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Guide to international legal standards on combatting sexual harassment

First published in
April 2025.



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INTRODUCTION

Sexual harassment is a persisting violation of human rights and a complex phenomenon which predominantly affects women and girls worldwide. It results from a culture of gender discrimination, unequal gender relations and power dynamics. As such, it is a form of sexual and gender-based violence and gender discrimination.

Of all the forms that violence against women can assume, sexual harassment is arguably the most ubiquitous¹ and often misjudged as normal behaviour within society. Even though sexual harassment is widespread, in many jurisdictions there is still a lack of clarity and understanding around the relevant laws and principles prohibiting sexual harassment and available remedies for survivors. Hence, it remains significantly underreported. Legislative gaps along with flawed investigations and lenient – if not non-existent – punishment of perpetrators create an atmosphere of impunity thus exacerbating the problem and leaving women and girls feeling unsafe and unprotected. At the same time, litigating sexual harassment cases can often present unique challenges for lawyers representing victims/survivors².

This Guide aims to help increase understanding of victims and lawyers of what conduct may constitute sexual harassment. It identifies the various behaviours that may constitute sexual harassment in the various contexts in which it commonly occurs, including unwanted sexual comments or “jokes” in the workplace, “catcalling” or “wolf-whistling” in public spaces, and non-consensual image or video sharing, or threats of doing so in the digital realm (Section II below). The guide is also intended to provide lawyers representing victims with tools to try to ensure that when cases of sexual harassment are reported, they are dealt with in accordance with the required international standards applicable at the domestic level, and where victims wish to seek redress through claims before regional or international human rights mechanisms (such as the European Court of Human Rights (“the ECtHR”) and the UN Committee on the Elimination of Discrimination against Women (“CEDAW Committee”)), these claims can be well presented and argued. It sets out the main international and regional legal instruments and the principles enshrined therein and highlights some of the common challenges that survivors face when bringing forward sexual harassment complaints (Section III below).

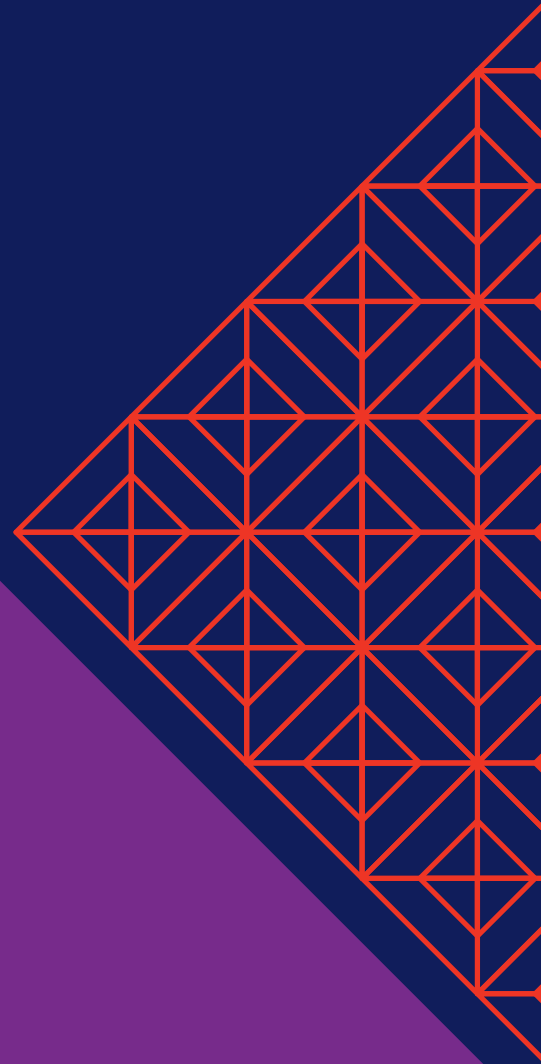
This guide is written by Kate Levine, Senior Legal Consultant, EHRAC and Sofia Roma, Legal Consultant, EHRAC, and is based on a webinar on challenging sexual harassment provided by EHRAC for partners in Ukraine, a roundtable discussion on international standards on sexual harassment with partners in Georgia, and EHRAC’s ongoing co-litigation of international cases addressing gender-based violence, including sexual harassment (for more on EHRAC’s work on gender-based violence, see here: [Discrimination - European Human Rights Advocacy Centre \(EHRAC\)](#)).

1 Numerous reports refer to the prevalence of sexual harassment. See e.g. UN Women, “Towards an End to Sexual Harassment: The Urgency and Nature of Change in the Era of #MeToo” (New York, November 2018), available at <<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2018/Towards-an-end-to-sexual-harassment-en.pdf>>, page 5 commenting that the #MeToo movement has demonstrated that “sexual harassment is neither trivial nor is it exceptional: its ubiquitous presence can take many forms from looks and words to physical assault and rape”. An EU-wide survey showed that “every second woman (55%) has experienced sexual harassment at least once since the age of 15”, European Union Agency for Fundamental Rights, “Violence against Women: an EU-wide survey” (March 2014), available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf, page 95.

2 This Guide uses the term “victim” to reflect the language of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and other European and international sources. The authors underline that the terms “victim” and “survivor” may both be used when referring to women and girls who have experienced gender-based violence. The reference to “victims” in this Guide does not in any way seek to undermine the experiences of those who feel that the term “survivor” is more appropriate for them.

PART 2

What is sexual harassment?



DEFINING SEXUAL HARASSMENT

There is no single, universally accepted definition of sexual harassment. Arguably the most authoritative and comprehensive definition of sexual harassment is found in the Council of Europe Convention on preventing and combating violence against women and domestic violence (the ‘Istanbul Convention’),³ referred to as the “gold standard” for combatting gender-based violence. Article 40 of the Istanbul Convention defines sexual harassment as

“any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment” (emphasis added).

This definition has also been adopted in relevant EU legislation combatting discrimination.⁴

Sexual harassment therefore entails three main types of conduct: unwanted verbal, non-verbal or physical conduct of a sexual nature. Verbal conduct refers to words or sounds expressed or communicated by the perpetrator. These could be jokes, questions, remarks, and may be expressed orally or in writing.⁵ Non-verbal conduct, on the other hand, covers any expressions or communication not involving words or sounds, such as facial expressions, hand movements or symbols.⁶ Thirdly, physical conduct refers to any sexual behaviour of the perpetrator and may include situations involving contact with the body of the victim.⁷

These behaviours must be of a sexual nature to fall under the definition of sexual harassment. Sexual harassment is distinguishable from sex-based harassment, which is any unwanted behaviour directed to someone because they are a woman or a man.⁸

The Istanbul Convention highlights as a key element of sexual harassment the lack of consent (“unwanted”), meaning that the behaviour is imposed on the victim by the perpetrator. Notably, these acts must have the purpose or the effect of violating the dignity of the victim, including conduct that creates an intimidating, hostile, degrading, humiliating or offensive environment. Importantly, even if the perpetrator’s intent is not to violate the survivor’s dignity, if this is the effect of their conduct, this may still constitute sexual harassment.

A determination of whether certain conduct constitutes sexual harassment is therefore necessarily context-based, considering, for example, the unwanted nature of the content, its sexual nature, and its impact on the survivor as well as the purpose or intent of the perpetrator. As with any context-based assessment, this should also consider the individual characteristics of survivors, as well as other intersectional factors that may increase their vulnerability and risks of discrimination.

The definition of sexual harassment in the Istanbul Convention encompasses a pattern of behaviours that if taken individually may not necessarily be sanctionable.⁹ A pattern of conduct, which can be subtle in nature, that has sexual overtones and is intended to create or has the effect of creating distress and/or humiliation in another person would constitute sexual harassment.¹⁰ Examples of sexual harassment include: repeated requests or other forms of pressure for a sexual or other personal — rather than professional — relationship (e.g. repeated requests for “a date”); unwarranted, intrusive or persistent questioning about a person’s marital status or sexual interests, history or orientation; sending obscene messages by text message, email, video chat, social media platform or left on an answering machine or voice mail; using unwelcome “pet” names, such as “honey”, “doll”, “babe”, “princess”, etc.; innuendo or other suggestive, offensive or derogatory comments or jokes about a person’s gender identity

3 Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210), Istanbul 11/05/2011 (Istanbul Convention), available at <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=210>.

4 See e.g. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) OJ L 204, 26.7.2006, p. 23–36, (Article 2(1)(d)); and Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, Official Journal L 269, 05/10/2002 P. 0015 – 0020, Article 1(2); see also Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004, p. 37–43, Article 2(d).

5 Istanbul Convention, Explanatory Report, available <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=210>, para. 208.

6 Istanbul Convention, Explanatory Report, para. 208.

7 Istanbul Convention, Explanatory Report, para. 208.

8 European Institute for Gender Equality, “Sexism at work: how can we stop it?”, available at https://eige.europa.eu/publications-resources/toolkits-guides/sexism-at-work-handbook/part-1-understand/what-sexual-harassment?language_content_entity=en.

9 See Istanbul Convention, Explanatory Report, available at <https://www.coe.int/en/web/istanbul-convention/text-of-the-convention>, para. 208.

