



SEXUAL VIOLENCE AND STIGMATISATION OF VICTIMS

NGO SHADOW REPORT ON THE IMPLEMENTATION OF THE COUNCIL OF
EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE
AGAINST WOMEN AND DOMESTIC VIOLENCE IN UKRAINE

Sexual Violence and Stigmatisation of Victims: NGO Shadow Report on the Implementation of The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in Ukraine.

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I. Introduction

This shadow report identifies challenges in the legislation and practices of the criminal justice system in Ukraine concerning the investigation and prosecution of rape and other sexual violence crimes against women and girls, with a focus throughout on the negative impact of gender-based myths and stereotypes on all phases of the criminal justice process, and the stigmatization of victims.¹ These challenges constitute discriminatory barriers preventing access to justice for victims, and highlight the pervasive scepticism and unwarranted disbelief of the accounts of women and girls who experience these crimes.²

Since first signing the Convention on Preventing and Combating Violence against Women and Domestic Violence in 2011 ('Convention'), Ukraine has implemented a number of positive reforms in line with its Convention obligations, the most notable being the amendment of Article 152 of its Criminal Code ('CCU'), so that the crime of rape is now gender neutral, and defined in a way that is non-restrictive, and is no longer force-based, but consent-based, with consent to be assessed in line with the surrounding circumstances.³ This definition is fully in line with Convention Article 36(2), which is drawn from both international criminal law and international human rights law. The elements of this crime not only represent the legal norm which should be applied in rape cases charged as violations of Article 152 CCU, but also constitute the material elements of rape when it is charged as a war crime contrary to Article 438 CCU.

In addition, the authors welcome the State's report to the CEDAW Committee in 2022 on the numerous capacity-building programmes on dealing with sexual and gender-based crimes which have been developed by Ukrainian authorities for judges, prosecutors, police and others, some of which are now institutionalised.⁴

¹ This report uses the term 'victim' to reflect the language of the Convention on Preventing and Combating Violence against Women and Domestic Violence and other European and international sources. The authors underline that the terms 'victim' and 'survivor' may both be used when referring to women and girls who have experienced gender-based violence. The reference to 'victims' in this report does not in any way seek to undermine the experiences of those who feel that the term 'survivor' is more appropriate for them.

² See for example, the discussion of 'credibility discounting' of women by criminal justice systems, in Deborah Tuerkheimer's [Incredible Women: sexual violence and the credibility discount](#), University of Pennsylvania Law Review, December 2017.

³ [The Criminal Code of Ukraine](#), Article 152.

⁴ [CEDAW 9th periodic report submitted by Ukraine under article 18 of the Convention, due in 2021 : Convention on the Elimination of All Forms of Discrimination against Women](#), paras 39-42; [CEDAW Concluding observations on the 9th periodic reports of Ukraine : Committee on the Elimination of Discrimination against Women](#), para 29; see also [Monitoring Response of the Justice System to Domestic and Gender-Based Violence: 2021-2022](#), La Strada-Ukraine, 2022, p 5; see also [Дистанційний курс "Забезпечення гендерної рівності"](#).

It is important to safeguard these reforms and strengthen them so that they can lead to sustainable, positive change.

The challenge now facing Ukraine is in their implementation. The causes and consequences of sexual violence against women and girls and barriers preventing their access to justice are deeply rooted in the societal and institutional attitudes and norms discussed below. Gender-based myths and stereotypes should not factor into any aspect of decision-making in investigations, pre-trial preparations, prosecution or adjudication of cases of sexual or other forms of violence against women. There should be no rigid approach to the investigation, prosecution and adjudication of sexual violence in any context, yet Ukraine's rules of procedure and evidence are often formalistically interpreted, giving rise to harmful, discriminatory practices and preventing access to justice for victims. GREVIO has found that reproducing stereotypes or applying excessively formalistic interpretations of the law can diminish the criminal liability of perpetrators and even blame the victim.⁵ Moreover, the strict statutory time limits set out in Article 49 CCU bar prosecutions of rape as violations of Article 152(1) CCU if more than five years have passed from the date of the alleged commission of the offence, effectively barring prosecution of historical cases.⁶

Improving investigative, prosecutorial and judicial practices by eliminating these challenges will require a sustained commitment by the State and its criminal justice actors in order for them to be meaningfully addressed.

II. Background

Deeply rooted discriminatory gender-based stereotypes on the roles and responsibilities of women and men are widespread in Ukrainian society and in its criminal justice system.⁷ State responses to violence against women in Ukraine have been historically ineffective, characterised by low reporting,⁸ a

⁵ [GREVIO Baseline Report for Spain](#), para 221. The UN CEDAW Committee also stresses that the judiciary must be careful not to create inflexible standards based on preconceived notions of what constitutes domestic or gender-based violence, and that "all legal procedures in cases involving crimes of rape and other sexual offenses must be impartial and fair, and not affected by prejudices or stereotypical gender notions." (*V.K. v. Bulgaria*, CEDAW/C/49/D/20/2008, para. 9.11; *Vertido v. The Philippines*, [Communication No. 18/2008](#), Views of 16 July 2010, UN Doc CEDAW/C/46/D/18/2008).

⁶ The statutory time limit for rape under [Article 152\(3\)](#) et seq are longer (10 – 15 years, and for child victims, only starts to run when the child reaches 18) (Article 49 CCU and Articles 152(3) et seq).

⁷ See [CEDAW Concluding Observations, 9th Periodic report on Ukraine](#), paras 27-48; [Well-Being and Safety of Women \(OSCE-led Survey on Violence Against Women\)](#), p 27, 30-31.

⁸ See: [CEDAW Concluding Observations, 9th Periodic report on Ukraine](#), para 28; UN Women, [Baseline Survey of Public Perceptions and Attitudes Towards Gender-Based Violence Against Women](#), 2019; [Well-Being and Safety of Women \(OSCE-led Survey on Violence Against Women\)](#), 2019, p 23-31, 62-66.

high rate of attrition (low conviction rates),⁹ and non-deterrent sentencing practices.¹⁰

Ukraine signed the Istanbul Convention in 2011.¹¹ On 6 December 2017 the CCU was amended to include a consent-based definition of rape and other acts of sexual violence.¹²

Also in December 2017, the Ukrainian law “On Preventing and Combating Domestic Violence” was adopted, and came into force one month later.¹³ This law provides expansive definitions of the concepts of psychological and economic violence, as well as physical and sexual violence, identifying them as different forms of domestic violence.¹⁴ The CCU was amended in December 2017 with the addition of Article 126-1, the new offence of domestic violence.¹⁵

Meanwhile, a 2019 OSCE led survey on violence against women in Ukraine reported that **over a quarter** of women aged 18-74 who have ever had a partner reported that they have experienced physical and/or sexual violence at the hands of an intimate partner since the age of 15, and **nearly a quarter** of women within the same age range said they have experienced physical and/or sexual violence at the hands of a non-partner since the age of 15.¹⁶

On 11 February 2021 the European Parliament adopted a resolution on the implementation of the EU Association Agreement with Ukraine, in which (among other things) it specifically urged the State to ratify the Istanbul Convention.¹⁷

⁹ [JURFEM Shadow Report for GREVIO on the implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence by Ukraine 2023](#), p 37-38.

¹⁰ DCAF and La Strada-Ukraine, [Criminal Justice Practice and Violence Against Women](#), 2017, p 30-31. On non-deterrence, see also [Women and Justice: Court: Верховний Суд \(Supreme Court of Ukraine\)](#).

¹¹ Istanbul Convention Action against violence against women and domestic violence, Country Monitoring, [Ukraine](#).

¹² [The Criminal Code of Ukraine](#).

¹³ UN Women, [Baseline Survey of Public Perceptions and Attitudes Towards Gender-Based Violence Against Women](#), 2019, p 12; [Law of Ukraine On Preventing and Combating Domestic Violence](#).

¹⁴ UN Women, [Baseline Survey of Public Perceptions and Attitudes Towards Gender-Based Violence Against Women](#), 2019, p 13; [Law of Ukraine On Preventing and Combating Domestic Violence](#).

¹⁵ [Про внесення змін до Кримінального та Кримінального процесуального кодексів України](#); UN Women, [Baseline Survey of Public Perceptions and Attitudes Towards Gender-Based Violence Against Women](#), 2019, p 13-15.

¹⁶ [Well-Being and Safety of Women \(OSCE-led Survey on Violence Against Women\)](#), 2019, p 22.

¹⁷ [European Parliament resolution of 11 February 2021 on the implementation of the EU Association Agreement with Ukraine](#).

The Convention was ultimately ratified by Ukraine on 18 July 2022,¹⁸ and entered into force as for Ukraine on 1 November 2022.¹⁹ Article 2(3) of the Convention specifies that it **shall** apply in times of peace and in situations of armed conflict (emphasis added).

Ukraine submitted its first baseline report pursuant to Convention Article 68(1) to the GREVIO Committee on 3 July 2023.

Against this backdrop, in 2014 Russia unlawfully annexed Crimea and the armed conflict with Russian-backed separatist forces in eastern Ukraine commenced, followed by Russia's full-scale invasion of Ukraine in February 2022. Reports of widespread systematic conflict-related sexual violence (CRSV) since that time have also increased. At the same time, reported or identified cases of domestic violence have surged,²⁰ driven by increasing levels of public awareness (and resulting reporting by victims) of domestic violence, and reforms to the law and practices in line with international standards.²¹

Since the full-scale invasion, Ukrainian authorities have implemented numerous international donor-sponsored initiatives for responding to **CRSV cases**, aimed at incorporating the standards and practices developed in international criminal law into their domestic investigation, prosecution and adjudication of rape and other forms of sexual violence as international crimes.²² Many of

¹⁸ Istanbul Convention Action against violence against women and domestic violence, Country Monitoring, [Ukraine](#).

¹⁹ Council of Europe, [Ukraine ratifies the Istanbul Convention](#), July 2022.

²⁰ See for example, Council of Europe, [Barriers, Remedies and Good Practices For Women's Access to Justice in Ukraine](#), 2023, p 33; Kristina Jovanovski, [Ukraine conflict causes spike in domestic violence](#), Al Jazeera, July 2015; Layli Foroudi, [Rising domestic violence is a hidden front in Ukraine's war](#), Reuters, August 2023.

²¹ See for example, Amnesty International, [Ukraine: Not a private matter: domestic and sexual violence against women in Eastern Ukraine](#), 2020.

²² See for example, [Strategic plan for the implementation of the powers of the prosecutor's office in the field of criminal prosecution for conflict-related sexual violence](#), Office of the Prosecutor General of Ukraine. Noting as well, [Convention Preamble](#) referring to the International human rights instruments, the Rome Statute, the Geneva Conventions and Additional Protocols I and II, and which recognises "...the ongoing human rights violations during armed conflicts that affect the civilian population, especially women in the form of widespread or systematic rape and sexual violence and the potential for increased gender-based violence both during and after conflicts;" noting also Convention Article 2(3), which states: "This Convention shall apply in times of peace and in situations of armed conflict." See also Kateryna Busol, [Russia's weaponizing of sexual violence, and Ukraine's response, reveals a grim war of values](#), The Guardian, March 2024; Anthony Deutsch and Anna Voitenko, [International Legal Experts Assist Ukraine Sexual Violence Investigations](#), Reuters, December 2022; ICC, [Conflict-related sexual violence in Ukraine: ICC holds training on Victim and Witness support](#), March 2023; US Department of State, [Supporting Justice and Accountability in Ukraine](#), February, 2023.

these same standards are reflected in the provisions of the Convention, and should be applied in dealing with these cases as ordinary crimes.²³

In any context, women and girls who survive rape and other forms of sexual violence have the right to be protected against this violence, as well as the right to access justice for the harms suffered.

III. Authors

The **European Human Rights Advocacy Centre** (EHRAC) is an apolitical legal centre based within Middlesex University Law School, which advances the protection of human rights in Russia, Ukraine, Armenia, Georgia and Azerbaijan. One of EHRAC's focus areas is gender-based violence. Together with partner lawyers, EHRAC successfully litigated the first five international cases concerning domestic violence and femicide against Georgia, including the first international case on honour crime. EHRAC's litigation has developed international standards on honour crime and discriminatory motives in cases of gender-based violence. EHRAC is co-litigating before the European Court of Human Rights ('ECtHR') the first case to challenge the gendered nature of human rights abuses suffered by women victims of trafficking in Russia, and has successfully litigated cases on domestic violence and sexual violence in Russia. In Ukraine, EHRAC is co-litigating the first case of self-defence in the context of domestic violence to be brought to the CEDAW Committee against Ukraine, and a case before the ECtHR concerning CRSV in Russia's war against Ukraine. EHRAC has published legal guides on 'Litigating Violence against Women', 'The Rights of Victims of Domestic Violence to Self-Defence', 'Using the UN CEDAW Committee', and 'An Overview of Avenues for Redress for Survivors of Conflict-Related Sexual Violence in Ukraine'.²⁴

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²³ See for example, [The Murad Code](#), Principles 1.1 (adapt to survivors' individuality), 1.2 (counter assumptions), 1.4 (prioritise survivor safety) and 1.8 (be inclusive and do not discriminate); Principle 2.2 (respect survivors' choices); Principle 3.3 (do not stigmatise); Principle 4.7 (change drivers of bad practice); Principle 6 (understand stigma), and Principle 7 (build the right competencies).

²⁴ [Legal Resource Library, European Human Rights Advocacy Centre](#).

engaged in Ukraine since April 2022, working across different sectors of the criminal justice system. This work has regularly been in collaboration with the other co-signatories to this submission.

