



# SEXUAL VIOLENCE LAWS IN EURASIA: TOWARDS A CONSENT-BASED DEFINITION

*Georgia, Kazakhstan,  
Kyrgyzstan, Ukraine,  
Uzbekistan*

JAN 2023

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Photographers: Collab Media, Duka82, Gennadiy Kravchenko, mashabuba, Radist, recep-bg, Shalika Studio, Tara Carey, xalanx

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# SEXUAL VIOLENCE IN EURASIA: MOVING TOWARDS A CONSENT-BASED DEFINITION

2	<b>ABOUT EQUALITY NOW</b>	21	<b>BRINGING DEFINITIONS OF SEXUAL VIOLENCE IN LINE WITH INTERNATIONAL STANDARDS IN EURASIA</b>
2	<b>ACKNOWLEDGEMENTS</b>		
4	<b>INTRODUCTION</b>	22	The Need For Legal and Practice Change and How This Would Look
5	<b>DEFINITION OF RAPE UNDER INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW AND BEST PRACTICE</b>	22	Introduction of a Consent-Based Definition of Sexual Violence
6	INTERNATIONAL HUMAN RIGHTS STANDARDS	22	Explicit criminalisation of causing another person to engage in non- consensual acts of a sexual nature with a third person
8	REGIONAL HUMAN RIGHTS STANDARDS	22	A person's free will should be assessed in the context of the surrounding circumstances
10	COUNTRY EXAMPLES: BELGIUM, MALTA AND SWEDEN	23	The "helpless state" should include many other reasons a victim might not have been able to resist
10	Belgium	23	Evidence of additional force or violence should not be required
11	Malta	23	Ensure the effective implementation of progressive legislation in Ukraine
11	Sweden	24	Interpreting Existing Legal Provisions In Line With International Human Rights Standards
12	<b>DEFINITION OF SEXUAL VIOLENCE UNDER NATIONAL LAWS OF GEORGIA, KAZAKHSTAN, KYRGYZSTAN, UKRAINE, AND UZBEKISTAN</b>	24	Rape
13	DEFINITIONS OF SEXUAL VIOLENCE AND CHALLENGES	24	Violence and evidentiary requirements
13	Rape	24	Threat of violence
13	Assault of a sexual nature	24	Abusing the helpless state of the victim
14	Compulsion/coercion into sexual intercourse or other acts of a sexual nature and committing acts against a third person	25	Penetration/sexual intercourse
15	Marital and Intimate Partner Rape	25	Assaults of a sexual nature
17	CHALLENGES IN THE IMPLEMENTATION OF EXISTING DEFINITIONS OF SEXUAL VIOLENCE	26	<b>CONCLUSION AND RECOMMENDATIONS</b>
17	"Violence" is primarily interpreted as the use of physical force	29	<b>ANNEX - LEGISLATION</b>
18	Limited interpretation of 'threat of violence'	30	UKRAINE
19	"Abusing the helpless state of the victim/ survivor" provisions overlook many other reasons a victim might not have been able to resist	31	GEORGIA
20	Implementation Challenges of Ukraine's Consent-Based Definition of Rape	32	KYRGYZSTAN
		34	UZBEKISTAN
		35	KAZAKHSTAN





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# INTRODUCTION

*This report examines challenges in the way sexual violence crimes are defined in the criminal codes of and interpreted in **Georgia, Kazakhstan, Kyrgyzstan, Ukraine, and Uzbekistan.***

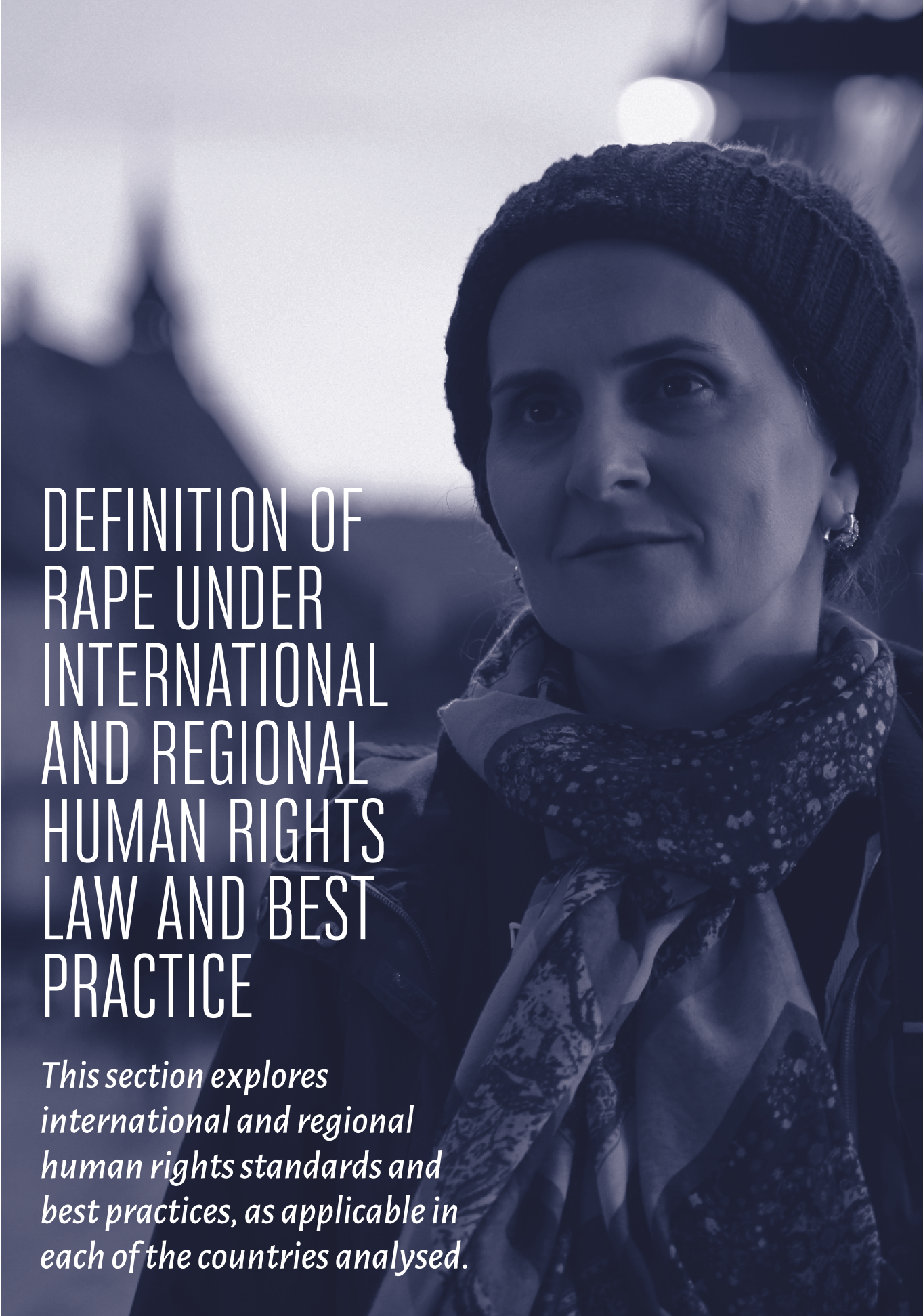
Amendments to these provisions are suggested, as well as ways, pending legal reform, in which the current provisions could be interpreted to ensure effective compliance with international and regional human rights standards which are binding on the States under review. The report mainly focuses on provisions regarding adult victims/survivors of sexual violence.

The first section provides an overview of international and regional standards and best practices for how sexual violence offences should be defined and interpreted. The

second section looks at the definitions of sexual violence crimes under the national laws of Georgia, Kazakhstan, Kyrgyzstan, Ukraine, and Uzbekistan and underlines the challenges in implementing these provisions. The third section addresses how existing legislation in these countries should be amended to comply with regional and international human rights standards and explains how current legislation could be interpreted to ensure better access to justice for victims/survivors now.

With the exception of Ukraine, the definitions of sexual violence provisions in these countries violate regional and international human rights standards as they do not appropriately criminalise and punish all acts of sexual violence. This provides several opportunities for perpetrators to escape criminal liability or punishment and effectively denies victims/survivors of sexual violence access to justice.

Specifically regarding Ukraine, the report provides recommendations for how sexual violence provisions should be interpreted and amended in line with international human rights standards, and how its definition of rape should be properly understood and implemented by the criminal justice system.



# DEFINITION OF RAPE UNDER INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW AND BEST PRACTICE

*This section explores international and regional human rights standards and best practices, as applicable in each of the countries analysed.*

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## INTERNATIONAL HUMAN RIGHTS STANDARDS

International human rights standards and international criminal law have evolved over the years to coherently and firmly recognise that a definition of rape based on needing to prove physical violence, coercion, threats and/or resistance by the victim/survivor does not adequately provide access to justice to victims/survivors of sexual violence.<sup>1</sup> Rape is inherently a violent act, and there should be no requirement in law to demonstrate that the perpetrator used additional violence or force.

The jurisprudence of the *ad hoc* tribunals for the Former Yugoslavia<sup>2</sup> and Rwanda<sup>3</sup> have laid down important precedent by stating that the victim/survivor's consent should not be taken into account if the circumstances deprived them of being able to give "voluntary and genuine consent" where the offender used "force, threat of force

or coercion" or when "taking advantage of a coercive environment".<sup>4</sup> Moreover, consent cannot be considered voluntary or free if it is given when coercive circumstances are in place.

All five states reviewed in this paper have ratified the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, which requires all States to "repeal all national penal provisions which constitute discrimination against women".<sup>5</sup> This obligation, in conjunction with the **CEDAW Committee's General Recommendations 19 and 35**, requires all States to repeal any discriminatory definitions of rape and other forms of sexual violence, as well as any procedural laws under which sexual violence is prosecuted and punished.

<sup>1</sup> CEDAW Committee, 'General recommendation No. 35' (2017); CEDAW Committee, *Karen Tayag Vertido v the Philippines* (CE-DAW/C/46/D/18/2008); Prosecutor v Jean-Paul Akayesu (Judgment), ICTR-96-4-T (2 September 1998); Prosecutor v Kunarac, Kovac and Vukovic (Judgment), IT-96-23 & IT-96-23/1-A (12 June 2002); UN Women, 'UN Handbook for Legislation on Violence against Women' (2012), available at: [https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/12/UNW\\_Legislation-Handbook%20pdf.pdf](https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/12/UNW_Legislation-Handbook%20pdf.pdf); UN Women, 'Virtual Knowledge Center to End Violence against Women and Girls', 'Legislation' section, available at: <http://www.endvawnow.org/en/modules/view/8-legislation.html>

<sup>2</sup> International Tribunal for the Former Yugoslavia, Prosecutor v. Kunarac et al., Case No. IT-96-23-T & IT-96-23/1-T, Judgment, 22 February 2001

<sup>3</sup> International Criminal Tribunal for Rwanda, Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, 2 September 1998

<sup>4</sup> *ibid.* paras. 686 and 688

<sup>5</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 03 September 1981) 1249 UNTS 1 (CEDAW), Art. 2

The **CEDAW Committee** has developed jurisprudence which recognises the importance of adopting a definition of rape which requires a lack of consent and incorporates a range of coercive circumstances in which consent should be considered invalid.

In the case of *Karen Tayag Vertido v The Philippines*,<sup>6</sup> the CEDAW Committee stressed that “there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence”.<sup>7</sup> It clarified that “rape constitutes a violation of women’s right to personal security and bodily integrity, and that its essential element was lack of consent.”<sup>8</sup>

The Philippines was subsequently found in violation of its obligations to ensure the effective protection of women through failing to repeal discriminatory laws and practices, and maintaining gender-stereotyped cultural practices.<sup>9</sup> The Committee, therefore, suggested:

*“(i) Review of the definition of rape in the legislation so as to place the lack of consent at its centre;*

*(ii) Removal of any requirement in the legislation that sexual assault be committed by force or violence, and any requirement of proof of penetration, and minimization of secondary victimization of the complainant/survivor in proceedings by enacting a definition of sexual assault that either:*

*a. Requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or*

*b. Requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances”<sup>10</sup>*

Since *Vertido*, the CEDAW Committee has reinforced and broadened this standard. In 2017, it recommended to States to ensure that their definitions of sexual crimes, including marital and acquaintance/date rape, should be based on “lack of freely given consent, and takes account of coercive circumstances”.<sup>11</sup> Coercive circumstances are still relevant for understanding and contextualising the lack of consent.