10 United Nations Development Programme (UNDP), “Examples of Behaviour constituting harassment, sexual harassment, discrimination and abuse of authority”, available at <https://www.undp.org/sites/g/files/zskgke326/files/migration/jm/ce28f35f250054109804944efc17a0a8a51d91339399db72b3775a9e61613214.pdf>, page 3.

or sexual orientation; unwanted, uninvited or inappropriate touching, patting, hugging or other physical contact (e.g. massaging a person without invitation or deliberately brushing up against them).¹¹ Overall, examples of sexual harassment may range from sexism and unwanted sexual attention, to sexual assault. Although there are differences in the definitions of sexual harassment, and the acts covered may differ, it is widely accepted that sexual harassment refers to unwanted behaviour.¹² Depending on the context, the behaviour may be dealt with under a state's civil, administrative or criminal laws, as will be explained below in Section III.

CONDUCT CONSTITUTING SEXUAL HARASSMENT

Behaviour constituting sexual harassment often occurs in a context of abuse of power. It is common for survivors and perpetrators to know each other and to be in a hierarchical relationship (such as in a work or education context), where there is “promise of reward or threat of reprisal”, associated with the conduct in question.¹³ However, that is not necessarily the case. Legal protection against sexual harassment under the Istanbul Convention and other relevant international standards (discussed below) are applicable to a wide variety of contexts, offline and online, public and private.

Sexual harassment, both offline and online, is the result of underlying gender-based stereotypes and myths. For example, such persisting myths around sexual harassment include the beliefs that women feel or should feel complimented by the attention they receive;¹⁴ or that they provoked the sexual harassment (e.g. by dressing inappropriately).¹⁵ Harmful notions around gender can also lead to sexual harassment. Harassing women in public, in the presence of other men, is often perceived as a way to “demonstrate their manhood”, while the woman who is being harassed is “very much an object in that interaction”.¹⁶ In addition, the response of law enforcement to sexual harassment complaints, as well as the judiciary's assessment of the evidence in a sexual harassment case may be tainted by gender-based biases and preconceived ideas around sexual harassment (see below Section III). These damaging beliefs and attitudes are deeply embedded in the fabric of societies and thus require a largescale societal change.

Sexual harassment in a workplace context

Sexual harassment in a workplace context can occur in the course of, linked with or arising out of an individual's work.¹⁷

The CEDAW Committee in Article 11 of General Recommendation No. 19 on Violence against Women noted that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace. The Committee emphasises that:

“Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”¹⁸

Sexual harassment in the workplace is also addressed by the International Labour Organization (ILO) in ILO

11 This list is non-exhaustive. The examples referenced herein were drawn from United National Development Programme (UNDP), “Examples of Behaviour constituting harassment, sexual harassment, discrimination and abuse of authority”, available at <https://www.undp.org/sites/g/files/zskgke326/files/migration/jm/ce28f35f250054109804944efc17a0a8a51d91339399db72b3775a9e61613214.pdf>, pages 2-3.

12 See Prevalence and reporting of sexual harassment in UK public spaces: A report by the APPG for UN Women (March 2021), available at https://www.unwomenuk.org/site/wp-content/uploads/2021/03/APPG-UN-Women-Sexual-Harassment-Report_Updated.pdf, page 9.

13 Istanbul Convention, Explanatory Report, para. 209.

14 Plan International, “We are expected to take sexual harassment as a compliment”, (15 November 2021), available at <https://plan-uk.org/stories/we-are-expected-to-take-sexual-harassment-compliment>.

15 See Plan UK, “Street Harassment: It's not ok”, available at <https://plan-uk.org/file/plan-uk-street-harassment-reportpdf/download?token=CyKwYGSJ>, pages 60-61;

16 See Plan UK, “Street Harassment: It's not ok”, available at <https://plan-uk.org/file/plan-uk-street-harassment-reportpdf/download?token=CyKwYGSJ>, page 34.

17 International Labour Organization (ILO), ILO Convention – Violence and Harassment Convention 2019 (No. 190), Article 3.

18 CEDAW General Recommendation No. 19: Violence against Women Adopted at the Eleventh Session of the Committee on the Elimination of Discrimination against Women, in 1992 (Contained in Document A/47/38), updated with its General Recommendation No. 35 in 2017, available at <https://www.refworld.org/pdfid/453882a422.pdf>.

Convention – Violence and Harassment Convention 2019 (No. 190) (the “ILO Convention”).¹⁹ While sexual harassment is not defined in the ILO Convention, it is clearly included within the definition of gender-based violence and harassment, under Article 1(1)(b) which defines gender-based violence and harassment as “violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment” (emphasis added).

The ILO Committee of Experts on the Application of Conventions and Recommendations, having reviewed various national legislative and policy approaches, judicial decisions and collective agreements, identified similarities in the national approaches to codifying sexual harassment. It concluded that definitions of sexual harassment include two key elements:

- a) *quid pro quo*: Any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient; and a person’s rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person’s job; or
- b) *hostile work environment*: Conduct that creates an intimidating, hostile or humiliating working environment for the recipient.²⁰

The ILO Convention’s Preamble recognises that violence and harassment in the world of work can constitute a human rights violation or abuse, and that violence and harassment is a threat to equal opportunities, is unacceptable and incompatible with decent work.²¹ It also reaffirms that violence and harassment in the workplace affects a person’s psychological, physical and sexual health, dignity, and family and social environment.²² Further, it emphasises that gender-based violence and harassment disproportionately affects women and girls, and that an inclusive, integrated and gender-responsive approach is essential to ending violence and harassment in the world of work.²³ The ILO Convention acknowledges that in order to address gender-based violence it is necessary to tackle its underlying causes and risk factors, including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations.²⁴

Indeed, sexual harassment at work is a widespread phenomenon. As ILO has pointed out, it can have a negative impact on victims’ pay, career progression and working conditions, and potentially drive individuals out of work.²⁵ According to a global survey published in 2022 by ILO, one in 15 people in employment has experienced sexual violence and harassment at work in their working life.²⁶

Nonetheless, as with other forms of sexual harassment, sexual harassment at work is also underreported and victims may be reluctant to share their experience, for a number of reasons: the normalisation of sexual harassment; lack of awareness about what constitutes sexual harassment; fear of reprisals from co-workers, supervisors, family members or the employer; lack of effective redress or reporting mechanisms; and stereotypes blaming the victim instead of the perpetrator.²⁷

19 For a list of countries that have ratified the Convention see https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:::P11300_INSTRUMENT_SORT:1.

20 General Observation (CEACR) - adopted 2002, published 91st ILC session (2003), available https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3066659,,,2002.

21 See International Labour Organization (ILO), ILO Convention – Violence and Harassment Convention 2019 (No. 190), Preamble: “Recognizing that violence and harassment in the world of work can constitute a human rights violation or abuse, and that violence and harassment is a threat to equal opportunities, is unacceptable and incompatible with decent work [...]”.

22 See International Labour Organization (ILO), ILO Convention – Violence and Harassment Convention 2019 (No. 190), Preamble: “Acknowledging that violence and harassment in the world of work affects a person’s psychological, physical and sexual health, dignity, and family and social environment [...]”.

23 International Labour Conference, Convention 190, Convention concerning the Elimination of Violence and Harassment in the world of work, adopted by the Conference at its 108th session in Geneva, 21 June 2019, available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711570.pdf.

24 ILO Convention, Preamble.

25 ILO. 2020. Series of Technical Briefs: Violence and Harassment in the World of Work: Brief No. 2: “Sexual Harassment in the World of Work”, available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_738115.pdf, page 1.

26 Experiences of violence and harassment at work: A global first survey, Geneva: ILO, 2022 available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_863095.pdf, page 22.

27 European Parliament, Study for the FEMM committee, “Bullying and sexual harassment at the workplace, in public spaces, and in political life in the EU” (March 2018), available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604949/IPOL_STU\(2018\)604949_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604949/IPOL_STU(2018)604949_EN.pdf), page 19.

Research data has demonstrated that “[h]igh frequency of exposure to low level sexual harassment may have an equally negative effect as very serious but rare experiences”.²⁸ Sexual harassment in the workplace can instil feelings of anger and annoyance, fear and anxiety, shame and embarrassment, vulnerability, and loss of self-confidence in victims and may cause PTSD symptoms.²⁹

Gender-specific violence, such as sexual harassment in the workplace constitutes a health and safety problem. It can also be humiliating, cause significant impacts on the victims’ work and life and can, thus, seriously impair equality in employment.³⁰

Sexual harassment in public spaces

Public sexual harassment is any unwanted sexual behaviour, actions or gestures, which could be verbal, nonverbal or physical, in public spaces.³¹ The term “public spaces” refers to spaces that are accessible to the public, i.e. streets, parks, squares, gyms, school and university campuses, public transport and shopping centres.³² In the case of public sexual harassment, the perpetrator is usually unknown to the victim, although not necessarily.

Examples of public sexual harassment include leering or persistent staring; following; sexually propositioning; sexual gestures; sexually explicit comments; intrusive persistent questioning; ‘catcalling’; ‘wolf-whistling’; non-consensual physical contact such as kissing, groping; stroking; ‘up-skirting’; viewing or showing pornography in public; flashing or exposing intimate body parts.³³

The spectrum of conduct constituting public sexual harassment is wide. Not all these types of conduct are subject to criminal sanction. For example, behaviours such as persistent staring or “cat-calling” may fall under civil or administrative laws, instead of criminal ones. As with sexual harassment manifesting in other contexts (discussed elsewhere in this section), national jurisdictions can choose to deal with certain aspects of public sexual harassment in their civil or administrative laws.³⁴ However, it is an established duty of States to enact legislation which effectively deals with all aspects of public sexual harassment and provides effective remedies to survivors, as will be discussed below in [Section III].

