

Challenges of Post-Separation Abuse

Swiss State Practice
and the Protection of Women and Children from Violence

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Abbreviations

CRC	Convention of the Rights of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
EBG	Federal Office for Gender Equality(Eidgenössisches Büro für die Gleichstellung von Frau und Mann (EBG))
EDA	The Federal Department of Foreign Affairs (Das Eidgenössische Departement für auswärtige Angelegenheiten)
EDI	The Federal Department of Home Affairs (Das Eidgenössische Departement des Innern)
EFD	The Federal Department of Finance (Das Eidgenössische Finanzdepartement)
EJPD	The Federal Department of Justice and Police (Das Eidgenössische Justiz- und Polizeidepartement)
EKS	Office for Child and Adult Protection (Amt für Kindes- und Erwachsenenschutz)
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
FDP	Swiss liberal party
FGM	Female Genital Mutilation
IC	Istanbul Convention
ILC	International Law Commission
INFRA	Frauenberatungsstelle Bern
IPV	Intimate Partner Violence
IPVaw	Intimate Partner Violence against Women
KESB	Child and adult protection services (Kindes- und Erwachsenenschutzbehörde)
KOKES	Conference of Cantons for Child and Adult Protection (Konferenz der Kantone für Kindes- und Erwachsenenschutz)
NAP IK	Nationaler Aktionsplan Nationaler Aktionsplan der Schweiz zur Umsetzung der Istanbul-Konvention 2022–2026

OGH	Swiss Victim Protection Law (Opferhilfe Gesetz)
PAS	Parental Alienation Syndrome
SODK	Conference of the Cantonal Directorates of Social Services Directorates (Konferenz der kantonalen Sozialdirektorinnen und -direktoren)
SCDV	Swiss Conference against Domestic Violence (Schweizerische Konferenz gegen Häusliche Gewalt (SKHG))
StGB	Swiss Criminal Code (Strafgesetzbuch)
SVP	Swiss People Party
UN	United Nations
USA	United States of America
UVEK	The Federal Department of the Environment, Transport, Energy and Communications (Das Eidgenössische Departement für Umwelt, Verkehr, Energie und Kommunikation)
Vista	Foundation against Violence against Women (Stiftung gegen Gewalt an Frauen)
VBS	The Federal Department of Defence, Civil Protection and Sport (Das Eidgenössische Departement für Verteidigung, Bevölkerungsschutz und Sport)
WBF	The Federal Department of Economic Affairs, Education and Research (Das Eidgenössische Departement für Wirtschaft, Bildung und Forschung)
ZGB	Swiss Civil Code (Schweizerisches Zivilgesetzbuch)

*Children can only thrive where women are safe, equal, and free.*¹

Evan Stark

¹ Evan Stark, *Children of Coercive Control* (Oxford University Press 2023) 276.

1 Abstract

This thesis aims to deepen the understanding of the issue of Intimate Partner Violence against women, post-separation abuse and custody allocation in Switzerland. The research question pursues the analysis of the Swiss State Practice regarding the protection of victimized mothers and their children through a human rights lens. Applying the concept of Coercive Control, the legislative, executive and judiciary State branches are reviewed on their alignment with Switzerland's obligations under the Articles 31 para. 1 and 2 and 45 para. 2 of the Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and Article 12 of the Convention of the Rights of the Child. Methods used for research include literature and document analysis as well as qualitative secondary data provided by a study commissioned by the Swiss Federal Office for Gender Equality. Furthermore, seven qualitative interviews with mothers affected by post-separation abuse are presented. The findings suggest a lack of protection of victimized mothers and their children from perpetrators engaging in post-separation abuse. The Swiss State Practice tends to perpetuate the ability of perpetrators of Coercive Control to instrumentalize shared parental authority and shared custody as a form of prolonged captivity and entrapment of their victims and their children.

Diese Dissertation untersucht welchen Herausforderungen Mütter und ihre Kinder, welche von Nachtrennungsgewalt betroffen sind, in der Schweiz begegnen. Anhand des Konzeptes Coercive Control wird die staatliche Praxis in der Schweiz zum Schutz von misshandelten Müttern und ihren Kindern aus der Perspektive der Menschenrechte untersucht. Dazu werden die Verpflichtungen der Schweiz unter dem Artikel 31. Para. 1 und 2 und Artikel 45 Para. 2 des Übereinkommen des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt und unter Artikel 12 der UN-Konvention über die Rechte des Kindes angewandt. Die für die Forschung verwendeten Methoden umfassen Literatur- und Dokumentenanalyse zur legislativen, judikativen und exekutiven Staatspraxis der Schweiz, wie auch die Betrachtung der Sekundärdaten der Studie, Unterstützungsangebote und Schutzmassnahmen für Kinder, die Gewalt in der elterlichen Paarbeziehung ausgesetzt sind, beauftragt vom Eidgenössischen Büro für die Gleichstellung von Frau und Mann. Zusätzlich werden sieben qualitative Interviews mit Müttern, die von Nachtrennungsgewalt betroffen sind, vorgestellt und auf gemeinsame Muster untersucht. Die Ergebnisse deuten darauf hin, dass die Schweizerische Staatspraxis es Tätern ermöglicht, elterliche Sorge- und Obhutsrechte als eine Form der Ausübung von Coercive Control nach der Trennung zu instrumentalisieren.

2 Introduction

Intimate partner violence against women (IPVaw) is one of the common forms of violence against women globally.² One in four woman experiences physical or psychological violence at the hands of their intimate partner during their lifetime.³ IPVaw can impair affected individuals with damage to the physical integrity and mental health, including an increased risk of depression and anxiety,⁴ as well as financial security and social isolation. A large number of survivors suffer from complex posttraumatic stress disorder (cPTSD), some only realizing months or years after the separation that they became victims of abuse.⁵⁶ Contextualizing and understanding is often a question of time and the privilege of therapy – not the least because IPV often includes forms of brainwashing.⁷ Victims of IPVaw try to leave their relationships seven times on average before leaving successfully.⁸ The moment of separation is usually the most dangerous instance in the timeframe of the relationship and can potentially end in murder (femicide).⁹

IPVaw often continues after separation in the form of post-separation abuse.¹⁰ Post-separation abuse mainly affects mothers because they face a distinct challenge when leaving. In case of a separation or divorce where children are involved, these women have no choice but to go through the legal and institutional system during the process of safeguarding custody and the safety of their children. The family court and child welfare systems are the playground of post-

² ‘NCADV | National Coalition Against Domestic Violence’ (*National Coalition Against Domestic Violence*) <<https://ncadv.org/STATISTICS>> accessed 11 April 2024.

³ ‘Violence against Women: An EU-Wide Survey’ (2015) <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf> accessed 8 August 2024.

⁴ Giulia Ferrari and others, ‘Domestic Violence and Mental Health: A Cross-Sectional Survey of Women Seeking Help from Domestic Violence Support Services’ (2016) 9 *Global Health Action* 29890 <<https://www.tandfonline.com/doi/full/10.3402/gha.v9.29890>> accessed 11 April 2024.

⁵ Adrian Horton, ‘Evan Rachel Wood’s Marilyn Manson Doc Shows the Messy Timeline of Healing’ (*The Guardian*, 18 March 2022) <<https://www.theguardian.com/tv-and-radio/2022/mar/18/evan-rachel-wood-marilyn-manson-documentary-phoenix-rising>> accessed 17 April 2024.

⁶ Deborah K Anderson and Daniel G Saunders, ‘Leaving An Abusive Partner: An Empirical Review of Predictors, the Process of Leaving, and Psychological Well-Being’ (2003) 4 *Trauma, Violence, & Abuse* 163, 178 <<http://journals.sagepub.com/doi/10.1177/1524838002250769>> accessed 3 August 2024.

⁷ LT Mega and others, ‘Brainwashing and Battering Fatigue. Psychological Abuse in Domestic Violence’ (2000) 61 *North Carolina Medical Journal* 260.

⁸ ‘50 Obstacles to Leaving’ (*National Domestic Violence Hotline*) <<https://www.thehotline.org/resources/get-help-50-obstacles-to-leaving/>> accessed 3 August 2024.

⁹ *Gender-Related Killings of Women and Girls (Femicide/Feminicide): Global Estimates of Female Intimate Partner/Family-Related Homicides in 2022* (United Nations 2023) <<https://www.un-ilibrary.org/content/books/9789213587072>> accessed 23 March 2024.

¹⁰ Kathryn J Spearman, Jennifer L Hardesty and Jacquelyn Campbell, ‘Post-separation Abuse: A Concept Analysis’ (2023) 79 *Journal of Advanced Nursing* pp. 1225 -1246. <<https://onlinelibrary.wiley.com/doi/10.1111/jan.15310>> accessed 3 August 2024.

separation abuse: Perpetrators weaponize State professionals to continue coercion and control over their victims.¹¹ Strategies of post-separation abuse used by perpetrators might include the imposition of ongoing threats and intimidation, instrumentalizing shared custody as a means to exert control, and withholding financial child support.¹²

The common threat by violent fathers to take away their partner's children if they leave,¹³ is unfortunately not far removed from reality: Perpetrators may use the allegation that the mother alienates the children and institutions may label the former as unwilling to cooperate. This may lead to the mother losing custody of her children.¹⁴ Discriminatory institutional policies against mothers with abusive (ex-)partners are frequent difficulties for mother victim-survivors of IPVaw.¹⁵ Factors such as 'gender differences in economic power (wage disparities between partners), gendered discourses of parenting that undervalue mothers' unpaid domestic labor, and misogynistic norms (...) position mothers as obstructive or vindictive'¹⁶ add to the vulnerability of mothers to experience 'institutional violence'¹⁷ during custody proceedings.¹⁸

Often, children are observers of IPVaw, even when they are not a direct target of it. They may be subjected to secondary victimization.¹⁹ They may also be deliberately harmed by the perpetrator, being used as a tool to dominate the mother pre- and post-separation.²⁰ The rights

¹¹ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem, 'Custody, Violence against Women and Violence against Children' (United Nations Human Rights Council 2023) <<https://www.ohchr.org/en/documents/thematic-reports/ahrc5336-custody-violence-against-women-and-violence-against-children>> accessed 1 August 2024; Stark, *Children of Coercive Control* p. 15; Spearman, Hardesty and Campbell

¹² Custody Peace, 'They Will Use the Systems Intended to Protect You, to Control You.' [2023] *Medium* <<https://custodypeace.medium.com/they-will-use-the-systems-intended-to-protect-you-to-control-you-c94670c6acdb>> accessed 8 August 2024; Michelle L Toews and Autumn M Bermea, "I Was Naive in Thinking, 'I Divorced This Man, He Is Out of My Life'": A Qualitative Exploration of Post-Separation Power and Control Tactics Experienced by Women' (2017) 32 *Journal of Interpersonal Violence* pp. 2166-2189 <<http://journals.sagepub.com/doi/10.1177/0886260515591278>> accessed 3 August 2024.

¹³ Stark, *Children of Coercive Control* p. 361, p. 596.

¹⁴ Joan S Meier, 'Johnson's Differentiation Theory: Is It Really Empirically Supported?' (2015) 12 *Journal of Child Custody* pp. 4-24 <<https://www.tandfonline.com/doi/full/10.1080/15379418.2015.1037054>> accessed 3 August 2024; Daniel G Saunders and Katherine H Oglesby, 'No Way to Turn: Traps Encountered by Many Battered Women with Negative Child Custody Experiences' (2016) 13 *Journal of Child Custody* pp. 154-177 <<https://www.tandfonline.com/doi/full/10.1080/15379418.2016.1213114>> accessed 3 August 2024.

¹⁵ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem.

¹⁶ Spearman, Hardesty and Campbell pp. 1226.

¹⁷ *ibid* 1231.

¹⁸ Vivienne Elizabeth, Nicola Gavey and Julia Tolmie, 'The Gendered Dynamics of Power in Disputes Over the Postseparation Care of Children' (2012) 18 *Violence Against Women* pp. 459-481 <<http://journals.sagepub.com/doi/10.1177/1077801212452049>> accessed 3 August 2024.

¹⁹ Stark, *Children of Coercive Control* p. 27.

²⁰ Joyanna Silberg and Stephanie Dallam, 'Abusers Gaining Custody in Family Courts: A Case Series of over Turned Decisions' (2019) 16 *Journal of Child Custody* pp.140-169 <<https://www.tandfonline.com/doi/full/10.1080/15379418.2019.1613204>> accessed 4 August 2024; Andrea

of affected children are frequently violated in these custody proceedings: Their needs might be ignored in the mist of custody battles, as they might be instrumentalized by the abusive parent as a means of coercion and control.²¹ Legally enabled contact with an abusive ex-partner and parent consequently often leads to prolonged violence, traumatization and devastating impacts on mental and physical health for both mother and child.²²

*Post-separation abuse is perpetrated at the individual level but facilitated and perpetuated by factors at the family (power differentials between intimate partners, stigma), community (legal system responses) and societal level (gender and patriarchal norms).*²³

Approaching from a human rights perspective, this thesis puts focus on the Swiss State's responses to IPVaw and post-separation abuse against mothers and their children in Switzerland. The UN Report 'Custody, Violence against Women and Violence against Children' 2023 of Special Rapporteur Reem Alsalem illustrates how perpetrators around the globe take advantage of family courts and child protection services to exercise post-separation abuse.²⁴ The GREVIO baseline evaluation report on measures giving effect to the provisions of the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence of 2022²⁵ suggests that this might also be a wide-spread issue in Switzerland. Key

Büchler, 'Elterliche Sorge, Besuchsrecht Und Häusliche Gewalt: Die Zuteilung Der Elterlichen Sorge Und Zivilrechtliche Aspekte Der Ausgestaltung Der Elterlichen Kontakte Zu Kindern Bei Trennung Nach Häuslicher Gewalt: Gutachten' (Eidg Büro für die Gleichstellung von Frau und Mann, EBG Fachbereich Häusliche Gewalt FHG 15122015) p. 11 <<https://doi.org/10.5167/uzh-116710>> accessed 2 May 2024; Marisa L Beeble, Deborah Bybee and Cris M Sullivan, 'Abusive Men's Use of Children to Control Their Partners and Ex-Partners' (2007) 12 European Psychologist pp. 54-61 <<https://econtent.hogrefe.com/doi/10.1027/1016-9040.12.1.54>> accessed 5 August 2024; Colleen Varcoe and Lori G Irwin, "'If I Killed You, I'd Get the Kids': Women's Survival and Protection Work with Child Custody and Access in the Context of Woman Abuse' (2004) 27 Qualitative Sociology pp. 77-99 <<http://link.springer.com/10.1023/B:QUAS.0000015545.82803.90>> accessed 5 August 2024.

²¹ Stark, *Children of Coercive Control* p. 711.

²² Eve M Valera and others, 'Understanding Traumatic Brain Injury in Females: A State-of-the-Art Summary and Future Directions' (2021) 36 Journal of Head Trauma Rehabilitation E1 <<https://journals.lww.com/10.1097/HTR.0000000000000652>> accessed 4 August 2024; Kimberly N Fleming and others, 'Intimate Partner Stalking Victimization and Posttraumatic Stress Symptoms in Post-Abuse Women' (2012) 18 Violence Against Women pp. 1368-1389 <<http://journals.sagepub.com/doi/10.1177/1077801212474447>> accessed 4 August 2024; Mega and others; Silberg and Dallam.

²³ Spearman, Hardesty and Campbell pp. 1226.

²⁴ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem.

²⁵ The GREVIO report is an assessment of the measures of implementation taken by the Swiss authorities with regard to all aspects of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). It was drafted by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) which is an independent human rights body mandated to monitor the implementation of the Istanbul Convention.

stakeholders involved in cases of legal separation or divorce with a history of IPVaw in Switzerland are civil courts and child and adult protection services (KESB).

Post-separation abuse cannot be analyzed without contextualizing it with the prevalence of IPVaw before the women left the relationship. To examine both the empirical phenomenon of post-separation abuse and IPVaw, I use the theoretical concept of Coercive Control. Coercive Control is a human rights-oriented theory gaining popularity among experts of IPVaw, e.g. Dr. Emma Katz, Dr. Judith Herman, or Dr. Evan Stark.²⁶ The concept frames IPVaw and post-separation abuse as violation of fundamental liberty rights, instead of focusing on physical violence, as traditional understandings of and legislation on violence against women do.²⁷ The application of the concept reveals how in the past century, the nature of IPVaw has changed to different forms of abuse: As incident numbers of severe physical assault decline in Western democracies, there is an increase of ‘minor’ serial violence.²⁸ The founder of the concept Evan Stark argues that this ‘signals the surfacing of a coercive and controlling pattern’, arguing that the numbers reflect ‘a shift in tactics from incident-specific assaults to ‘death from a thousand cuts’.²⁹ He ascribes this to the fact that women have gained considerable independence since they were awarded fundamental liberty rights, such as the right to work, or the right to get divorced.³⁰ In order to uphold dominance, perpetrators may be finding new ways to preserve the subjugation of their female partners. One of these ways may be to exert control over them through their children.

‘The existence of competing definitions of domestic violence (...) and requirements that battered mothers co-parent have undermined legislation intended to protect victims of domestic violence and their children’.³¹ I aim to provide an understanding of how current Swiss legislation impacts the protection (or lack thereof) of mothers and children exposed to post-separation abuse. To do so, I conceptualize post-separation abuse as a violation of human rights. Further, I aim to analyze associated executive and judiciary practices of the Swiss State, using

²⁶ See for example Emma Katz, *Coercive Control in Children's and Mothers' Lives* (Oxford University Press 2022); Judith Lewis Herman, *Trauma and Recovery* (Rev ed, BasicBooks 1997); Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (2nd edn, Oxford University Press New York 2024) <<https://academic.oup.com/book/55149>> accessed 19 July 2024; Stark, *Children of Coercive Control*.

²⁷ Stark, *Coercive Control* pp. 105.

²⁸ *ibid* 171, pp. 105-107.

²⁹ *ibid* pp. 119.

³⁰ *ibid* pp. 515.

³¹ Lisa Fischel-Wolovick, ‘Battered Mothers and Children in the Courts: A Lawyer's View’ (2020) 17 *International Journal of Applied Psychoanalytic Studies* pp. 246 <<https://onlinelibrary.wiley.com/doi/10.1002/aps.1669>> accessed 3 August 2024.

the concept of ‘State Practice’.³² The combination of both theoretical concepts of Coercive Control and State Practice reflects the creative approach of this thesis.

This thesis follows the research question: *what is the Swiss State Practice regarding the protection of mothers and their children affected by post-separation abuse?* It examines how mother victim-survivors in Switzerland experience post-separation abuse and what role the use of counter-claim allegations such as the parental alienation syndrome (PAS) play in custody proceedings. Furthermore, the thesis looks at how the custody allocation decisions of relevant State authorities and professionals align with the Swiss State’s obligations under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, i.e. the Istanbul Convention (IC),³³ specifically with regards to Article 31, para. 1 and 2, and Article 45 para. 2, and the Swiss State’s obligations under Article 12 of the Convention of the Rights of the Child.

For analysis, literature and document review, secondary data and primary data are used. Secondary data used is provided by a study conducted on behalf of the federal bureau for the equality of women and men (EGB) and the Swiss conference against domestic violence (SKHG)³⁴ published in January 2024, hereafter, the referred to as ‘the EBG study’. The study provides quantitative insight on the issue. It assesses how IPV in marriage and partnerships is considered in State institution’s decisions regarding parental authority and custody upon separation and divorce. Primary data is provided through seven qualitative semi-structured interviews conducted with victimized mothers in the canton of Bern, Switzerland. The canton of Bern serves as a case study as I work in this location on the issue of IPVaw since two years and know the environment as well as relevant actors. I have regular contact with victimized women and mothers, as well as with relevant institutions, through participation on round tables or in working groups with Vista, KESB workers, police men, city governance and other institutions. This gives me facilitated access to the community. The interviews aim to add in-

³² Wood M, Second report on identification of customary international law, Special Rapporteur 2014 [A/CN.4/672] p. 178-201 <https://legal.un.org/ilc/documentation/english/a_cn4_672.pdf accessed 17 July 2024.>

³³ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: a tool to end female genital mutilation; Istanbul Convention 2014.

³⁴ Paula Krüger and others, ‘Unterstützungsangebote Und Schutzmassnahmen Für Kinder, Die Gewalt in Der Elterlichen Paarbeziehung Ausgesetzt Sind’ (Eidgenössisches Büro für die Gleichstellung von Frau und Mann EBG und Schweizerische Konferenz gegen Häusliche Gewalt SKHG 2024) <<https://backend.ebg.admin.ch/fileservice/sdweb-docs-prod-ebgch-files/files/2024/01/19/ca23a3ef-098d-4992-aaa2-59b778f515e0.pdf>> accessed 8 August 2024.

depth understanding of the quantitative findings of the EBG study. They represent the main research contribution of this thesis.

The thesis starts with a short problem statement, elaborating on international tendencies on IPVaw, post-separation abuse and custody, by presenting the central findings of the report 'Custody, violence against women and violence against children: Report of the Special Rapporteur on violence against women and girls, its causes and consequences', submitted by UN Special Rapporteur Reem Alsalem to the Human Rights Council in 2023. Applying the international human rights lens on Switzerland, I thereafter provide insight into relevant concerns elaborated in the GREVIO Baseline Evaluation 2022 on Switzerland's performance with regards to its obligations under the Istanbul Convention. I further shortly touch upon the Convention on the Rights of the Child (CRC).³⁵ **Chapter four** elaborates the conceptual framework of Coercive Control, touching upon the origins of the concept, and how it frames IPVaw and post-separation abuse as a form of entrapment and subjugation. The chapter further reveals the role of children in coercively controlling relationships and provides an overview of relevant international and national legislations incorporating Coercive Control. **Chapter five** defines the concept of State Practice and gives an overview over relevant legislative, executive and judiciary Swiss State institutions. **Chapter six** provides the research question and sub-questions developed along the analysis presented in the theoretical chapters. **Chapter seven** presents the methodological approach of this thesis. It specifies in detail how the interviews with victimized mothers were conducted, using each interview as a case study. For reasons of specificity and due to the federalist system of Switzerland (executive and judiciary measures may vary slightly from canton to canton), all interviews were conducted in the canton of Bern. **Chapter eight** provides an analysis of Swiss legislation related to post-separation abuse and custody. It elaborates related Swiss criminal law and family law regarding custody allocation decisions within the framework of post-separation abuse, taking into account recent jurisprudence. Lastly, the chapter gives insight into the increasing popularity of Swiss policy initiatives hostile to mothers. In **chapter nine**, the results of the quantitative secondary data of the EBG study on executive and judiciary practices related to IPVaw and custody used for this thesis are presented and analyzed. In **chapter ten**, the results of the analysis of the primary data are presented and put into context with the quantitative secondary data. In the conclusion in **chapter eleven**, the research questions are answered. An interpretation of the results from a

³⁵ Convention on the Rights of the Child 1990.

human rights perspective is developed with regards to the previously defined relevant human rights obligations of the Swiss State under the IC and CRC. Finally, recourse is taken to the GREVIO baseline evaluation report and the report UN ‘Custody, violence against women and violence against children’ by Reem Alsalem presented in the problem statement.

2.1 Relevance

In Switzerland, victimized mothers have never been the subject of a study as interviewees. There is no current research focusing on interviews or questionnaires with mothers that are affected by IPVaw and post-separation abuse and going through institutional custody proceedings to secure themselves and their children. Further, the institutions responsible during this process give no possibility for a feedback loop or an evaluation by their clients. There are no studies available questioning mothers affected by IPVaw about their experiences. Also in general, research regarding this issue is scarce in Switzerland and has found neither much attention in policy, nor in academic research. Only in recent years, with the ratification of the IC³⁶ in 2017, the issue has gained more attention within Swiss lawmaking and policy. The GREVIO Baseline Evaluation Report of 2022 has revealed a lack of protection for women and children during the time of separation as well as during custody cases with abusive partners.³⁷

Another factor illustrating the relevance of this thesis is the number of women’s child abductions under The Hague Convention. Mothers affected by IPVaw might choose to flee to another country in order to bring themselves and their children to safety if institutions fail to do so.³⁸ Since 1980 international parental child abduction is covered under The Hague Convention. The law does not provide provisions for domestic violence, rendering mothers who seek to protect themselves and their children from abuse vulnerable to extradition. Internationally, around 75 % of all cases filed under The Hague convention are filed against mothers.³⁹ In Switzerland 80% of international child abductions were committed by mothers in 2023.⁴⁰ With

³⁶ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

³⁷ ‘GREVIO Baseline Evaluation Report Switzerland’ pp. 45-51.

³⁸ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem p. 10.

³⁹ Permanent Bureau, ‘Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and of the 1996 Child Protection Convention’ (2017) <<https://www.hcch.net/en/publications-and-studies/details4/?pid=6545>> accessed 8 August 2024.

⁴⁰ ‘Statistik 2023 Internationale Kindesentführungen Und Ausübung Des Besuchsrechts - Haager Und Europäisches Übereinkommen von 1980’ (Bundesamt für Justiz BJ Direktionsbereich Privatrecht Fachbereich Internationales Privatrecht IPR 2024)

intranational child abductions (refusal of visitation rights), this number rises to 90% mothers in Switzerland. These highly gendered numbers illustrate how mothers may search for self-proclaimed ways outside the legal proceedings in order to protect themselves and their children from violence, suggesting that Swiss institutions may be failing to do so systematically.⁴¹

2.2 Motivation

I aim to fill a knowledge gap on the effects of Swiss legislation and executive and judiciary practices on mothers and children affected by IPVaw. The lack of evidence-based knowledge on and evaluation of their experiences during institutional custody proceedings in Switzerland serve as my motivation for this thesis. This thesis is the first study conducted including the views of victimized mothers.

I approach this thesis as a becoming expert of IPVaw. In the past five years I have been researching and gaining knowledge about the mechanisms of IPVaw, its origins, and its impact. Two years ago, I have founded the association Sisters DV Bern, which offers peer-to-peer support meetings for women once a week in the city of Bern. In this short period of time, the association has served over 40 women affected by IPVaw, has organized public events, where survivors of IPVaw held panel discussions about their experiences, has placed several newspaper articles about the issue in Swiss media, and has won the Young Caritas Price. Within the framework of Sisters DV Bern, I have gained additional experience and am I offering lectures and workshops on mechanisms of IPVaw for adults across the German part of Switzerland. As I exclusively work with women (and gender-queer persons) and not with cis-men, my expertise lays with the specificities of gender-based patriarchal violence against women. This is why I have chosen this social group and perspective as the focus point for this thesis.

2.3 Terminology

Terms used in this thesis in relation to IPVaw are shortly defined in this chapter in order to provide clarity over slight differences of their meaning.

<<https://www.bj.admin.ch/dam/bj/de/data/gesellschaft/kindesentfuehrung/kindesentfuehrung-statistik.pdf.download.pdf/kindesentfuehrung-statistik-d.pdf>> accessed 19 July 2024.

⁴¹ Sudha Shetty and Jeffrey L Edleson, 'Adult Domestic Violence in Cases of International Parental Child Abduction' (2005) 11 *Violence Against Women* pp.115-138

<<http://journals.sagepub.com/doi/10.1177/1077801204271477>> accessed 4 August 2024.

‘IPV’, ‘domestic abuse’ and ‘domestic violence’: ‘Intimate Partner Violence’, ‘domestic abuse’ and ‘domestic violence’ can be used interchangeably. However, IPV applies specifically to violence in intimate relationships, whereas domestic violence and domestic abuse refer to forms of violence between parties of an intimate romantic relationship as well as parties with other familial ties including children. The United Nations define ‘Intimate Partner violence’, ‘domestic Violence’ and ‘domestic abuse’ as follows:

*A pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner. (...) This includes any behaviors that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone.*⁴²

Furthermore, the United Nations describes domestic abuse or domestic violence as mental, physical, economic, or sexual in nature. Incidents are rarely isolated, and usually escalate in frequency and severity. Domestic abuse may culminate in serious physical injury or death.⁴³ Regarding IPV specifically, the UN defines it as a ‘behavior by an intimate partner or ex-partner that causes physical, sexual or psychological harm, including physical aggression, sexual coercion, psychological abuse and controlling behaviours.’⁴⁴ This thesis adheres to these definitions while adding the factors of social isolation i.e. social violence, and financial abuse under the framework of Coercive Control (see chapter 4.).

‘Post-separation abuse’: Post-separation abuse is an extension of the violent/ abusive behavior perpetrated during a relationship with IPV. It can be defined as ‘the ongoing, willful pattern of intimidation of a former intimate partner including legal abuse, economic abuse, threats and endangerment to children, isolation and discrediting and harassment and stalking’.⁴⁵ It is also referred to as ‘post-separation violence’, ‘legal abuse’, ‘vexatious litigation’, ‘procedural abuse’, or ‘judicial terrorism’.⁴⁶ The German term for post-separation abuse is

⁴² ‘What Is Domestic Abuse?’ <<https://www.un.org/en/coronavirus/what-is-domestic-abuse>> accessed 26 February 2024.

⁴³ *ibid.*

⁴⁴ UN Women, ‘FAQs: Types of Violence against Women and Girls’ <<https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>> accessed 26 April 2024.

⁴⁵ Spearman, Hardesty and Campbell p. 1225.

⁴⁶ Lisa Arosen Fontes, ‘It’s Post-Separation Legal Abuse, Not High Conflict Divorce’ (18 January 2022) <<https://www.psychologytoday.com/us/blog/invisible-chains/202201/its-post-separation-legal-abuse-not-high-conflict-divorce>> accessed 3 August 2024; Spearman, Hardesty and Campbell p. 1227.

‘Nachtrennungsgewalt’.⁴⁷ Theoretically, the concept aligns with the concept of Coercive Control⁴⁸ which will be used to theorize post-separation abuse in this thesis.

‘Separation’ and ‘divorce’: I will sometimes use the word separation to encompass both separation of a non-married couple as well as the divorce of married couples. In case I want to make a distinction between the two, it will be clearly stated in the text.

‘Victim-survivor’: To describe the women and victimized mothers, I will use the terms ‘victim’, ‘survivor’ and ‘victim-survivor’. Both singular terms have a different meaning. The term victim (i.e. ‘victimized’) is a necessary term in legal language in the justice system, whereas the term survivor points to the (self-) agency of a (formerly) affected individual. When speaking generally, I will use the term ‘victim-survivor’.

‘abusive’ and ‘violent’: Along the concept of Coercive Control, IPVaw is not exclusively framed as physical violence. As elaborated in the introduction, the term IPVaw is traditionally associated with singular incidents of physical assault. IPVaw, however, contains multiple forms of violence.⁴⁹ Physically violent acts may or may not be part of domestic abuse/ IPVaw. The United Nations define abuse as ‘physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person’.⁵⁰ Following this definition, ‘abusive’ is used as an umbrella term for these different forms of violence, describing a prolonged pattern of control and subordination taking place in IPVaw.⁵¹

‘Gender-based violence’: The European Commission defines gender-based violence as ‘Gender-based violence is violence directed against a person because of that person's gender or violence that affects persons of a particular gender disproportionately’⁵². Gender-based violence affects women and girls, as well as gender-queer and trans persons, disproportionately in comparison to cis-men. However, gender-based violence inflicts severe harms to communities as a whole including boys and men. Both girls and boys growing up in abusive

⁴⁷ Asha Hedayati, *Die stille Gewalt: wie der Staat Frauen alleinlässt* (Originalausgabe, Rowohlt Polaris 2023) p. 71.

⁴⁸ Stark, *Coercive Control*.

⁴⁹ ‘What Is Domestic Abuse?’.

⁵⁰ *ibid.*

⁵¹ Stark, *Coercive Control* (n 29) p. 485-524.

⁵² European Commission, ‘What Is Gender-Based Violence?’ <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en> accessed 27 April 2024.

households are more likely to become victimized during adult life.⁵³ Witnessing or experiencing violence as a child, fosters boys especially to exert violence against their partners later in life.⁵⁴

To name fathers and (ex)-partners perpetrating ‘IPVaw’, ‘post-separation abuse’ and/or ‘domestic violence’, the terms ‘perpetrator’ and ‘abuser’ will be used.

⁵³ Sexual and Reproductive Health and Research (SRH), ‘Understanding and Addressing Violence against Women: Intimate Partner Violence’ (World Health Organization & Pan American Health Organization 2012) WHO/RHR/12.36 4 <<https://www.who.int/publications/i/item/WHO-RHR-12.36>> accessed 13 July 2024.

⁵⁴ Naomi N Duke and others, ‘Adolescent Violence Perpetration: Associations With Multiple Types of Adverse Childhood Experiences’ (2010) 125 *Pediatrics* pp. 778-786 <<https://publications.aap.org/pediatrics/article/125/4/e778/73159/Adolescent-Violence-Perpetration-Associations-With>> accessed 14 July 2024; Carrie A Moylan and others, ‘The Effects of Child Abuse and Exposure to Domestic Violence on Adolescent Internalizing and Externalizing Behavior Problems’ (2010) 25 *Journal of Family Violence* pp. 53-63 <<http://link.springer.com/10.1007/s10896-009-9269-9>> accessed 14 July 2024.

3 Problem Statement

Illustrating the problem examined in this thesis, this chapter touches upon global tendencies of State Practices harming victimized mothers and children in custody allocation proceedings. Providing an international human rights perspective with regards to the protection of mothers and their children affected by IPV, central findings of the report 'Custody, violence against women and violence against children: Report of the Special Rapporteur on violence against women and girls, its causes and consequences' submitted by UN Special Rapporteur Reem Alsalem to the Human Rights Council in 2023⁵⁵ is presented. Putting the issue in relation to Switzerland, relevant concerns of the GREVIO baseline evaluation report 2022 are examined, leading to the formulation of the research question of this thesis.

The report 'Custody, violence against women and violence against children: Report of the Special Rapporteur on violence against women and girls, its causes and consequences' submitted by UN Special Rapporteur Reem Alsalem shows concerning tendencies around the globe of ignoring IPVaw in determining child custody cases.⁵⁶ Alsalem finds that the best interest of the child is increasingly equated with the right of fathers to their children, independently of their history with IPVaw.⁵⁷ This puts victimized mothers at severe risk. Shared custody with their abusive ex-partners exposes them to continued contact with their abuser. Perpetrators of violence (including psychological or economic violence), often exploit custodial proceedings to their own advantage. They continue to exert pressure or even violence through visitation rights, and to worsen the financial situation of the other parent as a means of post-separation abuse. Also concerned children are at risk.⁵⁸ Prolonged psychological stress can suppress the proper functioning of the immune system of these children and affect brain development, which thus delays or reduces intellectual development.⁵⁹ Children exposed to domestic violence are equally more at risk of developing depression, anxiety, and post-traumatic stress disorder.⁶⁰ 'Intimate partnership violence is hardly considered in child custody proceedings. However, we know that children who witness partnership violence have a much

⁵⁵ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem.

⁵⁶ *ibid* p. 2.

⁵⁷ *ibid* p. 12-15.

⁵⁸ Stark, *Children of Coercive Control* p. 115.

⁵⁹ Emalee G Flaherty and others, 'Adverse Childhood Exposures and Reported Child Health at Age 12' (2009) 9 *Academic Pediatrics* pp. 150-156 <<https://linkinghub.elsevier.com/retrieve/pii/S1876285908002635>> accessed 14 July 2024.

⁶⁰ Renee M Johnsona and others, 'Adverse Behavioral and Emotional Outcomes from Child Abuse and Witnessed Violence' (2002) 7 *Child Maltreatment* pp. 179-186. <<http://journals.sagepub.com/doi/10.1177/1077559502007003001>> accessed 14 July 2024.

greater risk of becoming perpetrators or victims later in life,’⁶¹ says Asha Hedayati, a practicing family lawyer in Germany and author of the book ‘Die stille Gewalt’.⁶²

The Committee on the Elimination of All Forms of Discrimination against Women recommended in 2014 that in order to prevent the endangerment of women and children, the history of IPVaw must be taken into account in the determination of visitation schedules.⁶³ It called upon State’s responsibility to conduct compulsory training on for judiciary professionals to sensitize for post-separation abuse as an extension of IPVaw and the impact of domestic violence on children.⁶⁴ It stated that ‘*The rights or claims of perpetrators or alleged perpetrators during and after judicial proceedings, including with respect to property, privacy, child custody, access, contact and visitation, should be determined in the light of women’s and children’s human rights to life and physical, sexual and psychological integrity and guided by the principle of the best interests of the child*’.⁶⁵ The failure to address IPVaw in custody and visitation rights ‘is a violation of the rights of the child and the principle of the best interest of the child’.⁶⁶ Children’s perspectives, wishes and own views in matters affecting them must be heard and given weight.⁶⁷ They must be considered and validated in proceedings regarding custody and visitation allocation decisions if there is a history of domestic violence.⁶⁸ The trend for ‘pro-contact’ for both parents in Western family law however leads to a selective consideration of children’s experiences as research shows.⁶⁹ Special Rapporteur Alsalem attributes this trend towards allocating custody rights to violent fathers to the widespread

⁶¹ ‘DAS! Mit Anwältin Asha Hedayati’, *NDR* (27 May 2024) <<https://www.ardmediathek.de/video/das/das-mit-anwaeltin-asha-hedayati/ndr/Y3JpZDovL25kci5kZS9wcm9wbGFuXzE5NjM1MDk3OF9nYW56ZVNlbmR1bmc>> accessed 17 July 2024.

⁶² Hedayati *Die stille Gewalt: wie der Staat Frauen alleinlässt*.

⁶³ Communication No. 47/2012 [CEDAW/C/58/D/47/2012] para 46 <https://documents.un.org/doc/undoc/gen/n14/508/67/pdf/n1450867.pdf> accessed 8 August 2024. Switzerland has ratified the CEDAW in 1997.

⁶⁴ Concluding observations on the eighth periodic report of the Russian Federation [CEDAW/C/RUS/CO/8 2015] <https://documents.un.org/doc/undoc/gen/n15/387/33/pdf/n1538733.pdf?token=Jqbc9cJnFSNth2HdPL&fe=true> accessed 8 August 2024.

⁶⁵ General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 2017 [CEDAW/C/GC/35] para 31 (ii) General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 2017 [CEDAW/C/GC/35] <https://documents.un.org/doc/undoc/gen/n17/231/54/pdf/n1723154.pdf> accessed 17 July 2024

⁶⁶ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem p. 8.

⁶⁷ Convention on the Rights of the Child (CRC) art 9, para 2; *ibid* p. 12.

⁶⁸ Gillian S Macdonald, ‘Hearing Children’s Voices? Including Children’s Perspectives on Their Experiences of Domestic Violence in Welfare Reports Prepared for the English Courts in Private Family Law Proceedings’ (2017) 65 *Child Abuse & Neglect* 1, pp.1–13

<<https://linkinghub.elsevier.com/retrieve/pii/S0145213416303222>> accessed 16 July 2024.

⁶⁹ Macdonald.

adoption of the unscientific pseudo-concept of ‚parental alienation syndrome‘ (PAS)⁷⁰ in justice systems around the globe. PAS is a form of pathologization of the mother victim-survivor of gender-based violence. The concept of PAS refers to the process by which one parent influences a child to reject and alienate the other parent. It is highly gendered and usually used against victimized mothers or mothers in custody proceedings who aim to protect their children from abuse (see chapter 4.4.2).⁷¹

With the ratification of the Istanbul Convention (IC)⁷², Switzerland has committed to take appropriate (legislative) measures to ensure that such instances of violence are considered in decisions regarding visitation and custody rights, and that exercising these rights does not endanger the rights and safety of the victim or the children (Art. 31 IC). Art. 45 of the IC requires judicial authorities to withdraw parental rights of the abusive parent to protect the best interest of the child, which may include the safety of the victimized parent, if they cannot be guaranteed in any other way.

The GREVIO baseline evaluation report 2022 on measures to implement the provisions of the IC finds that Switzerland provides insufficient or inadequate financial and human resources to combat various forms of violence against women.⁷³ It establishes that the risk of post-separation abuse against mothers and their children is underestimated in the country. With regard to the implementation of Article 31 IC, GREVIO notes that domestic violence is not regularly considered by the relevant authorities as a reason to grant sole custody to the victimized parent.⁷⁴ GREVIO observes that parents with a history of domestic violence are rarely denied visitation rights, even if the mother and child are in a shelter or if there is a contact or restraining order against the abusive parent. The report reads:

GREVIO is concerned that a child’s exposure to domestic violence is not systematically viewed as a factor that could justify limited custody rights in disregard of the tendency of parents who

⁷⁰ The term used in German is ‘Kindesentfremdung’. Since the use of the term has been forbidden in family courts around the world, the father’s rights movement changed the wording to ‘Bindungsintoleranz’. The concept of Bindungsintoleranz and Kindesentfremdung is the same, only the name has been changed for political reasons.

⁷¹ Elizabeth Sheehy and Susan B. Boyd, ‘Penalizing Women’s Fear: Intimate Partner Violence and Parental Alienation in Canadian Child Custody Cases’ (2020) 42 Journal of Social Welfare and Family Law pp. 80-91 <<https://www.tandfonline.com/doi/full/10.1080/09649069.2020.1701940>> accessed 16 July 2024.

⁷² The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

⁷³ ‘GREVIO Baseline Evaluation Report Switzerland’ p. 6.

⁷⁴ *ibid* p. 48.

*perpetrate violence to exploit parental authority in order to maintain their control and influence over their ex-spouse and children.*⁷⁵

Relevant Swiss State professionals lack training to identify IPVaw and understand its mechanisms.⁷⁶ Only severe domestic violence or cases where the violence is directed at the children themselves are sometimes exceptions. The report also refers to cases where children have been withdrawn from mothers who were victims of IPVaw following criminal proceedings

*...indicating that protection mechanisms against violence can expose victims of violence to secondary victimization, by restricting the exercise of their parental rights. The difficulties experienced by many female victims of violence may result in a transfer of the child's residence to the perpetrator or a placement of the children with social services.*⁷⁷

The GREVIO report emphasizes that children are better protected when they can stay in their home after the abusive parent has been removed or, if their mother is forced to flee to a women's shelter, are taken there as well. If the State deprives the victimized parent of custody on the grounds that they are no longer able to take responsibility for the children due to trauma, this leads to a secondary traumatization of the victim and potentially their children.⁷⁸ Regarding the consideration of children's wishes related to custody, the non-governmental organization Swiss Human Rights finds that Swiss authorities do not systemically listen to children's needs and wishes in custody proceedings 'as the Convention on the Rights of the Child actually provides for.'⁷⁹

This thesis aims to deepen the understanding of the issue of IPVaw, post-separation abuse and custody allocation. Thus, this thesis builds on the findings of the report submitted by UN's Special Rapporteur Reem Alsalem as well as the GREVIO baseline evaluation report on Switzerland.

⁷⁵ *ibid* p. 49.

⁷⁶ *ibid* p. 50.

⁷⁷ *Ibid* p. 49.

⁷⁸ *ibid*.

⁷⁹ 'Häusliche Gewalt - Situation in Der Schweiz' (*humanrights.ch*, 24 August 2023)

<<https://www.humanrights.ch/de/ipf/menschenrechte/familie/dossier/situation-in-der-schweiz/>> accessed 1 July 2024.