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Women's Initiatives for Gender Justice (WIGJ) is an international human rights organisation that advocates for gender justice and accountability for sexual and gender-based crimes (SGBC) through the work of the International Criminal Court and domestic mechanisms. In Ukraine, their work has focused on raising awareness about all forms of conflict-related sexual and gender-based violence and on supporting local partners by answering their immediate needs on SGBC related issues, including guidance on documentation, victim-centred approaches, and SGBC prosecution before national and international courts. Women's Initiatives for Gender Justice led development of [The Hague Principles on Sexual Violence](#). The principles, aimed at building an enhanced understanding of the various forms of sexual violence, to allow for more inclusive, survivor-centred, forward-looking and culturally sensitive responses to these crimes, were developed as the result of a consultative process engaging more than 500 survivors and 60 CSOs from around the world (among others), In December 2023 they published a report on [Judicial Approaches to Sexual and Gender-Based Violence at the International Criminal Court – Structural Shortcomings, Critical Improvements and Future Possibilities of Intersectional Justice](#). Since 2022 they have been engaged in Ukraine, in partnership with ULAG on the project “Integrating international standards to address conflict-related sexual violence in Ukraine”.

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Equality Now is an international human rights organisation with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through their membership network of individuals and organisations in over 160 countries. In 2019 Equality Now published the report entitled “[Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence In Eurasia](#),” containing an overview of the laws on sexual violence in 15 countries of the former Soviet Union, including Ukraine. In 2021 they published “[Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Cases: A Manual for Practitioners in Georgia](#),” dealing the practical aspects of the state's implementation of the provisions of the Istanbul Convention, and in January 2023 they released: “[Sexual Violence Laws In Eurasia: Towards a consent-based definition](#).” This report examined the legal provisions in five Eurasian countries, including Ukraine.

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La Strada Ukraine is a civil society organization working in Ukraine since 1997 to ensure gender equality, peace building, prevention of gender-based

violence, including domestic violence, combating human trafficking, ensuring the rights of children and promoting human rights standards in all spheres of society and the state.

The main activities of the organization are advocacy and awareness raising, monitoring of state policy implementation in respective areas and lobbying to improve the legislation, prevention and education, training, scientific-methodical activity, researching, networking and providing legal and social assistance to those suffering from gender-based violence, including domestic violence and human trafficking.

The organization operates the National Toll Free Hot Line on preventing domestic violence, trafficking in persons and gender based discrimination, and the National Toll Free Hot Line for Children and Youth. It coordinates activity of the National Trainers' Network and National Mediators' Network that work in different regions of Ukraine. La Strada Ukraine is a member of the International La Strada Association, a European network of organizations working on preventing human trafficking, including Women Against Violence Europe (WAVE), Child Helpline International, ECPAT, GAATW, and more.

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Ukrainian Legal Advisory Group (ULAG) is an organization dedicated to ensuring justice and accountability for grave crimes. A team of experts with extensive experience, they constantly monitor and analyse the political and legal landscape at domestic and international levels in order to craft unique solutions to the most pertinent and urgent challenges faced by the Ukrainian justice system insofar as they concern the armed conflict on its territory. By bridging the best international practices, the world's human rights knowledge and experience, and the unique national context, they strive to increase the capacity of the domestic justice system and contribute to strengthening the international justice mechanisms. Among other analytical reports pertinent to criminal justice in Ukraine, ULAG has prepared: [Analytical Review: Conflict-Related Sexual Violence in Ukraine](#), as well as [Capacity of Ukraine's Judicial Legal System to Ensure Accountability for Grave International Crimes Committed in the Course of Russia's Aggression Against Ukraine](#).

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IV. Aims and methodology of the report

The authors offer recommendations to GREVIO on a number of priority areas which, if successfully implemented, would serve as a basis for further reform over time, to bring Ukraine fully in line with its Convention obligations.

Our approach is rooted in coordinated partnership between Ukrainian and international practitioners in human rights, as well as international and Ukrainian criminal law institutions, and reflects our shared understanding that an effective, enduring response to violence against women should be holistic and multi-disciplinary.²⁵

In their 2023 report entitled "[Barriers, Remedies and Good Practices for Women's Access to Justice in Ukraine](#)," the Council of Europe made the observation that "judges in Ukraine often feel that international instruments on gender equality are abstract and do not offer specific models for solving real-life disputes."²⁶ Citing the CEDAW Convention, the CoE noted that references to CEDAW in court decisions increased from 18 in 2017 to 364 in 2022, a function, perhaps, of the fact that lawyers and judges had received training on CEDAW's application in recent years.²⁷

This submission therefore refers to and has benefited from extensive legal research and analysis, including: the Convention and the Explanatory report to the Convention; GREVIO baseline reports for comparative contexts; Mid-term Horizontal Review of GREVIO baseline evaluation reports; the 4th General Report on GREVIO's Activities; the Criminal Code of Ukraine; the Criminal Procedure Code of Ukraine; the CEDAW Convention and the General Recommendations of the CEDAW Committee, as well as CEDAW Concluding Observations regarding Ukraine; the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights; jurisprudence of international criminal accountability mechanisms; case law of Ukrainian courts; open source materials; and manuals and handbooks reflecting international practices and standards in addressing violence against women (among others).

²⁵ [Explanatory Report](#) to The Istanbul Convention, Article 7.

²⁶ Council of Europe, [Barriers, Remedies and Good Practices For Women's Access to Justice in Ukraine](#), 2023, p 22.

²⁷ Ibid, p 22.

V. Summary of the recommendations

The authors offer the following recommendations:

Addressing gender-based myths and stereotypes, identifying intersecting vulnerabilities, and ensuring victim-centred approaches

- Ensuring that training programmes developed by the National School of Judges are updated to include best practices and developments resulting from Ukraine's legislative amendments in line with the Istanbul Convention and other applicable international standards. With that in mind, these training programmes may be revised and further developed with the support of judges of the Ukrainian Supreme Court.
- That the Supreme Court of Ukraine consider issuing non-binding guidance on interpreting and applying Articles 152 and 153 CCU in line with Istanbul Convention and other international standards, building on and developing existing guidance in the Court's judgments. This guidance should reflect the recent legal amendments that shift from a force-based to a consent-based definition of rape, and include an explanation of the flaws in the previous understanding of rape, to move away from victim-blaming and reliance on stereotypical assumptions about the behaviour of both the victim and the perpetrator. The new understanding of rape aims to eliminate these biases, thereby ensuring justice without disadvantaging the victim.
- For the Office of the Prosecutor General to develop and disseminate a strategic plan on addressing sexual violence, in line with the standards of the Istanbul Convention, and reflecting the same adherence to these standards as set out in the strategic plan on CRSV. Any such strategic plan should also incorporate an intersectional, individualised, victim-centred approach.
- In line with this, where assessed as needed, reinforce existing training for law enforcement professionals and the judiciary on dealing with domestic, sexual and gender-based violence by ensuring the mainstreaming of intersectionality, including training on identifying categories of especially vulnerable victims as referred to above.
- Where assessed as needed, reinforce existing training for law enforcement (particularly supervisors and senior officers) on recognising gender-based myths, stereotypes and biases they should be careful to avoid in all aspects of their pre-trial investigations of sexual violence crimes and at all stages of the criminal justice process; their analysis of the facts; their credibility assessments; in interpreting and applying the law; and in the language they use. In this way, they will be able to share this knowledge with subordinates, and monitor its implementation.

Article 36(2) Istanbul Convention

- Where assessed as needed, reinforce existing training for members of the judiciary and other stakeholders on understanding and interpreting voluntary consent, and coercion and coercive circumstances, among others, in line with international standards and practice (reflected for example, in the breadth of material reviewed as set out in section IV above, and cited throughout this submission). This could be done as part of the detailed training materials on handling sexual violence cases recommended above.
- Regularly update and deliver skill-based trainings for investigators, prosecutors and judges on the factors to consider when conducting a context-based assessment of the evidence in all cases of violence against women, including sexual violence.

Identifying and dispelling gender-based myths and stereotypes

- Where assessed as needed, reinforce existing training for law enforcement (particularly supervisors and senior officers) on recognising gender-based myths, stereotypes and biases they should be careful to avoid in all aspects of their pre-trial investigations of sexual violence crimes and at all stages of the criminal justice process; their analysis of the facts; their credibility assessments; in interpreting and applying the law; and in the language they use. In this way, they will be able to share this knowledge with subordinates, and monitor its implementation.

Building the necessary capacities

GREVIO has pointed out that in order to foster a truly gendered understanding of violence against women among the different actors in the criminal justice sector, sustained efforts to challenge stereotyped mindsets are extremely important. This holds true for Ukraine. Any training programme should therefore include specific components dedicated to helping participants to recognise gender stereotypes. Cases for which the assessments of the evidence are untainted by myths and stereotypes will be more likely to succeed – whether or not the victim elects to participate in the criminal justice process.

- Reinforce existing training programmes by ensuring they are designed and delivered using an iterative approach.
- For trainings to be effective, they need to be coordinated, consistent, mutually reinforcing, and grounded in the Convention principles and relevant standards of international human rights law. Recognising the overlap between international criminal law and international human rights law (and the provisions of the Convention) in dealing with sexual violence crimes, and given the number of international actors presently

supporting Ukraine in delivering training and capacity building programmes in relation to CRSV, it may therefore be appropriate for international actors skilled in this subject area to coordinate programmes and skills-based training to avoid repetition and inconsistent messaging.

- In order to ensure consistency and sustainability of these processes, GREVIO may recommend Ukraine implement cascade trainings and training of trainers (ToT) programmes in this area (sponsored and implemented initially by international donors, with a view to eventually being led by Ukrainian actors). The cascade training model ensures a practical, locally owned and adapted model for the dissemination of best practices in dealing with sexual violence.
- In particular, investigative practices in these areas can be improved by specialised training (and mentorship) of police and criminal investigators in the following areas:
 - Understanding the broad spectrum of acts which can constitute sexual violence;
 - Understanding the gendered aspects of crimes of violence against women;
 - Understanding consent and coercive circumstances in line with the Istanbul Convention and commentary by the Grevio Committee, informed by international human rights law and international criminal law; (patterns of) coercion and controlling behaviour, and recognising the different forms of habitual domestic abuse;
 - Training and mentorship in how to conduct comprehensive, context-based investigations in dealing with sexual and other forms of violence against women. (among others).
- Investigators who follow these courses may be recognised as specialists, whose qualifications should be renewed every two years. They may, in turn, become trainers. Where possible and feasible, the appropriate state authorities may consider issuing guidance by which domestic or sexual violence cases are assigned only to experienced investigators and prosecutors, thus ensuring a certain amount of de facto specialisation. This approach however requires sufficient staffing levels of all services, which may be impossible in the current state of martial law.
- Where possible and feasible, engage local and regional Ukrainian Civil Society active in these areas to monitor sexual violence courtroom proceedings to ensure the lessons learned in these trainings are being applied in court.
- Where possible and feasible, commission regular surveys by the judiciary, of judicial decisions in all cases on gender-based violence, including

sexual violence, to analyse compliance with the duty to address gender-based myths and stereotypes in judicial reasoning.

Access to justice barriers

Article 55 (1) Istanbul Convention

- That the relevant bodies of the criminal justice sector work together to develop and issue practical guidelines on evidence collection and case handling in rape and sexual violence cases to ensure effective investigations which may continue *ex parte*.
- That the Office of the Prosecutor General issue guidelines to the effect that victim withdrawals in rape and other sexual violence cases will be investigated to ensure that victims are not coerced or intimidated into withdrawing their complaints.
- That the Office of the Prosecutor General should issue guidelines ensuring procedures are put in place so that victims who do withdraw their claims are referred to support programmes and provided with information on personal safety.

Statutory time limitations

- Review the limitation periods prescribed by Article 49 CCU against all offences covered by the terms of the Convention to ensure they do not represent any barriers to victims of rape and other forms of sexual violence in accessing justice and take appropriate action.

Discriminatory and harmful practices

Corroboration practices

- Improve investigative and prosecutorial practices through iterative training and mentorship of investigators in how to conduct comprehensive, context-based investigations in dealing with cases of sexual violence against women.
- Reinforce investigative training programmes for relevant professionals, including investigators, with practical exercises aimed at building their skills in conducting comprehensive, context-based sexual violence investigations.

Unnecessary gynaecological examinations

- Ensure that the gynaecological examinations in rape cases are not considered mandatory, but only ordered where necessary and with the victim's informed consent.
- Ukraine may mitigate against delays in conducting necessary examinations in rape cases by increasing the number of medical specialists qualified and adequately trained to conduct forensic

medical examinations in line with the principles of the Istanbul Protocol, so that these reports may be included in case files and used as evidence in court.

Reconciliation agreements

- The authors recommend any amendment to Article 469(3) CPCU (and related criminal legislative provisions) specify that reconciliation agreements in relation to offences covered by the Convention may only be considered in those cases which are classified as misdemeanour offences, at the initiative of the victim and with the advice of their representative.
- Alternatively, for those victims who wish to consider entering into a reconciliation agreement but have no representative, the authors recommend that the state automatically provide access to a qualified legal representative so that they may be fully informed of their rights and obligations, as well as of the risks of entering into such agreement before they elect to enter into this process.

Investigative experiments

- For the appropriate prosecutorial and investigative authorities to issue recommendations or guidelines to ensure that investigative experiments with participants shall not be conducted in rape cases.

VI. Impact of gender-based myths and stereotypes on access to justice for women and girls in Ukraine

A. Article 12(1) Istanbul Convention

Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.