Public sexual harassment is an expression of power and gender inequality and the notion that women’s and girls’ bodies are subject to men’s desire and ownership and therefore ‘fair game’ for comment, invasive scrutiny, unwanted physical access and judgement, even in public spaces. As a form of gender-based discrimination, it can also encompass intersectional discrimination if the victim has other vulnerabilities which the perpetrator exploits (for example, age; gender identity or sexual orientation; disability; race). These can all compound and intensify the experience of victims.

Public sexual harassment is a common and widespread phenomenon and possibly more pervasive than any other form of sexual harassment. For example, in the UK, 71% of women of all ages have experienced some form of sexual harassment in a public space, rising to 86% among 18-24-year-olds.³⁵ In Georgia, a recent study showed that 24.5% of women have experienced sexual harassment in their lifetime.³⁶ However, It is notable that only 35.3% of women who experienced sexual harassment considered the unwanted behaviours they experienced to be sexual harassment, whereas nearly two out of three (63.5%) did not consider these unwanted behaviours, actions

28 European Parliament, Study for the FEMM committee, “Bullying and sexual harassment at the workplace, in public spaces, and in political life in the EU” (March 2018), page 28.

29 European Parliament, Study for the FEMM committee, “Bullying and sexual harassment at the workplace, in public spaces, and in political life in the EU” (March 2018), pages 30-31.

30 CEDAW General Recommendation No. 19, available at <https://www.refworld.org/pdfid/453882a422.pdf>, Article 11, para. 17.

31 Our Streets Now, Written evidence, UK Parliament, Home Affairs Committee (21 July 2021), available at <https://committees.parliament.uk/work/1159/violence-against-women-and-girls/publications/written-evidence/>, para. 1.3. Violence against women and girls

32 Plan International, “Public Sexual Harassment” at <https://plan-uk.org/our-work/protection-from-violence/public-sexual-harassment>.

33 Plan International UK and Our Streets Now, “Legal Briefing: Public Sexual Harassment”, available at <https://plan-uk.org/file/public-sexual-harassment-legal-briefing-apr21pdf/download?token=V5C-F0i5>, page 3.

34 See Istanbul Convention, Explanatory Report, para. 207.

35 See Prevalence and reporting of sexual harassment in UK public spaces: A report by the APPG for UN Women (March 2021), available at https://www.unwomenuk.org/site/wp-content/uploads/2021/03/APPG-UN-Women-Sexual-Harassment-Report_Updated.pdf, pages 10-11.

36 UN Women, “National Study on Violence against Women in Georgia” (2022), available at https://data.unwomen.org/sites/default/files/documents/Publications/2023/Georgia_VAW_survey-report_ENG.pdf, page 134.

or contacts to be sexual harassment.³⁷ The majority of women reported that the sexual harassment occurred on the street or in an alley (41.2%) or in public transport (28.0%).³⁸ In Ukraine, a 2019 report revealed that “[s]ince the age of 15, nearly half (49%) of women say they have experienced sexual harassment”.³⁹ According to a UN Women study in 2020, 82% of surveyed women noted that the military conflict in Ukraine worsened the sexual harassment situation and other forms of sexual violence against women and girls in public spaces.⁴⁰ Despite its prevalence, public sexual harassment is significantly underreported to the police for a number of reasons: the lack of awareness, considering that many women are unaware of what is happening to them;⁴¹ the normalisation of being subjected to sexual harassment in public spaces by society; the lack of clarity regarding reporting mechanisms; and the lack of faith in judicial system.⁴²

The impact on victims of sexual harassment in public spaces can be significant. Women and girls often blame themselves, they are made to feel they were ‘asking for it’, and feel social condemnation because they did not prevent or control it.⁴³ In many societies such behaviour has been normalised and women and girls are made to feel that they should tolerate it. This feeling can be exacerbated when public sexual harassment acts of less severity are left unchallenged and an atmosphere of impunity prevails. Sexual harassment in public spaces can instil fear in women and girls, and they often experience a reduced feeling of safety when in public spaces.⁴⁴ Their freedom is also restricted, as they modify their behaviours to avoid sexual harassment in public (not wearing certain clothes, not exercising outdoors, changing the time they travel, taking different routes, not going out alone or not going out at all).⁴⁵

Online sexual harassment

Violence against women through digital means is increasingly widespread and rapidly evolving as digital technologies develop and facilitate easier and more expansive means of transmission of online abuse.⁴⁶ It encompasses a wide range of behaviours that fall under the definition of violence against women set out in Article 3a of the Istanbul Convention.⁴⁷ Like offline violence, it is deeply rooted in power dynamics, economic imbalances and patriarchal attitudes that foster the idea of women’s inferiority to men.

The Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (‘GREVIO’) in its General Recommendation No.1 on the digital dimension of violence against women identified a number of acts that constitute online sexual harassment and fall within the remit of Article 40 of the Istanbul Convention.⁴⁸ These are the following: a) non-consensual image or video sharing, or threats of doing so (also known as “revenge pornography”); b) non-consensual taking, producing or procuring of intimate images or videos, including acts such as producing digitally altered imagery (known as “fake pornography”, e.g. “deepfakes”); c) exploitation, coercion and threats, including acts such as forced sexting, sexual extortion, and rape threats; d) sexualised bullying, such as circulating gossip or rumours about a victim’s alleged sexual behaviour, posting sexualised comments,

37 UN Women, “National Study on Violence against Women in Georgia” (2022), available at https://data.unwomen.org/sites/default/files/documents/Publications/2023/Georgia_VAW_survey-report_ENG.pdf, page 135.

38 UN Women, “National Study on Violence against Women in Georgia” (2022), available at https://data.unwomen.org/sites/default/files/documents/Publications/2023/Georgia_VAW_survey-report_ENG.pdf, page 138.

39 Organization for Security and Co-operation in Europe (OSCE), OSCE-led survey on violence against women: Well-being and Safety of Women: Ukraine”, available at https://www.osce.org/files/f/documents/1/3/440312_0.pdf, page iii.

40 UN Women, “Multi-site scoping study on sexual harassment and other forms of sexual violence against women and girls in public spaces in the Eastern Ukraine”, available at <https://eca.unwomen.org/sites/default/files/Field%20Office%20ECA/Attachments/Publications/2021/10/ENGMultisite%20scoping%20study%20on%20sexual%20harassment%20and%20other%20forms%20of%20sexual%20violence%20against%20women%20and.pdf>, page 33.

41 European Parliament, Study for the FEMM committee, “Bullying and sexual harassment at the workplace, in public spaces, and in political life in the EU” (March 2018), available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604949/IPOL_STU\(2018\)604949_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604949/IPOL_STU(2018)604949_EN.pdf), page 34.

42 Plan UK, “Street Harassment: It’s not ok”, available at <https://plan-uk.org/file/plan-uk-street-harassment-reportpdf/download?token=CyKwYGSJ>, pages 71-72.

43 Plan UK, “Street Harassment: It’s not ok”, available at <https://plan-uk.org/file/plan-uk-street-harassment-reportpdf/download?token=CyKwYGSJ>, pages 58-59.

44 Plan UK, “Street Harassment: It’s not ok”, available at <https://plan-uk.org/file/plan-uk-street-harassment-reportpdf/download?token=CyKwYGSJ>. The report concludes that “[g]irls have described being shocked, in fear, intimidated and dehumanised” due to public sexual harassment (page 85).

45 European Parliament, Study for the FEMM committee, “Bullying and sexual harassment at the workplace, in public spaces, and in political life in the EU” (March 2018), available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604949/IPOL_STU\(2018\)604949_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604949/IPOL_STU(2018)604949_EN.pdf), page 36.

46 GREVIO General Recommendation No. 1 on the digital dimension of violence against women adopted on 20 October 2021, available at <https://rm.coe.int/grevio-rec-no-on-digital-violence-against-women/1680a49147>, para. 26.

47 Article 3(a) of the Istanbul Convention defines “violence against women” as a “violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

48 GREVIO General Recommendation No. 1 on the digital dimension of violence against women adopted on 20 October 2021, para. 38.

or “outing” someone without their consent with the purpose of scaring, threatening and body shaming; and e) cyberflashing, namely sending unsolicited sexual images⁴⁹.

