

UDK 343.98

ISSN 1450-6637

TE M I D A

ČASOPIS O VIKTIMIZACIJI, LJUDSKIM PRAVIMA I RODU • godina 29 • broj 2 • 2026.



Tema broja SAVREMENE TEHNOLOGIJE I ŽRTVE: RIZICI VIKTIMIZACIJE
I MOGUĆNOSTI ZA UNAPREĐENJE DRUŠTVENIH ODGOVORA

Izdavači:

Viktimološko društvo Srbije – VDS

Univerzitet u Beogradu – Fakultet za specijalnu edukaciju i rehabilitaciju

Adresa redakcije:

Viktimološko društvo Srbije, Ismeta Mujezinovića 21/6, 11070 Beograd,

tel/fax: + 38111 22 88 040,

e-mail: vdsrbija@gmail.com i temida.vds@gmail.com

Savet časopisa:

dr Slobodan Savić, Univerzitet u Beogradu (u penziji), Srbija; dr Jelena Srna, Univerzitet u Beogradu (u penziji), Srbija; dr Nevena Petrušić, Univerzitet u Nišu (u penziji), Srbija; dr Saša Mijalković, Kriminalističko-policijski univerzitet, Srbija; dr Aleksandar Jugović, Univerzitet u Beogradu, Srbija; dr Tatjana Đurić-Kuzmanović, Visoka poslovna škola strukovnih studija (u penziji), Srbija; dr Gorazd Meško, Univerzitet u Mariboru, Slovenija; dr Nina Peršak, Institut za krivičnopravnu etiku i kriminologiju, Slovenija; dr Irma Kovčo Vukadin, Univerzitet u Zagrebu, Hrvatska; dr Dragana Batić, University St. Kliment Ohridski, Severna Makedonija; dr Stephan Parmentier, Catholic University of Leuven, Belgija; dr Antony Pemberton, Tilburg University, Holandija, Catholic University of Leuven, Belgija; dr Jan Van Dijk, Tilburg University, Holandija; dr Joanna Shephard, University of Sheffield, Velika Britanija; dr Sandra Walklate, University of Liverpool, Velika Britanija; dr Pam Alldred, Oxford Brookes University, Velika Britanija, URV Tarragona, Španija; dr Estelle Zinsstag, Edinburgh Napier University, Velika Britanija; Catholic University of Leuven, Belgija; mr Ruth Jamieson, Queen's University (u penziji), Velika Britanija; dr Robert Peacock, University of the Free State, Južna Afrika; dr Karuppannan Jaishankar, Saveetha University, Indija; dr Goran Bašić, Linnaeus University, Švedska; dr Vasiliki Artinopoulou, Panteion University of Political and Social Sciences, Grčka; dr Gema Varona, University of the Basque Country, Španija; dr Chadley James, California State University, Sjedinjene Američke Države.

Glavna i odgovorna urednica: dr Sanja Čopić, Univerzitet u Beogradu

Zamenica glavne i odgovorne urednice:

dr Mirjana Dokmanović, naučna saradnica Instituta društvenih nauka u penziji

Članovi redakcionog odbora časopisa:

dr Vesna Nikolić-Ristanović, redovna profesorka Univerziteta u Beogradu u penziji, Srbija; dr Branislava Popović-Čitić, Univerzitet u Beogradu, Srbija; dr Zoran Pavlović, Univerzitet Privredna akademija, Srbija; dr Ivana Stevanović, Institut za kriminološka i sociološka istraživanja, Srbija; dr Slađana Jovanović, Univerzitet Union, Srbija; dr Natalija Žunić, docentkinja Univerziteta u Nišu u penziji, Srbija; dr Vida Vilić, Klinika za stomatologiju Niš, Srbija; mr Ljiljana Stevković, Srbija; dr Oliver Bačanović, Univerzitet St. Kliment Ohridski, Makedonija; dr Jo-Ann Wemmers, University of Montreal, Kanada; dr Sanja Milivojević, Oxford University i Bristol University, Velika Britanija i La Trobe University, Australija.

UDK
343.98

ISSN (štampano izdanje)
1450-6637

ISSN (on line izdanje)
2406-0941

Tiraž:
200 primeraka

Štampa
„Prometej“-Beograd



Časopis Temida izlazi tri puta godišnje i dostupan je u režimu otvorenog pristupa. Članci objavljeni u časopisu mogu se koristiti u skladu sa licencom CC-BY 4.0 – Creative Commons Attribution 4.0 International.