The obligations in Article 12 are framed as foundational and over-arching for the implementation of the more specific measures contained in Chapter IV of the Convention.²⁸ Recognising this, the authors here will generally address the negative impact of gender-based biases, myths and stereotypes in criminal justice processes concerning sexual violence crimes against women in Ukraine. These submissions are then further developed below, with reference to specific investigative, prosecutorial and judicial practices.

GREVIO has recognised that “Traditional responses to sexual violence cases based on common gender stereotypes, prejudices and discriminatory attitudes minimise the victim’s account of violence, hinder the recognition of the seriousness and specificity of the violence and feed into assumptions of false allegations.”²⁹

The CEDAW Committee also underlines that in cases of violence against women “the application of preconceived and stereotyped notions of what constitutes gender-based violence against women, what women’s responses to such violence should be and the standard of proof required to substantiate its occurrence can affect women’s right to the enjoyment of equality before the law, fair trial and the right to an effective remedy.”³⁰

In addition, the ECtHR also calls for gender-based myths and stereotypes to be addressed,³¹ and has identified the deleterious impact of stereotyping on the effective investigation and prosecution of sexual violence offences against women and girls.³²

In one of the very few international decisions against Ukraine concerning gender-based violence, the ECtHR found violations of Articles 3 and 14 ECtHR on account of the domestic courts blaming the applicant, a victim of domestic

²⁸ [Explanatory Report](#) to The Istanbul Convention, para 84.

²⁹ [4th General Report on GREVIO’s Activities](#) - Covering the Period from January-December 2022, p 42.

³⁰ [CEDAW General Recommendation 35](#), para 26.c.

³¹ [Konstantin Markin v. Russia \[GC\], no. 30078/06](#), para 142-143.

³² See [D.J. v Croatia, no. 42418/10](#), para 102; [JL v Italy no. 5671/16](#), para 141; see also [Manual for Judges and Prosecutors on Ensuring Women’s Access to Justice](#), p 52-56.

violence, for being beaten by her husband.³³ The ECtHR found this reflected a gender discriminatory attitude towards the applicant as a woman and prejudice within the judiciary, and drew attention to the fact that “10% of prosecutors, 11% of judges and 12% of police officers justify some cases of family violence”.³⁴

Combatting gender-based stereotypes within the Ukrainian criminal justice system is challenging. If not addressed and dismantled, gender-based myths and stereotypes can:

- negatively affect the credibility given to women’s voices and in particular their evidence in court proceedings;
- distort perceptions of all actors tasked with responding to reports of sexual violence;
- result in decisions at all stages of criminal proceedings and in adjudication which are based on preconceived beliefs rather than relevant facts;
- result in stigmatization, and often secondary traumatising, of victims; and
- impede access to justice in all areas of law for women and girls.³⁵

The GREVIO Committee has noted that “In order to effectively tackle the root causes of violence against women, the implementation of laws and the shaping of policies must acknowledge and recognise that women’s overexposure to gender-based violence in comparison to men emerged from and is sustained by structural inequalities between women and men, as well as structural patterns of discrimination against women which are justified and reinforced by socially entrenched negative stereotypes and prejudicial attitudes against women.”³⁶

Echoing Article 12(1) of the Convention, UN General Assembly Resolution 76/304 on ‘International cooperation for access to justice, remedies and assistance for victims of sexual violence’ (adopted in July 2022) also identifies the interplay between discriminatory stereotypes and impacted patterns of behaviour, and emphasises the transformative nature of the domestic policies needed to tackle this:

³³ [Ivashkiv v Ukraine](#), para 22.

³⁴ *Ibid*, para 23.

³⁵ [CEDAW General Recommendation No 33 on Women’s Access to Justice](#), para 26; see also [Recommendation CM/Rec\(2019\)1](#) on Preventing and Combating Sexism, adopted by the Committee of Ministers on 27 March 2019, noting that sexism and gender stereotyping within the civil, administrative and criminal justice and law-enforcement systems were barriers to the administration of justice.

³⁶ [GREVIO Baseline Evaluation Report on Poland](#), para 6.

'Addressing the structural and underlying causes of such violence through enhanced prevention measures, capacity-building of relevant authorities, research and strengthened coordination, monitoring and evaluation conducted with victims and survivors by, inter alia, encouraging awareness-raising activities, including through designing and implementing appropriate domestic policies that are aimed at transforming discriminatory social attitudes and social and cultural patterns of conduct that condone such violence with a view to preventing and eliminating, in all public and private spheres, including online spaces, discrimination, gender stereotypes, negative social norms, attitudes and behaviours, and unequal power relations, as well as publicizing the societal and economic costs of violence, and working with local communities.' (emphasis added)³⁷

B. Impact of gender stereotypes in adjudication

The principal guidance from Ukrainian courts on dealing with cases of sexual violence (issued long before the reforms referred to in the BACKGROUND section of this submission) is outdated and does not reflect international standards.³⁸ While there are some positive examples of court practice which adopt a more victim-centred approach to addressing gender based violence, including at the Cassation level, the authors underline the need for consistent updated practice. This gap has contributed to court decisions which are inconsistent in their interpretations of Article 152 CCU (among others), not in line with the principles of the Convention, and marked by misconceptions about the crime of rape which are linked to gender-based myths and stereotypes.

More recently, the Supreme Court of Ukraine has recognised the importance of ensuring that criminal proceedings are not affected by prejudices or gender stereotypes in its jurisprudence. For example, in their December 2021 Decision in Case No. 566/1420/19 (rape) the Court emphasized that "the state of alcoholic or other intoxication of the victim; 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

³⁷ [UN General Assembly Resolution 76/304 on 'International cooperation for access to justice, remedies and assistance for survivors of sexual violence'](#)

³⁸ See for example, the 30 May 2008 [Plenum of the Supreme Court of Ukraine](#).

intention to stop the further commission of acts of a sexual nature against her, does not exclude criminal liability under Article 152 of the Criminal Code."³⁹

As noted, the court has not, however, appeared unified in its views of what might constitute best practice in dealing with these cases.

In 2022, the Synelnyk District Court of the Dnipropetrovsk Region sentenced a man to 10 years in prison, who in September 2017 (before the amendments to the offence of rape in December 2017) offered the victim (a female minor), a ride home in his car, and then raped her. During the commission of the crime, the perpetrator was found to be in a state of drug intoxication and threatened the victim with physical violence, "which the victim perceived as real and feared for her health."⁴⁰ In a 05 July 2023 decision on the appeal from that case, the Supreme Court of Ukraine Court overturned the Court of Appeal ruling in the matter and ordered the case returned for re-trial on the basis of findings that the lower court had not taken into account the appearance of the victim (the perpetrator stating that she didn't look like a minor), and how she behaved (the fact that she agreed to the ride home, and didn't leave the car).⁴¹ The District Court's emphasis on the conduct of the victim (that she agreed to the ride home and didn't leave the car) is an example of victim blaming. The perpetrator's conviction and sentence were upheld by the Court of Appeal judgment of September 2023, in which the court found that the perpetrator knew or assumed that the victim was a minor.⁴²

The language of trial judgments in other rape cases continues to show credibility assessments of victims based on stereotyped expectations of their 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"⁴³ 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".⁴⁴

It is not surprising then, that in their Concluding Observations on the 9th Periodic Report of Ukraine, the CEDAW Committee noted "...with concern that women

³⁹ [Unified State Register of Court Decisions](#) Case No. 566/1420/19, Judgement of Supreme Court, 8 December 2021

⁴⁰ [Unified State Register of Court Decisions](#) Case No. 172/1359/17, Judgment of Supreme Court, 5 July 2023

⁴¹ Ibid, see also "[Ла Страда-Україна/La Strada-Ukraine](#)", online: Facebook.

⁴² [The Supreme Court by the panel of judges of the Third Chamber of the Criminal Court of Cassation, case No. 172/1359/17.](#)

⁴³ [Unified State Register of Court Decisions](#) Case No. 639/1392/20, Judgement of Zhovtneviy Court of Kharkiv, 11 October 2021.

⁴⁴ [Unified State Register of Court Decisions](#) Case No. 149/2435/20, Judgement of the Khmilnitskiy Regional Court, 20 April 2021.

and girls who are survivors of gender-based violence, including CRSV, are often reluctant to report such violence due to fear of stigma or reprisals.”⁴⁵

Recommendations

Given Ukraine’s ratification of the Convention and the legislative reforms which have been implemented since the 2008 clarifications were issued, the authors recommend:

- Ensuring that training programmes developed by the National School of Judges are updated to include best practices and developments resulting from Ukraine’s legislative amendments in line with the Istanbul Convention and other applicable international standards. With that in mind, these training programmes may be revised and further developed with the support of judges of the Ukrainian Supreme Court.
- That the Supreme Court of Ukraine consider issuing non-binding guidance on interpreting and applying Articles 152 and 153 CCU in line with Istanbul Convention and other international standards, building on and developing existing guidance in the Court’s judgments. This guidance should reflect the recent legal amendments that shift from a force-based to a consent-based definition of rape, and include an explanation of the flaws in the previous understanding of rape, to move away from victim-blaming and reliance on stereotypical assumptions about the behaviour of both the victim and the perpetrator. The new understanding of rape aims to eliminate these biases, thereby ensuring justice without disadvantaging the victim.

VII. Impact of gender-based stereotypes on reporting sexual violence crimes

Gender-based stereotypes are also evidenced in societal perceptions of gender-based violence in Ukraine. For example, a UN Women survey of public attitudes towards gender-based violence (2019) found that 49% of respondents agreed that a woman was guilty of what happened to her if she was under the influence of alcohol or drugs, and around one third of respondents considered that women could provoke sexual violence by being promiscuous or wearing provocative clothing.⁴⁶ The study also highlighted the prevalence of victim blaming by law enforcement (“the police will blame the woman”) as well as by victims (“women who have experienced sexual violence often blame themselves for the fact that this has happened to

⁴⁵ [CEDAW Convention on the Elimination of All Forms of Discrimination against Women](#), para 19.

⁴⁶ UN Women, [Baseline Survey of Public Perceptions and Attitudes Towards Gender-Based Violence Against Women](#), 2019, p 69.

them").⁴⁷ Other prevailing discriminatory myths and/or stereotypes identified in studies of societal attitudes (among women and men) towards gender-based violence in Ukraine include:

- Women are obliged to fulfil men's sexual desires regardless of their own needs and preferences (see further page 29 below).⁴⁸
- Women lie about sexual violence (see further page 30 below).⁴⁹

A. Article 12(3) Istanbul Convention

Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre (emphasis added).

1. Victim-centred approaches

Closely aligned to addressing gender-based myths and stereotypes is the need to ensure a victim-centred approach in all proceedings concerning sexual violence crimes. Victim-centred approaches are not only individualised; they are tailored to an individual victim's rights, needs and wishes, and take into account their abilities and vulnerabilities based on who they are in their individual contexts.⁵⁰ Women and girls who are victims of sexual violence will each have different understandings of justice; different needs; different responsibilities and different relationships to the criminal justice authorities.

The need for positive action to ensure a victim-centred approach to sexual violence is also echoed by UN GA Resolution 76/304 which calls on states to:

- provide "relevant, comprehensive, gender-responsive legal protection, in full respect of human rights and centred on such victims and victims";
- establish "comprehensive, timely, coordinated, interdisciplinary, accessible and sustained multisectoral services, programmes and responses centred on victims and survivors that respect all human rights and take into account gender perspectives for all victims and survivors of such violence"; and
- ensure that "all appropriate actions are coordinated and taken to protect and respond to the needs of all victims and survivors of such violence, to identify acts of violence and to prevent their recurrence or further acts of violence and physical and psychological harm, ensuring

⁴⁷ UN Women, [Baseline Survey of Public Perceptions and Attitudes Towards Gender-Based Violence Against Women](#), 2019, p 67-68.

⁴⁸ [Well-Being and Safety of Women \(OSCE-led Survey on Violence Against Women\)](#), 2019, p 28-29.

⁴⁹ Ibid.

⁵⁰ Equality Now, [Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Crimes; a Manual for Practitioners in Georgia](#), September 2021, p 32; , [The Murad Code](#), Principal 1.1.

that services are gender-responsive and centred on the needs of victims and survivors" including by investing in the capacity of courts, the judicial system, and law enforcement and strengthening their response protocols and procedures (emphasis added).⁵¹

Victim-centred approaches will be gender-informed. Having a gender perspective will help investigators, prosecutors and judges understand the differences in status, power, roles, and needs between persons because of their gender. A gender perspective will allow them to also consider social and political hierarchies, domination, and inequalities as they relate to a person's gender. Taking a gender perspective will also allow them to break free from gender-based stereotypes, misconceptions and bias.⁵²

Victim-centred, gender-informed approaches to the investigation and prosecution of sexual violence:

- understand "*the wide range of behavioural responses to sexual violence and rape which victims exhibit*";
- are not "*based on assumptions of typical behaviour in such situations.*"; and
- ensures that "*interpretations of rape legislation and the prosecution of rape cases are not influenced by gender stereotypes and myths about male and female sexuality.*"⁵³

The likelihood of any successful investigations and prosecutions of cases of sexual or other forms of violence against women and girls is diminished when the evidence is assessed based on assumptions of "typical" victim behaviour, gender stereotypes, and explicit (or implicit) biases and myths about male and female sexuality.⁵⁴ Reports of sexual or other forms of violence against women are often dismissed on the basis of these myths and false assumptions, leading to a lack of trust in law enforcement by victims, which has a negative impact on reporting these crimes.

This is evident in Ukraine through the results of the OSCE-led Survey on Violence Against Women in Ukraine (2019):

⁵¹ [UN General Assembly Resolution 76/304 on 'International cooperation for access to justice, remedies and assistance for survivors of sexual violence'](#).

