

Rape as Gender-Based Violence and Discrimination Against Women: Analysis of German and Georgian Criminal Law Through the Lens of the International Anti-Discrimination Framework

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Abstract

This article studies and examines the conceptualisation of rape through the lens of gender equality, arguing that sexual violence must be understood as a form of discrimination against women. Against the backdrop of recent developments within the United Nations, particularly the renewed emphasis on women's rights and gender equality in the work of the General Assembly and the Commission on the Status of Women (2026), the study situates its analysis within the broader human rights and anti-discrimination framework. The article critically engages with legislative developments in Georgia, specifically the removal of the concept of "gender" from legal discourse and its replacement with the narrower notion of "equality between women and men," which is based solely on biological sex. It argues that such a shift obscures the structural and gendered dimensions of sexual violence and undermines a comprehensive understanding of rape as a manifestation of inequality. Adopting a feminist legal perspective, the study conducts a comparative analysis of Georgian and German criminal law on sexual violence using doctrinal and comparative legal methods. Drawing on this analysis, it demonstrates that framing rape as gender-based discrimination enhances both the conceptual clarity of the offence and the effectiveness of legal responses.

The article further draws on key contributions from feminist legal scholarship to support its normative and analytical framework. The study advocates for the reintegration of gender as a central analytical category in legal discourse and for the development of legal frameworks that more adequately address the structural inequalities underpinning sexual violence.

Keywords: Gender equality, gender-based violence, discrimination against women, patriarchal system, sexual violence

Introduction

This article aspires to explain the problem of sexual violence by presenting the intertwined position of legal, social and gender dimensions pertaining to sexual assault and to deal with it respectively. The present research asserts that when discussing the essence of the issue of sexual abuse, including rape, the first and most important concept to consider is gender-based violence, which in turn is a visible expression of discrimination directed against women, and thus, this issue should be considered from the perspective of gender equality, along with the expectations that the achievement of substantial gender equality is the most important prerequisite for reducing this crime.

In the article, it is assumed that the perception of rape and other forms of sexual violence by the society of a particular culture correlates with the accuracy of related legislation and its effectiveness, which overall defines the level of gender equality and anti-discrimination framework of the country. Thus, reducing sexual violence and achieving substantive equality is only possible through an intensified fight against women's discrimination.

In this context, the research advocates developing legal frameworks and policies in the jurisdictions under consideration to more effectively address discrimination, enhance protections against sexual violence, and promote substantive gender equality. Therefore, addressing sexual violence as a form of gender discrimination requires consideration not only of legal frameworks but also of the broader social and cultural dimensions that shape and perpetuate it.

Against this background, the study aspires to scrutinise sexual violence from the perspective of women's discrimination in Georgian and German legal, judicial and socio-cultural contexts as well as under International Human Rights Law.

Sociology of rape is also one of the main lines of this research. It means interpreting rape culture as a concept to describe a setting in which rape is condoned due to societal attitudes about gender, sexuality and even traditions. Acts such as victim blaming, statutory rape and reparatory marriage are the factors contributing to the impunity of the perpetrator.

The ultimate goal of the study is to analyse the legislation and practice in Georgia and Germany pertaining to sexual offences, taking into account the multidimensional approach to the problem, and outlining its discriminatory character. For these purposes, the problem in the study is analysed in line with the Istanbul Convention and the CEDAW committee documents.

Through its analytical framework, the study underscores the centrality of gender (in)equality in the interpretation of rape and demonstrates the necessity of moving beyond a narrow, consent-based understanding in legal doctrine and practice.

Despite the fact that sexual violence is not limited to rape, and Article 36 of the Istanbul Convention mentions the latter as part of sexual violence, due to the rationality of the scope of the study, it was considered appropriate to present, discuss and summarise sexual violence under the name of its extreme form - rape.

Given the plurality of approaches within contemporary feminist legal theory, this research deliberately adopts and consistently develops a single theoretical framework—namely, radical feminist discourse. This focused approach enables the study to maintain analytical coherence and to clearly distinguish itself from the broader spectrum of feminist legal perspectives. The aim of this research is not to present a balanced overview of competing legal interpretations, but rather to articulate and substantiate a specific theoretical position—one that conceptualises rape primarily as an expression of gender inequality. Accordingly, the study develops this argument through a comprehensive normative and theoretical foundation. Its central objective is to advance a radical feminist understanding of sexual violence and to explore its implications for legal reform.