In 2019, the **Platform of 7 independent United Nations and regional expert mechanisms on violence against women and women’s rights** jointly called upon all States and relevant stakeholders worldwide to act against rape as a form of gender-based violence and a human rights violation and to ensure that the definition of rape is based on the absence of consent, in line with international standards.<sup>12</sup>

The **Hague Principles on Sexual Violence** (2019) provide a non-exhaustive list of factors which may be relevant to the determination of whether an act was committed without such consent, e.g., the vulnerability of the affected person due to factors considered by the perpetrator to be strategic advantages; any type of dependency on the perpetrator; an awareness that the perpetrator has previously used violence against the affected person, or a third party, as punishment for non-compliance with the perpetrator’s demands.<sup>13</sup>

<sup>6</sup> CEDAW Committee, *Karen Tayag Vertido v the Philippines* (CEDAW/C/46/D/18/2008)

<sup>7</sup> *ibid.* para. 8.5

<sup>8</sup> *ibid.* para. 8.7

<sup>9</sup> Violation of Art. 2(c) and (f) and Art. 5(a) read in conjunction with Art. 1 of the CEDAW and General Recommendation No. 19 of the CEDAW Committee

<sup>10</sup> CEDAW Committee, *Karen Tayag Vertido v the Philippines* (CEDAW/C/46/D/18/2008), para. 8.9(b). In the same vein, the UN’s Handbook for Legislation on Violence against Women recommends States remove the requirement that sexual assault must be committed through the use of force or violence and should instead enact definitions that either “Requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or Requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances”. UN Women, ‘UN Handbook for Legislation on Violence against Women’ (2012), available at: [https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/12/UNW\\_Legislation-Handbook%20pdf.pdf](https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/12/UNW_Legislation-Handbook%20pdf.pdf), Chapter 3.4.3.1

<sup>11</sup> CEDAW Committee, ‘General recommendation No. 35’ (2017), para. 29(e)

<sup>12</sup> OHCHR, ‘International Day on the Elimination of Violence against Women 25 November 2019’ (22 November 2019), available at: <https://www.ohchr.org/en/press-releases/2019/11/international-day-elimination-violence-against-women25-november-2019>

<sup>13</sup> ‘The Hague Principles on Sexual Violence’, available at: <https://4genderjustice.org/ftp-files/publications/The-Hague-Principles-on-Sexual-Violence.pdf>, the Civil Society Declaration on Sexual Violence, Part 5



# REGIONAL HUMAN RIGHTS STANDARDS

While only Georgia and Ukraine from the countries of focus in this report are members of the Council of Europe and therefore bound to the Council of Europe's human rights system, all States can look to these human rights standards as they also reflect the principles set by the international instruments the remaining countries are bound to. As such, all countries should make improvements to their national laws and procedures to ensure continuing protection for victims/survivors of gender-based and sexual violence.

The **Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)**, which has been ratified by Georgia and Ukraine, is the first international human rights treaty of its kind in that its provisions specifically require States to enact a definition of sexual violence, including rape, as follows:

## **Article 36 – Sexual violence, including rape**

*1. Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:*

- a) engaging in non consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;*
- b) engaging in other non consensual acts of a sexual nature with a person;*
- c) causing another person to engage in non consensual acts of a sexual nature with a third person.*

*2. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.*

*3. Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law.*



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Essentially, States should undertake a “context-sensitive assessment of the evidence in order to establish on a case-by-case basis whether the victim has freely consented to the sexual act performed.” This assessment “must recognise the wide range of behavioural responses to sexual violence and rape which victims exhibit and shall not be based on assumptions of typical behaviour in such situations”.<sup>14</sup> In determining whether consent was demonstrated, investigators, prosecutors and judges should not be influenced by gender stereotypes and rape myths and should recognise that there is no ‘typical behaviour’ when responding to sexual violence.<sup>15</sup>

The Istanbul Convention is also explicit in requiring States to ensure that their criminalisation of the intentional conduct, as per para. 1 of Article 36, is applicable to all non-consensual sexual acts, irrespective of the relationship between the perpetrator and the victim. It is recognised that sexual violence and rape are a “common form of exerting power and control in abusive relationships and are likely to occur during and after a break-up. It is crucial to ensure that there are no exceptions to the criminalisation and prosecution of such acts when committed against a current or former spouse or partner as recognised by internal law.”<sup>16</sup>

Further, the jurisprudence of the **European Court of Human Rights (the Court)** sets an important precedent in relation to States’ responsibility to ensure victims/survivors of sexual violence are able to access justice.

In the seminal case of *M.C. v Bulgaria*, the Court concluded that “any sexual penetration without the victim’s consent constitutes rape and that *consent must be given voluntarily, as a result of the person’s free will, assessed in the context of the surrounding circumstances*”.<sup>17</sup> The applicant in this case did not physically resist the advances and explained that she did not do so because “she had not had the strength

to resist violently or scream. Her efforts to push P. back had been unsuccessful, as he had been far stronger”.<sup>18</sup> The Court recognised that victims/survivors of sexual violence, and in particular adolescent girls, react in different ways to coercive and intimidating circumstances, such as being intentionally led to a depopulated place by older men. The Court further underlined that “any rigid approach to the prosecution of sexual offences such as requiring proof of physical resistance in all circumstances risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual’s sexual autonomy.”<sup>19</sup> States have an obligation, therefore, to criminalise and effectively prosecute “any non-consensual sexual act, including in the absence of physical resistance by the victim.”<sup>20</sup> As a result, it is vital that lack of consent, and not violence or resistance, is considered the constituent element of the definition of rape.

Moreover, it is clear from the jurisprudence of international and applicable regional human rights mechanisms that requiring additional violence or force should not be an element of any legal definition of rape, as rape itself is a violent act. Instead, as put forward by Article 46 of the Istanbul Convention, aggravating circumstances (such as the use of additional violence) may be taken into consideration in the determination of the penalty for sexual offences.<sup>21</sup> Other examples include where the act was committed by two or more people, or repeatedly, or with the use or threat of use of a weapon.<sup>22</sup>

<sup>14</sup> Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence (adopted on 11 May 2011, entered into force on 01 August 2014) CETS No 210 (‘Explanatory Report to the Istanbul Convention’), para. 192

<sup>15</sup> *Karen Tayag Vertido v the Philippines* (CEDAW/C/46/D/18/2008) paras. 3.5.1-3.5.8 on examples of gender stereotypes

<sup>16</sup> Explanatory Report to the Istanbul Convention, para. 194

<sup>17</sup> *M.C. v Bulgaria* Application No. 39272/98 (ECtHR, 4 December 2003), paras. 102-107 and 163 (emphasis added)

<sup>18</sup> *ibid.* para. 17

<sup>19</sup> *ibid.* para. 166

<sup>20</sup> *ibid.*

<sup>21</sup> Explanatory Report to the Istanbul Convention, para. 234

<sup>22</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, ‘Rape as a grave, systematic and wide-spread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention’ (A/HRC/47/26), para. 90(b)

# COUNTRY EXAMPLES:<sup>23</sup> BELGIUM, MALTA AND SWEDEN

There are two distinct standards implemented by States which have adopted a consent-based definition of rape: the veto model of consent, “no means no”, and the affirmative model of “yes means yes”. According to the “no means no” model, sex is assumed to be consensual until someone expresses, either through words or actions, ‘no’.<sup>24</sup> This standard, however, implies that in the absence of evidence of an explicit “no”, there is consent. This has led to an over-reliance on evidence of resistance by the victim/survivor which is contrary to the international standards above.

On the other hand, the “yes means yes” model requires parties to express their consent, either through actions or words or otherwise, to the sexual activity. The “no means

no” model has been criticised by the **Council of Europe’s Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)**. It further emphasised that the circumstances under which consent is given should be assessed during the criminal proceedings and that evidence should therefore be judged according to its context.<sup>25</sup>

GREVIO has identified **Belgium, Malta and Sweden** as countries with promising practices, in line with international human rights standards, which have an offence of sexual violence based on the lack of freely given consent.



## BELGIUM

Belgium amended its definition of rape in 2018 and Article 375(1) of the Criminal Code defines rape as “any act of sexual penetration, of whatever nature and by whatever means, committed in respect of a person who has not given consent”. Under the second paragraph of this Article, consent is not considered to have been given if the crime is committed by violence, coercion or deceit, or is made possible by the infirmity or physical or mental impairment of the victim. These circumstances however are not considered exhaustive and do not constitute the essential elements of the offence.<sup>26</sup>

<sup>23</sup> Based on GREVIO, ‘Mid-term Horizontal Review of GREVIO baseline evaluation reports’ (February 2022), available at: <https://rm.coe.int/prems-010522-gbr-grevio-mid-term-horizontal-review-rev-february-2022/1680a58499>

<sup>24</sup> Criminal Codes of Germany (Section 177) and Austria (Art. 205(a))

<sup>25</sup> In GREVIO, ‘Mid-term Horizontal Review of GREVIO baseline evaluation reports’ (No. 23), it further notes its concern with the manner in which Austria defines consent as it is based on the ‘no means no’ model which requires the victim to express “her opposing will verbally or otherwise, hence not covering instances where the victim remains passive but does not consent”, p. 108

<sup>26</sup> GREVIO, ‘Baseline Evaluation Report Belgium’ (adopted on 26 June 2020), available at: <https://rm.coe.int/grevio-report-on-belgium/16809f9a2c, para. 155>





## MALTA

Further to reforms of the Criminal Code in 2018, rape is now based on lack of consent. Article 198 of the Criminal Code specifies that there is a presumption of “lack of consent, unless consent was given voluntarily, as the result of the person’s free will, assessed in the context of the surrounding circumstances and the state of that person at the time, taking into account that person’s emotional and psychological state, amongst other considerations”.<sup>27</sup>

The Criminal Code provides that rape committed by former or current spouses or partners qualifies as an aggravating circumstance. It further covers non-consensual acts of a sexual nature that fall short of penetration through the offence of non-consensual acts of a sexual nature (Article 207).

## SWEDEN

All non-consensual sexual acts are criminalised. Sections 1 and 2 of Chapter 6 of the Criminal Code on sexual offences, which came into force on 1 July 2018, criminalise intercourse or any other sexual act with a person “who is not participating voluntarily”. Participation in a sexual act must be voluntary and this must be perceptible. Passivity cannot *per se* be considered a sign of voluntary participation.

The Swedish National Council for Crime Prevention (Brå) undertook a review of the effectiveness of the new law in 2020, and in particular, looked into how voluntary participation was being interpreted. It investigated the significance of previous intimate contact, what constitutes an ‘adequate expression of refusal to consent’ and passivity. Additionally, Brå studied cases where consent has not been deemed adequate for the participation to be considered voluntary.<sup>28</sup>

More cases will have to be brought forward to develop the jurisprudence and understanding of voluntary participation, but there have been notable changes as the new law criminalises a range of situations which were not previously punished. These include situations where there was no use of violence or threats and the victim was not considered to have been in a particularly vulnerable situation or position of dependence, as well as cases of “surprise rape” (where sexual penetration was committed unexpectedly) and where the victim remained passive for a variety of reasons. The new legislative amendments also resulted in prosecutors deciding to prioritise the prosecution of sexual violence cases that had not previously fallen within the definition of rape.


This being a very recent development, GREVIO has not had the opportunity to effectively assess its implementation. GREVIO nonetheless points out that with the new rape legislation the onus is on the perpetrator to ensure that all sexual acts are engaged in voluntarily. This shift in perspective is what is needed to move away from focusing on the behaviour of the victim, including her appearance and actions prior, during and after the act.<sup>29</sup>



<sup>27</sup> GREVIO, ‘Baseline Evaluation Report Malta’ (adopted on 15 October 2020), available at: <https://rm.coe.int/grevio-inf-2020-17-malta-final-report-web/1680a06bd2, paras. 169-170>

<sup>28</sup> The Swedish National Council for Crime Prevention (Brå), ‘The new consent law in practice An updated review of the changes in 2018 to the legal rules concerning rape English summary of Brå report 2020:6’, available at: [https://bra.se/download/18.7d27eb-d916ea64de53065c/1614334312744/2020\\_6\\_The\\_new\\_consent\\_law\\_in\\_practice.pdf, p. 6](https://bra.se/download/18.7d27eb-d916ea64de53065c/1614334312744/2020_6_The_new_consent_law_in_practice.pdf, p. 6)

<sup>29</sup> GREVIO, ‘Baseline Evaluation Report Sweden’ (published on 21 January 2019), available at: <https://rm.coe.int/grevio-inf-2018-15-eng-final/168091e686, paras. 181-183>



# DEFINITION OF SEXUAL VIOLENCE UNDER NATIONAL LAWS OF GEORGIA, KAZAKHSTAN, KYRGYZSTAN, UKRAINE, AND UZBEKISTAN

*The first subsection provides definitions of sexual violence in the five respective countries and analyses the extent to which the definitions comply with the above-referenced regional and international human rights standards. The second subsection identifies challenges in the implementation of the existing definitions.*

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# DEFINITIONS OF SEXUAL VIOLENCE AND CHALLENGES

The criminal codes of the countries of Eurasia that are analysed in this report criminalise three main types of sexual violence: rape, assault of a sexual nature, compulsion or coercion into sexual intercourse of acts of a sexual nature.