⁵² Global Rights Compliance, ULAG and WIGJ, the Handbook for the Training of Trainers Programme on Addressing Conflict-Related Sexual Violence and Other International Crimes in Ukraine, 2023, p 4 (available on request by emailing info@4genderjustice.org).

⁵³ [Explanatory Report](#) to The Istanbul Convention, para. 192; see also [MC v Bulgaria no. 39272/98](#).

⁵⁴ [Explanatory Report](#) to The Istanbul Convention, para 192. See also for example, [GREVIO Baseline Report on Portugal](#), para 192, where it was observed that the stereotyped views on the credibility of the victim influenced the commitment of the law-enforcement agencies to search for extra evidence.

“Another key barrier identified by women was a lack of trust in institutions. They said that the police would only be interested in physical violence, not psychological violence. They also expressed the belief that the police would only follow up on a case if the physical violence were extreme, e.g., if there were any broken bones. There was a perception that if violence were reported to the police, then the response would not be effective. The women said that the police would issue a fine and separate the perpetrator from the victim for a few hours. They said that this type of response would not protect the victim and could lead to retaliation on the part of the perpetrator as a result.”⁵⁵

Ultimately, implementation of a victim-centred approach, as called for under the terms of the Convention, will be critical to eliminating the gender-based stereotypes which present serious barriers to addressing violence against women in Ukraine.

2. Identifying intersecting vulnerabilities

An individualised, victim-centred approach to investigation and prosecution of sexual violence will:

- recognise the many (non-exhaustive) factors of vulnerability which may be experienced simultaneously by victims of sexual violence, and
- involve criminal justice actors taking measures to ensure victims are not discriminated against in accessing justice on the basis of any of these factors of vulnerability.

Recognising and understanding a woman's intersecting vulnerabilities will be important to investigations of rape and other forms of sexual violence because women can be targeted for sexual violence or exploited because of their intersecting vulnerabilities. The intersection of these vulnerabilities can result in different coercive situations in which sexual violence is committed.⁵⁶ Intersecting vulnerabilities should also be taken into account in the context of a victim's risks assessments and related protective measurements. These vulnerabilities will also be relevant in assessing the most appropriate support measures for any victim. Evidence of these vulnerabilities may also be relevant as aggravating factors in any case of rape or other form of sexual violence.

Convention Article 4(3) states:

⁵⁵ [Well-Being and Safety of Women \(OSCE-led Survey on Violence Against Women\)](#), 2019, p 66.

⁵⁶ Equality Now, [Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Crimes; a Manual for Practitioners in Georgia](#), September 2021, p 20.

*The implementation of the provisions of this Convention by the Parties, **in particular measures to protect the rights of victims**, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status. (emphasis added).*

This list of possible grounds of discrimination is non-exhaustive.⁵⁷ Article 2 of the Law of Ukraine on the Principles of Preventing and Combating Discrimination in Ukraine defines discrimination as:

(...)the situation in which an individual and/or a group of individuals suffers from the restriction on the recognition, exercise or enjoyment of rights and freedoms in any form established in this Law on the grounds of their race, skin colour, political, religious and other beliefs, sex, age, disability, ethnic or social origin, nationality, marital and property status, place of residence, linguistic or on other grounds that have been, are or may be actual or alleged (...), except for cases when such restriction has a legitimate, reasonably justified aim, which is achievable in an appropriate and necessary way. ⁵⁸

CEDAW General Recommendation 35 called on State parties to take a number of measures to accelerate the elimination of gender-based violence against women (including protection, prosecution and punishment), and said that:

*All measures should be implemented with an approach centred around the victim/survivor, acknowledging women as right holders and promoting their agency and autonomy, including the evolving capacity of girls, from childhood to adolescence. In addition, the measures should be designed and implemented with the participation of women, **taking into***

⁵⁷ [Explanatory Report](#) to The Istanbul Convention, para 53. See also [Constitution of Ukraine](#), Article 24; [CEDAW/C/GC/35](#), para 12.

⁵⁸ [Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine](#), Article 2.

account the particular situation of women affected by intersecting forms of discrimination.⁵⁹

UN General Assembly Resolution 76/304 further emphasises the need of states to pay “particular attention to women and girls facing multiple and intersecting forms of discrimination” in ensuring full respect for the rights of victims of sexual violence.⁶⁰

The CEDAW Committee also identifies the “*aggravating negative impact*” of women experiencing intersecting forms of discrimination, and calls on states parties to consistently take into account the risks of intersectional discrimination, and ensure that all policies and measures designed to address gender-based violence take into account the particular situation of women affected by intersecting forms of discrimination.⁶¹

The authors underline that the experience of women victims of sexual violence in Ukraine is often compounded by their intersecting vulnerabilities, and more so during Russia’s war against Ukraine. The data confirms disproportionate impact of the war on marginalised groups, including female-headed households, internally displaced persons (IDPs), Roma communities, LGBTQIA+ individuals, and people with disabilities.⁶²

Ukraine’s Baseline Report to the Committee does not identify or discuss intersecting or multiple forms of discrimination as a recognised phenomenon, and there is no reference to how the State complies in practice with the duty under Article 4(3) of the Convention to ensure non-discrimination in the implementation of the Convention.

Where reference is made to particular groups of women, for example migrant women, the Report largely focuses on the legal grounds for securing residence status but does not discuss the experiences of migrant women victims of sexual violence, and the ways in which their migrant status (as well as their gender) impacts their capacity to report this violence and influences the response of criminal justice practitioners.⁶³

Strikingly, the Report does refer to “new approaches to protecting interests of victims and witnesses” in the cases of CRSV, including “adapting to the victim’s personality (respect for the unique character of each victim, consideration of their personal identity, traits, group pertinence as well as other

⁵⁹ [CEDAW/C/GC/35](#), para 28. See also [Explanatory Report](#) to The Istanbul Convention, para 53.

⁶⁰ [UN General Assembly Resolution 76/304 on 'International cooperation for access to justice, remedies and assistance for survivors of sexual violence'](#), p 5.

⁶¹ [CEDAW General Recommendation 35](#), p 5.

⁶² UN Women and CARE International, [Rapid Gender Analysis of Ukraine](#), May 2022.

⁶³ Council of Europe, [Ukraine Baseline Report](#), 2023, p 47-49.

factors....[and]....ensuring inclusion and non-discrimination)."⁶⁴ This recognition of the particular vulnerability of victims of CRSV is critical, though when in practice it is applied only to this group and not also to women victims of sexual violence outside of the context of 'CRSV', it constitutes a denial of equal access to justice.

Recommendations

- In 2023 the Office of the Prosecutor General developed and disseminated a strategic plan for addressing conflict-related sexual violence aimed at improving access to justice for survivors through and with the following objectives:
 - strengthening coordination and implementing a comprehensive approach to investigating and supporting public prosecution in CRSV criminal proceedings, as well as ensuring comprehensive protection of victims and witnesses in accordance with international standards and best practices;
 - developing and disseminating victim-centred, trauma-informed, and gender-sensitive programmes and procedures for investigating and supporting public prosecutions in criminal proceedings on CRSV;
 - organising and/or coordinating professional trainings on investigating and supporting public prosecution in criminal proceedings on CRSV within the framework of standardized national programmes and procedures.⁶⁵
- These objectives embrace many of the core principles for dealing with violence against violence and domestic contained in the Convention, including the need for an intersectional, individualised, victim-centred approach.
- The authors therefore recommend that Ukrainian authorities adopt and implement guidelines for dealing with the crimes covered by the Convention which reflect the same adherence to these standards as set out in the OPG's strategic plan on CRSV.
- Furthermore, existing training programmes for law enforcement professionals, the judiciary and others on dealing with domestic, sexual and gender-based violence should be updated in line with the most recent amendments to the current legislative framework, made as part of Ukraine's ongoing implementation of the Istanbul Convention. This would also involve ensuring that such training is reinforced with modules on mainstreaming of intersectionality and a victim-centred

⁶⁴ Ibid, p 46.

⁶⁵ See footnote above.

approach, including training on identifying categories of especially vulnerable victims as referred to above.

VIII. Article 36(2) Istanbul Convention

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

The Explanatory Report to the Convention clarifies Article 36(2) by stipulating that:

Prosecution of this offence [sexual violence, including rape] will require 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. Such an 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. It is equally important to ensure that interpretations of rape legislation and the prosecution of rape cases are not influenced by gender stereotypes and myths about male and female sexuality (emphasis added).⁶⁶

Context-based assessments are victim-centred, in line with the principles set out in Convention Article 12(3) (discussed above).

A. The importance of situating rape and other forms of sexual violence in context

In line with Convention Article 36(2), Article 152(1) CCU reads as follows:

Sexual activities involving vaginal, anal or oral penetration into the other person's body with the use of genitals or any other

⁶⁶ [Explanatory Report](#) to The Istanbul Convention, para 192. As to free consent, see also Equality Now, [Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Crimes: a Manual for Practitioners in Georgia](#), September 2021, p 18-19; Global Rights Compliance, [Basic Investigative Standards Manual for Documenting International Crimes in Ukraine](#), in particular p 460-470; WIGJ, [The Hague Principles on Sexual Violence](#), p 105, footnote 4: Consent to the relevant sexual activity must be specific and ongoing. Thus, it will not suffice if the person has consented to similar conduct, or if they consented to the relevant on a previous occasion, or if they initially consented but later withdrew that consent, or if the nature of the sexual activity changes without their consent. The consent should not be considered as freely given when occurred in a situation of vulnerability. A person may be incapable of giving relevant consent if affected by natural, induced, or age-related incapacity. Other factors that may affect a person's capacity to give genuine consent include literacy, access to information, and linguistic, educational, and economic positions. Physiological reactions should not be considered as a reflection of consent.

items, committed without voluntary consent of the victim (rape) shall entail imprisonment for the period of three to five years.

Note: Consent is deemed voluntary, when it is a result of free declaration of the will of the individual concerned, with due regard to all relevant circumstances.

The authors submit that interpreting whether consent is truly voluntary under this article, with regard to “all relevant circumstances”, should include examining any evidence of coercive circumstances which would prevent a victim from being able to express their consent.⁶⁷

Practically speaking, this means that an investigation of rape and other forms of sexual violence should be comprehensive, and built on an understanding of the context within which the violation was perpetrated. As noted above, a context-based approach to the investigation and assessment of cases of violence against women will mean that criminal justice actors will tailor their interventions to the rights, needs, wishes and risks of victims as individuals and respond to their abilities, their challenges and their vulnerabilities based on who they are and the context they are in.

The burden of proving non-consent should not be borne by the victim. The authors refer to a relevant example of comparative practice in Canada, where the Supreme Court has held that the belief that women have the burden of actively showing non-consent rather than that men have the responsibility to ascertain consent, “denies women’s sexual autonomy and implies that women are walking around this country in a state of constant consent to sexual activity.”⁶⁸

A context-based approach, however, shifts the onus on the perpetrator to ensure that sexual acts are engaged in voluntarily.⁶⁹ This approach will require Ukrainian criminal justice and law enforcement actors to focus not on the perceived credibility of the individual complainant, but on the credibility of the allegation. This methodology can help authorities understand perpetrator motives and strategies. A context-based approach will also help improve understanding of the dynamics of domestic violence and any patterns of perpetrator behaviour that might result in a victim’s reluctance to come forward. It will also help avoid the discriminatory, adverse, gender-based inferences against women and girls who are victims of sexual violence which are addressed throughout this submission. For example, a context-based

⁶⁷ [CEDAW General Recommendation 35](#), para. 33; ICC, [Rule of Procedure and Evidence](#), Rule 70; see also Equality Now, [Sexual Violence Laws in Eurasia](#), p 22.

⁶⁸ [R v Ewanchuk](#), [1999] 1 SCR 330 at p 372 (SCC).

⁶⁹ [Mid-term Horizontal Review of GREVIO Baseline Evaluation Reports](#), 2022, para 362.

approach may result in authorities being less likely to draw any negative inferences with respect to a victim who delayed reporting.

B. International standards regarding free, voluntary and genuine consent

Both international criminal law and international human rights law hold that the possibility to give free, voluntary and genuine consent to sexual contact is negated when the act is committed through:

- Use of actual or threatened physical, psychological or economic violence;⁷⁰
- Threats of force or coercion (such as that caused by fear of violence, duress, detention, intimidation, blackmail, psychological oppression or abuse of power, among others); (emphasis added)⁷¹
- By taking advantage of a coercive environment; or
- By taking advantage of a person who is incapable of giving genuine consent.⁷²

When just one of the above criteria is met, this has been held to be sufficient to establish the non-consensual nature of the sexual act charged.⁷³ At that point, examination of voluntary consent is not necessary.

C. Ukrainian courts interpretations of consent

This section enlarges on the observations in Section VI B, above.

In 2021, in a decision referring to a case arising from an allegation in 2019 (thus – *after* the 2017 amendment of Article 152 referred to in Section II, above) the Supreme Court interpreted Article 152 as though it remained a force-based offence, rather than applying the current, consent-based definition.⁷⁴ It also required the “threat of force” to refer to immediate force. A threat does not

⁷⁰ For additional guidance in defining these factors, see: Articles 1(4), 1(17) of the [Law on Domestic Violence](#). See also [Criminal Code of Ukraine](#) Article 126-1 (domestic violence); [Istanbul Convention](#) Article 3 (Definitions); [Explanatory Report](#) to The Istanbul Convention, Article 179-181, 187-189.

⁷¹ ICTR, [Akayesu Trial Judgment](#), para 688.