Izdavanje ovog broja finansijski je pomoglo Ministarstvo nauke, tehnološkog razvoja i inovacija Republike Srbije

Radovi u časopisu su dvostruko anonimno recenzirani
The articles in the journal are peer reviewed

Temida je referisana u DOAJ, EBSCO i Web of Science/ESCI, a dostupna je u DOI Serbia repozitorijumu
Temida is indexed in the DOAJ, EBSCO and Web of Science/ESCI, and is available in DOI Serbia repository

Victimization through the Misuse of Private Photographs in the Context of Violations of Article 8 of the European Convention on Human Rights (ECHR)

DUŠICA G. KOVAČEVIĆ*

This article examines intimate image abuse as a form of digital victimization within the framework of Article 8 of the European Convention on Human Rights (ECHR). The analysis explores whether the existing jurisprudence of the European Court of Human Rights provides a coherent doctrinal basis for protecting victims of non-consensual creation, possession, and dissemination of intimate images in digital environments. Drawing upon Strasbourg case law, comparative legislative developments, and contemporary scholarship on image-based sexual abuse, the article argues that Article 8 of the ECHR already encompasses protection of autonomy, dignity, psychological integrity, and control over personal imagery. Particular attention is devoted to states' positive obligations, institutional responses, and the growing role of digital platforms in preventing continuing harm. The article concludes that effective protection against intimate image abuse requires coordinated criminal, civil, procedural, and platform-oriented mechanisms capable of responding to technologically amplified forms of victimization in a practical and effective manner.

Keywords: intimate image abuse, digital victimization, Article 8 of the ECHR, image-based sexual abuse, privacy

* Dr Dušica G. Kovačević is a Research Associate in the Institute of Social Sciences, Belgrade, Serbia. E-mail: dkovacevic@idn.org.rs, ORCID: 0000-0001-7082-7159



Introduction

The non-consensual dissemination of intimate images has emerged as one of the most significant contemporary challenges to privacy protection in digital environments. The speed, permanence, and global reach of online communication have transformed privacy violations, exposing the limitations of legal frameworks developed for offline contexts. Unlike conventional interferences with private life, intimate image abuse is characterized by the persistent availability, effortless replicability, and potentially unlimited dissemination of intimate material, amplifying psychological harm and undermining personal autonomy and dignity (Henry et al., 2020; McGlynn et al., 2017; Powell & Henry, 2017). Beyond privacy, intimate image abuse is increasingly recognized as a form of technology-facilitated gender-based violence involving sexualized control, humiliation, coercion, and victim silencing. Although individuals of all genders may be affected, women and girls remain disproportionately targeted, particularly where online harassment intersects with broader patterns of gender inequality. Women in public life - including journalists, politicians, human rights defenders, and activists - are especially vulnerable because the dissemination or threatened dissemination of intimate images may serve as a means of intimidation and exclusion from public participation (Citron & Franks, 2014; McGlynn et al., 2017).

These challenges are particularly significant under Article 8 of the European Convention on Human Rights (ECHR). Although the European Court of Human Rights (ECtHR) has progressively extended Article 8 protection to privacy, personal data, surveillance, and visual integrity (*S. and Marper v. United Kingdom*, 2008; *Reklos and Davourlis v. Greece*, 2009), it has not yet directly addressed the non-consensual dissemination of intimate images. This absence of Strasbourg jurisprudence leaves national authorities with a broad margin of appreciation and contributes to divergent approaches to the protection of victims (*X and Y v. Sweden*, 1985).¹

Against this background, the present study examines whether Article 8 of the ECHR provides an effective normative framework for addressing intimate image abuse as a technologically mediated form of digital victimization. Particular attention is devoted to the Court's jurisprudence on privacy, dignity,

¹ For further guidance, see the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), adopted by the Committee of Ministers on 7 April 2011 and opened for signature in Istanbul on 11 May 2011.

personal autonomy, psychological integrity, and states' positive obligations, together with the interaction of criminal, civil, procedural, and platform-regulatory mechanisms (Pretty v. United Kingdom, 2002; Söderman v. Sweden, 2013; Keller, 2018; Powell & Henry, 2017).

Methodologically, this study adopts an integrated doctrinal, comparative, and socio-legal approach based on the jurisprudence of the ECtHR, selected judgments of the Court of Justice of the European Union (CJEU), comparative legislation, and interdisciplinary scholarship on image-based sexual abuse and digital victimization (Henry et al., 2020; McGlynn et al., 2017; Powell & Henry, 2017). This framework enables an assessment of states' positive obligations under Article 8 of the ECHR while considering the relationship among victim protection, freedom of expression, and platform regulation.²

The article argues that existing Convention principles concerning privacy, dignity and personal autonomy, and positive obligations provide a coherent basis for protecting victims of intimate image abuse despite the absence of directly applicable Strasbourg case law. Building on prior criminal law, privacy, feminist, and victimological scholarship, it develops an integrated human rights framework centered on states' positive obligations under Article 8 of the ECHR. It further demonstrates that effective protection requires criminal law, civil remedies, procedural guarantees, and platform accountability as complementary components of human rights protection in digital environments (Glawisch-nig-Piesczek v. Facebook Ireland Limited, 2019). The analysis is therefore structured around the conceptual foundations of intimate image abuse, the interpretation of Article 8 of the ECHR, states' positive obligations, platform responsibility, and comparative approaches to victim-centered protection.

² See Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act). *Official Journal of the European Union*, OJ L 277, 27 October 2022, pp. 1–102. Available at: <https://eur-lex.europa.eu/eli/reg/2022/2065/oj/eng>.

