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Seattle University

Silenced:

Women's Voices and the European Court of Human Rights

A Thesis Submitted to

The Faculty of the College of Arts and Sciences

In Candidacy for the Degree of

Departmental Honors in International Studies

By

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The signatures below constitute approval of this departmental honors thesis by Tiffany Carpenter.



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Abstract

This article examines the European Court of Human Rights (ECtHR) and its judgments associated with women's rights in the areas of reproduction, religious, and refugee expression. As an international court, the ECtHR seeks to resolve disputes related to violations of human rights between an individual and a member state. Although the introduction of the court has been perceived as progressive for global human rights, the ECtHR's recent judicial recommendations indicate an absence of recognition or limited advocacy for women's rights. In addition to analyzing how women's reproduction, refugee, and religious expression rights have received inadequate support from the ECtHR, this article will also suggest five possible influences underlying the court's decisions: namely, the ECtHR's definition of rights as exclusive of women-specific liberties; hesitancy to override national sovereignty; the minority of female judges serving on the ECtHR's Strasbourg bench; the court's consideration of external conservative bodies such as the Catholic church; and finally, that the international court, which relies on member states' cooperation, is susceptible to politicization and the rising far right. This article concludes with policy recommendations for the ECtHR, describing how the court might be able to move forward with increasing women's representation inside the courtroom and formulating gender-sensitive case law. By pursuing a more progressive and inclusive mission, the court will likely benefit from increased international legitimacy while re-establishing itself as a distinguished defender of women's basic liberties in Europe.

Keywords: Women's rights, European Court of Human Rights, judicial politicization, reproductive rights, refugee, religious expression, international courts, gender equality

Introduction

Women's voices within the European Court of Human Rights (ECtHR) are heard from both sides of the Strasbourg bench; however, whether the court adequately recognizes and advocates for women's rights continues to present concern for scholars across diverse disciplines. In a significant number of women-related cases, the ECtHR has given judicial recommendations which have implicitly condoned rights infringements by European member states, or which explicitly distanced the court from being a defender of certain reproductive, religious, and refugee liberties which other international organizations would consider fundamental. Whether rejecting abortion access under Article 8 of the European Convention of Human Rights in *A, B and C v. Ireland* (2010) or legally endorsing Belgium's ban on face veils (Kalantry, Pradhan 2017), a corpus of the ECtHR's case law demonstrates a judicial direction that is remarkably conservative regarding key opportunities to expand women's rights. Considering Europe's recent refugee crisis and emerging knowledge of violations and violence against refugee women held in European detention centers (Nobel Women's Initiative, 2016), it is increasingly relevant to question how women's rights are represented, interpreted, and recognized by international courts. This article will analyze the ECtHR and its judgments regarding reproductive, refugee, and religious rights, and will demonstrate that this human rights institution has undermined women in these three areas.

Because international courts such as the ECtHR are relatively recent and evolving organizations, established within the last century to address mass violations of human rights and other issues post-world wars, this article will contribute to the emerging literature in the field. The dearth of available data means only speculative suggestions can be offered for understanding five possible influences that prevent women's rights from manifesting more visibly within the ECtHR: the court's definition of rights as exclusive of women-specific liberties; hesitancy to

override national sovereignty; the minority of female judges serving on the ECtHR's Strasbourg bench; the court's consideration of external conservative bodies such as the Catholic church; and finally, that the court, which relies on member states' cooperation, is susceptible to politicization and the rising far right.

This article concludes with policy recommendations for the ECtHR, describing how the court might be able to move forward with increasing women's representation inside the courtroom and formulating gender-sensitive case law. By pursuing a more progressive and inclusive mission, the court will likely benefit from increased international legitimacy while re-establishing itself as a distinguished defender of women's basic liberties in Europe.

Background on the European Court of Human Rights

The European Court of Human Rights (ECtHR) was initially established in 1959 to address civil and political rights infringements, corresponding to the European Convention on Human Rights. Located in Strasbourg, France with the involvement of 47 European member states, it may hear applications from an individual, a member state, or multiple parties. (European Court of Human Rights, 2018). The court relies on the European Convention on Human Rights, which was signed in Rome in 1950. According to the ECtHR, "judgments finding violations [of the Convention] are binding on the States concerned and they are obliged to execute them" (European Court of Human Rights, 2014). If finding a violation, these judgments (often referred to as recommendations because of a lack of external mechanisms to enforce compliance with the court's rulings) involve compensation of the victimized individual and the corresponding member state's implementation of national reform to prevent additional violations (Hervey, 2017). The ECtHR is highly influential as one of the first international

courts, and it is the only such institution which will allow individuals, rather than states, to directly bring cases.