4 Conceptual Framework Coercive Control

The following chapters shortly touch upon traditional theories on IPVaw before presenting the concept of Coercive Control to contextualize the forms and dynamics of IPVaw. Thereafter, the role and impact of Coercive Control on children and its relation to post-separation abuse is elaborated. The gendered aspect of Coercive Control is elaborated, adding an excursion of the concept of parental alienation and its relation to the father's rights lobby exercising harmful impact on custody allocation. The concept of Coercive Control is then translated into legal language by looking at different national and international legislations who have incorporated Coercive Control.

4.1 Traditional Theories on Intimate Partner Violence against Women

In research, many different approaches to understand IPVaw have been developed over the years. Traditional theories of IPVaw, such as the theory of women's masochism, frame violence against women as an issue of women who enjoy their own suffering.⁸⁰ This theory is deeply engrained with victim blaming (the transfer of the responsibility for the crime from the perpetrator to the victim-survivor).⁸¹ In the 1970ties, feminist theorists changed the focus towards gender-role conditioning and sexist institutional factors.⁸² Recent theories include the approach of co-dependency, trauma-bonding and the cycle of violence. However, these theories similarly leave out systemic factors of IPVaw, framing women as incapable of functioning independently.⁸³ There is a great difference between co-dependance and the targeted jeopardization of a victim's independence and self-esteem.⁸⁴ Psychological theories such as women's masochism or co-dependence can lead to societal attitudes preventing the liability of IPVaw perpetrators. As Greg Dear frames it, 'the notion that all women who have difficulty leaving violent and abusive men have some form of personality disturbance is dangerous

⁸⁰ Alexandra Symonds, 'Violence against Women—The Myth of Masochism' (1979) 33 *American Journal of Psychotherapy* pp. 161-172

<<http://psychotherapy.psychiatryonline.org/doi/10.1176/appi.psychotherapy.1979.33.2.161>> accessed 29 July 2024; Herman pp.180–189.

⁸¹ 'Ending Victim Blaming in the Context of Violence against Women and Girls. Why Language, Attitudes, and Behaviours Matter.' (Independent Office for Police Conduct 2024) 7

<<https://www.policeconduct.gov.uk/sites/default/files/documents/IOPC-ending-victim-blaming-guidance-Feb-2024.pdf>> accessed 29 July 2024.

⁸² Anderson and Saunders p. 164.

⁸³ *ibid* p. 165.

⁸⁴ Carole Lambert, 'Abused Women Are Not Codependent and Here's Why' (11 September 2018)

<<https://www.psychologytoday.com/us/blog/mind-games/201809/abused-women-are-not-codependent-and-heres-why>> accessed 20 July 2024.

because it blames the victim for not being able to prevent, avoid or cope with the violence'.⁸⁵ This can lead to a further isolation of a victim of IPVaw. It holds true that certain neurochemical processes resulting from domestic abuse lead to a form of dependency which can be compared to substance addiction.⁸⁶ A neurochemical mix of oxytocin (bonding hormone), endogenous opioids (pain, pleasure, dependence, withdrawal), corticotropin (stress, withdrawal), and dopamine (wanting, craving) creates situations where it is almost impossible for victims to leave abusive relationships. During the beginning of an abusive relationship, perpetrators usually cover their targets with compliments and affection, which is known as the honeymoon phase.⁸⁷ However, traumatizing episodes of violence trigger a dysregulation of the nervous system and hormonal system of the victim.⁸⁸ The body is put under significant stress. Moreover, affection and tenderness are withdrawn and replaced with devaluation, shaming and denigration. Victims have difficulty to frame these instances as a reason to leave due to cognitive dissonance: why would a person who indicates to love them exert the abuse deliberately? Resolving cognitive dissonance is a process which happens mainly unconsciously. It is a strategy of self-regulation executed by the prefrontal cortex.⁸⁹ This process might include rationalization or denial of the violence, or attachment to illusions of hope and future change. Strategies of perpetrators such as the torsion and denial of the victim's reality ('gaslighting') and the destruction of the sense of self play also into this dynamic. Meanwhile, the violent episodes become usually more frequent, while the peaceful moments become rarer. The victim suffers from increasing exhaustion: its body is put into a state of constant hyper-vigilance and stress (fearing to trigger the next incidence of violence). Attempting to regulate their nervous system, victims crave intimacy and reconciliation. 'With such strong neurochemistry in dysregulated states, it will be extremely difficult to manage emotions or make logical decisions', says Rhonda Freeman.⁹⁰ This is known as the cycle of

⁸⁵ Greg Dear, 'Domestic Violence and the Codependency Model' in Chris Sumner and Australian Institute of Criminology (eds), *International victimology: selected papers from the 8th International Symposium: proceedings of a symposium held 21-26 August 1994, Adelaide* (Australian Institute of Criminology 1996) p. 287.

⁸⁶ Rhonda Freeman, 'How the Brain Can Work against Abuse Victims' (*Psychology Today*, 18 January 2017) <<https://www.psychologytoday.com/us/blog/neurosagacity/201701/the-brain-can-work-against-abuse-victims>> accessed 29 July 2024.

⁸⁷ Advocates to End Domestic Violence, 'Domestic Violence 101' (*AEDV.org*) <<https://www.aedv.org/domestic-violence-101>> accessed 29 July 2024.

⁸⁸ Freeman.

⁸⁹ *ibid.*

⁹⁰ *ibid.*

abuse.⁹¹ As mentioned, these theories focus mainly on the ‘subjective meaning’ and internal psychological factors of the victimized women.⁹² However, internal explanations need to be also ‘viewed in light of major structural constraints faced by battered women’, including the analysis of the post-separation period.⁹³

4.2 The Origin of Coercive Control

The psycho-social approaches of women’s masochism, co-dependency and the cycle of abuse neglect socio-cultural pressures, socio-economic gender-related power dynamics, and gender-based socialization of victims and perpetrators. These theories also fail to explain why women are disproportionately affected by IPV. More recent studies have increasingly focused on the role of coercion tactics used to control victims of IPV. Jess Hill, author of the book ‘See What You Made Me Do’ wrote in an article in the Guardian in 2019; ‘domestic abuse almost always follows the same script. It’s a truly confounding phenomenon: how is it that men from vastly different cultures know to use the same basic techniques of oppression?’.⁹⁴ Hill refers to Albert Biderman, a US Air-Force-sent sociologist who investigated the phenomenon of US American war prisoners aligning with their captors during the Korean war.

Biderman noted that ‘the ever-present fear of violence in the mind of the prisoner appears to have played an important role’.⁹⁵ He identified that the captors did not primarily use physical violence, but rather used tactics of brainwashing and ‘vague threats and the implication that they were prepared to do drastic things’ to establish compliance.⁹⁶ Biderman later summed up his research in the ‘chart of coercion’, identifying eight coercive methods used in the torture of war prisoners: 1) isolation, 2) monopolization of perception, 3) humiliation and degradation, 4) exhaustion, 5) threats, 6) occasional indulgences, 7) demonstration of omnipotence and 8)

⁹¹ Crystal Raypole, ‘Understanding the Cycle of Abuse’ (*Healthline.com*, 30 November 2020) <<https://www.healthline.com/health/relationships/cycle-of-abuse>> accessed 29 July 2024.

⁹² Anderson and Saundersp. 177.

⁹³ *ibid.*

⁹⁴ Hill.

⁹⁵ Albert Biderman, ‘Communist Attempts to Elicit False Confessions from Air Force Prisoners of War’ (1957) 33 *Bulletin of the New York Academy of Medicine*, p. 620 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1806204/pdf/bullnyacadmed00378-0046.pdf>> accessed 29 July 2024.

⁹⁶ *ibid.*

forcing trivial demands.⁹⁷ Amnesty International adopted this chart in 1973 to explain universal tools of torture and coercion.⁹⁸

Harvard clinical psychology professor and trauma expert Judith Herman wrote in 1992:

*Captivity, which brings the victim into prolonged contact with the perpetrator creates a special type of relationship, one of coercive control. This is equally true whether the victim is taken captive entirely by force, as in the case of prisoners and hostages, or by a combination of force, intimidation and enticement, as in the case of religious cult members, battered women, and abused children. The psychological impact of subordination to coercive control may have many common features, whether that subordination occurs within the public sphere of politics or within the private sphere of sexual and domestic relations.*⁹⁹

In 1994 Amnesty International officially applied the chart to the context of domestic abuse.¹⁰⁰ That is how scientific research on IPVaw based on concept of Coercive Control took it's beginning.

4.3 The Theory of Coercive Control

Coercive Control is a concept which explains the mechanisms of violence from a holistic and human rights-oriented perspective and calls for a more inclusive approach to address and combat domestic abuse, respectively IPVaw. It shifts the focus away from the traditional understanding of IPVaw, namely the cliché picture of the beaten wife with a black eye, towards an understanding IPVaw as a form of entrapment which violates the right to dignity, liberty, self-determination and equality. This chapter elaborates the theory of Coercive Control.

In 2009, sociologist Dr. Evan Stark presented a revolutionary feminist approach on IPVaw in his book 'Coercive Control: Entrapment of Women in Personal Life'.¹⁰¹ Stark identifies IPVaw as a broader pattern of behaviors aimed at dominating and controlling an intimate partner. He emphasizes that domestic violence is not merely a series of individual assaults, but a systematic

⁹⁷ 'Biderman's Chart of Coercion' <<https://archive.org/details/Bidermanschartofcoercion>> accessed 29 July 2024.

⁹⁸ 'Report on Torture' (Amnesty International 1997) ACT 40/001/1973 <<https://www.amnesty.org/en/documents/ACT40/001/1973/en/>> accessed 29 July 2024.

⁹⁹ Herman p. 74.

¹⁰⁰ 'Biderman's Chart of Coercion'.

¹⁰¹ Stark, *Coercive Control*.

pattern of dominance that can deeply impact the victim's autonomy and identity aiming to entrap the victim. These mechanisms function as a web of means of power, attacking every aspect of the victim's personhood; their political, moral, and psychological integrity. Perpetrators employ intimidation and isolation to undermine the independence of victims and establishing an atmosphere of fear.¹⁰² Perpetrators adapt these strategies to their victim. 'The victim's persona interests the oppressor only as a source of resistance to attain his primary end - to extract obedience, a confession, or information.'¹⁰³ The 'victim's agency' is the principal target of Coercive Control, says Stark.

Coercive Control involves a pattern of control including physical assault, economic abuse, manipulation, isolation, threats, exploitation, humiliation, belittling, degradation and intimidation, and regulation and micro-management of the victim's life.¹⁰⁴ By isolating victims, controlling their movements, and limiting their access to resources, the perpetrator attacks the victim's ability to make autonomous decisions and live freely, stripping away their identity and sense of self. The perpetrator's micro-regulation of the victim's life can lead to a loss of personal agency, making the victim feel as though they are not a separate and autonomous individual. Adding to the isolation, chronic fear and intimidation is instilled in victims, this leads to a form of psychological entrapment. Public figure and IPVaw survivor Rachel Evan Wood remembers:

*It was this non-stop onslaught of words and monologues, this constant stream of negativity that I felt like I couldn't escape and couldn't stop... it's where the brainwashing and abuse started taking place. He wouldn't stop until you gave in or started agreeing with everything he was saying.*¹⁰⁵

Explaining why she felt unable to leave, Wood says, 'it's what they do to your mind, body and spirit,'¹⁰⁶ saying she was too scared to leave because she felt like 'I'm dead anyway'.¹⁰⁷

¹⁰² Evan Stark, 'Rethinking Coercive Control' (2009) 15 Violence Against Women pp. 1509 – 1525
<<http://journals.sagepub.com/doi/10.1177/1077801209347452>> accessed 12 April 2024.

¹⁰³ Stark, *Coercive Control*, e.g. p. 257.

¹⁰⁴ Ibid p.1.

¹⁰⁵ Gil Kaufmann, 'Evan Rachel Wood Recounts Harrowing Details of Alleged Abuse by Marilyn Manson: "He Wouldn't Stop Until You Gave In"' *Billboard Media, LLC* (10 September 2023)
<<https://www.billboard.com/culture/tv-film/evan-rachel-wood-alleged-abuse-marilyn-manson-interview-1235437081/>> accessed 31 July 2024.

¹⁰⁶ 'Evan Rachel Wood on Past Relationship With Marilyn Manson', *The View* (14 March 2022) sc 9:16
<<https://www.youtube.com/watch?v=Ja-UFvajEHc>> accessed 23 May 2024.

¹⁰⁷ Kaufmann .

Coercive Control is a full-fledged campaign against ‘women’s persona, their social being and political identity, their sense of purpose and being in the world, their capacity and dignity’, says Stark.¹⁰⁸ The constant belittlement, humiliation, and systematic (public and private) degradation involved in Coercive Control erodes the victim's self-esteem and self-respect. A victim-survivor of Coercive Control recounts in the English documentary ‘walking on eggshells’: ‘I didn’t even have a name anymore, he was calling me ‘it’...oh ‘it’ speaks, oh ‘it’ has arrived home’(...) ‘by the time I left, I felt like I didn’t even exist as a person’.¹⁰⁹ This can ultimately end in suicide.

While physical injuries may be present and frequent, they are often seemingly futile. Similarly, Judith Herman understands IPVaw as a form of psychological subordination. ‘The [coercive] methods that enable one human being to enslave another are remarkably consistent,’¹¹⁰ she says. Describing how perpetrators become ‘the most powerful person’ in the victim’s life,¹¹¹ she elaborates:

The methods of establishing control over another person are based upon the systematic, repetitive infliction of psychological trauma. They are organized techniques of disempowerment and disconnection’, using ‘methods of psychological control (...) designed to instill terror and helplessness and to destroy the victim’s sense of self in relation to others. ¹¹²
The victim’s psychology becomes ‘shaped by the [perpetrator’s] actions and beliefs.’¹¹³

Like Stark, Herman determines that domestic perpetrators don’t need to apply physical violence to establish dominance. It is enough if they subliminally suggest that they are capable of applying it. The psychological violence is exercised on a daily base rather than in sudden outbursts of violence by the perpetrator. The perpetrator does not ‘lose control’, due to anger issues or incapability to regulate his emotions – he exercises control through the appliance of violence in strategic moments.

However, or maybe exactly because of the psychological nature of Coercive Control, the violence is often for longtime not recognized as such by the victims. Victims may believe that

¹⁰⁸ Stark, *Coercive Control* p. 162.

¹⁰⁹ *Walking On Eggshells: Coercive Control in the UK* (Directed by Annie La Vespa, Mumsnet Women’s Aid and Surrey Police 2021) <<https://www.youtube.com/watch?v=Cbx2q-hGgAc>> accessed 26 February 2024.

¹¹⁰ Herman p. 76.

¹¹¹ Ibid. p. 80.

¹¹² ibid p. 77.

¹¹³ ibid p. 75.

what is happening to them is their fault. Through victim-perpetrator reversing tactics, they may have also been influenced by the perpetrator to believe they were not victims, but the actual abusive party in the relationship: 'it was only when I left and was handed a questionnaire...I just got so upset because I hadn't realized that it was abuse'.¹¹⁴

Likewise, Asha Hedayati describes cases of women, who were 'only' hit a few times during the relationship, however 'the bare possibility of [renewed] escalation, made them obedient'.¹¹⁵

4.3.1 A gendered Form of Violence

The distinct feature of control and entrapment has no comparison for male victims of IPV. Coercive Control is deeply gendered: 'A course of calculated, malevolent conduct deployed almost exclusively by men to dominate individual women by interweaving repeated physical abuse with three equally important tactics: intimidation, isolation, and control'.¹¹⁶ Coercive Control has a unique aspect of 'sexual politics' which is distinct from other crimes. There is no comparable counterpart to the pattern of Coercive Control women experience for male victims of domestic violence. Coercive Control thrives and feeds on misogynistic societal discrimination as well as economic inequality to entangle and entrap women in abusive relationships.¹¹⁷

Stark suggests that the root of the recent increase of Coercive Control lays in the patriarchal context and the changing status of women's equality:

Women's changing economic, political, and social status. Domestic violence was sufficient to sustain male dominance in personal life so long as most women had limited options for self-development outside the domestic sphere.¹¹⁸ (...) The female agency men confront today is constituted from a wealth of rights and resources that make [physical] violence alone increasingly ineffective as a sole means to secure control.¹¹⁹

With the feminist movements of the last century, women won new rights to self-determination, equal education, employment, suffrage and participation in political life. Women's mobility

¹¹⁴ *Walking On Eggshells: Coercive Control in the UK*.

¹¹⁵ Hedayati pp. 38–39.

¹¹⁶ Stark, *Coercive Control* p. 14.

¹¹⁷ Ibid p. 460, p. 489.

¹¹⁸ ibid p.12.

¹¹⁹ ibid p. 224.

and independence increased – and with it the male need for new forms of their subordination in the domestic sphere. Stark names this the ‘paradox of equality’.¹²⁰ Male domination adapts in its forms to meet women’s moves for independence:

*The increment of male privilege expressed in personal life through Coercive Control is a measure to the gap between women developing capacities as producer/creators and the right to freely develop, apply and appropriate the fruits of those capacities.*¹²¹

In other words, Coercive Control is men’s attempts to undermine women’s aspirations for equality in order to force them to continue to meet men’s self-interest according to traditional gender roles. Domestic violence is transforming into domestic torture. Stark brings the case of Nicole Brown, ex-wife to O.J. Simpson, illustrating how...

*...the regulations of her movement, the restrictions on her speech, the insults to her dignity, the exploitation of her skills, the deprivations of money (...) made the incidental physical and sexual assaults she suffered more like ‘torture’ than ‘abuse’.*¹²²

Statistics show that male IPVaw perpetrators engaging in stalking (with no prior physical assault) have the same probability to commit femicide or attempted femicide as perpetrators who have engaged in prior violent assaults.¹²³ This underlines Starks argumentation that perpetrators who ‘only’ engage in non-violent control tactics are just as dangerous for women as perpetrators who engage in physical violence. While the means may vary, the aim is always complete control over the victim.

It is important to note, that coercively controlling men do not fall into any known pathological categorization. Judith Herman for example states that a perpetrator’s ‘most consistent feature is both the testimony of victims and the observations of psychologists, is his apparent normality. Ordinary concepts of psychopathology fail to define or comprehend him’.¹²⁴ Susan Forward, an internationally renowned therapist and author, equally clarifies: as much as the women in coercively controlling relationships are not masochists, the men perpetuating the abuse are not

¹²⁰ *ibid* p. 213.

¹²¹ *ibid* p. 12-13.

¹²² *ibid* p. 10.

¹²³ Judith M McFarlane and others, ‘Stalking and Intimate Partner Femicide’ (1999) 3 Homicide Studies pp. 300-316 <<http://journals.sagepub.com/doi/10.1177/1088767999003004003>> accessed 30 July 2024.

¹²⁴ Herman p. 75.

sadists.¹²⁵ She suggests, that these men's behavior does neither correspond with the features of narcissistic personality disorders, nor with antisocial personality disorders (i.e. sociopaths), although some elements of these disorders may be present in his character. Instead, Susan Forward calls them misogynists: men who hate women.

4.3.2 Children of Coercive Control

A frequently overlooked aspect of intimate partner abuse is its impact on children. Children should grow up in safe, nurturing, and loving environments with caregivers who empathetically show them boundaries as well as opportunities. Perpetrators of Coercive Control are unfit to provide children with these fundamental qualities, they rather actively endanger them. IPVaw usually increases during pregnancy and while children are still toddlers.¹²⁶ Twenty-three % of women even indicate that the abuse only started once they were pregnant.¹²⁷ Child witnesses in these relationships are affected by the violence, even in cases where the violence is not directly targeting them. Sociologist and Criminologist Emma Katz writes:

*A perpetrator of Coercive Control (usually, though not always, a child's father or father-figure) is singularly focused on one thing: their campaign to control their target or targets (usually the child's mother, and sometimes also the child themselves). To control their targets, coercively controlling fathers deploy an arsenal of harmful tactics: psychological abuse; manipulation; financial impoverishment; restriction of time, space and activities; isolation; constant monitoring; and threats.*¹²⁸

It is likely that millions of children are globally suffering under Coercive Control.¹²⁹ Stark worked with and interviewed children who were victims of Coercive Control to gain insight into these dynamics from a children's perspective. He illustrates how Coercive Control is the most important cause and context of child abuse, including sexual abuse, denigration, exploitation, isolation and subordination of children, outside of war zones. In his newest book

¹²⁵ Susan; Torres Forward Joan, *Men Who Hate Women and the Women Who Love Them: When Loving Hurts And You Don't Know Why* (Random House Publishing Group 2011) pp. 1–13.

¹²⁶ Ursula Müller and Monika Schröttle, 'Lebenssituationen, Sicherheit Und Gesundheit von Frauen in Deutschland' (Deutsches Bundesministerium für Familie, Senioren, Frauen und Jugend 2004) p. 261 <<https://www.bmfsfj.de/resource/blob/84328/3bc38377b11cf9ebb2dcac9a8dc37b67/langfassung-studie-frauen-teil-eins-data.pdf>> accessed 30 July 2024.

¹²⁷ 'Gesundheitliche Auswirkungen von Gewalt Gegen Frauen' (2020) pp. 316–317 <https://www.rki.de/DE/Content/Gesundheitsmonitoring/Gesundheitsberichterstattung/GBEDownloadsB/frauenbericht/08_Gewalt_gegen_Frauen.html> accessed 8 August 2024.

¹²⁸ Katz pp. viii.

¹²⁹ *ibid* p. 11.

‘Children of Coercive Control’, he sheds light on how Coercive Control not only affects women, respectively mothers, but also deeply harms children. His findings illustrate how abusive fathers use children as a way to exert control over their (ex-)partners:

*Coercive Control is deployed with a single objective, to establish a condition of dependence/subordination (...) by making the perceived costs of their refusal (the child or the mother’s), resistance, or autonomy higher than costs of their compliance. (...). Even where a coercively controlling partner has not abused a child physically or sexually, children are almost always subjected to tactics that compromise their autonomy, deny them dignity, and deprive them of the resources and support they need to thrive.*¹³⁰

These tactics serve the aim of establishing dependency, loyalty, and compliance to the perpetrator, by which he gains control and monopolizes the access over resources in the family. Domestic abusers isolate and instill fear in children with the ultimate goal to gain and maintain control. In order to coerce the mother into subordination, abusive fathers intentionally inflict suffering and fear onto their children. One of the key pillars of Coercive Control is (as seen the previous chapter) intimidation:

*The abuser is always on. It is not merely that women and children ‘walk on eggshells’ waiting for the inevitable explosion. The reality of life with Coercive Control is more surreal: every moment of a child’s day is saturated with authority and foreboding (...). Intimidation is a way of life.*¹³¹(..) It ‘is a campaign to overcome the courage and destroy the confidence of a child (...) it’s aim is terroristic.’¹³²

Abusive fathers terrorize and shame mothers in front of their children in order to destroy the mother-child relationship and to make the mother seem weak, unable to protect the child. Further, abusive fathers also ‘denigrate children for its intended effect on the mother’¹³³ as a form of ‘staged performance’.¹³⁴

Children, especially infants and preschoolers, who grow up in households with a coercively controlling parent typically produce stress-induced trauma symptoms such as sleeping and eating problems, stagnating physical and intellectual growth, internalizing externalizing

¹³⁰ Stark, *Children of Coercive Control* p. 236.

¹³¹ *ibid* p. 244.

¹³² *ibid* p. 247.

¹³³ *ibid* p. 240.

¹³⁴ *ibid*.

behavioral problems and mood disturbances.¹³⁵ Additionally, children often think that the violence at home is associated to something that they did wrong. Stark writes that children interpret, predict and assess abusive and violent episodes happening in their family home.¹³⁶

4.3.3 Framing post-separation abuse as a Form of Coercive Control

Coercive Control most often continues after a successful separation, and in cases where children are involved, they often become tools in the attempt to uphold control and coercion. This is what is understood as post-separation abuse. It is an extension of the abusive and violent behavior perpetrated during a relationship where IPVaw, respectively Coercive Control, was prevalent. In this thesis, post-separation abuse is understood under the framework of Coercive Control to understand how abusive partners take advantage of legal systems and other State institutions to extend their power over ex-partners and their children beyond the point of separation.

Post-separation abuse ‘is in many cases even worse than the violence during the relationship’.¹³⁷ It is a form of Coercive Control which may include various tactics, including physical and digital stalking, physical and digital harassment, or smear campaigns (spreading false information or rumors about the victim to friends, family, neighbors, or colleagues to damage their reputation and isolate them socially). Mothers are especially vulnerable to post-separation abuse as they are still linked to their abuser by their common children through shared custody and/or financial dependency. Their ex-partners may prevent them from getting essential documents, or therapy places for their children through the withholding of their signature. Their children may return home upset and confused after visits with their father. Harassment and

¹³⁵ John W Fantuzzo and others, ‘Effects of Interparental Violence on the Psychological Adjustment and Competencies of Young Children.’ (1991) 59 *Journal of Consulting and Clinical Psychology* pp. 258-265 <<https://doi.apa.org/doi/10.1037/0022-006X.59.2.258>> accessed 25 July 2024; Michelle Bosquet Enlow and others, ‘Interpersonal Trauma Exposure and Cognitive Development in Children to Age 8 Years: A Longitudinal Study’ (2012) 66 *Journal of Epidemiology and Community Health* pp. 1005-1010 <<https://jech.bmj.com/lookup/doi/10.1136/jech-2011-200727>> accessed 25 July 2024; John W Fantuzzo and Carol Ummel Lindquist, ‘The Effects of Observing Conjugal Violence on Children: A Review and Analysis of Research Methodology’ (1989) 4 *Journal of Family Violence* pp. 77 -94 <<http://link.springer.com/10.1007/BF00985658>> accessed 25 July 2024; Sandra A Graham-Bermann and others, ‘The Impact of Intimate Partner Violence and Additional Traumatic Events on Trauma Symptoms and PTSD in Preschool-aged Children’ (2012) 25 *Journal of Traumatic Stress* pp. 393-400 <<https://onlinelibrary.wiley.com/doi/10.1002/jts.21724>> accessed 26 July 2024.

¹³⁶ Stark, *Children of Coercive Control* p. 233.

¹³⁷ Hedayati p. 71.

stalking are often enabled through State-ordered contact due to custody arrangements.¹³⁸ An Italian study with women affected by IPVaw pre-separation revealed that 78% of women report coercively controlling behavior during father-child contacts after separation. The behaviors identified in this study include treats, denigration, targeted impoverishment, prevention of living an autonomous life and attempts to destroy the mother-child bond.¹³⁹

Custody battles especially are a fertile ground for post-separation abuse. Perpetrators may file for custody or visitation rights not because they genuinely wish to care for their children, but as a means of harassing and to continuing to control the victim. This may include continuous legal actions to keep the victim entangled in endless litigation or intimidating the victim during custody mediation sessions.¹⁴⁰ Constantly recurring demands for modifications to custody arrangements consume time, money and physical and emotional energy from the victim.

Men in my cases have battled unyieldingly for sole custody of children whose grade level or birth dates they 'don't recall' until their wives abandoned lucrative property settlements or gave up custody altogether, denuded of hope of ever having their children apart from surveillance'. Later, they abandoned their families [i.e. children] once they had won sole legal and/or primary physical custody after extremely costly multiyear battles, writes Stark.¹⁴¹

Post-separation as a form of Coercive Control may also include forms of economic abuse. Perpetrators may refuse to pay child support, or they may make irregular payments to destabilize the victim's financial situation.¹⁴² Single mothers are especially vulnerable to

¹³⁸ Judith Wuest, Marilyn Merritt-Gray and Marilyn Ford-Gilboe, 'Regenerating Family: Strengthening the Emotional Health of Mothers and Children in the Context of Intimate Partner Violence' (2004) 27 *Advances in Nursing Science* pp. 257-274 <<http://journals.lww.com/00012272-200410000-00003>> accessed 3 August 2024.

¹³⁹ Mariachiara Feresin and others, 'The Involvement of Children in Postseparation Intimate Partner Violence in Italy: A Strategy to Maintain Coercive Control?' (2019) 34 *Affilia* pp. 481-497 <<http://journals.sagepub.com/doi/10.1177/0886109919857672>> accessed 25 July 2024.

¹⁴⁰ Emmaline Campbell, 'How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It' (2017) 24 *UCLA Women's Law Journal* pp.41-66 <<https://escholarship.org/uc/item/31z272j1>> accessed 26 July 2024.

¹⁴¹ Stark, *Children of Coercive Control* p. 53.

¹⁴² Margret E Bell, Lisa A Goodman and Mary Ann Dutton, 'The Dynamics of Staying and Leaving: Implications for Battered Women's Emotional Well-Being and Experiences of Violence at the End of a Year' (2007) 22 *Journal of Family Violence* pp. 413-428 <<http://link.springer.com/10.1007/s10896-007-9096-9>> accessed 3 August 2024; Douglas A Brownridge and others, 'The Elevated Risk for Non-Lethal Post-Separation Violence in Canada: A Comparison of Separated, Divorced, and Married Women' (2008) 23 *Journal of Interpersonal Violence* pp. 117-135 <<http://journals.sagepub.com/doi/10.1177/0886260507307914>> accessed 3 August 2024; Helen Cleak and others, 'Screening for Partner Violence Among Family Mediation Clients:

poverty, and the withholding of child support may be the last straw to make them dependent on social aid. Lastly, the endangerment of the child is an important aspect:

*The risk that the abuser will kill, kidnap, or seriously harm the child is a function of the overall level of Coercive Control (..) using the child as a pawn to gain control over his wife and her assets, like any other means.*¹⁴³

These harms may include the psychological or medical neglect of the child. Perpetrators might also leave them in inappropriate settings, imposing indirect danger to the child. Lastly, the child may be exposed to physical or sexual abuse by the perpetrator.

4.3.4 Operationalization of Coercive Control

Key elements of Coercive Control used for the methodic operationalization and analysis of the primary data of this thesis are defined as:

- Psychological violence: Employing manipulation, exploitation, humiliation, belittling, name calling, and degradation.
- Intimidation and Threats: Using threats of violence and intimidation to instill fear in the victim. For example, perpetrators often threaten to take the children away if mothers were to leave the relationship. This fear keeps the victim compliant and less likely to resist the abuser's control.
- Isolation: Isolating the victim from friends, family, and other support networks. This isolation increases the victim's dependence on the abuser and reduces their ability to seek help.
- Micro-Regulation: Exerting control over every aspect of the victim's life; determining what clothes to wear, what to cook and what to eat, when to be at home, how and when to perform sexually, and what to say or not to say; tracking of the victim's everyday contacts (increasingly over their phones) and forced sharing of their location; diminishing the victim's sense of autonomy.
- Economic Abuse: Controlling the victim's access to financial resources, preventing them from working, sabotaging their employment opportunities, or preventing their access to a

Differentiating Types of Abuse' (2018) 33 Journal of Interpersonal Violence pp. 1118-1146
<<http://journals.sagepub.com/doi/10.1177/0886260515614559>> accessed 3 August 2024.

¹⁴³ Stark, *Children of Coercive Control* pp. 711–712.

car to obstruct the victim from leaving. Financially independent women are often exploited and deprived of their own money, sometimes contributing to their indebtedness.

- Sexual abuse: Sexual assault and ‘rape as routine’; women participate in sex to mitigate the abuser’s behavior; participation in sex is based on fear.¹⁴⁴
- Physical violence: physical assault, (attempted) femicide.

These key elements are not an extensive list and not all elements (specifically not physical and/or sexual violence) must be prevalent in individual cases to qualify as Coercive Control.

Key elements of post-separation abuse understood as a form Coercive Control *in conjunction with* the elements elaborated above are:

- Legal Abuse: Engaging in continuous dispute over child custody
- Application of the Parental Alienation Syndrome (PAS); discreditation: framing mothers as psychologically ill, as alienating and/or as unable to care appropriately for their children
- Endangerment to children; psychological and medical neglect, physical and sexual abuse
- Targeted impoverishment, targeted withholding of child support
- Prevention of living an autonomous life; going on vacation, being free to move the place of residency and other forms of restriction of movement
- Attempts to destroy the mother-child bond
- Harassment, stalking and threats

4.4 Law-and-Order Response to Post-separation Abuse

This chapter examines how prevalent gender stereotypes might be detrimental for mothers affected by IPVaw in legal proceedings, especially with regards to custody. It takes recourse to the growing impact of PAS counterclaims on custody allocation to abusive fathers. This analysis includes an international human rights perspective on PAS. Thereafter, the incorporation of Coercive Control into national and international legislation around the world is presented. The chapter concludes with legal provisions under the IC and CRC relevant for tackling post-separation abuse as a form of Coercive Control used for the analysis of this thesis.

¹⁴⁴ Stark, *Coercive Control* p. 159.

4.4.1 Gender Bias against victimized Mothers

One effective strategy perpetrators of Coercive Control may use to increase their chances to gain custody is to discredit the mother's ability to parent with allegations of mental illness. Labelling women and girls, who are victimized by gender-based violence as mentally ill (especially when they choose to call out the injustice committed) has longstanding tradition. One has just to look into the late nineteenth century practice of diagnosing women with hysteria, the 'archetypal psychological disorder of women' as Judith Herman calls it.¹⁴⁵ It was used as a 'dramatic metaphor for everything that men found mysterious or unmanageable in the opposite sex'.¹⁴⁶ A recent book of Dr. Jessica Taylor describes how psychiatrist diagnoses are being used against women and girls subjected to male violence and how the 'belief that women and girls make up rape and abuse for attention or revenge' is used against women in court proceedings.¹⁴⁷ The stereotype of an obsessed women seeking revenge ('the crazy-ex') is a claim men frequently make use of.¹⁴⁸ In criminal proceedings related to gender-based violence, and in child custody proceedings, the diagnosis of a mental health disorder 'is usually a recipe for discrimination, gaslighting and injustice'.¹⁴⁹ Taylor describes, how psychologists or psychiatrists often neglect to mention domestic violence and abuse in records later used for these proceedings, reframing the trauma resulting from gender-based violence as an issue caused by the victim itself.¹⁵⁰ Stark similarly mentions how the persistent stereotype of narcissist, manipulative women who make false allegations of abuse is used in family court. Perpetrators engaging in post-separation abuse often employ these stereotypes in order to gain advantages in child custody proceedings.¹⁵¹ The experience of abuse leads to traumatization in most cases. Traumatized people may act in unpredictable ways which are often not seen as logical behavior from the outside. Victims may seem angry, bitter or suspicious. Their behavior may be understood as 'uncooperative' or difficult, as victimized women are expected to present themselves as helpless.¹⁵² However, women's most common response to IPVaw is anger (60%),

¹⁴⁵ Herman p. 9.

¹⁴⁶ Mark S Micale, 'Hysteria and Its Historiography: A Review of Past and Present Writings (II)' (1989) 27 History of Science 319, pp. 319-351 <<http://journals.sagepub.com/doi/10.1177/007327538902700401>> accessed 26 July 2024.

¹⁴⁷ Dr Jessica Taylor, *Sexy but Psycho: How the Patriarchy Uses Women's Trauma against Them* (Constable 2022) p. 149.

¹⁴⁸ *ibid* p 23-25.

¹⁴⁹ *ibid* p.168.

¹⁵⁰ *ibid* pp. 168-184.

¹⁵¹ Stark, *Children of Coercive Control* p. 379.

¹⁵² Mary Przekop, 'One More Battleground: Domestic Violence, Child Custody, and the Batterers' Relentless Pursuit of Their Victims Through the Courts' (2011) 9 Seattle Journal for Social Justice p. 1053, p. 1068

followed by fear and shock.¹⁵³ The emotion of anger is however ascribed to male stereotyping and not socially accepted for women, especially for women of color. Male display of anger is traditionally associated with power, while female display of anger is associated with powerlessness, inappropriate emotionality, over-dramatization and over-reaction.¹⁵⁴ ‘Calling women hysterical isn’t accurate or warranted. But it is a useful way to try to shame women into shutting up while, at the same time, scoffing at them and undermining their point’, says Laura Bates.¹⁵⁵ The societal expectation of women’s self-pacification in the face of violence serves perpetrators of IPVaw.

Women suffering from cPTSD may also display ‘a strange lack of affect when discussing the violence, or giggle inappropriately’.¹⁵⁶ In return, perpetrators may present as ‘charming, charismatic, likeable, reasonable, generous, and even flexible’.¹⁵⁷

By alleging that the victim is mentally ill, perpetrators create confusion, stir the image of mutual abuse, and shift the focus away from themselves. Judges and other evaluators who are not trained to recognize Coercive Control, post-separation abuse, and varying expressions of cPTSD may rather trust the perpetrator who presents himself as calm and rational (stereotypes associated with men), than a victim seeming strange or emotional (stereotypes associated with women).¹⁵⁸ Even if a parent is suffering from cPTSD, it is important to consider that the experienced violence does not necessarily lead to a loss of parenting ability, even though the stress associated with the violence can negatively impact it. Studies show that victimized mothers may exhibit increased hostility and impatience towards their children, greater inconsistency in parenting, and higher aggressiveness in dealing with their children. However,

<<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1045&context=sjsj>> accessed 26 July 2024.

¹⁵³ ‘Violence against Women: An EU-Wide Survey’ p. 56.

¹⁵⁴ Chemaly Soraya, ‘How Women and Minorities Are Claiming Their Right to Rage’ *The Guardian* (11 May 2019) <<https://www.theguardian.com/lifeandstyle/2019/may/11/women-and-minorities-claiming-right-to-rage>> accessed 29 July 2024.

¹⁵⁵ Laura Bates, *Fix the System, Not the Women* (Simon & Schuster 2023) p. 101.

¹⁵⁶ Joan S Meier, ‘Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions’ (2003) *Gender Soc. Pol’y & L.* pp. 691-69 <https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1856&context=faculty_publications> accessed 12 April 2024.

¹⁵⁷ Clare Dalton, Judge Susan Carbon and Nancy Olesen, ‘High Conflict Divorce, Violence, and Abuse: Implications for Custody and Visitation Decisions’ (2003) 54 *Juvenile and Family Court Journal* p.16 <<https://onlinelibrary.wiley.com/doi/10.1111/j.1755-6988.2003.tb00084.x>> accessed 26 July 2024.

¹⁵⁸ Campbell p. 45.

studies also show that if this is the case, parenting abilities often recover after the violence ends.¹⁵⁹

Lastly, the intersectionality of gender discrimination plays into the issue. Women of color are less likely to be heard, or even have their situation exacerbated through institutional violence when coming forward about experiences of gender-based violence.¹⁶⁰ Andrea Simon, director of the End Violence Against Women Coalition in the UK elaborates:

*The idea of a perfect, blameless victim relies on harmful sexist and also racist myths and stereotypes. Women and girls who are black or minority ethnic, disabled, LGBTQ or who face multiple disadvantages too often encounter institutional discrimination in their interactions with criminal justice agencies, which becomes a barrier to accessing justice.*¹⁶¹

These factors often lead to biased decision making of professionals at court and other law-and-order institutions. Referring to her work with victim-survivors, Asha Hedayati says:

*Over time, I have become increasingly appalled by how this shift in responsibility repeatedly occurs, where we are essentially constantly evaluating the woman's behavior. Instead of examining why he begins to use violence and why the State fails to protect her, she is expected to adjust her behavior so that she does not experience violence. She is expected to free herself from violence in a timely manner, protect her children, and then, if she tries to protect her children, she experiences institutional violence from the family courts.*¹⁶²

Likewise, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) noted in 2015 that gender-stereotypes and myths of men and women manifest in impeding women's access to effective justice. Societal stereotypes about women may have a particularly negative impact for women-survivors of violence, affecting their perceived credibility and potentially leading to a misinterpretation or misapplication of law. The

¹⁵⁹ Heinz Kindler, 'Partnergewalt und Beeinträchtigungen kindlicher Entwicklung: Ein Forschungsüberblick' in Barbara Kavemann and Ulrike Kreyssig (eds), *Handbuch Kinder und häusliche Gewalt* (VS Verlag für Sozialwissenschaften 2007) <http://link.springer.com/10.1007/978-3-531-90550-1_2> accessed 18 July 2024.

¹⁶⁰ Melanie Brazell, 'Transformative Gerechtigkeit Statt Polizei Und Gefängnisse: Für Einen Alternativen Umgang Mit Sexualisierter Gewalt Und Beziehungsgewalt' in Daniel Loick (ed), *Kritik der Polizei* (Campus Verlag 2018) pp. 279-297.

¹⁶¹ Bates p. 64.

¹⁶² 'Asha Hedayati Über Stille Gewalt'

<https://open.spotify.com/episode/6GljlUBxRP4CVabInYTtD5?si=gKFbg-_VSEi6MEM6ua-9MA> accessed 13 July 2024.

Committee further describes how this can lead judges and magistrates to support the defence advanced by the alleged perpetrator, while neglecting valid claims of victim-survivors.¹⁶³

When this bias leads to violent fathers being awarded with custody this can lead to drastic consequences. A study conducted in the USA found that 88 % of cases with IPVaw prevalent included forms of child abuse. The study furthermore found that courts were ‘highly suspicious of mothers’ motives for being concerned with abuse’.¹⁶⁴

*They ‘were often treated poorly and two-thirds of the mothers were pathologized by the court for advocating for the safety of their children. Judges who initially ordered children into custody or visitation with abusive parents relied mainly on reports by custody evaluators and legal guardians ad litem who mistakenly accused mothers of attempting to alienate their children from the father or having coached the child to falsely report abuse. As a result, 59 % of perpetrators were given sole custody and the rest were given joint custody or unsupervised visitation.’*¹⁶⁵

In Switzerland, there is currently no data concerning mothers experience with post-separation abuse. However, a recent study conducted by Terre des Femmes in Germany with mothers affected by post-separation abuse found that 69 % of perpetrators threatened to withdraw the mother’s parental authority for their common children through court processes, with 44 % successfully following through with the threat.¹⁶⁶ 73 % of fathers who were estimated as ‘unsafe contact for the children’ by mothers, have threatened to claim visitation rights. 56 % of those fathers were equally successful on following through with the threat. 67 % of perpetrators engaged in prolonged and repeated litigation. Regarding financial abuse, the study found that 72 % threatened to withdraw any financial support after separation, with 74 % successfully implementing that. Regarding German State Practice, 68 % of the participant mothers in the study indicated that they made discriminating experiences with family court. 67 % recounted the same with child protection services, followed by 45 % with victim counseling services and 36 % with law enforcement.

¹⁶³ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 03 September 1981) <<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf>> accessed 16 July 2024.

¹⁶⁴ Silberg and Dallam p. 140.

¹⁶⁵ *ibid.*

¹⁶⁶ ‘Nachtrennungsgewalt Und Institutionelle Gewalt Bei Gewaltbetroffenheit in Umgangs- Und Sorgerechtsangelegenheiten’ (Terre des Femmes 2024) <https://frauenrechte.de/fileadmin/user_upload/20240505_Umfrageergebnisse_19_.pdf> accessed 30 July 2024.