Methodology:

This study adopts a comparative approach, examining the extent to which Georgian and German criminal law legislation on sexual violence complies with international human rights law, particularly within an anti-discrimination framework. As such, it constitutes a comparative legal study. While the methodology is comparative by nature, the research's theoretical framework is grounded in feminist legal theory.

Germany has been selected as the benchmark jurisdiction for comparison for a specific reason. As widely acknowledged in comparative legal scholarship, the purpose of a study determines the selection of jurisdictions (Bhat, 2015, p. 161). Accordingly, Germany was chosen due to its significant influence on the development of Georgian criminal law, which is largely derived from German legal traditions. The choice of feminist legal theory as the theoretical framework is determined by its focus on

understanding the structural nature of women's subordination and proposing remedies to address such inequalities.

As noted by Obiora and Perry (2001), feminist legal theory represents "a manifestation in the legal academy of a range of efforts to understand the nature of women's subordination and to propose remedies for this subordinate condition." This aligns closely with the aims of the present study. Furthermore, given that the research is grounded in feminist discourse, it incorporates a plurality of methodological approaches characteristic of feminist research. In this regard, contextual analysis constitutes one of the key methodological tools.

As a study developed within the framework of feminist legal theory, this research approaches law both as a mechanism for reform and as a site of broader socio-political struggle. In line with feminist inquiry, law is understood as "an ensemble of potential tactics for reform and, more generally, as a site of struggle for a broader political transformation" (Obiora & Perry, 2001). This perspective is particularly relevant in the context of contemporary political developments in Georgia.

The collection, processing, and analysis of data were conducted using the following research methods: (1) library/desk research and (2) empirical research.

Accordingly, the study employed the following techniques:

1. Library/desk research, which included: (a) analysis of legislative sources at both national and international levels in order to assess the compliance of Georgian and German domestic laws with relevant international legal standards; (b) examination of anti-discrimination practices as reflected in academic literature and legislation; (c) review and evaluation of policy documents and reports produced by governmental and non-governmental organisations.
2. Empirical research, which involved analysis of cases of sexual violence against women and girls, as reflected in judicial decisions at both national and international levels. Thus, the empirical component of this study is based on a qualitative analysis of the above-mentioned decisions concerning sexual violence, with a particular focus on rape.

The cases were drawn from the jurisprudence of the European Court of Human Rights (ECtHR), the Committee on the Elimination of Discrimination against Women (CEDAW Committee), German and the US courts. The selection focused on decisions that address the relationship between sexual violence, gender-based discrimination, and structural gender inequality.

The cases were identified through official jurisprudential databases, relevant legal scholarship, and academic literature on sexual violence and gender equality.

The analysis examines both the factual circumstances of the cases and the legal reasoning adopted by the respective bodies in order to assess the extent to which rape is recognised and interpreted as a form of gender-based violence rooted in unequal power relations and discriminatory social norms.

Results

The findings of this research underscore the value of the comparative legal method employed in the study and demonstrate the robustness of the analysis conducted within the frameworks of feminist legal theory and human rights doctrine concerning the issue under investigation.

The results corroborate Professor Hörnle's observation that "it makes sense to scrutinise substantive criminal law because the reform of sexual assault laws is an ongoing process, and scholars should follow and hopefully influence the ensuing political and legislative discussions" (Hörnle, 2023, p. 2).

The findings acquire particular significance in the context of the evolving legal frameworks governing sexual offences in Germany and Georgia following the ratification of the Istanbul Convention and subsequent legislative and policy developments.

The analysis demonstrates that, despite the legislative progress achieved to date, German rape law remains in a transitional phase in its movement from the traditional "No means no" approach towards an affirmative consent model based on the principle of "Only yes means yes", which is better suited to protecting the rights and interests of victims of sexual violence.