The often-controversial Article 8 is frequently cited by women plaintiffs at the court who seek to terminate a pregnancy, wear a veil in public, or gain custody of their refugee children:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedoms of others. (Article 8, European Convention on Human Rights, 2010)

Despite the Convention's broad scope and masculine-pronoun language, similar human rights groups in Europe are remarkably more inclusionary about promoting women's rights; for instance, they champion women's ability to participate in public political office or be employed without facing gender-based harassment (Council of Europe, 2018). This article will only focus on the intersection of women and reproductive, religious, and refugee rights, which have been threatened by multiple socio-political factors in recent years. These socio-political factors in Europe include the rise of stricter abortion laws (Matchar, 2013), increased Islamophobia, which particularly impacts women who are easily identified for discrimination when wearing traditional religious clothing (Henley, 2017), and the recent influx of migrants from war-ravaged countries such as Syria—a number of whom are vulnerable refugee women encountering various dangers

along the journey, including assault and mistreatment from male migrants and state actors (Müller et al., 2017).

Methodology

Quantitative research has measured the number and frequency of women serving judgeships on the Strasbourg bench, demonstrating that the court has faced multiple challenges soliciting female candidates from member states, and additionally struggles with consistent number underrepresentation of this minority overall. Utilizing such data enables this research to echo concerns that the internal structure of the ECtHR does not correspond with its stated goals of gender equality. Additionally, with women underrepresented in the decision-making process, one must look closer at the defining characteristics of the women who do ascend the bench. Qualitative analysis regarding their curriculum vitae and legal experience, merged with the quantitative method, form a compelling illumination of which women in particular are promoted to ascend an international court, and how many women eventually join a court that claims to support gender equality.

Literature Review: ECtHR Judicial Recommendations

A majority of literature on women's rights seems to reach consensus that the ECtHR has not been a strong advocate in certain landmark cases. Firstly, limited reproductive freedom and the rejected right of a woman to seek the termination of a pregnancy through abortion has concerned many scholars. In 19 highly influential ECtHR cases such as *Tysiack v. Poland* (2007), and *A, B and C v. Ireland* (2010), reproductive rights for women have been critically marginalized (Oja, Yamin, 2016). Conversely, certain legal scholars with a feminist background, such as Rachel Cichowski—assert that the ECtHR continues to pioneer further protections for

women, especially by denouncing rape, sexual trafficking, and other reproductive-related matters (Cichowski, 2016, p. 913).

Secondly, analysis on women's right to religious expression led by scholar Elkayam-Levy, claims that by lending credibility to member states who wish to restrict and define women's dress, the ECtHR fails to adequately intervene on behalf of "women's rights, religious freedoms, and equality" (Elkayam-Levy, 2014, p. 1222). Using the work of Camila Arêas on strategies of religious visibility, this article will also examine why France—geopolitically home to European Court of Human Rights and a highly diverse population—has pitted secular democracy against an individual's religious attire.

The final women's rights issue this article is concerned with—the recent situation of refugee women arriving in Europe and receiving maltreatment from fellow refugees, camp administrators, and government entities—is constricted by the dearth of peer-reviewed scholarly resources; the peak of migration influx has been within the past several years at the time of writing. Nonetheless, the violence suffered by refugee women has not escaped the notice of numerous headlines and human rights organizations (both governmental and non-governmental), which serve as a starting point for further inquiry into how the ECtHR has resolved dilemmas involving refugees.

Finally, literature on the European Court of Human Rights as an institution has focused on the internal structure using positive analysis (for instance, which legal mechanisms are currently in place? How many judges are on the bench and is there partiality?) rather than a deep normative analysis (such as how the ECtHR could enforce decisions on member states more effectively, or by which criteria international judges should be chosen). Drawing primarily from court opinions, but also from a body of theories such as judicial politicization, this article will

attempt to offer five hypotheses on why women's rights seem to have been undermined by the ECtHR judiciary.

