

Indicators of Discriminatory Motive in Crimes of Sexual Violence Against Women in Georgia

Tamar Dekanosidze, PhD Candidate

School of Law, Caucasus University, Tbilisi, Georgia

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Abstract

This article examines whether sexual violence should be understood as a crime motivated by gender-based discrimination and identifies contextual indicators for establishing a discriminatory motive in criminal proceedings. Drawing on international and regional human rights law, feminist legal theory and an analysis of Georgian judicial practice, it argues that sexual violence is not merely an act of individual aggression but a manifestation of systemic gender inequality and patriarchal power. The article demonstrates that discriminatory motive is often structurally embedded rather than expressed through overt hostility and therefore should be assessed through contextual indicators, similar to those used in hate crime analysis. It further argues that the existence of multiple motives does not preclude the recognition of a discriminatory motive. Finally, the article recommends strengthening the application of contextual analysis in Georgian criminal justice practice to improve the recognition of discriminatory motive in sexual violence cases and to advance survivor-centred and transformative justice.

Keywords: Rape, sexual violence, discriminatory motive, gender basis

Introduction

Sexual violence constitutes a violation of fundamental human rights and a form of gender-based violence, recognised by international human rights

legal instruments and prohibited under the criminal laws of states. According to the World Health Organization (2021), one in three women worldwide experiences physical or sexual violence during her lifetime.¹

Although the legislation of various countries, including the Criminal Code of Georgia, classifies sexual violence (rape and other forms of sexual offenses) as crimes against sexual freedom and inviolability,² feminist legal theorists and researchers argue that sexual violence is a fundamental manifestation of gender subordination.³ This position is also affirmed by sources of international human rights law and international criminal law. For example, the UN Committee on the Elimination of Discrimination against Women and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) both recognise that gender-based violence, including sexual violence, constitutes a form of discrimination against women.⁴

The perpetrator and victim of sexual violence may be male or female; however, the vast majority of perpetrators are men, while most victims are women.⁵ Sexual violence is not only an act of aggression and domination but also a manifestation of systemic discrimination against women. The Istanbul Convention underscores “the structural nature of violence against women, as gender-based violence,”⁶ and affirms that “violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”⁷

Building on international and regional human rights instruments, feminist legal theory, and intersectional approaches, this article develops a conceptual and legal framework aimed at understanding the discriminatory nature of sexual violence against women and identifying indicators of discriminatory motive in perpetrators’ actions. The article also advances

¹ World Health Organization. *Violence against women prevalence estimates, 2018*. Geneva: World Health Organization, 2021, p. 9.

² Criminal Code of Georgia (1999). *Chapter XXII: Crimes against Sexual Freedom and Inviolability*. Legislative Herald of Georgia.

³ MacKinnon, C. A., (1989). *Toward a feminist theory of the state*. Cambridge, MA: Harvard University Press, 171–172. Brownmiller, S., (1975). *Against our will: Men, women and rape*. New York: Simon & Schuster, 15–17.

⁴ Committee on the Elimination of Discrimination against Women, (2017). *General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (CEDAW/C/GC/35)*, para. 1. Council of Europe Treaty Series No. 210, 2011, Art. 3(a). Council of Europe, (2011). *Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)*. Council of Europe Treaty Series No. 210, art. 3(a).

⁵ World Health Organization, (2021).; Walters, M. A., & Tumath, J., (2014). *Gender “hostility,” rape and the hate crime paradigm*. *The Modern Law Review*, 77(4), 563–596.

⁶ Istanbul Convention, Preamble.

⁷ *Ibid.*

recommendations for justice system actors to ensure the establishment of an appropriate approach to the assessment of motive in such crimes.

Methodology

This article draws on feminist legal theory and an intersectional approach to uncover the patriarchal and structural foundations of sexual violence and to analyse contextual indicators of discriminatory motive in sexual violence offences. Feminist legal theory is employed to demonstrate that sexual violence does not constitute a manifestation of individual aggression or deviant behaviour, but rather functions as a mechanism for maintaining gendered power relations and inequality. The intersectional approach, in turn, enables an assessment of how gender discrimination intersects with other protected characteristics (such as disability), which is particularly important for the identification of discriminatory motive.

The analysis is based on desk-based doctrinal research. The sources were selected on the basis of their relevance to the recognition of discriminatory motive in sexual violence, including international and regional human rights instruments, international and domestic case law, comparative criminal law, and leading feminist legal scholarship. The analysis of judicial practice focuses primarily on the jurisprudence of the European Court of Human Rights and recent Georgian trial court decisions concerning sexual violence, selected because they illustrate the practical challenges in identifying discriminatory motive. Comparative jurisdictions were chosen where their legislation or judicial practice expressly recognises sex- or gender-based discriminatory motive in criminal law or provides useful approaches to the assessment of hate-motivated offences.

This methodological combination allows the theoretical analysis to be integrated with comparative legal analysis, international human rights standards, relevant case law (examined through desk-based research), and legal and policy recommendations

The Essence of Discriminatory Motive in Crimes of Sexual Violence

Since sexual violence constitutes a manifestation of systemic gender/sex-based⁸ discrimination rather than an isolated or incidental form of violence, the perpetrator's behaviour is often shaped by entrenched gender roles, unequal distributions of power, and stereotypical perceptions. Feminist legal theorists emphasise that sexual violence is, above all, a tool for exercising control and maintaining patriarchal dominance, rather than the

⁸ Sex and gender are often used interchangeably in various academic works. See: Haynes, A., & Schweppe, J., (2020). Should hate crime legislation include misogynistic crimes? In Sternberg, R. J. (Ed.), *Perspectives on hate: How it originates, develops, manifests, and spreads*. Washington, DC: American Psychological Association, 277–297.

outcome of sexual desire or individual pathology.⁹ According to Gegelia, the perception of rape in Georgian justice is moralistic-patriarchal, with its boundaries defined by patriarchal ideology itself.¹⁰