## Rape

**Georgia (Article 137); Kazakhstan (Article 120); Kyrgyzstan (Article 154); Ukraine (Article 152); Uzbekistan (Article 118)**

The constituent elements of the definitions of rape in the Criminal Codes of **Georgia, Kazakhstan, Kyrgyzstan** and **Uzbekistan** are violence, threat of violence, or abusing the helpless condition of the victim. The crime of rape in **Kazakhstan, Kyrgyzstan**, and **Uzbekistan** is understood to only cover penile-vaginal penetration, rather than other orifices of another person's body with any bodily part or object which that person has not consented to.<sup>30</sup>

The definitions of rape in the Criminal Codes of **Georgia** and **Ukraine** do not make a distinction between the means of assault.<sup>31</sup>

**Ukraine**, which ratified the Istanbul Convention in June 2022, adopted a consent-based definition of rape in January 2019, in line with international human rights standards. Thus, according to Article 152(1) of the Ukrainian Criminal Code, rape is defined as “sexual acts involving vaginal, anal or oral penetration into the body of another person using the genitals or any other item, without the voluntary consent of the victim.” The explanatory note to Article 152 states that “[c]onsent shall be deemed voluntary if it is the result of a person's free act and deed, with due account of attending circumstances.”<sup>32</sup> The Supreme Court of Ukraine emphasised that the new definition of rape is based on the “presumption of the lack of consent” of the victim.<sup>33</sup> It further noted<sup>34</sup> that Article 152 requires that acts of a sexual nature are committed with a clearly expressed, convincing voluntariness, such that the other person would

understand that the person desires sexual penetration of her or his body. Expression of consent can be verbal or through gestures, facial expressions, or other “conclusive actions”.<sup>35</sup> Consent must be supported by evidence in criminal proceedings, in line with the presumption of non-consent by the victim as provided in Article 152.

The direct rape intent can also be established if the perpetrator did not attach sufficient importance to determining whether or not the victim consented; if either they did not think about whether the victim consented at all, or if after realising that the victim probably did not consent, he continued to carry out the sexual assault.<sup>36</sup>

## Assault of a sexual nature

**Georgia (Article 138); Kazakhstan (Article 121); Kyrgyzstan (Article 155); Ukraine (Article 153); Uzbekistan (Article 119).**

‘Assaults of a sexual nature’<sup>37</sup> which do not currently fall under the definition of rape in the Criminal Codes of **Kazakhstan, Kyrgyzstan, and Uzbekistan**, still require the sexual act to have been committed with the use of violence, threat of violence or abusing the helpless state of the victim. However, in contrast to the behaviour criminalised under the offence of rape, this provision applies to penile and non-penile penetration of *other orifices* and can also be committed by persons of the same sex. Derogatory terminology is used in the definition of the crime, namely “sodomy, lesbianism or other acts of a sexual nature in a perverted form”<sup>38</sup> and the crime carries similar criminal penalties as rape.

Contrastingly, in **Georgia** and **Ukraine**, ‘another act of a

<sup>30</sup> Istanbul Convention, Art. 36(1)(a) covers “engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object”

<sup>31</sup> The detailed analysis of Georgian legislation is provided in ‘A Manual For Practitioners In Georgia’ (No. 31), p. 7-9, available at: <https://www.equalitynow.org/resource/manualgeorgia/>

<sup>32</sup> Note to Art. 152 of the Criminal Code of Ukraine

<sup>33</sup> Decision of the Supreme Court of Ukraine by the panel of judges of the Third Trial Chamber of the Criminal Court of Cassation from 8 December 2021, case No. 566/1420/19

<sup>34</sup> *ibid.*

<sup>35</sup> *ibid.* “конклюдентними діями” as noted in the original text

<sup>36</sup> *ibid.*

<sup>37</sup> This description covers the behaviour being criminalised in these articles but each Criminal Code analysed uses a different title to cover the same behaviour. For example, in Uzbekistan, Article 119 is entitled ‘Satisfaction of a sexual need in an unnatural form with the use of violence’, while in Kazakhstan, Article 121 is entitled ‘Violent acts of a sexual nature’

<sup>38</sup> Article 155 of the Criminal Code of Kyrgyzstan and Article 121 the Criminal Code of Kazakhstan. Similarly, Article 119 of the Criminal Code of Uzbekistan covers “satisfaction of sexual need in an unnatural form” which covers the same behaviour

sexual nature' and 'sexual violence', respectively, relate to sexual acts without penetration. The definition of "Another act of a sexual nature" in the Criminal Code of Georgia is defined as committed with "violence, under threat of violence, or a helpless condition of a victim". This Article applies to non-penetrative, physical contact (not necessarily contact on the skin - it can be made through clothing) of a sexual nature.

In **Ukraine**, according to Article 153(1) of its Criminal Code, the crime of sexual violence is any act of a sexual nature that is not related to penetration into another person's body, without the voluntary consent of the victim.

### Compulsion/coercion into sexual intercourse or other acts of a sexual nature and committing acts against a third person

**Georgia (Article 139); Kazakhstan (Article 123); Kyrgyzstan (Article 156); Ukraine (Article 154); Uzbekistan (Article 121)**

In the Criminal Codes of **Georgia, Kazakhstan** and **Kyrgyzstan**, the crime of compulsion or coercion<sup>39</sup> into sexual intercourse or other acts of a sexual nature involves any of the types of behaviour criminalised by the offences of rape and assault of a sexual nature, but that have been committed:

- using either blackmail or the use of the material or other dependence of the victim (**Kyrgyzstan**);
- using either blackmail, threats to destroy, damage, or confiscate property, or the material or other dependence of the victim (**Kazakhstan**);
- using the threat of damaging property, disclosing defamatory information, information representing private life or such information that may substantially affect the right of that person, and/or by abusing a helpless condition of a person affected, or material, official or other kind of dependence (**Georgia**);
- where the victim was in official, material or other dependence on the perpetrator (**Uzbekistan**).

This offence is classified as a "less serious crime" and carries lower penalties, despite being classified as rape under regional and international standards.<sup>40</sup>

The problematic assumption behind these definitions is that if an act is not committed using physical violence or serious threats to life and health, it cannot amount to rape and could only be criminalised as a minor crime. This presumption ignores other, and many times equally serious, means which perpetrators use to overcome the genuine and free will of the victim. A similar two-crime approach (that the offences of rape and assault of a sexual nature may apply only to cases in which violence, threat of violence or abusing the helpless state of the victim is used) has been criticised by GREVIO<sup>41</sup> which stated that this approach illustrates an "improper understanding of the use of force and intimidation and the reactions this may trigger in victims of rape".<sup>42</sup>

In line with its previous findings, in **GREVIO's** baseline evaluation of **Georgia**:

256. GREVIO notes with concern that the Georgian legislation currently incriminates two different types of acts of rape, one of which is termed rape (Article 137) and provides for more serious penalties, and one that is termed coercion to intercourse (Article 139) and is defined as a less serious crime, mainly because it does not require the use of force or threat of immediate force. Instead of ensuring through the conceptualisation of the offences of rape and sexual violence that any sexual act performed on another person without his or her freely given consent is a form of criminal behaviour as required by Article 36 of the Istanbul Convention, the applicable definitions and differences in their sentencing ranges reinforces the myth that rape always involves physical force or threat thereof. However, according to the authorities, context-based investigations have been conducted in recent years with a special focus on the circumstances that may minimise the victim's free will.

257. Moreover, they reinforce the notion of a hierarchy of rape victims, where one set of circumstances such as threats of damaging property or disclosing defamatory

<sup>39</sup> It is noteworthy that the above articles also criminalise sexual coercion taken alone, falling short of penetration or another contact of a sexual nature

<sup>40</sup> In Georgia, non-aggravated rape is punishable up to eight years of imprisonment; non-aggravated coercion is punished up to 5 years of imprisonment. In Kyrgyzstan, rape – up to 8 years; coercion – up to 5 years. In Uzbekistan, rape – up to 7 years; coercion – either compulsory community service up to 300 hours, or correctional labour up to two years. In Kazakhstan, rape – up to 8 years; coercion – up to 3 years

<sup>41</sup> GREVIO, 'Baseline Evaluation Report Spain' (adopted on 15 October 2020) available at: <https://rm.coe.int/grevio-s-report-on-spain/1680ao8a9f>

<sup>42</sup> *ibid.* para. 220



*or personal information or the exploitation of a dependency on the perpetrator, may result in much lower sentences, or merely a fine, than another set of circumstances, for example that of threats of physical harm. GREVIO points to the fact that in both sets of circumstances, the victim does not consent to the act, which is what criminal liability should hinge upon. Where the circumstances of the act are particularly violent, abusive and traumatising, aggravating circumstances should be applied to ensure a sanction commensurate with the gravity of the act – and in accordance with the requirements of Article 46 of the Istanbul Convention. It is therefore of crucial importance to move towards a consent-based definition of rape.”<sup>43</sup>*

The Istanbul Convention, as noted above, requires States to criminalise causing another person to engage in non-consensual acts of a sexual nature with a third person.<sup>44</sup> GREVIO explains that this offence “covers scenarios in which the perpetrator is not the person who performs the sexual act but who causes the victim to engage in sexual activity with a third person, for example as part of the control and abuse in intimate partner violence.”<sup>45</sup> GREVIO further explains that, with this offence, the scope of criminal intent is wider than that with the crime of aiding and abetting: “It would not only cover the intent to help the commission of an offence, for example, a rape, and the intent of the rape as such, but would also extend to the intent of causing both. In other words, the intentional conduct covered by Article 36, paragraph 1c, aims at capturing more than the instigation or facilitating of a crime but the malevolent behaviour of abrogating a woman’s sexual self-determination.”<sup>46</sup>

In line with the above international standards, the offence of compulsion/coercion under the **Ukrainian** Criminal Code (Article 154) criminalises forcing a person without their voluntary consent to engage in an act of a sexual nature with *another person*. Aggravated forms of such coercion that are criminalised are on the basis of

financial or professional dependency (Article 154(2)) and accompanied by threats of destruction, damage or seizure of the property of the victim or her/his close relatives, or with the threats of disclosure of information disgracing her/him or her/his close relatives (Article 154(3)). However, coercion is still classified as a less serious crime than rape or sexual violence (up to five years of imprisonment for non-aggravated rape as opposed to imprisonment for a term of up to six months for coercion).

There are no provisions in the Criminal Codes of **Georgia, Kazakhstan, Kyrgyzstan, and Uzbekistan** criminalising “causing another person to engage in non-consensual acts of a sexual nature with a third person” as provided in the Istanbul Convention. Articles on compulsion or coercion from the Criminal Codes of these countries, examined above, are not intended to cover this specific behaviour.

### Marital and intimate partner rape

While there is no explicit recognition or criminalisation of rape committed against a current or former spouse or current or former partner in **Georgia, Kazakhstan, Kyrgyzstan, or Uzbekistan** (although, the law in Georgia treats rape against a family member as aggravated rape<sup>47</sup>), the general provisions of the crime of rape apply regardless of the relationship between the victim and the perpetrator.

**Ukraine** specifically details rape and sexual violence committed in respect of a spouse or former spouse or another person with whom the offender is or was in a family or close relationship as an aggravating factor with an increased penalty.<sup>48</sup>

In **Georgia**, under Article 53 of the Criminal Code, a crime against any family member<sup>49</sup> is an aggravating factor for all crimes, including sexual violence. Another aggravated form of rape is one which is “committed against a minor using trust and an authoritative and influential position”.<sup>50</sup>

<sup>43</sup> GREVIO, ‘Baseline Evaluation Report Georgia’, (adopted on 13 October 2022), available at: <https://rm.coe.int/grevio-report-on-georgia-2022/1680a917aa>, p. 51

<sup>44</sup> Istanbul Convention, Art. 36 para. 1(c)

<sup>45</sup> GREVIO, ‘Baseline Evaluation Report Georgia’, (adopted on 13 October 2022), available at: <https://rm.coe.int/grevio-report-on-georgia-2022/1680a917aa>, para. 259

<sup>46</sup> *ibid*

<sup>47</sup> Criminal Code of Georgia, Art.137(3)(e)

<sup>48</sup> Criminal Code of Ukraine, Art. 152(2) and 153(2)

<sup>49</sup> Under Art. 11 of the Criminal Code of Georgia, family member is defined as follows: “a mother, father, grandfather, grandmother, spouse, person in an unregistered marriage, child (stepchild), foster child, foster carer (foster mother, foster father), stepmother, stepfather, grandchild, sister, brother, parent of the spouse, parent of the person in an unregistered marriage, spouse of the child (including the one in an unregistered marriage), former spouse, person who previously was in an unregistered marriage, guardian, custodian, supporter, person under guardianship and custodianship, beneficiary of support, as well as other persons that maintain or maintained a common household.”