An Analysis of ECtHR Decisions on Women's Rights

ECtHR's recent judicial recommendations indicate an absence of recognition or limited advocacy for women's rights. Although not comprehensive of all judicial decisions, the cases discussed here regarding women who seek reproductive, religious, or refugee-related rights from the ECtHR illuminate how the international court interprets the European Convention on Human Rights without strongly advocating for women.

Beginning with reproductive freedom and particularly abortion, women have been critically marginalized in 19 highly influential ECtHR cases, specifically *Tysiac v. Poland* (2007) and *A, B, and C v. Ireland* (2010) where the court explicitly distanced themselves from abortion. *Tysiac v. Poland* (2007) concerns Ms. Tysiac's inability to access a lawful abortion; as a woman in Poland, she was informed by multiple physicians that her third pregnancy posed a serious risk to her eyesight. In Warsaw, she sought a state hospital for the procedure; however, the institution refused to accept former or current medical assessments that would support terminating the pregnancy. Soon after a caesarean section, social welfare confirmed that Ms. Tysiac's eyesight now had almost completely deteriorated, and she lodged a complaint with the ECtHR for the Polish state denying a medical procedure she requested at the advice of other doctors. Although the court found in favor of Ms. Tysiac's right to private life as described under Article 8 ECHR, it also significantly distanced itself from reproductive rights--an area which disproportionately affects not only women's bodies, but also their life trajectories should they be a caretaker (or often, the primary caretaker, as Ms. Tysiac was) of children. In a separate opinion, Judge Bonello spelled out an explicit rejection of women's reproductive rights by stating that the ECtHR could

not consider “any abstract right to abortion” or “any fundamental human right to abortion” (Tysiac v. Poland Judgment, 2007, p. 37).

Similarly, the case *A, B, and C v. Ireland* (2010) all involve Irish women who assert that their pregnancies were unintentional, due to (unexpectedly) fertile partners and ineffective Plan B pills. Due to a lack of information for the procedure and social stigma in their own country, the women arranged for abortions in England. Each suffered a number of health impacts, such as nausea and bleeding, weeks afterwards due to poorly performed procedures. Yet the Court insisted once again that “Article 8 cannot...be interpreted as conferring a right to abortion” and dismissed all complaints except for the plea of C, the petitioner whose ongoing chemotherapy was in fatal conflict with the ability to bear and raise children. Even while raising contention with Article 8, the court had agreed that in Ms. Tysiac’s case, the Polish state needed to provide access for her medical abortion; just three years later, they conservatively shied away from even supporting plaintiffs A and B; while it is difficult to suggest a reason why, it is evident that an initially conservative stance became more extreme and led to the dismissal of cases in 2010.

Do women’s rights include the ability to enjoy reproductive freedom, and indeed, have access to safe continuation or termination of a pregnancy? It is certainly championed by the United Nations and other international organizations on a global scale, and by individual scholars such as Tatyana Margolin, who argues that “in order for states to take their responsibilities to women seriously, it is essential to establish a free-standing right to abortion” (Margolin, 2007, p. 78). Yet the ECtHR continues business as usual with “deferred abortion-related cases to states that are hostile to women’s right to an abortion” and is complicit in “tolerating the criminalization of medical procedures that only women need” (Margolin, 2007, p. 78). What does it mean that the court governs based on Article 8—a right to privacy and family life—yet

rejects a woman's autonomy over her own body and ability to have children? While this article would propose that it is a lack of feminist orientation within the court that has translated to a failure to incorporate women's reproductive rights, particularly access to abortion, into their case law, other scholars claim that the court has nonetheless been progressive regarding women's bodily integrity.

The ECtHR stands as a model for international courts and holds significant sway in the global conversation about human rights. Yet the Strasbourg bench refuses to recognize abortion as a human rights issue through their judicial recommendations within *Tysiack v. Poland* (2007) and *A, B, and C v. Ireland* (2010); as Margolin noted, they simply leave women's reproductive health in the hands of member states (Poland, Ireland, and others) despite evidence that these countries have consistently failed to make women's health needs (supported by doctors) a priority over the existence of a fetus. Particularly by separating *Tysiack* and *A, B and C* from institutional human rights abuses and using the Article 8 injunction of privacy as a reason for the court to practice non-interference, the ECtHR has tacitly allowed member states to block abortions while also hindering human rights in a significant way. Scholars such as Oja, Yamin, and Charlotte Bunch critically draw our attention to these recent abortion cases, but the often-controversial topic of abortion set aside, Oja and Yamin also explain the inherent dangers of the court's stated intention in *A, B, and C v. Ireland* (2010) to address "public" institutional abuses and remain aloof from private moral issues, especially when concerning women or reproductive rights. This trend, according to Oja and Yamin, creates intimidating difficulties for women who need to seek help for what the court might consider a "private" moral issue, such as violence by an intimate partner or a state actor infringing on a woman's body. (Oja, Yamin, 2016, p. 76).