Recognising the gendered nature of sexual violence is essential to identifying its discriminatory motive. Women are often targeted precisely because of their sex, while violence serves to punish those who challenge traditional expectations of obedience, sexuality, or family roles, thereby reinforcing gender hierarchy.¹¹

The European Court of Human Rights has repeatedly emphasised the State's obligation to investigate the discriminatory motive in cases of violence; however, the jurisprudence relating to sexual violence is still in the process of development.¹² In the cases of *Identoba and Others v. Georgia*,¹³ *Nachova and Others v. Bulgaria*,¹⁴ and *B.S. v Spain*¹⁵ the European Court of Human Rights held that States are obliged to investigate whether a violent act was motivated by gender-based or other forms of discrimination. The Court further emphasised that disregarding the discriminatory motive would be "to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights."¹⁶

Subsequently, in *Tkheldidze v. Georgia*, the European Court of Human Rights underlined the importance of "special diligence" to investigate whether the police's inaction was influenced by gender bias.¹⁷ In *A and B v. Georgia*, the Court found that the authorities had failed to properly examine whether the

⁹ MacKinnon, C. A., (1989), 172; Dworkin, A., (1981). *Pornography: Men possessing women*. New York: Putnam, 32–39; Estrich, S., (1987). *Real rape*. Cambridge, MA: Harvard University Press, 102–110.

¹⁰ Gegelia, T. (2024). Rethinking the Boundaries of Sexual Violence for Criminal Law Reform. *Law and World*, 10(31), 201–202. <https://doi.org/10.36475/10.3.15>

¹¹ Antmen, D. (2023). Explaining the justification of violence against women based on the system justification theory. *Nesne*, 11(29), 508–509. DOI: 10.7816/nesne-11-29-10.

Goldscheid, J. (2018). Gender Violence and Human Rights in an Era of Backlash. *William & Mary Journal of Women and the Law*, 24 (3), 559–560. <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1479&context=wmjowl>; Kelly, L., (1988). *Surviving sexual violence*. Cambridge: Polity Press, 139; McGlynn, C., & Westmarland, N., (2019). Kaleidoscopic justice: Sexual violence and victim-survivors' perceptions of justice. *Social & Legal Studies*, 28(2), 179–199; Westmarland, N., & Hester, M., (2006).

¹² Sommardal, J., (2025). ECHR Developments on Gender-Based Violence Part I: Secondary Victimisation, Discrimination, and Minors' Consent. *ECHR Blog*, June 9, 2025. <https://www.echrblog.com/2025/06/echr-developments-on-gender-based.html>

¹³ *Identoba and others v Georgia*, no 73235/12, ECHR, 12.05.2015, §67.

¹⁴ *Nachova and others v Bulgaria* [GC], no 43577/98 43579/98, 06.07.2005, §160.

¹⁵ *B.S. v Spain*, no 47159/08, ECHR, 24.07.2012, §58.

¹⁶ *Identoba and others v Georgia*, §67.

¹⁷ European Court of Human Rights, *Tkheldidze v. Georgia*, no. 33056/17, 08.07.2021, para. 60.

inaction of law enforcement was motivated by gender-based discrimination. The Court further noted that, in the related criminal proceedings, no assessment was made as to whether the murder might have been the result of gender bias and in the civil proceedings, no consideration was given to whether the police had disregarded the victim's complaints on account of the same discriminatory attitudes.¹⁸ Similarly, in *Gaidukevich v. Georgia*, the Court criticized the failure to examine "whether the official tolerance of incidents of domestic violence might have been conditioned by the same gender bias."¹⁹

The analysis of these cases demonstrates that, according to the European Court of Human Rights, an effective response to violence requires uncovering and addressing its deeply entrenched discriminatory motives. This constitutes a crucial factor for ensuring that States fully comply with their heightened obligations to prevent and combat gender-based violence and to provide an adequate response to violations of the principle of equality.

The European Court's jurisprudence was preceded by the case of *Prosecutor v. Kunarac* (ICTY, 2001),²⁰ in which the International Criminal Tribunal for the former Yugoslavia held that systematic rape during armed conflict constituted a form of persecution, grounded in a discriminatory motive, and amounted to a crime against humanity. Gender-based crimes (such as persecution on the basis of gender) are likewise recognised under the Rome Statute of the International Criminal Court.²¹

Despite these clear standards, recent Georgian trial court practice demonstrates that the discriminatory dimension of sexual violence is still interpreted narrowly. Research on recent judgments shows that courts continue to require proof beyond the broader context of the offence, often failing to recognise discriminatory motive even where the factual circumstances demonstrate that the violence was driven by gender stereotypes and patriarchal attitudes.²² As a result, a significant gap remains between the European Court of Human Rights' requirement to investigate the discriminatory context of gender-based violence and the reasoning adopted by domestic courts.

Psychological research confirms that personality traits such as narcissism, psychopathy, and Machiavellianism - the so-called "Dark Triad" -

¹⁸ European Court of Human Rights, *A and B v. Georgia*, no. 73975/16, 10.02.2022, para. 45.

¹⁹ European Court of Human Rights, *Gaidukevich v. Georgia*, no. 38650/18, 15.06.2023, para. 65.

²⁰ *Prosecutor v. Kunarac*, Case No. IT-96-23-T & IT-96-23/1-T, Judgment, International Criminal Tribunal for the former Yugoslavia (ICTY), 22 February 2001.

²¹ *Rome Statute of the International Criminal Court*, art. 7(1)(h).