4.4.2 Coercive Control and the Parental Alienation Syndrome

Stark stresses that authorities should consider the abused mother's and the child's interests jointly, as they are inextricably linked:

*Most non-accidental child fatality and serious child injury is a form of 'secondary victimization' intended primarily to dominate mothers elevates the significance of a global justice response that sanctions crimes against women and children equally as elements of a single course of torturous conduct.*¹⁶⁷

In return, this means that 'children can thrive only where women are safe, equal, and free'.¹⁶⁸ However, the afore mentioned UN report of Special Rapporteur Alsalem suggests that this is often not the case, ascribing the problem not least to the growing father's rights movement and the concept of PAS. PAS 'is replicated globally and has led to an explosion in the use of misogynistic narratives like parental alienation; otherwise known as 'malevolent mother syndrome' or 'implacable hostility' in custody disputes, with chilling outcomes for children'.¹⁶⁹ PAS is a concept coined as 'emotional and psychological child abuse'¹⁷⁰, where one parent, usually the mother, 'maliciously' manipulates their children to turn against the other parent in order to gain sole custody. The concept was introduced by Richard A. Gardner, a psychiatrist and psychoanalyst in the 1980s. His ideas have been used widely by father's rights lobbies in family law and child custody disputes. Gardner characterizes PAS as systematic denigration of the 'targeted' parent, where the alienating parent (usually the mother) invents absurd and untrue reasons for the child's rejection of the alienated parent. Gardner lists a total of eight symptoms of PAS¹⁷¹ amongst which he mentions: 1) a campaign of denigration by the alienating parent against the alienated parent, usually the father, 2) a lack of ambivalence, where child sees the alienating parent as wholly good, whereas the alienated parent is seen as wholly bad, and 3) the "independent-thinker" phenomenon, where the child expressively says that it does not wish to

¹⁶⁷ Stark, *Children of Coercive Control* p. 381.

¹⁶⁸ Ibid p. 382.

¹⁶⁹ Natalie Page, 'This Poor Understanding Is Replicated Globally and Has Led to an Explosion in the Use of Misogynistic Narratives like Parental Alienation; Otherwise Known as "Malevolent Mother Syndrome" or "Implacable Hostility" in Custody Disputes, with Chilling Outcomes for Children' *The Court Said Wordpress* (28 May 2024) <<https://thecourtsaid.wordpress.com/2021/05/28/parental-alienation-discredited-unscientific-nazi-theory/>> accessed 8 August 2024.

¹⁷⁰ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem, (n 12) 10.

¹⁷¹ Richard A Gardner, *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals* (Creative Therapeutics 1992).

have contact with the alienated parent, which along Gardner's argumentation is due to the manipulation of the alienating parent (mother).

In his work, Gardner argues that children are not as harmed by sexual contact with adults, as commonly believed and suggested.¹⁷² On the contrary, he argues that the harm rather stems from societal attitudes and outside reactions towards the abuse, rather than the sexually abusive acts themselves. Gardner believes that early 'sex' with the father creates a sexually 'charged up child', which will move the child to mature faster and foster the preservation of the human species.¹⁷³ He further states that it is the mothers who should be blamed for the fathers' sexual abuse.

*It may be that one of the reasons the daughter turned toward the father is the impairment of the child's relationship with the mother*¹⁷⁴. *'Her own diminished guilt over masturbation will make it easier for her to encourage the practice in her daughter, if this is warranted. And her increased sexuality may lessen the need for her husband to return to their daughter for sexual gratification.'*¹⁷⁵

According to Gardner, the molesting parent should not be alienated from the child. Rather, the protective parent should refrain from litigation, as the trauma caused by legal processes may be more damaging to the child than the sexual abuse itself.¹⁷⁶

PAS has been widely criticized due to a lack of scientific validity, strong gender bias (as it is usually used to target mothers) and concerns about its widespread misuse in custody disputes. A study conducted in the USA found that mothers who claimed any type of abuse against themselves or their children were twice as likely to lose custody if the fathers claimed parental alienation.¹⁷⁷ Pro-PAS professionals may label victimized mothers as mentally disturbed, accusing her of affecting the child 'by parental relationship distress' or to psychologically abuse her child.¹⁷⁸ Other factors, such as insufficient training of lawyers, judges and social workers

¹⁷² Richard A Gardner, *True and False Accusations of Child Sex Abuse* (Creative Therapeutics 1992).

¹⁷³ Gardner pp. 24–25.

¹⁷⁴ Gardner p. 579.

¹⁷⁵ *ibid* p. 585.

¹⁷⁶ Gardner p. 75.

¹⁷⁷ Joan S Meier, 'U.S. Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations: What Do the Data Show?' (2020) 42 *Journal of Social Welfare and Family Law* pp. 92-105

<<https://www.tandfonline.com/doi/full/10.1080/09649069.2020.1701941>> accessed 12 April 2024.

¹⁷⁸ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem, p. 10.

engaged in the field of domestic violence and custody questions, lead to a lack of recognition of perpetrators tactics to reverse victim and offender roles. Patric Jean elaborates in detail how this process usually unfolds:

Separation – official State regulation of the child's personal contact with the father in accordance with his demands - contact carried out in accordance with official instructions - evidence of sexual abuse of the child and/or refusal of contact with the father by the child - report by the mother or a specialist due to evidence of sexual abuse or request by the mother to respond to the child's refusal of contact and excessive demands - expert opinion attesting to the mother's 'inability to raise the child' and 'mental disorder' and presenting the child's evidence of sexual abuse as an implausible lie by the mother induced in the child or the child's refusal of contact as the result of negative influence by the mother. the child's refusal of contact as the result of the mother's negative influence. All problems in the relationship between father and child are interpreted as the result of the mother's 'obstructive attitude' [Verhinderungshaltung / Verhinderungsmutter¹⁷⁹] and 'lack of bonding tolerance' [Bindungsintoleranz¹⁸⁰] and therefore her 'inability to raise the child' [Erziehungsunfähigkeit¹⁸¹], and the father is judged to be sufficiently capable of raising the child - decision of the State authority based on the expert opinion: Allocation of custody and care to the father or external placement.¹⁸²

The UN Report on Custody, Violence Against Women And Violence Against Children, presented by the Special Rapporteur Reem Alsalem, illustrates how the concept of PAS is nowadays weaponized by abusive partners in family law proceedings against mothers as a means of post-separation abuse, continued coercion, and prolonged violence.¹⁸³ The report states that the 'discredited and unscientific pseudo-concept of parental alienation is used in family law proceedings by abusers as a tool to continue their abuse and coercion, and to undermine and discredit allegations of domestic violence made by mothers who are trying to keep their children safe'.¹⁸⁴

¹⁷⁹ Patric Jean, *La loi des pères* (Éditions du Rocher 2020) p. 6.

¹⁸⁰ *ibid* p. 4.

¹⁸¹ *ibid* p. 1.

¹⁸² *ibid*.

¹⁸³ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem pp. 5–13.

¹⁸⁴ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem.

*The use of parental alienation tends to become a self-fulfilling prophecy. As soon as parents are judged as being ‘alienating’, ‘implacable’ or ‘failing to listen’, their actions or inaction can be prejudiced. As a result, allegations of domestic violence remain side-lined as a one-off occurrence. This reduces domestic violence to a minor conflict and stigmatizes and pathologizes women and children.*¹⁸⁵

In cases where mothers affected by IPVaw aim to gain custody of their children, the use of PAS as a legal counter-claim may lead to violent fathers being awarded contact.¹⁸⁶ Reportedly, women have even been imprisoned for violating the custodial rights of fathers with violent histories, or even lost custody of the child(ren) completely when they aimed to resist the father’s contact order.¹⁸⁷ The UN report by the Special Rapporteur Reem Alsalem further elaborates: ‘despite a history of domestic violence, courts have invoked the pseudoconcept of parental alienation or blamed mothers for purposely isolating children from their fathers, even where the safety of the mother or the child was at risk’.¹⁸⁸ The Committee on the Elimination of Discrimination against Women (CEDAW) has likewise recognized the use of PAS as a form of post-separation abuse, recalling State parties to prohibit the use of the concept in custody cases.¹⁸⁹

Describing cases where PAS was used as a counter-claim in family court, Stark writes that for courts ‘the principle (...) was not whether the child’s decision to become ‘estranged’ was reasonable or even ‘safe’, but the apparently higher standard of whether the status of the evidence for the claim merited a challenge to men’s rights to their children’.¹⁹⁰ He further emphasizes how ‘(..) whenever I come across a case of ‘PAS’ where a child is estranged from a dad who is also alleged to be abusive, I suspect the child as well as the wife has been a victim of the man’s coercive control and that the ‘alienation’ claim is part of his strategy’.¹⁹¹ Stark consequently recommends prioritizing and believing the child’s perspective over the father’s

¹⁸⁵ *ibid* p. 5.

¹⁸⁶ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem p. 18.

¹⁸⁷ *ibid*.

¹⁸⁸ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem p. 6.

¹⁸⁹ Concluding observations on the combined seventh and eighth periodic reports of Spain paras 38–39. [CEDAW/C/ESP/CO/7-8 2015] <https://documents.un.org/doc/undoc/gen/n15/235/15/pdf/n1523515.pdf> accessed 8 August 2024

¹⁹⁰ Stark, *Children of Coercive Control* 304.

¹⁹¹ *ibid* 422.

claim that the child's refusal to see him is due to the mother's manipulation. Prioritizing an abusive father's claim to PAS over the child's wishes may compromise the child's best interest. A study conducted in England revealed significant impacts on the health of mothers accused of PAS. The study investigated 45 mothers of whom all reported alleged child abuse of their children by their former partner. All of these mothers reported serious health problems including cancer, miscarriages, heart attacks and suicidal ideation they attributed to the family court proceedings.¹⁹² Some reported feeling 'tortured' as in 'war-like situations'.¹⁹³ A related BBC investigation 'found five mothers died - some taking their own lives and one having a heart attack'.¹⁹⁴

The father's rights lobby pushing PAS on the political and legal agenda has its main anchorage in Western Europe.¹⁹⁵ It is closely linked to radicalized European 'masculinist' movements and radical right-wing fraternities, according to the years-long research of the German journalist Tobias Ginsburg.¹⁹⁶

4.5 Coercive Control in Legal Language

Coercive Control brings a broader understanding of IPVaw into play. This chapter elaborates how Coercive Control is finding its way into new legislation around the globe. It concludes with the presentation of relevant articles of the Istanbul Convention (IC) applicable to Switzerland.

Stark's theory illustrates how the abuse is inflicted systematically and in a deeply calculated manner. At all, the physical abuse usually begins when women are already trapped in abusive relationships (trapped psychologically, financially, through the presence of common children, through marriage or through lacking prospects of another housing opportunity). However, traditional legislation and other law-and-order institutions usually fail to consider these

¹⁹² Elizabeth Dalgarno and others, 'Health-Related Experiences of Family Court and Domestic Abuse in England: A Looming Public Health Crisis' (2024) 21 *Journal of Family Trauma, Child Custody & Child Development* p. 283 <<https://www.tandfonline.com/doi/full/10.1080/26904586.2024.2307609>> accessed 8 August 2024.

¹⁹³ *ibid* p. 285.

¹⁹⁴ Thomas Ed, 'Family Courts: Children Forced into Contact with Fathers Accused of Abuse' *BBC* (4 September 2022) <<https://www.bbc.com/news/uk-66531409>> accessed 8 August 2024.

¹⁹⁵ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem p. 2.

¹⁹⁶ Tobias Ginsburg and Günter Wallraff, *Die Letzten Männer Des Westens: Antifeministen, Rechte Männerbünde Und Die Krieger Des Patriarchats* (Originalausgabe, Rowohlt Taschenbuch Verlag 2021).

dynamics. They typically capture assaults of domestic violence under laws which are focused on physical violence with injuries as a marker. These laws are singular-incident-based and use a calculus of harms.

Stark argues¹⁹⁷ that in order to tackle IPVaw as a pattern of assaults aiming to entrap a victim, it must be understood as a violation of the fundamental human rights to dignity¹⁹⁸ and freedom and security¹⁹⁹, such as the right to self-determination and equality²⁰⁰, the right to physical and mental integrity²⁰¹, the right to freedom from torture, inhuman and degrading treatment²⁰². These violations must be understood as paired with physical, sexual and psychological harms to children.

Globally, states are moving to integrate Coercive Control in their legislation. For example, bills were passed to criminalize Coercive Control in Ireland, Wales, Scotland and Canada.²⁰³ South Australia is currently drafting a new legislation.²⁰⁴ Also the United Kingdom has introduced Coercive Control into legislation in 2015. The bill criminalizes ‘behavior towards another person that is controlling or coercive.’²⁰⁵ This behavior is defined as:

An act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.’ (...) ‘Controlling behavior is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the

¹⁹⁷ Stark, *Coercive Control* 273-282.

¹⁹⁸ Charter of Fundamental Human Rights of the European Union 2000 (2000/C 364/01) art 1; Universal Declaration of Human Rights 1948 art 1; International Covenant on Civil and Political Rights 1966 art 1; International Covenant on Economic, Social and Cultural Rights 1966 art 1.

¹⁹⁹ Charter of Fundamental Human Rights of the European Union 6; European Convention on Human Rights 1953 art 5; United Declaration of Human Rights art 3; International Covenant on Civil and Political Rights arts 9 and 10.

²⁰⁰ International Covenant on Civil and Political Rights arts 18, 19, 2; International Covenant on Economic, Social and Cultural art 3.

²⁰¹ Charter of Fundamental Human Rights of the European Union art 3; International Covenant on Civil and Political Rights art 7.

²⁰² Charter of Fundamental Human Rights of the European Union art 4; European Convention on Human Rights art 3; United Declaration of Human Rights art 5; International Covenant on Civil and Political Rights art 7.

²⁰³ ‘MPs Vote Unanimously to Criminalize Coercive Control’ *CBC News* (Canada, 13 June 2024) <<https://www.cbc.ca/news/canada/british-columbia/coercive-control-laurel-collins-domestic-violence-1.7233526>> accessed 30 July 2024; ‘Sex Offenders (Amendment) (Coercive Control) Bill 2023: Second Stage’ (Houses of the Oireachtas Ireland 2023) <<https://www.oireachtas.ie/en/debates/debate/seanad/2023-12-06/28/#:~:text=The%20Bill%20provides%20that%20people,and%20always%20up%20to%20date.>> accessed 30 July 2024.

²⁰⁴ ‘Coercive Control in South Australia’ *Government of South Australia Attorney-General’s Department* (2023) <<https://www.agd.sa.gov.au/law-and-justice/legislation/coercive-control-in-south-australia>> accessed 30 July 2024.

²⁰⁵ Serious Crime Act UK 2015 (Chapter 9, Part 5, Section 76).

*means needed for independence, resistance and espace and regulating their everyday behavior.*²⁰⁶

The bill has since been extended to also cover post-separation abuse: the former requirement of ‘living together’ for Coercive Control to be a criminal offence was removed as of April 2023.²⁰⁷ Now, the offence applies to intimate partners, ex-partners or family members, regardless of whether the victim and perpetrator live together, with the argument that ‘the amendment was made to extend the offence in recognition that controlling or coercive behavior can persist and often increase when a relationship ends, or in cases where the victim no longer lives with the perpetrator’.²⁰⁸ According to Stark, this is an important loophole which must be addressed: ‘Not only is shared living not a precondition for ongoing abuse, but women who are physically separated are at the highest risk of abuse, and women face the highest risk when they separate from abusive partners’.²⁰⁹ Neglecting to frame Coercive Control as an offence would exclude a great part of the victim-survivors from legal protection.

Another country that has integrated Coercive Control into their legislation, is Brazil. The Maria da Penha law may be considered as the gold standard. It defines domestic violence as physical, psychological, sexual, patrimonial and moral violence.²¹⁰ Patrimonial (economic) violence is understood as ‘partial or total destruction of the woman’s objects, working instruments, personal documents, property, assets and economic rights or resources, including those intended to satisfy her needs’.²¹¹ Moral violence is defined as ‘any behavior that constitutes slander, defamation or insult’.²¹²

Psychological violence is understood as *Any behavior that causes emotional damage and reduction of self-esteem or that harms and disturbs full development or that aims at degrading or controlling the woman’s actions, behaviors, beliefs and decisions, by means of threat, embarrassment, humiliation, manipulation, isolation, constant surveillance, constant pursuit, insult, blackmail, ridiculing, exploitation and limitation of the right to come and go or any*

²⁰⁶ Government response, ‘Controlling or Coercive Behaviour Statutory Guidance Consultation’ (Home Office 2023) 3 <https://assets.publishing.service.gov.uk/media/64c24fcd331a650014934cba/Consultation_Response_-_Controlling_or_Coercive_Behaviour_Statutory_Guidance__FINAL.pdf> accessed 30 July 2024.

²⁰⁷ *ibid* p. 4.

²⁰⁸ *ibid*.

²⁰⁹ Stark, *Coercive Control* p. 157.

²¹⁰ Maria da Penha Law Brazil 2006.

²¹¹ *ibid* art. 7, para 4.

²¹² *Ibid* art 7, para 5.

*another means that causes damage to the woman's psychological health and self-determination.*²¹³

The Maria da Penha law equally specifies that IPVaw in '*any intimate relationship of affection, in which the aggressor lives or has lived with the abused woman, regardless of cohabitation*' is criminalized.²¹⁴ Additionally, the law establishes protective measures for mothers affected by IPVaw such as the removal of the perpetrator from the home²¹⁵ and the perpetrator's suspension from visiting his children.²¹⁶ Judges must apply preventive measures to preserve the woman's physical and psychological integrity,²¹⁷ and the provision of child support must be guaranteed.²¹⁸ These preventive measures allow the 'judge to decree preventive custody when there is risk to the physical or psychological integrity of the woman' *ex officio*'.²¹⁹ Last but not least, the law also allows victims to leave their work due to domestic violence for 6 months without losing their jobs.²²⁰ The Maria da Penha law is not only criminalizing IPVaw in a comprehensive manner, but it also provides preventative measures.

4.5.1 Coercive Control under the Istanbul Convention

With regards to the IC law ratified by Switzerland, the inclusion of Coercive Control can be found in Article 3, defining violence against women 'as all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'.²²¹

State parties' responsibilities to protect women from Coercive Control can be found in Article 33 of the IC: 'Parties shall take the necessary legislative or other measures to ensure that the intentional conduct seriously impairing a person's psychological integrity through coercion or threats is criminalized'.²²² According to Article 46, it must be considered as an aggravating circumstance if 'the offence was committed against or in the presence of a child'²²³

²¹³ *ibid* art 7, para 3.

²¹⁴ *ibid* art 5, para 3.

²¹⁵ *ibid* art 22, para 2.

²¹⁶ *ibid* art 22, para 4.

²¹⁷ *ibid* art 9, para 2.

²¹⁸ *ibid* art 22, para 5.

²¹⁹ *ibid* art 7; *ibid* 20.

²²⁰ Maria da Penha Law Brazil art 9, para 2.

²²¹ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence art 3, para a.

²²² *ibid* art. 33.

²²³ *ibid* art 46, para d.

or if ‘the offence resulted in severe physical or psychological harm for the victim’.²²⁴ Lastly, Article 46 takes the systemic pattern of Coercive Control into consideration calling for a consideration of aggravating circumstances if ‘the offence, or related offences, were committed repeatedly’.²²⁵ Article 46 of the IC additionally covers post-separation abuse. It holds that State parties must ‘take necessary legislative or other measures to ensure’ that offences committed against a former spouse or partner’ must be considered as an aggravating circumstance.²²⁶

4.5.2 Swiss State Obligations under the IC and CRC

For the purpose of this thesis to examine the State protection of mothers and children affected by post-separation abuse Article 31, para 1 and 2, and Article 45, para. 2 of the IC are relevant for the Swiss State’s obligations under international law:

Article 31 – Custody, visitation rights and safety

- 1 Parties shall take the necessary legislative or other measures to ensure that in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this convention are taken into account.
- 2 Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardize the rights and safety of the victim or children.

Article 45 – Sanctions and measures

- 1 Parties may adopt other measures in relation to perpetrators, such as the withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.

Regarding children’s rights on the matter of their mothers facing IPVaw and related custody proceedings, Article 12 of the Convention on the Rights of the Child (CRC) is relevant. It defines their right to be heard, to have their views be given due weight and to have a say in matters affecting them.²²⁷ Switzerland has ratified the CRC in 1997. Due to the limited scope of this thesis other related international conventions ratified by Switzerland are not included in this thesis’ analysis.

²²⁴ *ibid* art 46, para h.

²²⁵ *ibid* art 46, para b.

²²⁶ *ibid* art 46, para a.

²²⁷ Convention on the Rights of the Child (CRC) art 12.

5 State Practice

The use of the concept of State Practice is defined in this chapter, elaborating on how it is employed throughout this thesis. This is followed by a short elaboration on national Swiss State institutions relevant for State Practice regarding IPVaw, post-separation abuse and custody. Thereafter, relevant State institutions and actors on the cantonal level of Bern (subject to the qualitative case study research of this thesis) are elaborated. The chapter concludes with a definition of relevant executive (i.e. administrative) and judiciary institutions being part of a closer analysis in this thesis. Attention is laid on institutions with which mother victim-survivors interact with during and after separation or divorce from abusive ex-partners.

Feminist theories have tradition in analyzing the patriarchal role the State plays in reproducing gender division.²²⁸ Bob Jessop writes:

*Whereas the modern state is commonly said to exercise a legitimate monopoly over the means of coercion, feminists argue that men can get away with violence against women within the confines of the family (...). Moreover, even where women win full citizenship rights, their continuing oppression and subjugation in the private sphere hinders their exercise and enjoyment of these rights.*²²⁹

The concept of State Practice is also a longstanding interest of research in international law, including human rights law. In his report on the identification of international customary law in relation to State responsibility, Special Rapporteur Michael Wood referred to ‘State Practice’ as the ‘conduct, which is attributable to States’,²³⁰ including organs of the State which may exercise legislative, executive or judiciary power. Amongst others, he mentions a) legislative acts (from constitutions to draft bills) and associated policy, b) acts of the executive branch and judiciary branch and c) practice in connection with international treaties as State Practice.²³¹ This includes State organs on the regional and municipal levels of State power. The International Law Commission (ILC) similarly concluded in 2018 that State Practice ‘consists

²²⁸ Bob Jessop, ‘The State and State-Building’ in Roderick AW Rhodes, Sarah A Binder and Bert A Rockman (eds), *The Oxford handbook of political institutions* (Oxford University Press 2006) p. 221.

²²⁹ *ibid* p. 123.

²³⁰ Michael Wood, Second report on identification of customary international law, Special Rapporteur 2014 [A/CN.4/672] p. 16. <https://legal.un.org/ilc/documentation/english/a_cn4_672.pdf> accessed 17 July 2024.

²³¹ *ibid* p. 180.

of conduct of the State, whether in the exercise of its executive, legislative, judicial or other functions'. It states that State Practice includes 'executive conduct, including operational conduct on the ground' and 'administrative acts'.²³² The ILC further clarifies that negative practice in the form of inaction also qualifies as State Practice.²³³

This thesis adheres to this definition, structuring the analysis of Swiss State Practice with regards to the protection of mothers affected by post-separation abuse and their children along the legal²³⁴, executive²³⁵ and judiciary²³⁶ branches of the State. Legislative practice is understood as the relevant currently applicable law and upcoming policy, which is applied to the Swiss State in the chapters 8.1 and 8.2. Executive and judiciary practice is understood as the institutions responsible for custody proceedings including administration, as well as the relevant state agents as part of these branches mediating between those institutions and victim-survivors. They are at the focus of the quantitative and qualitative data of this thesis and are examined in the results chapters 9 and 10 through the analysis of the EBG study (quantitative data) and of the results from the qualitative case study interviews.

5.1 Definition of relevant Swiss State Institutions and Actors

The Swiss political system is federalist and functions on three different levels. The power is shared between the Confederation (the federal government), followed by the 26 cantons and it's the communes. The cantons have their own political bodies (parliament) and judicial bodies (cantonal tribunals). The Confederation is responsible for the application of international law into Swiss legislature and for the application of federal law (please see Annex 1 for further explanations on the Swiss political system). The legislation on IPVaw and the integration of the IC into Swiss legislation is therefore made on the federal level.

The implementation of initial intervention measures for adults and children affected by domestic violence falls within the responsibility of the cantons as part of the decentralized (executive) administration, and judiciary.²³⁷ The two key stakeholders are the civil courts and

²³² Report of the International Law Commission 2018 [A/73/10] p. 133
<https://legal.un.org/ilc/reports/2018/english/a_73_10_advance.pdf> accessed 17 July 2024

²³³ Ibid p. 120.

²³⁴ James Gibson, *Oxford Handbooks of Political Science* (Roderick AW Rhodes, Sarah A Binder and Bert A Rockman eds, Oxford University Press 2006) p. 431.

²³⁵ Jessop p. 323.

²³⁶ Gibson p. 514.

²³⁷ Krüger and others.

the Child and Adult Protection Authority (KESB). The KESB is a young institution which has been formed in 2013 when it replaced the old municipal legal guardianship model.²³⁸ The Cantonal Youth Welfare Office (KJA) supervises the KESB and supports its management by providing advice and ensuring the vocational training of KESB members.²³⁹ Moreover, law enforcement and the establishment of support services and shelters for victims equally fall under the canton's obligations. Cantonal women's shelters provide essential support during the first period of separation, offering women and their children a safe environment for a limited period of time. Cantonal coordination centers are put into place for the coordination of law enforcement, shelters, and victim support services. The Parliament is increasingly dealing with questions of national prevention of violence against women while struggling to harmonize current administration and jurisdiction amongst cantons. In case of police intervention, the governor's office may summon the perpetrator of the violence to a personal interview. The public prosecutor's office is informed if the victim has filed a criminal complaint and in the case of ex officio offences (see chapter 8.1). Lastly, migration services are alarmed if foreign nationals are affected.

5.1.1.1 Canton of Bern

On behalf of the KESB of the canton of Bern, the Office for Child and Adult Protection (EKS) clarifies reports of endangerment from children, young people and adults in the city of Bern.²⁴⁰ Child and Adult protection services like the EKS are organized on a municipal level. Depending on the size of the municipalities in the canton of Bern, there may also be polyvalent social services which take on the same responsibilities as the EKS in the city of Bern.²⁴¹ The EKS or social services also make proposals for possible protection measures to the KESB. The EKS or social services carry out clarification of endangerment-reports, look for possible measures, write the clarification report (with a recommendation for measures).²⁴² One possible measure is the deployment of a legal guardian for the child. These legal guardians can be private persons or persons employed by e.g. the EKS or social services.²⁴³ Then the KESB carries out a hearing

²³⁸ Ecoplan and HES-SO Valais-Wallis, 'Evaluation Umsetzung Des Kindes- Und Erwachsenen- Schutzgesetzes Im Kanton Bern' (Kantonales Jugendamt Bern 2018) 4 <https://www.ecoplan.ch/download/evo2_sb_de.pdf> accessed 7 August 2024.

²³⁹ *ibid* p. 65–67.

²⁴⁰ 'Amt Für Erwachsenen- Und Kindesschutz' (*Stadt Bern*) <<https://www.bern.ch/politik-und-verwaltung/stadtverwaltung/sue/amt-fur-erwachsenen-und-kindesschutz>> accessed 7 August 2024.

²⁴¹ Ecoplan and HES-SO Valais-Wallis p. 53–61.

²⁴² *Gefährdungsmeldung Kindesschutz* (Directed by Kanton Bern Kindes- und Erwachsenenschutzbehörde (KESB)) <https://www.youtube.com/watch?v=a7y_68s-lQ8&t=131s> accessed 8 August 2024.

²⁴³ Ecoplan and HES-SO Valais-Wallis p. 56.

with the parents, and possibly with the child(ren), and makes the decision.²⁴⁴ Thereafter, the EKS again carries out the enforcement of these measures (i.e. mandate management). The EKS and social services must report regularly to the KESB regarding their mandates.

²⁴⁴ *ibid* p. 21–25.

6 Research Question and Sub-questions

Given the issues elaborated in the problem statement and the theoretical chapter 4 on Coercive Control, this thesis is concerned with the examination of *Swiss State Practice regarding the protection of mothers affected by post-separation abuse and their children*. It aims to examine the issues presented in the problem statement and theory chapters of this thesis in-depth, examining State Practice impacting mother's abilities to secure themselves and their children from post-separation abuse. The research questions are as follows:

What is the Swiss State Practice regarding the protection of mothers and their children affected by post-separation abuse understood under the theoretical framework of Coercive Control ?

- 1) How do mother victim-survivors of Coercive Control in Switzerland experience post-separation abuse?*
- 2) How are mother victim-survivors' rights respected and protected by executive and judiciary Swiss State institutions?*
- 3) How are mother victim-survivors' children's rights respected and protected by executive and judiciary Swiss State institutions?*
- 4) What is the role of PAS in Swiss State Practice in custody decisions regarding mothers and children affected by post-separation abuse?*
- 5) How does the Swiss State Practice align with the Swiss State's obligations under the Istanbul Convention, specifically with regards to Article 31, para. 1 and 2, and Article 45 para. 2?*
- 6) How the Swiss State Practice align with the Swiss State's obligations under the Convention of the Rights of the Child under Article 12?*

In order to answer the research question and sub-questions, the concept of Coercive Control is used to contextualize and operationalize postseparation abuse through a human rights lens, applying a progressive and feminist understanding of IPVaw. Along the logic of the UN report of Special Rapporteur Reem Alsalem and the GREVIO report, this thesis uses an approach from a women's perspective.

7 Methodology

A mixed methods approach was chosen, using literature and document review, quantitative secondary data (EBG study from 2024) and qualitative primary data (interviews).

The research is divided into three parts. The first part consists of an analysis of Swiss legislation on IPVaw and custody through a lens of Coercive Control. Additionally, it touches on the latest jurisprudence on IPVaw and Coercive Control. Existing Swiss laws and latest decisions of the Swiss Federal Supreme Court are examined and put into context. Also, upcoming policy initiatives on PAS are elaborated.

The second part of research presents the quantitative data and findings of a study published by the Federal Office for the Equality of Women and Men (EBG) in 2024.²⁴⁵ The study is concerned with the decentralized executive and judiciary branches of the Swiss State: Judges, KESB officers and legal guardians were interviewed on their practice regarding the consideration of IPVaw in custody proceedings. The results of this study are sorted, analyzed and presented in Chapter 9.

The last part of research is the main contribution of this thesis. Seven qualitative interviews were conducted with mother-victim survivors, inquiring them on their experiences with post-separation abuse and custody proceedings. This qualitative approach was applied in order to go beyond the statistics to examine the phenomenon of post-separation abuse, custody and related State Practice and from a victim-survivors perspective. The interviews grant insight into how mother victim-survivors experience the State practice's role during separation and the securing of themselves and their children. Here, parallel to the EBG study, the following institutions and actors are put into focus: civil courts (judges), KESB (KESB officers), the EKS and social services, and legal guardians. Victim support services, the police (police officers), women's shelters and foster homes are discussed as part of the interviews conducted. However, they are not the focus of analysis, as they do not have any executive or administrative decision-making power with regards to child custody. Neither do criminal courts have direct authority over the allocation of custody. The EBG study shows that criminal proceedings against a parent are unregularly clarified and considered by civil courts in the allocation of custody.²⁴⁶ The results

²⁴⁵ Krüger and others.

²⁴⁶ Krüger and others p. 140–144.

of the interviews are presented in chapter 10. They are put into context with the quantitative results of the EBG study against the backdrop of relevant Swiss legislation.

7.1 Primary Data Collection: Case Study Interviews

The following chapter presents the qualitative methodology chosen for the third part of research of this thesis: the case study interviews. The interviews were conducted with victimized mothers living in the canton of Bern (primary data). By interviewing victim-survivors, insight into mother's specific experiences of post-separation abuse and related Swiss State Practice is provided. Therefore, the interviews not only examine the experiences of entrapment during the relationship with the perpetrator but explore what happened in the months and years after separation: they enable the exploration of coercively controlling tactics perpetrators use after separation. This research is unique in its focus in Switzerland, allowing for a fuller understanding of victimized mother's experiences.

The research data presented was collected through seven semi-structured qualitative interviews. Each interview is treated as a case study. A summary of each case can be found in Annex 6.

7.1.1 Fieldwork Location and Sampling Process

The participants were accessed through the online network of the association Sisters Domestic Violence and Abuse Bern, an independent Peer-to-Peer Support network located in the City of Bern, and in cooperation with the partner network Vista through a combination of snowball sampling²⁴⁷ and purposive sampling²⁴⁸. This recruitment through support networks ensured that the women interviewed had already received some sort of support. From the standpoint of ethical research, it was important that they had already talked about their experiences to someone before, as the issue is emotionally challenging to discuss. Further, their connection to support services ensured that they had access to someone to talk to in case the interviews brought back hurtful memories or raised other issues or concerns.²⁴⁹ Interview dates were set after an exchange by phone or message explaining about the study and clarifying the potential interviewee's situation. The interviews were conducted at the mothers' respective homes. This location provided a safe setting to discuss this highly personal issue and gave the participants

²⁴⁷ Alan Bryman, *Social Research Methods* (Fifth Edition, Oxford University Press 2016) p. 410; Kristin G Esterberg, *Qualitative Methods in Social Research* (International ed, McGraw-Hill 2002).

²⁴⁸ Bryman p. 410.

²⁴⁹ Audrey Mullender (ed), *Children's Perspectives on Domestic Violence* (Reprinted, SAGE 2006) p. 27.

security, putting me in the position of being a guest. This had the benefit, that I could thank them for their hospitality and show humbleness moving through their space to even out the power imbalance between the interviewees and me. One interview was conducted per Zoom as this was the preferred setting of this interviewee.

7.1.2 Composition of the Sample

Data collected consists of seven interviews of 60-240 minutes duration. The reason of the variation in the length of the interviews is because the free narration of the interviewees was not stopped. I let them talk as long as they wished to talk without interrupting them.

Twelve women offered to take part in the study of which eight were chosen to conduct the interviews with. Minimum criteria for selection were 1) being resident in the canton of Bern or having been resident in the canton of Bern at the beginning of custody proceedings and 2) having gone through separation or divorce from a domestically violent partner or father with 3) at least one biologically common child involved. It was not specified that the violence they had experienced must have been Coercive Control-based. However, all of the interviewees who took part had experienced Coercive Control.

Other criteria were a variation in the legal status of the relationship, to investigate differences in divorce processes from the separation of non-married couples. In the sample, four women went through divorce, and three through legal separation. Further, attention was laid on covering cases with children of varying age (the sample includes children between six months old and fourteen years old) and with varying custody agreements.

40 % of the Swiss population over fifteen years old have migratory background.²⁵⁰ Partner constellations with different citizenship status of the victim-survivors and their ex-partners were included, in order to investigate the impacts of citizenship and immigration status of victim-survivors and their perpetrators on the experience of post-separation abuse. Of the seven mothers, five have white Caucasian ethnicity as well as Swiss citizenship, one has South Asian ethnicity with a Swiss passport, one has Black East African ethnicity with a Swiss passport, and one has a foreign citizenship status with Russian citizenship. Similarly, their ex-partners had

²⁵⁰ 'Migration Und Integration' (*Bundesamt für Statistik*)

<[https://www.bfs.admin.ch/bfs/de/home/statistiken/bevoelkerung/migration-integration/integration.html#:~:text=31%25%20der%20ständigen%20Wohnbevölkerung%20der,Personen%20mit%20Migrationshintergrund%20\(40%25\).](https://www.bfs.admin.ch/bfs/de/home/statistiken/bevoelkerung/migration-integration/integration.html#:~:text=31%25%20der%20ständigen%20Wohnbevölkerung%20der,Personen%20mit%20Migrationshintergrund%20(40%25).>)> accessed 20 July 2024.

varying ethnicity and citizenship status; four being of white Caucasian ethnicity having the Swiss citizenship, two holding another citizenship next to their Swiss citizenship, and one having a foreign citizenship with B-residence permit in Switzerland. It was not intended to have more perpetrators with foreign citizenships than mother victim-survivors being part of the study. However, these constellations allowed me to gain insight into the threat of child abduction perpetrators with a foreign citizenship might hold. For example, in one of the cases, two female children were at risk to be abducted to Egypt with their father's purpose to perform female genital mutilation (FGM) on them.

The mothers had been separated from the perpetrator for 5.5 years on average, with the shortest time span of five months, and the longest being eleven years. Two out of seven mothers had their children being placed in foster care at one point after the separation or divorce.

Pseudonym	Age	Profession	Number & age of children	Citizenship/immigration status	Citizenship /immigration status of ex-partner	Divorce /separation	Year of leaving	Out of home placement of child
Emilia	30	On Social Aid since 5 years, working in Peer to Peer support	1 (7 y.o.)	Swiss citizenship (White/Caucasian ethnicity)	Swiss citizenship	Separation	2019	no
Sofia	26	Teacher	3 (3 y.o. and 6 months old twins)	Swiss citizenship (White/Caucasian ethnicity)	North African and Swiss citizenship (due to marriage)	Divorce	2024	no
Sarah	31	Policy strategist	1 (4 y.o.)	Swiss citizenship (East African ethnicity)	Swiss citizenship	Separation	2020	no
Leona	45	Engineer	1 (11 y.o.)	Swiss citizenship (White/Caucasian ethnicity)	Swiss citizenship	Divorce	2014	no
Valentina	41	Project Manager environmental engineering	1 (14 y.o.)	Swiss citizenship (White/Caucasian ethnicity)	West-African and Swiss citizenship (through marriage)	Divorce	2015	yes
Ada	40	On Social Aid since	2 (9 y.o. and 12 y.o.)	Swiss citizenship (South Asian ethnicity)	Egyptian citizenship and B-citizenship in Switzerland	Divorce	2016	yes
Natascha	44	Visual Artist	2 (1 and 9 years old)	Russian citizenship (C-pass) (White/Caucasian ethnicity)	Swiss citizenship	Separation	2022	no

For reasons of specificity, I solely chose heteronormative intimate partner constellations in this analysis. The IPV dynamics in gender-queer and non-heteronormative romantic relationships

defer significantly from the IPV dynamics in heteronormative couples, which deserves a deeper and exact analysis. This would exceed the scope of the thesis. Additionally, the Swiss government does neither provide statistics on genderqueer IPV, nor does it raise data outside the binary categories of ‘male’ and ‘female’. Without any secondary data, analysis would risk imprecision.

7.1.3 Anonymity and Consent

Complete confidentiality was offered to the interviewees. Before the interview, the interviewees were presented with, and signed a Form of Consent (see Annex 3) , informing them about the prerequisites and aims of the study. They were advised that the purpose of this research was to investigate how IPV against mothers is prolonged after separation, and what role Swiss State Practice plays during this process. It was stressed that the study was aiming to gain insights into mothers’ experiences of post separation abuse, with specific focus on custody cases, exploring its manifestations. The participants had the opportunity to stop the interview at any time, following Dr. Ruth Lewis’ understanding of ongoing consent.²⁵¹ It was also emphasized that they could go into detail as much as they liked and were not forced to discuss issues they preferred not to talk about. They were also assured that they could withdraw their consent to taking part in the study at any time from the first meeting until the last agreed upon contact before the publication of the study. The data was anonymized and potentially identifying information was removed or made less specific. The interviewees were given the opportunity to select their pseudonym themselves.

7.1.4 Ethics and Rapport with Participants

A feminist ethic of care framework²⁵² was chosen for the interviews conducted and the principle of ‘conscious partiality’²⁵³ was applied. A feminist research framework allows the researcher to respond to interviewees individual prerequisites instead of applying rigid rules of questioning during the interview.²⁵⁴ Maria Mies calls for researchers inquiring societal inequality from the

²⁵¹ Ruth Lewis, ‘Recruiting Parents and Children into a Research Project: A Qualitative Exploration of Families’ Decision-making Processes’ (2009) 12 International Journal of Social Research Methodology pp. 405-419 <<http://www.tandfonline.com/doi/abs/10.1080/13645570802289104>> accessed 28 July 2024.

²⁵² Katz p. 57; Campbell.

²⁵³ Maria Mies, ‘Towards a Methodology for Feminist Research’ in Gloria Bowles and Renate Klein (eds), *Theories of women’s studies* (Routledge and Kegan Paul 1983) p. 139. <https://books.google.ch/books/about/Theories_of_Women_s_Studies.html?id=A6M9AAAAIAAJ&redir_esc=y> accessed 26 July 2024

²⁵⁴ Bryman pp. 491–493.

dominated and exploited group's perspective, rather than serving the 'neutral', 'value-free' and 'impartial' rationale of traditional research.²⁵⁵ Mies argues that artificial distance between the interviewee and the researcher fosters distrust, especially with women affected by discrimination. Instead, conscious partiality allows researchers to identify with the research object. The researcher is encouraged to base their interactions with the interviewee on empathy, respect and trust.

In order to make the interviewees feel safe, I entered the interaction with the interviewees with rather lighthearted conversations about unspectacular, day-to-day topics before the start of the interview. Further, I mentioned that I had experience with IPVaw myself without going into detail. I noticed that this took away the feelings of shame or the urge to justify and explain themselves. And helped to create rapport. The interviewees thereafter opened up and seemed increasingly relaxed. I therefore assume, that this approach led to a more accurate narration of the experiences of the interviewees, mitigating social desirability bias. It gave the women the opportunity to talk without censoring themselves due to shame because I made clear that I would not judge or question their narratives.

During the interviews, I adopted an open and positive approach. I gave the interviewees my full attention while they were talking, nodding from time to time, or acknowledging their narrative with simple affirmative words such as 'yes' or 'hmm'. I also tried to apply good interpersonal skills and positive body language.

7.1.4.1 Why children were not interviewed

From a children's rights perspective, the KESB is the central institution for children in the mist of their parent's custody battles in the case of domestic violence/ IPVaw in Switzerland. According to a study of 2020 analyzing the perception of youth regarding KESB intervention processes, many Swiss children and youth lack trust in the child protection processes of KESB.²⁵⁶ In this study, interviewed youth indicated that they often felt uninformed about their rights and uninformed about the formality and importance of the meetings with KESB. It is important to interview children and youth victims of Coercive Control on their experiences. Especially with regards to custody cases against the backdrop of Coercive Control present in

²⁵⁵ Maria Mies p. 139.

²⁵⁶ Andrea Hauri, 'Wahrnehmung Des Kindesschutzverfahrens Vor Der KESB Durch Jugendliche Und Eltern Mit Fokus Auf Gerechtigkeit' (Philosophischen Fakultät der Universität Zürich 2020) <https://www.zora.uzh.ch/id/eprint/191332/1/HAURI_ANDREA_Dissertation.pdf> accessed 3 August 2024.

the family, it is important to gain an insight into victimized children's perspectives. However, ensuring the upholding of ethical standards conducting qualitative interviews with children, especially with traumatized children, falls out of the scope of what I can provide for within the context of this thesis. In case of shared custody, the approval of both parents would be needed to conduct the interviews, which might present as difficulty in ongoing cases. Further the risk of re-traumatization when interviewing children and youth about violence-related issues without adequate trauma-sensitive training is high.²⁵⁷ Therefore, this thesis does not include interviews with victimized children. However, the children's perspective is included in the theoretical body of the thesis as well as in the conducted interviews with the victimized mothers.

7.1.5 Construction of the Interview Guide

The interview guide was composed according to semi-structured qualitative interview following Byrman.²⁵⁸ This form of interview allows room for genuine access to in-depth elaborations on the respondent's views and experiences. Further, it is useful to explain relationships between related themes and for providing a basis for further research as the interviewees can draw attention to additional themes themselves. Lastly, qualitative semi-structured interviews are coherent with a feminist research method and the reconstruction of the subjective interpretation of biographical sequences such as experience of post-separation abuse.