In support of the converse view that the court has actually been progressive for women's bodily integrity, we can also understand that how ECtHR is structurally constrained in its impact; according to a French scholar authoring a comprehensive book on the workings of the ECtHR,

En revanche, dans son rôle de contrôleur de la constitutionnalité des lois, le Conseil s'est *a priori* interdit l'accès à la jurisprudence européenne en décidant, le 15 janvier 1975, que la CEDH (dont l'article 2 & 1, aurait pu, selon certains, empêcher la libéralisation de l'avortement) ne fait pas partie du bloc de constitutionnalité et que, d'une manière plus générale, il ne lui appartient pas de contrôler la conventionnalité des lois (Marguénand, 2016).

Translated, the paragraph specifies, "On the other hand, in its role of controlling the constitutionality of laws, the council has *a priori* prohibited access to European case law by deciding, on January 15, that the CEDH (which could have, according to some, prevented the liberalization of abortion) is not part of the constitutional block and that, more generally, it does not belong to it to control the legality of the laws" (Marguénand, 2016). Because the 47 states involved with the ECtHR represent a great diversity of population, laws, and moral identities, each time the ECtHR accepts a plaintiff's complaint and ultimately challenges a member state is an instance of introducing new and overarching case law, meaning that the bench could be seen as simply cautious rather than conservative.

Does the court fare more progressively regarding religious expression? Recent debates over headscarves and other "modest" attire of Muslim women (largely due to headlines about veil banning) range from supportive to critical; feminist theorists often add an intersecting layer to an already complex issue of regarding the manifestation of religious beliefs, political tensions in an era of jihadist terror, and immigration integration in Europe. Most recently, in *Dakir v.*

Belgium (2017) and *Belcacemi and Oussar v. Belgium* (2017), the plaintiffs had been fined for wearing full face veils in public areas, but the ECtHR legally upheld Belgium's ban on face veils due to concerns about "public safety, gender equality and a certain conception of "living together" in society (Strasbourg Observer, 2017).

Some scholars remarked that the court's refusal to clash over the ban signals a respectful recognition of member sovereignty and alignment with the often-secular focus of human rights in European democracies; however, others decried a violation to women's freedom to observe religious dress and wear garments that make them feel comfortable participating in employment and education (Elkayam-Levy, 2014, p. 1176). Elkayam-Levy herself contends that secularism must be recognized as a human rights value in itself while freedom to religious practice is considered within, rather than regarded as external to, the court's jurisdiction: by leaving it up to member states, the ECtHR fails to make an adequate intervention for "women's rights, religious freedoms, and equality" (Elkayam-Levy, 2014, p. 1222).

But why might secular democracies attempt to restrict women's choice of dress in public? Camila Arêas, a researcher at Université Paris, analyzes French media narratives regarding a woman fined for wearing the hijab while driving, despite the fact that she was not involved in any accidents. Arêas realized that the visibility of Muslim women who wear the veil for modesty is often literally sidelined—even in in journal headlines—in favor of publishing state declarations on security dangers associated with Islamic dress or the paragraphs and photo flashes focus on a male spokesperson; in this scenario, it was the husband of the woman wearing the hijab. Such media representation might be stoking fears of jihadism and state security, while simultaneously otherizing Muslim women's modesty and moral standards. Arêas' article broadly suggests that the French Republic perceives the burqa as an anti-thesis of values such as laïcité,

or separation of church and state (Arêas, 2015), thus providing one explanation for why women fighting for religious expression at the ECtHR are viewed as oppositional to secular democracies even though they are only attempting to claim the right to dress as they wish (Kalantry, Pradhan 2017). The court, however, ultimately has the moral responsibility uphold human rights in all contexts (secular, religious, or both) rather than endorse Islamophobic national laws that limit women's religious expression within a public space simply because her dress might be associated with a public security concern such as jihadism.