²² Public Defender of Georgia. (2025). *Administration of Justice in Cases of Sexual Violence in Georgia*, pp. 29-31.

are frequently associated with patterns of dehumanization and moral disengagement, which in turn foster the perception of women as objects and the justification of violence against them.²³ However, it is unacceptable to automatically link sexual violence to issues of mental health, as such an approach disregards the systemic and discriminatory foundations of this crime. As Stark and other scholars have noted, domestic violence, for example, is more accurately understood as a dominance strategy rooted in social norms rather than the result of mental disorder.²⁴ Contemporary research (e.g., Westmarland and Hester) likewise confirms that perpetrators of gender-based violence rarely meet the diagnostic criteria for mental illness; rather, they frequently exhibit a sense of gender entitlement and corresponding normative attitudes.²⁵

The World Health Organization²⁶ similarly underscores that attributing violence to mental illness obscures the cultural and institutional factors on which gender-based violence is grounded. While psychological assessments may be useful for obtaining insights into certain behavioural tendencies, they should not influence the legal and structural analysis of the discriminatory motive.²⁷

A similar approach is reinforced by international human rights standards. The Istanbul Convention emphasises that violence against women is the result of historically unequal power relations²⁸ and does not constitute isolated incidents. As discussed, the case law of the European Court of Human Rights likewise affirms the obligation of States to investigate the discriminatory motives underlying acts of violence. The above principles demonstrate that sexual violence should be understood as structurally discriminatory, requiring contextual rather than purely individual assessment.

²³ Navas, M. P., Maneiro, L., Cutrín, O., & Gómez Fragueta, X. A., (2021). Sexism, moral disengagement, and dark triad traits on perpetrators of sexual violence against women and community men. *Sexual Abuse: A Journal of Research and Treatment*, 34(2), 107906322110516. <https://doi.org/10.1177/10790632211051689>

²⁴ Stark, E., (2007). *Coercive control: How men entrap women in personal life*. Oxford: Oxford University Press, 122–124. Dobash, R. E., & Dobash, R. P., (2004). Women's violence to men in intimate relationships: Working on a puzzle. *British Journal of Criminology*, 44(3), 324–349.

²⁵ Westmarland, N., & Hester, M., (2020). *Perpetrators of domestic and sexual violence: Data, evidence and resource implications*. Bristol: University of Bristol, 18–20.

²⁶ World Health Organization, (2013). *Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines*. Geneva: World Health Organization, 17–18.

²⁷ See also: Heise, L. L., (1998). Violence against women: An integrated, ecological framework. *Violence Against Women*, 4(3), 262–290.

²⁸ Istanbul Convention, Preamble.

Identifying the Discriminatory Motive in Cases of Sexual Violence

Although motive - the underlying reason for committing a crime - does not generally constitute a necessary element of an individual's criminal liability, its determination is crucial for the assessment of hate-motivated, discriminatory and gender-based crimes.²⁹

Georgian legislation treats discriminatory motive based on sex as an aggravating circumstance in sentencing (discrimination on the grounds of gender and gender identity, in addition to sex, was expressly prohibited by law until the legislative amendments adopted in April 2025, which removed "gender" and "gender identity" as protected grounds while retaining "sex.").³⁰ Comparative legal analysis demonstrates that, in a number of jurisdictions, bias based on sex or gender is recognised as a relevant element of hate crime legislation or as an aggravating circumstance. For example, the Canadian Criminal Code explicitly provides that an offence motivated by bias or prejudice based on sex, gender identity or gender expression must be treated as an aggravating circumstance at the sentencing stage.³¹ Similarly, the Spanish Criminal Code expressly identifies sex and gender as discriminatory grounds whose presence constitutes an aggravating circumstance,³² which is particularly significant in cases of sexual violence, where bias is often not manifested through explicit hate speech. In the United Kingdom (England and Wales), the applicable legal framework obliges courts, when passing sentence, to treat as an aggravating factor the fact that an offence was committed with bias or hostility towards a protected characteristic.³³

A discriminatory motive exists when violence is intended to cause harm to an individual on the basis of a protected characteristic - such as sex, race, or ethnic origin.³⁴ This reasoning applies to all forms of violence, including manifestations of gender-based violence. Sexual violence, however, carries a particular specificity in that, like other gender-based crimes, it

²⁹ Ashworth, A., & Horder, J., (2013). *Principles of criminal law* (7th ed.). Oxford: Oxford University Press, 155–157; Duggan, M., (2021). From femicide to gender-based hate crime: Misogyny as hate crime. In *Studies in Law, Politics, and Society*, Vol. 85. Bingley: Emerald Publishing, 95–118, at 102–104.

³⁰ Criminal Code of Georgia (1999). Article 53.¹. Legislative Herald of Georgia.

³¹ Criminal Code of Canada, (R.S.C., 1985, c. C-46), Section 718.2.a.i.

³² Criminal Code of the Kingdom of Spain (1995). **Article 22.**

³³ Criminal Justice Act (2003). Article 145.

³⁴ OSCE/ODIHR, (2014), 15-16. U.S. Department of Justice, (2024). *Learn about hate crimes*. <https://www.justice.gov/hatecrimes/learn-about-hate-crimes>; UNIA, (n.d.). *The difference between hate speech, hate crime and discrimination*. Brussels: Interfederal Centre for Equal Opportunities. <https://www.unia.be/en/difference-hate-speech-hate-crime-discrimination>. Gelovani, N. (2022). Crime committed with a motive of intolerance on the grounds of discrimination in Georgian criminal law. *Justice and Law*, 2(74), 115–117 (in Georgia).

constitutes not merely an individual act but a manifestation of structural gender inequality. As MacKinnon observes, the essence of sexual violence lies in the fact that social norms, which disregard women's autonomy transform such crimes into a means of normalising male dominance.³⁵ According to Halley, sexual violence carries a social function: it affirms male power, punishes women's "non-conformity," and establishes a coercive model of subordination.³⁶

Unlike other crimes (such as theft or robbery), where motive may be explained by specific circumstances, sexual violence against women is perpetrated specifically on the basis of their sex/gender and functions as a tool for maintaining gender hierarchy and reinforcing patriarchal relations. Sexual violence is not an isolated criminal issue but rather a means of reproducing and entrenching gendered power relations, thereby sustaining structural inequality and gender hierarchies within society.³⁷

The discriminatory motive in sexual violence is analogous to that in hate crimes;³⁸ however, it is often more difficult to identify, as it is deeply embedded in cultural norms and stereotypes. Unlike situations where hostility is explicit (e.g., a homophobic motive), in cases of sexual violence the question of why the perpetrator targeted a woman rather than a person of another sex is sometimes not even identified as a potential issue. Consequently, the identification of motive requires contextual and structural analysis.