With regard to Georgia, the study highlights not only the urgent need for comprehensive reform of the relevant criminal law provisions, which continue to conceptualize rape primarily through the lens of violence, but also demonstrates that recent legislative amendments, including the removal of the term "gender" from the legal framework, may hinder efforts to align the definition of rape in the Criminal Code with the standards established by the Istanbul Convention. Indeed, both in general and in relation to sexual offences in particular, a gender perspective is indispensable for advancing substantive equality, exposing the role of unequal power relations in the perpetration of such offences, and recognising their intrinsic connection to discrimination against women.

Furthermore, these developments risk obscuring the recognition of rape as a crime which, as the present study demonstrates, constitutes a form of gender-based violence and discrimination against women.

The potential adverse consequences of these legislative amendments in Georgia, particularly for the understanding of the nature and legal foundations of rape under the Criminal Code of Georgia, create a significant

obstacle to the effective functioning of the country's anti-discrimination and human rights protection framework.

The findings further underscore the regrettable reality that these developments are occurring despite compelling evidence from contemporary scholarship, the applicable international legal framework, and a gender-equality-oriented analysis of authoritative judicial jurisprudence, all of which support the conclusion that rape constitutes a form of gender-based violence that discriminates against women and fundamentally undermines the principle of gender equality.

In addition, the empirical analysis conducted within the framework of this study demonstrates that, alongside deficiencies in the legal framework (in both countries, albeit to differing degrees), gender roles and stereotypes, unequal power relations, rape culture, and rape myths generate substantial harm. These phenomena are sustained and reproduced within broader patriarchal structures and discriminatory social norms, thereby perpetuating patterns of structural inequality.

Accordingly, the study concludes that the most appropriate theoretical approach is to conceptualise the crime of rape through the prism of gender (in)equality, while, at the practical level, cases of rape should be analysed and adjudicated through a gender-equality lens.

Discussion

1. Why does gender equality matter in rape case analysis?

a) Historical discourse and general overview

Prominent feminist authors (Charlesworth et al. 1991) have long ago mentioned and vividly outlined that:

International law has largely resisted feminist analysis. The concerns of public international law do not, at first sight, have any particular impact on women: issues of sovereignty, territory, use of force and state responsibility, for example, appear gender free in their application to the abstract entities of states. Only where international law is considered directly relevant to individuals, as with human rights law, have some specifically feminist perspectives on international law begun to be developed (p. 614). Accordingly, “challenging the silences of international law and exposing the invisibility of women as an integral part of the structure of the international legal order is an important first step in feminist engagement” (Chinkin, 2008, paragraph 5). Feminist argued that “the protection of private as a sphere of non-intervention was a dangerous ideology that legitimated ignoring many injustices, including “VAW” as just domestic violence.” FitzGerald & Skilbrei, 2022, p.11). One of the obstacles to the elimination of violence against women is the fact that the legal systems of many countries consider violence between women and men not a crime, but a family dispute that should

be resolved without the intervention of the state (Kurtanidze et al., 2016, p. 24). “One priority of 1970s feminism was to bring violations that take place in the home to the attention of politicians and to make sure that such crimes were illegal, on par with physical and sexual crimes that take place between strangers together” (May-Len Skilbrei et al. 2020, p.10). It is agreed that intimate relationships are the most common context for rape and thus physical and sexual violence overlap very often, making victims vulnerable to both intimate partner violence and rape.

b) Marital rape as an expression of structural gender inequality

“Wider societal awareness of rape in marriage rose gradually alongside second-wave feminism, the growing criticism of violence against women and the lack of state intervention in both the private sphere and in intimate relations” (Kotanen, 2020, p. 83). Finally, it led to the criminalisation of marital rape in different parts of the globe, notably in the US. By the end of the 1990s, the marital exemption rule was finally declared to be void in the United States (People v. Liberta, 1984). Germany was not an exception, as its legislation also historically justified marital rape, a phenomenon which was endorsed in Germany until 1979 (Hörnle, 2023, p. 142). The historical acceptability of marital rape can be explained by a combination of socio-legal ideologies and attitudes to marriage, sexuality and gender inequality (Kotanen, 2020, p. 85).

Ironically, even though marital rape as a phenomenon has never been articulated in the national legislation of Georgia as a justification for the removal of criminal charges from the perpetrator, rape in marriage, as an offence, has never been put forward in practice because of its societal understanding, until very recently, when the Istanbul Convention induced the revision of the legislation.