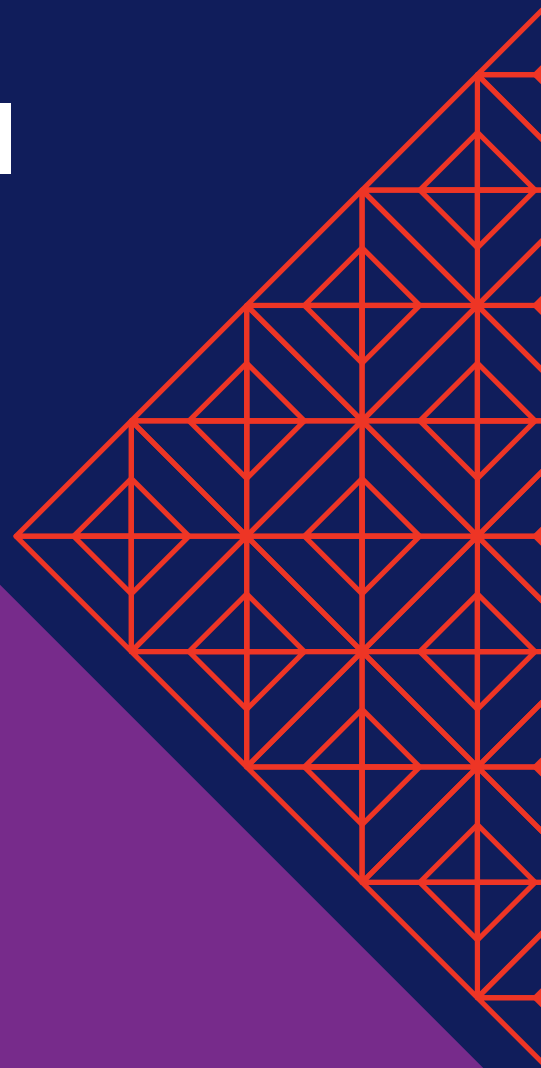
Such acts are humiliating and traumatising for victims and often impact their reputation and/or livelihood. Some of the above behaviours are known as sexist hate speech. Sexist hate speech is often the first step towards physical violence and may escalate or incite offensive acts, including sexual abuse, violence or rape.⁵⁰ It is noteworthy that incidences of online sexual harassment are more prevalent in younger age groups.

49 According to YouGov 2018 survey, 40% of women aged 18 to 34 have received an unsolicited sexual photo from someone who is not a romantic partner; see https://yougov.co.uk/politics/articles/20179-four-ten-female-millennials-been-sent-dick-pic?redirect_from=%2Ftopics%2Fpolitics%2Farticles-reports%2F2018%2F02%2F16%2Ffour-ten-female-millennials-been-sent-dick-pic.

50 GREVIO General Recommendation No. 1 on the digital dimension of violence against women adopted on 20 October 2021, para. 39.

PART 3

Relevant international and regional legal standards and principles



RELEVANT INTERNATIONAL AND REGIONAL LEGAL STANDARDS AND PRINCIPLES

One of the challenges in addressing sexual harassment is the fragmentation frequently encountered in the applicable legal framework at the domestic level. As sexual harassment encompasses a wide range of acts, it is often dealt with within different areas of law (such as labour law, criminal law, and civil law), as will be further explained below.

Assessing national laws and practices against the international standards on sexual harassment (which are also diverse) provides a means for identifying key gaps in legal frameworks and addressing challenges in law enforcement and judicial practices relating to sexual harassment. Knowledge of the relevant international standards helps lawyers supporting survivors of sexual harassment to be able to better provide comprehensive legal advice to victims; choose the best legal avenue for the victims' protection; understand potential gaps in domestic legislation; and ensure exhaustion of domestic remedies ahead of pursuing international remedies where needed.

This section of the Guide sets out the main international and regional legal standards and principles that may be applied in sexual harassment cases. As sexual harassment is a form of gender-based violence, the general obligations of States in dealing with gender-based violence cases apply equally (see below and also the EHRAC Guide to Litigating Cases of Violence Against Women which provides further guidance on a number of issues that arise in litigating violence against women cases internationally). This section also identifies examples of common practices that fall short of these international standards.

Sexual harassment as a form of gender-based violence and gender-based discrimination, which states are required to prevent and remedy, is covered by the provisions of the CEDAW, as clarified by the authoritative General Recommendations of the CEDAW Committee.⁵¹

ENACTING CRIMINAL AND/OR CIVIL LAWS PROHIBITING SEXUAL HARASSMENT

Both the CEDAW and the Istanbul Convention require States to enact legislation prohibiting sexual harassment and ensure that sexual harassment is subject to appropriate sanctions.⁵² Within the framework of the European Convention on Human Rights ("the ECHR"), the ECtHR has also reiterated that in line with their duty to protect the physical and psychological integrity of an individual from other persons under Article 8 ECHR, States must maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals, including in the context of harassment and sexual harassment.⁵³ Directive 2006/54/EC unequivocally condemns sexual harassment and urges States to take preventive measures against it.⁵⁴

General Recommendation No. 35 supplementing the CEDAW recommends that States parties "ensure that all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual or psychological integrity, are criminalized and introduce, without delay, or strengthen, legal sanctions commensurate with the gravity of the offence, as well as civil remedies" (emphasis added).⁵⁵

Under the Istanbul Convention sexual harassment could be subject to remedy either under criminal law sanctions or other legal sanctions.⁵⁶ While generally considering it preferable to place sexual harassment under criminal law, the drafters of the Istanbul Convention acknowledged that many national legal systems consider sexual harassment under their civil or labour laws.⁵⁷ Consequently, Parties may choose to deal with sexual harassment either under their criminal laws or by establishing administrative or other legal sanctions.

51 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) came into effect for Armenia on 13 Sep 1993; for Azerbaijan on 10 Jul 1995; for Georgia on 26 Oct 1994; for the Russian Federation on 23 Jan 1981; and for Ukraine on 12 Mar 1981; see <https://indicators.ohchr.org/>.

52 See CEDAW, Article 2b and 11; and Istanbul Convention, Article 40.

53 See *C v. Romania*, Application no. 47358/20, ECtHR, 30 November 2022, para. 62 citing Špadijer, para. 87 and the references cited therein.

54 Article 26.

55 General Recommendation No. 35, para. 29(a).

56 Istanbul Convention, Explanatory Report, available at <https://www.coe.int/en/web/istanbul-convention/text-of-the-convention, para. 207>.

57 Istanbul Convention, Explanatory Report, para. 207.

Considering that the spectrum of behaviours constituting sexual harassment is wide, as explained above in [Section II], States may criminalise certain aspects of sexual harassment, while dealing with other forms of sexual harassment under civil or other laws. For example, at the time of writing:

In Armenia, sexual harassment is not addressed under criminal law, nor is there any generic provision that may apply. The Law on Equal Rights and Equal Opportunities for Women and Men, adopted in 2013, defines sexual harassment but does not provide a solid basis for victims to seek redress.⁵⁸

Sexual harassment is not defined under criminal law in Georgia either. In the absence of a specific provision of criminal law prohibiting sexual harassment, prosecutors often rely on Article 138 of the Criminal Code of Georgia, which deals with “Another action of a sexual nature, which does not contain elements of rape”. In Georgia provisions on sexual harassment are contained in several laws. Since 2019, sexual harassment has been regulated in Georgia under the Administrative Offences Code (Article 166 1), although the scope of the provision is limited to certain types of behaviours in public spaces. Sexual harassment is also defined under the Law on the Elimination of All Forms of Discrimination.⁵⁹ The Labour Code also includes a provision on sexual harassment within a workplace context.⁶⁰

Similarly, in Ukraine, criminal laws do not contain an explicit offence of sexual harassment. Article 1 of the Law of Ukraine “On ensuring equal rights and opportunities for women and men” defines sexual harassment as “acts of a sexual nature expressed verbally (threats, intimidation, obscene remarks) or physically (touching, patting) which humiliate or insult persons in employment and service subordination, in financial or another dependency”⁶¹ The same law provides for compensation claims as a result of sexual harassment, among other remedies. Amendments to the Code of Administrative Offences introduced in June 2024 provide that ‘offensive, humiliating actions of sexual nature, expressed verbally or non-verbally, including through the use of electronic communications’, are punishable by fines (from UAH 1,360 to 2,720), community service (from 20 to 40 hours), correctional labor (one month with a 20% deduction of earnings), and administrative arrest for up to 15 days. While the Ukrainian legislation does not expressly sanction sexual harassment occurring specifically in public spaces, it does contain several provisions that can be used to hold perpetrators accountable (e.g. petty hooliganism described in Art. 173 of the Code of Administrative Offences of Ukraine).⁶²

These examples show that the legal treatment of sexual harassment largely depends on context and type of conduct. Even in the absence of a specific criminal law provision on sexual harassment, such conduct may still incur criminal liability, to the extent that the behaviour crosses the threshold of relevant criminal law provisions (e.g. sexual assault).

The classification of sexual harassment acts under criminal or other legal provisions remains within the sphere of appreciation by domestic legislators. However, the ECtHR has clarified that in the context of attacks on the physical integrity of a person, such protection should be ensured through efficient criminal law mechanisms.⁶³ According to the ECtHR, less serious acts between individuals which may violate psychological integrity may not require a criminal law provision covering the specific act. Rather, the legal framework could also consist of civil law remedies capable of affording sufficient protection.⁶⁴

In any event, States must ensure that the law deals with sexual harassment, establishes dissuasive and appropriate sanctions, and provides a solid basis for victims to seek redress against this form of violence.

58 Council of Europe, “Gap analysis of Armenian criminal law in light of the standards established by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence” (July 2017), page 22.

59 GREVIO Baseline Evaluation Report on Georgia, 22 November 2022, available at <https://rm.coe.int/grevio-report-on-georgia-2022/1680a917aa>, paras. 280-281.