Conceptualizing Intimate Image Abuse as a Form of Victimization

Defining Intimate Image Abuse

Intimate image abuse encompasses a broad range of conduct involving the creation, possession, disclosure, or dissemination of visual material depicting an individual in a sexual, nude, or otherwise intimate context without that person's consent (McGlynn et al., 2017: 27–29). Contemporary scholarship recognizes such conduct as a distinct form of digital victimization because its consequences extend beyond the circulation of sexual content to affect privacy, personal identity, psychological integrity, and autonomy. Unlike traditional privacy violations, intimate image abuse is facilitated by the persistence, replicability, and potentially unlimited circulation of digital content, allowing harm to continue long after the initial disclosure (McGlynn et al., 2017; Powell & Henry, 2017).

Academic literature employs several overlapping terms, including *image-based sexual abuse* (IBSA), *non-consensual pornography*, and *revenge porn*. These concepts reflect different understandings of the protected legal interests, including sexual autonomy, dignity, privacy, and informational control (Citron & Franks, 2014). This article adopts the term *intimate image abuse* because it most comprehensively captures non-consensual interferences with privacy, dignity, autonomy, and intimate identity through the creation, possession, or dissemination of intimate material (Henry et al., 2020). Recent scholarship likewise supports broader conceptualizations extending beyond the traditional notion of so-called revenge pornography (Henry & Beard, 2024). Distinctions among forms of image-based abuse nevertheless remain important. IBSA encompasses voyeurism, coercive production, threats of disclosure, digitally manipulated images, and the non-consensual dissemination of intimate material (McGlynn et al., 2017). By contrast, the expression *revenge porn* implies a retaliatory motive that is absent in many documented cases, where dissemination serves coercion, humiliation, financial gain, intimidation, or social control (Citron & Franks, 2014).

Intimate image abuse is increasingly recognized as a form of technology-facilitated gender-based violence characterized by sexualized control, humiliation, coercion, and intimidation. Although individuals of all genders may be

affected, women remain disproportionately targeted, particularly those engaged in public life, where the dissemination or threatened dissemination of intimate images may function as a means of intimidation, silencing, and exclusion from public participation (Citron & Franks, 2014; McGlynn et al., 2017). Beyond individual instances of victimization, intimate image abuse forms part of the broader phenomenon of technology-facilitated abuse, requiring coordinated legal, institutional, and technological responses (Rogers et al., 2023). This broader understanding is increasingly reflected in international human rights standards. In particular, the UN Working Group on Discrimination against Women and Girls has recognized technology-facilitated gender-based violence, including online image-based abuse, as a manifestation of structural discrimination that undermines women's equal participation in political, professional, and public life. It further emphasizes the need for coordinated legal, institutional, and preventive measures capable of addressing the gendered nature of digital violence and ensuring effective protection of victims.³

From a victimological perspective, intimate image abuse constitutes a continuing form of digital victimization. Once intimate material is shared online, it may be repeatedly copied, redistributed, manipulated, and remain permanently accessible, exposing victims to ongoing re-victimization. As a result, victims frequently experience anxiety, humiliation, shame, reputational harm, social isolation, and a profound loss of autonomy and control (Henry et al., 2020). Recent systematic reviews further confirm that these harms often persist long after the initial dissemination, contributing to anxiety, depression, social withdrawal, and other enduring psychological and psychosocial consequences (Paradiso et al., 2024: 931–932; Schmidt et al., 2024). At the same time, many victims face substantial barriers to reporting, including fear of disbelief, victim blaming, social stigma, and concerns that legal intervention may inadvertently amplify the dissemination of intimate material. These circumstances highlight that effective protection cannot rely solely on criminalization but requires a broader victim-centered framework capable of ensuring timely, comprehensive, and effective protection under Article 8 of the ECHR.

³ See UN Working Group on Discrimination against Women and Girls, *Report of the Working Group on Discrimination against Women and Girls* (A/HRC/59/45, 2025).

Private, Sexual, and Visual Privacy under Article 8 of the ECHR

Article 8 of the ECHR guarantees the right to respect for private and family life, home, and correspondence. Its open-textured character has enabled the ECtHR to develop an evolving understanding of the concept of private life encompassing autonomy, identity, dignity, psychological integrity, and control over personal information (*Pretty v. United Kingdom*, 2002; *S. and Marper v. United Kingdom*, 2008). This interpretative flexibility has proved particularly important in adapting Convention protection to technological developments. The Court has progressively recognized that visual information concerning an individual engages private life whenever it affects autonomy, identity, dignity, or psychological integrity (*Von Hannover v. Germany*, 2004; *Reklos and Davourlis v. Greece*, 2009). Intimate image abuse therefore directly implicates autonomy, dignity, informational self-determination, and psychological security in digital environments.

The broad understanding of private life under Article 8 has gradually expanded to include sexual autonomy, bodily integrity, and protection against intrusive exposure affecting the intimate sphere. In *Söderman v. Sweden* (2013), the Grand Chamber confirmed that sexually intrusive conduct may fall within Article 8 even without the creation or dissemination of images, emphasizing that the core interference lies in the violation of personal autonomy, dignity, and sexual integrity. The Court has likewise consistently recognized psychological integrity and personal dignity as central components of Convention protection. Accordingly, even the threat of dissemination may constitute an interference with Article 8.