Traditionally, as mentioned in the legal literature, rape in marriage was perceived to be as impossible as a husband robbing himself (Kotanen, 2020, p. 85).

A similar perception of marital rape has historically prevailed in Georgia. Although such behaviour was criminalised long ago under Georgian Criminal law, relevant data from the police on reporting such crimes or from the prosecution office on prosecuting them indicate that such behaviour is socially condoned, insofar as it is accepted as normal by the community. This approach remained largely unchanged until recently. According to information released by Georgian law enforcement authorities, only two cases involving allegations of marital rape were publicly reported, one in 2022 (Ambebi.ge, 2022, reporting information from the Ministry of Internal Affairs of Georgia) and another in 2026 (Prosecutor’s Office of Georgia, 2026).

However, a detailed examination of these cases is not possible due to procedural rules permitting closed hearings in sexual violence proceedings to protect victims' privacy, dignity, and other legitimate interests (Article 182(3)(d) of the Criminal Procedure Code of Georgia).

Overall, the above-described reality demonstrates how harmful cultural attitudes and traditions can be for the development of equal rights in the country, where women at large are thought to be subjected and submitted to their husbands' sexual needs and desires.

c) Sexual domination as an exposure of systemic inequality within the public sphere

Inequality as a basis for the issue in sexual violence cases does not emerge only in intimate partner relationships, but in the same vein, it reiterates a well-known and historically established pattern of male domination over women in all sexual assault cases. This is why achieving gender equality must be the first and foremost aim of policymakers in a quest to decrease sexual violence cases against women, which are clearly gendered and thus discriminatory.

CEDAW addresses violence against women, including rape, as a form of discrimination against women following Recommendation 19 in 1992 (UN, 1979, 1992). Although attributing the concept of gender discrimination to violence against women is mostly ignored in practice and perhaps even not fully apprehended, the legal literature, where it has been developed, is noteworthy and highly considerable. Such development is observed in the work of MacKinnon (1979) on sexual harassment in employment, and yet another example of such discourse is that of Edwards (2008) on jurisprudence in UN human rights treaty bodies (Walby et al. 2015, p.117-119).

Moreover, and even on the broader scale, "in international criminal law, substantive sex equality concepts are being fielded in prosecutions for gender crime, including in the ad hoc tribunals for genocidal rape and in the International Criminal Court... bringing together human rights and international criminal law" (MacKinnon, 2016b, p. 745). Professor MacKinnon reasonably argues that in situations of widespread coercion, there are adequate grounds to classify unwanted sexual intercourse as rape, without requiring separate proof that the woman did not consent to this particular intercourse (MacKinnon, 2006, pp. 241–244).

It is a fact that nowadays women's rights are protected by numerous international and national legal instruments worldwide. Nonetheless, their gender continues to carry negative significance in the lives of many women, particularly within communities, where women are socialised from birth to be silent about their circumstances, simply because they were born female (Papp, 2013, p.115). This issue is directly related to and reinforces gender roles and

gender stereotypes, and hence makes the discrimination sustainable, which in turn prevents the achievement of gender equality.

d) Gender equality as a normative foundation of the legal concept of rape

In the book “stopping rape”, its authors suggest a new holistic approach in which they argue that using a broad, institutional, complex-systems approach is necessary in theorising about and preventing rape (Bjørnholt, 2020, p.10). Nonetheless, gender equality is the main issue. Walby et al. (2015) clarify that:

The principles underpinning the law on rape have been developing, drawing on concepts of human rights and gender equality, although not uniformly so. The definition of rape in law has been developing, albeit unevenly, removing marital exceptions and moving towards a consent-based definition (p.111).

Even though the latest attempts on massive elaboration of the “consent-based” model of sexual assault are grounded on the protection of sexual autonomy, “rape is a crime of gender inequality” (MacKinnon, 2016a, p. 431). The spirit and roots of the above-mentioned statement, made by its author, a prominent scholar and radical feminist professor, Catherine MacKinnon, depict the reasonable comprehension of the furtive damage of inequality in the sustainability of sexual violence.