⁷² The ICC Elements of crimes specifically incorporates the above factors negating free, voluntary and genuine consent to sexual contact. See also ICTY, [Furundžija Trial Judgment](#), para 186; ICTY, [Kunarac Trial Judgment](#), para 440.

⁷³ [Judgement in the Case of The Prosecutor v Jean-Pierre Bemba Gombo](#), paras 105-106: ‘The Chamber notes that the victim’s lack of consent is not a legal element of the crime of rape under the Statute. The preparatory works of the Statute demonstrate that the drafters chose not to require that the Prosecution prove the non-consent of the victim beyond reasonable doubt, on the basis that such a requirement would, in most cases, undermine efforts to bring perpetrators to justice. Therefore, where “force”, “threat of force or coercion”, or “taking advantage of a coercive environment” is proven, the Chamber considers that the Prosecution does not need to prove the victim’s lack of consent.

⁷⁴ [Unified State Register of Court Decisions](#) Case No. No. 566/1420/19, Decree of the Criminal Court of Cassation, 8 December 2021.

need to be explicit, nor does it need to refer to immediate harm, or harm that would reach a particular threshold.⁷⁵

Sexual penetration of the body cannot be considered to have been committed by voluntary consent in the context of accompanying circumstances, if it was carried out as a result of the use of physical violence, the threat of its use, or other methods of committing the crime similar to them in terms of the specifics of their impact on the psyche of the victim, by using a helpless state.

Establishing the fact of the use of physical violence, the threat of its use, or other methods of overcoming real or preventing expected resistance, which actually put the victim in a state similar to a state of extreme necessity, when she is forced to agree to perform acts of a sexual nature against her under the threat of immediate infliction of another significant harm to law-protected interests (own or of a third party), also excludes the free expression of a person's will. ⁷⁶

The court however went on to state that: "Taking into account the accompanying circumstances, there are no signs of rape if the person should not have been led to believe beyond a reasonable doubt that the victim did not consent to acts of a sexual nature towards her, and the belief in her voluntary consent and free expression of will is sincere. The voluntariness of consent must be confirmed by evidence in criminal proceedings, since the legislator established in Article 152 of the Criminal Code presumption of the victim's consent. Any act of penetration into the body of the victim, without the corresponding affirmative voluntary permission on her part, constitutes an offense punishable by law," and that voluntary consent to acts of a sexual nature should be "(...) expressed in a certain external form (verbally, gestures, facial expressions or conclusive actions, etc.)"

On its face, this approach does not consider the international standards regarding free, voluntary and genuine consent set out in Section VII(B) above, and instead reflects a narrow interpretation of what might constitute "all relevant circumstances," as required under Article 152 of the Criminal Code.

⁷⁵ Equality Now, [Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Crimes; a Manual for Practitioners in Georgia](#), September 2021, p 8; see for example, ICC, [Rule of Procedure and Evidence](#), Rule 70(a): (a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent.

⁷⁶ [Unified State Register of Court Decisions](#) Case No. No. 566/1420/19, Decree of the Criminal Court of Cassation, 8 December 2021.

In the ECtHR decision of *E.B. v. Romania*⁷⁷ (and referring to *M.C. v. Bulgaria*), the court reaffirmed that “In similar cases the (...) the presence of two irreconcilable versions of the facts obviously called for a context-sensitive assessment of the credibility of the statements made and for verification of all the surrounding circumstances.” Moreover, they specified that the complainant’s personal circumstances should be considered by courts in order to properly assess the capacity of the complainant to consent to sexual acts.⁷⁸

Further refining the factors set out above in Section VII(B), The Hague Principles on Sexual Violence⁷⁹ identifies a non-exhaustive list of factors which could be considered in determining whether an act of a sexual nature takes place with free, voluntary and genuine consent of the participants. Among them are an unequal relationship between the perpetrator and the affected person due to a variety of possible factors, including

- the affected person having any type of dependency (including financial, legal, professional, familial, and/or personal) on the perpetrator, or any other type of contextual relationship that gives rise to a risk of exploitation;
- 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; and
- a situation where there is reasonable fear of suffering sexual violence based on the surrounding context of terror created by the perpetrator.⁸⁰

Moreover, the authors submit that Article 152 contains no presumption of consent. Such a presumption would violate a woman’s right to autonomy, particularly in an intimate partner relationship where, for example, domestic violence has been established.

Finally, the idea that consent must be proved by some kind of affirmative evidence of sexual interest in a prescribed form cannot in and of itself be determinative. No one experiences or communicates their consent to sexual contact the same way, nor is that consent always externalised.

Rather, this be a determination based on the surrounding circumstances: in essence a context led approach. Irrespective of evidence of what might have been said or indicated, consent should not be considered as freely given when it occurs in a situation of coercion or vulnerability.⁸¹

A plain reading of Article 152 CCU defines rape as sexual intercourse with a person who is not voluntarily participating. Consent is not an element of the

⁷⁷ [EB v Romania no. 49089/10](#), para 58.

⁷⁸ *Ibid*, para 60.

⁷⁹ WIGJ, [The Hague Principles on Sexual Violence](#).

⁸⁰ *Ibid*, p 20-21.

⁸¹ *Ibid*, p 22.

crime. As underlined in the note to Article 152 CCU, “Consent is deemed voluntary, when it is a result of free declaration of the will of the individual concerned, with due regard to all relevant circumstances”.

In another decision, the Supreme Court emphasized 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.”⁸² This interpretation is in line with international standards.

Lower courts in Ukraine are meanwhile making increasing efforts to interpret issues around voluntary consent in accordance with the standards of the Istanbul Convention, yet a review of decisions still show their reasoning is impacted by rape myths and stereotypes, as illustrated in the example below, excerpted from a November 2023 Judgment of the Dnipro District Court of Kyiv:

"Regarding the assertion of the defence about the lack of objective data that would testify to the rape of the victim, the wording of Article 152 of the Criminal Code of Ukraine is based on the provisions of the Istanbul Convention of 2011, in which rape as a socially dangerous act does not exclude violence, and in most cases it is impossible to commit rape without violence (for example, with intensive resistance to the rapist). However, violence during rape is not an aim itself, it has an auxiliary character in implementing the intention of the rapist, for whom the main thing is the desire to satisfy his sexual intentions. In relation to the achievement of the goal, violence acquires an auxiliary meaning. In the mind of the guilty party, it is not a separate factor. Under certain accompanying circumstances, he can use other methods of illegal satisfaction of his sexual intention. According to this approach, 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. Thus, tying the limbs without the victim's voluntary consent, i.e. intentional infliction of minor bodily injury in the process of rape is fully covered by the objective aspect

⁸² [Unified State Register of Court Decision](#) Case No. 562/1629/17, Decree of the Criminal Court of Cassation, 7 December 2020, cited at “Sexual Violence Laws in Eurasia: Towards a Consent-based Definition,” p 18.

*of the crime provided for in Article 152 of the Criminal Code of Ukraine.*⁸³ (emphasis added)

This reasoning reflects two common misconceptions about rape. First, it is a myth that rape “in most cases” involves violent, physical force.⁸⁴ Moreover, proof of violence does not require evidence of visible, physical resistance by the victim.⁸⁵ Underpinning this misconception is the myth that when women are being really raped, someone who is really, truly unwilling is going to vigorously verbally or physically resist and would call for help or fight back – and that this resistance should be capable of being proved by evidence. This misconception can be very damaging, as it potentially excludes situations where rape was perpetrated through coercion, or an implicit or overt threat or abuse of power. Secondly, rape is not a crime of passion or about biological urges. Rape is about power and control over women.

The foregoing underscores the need for up to date and unified guidance from the Supreme Court in dealing with crimes of rape and other forms of sexual violence (recommended in Section VI above) as an important step towards mitigating the risk of judgments in cases of violence against women impacted by rape myths and stereotypes and improving access to justice for victims.

D. Elements of proof to be considered in a context-based assessment

Coercion and coercive environments are commonly found in the context of an unequal power relationship between the victim and perpetrator. Coercion is a form of psychological violence. It includes the idea of someone in a position of power offering or giving material or a benefit to a victim in order to achieve control over the will of that person. In domestic and intimate partner contexts, it may be referred to as coercive control.

Coercive control is a form of abuse where the main goal is to degrade, isolate, and deprive a person of their rights to physical security, dignity, and respect, which puts the victim in a state of terror and entrapment, and includes tactics such as monitoring movements, social isolation, and restriction of access to financial resources, employment, education, or medical care (among a wide range of others).⁸⁶ Means and methods of coercion are not limited, but cover

⁸³ [Unified State Register of Court Decision](#) Case No 755/3435/21, Judgment of the Dnipro District Court of Kyiv, 01 November 2023.

⁸⁴ See for example, comparative practice from England and Wales in the guidance for prosecutors which clarifies this: [Code for Crown Prosecutors, Rape and Sexual Offences - Annex A: Tackling Rape Myths and Stereotypes](#).

⁸⁵ [MC v Bulgaria no. 39272/98](#), para 166.

⁸⁶ Lohmann, S., Cowlishaw, S., Ney, L., O'Donnell, M., & Felmingham, K. (2024). The Trauma and Mental Health Impacts of Coercive Control: A Systematic Review and Meta-Analysis. *Trauma, Violence, & Abuse*, 25(1), 630-647, doi: <https://doi.org/10.1177/15248380231162972>; See also Equality Now, [Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Crimes; a Manual for](#)

a broad spectrum of behaviours. Any descriptive list of coercive behaviours is non-exhaustive.

It is important to assess situations of coercive control in context, because what may initially be seen as the victim's consent or submission to sexual contact may actually be their way of coping with or adapting to their threatening, coercive environment and avoiding other harmful consequences.

A pattern of coercive abuse and control may be well established before a single incident of such behaviour or rape itself has been reported. In that sense, the behaviour may be described as systematic.

If considered in isolation from other incidents, the coercive conduct might seem innocent - and the victim may not be aware of, or be ready to acknowledge, abusive behaviour.⁸⁷ However, coercive, controlling behaviours will often intensify and escalate.

Recommendations

- Where assessed as needed, reinforce existing training for members of the judiciary and other stakeholders on understanding and interpreting voluntary consent, and coercion and coercive circumstances, among others,⁸⁸ in line with international standards and practice (reflected for example, in the breadth of material reviewed as set out in section IV above, and cited throughout this submission⁸⁹). This could be done as part of the detailed training materials on handling sexual violence cases recommended above.
- Regularly update and deliver skill-based trainings for investigators, prosecutors and judges on the factors to consider when conducting a context-based assessment of the evidence in all cases of violence against women, including sexual violence.

IX. Identifying and dispelling gender-based myths and stereotypes

Identifying and dismantling discriminatory myths and stereotypes around sexual violence requires recognition that there is no 'typical' behaviour for a

[Practitioners in Georgia](#), September 2021, p 14-18; Crown Prosecution Service Guidelines, [Controlling or Coercive Behaviour in an Intimate or Family Relationship](#).

⁸⁷ See for example, the Crown Prosecution Service Guidelines, [Controlling or Coercive Behaviour in an Intimate or Family Relationship](#).

⁸⁸ Such as stalking, sexual harassment, intimidation, and online violence against women as covered by the Istanbul Convention.

⁸⁹ In particular, cited at section XIII(b) of this report above, among others.

woman who has been a victim of sexual violence, and no ideal victim.⁹⁰ The myth of the 'ideal' victim who deserves the help of the criminal justice system undermines the credibility of women who might step too far outside the boundaries of what are assumed to be "reasonable" victim responses. The authors offer the following examples of the prevalence and impact of commonly held gender-based myths and stereotypes concerning victims of sexual violence and acts of sexual violence, in Ukraine, focusing in particular on the attitudes and responses of law enforcement.

A. It's a woman's marital duty to obey their husbands or intimate partners and have sex even if they do not want it

Victims of domestic violence are very often subjected to sexual violence. Women in abusive relationships may not recognise or be ready to acknowledge that they have been subjected to sexual violence. Some women might view any kind of sexual intercourse (consensual or non-consensual) as their "marital duty", not recognising the abuse is a crime. They may only turn to the authorities when the pattern of violence becomes unbearable or rises to extreme levels.⁹¹

As evidenced by the OSCE led survey, more than a third of women aged 18–74 believe that their friends would agree that "a good wife obeys her husband even if she disagrees."⁹² Nearly one in five women (and one in four for women over 60) believe that their friends would agree that "it is a wife's obligation to have sex with her husband even if she doesn't feel like it".⁹³

This is echoed by the views of male and female participants in the UN Women Perceptions survey:

"In our society, the topic of sexual violence within marriage is a taboo. It is believed, if a woman is married, the husband has the right to do whatever he wants."⁹⁴

"Many people do not know that despite the fact that you have a formal marriage, if one of the partners commits sexual violence against another, it is a criminal offence. It is considered this is a conjugal duty."⁹⁵

⁹⁰ Tamara Rice Lave, [The Prosecutor's Duty to "Imperfect" Rape Victims](#), University of Miami School of Law Institutional Repository, 2016.

⁹¹ Equality Now, [Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Crimes; a Manual for Practitioners in Georgia](#), September 2021, p 22-23.

⁹² [Well-Being and Safety of Women \(OSCE-led Survey on Violence Against Women\)](#), 2019, p 28-29.

⁹³ Ibid.

⁹⁴ UN Women, [Baseline Survey of Public Perceptions and Attitudes Towards Gender-Based Violence Against Women](#), 2019.

⁹⁵ Ibid.