Closely connected to sexual privacy is the protection of visual privacy. The Strasbourg Court has repeatedly affirmed that a person's image constitutes an essential aspect of identity protected by Article 8, even when captured in a public space (*Sciacca v. Italy*, 2005; *Von Hannover v. Germany*, 2004). Based on this, we can conclude that visual privacy encompasses individual control over the creation, use, storage, and disclosure of one's image, and that intimate image abuse directly interferes with both visual and sexual privacy because it deprives individuals of meaningful control over intimate aspects of their identity and self-presentation.

Strasbourg Jurisprudence and the Protection of Victims

Although the Strasbourg Court has not yet directly adjudicated cases concerning the non-consensual dissemination of intimate images, its jurisprudence on visual privacy, sexual autonomy, misuse of personal imagery, and psychological integrity provides an important doctrinal foundation for assessing image-based abuse under Article 8 of the ECHR. While none of the relevant judgments concern intimate image abuse in its contemporary digital form, they establish principles governing personal imagery, intrusive observation, and individual control over one's image that are readily applicable to digital victimization (McGlynn et al., 2017; Powell & Henry, 2017).

In *Reklos and Davourlis v. Greece* (2009), the Court held that the unauthorized taking and retention of photographs of a newborn child constituted an interference with private life even though the images had not been publicly disseminated. It emphasized that a person's image forms an important aspect of identity and autonomy protected by Article 8, including the right to determine when and under what conditions that image is created, stored, and used. The judgment confirms that loss of control over one's image may itself amount to an interference with private life.

In *Peck v. United Kingdom* (2003), the Court examined the dissemination of CCTV footage recorded in a public place. Although the applicant had been filmed in public, broadcasting the footage constituted a serious interference with private life because it subjected him to unwanted public exposure and humiliation. The judgment demonstrates that the principal harm may arise from the subsequent dissemination rather than the initial recording.

Similarly, in *Sciacca v. Italy* (2005), the Court found a violation of Article 8 after state authorities disclosed the applicant's photograph during a press conference without adequate justification. The unauthorized use of her image interfered with her personal identity, dignity, and control over her personal imagery.

The protection of sexual integrity under Article 8 was further developed in *Söderman v. Sweden* (2013), where the Grand Chamber confirmed that covert attempts to film an individual in a private setting fall within the scope of Convention protection even without actual recording or dissemination. The Court emphasized that the interference resulted from the intrusion into the applicant's intimate sphere and the resulting vulnerability, fear, and insecurity. Accordingly, even the threat of exposure may engage Article 8 protection.

Taken together, these judgments demonstrate that Article 8 protects not only physical or spatial privacy but also personal autonomy, dignity, psychological integrity, and meaningful control over one's image. Although the Court has not yet addressed intimate image abuse directly, its jurisprudence provides a coherent normative basis for extending Convention protection to contemporary forms of digital victimization, consistent with the Convention's character as a living instrument capable of evolving alongside technological and societal developments (Spano, 2018: 478–480).

Institutional Responses to Digital Victimization

The Strasbourg Court has consistently held that Article 8 of the ECHR imposes both negative obligations requiring states to refrain from unjustified interference with private life and positive obligations requiring effective protection against violations committed by private actors (*X and Y v. Netherlands*, 1985). The central question is whether domestic legal systems provide a legal and institutional framework capable of securing Convention rights in practice (*Evans v. United Kingdom*, 2007; *M.C. v. Bulgaria*, 2003). This approach is particularly significant in cases of intimate image abuse, where threats to autonomy, dignity, sexual integrity, and psychological well-being commonly arise through digitally mediated conduct between private individuals. Positive obligations therefore extend beyond criminalization and require an effective combination of criminal, civil, procedural, and regulatory measures (*X and Y v. Netherlands*, 1985; *M.C. v. Bulgaria*, 2003).

The Court has repeatedly emphasized that victims of harassment and sexually intrusive conduct must have access to effective protection and meaningful legal remedies (*M.C. v. Bulgaria*, 2003). These principles apply directly to intimate image abuse, where victims lose control over highly personal aspects of their identity and may suffer serious psychological, social, and reputational harm. Effective protection should therefore extend beyond the non-consensual dissemination of intimate images to include their coercive creation, possession, attempted acquisition, and threatened disclosure. Civil remedies are equally important, requiring prompt injunctions and effective takedown procedures consistent with the Court's requirement that Convention rights remain practical and effective (*Airey v. Ireland*, 1979).

The protection of private life has become considerably more complex in digital environments characterized by anonymous offending, instantaneous dissemination, cross-platform circulation, and the persistence of unlawful content. In *K.U. v. Finland* (2008), the Court observed that without procedures enabling authorities to identify anonymous online offenders, Article 8 protection risks becoming illusory and ineffective. These concerns are particularly acute in cases of intimate image abuse, where unlawful material may circulate rapidly across jurisdictions and remain accessible despite removal efforts, exposing victims to continuing humiliation, psychological vulnerability, and lasting social stigma.