The article's final women's rights issue concerns the recent situation of women as refugees in Europe. Claiming that Europe has long considered itself enlightened by continuously expanding rights for "women or LGBT people," Thomas Spijkerboer conjectures that in many cases, these same people are "required to renounce human rights in order to prevent persecution, for example by complying with patriarchal family norms" (Spijkerboer, 2017, p. 222). Even the Council of Europe expounded upon the dangers for women mentioned by Spijkerboer and called on related European international organizations to better monitor and support women refugees, who number almost 60% of those who cross into Europe via life-threatening land and sea routes (Council of Europe, 2016). Detention of refugee women with inadequate resources (especially in cases of pregnancy), lack of protection from male migrants and police brutality, and uncertain legal status mean that Greece and Italy, in addition to other countries, have violated human rights (Council of Europe, 2016). Refugees' forced "renounce[ment] of human rights," as Spijkerboer claims, is a view heralded by other scholars—most clearly by Dembour in an Oxford University Press book on "When Humans Become Migrants: Study of the European Court of Human Rights with an Inter-American counterpoint." Dembour suggests, "From a human rights perspective, it would be normal to consider the human being before anything else...in the Strasbourg case law,

however, it is the right of the state” (Dembour, 2015, p. 119). In numerous decisions, Dembour claims that the “Strasbourg court has no qualms about rejecting complaints which are about ‘the right to have rights’ or at least a legal status by migrants (Dembour, 2015, p. 443). For instance, the Council of Europe noted that refugee women face inadequate resources in detention centers when expecting a child. Dembour goes a step further with case analysis, citing *Moser v. Austria* (2006) where (as in the abortion cases mentioned previously) a mother invoked Article 8 (the right to private and family life) in trying to claim custody of her child; although the court eventually granted a modest compensation, their ruling sought to portray the circumstances of a refugee family separation as unusual, despite the fact that there are additional cases where refugee mothers, already facing difficulties acquiring permits to live and work in their host country, found themselves physically separated by a state hospital or other actor from living with, or caring for, their child (Dembour, 2015, p. 269). Regarding conditions in refugee camps and reported maltreatment from state actors, the ECtHR does not yet seem to have specific cases; however, considering their past record, it will be critical to continue recognizing the difficulties faced by refugee women and especially by refugee mothers who seek reunion with their children.

On the other hand, some legal scholars—particularly Rachel Cichowski—assert that the ECtHR continues to expand the protections for women. Drawing on recent official databases of the ECtHR, Cichowski, Chrun, and other colleagues discovered that amicus curiae (advocacy) groups had greatly influenced decisions around women’s rights (Cichowski, 2016, p. 892). According to Cichowski, they have “expanded the protections provided to women under Article 3, 8, and 14 of the European Convention” (2016, p. 892). In particular, these amendments specifically outlawed violence such as rape, sex trafficking, and other reproductive-related matters (Cichowski, 2016, p. 913). There is therefore scholarly debate about the extent to which

external groups have influenced the court's decisions, and in which direction: toward more concrete protections associated with European Convention Articles, or towards disturbingly vague "private" spaces outside the judicial jurisdiction, where member states or individual actors are ostensibly unable to be brought into a court of human rights? This article has found that women's rights are at risk, but what factors may be influential regarding the court's continued lack of support?

An Analysis: Potential Factors Influencing the Interpretation of Women's Rights

This section will identify five potential factors which may be influential to the ECtHR's interpretation of women's rights: ECtHR judges' definition of rights as exclusionary of women-specific liberties; judges' hesitancy to override national sovereignty when confronted with more patriarchal member states; the lack of female judges serving on the Strasbourg bench; the court's consideration of external conservative bodies such as the Catholic church; and finally, the chance that the international court, which relies on member states' cooperation, is susceptible to politicization. All proposed factors will be explored in less or greater detail.

The first factor, ECtHR judges' definition of rights, has already been discussed in the two reproductive cases where the right to private life, Article 8 ECtHR, was found to not guarantee the right to an abortion, and similarly, made a motion for separating public and private matters. In such examples, the court clearly pursues human rights rhetoric while neglecting to use the term "women's rights" or allude to gender-specific rights. In such a case, Judge Bonello and the other representatives of the chamber continue a more conservative dialogue which invites member states to make their own rules, even when a woman's health is immediately threatened by an unwanted pregnancy. There is significant possibility that judges simply observe a less gendered and more secular version of human rights in the Convention, for instance leading to a

defense of the headscarf ban due to valuing the right of secularism more, which has unfortunate consequences for women who seek reproductive freedoms.