B. Women lie about sexual and gender-based violence

According to the OSCE led survey, one in five women consider that women who say they were abused often “make up or exaggerate” claims of abuse or rape.⁹⁶ Age, education levels, and financial security are all factors influencing women’s perceptions about the credibility of allegations of sexual violence (women aged 18–29 are less likely to consider that women victims make up claims of violence, compared with women who are retired and those in financially unstable circumstances, who are more likely to agree).⁹⁷ As noted above, the stereotyped perception that women lie about gender-based violence is also evidenced in the attitudes of law enforcement towards domestic violence: the 2017 DCAF report noted that nearly 60% of police officers, prosecutors and judges surveyed regarded the majority of domestic violence reports as false.⁹⁸

The criminal justice process can revictimize and stigmatise victims when messages, decisions, questions and outcomes doubt their account and honesty. When they are asked ‘why’ they did not do something or react in a certain expected way, victims are again retraumatised and harmed by the justice process. For example, a 2009 victim experience review in England and Wales found that any indication of disbelief (perceived or actual) from authorities was most likely to cause a victim to withdraw from the process.⁹⁹

Perceptions of delayed reporting are also connected to the gender-based myth that women lie about sexual violence. For many reasons, including stigma and trauma, victims often delay disclosing, and assisted by time, support and healing reporting can disclose in phases or develop over time and through a series of interactions or exchanges. Misunderstanding of this can lead justice actors to doubt credibility or question a late disclosure as a lie.

C. Sexual violence against women and girls is a ‘private’ or ‘family’ matter

Over a quarter of women surveyed by the OSCE in Ukraine agree that domestic violence is a private matter and should be handled within the family, which is higher than the EU average (14%).¹⁰⁰ The perception that domestic abuse and other forms of gender-based violence are private matters is also reflected in the low rates of reporting such incidents to the authorities. Among participants of the OSCE led survey, 81% of women did not inform the police about even the most serious incidents of physical and/or sexual violence.¹⁰¹

⁹⁶ [Well-Being and Safety of Women \(OSCE-led Survey on Violence Against Women\)](#), 2019.

⁹⁷ Ibid.

⁹⁸ DCAF and La Strada-Ukraine, [Criminal Justice Practice and Violence Against Women](#), 2017, p 45.

⁹⁹ A report by Baroness Vivien Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales, [The Stern Review](#).

¹⁰⁰ [Well-Being and Safety of Women \(OSCE-led Survey on Violence Against Women\)](#), 2019.

¹⁰¹ Ibid, p 52-53.

The most prevalent reason for not reporting this violence was the perception that the violence should be dealt with it as a private or 'family' matter.¹⁰²

As with the other attitudes above, younger women (aged 18–29), those with tertiary education, and those who are more financially stable, are less likely to agree that partner violence should be dealt with in private.¹⁰³

Among police officers surveyed in 2017, just under 40% considered domestic violence to be a private matter.¹⁰⁴

D. Women are somehow to blame for sexual and gender-based violence

According to the 2019 OSCE led survey, nearly one in four women considered that violence against women is often provoked by the woman,¹⁰⁵ while 60% of police officers think that women are to blame for sexual violence.¹⁰⁶ This is echoed by the attitudes conveyed in the UN Women Perceptions Survey:

“Women who have experienced sexual violence often blame themselves for the fact that this has happened to them. They are ashamed, and as a result they do not seek assistance in time”¹⁰⁷

In cases of rape, “the police will blame the woman”.¹⁰⁸

It was also revealed by the DCAF/LSU survey data (2017) that 58% of police officers, 61% of prosecutors, and 62% of judges in Ukraine believed that victims of sexual violence are sometimes responsible for their own victimisation.¹⁰⁹

As noted above, victim blaming was also identified in the case of *Ivaskhiv v Ukraine*, in which the ECtHR acknowledged that “the appellate court de facto blamed the applicant for being beaten by her husband, reflecting a discriminatory attitude towards the applicant as a woman and indicating prejudice existing within the judiciary”.¹¹⁰

Victim shaming is often connected to credibility challenges, which are nominally (but incorrectly) connected to the question of consent (for example, drawing on prior or subsequent sexual history to seek to shame and discredit

¹⁰² Ibid, p 54.

¹⁰³ Ibid.

¹⁰⁴ DCAF and La Strada-Ukraine, [Criminal Justice Practice and Violence Against Women](#), 2017, p 8.

¹⁰⁵ [Well-Being and Safety of Women \(OSCE-led Survey on Violence Against Women\)](#), 2019, p 19.

¹⁰⁶ DCAF and La Strada-Ukraine, [Criminal Justice Practice and Violence Against Women](#), 2017, p 8.

¹⁰⁷ UN Women, [Baseline Survey of Public Perceptions and Attitudes Towards Gender-Based Violence Against Women](#), 2019, p 67.

¹⁰⁸ Ibid.

¹⁰⁹ DCAF and La Strada-Ukraine, [Criminal Justice Practice and Violence Against Women](#), 2017, p 45.

¹¹⁰ [Ivaskhiv v Ukraine no. 59670/14](#), para 22.

victims, or trying to infer consent from being sexually active or having known the accused beforehand).

The triggers for blaming women victims of sexual violence are solely focused on the victim or victim's behaviours, such as:

- alcohol or drug use (e.g. nearly half of respondents agreed that the woman was guilty of what happened to her if she was under the influence of alcohol or drugs);¹¹¹
- having multiple sexual partners or even just being sexually active (e.g. a third of respondents believed that women could provoke sexual violence by being 'promiscuous' in relationships with the opposite sex;);¹¹²
- wearing provocative clothes (e.g. a third of respondents believed that women could provoke sexual violence by wearing provocative clothes);¹¹³
- flirting with the perpetrator before the sexual violence happens (e.g. 15% of respondents agreed that sex without consent is justified if the woman flirts with the perpetrator beforehand);¹¹⁴
- Voluntarily going home with the perpetrator (e.g. one in six respondents think sex without consent is justified if a woman voluntarily goes home with someone);¹¹⁵

Recommendations

- Where assessed as needed, reinforce existing training for law enforcement (particularly supervisors and senior officers) on recognising gender-based myths, stereotypes and biases they should be careful to avoid in all aspects of their pre-trial investigations of sexual violence crimes and at all stages of the criminal justice process; their analysis of the facts; their credibility assessments; in interpreting and applying the

¹¹¹ [Baseline Survey of Public Perceptions and Attitudes Towards Gender-Based Violence Against Women](#), p 70; see also "...she voluntarily came to the house with men unknown to her with the purpose of alcohol consumption" Equality Now, [Sexual Violence Laws in Eurasia: Towards a Consent-Based Definition](#), 2023, p. 20

¹¹² [Baseline Survey of Public Perceptions and Attitudes Towards Gender-Based Violence Against Women](#), p 70; See also for example, DCAF and La Strada-Ukraine, [Criminal Justice Practice and Violence Against Women](#), 2017, p 46; "...she voluntarily came to the house with men unknown to her with the purpose of alcohol consumption" Equality Now, [Sexual Violence Laws in Eurasia: Towards a Consent-Based Definition](#), 2023, p. 20; [Unified State Register of Court Decisions](#) Case No. 639/1392/20, Judgement of Zhovtneviy Court of Kharkiv, 11 October 2021

¹¹³ UN Women, [Baseline Survey of Public Perceptions and Attitudes Towards Gender-Based Violence Against Women](#), 2019, p 70; See also [Well-Being and Safety of Women \(OSCE-led Survey on Violence Against Women\)](#), 2019, p 28-29.

¹¹⁴ [Well-Being and Safety of Women \(OSCE-led Survey on Violence Against Women\)](#), 2019, p 18.

¹¹⁵ Ibid.

law; and in the language they use. In this way, they will be able to share this knowledge with subordinates, and monitor its implementation.

X. Building the necessary capacities

A. Article 15(1) Istanbul Convention

Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation. (emphasis added)

Awareness raising and training programmes on violence against women should be sufficiently regular, and in particular for trainings of professionals, needs to be “on-going and sustained with appropriate follow-up to ensure that newly acquired skills are adequately applied”, and supported by protocols and guidelines spelling out the standards expected of professionals in their relevant fields.¹¹⁶ The Convention's emphasis on training of professionals is underpinned by the recognition that it does contribute to changing the outlooks and conduct (much of which is informed by gendered myths and stereotypes, as evidenced above) of professionals engaging with victims of gender-based violence.¹¹⁷

While it is regrettable that Ukraine's Baseline report makes scant reference to awareness raising and training programmes specifically addressing gender-based stereotypes, as noted above in our Introduction, this was supplemented by information in Ukraine's 9th Periodic Report to the CEDAW Committee setting out details relating to numerous capacity-building programmes for Ukrainian criminal justice actors, some of which are now institutionalised.¹¹⁸ The authors also note the availability of bespoke materials prepared by international actors for Ukraine and touching on these topics, such as the [Benchbook on the Adjudication of International Crimes Under Ukrainian Domestic Law](#); the Handbook for the Training of Trainers Programme on Addressing Conflict-Related Sexual Violence and Other International Crimes in

¹¹⁶ [Istanbul Convention](#), para 99.

¹¹⁷ [Explanatory Report](#) to The Istanbul Convention, paras 98-101.

¹¹⁸ See [CEDAW 9th periodic report submitted by Ukraine under article 18 of the Convention, due in 2021 : Convention on the Elimination of All Forms of Discrimination against Women](#), paras 39-42; [CEDAW Concluding observations on the 9th periodic reports of Ukraine : Committee on the Elimination of Discrimination against Women](#), para 29. See also [Monitoring Response of the Justice System to Domestic and Gender-Based Violence: 2021-2022](#), La Strada-Ukraine, 2022, p.5; see also [Дистанційний курс “Забезпечення гендерної рівності”](#)

Ukraine,¹¹⁹ and the [Global Rights Compliance BIS-Ukraine Manuals](#), among a range of others.

The National School of Judges ('NSJ') for example has programmes which include courses on domestic violence, sexual violence, CRSV (and others) which have modules addressing gender-based myths and stereotypes.¹²⁰ In another example, the NSJ also has courses on gender equality, and the importance of overcoming gender stereotypes.¹²¹ The programme at the Ukrainian Training Centre for Prosecutors also offers courses on sexual and domestic violence. La Strada-Ukraine's training of police operators, ongoing over the last several years, has a fixed component on dealing with myths and stereotypes.

Equipping law enforcement officials and judges with this knowledge and helping them build the skills needed to deal with the challenges ahead - in line with international standards - will be a critical component of the criminal law reform needed to fully implement the standards of the Convention and provide effective protection against all forms of violence against women, including sexual violence.

Recommendations

GREVIO has pointed out that in order to foster a truly gendered understanding of violence against women among the different actors in the criminal justice sector, sustained efforts to challenge stereotyped mindsets are extremely important.¹²² This holds true for Ukraine. Any training programme should therefore include specific components dedicated to helping participants to recognise gender stereotypes. Cases for which the assessments of the evidence are untainted by myths and stereotypes will be more likely to succeed – whether or not the victim elects to participate in the criminal justice process.

In light of the above, the authors offer the following recommendations:

- Reinforce existing training programmes by ensuring they are designed and delivered using an iterative approach.
- For trainings to be effective, they need to be coordinated, consistent, mutually reinforcing, and grounded in the Convention principles and relevant standards of international human rights law. Recognising the overlap between international criminal law and international human rights law (and the provisions of the Convention) in dealing with sexual

¹¹⁹ Prepared by ULAG, WIGJ and Global Rights Compliance (available on request by emailing info@4genderjustice.org).

¹²⁰ See for example, the detailed list set out in the Council of Europe, [Barriers, Remedies and Good Practices For Women's Access to Justice in Ukraine](#), 2023, p. 39.

¹²¹ *Ibid.*

¹²² [GREVIO Baseline Report on Portugal](#), para 190.

violence crimes, and given the number of international actors presently supporting Ukraine in delivering training and capacity building programmes in relation to CRSV, it may therefore be appropriate for international actors skilled in this subject area to coordinate programmes and skills-based training to avoid repetition and inconsistent messaging.¹²³

- In order to ensure consistency and sustainability of these processes, GREVIO may recommend Ukraine implement cascade trainings and training of trainers (ToT) programmes in this area (sponsored and implemented initially by international donors, with a view to eventually being led by Ukrainian actors).¹²⁴ The cascade training model ensures a practical, locally owned and adapted model for the dissemination of best practices in dealing with sexual violence.
- In particular, investigative practices in these areas can be improved by specialised training (and mentorship) of police and criminal investigators in the following areas:
 - Understanding the broad spectrum of acts which can constitute sexual violence;
 - Understanding the gendered aspects of crimes of violence against women;¹²⁵
 - Understanding consent and coercive circumstances in line with the Istanbul Convention and commentary by the Grevio Committee, informed by international human rights law and international criminal law; (patterns of) coercion and controlling behaviour, and recognising the different forms of habitual domestic abuse;
 - Training and mentorship in how to conduct comprehensive, context-based investigations in dealing with sexual and other forms of violence against women.¹²⁶ (among others).
- Investigators who follow these courses may be recognised as specialists, whose qualifications should be renewed every two years. They may, in turn, become trainers. Where possible and feasible, the appropriate state authorities may consider issuing guidance by which domestic or

¹²³ See also [Needs Assessment of Ukraine's Justice System: Delivering Meaningful Justice to the Victims and Survivors of the Armed Conflict](#), p 112, 201.

¹²⁴ Over the last three years, these have been successfully implemented in Georgia across different criminal justice sectors, with the support of the Council of Europe, UN Women and local Civil Society.

¹²⁵ [GREVIO Baseline Report on Portugal](#), para 190-191.