<sup>50</sup> Criminal Code of Georgia, Art. 138(3)(b) and 137(4)(d)



Photo by Ehimealor Akhere Unuabona

In **Uzbekistan**, rape committed by a close relative is considered an aggravated form of rape.<sup>51</sup> However, this is understood as a close blood relative, not a spouse or an intimate partner.

In **Kazakhstan**, Article 120 (3-2(3)) of the Criminal Code specifically criminalises cases of rape against minors committed by a parent/step parent or another person in charge of the child's upbringing. Also, according to Article 54(1)(7) of the Code, the commission of a criminal offence against a person who is dependent on the perpetrator is an aggravating factor.

International standards recommend specifically criminalising sexual assault within a relationship either by: “[p]roviding that sexual assault provisions apply ‘irrespective of the nature of the relationship’ between the perpetrator and complainant; or stating that ‘no marriage or other relationship shall constitute a defence to a charge of sexual assault under the legislation.’”<sup>52</sup> Under the Istanbul Convention, an offence committed against a former or current spouse or partner should be an aggravating factor (Art. 46.a). Such a recognition of aggravating circumstances could help with preventing the crime from being overlooked and putting at risk the ongoing safety of the woman within the relationship concerned.

<sup>51</sup> Criminal Code Uzbekistan, Art. 118

<sup>52</sup> UN Women, ‘UN Handbook for Legislation on Violence against Women’ (2012), available at: [https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/12/UNW\\_Legislation-Handbook%20pdf.pdf](https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/12/UNW_Legislation-Handbook%20pdf.pdf), p. 24



# CHALLENGES IN THE IMPLEMENTATION OF EXISTING DEFINITIONS OF SEXUAL VIOLENCE

While existing definitions of sexual violence are problematic for the above-mentioned reasons, survivors' access to justice is further hindered by the excessive formalism of investigators, prosecutors and judges.

## **"Violence" is primarily interpreted as the use of physical force**

The notion of 'violence' in the definitions of sexual violence in **Georgia, Kazakhstan, Kyrgyzstan, and Uzbekistan** is narrowly interpreted as the use of *physical force* rather than also including psychological or economic harm or of any other form of coercion.

In **Georgian** judicial practice, violence is mostly understood as the use of physical force. Courts have interpreted this as slapping the victim's face,<sup>53</sup> kicking in the face, attempting to strangle using hands<sup>54</sup> and a belt and biting on different parts of the body,<sup>55</sup> pulling the victim's hair, hitting the victim's head with the back of a knife,<sup>56</sup> punching, biting the victim's cheeks and grabbing the victim's neck.<sup>57</sup> However, not all forms of physical violence may be deemed sufficient and acceptable for the courts to prove that rape has occurred, and it is sometimes the case that law enforcement looks for other particular types of injury. For example, in one case involving kidnapping and rape, the judge stated that although the victim "had some injuries on her body, ... these injuries were not typical of rape, since the rape injuries usually appear around the genitals and lower extremities".<sup>58</sup> On the other hand, the Court also said that the absence of such injuries would have been acceptable to the Court (meaning that, in the Court's

view, evidence of "typical" physical injuries is not always mandatory), but the judge was not persuaded that the victim physically resisted the perpetrator, as there were no signs of this on the perpetrator's body or any damage to the victim's clothes. The Court therefore determined that rape did not take place, since the judge considered that sexual intercourse with the kidnapped minor was voluntary and consensual and the victim was not in a helpless condition.<sup>59</sup> Instead, a conviction was only possible for the lesser crime of penetration of a sexual nature into the body of a person below 16 years of age, under Article 140 of the Criminal Code of Georgia.

According to the Council of Europe and Public Defender's Office joint study (2020) on the administration of justice on sexual violence crimes against women in Georgia, the "evidentiary requirements of criminal prosecution and judicial authorities are excessively strict, which leaves different forms of sexual violence unpunished. In particular, in such cases, justice is administered and the verdict of guilty is delivered only if there are physical injuries and biological material associated with a violent sexual act on the victim's body".<sup>60</sup>

Since the original case, there has been progress in Georgia<sup>61</sup> to align its interpretation of the law with its international obligations, specifically under the Istanbul Convention.

<sup>53</sup> Tbilisi City Court Judgment from 17 July 2020, case No.1/475-20; Tbilisi City Court Judgment from 13 January 2022, case No.1/3245-21

<sup>54</sup> Tbilisi City Court Judgment from 13 January 2022, case No.1/3245-21

<sup>55</sup> Telavi District Court Judgment from 10 December 2020, case No.1/189-20

<sup>56</sup> Tbilisi City Court Judgment from 23 April 2020, case No.1/4912-20

<sup>57</sup> Tbilisi City Court Judgment from 16 September 2021, case No.1/1894-21

<sup>58</sup> Bolnisi District Court Judgment from 22 April 2022, case No.1/322-20

<sup>59</sup> Bolnisi District Court Judgment from 22 April 2022, case No.1/322-20

<sup>60</sup> Public Defender of Georgia, CoE, 'The Administration of Justice on Sexual Violence Crimes Against Women in Georgia' (December 2020), available at: <https://rm.coe.int/sexual-violence-research-eng/1680a17b78>, p. 24. Also, in their shadow report to the CEDAW Committee during its review of Georgia, national and local human rights organisations claimed that "in [the] overwhelming majority of cases, sexual violence crimes are prosecuted and perpetrators are being convicted only when physical injuries are found on the body of the victim, as well as biological materials associated with a sexual act. Such practice leaves the vast number of sexual violence acts envisaged under the law (Articles 137-140 of Criminal Code of Georgia) to go unpunished in practice, because the authorities are solely investigating sexual violence crimes where the perpetrator used physical force and the victim physically resisted". 'Information on Georgia for consideration by the Committee on the Elimination of Discrimination against Women at the Pre-Sessional Working Group of its 81st Session (5 July - 9 July 2021)' (7 June 2021), available at: <https://equalitynow.storage.googleapis.com/wp-content/uploads/2021/10/18204235/Georgia-CEDAW-joint-submission-by-Equality-Now-partners.pdf>, p. 4

<sup>61</sup> In 2021-2022, over 400 investigators, prosecutors and judges were trained on sexual violence based on 'A Manual For Practitioners In Georgia' (No. 31). As a result, in 2021, as compared to 2020, the number of registered sexual violence crimes increased by 55%; the number of prosecution for sexual violence crimes increased by 76%; and the number of sexual violence cases resulting in conviction increased by 44%. As to first 6 months of 2022, as compared with first 6 months of 2021, number of rape convictions increased by 49%

As a consequence, the Court of Appeal overturned the original judgment and found the kidnapped minor girl had been raped under Article 137 of the Criminal Code of Georgia. The Court stated that it is essential for one person to penetrate into another person's body against her/his will to qualify the action as rape. The absence of that will automatically means that consent is not present, which in turn implies that there is violence or the threat of violence.<sup>62</sup>

In **Uzbekistan**, the definitions of violence referred to in the provisions dealing with sexual violence in the Criminal Code - Article 118 ('Rape'), Article 119 ('Satisfaction of sexual need in an unnatural form with the use of violence') and Article 121 ('Coercion of a woman to have sexual intercourse') - are provided by a Decree of the Supreme Court.<sup>63</sup> The Decree explains that "violence during rape or satisfaction of a sexual need in an unnatural form should be understood as the commission of such actions that are aimed at overcoming the resistance of the victim (hereinafter referred to as the victim), for example, striking, squeezing the airways, holding hands, feet, tearing off clothes and etc".<sup>64</sup> The Supreme Court also clarified that "violence ... in all cases must precede sexual intercourse or satisfaction of sexual needs in an unnatural form and may take place not only in relation to the victim herself, but also to close relatives and other persons in respect of whom the victim has a certain responsibility".<sup>65</sup> In **Kazakhstan**, the definition of violence was also similarly interpreted in a Decree of the Supreme Court.<sup>66</sup>

In **Kyrgyzstan**, local experts suggested that, similarly to other jurisdictions, law enforcement looks for evidence of *physical* violence against the victim.

The definitions of sexual violence in the **Ukrainian** Criminal Code do not require proof of use of violence and rely instead on proving that the sexual acts were committed without the voluntary consent of the victim.

The Supreme Court of Ukraine emphasised that the use of violence as a way of committing rape is not excluded from the new definition of rape, but is no longer a decisive or even a required factor: "violence during rape is not an end in itself, it has an auxiliary character in solving the intention of the rapist, ... the dominant crime-forming factor determining responsibility for rape is the lack of voluntary consent of the victim in relation to the actions of the rapist."<sup>67</sup> The Court stated that physical violence, threats, coercion or other exploitation pushed the victim into a form of extreme necessity such that she was forced to consent against her free will.<sup>68</sup>

### Limited interpretation of "threat of violence"

'Threat of violence' is also a constituent element of sexual violence offences in the Criminal Codes of **Georgia, Kazakhstan, Kyrgyzstan** and **Uzbekistan**. In practice, the definition of a 'threat' is limited to threats of murder or inflicting a serious bodily harm. Blackmail and some other forms of psychological violence as a means of committing rape would likely be prosecuted as compulsion or coercion.

In **Georgia**, 'threats' have mainly been interpreted as threats of death or bodily injury.<sup>69</sup> Threats of group violence and rape have also been considered as the means of rape.<sup>70</sup> If the perpetrator uses other forms of threats, such as the threat of damaging property, disclosing defamatory information, information about a person's private life or information that may substantially affect the victim's rights, the case has traditionally been prosecuted as sexual coercion within the meaning of Article 139 of the Criminal Code.

In **Uzbekistan**, a threat is defined as "the *intimidation* of the victim in order to stop their resistance by actions or statements that express the *real intention* of the perpetrator *to use physical violence*".<sup>71</sup> The Supreme Court

<sup>62</sup> Tbilisi Court of Appeals Judgement from 17 March 2022, case No.1b/1112-21

<sup>63</sup> Decree of the Supreme Court of the Republic of Uzbekistan "On judicial practice on cases of rape and satisfaction of sexual needs in an unnatural form" from 29 October 2010 No. 13

<sup>64</sup> *ibid.* para. 3

<sup>65</sup> *ibid.* para. 5

<sup>66</sup> Decree of the Supreme Court of the Republic of Kazakhstan "On certain issues of qualification of crimes related to rape and other violent acts of a sexual nature" from 11 May 2007 No. 4, para. 3

<sup>67</sup> Decision of the Supreme Court of Ukraine by the panel of judges of the Third Trial Chamber of the Criminal Court of Cassation from 7 December 2020, case No. 562/1629/17

<sup>68</sup> Decision of the Supreme Court of Ukraine by the panel of judges of the Third Trial Chamber of the Criminal Court of Cassation from 8 December 2021, case No. 566/1420/19

<sup>69</sup> Telavi District Court Judgment from 10 December 2020, case No.1/189-20; Tbilisi City Court Judgment from 23 April 2020, case No.1/4912-20; Tbilisi City Court Judgment from 17 July 2020, case No.1/475-20; Senaki District Court Judgment from 28 June 2021, case No.1/57; Gurjaani District Court Judgment from 26 November 2021, case No.1/142-2021

<sup>70</sup> Tbilisi City Court Judgment from 16 September 2021, case No. 1/1894-21

<sup>71</sup> Decree of the Supreme Court of the Republic of Uzbekistan "On judicial practice on cases of rape and satisfaction of sexual needs in

clarified that “threats in all cases must precede sexual intercourse”.<sup>72</sup> However, it also noted that “where the threat to kill, use violence or destroy property by fire, explosion or other generally dangerous means is made after rape or unnatural sexual intercourse has occurred with the aim, for example, of intimidating the victim and preventing publicity of the incident, *the offence*, if there are reasonable grounds to fear that the threat might be carried out, *amounts to a combination of the Criminal Code articles criminalising the offences in question* e.g., Article 112 (‘Threat of murder or violence’) and the relevant part of article 118 (‘Rape’) or 119 (‘Assault of sexual nature’).<sup>73</sup> A similar definition of a threat is given in a Decree of the Supreme Court of **Kazakhstan**.<sup>74</sup>

In **Kyrgyzstan**, the definition of rape specifically differentiates between various types of threats which can be used by the perpetrator as a means of committing rape. Therefore, if the perpetrator threatened the use of violence which is not dangerous to the life and health of the victim or other person, the case of rape will be prosecuted under Article 154(1) of the Criminal Code (rape without aggravating circumstances). If the perpetrator threatened to use violence which is dangerous to life and health, the case of rape is instead prosecuted under Article 154(2)(3) (rape with aggravating circumstances).