60 GREVIO Baseline Evaluation Report on Georgia, 22 November 2022, para. 133.

61 This definition is drawn from UN Women, “Multi-site scoping study on sexual harassment and other forms of sexual violence against women and girls in public spaces in the Eastern Ukraine”, available at <https://eca.unwomen.org/sites/default/files/Field%20Office%20ECA/Attachments/Publications/2021/10/ENGMultisite%20scoping%20study%20on%20sexual%20harassment%20and%20other%20forms%20of%20sexual%20violence%20against%20women%20and.pdf>, page 2.

Art 22-23 of the Law of Ukraine ‘On ensuring equal rights and opportunities for women and men’

62 See UN Women, “Multi-site scoping study on sexual harassment and other forms of sexual violence against women and girls in public spaces in the Eastern Ukraine”, available at <https://eca.unwomen.org/sites/default/files/Field%20Office%20ECA/Attachments/Publications/2021/10/ENGMultisite%20scoping%20study%20on%20sexual%20harassment%20and%20other%20forms%20of%20sexual%20violence%20against%20women%20and.pdf>, page 2.

63 See *Remetin v. Croatia*, App. No. 7446/12, ECtHR, 24 July 2014, para. 70 in fine, and the references cited therein.

64 See *C v. Romania*, paras. 63-64; see also *Špadijer v. Montenegro*, App. No. 31549/18, ECtHR, 9 February 2022, para. 89 with further references; and *A, B and C v. Latvia*, App. No. 30808/11, ECtHR, 31 March 2016, para. 151.

Equally, it is important to close any gaps in existing legislation to ensure effective protection against sexual harassment. The fragmented legal treatment of sexual harassment may result in leaving certain sexual harassment acts uncovered by domestic legislation. For example, criminal laws may protect against sexual assault, but may not address the entirety of the wide range of unacceptable behaviours and practices that sexual harassment includes. For example, unwanted groping, persistently following someone, sexual propositioning, pressing against someone or sending unwanted illicit images to someone's phone may not be covered by domestic criminal laws. That would leave a gap in providing survivors of sexual harassment with an effective remedy. As such, incomplete or ineffective legislation on sexual harassment would be inconsistent with the State's international obligations under the CEDAW and the Istanbul Convention.

Under Article 21 of the Istanbul Convention, survivors should be provided access to and information about existing complaint procedures, including available international and regional mechanisms.⁶⁵ This means that if sexual harassment is not a criminal offence under the State's laws and the criminal investigation is thus not initiated, it is important to inform the victim and refer her to other mechanisms combating sexual harassment under civil, administrative or other laws.

ENSURING UNOBSTRUCTED ACCESS TO JUSTICE FOR VICTIMS OF SEXUAL HARASSMENT

CEDAW General Recommendation No. 35 urges States to "[e]nsure effective access for victims to courts and tribunals and that the authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and, as appropriate, ex officio prosecution to bring alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties".⁶⁶

One of the obstacles that women often face when bringing forward a complaint of sexual harassment is the reluctance of authorities to initiate an official investigation. This could be due to a number of reasons: lack of understanding by prosecutors/investigators as to what behaviour constitutes sexual harassment; lack of clarity on how to properly classify the behaviour under the State's existing laws; legislative gaps not covering the specific behaviour; or even discriminatory attitude, as discussed further below.

Discriminatory stereotyping:

Stereotyped attitudes of investigators and/or prosecutors may impact their judgment on what behaviour constitutes sexual harassment and their decision to initiate or terminate a criminal case. This may be particularly prominent in sexual harassment cases where the conduct is deemed less severe (e.g. absence of physical violence) and is thus downplayed as normal behaviour. Such biased attitude could manifest, for example, in asking irrelevant and humiliating questions, commenting on how the victim was dressed,⁶⁷ and disregarding the psychological impact on the victim by claiming that the victim was overreacting or – in the alternative – that the victim was lying in the absence of a finding reaching psychological suffering.⁶⁸ ILO has identified that "[i]n practice, prosecutions of sexual harassment under criminal law are rare and unlikely to be successful".⁶⁹

However, States' obligations under Articles 5 of the CEDAW and 12(1) of the Istanbul Convention include combating prejudices and social and cultural patterns of behaviour predicated on gender-based stereotypes.

In *Belousova v. Kazakhstan*, the CEDAW Committee noted the failure of the investigators not to initiate criminal proceedings, despite having sufficient evidence (the testimonies of two witnesses that had overheard a conversation

⁶⁵ Article 21 of the Istanbul Convention reads as follows: "Parties shall ensure that victims have information on and access to applicable regional and international individual/collective complaints mechanisms. Parties shall promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints".

⁶⁶ General Recommendation No. 35, para. 32(a).

⁶⁷ See e.g. GREVIO Baseline Evaluation Report on Georgia, 22 November 2022, paras. 309 and 315.

⁶⁸ See e.g. 2022 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, page 158.

⁶⁹ ILO. 2020. Series of Technical Briefs: Violence and Harassment in the World of Work: Brief No. 2: "Sexual Harassment in the World of Work", available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_738115.pdf, page 4.

between the author and the perpetrator) in addition to the author's account of events.⁷⁰ It identified that domestic institutions had seemingly applied double standards in adjudicating the victim's case and the perpetrator's libel case against the victim. In the present case, the authorities did not explore any reasons why the author's employment contract was not renewed after service of more than 10 years.⁷¹ Furthermore, the domestic court referred to the fact that the author did not complain about the alleged sexual harassment while she was still employed, but only after her dismissal, as a circumstance rendering her allegation less credible.⁷² These errors, along with a "lack of sensitivity to the author's vulnerable position as a sole female wage earner subordinate to A.",⁷³ indicated that domestic authorities had been influenced by stereotypes. The CEDAW Committee noted that "by failing to investigate the author's complaint about sexual harassment promptly, adequately and effectively, even though the civil proceedings initiated by A. against the author were handled in less than three weeks, and by failing to address the author's case in a gender-sensitive manner, the national institutions allowed their reasoning to be influenced by stereotypes" (emphasis added).⁷⁴

Burdensome evidentiary requirements:

Another challenge that women survivors of sexual harassment may face is a high evidentiary burden. Due to the nature of sexual harassment, women often have difficulty proving what has happened to them, especially if there were no witnesses. The Court has reiterated that, "like domestic violence, cases of sexual harassment do not always surface as they continue to be significantly underreported – it often takes place within personal relationships and behind closed doors, which makes it even more difficult for victims to prove".⁷⁵ A high standard of proof required to substantiate the occurrence of sexual harassment can negatively influence women's right to enjoyment of equality before the law, the right to fair trial and the right to an effective remedy. CEDAW General Recommendation No. 33 on women's access to justice urges States parties to "[r]evise the rules on the burden of proof in order to ensure equality between the parties in all fields where power relationships deprive women of fair treatment of their cases by the judiciary"⁷⁶ and "to ensure that the evidentiary requirements are not overly restrictive, inflexible or influenced by gender stereotypes".⁷⁷

In *Allée v. France*, a case about the applicant's conviction for defamation after having spoken up about her harassment and sexual assault, the Court considered that the domestic courts' refusal to adapt the concept of sufficient factual basis and the criteria for assessing good faith to the circumstances of the case had placed an excessive burden of proof on the applicant, by requiring that she provide evidence of the acts she wished to report.⁷⁸

Therefore, in line with the obligation to ensure access to justice for women who have experienced gender-based violence, States must ensure that women victims of sexual harassment are not burdened with exorbitantly high standards of proof. Requiring corroborating evidence or evidence that would be impossible to produce; discarding the statement of the victim; and giving unjustified preference to the perpetrator's account of events in case of contradictory statements are some of authorities' common practices that hinder effective access to justice and thus fall short of international standards.

It is worth noting that under EU law, Directive 2006/54/EC covering sexual harassment in the workplace expressly places the burden of proof on the defendant. Article 19 of the Directive provides that where a victim establishes facts from which it may be presumed that there has been discrimination, it is for the respondent to prove that there has been no breach of the principle of equal treatment.⁷⁹

⁷⁰ *Belousova v. Kazakhstan*, Committee on the Elimination of Discrimination against Women Communication No. 45/2012, CEDAW/C/61/D/45/2012, (25 August 2015), para. 10.6.

⁷¹ *Belousova v. Kazakhstan*, para. 10.10.

⁷² *Belousova v. Kazakhstan*, para. 10.10.

⁷³ *Belousova v. Kazakhstan*, para. 10.10.

⁷⁴ *Belousova v. Kazakhstan*, para. 10.10.

⁷⁵ *C v Romania*, para. 79.

⁷⁶ Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/33, General Recommendation No. 33 on women's access to justice, para. 15(g).

⁷⁷ Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/33, General Recommendation No. 33 on women's access to justice, para 51(h).

⁷⁸ *Allée v. France*, App. No. 20725/20, ECtHR, 18 January 2024.

⁷⁹ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006, p. 23–36, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0054>.