The constructed interview guide served as orientation covering a list of relevant issues to be addressed to assure all relevant questions were covered (see annex 4).²⁵⁹ The order of the questions provided in the interview guide was not always followed, giving space to spontaneous adaption and follow ups to the informant's inputs. This left space for the consideration of issues not included in the interview guideline. To avoid my personal views and preconceived notions to impact the answers of the respondents, the interview questions were formulated in a manner that avoids suggestive answers.

The interview started with an open question asking about the types of violence the interviewee and/or their children had experienced during the relationship. It was followed up with an open

²⁵⁷ Priscilla Alderson, 'Designing Ethical Research with Children' in Ann Farrell (ed), *Ethical research with children* (Reprint, Open University Press 2007).

²⁵⁸ Bryman (n 341) pp. 469–498.

²⁵⁹ *ibid* p. 473.

question about what happened during and after the separation. Here, I specified that I am particularly interested in the role played by State institutions and actors such as (if applicable) victim support services, Child and Adult Protection Authorities, family court, lawyers, judges, and legal guardians. Subsequently open follow-up questions were asked, if they had not been answered yet during the first two questions of the interview.

These questions were derived from the central theoretical dimensions of this paper, focusing on the human rights-aspect and related State obligations to protect women affected by IPVaw:

1. How were you informed about your and your child(ren)'s rights?
2. How were your rights recognized, respected and protected by State institutions?
3. How were the rights of your child(ren) recognized, respected and protected by State institutions?

The first question was formulated to lay the basis for the two following questions. I assumed that the interviewed women knew what was meant by 'your rights', because in my years-long experience working with mothers affected by IPVaw, I learned that mothers usually invest a lot of time and energy into self-education and the acquisition of knowledge about their rights. If needed, I would have specified before continuing the interview. However, as expected, all of the interviewees knew what was meant by 'your rights' and no further clarification was needed.

The last question of the interview guide asked for the women's strategies of self-help. On one hand, this served the aim to finish the interview on a positive note. On the other hand, the question was included to not only concentrate on the harm and deficiency the women had experienced. This could lead to negative impacts and reinforce harmful stereotyping, portraying victimized women as helpless victims rather than resilient and knowledgeable individuals with strategies of agency and resistance.

7.1.6 Data Processing

Interviews were recorded and subsequently transcribed. This process could not be done with the help of a software in most cases, as the interviews were conducted in Swiss German in order to be as authentic in the conversation as possible. Only two interviews were conducted in a different language. One in German and one in English because the informants were not speaking Swiss German as a mother tongue. All interviews were transcribed manually in German, except for the English one which was transcribed in English.

7.1.7 Data Analysis

The data was codified and analyzed with the support of the qualitative data analysis software Atlas.ti. Coding was done by adopting and adapting the thematic analysis approach of Ritchie and Spencer.²⁶⁰ A thematic framework with a variety of themes according to the categories defined in the theory elaborated in chapter 4.3.4, as well as in reference to the interview guide was developed.

Post-separation abuse cannot be measured and understood independently from the IPVaw which took place during the relationship. It is a prolongation of the latter. Therefore, both forms of violence were analyzed under the framework of Coercive Control; respectively post-separation abuse was analyzed in conjunction with pre-separation abuse. Coercive Control by the ex-partner during the relationship was analyzed under the subthemes of ‘psychological violence’, ‘intimidation and threats’, ‘isolation’, ‘micro-regulation’, ‘economic abuse’, ‘sexual abuse’ and ‘physical violence’. After the first screening it was complemented with the theme ‘exploitation of care work’ and ‘children as a tool of coercion and child abuse’.

Predefined themes to measure post-separation abuse established along the theory of Coercive Control in connection to the experienced IPVaw by the ex-partner and father were: 1) Engaging in continuous dispute over child custody, 2) Targeted impoverishment, 3) Application of PAS in custody proceedings, 4) Prevention of living an autonomous life, 5) Harassment, stalking and threats, 6) Attempts to destroy the mother-child bond, and 7) Endangerment of child(ren).

Predefined themes to measure related State Practice of the protection of mothers and children were aligned with the semi-structured interview guide: 1) Protection of the mother, 2) Protection of the child(ren). In analysis, they were put into relation with the themes defined for post-separation abuse by perpetrators mentioned above.

In the (2) second round of coding, the ‘range of experiences’ for each theme were gathered and organized.²⁶¹ Using Atlas.ti, a table with the interviewee’s names listed in rows for each theme was created. The ex-partner, as well as each predefined executive or judiciary state institution/

²⁶⁰ Jane Ritchie and Liz Spencer, ‘Qualitative Data Analysis for Applied Policy Research’ in A Huberman and Matthew Miles, *The Qualitative Researcher’s Companion* (SAGE Publications, Inc 2002) pp. 305-329 <<https://methods.sagepub.com/book/the-qualitative-researchers-companion/n12.xml>> accessed 30 July 2024.

²⁶¹ *ibid* p. 317.

actor (KESB, civil court, EKS/social services and legal guardians,) were put as columns.²⁶² This meant that experiences of post-separation abuse (as a form of Coercive Control) in relation to State Practice were organized along the different relevant institutions. Thereafter each interviewee's experiences for each theme along these different columns was summarized, adding relevant citations. This enabled a comparison the experiences of the interviewees with a separate table for each theme. In the last (3) cycle of coding of 'mapping and interpretation', the range of patterns was identified and associations with the theoretical body of this thesis were sought out to generate meaningful units of analysis.²⁶³

7.1.8 Data Presentation

The results are presented in two steps. First an analysis of the presence of Coercive Control pre-separation is presented. Subsequently, the predefined themes of post-separation abuse through the fathers are presented along the lines of related State Practice. These results are summarized under three categories: 1) Lack of investigation and due consideration of IPVaw, and 2) Lack of justice and protection to illustrate related Swiss State Practice. Each case study was additionally summarized and described in-depth (see Annex 6).

7.1.9 Research Experience

During the months when I conducted the interviews, I had been experiencing lingering feelings of anger, sadness and powerlessness in face of the stories I have gathered and witnessed. I realized that my nervous system had slid into a constantly overstimulated state, and I had difficulty to calm down. I assigned these symptoms to the fact, that listening to hours-long stories of torture, abuse, and violence can affect a researcher regardless of one's experience with the issue. Detaching completely emotionally from the stories told by the interviewees would not have corresponded with the approach of this thesis, as elaborated above. However, I was aware of the danger of vicarious traumatization. Vicarious traumatization, or 'compassion fatigue' is defined as harmful changes that can occur in professionals through empathetic engagement with severely traumatized people.²⁶⁴ This applies especially to professionals who

²⁶² Matt Barnard, 'Critical Qualitative Theory and Framework Analysis' in Saul Becker, Alan Bryman and Harry George Ferguson (eds), *Understanding research for social policy and social work: themes, methods and approaches* (Second edition, Policy Press 2012) pp. 334-337.

²⁶³ Ritchie and Spencer p. 321.

²⁶⁴ Katie Baird and Amanda C Kracen, 'Vicarious Traumatization and Secondary Traumatic Stress: A Research Synthesis*' (2006) 19 *Counselling Psychology Quarterly* pp. 181-188
<<http://www.tandfonline.com/doi/abs/10.1080/09515070600811899>> accessed 28 July 2024.

have experienced trauma themselves. Accordingly, I thereafter took some time off to take care of my body and mind, practicing various techniques used to foster the activation of my vagus nerve.²⁶⁵

Another phenomenon I observed was the ‘hot potato’ dynamic: a concept which describes the passing on of traumatic experiences, feelings and memories onto other people who are willing to listen.²⁶⁶ In order to mitigate this, I practiced self-awareness and the upholding of clear boundaries between personal and professional life. A further mitigation strategy I found useful was to laugh with the interviewees at appropriate times. For example, when an interviewee recounted absurd instances of perversion of victim and offender roles, or in some instances extremely inappropriate reactions of state actors to recounts of violence, I found that laughing together had a positive and relieving impact on the interviewees as well as on myself.

²⁶⁵ Nicole LePera, *How to Do the Work: Recognise Your Patterns, Heal from Your Past, and Create Your Self* (Orion Spring 2021).

²⁶⁶ ‘Hot Potato, Hot Potato! The Dance of Psychological Projection!’ (*Dr Olga Lavalle and Associates*, 24 August 2023) <<https://www.olgalavalle.com/hot-potato-hot-potato-the-dance-of-psychological-projection/>> accessed 28 July 2024.

8 Swiss State Practice: The Legislative

The following chapter elaborates the relevant legislative on IPVaw, post-separation abuse and child custody. First, the Swiss criminal law on IPVaw and the associated victim support act is presented and analyzed under the framework of Coercive Control, followed by elaborations on child custody law against the backdrop of familial history of domestic abuse. In the second part, it touches upon recent policy initiatives attempting to anchor PAS in the Swiss legislation.

8.1 Criminal Law on Intimate Partner Violence against Women in Switzerland

Switzerland has no separate legislation recognizing domestic violence or IPVaw as a criminal offence. IPVaw can only be persecuted through single incident-based laws which use a calculus of harms (a traditional legislation on IPVaw as elaborated in the chapter XX on the theory of Coercive Control). Offences may be severe bodily harm²⁶⁷, defamation²⁶⁸, threats,²⁶⁹ and rape²⁷⁰, as well as low level-violence such as repeated assaults²⁷¹, simple bodily harm²⁷², and coercion²⁷³. Psychological violence falls under the offence of bodily harm, coercion or threats but is not defined as a criminal offence in itself, which leads to a lack of effective criminalization. Since these offences are single-incident based, the systematic nature of psychological violence is poorly encompassed in them. Psychological violence also receives little attention in the jurisdiction.²⁷⁴ Lastly, attempts of murder fall under offences against life.²⁷⁵ Femicides, defined as the murder of a woman because she is a woman, are not legally defined, nor recognized under Swiss law. Controlling behavior, as understood under the framework of Coercive Control, is not covered by this legislation. Neither are systematical tactics of degradation and humiliation, insults and manipulation, control of actions, behavior and beliefs, through isolation, threats, micro-regulation and economic violence.

Applied to the reality of Coercive Control, where physical violence usually happens repeatedly on a low level (if at all), this means that women in coercively controlling relationships would have to call the police each time they were slapped, or inflicted other forms of minor violence,

²⁶⁷ Schweizerisches Strafgesetzbuch 1937 art 122.

²⁶⁸ *ibid* art 173, para ff.

²⁶⁹ *ibid* art 180, para ff.

²⁷⁰ *ibid* art 187, para ff.

²⁷¹ *ibid* art 126.

²⁷² *ibid* art 123.

²⁷³ *ibid* art 181.

²⁷⁴ 'Psychische Gewalt Unter Strafe Stellen' (Opferhilfe beider Basel 2023) <<https://opferhilfe-beiderbasel.ch/aktuelles/psychische-gewalt-unter-strafe-stellen/>> accessed 9 August 2024.

²⁷⁵ ZGB art 111.

for it to hold any value before a Swiss criminal court (upon separation). Due to the nature of Coercive Control, it is very unlikely for victims to do this. One of the reasons for this may include their fear that the abuse might escalate if the police intervenes. Another might be the fear that they will not be believed or that they will be blamed for the abuse. Viewed in isolation, single incidents of Coercive Control are not criminalized and usually hard to prove. Additionally, the Swiss legal system is based on a calculus of harm. Even if a woman had several minor assaults or injuries to prove, they often don't lead to an effective sentence.

Additionally relevant is that 'low-level violence', i.e. repeated assaults²⁷⁶, simple bodily harm²⁷⁷, coercion²⁷⁸ and threats²⁷⁹ are only persecuted ex officio, if they take place within a marriage, a legally registered partnerships ('cohabitation') and couples who verifiably share a household together. If the couple is not married, has no cohabitation contract or a verifiable shared household, then outsiders such as family, friends or neighbors are not able to file a criminal complaint against the perpetrator on behalf of the victim, and the State is not forced to perform investigations. In order for such cases to qualify as a criminal offence, incidents of severe physical harm must happen first. Referring to Stark as elaborated in the theory chapter (4.3.3), this represents a lack of protection for victims affected by post-separation abuse and a lack of preventive measures.

Currently, there are parliamentary efforts underway to include stalking as a new criminal offence, that in partnerships would be prosecuted ex officio.²⁸⁰ However, this 'does little to change this state of affairs. This is because stalking only covers a small area of the broad spectrum of psychological violence', says the victim support center in Basel.²⁸¹

8.2 Victim Support Act in Switzerland

The victim support law provides help for victims of domestic violence, respectively IPV independent of whether a criminal complaint has been filed or not. This includes financial

²⁷⁶ StGB art 126.

²⁷⁷ ibid 123.

²⁷⁸ ibid 181.

²⁷⁹ ibid 180.

²⁸⁰ Parlamentarische Initiative StGB-Tatbestände mit Stalking ergänzen 2019 [19.433]

<[²⁸¹ 'Psychische Gewalt Unter Strafe Stellen'.](https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20190433#:~:text=Wer%20jemanden%20durch%20Gewalt%2C%20durch,drei%20Jahren%20oder%20Geldstrafe%20bestraft.> accessed 17 July 2024</p></div><div data-bbox=)

support for the employment of legal representation for victimized women. According to the Swiss Victim Support Act (OHG), a ‘victim’ is ‘anyone who has been directly affected in their physical, sexual, or psychological integrity’.²⁸²

8.3 The Role of Swiss Citizenship in IPVaw and Custody

In Switzerland, the hardship clause (‘Härtefallklausel’) under article 50 of the Foreign Nationals and Integration Act (AIG) is intended to protect victims of IPV without an independent residence permit. In the parliamentary summer session of 2024, article 50 AIG was revised.²⁸³ Previously, a person whose residency rights is tied to their partner could lose this right upon divorce, even in cases of domestic violence. With the revision, domestic violence is specified and are exemplified with indicators in the law with the aim to guarantee the hardship clause. Nevertheless, a factor which disproportionately affects single mothers without Swiss citizenship is the threat of deportation due to their dependency on social aid services (which can be a reason for deportation in Switzerland).²⁸⁴ In the case of total withdrawal of legal guardianship and custody rights of a mother without Swiss citizenship (e.g. through the application of PAS at civil court), these mothers can be deported, having thus to leave their children behind in the hands of the perpetrator of IPVaw.²⁸⁵

8.4 Family and Custody Law

The following chapter goes into deeper analysis of family and custody rights in Switzerland. The chapter starts with a definition of the most important legal terms with regards to custody questions in cases of domestic violence including IPVaw and is followed by elaborations on

²⁸² Bundesgesetz über die Hilfe an Opfer von Straftaten 2007 art 1, para 1.

²⁸³ ‘Opfer Häuslicher Gewalt Verlieren Aufenthaltsstatus Nicht Mehr’ (28 February 2024) <https://www.parlament.ch/de/services/news/Seiten/2024/20240228114115487194158159038_bsd095.aspx> accessed 17 July 2024.

²⁸⁴ In Switzerland, people without Swiss citizenship can be deported when they are on social aid (which is common for single migrant mothers) for ‘too’ long. Without being holder of the custody of a minor Swiss child, these mothers can be deported without having the right to take their children with them. See for example: Dana Liechti, ‘Ich Fühlte Mich, Als Wäre Ich Eine Schlechte Mutter’ *Blick* (11 September 2022) <<https://www.blick.ch/schweiz/landesverweis-wegen-sozialhilfebezug-ich-fuehlte-mich-als-waere-ich-eine-schlechte-mutter-id17867094.html>> accessed 8 August 2024; ‘Nach 40 Jahren in Der Schweiz – Frau Wird Ausgeschafft, Obwohl Ihre Kinder Und Enkelkinder in Der Schweiz Leben’ (*Beobachtungsstelle Schweiz*) <<https://beobachtungsstelle.ch/news/nach-40-jahren-in-der-schweiz-frau-wird-ausgeschafft-obwohl-ihre-kinder-und-enkelkinder-in-der-schweiz-leben/>> accessed 8 August 2024.

²⁸⁵ See for example: Claudia Dubacher, ‘Die Rechte Der Kinder Werden Nicht Immer Beachtet’ (*Beobachtungsstelle Schweiz* 2010) p. 18–21 <https://beobachtungsstelle.ch/fileadmin/user_upload/pdf_divers/Artikel/terra_cgnita_kinderrechte.pdf> accessed 8 August 2024.

the most recent changes in relevant legislation. Special attention is laid on the role of civil courts and the KESB.

8.4.1 Definition of terms

Under the name of a ‘paradigm change’, Swiss law regarding custody has changed in 2014. The aim of the revision was ‘to make joint parental custody the norm, regardless of the marital status of the parents. The main justification for this objective is that a child is entitled to have its parents take joint responsibility for its development and upbringing’.²⁸⁶ Up until this point, the term custody defined both legal and factual custody. With the revision, the legal term was split into two different concepts:

Parental authority (elterliche Sorge) equals former legal custody.²⁸⁷ It defines the legal right to decide on and holding duty to make decisions for the child where it is not legally mature to do so itself. This includes for example managing their assets, the choice of schooling and religious upbringing, and determining their place of residence. The holder(s) of parental authority are the child's legal representatives, meaning they can make legally binding decisions for the child and are liable for their actions.

Custody (Obhut) equals former factual custody.²⁸⁸ It entails where the child spends its time and is cared for in everyday life. Custody also includes establishing rules that apply in the shared household, such as mealtime, screen time, study times, play, and bedtime.²⁸⁹ If custody has been allocated to only one parent, the other parent is, or might be, allocated visitation rights (persönlicher Verkehr).²⁹⁰ If both parents are custody holders, their shares of supervision (Betreuungsanteile) must be determined.²⁹¹

²⁸⁶ ‘Umsetzung Gemeinsame Elterliche Sorge Als Regelfall, Empfehlungen Der KOKES’ (Konferenz der Kantone für Kindes- und Erwachsenenschutz 2014) p. 2
<https://www.kokes.ch/application/files/5014/6167/5322/Empfehlungen_zuhanden_KESB.pdf> accessed 2 August 2024.

²⁸⁷ *ibid.*

²⁸⁸ *ibid.*; ZGB art 301, para 1.

²⁸⁹ Familienrechts-redaktion, ‘Alleinige Obhut § Infos, Voraussetzungen & Entzug’ (*Familienrechtsinfo*, July 2022) <<https://www.familienrechtsinfo.ch/sorgerecht/alleiniges-sorgerecht-und-alleinige-obhut/>> accessed 1 August 2024.

²⁹⁰ ‘Umsetzung Gemeinsame Elterliche Sorge Als Regelfall, Empfehlungen Der KOKES’ (n 273) p. 2.

²⁹¹ ZGB art 273.

8.4.2 Recent changes in family and custody law

In case of a dispute, the decision on who holds parental authority and custody falls within the authority of the civil courts or the KESB. In the event of a divorce, the responsibility for determining the parental authority lies directly with the civil courts. In case of sole dispute over custody, visitation rights, and shares of supervision, KESB remains the deciding authority. In the case of a separation of unmarried couples, the authority for determining the parental authority as well as custody is assigned to the KESB. It decides on the arrangements for the implementation of custody and visitation rights of the parents.²⁹² In this case, a possibility to have the case treated by a civil court is to request an authorization to sue²⁹³ (Klagebewilligung) for child support.²⁹⁴ This authorization to sue usually takes several months to be approved. Once the court is called upon, it has full jurisdiction – not just for child support.²⁹⁵

	Parental Authority (elterliche Sorge)	Custody, Visitation rights, Shares of Supervision (Obhut, Betreuung, persönlicher Verkehr)	Child Support (Unterhalt)
Non-married couples in separation	<u>KESB</u> : in case agreement as well as in cases of disagreement Art. 298a para. 1 und 4 ZGB)	<u>KESB</u> : in case agreement as well as in cases of disagreement Art. 298a para. 1 und 4 ZGB)	<u>KESB</u> : in case of agreement (Art. 287, para. 1 and 2 ZGB) <u>Civil Court</u> : in case of disagreement (Art. 286, para. 2 ZGB)
Legally divorcing or judicially separating parents	<u>KESB</u> : if parents are in agreement (Art. 134, para. 3 ZGB) <u>Civil Court</u> : in disputed cases (Art. 134, para. 3 ZGB)	<u>KESB</u> : if parents are in agreement (Art. 134, para. 3, Art. 179, para. 3 ZGB) and in disputed cases concerning solely custody, shares of supervision and visitation rights (Art. 143, para. 4 ZGB) <u>Civil Court</u> : if allocation of parental authority and/or custody and/or child support contribution is disputed at the same time (Art. 134, para. 4 ZGB)	<u>KESB</u> : <u>KESB</u> : if parents are in agreement (Art. 134, para. 3 ZGB) <u>Civil Court</u> : in case of disagreement (Art. 134, para. 3 ZGB)

The KESB also enforces court decisions on child protection. The KESB has the authority to restrict²⁹⁶ or withhold²⁹⁷ custody and visitation rights. It may order the visitation of a perpetrator programme for the violent parent to ‘unlearn’ and ‘mitigate’ their violent behavior.²⁹⁸ The KESB may also order various measures²⁹⁹ in the application of custody and visitation rights, including supervised visits, ordering mediation between parents³⁰⁰, couple- and parenting

²⁹² ibid art. 298a, para 3.

²⁹³ Schweizerische Zivilprozessordnung 2008 art 209 ff.

²⁹⁴ ‘Kinderbelange Bei Nicht Verheirateten Eltern’ (*Zivil- und Strafgerichtsbarkeit Kanton Bern*) <<https://www.zsg.justice.be.ch/de/start/themen/zivilrecht/familienrecht/kinderbelange-nicht-verheiratete-eltern.html>> accessed 1 August 2024.

²⁹⁵ ZGB art 298d, para 3.

²⁹⁶ ibid art. 274, para 2.

²⁹⁷ ibid.

²⁹⁸ ‘Lernprogramm Gegen Gewalt in Ehe, Familie Und Partnerschaft’ (*Berner Interventionsstelle gegen Häusliche Gewalt*) <<https://www.big.sid.be.ch/de/start/hilfe/hilfe-fuer-gewalt-ausuebende/unser-beratungsangebot.html>> accessed 30 July 2024.

²⁹⁹ ZGB art 273, para 2; ibid 307.

³⁰⁰ ZGB art 314, para 2.

counselling³⁰¹, or requiring a parent to attend therapy.³⁰² These measures pose a potential threat to victim-survivors of IPVaw. Forced mediations in the case of IPVaw are not beneficial.³⁰³ Moreover, forced therapy can be a further potential threat for victims: If the victim-survivor is being pathologized, with the potential use of PAS claims by the perpetrator, being sent to a therapist chosen by the KESB may not be beneficial.

Additionally, the KESB holds special powers with regards to immediate provisional measures outside of a court decision (superprovisorische Massnahmen).³⁰⁴ This includes the withdrawal of a child from its parents and placing it in a foster home, without the immediate right of appeal for the parents.

Deployed by the KESB are legal guardians as a possible measure of child protection.³⁰⁵ In the canton of Bern, this is done through the EKS or polyvalent social services. Legal guardian's competencies vary according to the degree of their assignment, from providing simple support to taking over full legal maturity for their clients. They can make assessments about the familial situation to the KESB and make recommendations regarding parental authority and custody. Not all legal guardians are trained professionally. Private individuals can become legal guardians with little vocational training.³⁰⁶

Next on the judiciary agenda is the application of the alternating custody model. The alternating custody model calls for a division of the time children spent with their mothers and fathers and having both of their separate households as their living residency. Although the Confederation's legislative has not passed this law yet³⁰⁷, the Federal Supreme Court passed two judgments on October 19th and November 13th 2020, establishing the alternating custody model as the new norm.³⁰⁸ The judgments elevate the prioritization of equal shares of supervision over unequal shares as standard. Deviations from this case law may qualify as a violation of the prohibition

³⁰¹ Krüger and others p. 73.

³⁰² Bächler p. 11.

³⁰³ *ibid* p. 74.

³⁰⁴ ZPO art 265; ZGB art 455, para 2.

³⁰⁵ ZGB art 314a^{bis}.

³⁰⁶ Ecoplan and HES-SO Valais-Wallis (n 246) 53; 'Beistandschaft' (*Pro Infirmitis*)

<<https://www.proinfirmitis.ch/behindertwastun/erwachsenenschutz/beistandschaft.html>> accessed 1 July 2024.

³⁰⁷ 'Die Alternierende Obhut Benötigt Vor Allem Gute Rahmenbedingungen' (*Schweizerische Eidgenossenschaft*, 24 April 2024)

<<https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-100794.html>> accessed 1 August 2024.

³⁰⁸ Martin Widrig, 'Das Bundesgericht Erhebt Die Alternierende Obhut Zur Regel' (*Sui Generis*, 2021) <<https://sui-generis.ch/article/view/sg.183/1871>> accessed 1 July 2024.

of arbitrariness.³⁰⁹ As Asha Hedayati elaborates, the alternating custody model is catastrophic in cases of IPVaw and post-separation abuse.³¹⁰ Tying children and women to coercively controlling fathers adds up to a legally ordered exposure to post-separation Coercive Control. Additionally, the alternating custody model enables perpetrators to circumvent the payment of child support because child support is awarded in proportion to the supervision shares. Jean Patric designates this as the new strategy of the masculinist movement aiming at maximizing the father's right to their children, while minimizing the input of their own financial resources: The narrative of disadvantaged fathers at family courts in custody decisions does not hold true but rather is the result of the creation of a myth.³¹¹ Asha Hedayati elaborates:

*I hear so often from separated mothers that they prefer to renounce child support and don't apply for it because they are afraid of their partner's reaction. (...) Sometimes ex-partners threaten to take the child away from the mothers if they demand child support. Some women know that their partners will demand the alternating custody model. (...) In the end, all of this is at the expense of the children, who are even more at risk of poverty without child support than they already are in a family with a single parent.*³¹²

A study conducted by Dorian Kessler³¹³ has shown that between the 1990s and the 2000s, post-marital child support became less common. At the same time, the income and position in the labor market of divorced women did not increase.³¹⁴ To this comes the lack of affordable childcare in Switzerland, which ranks as one of the last among the OECD states with regards to childcare services.³¹⁵ This, amongst other factors, contributes to the unequal distribution of

³⁰⁹ Bundesverfassung der Schweizerischen Eidgenossenschaft 1999 art 9.

³¹⁰ Matthias Meisner, 'Asha Hedayati Zum Familienrecht: „Bei Gewalt Ist Das Wechselmodell Katastrophal“' *der Freitag* (March 2024) <<https://www.freitag.de/autoren/matthias-meisner/asha-hedayati-zum-familienrecht-bei-gewalt-ist-das-wechselmodell-katastrophal>> accessed 13 July 2024.

³¹¹ Jean p. 10–14.

³¹² Hedayati *Die stille Gewalt: wie der Staat Frauen alleinlässt* p. 154.

³¹³ Dorian Kessler, 'Economic Gender Equality and the Decline of Alimony in Switzerland' (2020) 17 *Journal of Empirical Legal Studies* pp. 493 -518 <<https://onlinelibrary.wiley.com/doi/10.1111/jels.12258>> accessed 4 June 2024.

³¹⁴ Laurent Gillieron, 'Almost Half of Swiss Families Are Unable to Cover an Unexpected Expense' (*Swissinfo*, 14 March 2024) <<https://www.swissinfo.ch/eng/swiss-politics/philippe-gnaegi-in-switzerland-family-policy-is-the-poor-relation-of-social-policy/73609430>> accessed 1 July 2024; 'Berufliche Stellung' (*Bundesamt für Statistik*, 22 February 2024) <<https://www.bfs.admin.ch/bfs/de/home/statistiken/wirtschaftliche-soziale-situation-bevoelkerung/gleichstellung-frau-mann/erwerbstaetigkeit/berufliche-stellung.html#:~:text=Frauen%20haben%20im%20Allgemeinen%20eine,Unternehmensleitungen%20oder%20mit%20leitender%20Funktion.>> accessed 1 August 2024.

³¹⁵ 'Bezahlbare, Qualitativ Hochwertige Kinderbetreuung in Vielen Wohlhabenden Ländern Nicht Verfügbar' (*UNICEF*, 18 June 2021) <<https://www.unicef.de/informieren/aktuelles/presse/-/innocenti-childcare-report-2021/277066>> accessed 8 August 2024.

income between separated couples with children today. The revision of the child support law has brought various changes since 2017. This prompted the Federal Supreme Court to clarify its interpretation in several landmark rulings which have passed since. In 2022, the Federal Supreme Court decided that providing for the child as the main carer alone is no longer sufficient to justify a claim for obtaining child support after divorce. With this decision, it introduced a new era in child support law, with the clear message that after divorce, women should look for themselves how to care for the children. However, in ongoing partnerships, women continue to provide double the amount of care work in the family. In opposition, coupled men invest 40 % more of their time in paid labor, investing in their careers. At the moment of separation or divorce, this results in a significant difference in women's ability to secure well paid working positions. Added with the persisting inequality regarding income³¹⁶ and position in the labor market,³¹⁷ it becomes clear that women and men do not have the same baseline position when it comes to earning money for the financial maintenance of their children. Expecting single mothers to get by without child support with the argument of equal treatment of women and men, represents an application of standards of 'equality' which do not correspond with the realities on the ground. Single parents have a poverty rate of 16.5 % and are about four times more likely to be affected by poverty than two-parent families in Switzerland. 83 % of single parent households are headed by mothers.³¹⁸ Around 18 % of people receiving social assistance in the canton of Bern are single parents.³¹⁹ 'When victimized mothers contemplate leaving their abusive partner, they have a choice between violence and poverty,' says Asha Hedayati.³²⁰ A key reason for mothers to become dependent on social aid is the consequences of a divorce or separation.³²¹ Against this background, it can be assumed that the progressive decrease of child support by fathers after separation or divorce will result

³¹⁶ 'Legislaturindikator: Lohnunterschied Nach Geschlecht' (*Bun*, 27 October 2022) <<https://www.bfs.admin.ch/bfs/de/home/statistiken/querschnittsthemen/monitoring-legislaturplanung/indikatoren/lohnunterschied-geschlecht.html>> accessed 1 August 2024.

³¹⁷ 'Berufliche Stellung'.

³¹⁸ Schweizerischer Verband alleinerziehender Mütter und Väter, 'Zahlen Und Fakten' (*svamv.ch*, 24 April 2022) <<https://svamv.ch/svamv/einelternfamilien/zahlen-und-fakten/#:~:text=%20Einelternerhaushalte%20machen%2016%20%25%20der%20Familienhaushalte,auch%20zeitweise%20beim%20anderen%20Elternteil.>> accessed 17 July 2024.

³¹⁹ Michèle Amacker, Sebastian Funke and Nadine Wenger, 'Alleinerziehende Und Armut in Der Schweiz' (Interdisziplinäres Zentrum für Geschlechterforschung (IZFG) 2017) Eine Studie im Auftrag von Caritas Schweiz 18 <<https://boris.unibe.ch/108052/1/Alleinerziehende%20in%20prekären%20Lebenslagen%20-%20Empirische%20Befunde%20aus%20sozialwissenschaftlicher%20Perspektive.pdf>> accessed 17 April 2024.

³²⁰ 'DAS! Mit Anwältin Asha Hedayati'.

³²¹ Barbara Zimmermann and Dorian Kessler, 'Scheidungsfolgen im System der Sozialen Sicherheit' [2016] Magazin des Departements Soziale Arbeit 37, 33 <<https://arbor.bfh.ch/6897/>> accessed 17 July 2024. Barbara Zimmermann and Dorian Kessler, 'Scheidungsfolgen im System der Sozialen Sicherheit' [2016] Magazin des Departements Soziale Arbeit 37, 33 <<https://arbor.bfh.ch/6897/>> accessed 17 July 2024.

in a worsening of the financial situation for many mothers. This in turn, can be used as a strategy of Coercive Control; economic violence.

8.5 Legal Consideration of Intimate Partner Violence in Custody Decisions

In the new family and custody law in place since 2014 in Switzerland, it is not clarified whether IPV and/or domestic violence classifies as a reason to withdraw parental authority of a child. The Federal Council reasoned this by stating, that in the case of IPV, the ability to parent must be put in question not only for the parent perpetuating violence, but for both parents.³²²

‘Violent behavior’ (‘Gewalttätigkeit’) is however mentioned as a reason to withdraw parental care without specifying whether this speaks to violence against the partner or the child itself.³²³ Nonetheless, the law also specifies that ‘very valid reasons’ are required to reconsider the withdrawal of parental authority ‘to be considered at all’.³²⁴ *‘In this respect, (attempted) homicide or, at most, grievous bodily harm by the other parent to the parent who was looking after or caring for the children is most likely to come to mind’*, says Andrea Büchler, holder of the Chair of Private Law and Comparative Law at the Faculty of Law of the University of Zurich.³²⁵

The Swiss National Action plan 2022-2026 for the implementation of the Istanbul Convention (NAP IK)³²⁶, defines following goals under Action 30:

In proceedings, it is ensured that acts of violence against women and domestic violence are duly taken into account in decisions on visiting and custody rights concerning children (Art. 31 para. 1 IC). Parents affected by violence and their children are protected from further harm when exercising visiting or custody rights (Art. 31 para. 2 IC).’³²⁷

³²² Bundesrat Schweiz, ‘Botschaft Zu Einer Änderung Des Schweizerischen Zivilgesetzbuches (Elterliche Sorge)’ (2011) BBl 2011 9077 9105

<<https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/fga/2011/1580/de/pdf-a/fedlex-data-admin-ch-eli-fga-2011-1580-de-pdf-a.pdf>> accessed 7 August 2024.

³²³ ZGB art 311, para 1.

³²⁴ *ibid* art 311.

³²⁵ Büchler p. 5.

³²⁶ ‘Nationaler Aktionsplan Der Schweiz Zur Umsetzung Der Istanbul-Konvention 2022–2026’

<<https://www.news.admin.ch/news/message/attachments/72267.pdf>> accessed 8 August 2024.

³²⁷ *ibid* p. 30.

In the joint ‘road map domestic violence’ of the Confederation and cantons 2021,³²⁸ it is written that ‘the welfare of children is jeopardized if they are exposed to domestic violence. (...) It is important to (...) always assess, whether the child's best interest is at risk.’ Thus, the Swiss Federation and Cantons acknowledge that children should not be exposed to domestic violence, arguably implying that IPVaw should be taken into consideration.

This directly contradicts recommendations made by the conference of cantons for children and adult protection (KOKES) in 2014 on the implementation of joint parental custody as a new norm.³²⁹ These recommendations were made in the course of the legislative changes in family law elaborated above and are still in force. KOKES states:

*If there are no qualified reasons, joint custody must be granted. Unreasonableness [‘Unzumutbarkeit’] for one parent does not in itself constitute a reason to refrain from granting joint custody. The primary guideline for the authority's decision is to safeguard the best interests of the child.*³³⁰

This implicates, that even though it might be unreasonable to impose joint parental care on a victim of IPV, that does not qualify as a reason to withdraw parental care from a perpetrator of IPV. In the case of IPVaw, it is however often ‘unreasonable’ to share parental authority with the perpetrator.³³¹ In opposition KOKES states, legal fatherlessness (when a child has no legally acknowledged father) generally constitutes a risk to the child's welfare, which requires the intervention of the KESB.³³² Efforts to establish the child's relationship with the father are supported by the KESB, if necessary, by means of the establishment of a legal guardianship for the child. This legal guardianship has thereafter the mandate to identify and establish legal paternity. Usually this includes the mandate to arrange legal guardianship for the child's father. From a perspective of Coercive Control, these laws and recommendations are detrimental for mothers affected by IPVaw and post-separation abuse: Their victimization of IPVaw is not considered an endangerment of their children's welfare, however, the lack of paternity is.

³²⁸ Häusliche Gewalt: Roadmap von Bund und Kantonen 2021 p.8
<<https://www.bj.admin.ch/dam/bj/de/data/gesellschaft/haeusliche-gewalt/strategischer-dialog/raodmap-bund-kantone.pdf.download.pdf/raodmap-bund-kantone-d.pdf>> accessed 7 August 2024.

³²⁹ ‘Umsetzung Gemeinsame Elterliche Sorge Als Regelfall, Empfehlungen Der KOKES’.

³³⁰ *ibid* p.4.

³³¹ Heinz Hausheer and Regina E Aepli-Müller, *Das Personenrecht des Schweizerischen Zivilgesetzbuches* (5. Auflage, Stämpfli Verlag 2020) pp. 892–894, pp. 893–894, p. 912.

³³² ‘Umsetzung Gemeinsame Elterliche Sorge Als Regelfall, Empfehlungen Der KOKES’ p. 9.

The document further takes recourse to the term ‘uncooperativeness’³³³, elaborating that ‘in particularly contentious cases [meaning high conflict separation] or in cases of so-called qualified incapacity to cooperate, legal representation of the child will also have to be examined’.³³⁴ As is revealed in chapter 8 (Results EBG study), KESB authorities and civil courts do not differentiate between high conflict separation and separation with a history of IPV involved. High conflict separations may hold aspects of a strategic behavior of a coercively controlling parent.³³⁵ KOKES’ recommendation consequently leads the possibility that mothers may lose parental authority and decision-making power for their minor children due to being victimized by IPVaw. The label ‘uncooperativeness’ for mothers affected by IPVaw is a violation under international law: In the case I.M. and others v. Italy, the European Court of Human rights stated that it was concerned...

*..about the existence of a widespread practice on the part of the civil courts whereby women who cited the issue of domestic violence as a reason for not attending contact sessions between their children and their former partner, and not agreeing to shared custody or visitation rights, were regarded as “uncooperative” parents and therefore as “unfit mothers” deserving of sanctions.*³³⁶

The ECHR qualified this as a violation to the rights to family life under article 8 of the ECHR.

KOKES further elaborates that when both parents are allocated parental authority, the parent mainly supervising the child must have the consent from the other parent to change the place of residency: ‘The other parent must consent if the change has a significant impact on the exercise of parental care and personal contact’.³³⁷ Applied to mothers affected by post-separation abuse, this equates that they cannot move their place of residence without the perpetrator’s approval. A feature which can be used as a tool of Coercive Control.

If joint parental authority is given, the shared custody and shares of supervision are determined. Parents who do not hold parental authority have a right to see their children and vice versa.³³⁸

³³³ ibid p. 4.

³³⁴ ZGB art 314, para a.

³³⁵ Ron Stewart, ‘The Early Identification and Streaming of Cases of High Conflict Separation and Divorce: A Review’ (Department of Justice Canada 2001) 2001-FCY-7E p.14-18 <https://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/2001_7/pdf/2001_7.pdf> accessed 7 August 2024; Fontes.

³³⁶ I.M. and Others v. Italy 2022, European Court of Human Rights [Application No. 25426/20].

³³⁷ ‘Umsetzung Gemeinsame Elterliche Sorge Als Regelfall, Empfehlungen Der KOKES’ p. 16: ZGB art 301, para 3.

³³⁸ ibid art 273, para 1.

This includes seeing each other in person, as well as contact per phone or other ways of communication.³³⁹ However, this right has to be restricted if the best interests of the child are at risk. As elaborated in previous chapters 2 and 4, the best interest of the child is not only endangered when they are the direct target of violence and abuse, but also when they are witness to IPV through secondary victimization and instrumentalization as a means of Coercive Control.³⁴⁰ Additionally, ‘the risk of violence against the child cannot be dismissed, as studies confirm the increased risk of child abuse by parents who have already used violence against their partner,’³⁴¹ says Andrea Büchler. ‘In order to prevent the child from being traumatized again, accompanied visiting contact should not be granted on a regular basis as long as there is a concrete risk of violence against the other parent or the child’.³⁴² According to Swiss law, children must be heard by the KESB and/or family courts regarding the allocation of parental authority.³⁴³ In a civil law case of 2010, regarding three older children (twelve, fourteen and sixteen years old) who have ‘constantly’ ‘voiced for years’ not to wish be in contact with their father, the Federal Supreme Court has confirmed that their wishes must be respected.³⁴⁴ In another case of 2015, the Federal Supreme Court has clarified that ‘when the parent is imprisoned for an offence committed against the child or the other parent’, visitation rights of such parent may be withdrawn.³⁴⁵

8.6 Increasing Use of the Parental Alienation Syndrome in Switzerland

Parallel to the recent legal changes in Swiss law, the increasing use of the Parental Alienation Syndrome (PAS) on the Swiss policy agenda is relevant to the issue of this thesis.

The use PAS as a counter-claim in family court is meanwhile prohibited in Germany, with the argumentation that it ‘does not provide a sufficiently sound basis for a decision based on the best interests of the child’.³⁴⁶ Italy’s highest court similarly ruled that PAS ‘leads to sanctioning not the offender but [the victimized parent] for what he is and not for what he does, neglecting

³³⁹ Büchler p. 10.

³⁴⁰ Silberg and Dallam p. 140; Büchler p. 11; Beeble, Bybee and Sullivan pp. 54-61; Varcoe and Irwin

³⁴¹ Büchlerp. 11.

³⁴² *ibid* p. 13.

³⁴³ ZPO art 298; ZGB art 314a, para 1.

³⁴⁴ 5A_716/2010 (Schweizer Bundesgericht) para. 5.

³⁴⁵ 5A_638/2014 (Schweizer Bundesgericht) para. 5.1.

³⁴⁶ Matthias Meisner, ‘Ein Pseudo-Konzept Des Väterrechts’ [2024] taz <<https://taz.de/Bundesregierung-geht-auf-Distanz/!6018477/>> accessed 13 July 2024.

the most important thing, namely, the search for concrete and objective factual data'.³⁴⁷ Spain has equally banned PAS.³⁴⁸ In Switzerland however, the PAS is advancing on the political agenda. In November 2022, the father's rights organization 'Genug Tränen' pushing PAS had its kickoff event in the municipality of Köniz, canton of Bern.³⁴⁹ It is a new branch of the German organization called by the same name, which has already been subject to extensive criticism in Germany.³⁵⁰ Already in the past 14 years, several attempts were made in order to anchor the concept of parental alienation in Swiss law. The first attempt was made by a parliamentary interpellation by Dominique Baettig, psychiatrist and former National Council of the Swiss People Party (SVP) in 2010 stating that 'parental war leads to insidious psychological disorders (parental alienation syndrome)'.³⁵¹ It was followed by a parliamentary initiative by Hugues Hiltbold who aimed to punish 'any person who refuses to entrust a minor to the holder of a right of personal contact with that person' with up to three years prison sentence.³⁵² When the initiative failed to materialize, Philippe Nantermod of the Swiss liberal party (FDP) administered another motion demanding that 'just as the deprivation of minors by the non-custodial parent is prosecuted, an unlawful refusal to exercise visiting rights must also be penalized'.³⁵³ The latest initiative aiming to push PAS on the Swiss political agenda was made in February 2024 by the 'Stop Child Alienation Switzerland working group'.³⁵⁴ Please see Annex 2 for an extensive list of initiatives pushing PAS on the Swiss political agenda.

³⁴⁷ 'Cassazione Ordinanza N.13217/2021: Il Giudice Non Può Fondare L'Affidamento Super Esclusivo Solo Sulla Consulenza Tecnica D'Ufficio' <<http://www.olgaanastasi.it/wp-content/uploads/2019/10/Cassazione-civile-sez.-I-16-Maggio-2019-n.-13274.pdf>> accessed 8 August 2024.