**“Abusing the helpless state of the victim/survivor” provisions overlook many other reasons a victim might not have been able to resist**

Abusing the helpless state of the victim is another constituent element of rape in **Georgia, Kazakhstan, Kyrgyzstan, and Uzbekistan**.

In the judicial practices of **Uzbekistan**, a helpless state is defined as “a state of the victim when, due to her physiological, physical or mental state (physical disabilities, mental disorder, young or old age, morbid or unconscious state, a state of severe intoxication under the influence of alcohol, narcotic drugs or psychotropic substances) she was not able to defend herself, actively resist the perpetrator, or could not understand the nature and significance of the actions committed against her or control her actions. At the same time, the perpetrator must be aware that the victim is in a helpless state”.<sup>75</sup>

The judicial practice of **Kazakhstan** provides a similar definition.<sup>76</sup> However, it also clarifies that “young age” within the meaning of the helpless state means below the age of 14.<sup>77</sup>

In **Kyrgyzstan**, there is no specific clarification on the meaning or interpretation of helpless state of a victim of rape. However, a local expert has stated that, in cases of sexual violence, children under 11 years old are normally seen as being in a helpless state.

In **Georgia**, the notion of a helpless state is applied to persons who are not physically capable of giving consent or are unable to comprehend the situation because of their mental state.<sup>78</sup> Helplessness is defined as a situation in which different factors (age, disability, being under the influence of alcohol or psychoactive substances, etc.) prevent the victim from understanding the meaning of the actions that s/he is subjected to and cause her/him to lack the capacity to resist the perpetrator. Committing rape against a person with a disability can also be considered as rape by abusing a helpless condition.<sup>79</sup> In judicial practice, cases of rape by abusing a helpless condition have been prosecuted with respect to minors where children were

an unnatural form” from 29 October 2010 No. 13, para. 4

<sup>72</sup> *ibid.* para. 5

<sup>73</sup> *ibid.*

<sup>74</sup> Decree of the Supreme Court of the Republic of Kazakhstan from 11 May 2007 No. 4, para. 4

<sup>75</sup> Decree of the Supreme Court of the Republic of Uzbekistan “On judicial practice on cases of rape and satisfaction of sexual needs in an unnatural form” from 29 October 2010 No. 13, para. 6

<sup>76</sup> *ibid.* para. 5

<sup>77</sup> *ibid.*

<sup>78</sup> ‘A Manual For Practitioners In Georgia’ (No. 31), p. 8

<sup>79</sup> For example, Senaki District Court Judgment from 28 June 2021, case No. 1/57 and Gurjaani District Court Judgment from 26 November 2021, case No. N1/142-2021. A local expert noted that the Public Defender of Georgia studied the case where a lewd act against a person with disabilities (autism spectrum disorder) under the age of 16 was committed with no obvious violence or physical coercion, but by promising the minor to buy something for her and persuading her not to say anything about what happened. Prosecution was launched under Article 138 (Assault of a sexual nature) of the Criminal Code of Georgia (CCG), however, the court re-categorised the case under Article 141 (Lewd act) of the CCG on the grounds that there was no apparent physical violence, physical coercion or threat of violence. The judge used a limited interpretation of the law and did not take into account the fact that the evidence in the case indicated at least vulnerability of the juvenile or psychological violence, which might constitute a crime referred to in Article 138 of CCG (Public Defender of Georgia, CoE, ‘The Administration of Justice on Sexual Violence Crimes Against Women in Georgia’ (December 2020), available at: <https://rm.coe.int/sexual-violence-research-eng/1680a17b78, p.15; Tbilisi City Court judgment No.1/2215-19>)



considered to be in a helpless condition because of their youth (for example, when the victims were 6, 8<sup>80</sup> and 4 years old<sup>81</sup>). Until recently, young children were not considered as being in a helpless condition when suffering actions of a sexual nature which did not contain elements of physical force or threats. Instead, that type of sexual violence has been prosecuted as a lewd act (Article 141 of Criminal Code of Georgia) and is considered a less serious crime. This tendency however is changing and the number of cases where such acts will instead be classified under Article 138 (Assault of a Sexual Nature) have increased. However, a broad description of a helpless state has not yet been defined and rape committed in coercive circumstances remains largely unpunished or categorised as a less serious offence.

With the exception of Kazakhstan, there is no specific reference to a certain age under which a minor will be seen as being in a helpless state in cases of rape. However, the judicial practice in **Uzbekistan** and **Kazakhstan** understand helplessness when a person, including a minor, is not able to defend herself or actively resist the perpetrator, or could not understand the nature and significance of the actions committed against her or control her actions.

In **Ukraine**, committing an offence against a person in a helpless state is considered an aggravating circumstance under Article 67 (6) of the Criminal Code of Ukraine. The general understanding of “helpless state” can be said to be primarily based on the following factors: age, disability, severe intoxication, unconscious state.

## Implementation challenges of Ukraine's consent-based definition of rape

Even though Ukraine has a consent-based definition of rape, women's rights non-governmental organisations have expressed concern that “it appears that victims of sexual violence do not have adequate access to justice because there has been no change in how [Ukraine] pursues cases of sexual violence.”<sup>82</sup> Local experts<sup>83</sup> observe insufficient understanding of the consent-based definition and its practical application in criminal cases among law enforcement and the general public. The Supreme Court emphasised that “the victim's state of alcoholic or other intoxication; her behaviour before the incident; her failure to take personal safety measures; the victim's moral character and her way of life; immoral or other tactile behaviour of the victim, which may have inadvertently provoked the sexual behaviour of the perpetrator with the intention to stop the further commission of acts of a sexual nature against her, does not exclude criminal liability.”<sup>84</sup> This approach contrasts to some lower courts which appear to continue to struggle with the concept of consent by the victim and instead have focused on stereotyped expectations of victims' behaviour. Examples include statements such as “she voluntarily came to the house with men unknown to her with the purpose of alcohol consumption, did not take the opportunity to call for help while communicating with her son on a mobile phone”<sup>85</sup> or that the victim “independently voluntarily sat in the car ... [they] were kissing in the garden house ... objective signs of bodily injuries not found ... did not try to show any resistance”.<sup>86</sup>

<sup>80</sup> Gori District Court Judgment from 03 December 2021, case No. N1/347-21

<sup>81</sup> Tbilisi City Court Judgment from 16 July 2021, case No.1/2734-21

<sup>82</sup> Information on Ukraine for consideration by the CEDAW Committee at the Pre-Sessional Working Group of its 77 Session “AUkraine's Compliance with the Convention on the Elimination of All Forms of Discrimination against Women Suggested List of Issues Prior to Reporting Relating to Domestic Violence” (3 February 2020), available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fICS%2fUKR%2f41385&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fICS%2fUKR%2f41385&Lang=en), p. 9

<sup>83</sup> Information provided by Ukrainian lawyers Yulia Prystash and Halyna Fedkovych

<sup>84</sup> Decision of the Supreme Court of Ukraine by the panel of judges of the Third Trial Chamber of the Criminal Court of Cassation from 8 December 2021, case No. 566/1420/19. Also, according to the Code of Criminal Procedure of Ukraine, analysing and assessing the personality and behaviour of a victim is not included in the list of circumstances that has to be established and proven in the criminal proceedings, in contrast to the characteristics and the circumstances of the accused (Art. 91). There remains a procedural possibility for all crimes to examine evidence regarding the victim's behaviour right before and during the crime under the concept of “other circumstances of the criminal offence” (Art. 91(1) of the Code of Criminal Procedure of Ukraine)

<sup>85</sup> Judgement of Zhovtneviy Court of Kharkiv from 11 October 2021, case No. 639/1392/20

<sup>86</sup> Judgement of the Khmilnitskiy Regional Court from 20 April 2021, case No. 149/2435/20



# BRINGING DEFINITIONS OF SEXUAL VIOLENCE IN LINE WITH INTERNATIONAL STANDARDS IN EURASIA

*The first subsection addresses how existing legislation should be amended to be in compliance with regional and international human rights standards. The second subsection addresses how, in the absence of legislative amendments, existing legislation can be interpreted to ensure better access to justice for survivors.*

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## The need for legal and practice change and how this would look

### Introduction of a consent-based definition of sexual violence

The reviewed sexual violence provisions of **Georgia, Kazakhstan, Kyrgyzstan, and Uzbekistan** are contrary to international and regional human rights standards primarily because the elements of the crimes do not respect or recognise the bodily autonomy or sexual integrity of victims or adequately protect victims of sexual violence. Specifically, the lack of consent on the part of the victim is not considered the constituent element of the crimes, even though it is specifically required by regional and international standards. Instead, the crimes rely on evidence of physical violence, threat of violence or the abuse of the helpless condition of the victim. Also, the offence of compulsion/coercion, which is equivalent to rape under the regional and international standards, is classified in Georgia, Kazakhstan, Kyrgyzstan, and Uzbekistan as a less serious crime and carries lower penalties.

### Explicit criminalisation of causing another person to engage in non-consensual acts of a sexual nature with a third person

The Criminal Code of Georgia should criminalise causing another person to engage in non-consensual acts of a sexual nature with a third person, which is required by the Istanbul Convention (Article 36.1.c).<sup>87</sup> The same should be applied in the Criminal Codes of Kazakhstan, Kyrgyzstan, and Uzbekistan. This article should include scenarios in which the perpetrator is not the person who performs the sexual act but who causes the victim to engage in sexual activity with a third person, as well as using various means, including the control and abuse in intimate partner violence.<sup>88</sup>



### A person's free will should be assessed in the context of the surrounding circumstances

The sexual violence provisions do not enumerate a wide range of coercive circumstances which could prevent a victim from being able to express their consent, such as an abuse of trust and authority and situations of dependence.<sup>89</sup> These elements are addressed to a certain extent in the provisions of compulsion/coercion to sexual actions which, as discussed above, is a lesser crime than rape. But, as highlighted in regional and international standards, UN Women Guidelines and international jurisprudence,<sup>90</sup> the definition of rape should be based on consent which should be assessed, among other things, in light of a broad range of circumstances to understand whether any expression of consent was genuine. Examples of presumed coercion/exploitation of a position of power include environments such as in a correctional facility or a school setting where an individual is in a position of authority over the other; or where individuals hold a certain professional relationship to the victim, such as a doctor with their patient; or the circumstances are coercive due to intimidation or fraud.<sup>91</sup>

<sup>87</sup> GREVIO, 'Baseline Evaluation Report Georgia', (adopted on 13 October 2022), available at: <https://rm.coe.int/grevio-report-on-georgia-2022/1680a917aa, para. 259>

<sup>88</sup> *ibid.*

<sup>89</sup> Equality Now, 'Roadblocks To Justice: How The Law Is Failing Survivors Of Sexual Violence In Eurasia' (2019), available at: [https://www.equalitynow.org/resource/roadblocks\\_to\\_justice/](https://www.equalitynow.org/resource/roadblocks_to_justice/), p. 14. Also, 'The Hague Principles on Sexual Violence', available at: <https://4genderjustice.org/ftp-files/publications/The-Hague-Principles-on-Sexual-Violence.pdf>

<sup>90</sup> UN Women, 'Virtual Knowledge Center to End Violence against Women and Girls', 'Legislation' section, available at: <http://www.endvawnow.org/en/modules/view/8-legislation.html>

<sup>91</sup> 'Developing Legislation on Violence against Women and Girls' (May 2011), available at: <https://www.endvawnow.org/uploads/modules/pdf/1355776748.pdf, p. 94>





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### The “helpless state” should include many other reasons a victim might not have been able to resist

‘Abusing the helpless state of the victim’ in the sexual violence provisions of Georgia, Kazakhstan, Kyrgyzstan and Uzbekistan is considered to be a “state which prevents the victim from understanding the meaning of the actions they are subjected to or to resist those actions due to various reasons, such as age, disability, mental issues, being under the influence of alcohol or drugs, etc. A lack of resistance on the part of the victim, if not connected to this conventional understanding of “helpless” state, means the crime will not be classified as rape.”<sup>92</sup> Therefore, in violation of international standards, these provisions rely on the victim resisting the perpetrator even if they might not be able to as a result of being paralysed by fear, for example, or feeling that they would suffer more harm by trying to defend themselves. Requiring victims to resist their attacker fails to recognise the different ways of responding to a sexual assault.<sup>93</sup>

### Evidence of additional force or violence should not be required

By also requiring additional violence in order to prove rape, which is narrowly interpreted as physical violence, there are very limited opportunities for access to justice for

survivors of rape in these countries. Focusing on additional physical violence leaves a vast number of sexual violence acts to continue to go unpunished. Sexual offences do not often have such types of physical injury evidence available. The UN Women Guidelines clearly underline the importance that rape and sexual assault laws should not require evidence of additional force as rape in itself is a violent act. Instead, and in line with Article 46 of the Istanbul Convention,<sup>94</sup> additional violence should be considered an aggravating factor.