¹²⁶ [Explanatory Report](#) to The Istanbul Convention, para 280; [GREVIO Baseline Report on France](#), para 226; [GREVIO Baseline Report for Spain](#), para 247. Such programmes may be assisted by bespoke handbooks already published, including: [Combating Violence against Women and Domestic Violence](#), Council of Europe, November 2023.

sexual violence cases are assigned only to experienced investigators and prosecutors, thus ensuring a certain amount of de facto specialisation.¹²⁷ This approach however requires sufficient staffing levels of all services, which may be impossible in the current state of martial law.

- Where possible and feasible, engage local and regional Ukrainian Civil Society active in these areas to monitor sexual violence courtroom proceedings to ensure the lessons learned in these trainings are being applied in court.
- Where possible and feasible, commission regular surveys by the judiciary, of judicial decisions in all cases on gender-based violence, including sexual violence, to analyse compliance with the duty to address gender-based myths and stereotypes in judicial reasoning.

XI. Access to justice barriers

A. Article 55 (1) Istanbul Convention

Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependent upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.

1. Ex officio proceedings

In considering issues around State implementation of Article 55 of the Convention, it is important to recall that “[c]onscious of the particularly traumatizing nature of the offences covered by this article, the drafters sought to ease the burden which lengthy criminal investigations and proceedings often place on the victims while at the same time ensuring that perpetrators are brought to justice. The aim of this provision is therefore to enable criminal investigations and proceedings to be carried out without placing the onus of initiating such proceedings and securing convictions on the victim.”¹²⁸ (emphasis added)

While at present in Ukraine cases on domestic violence, illegal abortion, forced marriage, rape without aggravating circumstances, sexual violence and compulsion to intercourse, are listed in Article 477 of the CPCU as private, *rather than ex officio prosecutions*, the authors welcome the exclusion of these offences from the realm of private prosecution, under Draft Law 10420 ‘on Amendments to the Criminal Procedural Code of Ukraine regarding

¹²⁷ See for example, [GREVIO Denmark](#), para 196.

¹²⁸ [Explanatory Report](#) to The Istanbul Convention, para 279.

investigation and examination, conciliation agreement and criminal proceedings in the form of private prosecution in connection with the ratification of the Council of Europe Convention on the prevention of violence against women and domestic violence and the fight against these phenomena (Istanbul Convention)¹²⁹ On 22 May 2024 the Draft Law 10420 passed the first reading in the Ukrainian Parliament.¹³⁰

2. Ex parte proceedings

The Explanatory Report to the Istanbul Convention calls upon law enforcement authorities to investigate in a *proactive* way to gather evidence that will ensure *ex parte* prosecutions for the offences contemplated under Articles 35-39 of the Convention:

*Paragraph 1 places on Parties the obligation to ensure that investigations into a number of categories of offences shall not be “wholly dependent” upon the report or complaint filed by a victim and that any proceedings underway may continue even after the victim has withdrawn her or his statement or complaint.[...] Therefore, law enforcement authorities should investigate in a proactive way in order to gather evidence such as substantial evidence, testimonies of witnesses, medical expertise, etc., in order to make sure that the proceedings may be carried out even if the victim withdraws her or his statement or complaint at least with regard to serious offences, such as physical violence resulting in death or bodily harm’.*¹³¹ (emphasis added)

Where *ex parte* prosecutions may occur, they will only ever be effective when they are based on investigations which are timely, effective, conducted with a gendered understanding of the violence under investigation and grounded in context-based assessments of the evidence, which do not rely on gender-based myths and stereotypes.¹³²

Further, international human rights standards stipulate that in dealing with sexual violence cases, the withdrawal of the complaint by the victim, taken alone, should not be considered as a reason for terminating the investigation

¹²⁹ [Картка законопроекту - Законотворчість](#).

¹³⁰ [Ibid.](#)

¹³¹ [Explanatory Report](#) to The Istanbul Convention, para 280; see also [GREVIO Baseline Report on France](#), para 226.

¹³² [Istanbul Convention](#), Article 6, 49; [Explanatory Report](#) to The Istanbul Convention, paras 191-192, 255, 256, 280.

or prosecution.¹³³ Cases of rape and other forms of sexual violence may, in practice, still be terminated on the withdrawal of the victim's complaint, for example, where such withdrawals undermine the perceived 'consistency' of the victim's complaint.¹³⁴ Victims may withdraw their complaints for many reasons: fear of the perpetrator, pressure from their families, and lack of trust in the Ukrainian criminal justice system are among them.¹³⁵ Such an investigation may reveal credible risks to the victim and her family. It may give rise to additional criminal charges and may require special measures to ensure the victims and her family's protection.¹³⁶

Recommendations

- That the relevant bodies of the criminal justice sector work together to develop and issue practical guidelines on evidence collection and case handling in rape and sexual violence cases to ensure effective investigations which may continue *ex parte*.¹³⁷
- That the relevant bodies of the criminal justice sector, in particular the police services, issue guidelines to the effect that victim withdrawals in rape and other sexual violence cases will be investigated to ensure that victims are not coerced or intimidated into withdrawing their complaints.¹³⁸
- Referrals to support services should not be dependent on a victim's participation in the criminal justice process.¹³⁹ Moreover, the Convention does not require that victims receive a formal designation of victim status

¹³³ [Opuz v. Turkey no. 33401/02](#), paras 139, 145; [A Framework for Legislation on Rape \(Model Rape Law\) Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences](#), Article 14.

¹³⁴ [Combating Violence against Women and Domestic Violence](#), Council of Europe, November 2023, page 22.

¹³⁵ [Information on Ukraine for Consideration by the Committee on the Elimination of Discrimination against Women at its 83rd Session](#) (10 - 28 October 2022): "Based on these standards, the criminal justice framework currently fails to protect victims of sexual violence in Ukraine from pressures to not report or to withdraw complaints. Indeed, like many other countries, victims and survivors of sexual violence in Ukraine continue to face stigma and shame surrounding incidents of sexual violence and are often placed under pressure by a range of persons – including the perpetrator, their friends and families, criminal justice actors including investigators and prosecution, representatives of state bodies, as well as doctors and lawyers - to either withdraw or not file their complaint" See also Equality Now, [Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Crimes; a Manual for Practitioners in Georgia](#), September 2021, p 75-77 for an expansive list of reasons for withdrawal.

¹³⁶ Equality Now, [Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Crimes; a Manual for Practitioners in Georgia](#), September 2021, p 75.

¹³⁷ See for example, [GREVIO Denmark](#).

¹³⁸ Equality Now, [Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Crimes; a Manual for Practitioners in Georgia](#), September 2021, p 77.

¹³⁹ Equality Now, [Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Crimes; a Manual for Practitioners in Georgia](#), September 2021, p 71.

before being referred for necessary support.¹⁴⁰ In light of this, it is recommended that the relevant bodies of the criminal justice sector develop and effectively implement procedures which will ensure that victims who do withdraw their claims are referred to support programmes and provided with information on personal safety.¹⁴¹

B. Statutory time limitations

Ukraine was one of the first countries in the world to ratify the CEDAW Convention.¹⁴² CEDAW General Recommendation 33 calls on states to reject statutory limitations for the prosecution of gender-based human rights violations and sexual violence against women in conflict and post-conflict situations.¹⁴³ CEDAW General Recommendation 35, meanwhile, calls on states to:

*Ensure that sexual assault, including rape, is characterized as a crime against the right to personal security and physical, sexual and psychological integrity and that the definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances. Any time limitations, where they exist, should prioritize the interests of the victims/survivors and give consideration to circumstances hindering their capacity to report the violence suffered to the competent services or authorities.*¹⁴⁴

Furthermore, Paragraph 7 of the 16 December 2005 UN General Assembly Resolution on the Basic Principles and Guidelines on the Rights to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law states that “Domestic statutes of limitations for (...) violations that do not constitute crimes under international law (...) should not be unduly restrictive.”¹⁴⁵

The Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović recommended that “There should be no

¹⁴⁰ See [Istanbul Convention](#) Article 19.

¹⁴¹ Equality Now, [Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Crimes; a Manual for Practitioners in Georgia](#), September 2021, p 77; [Directive 2012/29/EU of the European Parliament and of the Council](#), 25 October 2012, Preamble, para. 40.

¹⁴² [CEDAW-Based Legal Review: Brief Guide](#), p 13.

¹⁴³ [CEDAW General Recommendation No 33 on Women's Access to Justice](#), para 19(f).

¹⁴⁴ [CEDAW General Recommendation 35](#), para 29(e).

¹⁴⁵ [UN General Assembly Resolution 60/147 on 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#).

statute of limitation for initiating legal proceedings on rape, whether committed during conflict or in peacetime. Where statutes of limitation do exist, they should be prolonged to allow for the healing of victims and should never preclude access to justice. In the case of child victims, statutes of limitation should at a minimum allow for the initiation of proceedings after the victim has reached the age of majority."¹⁴⁶

In Ukraine, rape and other forms of sexual violence charged as war crimes contrary to Article 438 CCU are not subject to statutory time limitations. Rape and other forms of sexual violence charged as ordinary crimes, however, remain subject to the very strict, non-discretionary limitation periods set out in Article 49 CCU. Under this Article, a person shall be released from criminal liability if the following periods have passed from the date of commission of the criminal offense to the date of entry into force of the sentence:

- two years - in case of committing a criminal misdemeanour, for which the prescribed punishment is less severe than restriction of freedom (this includes intentional minor bodily injury (Article 125(1)) and coercion into sexual intercourse (Article 154(1));
- three years – in the case of a criminal misdemeanour punishable by restriction of freedom, or in the case of a minor crime punishable by imprisonment for a term of no more than two years (this includes domestic violence (Article 126¹);
- five years - in the case of committing a minor crime, except for the case provided for in clause 2 of this part (this includes rape without aggravating circumstances (Article 152 (1)) and sexual violence without aggravating circumstances (Article 153 (1));
- ten years - in case of committing a serious crime (this includes intentional grievous bodily harm (Article 121 (1) and torture (Article 127));
- fifteen years - in case of committing a particularly serious crime (this includes rape committed by a group of individuals, or rape of a minor (Article 152(3)).

While these time limitations do NOT apply to rape cases charged as war crimes under Article 438, Article 49 bars any prosecution of ordinary sexual violence crimes which fall outside these arbitrary time limitations. In particular, if made outside of the 5 year limitation period, complaints of rape contrary to Article 152(1) have no prospects of being brought to court. This is a serious access to justice barrier which may represent a violation of a victim's rights to an effective remedy under Article 13 of the ECHR.

¹⁴⁶ [Rape as a grave and systematic human Rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention – Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences](#), at para 107(a).

Moreover, the challenges of processing cases of rape and other forms of sexual violence within these strict time limitations in the context of the ongoing war and its impact on the functioning of the courts has already been the subject of comment by the Ukrainian judiciary.¹⁴⁷

Although the Convention does not require states to abolish statutes of limitation for sexual violence cases, the authors recall the words of Convention Article 12(3), referred to above, that: *Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre.*

International human rights law, binding on Ukraine, is clear: at a bare minimum, statutory time limits for any sexual violence crimes should not be rigidly applied.

Recommendations

- Review the limitation periods prescribed by Article 49 CCU against all offences covered by the terms of the Convention to ensure they do not represent any barriers to victims of rape and other forms of sexual violence in accessing justice and take appropriate action.

XII. Discriminatory and harmful practices

A. Article 49(2) Istanbul Convention

Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention. (emphasis added)

1. Corroboration practices

In contexts of wartime or peace, rape and other forms of sexual violence often happens in isolated situations, without eyewitnesses, and long periods may pass before such crimes are ever reported. Corroboration in a rape case usually refers to physical injuries from the assault, torn clothing, or other evidence of a physical struggle. The reality of most victims is different. In most cases, those are not available.

In these circumstances, any practice of strictly requiring corroboration of the testimony of the rape victim is discriminatory, and reinforces the myth that assumes that if a woman were really raped, she would have corroborative

¹⁴⁷ “[Верховний Суд](#)”, online: Facebook.

evidence of the assault, and that her failure to produce corroboration means that she was not really raped.

It is a settled principle of both international and Ukrainian criminal law that judges may rely on the evidence of a single witness to enter a conviction without the need for corroboration.¹⁴⁸ This is also the case in sexual violence crimes.

This principle has been codified in the ICC Rules of Procedure and Evidence, where Rule 63(4) states that: “(...) a Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence.” (emphasis added)

The United Nations Human Rights Council has said that states should “...repeal discriminatory provisions that require corroboration of testimony in sexual violence cases.”¹⁴⁹ In its General Recommendation 33, the CEDAW Committee recommended that state parties ensure that women’s equality before the law is given effect by “...taking steps to abolish (among others) any practices that directly or indirectly discriminate against women especially in their access to justice, and to abolish discriminatory barriers to access to justice,” including: “Corroboration rules that discriminate against women as witnesses, complainants and defendants by requiring them to discharge a higher burden of proof than men in order to establish an offence or to seek a remedy.”¹⁵⁰ (emphasis added)

In addition, numerous countries have confirmed through both their legislation and case law that corroboration of testimony by victims of sexual violence is not required.¹⁵¹ In the Bosnia and Herzegovina war crimes case of Gojko Janković, the Chamber held that:

¹⁴⁸ GRC, [Basic Investigative Standards Manual for Documenting International Crimes in Ukraine](#), May 2023, p 476, FN 2174, citing Criminal Procedure Code of Ukraine of 13 April 2012 No. 4651-VI (‘CPC ’), Chapter 4 (Evidence and Proving); [Judgment in the Case of The Prosecutor v. Bosco Ntaganda](#), paras 75-76; [Judgement in the Case of The Prosecutor v. Haradinaj et al.](#), paras 145, 219; [Judgement of the Appeals Chamber in the Case of The Prosecutor v. Duško Tadić](#), para. 65; [Judgement of the Appeals Chamber in the Case of the Prosecutor v. Ignace Bagilishema](#), para. 79; [Judgement of the Appeals Chamber in the Case of the Prosecutor v. Dragomir Milošević](#), para. 215; [Judgement of the Appeals Chamber in the Case of the Prosecutor v. Kupreškić et al.](#) at para 220.