Professor MacKinnon presents social hierarchy as a central organising principle for substantive equality (Fredman, 2016, p.747), which makes great sense for understanding unequal power relationships in sexual assault cases, too. In contrast to MacKinnon, Friedman contends the opposing opinion, that characterising “substantive equality solely in terms of hierarchy obscures the multi-faceted ways in which inequality manifests” as far as power relationships are not only vertical, as hierarchy would suggest, but they are also diagonal, horizontal, and layered (Fredman, 2016, p.747). “Despite listing violence as a substantive factor, Friedman avoids equality analyses of sexual abuse” (MacKinnon, 2016b, p. 745). Nonetheless, what stands in the centre of sexual violence analysis is the hierarchically gendered social meaning of the issue. Although it was first perceived, named, and regulated as such in the United States, this understanding has since spread worldwide.

As MacKinnon (2016a) comments:

Authorities around the world increasingly recognise the reality that sexual violence is socially gender-based, whether that understanding is predicated on the large numbers and vast disproportion by sex between perpetrators and victims, on gender roles and stereotypes of masculine and feminine sexuality, or on the hierarchically gendered social meanings and consequences of sexual victimisation and perpetration (p.433).

e) Patriarchy as a systemic structure of gender inequality underpinning sexual violence

The foregoing demonstrates the necessity of analysing sexual violence through the lens of patriarchy as a systemic structure. In turn, it does not presume to ignore perpetrators as individuals. Instead, they are included as participants in a larger system rather than being treated as the beginning and end of everything (Johnson, 2005, p. 93). Nonetheless, understanding how this system fosters sexual assault, as a form of gender-based violence and thus discriminating against women, is the first and fundamental step for understanding the essence of the issue.

Professor MacKinnon's analysis of sexual violence encourages scholars, including myself, to demonstrate why gender inequality matters in the analysis of sexual assault, whilst there is a trending shift solely to a "consent-based" understanding of sexual offences in the legislation of Western countries, removing gender inequality from the discourse in favour of personal autonomy.

2. Germany

a) Assessing recent changes to German sexual law under the gender equality prism

In the German criminal code and related legislation, consent has taken the central place in the definition of sexual assault, with the main target being the person's autonomy to be protected from intrusion. Also, as Germany conveys in its ninth periodic report to the CEDAW Committee: "Women and girls are, for instance, protected against violent attacks under the provisions relating to offences against sexual self-determination (sec. 174ff. Criminal Code (StGB))" (CEDAW Committee, 2021, para. 104). While individual autonomy is significant, gender equality takes on greater analytical value when considered at a broader structural level and thus outweighs any analysis, interpretation, or judgment grounded solely in the individual's consent. As Professor MacKinnon correctly notes: "when power is unequal, consent to sex is unlikely to be meaningful, or it becomes impossible to tell" (MacKinnon, 2016a, p. 463). Thus, it is crucial to understand the implications of gender inequalities in rape cases; it is equally important for all - for an individual and for society, for a state and for a government too, because without recognising and respecting gender equality, the right to women's self-determination and autonomy will never be protected.

Notwithstanding numerous international and national acts, and despite loudly applauded agreements and signatures on documents on gender equality, gender equality has yet to be achieved. And yes, women do have rights... victims of sexual violence too! But here the question arises: to what extent are those rights realised, respected and upheld? Unfortunately, the response is

overly simple, particularly in light of the fact that patriarchal structures are deeply entrenched, historically persistent, and resistant to meaningful change. It is true, as the literature notes, that women have rights on paper but not in practice (Wolf & Werner, 2021, pp. 800–816). The same holds true for the gender equality clause - equality exists ostensibly at the formal level, yet remains unrealised in practice.

Whilst Germany's nine periodic report to CEDAW states that since 13 December 2019 examinations of injured parties in relation to sexual offences have been conducted by an investigating judge and an audio-visual recording is also made of the examination, which can then be used in the main hearing instead of hearing the injured party in person (CEDAW Committee, 2021, para. 105), the CEDAW Committee is concerned, however, that in practice: "Audiovisual interviews are rarely granted, subjecting survivors to further victimization" (CEDAW Committee, 2023, Para 17 (a)). Under such circumstances, rape is better understood not as intrusive solely to a person's autonomy, but as "assault upon human dignity, an action that constitutes a denial of any concept of equality for women (R.v. Osolin, 1993, pp. 595, 669).