### Ensure the effective implementation of progressive legislation in Ukraine

Even though Ukraine has introduced a consent-based definition of rape in line with its international obligations, some lower courts continue to struggle with the concept of consent and instead are influenced by gender stereotypes when assessing the victim’s behaviour. Local experts highlight that domestic authorities struggle with the implementation of a consent-based definition of rape in cases particularly where the only evidence is the testimony of the victim and the suspect. If a survivor makes a statement to the police some time after the rape, there is no possibility of conducting a forensic medical examination and, accordingly, there is no physical evidence of sexual intercourse. If there are also no testimonies by witnesses and no evidence of the use of force or threats, then the prospects of such a case reaching the courts and a finding in favour of the survivor are very unlikely. In similar, non-penetrative sexual assault cases, the prospects are even slimmer. Therefore, it is important to provide relevant and gender-sensitive training for the judiciary, prosecutors, police and investigators as to how to interpret or investigate whether there was a lack of consent. This would include exploring the circumstances of each individual case to determine whether there were any coercive circumstances in place which would have inhibited the free expression of voluntary consent or which would have affected the victim’s capacity and ability to express consent. Moreover, the development of guidelines for criminal justice actors on this matter,<sup>95</sup> including in relation to sexual violence in the context of conflict, supported by practical training would be beneficial.<sup>96</sup>

<sup>92</sup> Equality Now, ‘Roadblocks To Justice’ (No. 89), p. 14

<sup>93</sup> ‘A Manual For Practitioners In Georgia’ (No. 31), p. 57 (on some of the different behavioural responses that victims exhibit during and after experiencing sexual violence in order to protect themselves from additional harm and survive the situation)

<sup>94</sup> Provides that extreme levels of violence, the use or threat of a weapon and severe physical or psychological harm for the victim are aggravating circumstances (Art. 46(f),(g),(h))

<sup>95</sup> ‘A Manual For Practitioners In Georgia’ (No. 31)

<sup>96</sup> CEDAW, ‘Concluding Observations on the Eight Periodic Report of Ukraine’ (CEDAW/C/UKR/CO/8), para. 15(b): “provide relevant training for legal professionals, investigators, prosecutors and police officers in order to enhance their capacity to investigate and

## Interpreting existing legal provisions in line with international human rights standards

The definitions of sexual violence crimes in Georgia, Kazakhstan, Kyrgyzstan and Uzbekistan are not in conformity with international and regional human rights standards, as explained above, and amendments are absolutely necessary to ensure compliance. Until amendments are introduced to bring these provisions in line with these standards, the sections below provide recommendations for ways in which the current provisions can be interpreted so as to bring criminal justice practice as close to international standards as possible.

### Rape

#### Violence and evidentiary requirements

Existing legislative provisions do not require evidence of ejaculation, physical traces of penetration or visible physical injuries to prove that rape occurred. Therefore, law enforcement, investigators and the judiciary should not require them from victims/survivors and should avoid making excessive, unfairly strict or discriminatory evidentiary requirements, for example, hymen/virginity checks.

There is no current requirement in the law in these countries that the victim should have resisted the sexual assault, that the level of violence reached a certain threshold, such as provisions requiring ‘excessive physical force’ or ‘life threatening force’, in order for such behaviour to be essential elements of rape. Additionally, the existing legislative provisions, as well as international standards, do not limit ‘violence’ to solely physical violence. Therefore, violence should be interpreted also as psychological or economic violence or coercion.<sup>97</sup>

#### Threat of violence

The interpretation of the requirement of a ‘threat of violence’ should be expanded to include not just the

threat of *physical* violence or be considered to immediately endanger life or health or the destruction of property. Such a narrow interpretation effectively limits its application to the small number of situations that pass this burdensome evidential threshold.<sup>98</sup> Other types of violence should be recognised, such as psychological<sup>99</sup> or economic violence or threats of other types of harm, such as threatening to reveal sensitive or personal information on social media or to known persons. Currently, a threat of violence may be directed not only in relation to the victims themselves, but also to any other person in respect of whom the victim has a certain responsibility. Threat of violence does not require a perpetrator to fulfil the threat or even to have the ability to do so, but for the victim to believe at that time that he could. The legislation in force contains no restrictions on how such a threat can be expressed, e.g. through words, gestures, actions. Nor do the existing provisions require a threat to be immediate. Therefore, any kind of actions/threats that overcome a victim’s will can and should be considered as threats used as means for committing rape within the scope of the legislative provisions.

#### Abusing the helpless state of the victim

Definitions of sexual violence include abusing the helpless state of the victim and this could be interpreted more broadly so as to also include situations where the perpetrator took advantage of a coercive environment, such as in a domestic violence relationship, or used force, threat of force or coercion.<sup>100</sup> Women who are victims of domestic violence and coercive control could be considered ‘helpless’ for the purposes of these provisions as a victim is unable to give consent genuinely in such a coercive environment. To ascertain this, a contextual analysis on a case-by-case basis is required. Situations such as when the perpetrator physically assaults the victim and then pushes her to have sexual intercourse could be classified as rape, as she was in no position to be able to voluntarily express consent.

With respect to victims with disabilities, there should not be an automatic presumption that a person with

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prosecute sexual violence cases in accordance with the international protocol on the documentation and investigation of sexual violence in conflict”

<sup>97</sup> Explanatory Report to the Istanbul Convention, Art. 36; CEDAW General Recommendation 35 and the Law of Georgia on Violence against Women and Domestic Violence, Art. 4 (a-e), available at: <https://www.matsne.gov.ge/ka/document/view/26422?publication=21>

<sup>98</sup> Equality Now, ‘Roadblocks To Justice’ (No. 89), p. 8

<sup>99</sup> Gegelia T., Kelenjeridze I., Jishkariani B., ‘Sexual Offences’ (2020), available at: <https://hol.ge/img/file/%E1%83%A1%E1%83%A5%E1%83%94%E1%83%A1%E1%83%9D%E1%83%91%E1%83%A0%E1%83%98%E1%83%95%E1%83%98%E1%83%93%E1%83%90%E1%83%9C%E1%83%90%E1%83%A8%E1%83%90%E1%83%A3%E1%83%9A%E1%83%94%E1%83%91%E1%83%98.pdf,p.37>

<sup>100</sup> *M.C. v Bulgaria* Application No. 39272/98 (ECtHR, 04 December 2003), para. 102, referring to *Prosecutor v. Furundzija*, IT-95-17/1-T, Trial Judgment, 10 December, 1998





Photo by Tara Carey

a mental/intellectual disability is helpless, “except for the situations where a specific form of disability hinders an individual to comprehend the situation and express voluntary consent.”<sup>101</sup> The evaluation of helplessness in relation to a victim with disabilities could and should instead involve an assessment of their individual capacity and competency to consent and an assessment of whether there was consent to a specific sexual act in light of surrounding circumstances and conditions informing this.<sup>102</sup> Helplessness could and should therefore be interpreted broadly and cover a wide range of circumstances, in addition to the explanation of helplessness in the Criminal Codes as requiring an assessment of age, disability, severe intoxication and an unconscious state.

### Penetration/sexual intercourse

The existing legislative provisions do not require full penetration to establish rape. Therefore, any depth of penetration, however slight, is sufficient to establish rape.

### Assaults of a sexual nature

In Georgia, Kazakhstan, Kyrgyzstan, and Uzbekistan, references in the Criminal Codes to ‘other acts of a sexual nature’/‘satisfaction of sexual need’ should use the same understanding of violence and evidentiary requirements, threat of violence, penetration/sexual intercourse and relationship between perpetrator and victim as indicated in the section above.

Therefore, existing legislative provisions on assaults of sexual nature should be interpreted in a way to include non-consensual acts, such as intrusive body searches carried out by the security forces on a person during detention; acts of a humiliating and sexual nature in prisons (for example, forced nudity), and vaginal or anal examinations carried out by police and not health personnel as a first and not a last resort measure, with the aim of maintaining security in prison.<sup>103</sup> Physical contact should also be understood as contact on the skin and through clothing, and the act can also be committed also with objects.

<sup>101</sup> Equality Now, ‘Roadblocks To Justice’ (No. 89), p. 9

<sup>102</sup> ‘A Manual For Practitioners In Georgia’ (No. 31), p. 24-25

<sup>103</sup> Equality Now, ‘Roadblocks To Justice’ No. 89, p. 10; ‘The Hague Principles on Sexual Violence’, available at: <https://4genderjustice.org/ftp-files/publications/The-Hague-Principles-on-Sexual-Violence.pdf>



# CONCLUSION AND RECOMMENDATIONS



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Overall, the sexual violence provisions analysed above fall well below international human rights standards and detrimentally impact victims' rights to access justice and be protected from sexual violence. These provisions, rather than protecting victims from sexual violence, support perpetrators' impunity.

**In the CEDAW Committee's latest review of Georgia, Kyrgyzstan, Kazakhstan and Uzbekistan, it recommended the following with respect to sexual violence:**

- **Uzbekistan** should "[a]mend its legislation to base the definition of rape on lack of consent rather than the use or threat of force,"<sup>104</sup>
- **Kyrgyzstan**<sup>105</sup> should "[a]dopt a definition of rape (article 161) based on lack of free consent that protects all women from rape, including lesbian, bisexual and transgender women"<sup>106</sup> and "[a]mend the Criminal Code to explicitly criminalise marital rape..."<sup>107</sup>
- **Kazakhstan** should "[r]evise article 120 of the Criminal Code to base the definition of rape on the absence of consent and align it with the Convention and the Committee's jurisprudence under the Optional Protocol,"<sup>108</sup>
- **Georgia** is required to provide information to the Committee before its review in 2023 on the steps it has taken to "[a]mend the legal definition of rape on the basis of lack of consent rather than use or threat of force,"<sup>109</sup>
- **Ukraine** should "[a]mend its legislation to harmonise it with the Council of Europe Convention No. 210 on Preventing and Combating Violence against Women and Domestic Violence (2011) and raise awareness among judges, prosecutors, law enforcement officers and the public, particularly women and girls, on Convention No. 210".<sup>110</sup>

**The Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) baseline evaluation report on Georgia also contains the following recommendations:<sup>111</sup>**

*GREVIO urges the Georgian authorities to amend the provisions of the Criminal Code covering rape and the other sexual violence offences under Articles 138 and 139 of the Criminal Code and to fully incorporate the notion of the lack of freely given consent as required by Article 36 of the Istanbul Convention and to ensure that such provisions are effectively applied in practice by law enforcement, prosecutors and the judiciary, including where the circumstances of the case preclude valid consent. To this end, GREVIO strongly encourages the Georgian authorities to introduce guidelines and training programmes for all relevant professionals in the criminal justice system, which would reflect the understanding of rape as defined above (para. 261).*

*GREVIO encourages the Georgian authorities to introduce criminal legislation that would cover the intentional conduct set out in Article 36, paragraph 1c, of the Istanbul Convention (para. 262).*

<sup>104</sup> CEDAW Committee, 'Concluding observations on the sixth periodic report of Uzbekistan', (CEDAW/C/UZB/CO/6), para. 22(c)

<sup>105</sup> CEDAW Committee, 'Concluding observations on the fifth periodic report of Kyrgyzstan', (CEDAW/C/KGZ/CO/5)

<sup>106</sup> *ibid.* para. 48(b)

<sup>107</sup> *ibid.* para. 22(c)

<sup>108</sup> CEDAW Committee, 'Concluding observations on the fifth periodic report of Kazakhstan', (CEDAW/C/KAZ/CO/5), para. 26(b)

<sup>109</sup> CEDAW Committee, 'List of issues and questions in relation to the sixth periodic report of Georgia', (CEDAW/C/GEO/Q/6), para. 10(a)

<sup>110</sup> CEDAW Committee, 'Concluding observations on the ninth periodic report of Ukraine', (CEDAW/C/UKR/CO/9), para. 30(a)

<sup>111</sup> GREVIO, 'Baseline Evaluation Report Georgia', (adopted on 13 October 2022), available at: <https://rm.coe.int/grevio-report-on-georgia-2022/1680a917aa>

**In addition to reiterating the above recommendations, Equality Now recommends the following legal changes should be made in Georgia, Kyrgyzstan, Kazakhstan, and Uzbekistan:**

1. Amend the definition of rape to explicitly include lack of consent as the constituent element of the crime. Use of violence and threat of violence should be considered aggravating circumstances and not constituent elements of the crime. Consent should be interpreted as genuine and voluntary and given as a result of the person's free will, assessed in the context of the surrounding circumstances and on a case-by-case basis.
2. Abolish crimes of compulsion/coercion into sexual intercourse/acts, since they are crimes equivalent to rape, and integrate those acts into the rape articles, with sanctions commensurate to the gravity of the crime.
3. Ensure that rape committed against a current or former spouse or a current or former partner is included as an aggravating circumstance of rape.
4. Explicitly criminalise causing another person to engage in non-consensual acts of a sexual nature with a third person.