¹⁴⁹ [UN General Assembly Resolution 23/25 on ‘Accelerating efforts to eliminate all forms of violence against women: preventing and responding to rape and other forms of sexual violence’](#), para. 8 (emphasis added). See also UN Women [Handbook for Legislation on Violence Against Women](#), 2012, p 41-42; [CEDAW General Recommendation No 33 on Women’s Access to Justice](#), para 25(a)(iii).

¹⁵⁰ [CEDAW General Recommendation No 33 on Women’s Access to Justice](#), para 25(a)(iii).

¹⁵¹ ICJ, [‘Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice’](#), 2015, p 13-16.

The only evidence presented to the Court in relation to the first and second item of this count was the testimony of FWS-95 and thus, in convicting, the Court relies solely on her testimony. Nevertheless, the Court is free in its evaluation of the evidence submitted and corroboration is not required in general or in particular. This rule applies equally to the testimony of a victim of sexual assault. [...] The judgment as to the credibility of a witness lies solely in the domain of the Court, with judges free to draw any conclusion they see fit, providing it passes the threshold of reasonableness. Witness FWS-95 clearly passed this threshold beyond a reasonable doubt in the eyes of the Court and thus has been given full credence.¹⁵²

As noted, under Ukrainian law there is no strict requirement that the evidence of victims be corroborated. Neither Article 85 nor Article 91 CPC strictly require corroboration, a recent complaint or evidence of physical injuries in dealing with cases of sexual violence.

This underscores the need for investigations of sexual violence to be comprehensive and context based. This is because “the potential range of types and sources of corroborative evidence is vast and will depend upon the context in which the incident in question has taken place.”¹⁵³

While the context-based assessment required by the Convention necessitates criminal justice actors focus on the credibility of the allegation and not on the credibility of the complainant, in Ukraine corroboration of the testimonies of women who have been victims of rape and other forms of sexual violence is routinely demanded, using procedures and in circumstances which are invasive, traumatising, re-victimising, and which can have little or no evidentiary value. Two examples, discussed below, are gynaecological examinations of women and girls in circumstances where such tests not warranted by the facts of the individual case, and carrying out re-enactments of rape cases at the crime scene, to “test” the credibility of the testimony of the parties. Absent these medical examination reports and/or other corroborating evidence, testimonial evidence in sexual violence cases is generally considered by prosecutors and judges to lack probative value.¹⁵⁴

¹⁵² [Prosecutor v. Gojko Janković](#), p 58.

¹⁵³ GRC, [Basic Investigative Standards Manual for Documenting International Crimes in Ukraine](#), May 2023, p 377.

¹⁵⁴ OHCHR, [Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017](#), para 119.

Recommendations

- Improve investigative and prosecutorial practices through iterative training and mentorship of investigators in how to conduct comprehensive, context-based investigations in dealing with cases of sexual violence against women.¹⁵⁵
- Reinforce investigative training programmes for relevant professionals, including investigators, with practical exercises aimed at building their skills in conducting comprehensive, context-based sexual violence investigations.

2. Unnecessary gynaecological examinations

Pursuant to Article 241 CPCU, an examination concerning criminal offences is voluntary. In practice however, particularly in circumstances where rape cases rely solely on the testimony of the victim and even though corroboration of the victim's testimony is not strictly required, Ukrainian authorities commonly carry out forensic gynaecological examinations to not only prove penetration, but also to assess the credibility of the victim's testimony.

While Article 242 CPCU states that such examinations should only be carried out if special knowledge is required to “clarify” circumstances relevant to the criminal proceedings, and that an examination to clarify issues of law is not allowed, it also stipulates in subclause 2.2) that an investigator or public prosecutor “shall” commit an expertise to conduct an examination in establishing gravity and nature of bodily injuries.¹⁵⁶

As mentioned, rape does not always leave signs of visible, physical force. In addition, evidence of physical injuries may no longer exist where reporting of the crime is delayed. The result is that such examinations are often inconclusive, and seldom completed in a timely manner. Furthermore, local practice is that rape cases without conclusive forensic or medical evidence to prove penetration or visible, physical injury, including historical cases, are likely to be dismissed.¹⁵⁷

GREVIO dealt with a similar issue in North Macedonia, where although there was no formal obligation to have a forensic examination in sexual violence cases, in practice such examinations were considered mandatory by the authorities. Their observations are reproduced below.

¹⁵⁵ [Explanatory Report](#) to The Istanbul Convention, para 280; [GREVIO Baseline Report on France](#), para 226; [GREVIO Baseline Report on Spain](#), para 247.

¹⁵⁶ [The Criminal Code of Ukraine](#), Article 242.

¹⁵⁷ [JURFEM SHADOW REPORT for GREVIO on the implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence by Ukraine 2023](#), section on Article 36.

311. [...] GREVIO points out that this departs from the victim-centred approach foreseen by the convention and its requirement to assess consent in the context of the surrounding circumstances, which would require a context-sensitive assessment of the evidence in order to establish the presence or absence of consent on a case-by-case basis. Such an assessment must recognise the wide range of behavioural responses to sexual violence and rape which victims can exhibit and shall not be based on assumptions of typical behaviour in such situations or influenced by gender stereotypes and myths. Second, this practice risks leaving certain cases of rape unpunished and thus jeopardises the effective protection of the individual's sexual autonomy. Such an interpretation often means that in cases where the victim refuses to undergo forensic examination or such forensic examination is inconclusive because of the time lapse or the nature of the sexual violence, non-forensic evidence (circumstantial evidence, testimonies, etc.) is not collected by law-enforcement agencies and will subsequently not be examined by the court. Women who do not want to lodge a report to the police in the immediate aftermath of a rape are thus denied the possibility of preserving valuable medical evidence should they decide to seek justice later. These findings are of grave concern to GREVIO and should be clarified through instructions issued to the relevant authorities, training and other measures.¹⁵⁸

Recommendations

- Ensure that the gynaecological examinations in rape cases are not considered mandatory, but only ordered where necessary and with the victim's informed consent.¹⁵⁹
- Ukraine may mitigate against delays in conducting necessary examinations in rape cases by increasing the number of medical specialists qualified and adequately trained to conduct forensic medical examinations in line with the principles of the Istanbul Protocol,

¹⁵⁸ [GREVIO Baseline Report on North Macedonia](#), para 311.

¹⁵⁹ [Directive 2012/29/EU of the European Parliament and of the Council](#), 25 October 2012, Article 20(d). See also [JURFEM SHADOW REPORT for GREVIO on the implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence by Ukraine 2023](#), p 37-38.

so that these reports may be included in case files and used as evidence in court.

3. Reconciliation agreements

The Draft Law referred to above amends Article 469 CPCU, stipulating that reconciliation agreements may only be concluded in respect of criminal offences against sexual freedom and sexual inviolability of a person at the initiative of the victim, their representative or legal representative (...).¹⁶⁰

While the reconciliation agreement process provided for in the CCU does not fall under the category of mandatory alternative dispute resolution processes prohibited by Convention Article 48, it is worth noting that the drafters of the Explanatory Report took care to emphasize that victims of the different forms of violence covered by the scope of the Convention “[...] can never enter the alternative dispute resolution processes on a level equal to that of the perpetrator. It is in the nature of such offences that such victims are invariably left with a feeling of shame, helplessness and vulnerability, while the perpetrator exudes a sense of power and dominance. To avoid the re-privatisation of domestic violence and violence against women and to enable the victim to seek justice, it is the responsibility of the state to provide access to adversarial court proceedings presided over by a neutral judge and which are carried out on the basis of the national laws in force.”¹⁶¹

Keeping in mind the provisions of Convention Article 12(3) and the centrality of the human rights of victims of sexual violence, the authors submit that reconciliation agreements are generally inappropriate in rape cases - in any context. First, it is broadly accepted that a pattern of reconciliation is often a feature of domestic violence cases.¹⁶² Evidence of this same pattern of reconciliation may not be limited to domestic abuse cases, but other situations which involve an unequal power relationship between the perpetrator and victim, including in an institutional setting.

Moreover, reconciliation of the perpetrator with the victim should never be considered a mitigating circumstance in rape cases, as this contributes to a climate of impunity for perpetrators.¹⁶³ As available under the CCU, a reconciliation agreement in a rape case will always involve the perpetrator receiving a reduced sentence.¹⁶⁴ Rape is rape.¹⁶⁵ Convention Article 45

¹⁶⁰ [Картка законопроекту - Законотворчість](#)

¹⁶¹ [Explanatory Report](#) to The Istanbul Convention, Article 252.

¹⁶² See for example, [Code for Crown Prosecutors, Legal Guidance, Domestic Abuse](#).

¹⁶³ Equality Now, [Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Crimes; a Manual for Practitioners in Georgia](#), September 2021, p 86.

¹⁶⁴ See for example, [Unified State Register of Court Decisions](#) Case No. 464/3073/23, Sentence of the Sykhiv district Court, Lviv, 28 June, 2023.

¹⁶⁵ [GREVIO's Baseline Report on Spain](#), para 222.

requires sanctions for sexual violence crimes to be effective, proportionate, dissuasive and commensurate with the real gravity of the crimes.¹⁶⁶

Recommendations

- The authors recommend any amendment to Article 469(3) CPCU (and related criminal legislative provisions) specify that reconciliation agreements in relation to offences covered by the Convention may only be considered in those cases which are classified as misdemeanour offences, at the initiative of the victim and with the advice of their representative.
- Alternatively, for those victims who wish to consider entering into a reconciliation agreement but have no representative, the authors recommend that the state automatically provide access to a qualified legal representative so that they may be fully informed of their rights and obligations, as well as of the risks of entering into such agreement before they elect to enter into this process.

4. Investigative experiments

Investigative experiments are provided for under Article 240 CPCU, which states that "[i]n order to check and clarify information that is important for establishing the circumstances of a criminal offense, the investigator and prosecutor has the right to conduct an investigative experiment by reproducing the actions, situation, circumstances of a certain event, conducting the necessary experiments or tests.¹⁶⁷

Article 240(4) CPC specifically provides that "[t]he investigative experiment shall be allowed provided that it does not endanger life and health of participants thereto or those around, nor degrade their honour and dignity or cause damage."

Investigative experiments are re-enactments of the crime under investigation, at the crime scene, in the conditions under which the crime took place.¹⁶⁸ They may involve the parties to the case: suspects, victims, defence counsel, witnesses and victim representatives.¹⁶⁹ When these experiments involve persons, they are essentially conducted to verify their testimony on the spot.¹⁷⁰

¹⁶⁶ See also *ibid* para 224.

¹⁶⁷ [The Criminal Code of Ukraine](#), Article 240 (1).

¹⁶⁸ Anna Kashpur, "Investigative Experiment During Investigation of Criminal Offenses Committed by Underage Persons" (2022) 5 *Entrepreneurship, Economy and Law* 133 at 139, doi: <https://doi.org/10.32849/2663-5313/2022.5.19>.

¹⁶⁹ [The Criminal Code of Ukraine](#), Article 240 (3).

¹⁷⁰ M H Shcherbakovskyi, "An Investigative Experiment in the Destruction or Damage to Property Investigation" (2023) 101:2(Part 1) *Bulletin of Kharkiv National University of Internal Affairs* 323 at 333, doi: <https://doi.org/10.32631/v.2023.2.29>; Anna Kashpur, "Investigative Experiment During Investigation of Criminal Offenses Committed by Underage Persons" (2022)

Furthermore, before an investigative experiment is conducted, it is mandatory for the authorities to conduct an interrogation of the victim and alleged perpetrator.

While it is accepted that investigative experiments may be useful in assessing the facts in relation to certain offences (road accidents being an obvious example), carrying out investigative experiments involving the parties to the case at any stage of criminal proceedings for rape and other forms of sexual violence is wholly out of line with Ukraine's Convention obligations, which specifically require the parties to take measures to avoid secondary victimisation (see above).¹⁷¹

The traumatic impact of investigative experiments on rape victims cannot be under-estimated. After having been previously interrogated by authorities, victims who participate in investigative experiments must repeat their stories, re-living the assault at the actual crime scene, in conditions made to resemble those in place at the time, in a context which might also involve the participation of the perpetrator. This forces victims to re-live their rape. It is intrusive, degrading and discriminatory.

The authors submit that all victims of sexual violence in any context should be able to access justice without risk of secondary victimisation and re-traumatisation. In cases of rape and other forms of sexual violence, the risks for the victim of participating in an investigative experiment will always far outweigh the evidentiary value the results of an investigative experiment might bring to a case.

The authors offer the following recommendation addressing the discriminatory investigative practices discussed above and the overall obligation to adopt a gender sensitive, victim-centred approach to the investigation and prosecution of all forms of violence covered by the Convention.¹⁷²

Recommendations

- For the appropriate prosecutorial and investigative authorities to issue recommendations or guidelines to ensure that investigative experiments with participants shall not be conducted in rape cases.

5 Entrepreneurship, Economy and Law 133 at 139, doi: <https://doi.org/10.32849/2663-5313/2022.5.19>.

¹⁷¹ [Istanbul Convention](#), Article 18(3); Article 56(1).

¹⁷² See sections VII and XII above.