Another potential constriction for ECtHR judges may derive from the need for cooperation from member states. Throughout Europe's history, societies have primarily been patriarchal in nature, placing men at the forefront of possession of goods, moral authority, and political leadership. Changing such institutional norms requires popular support and a willingness to embrace gender equality. When the ECtHR faces a division between national sovereignty and an individual complaint, particularly when it concerns women fighting to dismantle a patriarchal norm describing when to have children, which garments are appropriate, and how to live in a refugee camp, it is highly likely the ECtHR judges face some influence to protect national sovereignty where possible to continue ensuring cooperation from the member states.

A third, and highly analyzed, reason for the lack of support for women's rights suggests that women are underrepresented on the Strasbourg bench and so provide limited input on gender-specific issues. The judicial body of international courts has long been closely scrutinized, often in regards to political factors but also for aspects such as diversity. As a role model for accountability, transparency, international cooperation, and legal innovation, international courts receive considerable scholarly attention, and the ECtHR--which publicly states that promotion of women and gender equality is a cornerstone goal of their collective work--has recently faced critique for its limited inclusion of women. Stéphanie Vauchez, a professor of law at Université Paris Ouest Nanterre, provides a clarifying and extensive report in her 2015 article, "More Women—But Which Women? The Rule and the Politics of Gender Balance at the European Court of Human Rights." In her original quantitative and qualitative

research, she analyses the European legislation regarding diversity in ECtHR judgeships and deconstructs women candidates' curriculum vitae from 1959—2012 to discover if—and to what extent—member states make a gender-based distinction when placing forward male and female candidates for judgeship selection. She notes that the court's external appointing committee, the PACE mechanism, has been proactive by approving the resolution 1366 in 2004 which requires “at least one candidate of each sex” in order to consider a country's recommended judges (Vauchez, 2015, p 201). Nonetheless, Vauchez joins a host of other scholars (Thornton, 2007; Madsen 2007) who express concern that gender equality remains far from affirmative. As Vauchez points out, four countries have since polarized the gender issue by refusing to comply with resolution 1366 and presenting all-male lists: the Slovak Republic, Malta, Belgium, and most recently Moldova in 2012 (Vauchez, 2015, p. 211). Despite the 18 women currently sitting as Strasbourg judges, Vauchez's long-term analysis of the female candidates' CVs suggest that future inclusion of more women may continue to present difficulties to a gender-balanced ECtHR.

As Vauchez argues, a concerning number of the women recommended by member states lack much of the involvement and qualifications held by their male candidates counterparts for international judicial appointments; for instance, in some cases they have not served in their country's national supreme courts (Vauchez, 2015, p. 219). Thus, though they are presented on the candidate list to outwardly comply with the groundbreaking 2004 resolution 1366 at least one woman candidate, these female lawyers and judges are set up to serve as placating alternatives rather than significant competition. Indeed, in such instances, Vauchez suggests that member states are overtly “complying with the rule of gender balance while simultaneously remaining confident that eventually a man will be elected” (Vauchez, 2015, p. 216).

This trend is particularly troubling because it is not only numerically evident that women are underrepresented, but also because of the implications of a male-dominated bench attempting to address gender-specific issues such as violence against women. As Vauchez suggests, effective gender-sensitive case law may be one benefit of having more female judges (Vauchez, 2015, p. 199). While direct links have not been established between gender-sensitive case law and the gender of judges, it is apparent that becoming more inclusive of women within the ECtHR's internal structure would place it on the same standard as other international organizations who also focus on upholding gender equality: "Famously, the International Criminal Court (ICC) was created as a gender-balanced court...ever since its installation in 2003 half of the judges of the ICC have indeed been women" (Vauchez, 2015, p. 198).

Table 1: Eagerness to Present Women Candidates

Before 2004	After 2004
Albania, 1993, 2 women	Bulgaria, 2007, 2 women
Bulgaria, 1998, 2 women; 2001, 3 women	Croatia, 2004, 2 women
Croatia, 1998, 2 women	Serbia and Montenegro, 2004, 2 women
Macedonia, 2001, 2 women	Latvia, 2005, 3 women
Austria, 2001, 3 women	Armenia, 2007, 2 women
Sweden, 2003, 3 women	Macedonia, 2007, 2 women
	Latvia, 2007, 2 women
	Estonia, 2008, 2 women
	Switzerland, 2010, 2 women
	Croatia, 2012, 3 women

Fig. 1. "Eagerness to Present Women Candidates" before and after resolution 1366.