Conducting an effective investigation following a victim-centred, context-based approach:

CEDAW General Recommendation No. 35 clarifies that States have a due diligence duty to take all appropriate measures to prevent, investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women.⁸⁰ Additionally, the general obligations of States under Chapter VI of the Istanbul Convention on investigation, prosecution, procedural law and protective measures apply in cases of sexual harassment as well. Investigation into sexual harassment complaints must be effective, without undue delay, while taking into consideration the victim's rights and applying a gendered understanding.⁸¹

As the Court has clarified, "[t]he effectiveness principle means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished".⁸²

Investigation of discriminatory motive:

An effective investigation must include an examination into possible discriminatory motives behind the commission of gender-based violence.⁸³ States should ensure that investigation and prosecution of gender-based violence is not solely dependent upon the victim's statement, but rather law enforcement authorities should investigate and prosecute gender-based violence in a proactive manner. In *Gaidukevich v Georgia*, the Court found that the circumstances of the victim's death – which presented the characteristics of a form of gender-based violence – "should have incited the investigative authorities to include in their examination the possible role of gender-based discrimination in the commission of the offence."⁸⁴ In *Tkheldze v Georgia*, the Court reiterated that "[w]here there is a suspicion that discriminatory attitudes induced a violent act, it is particularly important that the official investigation be pursued with vigour and impartiality, having regard to the need to continuously reassert society's condemnation of such acts and to maintain the confidence of minority groups in the ability of the authorities to protect them from discriminatory violence."⁸⁵ The requirement for an effective investigation cannot be reduced to a bare checklist or a simple set of formalistic questions to claim fulfilment of the obligation to investigate.

Failure to conduct a meaningful inquiry into possible discriminatory motives may indicate that the investigation was ineffective.⁸⁶ "Without a strict approach from the law enforcement authorities, prejudice-motivated crimes would unavoidably be treated on an equal footing with ordinary cases without such overtones, and the resultant indifference would be tantamount to official acquiescence to or even connivance with hate crimes".⁸⁷

Context-based assessment:

It is also crucial for authorities to consider the context in dealing with such cases, especially in assessing evidence, in order to conduct a proper investigation. In that regard, the Court found significant flaws in the criminal investigation in *C v. Romania* and criticised the fact that the prosecution did not consider the applicant's statements as pertinent evidence and the failure to place the evidence into context.⁸⁸ The prosecutor had concluded that the acts were not criminal, as the victim had not felt "humiliated", a necessary element for the acts to constitute criminal offences. The Court observed with regards to the absence of humiliation: "the authorities gave no further explanation for their findings and did not try to place into context the evidence suggesting that she had sometimes seemed sad after her encounters with C.P., while at other times she had seemed rather cheerful [...]. [T]he mention of those assertions in the decisions was not accompanied by any assessment of the relationship of power and subordination between the applicant and C.P., or the threats allegedly made by him against her, although those elements were duly brought to the authorities' attention during the proceedings" (emphasis

80 CEDAW, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 26 July 2017, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/231/54/PDF/N1723154.pdf?OpenElement>, para. 24(2).

81 Article 49, Istanbul Convention.

82 *Gaidukevich*, para 58.

83 *Gaidukevich*, para. 68; *A & B v. Georgia*, para. 45.

84 *Gaidukevich*, para 66.

85 *Tkheldze v. Georgia*, no. [33056/17](#), 8 July 2021, para. 51.

86 See ECtHR, *M.C. and A.C. v. Romania*, para. 124-125; *Nachova v Bulgaria*, para. 160; *BS v Spain*, para. 58; *Identoba v Georgia*, para. 67.

87 *Tkheldze v. Georgia*, no. [33056/17](#), 8 July 2021, para. 51; see *Identoba and Others v. Georgia*, no. [73235/12](#), para. 77, 12 May 2015, with further references.

88 *C v Romania*, para 79.

added).⁸⁹ Nor was any psychological assessment ordered in order to properly evaluate the victim's state.⁹⁰

Gender sensitive approach:

Applying a gendered understanding during the investigation includes adjusting questioning to avoid intrusive or embarrassing questions; avoiding multiple, repetitive testimonies; and taking protective measures.⁹¹

Further, as mentioned above, one of the particularities of investigations into sexual harassment complaints is that victims often have difficulty proving what has happened to them. As explained by the Court in *C v. Romania* – a case of sexual harassment at work – cases of sexual harassment, like domestic violence, often occur behind closed doors, which makes it even more difficult for victims to prove.⁹² That is why it is important for authorities to consider the victim's account of events. In *Belousova v. Kazakhstan*, the CEDAW Committee indicated that it is important for domestic investigative bodies to provide the victim with the opportunity to explain her account of the events and to clarify her claims.⁹³ Similarly, it condemned the domestic courts' refusal to adduce evidence presented by the victim, in civil proceedings, without offering any justification.⁹⁴

Overall, investigative and judicial authorities ought to apply gender sensitivity to the examination of the complaint of sexual harassment and to the evidence in support of that complaint.⁹⁵ This is especially pertinent considering that victims of sexual harassment in the workplace are often in a vulnerable position within a power relationship with the perpetrator. GREVIO has flagged that implementation of sexual harassment laws in Georgia appear insufficient “as law-enforcement agencies and the judiciary lack a sensitive approach when dealing with cases of sexual harassment” (emphasis added).⁹⁶

Preventing the re-traumatisation of survivors in the investigation and prosecution of sexual harassment and use of gender stereotyping by law enforcement and the judiciary

Sexual harassment can cause significant trauma to women survivors and can have long-lasting impacts, affecting their daily lives. Speaking up about the experience, going through the process of investigation, prosecution and occasionally multiple degrees of judicial review carry a risk of re-traumatisation. This risk may be heightened when women are called to face prejudiced authorities and hostile investigative practices.

The Court in *C v. Romania* took into account the impact of sexual harassment on the victim and the result of her forced resignation, stating that “[t]his element, which undoubtedly added to her distress and feelings of powerlessness, had no bearing on the manner in which the authorities assessed her grievances”.⁹⁷

The CEDAW Committee recommends States to “take effective measures to protect women against secondary victimization in their interactions with law enforcement and judicial authorities”.⁹⁸ Therefore, as discussed above, it is important that authorities use a “confidential and gender sensitive approach”, and identify and challenge any use of gender stereotyping, during the investigation. Article 56 of the Istanbul Convention provides that states “shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings”.⁹⁹

Addressing gender stereotyping:

⁸⁹ *C v. Romania*, para 80.

⁹⁰ *C v. Romania*, para 82.

⁹¹ Intrusive and irrelevant questions by investigators or defence lawyers “serve the purpose of discrediting and humiliating the victim, harming her reputation and credibility and contributing to their secondary victimisation” (GREVIO baseline evaluation report, Georgia, 2022, paras. 309 and 315).

⁹² *C v. Romania*, para 79.

⁹³ *Belousova v. Kazakhstan*, para. 10.6.

⁹⁴ *Belousova v. Kazakhstan*, para. 10.7.

⁹⁵ *Belousova v. Kazakhstan*, para. 10.8.

⁹⁶ GREVIO Baseline Evaluation Report on Georgia, 22 November 2022, para. 283.

⁹⁷ *C v. Romania*, para 86.

⁹⁸ CEDAW General Recommendation No. 33, para. 51 (c).

⁹⁹ On trauma-informed legal practice, see [EHRAC Guidelines for trauma informed legal practice for lawyers working with adult survivors of human rights violations](#).

One of the challenges women often face when making complaints of sexual harassment is the state agents' preconceived notions around gender and gender-based violence, which can greatly impact the women's experience and the legal handling the complaint.

Importantly, States must ensure that law enforcement and the judiciary do not engage in gender-based stereotyping in their examination of gender-based violence, including in cases of sexual harassment. Article 2(d) of the CEDAW Convention requires that State parties and their organs and agents, are to refrain from engaging in any practice of direct or indirect discrimination against women and ensure that public institutions act in conformity with this obligation. This includes an effective and accessible legal framework to address all forms of gender-based violence committed by State agents (General Recommendation 35, paragraph 22). Conduct of the prosecutorial and judicial system that constitutes discrimination against women is a failure of the State to refrain from discrimination.¹⁰⁰

Further, Article 5(a) of the CEDAW Convention requires States parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Hence, Article 5(a) contains an express obligation concerning harmful stereotypes and stereotyping and requires States parties to modify or transform harmful gender stereotypes and eliminate gender stereotyping. States parties should ensure that all Government bodies and organs are fully aware of the principles of equality and non-discrimination on the basis of sex and gender and that adequate training and awareness-raising programmes are set up and carried out in this respect. (General Recommendation No. 28, para. 17).

This obligation means that law enforcement and judges must: a) refrain from stereotyping (obligation to respect); b) ensure stereotyping does not infringe enjoyment of human rights (obligation to protect); and c) ensure women can exercise and enjoy the right to be free from wrongful gender stereotyping (obligation to fulfil).