**Equality Now recommends the following practice changes to Georgia, Kyrgyzstan, Kazakhstan, and Uzbekistan, to ensure that interpretation of the current legislation is brought closer to international standards, until legal amendments are put in place:**

1. Make sure that violence as the means for committing rape, comprises not only physical but also psychological and economic violence, as well as coercion.
2. Make sure that the threat of violence as the means for committing rape not only involves an immediate threat to life and health but also includes any threats that overcome the free will of the victim.
3. Make sure that helplessness is not restrictively interpreted and that it covers situations where the victim remained passive in a wide range of scenarios, including because of fear, no opportunity for obtaining help, domestic violence or deprivation of liberty.
4. Charge all non-consensual sexual penetrative acts as rape, as opposed to compulsion or coercion.
5. Make sure that existing sexual violence provisions are interpreted in a way that cover acts causing another person to engage in non-consensual acts of a sexual nature with a third person.

**Equality Now recommends that Ukraine:**

1. Issue guidelines/manuals and provide training and resources to investigators, law enforcement and the judiciary on how to interpret and implement a consent-based definition of rape and other forms of sexual violence to ensure that all victims can access justice.
2. Make sure that the new legislation in force is properly implemented to prosecute and punish all non-consensual sexual acts and move away from overly emphasising the use of physical force or threats to bring rape charges. In particular, make sure that all scenarios are covered where the victim remained passive because of a broad range of reasons, including coercive circumstances and situations of unequal power.



# ANNEX – LEGISLATION



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**Article 152. Rape**

1. Committing sexual acts involving vaginal, anal or oral penetration into the body of another person using the genitals or any other item, without the voluntary consent of the victim (rape) shall be punishable by imprisonment for a term of three to five years.

2. Rape committed repeatedly or by a person who has previously committed any of the criminal offences provided for by Articles 153—155 hereof, or the commission of such acts in respect of a spouse or former spouse or other person with whom an offender is (was) in a family or close relationships, or in relation to a person in connection with the performance of official, professional or public duties, or in respect of a woman who was pregnant and an offender knew it shall be punishable by imprisonment for a term of five to ten years.

3. Rape committed by a group of persons, or rape of a minor shall be punishable by imprisonment for a term of seven to twelve years.

4. Any such actions as provided for by part 1 of this Article, committed against a person under fourteen years of age, regardless of his/her voluntary consent shall be punishable by imprisonment for a term of ten to fifteen years.

5. Any such actions as provided for by parts 1, 1 or 3 of this Article that resulted in any grave consequences shall be punishable by imprisonment for a term of ten to fifteen years.

6. Any such actions as provided for by part 4 of this Article committed repeatedly or by a person who has previously committed any of the offences provided for by part 4 or 5 of Article 153, Article 155 or part 2 of Article 156 hereof shall be punishable by imprisonment for a term of fifteen years or life imprisonment.

Note: Consent shall be deemed voluntary if it is the result of a person's free act and deed, with due account of attending circumstances.

**Article 153. Sexual violence**

1. Committing any sexual violence, not related to the penetration into another person's body, without the voluntary consent of the victim (sexual violence) shall be punishable by imprisonment for a term of up to five years.

2. Sexual violence committed repeatedly or by a person who has previously committed any of the criminal offences provided for by Articles 152, 154, 155 hereof, or the commission of such acts in respect of a spouse or former spouse or other person with whom an offender is (was) in a family or close relationships, or in relation to a person in connection with the performance of official, professional or public duties, or in respect of a woman who was pregnant and an offender knew it shall be punishable by imprisonment for a term of three to seven years.

3. Sexual violence committed by a group of persons or sexual violence against a minor shall be punishable by imprisonment for a term of five to seven years.

4. Any such actions as provided for by part 1 of this Article, where committed against a person under fourteen years of age, regardless of his/her voluntary consent shall be punishable by imprisonment for a term of five to ten years.

5. Any such actions as provided for by parts 1, 2, 3 and 4 of this Article that resulted in any grave consequences shall be punishable by imprisonment for a term of ten to fifteen years.

6. Any such actions as provided for by part 4 of this Article, where committed repeatedly or by a person who has previously committed any of the offences provided for by part 4 of Article 153, Article 155 or Part 2 of Article 156 hereof shall be punishable by imprisonment for a term of fifteen years or life imprisonment.

**Article 154. Compulsion to sexual intercourse**

1. Forcing a person without his/her voluntary consent to commit an act of a sexual nature with another person shall be punishable by a fine of up to fifty tax-free minimum incomes or arrest for a term of up to six months.

2. Forcing a person without his/her voluntary consent to commit an act of a sexual nature with a person the victim is materially or professionally dependent from shall be punishable by a fine of up to one thousand tax-free minimum incomes or restriction of liberty for up to two years.

3. Any such actions as provided for in part 1 or 2 of this Article, where accompanied with threats of destruction, damage or seizure of the property of the victim or his/her close relatives, or with the threats of disclosure of information disgracing him/her or his/her close relatives shall be punishable by restriction of liberty for a term of up to three years, or imprisonment for the same term.

## Article 137. Rape

1. Rape, that is any form of penetration of a sexual nature of the body of a person with any bodily part or object, committed with violence, under the threat of violence or by abusing a helpless condition of a person affected, –

shall be punished by imprisonment for a term of six to eight years, with or without restriction of the rights regarding weapons.

2. The same act:

- a) committed by abusing the official position;
- b) that caused a serious damage to the health of a person affected, or other serious consequence, –

shall be punished by imprisonment for a term of eight to ten years, with or without restriction of the rights regarding weapons.

3. The same act committed:

- a) repeatedly;
- b) by a person who had previously committed any crime under Articles 138-141 of this Code;
- c) by a group of persons;
- d) knowingly by an offender against a person with disability or a pregnant woman;
- e) against a person under the custodianship, guardianship or surveillance, or a family member, of an offender, –

shall be punished by imprisonment for a term of ten to thirteen years, with or without restriction of the rights regarding weapons.

4. The same act:

- a) committed against a person affected or any other person with extreme cruelty;
- b) that caused death of a person affected;
- c) committed knowingly against a minor;
- d) committed against a minor using trust, and authoritative and influential position, –

shall be punished by imprisonment for a term of fifteen to twenty years, or life imprisonment, with or without restriction of the rights regarding weapons.

## Article 138. Another action of a sexual nature

1. Another action of a sexual nature, which does not contain elements of crime under Article 137 of this Code,

committed with violence, under the threat of violence or a helpless condition of a victim, –

shall be punished by imprisonment for a term of four to six years, with or without restriction of the rights regarding weapons.

2. The same act:

- a) committed repeatedly;
- b) committed by abusing the official position;
- c) committed by a group of persons;
- d) committed knowingly by an offender against a person with disability or a pregnant woman;
- e) committed by a person who had previously committed any crime under Articles 137, 139, 140 and 141 of this Code;
- f) committed against a person under the custodianship, guardianship or surveillance, or a family member, of an offender;
- g) that has caused a serious damage to the health of a person affected, or other serious consequence, –

shall be punished by imprisonment for a term of six to nine years, with or without restriction of the rights regarding weapons.

3. The same act:

- a) committed knowingly against a minor;
- b) committed knowingly against a minor using trust, and authoritative and influential position;
- c) that caused death of a person affected, –

shall be punished by imprisonment for a term of eleven to fifteen years, with or without restriction of the rights regarding weapons.

4. The same act:

- a) committed knowingly by an offender against a person that has not reached 14 years of age;
- b) committed with the extreme cruelty, –

shall be punished by imprisonment for a term of fifteen to twenty years, with or without restriction of the rights regarding weapons.

## Article 139. Coercion into penetration of a sexual nature into the body of a person, or into another action of a sexual nature

1. Coercion into penetration of a sexual nature into the body of a person, or into another action of a sexual nature, committed under the threat of damaging property, disclosing defamatory information, information



representing private life or such information that may substantially affect the right of that person, and/or by abusing a helpless condition of a person affected, or material, official or other kind of dependence, –

shall be punished by a fine or imprisonment for a term of up to five years, with or without restriction of the rights regarding weapons.

2. The same act that has caused a serious damage to the health of a person affected, or other serious consequence, –

shall be punished by imprisonment for a term of five to seven years, with or without restriction of the rights regarding weapons.

3. The same act committed:

- a) repeatedly;
- b) by a person who had previously committed any crime under Articles 137, 138, 140 and 141 of this Code;
- c) by a group of persons;
- d) knowingly by an offender against a person with disability or a pregnant woman;
- e) against a person under the custodianship, guardianship or surveillance, or a family member, of an offender, –

shall be punished by imprisonment for a term of seven to nine years, with or without restriction of the rights regarding weapons.

4. The same act:

- a) having caused death of a person affected;
- b) committed knowingly against a minor, –

shall be punished by imprisonment for a term of nine to fifteen years, with or without restriction of the rights regarding weapons.

## KYRGYZSTAN

### Article 154. Rape

1. Rape, that is, sexual intercourse with the use of violence not dangerous to life and health, or the threat of its use against the victim or other persons, as well as using the helpless state of the victim, –

shall be punishable by imprisonment for a term of five to eight years.

2. The same act:

- 1) committed by a group of persons;
- 2) committed by a group of persons by prior agreement;
- 3) associated with the threat of violence dangerous to life or health;
- 4) committed with special cruelty towards the victim or her relatives, –

shall be punished by imprisonment from eight to eleven years.

3. The acts provided for by parts 1 or 2 of this article:

- 1) caused the onset of pregnancy;
- 2) committed against a child between the ages of fourteen and eighteen;
- 3) committed by an organised group;
- 4) committed as part of a criminal community;
- 5) who caused serious harm by negligence, –

shall be punishable by imprisonment for a term of eleven to fifteen years.

4. The deeds provided for by parts 1, 2 or 3 of this article, committed in respect of a child who has not reached the age of fourteen years, –

shall be punishable by imprisonment for a term of fifteen years or life imprisonment.

### Article 155. Violent acts of a sexual nature

1. Sodomy, lesbianism or other acts of a sexual nature in a perverted form, committed with the use of violence not dangerous to life and health, or with the threat of its use against the victim (victim) or other persons, or using the helpless state of the victim (victim), –

shall be punishable by imprisonment for a term of five to eight years.

2. The same acts:

- 1) committed by a group of persons;
- 2) committed by a group of persons by prior agreement;
- 3) associated with the threat of violence dangerous to life and health;
- 4) committed with special cruelty in relation to the victim (victim) or to other persons, –

shall be punishable by imprisonment for a term of eight to eleven years.

3. The deeds provided for by parts 1 or 2 of this article, committed:

- 1) with infliction of grievous harm by negligence;
- 2) in relation to a child between fourteen and eighteen years of age;
- 3) an organised group;
- 4) as part of a criminal community, –

shall be punishable by imprisonment for a term of eleven to fifteen years.

4. The deeds provided for by parts 1, 2 or 3 of this article, committed in respect of a child who has not reached the age of fourteen years, –

shall be punishable by imprisonment for a term of fifteen years or life imprisonment.

shall be punishable by imprisonment for a term of five to eight years, with deprivation of the right to hold certain positions or engage in certain activities for a term of one to three years.

3. The same acts committed in respect of a child who has not reached the age of fourteen, –

shall be punishable by imprisonment for a term of eight to eleven years, with deprivation of the right to hold certain positions or engage in certain activities for a term of one to three years.

## **Article 156. Compulsion to act of a sexual nature**

1. Coercion of a person to sexual intercourse, sodomy, lesbianism or other acts of a sexual nature by means of blackmail or the use of material or other dependence of the victim (victim), in the absence of signs of the crimes provided for in Articles 154 and 155 of this Code, –

shall be punishable by deprivation of the right to occupy certain positions or engage in certain activities for a term of one to three years, or correctional labour for a term of one to three years, or a fine of 1,000 to 2,000 minimum monthly wages, or imprisonment for a term of up to five years.