For this reason, although the nature of discrimination in sexual violence is similar to hate crimes, in practice it receives less attention or is overlooked.³⁹ Legal definitions of hate crimes often require evidence of explicit hostility,⁴⁰ whereas sexual violence may be driven by structural norms rather than the perpetrator's direct animosity toward the victim. As Dawson notes, gender-based violence constitutes a form of "gender hate crime" that

³⁵ MacKinnon, C. A., (2006). *Are women human? And other international dialogues*. Cambridge, MA: Harvard University Press, 176.

³⁶ Halley, J., (2008). *Split decisions: How and why to take a break from feminism*. Princeton: Princeton University Press, 123.

³⁷ On this issue, see Walters, M. A., & Tumath, J., (2014). Gender "hostility," rape and the hate crime paradigm. *The Modern Law Review*, 77(4), 572.

³⁸ Dawson, M., (2025). Considering sex/gender-based violence as a form of hate: The invisibility of sex and gender. *Trauma, Violence & Abuse*, OnlineFirst, January 14, 2025. <https://doi.org/10.1177/15248380241311873>

³⁹ *sakhelmtsipos reagireba genderulad motivirebul dzaladobaze sakartveloshi: kanonmdblobisa da praktik'is analizi*. Tbilisi: *Sakartvelos Akhlagazrda Iuristta Asotsiatsia*, 97. According to this study, "progress has been observed in highlighting the gender motive, and the corresponding indicators have increased, which should be assessed positively. However, in some cases this issue remains a challenge."

⁴⁰ Dawson, M., (2025).

reinforces patriarchal hierarchies even in cases where the perpetrator does not overtly express hostility.⁴¹

Dawson's aforementioned approach aligns with that of Perry, who argues that in the case of hate crimes it is not necessary for the motive to involve personal animosity; rather, it may reflect broader cultural contexts of domination.⁴² Similarly, according to Jacobs and Potter, an overly narrow understanding of hate motive is problematic, as the broader social context of inequality is often of fundamental importance.⁴³ The views of these authors have been reaffirmed by the in its recent guidelines, which emphasise that crimes committed on the basis of gender hatred are often rooted in social norms and structural inequality, thereby reflecting manifestations of gender hierarchy and discrimination.⁴⁴

Despite the seemingly clear principles and standards establishing that approaches used to identify discriminatory motives in gender-based crimes should likewise extend to sexual violence, in practice this is rarely the case.⁴⁵ The central question faced by criminal law practitioners concerns what types of evidence can substantiate a discriminatory motive in cases of sexual violence, where explicitly expressed sexist, misogynistic, or other overtly hateful motives are absent - particularly given that such motives often play a decisive role in the qualification of other hate-motivated crimes.

To address the above problem, it is important to rely on the general approaches already established in the assessment of hate-motivated crimes. In particular, during the investigation of a criminal case, the identification of a discriminatory motive should be grounded in contextual evidence, taking into account the broader situation of gender inequality and discrimination in society - especially in instances where explicit signs of hostility are absent.

To begin with, as described in the OSCE guidelines regarding gender-based and other hate-motivated crimes (and not only in cases of sexual violence), evidence of a discriminatory motive may include: the selection of a victim on the basis of sex or gender expression; the use of misogynistic

⁴¹ Ibid

⁴² Perry, B., (2001). *In the name of hate: Understanding hate crimes*. New York: Routledge, 10–12.

⁴³ Jacobs, J. B., & Potter, K. A., (1998). *Hate crimes: Criminal law & identity politics*. New York: Oxford University Press, 20–23.

⁴⁴ Supported by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), (2021). *Gender-based hate crime* (eet), Warsaw: OSCE/ODIHR.

⁴⁵ Dekanosidze, T., Chikhladze, N., & Kharatishvili, G. (2020). *Administering Justice on Sexual Violence Crimes against Women in Georgia*. Tbilisi: Public Defender of Georgia and Council of Europe, 22–25. The study reflects findings up to 2020; however, in practice this issue remains problematic despite the steps that have been taken.

language during the commission of the crime;⁴⁶ violence against a woman because of her “disobedience”; or the use of sexual violence to punish a woman for non-compliance with general gender norms.⁴⁷ Clear evidence of a discriminatory motive, which may also arise in sexual violence cases (as in other gender-based crimes), includes sexist or derogatory remarks, attempts to control a woman’s behaviour, targeting women who occupy “non-traditional” roles, or punishing them for failing to fulfill family obligations.

Indicators of bias may also include the perpetrator’s past conduct and association with hate groups, comments made during or prior to the commission of the crime, the use of symbols, as well as the location and timing of the offense - including the perception of the victim or witnesses that the act was motivated by bias, among others.⁴⁸ These general indicators are equally relevant in cases of sexual violence, where patriarchal ideology constitutes a defining factor both of the nature of the crime and of its broader context.

A discriminatory motive may also be evident - and almost automatically established - when sexual violence is committed in connection with “harmful traditional practices” (for example, so-called bride kidnapping, de facto marriage with a minor, and similar practices), as well as in cases of intersectional discrimination where the victim is targeted on the basis of a characteristic such as disability.⁴⁹ Likewise, sexual violence that forms part of systematic domestic violence reflects the same discriminatory motive that underpins domestic violence as a whole.⁵⁰

In cases where such explicit evidence is absent, the approaches developed in the fields of human rights protection and international criminal law are of particular importance. For example, although the CEDAW Committee does not prescribe a specific technique for identifying motive, it emphasises that gender-based violence is inherently discriminatory in nature.⁵¹ Accordingly, while not every act of sexual violence automatically entails the establishment of a discriminatory motive, investigative authorities must take into account the broader context when assessing motive.

⁴⁶ Dawson, M., (2022). *Considering gender-based violence as a form of hate: A socio-legal examination*. Vancouver, BC: Office of the Human Rights Commissioner.