³⁴⁸ Solar Calvo Puerto, 'Prohibición Legal Del Uso Del Síndrome de Alienación Parental (SAP): Dudas Que Plantea y Propuestas' (Spain, 17 February 2022) <<https://www.legaltoday.com/practica-juridica/derecho-penal/penitenciario/prohibicion-legal-del-uso-del-sindrome-de-alienacion-parental-sap-dudas-que-plantea-y-propuestas-2022-02-17/>> accessed 8 August 2024.

³⁴⁹ 'Genug Tränen Schweiz Startet! Kick-off Veranstaltung in Köniz' (20 January 2022) <<https://genug-traenen.ch/kickoff-genug-traenen-schweiz>> accessed 14 July 2024.

³⁵⁰ Gabriela Keller, 'Väterrechtler Auf Dem Vormarsch' (19 September 2023) <<https://correctiv.org/aktuelles/haeusliche-gewalt/2023/09/19/die-netzwerke-der-vaeterrechtler/>> accessed 19 July 2024.

³⁵¹ Dominique Baettig, Interpellation: Für einen Schutz der Kinder bei elterlichen Konflikten 2010 [10.3995].

³⁵² Hugues Hiltbold, Parlamentarische Initiative: Änderung des Strafgesetzbuchs 2011 [11.436].

³⁵³ Nantermod P, Motion: StGB. Vergehen gegen die Familie. Verweigerung des Rechts auf persönlichen Verkehr mit Strafe bedrohen 2019 [19.3597] <https://www.parlament.ch/rm/ratsbetrieb/suche-curia-vista/geschaef?AffairId=20193597> accessed 17 July 2024

³⁵⁴ Arbeitsgruppe Stopp Kindsentfremdung Schweiz, Petition: Stopp der Kindsentfremdung - Gleichstellung von Vater und Mutter in der Schweiz 2024 [24.2004].

8.7 Conclusion

The Swiss criminal law poorly protects victims of IPV. It has no gender-specific legislation for female victims of IPVaw, such as e.g. the Brazilian Maria da Penha law, and does not provide any legislation to criminalize Coercive Control. It does not address patterns of acts of assault, threats, humiliation and intimidation or other abuse. Legislation criminalizing violence is singular-incident-based and uses a calculus of harms with the severity of physical injuries as a marker. The Swiss legislation equally fails to provide a legal basis for preventative measures, except from the woman's possibility to issue a restraining order.³⁵⁵ For example, there is no provision to prohibit the cancellation of an employment contract for victims of IPVaw who flee to a woman's shelter. The Swiss legislation sticks to the criteria of 'cohabitation' or 'marriage' to criminalize IPVaw as an offence *ex officio* (up until a year after separation). The consideration of IPVaw in custody proceedings is not clearly defined, and the new family law of 2014 with respective recommendations by KOKES holds problematic features. No legislation is given for judges to decree preventative measures when there is a risk to the psychological integrity of a mother affected by IPVaw. The mother's welfare is regarded as separate from the child's welfare and the harm of a woman's psychological integrity is not considered as an official offence. PAS is picking up speed on the political agenda.

³⁵⁵ ZGB art 28b.

9 Quantitative Data: An Analysis of the EBG Study 2024

On behalf of the EBG following aforementioned measure 30 of the NAP IC a study on ‘Support services and protection measures for children exposed to violence in parental relationships’ was conducted and published in January 2024, which is used as secondary data in the thesis.³⁵⁶ In the following, the most important results of the study are presented. First, the study examined executive and judiciary practices on whether and how IPV is considered in the allocation of parental authority and custody (including visitation rights and shares of supervision). Further, it examined expert knowledge of legal guardians appointed by state authorities as well as the expertise of private advocates. Central findings are presented in the illustration below:

		KESB-officers	Judges	Private advocates
1.	No systematic assessment of domestic violence			
	Systematic assessment of domestic violence in legal separation and divorce proceedings with minor children involved	48% No (n=28)	70% No (n=11)	
2.	Obtaining information, specifically from the police and the KESB			
	a) Police reports of domestic violence are used as a central source of information.	95% Yes (n=55) (however: not all cases are reported by the police / sometimes with a delay of several weeks)		
	b) Obtaining police reports as evidence of incidents of violence	85% (n=51)	89% (n=33)	
	c) Obtaining information from social services	55% (n=33)	27% (n=10)	
	d) Einholen von Informationen von Gerichten und Schulen	45% (n=27)	40% (n=15) 35% (n=13)	
	e) Obtaining information from other courts and schools	43% (n=26) Latin part of Switzerland: 56% German part of Switzerland: 37%	30% (n=11)	
	f) Obtaining information from the KESB		81% (n=30)	
	g) Obtaining information from the public prosecutor's office, cantonal threat management, victim support, other counselling centres	Selective, 2 to 3 mentions each (n ≈ 50)		
3.	No separate discussions and negotiations with parents affected by violence			
	As standard, hold discussions and negotiations with both parents together, even in cases of domestic violence	As standard, hold discussions and negotiations with both parents together, even in cases of domestic violence	Yes, is preferred	No, conversations should be held separately
	Hold individual discussions with the victimized parent	Rarely	Rarely	Important to protect the parent affected by violence
4.	Lack of interdisciplinary cooperation			
	Active reporting of cases of domestic violence with minor children involved to the civil court	41% do not report (n=54)	43% do not report (n=35)	
5.	Hearing of involved children during proceedings			
	a) Only hearing of children above a certain minimum age	86% (n=50) Minimum age between 4 and 12 years	92% (n=34) Minimum age between 4 and 10 years	Children are not systematically consulted by the authorities
	b) Hearing of over 13-year-old children without evidence of domestic violence/ IPV	40% Yes (n=29)	40% Yes (n=19)	

³⁵⁶ ‘Umsetzung Gemeinsame Elterliche Sorge Als Regelfall, Empfehlungen Der KOKES’.

	c) In case substantiated indications of domestic violence / psychological IPV, hearing of a 13-year-old child	54% Yes (n=38)	41% Yes (n=17)	Children are not systematically consulted by the authorities
	d) In case substantiated indications of domestic violence / psychological IPV, hearing of a 5-year-old child	30% Yes (n=21)	15% Yes (n=6)	Children are not systematically consulted by the authorities
	e) Discuss personal contact and visitation arrangements with children BEFORE allocating custody	50% Yes (n=28)	33% Yes (n= 12)	Children are not systematically consulted by the authorities
6.	Ordering legal child representation			
	a) Order legal child representation in case of substantiated indications of domestic violence / psychological IPV	7% Yes (n ≈50)	2% Yes (n=41)	
7.	Allocation of parental care and custody in the event of substantiated indications of IPV			
	a) Allocation of parental authority with or without indications of domestic violence / IPV	New legal norm: joint parental authority 97 to 100% Reasoning: Since the violence took place at the parental level and was not directly directed against the children, even if there was physical violence, there is no risk to the child's welfare.	New legal norm: joint parental authority 97 to 100% Justification: ditto.	Judges in civil courts rarely take notice of domestic violence and are not interested in incidents of violence. 25% of respondents: there is no difference in the approach of the KESB and family courts in cases with or without domestic violence/ IPV
	b) Allocation of custody with or without indications of domestic violence / IPV	Most frequently: Continuation of existing care arrangement	Most common: Alternating custody, also in the case of reports of violence	
		The violence described by victimized parents and children is hardly ever addressed in the reasoning for these decisions. IPV is not interpreted as domestic violence, but as a 'separation conflict'.		
	c) Decisions concerning personal contact/ visitation rights: 'A child's contact with his or her parents should be maintained regardless of incidents of even severe IPV.'	33% Yes	52% Yes	In some cases, handovers are arranged at a neutral location at the suggestion of the parents. Accompanied handovers must be requested by victimized parents.
	d) The refusal of contact by a child aged 12 or older must be respected	49% Yes	42% Yes	
	e) Children under 12 y.o. may be coerced to have contact with parents	30% Yes, they may be coerced	30% Yes, they may be coerced	
		KESB-officers	Judges	Legal guardians
	f) Operational regulation of personal transport	Even if there is evidence of several months of regular psychological and physical violence: the violent parent is usually granted 14-day visitation rights plus part of the school holidays		The legal guardians interviewed would like the authorities to restrict contact between the children and the violent parent more often in these cases.
8.	Appointment of legal guardians for children			
	a) Appointment of a legal guardian for child(ren) if there are indications of IPV	40 – 50% Yes	20 – 45% Yes	
	b) Legal guardians are explicitly informed by the civil court about incidents of parental partner violence			50% No (n=67)
	c) IPV is explicitly considered in the mandate given to the assisting person			48% No (n=114)

In order to take IPV into consideration in the allocation of parental authority and custody, the presence of IPV must first be assessed. However, the findings suggest that this sparsely practiced across Switzerland.

The study finds that during custody proceedings...

- ..IPV is only partially and not systematically assessed in separation, spousal protection, and divorce proceedings.³⁵⁷
- ..only 30 % of surveyed judges indicate that there was always an inquiry into whether incidents of parental partnership violence have occurred.³⁵⁸
- ..only 52 % of surveyed KESB officers indicate to systematically assess the prevalence of domestic violence.³⁵⁹
- ..45 % KESB officers and 40 % civil court judges indicate to obtain information of other courts (e.g. criminal courts) or schools regarding the prevalence of IPV/domestic violence.³⁶⁰
- ...KESB officers and civil court judges indicate that they are hesitant to exchange information about the prevalence of IPV/domestic violence between each other as well as with other actors.³⁶¹
- ..the police forces typically report incidents of domestic violence in families with underage children to the relevant KESB or another appropriate authority. However there are instances where such reports are delayed or not made at all until more than a week later.³⁶²

Further, KESB members as well as judges hold discussions, negotiations and mediations as a standard with both parents together regardless of the prevalence of IPV. The study however concludes, that holding these conversations jointly ignores ‘that in such a setting, the violent parents can continue to exert control over the ex-partner’.³⁶³ KESB officers and judges indicate to uphold the practice of joint mediations in order to gain better insight into the parental conflict. However, in research this is not proven to be an effective strategy: Perpetrators usually develop

³⁵⁷ Paula Krüger and others, ‘Unterstützungsangebote Und Schutzmassnahmen Für Kinder, Die Gewalt In Der Elterlichen Paarbeziehung Ausgesetzt Sind’ (Eidgenössisches Büro für die Gleichstellung von Frau und Mann EBG und Schweizerische Konferenz gegen Häusliche Gewalt SKHG 2024) p. 78
<<https://backend.ebg.admin.ch/fileservice/sdweb-docs-prod-ebgch-files/files/2024/01/19/7f186a13-2e64-4a37-a69d-f9aaf627f281.pdf>> accessed 8 August 2024.

³⁵⁸ *ibid* p. 78.

³⁵⁹ *ibid*.

³⁶⁰ *ibid* p. 82.

³⁶¹ *ibid* p. 83-85.

³⁶² *ibid* p. 57.

³⁶³ Krüger and others pp. 5–6.

strategies to influence professionals.³⁶⁴ These may include trivializing the violence inflicted, attributing responsibility for the violence to the victim or holding allegations of mental illness of the victim, undermining its parenting ability. The private advocates interviewed as part of the study emphasize that these conversations should be held separately as it is important to protect the victimized parent from further violence.

Second, the study assessed how children's views and perspectives are taken into consideration during parental authority and custody proceedings. The study finds that...

- ..most KESB officers and judges indicate to hearing children depending on a certain minimum age.³⁶⁵
- ..in case of substantiated indications of domestic violence, 54% of KESB officers and 41 % of judges indicate to hear children over 13 years old.³⁶⁶
- ..in case of substantiated indications of domestic violence, 30% of KESB officers and 15% of judges indicate to hear children over 5 years old.³⁶⁷
- ..59% of KESB officers and 33% of judges indicate to discuss the allocation of custody, visitation arrangements and personal contact with the child before making their decisions.³⁶⁸
- ..reasons for not hearing the child mentioned by KESB officers and judges included 1) not being qualified to do so and 2) that it was better for the child not to be heard.³⁶⁹
- ..over 30 % of interviewed authority representatives have the opinion that children under the age of 12 might be coerced to be in contact with a parent for their own good.³⁷⁰
- ..about 55 % of KESB officers and judges have the opinion that the refusal of a child over the age of 12 years to be in contact with a parent must be not respected.³⁷¹
- ..the legal guardians interviewed would like the authorities to restrict contact between the children and the violent parent more often in cases of prevalent IPV. Only about half of them indicate to be informed about the prevalence of IPV upon the issuing of their mandate.³⁷²

³⁶⁴ *ibid* p. 86.

³⁶⁵ Krüger and others pp. 87–92.

³⁶⁶ *ibid*.

³⁶⁷ *ibid*.

³⁶⁸ *ibid* p. 93.

³⁶⁹ *ibid*.

³⁷⁰ *ibid* p. 94.

³⁷¹ *ibid*.

³⁷² *ibid* p. 112.

In almost all cases, victimized children are ordered to spend at least every other weekend and certain portion of holidays with the perpetrator parent, without consideration to their own testimonies up until the age of 12 years old.³⁷³ If restrictions are imposed, they typically involve other measures, such as supervised child handovers, supervised visitations or the allocation of a legal guardian. However, research suggests that while ‘supervised visitation can be a good source for courts that wish to keep a batterer in the child’s life’, it may not be beneficial for the child’s best interest but rather the father’s.³⁷⁴ In another report commissioned by the EBG in 2015, it is clearly stated that:

*It should be emphasized that recent legal doctrine, in view of psychiatric research findings, calls for restraint in granting (accompanied) visiting contact in cases of proven domestic violence (...) should generally not be granted as long as there is a concrete risk of violence against the other parent (...) in order to avoid re-traumatizing the child.*³⁷⁵

Equally extensive authority of legal guardians to make recommendations regarding the ‘parenting ability’ of parents can lead to a withdrawal of child custody from a victimized mother. It poses a severe risk if these actors are not informed about the presence of IPV as indicated in chapter 8.4.2.

Third, regarding the consideration of substantiated indications of IPV in the allocation of parental authority and custody, the study finds the that...

- ..even in case of parallel criminal proceedings due to domestic violence, joint parental custody is typically granted.³⁷⁶
- ..‘regardless of incidents of parental partner violence, all interviewees considered the child's contact with both parents to be important’.³⁷⁷
- ..in case of ongoing post-separation stalking, and physical violence, none of the judges questioned would have ordered a suspension of contact to the violent parent.³⁷⁸

³⁷³ Krüger and others p. 108-110.

³⁷⁴ Emmaline Campbell, ‘How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It’ pp.41-66.

³⁷⁵ Büchler p. 12.

³⁷⁶ Krüger and others 105.

³⁷⁷ *ibid.*

³⁷⁸ *ibid* p. 104.

- ..in case indications of IPV only came about after the start of initial proceedings, only 10% of KESB officers would have reversed initial decisions and would have ordered accompanied visitation rights.³⁷⁹
- ..0-3% of KESB officers and judges withhold parental authority from parents who are subject of substantiated claims of perpetrating IPV.³⁸⁰
- ..similarly known incidents of IPV have little influence on the allocation of custody. Even in case examples with indications of psychological and physical partnership violence (such as insults, slaps), some KESB officers and civil courts oriented their allocation of custody on the previous shares of supervision.³⁸¹
- ..judges tended towards the alternating custody model despite of IPV.³⁸²
- ..KESB officers however frequently order measures such as supervised visits and visits in a neutral public location.³⁸³

Even in cases involving IPV, professionals revert to the ‘standard arrangement’ of joint parental custody. The findings demonstrate that both relevant authorities KESB and civil courts prioritize the child's right to contact with both parents³⁸⁴ and the parents' right to regular contact with the child³⁸⁵ over the protection of the child. Neither do these authorities prioritize the protection of the parent affected by violence. As reason for these decisions, KESB officers and judges indicate that when the violence took place at the parental level and was not directly directed against the children, there is no risk to the child's welfare. Even if the perpetrator applied physical violence, this reasoning does not change. Interviewed advocates substantiated the claims, that IPV as well as the endangerment of children's welfare are systematically being neglected by KESB officers and civil court judges. Instead of taking allegations of IPVaw seriously ‘all professional groups - with the exception of judges - mentioned the trivialization or even negation of violence by professionals as a challenge’.³⁸⁶ As could be anticipated with regards to the theoretical body of this thesis, victimized parents are instead blamed for the violence; a reversal of perpetrator and victim roles takes place.³⁸⁷ For example, some

³⁷⁹ *ibid.*

³⁸⁰ *ibid* p. 155.

³⁸¹ *ibid* p. 109.

³⁸² *ibid.*

³⁸³ *Ibid.* p.106.

³⁸⁴ ZGB art 298, para 2.

³⁸⁵ *ibid* 273, para 1.

³⁸⁶ Krüger and others p. 144.

³⁸⁷ *ibid.*

professionals participant to the EBG study reproached victimized parents to be ‘dramatizing’. The authors of the study refer to increasing use of PAS claims as a possible reason for this.³⁸⁸

What the study further reveals is that authorities tend to order measures for parents such as mediations, couple’s therapy and parenting courses.³⁸⁹ However, they neglect to order measures targeting IPV and post-separation abuse to hold the abusive parent accountable. This would be necessary, especially against the backdrop of systematic ongoing state-ordered exposure of children and victimized parents to their abuser. Ordering therapy and parenting courses for victimized mothers must be analyzed within the framework of gender-stereotyping women-victims of gender-based violence as mentally ill, as elaborated in Chapter 4.3.1. Pathologizing victimized mothers further adds up to a loss of autonomy already experienced during IPVaw in their relationships.

The numbers shown are also concerning with regard to child endangerment when comparing them to other statistics: A Swiss study from 2018 showed, that 18,7 % of child endangerment reports made to KESB are made for children who are witnesses of IPV.³⁹⁰ Further 15,2 % of child endangerment reports are due to sexual abuse, and 20,2 % due to physical violence. In one third of both these forms of abuse, the violence is perpetrated by a parent, usually the father.³⁹¹ However for sexual and physical harms to a child by a parent, no official Swiss statistic regarding the withdrawal of parental authority or custody is available. Neither are statistics available in Switzerland which would reflect how often sexual and physical violence against children coincide with IPV.

In the canton of Bern parental authority was withdrawn from eight fathers and three mothers from a total of 564 cases of child endangerment in the year 2022.³⁹² Information about the reasons why and in which context is not accessible.

³⁸⁸ *ibid* pp. 159–160.

³⁸⁹ Krüger and others pp. 128-130.

³⁹⁰ Conny Schmi, ‘Kindeswohlgefährdung in Der Schweiz; Formen, Hilfen, Fachliche Und Politische Implikationen’ p. 25 <<https://www.kinderschutz.ch/angebote/herunterladen-bestellen/optimus-studie-2018>> accessed 8 August 2024.

³⁹¹ *ibid* p. 29.

³⁹² ‘KOKES-Statistik 2022 / Bestand Kinder’ <https://www.kokes.ch/application/files/1916/9579/4504/KOKES-Statistik_2022_Kinder_Alter_und_Geschlecht_Details_Kantone.pdf> accessed 11 August 2024.

10 Interview Case Studies Results

This chapter provides the results of the analysis of the interviews conducted in relation to post-separation abuse and related State Practice. Cross-sectional post-separation abuse tactics of Coercive Control employed by all fathers are ‘continuous litigation’, ‘targeted impoverishment’, ‘harassment, stalking and threats’ and ‘the application of PAS’. The analysis shows, how the successful perpetration of these tactics is linked to the lack of investigation, the lack of justice and the lack of protection through State authorities, especially the KESB and civil courts. Subsequently, the impacts of the new family law legislation of 2014 on mothers and their children victimized by Coercive Control are illustrated. It is revealed how shared parental authority gives a platform for the perpetrators to prevent the mothers from living an autonomous life and to continuously harass, stalk and threaten them. Lastly, the chapter illustrates findings on how shared custody enables attempts by perpetrators to destroy the mother-child bond and endanger the children, and how these attempts are mirrored by State authorities in the removal of custody from mothers.

10.1.1 Mothers under Coercive Control

All of the women (Emilia, Sofia, Sarah, Leona, Valentina, Ada, and Natascha) experienced degradation, humiliation, belittling, name calling, private and public shaming, gaslighting attacks on their self-confidence, so as the devaluation of their person, their moral being, their time, and their work during their relationships. They also experienced repeated intimidations and threats to take their children away, threats to kidnap their children, threats of physical violence, threats to harm or kill their pets and threats to kill them. Additionally, indirect strategies to instill fear were part of the abuse. Four women have experienced sexual assault. Two of the women interviewed experienced repeated severe physical violence. The majority, however, were rather exposed to threats thereof; the perpetrator throwing things around, destroying furniture, and banging against walls next to them. All women further indicated that they were consistently isolated and entrapped. The people who form their social environment were portrayed as enemies which cannot be trusted. This Isolation was reinforced through strict rules and micro-regulation. The main prohibitions mentioned were related contact with other friends and family, often the mother of the victim, as well as other men. This prevented them from seeking help. In the cases of Valentina, Ada and Natascha the children were ‘only’ indirect targets of the abuse inflicted on the women during their relationships. In the cases of

Emilia, Sarah, Sofia and Leona the children were also direct targets of physical violence (including the endangerment of their life during pregnancy, physical assault and sexual abuse).

10.1.2 Continuous Litigation

In all cases examined, the perpetrators applied for parental authority and alternating or sole custody upon separation. In all of the cases except for Valentina's, whose child is now fifteen years old now, the perpetrators continue litigation over custody to this day as of the writing of this thesis. The marital status did not have significant impact on the proceedings of the interviewed women, except for Emilia. She was not informed that she could apply for child support at the civil court. Therefore, the authority to deal with her case remained with the KESB. The perpetrators systematically disagreed with the negotiation settlements and manipulated the KESB officers, the legal guardians and the civil courts. When settlements for custody were finally reached, they found new ways to instigate litigation and disagreed with agreements they had previously agreed to. Every few years, the mothers faced (and are still facing) new attempts of their ex-partners to get more supervision shares of the children.

All women indicate that they were unprepared for what would happen after the separation. Some had not expected their ex-partners to apply for custody at all, because they hadn't been interested in the child's care before or had requested their abortion. This put women at a disadvantage: 'I was still totally in survival mode and just tried to get through everyday life and be there for my children and not go crazy with fear', says Ada. Emilia equally was constantly occupied with the different demands her ex-partner imposed on her through the KESB: 'I didn't have any time to take a deep breath or to take time out, instead I was always being asked, asked, asked.'

In the case of Leona, Valentina, Sarah and Ada, their ex-partners applied for sole custody. Both Valentina and Ada lost the custody of their children during the proceedings and their children were put into foster homes. Ada's two daughters are both still there. Emilia and Sarah are still being dragged through custodial proceedings by their ex-partners, as they continuously apply for more supervision shares. Recently, Sarah's ex-partner managed to acquire alternating custody. The children of Emilia, Ada, Valentina, Sofia and Leona were all awarded a legal guardian by the KESB. Sarah turned down the offer (optional for her) of a legal guardian, a decision she would later call 'good intuition'.

10.1.3 Harassment, stalking and threats

All women, except Sofia, who separated only six months ago and was able to obtain a restraining order against her for her ex-husband, were harassed after their separation. The harassment took place online through phone calls as well as in person.

Leona, for example, was told by her ex-partner that he would take away what she loved most, her child, when she decided to leave. She remembers him telling her 'I will not give up until I succeed, you will suffer'. Since then, she had continuously been harassed by him. He sent her intimidating emails every week, threatening to harm her and to abduct the child, leaving her under constant threat and a luring sense of danger: 'I can't go jogging normally anymore; I always have something with me, pepper spray, two stones in my hand, (...) I'm never really relaxed'. When her son was four years old, he came back after a visit to his father, and told her that his father and some of his friends were 'coming to get her and kill her'. He described to her exactly how they, the father and his colleagues, were going to do it. Leona concluded that the child's father and his colleagues were fantasizing loudly in front of her child about how to get rid of her.

10.1.4 Targeted Impoverishment

All interviewed women recount that during the relationships, the children and the household were the women's job. The women all recite forms of exploitation of their labor in relation to childcare and housework, leading to complete exhaustion: The women explain how their perpetrators established a dynamic that forced the woman to constantly attend to his needs. Strategies to establish this were 1) to simply not doing any work until it was done by their girlfriends/ wives 2) by intimidation to establish that the perpetrator's needs were the priority, or 3) by manipulatively using excuses for not participating in any household or childcare tasks. With no exception did the women emphasize that the fathers did not take any responsibility for the children in any form during the relationship. Besides caring for the children and running the household, the women were all working wage labor. Rather than being deprived financial resources, they pointed to systematic exploitation and the depletion of their own financial resources: Ada's husband asked her mother for 10'000 Swiss Francs in order to buy his own flat in his home country, although he had already recently inherited a flat from his late father. Sofia's husband equally coerced her to transfer all her savings to his home country. Sarah was working three jobs during her high-risk pregnancy up to her eighth months of pregnancy, while

her partner had left his job and slept until twelve o'clock. When she asked him why he quit his job, he told her he was occupied with his master's degree. Sarah was in the middle of her bachelor's degree herself then. Neither did Natascha's, Leona's, Emilia's or Valentina's ex-partners contribute to paying child-related or household bills.

The pre-separation strategy of financial exploitation was replicated post-separation. Emilia's, Natascha's, Valentina's and Leona's ex-partners don't pay child support to this day, although they were ordered to do so by either by the KESB or the civil court. While the women can report them to the debt collection office and receive an advance on child support from social services, the State authorities make efforts to collect the money from their ex-partners directly and fail to consider financial abuse as a relevant issue in custody negotiations. Additionally, litigation is expensive. In Valentina's case, the combination of the withholding of child support and the continued hearings about child custody brought her to the brink of a breakdown.

Valentina: All I get are requirements and expectations, but the fact that I need relief with all this and the lack of finances... (...) They [the KESB and legal guardian] just say, 'Well, you'll have to deal with it'. He doesn't have to fulfil any obligations (...).I've been on sick leave for two years because of exhaustion. How am I supposed to recover from that? I have to take care of my child; take care of all these proceedings.

Valentina's case illustrates how the power dynamics of Coercive Control experienced during the relationship are replicated when perpetrators are able to continue to circumvent paying child support, while their lack of participation in childcare prior to the separation is not taken into account in custody allocation. The perpetrator can continue to deprive the mother of financial resources, making her dependent on State support through social aid, while draining her energy in the process.

The withholding of child support had an especially dramatic impact on Natascha. Although her social aid worker had told Natascha that the father had to pay child support, he never did. During the relationship, she was threatened by her partner that he would report her for 'kidnapping' his child if she tried to flee to her home country Russia. He also threatened her to alert the migration authorities: that she would be deported to Russia, while the baby would stay with him.

Natascha: When I decided to be separate from my ex-partner, it was when I got pregnant. I understood that I cannot be pregnant and have a child near him. Because I was knowing that

he will use my weakness in this. (...) He always frightened me, that he can pick up [kidnap] the child, and I have no work, that the law will not be on my side, (...) I was afraid, that he will do something against me and the child.

During the relationship, she worked until her eighth months of pregnancy, unable to leave for Russia due to his threats: ‘He was using this very hard, because I had to stay with him, he was making stress, stress, stress, every day’. After the separation, she lived in a flat with practically no furniture for several months. She and her children slept on the floor because Natascha couldn’t afford a mattress.

The withholding of child support was also used as a tool of coercion. During their relationship, Ada’s ex-partner had threatened to perform FGM on their daughters. He only started discussing this after they were born and pursued this ‘goal’ equally after the separation. This put Ada into a constant state of fear that he might abduct them to Egypt, his home country, to perform the procedure. Therefore, Ada did not want to get new passports for her children so that her ex-partner would not be able to cross the borders. She says: ‘he tried to blackmail me into giving him my signature for passports and then he didn’t pay any child support for three months’.

10.2 State Practice: Lack of Investigation and due Consideration of IPVaw

A consistent stringent pattern in all cases was the lack of investigation and the failure to take the women’s and children’s vulnerability seriously. Their fears and experiences of abuse during their relationships were consistently minimized, trivialized, or completely denied at the civil court, by the KESB, the EKS officers, and the legal guardians. All of them were given parental authority and custody with varying shares of supervision.

This was equally the case for Emilia and Sofia who had experienced extensive physical violence. Both of their ex-partners had obtained guns towards the end of their relationships.

Sofia: I wasn't allowed to go out without him, I always had to come straight home from work, and I had to be reachable on my mobile phone at all times. If I didn't answer within minutes, I would have to expect a huge fight and worse when I got home. I wasn't allowed to have any friends, especially not male ones, and I wasn't allowed to spend much time with my parents either. I always had to dress modestly and wasn't allowed to look anyone in the eye on the street. He also beat me during all my pregnancies, indirectly endangering my children, forced

me to abort a child and he also locked me up several times without leaving me a key at home, here in Switzerland, but also in his home country, where I had no way of contacting anyone.

Her first child was born early ‘extremely small, and the amniotic fluid was green, which indicates stress for the mother and the fetus’. When Sofia’s first son got older (he is four years old now), he also became a target of violence. Sofia had made her first attempt to flee with her three children, which failed, because the mother-child-facility she went to, coerced her to immediately tell her ex-husband where she was. He immediately came by and brought her back home – under the eyes of the facility workers. The KESB, thereafter, was alerted with an endangerment report. After receiving the report, the KESB officer called Sofia’s midwife to ask whether it was an urgent matter, or whether she could wait until after Christmas vacation to contact Sofia. When she contacted Sofia some weeks after, they settled a meeting at the hospital. However, during the meeting, Sofia wasn’t asked about the occurrence of IPVaw and/or domestic violence occurring in her home:

I saw on the KESB officer's note that she had written down domestic violence. But she didn't ask me any specific questions, she just said: ‘Yes, you didn't have any noise complaints or police interventions, everything was fine in that respect’ and then she moved on with the conversation. [At home]...the situation then got drastically worse, from one day to the next the physical violence got worse and worse. The violence in front of the children, the fact that he hit me in front of the children, attacked me, shouted at me, insulted me, became a daily occurrence.

When she made her second attempt to leave, she fled to a women’s shelter and informed the EKS officer previously deployed by the KESB. Thereafter, she was placed under police protection to accompany her whenever she needed to leave the shelter. Sofia had informed the police that her partner had several guns at home. However, the EKS officer asked her whether it was possible that the father would see his children while she was at the women’s shelter. Sofia clarified the question with the responsible person at the women’s shelter, who told the EKS officer that this was not possible. Two weeks later, the EKS officer called again and asked whether it was simply not possible or just not recommended. Sofia recalls that she added ‘If you hadn't split up now, I would have organized a violence prevention workshop for your husband [perpetrator program], but that has obviously been settled now’. The EKS officer then submitted a letter to the KESB, recommending that the children should receive a legal guardian.

Additionally, she recommended parental authority and custody with supervised visits for the father.

Emilia had similar experiences of lack of investigation and failure to take her endangerment seriously. Emilia was repeatedly physically assaulted during her relationship and was told by her ex-partner that she was ‘mentally deranged’, had ‘borderline syndrome’ and that he would therefore take her children away, because the authorities would realize how bad of a mother she was. About her pregnancy she remembers:

The pregnancy was really bad. It really was a horror. On the one hand, how can I explain it? It was somehow reassuring to know that the baby inside me was protected by the amniotic sac, by my abdominal wall. And when I wrapped my arms and legs around my stomach in the fetal position [during the beatings], it was like a kind of armor. Or I had the feeling it was like an armor for the baby. Then it only attacked me [and not the baby]’.

After the baby was born, it became ‘clearly the [perpetrator’s] object of desire and, how shall I put it, was the object for the blackmail,’ she says. Some days before Emilia fled to the women’s shelter, her partner instigated an argument about her ‘lacking’ cooking skills. He pushed her on the floor, screamed, and choked her into unconsciousness in front of their child. She remembers how he told her: ‘I will kill you. I will end your life’. Two days later she found a gun in his backpack.

Emilia did not file a criminal complaint. Although she had hospital records and police records, audio and video recordings of the abuse, and photographs of her physical injuries at hand she was advised not to do so. The lawyer assigned to her by the Bern victim support services told her that she was not allowed to use the footage as this would violate the perpetrator’s right to privacy. She would have needed his permission to use the recordings at court. When Emilia was asked to explain what had happened during the relationship, and why she fled to the women’s shelter at the first hearing with the KESB, she was also told that she should not file a criminal complaint, because it wouldn’t make any difference. The KESB further suggested, that she might be lying about the abuse: ‘I was asked, why didn't you go to the family doctor, why didn't you go to the hospital to report the assaults, the physical attacks?’ She was also asked why she didn’t call the police. Emilia had made the experience that the police would not help her. Once, during the relationship, the police had come after an assault of her ex-partner. Her ex-partner managed to position himself well with the police officers telling them that she was

the actual perpetrator, and that she was being 'difficult'. The police officer had thereafter insulted Emilia, saying that she was 'one of those borderline girlfriends' who wanted to exploit her partner for child support. Emilia had also been at the hospital several times during her pregnancy to check if the baby was still alive after the beatings. However, she never dared to say anything because her partner had always accompanied her. The KESB further asked her at this first hearing what she would like them to do with his gun (the perpetrator did not have a gun-license). For Emilia, this question came as a shock: 'It was actually clear to me that the gun would be confiscated. But that wasn't the case. I had to keep insisting that the gun had to be deposited somewhere. (...) Why does this even come into question?' Her ex-partner was awarded parental authority and supervised visits with the daughter. They were later replaced by shared unsupervised custody including sleepovers and five weeks' vacation. The fact that Emilia was still scared of the perpetrator until years later was blatantly ignored:

Emilia: *I then also had to listen to the KESB, well, Ms. [last name of Emilia]-, you have to acquire some trust [in him], just because you're afraid of the perpetrator doesn't mean that the child feels the same, (...). that it is my trauma, not the child's trauma. I was always told that I had to give him the benefit of the doubt [Vertrauensbonus]- I hate that word, it's really ingrained - it's just always my trauma, it's my problem, that I'm afraid of the perpetrator, that I suffer from panic attacks, it's my problem, I have to get a grip on it. (...) And that put me under extreme pressure again, because the perpetrator always insinuated, also at every KESB hearing, that I was mentally disturbed and it all became so...sometimes I had the feeling that I was being stripped naked there and I felt so ashamed and humiliated by the KESB and it reinforced the perpetrator in his statements, in his actions.*

The excessive substance use of her ex-partner was also discussed. When she asked the KESB about possible drug testing of him, because she was worried about her ex-partner being high when he saw her daughter, the KESB told her that she should not interfere with his private business.

The cases of Emilia and Sofia illustrate the impact on victimized women of the EBG study's findings, that IPV is only partially and not systematically assessed in separation, spousal protection, and divorce proceedings. The fact that only 0-3% of KESB officers and judges withhold parental authority from parents who are subject of substantiated claims of perpetrating

IPV,³⁹³ is concerning: as illustrated in Emilia's case, this can lead to re-traumatization and unreasonable expectations towards victimized women; to negate their experiences in order to give the father's expectations and wishes to see his child priority over the victim's right to protection.

10.2.1 Parental Alienation Syndrome Counter-Claims

The custody proceedings following the separations made the mothers available as targets for further Coercive Control. To do so, the perpetrators used tactics of distortion, to shift the focus away from the allegations of their own abuse, and towards the mothers. The central strategy applied by all perpetrators to avoid investigation, and put their victim's credibility into question, was to make use of misogynistic gender stereotypes and PAS. They claimed that the women were 'revengeful', 'jealous', 'mentally ill', 'selfish' 'alienating', 'unstable' and 'unable of parenting'. A further pattern emerging during the analysis, was that these tactics used by the fathers were mirrored by the responsible State authorities, who subsequently labelled the mothers as 'uncooperative' and 'unable to parent'.

After Emilia, her ex-partner had married another woman. This time, the relationship ended with a criminal complaint against him: like Emilia, the new wife had left as soon as the baby was born, a fact that was known to the KESB. A few years later, when Emilia's daughter was seven years old, she witnessed her father assaulting yet again his third girlfriend in their home, where she stayed due to the State-ordered supervised visits. When her daughter came home crying after witnessing her father being violent, saying she didn't want to go to her father's place anymore, Emilia decided to make a report to the KESB about child endangerment. The father was summoned by the KESB for a hearing, after which the KESB decided that it was a false alarm, and that the daughter had to continue seeing him. Additionally, the KESB decided to conduct an assessment of Emilia's parenting ability.

Emilia: *The father has made a comment to the KESB that he is not sure whether I am a good contact for the child. And now I am being investigated as to whether I am capable of being a good mother for my daughter because I have 'overreacted' and it is not good contact for my daughter that I don't get on with the child's father.*

³⁹³ Krüger and others p. 155.

This is a typical mechanism of PAS counter-claims described in the theory chapters of this thesis. The appliance of PAS by their ex-partners was shared by all mothers interviewed.

Another case, in which the lack of investigation was detrimental to the mother, but even more so for the child, was Leona's. During her relationship, she was subjected to rape by her partner in front of her child. In the first few months after the birth of their son, the father once (exceptionally) changed the nappies of her son when she was in another room. When she came back, the son was crying, and his intimate area was reddish. Her partner told her that it must come from breastfeeding. When she took her son to the doctor, he disagreed and found that the case was very unusual: The baby had an infection with a specific E. coli bacterium, a hospital-resistant bacterium that lives in the intestines of adults and somehow found its way into the baby's bladder. The baby barely survived. Two years later, after Leona has already separated from her partner, her son came home after a day of visiting his father. The son, a little over two years old by then, re-enacted a masturbation scene at home: 'Look mummy, I'll show you something.' He rubbed his tip: 'You have to rub it really quickly and make it tight. Daddy has a big tip.' This is when Leona realized that her ex-partner was sexually abusing the child, starting shortly after he was born. After the separation, her ex-partner requested full custody of the child. For Leona, her ex-partner's request for custody of their child came as a shock, until then, he had not ever wanted to take any responsibility for the child's care, and neither for child-related expenses. Her ex-partner immediately claimed to the KESB that Leona was mentally disturbed and unable of caring for the child, calling her a 'hindering mother' ('Verhinderungsmutter'), i.e. an alienating mother, and alleging that she hit the child. He presented himself as a reasonable, decent, well-adjusted, nice person in front of the KESB officers and at court. Leona, on the other hand, was on the verge of a breakdown after a year of having cared for the baby and sleepless nights without any support. She was irritable, emotional, and unable to convincingly counter the father's narrative to the KESB officers. The child was awarded a legal guardian. When Leona told him of her concerns about child abuse, she found out that the legal guardian had not reported this to the KESB, but instead had called the father on the phone to ask him if her allegations were true. He thereafter informed Leona:

He told me had spoken to the child's father on the phone, and no, nothing had happened. And even if it had, then he [the father] would know that they were watching now. So, nothing would happen for the time being. I started crying and said: 'I can't bring my child now. Can you accompany him so that I can be sure that nothing will happen to him?' The counsellor: 'No,

nothing will happen'. And then the threat: 'If you don't bring the child, you are unfit to raise the child and your parenting skills will be assessed. In other words, you bring the child, you bring the child, and you have to be positively prepared, otherwise there will be consequences.

Neither she, nor the midwife, nor the doctor who diagnosed the baby's urinary tract infection were questioned by the KESB regarding the sexual abuse allegations. When Leona asked for the visitations at the father's place to be suspended over Christmas (so that she could prepare for the coming proceedings), the KESB issued a super-provisional measure to extend the father's visitation rights. Her lawyer told her that she must adhere to the decision because, otherwise, she was committing a criminal offence. When Leona filed a criminal complaint against her ex-partner, she was supported by the State prosecutor who believed her. However, the KESB ordered an assessment of Leona's parenting ability. The expert conducting the psychological assessment of Leona ignored the State prosecutor's statement and assessed Leona's parenting ability as limited. Leona was told that she was fueling the conflict with the child's father and that she was exacerbating the situation. The expert wrote a report recommending that the extension of visitation rights to alternating custody for the father must be re-evaluated. What followed was eleven years of custody proceedings, during which she tried to protect her son from being forced to visit his father. During this time, she says, she 'almost died from exhaustion' and became suicidal at one point. Leona was labelled mentally ill and called stubborn by the KESB. The KESB required her to attend therapy and a parenting course. The father was not.

Leona: So, you never get out of it, because it was a measure taken by the KESB. In the end, I had to pay the CHF 1,300 for this course and the external observation of my parenting skills and it [completion of the course with excellent credentials] wasn't even recognized as a fact in the proceedings. No, I was still considered to have limited parenting skills. I was the problem. And the child's legal guardian managed to get the change of custody reconsidered.

Her son was severely traumatized by the visits to his father. When he got older, he would run away from the father on the open street. The hearing of the son was denied by the KESB with the argument that it was for his best interest. It was not until the Covid-19 lockdowns that Leona was able to stop her son's visits at the father's house.

Leona's experience not only showcases the lack of investigation, but also underlines the EBG's study's findings that KESB officers are reluctant in reconsidering initial decisions, and ordering

supervised visitation, when indications of violence within the family submerge after the initial proceedings.³⁹⁴ Further, Leona's case illustrates the impact of State actor's reasoning, that children may be coerced to be in contact with their parents, even if the child does not want to. The allocation of a legal guardian did neither protect Leona's son, but rather contributed to his endangerment. When endangered children are not systematically heard by State authorities, even in the case of sexual abuse allegations, it may have a detrimental impact on their safety and well-being. The case further shows how allegations of child endangerment are not taken seriously when met with PAS counter-claims. The dynamics in this case remind of Patric Jean's³⁹⁵ examination of how PAS cases, presented in chapter 4.4.2., usually evolve. It also underlines the EBG study's findings that a reversal of perpetrator and victim roles frequently takes place,³⁹⁶ when some professionals reproach victimized parents to be 'dramatizing'. Lastly, it fits with the EBG study's assessment that the increasing use of PAS might be a possible reason for this.³⁹⁷

10.2.1.1 Super-provisional Measures: Psychological Assessments and Loss of Custody

The pattern of labeling the mother 'uncooperative' and 'mentally ill' was also found in other cases examined. Upon the allegations of the perpetrators, not only Leona, but also Ada, Valentina and Sarah were psychologically assessed by an extern evaluator on behalf of the KESB. Ada and Valentina were equally declared 'mentally unstable' or 'unfit for parenting' in the psychological assessments. In the case of Ada and Valentina, the KESB made use of their power to impose super-provisional measures to remove the children from their care.

Ada says: *'my daughter testified [to the KESB](...) she said: 'You've told me now that mum and dad should stop arguing. Dad is arguing with mum and he's not going to stop. And if you want to do it that way, then I'll have to stay in the foster home until I'm an adult, because dad will never leave mum alone.'*

Ada remembers that when they were directly taken to the foster home after the KESB hearing, 'I had to wait outside the door, I heard my children crying and screaming that they didn't want to leave me.' Since the age of twelve, her daughter has refused seeing her father. Her decision was respected by the KESB. However, the responsible KESB officer told Ada that as long as

³⁹⁴ Ibid p. 104.

³⁹⁵ Patric Jean, *La loi des pères* (Éditions du Rocher 2020) p. 6.

³⁹⁶ Krüger and others p. 159–160.

³⁹⁷ *ibid* pp. 159–160.

her older daughter refused to see her father, she would not recommend placing her daughter back in Ada's care.