Thus, perception of the sexual violence (including rape) as a form of gender - based violence is a first and foremost step for the comprehension of the issue. In this relation, it's important to remind the reader that "under the European Convention on Human Rights, a new sex equality jurisprudence is developing in application to rape and, most stunningly, to domestic violence" (MacKinnon, 2016b, p. 745). Hence, a second, equally important consideration is the recognition of the close alignment and overlap between domestic violence and sexual violence, which predominantly occur between intimate partners or spouses as forms of gender-based violence, yet remain largely unreported and rarely prosecuted or adjudicated. Correspondingly, both of them (domestic violence and sexual violence) are regarded to be acts of gender-based violence as they "result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (Council of Europe, 2011, Istanbul Convention, Article 3).

b) The gendered "chain" in rape: from gender-based discrimination to inequality

The UN Special Rapporteur on violence against women and girls, its causes and consequences in 2015-2021 years, Dubravka Šimonović, has clearly referred to such nexus (Šimonović, 2014):

While being unique in terms of its scope and approach, which is based on a gendered understanding of violence against women the Istanbul Convention outlines the explicit linkage between the gender stipulated

violence and discrimination – an interaction – which the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) failed to accomplish, even though this inaccuracy was redressed later on through the General Recommendation No. 19. This particular recommendation is considered to be one of the most important general recommendations of the CEDAW Committee because it clarified the relationship between discrimination against women and gender-based violence against women (pp. 601-602). It was the most significant document to show that the CEDAW Convention prohibits any kind of sex-based discrimination. In this recommendation, the Committee interpreted that the definition of discrimination against women given in Article 1 of the Convention “includes gender-based violence, which is violence that is directed against a woman because she is a woman or that affects women disproportionately” (CEDAW Committee, GR No. 19, 1992, Article 6). Gender-based violence is identified as “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”. According to the CEDAW Committee, gender-based violence includes “acts that inflict physical, mental, or sexual harm, or suffering, threats of such acts and other deprivations of liberty”. The view that the recommendation connects gender-based violence to the international prohibition of discrimination has gained broad acceptance (Kherkheulidze, 2017, p.18).

General Recommendation No. 19 reinforced CEDAW's anti-discrimination spirit so boldly that it has been regarded as an important document that establishes “the missing link” between discrimination and violence (Shin, 2007, p. 229).

In her work, MacKinnon (2016a) demonstrates how inequality forms the foundation of the crime of rape:

In 2006, the Secretary General of the United Nations, in a conclusion to which “the link between violence against women and discrimination was key,” observed that violence against women, including rape, had been established as “global, systemic and rooted in power imbalances and structural inequality between men and women” (p.435). “Sexual violence as a distinct expression of gender-based inequality was further recognised in two corresponding resolutions in 2013 - one from the CEDAW Committee, and another by the UN Security Council, “converging human rights with humanitarian law, both recognising gender-based violence as a substantive form of sex inequality and a threat to international security and peace” (MacKinnon, 2016b, p. 746).

Nevertheless, it was not until the adoption of the Istanbul Convention that the notion of gender-based violence against women was defined separately in a legally binding international instrument (Council of Europe, 2011, Istanbul Convention, Article 3(d)). Defining it as “violence that is

directed against a woman because she is a woman or that affects women disproportionately” enables us to analyse sexual violence from the prism of equality, insofar as discrimination against women is nothing but the mere expression of historically entrenched inequality between the sexes.

Moreover, the Istanbul Convention not only codifies, embraces and develops understanding of violence against women as elaborated in the CEDAW General Recommendation No. 19, but it also goes further and defines it as both “a human rights violation and as discrimination against women”, equating them to all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (Council of Europe, 2011, The Istanbul Convention, Article 3(a)). Even during wartime, sexual abuses, which, at first glance, are regulated by IHL and ICR, IHRL is still applicable in view of the recognition of gender-based violence against women as a violation of human rights (Moore & Chinkin, 2018, p. 179). Rape in war is now reorganised as a violation of women's human rights under CEDAW as well as under CAT and the ICCPR (Moore & Chinkin, 2018, p.194).

Thus, it is important to highlight the gendered nature of the issue.