Image credit: Vauchez, 2015.

Additionally, we should not assume that because of resolution 1366 requiring at least one woman present on candidate lists from member states, the support for women has substantially increased. In fact, it has stayed constant to some extent even among historically eager countries which anticipated the need for female candidates ahead of the PACE appointing mechanism

(such as Macedonia, which approved just 2 women for consideration each time it submitted lists within six years preceding and after resolution 1366. Rather than the numbers of women candidates increasing, Vauchez's original data (some of which is captured in Fig. 1) only serve to exemplify how that number has largely failed to grow. It is not only concerning that four member states have openly challenged the ECtHR resolution; it is also concerning that amongst allied countries, female candidates are rarely given a spot on the ballot.

But, if the men elected to the Strasbourg bench are well-qualified judicial candidates, and hold reasonably progressive views on human rights, then what else could be undermining women's rights? Perhaps it is the external bodies which provide informal advice to the ECtHR. Drawing on recent official databases of the ECtHR, Cichowski, Chrun, and other colleagues discovered that *amicus curiae* (advocacy) groups had greatly influenced decisions around women's rights (Cichowski, 2016, p. 892). Unlike Oja and Yamin's findings (some of which indicated that moral positions of the Catholic church, among other authorities, tended to be regarded more favorably than women petitioners' concerns), Cichowski's analysis of the official ECtHR dataset argues that in the long term, the court has practiced inclusive decision-making by allowing input "from human rights organizations to professional associations" and ultimately The ways that advocacy groups impact the court's rulings are the subject of further research, but it is very likely a component.

This article proposes a final reason: that the international court, which is composed of member states and actively creating its own precedent, may be susceptible to politicization. Hirschl explains how "the reliance on courts and judges for dealing with what we might call "mega-politics": core political controversies that define (and often divide) whole polities" (Hirschl, 2009, p. xlviii). A case can certainly be made that Europe, which has recently seen the

rise of populist Far Right parties with ideologies hostile to immigrants and women's rights and secured increased in parliamentary elections in Sweden and presidential candidates in France (Bremmer, 2015), is relying on international courts—such as the ECtHR—to deal with core political controversies around abortion, refugee rights, and the manifestation of one's religion. Consequently, the court's seeming conservatism may be influenced by the rising far-right political sentiments of the past decade. Should European societies become ever-more conservative under the charismatic state leaders, this article suggests that the court should nonetheless continue to maintain a progressive human rights front and to extremely specific in revisiting women's rights cases and deciding to take jurisdiction in these areas to cement human rights that are gender-inclusive.

Limitations of Research

In this secondary research, which relies on interdisciplinary interpretations of the ECtHR's internal organizing structure and judicial recommendations, it is critical to be comprehensive to avoid unintentional bias and selective case studies that would misrepresent the breadth of the court's work on gender equality. By reviewing scholarship that documents how the Strasbourg bench has promoted landmark progressive policies, it is hoped that the international court gains due credit as a unique institution that has pioneered many unprecedented efforts for gender equality, such as the 2004 Resolution 1366 that began requiring at least one female candidate for judgeship from each member state. The findings of this thesis, that women's rights remain often overlooked by the court, have been made on a selection of evidence from particular cases chosen for their landmark nature. Unfortunately, the research time parameters mean that it is not feasible to read or examine the entire body of judicial recommendations related to women's rights, meaning that a greater context will be elusive and

cases chosen to reverberate through the scholarly work will likely be those which put the court in the most unfortunate light. Furthermore, the research is secondary, meaning that it relies on scholars and not on direct interviews or other qualitative data which may provide a closer look at whether women felt their cases were adequately addressed. Coming primarily from legal feminist scholars, they may well have a very different opinion than the women concerned. Finally, this research relies on the few available sources for understanding the internal structure of the ECtHR; it sparks a conversation about the inclusion of female decision-makers meant to be continued rather than providing a strong evaluation on how it has become this way.