The preventive dimension of Article 8 further reinforces these positive obligations. Under the Court's doctrine of operational protection, states may be required to take reasonable preventive measures where authorities knew, or ought reasonably to have known, of a serious risk of harm (*Osman v. United Kingdom*, 1998). This reasoning readily extends to digital environments, where the characteristics of online communication make many forms of harm foreseeable. Once intimate material enters digital circulation, institutional responses must act quickly enough to prevent further dissemination and minimize ongoing harm (*Peck v. United Kingdom*, 2003; *Söderman v. Sweden*, 2013). Accordingly, compliance with Article 8 cannot be achieved solely through *ex post* sanctions. Effective protection increasingly depends on rapid content removal procedures, timely protective measures, coordination between competent authorities and digital platforms, and mechanisms to prevent the repeated circulation of intimate material. Delayed intervention may render legal protection ineffective even where formal remedies remain available.

From a victimological perspective, the effectiveness of positive obligations depends on the existence of criminal offenses or formal legal remedies, and victims' ability to obtain timely, accessible, and meaningful protection. This understanding is consistent with the GREVIO's (Group of Experts on Action against Violence against Women and Domestic Violence) recommendation that responses to technology-facilitated violence against women should prioritize victim-centered protection, accessible remedies, and measures preventing secondary victimization (GREVIO, 2021). Victims of intimate image abuse frequently encounter barriers to reporting, victim-blaming, procedural delays, and the continued circulation of intimate material during legal proceedings, thereby aggravating the original harm. As a result, positive obligations under Article 8 therefore require an adequate legislative framework and institutional responses capable of reducing

repeated victimization and mitigating its long-term psychological and social consequences. At the same time, these positive obligations must be balanced against the freedom of expression under Article 10 of the ECHR. The Strasbourg Court has consistently required a fair consideration of competing Convention rights rather than the automatic priority of any single interest.

Platform Responsibility and Technologically Responsive Protection

Emerging forms of synthetic and AI-generated intimate imagery present new challenges for privacy protection under Article 8 of the ECHR. Advances in generative artificial intelligence enable the creation of highly realistic fabricated sexual images capable of causing harm comparable to authentic intimate material. Also, digital platforms have become the primary environment for intimate image abuse, where algorithmic amplification, cross-platform dissemination, and the persistence of digital content significantly reduce victims' control over intimate aspects of their identity.

The ECtHR acknowledged the significance of these technological realities in *K.U. v. Finland* (2008), holding that Article 8 requires states to establish procedures capable of identifying anonymous online offenders. Although the judgment predated contemporary forms of digital abuse, its rationale remains directly applicable. Where anonymity and platform architecture prevent victims from identifying perpetrators or obtaining effective protection, the practical enjoyment of Convention rights may be seriously undermined. Algorithmic recommendation systems, digital copying, and online storage facilitate the repeated circulation of unlawful intimate material, prolonging psychological harm and reinforcing victims' loss of control over their personal identity (*Peck v. United Kingdom*, 2003; *Sciacca v. Italy*, 2005). These characteristics expose the limitations of traditional legal responses. Harmful content may spread across multiple platforms within minutes, while legal remedies often become effective only after the damage has occurred. Digital platforms' recommendation systems, sharing functions, and content moderation practices directly influence the visibility, accessibility, and persistence of unlawful material, making effective platform governance an increasingly important component of privacy protection.

A major regulatory development in this area is the European Union's Digital Services Act (DSA) (2022), which establishes a comprehensive framework

for intermediary responsibility and platform due diligence (Wilman et al., 2024). Rather than imposing a general monitoring obligation, the DSA introduces differentiated due diligence requirements, including notice-and-action procedures, transparency obligations, trusted flagger mechanisms, and systemic risk assessments for very large online platforms. Although it does not mandate automated detection technologies, it permits appropriate technological tools where compatible with fundamental rights and the principle of proportionality. From the perspective of Article 8 of the ECHR, the DSA provides an important comparative model for implementing positive obligations in digital environments through the rapid removal of unlawful content and effective platform responsiveness (Wilman et al., 2024).

The growing recognition of platform responsibility is reflected in the CJEU's case law. In *Glawischnig-Piesczek v. Facebook Ireland* (2019), the CJEU held that platforms may, under certain circumstances, be required to remove unlawful material and prevent the re-uploading of identical or equivalent content. Although the case did not concern intimate image abuse specifically, it confirms that platforms possess the technical capacity to limit the continued dissemination of unlawful material once its existence has been established. The CJEU's broader jurisprudence, including *Google France* (2010), *L'Oréal v. eBay* (2011), and *YouTube/Cyando* (2021), likewise recognizes that intermediaries assume important responsibilities once they acquire actual or legally sufficient knowledge of unlawful activities facilitated through their services. These developments reflect an emerging European approach in which effective privacy protection increasingly depends on coordinated legal and technological responses.

Strengthening platform responsibilities under Article 8 must nevertheless remain compatible with the freedom of expression protected by Article 10 of the ECHR. The ECtHR has consistently emphasized that neither right enjoys automatic priority and that restrictions on online expression must satisfy the requirements of legality, legitimacy, necessity, and proportionality. Accordingly, measures protecting victims of intimate image abuse should operate through transparent procedural safeguards, including effective notice-and-action mechanisms, opportunities to challenge removal decisions where appropriate, and contextual assessments of the unlawfulness of the material.