⁴⁷ OSCE Office for Democratic Institutions and Human Rights, (2022). *Hate crime laws: A practical guide*. Warsaw: OSCE/ODIHR, 28–32.

⁴⁸ OSCE (2014), 47–48; Gelovani, N. (2023). Indicators of crimes committed with a motive of intolerance on the grounds of discrimination. *Justice and Law*, 4(80), 144–146.

⁴⁹ Edgerton, K., Dekanosidze, T., Khatiashvili, G., Barbakadze, N., & Bichikashvili, L. (2021). *Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Cases: A Manual for Practitioners in Georgia*, Tbilisi: Council of Europe; UN Women; Equality Now, 88-89; OSCE (2014), 47–48.

⁵⁰ Edgerton et al. (2021), 88-89;

⁵¹ CEDAW Committee, General Recommendation No. 35, paras. 8–9.

As Mullins and Wright point out, perpetrators often follow gendered scripts that reflect the dominant gender-based relations existing in society.⁵² Accordingly, contextual analysis is of essential importance for understanding how a discriminatory motive may be identified even in the absence of explicit evidence of hate speech or hostility.

The Criminal Code of Georgia provides for the establishment of a discriminatory motive.⁵³ Under the Criminal Procedure Code of Georgia, discriminatory motive may be established through any admissible evidence capable of proving the circumstances of the offence and the motives underlying the perpetrator's conduct.⁵⁴ Accordingly, contextual indicators may be demonstrated through witness testimony, electronic communications, social media activity, audio or video recordings, prior incidents of violence, statements made by the perpetrator and evidence concerning the relationship between the parties.⁵⁵

For example, evidence that the perpetrator repeatedly attempted to control the victim's behaviour, restricted her autonomy, punished perceived disobedience, or expressed stereotypical views regarding women's roles may assist in establishing a discriminatory motive. Likewise, evidence of previous domestic violence, coercive control, threats relating to the victim's conduct, or hostility towards the victim's independence may provide relevant contextual information.

The assessment of discriminatory motive does not require a separate category of evidence. Rather, the same evidentiary sources that are used to establish the underlying offence may also assist investigators, prosecutors and courts in identifying the broader discriminatory context in which the violence occurred.

Recent Georgian judicial practice illustrates why such a contextual approach is necessary. In several cases, the court declined to recognise a discriminatory motive despite evidence presented by the prosecutor that the perpetrator targeted the victim because she allegedly returned home late, associated with other men, or was perceived as dressing "provocatively."⁵⁶ In another case, the prosecutor did not include discriminatory motive in the indictment even though the alleged motive for the sexual assault was the

⁵² Mullins, C. W., & Wright, R., (2003). Gender, social networks, and residential burglary. *Criminology*, 41(3), 813–840.

⁵³ Criminal Code of Georgia, Article 53¹.1.

⁵⁴ Criminal Procedure Code of Georgia, Articles 3.23 – 3.25, 75, 76 and 82,

⁵⁵ *Ibid.*

⁵⁶ Indictment in the criminal case №05904102200; Zestaponi Regional Court Judgment of 27 January 2023, №1/4-2023.

victim's clothing and the perpetrator's belief that this meant she would consent to sexual relations.⁵⁷

Conversely, only isolated judgments expressly acknowledge that sexual violence is a gender-based crime committed predominantly against women and girls, recognise that rape objectifies women and violates their dignity and autonomy and situate the offence within broader patterns of gender inequality – however, still not recognizing the discriminatory motive of the perpetrator⁵⁸. These examples demonstrate that Georgian courts continue to interpret discriminatory motive narrowly, often requiring direct proof that the offence was committed because the victim was a woman, rather than drawing reasonable inferences from the factual context of the offence.

The approaches of Crenshaw⁵⁹ and Dawson⁶⁰ are particularly significant, as they argue that the determination of discrimination should be based on an analysis of conduct, context, and the social meaning of the act, and that the requirement of explicit evidence of bias should not be decisive. The absence of such an approach creates the risk that patriarchal violence will remain shielded from legal accountability under the guise of “neutrality.” Accordingly, reliance solely on explicit evidence of hostility or hate often leads to the neglect of the gendered dimension of violence, which manifests in culturally sanctioned patterns of control and domination.⁶¹

The recognition of a discriminatory motive in cases of sexual violence should not remain limited to theoretical analysis; for these principles to be effectively implemented, practitioners must be able to identify the gender motive in sexual violence cases. Investigators and prosecutors should proactively examine the presence of a discriminatory motive in every such case, just as is required in instances of domestic violence and other hate-motivated crimes. First and foremost, it is essential to acknowledge the nature of sexual violence as a gender-based crime,⁶² and thereafter to assess whether the specific act was motivated by gender-based discrimination - through the

⁵⁷ Indictment in the criminal case №030280621001.

⁵⁸ Tsageri District Court, Judgment No. 1/35-21, 6 April 2022; Rustavi City Court, Judgment No. 1-772-22, 5 May 2023; Akhaltsikhe District Court, Judgment No. 1/268-22, 22 February 2023; Rustavi City Court, Judgment No. 1-772-22, 5 May 2023. See Public Defender of Georgia. (2025), pp. 29-31.

⁵⁹ Crenshaw, K., (1991). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stanford Law Review*, 43(6), 1241–1299.

⁶⁰ Dawson, M., (2025).

⁶¹ Research demonstrates that the intersection of different social identities significantly influences both the manifestation of hate-motivated crimes and the responses to them. See, on this issue: Erentzen, C., & Schuller, R., (2020). Exploring the dark figure of hate: Experiences with police bias and the under-reporting of hate crime. *Canadian Journal of Criminology and Criminal Justice*, 62(2), 64–97; Pezzella, F. S., Fetzter, M. D., & Keller, T., (2019). The dark figure of hate crime underreporting. *American Behavioral Scientist*, 1–24.

⁶² Dekanosidze et al. (2020), 20–25.

targeting of the victim because of her sex, sexist treatment, or punishment of women's autonomy.