Intention of Research

The intention of this research was to examine women's rights in the context of judicial recommendations and internal structure of the European Court of Human Rights (ECtHR), which is one of the longest-established and venerable institutions established for human rights and therefore arguably could be at the forefront of many novel human rights developments. However, upon discovery of different scholarly viewpoints that purported the court's lack of impact for women's rights, the research focus changed to scouring secondary sources from multidisciplinary viewpoints (such as reports from human rights groups; analysis from feminist legal scholars; and even published commentary by European Union colleague organisations). This allowed a more diverse and varied understanding of an institution that has not yet been in operation long, nor has been externally documented regarding its decision-making. Drawing on interdisciplinary sources, as scholars have said, raises the implication that findings are more accurate having resonated with various academic audiences.

Concluding Thoughts and Future Research

Women's rights, which can be said to enclose all dimensions of presenting as female and participating equally in society, have increasingly become headline material as controversies on reproductive rights including birth control continue, tense political situations make uprooted refugee women vulnerable to state and individual agents, and religious expression becomes compromised in apparent favor of an anonymous democratic secularism. With such complex issues arising in cases brought before the European Court of Human Rights, which aims to uphold basic human freedoms internationally and impartially, it is evident that the often progressive and pioneering court has rarely responded in a way that satisfies scholarly critics, and this article has demonstrated that the ECtHR's recent judicial recommendations indicate an absence of recognition or limited advocacy for women's rights.

In order to draw an accurate and compelling picture of the gendered situation playing out inside the walls of the ECtHR's Strasbourg court and reverberating throughout its most influential case recommendations, this research utilized qualitative and quantitative methods of how women were selected to the international bench and the remarkable challenges they faced, despite historic women's rights promotions such as resolution 1366. Beyond the documented and consistent gender bias involving judge selection for the ECtHR, there was also a concerning trend in contemporary cases where the ECtHR has neglected to distinctly advocate for women's rights, declaring instead that such matters are private affairs or even deferring to a member state or external organization which has crusaded for subjugation of women (for example, state control over women's dress in claims to minimize terrorism and ostensibly promote secular and democratic values—which seems a slight oxymoron as dress often has as much to do with cultural custom as it does religious values, and democracy necessarily implies a representative government). In the three areas of women's rights that were examined—reproductive, refugee,

and religious freedoms—evidence in the form of oral commentaries from judges, as well as case recommendations, indicate that the ECtHR must re-evaluate how it genuinely engages with the progressive values that the institution professes to uphold.

Future research may focus more specifically on the extent to which women's rights are upheld in the thousands of cases overseen by the ECtHR, because it is critical to understand whether women have consistently been disadvantaged in judicial rulings or if they have in fact helped establish progressive precedent, and by which mechanisms (such as a lack of member state accountability, or perhaps ECtHR statements on gender equality).

Is it possible for the court to restore, or at best maintain, its international relevance and legitimacy while expanding their focus on women's rights? As a vast institution relying on individual countries to submit judicial candidates and member states to ultimately implement case recommendations, the ECtHR is continually constrained by lack of full accountability and left to navigate a minefield of international political tensions as they chart new human rights territory in case precedent. Considering all of this, it can be understandable that the ECtHR has attempted to forge a conservative and relatively non-confrontational approach (for example, by declaring birth control a private affair, not a state one despite all odds, and minimizing its connection to women's rights). However, with the rise of right-wing leaders emerging in Europe, among other international developments, has—whether by coincidence or correlation—happened in conjunction with challenged reproductive rights, escalating hostility towards immigrants, and a polarization and secularization of religious expression. In contemporary times, as in during the first years of its founding, the court occupies a critical space in the global dialogue of women's rights. Staying silent on issues of women's rights, or even showing lukewarm support, conveniently preserves a history of conservative court matters and cooperation with member

states' demands while risking potentially impactful opportunities to represent women during a time of key rulings. Should the ECtHR seek to substantially improve their engagement with women's rights, it is apparent that crafting a more diverse and gender-balanced bench should arguably be accomplished, as indeed it already has by the International Criminal Court. Additionally, the court must be more sensitive to scholarly feedback and women's aid organizations, as well as considering the emerging studies which are beginning to analyze their numerous body of cases. With review of external feedback from critics and the development of internal mechanisms to officially recognize and reference women's rights within inclusive case recommendations, the ECtHR is much more likely to remain an empowering force for women in the decades to come.

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