In Switzerland, there are no statistics available on how many mothers who have experienced IPVaw lose custody of their children. Some Swiss cantons publish statistics on how many parents, from which gender, yearly lose custody. However, these numbers are not put in relation with the prevalence of IPVaw and/or domestic violence.

10.2.1.2 Provisional measures; Mediation and Perpetrator Programme

In two cases examined (Natascha and Emilia), the women's perpetrators had been ordered to take part in perpetrator programs. Both Natascha and Emilia indicate how the perpetrator used the completion of the program against them. Emilia's ex-partner would contact and harass her after his meetings with the program, saying other perpetrators confirmed his view, that victims had deserved the violence inflicted upon them, because they were mentally ill, like Emilia:

You have to imagine that offenders sit in a circle with a correctional officer and the course leader (...). They keep an aggression diary, an anger diary, where they have to record why they get angry, why they escalate so quickly, they learn the escalation levels. But what I noticed above all was that they had a blatant exchange among themselves as to why they had become violent and the excuse for this was actually always a mental illness of their victims. (...) It wasn't about the core issue itself, changing the behaviour, (...) but it was more about 'how can I now put the blame on the survivor, the victim', so to speak. Then, they then get a kind of certificate that they have attended this perpetrator programme, it's like a kind of certificate of good conduct from that time and in my case this 'certificate of good conduct' was used against me.

The KESB thereafter repeatedly forced Emilia to take part in joint in-person mediations with the perpetrator. Before those mediations, he would wait outside the door to accompany her on the way in and utter 'threats again, and then during the mediation could smile into [her] face again vis-à-vis at the little table and be charming'. The correctional officer who led the perpetrator program accompanied Emilia's ex-partner to the next mediation:

She encouraged him and supported him (...) what a good guy he was, and she didn't understand how he could escalate back then and probably we both contributed to it and we both had to work on each other, and just completely trivialized it. I should have informed myself better

about my rights. I should have stood up for myself more. That was difficult at the time because my self-worth was somewhere below zero, (...) because I was still a mum, and I couldn't just do that on holiday and clear my head. And what I also know very clearly today is that I would never have had to go to mediation if I had attended trauma therapy at the time.

As the authors of the EBG study elaborate, victimized parents are rarely protected through separate meetings.³⁹⁸ Emilia's case illustrates how this poses a severe risk for re-traumatization for victims. It gives platform for perpetrators to further shame, denigrate, manipulate and humiliate victims in front of professionals.

10.3 Lack of Justice and Protection

Emilia was never informed by the women's shelter, any victim support services, the KESB or the legal guardian of her child, that she could demand child support and go to civil court. Nor was she informed that she could request a psychological assessment of her ex-partner to see if he was a danger to the child. Because she had lost her job when she went to the women's shelter, she did not have the financial resources to search help from a lawyer until much later.

Like Emilia, *all* of the women interviewed indicate never having been informed of their rights and their children's rights to protection by any child and adult protection services, i.e. KESB, EKS and legal guardians deployed by social services. The only exception was Natascha, who had never been involved with the KESB in the first place – she had avoided contacting the KESB because a distant friend she contacted after the separation, who works for the KESB, advised her not to do so. Nor were the women informed about their rights and their children's rights during custody allocation proceedings. A striking similarity between all of the women interviewed was the indication that they don't have any rights as mothers - only duties.

Emilia: *'I've never heard of rights. Duties. I know duties by heart', she says. 'I always had to fulfil my duties and had absolutely no idea what rights I actually had. And yes, that's why the perpetrator kept making demands and requests of me, telling me what I had to do because he had a right to the daughter' (..) 'Everything was only made clear to me and told and communicated to me after I had informed myself about my rights or the rights of my daughter. So, I just always bowed and fulfilled my obligations out of fear that the perpetrator might take the child from me or cause me more harm or whatever, but simply got a lawyer and sought*

³⁹⁸ Umsetzung Gemeinsame Elterliche Sorge Als Regelfall, Empfehlungen Der KOKES' p. 83-85.

advice, which I did. (...) I had no rights as a mother. When he explained that I have rights and that I can demand child support payments, that I don't just have to give and take (...) I was then able to achieve my first goals.

Ada equally informed herself about her rights in custody proceedings when she started to realize she could lose the custody of her children. She studied the Swiss administrative system, and national and international law in her free time. She says ‘the KESB says quite clearly: It is not our job to protect the mother. It's our job to protect the children. And what is protection is not what a mother considers to be protection’. Sarah contacted a lawyer and INFRA, another advice center for women in Bern, where she was informed about her rights. Before that, she had contacted KESB, because she thought she would receive help there. Looking back now, she says she deeply regrets this decision and ‘would never do it again’. Regarding her interactions with the KESB, Sarah says:

I went there and was told that he simply has rights. And I have duties (...) I was not protected by the KESB because the KESB does not see the protection of mothers as being connected to the protection of the child.(...) I feel like I've aged ten years in that time. It was then that I realized I couldn't go to institutions [for help].

Valentina equally states: *I have no rights. The father has 100% rights, and the authorities take care of his rights. He doesn't even have to do anything; he just has to say that he doesn't like something, and they do the rest. I only have duties. And if I don't fulfil them, or don't want to fulfil them, then I'm uncooperative. An obstructive mother. Then I can't be trusted, and the child has to be taken away from me.*

Similarly, Sofia was never informed about her and her children's rights to protection by the KESB, the EKS officer or the women's shelter. When she went to the police for her first hearing, she was handed a leaflet to inform her about her rights during criminal proceedings. She indicates that in opposition to the other State institutions she had contact with, she felt well protected and cared for by the police. Several other women (e.g. Elena and Sarah) indicate to have made positive experiences with State prosecutors from criminal courts. The women also sought out help with other services such as victim support offices with which they made positive experiences. Another strategy of self-help used by several women was to educate themselves about their rights and find peer-to-peer support groups to exchange on their experiences and

possibilities of action. Elena states that after eleven years in custody proceedings, she learned to 'hit on the table' and 'behave like a man' in order to be heard.

Several mothers emphasize that they made efforts not to tarnish the children's fathers. Neither in front of authorities, nor in front of their children. All women report having made exhaustive efforts to meet the requirements imposed by the KESB, and having tried to be as cooperative, neutral, and sociable as possible.

10.4 Coercive Control and the new Legal Norms in Swiss Family Law

The new legal norms of the family law issued in 2014, positioning shared parental authority and shared custody as the new norm, were detrimental in the custody proceedings of the women interviewed. Both shared parental authority and shared custody enabled the continuation of their ex-partner's campaign of Coercive Control against the mothers and their children. Several of the women have been told that something 'very drastic' needs to happen in order for the father to lose parental authority or shared custody, implying that their ex-partners first had to seriously harm them or their children.

I've been told by the lawyer, the police, the KESB, the social worker from the Vista women's refuge that the chances are actually zero, because something really bad would have to happen first, (...) someone would have to almost die first, there would have to be blood involved, (...) for such a right to be contested, says Emilia.

Emilia's case first came to the KESB in 2017. She recalls how the 2014 family law was to be newly implemented and how the allocation of parental authority and custody was not clear to her: 'All these questions, including parental authority, child support, where is the child better off, with the mother or the father, this custody right, everything was in a state of flux'. She suggests:

The KESB has now reached the point where it prefers to place the children in a foster family or in a home before the parents enter into such a conflict construct. So, it's really extremely difficult to contest custody in any way.

Sarah and Leona equally observe some impacts of the new law on their protection (or lack thereof). Sarah states that she had 'luck at court': 'Because the judge was old. (...) my lawyer explained to me, the old judges are still implementing old law. They don't care about custody, alternation and things like that.' Leona, on the other hand, was not lucky. For her, the lack of

information about her rights played against her. She went into legal proceedings with little to no information about what to expect. She was sure that the violence would end after the separation and was therefore completely unprepared. She remembers that when she decided to leave the relationship, she told herself:

Okay, yes, that's the end of violence, that's right, I can only win. I didn't know anything about the new law, it wasn't even there yet, if you googled it, it said: the mother has sole custody, and normal visiting rights, and you orientate yourself on the state of cohabitation [the previous supervision shares of the child; who did take how much responsibility for the child care], that was my information, and then I thought (...) my freedom is worth it to me.

She had separated in 2014.

10.4.1 Coercive Control and Shared Parental Authority

Several women indicate that their ex-partners pursued strategies to prevent them from living an autonomous life, using shared parental authority or shared custody as tools of continued control. The entrapment experienced by the mothers during the coercively controlling relationships was continued after the relationship. The findings suggest that shared parental authority in the case of Coercive Control allows for harassment, and the loss of the freedom of movement, autonomy, and independent decision-making regarding the children.

Sarah had decided to separate a few weeks before the birth of her daughter. Shortly after birth, her ex-partner repeatedly showed up at her door in the middle of the night, to insult her, scream at her and demand entry. She was told she could not take any legal action because he had parental rights to see his daughter. When Sarah alerted the KESB, asking for help, she was refused:

[Name of the KESB officer] from the KESB Bern, spoke to me on the phone as if I was subhuman. As if it was too much trouble for her that I was looking for help, because I kept writing emails, I kept getting in touch and nobody responded. They kept saying, yes, he's the father and he has rights, he's the father and he has rights. And nobody was interested in what he was doing. Whenever I defended myself, I was told: 'Yes, Mrs [last name of Sarah], you have to de-escalate. What's the point if you fight back now - I was literally told - what's the point if you fight back now, you have to de-escalate the situation.

However, the continued exposure of her and her child to her ex-partner was damaging to her and her child:

My daughter is not protected by the fact that her mother, who is raising her, is terrorized on a daily basis. The child is not protected. If I'm not well, how can the child be well? If I suddenly have no milk because I'm so stressed, how am I supposed to breastfeed my child? (...) that he's allowed to turn up at 11 o'clock at night when a mum who can only sleep for two hours needs all the sleep she can get for her newborn. But he has the right to turn up at any time. No one protects me, no one protects the child.

As the EBG study reveals, judges are reluctant to order a suspension of contact with a violent parent when stalking continues after the separation.³⁹⁹ Sarah's case gives insight into the impacts of this practice: it does not only harm the mother, but also harms the children.⁴⁰⁰ As KOKES elaborates, the new legislation binds the parent supervising the child to inform the other parent holding parental authority of any change of residence.⁴⁰¹ In Sarah's case, this enabled her ex-partner to further exercise control over her.

Sarah: I feel like I'm a housewife in her 80s who needs her husband's signature for everything. (...) He has to (approve) everything ... I moved 20 metres. I had to have his signature. The city said, I have to have the father's signature to move. Within the same neighborhood. (...) He can do what he wants. But I have to have a signature for everything. Everything. He controls everything The institutions put me in a situation that shows me that I will live in captivity for the next 18 years.

The means to restrict the women's autonomy applied by perpetrators included withholding signatures for identity cards and passports, signatures for the child's registration in a new school and signatures for the application for child benefits ('Kinderzulagen'). When Natascha moved to another canton, her ex-partner initially agreed to the move. Shortly after, he suddenly claimed that her move was 'illegal' and that she must return. Natascha thereafter remained unregistered in the new canton because he denied her access to the needed documents. Because she was not registered, she was unable to secure a daycare spot for her younger child. Since then, he has held this threat over her. Natascha constantly fears having to move back to Bern if he claims at

³⁹⁹ *ibid* p. 104.

⁴⁰⁰ *ibid* p. 104.

⁴⁰¹ ZGB art 301, para 3.

the civil court that he can no longer see his child due to the distance. She also fears that he might alert the migration authorities, as her residency status is not clear.

Other strategies implied forced exhaustion: Leona for example, was ordered to travel six hours by train to bring her child to her ex-partner on his visitation days. She would drop the child at his place, pass the time alone in the city of Bern, and then travel back home. Over time, this increasingly wore her down and added up to the other issues she faced (continuous litigation and the fear that the child was sexually abused during the visitation time). When her doctor signed for her a dispensation for the train journeys, stating that she could not travel, the ex-partner refused to travel himself to her place. He preferred to not see his child at all, rather than to make the journey himself.

10.4.2 Coercive Control and Shared Custody

Shared custody equally has a detrimental impact on the women interviewed. The perpetrators sabotage any cooperation with the mothers, don't show up at the meetings with the children they had fought for in court, or use their supervision time to manipulate the children in order to negatively impact the child-mother bond. As elaborated in chapter 8.1.4.2, the Federal Supreme Court issued two rulings on October 19th and November 13th 2020, establishing the alternating custody model as the new norm.⁴⁰² Sarah reached for legal advice by the non-profit organization INFRA in the year of 2019. She remembers:

What can I do if we separate, what can I expect? I can't remember the exact words, but it sounded much more positive in 2019 than it did later at the KESB in 2020, partly because the legal situation had changed during this period.

Shared custody was used by Sarah's ex-partner to circumvent paying child support. He engaged in continuous litigation over four years to gain more supervision shares of the child. When the child was 1,5 years old, he applied for sole custody. However, as soon as he won more time of supervision with their daughter, he would bring their daughter to his parent's house for them to supervise her. To this day he is not present for the most of his supervision time. Sarah argues that this shows that he does not care about actually seeing his child, but rather seeks to inflict pain upon her by withdrawing the child as much from her supervision as possible. The father

⁴⁰² Martin Widrig, 'Das Bundesgericht Erhebt Die Alternierende Obhut Zur Regel' (*Sui Generis*, 2021) <<https://sui-generis.ch/article/view/sg.183/1871>> accessed 1 July 2024.

does not have to actually take care of the child and at the same time, he can avoid paying Sarah child support.

She elaborates: *The grandparents don't get any money either; they just have their pension. Their son doesn't pay them anything for looking after the child. The grandfather is 80 and my daughter tells me he's always shouting at her (...). He [the father] is not obliged to do anything. Not even under alternating custody.*

Due to traumatization, the shared custody had further impact on Sarah: 'It was so bad that I started vomiting every time I saw him. I vomited, I had to bathe my daughter every time she saw him because she smelled like him. And that smell got to me so much'.

As revealed in the EBG study, judges tend towards the alternating custody model even in cases of IPV.⁴⁰³ Sofia's case especially illustrates the threat this poses to women and children with coercively controlling ex-partners/fathers. At the time of writing this thesis, Sofia is still under police protection due to the threat of femicide by her ex-partner. She was given an alarm-wristband to press that would immediately alert police if her ex-husband found out where she lives and would show up at her door. Sofia is the only one who filed a criminal complaint among the women interviewed. However, custody decisions were made before the criminal proceedings started. Sofia's ex-partner demanded alternating custody for all three children and positioned himself as cooperative and willing to communicate with Sofia. He argued that because he had no job, he had enough time to take care of the children – although he never did before. Using the recommendations submitted by the EKS officer while she was at the women's shelter, he argued that it was impossible that any domestic violence against Sofia or her children had ever taken place, because there were no police records and no noise complaints by neighbors. Sofia was portrayed as vindictive, jealous and mentally unstable. The judge of the competent civil court then consequently allocated parental authority to both Sofia and her ex-partner for all three children. The judge also allocated shared custody for her four-year-old son with prospect of expanding shared custody to the twins when they were older. Sofia remembers: 'When I asked whether it was normal to give custody to violent fathers, she [the judge] said 'if we would take custody away from him, we would have to do the same with lots of other fathers'. Regarding the court's decision of giving her ex-partner shared parental authority of all children and shared custody for her son, Sofia states:

⁴⁰³ Ibid p. 109.

‘I don't want him to be able to see my children, to see our children. Firstly, because he also used physical and psychological violence against our older son. Secondly, because he didn't want the twins in the first place, also pressured me to abort them. And told me every day of my pregnancy that I wanted them and that (...) he wouldn't do anything for them, that I would have to pay for them. This in the context that he still wanted to be with me. I'm also afraid that the visits completely disrupt the stability we [her and the children] have slowly regained after this turbulent time. And that it will be a safety risk for me, as I will have to drive my child there. He will know that I will be in that room, (...) that I will come back and leave again to get my son back. Even if they say that we won't leave the house at the same time etc., he can very well organize other people to follow me, he can very well wait for me somewhere, he can, as soon as my son is a bit older, try to ask him exactly where we live and find out.

Sofia's case illustrates how the authorities' practice to allocate parental authority and joint custody even in case of parallel criminal proceedings⁴⁰⁴ – even in case the victim is under the threat of femicide – may have detrimental impact on women affected by IPVaw. It leads to continued endangerment of their life and well-being. As Sofia is under police protection due to threat of femicide by her partner, the decision to expose her to such danger is arguably neglectful with regards to Sofia's right to life and security. Sofia says that she thinks that as soon as her ex-partner has the possibility to have unsupervised visits, he will try to abduct the children to his home country: ‘And I may never see this child again’.

⁴⁰⁴ Krüger and others 105.

11 Conclusion

This thesis was written from a women's perspective, aspiring to give voice to mother victim-survivors. I endeavored to apply Evan Stark's sociological concept of Coercive Control in order to shine light on Swiss legislative, executive and judiciary State Practice with regards to women and their children affected by post-separation abuse. I aimed to do so through a human rights lens, which the concept of Coercive Control proved to be useful for: It has served to understand the issue of post-separation abuse as a form of entrapment and as a violation of fundamental liberty rights, providing a theoretical basis to examine Swiss legislation on IPVaw and custody in relation to relevant international legal frameworks.

The qualitative research of this thesis provides a rich picture of the dynamics of Coercive Control and post-separation abuse mothers and their children face. It sheds light on the different harms mothers and their children suffer from, and how the Swiss State Practice contributes to, respectively reinforces these harms. The findings reveal that women experience post-separation abuse in the forms of continuous litigation, targeted impoverishment, harassment, stalking and threats. With regards to State Practice, the analysis illustrates a significant lack of consideration and investigation of IPVaw in child custody proceedings. Moreover, the findings reveal a lack of justice and protection for victimized mothers and their children. This lack is closely linked to the new 2014 family law. Shared parental authority and shared custody prove to give platform for perpetrators to expand their tactics of Coercive Control beyond the separation, including the targeting of the autonomy of their victims, of attacking the bond between mothers and their children and of endangering children as secondary as well as primary targets of abuse.

With no exception did the participating mothers of the study state that they were not holders of any rights but rather exclusively duties to serve and uphold the father's right to his child(ren).

The data suggests not only a lack of the protection of mother victim-survivors' rights through executive and judiciary Swiss State institutions, but also a lack of respect for their and their children's rights under international law. The post-separation abuse examined in the qualitative case studies was closely linked to PAS counter-claims, which effectively impacted the mother's ability to protect themselves and their children from further abuse. The research suggests that mothers subjected to post-separation abuse risk to lose custody of their children when perpetrator's claims of PAS are mirrored by State authorities. State authorities may claim a mother's lack of willingness to cooperate, label them mentally ill or unable to parent. Emilia's

and Leona's cases both illustrate the mechanism how mothers are being labeled as 'uncooperative' or 'unable to parent' when they claim an endangerment of their child's well-being by the father. Both these cases correspond with the UN Special Rapporteur Reem Alsalem's concern that globally, relevant State authorities 'invoked the pseudoconcept of parental alienation, or blamed mothers for purposely isolating children from their fathers, even where the safety of the mother or the child was at risk', and despite a history of domestic violence.⁴⁰⁵ Instead of duly considering the endangerment of Emilia's and Leona's children, it was suggested that they were making unfounded allegations in order to alienate the father from his child. Leona was threatened by State authorities with the loss of custody of her son if she did not drop her allegations of sexual abuse. This fosters the mistrust in State institutions, especially towards the KESB, which holds the power to issue provisional and super-provisional measures, and prevents mothers from coming forward with valid concerns. Further, as Reem Alsalem suggests, 'public officials and institutions involved in the evaluation of children's best interests may be trained or lobbied by promoters of parental alienation'.⁴⁰⁶ The findings suggest that this might be the case with the experts assigned with such assessments by the KESB in the Canton of Bern: In three out of four cases with psychological assessors involved, the assessed mothers have been diagnosed with mental disorders or parenting inability.

With regards to Art. 31 para. 1 and 2 of the IC, Switzerland has committed to take appropriate (legislative) measures to ensure that IPVaw is considered in decisions regarding visitation and custody rights, and that exercising these rights does not endanger the rights and safety of the victim or the children. IPVaw and post-separation abuse are not comprehensively criminalized in Swiss legislation, failing to include the gender-based aspect of IPVaw and the different forms of violence and abuse under Coercive Control. This presents a lack of a legal basis for effective measures in custody proceedings to prevent and penalize the abuse of mothers and children after separation. IPVaw specifically is not considered as a reason to withdraw parental rights in the legislation, the legal basis for preventative measures is scarce. Further, the family law introduced in Switzerland in 2014, defining joint parental authority for children as the new legal standard, puts abused women and children at risk.⁴⁰⁷ The widespread belief amongst professionals that generally the child's contact with both parents serves the best interests of the

⁴⁰⁵ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem p. 6.

⁴⁰⁶ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem p. 15.

⁴⁰⁷ UN Special Rapporteur on violence against women and girls, its causes and consequences Reem Alsalem.

child, leads authorities to focus on minimal disruption in their decisions about the regulation of contact between the perpetrator parent and the child. In cases of separation and divorce involving IPVaw, joint parental authority and shared custody tend to be upheld as the standard practice. The Swiss legislative, executive and judiciary authorities fail to acknowledge that this allows abusive fathers to continue exerting Coercive Control over their victims, i.e. enabling Coercive Control post separation. Measures applied by executive and judiciary State authorities to mitigate the threat of violence by perpetrators include supervised visits and the allocation of legal guardians for the child. While these measures may be beneficial to prevent serious danger and physical threat to children during the visitation time, the qualitative case studies of this thesis reveal how they may not be sufficient to protect mothers and their children from Coercive Control. The allocation of legal guardians may also be a way of civil courts and the KESB to circumvent withdrawing parental authority.

Art. 45 para. 2 of the IC further requires Switzerland's judicial authorities to withdraw parental rights of the abusive parent to protect the best interest of the child, which may include the safety of the victimized parent, if they cannot be guaranteed in any other way. Here the findings equally suggest that Swiss State Practice shows considerable gaps in its alignment with Switzerland's obligations. The EBG study's data shows that parental rights are withdrawn from the perpetrating parent in only 0-3% of custody proceedings with a history of IPV. Further, the provision in the KOKES guidelines of 2014 defining that 'unreasonableness' ('Unzumutbarkeit') for one parent to share custody with another is not a reason to withdraw parental authority and custody rights, without specifying the case of domestic violence/IPVaw, contradicts Switzerland's obligations under Article 45 para. 2 of the IC which includes the duty to ensure the safety of the victimized mother. Parental authority and custody tend to be granted for perpetrators of IPVaw, even when criminal proceedings are parallelly going on. The qualitative interview results of Leona's, Sofia's and Emilia's cases especially illustrate how this puts the child's safety at risk. For example, the fact that custody was allocated to Sofia's ex-partner with the reasoning that if the judge withdrew parental rights from him, courts would have to do this with many more fathers, suggests a systematic disregard for women's and children's safety. Even in case of a serious threat of femicide and physical violence against children by the perpetrator, the father is granted parental rights. The protection of victimized mothers affected by IPVaw is not considered to be related to the welfare of their children: Both central executive authorities, the KESB and the civil courts, prioritize father's right to regular

contact with the child over the protection of the child as a subject of secondary traumatization of IPVaw, and the mother as a primary target of the abuse. The research suggests that KESB officers and judges follow the rationale that violence at the parental level is no risk to the child's welfare. This contradicts leading research on the issue of domestic violence and child protection, as well as Switzerland's obligations under the IC Art. 31 and 45.

These findings correspond with the concerns stated in the GREVIO baseline evaluation report: Domestic violence/ IPVaw is not regularly considered by the relevant authorities as a reason to grant sole custody to the victimized parent.⁴⁰⁸

Art. 12 of the CRC defines respect children's right to be heard, to have their views be given due weight and to have a say in matters affecting them. The numbers revealed in the EBG study show that Swiss State Practice aligns with these provisions insofar as that 49 % of questioned KESB officers and 42 % of civil court judges participant to the study agreed that the refusal of contact with a parent by a child aged 12 or older must be respected. Only 30% of KESB officers and judges indicate that children may be coerced into contact with both parents. Comparing the number with the allocation of parental authority to 97-100% of parents indicated to be violent and abusive, it is however questionable how non-coercion is assessed and implemented. The case of Leona's son, who was denied being heard with regards to the sexual abuse he suffered, and Emilia's daughter, whose wish to stop visitation with her father was denied, illustrate the need for further improvements.

The results of the conducted interviews cannot be generalized due to their qualitative nature and the small number of the sample. The qualitative case study results are therefore not interpreted as universally applicable within Switzerland but rather aim to broaden and deepen the understanding of the issue of post-separation abuse against mothers. Together with the EBG study presented, the results nevertheless shed light on patterns and tendencies of the Swiss State Practice and its impact on victimized mothers and their children in the country. The findings correspond with the research on Coercive Control, as well as with the report of UN Special Rapporteur Reem Alsalem and the concerns voiced by the GREVIO baseline evaluation report. The Swiss State Practice tends to perpetuate the ability of perpetrators of Coercive Control to

⁴⁰⁸ GREVIO Baseline Evaluation Report Switzerland' p. 48.

instrumentalize shared parental authority and shared custody as a form of prolonged captivity and entrapment of their victims and their children.

To conclude, I quote a part of UN Special Rapporteur Reem Alsalem's speech on the 53. Meeting of the UN Human Rights Council in Geneva. Reem Alsalem asked:

*How, Mr. Vice President, can practices such as these be taking place day in and day out right under our noses? (...) How can they result in such a perpetual state of suffering and result in such colossal miscarriage of justice by institutions who are meant to realize justice and protect victims. The short answer is that structural and deeply embedded gender bias is rampant in family courts, that mostly, I repeat, work against mothers. It leads them to lose partial or full custody of their children, no matter what they do, throwing them in a spiral of agony, despair, suffering and losing contact with their children, or seeing their children remain trapped in situations of insecurity and violence, including psychological and physical violence. The other factor that is clearly at play is the continued failure of the judiciary as well as family and child experts, to identify and consider already existing realities of domestic violence against women and children, including situations of Coercive Control.*⁴⁰⁹

⁴⁰⁹ SR on Violence against Women - 8th Meeting, 53rd Regular Session of Human Rights Council (2023) <<https://webtv.un.org/en/asset/k1b/k1bmrh42z>> accessed 7 August 2024.

12 Limitations

The case studies are not expected to be representative of Coercive Control victim-survivors as a whole. For example, they are limited with regards to women with a refugee status, varying statuses of residency, and varying ethnicities, i.e. the influence of the intersection of race and gender. Also were the interviewees found through victim support networks, which leaves out victimized mothers and children who are not linked to any kind of support services. Accordingly, the results do not cover experiences of the most marginalized and vulnerable victim-survivors. Another limitation to the study is the lack of children's perspectives. Although it was out of scope for this thesis, the need to make victimized children's views heard must be considered in future research.

The thesis mainly pursues the aim to illustrate the need for further research. No data is available to the question of how many children are taken from mothers suffering post-separation abuse and placed in foster care. For example, data on how many children, from which socio-economic and ethnic background are withdrawn from parents from which gender in families with a record of domestic violence and abuse need to be provided by the state. Another study along the lines of EGB study presented, but with the parent's (i.e. the victim's and the perpetrator's) gender as variables, is needed as well. Lastly, the application of the framework of Coercive Control in Swiss research related to IPVaw would be beneficial for a fuller understanding of post-separation abuse and the role Swiss State Practice play in the prevention, respectively the reproduction, of said violence.

13 Reflections

During the writing of this thesis, I have often felt despair about the state of the world, of the violence and suffering people, and especially women and children, are facing. A world where gender-based violence is normalized and perpetrators seem to be rather encouraged instead of being held accountable. I felt like I was observing the passing on of intergenerational trauma firsthand, already anticipating the impacts of today's violence on the future generation. Behind the anger which often rushed through me during the times of writing, there was a big sadness hidden.

To me, the root cause of IPVaw is systemic and not individualistic. When a society fails to hold perpetrators accountable, we render the process of healing impossible. There is no healing where no justice is served and no truth is spoken. I believe that in order to create violence-free communities, we must create systems of accountability. Accountability for perpetrators as well as institutional accountability.

I believe it would be beneficial for Switzerland to incorporate Coercive Control into the legal definitions of domestic violence and IPVaw, allowing for more comprehensive protection for victims. The law should be designed to address the complex experiences of victims who may not be experiencing physical violence but are suffering from other forms of Coercive Control.

During my work on IPVaw in Switzerland, Bern in the past years, I came to realize the lack of knowledge about the dynamics of Coercive Control and post-separation abuse. Employees on the Federal State level told me that 'we don't need another concept' to describe IPVaw, and that the legislation was comprehensive enough. Similarly, when I participated in the national campaign '16 Tage gegen Gewalt an Frauen', sensitizing on violence against women in Switzerland, the concept of Coercive Control was not yet heard of. It became obvious that concept has not yet reached the German realm, and I fear that it will take some more years to do so.

Switzerland has never been on the forefront of women's rights in Europe (see Annex 5). It also has its own history of child removing children from poor families, especially from single parents as well as from Jenish, Sinti and Roma communities.⁴¹⁰ These children were put in

⁴¹⁰ Jonas Burki, 'Die Société d'histoire Du Canton de Fribourg Veröffentlicht Buch Über Verdingkinder in Freiburg' (*Freiburger Nachrichten*, 22 June 2024) <<https://www.freiburger-nachrichten.ch/die-societe->

foster homes, penal- and psychiatric institutions, or sold out as cheap labor forces. The practice of *Heim- und Verdingkinder* is a dark chapter in Swiss history, where the State withdrew children from poor families and sold them for forced child labor. This State Practice, called ‘administrative coercion measures’ (administrative Zwangsmassnahmen), led to a lot of physical and sexual abuse of these children.⁴¹¹ The measures were implemented by communal and cantonal authorities, as well as the ‘aid organization’ Pro Juventute.⁴¹² *‘The fertile ground for this was provided by the extensive self-responsibility of the communities, where village elites in militia authorities took care of the legal guardianship system and decided on people’s fates. They were responsible for the poor - and in some places still are today’*, says Bern-based historian Daniel Schläppi.⁴¹³ Generational pain and trauma remain from that period as this history has never been properly processed by the country.

It was important to me to discuss the issue of IPVaw through a lens which puts the role of State Practice at the center of systemic violence, in order to draw away the focus from individual failure towards broader factors underpinning IPVaw. My personal experience with IPVaw might have influenced me emotionally and in how I approached the issue. However, I believe that I was successful in drawing clear boundaries between my personal experience and my scientific work.

Another critical thought which crossed my mind during the times of writing concerned the Western gender equality discourse. When listening to the narratives of victimized mothers, it seemed like the term ‘gender equality’ is turning into a rationale where fathers are seen as equally good mothers as the mothers themselves, neglecting the biological differences and abilities mothers and fathers bring to the table. I do believe that we must not apply ‘equality’ laws such as shared parental authority or alternating custody models as a standard when the reality of society is that we are still far from reaching a point, where care work is shared equally between women and men, where violence against women remains on a high level, where

dhistoire-du-canton-de-fribourg-veroeffentlicht-buch-ueber-verdingkinder-in-freiburg/> accessed 6 August 2024.

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⁴¹² ‘Kindswegnahmen Bei Jenischen Familien: Ein Dunkles Kapitel Unserer Geschichte’ (Pro Juventute, 2024)

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⁴¹³ Michael Feller, ‘Unmenschlichkeit Mit System – Über Jahrhunderte’ (Der Bund, 29 April 2024)

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misogyny is still deeply ingrained in service institutions and administrative, executive and judiciary practices. As this thesis has illustrated, this can lead to an increase of inequality and provoke harmful impacts. Measures to bring equality and a life free from violence should be fostered and are very much in need. However, legislation must be formulated in a manner that protects the most vulnerable in the community – women and children.

14 Literature

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15 Literature Legislation and Case Law

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16.1 Annex 1 – Short explanation of the Swiss political system

Legislation takes place on two different levels: laws are either made by the national parliament or on the cantonal level by the cantonal parliament, depending on how the competencies are regulated according to the Federal Constitution.⁴¹⁴ The most important legislative institution is the Swiss parliament. It consists of the National Council which has 200 members, with seats distributed according to the population size of the cantons, and the Council of States, which has 46 members, two for all 20 full-cantons and one each for the six half-cantons of Switzerland. The two chambers are equal; together they form the Federal Assembly. The Parliament enacts laws and supervises the management of the Federal Council and the Federal Court.⁴¹⁵ Members of Parliament are elected by the people and are accountable to them. The Federal Council as well as the members of the federal courts are elected by the parliament.

Executive institutions are the branch of State power whose main task it is, to execute the laws provided by the legislative. This includes policy and administration. At the federal level, the Federal Council, is composed of the seven Federal Councilors, each of whom heads one of the seven departments (EDA, EDI, EJPD, VBS, EFD, WBF, UVEK) along with the Federal Chancellery. Every department has several specialized administrative offices. This represents the executive branch of the State. The Federal Council with its departments thus forms the top of the federal administration. The executive power supports the legislative in drafting laws. The department's administration offices usually have the necessary expertise to draft the respective legislative proposals (for example, to ensure there are no contradictions between new and existing laws). However, the final word in passing new legislation remains with the parliament or the people (through initiatives and referendums). After a new law is passed, the Federal Council can issue recommendations on how the law should be implemented. These include recommendations to the judiciary regarding adjudication.

<<https://www.eda.admin.ch/aboutswitzerland/de/home/politik-geschichte/politisches-system.html#:~:text=Die%20Schweiz%20ist%20eine%20direkte,seine%20Entscheide%20mittels%20Konsens%20fallt.>> accessed 8 August 2024.

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The judiciary is also regulated at both the cantonal and national levels. The highest national judicial authority is the Swiss Federal Supreme Court, where appeals against the judgments of other courts can be brought to. Its decisions are the final judgment on a national level in Switzerland. The Federal Supreme Court considers the recommendations of the Federal Council in its deliberations, but the recommendations are not binding for the court. Although the decisions of the Federal Supreme Court do not become binding law as in common law systems, they do establish precedents that regional and cantonal courts, as well as the Federal Supreme Court, orient themselves by in future rulings. The other three federal courts are the Federal Criminal Court, the Federal Administrative Court and the Federal Patent Court, most of which decisions can be appealed to the Federal Supreme Court.

The Federal Department of Justice and Police (EJPD) and the Federal Department of Home Affairs (EDI) are responsible for prevention of domestic violence and for ensuring the protection of victims of gender-based violence, including the allocation of respective budgets. The Federal Office for Gender Equality (EBG), belonging to the EDI, is supervising the promotion and coordination of measures to prevent and combat domestic violence, including IPVaw. The study providing the secondary data for this thesis (chapter 9) was commissioned by the EBG. Other national key players are DAO (Umbrella Organization of Women's Shelters in Switzerland and Liechtenstein), women's rights NGOs such as Brava and Frieda and regional civil society initiatives. DAO plays a crucial role in IPVaw prevention by raising awareness at the national level representing the needs of women affected by IPVaw and organizing conferences for training and exchange of experiences. Through close State collaboration with these institutions, the prevention and protection measures against domestic violence are to be effectively implemented.

Cantonal level

The federal system of separation of power is mirrored on the cantonal level.⁴¹⁶ The cantonal parliaments (legislative) parliament is primarily responsible for deciding on cantonal laws (adopting, rejecting or amending them) and taking a position on initiatives and petitions submitted by citizens, municipalities or one or more members of parliament. The cantonal government (executive) coordinates its actions with those of the Confederation and the

⁴¹⁶ 'Föderalismus' (*Schweizerische Eidgenossenschaft*, 24 April 2024)
<<https://www.eda.admin.ch/aboutswitzerland/de/home/politik-geschichte/politisches-system/foederalismus.html>> accessed 8 August 2024.

communes. The cantonal government enforces both federal and cantonal laws, regulations and recommended measures and manages the cantonal administration within the scope of its competences. Each canton has its own cantonal court, judging cases as a first instance. Family law is regulated under civil law⁴¹⁷, which is subject to the cantonal civil court at first instance. Interpersonal violence including violence against women is regulated under criminal law,⁴¹⁸ subject to the cantonal criminal court.

⁴¹⁷ ZGB.

⁴¹⁸ StGB.

16.2 Annex 2 – PAS on the Swiss Political Agenda

This Annex has been left in German, as the English translation is already included in the text of the dissertation, and the choice of words can thus be better understood.

Name der Initiative	Initiator(in)	Politische Partei	Jahr	Relevante Zitation
‘Stopp der Kindesentfremdung: Gleichstellung von Vater und Mutter in der Schweiz’ ⁴¹⁹	Arbeitsgruppe Stopp Kindesentfremdung Schweiz	none	2024	‘Kindsentfremdung vom geschiedenen oder getrennten Elternteil meistens Väter ist in der Schweiz immer noch gängige Praxis. Die heutige Rechtslage und die Behördenpraxis schützen Kinder nicht davor. Der/die Inhaber/in der Obhut kann den Kontakt der Kinder zum anderen Elternteil nach Belieben einschränken. Gerichte und Behörden, d.h. die Schweiz hat keine gesetzliche Grundlage diese zu verhindern und/oder einzuschränken. In Trennungssituationen verlieren die Kinder den Kontakt zu einem Elternteil meistens dem Vater. ’
‘Bei problematischen Scheidungen Kindeswohl ins Zentrum stellen und Entfremdung von Elternteilen verhindern’ ⁴²⁰	Binder-Keller Marianne	EVP	2022	‘Bei problematischen Trennungen und Scheidungen besteht die Gefahr, dass die Interessen der involvierten Kinder aus dem Fokus rücken. ’
‘Bei gemeinsamer elterlicher Sorge die alternierende Obhut fördern’ ⁴²¹	Sidney Kamerzin	EVP	2021	Beantragte Änderung: ‘Art. 298 Abs. 2ter: "Bei gemeinsamer elterlicher Sorge prüft und fördert das Gericht im Sinne des Kindeswohls die Möglichkeit einer alternierenden Obhut, wenn ein Elternteil oder das Kind dies verlangt. Die Weigerung eines Elternteils darf der Einrichtung einer alternierenden Obhut nicht entgegenstehen, wenn dies zur Wahrung des Kindeswohls nötig ist und die Umstände es erlauben." Art. 298b Abs. 3ter: "Bei gemeinsamer elterlicher Sorge prüft und fördert die Kindesschutzbehörde im Sinne des Kindeswohls die Möglichkeit einer alternierenden Obhut, wenn ein Elternteil oder das Kind dies verlangt. Die Weigerung eines Elternteils darf der Einrichtung einer alternierenden Obhut nicht entgegenstehen, wenn dies zur Wahrung des Kindeswohls nötig ist und die Umstände es erlauben."’

⁴¹⁹ Arbeitsgruppe Stopp Kindsentfremdung Schweiz Petition: Stopp der Kindsentfremdung - Gleichstellung von Vater und Mutter in der Schweiz (n 339).

⁴²⁰ Marianne Binder-Keller, Interpellation: Bei problematischen Scheidungen Kindeswohl ins Zentrum stellen und Entfremdung von Elternteilen verhindern 2022 [22.4562].

⁴²¹ Kamerzin S, Parlamentarische Initiative: Bei gemeinsamer elterlicher Sorge die alternierende Obhut fördern 2021 [21.449] <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20210449> accessed 17 July 2024

‘StGB. Vergehen gegen die Familie. Verweigerung des Rechts auf persönlichen Verkehr mit Strafe bedrohen’, ⁴²²	Nantermod Philippe	FDP	2019	‘Genauso wie das Entziehen von Minderjährigen durch den nichtsorgeberechtigten Elternteil strafrechtlich verfolgt wird, muss auch eine unrechtmässige Verweigerung, das Besuchsrecht auszuüben, bestraft werden.’
‘Weniger Verletzungen beim Kampf ums Kind. Massnahmen für das Wohl von Kind, Mutter und Vater’, ⁴²³	Müller-Altermatt Stefan	EVP	2019	‘...soll insbesondere dargelegt werden, mit welchen gesetzgeberischen und verfahrenstechnischen Anpassungen gewährleistet werden kann, dass schneller entschieden und konsequenter gehandelt werden kann, wenn amtlich verfügte oder vereinbarte Rechte und Pflichten nicht eingehalten werden (wenn z. B. einem Elternteil durch den anderen der Umgang mit dem gemeinsamen Kind verweigert wird).’
‘Änderung des Strafgesetzbuchs’, ⁴²⁴	Hiltbold Hugues	FDP	2011	‘Wer eine minderjährige Person dem Inhaber der Obhut entzieht oder sich weigert, sie ihm zurückzugeben, und wer sich weigert, eine minderjährige Person dem Inhaber eines Rechts auf persönlichen Verkehr mit dieser Person anzuvertrauen, wird auf Antrag mit Freiheitsstrafe bis zu drei Jahren oder Geldstrafe bestraft.’
‘Für einen Schutz der Kinder bei elterlichen Konflikten’, ⁴²⁵	Baettig Emilia	SVP	2010	‘Kurz vor Weihnachten wird wieder Zehntausenden von Kindern der Kontakt zu einem Elternteil verwehrt, was eine Folge einer Kultur ist, in der getrenntlebenden Eltern die Gewinner- oder Verliererrolle zukommt. Dieser Elternkrieg führt zu heimtückischen psychischen Störungen (elterliches Entfremdungssyndrom) und hält teure und endlose juristische Verfahren in Gang.’

⁴²² Nantermod P, Motion: StGB. Vergehen gegen die Familie. Verweigerung des Rechts auf persönlichen Verkehr mit Strafe bedrohen 2019 [19.3597] <https://www.parlament.ch/rm/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20193597> accessed 17 July 2024

⁴²³ Müller-Altermatt S, Postulat: Weniger Verletzungen beim Kampf ums Kind. Massnahmen für das Wohl von Kind, Mutter und Vater 2019 [19.3503] <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20193503> accessed 17 July 2024

⁴²⁴ Hugues Hiltbold Parlamentarische Initiative: Änderung des Strafgesetzbuchs (n 337).

⁴²⁵ Dominique Baettig Interpellation: Für einen Schutz der Kinder bei elterlichen Konflikten (n 336).

16.3 Annex 3 – Declaration of Consent

Information for interviewees and declaration of consent to participate in an interview for a research project

MA Thesis at the Universität für angewandte Kunst Wien

Swiss State Practice and the Protection of Women and Children from Violence

Dear interviewee,

I would like to invite you to participate in an interview related to the thesis topic mentioned above.

Your participation in this interview is voluntary. You can refuse to participate at any time, without having to give a reason, or withdraw your agreement to participate once the interview has already started.

This interview is conducted to gain new, reliable academic research results. Additionally, your written consent to participate is an indispensable prerequisite to conduct this interview. Please take time to read the following information, and do not hesitate to ask questions.

Please only sign the declaration of consent:

- if you have fully understood the type and procedure of the interview,
- if you are willing to give your consent to participate, and
- if you are aware of your rights as a participant in this interview.

1. What is the purpose of this thesis research?

The purpose of this research is to investigate how Intimate Partner Violence against mothers, is prolonged after separation, and what role Swiss state institutions play during this process. Through interviews, I aim to gain insights into mothers' experiences of post separation abuse, with specific focus on custody cases, exploring its manifestations. Additionally, I investigate the legal basis regarding violence against women and child protection law and examine the role of executive and judiciary state authorities.