This balanced approach is reflected in the relevant jurisprudence and the regulatory philosophy of the Digital Services Act. In *Delfi AS v. Estonia* (2015), the ECtHR accepted that intermediary liability may, in certain circumstances,

be compatible with Article 10 where necessary to protect the rights of others. Conversely, in *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary* (2016), it emphasized that liability regimes should not impose disproportionate burdens on lawful online expression. The Court's case law demonstrates that effective protection against intimate image abuse requires a balanced legal framework that reconciles the positive obligations under Article 8 with freedom of expression under Article 10 of the ECHR.

Comparative Approaches and Evolving Standards of Protection

The transnational nature of digital communication presents significant challenges for protecting victims of intimate image abuse. Harmful material may be created in one jurisdiction, disseminated through platforms established in another, and accessed globally within minutes. Anonymity, encrypted communication, and cross-border digital infrastructure complicate the identification of offenders, delay enforcement, and hinder the timely removal of unlawful content, exposing victims to continuing harm and revealing the limitations of purely territorial legal responses (Powell & Henry, 2017).

Comparative legislative developments demonstrate a gradual convergence towards more comprehensive and technologically responsive models of protection. This trend has been reinforced by Directive (EU) 2024/1385 on combating violence against women and domestic violence,⁴ which expressly recognizes technology-facilitated violence and promotes a more coordinated approach to victim protection across Member States. More broadly, these developments reflect the growing recognition that traditional offenses, such as harassment, defamation, and obscenity, are often inadequate to address image-based sexual abuse and digitally mediated privacy violations (Citron & Franks, 2014; McGlynn et al., 2017).

Several jurisdictions have adopted specific legislative frameworks addressing the non-consensual creation, possession, or dissemination of intimate images. In England and Wales, section 66B of the Sexual Offences Act 2003, inserted by section 188 of the Online Safety Act 2023, establishes offenses concerning the non-consensual sharing, or threatened sharing, of intimate

⁴ Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, *Official Journal of the European Union*, OJ L, 2024/1385, 24 May 2024, ELI: <http://data.europa.eu/eli/dir/2024/1385/oj>

photographs or films. Ireland's *Harassment, Harmful Communications and Related Offences Act* (2020) combines criminal liability with expedited civil remedies facilitating the prompt removal of harmful content, while Canada introduced section 162.1 of the Criminal Code (2015), criminalizing the non-consensual publication of intimate images and authorizing judicial orders for content removal and the preservation of electronic evidence. Other legal systems complement criminal-law responses with administrative and regulatory mechanisms addressing the persistence of unlawful online content. Australia's *Online Safety Act 2021* empowers the eSafety Commissioner to issue removal notices and requires online service providers to cooperate in limiting harmful material. Germany's §201a StGB criminalizes the creation, transfer, and dissemination of intimate images violating personal privacy, while Norway's Penal Code §267a similarly prohibits the distribution of sexually offensive or intimate images and provides civil remedies to prevent continuing harm.

Generally, these legal documents demonstrate that contemporary responses to intimate image abuse no longer rely on a single regulatory strategy. Instead, legal systems increasingly combine criminal law, civil remedies, administrative procedures, and platform governance. Criminalization-oriented approaches, exemplified by the United Kingdom and Germany, establish specific criminal offenses targeting the non-consensual creation or dissemination of intimate images. Hybrid models, such as those adopted in Ireland and Norway, combine criminal liability with civil remedies, while Australia emphasizes rapid administrative notice-and-takedown procedures. At the European level, digital regulation complements these mechanisms by imposing due diligence obligations on online intermediaries while preserving procedural safeguards and freedom of expression.

Although the regulatory models mentioned differ in their institutional design, they share the objective of ensuring effective protection in digital environments. Comparative developments demonstrate that safeguarding victims requires legal frameworks combining criminal accountability, civil remedies, administrative intervention, and responsible platform governance capable of responding rapidly to unlawful online dissemination. This comparative evolution reinforces a dynamic interpretation of Article 8 of the ECHR by illustrating the continuing development of states' positive obligations in response to technological change. Despite remaining differences concerning intermediary liability, procedural safeguards, and the balance between privacy and freedom of

expression, the growing convergence among these approaches supports the recognition of intimate image abuse as a distinct form of digital victimization requiring swift, adaptive, and victim-centered legal responses.

Conclusion

This article has demonstrated that intimate image abuse constitutes a serious interference with private life protected under Article 8 of the ECHR and that the existing jurisprudence of the ECtHR already provides a coherent normative foundation for addressing this form of digitally mediated victimization. Although the Convention does not expressly regulate image-based sexual abuse, the Court's evolving interpretation of private life has progressively expanded the protection of autonomy, dignity, sexual integrity, visual privacy, and individual control over personal information. These principles support the conclusion that the non-consensual creation or dissemination of intimate images falls within the scope of Article 8 of the ECHR and may trigger corresponding positive obligations for states.