Judges, for their part, must assess the facts and motives within the broader context of structural inequality and prevailing gender norms. Disregarding this approach amounts to denying the very nature of sexual violence, depoliticizing it, and ultimately fostering an environment of impunity.

The Possibility of Multiple Motives in the Perpetrator's Conduct

Since an individual may be driven by more than one motive when committing a crime,⁶³ in cases of sexual violence - just as in other gender-based or hate-motivated crimes - a discriminatory motive may coexist alongside other motives,⁶⁴ such as pecuniary motives, revenge, or situational factors. It is important to emphasise that the presence of multiple motives does not exclude the discriminatory nature of the act, nor does it diminish its significance for the proper legal qualification of the crime. A discriminatory motive may constitute one among several determining factors underlying the conduct.⁶⁵

For example, a perpetrator may commit sexual violence with an opportunistic or retaliatory motive (which, it should be noted, in the context of gender-based crimes often itself reflects a discriminatory element), as well as out of hostility arising from the victim's non-compliance with prescribed gender roles (e.g., a woman failing to perform household duties, dressing "provocatively," returning home late, choosing her own sexual partners, or leaving her husband against his will). Where violence is inflicted because the victim is a woman or because she does not conform to patriarchal expectations, the act necessarily carries a gender-discriminatory dimension, regardless of the presence of other personal motives.

This approach is consistent with the OSCE guidelines on hate-motivated crimes and with the judicial practice of various countries, where it has been repeatedly emphasised that bias need not be the sole motive, but must constitute a significant motivating factor.⁶⁶ The same standard should likewise apply to cases of sexual violence.

⁶³ Chiu, E. M., (2005). The challenge of motive in the criminal law. *Buffalo Criminal Law Review*, 8(2), 653–710.

⁶⁴ Da Silva, T., Woodhams, J., & Harkins, L., (2015). Multiple perpetrator rape: A critical review of existing explanatory theories. *Aggression and Violent Behavior*, 25, 150–158; Gesser, N., Eby, F. G., & Anderson, R. E., (2023). Motives for sex and sexual perpetration in college men: An exploratory study. *Psychology Faculty Publications*, 49.

⁶⁵ OSCE (2022), 65-69.

⁶⁶ Ibid.

Critical Perspectives on the Discriminatory Motive in Sexual Violence

According to some authors, many instances of sexual violence are better explained by opportunistic, impulsive, sadistic, or other motives⁶⁷ rather than by gender or patriarchal ideology. Although the literature on the discriminatory motive in sexual violence remains limited, certain legal scholars advocate for a narrower understanding of motive in general and argue that its interpretation in criminal law should not be overly expanded, as this could blur the boundary between criminal liability and social critique. In their view, the establishment of a discriminatory motive requires clear evidence of bias - evidence which is often absent or difficult to prove in sexual violence cases.

These concerns require serious examination. If discriminatory motive were treated as an additional element requiring independent proof beyond that necessary to establish the underlying offence, there is a risk that investigations would become unnecessarily prolonged, proceedings more complex and victims subjected to additional questioning in an effort to establish the perpetrator's beliefs or attitudes. Such an approach could inadvertently increase the evidentiary burden in cases that are already among the most difficult to prosecute.

However, this risk can be effectively mitigated by adopting an evidentiary approach that does not require a separate category of proof. As argued in this article, discriminatory motive should be inferred from the totality of the circumstances surrounding the offence and assessed on the basis of the same evidence relied upon to establish the crime itself, including the relationship between the parties, the context in which the violence occurred, prior patterns of coercive or controlling behaviour, statements made by the perpetrator, and other contextual indicators. This approach does not impose additional evidentiary requirements on victims; rather, it requires investigators, prosecutors and courts to evaluate existing evidence through a gender-sensitive lens and to recognise patterns of inequality that might otherwise remain legally invisible.

Other authors point to potential practical difficulties: investigating a discriminatory motive may further complicate criminal prosecution, particularly given the already high evidentiary standards in rape cases, and could ultimately disadvantage victims.⁶⁸ While these concerns merit careful consideration, they do not justify excluding the discriminatory dimension of sexual violence from criminal law. The solution is not to abandon the inquiry

⁶⁷ Sarkar, J., (2013). Mental health assessment of rape offenders. *Indian Journal of Psychiatry*, 55(3), 235–243.

⁶⁸ Dawson, M., (2022). *Considering gender-based violence as a form of hate: A socio-legal examination*. Vancouver, BC: British Columbia Office of the Human Rights Commissioner.

into discriminatory motive but to ensure that it is assessed through contextual analysis rather than by requiring direct evidence of prejudice or hostility.

Additionally, this critique fails to demonstrate why potential difficulties in establishing motive should obstruct criminal prosecution, and it disregards the fact that sexual violence functions as a mechanism of inequality and domination over women, requiring that justice be pursued through a gender-sensitive lens and with due regard to systemic and structural inequality.⁶⁹ Even when a perpetrator does not explicitly articulate a discriminatory motive, the act frequently reflects societal norms that restrict women's autonomy and reinforce patriarchal hierarchies. Accordingly, requiring direct proof of conscious hostility sets an unduly narrow standard for such crimes. As MacKinnon observes, the very structure of inequality transforms sexual violence into an instrument of subordination⁷⁰ and, as discussed above, sexual violence is driven by social norms that devalue women's autonomy and normalise male dominance over women's bodies.⁷¹

The asymmetry of gender-based violence is most strongly reflected in sexual violence.⁷² Accordingly, denying the discriminatory dimension of sexual violence not only misrepresents the essence of its social and legal context but also hinders an effective legal response. Properly understood, recognising discriminatory motive should improve the accuracy of criminal justice responses without increasing victims' evidentiary burden, because it changes the interpretation of evidence rather than the quantity or type of evidence that victims are expected to produce.

Conclusion and Recommendations

Sexual violence is, by its very essence, a gender-based and discriminatory crime. In individual cases, the identification of the discriminatory element in the perpetrator's motive is crucial for the justice system to properly assess the nature of the offense and to accord adequate recognition to victims' experiences. Examining motive is necessary to acknowledge the patriarchal character and root causes of sexual violence and to ensure that the legal system serves not to perpetuate or reinforce discrimination, but rather to achieve transformative equality.