2. What is the procedure of the interview?

If possible, interviews will take place in person. If this is not possible, I as interviewer will arrange the interview over video conferencing. The interview will be recorded with your consent and I will additionally take notes. The transcript of the interview will then be analysed and can be shared with you upon request.

3. What are the benefits of participating in the interview?

The results of this research are intended to contribute to the existing research on Intimate Partner Violence and post-separation abuse in Switzerland. Participating in this interview would allow you to take part in analyzing survivors' experiences, promoting change through heightened visibility and destigmatization, and be a part of the expansion of relevant research.

4. What are the possible risks of taking part in this interview?

There is no potential risk to taking part of this study. The form of your participation will be voluntary and in the form of a verbal interview, with the ability to pause or terminate at any point without explanation.

5. How will the data collected in this interview be used?

The data collected in this interview will be used as qualitative data to answer the research question of the thesis. This data will be confidential and used only by those conducting and reviewing the research. The data will be anonymized.

6. Will there be any costs for the interviewees? Will they receive reimbursement or remuneration?

There are no costs associated for participants. Participation in this research is voluntary and interviewees will not receive reimbursement or remuneration.

If you have any outlying questions, please reach out to Anne-Lea Portmann for clarity.

Names of the contact persons:

Study Supervisor	Name: Dr. Brigitte Holzner E-mail: brigitte.holzner@chello.at Phone: +43 699 12280973
Student	Name: Anne-Lea Portmann E-mail: anneleaadonia@icloud.com Phone: +795006388

DECLARATION OF CONSENT

Name of the interviewee:

I agree to participate in the research: *Swiss State Practice and the Protection of Women and Children from Violence*

Anne-Lea Portmann has provided me with clear and detailed information about the objectives, significance, and scope of the research. All my questions have been answered sufficiently and in a comprehensible manner. I had enough time to decide whether I would like to participate in this interview. At this moment, I have no further questions.

I reserve the right to end my voluntary participation at any time, without this being to my disadvantage. If I want to withdraw from the interview, I can do so at any time by contacting Anne-Lea Portmann, either in writing or verbally.

I agree that my data collected in this interview is to be recorded and analysed.

If I want to receive the transcript of the interview, I will communicate this to Anne-Lea Portmann.

I have read and understood the information for interviewees.

I have received a copy of the corresponding information for interviewees and declaration of consent.

(Date and signature of the interviewee)

16.4 Annex 4 – Interview Guide

Sociodemographic Indicators & Legal Data (Lawsuits & Custody)

Pseudonym:	
Age:	
Profession:	
Number of children:	
Age of children:	
Citizenship or immigration status:	
Citizenship or immigration status of ex-partner:	
Profession of ex-partner:	
Divorce /separation:	
Year of leaving:	

Legal guardian for children:	
Civil lawsuit:	
Criminal lawsuit:	
Custody rights:	
Out-of-home-placement of children:	

Explorative Questions	Supporting the interviewee
1. Forms of Violence: Can you briefly summarize the types of violence you and/or your children experienced during the relationship?	<ul style="list-style-type: none"> Encourage the story with prompts like 'Mhm, and what happened next?' Clarify any uncertainties. Engage with interesting side-issues. Along the principles of conscious partiality and informed consent
2. During and After Separation: Can you tell me a bit about what happened during and after the separation. I am particularly interested in the role played by State institutions such as (if applicable) victim support services, KESB, civil court, lawyers, judges, and guardians during and after the separation. Can you tell me about that?	
Potential Follow-Up Questions	
3. How were you informed about your and your child(ren)'s rights?	
4. How were your rights recognized, respected and protected by State institutions?	
5. How were the rights of your child(ren) recognized, respected and protected by State institutions?	
6. What ways have you found to help yourself?	

16.5 Annex 5 – Historical development of women's rights in Switzerland

Switzerland has never been at the forefront for women's rights in the European realm. Its legal foundations regarding women's rights, children's rights and family rights (i.e. the Swiss constitution, civil code and criminal code) have undergone major changes since the 1960ties.

Women have gained the right to vote in national federal elections in only 1971 in Switzerland.⁴²⁶ Additionally, since this legislation had to be passed on cantonal levels as well, the last canton of Switzerland to finally join the legislation was Appenzell Innerrhoden in 1991. In 1985, a referendum abolished the legal authority of the husband as the head of the household. Up until that point, men could forbid their wives to open their own bank accounts. Women also needed their husbands' signatures of consent when searching for a job.⁴²⁷ In 1996, the equality gender act was passed in order to forbid discrimination against women at the workplace. Article 8 of the Swiss Federal Constitution postulates a principle of equality and a prohibition of discrimination, among other things, based on gender. However, women's rights to labor came before their right to protection from sexual violence. It took until 1992 to criminalize sexual coercion⁴²⁸ and rape in a marriage^{429, 430}

In 2001, the revised Police Act was introduced in the Great Council of the canton of St. Gallen. This law was a pioneering achievement with regards to protection from gender-based violence in Switzerland. For the first time in Switzerland, the term 'domestic violence' was mentioned in a law.⁴³¹ Additionally, the police were granted to administer the right of expulsion

⁴²⁶ '1971: Swiss Women Get the Vote' *BBC* (London, 7 February 1971)
<http://news.bbc.co.uk/onthisday/hi/dates/stories/february/7/newsid_2738000/2738475.stm> accessed 19 May 2024.

⁴²⁷ 'Swiss Grant Women Equal Marriage Rights' *New York Times* (23 September 1985)
<<https://www.nytimes.com/1985/09/23/world/swiss-grant-women-equal-marriage-rights.html>> accessed 19 May 2024.

⁴²⁸ StGB art 189.

⁴²⁹ *ibid* 190.

⁴³⁰ United Nations Committee on the Elimination of Discrimination against Women, 'Concluding Comments of the Committee on the Elimination of Discrimination against Women: Switzerland' (2003) Twenty-eighth session, Supplement No. 38 (A/58/38)
<https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING_COMMENTS/Switzerland/Switzerland-CO-2.pdf> accessed 10 May 2024.

⁴³¹ Marianne Schwander, 'Häusliche Gewalt; Situation Kantonalen Massnahmen Aus Rechtlicher Sicht' (Eidg Büro für die Gleichstellung von Frau und Mann 2006) 10
<https://www.coe.int/t/dg2/equality/domesticviolencecampaign/countryinformationpages/switzerland/Bericht_d.pdf> accessed 8 August 2024.

(Wegweisungsrecht) by law. Previously, in cases of IPV, the police only had the option of recommending the protection of a women's shelter.

Timeline of key data development of women's rights and key data on domestic violence in Switzerland	
1959	The first referendum on federal women's suffrage fails. Only 3 French-speaking cantons vote in favour. The voter participation rate is at 67%. ⁴³²
1971	Women's right to vote in national federal elections of Switzerland. ⁴³³
1974	The first woman is elected as a federal judge. ⁴³⁴
1981	The principle of equal pay is enshrined in the Federal Constitution. ⁴³⁵
1984	The first woman is elected Federal Councillor (executive level). ⁴³⁶
1985	The new marriage law comes into force. A majority of men reject the law at the ballot box and it is only accepted thanks to the majority of women. The referendum abolishes the legal authority of the husband as head of the household. Wives can now open their own bank accounts and sign their own employment contracts. ⁴³⁷
1987	The DAO is founded: The umbrella organisation of women's shelters in Switzerland and Liechtenstein. ⁴³⁸
1991	The last Swiss canton to grant women the right to vote. ⁴³⁹
1992	Revision of the Criminal Code: marital rape is criminalised, but only as an application offence. ⁴⁴⁰
1996	The first Gender Equality Act comes into force: discrimination against women in the workplace is prohibited. The principle of equal pay is concretised. ⁴⁴¹

⁴³² 'Frauenstimmrecht in Der Schweiz Die Wichtigsten Etappen Des Langen Und Steinigen Wegs Zur Einführung Des Stimm- Und Wahlrechts Für Frauen Am 7. Februar 1971' (*Schweizerische Eidgenossenschaft*, 2023) <<https://www.ch.ch/de/wahlen2023/geschichte-der-wahlen/frauenstimmrecht/>> accessed 8 August 2024.

⁴³³ *ibid.*

⁴³⁴ 'Dr. Iur. Margrith Bigler-Eggenberger; Erste Rechtsdozentin Der Universität St.Gallen (1967) Und Erste Bundesrichterin Der Schweiz (1974)' (*Universität St. Gallen*) <<https://irphsg.ch/ueber-uns/kooperationen/kompetenzzentrum-fuer-rechtspsychologie/dr-iur-margrith-bigler-eggenberger-fonds/>> accessed 8 August 2024.

⁴³⁵ 'Lohngleichheit' (*Eidgenössisches Büro für die Gleichstellung von Mann und Frau*, 15 August 2023) <<https://www.ebg.admin.ch/de/lohnungleichheit>> accessed 8 August 2024.

⁴³⁶ 'Die Erste Schweizer Bundesrätin – Eine Feministin Im Gegenwind' (*Swissinfo*, 14 April 2023) <https://www.swissinfo.ch/ger/wirtschaft/elisabeth-kopp-ist-tot_die-erste-schweizer-bundesraetin-eine-feministin-im-gegenwind/48436816> accessed 8 August 2024.

⁴³⁷ 'Das Neue Eherecht Wurde 1985angenommen Dank Frauenstimmen' (*Parlament.ch*) <<https://www.parlament.ch/de/über-das-parlament/politfrauen/erobierung-der-gleichberechtigung/das-eherecht-von-1985>> accessed 8 August 2024.

⁴³⁸ 'Frauenhausbewegung in Der Schweiz' (*Frauengeschichte(n)*, 2 July 2023) <<https://frau-engeschichte-n.ch/quellen/frauenhausbewegung-in-der-schweiz/>> accessed 8 August 2024.

⁴³⁹ 'Frauenstimmrecht in Der Schweiz Die Wichtigsten Etappen Des Langen Und Steinigen Wegs Zur Einführung Des Stimm- Und Wahlrechts Für Frauen Am 7. Februar 1971' (n 423).

⁴⁴⁰ 'Sexuelle Integrität Und Gewalt an Frauen' 2.2000 Eidgenössische Kommission für Frauenfragen. 39 <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.ekf.admin.ch/dam/ekf/de/dokumente/frauen_macht_geschichte/3_7_sexuelle_integritaetundgewaltanfrauen12seiten.pdf.download.ad.pdf/3_7_sexuelle_integritaetundgewaltanfrauen12seiten.pdf&ved=2ahUKEwjslJ_an-SHAXUnzQIHXX0HKcQFnoECBAQAQ&usg=AOvVaw3GDOE7C-2S3rB2IQ7MphRs> accessed 8 August 2024.

⁴⁴¹ 'Bundesverfassung Und Gleichstellungsgesetz' (*Eidgenössisches Büro für die Gleichstellung von Mann und Frau*, 15 August 2023) <<https://www.ebg.admin.ch/de/bundesverfassung-und-gleichstellungsgesetz>> accessed 8 August 2024.

1998	The Federal Office for Gender Equality (EBG) is established. ⁴⁴²
1999	The proportion of women in parliament is 23.5% (National Council) and 19.6% (Council of States) ⁴⁴³
2001	For the first time, the term "domestic violence" is included in a law in a Swiss canton. For the first time, the police are given the right to expel perpetrators of domestic violence. ⁴⁴⁴
2002	The right to abortion up to the 12th week of pregnancy comes into force. ⁴⁴⁵
2017	Das Parlament ratifiziert die Istanbul-Konvention zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt. ⁴⁴⁶
2023	The proportion of women in parliament is 38.5% (National Council) and 34.5% (Council of States) ⁴⁴⁷
2023	The police registered 19,918 offences in the area of domestic violence (the number of incidents has remained relatively stable since 2009). Serious bodily harm and rape, however, have increased by almost 20% compared to the previous year. ⁴⁴⁸
2023	The number of women and girls affected by violence who report to the police or counselling centres has tended to increase in recent years. ⁴⁴⁹
2024	The revised Sexual Offences Act comes into force: the offences of sexual assault and rape are now based on the so-called "no means no" solution. ⁴⁵⁰

⁴⁴² 'Kurzevaluation Zur Zehnjährigen Tätigkeit Des Eidgenössischen Büros Für Die Gleichstellung von Mann Und Frau' (Schweizerische Eidgenossenschaft Parlamentsdienste 1999)

<<https://www.parlament.ch/centers/documents/de/ko-au-pvk-gleichstellung-d.pdf>> accessed 8 August 2024.

⁴⁴³ 'Gewählte Frauen' (Schweizerische Eidgenossenschaft Bundesamt für Statistik, 2024)

<<https://www.bfs.admin.ch/bfs/de/home/statistiken/politik/wahlen/gewaehlte-frauen.html>> accessed 8 August 2024.

⁴⁴⁴ Schwander (n 422) 10.

⁴⁴⁵ 'Schwangerschaft Abbrechen' <<https://www.sexuelle-gesundheit.ch/themen/schwangerschaft-gewollt-ungewollt/abbrechen#:~:text=Die%20Fristenregelung%20trat%20am%201,wie%20vor%20im%20Strafgesetzbuch%20geregelt.>> accessed 8 August 2024.

⁴⁴⁶ 'Istanbul-Konvention' (Eidgenössisches Büro für die Gleichstellung von Mann und Frau, 15 August 2023)

<<https://www.ebg.admin.ch/de/istanbul-konvention>> accessed 8 August 2024.

⁴⁴⁷ 'Gewählte Frauen' (n 434).

⁴⁴⁸ 'Gewalt Gegen Frauen Und Häusliche Gewalt' (Eidgenössisches Büro für die Gleichstellung von Mann und Frau, 18 August 2023) <<https://www.ebg.admin.ch/de/gewalt-gegen-frauen-und-hausliche-gewalt>> accessed 8 August 2024.

⁴⁴⁹ *ibid.*

⁴⁵⁰ 'Neues Sexualstrafrecht Ab 1. Juli 2024' (Schweizerische Eidgenossenschaft, 10 January 2024)

<<https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-99508.html>> accessed 8 August 2024.

16.6 Annex 6 – Case Study Summaries

16.6.1 Thick Description

In this chapter I provide a thick description of the cases examined for this thesis. All of the women interviewed have experienced Coercive Control with similar patterns regarding psychological violence, intimidation and threats, isolation, exploitation and economic violence. Some additionally experienced sexual violence and physical assaults.

Emilia is a 31 Swiss woman who nowadays works as a Peer-to-Peer companion and as an advocate for violence against women. She met her future partner at the age of sixteen. He was twenty-six at the time. Both hold Swiss citizenships. When she was nineteen, they moved in together. They share one child which is seven years old now. Emilia has experienced Coercive Control including severe repeated physical assaults, especially during her pregnancy. She left her partner when she found a gun in his backpack after he strangled and threatened to kill her. She now shares parental authority with him, including unsupervised visits at his home every weekend.

Sofia is a 26-year-old Swiss woman with a bachelor's degree. She met her ex-partner when she was 20. They married after two years of dating and have three children together: a son, who was seven years old, and twins, who are less than two years old. Sofia experienced Coercive Control including high-level-violence throughout her marriage, including daily beatings. During her first pregnancy, she was forced to have an abortion. Her husband beat her during all her subsequent pregnancies, endangering the unborn children. He locked her up at home multiple times without leaving her a key, in apartments in Switzerland and during vacations in his home country in West Africa, where she had no way to contact anyone. He destroyed valuable and meaningful items of hers. Sofia also endured financial violence, as her husband coerced her into sending all her savings to his home country. Additionally, she was coerced to perform sexual acts against her will. As their first son grew older, he was also physically assaulted by his father. Sofia is under police protection to this day due to severe danger of femicide. However, her partner gained parental authority, while she is waiting for the criminal complaint to proceed at the criminal court.

Sarah is a 31-year-old Swiss Muslim woman of East African descent, has a master's degree in public law. Her partner, who was twenty-eight at the time of her pregnancy, lived in Germany and was writing his master's thesis in jurisprudence. The two were in a long-term-partnership and planned to marry the year before she fell pregnant. When Sarah became pregnant, the father demanded an abortion. During her high-risk pregnancy, Sarah worked three jobs to provide for both of them financially, while suffering under her partner's intimidating and coercively controlling behavior. He additionally endangered the life of her and her unborn child by infecting her with chlamydia because he had repeated unprotected sex with prostitutes (without her knowing). When she wanted to separate, she faced severe harassment and stalking. Today, he successfully gained alternating custody of the child.

Leona is a 45-year-old Swiss scientist holding a Ph.D. from one of the best universities in Switzerland. She was a little over 30 years old when she met her future partner on a dating platform. He was also Swiss, over 30 years old, and worked in an established profession. Soon after they met, she became pregnant with a boy. Leona did not recognize the psychological violence which she was subjected to due to the severe gaslighting and manipulation that took place from early on in the relationship. Later when the abuse increased, she was subjected to rape in the presence of her child. Her partner had also started to sexually abuse her son shortly after he was born, which she only discovered two years later. He continued to do that long after the separation while she was not able to protect him because she was not being believed by the responsible authorities. It took ten years of continued litigation until, she was able to put an end to the forced visitations with the father. However, he still has parental authority of the child.

Valentina is a 41-year-old Swiss project manager and environmental engineer. Shortly after she met her husband from West Africa, they married, and he moved to Switzerland. Almost immediately after his arrival, Valentina became pregnant, and the relationship turned abusive. While he did not physically beat her, he harassed her daily, including telling her that she 'needed a good beating'. After separation, Valentina temporarily lost custody of her child. She now shares custody with the father.

Ada is a 40-year-old Swiss woman with South-East-Asian ethnicity who holds multiple medical qualifications working in nursing. She met and married her husband in Egypt. They have two girls together. Ada suffered sexual coercion and physical entrapment amongst other

forms of abuse. Her main struggle after the separation was to prevent her husband from abducting her children to Egypt to perform FGM. She also lost custody of her children who are currently residing in a foster home.

Natascha is a 44-year-old Russian woman with a psychology degree, working as a visual artist in Switzerland. She has moved after meeting a Swiss man in Russia who brought her to Switzerland to marry her. Natascha brought a seven-year-old child into the marriage. Her new partner has shared custody of a five-year-old child from a previous relationship, which had ended due to domestic violence (which she initially did not know of). At the time, the husband was living on social assistance and forbade Natascha from taking a job, as it would reduce his social assistance payments. In Switzerland, she soon became pregnant while he abused, completely isolated and financially drained her. Natascha was scared to leave because he threatened to take her child while she would be deported to Russia. She shares custody with him today.

16.6.2 The Story of Emilia

At the age of 16, Emilia meets her future partner and father of her child. He is 10 years older, 26 at the time. Both have Swiss citizenship. They maintain a strong friendship for years. Emilia completes her vocational training successfully. At 19, with her parents' consent, their friendship turns into an official relationship, and they move in together. Two weeks after announcing their relationship, her future partner proposes with red roses and a love letter. Emilia is struggling with depression at the time. Feeling overwhelmed, she retreats to the bathroom. Her partner becomes aggressive, insults her, and spits in her face as she sits on the floor crying. Later, he apologizes, and Emilia decides to forget the incident, blaming herself.

This cycle of honeymoon phases, declarations of love, and attacks continues for four years. After each attack, he apologizes, showing remorse and respect until the next outburst. At 21, Emilia becomes unintentionally pregnant due to taking mood stabilizers and birth control pills simultaneously. Her partner accuses her of infidelity, calling her a witch and worse. He demands a paternity test during the pregnancy, which confirms he is the father, though he accuses her of faking the results. The physical violence increases, and Emilia often ends up in the women's clinic to check on the health of the fetus. Her partner always accompanies her there

and waits in the treatment room, leaving her no chance to explain the bruises to the health care staff.

The custody was determined immediately after the baby's birth, still in the hospital. Emilia had to provide the baby's name, his last name, who had custody, and she had to schedule a civil registry appointment to have the paternity recognized. He was next to her that day, and with him signing the document, her chance of him disappearing from their lives was gone.

Her partner is jealous of the unborn child receiving more attention. Emilia flees to her mother's house a few times. Each time, her partner begs for forgiveness, promises to go to therapy, and she returns. Soon after, the insults and beatings resume. He threatens to harm her pets, hits one of her dogs. Few months after childbirth, he begins blackmailing Emilia, threatening to take the child away, claiming she is mentally ill and an unfit mother. After belittling her and destabilizing her mentally, he calls the police to prove her instability.

Emilia experiences the police as biased: one of the officers treats her initially as a woman who only wants child support from the man and wants to withhold the child from the father. The officer tells her she needs to calm down and seek help from a midwife. They encourage Emilia and her partner to shake hands and leave without taking further action.

One day, he threatens her life telling her 'I will kill you. I will end your life'. The next day, after another minor argument related to her cooking skills, he pushes her on the floor, screams, and chokes her into unconsciousness in front of their child. Realizing his threats of killing her are to be taken seriously, something switches within Emilia. The next day, she finds a small-caliber pistol in his backpack. She contacts victim support and a women's shelter. They advise her to leave immediately, take her child, secure her animals, and grab essential documents, 'and then you run as fast as you can'.

Emilia prepares everything carefully. On the advice of the victim support services, she writes a farewell letter to the child's father so that he won't worry when she and the child are gone. She packs her things and hides them in the apartment. She temporarily moves to a hotel in the mountains (there is no free space in the women's shelter): "Done. You don't look back. You leave." The staff at the women's shelter tell her, "You won't be able to go home for several

weeks, and you won't be able to continue your job because the perpetrator will very likely show up there to find you." She loses her job.

She is in daily contact with the victim support services, the women's shelter, and the police by phone. The police offer her protection in case someone has followed her to the shelter. She must stay undercover and wait for instructions. Meanwhile, the child's father bombards her with calls, SMS, and video calls. Three days later, the transfer to the women's shelter takes place. They constantly check if anyone is following her.

She must decide whether to file a complaint or not. A lawyer gets involved, along with the KESB, the police, and the women's shelter. Victim support stays in the background. She needs legal assistance regarding the rental agreement of her flat because she cannot return to her apartment. She needs a new apartment for herself, the child, and the pets and finds one an hour away from her old place. She looks for a new job, contacts social services, and seeks financial support. The women's shelter offers her financial support for a self-defense course and childcare during lawyer and court appointments. She and the child receive psychological counseling.

On Day X, she is allowed to go to her old apartment with the police and a social worker. She clears out her belongings – the child's father and perpetrator is present – and she moves into her new apartment.

In the first KESB hearing, Emilia has to explain why she separated from the child's father and fled to the women's shelter. Subsequently, the issue is how to proceed with this information and whether she will press charges or not. The child's father and perpetrator does not have a permit for his pistol. Emilia has to request and insist that the perpetrator must deposit his pistol. The KESB formulates the requirement that the perpetrator must deposit the pistol at the city clerk's office by a certain date only at Emilia's request. At the KESB, the focus shifts to the perpetrator's drug use, child support payments, and custody.

A mediation is scheduled. The child's father waits for her outside the building and threatens her as they walk up the stairs to the mediator together. There, he appears charming and with a smiling face.

She hires a lawyer to understand her rights and those of her child. She considers whether to press charges against the perpetrator. She has audio recordings from the last year of their relationship in which the perpetrator is beating and threatening her. The lawyer and the police inform her that this is not sufficient because it infringes on the perpetrator's privacy rights and would require his consent to use this material as evidence against him.

The first KESB ombudsman takes her concerns regarding the child's father's drug use during his caregiving times seriously: she is allowed to order drug tests right before the father cares for the child. With the change of residence comes a change of the responsible person at the KESB. The second KESB office does not take the father's drug use seriously. This second KESB office argues that what the perpetrator does in his free time is none of their business and that her fear is unfounded. They say that the father is a very caring father, coming across as very charming, helpful, and cooperative. Emilia is repeatedly told by the KESB, "Ms. X, you need to earn a trust bonus. Just because you are afraid of the perpetrator doesn't mean the child feels the same way."

With the first hearing, the perpetrator not only had to deposit his pistol but also complete the perpetrator program of the canton of Bern, 26 hours. He cares for the child for four hours a month under supervision and care in a children's home. In the perpetrator program, he discusses his aggression with other perpetrators and a course leader and keeps an anger diary. The narrative circulating among the perpetrators is that the victims are depressed, eating disordered, bipolar, borderline, or otherwise mentally ill as a justification for their own aggression – as he shares with her after their meetings to make her feel insecure.

The same judicial officer who supervises the child's father in the perpetrator program as a course leader later accompanies him as supportive figure to the mediation with Emilia issued by the KESB. The officer supports him verbally in the hearing, downplays the violence and threats against Emilia, and goes outside with the perpetrator to smoke after the KESB hearing.

Emilia has to ask the KESB for the perpetrator's pistol to be confiscated. The perpetrator does not have a firearms license; the police are informed, but she, as a victim of domestic violence, has to apply for the gun to be confiscated and will have to give written consent for its return: 'Why is this even a question? That made me so insecure and somehow showed me that the

perpetrator can do whatever he wants, and you just don't stand a chance. If they already fail with things that should be so clear, then you don't stand a chance anyway.'

The KESB decides that the child will have a legal guardian and that the father has the right to see the child every 14 days plus five weeks of vacation per year. She is required to organize the handovers and bring the child to the father. Quite quickly, the visitation days are extended to one night and then to two nights. Emilia receives the respective letters with legal validity.

Emilia is unable to work since. She does receive any child support from the father for years and is since dependent on social aid. Only later does Emilia learn that she can demand child support, that she should never have had to face the perpetrator personally all these years, that she had the right to a psychological assessment, that she could have had trauma therapy, that the KESB should have provided a mediating person to hand the child over to the perpetrator or that the perpetrator should have picked up the child. Her new lawyer, specializing in family law, separations, and domestic violence, informs her of these rights for the first time. He also tells her that she can always report acts of violence and submit all evidence, no matter how inadequate it may be.

After his separation from Emilia, the child's father has two more relationships, both of which involve violence. The first woman after Emilia filed a criminal complaint against him and leaves when their baby was newly born. Emilia and she are friends today. The child's father's newest wife, just 20 years old, is brought from Mexico. Recently, Emilia's daughter, who as of issued by KESB, still visits him, witnesses him beating his new wife. The daughter comes home crying telling Emilia what had happened. Emilia then files an endangerment-report with the KESB. The child's father is summoned to a hearing three days later along with the woman involved in the incident, who does not take a stand against him. The following day, her now 7-year-old daughter must attend a hearing and is questioned under pressure without a child advocate present. The KESB concludes that Emilia raised a false alarm and finds nothing substantial in the allegations. The daughter must continue to visit her father. However, after this hearing, KESB decides that Emilia must now be assessed for parenting ability, as she has 'overreacted'. KESB believes she is not a good influence on the daughter.

16.6.3 The Story of Sofia

Sofia is a 26-year-old Swiss woman with a bachelor's degree. At 20 years old, she meets a man from West Africa. They marry after two years of dating. Together, they have three children: a son, now seven years old, and twins, less than two years old.

Sofia experiences physical and psychological violence in this marriage. Three months after the wedding, the first physical assault occurs, and over the years, these get worse, sometimes involving daily beatings. During her first pregnancy, she is forced to have an abortion. The husband and father of the children beats her during all her subsequent pregnancies, also endangering the unborn children. He locks her up at home multiple times without leaving her a key. He locks her in apartments in Switzerland and on vacation in his home country, where she has no way to contact anyone. He destroys valuable and meaningful items. Sofia also experiences financial violence. She is coerced by her husband into sending all her savings to his home country. Additionally, there is sexual violence. To reduce the physical violence, she performs sexual acts against her will. As her first son gets older, he is also physically disciplined by the father.

When Sofia becomes pregnant with the twins, the husband urges her to abort them as well. He tells her every day that she chose these children and that he would not do anything for them, and she would have to provide for them. When Sofia gives birth to the twins, her psychiatrist asks if she is experiencing domestic violence. Sofia confirms this. The psychiatrist strongly advises her not to go home after the twins' birth and to separate from her husband. Sofia then speaks to her father and tells him that she wants to leave her husband. Her father wants to help her find an apartment. However, this proves difficult because she has little finances and is not allowed to leave the house to view apartments.

Three months after the birth, Sofia's condition worsens significantly. She asks her midwife to organize a place for her and her children in a mother-child facility called Meliso in Bern. Her husband drives her to the initial meeting at this institution, as she first had to complete household tasks before she was allowed to leave. The staff at the mother-child facility ask Sofia to call the women's shelter and describe her case so that her stay can be financed. The goal is for victim support to fund her stay at the mother-child facility. Sofia moves into the mother-child facility a few days later with the intention of separating from him and not having to return. The midwife visiting her is surprised at how much better the small twins are doing there.

Upon arrival, her contact person at the mother-child facility immediately points out that she must tell her husband where she is, that she must be transparent. Sofia says, 'I already said in the first conversation that I am not comfortable telling him, that in seven years I have never told him where I am and that this was a completely new feeling and a huge insecurity for me'. At this point, she is very afraid that the father will take the children away and use them to pressure her to return. The head of the mother-child facility and her contact person still tell her several times to call her husband and tell him where she is. She then contacts the women's shelter by phone. They tell her not to call the father and not to let herself be pressured.

Sofia feels 'coerced' to follow the instructions of the mother-child facility and call her husband because she 'was somewhat dependent on this institution'. He immediately tells her that he will come and pick her and the children up. She informs the staff of the mother-child facility that she does not want the father in a room with her and that it is essential to prevent him from taking the older son with him. Additionally, they should ensure that he does not speak Arabic because the women's shelter staff cannot understand it.

The father appears in the reception room and tells her in Arabic to come home: 'They will say you are crazy; they will take the children away from you. Everything will be better at home. I love you so much, come home now'.

He also says in German that these women have no right to tell him whether he can take his child with him or not. (...). The staff of the mother-child facility repeatedly ask Sofia, 'do you really want to leave'? Sofia says nothing about the whole situation. She packs her things and gets into the car with the children, terrified, and drives home.

The next day, the head of the institution calls her and asks if she wants to keep the appointment with victim support. Sofia says no: 'I didn't even ask him if I could go there'. Shortly afterward, the twins get ill. The midwife visits and determines that the twins need to be hospitalized due to a viral infection. On the way to the car, she tells Sofia that the Child and Adult Protection Authority (KESB) called and asked if Sofia's situation was urgent or if they could wait until after the Christmas holidays.

Sofia stays in the hospital with the children for several days, where the KESB also calls her and asks how she and the children are doing. The KESB informs her that there has been a risk report. Later, there is a conversation between her and a KESB employee. Sofia decides to stay with

her husband. She is overwhelmed. She does not know what a risk report means for her as a mother or for her husband as a father. She wants to try again with her husband. Therefore, she tries to make everything look good to the KESB. About the KESB employee, Sofia says, 'I saw on the KESB employee's note that she had written domestic violence. But she did not ask me directly, just said that there were no noise complaints and no police interventions. In this respect, everything is fine. And then she moved on in the conversation'.

The KESB employee wants to make a home visit and meet the father. Sofia feels guilty telling her husband because she is the reason for the KESB home visit as she went to the mother-child institution. The father refuses to let the KESB woman into the house. Sofia has to cancel the appointment, pretending the children are sick.

As a result, the situation worsens drastically. From one day to the next, the physical violence becomes increasingly severe. The husband yells at her, attacks her, insults her, and beats her daily in front of the children. Sofia decides to leave again. She knows she needs an apartment for this. She fears that she will suddenly have nowhere to go. She asks her father for help, who now also supports her financially. She connects with a self-help group for victims of domestic violence and meets mothers who have experienced similar things. The municipality offers her an apartment specifically for people with low income.

'My idea was to leave as simply as possible, without escalation, but that was not possible'. During an argument with her husband, in the presence of her mother, she packs all her important things and leaves the house with the children. She calls the women's shelter hotline, which organizes a safe place for her. She also contacts her midwife again. The midwife writes a very neutral report for the KESB. Later, the ex-husband and his lawyer will use this report to argue that he should be considered a good father.

Sofia informs the KESB authorities. The authority sends her a recommendation letter to the municipality for the municipal apartment. However, the municipality declines. Sofia then moves with her children to the women's shelter. There, she is asked to sign a document releasing the KESB from confidentiality. Sofia says, 'I do not want to release the KESB (from confidentiality), partly because of the experiences of other women I was in contact with'. Additionally, Sofia has her first conversations with the EKS, which is investigating Sofia and her children's endangerment on behalf of the KESB. Sofia tells her in detail about the violence

she has experienced. However, she does not tell the EKS employee about the father's violence towards the son 'out of fear that it could be used against me and I would face consequences.'

The EKS employee asks if it is possible for the father to visit the children while Sofia is in the women's shelter. The women's shelter employee communicates to the EKS employee that this is not possible. Two weeks later, the EKS employee calls again and asks, 'is it not possible or not recommended'?

The EKS employee then went on vacation for a month and a half. Beforehand, she contacted Sofia and told her, 'I will write in my report to the KESB that I recommend a legal guardianship for the children, which I will also take under my responsibility'. She adds, 'since you hadn't separated now, I would have also organized a violence prevention workshop for your husband, but that's obviously settled now'.

Sofia is in a bad mental state. The women's shelter connects her with a 'very good lawyer.' This lawyer calms her and gives her security. Sofia decides to press charges against the father of her children. The women's shelter also connects Sofia with the cantonal police, who are supposed to take care of her safety, and with victim support.

After the police interrogation, Sofia wants to go view an apartment that she likes. She asks the women's shelter to have her children looked after for a few more hours. The management of the women's shelter recommends that she does not go to view this apartment because it is too close to her original residence. The police also tell her that she should only move south of a certain location, not north. Sofia contacts victim support and her lawyer. Sofia gets the new apartment and moves in.

Sofia will later apply for another apartment that is provided by an association for victims of domestic violence who are still threatened by violence. However, the association's officials assess the risk of housing Sofia and her children there to be so high that they do not want to rent an apartment to Sofia.

The EKS employee recommends to the court that the father should preliminarily not see the twins, but that he should have the right to supervised visits with the older son. Sofia does not agree with this. She does not want the father to see her children, not even the son. The father has never taken care of the children and does not know how to do it. She fears the visits would

disrupt the slowly gained stability again. Furthermore, the visits pose a personal security risk for Sofia, as she would have to drive the son to and from the visitation locations. The father could follow her or have other people follow her and find out her residence. He could also simply try to ask the son where exactly he and the mother live.

The father's lawyer files a request arguing that he has a right to alternating custody. She argues, that there are no objective indications of the father's use of violence against the son or that the husband ever hit or attacked his wife. Since there were no noise complaints and no police interventions, she argues that it is unlikely there were ever dramatic situations in the marital home. Moreover, she states that there are sweet photos of the father and son, proving that the son was not beaten by the father.

The KESB decides in favor of the father and recommends that the father be granted shared custody with visitation rights for his older son. Since he is not working, he has sufficient capacity to take care of his children. The KESB also decides that the father should be granted generous contact rights with the twins so that a healthy relationship between the children and the father can develop. The extent of the contact rights with the twins is to be determined by the court, at least to the extent of one day per week. They argue that the father is suffering greatly from the separation from his children for two months, and a quick resolution is requested.

At the court hearing, the judge grants the father visitation rights and shared custody in accordance with the KESB's decision. When Sofia asks if it is common to give violent fathers custody rights, the judge replies, 'if we were to revoke his custody rights, we would have to do this with many other fathers as well'.

Shortly after the proceedings, it becomes clear that the amount of CHF 1,300 for social services, which Sofia is entitled to by victim support, had been used up at the women's shelter: for transportation costs and childcare costs during interrogations and official appointments. Apparently, no more money is available for further services.

Sofia says she knows that her ex-husband will never let go. And that as soon as he finds an opportunity, he will take at least one of the children back to his home country, and she will 'possibly never see' this child again. His lawyer argues that without passports, he cannot kidnap the children, and therefore no Fedpol entry is needed due to the risk of child abduction.

Sofia says she feels 40% safe on a scale of 0 to 100%. She knows that everything depends on the father not finding her. However, she considers herself one of the most privileged victims of domestic violence, as she has a family that supports her, not least financially.

16.6.4 The Story of Sarah

Sarah is a Swiss Muslim woman with East African descent in her 30s with a master's degree. Her partner, who was 28 at the time of her pregnancy, lives in Germany and is writing his master's thesis in jurisprudence. He is also an athlete, playing professional football in a small regional league in Germany. The two are in a domestic partnership and plan to marry the following year. When Sarah gets pregnant, the father demands an abortion. When Sarah communicates that she will keep the child and, if necessary, raise it alone, he suddenly writes from Germany that he is looking forward to the child.

From this point, the child's father's violence begins. His behavior becomes strange, and his communication changes; he seems like a completely different person: 'Then hell broke loose'. Sarah has a high-risk pregnancy and must lie down for six weeks, partly in the hospital. He visits her only twice in these 1.5 months, rarely talking about the child, her, or her health, but rather about his career as a footballer and how she should support him and not complain.

Sarah loses her job due to her pregnancy during the probation period and faces financial difficulties. She applies for a scholarship and needs documents from him since he is registered as her partner in her apartment, proving his income and residence in Germany. He does not respond to her questions or provide the documents, stating, 'he doesn't have time for such things'. He repeatedly tells her she is crazy, imagining things.

Her mother does not suit him. He calls says that her friends are bad friends. When she reconnects with her mother in the fifth or sixth month of pregnancy and shares her situation with her, he pressures her. He confronts her at 10 PM when she is sleeping, demanding to know what she discussed with her mother and insists she get up and answer him. The incidents escalate: shouting, hitting walls, threats.

Her financial problems worsen: he quits his job, wanting to focus only on his master's thesis and play football in Germany for less than 1,000 euros a month. Sarah, eight months pregnant, works in four different jobs from Monday to Saturday in Bern, Biel, and Zurich, while also

studying in Fribourg. He sleeps until noon and does no household chores, not even taking out the trash from the third floor as she recalls.

He tells her she is crazy and imagines that he goes to prostitutes until one evening he shares that he uses online services like 'Uber for prostitution, 100 francs for 15 minutes'. He doesn't always use protection, sometimes removing the condom. A test for sexually transmitted diseases reveals that Sarah has chlamydia, which can cause blindness, disabilities, genetic defects, premature birth, or death in the child and scarring of the uterus and infertility for the mother.

Sarah consults her gynecologist, a psychologist, and seeks legal advice. She is looking for a way out of the relationship. When she tries to leave, he starts checking her phone and emails, deleting messages and notes. She seeks advice from INFRA about what to expect if she separates. She gets advised that since the father lives in Germany, he will get to share parental authority with her and will not pay much child support, but he will not receive custody.

Then comes COVID-19: during childbirth, mothers can only be accompanied by the child's father. After birth, she moves in with her mother for 40 days. There is no official acknowledgment of paternity yet, with two separate birth certificates, one with his name as the father and one without. He demands access to the mother's apartment 12 days after the birth at 11 PM, calling the police multiple times and receiving their support: it is considered a form of child endangerment if the mother does not open the door at night. The police record an entry about Sarah. The father threatens with messages and emails about involving KESB (Child and Adult Protection Authority) and breaking down the door.

Sarah writes to KESB asking for help, not knowing she is making an endangerment report, leading to closer scrutiny of her rather than the man terrorizing her. She recalls regretting this decision heavily. The KESB officer tells her: 'As long as he only abuses you and not the child, it is not a form of child endangerment. He has access to your child and to you.'

The father is granted daily visitation rights of one to two hours. He shows up in inappropriate clothing, throws the diaper bag at her head, and stays longer with the baby than agreed upon, although she needs to breastfeed every two hours. The KESB officer states: 'He is right. And he has access'. She is advised to not resist but deescalate the situation. Her lawyer advises her to file a complaint for full custody. He said: 'Yes, we will simply say that we don't agree with

the the amount of child support. And if you don't agree with the amount of child support, you get an authorization to sue (Klagebewilligung). And with this authorization to sue, you can get away from the KESB. Only monetary grounds are valid, other grounds are not: psychological abuse, physical abuse, everything is useless. You have to have monetary reasons, then you can get away from the KESB.

KESB holds a hearing on the final report: the caseworker reads her report, which sounds neutral, stating both parents have sound parenting abilities, but the parental conflict endangers the child. However, the KESB staff submits a different version to the court than presented at the hearing, alleging the father suspects severe mental illness of the mother.

KESB, with Sarah's consent, obtains reports from her gynecologist and psychologist, both stating she has no mental illnesses but is being psychologically and financially abused and needs protection. However, KESB withholds these reports from the court.

During the 16 months of KESB's involvement, Sarah receives no child support. The father calls the police on her eight times to gain access to her apartment outside the schedules agreed upon, shouting at her, accusing her of bipolar disorder and borderline syndrome. Once, the police arrive at her door. She tries to file a defamation complaint regarding the mental illness accusations and provides the police with professional reports on her mental health. The prosecutor recognizes Sarah's psychological abuse and offers her the opportunity to press charges. The court incorporates all this information, confronting the father and making it clear he must pay child support and that there will be no joint custody, with the mother receiving sole custody. The father's lawyer, a feminist jurist, argues Sarah is a danger to her daughter and the father should get sole custody, with Sarah paying him support. The judge decides an evaluation by child counseling will determine if joint custody is possible when the child turns four. The judge was well over 70 years old at that time, exercising the old school of law regarding custody rights. Sarah is convinced that she was extremely lucky to have her hearing with this judge and stresses that if she were to go back to court now, the result would be different: 'my lawyer explained to me, the old judges still apply the old law. They don't care about alternating custody'.

Four years later, an EKS evaluation states the psychological abuse is not severe, resulting in a decision of 2.5 days per parent and every other weekend. The father claims his mother and

grandparents will care for the child, allowed by law to act as parental substitutes to implement joint custody.

Simultaneously, the father signs a contract with a new football club in Germany, hiding this from the KESB. Consequently, he is granted 50% custody by the civil court. The four-year-old is cared for by her 65-year-old grandmother and her 80-year-old grandfather, instead of the child's father. The father does not adhere to handover times and does not personally care for the child. The child receives no help with hygiene, resulting in repeated infections attributed to poor hygiene by the hospital. Sarah says: 'He is not obligated to do anything. Even under joint custody.'

16.6.5 The Story of Natascha

Natascha is Russian, 44 years old. She studied psychology in Russia and has a university degree but now lives from her art as a painter. Natascha recently came to Switzerland; the Swiss man she met in Russia wanted to live with her. They are married. Natascha's sister is also in Switzerland. Natascha brings a seven-year-old child into the marriage. Her new partner has a five-year-old child from a previous relationship, which ended due to domestic violence with the KESB involved. He has the child during defined visitation times. The husband lives on social assistance at this time. He forbids her from taking a job because it would reduce the social assistance payments.

After the wedding, the relationship with the husband is marked by stress, conflict, and domestic violence. He tries to socially isolate her. She is not allowed to maintain friendships. He reacts jealously and aggressively to new acquaintances. Natascha calls the police twice. Once, the police come. They ask what Natascha wants. She says she wants the police to record how her husband treats her, that he does not want her to go to a women's shelter, and that he financially puts pressure on her.

When she gets pregnant, Natascha decides to separate from her husband; she does not want to have a child with him. She seeks a lawyer who reluctantly takes on the case. Natascha wants to move out of the shared apartment. She cannot do this without her husband's consent, as her residence permit is tied to him. She also cannot move in with her sister because her first child goes to school at the current residence. Her husband does not want her to move out.