Nonetheless, as the Report of the German Women Lawyers Association on the Implementation of the Istanbul Convention in Germany (djb, 2021) outlines:

Even though The Atlas on Equality between Women and Men in Germany from the year 2020 contains a chapter on intimate partner violence, in which victims of intimate partner violence are listed according to gender and the respective Land, it still does not contain any further details on gender-based violence (p.9).

It is essential that even some of the relevant EU Directives be interpreted from a gender perspective.

European Institute for Gender Equality illustrates the importance of gender analysis regarding the issue:

The purpose of undertaking a gender analysis is primarily to make visible the fact that gender relations are likely to impact the solution to a problem, to indicate the form that impact will take and to propose mitigating factors or alternative courses of action (“Analysis of EU directives from a gendered perspective” section).

c) Significance of implicating gender dimension for dismantling rape misconceptions

The inclusion of the gender dimension is essential to assessing the issue from both substantive and procedural criminal law perspectives, as it is

a prerequisite for ensuring effective investigations and the delivery of fair and proportionate punishment. Even though in Germany prosecution authorities (public prosecution offices and police) are required by law to investigate every criminal offence (known as the “principle of mandatory prosecution”, section 152 (2) Code of Criminal Procedure” (CEDAW Committee, 2021, para. 104), studies indicate (Lea et al. 2003, p.583), that in Germany (Wolf & Werner, 2021, pp. 805-807) as in many other countries the issue of holding perpetrators accountable is often left unresolved as a consequence of case attrition in rape proceedings (Daly & Bouhours, 2010, p. 565-569). This is a common problem in many countries, including Georgia (Public Defender of Georgia, 2020, p. 15).

As Walby indicates in her research, most rapists are not convicted, resulting in impunity (Walby et al. 2015, p.5), which may ultimately be attributed to the persistence of gender stereotypes. Also, during wartime sexual offences, “stereotypes persist leading to lack of prosecutions, reluctance of victims and witnesses to come forward to testify and to acquittals” (Moore & Chinkin, 2018, p.202). Considering all these challenges, the Istanbul Convention explicitly mandates the parties 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” (Council of Europe, 2011, Explanatory report to the Istanbul Convention, para. 192).

At a societal level, it is also crucial to confront the so-called “rape culture”. In the corresponding literature (Phipps et al.2018), “rape culture” is interpreted as:

A set of general cultural beliefs supporting men’s violence against women, including the idea that this violence is a fact of life, that there is an association between violence and sexuality, that men are active while women are passive, and that men have a right to sexual intercourse (p.1). Expressed attitude, in turn, generates prevalent “rape myths” such as that women enjoy being raped, and reinforces the idea that lines around consent are vague, which has established widespread mistrust of rape victims and low conviction rates of perpetrators (Phipps et al. 2018, p.1).

As it is stated in the literature concerning the procedural aspects of the sexual assault law in Germany, “in cases where rape myths and gender stereotypes come into play, gender stereotyped arguments have actually been used to influence the margin of appreciation of the court and the outcome of the trial” (Wolf & Werner, 2021, pp. 806).

According to contemporary studies, “there is still considerable ‘attrition’, which means that many cases of rape reported to the police do not lead to a conviction” (Walby et al. 2015, p.111). In general, “rape myths are understood as descriptive or prescriptive beliefs about sexual aggression,

which are usually used for the denial, downplaying and justifying men's sexually aggressive behaviour towards women" (Gerger et al. 2007, p. 425). Also, in relation to underreporting of sexual violence, The EWL's "Barometer on rape" found, that the low levels of reporting were associated with gender roles, as far as gender stereotypes, coupled with societal expectations with regard to women and men's behavior, thereby fostering an environment in which date rape is both possible and socially acceptable (Amnesty International Report, 2018, p.25). Culturally legitimate violence plays a huge role in rape cases as it creates both a culturally legitimised crime and a culturally legitimate victim. In such a society, gender roles stipulate the formation of a typology of the perpetrator and the victim. Various cultures describe certain forms of sexual violence that are condemned and other forms that may be tolerated to a degree, the culturally legitimised forms of violence (Baron & Straus, 1989, p.32). The risk of rape victimisation for women is heightened by cultural and structural factors that create a predisposition toward such behaviour. In Criminology, "a positive correlation is found between powerlessness, deprivation and the frequency of criminal victimisation. Cultural stigmatisation and marginalisation also enhance the risks of criminal victimisation by designating certain groups as "fair game" or as culturally legitimate victims (Fatta, 2000, p.32). Hence, it is obvious why in a society of male dominance and women's powerlessness, women in general are deemed to be "legitimate" victims of the sexual desires of men. That is why equal power relations as a guarantor of gender equality at the same time safeguards the reduction of sexual violence against women (Kherkheulidze, 2025, p.143).