In light of the above, the justice system must establish a context-based understanding of motive in sexual violence cases and recognise the following principles:

⁶⁹Dekanosidze et al. (2020),19–25.

⁷⁰ MacKinnon, C. A., (2006), 71–72.

⁷¹ *Ibid*, 65-67.

⁷² Gegelia, T., (2021). The Rape Paradigm: Violent Stranger vs Warrior Victim. *Law and World*, 7(18), 58.

- Justice in cases of sexual violence must be administered through a gender-sensitive lens, as sexual violence is, by its very nature, a gender-based and discriminatory crime.
- A crime may involve multiple motives, both discriminatory and unrelated. Establishing a discriminatory motive in a crime does not require bias to be the principal or most apparent motive.
- Prosecutors and judges may rely on established bias indicators used in hate crime cases, while taking into account the specific nature and characteristics of sexual violence.
- The identification of a discriminatory motive need not rely solely on explicit statements by the perpetrator, but may also be established through contextual analysis, behaviour, and the social meaning of the act.
- The discriminatory motive in sexual violence becomes particularly evident when the offense is committed together with, or in connection to, other discriminatory crimes. For example:
 - forced marriage accompanied by rape;
 - rape in the context of systematic domestic violence;
 - discriminatory victim selection, where the perpetrator targets the victim not only because of her sex, but also on the basis of intersecting factors (e.g., disability, gender identity), without which the individual would not have been subjected to sexual violence.

Recent Georgian judicial practice demonstrates the need for courts to move beyond a narrow understanding of discriminatory motive that requires direct proof of gender bias. Judicial reasoning should instead assess the broader factual context of the offence, including gender stereotypes, punishment of women's autonomy, coercive control, and other contextual indicators capable of establishing discriminatory motive under Article 53¹ of the Criminal Code.

Integrating these approaches into the guiding principles and practice of investigators, prosecutors, and judges, by providing procedural and policy instructions, will ensure that justice in sexual violence cases is administered in line with international human rights law standards, contribute to the prevention and elimination of discrimination, and advance the achievement of transformative equality.

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References:

1. Criminal Code of Georgia (1999). *Chapter XXII: Crimes against Sexual Freedom and Inviolability*. Legislative Herald of Georgia.
2. Council of Europe, (2011). *Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)*. Council of Europe Treaty Series No. 210.
3. Criminal Code of Canada, (R.S.C., 1985, c. C-46).
4. Criminal Code of the Kingdom of Spain (1995).
5. England and Wales, Criminal Justice Act (2003).
6. Rome Statute of the International Criminal Court.
7. European Court of Human Rights, *A and B v. Georgia*, no. 73975/16, Judgment, 10 February 2022.
8. European Court of Human Rights, *B.S. v. Spain*, no. 47159/08, Judgment, 24 July 2012.
9. European Court of Human Rights, *Gaidukevich v. Georgia*, no. 38650/18, Judgment (Merits and Just Satisfaction), Fifth Section, 15 June 2023.
10. European Court of Human Rights, *Identoba and Others v. Georgia*, no. 73235/12, Judgment, 12 May 2015.
11. European Court of Human Rights, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, Judgment, 6 July 2005.
12. European Court of Human Rights, *Tkheldidze v. Georgia*, no. 33056/17, Judgment (Merits and Just Satisfaction), 8 July 2021.
13. International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Kunarac*, Case Nos. IT-96-23-T & IT-96-23/1-T, Judgment, 22 February 2001.
14. Akhaltsikhe District Court, Judgment No. 1/268-22, 22 February 2023.
15. Rustavi City Court, Judgment No. 1-772-22, 5 May 2023.
16. Tsageri District Court, Judgment No. 1/35-21, 6 April 2022.
17. Zestaponi Regional Court, Judgment No. 1/4-2023, 27 January 2023.
18. Prosecutor's Office of Georgia. Indictment in Criminal Case No. 030280621001.
19. Prosecutor's Office of Georgia. Indictment in Criminal Case No. 05904102200.
20. Ashworth, A., & Horder, J., (2013). *Principles of criminal law* (7th ed.). Oxford: Oxford University Press.
21. Brownmiller, S., (1975). *Against our will: Men, women and rape*. New York: Simon & Schuster.
22. Dworkin, A., (1981). *Pornography: Men possessing women*. New York: Putnam.
23. Estrich, S., (1987). *Real rape*. Cambridge, MA: Harvard University Press.

24. Halley, J., (2008). *Split decisions: How and why to take a break from feminism*. Princeton: Princeton University Press.
25. Kelly, L., (1988). *Surviving sexual violence*. Cambridge: Polity Press.
26. MacKinnon, C. A., (1989). *Toward a feminist theory of the state*. Cambridge, MA: Harvard University Press.
27. MacKinnon, C. A., (2006). *Are women human? And other international dialogues*. Cambridge, MA: Harvard University Press.
28. Stark, E., (2007). *Coercive control: How men entrap women in personal life*. Oxford: Oxford University Press.
29. Westmarland, N., & Hester, M., (2020). *Perpetrators of domestic and sexual violence: Data, evidence and resource implications*. Bristol: University of Bristol.
30. Haynes, A., & Schweppe, J., (2020). Should hate crime legislation include misogynistic crimes? In Sternberg, R. J. (Ed.), *Perspectives on hate: How it originates, develops, manifests, and spreads*. Washington, DC: American Psychological Association.
31. Duggan, M., (2021). From femicide to gender-based hate crime: Misogyny as hate crime. In *Studies in Law, Politics, and Society*, Vol. 85. Bingley: Emerald Publishing.
32. Antmen, D. (2023). Explaining the justification of violence against women based on the system justification theory. *Nesne*, 11(29), 508-509. DOI: 10.7816/nesne-11-29-10.
33. Chiu, E. M., (2005). The challenge of motive in the criminal law. *Buffalo Criminal Law Review*, 8(2).
34. Crenshaw, K., (1991). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stanford Law Review*, 43(6).
35. Da Silva, T., Woodhams, J., & Harkins, L., (2015). Multiple perpetrator rape: A critical review of existing explanatory theories. *Aggression and Violent Behavior*, 25. <https://doi.org/10.1016/j.avb.2015.07.017>
36. Dawson, M., (2025). Considering sex/gender-based violence as a form of hate: The invisibility of sex and gender. *Trauma, Violence & Abuse*, advance online publication, January 14, 2025. <https://doi.org/10.1177/15248380241311873>
37. Dobash, R. E., & Dobash, R. P., (2004). Women's violence to men in intimate relationships: Working on a puzzle. *British Journal of Criminology*, 44(3).
38. Erentzen, C., & Schuller, R., (2020). Exploring the dark figure of hate: Experiences with police bias and the under-reporting of hate crime. *Canadian Journal of Criminology and Criminal Justice*, 62(2).