She works during the pregnancy at two kiosks in two different cities to secure her income, as her husband pressures her to earn money. Sometimes she works 13 hours a day at both kiosks. She finds a third job a bit further away in a sauce factory. She commutes long distances between her three jobs during her pregnancy.

Her husband regularly has his five-year-old child from the previous relationship visiting. He spoils this child, allows him everything, and sets no boundaries: the child can stay up late and watch TV. The husband tells Natascha he does this only because of the child's mother. So that the child prefers him and turns against his mother because she does not allow it to do what it wants.

When she is eight months pregnant, the court hearing begins. The lawyer initially presents the case of domestic violence and addresses the man's aggressive behavior. He responds that he has a paper proving he is not dangerous. He argues that he has completed a perpetrator program provided by the City of Bern, and now has a certificate to prove that he is not violent. Natascha's lawyer changes her strategy during the hearing. During a short break, she tells Natascha that the husband is not a bad person, seems lost, and is just upset. She states that this is not a case of domestic violence. As a result, the civil court only puts the separation and custody of the child on the hearing plan. The domestic violence is not addressed. The court decides that the father must pay alimonies and can see the child every two weeks for two hours.

She cannot leave the shared apartment due to her health condition in the ninth month of pregnancy, her residence permit tied to the father and ex-husband and because her first child's school is located in the same city. Natascha continues to live with the father. Shortly after, she gives birth to the child. Natascha accepts the court's separation decision. These conditions are not central to Natascha; she just wants to move out of the shared apartment and maybe move back to Russia, as the relationship endangers her mental and physical health. Her (now legally separated) ex-husband does not allow this. He threatens to kidnap the baby if she returns to Russia. He also threatens that the KESB will take the child away if she tries to leave Switzerland.

The police still have records from his previous domestic violence case. During another intervention, the police recommends that Natascha immediately move out of the shared apartment. Natascha cannot move out because she has a baby and a school-aged child. The police continue to urge her to leave the apartment and bring herself and her children to safety.

Natascha turns to social assistance and asks for support because she is left without a job and finances with a baby and a school-aged child. Social assistance urges her to quickly find an apartment. Social assistance tells Natascha that the father will have to pay alimonies. She finds an apartment 40 minutes away and moves out. However, her ex-husband does not pay the alimonies. Instead, he visits her with a bouquet of flowers and asks her to come back.

Natascha is completely isolated. She has no friends. She has nowhere to go. She lives in the new apartment with the two children, six months and eight years old, for several months practically without furniture. She sleeps on the floor. She has hardly any energy left and understands – due to her degree in psychology – that she suffers from post-traumatic stress disorder and is completely exhausted. She is aware of what has happened to her; she knows the patterns of abuse and manipulation. She worries about the future and her children. Her ex-husband quickly gets two new girlfriends from Russia. He shows her how well he is doing, how he enjoys life, and that it is all her fault. He calls her a bad mother. He shows her how successful he is, constantly sends her messages of his new life.

After a year, Natascha moves again to central Switzerland. Her ex-husband agrees to her moving. When the new canton tries to collect alimonies from him, he suddenly refuses. He argues that her relocation to the new canton is illegal and that she must return. Natascha remains unregistered in the new canton for seven months because she has no access to her documents. She receives no alimonies. Because she is not registered, she cannot get a daycare spot for her younger child. Her ex-husband says to her ‘The State will help you’.

Natascha meets her ex-husband’s previous partner. She had fled to a women’s shelter due to physical, psychological, financial, and social violence and had a years-long case with the KESB. They bond over the shared experience.

The State-funded lawyer works only minimally on Natascha’s case. She does not inform Natascha of her rights. The police also do not inform her of her rights. Natascha turns to the victim support center in a neighboring canton. There, Natascha is informed that her new canton does not report domestic violence cases to the victim support center. The victim support center also tells Natascha that the women’s shelter cannot take her in because funding is not guaranteed. She should continue to monitor the situation, and if it gets worse, she should contact them again. Otherwise, nothing can be done. Natascha also turns to charitable organizations of the Catholic Church.

Natascha fears having to move back to her ex-husband's canton. If he argues in civil court that he can no longer visit his child in central Switzerland, the court could decide that she must move back to Bern. She also fears that the migration authorities could support this decision.

Two years after the separation, her ex-husband writes to her that he is financially ruined. He still does not pay alimonies. The debt collection agency now finances half of the alimonies for Natascha's child. They collect the money directly from her ex-husband's employer; the amount is deducted from his salary. Her ex-husband earns CHF 6,000 per month plus a bonus. He receives CHF 8,000 per month in hand. The debt collection office tried to collect the alimonies from him. Her ex-husband argues to the debt collector that he has no money. The alimonies are then set at CHF 400 (the usual minimum in the canton of Bern is CHF 900). Natascha has seen his bank statements and knows he has money. He flies to Mexico on vacation. He buys large quantities of marijuana. And he has told Natascha: "I know how to fuck the system."

16.6.6 The Story of Leona

Leona is a scientist with a Ph.D. from one of the best universities in Switzerland. In her master's degree, Leona is the second best in her year. She is Swiss and a little over 30 years old when she meets her future partner on a dating platform. He is also Swiss, over 30 years old, and works in an established profession.

Leona does not recognize the subtle violence, the psychological violence that affects her for a long time. She presents her characteristics and preferences on the online portal and wonders that the man who contacts her has exactly the same interests and matches her perfectly. The spiral of violence begins with him bombarding her with love and admiration, constantly praising her. A 'soulmate,' her 'dream prince', she thinks. Within weeks, they become a couple. Shortly afterward, she becomes very ill, and he takes care of her attentively. She thinks, 'Oh wow, if we can get through this together, I will never leave him.' When she is well again, he introduces her to his friends: 'Kind of a men's club, no idea, they just all came and sort of insulted me. And he didn't defend me, just stood there.' She feels humiliated, brushes off the strange feeling, but first 'doubts' remain. Half a year later, he tells her she does not fit in with his friends, and they are more important to him than she is. When she wants to leave him because they apparently don't fit as a couple, he makes a great effort to win her back and apologizes. She feels indebted to him because he was caring for her when she was ill.

She stays in the relationship, experiences highs and lows. 'Actually, whenever I was very happy, especially when mountain climbing, he was grumpy in a strange way.' Leona's desire for children comes to light. In all sincerity, she communicates her wish to him and asks him if he wants that too. At first, he declines, but three weeks later, he suddenly agrees. He formulates many conditions: 'First, try for a maximum of 1 year. Second, a maximum of 1 child. Third, you are the driving force.'

Leona is on 'cloud nine' and becomes pregnant after three months. It is agreed that the two will move in together and get married when Leona gets pregnant. She relies on that. He finds a joint apartment very quickly. When she is six months pregnant, she proposes to him, 'because now it's getting tight for me.' He replies: 'Marry? What? Under these circumstances?' He refuses marriage and a cohabitation contract.

He speaks derogatorily about her: 'pregnant,' not 'expecting.' 'It can all still go wrong,' 'you are already too old,' 'you will lose the child anyway,' 'that is your problem, the pregnancy.' She is shocked because she knows that other expectant fathers take loving care of their wives and look forward to the child. She interprets his behavior as a kind of depression and believes she must help him. She pampers him, takes care of everything for him, tries to make everything right for him. He ignores her.

They move into the shared apartment. That means, he moves in one day earlier, chooses the best room and the best bathroom for himself, and places all the furniture the way he wants. He designates a room for her and the baby as far away from his as possible so that he won't be disturbed while sleeping. She is seven months pregnant, cooks, and bakes a braided loaf on Sunday. He however constantly ignores her, criticizes her behavior, and makes her walking on eggshells. She doesn't take it personally, thinking he has some kind of problem. She continues to pamper him and washes his clothes. After two days, she asks him: 'What's going on? Did someone die? You're not talking at all anymore.' He needs to get used to living under the same roof with her. Leona is shocked. If she hadn't been pregnant, she would have immediately left him. She thinks, 'The child needs a father.' She never sets boundaries and accepts everything.

The father of the child wants all the tests done to ensure the child is healthy and definitely not disabled. Once it is clear that the child is healthy, he immediately demands paternity recognition. He continues to refuse the cohabitation contract, marriage, and financial support. Leona thinks that's how it's supposed to be. Later, she will call herself naive.

Three days after the birth, she returns from the hospital to the shared apartment. He has three weeks of paternity leave. On the same day of her return from the hospital, he organizes a surprise visit with his nieces and nephews and presents the baby. He does not take care of the mother at all. Later, he will reproach her for not paying enough attention to the visit and tell 'everyone' that Leona does not want visitors. He isolates her socially. No one comes to visit; he blocks every visit. Only his parents come. While they are there, 'he plays the angel,' is caring and overly friendly to Leona: 'No one would believe it. He is a complete jerk, then suddenly, the door opens: You don't recognize the man!! Suddenly, he pulls out the chair for you and says, hey, do you want to give me the baby?' As soon as the guests leave and the door closes, he hands Leona the baby and says: 'I'm going out.' 'Not a single night' does he help Leona with the baby. He withdraws all support from her. He drives her into exhaustion and isolates her from any social support. Outwardly, he plays the 'perfect partner and father'.

In the evenings, before going to bed, she gives him the baby for half an hour so she can shower and drink tea. During this time, the father is supposed to change the baby's diaper. Only later does she realize that he always hands the baby back to her crying. When the baby is 10 weeks old, a tiny infant, he gets a high fever. She takes the baby to the doctor against the father's will. The doctor diagnoses the baby with a urinary tract infection. The father blames Leona: It's her fault. She gave the baby the urinary tract infection through breastfeeding. She should stop breastfeeding. The doctor disagrees. The infection cannot come from breast milk. The case is very unusual: The baby has an infection with a specific E. coli bacterium, a hospital-resistant bacterium that lives in the intestines of adults and somehow found its way into the baby's bladder. The baby barely survives; Leona stays with him in the hospital for 10 days. Years later, her son will re-enact situations of sexual abuse by the father, and Leona will understand where the specific E. coli bacteria came from: the father sexually abused the baby.

Whenever she wants to leave the man, he showers her with love, gives her expensive gifts, and brings her red roses. In the middle of the first year with the baby, he travels for two weeks with his friends. When he returns, she thinks: 'Now he realizes that we are a couple, maybe he has overcome his depression.' The day he comes back, he starts making sexual advances towards her while she is still holding the baby in her arms. She has a 'blackout'. As she stands there with the crying child in her arms, lying on the floor, leaning against the wall, he satisfies himself from behind on her. She rationalizes suppresses the event.

When she tells her friends about her doubts, they respond: 'Yes, but Leona, you have to help him, you are his partner!' All her friends urge her to stay in the relationship. She feels 'dead inside,' 'empty.'

Almost exactly one year after the birth, he announces their separation. Later she finds out that unmarried fathers have a right to the child if they have lived at the same address as the mother for exactly one year. Leona is completely sleep-deprived and cannot defend herself. The father moves in with a friend. This friend, just like the father, had a child with a woman, separated from her after a year, and demanded visitation rights. The father also demands that he wants to take care of their baby together with this friend. Leona objects. She argues that he never wanted to take care of the baby, had cut short his paternity leave after a week. 'And now with the separation, he wants to take care of the baby?'

She shares contemplating separation with her therapist. The therapist says: 'You were always a single parent anyway, it won't make a difference.' She googles the legal basis and reads: 'The mother has sole custody' and 'one looks at the state of cohabitation.' 'That was my information, and then I thought, I can only win, I'll accept that, my freedom, and in return, I'll do everything alone, my freedom is worth that to me, I can do it.'

As soon as they separate, the father gets a lawyer: He starts the narrative of the committed father being hindered by the mentally disturbed mother from caring for the child. She is a 'hindering mother.' The case goes to the KESB. At the KESB hearing, Leona cannot bring any witnesses to support the opposite of this narrative because she was socially isolated the whole time. She is not listened to. She is treated 'like a mad woman' and does not understand what is happening. She does not get to see the files and is not allowed to comment. She has no idea that her ex-partner has just accused her of being a mentally disturbed mother endangering the child's welfare. The KESB does not follow up on this. They do not demand proof of clinic stays or other evidence of Leona's alleged delusions. The KESB adopts the narrative that Leona is mentally ill.

He demands 100% sole custody of the child. He says she hits her child. Then the percentage shares of custody are negotiated. He demands 30%, then 50% custody. She later sees the logic: In joint custody, the man does not have to pay child support.

The KESB initiates no investigations. Leona appears without a lawyer. She demands a trusted lawyer but is told by the KESB officer, that this is not necessary. She should wait for the decision, this is a 'professional authority.'

Leona is close to a breakdown, having had a year of baby care and sleepless nights without any support. Today she calls it 'sleep deprivation'. Later she realizes that he exploited exactly this situation, that this 'was his plan.' She is irritable, emotional, and unable to convincingly counter the father's narrative. She is the one who stands out in front of the KESB – not him. He presents himself as a reasonable, decent, well-adjusted, nice person. Her ex-partner tells her to her face: 'I will take away what you love most, your child. I will not give up until I succeed, you will suffer.'

Leona has to look for a new apartment while the KESB procedure is ongoing. The KESB refuses to conduct an investigation, neither of her nor the child or her interaction with the child. The people responsible at the KESB change. A 'sloppy report' is written, which in 'copy-paste mode' takes sentences from a father-rights lawyer's plea for shared custody.

Leona 'flees' (in her words) to another canton, she can no longer stand it. She moves to the east of Switzerland, to the mountains. A new KESB is responsible. Leona experiences how the patterns of violence from the relationship are transferred to the KESB process. 'No one ever' listens to her. She is not believed. 'They always only believe the father.' No one looks closely. His version is transferred into the KESB documents. That way, the authority has the least amount of work. The KESB in the new canton formulates impossible conditions: Leona must drive the baby, whom she is still breastfeeding, across Switzerland every week for visits with the father, wait, and then bring him back home. If Leona cannot fulfill these conditions, 'then it means: ah yes, she is a hindering mother.'

The father of the child has a very good and very expensive lawyer. The mother cannot defend herself. It is statement against statement. Leona is completely exhausted; she does not know that what is happening to her is considered domestic violence. She is afraid of her ex-partner. The ex-partner demands his visitation rights several times a week. Leona agrees to bring the child to his place once a week; she cannot manage more. The proceedings are a shock for Leona. She feels 'set up', completely unprepared. 'They were all out to ensure the father got his rights, to push through this ideal of joint custody at any cost'. Only later does she realize that a KESB cannot make a decision without prior investigation and that allegations of mental illness must

be checked for consistency. Neither she, nor the midwife, nor the doctor who diagnosed the baby's urinary tract infection are questioned. No psychiatrist is consulted. The father's claims are not verified. Her midwife had told Leona, 'The child is traumatized, and you may need to give him a lot of closeness for a very long time. Whenever he cries, pick him up, carry him around. Eventually, it will get better'. Leona follows this advice. Later, this is used against her, and she is accused of being overprotective by the KESB.

It is only much later that Leona understands there are files about her case at the KESB and that she has a right to view these files. She is again told she does not need a lawyer. She can always file an appeal later. Her ex-partner, however, has a lawyer by his side. Leona says it would have been better if the KESB had advised her, 'You are completely exhausted. Get a lawyer, who can better defend you'. Leona goes to her general practitioner and wants to be signed off sick. The doctor is against it: 'No, you have to fight through this. If I sign you off sick now, it will be said you are unfit to parent'. Leona realizes that they could take the child away from her. The doctor recommends that she get a lawyer. She gives her the address of an allegedly good lawyer. The lawyer, however, does not ask about domestic violence. She does not recommend victim support. She briefly hesitates over Leona's stories and then says, 'You have to be cooperative. If you do not accept the visitation rights, then...'. Leona suggests visitation for half a day every two weeks for the baby, which she is still breastfeeding. The lawyer disagrees, saying she cannot represent her in that case. Leona suggests supervised visitation. The lawyer also disagrees here, saying supervised visitation is only granted in exceptional cases. She advocates for weekly visitation for the father, one day each week, unsupervised, plus weekends and holidays starting from kindergarten age. And she must not say anything negative about the father; otherwise, she would be labeled as being uncooperative with the bond. 'Get on good terms with those in charge. That is your only chance'.

Leona trusts the lawyer. However, she demands an investigation, 'someone who looks closely'. Later, she thinks she could partly kick herself for not having fought back: 'You can't say anything that's actually important anymore. If you do, you're considered unfit to parent or a troublemaker, and the KESB has another reason to take the child away'. 'He used the child to torment me'. Not only the KESB but also her own lawyer ensured that nothing significant made it into the files.

Meanwhile, her ex-partner writes her about three emails every week, in which he intimidates her and tells lies about her. Leona concludes that the father is allowed to speak negatively about the mother without facing any consequences. She says, 'The dumb thing is, at some point you really start to go a bit crazy. I can't go jogging normally anymore; I always have something with me, pepper spray, two stones in my hand. (...). I'm never really relaxed'. Leona enters psychotherapeutic treatment with a psychiatrist.

Leona has regular sessions with the legal guardian. The legal guardian gives her positive feedback. It is actually the legal guardian's task to accompany the visitation days. Leona expects him to write a report on how the mother implements the visitation rights: That she brings the child to the father punctually every Saturday and takes a six-hour train ride. That she builds a routine. That she never takes holidays, never. That she always picks up the child on time and travels back home with him. Her lawyer had told her that if she managed to do this, there would be peace. The legal guardian does not write a single report on the implementation of the visitation rights. The objective facts are not recorded anywhere in the entire files: That Leona continuously brings the child across Switzerland to the father every week.

Leona's friend, who also nappies the two-and-a-half-year-old, tells her that the toddler is afraid of nappies. Was she sure that the father wasn't doing anything to him? Six months later, after a day of visiting his father, the son re-enacts a masturbation scene at home: 'Look mummy, I'll show you something'. He rubs his tiny tip: 'You have to rub it really quickly and make it tight. Daddy has a big tip'. Leona's mum immediately wants to press charges. However, Leona first asks the counsellor how to proceed in such a case. The counsellor says that he will report this to the KESB and Leona will be told what the next steps are. But she is not allowed to do anything and must continue to bring the child to the visitation day. The counsellor then calls the child's father. He reports that nothing has happened. The counsellor says that the situation must now be monitored. Nothing will happen for the time being. Leona asks for visiting rights to be monitored, but the counsellor refuses. He threatens her: 'If you don't bring the child, you are not fit to parent. Then your parental incapacity will be assessed. You bring the child. Bring the child, and be positively prepared, otherwise there will be consequences'.

Leona thinks that the KESB will investigate the matter and get back to her. Nothing happens. Later, she will read in the files that the legal guardian did not report anything about this to the KESB. However, he has transmitted every detail of the account to the father. The KESB

appoints a child representative. Shortly afterwards, this child representative accuses Leona of manipulating the legal guardian because she sends him a weekly report with the factual details of the visitation days. The child representative is actually supposed to represent the interests of the child. However, this child representative only observes whether the mother hands over the child to the father properly. She notes that this is happening but does not record it in the KESB files.

When the child is 3 years old, the demands of the father for alternating custody are reviewed again. Leona proposes the recommendations of the Marie Meierhofer Institute for a three-year-old child. The maximum, but not beyond that. The child representative disagrees with this suggestion. She describes it as unfounded and Leona as stubborn. She takes the position that if the father's wishes are not met, there will be an expert report.

Leona makes her first request for vacation days from the visitation schedule to rest. She requests to suspend the visits over Christmas for two weeks. The response from the KESB and the legal guardian is: The KESB decision does not regulate vacations for the mother. Since the father does not agree, the mother cannot take vacation. Leona accepts the decision.

Leona demands that the sexual acts be investigated. It cannot be that the three-year-old child has to stay overnight at the father's house without this being clarified. However, the KESB does not investigate. In its decision of December 15, the KESB extends the father's visitation rights with overnight stays. The child representative argues in this decision that she discussed this with the legal guardian and questioned the father. Based on the statements of the father, the legal guardian, and the child representative, it is clear that the allegations of sexual acts are a lie. Otherwise, the mother would have filed a complaint. However, the legal guardian had threatened her not to file a complaint, as it would backfire on her. From the fact that Leona did not file a complaint, 'a noose is now being tightened around her': it proves conclusively that she lied. The allegation of sexual acts is not investigated. The mother is not questioned even once about it. The child is not observed during diaper changes – even though the father has admitted that the child always is afraid during diaper changes. Leona requests a supervisory complaint. She argues: Under the pretext of the mother's vacation request, the KESB issues a super-provisional measure to extend the father's visitation rights. The vacation is not regulated in the KESB decision, it only serves as a pretext. The supervisory authority responds: 'We

cannot do anything about that. We do not comment on the content.’ The responsible government council also refuses. Her lawyer tells her: ‘This is now legally binding. You are committing a criminal offense if you do not implement it.’

Leona’s lawyer tells her: ‘They don’t believe you anyway, I don’t believe you either, I need to hear it from a child psychiatrist, who has to assess it.’ Leona finds a child psychiatrist who prepares a report stating: The child is at risk because the visitation rights for his age as a three-year-old are far too long. The lawyer’s response is: ‘We need to prove it first that it (the child) suffers from it. Your child might handle it. Now you need to make an effort. Prepare it well. Now get a child psychiatric accompaniment. Have the child observed. If it really comes to that, I might be able to make a complaint. Or an endangerment danger report.’

Leona calls the KESB representative. Her response: ‘I would just be careful about what you say. The decision is now legally valid. And if you do not implement it... The first step is a parenting ability report and in the second step, even if you refuse to prove this, you are deemed unfit to parent. The second step is, we will take your child away.’

Leona agrees and goes to the child psychiatrist. She wants to tell him about the child. However, the psychiatrist has already been informed by her lawyer. In retrospect, Leona realizes that the psychiatrist did not examine the child but the mother. She has to tell him everything about her life. After three months of regular conversations with the psychiatrist, Leona demands: “Can we talk about the essential things? The child? It has acted out sexualized role plays, I think it is being sexually abused.” She demands that the psychiatrist examine the child. The psychiatrist responds that he cannot make a professional statement until he has accompanied someone for six months. A child protection report would be exaggerated, it does not look good to the Child and Adult Protection Authority (KESB). He calls the KESB. And he agrees to write a statement from a child psychiatric perspective: a few brief sentences. Meanwhile, the responsible person at the KESB has changed. The person has never seen Leona or the child.

When her four-year-old son is reported to her after a visit to the father: “They will come to you when I (the son) am gone, they will kill you.” He describes to her exactly how they, the father’s colleagues, will do it. Leona concludes that the child’s father and his colleagues fantasize loudly in front of her child about how to get rid of Leona.

Leona finds a new lawyer. She initially shows indignation about the case. She says: Legally, we need a report which proves the endangerment of the child, otherwise nothing will proceed. However, the psychiatrist does not want to do this. He wants to wait, to find an amicable solution and to have a round table discussion. The legal guardian reports that he has reported this, the round table will come soon. However, the legal guardian does not report this to the KESB.

The KESB obtains an enforcement order and assigns the legal guardian the task of investigating the issue of sexual acts. The legal guardian questions the father. The father, however, denies any sexual acts. There was nothing, he did not masturbate in front of the child.

Leona takes the child to the pediatrician. The pediatrician says that Leona needs to be a bit more flexible, a bit more tolerant. "The case is only legally relevant if the foreskin is injured." He can check the child. As the pediatrician leans over the child and wants to remove the diaper, the child panics. The pediatrician asks Leona to calm the child down; it is in panic. He concludes that the foreskin is intact. Leona should not make any allegations. Later, Leona requests the medical record of her son. There is a note about her: "Strikingly overprotective, clings to the child."

Leona turns to the victim support services. The responsible persons ask: "Has the child acted out masturbation multiple times?" Leona's answer is no. The victim support services say: Then the child is not traumatized, nothing needs to be done. She receives books on how to teach the child to say stop.

Subsequently, Leona implements the newly defined, extended visitation rights. The toddler stays with the father for four days during the holidays. The child reacts with psychosomatic stomach pains. The daycare staff and the pediatrician also observe this.

Only when the child – just under four years old – runs away from the father on an open street during a visit day, does the father admit that the child has shown behavioral problems towards him from the beginning. He argues that the mother is to blame; she has turned the child against him. The KESB reacts immediately and wants to have a report prepared. Leona waits hopefully.

The report is delayed for months. The father delays his statement in the report. Meanwhile, the visitation rights are not suspended; Leona must continue to bring the child to the father. Leona asks the legal guardian to accompany and observe the child during a visit. The legal guardian refuses. He also refuses to record the situation in the records.

The legal guardian receives a mandate from the KESB to obtain the daycare's assessment of the child. The daycare provides an alarming description of the child's trauma, particularly during diaper changes. The legal guardian leaves the written report from the daycare director aside and later reports vaguely about the statement.

Leona continues to have to take the child to the father in Bern on her day off. They spend about six hours on the train for this. Leona requests that she bring the child to Bern and that the father return the child to Eastern Switzerland. The response from the KESB is no. When Leona receives a dispensation for the train journeys from her family doctor, the father is required to visit the child himself. From that point on, the father renounces his visitation rights. He refuses to fetch the child himself, saying he will not get on the train.

Meanwhile, a criminal procedure is underway. Leona had filed a criminal complaint against her ex-partner. The prosecutor, based on her descriptions, believes: "Yes, this is sexual abuse. Even though the child's foreskin is not injured." The expert receives this information but does not address it. He asks no questions about sexual acts or psychological violence. The expert asks Leona: "Are you aware that you are fueling the conflict with your criminal complaint? You are exacerbating the situation." Everyone, from the family doctor to the legal guardian, attests to Leona's full parenting ability. However, the report says otherwise. The reason given is: She does not sufficiently promote contact with the father.

In the subsequent KESB procedure regarding the sexual acts, the child representative decides on behalf of the son that the son should not be interviewed for his own protection. She argues: "The report does not mention anything about sexual acts, nor violence." However, the report does state that Leona is undergoing psychiatric treatment. This implicitly suggests she has a psychiatric disorder. The expert advises Leona to undergo therapy. Leona questions the quality of the report.

Later, she knows she could have requested supplementary questions or an additional expert opinion. She was never told this. In the subsequent administrative meeting, the KESB issues a super-provisional measure for therapy with the goal of alternating custody. Leona requests the legal guardian to initiate a review of her parenting ability. She files a complaint with the KESB. The KESB conducts a reconsideration. Leona is offered a Triple-P course, a parenting course. She agrees and also chooses a home visit: five sessions of intensive observation of the interaction between mother and child by the educational specialist. The result of the observation is that Leona has ‘excellent parenting ability’.

Leona brings the written result to her therapy. The therapist appointed by the KESB is also the expert who had prepared the report about her. Leona only later learns that this role confusion is illegal. She presents the results of the parenting ability assessment to the therapist (i.e., the expert). She demands a written protocol acknowledging her full parenting ability, or she will leave. Ultimately, the therapy is terminated.

Then comes COVID-19. Leona demands either Skype visits or a COVID test before each visit of the child. She does not want to contract the virus. The father considers the Skype visits to be harassing. He voluntarily renounces his visitation rights from then on. The KESB decides to schedule the visitation rights only once every two weeks for one day. The child representative objects to this decision. She describes the report on Leona’s ‘excellent parenting ability’ as a ‘party report’. Leona corrects her, stating that the report is a measure resulting from the KESB decision. The child representative succeeds in having Leona still considered ‘limited in parenting ability’ and that the custody change must be re-evaluated. The next report is to follow. Leona files a complaint with the professional ethics committee against the previous expert. The professional ethics committee rules in her favor in the first instance. Shortly thereafter, the head of the KESB leaves the responsible authority. The relevant expert moves to the court. Leona demands to have a say in who will prepare the second report. She insists that the father’s psychological health and parenting ability also be assessed now. Leona hires an out-of-canton lawyer from the Mittelland region.

He refers her to a psychiatrist who specializes in sexual abuse. The specialized psychiatrist examines the child and the case. He writes a firm statement for the attention of the KESB. He

criticizes the visiting rights ordered, saying they go far too far for such a young child. He calls for the father to be investigated for sexual offences.

Leona retrieves all emails with threats of violence from the father: how he threatens to abduct the child, how he repeatedly demands a change in custody, how he slanders her. The specialized psychiatrist states: the father needs to be assessed. The mother's assessments are likely true. It is not normal for a three-year-old child to reenact masturbation role plays.

Leona files another complaint with the national professional association against the expert practices of the KESB in her canton of residence. Her appeal is rejected by the professional association. Her new out-of-canton lawyer decides: "Alright, then we will first submit supplementary questions to the report." The supplementary questions and the request are rejected by the KESB. Then the KESB suddenly decides through a super-provisional measure that the father's visitation rights are suspended. Additionally, both the child and the mother are to undergo therapy. For the father, the therapy is voluntary, according to the KESB decision. A new legal guardian is appointed. He interviews the now 10-year-old son. The son says: "I never want to see the father again." "Maybe later?" "No, never."

The case is put on hold. Leona's son is now eleven years old. Leona decides to wait until he is twelve and must be heard in court according to the law. The son is doing better and better since he no longer has to see the father.

16.6.7 The Story of Valentina

Valentina is a Swiss project manager and environmental engineer. When she was twenty-six, she met her husband from West Africa. Shortly after they meet, they get married, and he moves to Switzerland. When Valentina's husband relocates, she helps him integrate into the country. She writes all his applications, tries to find him a job, and helps him to learn German. Around the time he arrives, Valentina becomes pregnant, and the relationship turns violent. He does not physically attack her, but he harasses her daily. She has to do almost everything for him. He humiliates her, belittles her and controls her.

She contacts the victim support service. There, she is informed that psychological violence is technically illegal, but that nothing can be done about it, and they cannot help her.

Valentina earns the livelihood for the entire family and takes care of the child. She pays all the bills. Her husband lives off her money, financing himself through her bank account. He does nothing at home. Not even when she has a broken arm, he helps her with the household, instead he screams at her when she asks for help.

When he starts earning a little money, he wants to have his own bank account and denies her access to it. She still has to pay the bills for both of them. He pays nothing, simply says no.

She considers leaving him but does not dare because she thinks he will be deported from Switzerland if she separates from him.

As the child approaches school age, the two discuss homeschooling. Valentina knows that she has the right to homeschool her child in Switzerland. Her husband thinks it is a great idea.

Eventually, Valentina separates from her husband. He takes their case to the KESB. Valentina does not dare to mention the many years of psychological and financial violence. The KESB grants Valentina's ex-husband parental authority and shared custody with visitation rights. Her daughter gets a legal guardian.

The daughter, now around 7 years old, explicitly says she does not want to visit her father and especially does not want to stay overnight with him. The child's father refuses to accommodate this. He also suddenly refuses homeschooling, implicating that she is a bad mother in front of the KESB. Often, he does not attend the KESB appointments. However, the KESB does not document this in writing anywhere.

The child has difficulties in school. It is only years later that she is diagnosed with neurodivergence: autism spectrum disorder. The child's father uses only half of his visitation days. Most of the time, he does not pick up the child and does not inform anyone that he will not be coming.

Valentina's lawyer advises her not to mention the abuse that happened during the relationship before the KESB: ultimately, her statements would always be used against her.

At the civil court proceedings, the focus is mainly on child support and advance payments. Initially the child's father refuses to pay child support. After negotiations, the child's father suggests to the judge that the child support be set at CHF 900. He knows that this is exactly the

amount the social service office of the canton of Bern will pay the mother as an advance on child support, when he neglects to pay.

Valentina agrees to this proposal. She does not negotiate the amount because she assumes that even if she takes the case to the Federal Supreme Court, he would still just not pay. The child's father does not see it as his responsibility to pay for the child.

As a result, Valentina is dependent on support from social services. She is on sick leave due to exhaustion for two and a half years. Meanwhile, the child's father is building an entire fitness studio in his home country in West Africa. He also runs a similar fitness business in Switzerland.

Some months after, the father tells the legal guardian that he is against homeschooling and that the mother is harming the child. He claims that the mother just wants to keep the child to herself and isolate her from the father, pushing him away and alienating him.

The legal guardian requests an assessment from the KESB due to concerns about the child's well-being. A well-known psychologist, an author of books on separation procedures, is tasked with mandate. The psychologist conducts two interviews with the mother, one with the father, and has a 45-minute conversation with the child. Additionally, she makes a home visit at Valentina's place. In her report, she states that Valentina is a danger to herself and others and that she could potentially harm herself and the child. She claims that Valentina is projecting her negative experiences with school onto her daughter. Valentina, however, assures that she has never had a negative experience with school and has never said a word about it.

The legal guardian also has a 45-minute conversation with the daughter. She then notes significant gaps in the daughter's general knowledge. In contrast, Valentina observed that when the child later attended a special needs school, neither the special education teacher nor the school psychologist was willing to make a diagnosis about the child and her academic knowledge after even two weeks of observation.

Valentina feels that her child's neurodivergence and ASD are being blamed on her as a mother and her homeschooling efforts.

In joint discussions, the guardian explicitly informs the father of his rights. She asks him how he feels about homeschooling. She emphasizes that he has the right to refuse homeschooling: ‘She told him directly that he could take legal action, that he (...) what about this behaviour (of the legal guardian) is de-escalating, please?’ The legal guardian explains him the legal steps he can take to do pursue litigation against Valentina: ‘The guardian is actually there to calm the situation down. But she has actually encouraged him to continue seeking conflict. I think she is there to look after the child's welfare and not his.’

The KESB schedules a hearing to discuss their decisions based on the psychologist's report. Immediately after the hearing, the daughter is taken to a foster home through a super-provisional measure of the KESB. When she is carried away, her daughter is screaming. Valentina is driven home by a care giver mandated by the KESB, under the assumption that she is suicidal. The caregiver waits outside the house for 30 minutes while Valentina packs her daughter's things for the children's home. Valentina wonders, if she is truly suicidal, why didn't the caregiver accompany her into the apartment?

The lawyer tries everything to prevent the child's placement in the KESB process. During the court proceedings, she is called into a side room and returns with a flushed face. She says to Valentina, ‘Look, this is a super-provisional decision, and there are no legal steps against it. There are no legal steps; there's nothing we can do’.

During the child's stay at the foster home, the lawyer did everything possible to bring the child back home. At some point, she tells Valentina, ‘I'm at my wit's end’.

The child spends eight months in a foster home in another canton. Valentina visits her every day, picks her up, drives her to school, brings her back to the foster home, and has dinner with her. The father visits her very rarely.

Valentina resumes working. At the next KESB hearing, it is decided that the child can leave the children's home. The report of the legal guardian, which defined the mother's lack of parental ability, is no longer discussed. Parental authority and custody are again awarded to both the mother and the father.

After the stay in the foster home, the child is diagnosed with cPTSD. This time, Valentina requests a legal guardian from the KESB with expertise in neurodivergence and cPTSD. The

KESB does not respond to the request and replies that there are other criteria for selecting a legal guardian, particularly travel times.

Thereafter, the legal guardian frequently changes (every year). Each time there is an introductory conversation, then Valentina hears nothing from the person until the next legal guardian schedules an introductory conversation the year after.

The father rarely attends KESB meetings or legal guardian appointments. The KESB stops providing interpreters for the appointments since the father never shows up anyway.

Again, the father accuses Valentina of being unfit to raise the child. When he visits, he asks the child where she would like to live, suggesting that any place is better than with the mother: With the father? No. With the grandmother? No. With the aunt? No. Here or there? No. Back in the foster home? The child is confused and upset.

The daughter, now a teenager, starts to refuse to speak with a legal guardian. She also refuses to attend KESB meetings. Both are blamed on the mother.

Valentina needs her ex-husband's signature for her daughter's passport renewal for a planned holiday. The father refuses to sign. Two legal guardians could not reach him to get his signature for the passport. He refuses. The KESB formally orders him in writing to sign. He does not open the letter. Eventually, the passport office issues the passport, which is valid for 30 days.

The child, now 14 years old, knows that her father is trying to ruin her holiday and therefore refuses to sign for the passport. She is afraid of her father. She no longer wants to see him or stay with him. She is disturbed that her father has the right to call anytime and demand information about her: from the teacher, from her psychologist. She explicitly sees this as an invasion of her privacy.

Valentina says: 'all this is made possible by this custody arrangement, by this idea that the father absolutely, absolutely must be part of the decision-making. And neither the child nor the mother is asked. (...) His behavior is never recorded. All these refusals, it's never documented. The file just says, they agreed on this and that.'

Valentina also notes that she receives no support: ‘All I get are requirements and expectations, but the fact that I need relief with all this and the lack of finances... (...) They just say, ‘Well, you’ll have to deal with it’.’

Because the father of the child continues not to see his daughter although he still has custody, Valentina takes the case to the cantonal court and the Federal Supreme Court. She argues, that his parts of supervision should be cut down because he does not seize this time with his daughter anyway. She argues, that in order to get more child support – as this amount is directly linked to the parts of supervision in custody. The Federal Supreme Court refutes her case.

Neither the legal guardian nor the KESB ever addressed the original order, the psychological report diagnosing Valentina’s inability to parent, or the decision to place the child in a foster home, ever again. Valentina is certain that the authorities harmed her child.

16.6.8 The Story of Ada

Ada is a Swiss citizen with multiple medical qualifications, working in nursing. She met and married her husband in Egypt, and they have two children together. At the time of their divorce, the daughters are three and a half years and nine months old. Today, they are on the threshold of puberty and adolescence.

At the beginning of the marriage, Ada’s husband has a job in Egypt but is on sick leave. Her husband flies to Egypt every few weeks to extend his sick leave, using money earned illegally in Switzerland to pay for the flights. He wants to make a lot of money quickly and asks Ada’s mother for CHF 10,000 to buy an apartment in Egypt. He also inherits his father’s apartment in Egypt during this time. He regularly empties their joint account, transferring all the money to his own account in Egypt.

Ada experiences financial, sexual, physical, psychological, and social violence. Her husband destroys household items, pulls down curtains, breaks the living room lamp, and smashes a glass jug. He controls Ada, blaming her harshly when the children fall or hurt themselves. He forces her to stay indoors after arguments, forbidding her from taking a walk or going to the rooftop, claiming she might be raped outside.

Two years after their first child is born, her husband returns from one of his long trips to Egypt and demands unprotected sex. Ada refuses, stating she is ovulating. Due to his frequent absences, she does not use contraceptives. Under pressure, she gives in. A few weeks later, she discovers she is pregnant again, despite not being ready for another child after her first emergency C-section. The pregnancy progresses, and she gives birth.

Ada manages the household and children alone, without support. When the second child is one year old, Ada is diagnosed with an autoimmune disease. Her husband dismisses her illness, insisting she must prove she can manage everything alone. If she cannot, he threatens to take the children and return to Egypt. Three months later, he reiterates his threat, saying she cannot handle the household, children, his job applications, bookkeeping, and taxes. Her husband supports female genital mutilation (FGM) and wants to take the girls to Egypt for the procedure (closing their vulvas completely to – as he argues – protect them). Ada learns that Egypt has an 87% FGM rate.

Ada decides to leave him, fearing he might abduct the daughters. She asks her husband for permission to visit her mother to ‘recharge’. He agrees, unaware that she is planning to leave him. Ada goes to her mother, reveals the truth about her relationship, and sets things in motion. She contacts victim support and the police, finds a lawyer. After he receives notice of a marriage protection proceeding, he shows up at Ada’s mother’s house with a friend, demanding to see her. Ada firmly states she is no going back.

Her husband collapses in front of the children, who cry, thinking he is dying. A neighbor, a nurse, calls an ambulance. The nurse assesses it was not a genuine collapse but theatrics. Three hours later, he is back at the door.

Ada seeks refuge in a women’s shelter but is denied because she has a safe place at her mother’s. She goes to the police with her sister, reporting her husband’s threats to abduct and proceed with FGM against the children. The police ask if he belongs to an Islamic group. When she denies, they refuse to act. Thereafter, victim support, which had previously helped her return from Egypt, connects her with a lawyer, but he is not a family law specialist.

Ada learns about the Federal Office of Justice's child abduction department. She contacts them and is advised to take threats of abduction seriously and ensure protective measures are included in any court ruling. There is also a travel ban registry (RIPOL) for children at risk of abduction. The civil court judge takes Ada's concerns seriously, orders a RIPOL entry, and recommends a professional legal guardian for the children. KESB (Child and Adult Protection Authority) will regulate the father's visitation rights. Ada, 'overwhelmed and in survival mode', agrees to everything without consulting her lawyer. The children initially receive an experienced legal guardian, who is later replaced by an inexperienced one. KESB tells Ada their 'duty is to protect the children, not her', saying child 'protection is not what the mother sees as protection'.

Years later, Ada speaks with the KESB, who claims it is the first time hearing about the domestic violence. Ada counters, insisting she had laid out all the facts.

The divorce takes place. Four years later, the father remarries without informing his daughters, who find out via Facebook. Ada continues working in nursing and wants to move to the city to shorten her commute. The new legal guardian for the children opposes, threatening to place the children in foster care if she moves. The legal guardian mediates between Ada and the father, but only organizational issues are addressed.

The father refuses to sign identity card and child allowance forms, ignores agreed visitation times, and fails to report his income and expenses as required by the divorce agreement. He frequently misses child support payments. KESB and civil court hearings occur every few months to settle minor issues. The older daughter begins refusing to see her father. Ada encounters him every two weeks for five minutes during the younger daughter's handover. The children struggle to concentrate at school, prompting the school to report concerns about their learning abilities. Family support and the legal guardian recommend Ada's psychiatric hospitalization for three to four months. Ada is admitted but released after five weeks, with doctors stating she is fine.

A hearing is held to ask the children if they want to return to Egypt. Neither Ada nor a child lawyer is present. A provisional decision places the children in a children's home. Ada's appeal is rejected, and the children remain at the foster home for two years.

The older daughter is 10 years old at this point. She says to the KESB employees: 'You have told me that Mom and Dad should stop arguing. Dad argues with Mom, and he won't stop. And if you want to do it this way, then I have to stay in the children's home until I am of legal age because Dad will never leave Mom alone!'

After that, Ada obtains two psychiatric reports that prove she has no mental health issues. What she still lacks is proof of her parenting ability. The KESB or the legal guardian and social welfare order an assessment. Ada has to demand access to the records of this assessment of her parenting ability with the help of her lawyer as it is previously denied to her.

The report by the specialist of the socio-educational family support recommends that the children should return to the mother from the home during the summer holidays. The mother's parenting ability is given. The legal guardian appointed by the KESB however writes a second report after only seeing Ada twice. In her statement, she writes that the father believes Ada is not in good enough health to take care of the children. The legal guardian further writes that she does not support a return as long as the older child does not visit the father. As a third point, she demands the implementation of the ordered mediation between the parents.

The mediation cannot take place because the father either does not open the mediator's emails with the appointment requests or because he responds: 'The mother must prove to me that she is doing better; only then am I willing to continue the mediation.' The legal guardian's report does not state that the father is boycotting the mediation. It states that both parents are doing so. Ada involves her lawyer. The mediator does not want to release his statement, which he has written about the mediation. He writes it only for the KESB. Ada cannot see this statement.

After two years, the children can return to the mother.

Discharged from the psychiatric clinic, Ada gets herself tested for ADHD. She also has her older daughter examined for ADHD. Both receive an ADHD diagnosis. For several months, the older daughter has been taking medication for ADHD. Since then, she has been excellent in her exams. Ada feels discriminated because of her and her daughter's neurodivergence.