The CEDAW Committee has affirmed that stereotyping affects women's right to a fair trial and urged State parties to ensure that all criminal proceedings involving rape and other sexual offences are conducted in an impartial and fair manner and free from prejudices or stereotypical notions regarding the victim's gender, age and disability.¹⁰¹

Judicial bodies in particular ought to ensure that all legal procedures in cases involving allegations of gender-based violence against women are impartial, fair and unaffected by gender stereotypes or the discriminatory interpretation of legal provisions.¹⁰² The obligation to avoid and address stereotyping attaches to all involved in the pathways to access to justice, including judges, lawyers, police, prosecutors, witnesses, victims, defendants and is relevant to all stages of proceedings.¹⁰³

Due to the stereotype that victims of sexual harassment invited the inappropriate acts through their behaviour, it is not uncommon for authorities to scrutinise women for their personal life choices and past behaviours (e.g. revealing clothes, consumption of alcohol, etc.). Such profiling is discriminatory and incompatible with international standards. Under the Istanbul Convention, "evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary" (Article 54). As highlighted in the GREVIO Baseline Evaluation Report on Georgia, the stereotype that victims themselves often provoke it along with the general attitude of the population that sexual harassment is socially acceptable behaviour results in women blaming themselves and avoiding reporting the sexual harassment they suffered.¹⁰⁴

As part of the #MeToo movement, the stories shared by women who experienced sexual harassment revealed the prevalence of gender stereotypes within society and in states' responses which enhanced the gender stereotypes. For example, in Italy, a judge justified the groping of a teenage girl on the basis that it was only "a joke" and that the sexual harassment lasted "less than 10 seconds."¹⁰⁵ In another case from Georgia, "the judge questioned the victim's credibility due to her late reporting to law enforcement agencies, going to a birthday party after the alleged

¹⁰⁰ *Vertido v. Philippines*, para. 8.2; *V.K. v. Bulgaria*, Communication No. 20/2008 (15 October 2008) CEDAW/C/49/D/20/2008, paras. 9.11-9.12.

¹⁰¹ *Vertido v The Philippines*, CEDAW Communication No. 18/2008, para. 8.9 (b).

¹⁰² General Recommendation 35, para. 26 (c).

¹⁰³ General Recommendation 33, para. 27.

¹⁰⁴ GREVIO Baseline Evaluation Report on Georgia, 22 November 2022, para. 283.

¹⁰⁵ See The Guardian, "Italian man cleared of assault because grope only lasted 'between five and 10 seconds'", (13 July 2023), available at <https://www.theguardian.com/world/2023/jul/13/fury-italy-school-caretaker-cleared-groping-assault-lasting-seconds?ref=hir.harvard.edu>.

abuse, and her verbal and non-verbal communication during the court hearing”.¹⁰⁶

A UN Women report on sexual harassment in the era of the #MeToo movement condemned stereotyped responses and noted their impacts on women. “Speaking of their experiences has brought women condemnation, ridicule and abuse. They have faced defamation suits and gone into exile from their home countries. Yet, a myth prevails that women who name harassment (or other abuse) do so for attention or other gain, out of ill-will, confusion or the absence of a sense of humour. This expresses gendered assumptions which are particularly sharp and antagonistic when women speak of sexual matters, and is evidenced, for example, in the contestation women experience in relation to naming and reporting rape. The construction of women’s words and memories as untrustworthy is a deep, pervasive and enduring prejudice that impacts all aspects of sexual violence from rape to child abuse, including sexual harassment”.¹⁰⁷

The use of discriminatory language from investigators or the judiciary has also been criticised. International jurisprudence has held that judicial authorities should avoid reproducing sexist stereotypes in court decisions, downplaying gender-based violence. In *C. v. Romania*, the Court noted that the detailed reproduction of the perpetrator’s statements about the victim in the prosecution’s decision “besides being insensitive and irreverent”, “stigmatised” the victim.¹⁰⁸

In contrast, in *M.S. v. Philippines*, a case of sexual harassment in the workplace, the author claimed that the reasoning of the courts relied heavily upon gender myths and discriminatory stereotypes and deprived her of a fair trial. However, the CEDAW Committee found the submission inadmissible for failure to substantiate the claim, concluding that “even if it could be argued that some aspects of gender-based stereotypes may appear to be indicated in the Court’s decision, they do not suffice, per se, to demonstrate that they have negatively affected the Court’s assessment of the facts and the outcome of the trial”.¹⁰⁹

Addressing the use of defamation proceedings against women victims:

One of the potential challenges for women victims of gender-based violence is the stereotype that the women often lie about their experience.¹¹⁰ Because of the inherent difficulty to produce evidence in sexual harassment cases, women are sometimes accused of lying about the events. In addition to having suffered sexual harassment and having to recount their experience, they also risk becoming the defendant in a defamation case due to the practice of abusive defamation claims against survivors of sexual harassment. GREVIO, in its 2022 Baseline Evaluation Report on Georgia noted that, “[r]eporting of sexual harassment is low and victims that come forward face public condemnation and legal action against them for “defamation””.¹¹¹

In *Belousova v. Kazakhstan*, the CEDAW Committee noted that, as a result of civil proceedings for libel, the victim had to pay compensation for moral damages and to publicly apologise to her perpetrator. This caused her to suffer from depression and post-traumatic stress disorder.¹¹²

In *Allée v. France*, the Court expressly recognised the need, under Article 10 (freedom of expression), to protect victims of sexual harassment from abusive use of defamation claims. The case concerned the applicant’s criminal conviction for public defamation following an email she had sent to six people from both inside and outside her workplace about the harassment and sexual assault she had suffered by a senior executive. The Court noted that although the financial penalty imposed was not particularly severe, the applicant had nonetheless been convicted of a criminal offence. Such a conviction had a chilling effect, which could discourage people from reporting such

106 Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia (2022), available at <https://www.ombudsman.ge/res/docs/2023120411211781277.pdf>, page 159, footnote 660.

107 UN Women, “Towards an End to Sexual Harassment: The Urgency and Nature of Change in the Era of #MeToo” (New York, November 2018), available at <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2018/Towards-an-end-to-sexual-harassment-en.pdf>, page 10.

108 *C v Romania*, para 83.

109 *M.S. v. Philippines*, Committee on the Elimination of Discrimination against Women Communication, Communication No. 030/2011, CEDAW/C/58/D/30/2011 (16 July 2014), para. 6.5.

110 Human Rights Council, Interim report of the Special Rapporteur on the independence of judges and lawyers, A/66/289, 2011, para. 48: “Examples of stereotypes applied to rape cases through gender-biased criminal rules of evidence and procedure are provided by cases where the following requirements or beliefs obtain: [...] women are likely to lie, therefore evidence should be accepted only if corroborated”.

111 GREVIO Baseline Evaluation Report on Georgia, 22 November 2022, para. 283.

112 *Belousova v. Kazakhstan*, para. 10.13.

serious actions as those amounting to mental or sexual harassment, or even sexual assault.¹¹³

Addressing the use of confrontations:

Further, during the investigation, in the event of receiving contrasting testimonies from the victim and the perpetrator, some jurisdictions still employ the practice of confrontational interviewing. This is incompatible with States' obligations to protect victims of gender-based violence from repeat victimisation. It is a well-established principle in international law that confrontations between victims of gender-based violence and their perpetrators during proceedings should be avoided.¹¹⁴ The Court has repeatedly held that criminal proceedings should be organised in such a way as not to unjustifiably imperil the life, liberty or security of witnesses, and in particular those of victims called upon to testify, or their interests coming generally within the ambit of Article 8 of the Convention.¹¹⁵ In *C. v. Romania* the Court found that subjecting the victim to confrontation with the perpetrator during criminal investigation proceedings indicated that the authorities failed to protect the victim from secondary victimisation and infringed her rights under Article 8.¹¹⁶

Providing appropriate remedies and further protection for survivors beyond criminal prosecution and/or civil damages

Article 45(1) of the Istanbul Convention stipulates that sanctions imposed for the offences covered by the Convention (including sexual harassment) must be effective, proportionate and dissuasive.¹¹⁷

Accordingly, sentences imposed by national courts must be proportionate to the severity of the gravity of the abuse suffered.¹¹⁸ The Court in *Vučković v. Croatia* expressed its concern that leniency for gender-based violence appears to be a systemic issue. In the case in question, a case of sexual harassment in the workplace, despite the repeated nature of the serious sexual violence suffered by the applicant, the appeal court chose to replace the perpetrator's prison sentence with community service without giving adequate reasons and without considering in any way the interests of the victim, solely in view of the fact that four years had passed since the commission of the offences and the perpetrator had not committed any further crimes.¹¹⁹ The Court noted that "[s]uch an approach by the domestic courts, in the Court's view, may be indicative of a certain leniency in punishing violence against women, instead of communicating a strong message to the community that violence against women will not be tolerated. Such leniency may in turn discourage victims from reporting such acts, whereas according to the scarce data available in this context, violence against women is worryingly common and remains seriously underreported".¹²⁰

In addition to establishing appropriate sanctions, States must take protective measures for sexual harassment survivors, including providing information on their rights, providing support services, ensuring access to domestic and international complaints mechanisms, and immediate protection, such as restraining orders.¹²¹

Moreover, Article 30 of the Istanbul Convention states that States parties shall ensure that victims have the right to claim compensation from the perpetrator. In terms of sexual harassment in the workplace, under EU law, Directive 2006/54/EC covering sexual harassment in the workplace stipulates that Member States shall ensure that real and effective compensation or reparation is available for the loss and damage sustained as a result of discrimination on grounds of sex, including sexual harassment (Article 18).

¹¹³ *Allée v. France*, App. No. 20725/20, ECtHR, 18 January 2024.

¹¹⁴ See e.g. GREVIO Baseline Evaluation Report on Serbia, 22 January 2020, available at <https://rm.coe.int/grevio-report-on-serbia/16809987e3>, in para. 218 where "GREVIO notes with concern the worrying information it received regarding the use of "confrontation" in sexual violence proceedings as a tool to corroborate evidence".

¹¹⁵ See e.g. *Y. v. Slovenia*, App. No. 41107/10, ECtHR, 28 May 2015, para. 103.