39. Gesser, N., Eby, F. G., & Anderson, R. E., (2023). Motives for sex and sexual perpetration in college men: An exploratory study. *Psychology Faculty Publications*. https://scholarworks.uni.edu/psych_facpub/49
40. Goldscheid, J. (2018). Gender Violence and Human Rights in an Era of Backlash. *William & Marry Journal of Women and the Law*, 24 (3), 559-560.
<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1479&context=wmjowl>
41. Gegelia, T., (2021). The Rape Paradigm: Violent Stranger vs Warrior Victim. *Law and World*, 7(18), 58.
42. Gegelia, T. (2024). Rethinking the Boundaries of Sexual Violence for Criminal Law Reform. *Law and World*, 10(31), 201–202. <https://doi.org/10.36475/10.3.15>
43. Gelovani, N. (2022). Crime committed with a motive of intolerance on the grounds of discrimination in Georgian criminal law. *Justice and Law*, 2(74).
44. Gelovani, N. (2023). Indicators of crimes committed with a motive of intolerance on the grounds of discrimination. *Justice and Law*, 4(80).
45. Heise, L. L., (1998). Violence against women: An integrated, ecological framework. *Violence Against Women*, 4(3).
46. McGlynn, C., & Westmarland, N., (2019). Kaleidoscopic justice: Sexual violence and victim-survivors' perceptions of justice. *Social & Legal Studies*, 28(2).
47. Mullins, C. W., & Wright, R., (2003). Gender, social networks, and residential burglary. *Criminology*, 41(3).
48. Navas, M. P., Maneiro, L., Cutrín, O., & Gómez Fragueta, X. A., (2021). Sexism, moral disengagement, and dark triad traits on perpetrators of sexual violence against women and community men. *Sexual Abuse: A Journal of Research and Treatment*, 34(2), 107906322110516. <https://doi.org/10.1177/10790632211051689>
49. Pezzella, F. S., Fetzer, M. D., & Keller, T., (2019). The dark figure of hate crime underreporting. *American Behavioral Scientist*.
50. Sarkar, J., (2013). Mental health assessment of rape offenders. *Indian Journal of Psychiatry*, 55(3).
51. Walters, M. A., & Tumath, J., (2014). Gender “hostility,” rape and the hate crime paradigm. *The Modern Law Review*, 77(4).
52. Dekanosidze, T., Chikhladze, N., & Kharatishvili, G. (2020). *Administering Justice on Sexual Violence Crimes against Women in Georgia*. Tbilisi: Public Defender of Georgia and Council of Europe.
53. Edgerton, K., Dekanosidze, T., Khatiaishvili, G., Barbakadze, N., & Bichikashvili, L. (2021). *Effectively Investigating, Prosecuting and*

- Adjudicating Sexual Violence Cases: A Manual for Practitioners in Georgia*, Tbilisi: Council of Europe; UN Women; Equality Now.
54. Public Defender of Georgia. (2025). *Administration of Justice in Cases of Sexual Violence in Georgia*. Tbilisi: Public Defender of Georgia.
55. Sakartvelos Akhlagazrda Iuristta Asotsiatsia. (2024). *Sakhelmtsipos reagireba genderulad motivirebul dzaladobaze sakartveloshi: kanonmdeblobisa da praktik'is analizi*. Tbilisi.
56. World Health Organization, (2013). *Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines*. Geneva: World Health Organization.
57. World Health Organization, (2021). *Violence against women prevalence estimates, 2018: Global, regional and national prevalence estimates for intimate partner violence against women and global and regional prevalence estimates for non-partner sexual violence against women*. Geneva: World Health Organization.
58. OSCE, (2009). *Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region*. Warsaw: OSCE. <https://www.osce.org/files/f/documents/8/a/39821.pdf>
59. OSCE/ODIHR, (2014). *Hate crime data-collection and monitoring mechanisms: A practical guide*, Warsaw: OSCE/ODIHR.
60. OSCE/ODIHR, (2021). *Gender-based hate crime (Factsheet)*. Warsaw: OSCE/ODIHR.
61. OSCE/ODIHR, (2022). *Hate crime laws: A practical guide* (2nd ed.). Warsaw: OSCE/ODIHR.
62. OSCE/ODIHR & International Association of Prosecutors, (2014). *Prosecuting hate crimes: A practical guide*. Warsaw: OSCE/ODIHR.
63. UNIA, (n.d.). *The difference between hate speech, hate crime and discrimination*. Brussels: Interfederal Centre for Equal Opportunities. <https://www.unia.be/en/difference-hate-speech-hate-crime-discrimination>
64. Sommardal, J., (2025). ECHR Developments on Gender-Based Violence Part I: Secondary Victimization, Discrimination, and Minors' Consent. *ECHR Blog*, 9 June 2025. <https://www.echrblog.com/2025/06/echr-developments-on-gender-based.html>
65. U.S. Department of Justice, (2024). *Learn about hate crimes*. <https://www.justice.gov/hatecrimes/learn-about-hate-crimes>