appearance of supporting human rights, like the privacy of vulnerable people, but not actually following up on this in practice. Law enforcement on our island recognizes this, and may or may not act only at the point of broken skin or bruising/bleeding, teeth knocked out. The lead up to each event, the way in which victims are stalked, profiled and contacted, is not discussed or investigated or criminalized. It is this pre-step, however, which is equally significant. And, it is this early detection and recognition of offender profiles and behavior which will mean better protection for victims.

In conclusion, the morbid, shocking reminder is that when vulnerable persons are caught in the net of Groomers, are enslaved and their psychological sense of self broken, they will often disappear as their attractiveness as a ‘commodity’ is depleted with age and ‘use’.

V. Privacy Rights and The Role of Non-governmental Organizations

1. Do Prostitutes Possess Equal Civil Privacy Human Rights To No Contact?

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Well, there is an easy and a not so easy answer to this question. The easy answer is yes, but the reality as often is the case is not so straightforward.

Let me start by giving a very brief explanation on the laws that regulate prostitution in this country. The body of law in Italy does not penalize prostitution by itself, which is considered a non-criminal activity, but rather regulates and penalizes the exploitation and abetting of prostitution.

These regulations lay their foundations in my opinion on two important pillars. One is the idea that an adult woman who decides to become a sex worker can do so without going against the law. But the law prohibits any formal "organization" of such activity and prohibits any third party involvement.

What does that mean practically? That sex workers can work on the streets but not in apartments or in organized groups. This brings on a rather ambiguous framework, which does not prohibit prostitution but *de facto* leaves prostitution in a non-regulated shadow, in particular in regards to civil rights, specific needs of safety, as well as an exclusion from social security and labor laws.

The other fundamental aspect of our laws on the matter is the concept of consent, which is regulated by the criminal body of laws of crimes against individual liberties, therefore penalizing exploitation or forcing a non-consenting individual into prostitution.

Our stalking law, on the other hand, penalizes any repeated conduct that threatens or disturbs an individual causing a continued state of anxiety or fear, forcing such individual to changing their life habits.

So, to get to our easy answer, a sex worker who is stalked, for example by a former client and therefore lives in a state of anxiety and fear, is being the victim of a criminal conduct and has the right to be protected by the law. This, however, implies an aspect that I believe is most critical, which is the fact that such sex worker actually feels authorized to press charges. In this sense, I believe and I see in my daily practice with women victims of gender-based violence is

that, rather than the laws by themselves, what really determines access to protection is the level of awareness that exist in the surrounding culture of the society.

So, when I asked the lawyer who works at our shelter, while preparing for this presentation, what are the aspects that would prevent a sex worker to be protected in a stalking case she replied, “Her profession.” In fact, it is the social perception of female sex workers that prevents her from feeling that she has the right to the needed protection. In my practice I have witnessed several cases of sex workers who were afraid to disclose the initial nature of the contact with the stalker.

To come to less straight forward answer to our question, I believe when dealing with women victims of domestic abuse, stalking or sexual assault, whether they are prostitutes or not, what really prevents them from getting the protection they need is not so much a weakness in our body of law on gender-based violence, but rather overcoming the feeling of guilt, and therefore the fear of the judgmental attitudes of the outside which are still so common in our society.