¹¹⁶ *C v Romania*, paras 83-85.

¹¹⁷ Article 45(1) reads as follows: "Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition".

¹¹⁸ See Istanbul Convention, Explanatory Report, para. 232: "[...] Article 45 requires Parties to match their action with the seriousness of the offences and lay down sanctions which are "effective, proportionate and dissuasive".

¹¹⁹ *Vučković v. Croatia*, App. No. 15798/20, ECtHR, 12 December 2023, para. 64.

¹²⁰ *Vučković v. Croatia*, App. No. 15798/20, ECtHR, 12 December 2023, para. 65.

¹²¹ See Istanbul Convention, Chapter IV.

States parties are obliged to take appropriate measures including the regulation of the activities of private actors with regard to employment and health policies and practices, working conditions and work standards (CEDAW General Recommendation No. 28, para. 13). The CEDAW Committee in General Recommendation 35 underlines the need for “protocols and procedures addressing all forms of gender-based violence that may occur in the workplace or affect women workers, “including effective and accessible internal complaints procedures, the use of which should not exclude recourse to law enforcement authorities, and should also address workplace entitlements for victims/survivors”.¹²²

Guidance from UN Women on sexual harassment laws states that “[r]emedy provisions in sexual harassment laws should reflect a policy of returning victims to the position they were in prior the harassment and should provide for dissuasive penalties...[R]emedies may range from reinstatement of a worker who was dismissed, to recovery of back pay and leave time, to policy changes in education or housing settings, to changes in working conditions, to awards of compensatory and punitive damages.”¹²³

The Istanbul Convention requires States parties to take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.¹²⁴ The UN Handbook for Legislation on Violence against Women also highlights that “[l]egislation should protect the employment rights of survivors of violence against women, including by prohibiting employers from discriminating against them or penalizing them for the consequences of their abuse”.¹²⁵

¹²² CEDAW, General Recommendation 35, para. 30(f).

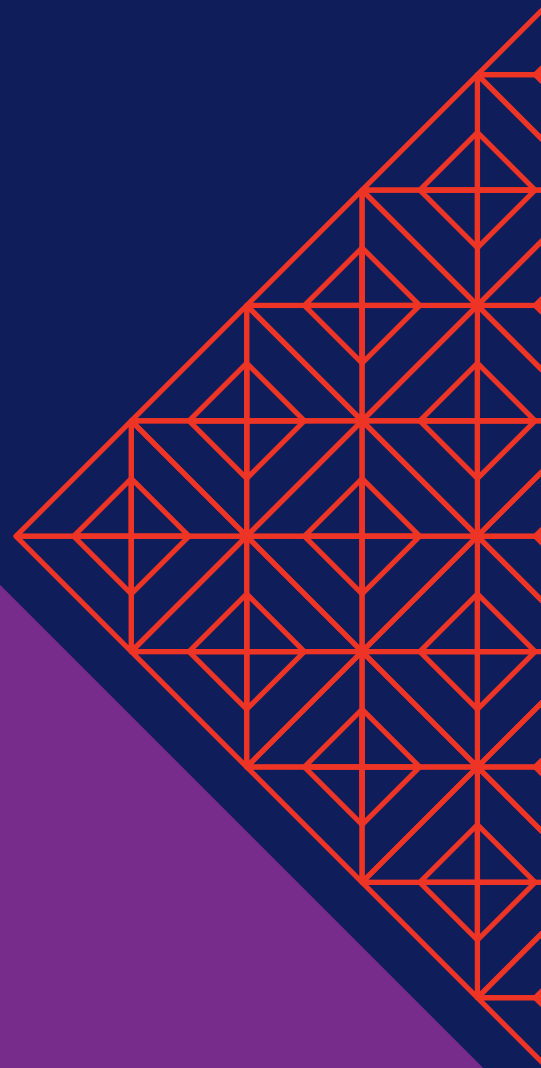
¹²³ <https://www.endvawnow.org/en/articles/501-remedies-and-policy-development-training.html?next=482>

¹²⁴ Istanbul Convention, Article 20(1).

¹²⁵ United Nations, Department of Economic and Social Affairs Division for the Advancement of Women, “Handbook for Legislation on Violence against Women” (New York, 2010), available at <<https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>>.

PART 4

Conclusions



CONCLUSIONS

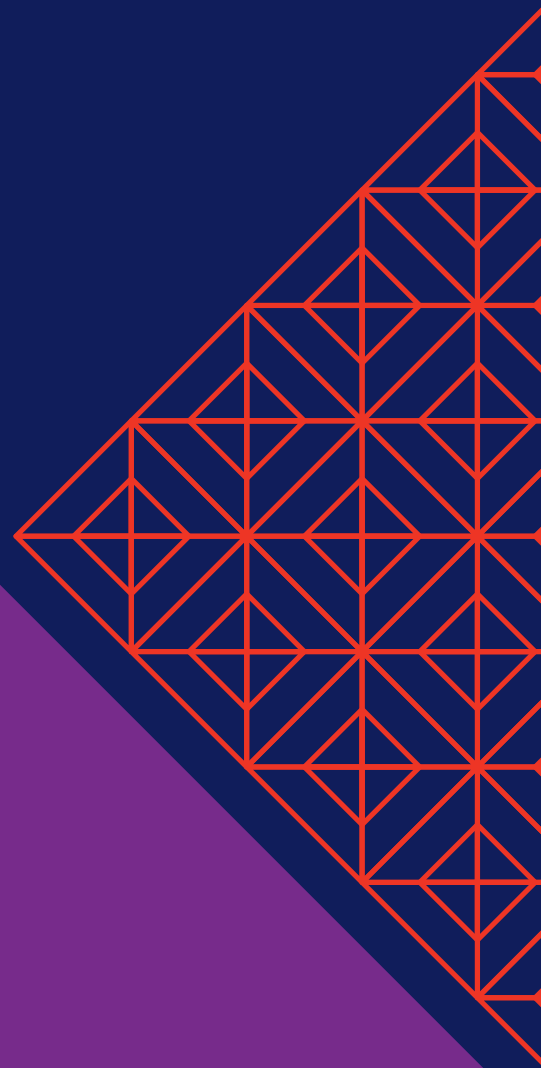
Sexual harassment is a complex social phenomenon affecting women and girls worldwide. Although there is no universally accepted definition, the Istanbul Convention (Article 40) offers a comprehensive definition, according to which sexual harassment is “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”. Sexual harassment can take various forms, such as digital sexual harassment, public sexual harassment or sexual harassment in the workplace.

Given the systemic nature of sexual harassment and the litigation challenges addressed in this Guide, it is worth considering whether to request the Court to apply general measures and injunctions under Article 46 of the Convention or specifying recommendations for the CEDAW Committee. These measures could include specific legislative changes to address gaps in the legislative treatment of sexual harassment; adopt a consent-based definition in line with Article 40 of the Istanbul Convention; and legislate for mandatory training of the police and the judicial and prosecutorial authorities. These measures are important to fully recognise the suffering and experiences of women victims of sexual harassment and remedy the failure of the State in transforming the structural inequality, discrimination, subordination and gender hierarchies, which are among the root causes of violence against women.

Importantly, a gender perspective in adjudicating violence against women cases, including sexual harassment, necessitates: a) applying a gender perspective at every level (prevention, investigation, prosecution, punishment, reparations) while assessing whether the State fulfilled its due diligence obligations in regard to violence against women; b) identifying and defying gender stereotypes; and c) automatically examining all forms of violence against women, including sexual harassment, as a form of discrimination against women under Article 14 of the Convention.

PART 5

Useful resources



USEFUL RESOURCES

MAIN LEGAL INSTRUMENTS

European Convention on Human Rights https://www.echr.coe.int/documents/d/echr/Convention_ENG

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the 'Istanbul Convention')

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

The Convention on the Elimination of All Forms of Violence Against Women (CEDAW)

<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

CEDAW, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19:

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf

International Labor Organization (ILO) – Violence and Harassment Convention 2019 (No. 190)

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190

RELEVANT REPORTS AND GUIDES

EHRAC Guide to Litigating cases of Violence against Women

[EHRAC-Guide-to-Litigating-Cases-of-Violence-Against-Women December-2023 FINAL1.pdf](#)

EHRAC Guidelines for trauma informed legal practice for lawyers working with adult survivors of human rights violations

<https://ehrac.org.uk/wp-content/uploads/2022/03/Trauma-Informed-Legal-Practice-Toolkit-2022.pdf>

UN Women, “Towards an End to Sexual Harassment: The Urgency and Nature of Change in the Era of #MeToo” (New York, November 2018)

<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2018/Towards-an-end-to-sexual-harassment-en.pdf>

Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence

<https://rm.coe.int/1680a48903>

RELEVANT CASE LAW

[C v. Romania, ECtHR, App. No. 47358/20 \(30 November 2022\)](#)

[Belousova v. Kazakhstan, CEDAW, Communication No. 45/2012, CEDAW/C/61/D/45/2012 \(25 August 2015\)](#)

[M.S. v. Philippines, CEDAW, Communication No. 030/2011, CEDAW/C/58/D/30/2011 \(16 July 2014\)](#)

[Vučković v. Croatia, ECtHR, App. No. 15798/20 \(12 December 2023\)](#)

[Allée v. France, ECtHR, App. No. 20725/20 \(18 January 2024\)](#)



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