The analysis further demonstrates that intimate image abuse cannot be effectively addressed through traditional legal categories alone. Despite differences in national legal traditions, an observable convergence has emerged towards more comprehensive models integrating criminal law, civil remedies, administrative procedures, and regulatory obligations applicable to digital intermediaries. Recent European developments, including Directive (EU) 2024/1385 and the Digital Services Act, further illustrate the growing recognition that technology-facilitated forms of gender-based violence require coordinated, adaptive, and victim-centered legal responses. The Strasbourg Court's jurisprudence, together with the regulatory framework established by the Digital Services Act, demonstrates that privacy and freedom of expression should be balanced through context-sensitive legal and institutional mechanisms rather than treated as competing or mutually exclusive values.

Ultimately, the continuing evolution of digital technologies will require further refinement of the Court's jurisprudence concerning states' positive obligations under Article 8 of the ECHR. Nevertheless, the existing Convention framework already provides a sufficiently robust foundation for interpreting intimate image abuse as a serious violation of Convention rights. Future developments

should focus on ensuring that its established principles are translated into practical, effective, and victim-centered mechanisms that protect dignity, autonomy, sexual integrity, and personal security in the digital environment.

References

- Citron, D. K., & Franks, M. A. (2014). Criminalizing revenge porn. *Wake Forest Law Review*, 49(2), 345–391.
- Henry, N., & Beard, G. (2024). Image-based sexual abuse perpetration: A scoping review. *Trauma, Violence, & Abuse*, 25(5), 3981–3998. <https://doi.org/10.1177/15248380241266137>
- Henry, N., Flynn, A., & Powell, A. (2020). *Image-based sexual abuse: A study on the causes and consequences of non-consensual nude or sexual imagery*. Routledge.
- Keller, D. (2018). Internet platforms: Observations on speech, danger, and money. *Hoover Institution, Aegis Series Paper*, No. 1807.
- McGlynn, C., Rackley, E., & Houghton, R. (2017). Beyond ‘revenge porn’: The continuum of image-based sexual abuse. *Feminist Legal Studies*, 25(1), 25–46. <https://doi.org/10.1007/s10691-017-9343-2>
- Paradiso, M. N., Rollè, L., & Trombetta, T. (2024). Image-based sexual abuse associated factors: A systematic review. *Journal of Family Violence*, 39(5), 931–954. <https://doi.org/10.1007/s10896-023-00557-z>
- Powell, A., & Henry, N. (2017). *Sexual violence in a digital age*. Palgrave Macmillan. <https://doi.org/10.1057/978-1-137-57674-0>
- Rogers, M. M., Fisher, C., Ali, P., Allmark, P., & Fontes, L. (2023). Technology-facilitated abuse in intimate relationships: A scoping review. *Trauma, Violence, & Abuse*, 24(4), 2210–2226. <https://doi.org/10.1177/15248380221090218>
- Schmidt, F., Varese, F., Larkin, A., & Bucci, S. (2024). The mental health and social implications of nonconsensual sharing of intimate images on youth: A systematic review. *Trauma, Violence, & Abuse*, 25(3), 2158–2172. <https://doi.org/10.1177/15248380231207896>
- Spano, R. (2018). The Future of the European Court of Human Rights—Subsidiarity, Process-Based Review and the Rule of Law. *Human Rights Law Review*, 18(3), 473–494. <https://doi.org/10.1093/hrlr/ngy015>
- Wilman, F., Kalèda, S. L., & Loewenthal, P.-J. (2024). *The EU Digital Services Act*. Oxford University Press.

Legal Documents

Act of 20 May 2005 No. 28 relating to punishment (Norwegian Penal Code), section 267a (Norway). *Lovdata*. Available at: <https://lovdata.no/lov/2005-05-20-28>, accessed 10 July 2026.

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), CETS No. 210, adopted by the Committee of Ministers on 7 April 2011 and opened for signature in Istanbul on 11 May 2011. Available at: <https://www.coe.int/en/web/gender-matters/council-of-europe-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence>, accessed 15 July 2026.

Criminal Code, R.S.C. 1985, c. C-46, section 162.1 (Canada). *Justice Laws Website*. Available at: <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-162.1.html>, accessed 12 July 2026.

Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence. *Official Journal of the European Union*, OJ L, 2024/1385, 24 May 2024. Available at: <https://eur-lex.europa.eu/eli/dir/2024/1385/oj/eng>, accessed 5 July 2026. German Criminal Code (Strafgesetzbuch – StGB), in the version published on 13 November 1998, *Federal Law Gazette I*, p. 3322, as subsequently amended, section 201a (Germany). Available at: https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1915, accessed 10 July 2026.

Harassment, Harmful Communications and Related Offences Act 2020, No. 32 of 2020 (Ireland). *Irish Statute Book*. Available at: <https://www.irishstatutebook.ie/eli/2020/act/32/enacted/en/html>, accessed 11 July 2026.

Online Safety Act 2021, No. 76, 2021 (Australia). Federal Register of Legislation. Available at: <https://www.legislation.gov.au/C2021A00076/latest/text>, accessed 10 July 2026.

Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act). *Official Journal of the European Union*, OJ L 277, 27 October 2022, pp. 1–102. Available at: <https://eur-lex.europa.eu/eli/reg/2022/2065/oj/eng>, accessed 10 July 2026.

Sexual Offences Act 2003, c. 42, section 66B, as inserted by section 188 of the Online Safety Act 2023, c. 50 (England and Wales). Available at: <https://www.legislation.gov.uk/ukpga/2023/50/section/188>, accessed 12 July 2026.

Policy Documents

Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). (2021). *General Recommendation No. 1 on the Digital Dimension of Violence against Women*. Council of Europe. <https://edoc.coe.int/en/violence-against-women/10643-grevio-general-recommendation-no-1-on-the-digital-dimension-of-violence-against-women.html>, accessed 15 July 2026.

Working Group on Discrimination against Women and Girls. (2025). *Report of the Working Group on Discrimination against Women and Girls* (Report No. A/HRC/59/45). United Nations. Available at: <https://docs.un.org/en/A/HRC/59/45>, accessed 15 July 2026.

Case Law

Airey v. Ireland, no. 6289/73, European Court of Human Rights, 1979.

Evans v. United Kingdom, no. 6339/05, European Court of Human Rights, 2007.

Glawischnig-Piesczek v. Facebook Ireland Limited, Case C-18/18, Court of Justice of the European Union, 2019.

Google France SARL and Google Inc. v. Louis Vuitton Malletier SA, Joined Cases C-236/08 to C-238/08, Court of Justice of the European Union, 2010.

K.U. v. Finland, no. 2872/02, European Court of Human Rights, 2008.

L'Oréal SA and Others v. eBay International AG and Others, Case C-324/09, Court of Justice of the European Union, 2011.

M.C. v. Bulgaria, no. 39272/98, European Court of Human Rights, 2003.

Osman v. United Kingdom, no. 23452/94, European Court of Human Rights, 1998.

Peck v. United Kingdom, no. 44647/98, European Court of Human Rights, 2003.

Pretty v. United Kingdom, no. 2346/02, European Court of Human Rights, 2002.

Reklos and Davourlis v. Greece, no. 1234/05, European Court of Human Rights, 2009.

S. and Marper v. United Kingdom, nos. 30562/04 and 30566/04, European Court of Human Rights, 2008.

Sciacca v. Italy, no. 50774/99, European Court of Human Rights, 2005.

Söderman v. Sweden, no. 5786/08, European Court of Human Rights, 2013.

Von Hannover v. Germany, no. 59320/00, European Court of Human Rights, 2004.

Dušica G. Kovačević Victimization through the Misuse of Private Photographs in the Context of Violations of Article 8 of the European Convention on Human Rights (ECHR)

X and Y v. Netherlands, no. 8978/80, European Court of Human Rights, 1985.

YouTube and Cyando, Joined Cases C-682/18 and C-683/18, Court of Justice of the European Union, 2021.

DUŠICA G. KOVAČEVIĆ*

Viktimizacija zloupotrebom privatnih fotografija u kontekstu povrede člana 8 Evropske konvencije o ljudskim pravima

Rad analizira zloupotrebu intimnih snimaka kao oblik digitalne viktimizacije u okviru člana 8 Evropske konvencije o ljudskim pravima (EKLJP). Predmet rada odnosi se na zaštitu privatnog života, autonomije, dostojanstva i psihološkog integriteta u kontekstu neovlašćenog stvaranja, posedovanja i distribucije intimnog sadržaja u digitalnom okruženju. Cilj rada je da se ispita da li postojeća praksa Evropskog suda za ljudska prava pruža dovoljno koherentan doktrinarni osnov za zaštitu žrtava intimne zloupotrebe slika, kao i da se razmotri obim pozitivnih obaveza država u savremenim digitalnim uslovima.

Analiza se zasniva na praksi Evropskog suda za ljudska prava, relevantnoj sudskoj praksi Suda pravde Evropske unije, uporednopravnim zakonodavnim rešenjima i savremenoj literaturi o seksualnom zlostavljanju putem slika i digitalnoj viktimizaciji. Posebna pažnja posvećena je institucionalnim odgovorima, odgovornosti digitalnih platformi i mehanizmima zaštite koji treba da omoguće efikasno sprečavanje kontinuirane štete i ponovne distribucije intimnog sadržaja.

Rad zaključuje da član 8 EKLJP već pruža značajan doktrinarni osnov za zaštitu žrtava zloupotrebe intimnih snimaka, ali da efikasna zaštita zahteva koordinisane krivičnopravne, građanskopravne, proceduralne i regulatorne mehanizme prilagođene tehnološki posredovanim oblicima viktimizacije.

Ključne reči: zloupotreba intimnih snimaka, digitalna viktimizacija, član 8 EKLJP, seksualno zlostavljanje putem slika, privatnost.

* Dr Dušica G. Kovačević je naučna saradnica na Institutu društvenih nauka u Beogradu.
E-mail: dkovacevic@idn.org.rs, ORCID: 0000-0001-7082-7159