2. The same acts committed:

- 1) in relation to a child aged fourteen to eighteen years;
- 2) by a parent or other person who is entrusted with the duty of raising a child by law, as well as by a teacher or other employee of an educational, upbringing, medical or other institution who is entrusted with the duty to supervise a child by law, –

**Article 118. Rape**

Rape, that is, sexual intercourse with the use of violence, threats or using the helpless state of the victim –

shall be punished by imprisonment from three to seven years.

Rape:

- a) two or more persons;
- b) committed repeatedly, by a dangerous recidivist or by a person who has previously committed a crime under Article 119 of this Code;
- c) committed by a group of persons;
- d) accompanied by a threat of murder, –

shall be punished by imprisonment from seven to ten years.

Rape:

- a) a person who is known to the guilty person to be under eighteen years of age;
- b) a close relative;
- c) committed by a participant in mass riots;
- d) committed by a particularly dangerous recidivist;
- e) causing serious consequences, –

shall be punished by imprisonment from ten to fifteen years.

Rape of a person who is known to the perpetrator to be under the age of fourteen, –

See previous edition.

shall be punished by imprisonment from fifteen to twenty years.

**Article 119. Satisfaction of sexual need in an unnatural form with the use of violence**

Satisfaction of sexual need in an unnatural form with the use of violence, threats or using the helpless state of the victim –

shall be punished by imprisonment from three to seven years.

Same actions:

- a) in relation to two or more persons;
- b) committed repeatedly, by a dangerous recidivist or by a person who has previously committed a crime under Article 118 of this Code;
- c) committed by a group of persons;
- d) associated with the threat of murder, –

shall be punished by imprisonment from seven to ten years.

Actions provided for by part one or two of this article:

- a) committed against a person who is known to the perpetrator to be under the age of eighteen;
- b) committed against a close relative;
- c) committed by a participant in mass riots;
- d) committed by a particularly dangerous recidivist;
- e) entailed grave consequences, –

shall be punishable by imprisonment from ten to fifteen years.

Actions provided for by this article, committed against a person who is known to the perpetrator to be under the age of fourteen, –

shall be punishable by imprisonment from fifteen to twenty years.

**Article 121. Forcing a woman to have sexual intercourse**

Forcing a woman to have sexual intercourse or to satisfy a sexual need in an unnatural form by a person in respect of whom the woman was in official, material or other dependence –

shall be punishable by compulsory community service up to 300 hours, or correctional labour up to two years.

The same action associated with sexual intercourse or satisfaction of a sexual need in an unnatural form,

shall be punishable by compulsory public works from three hundred to four hundred and eighty hours, or correctional labour from two to three years, or restraint of liberty from three to five years, or imprisonment from three to five years.



**Article 120. Rape**

1. Rape, that is, sexual intercourse with the use of violence or with the threat of its use against the victim or other persons, or by taking advantage of the helpless state of the victim, -

shall be punishable by imprisonment for a term of five to eight years.

2. Rape:

- 1) committed by a group of persons, a group of persons by prior agreement;
- 2) combined with the threat of murder, as well as committed with special cruelty towards the victim or other persons;
- 3) resulting in infection of the victim with a venereal disease;
- 4) committed repeatedly;
- 5) committed by a person in the performance of official duties, -

shall be punishable by imprisonment for a term of nine to twelve years.

3. The acts provided for by paragraphs one or two of this article, if they:

- 1) excluded in accordance with the Law of the Republic of Kazakhstan dated December 27, 2019 No. 292-VI;
- 2) caused by negligence the infliction of grievous harm to the health of the victim, infection of her with HIV or other grave consequences;
- 3) excluded in accordance with the Law of the Republic of Kazakhstan dated 01.04.19 No. 240-VI;
- 4) committed in an emergency situation or in the course of mass riots;
- 5) excluded in accordance with the Law of the Republic of Kazakhstan dated 01.04.19, No. 240-VI;
- 6) excluded in accordance with the Law of the Republic of Kazakhstan dated December 30, 20, No. 393-VI;

shall be punishable by imprisonment for a term of twelve to fifteen years, with or without deprivation of the right to hold certain positions or engage in certain activities for a term of ten years.

3-1. The acts provided for by the first, second or third parts of this article, if they:

- 1) committed against a minor;
- 2) excluded in accordance with the Law of the Republic of

Kazakhstan dated December 30, 2020 No. 393-VI;

3) committed by a criminal group, -

shall be punishable by imprisonment for a term of fifteen to seventeen years, with lifelong deprivation of the right to hold certain positions or engage in certain activities.

3-2. The acts provided for by parts one, two, three or 3-1 of this article, if they:

- 1) committed against two or more minors;
- 2) excluded in accordance with the Law of the Republic of Kazakhstan dated December 30, 2020 No. 393-VI;
- 3) committed in relation to a minor by a parent, stepfather, teacher or other person, who is entrusted with the duties of raising her by the law of the Republic of Kazakhstan, -

shall be punishable by imprisonment for a term of seventeen to twenty years, with life imprisonment to hold certain positions or engage in certain activities, or life imprisonment.

4. The acts provided for by parts one, two, three, paragraph 3) of part 3-1 and part 3-2 of this article, if they are committed against a minor or negligently caused the death of the victim, -

shall be punished by imprisonment for a term of twenty years, with life imprisonment for the right to occupy certain positions or engage in certain activities, or life imprisonment.

**Article 121. Violent acts of a sexual nature**

1. Sodomy, lesbianism or other acts of a sexual nature with the use of violence or with the threat of its use against the victim (victim) or other persons, or using the helpless state of the victim (victim) -

shall be punishable by imprisonment for a term of five to eight years.

2. The same acts:

- 1) committed by a group of persons, a group of persons by prior agreement;
- 2) connected with the threat of murder, as well as committed with special cruelty in relation to the victim (victim) or to other persons;
- 3) entailed infection of the victim (victim) with a venereal disease;
- 4) committed repeatedly;
- 5) committed by a person in the performance of official duties,

shall be punishable by imprisonment for a term of nine to twelve years.

3. The acts provided for by paragraphs one or two of this article, if they:

- 1) excluded in accordance with the Law of the Republic of Kazakhstan dated December 27, 2019 No. 292-VI;
- 2) negligently entailed the infliction of grievous harm to the health of the victim (victim), infection of his (her) HIV or other grave consequences;
- 3) excluded in accordance with the Law of the Republic of Kazakhstan dated 01.04.19 No. 240-VI;
- 4) committed in an emergency situation or in the course of mass riots -
- 5) excluded in accordance with the Law of the Republic of Kazakhstan dated 01.04.19, No. 240-VI;
- 6) excluded in accordance with the Law of the Republic of Kazakhstan dated December 30, 20, No. 393-VI;

shall be punishable by imprisonment for a term of twelve to fifteen years, with or without deprivation of the right to hold certain positions or engage in certain activities for a term of ten years.

3-1. The acts provided for by the first, second or third parts of this article, if they:

Subparagraph 1 was amended in accordance with the Law of the Republic of Kazakhstan dated December 27, 2019 No. 292-VI;

- 1) committed against a minor;
- 2) excluded in accordance with the Law of the Republic of Kazakhstan dated December 30, 2020 No. 393-VI;
- 3) committed by a criminal group, -

shall be punishable by imprisonment for a term of fifteen to seventeen years, with lifelong deprivation of the right to hold certain positions or engage in certain activities.

3-2. The acts provided for by parts one, two, three or 3-1 of this article, if they:

- 1) committed against two or more minors;
- 2) excluded in accordance with the Law of the Republic of Kazakhstan dated December 30, 2020 No. 393-VI;
- 3) committed in relation to a minor (minor) by a parent, stepfather, teacher or other person who is entrusted with the duties of his (her) upbringing by the law of the Republic of Kazakhstan, -

shall be punishable by imprisonment for a term of seventeen to twenty years, with life imprisonment to hold certain positions or engage in certain activities, or life imprisonment.

4. The acts provided for by parts one, two, three, paragraph 3) of part 3-1 and part 3-2 of this article, if they are committed in relation to a minor (minor), or negligently entailed the death of the victim (victim), -

shall be punished by imprisonment for a term of twenty years, with life imprisonment for the right to occupy certain positions or engage in certain activities, or life imprisonment.

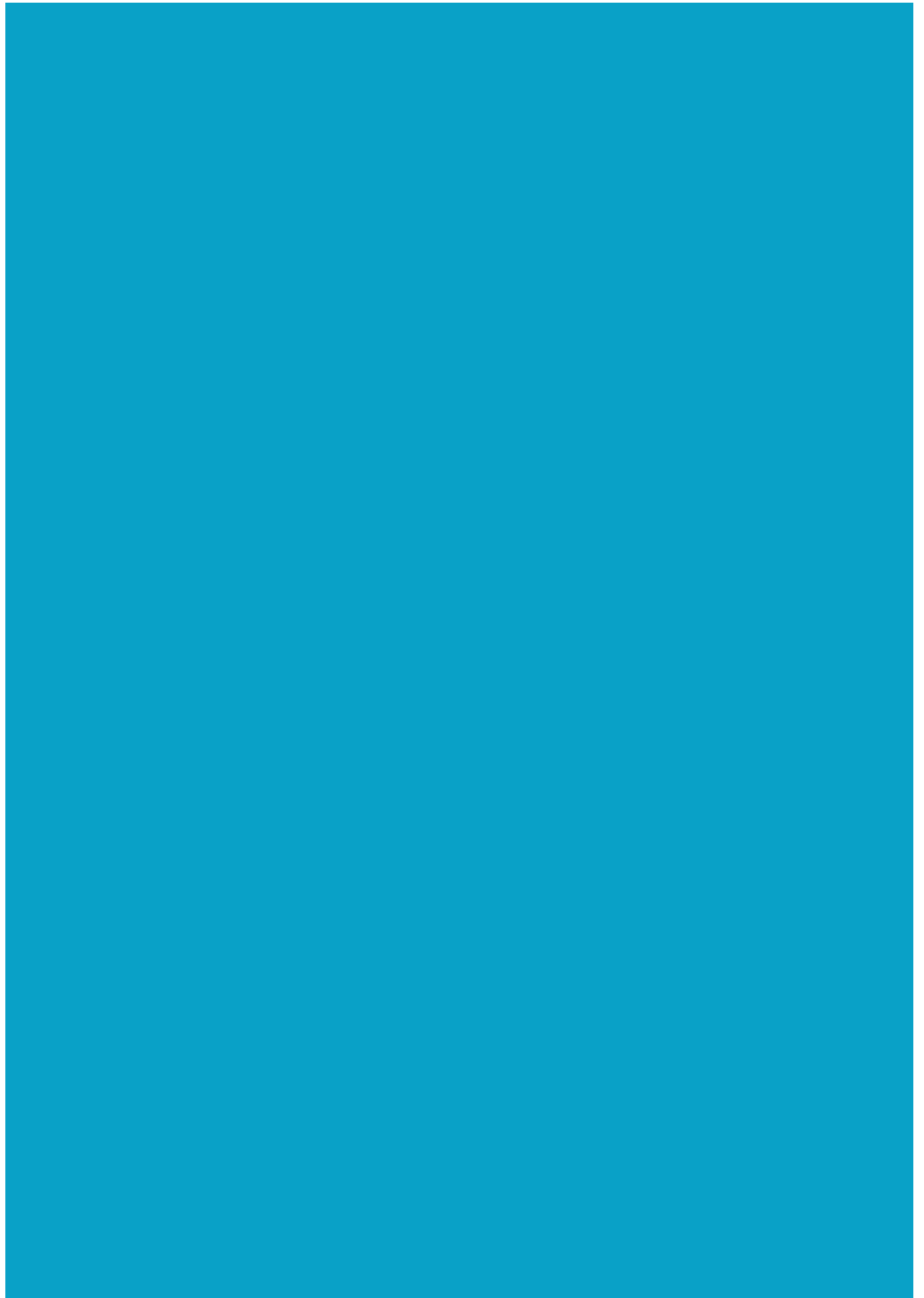
## Article 123

1. Forcing a person to have sexual intercourse, sodomy, lesbianism, or other acts of a sexual nature by means of blackmail, threats to destroy, damage, or confiscate property, or by using the material or other dependence of the victim (victim) -

shall be punishable by a fine in the amount of up to three thousand monthly calculation indices, or correctional labour in the same amount, or restraint of liberty for a term up to three years, or imprisonment for the same term.

2. The same act committed in respect of a minor (minor), -

shall be punishable by deprivation of liberty for a term of up to five years, with lifelong deprivation of the right to occupy certain positions or engage in certain activities.





# CONTACT

## EQUALITY NOW

Email: [info@equalitynow.org](mailto:info@equalitynow.org)

Website: [equalitynow.org](http://equalitynow.org)

EQUALITYNOW.ORG

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