Even in the context of conflict-related rape and sexual violence - regulated and condemned under three overlapping branches of international law, such as international humanitarian law (IHL), international criminal law (ICL), and international human rights law (IHRL) - the protection afforded to civilians remains limited. Expanding the number of applicable legal frameworks or involving additional international bodies does not, in itself, ensure more effective protection for victims. Rather, the central issue lies in the failure of states to comply with their existing international obligations. This includes, foremost, addressing the structural power inequalities that enable rape both in times of peace and during armed conflict. As scholarship emphasises, the prosecution of individual cases by institutions such as the ICC or other international, hybrid, or national tribunals is insufficient to transform the broader, gendered conditions embedded in everyday life that perpetuate sexual violence in wartime (Moore & Chinkin, 2018, p. 203).

This reasoning can be used as an auspicious argument to insist that it is historically unequal power relations between men and women that breed

and sustain rape, concurrently linking such an inequality to the discrimination against women on a structural level.

d) Some steps taken toward gender-equality in Germany – do they suffice?

The website of the Federal Ministry for Education, Family Affairs, Senior Citizens, Women and Youth of Germany (n.d.) provides information on the gender equality situation in the country:

Germany's Grundgesetz (Basic Law) states that women and men are equal and that the state has to promote substantive, de facto gender equality. Germany is also committed to fulfilling its gender equality obligations under European law and international human rights law, for example, by having ratified the CEDAW Convention and its Optional Protocol (see the “Gender equality” section).

In the Ninth periodic report submitted by Germany to the CEDAW Committee, important steps towards eradicating discrimination and fostering gender equality are outlined. In this regard, the documents also refer to publishing a new handbook entitled “Rightfully Gender Equality! CEDAW Manual” – in 2019 in a consultation version and in 2020 in an expanded version (CEDAW Committee, 2021, para.15). It contains translations of the Convention and the Optional Protocol thereto and the more recent general recommendations of the Committee. However, in its concluding observations, “the Committee notes with concern the lack of sufficient explicit references to the Convention and the Optional Protocol thereto in judgments of national courts” (CEDAW Committee, 2023, para. 9).

German Institute for Human Rights (DIMR) has also published an article pertaining the scope and significance of the CEDAW Convention in German law, “thereby lending key support to the handbook as a practical guide for politics and the judiciary” (CEDAW Committee, 2021, para.16). It is also important to mention, that the same institute (DIMR, 2023) was tasked to monitor policies and measures to prevent and combat all forms of violence covered by the Istanbul Convention in line with “Concept for a National Rapporteur Mechanism on gender-based violence”:

The National Rapporteur Mechanism on gender-based violence will first compile and then assess the available quantitative and qualitative data and findings in this field in and for Germany, thereby facilitating the design of policy at the federal and Länder levels that is robust, evidence-based, better coordinated, and more coherent (p.6).

As it is stated in the ninth periodic report of Germany to CEDAW: “nationwide gender equality policy cooperation and coordination aimed at securing equal living conditions and opportunities are backed by a number of Federal Government/Länder working groups and the Standing Conference of

Equality and Women's Affairs Ministers and Senators (GFMK)" (CEDAW Committee 2021, para. 19).

"The decisions of the GFMK provide the baselines for a common gender equality policy across the Länder. The Federal Government, represented by the BMFSFJ, is a permanent guest of the GFMK and reports on women's and gender equality policy measures and trends. The decisions of the GFMK have no direct legal effect, but they do have political weight and clout" (CEDAW Committee 2021, para. 20). The establishment of the Federal Foundation for Gender Equality aspires to boost gender equality policy also at the structural level. Germany's Ninth periodic report to the CEDAW Committee (2021) informs that:

The Bundestag passed the Act establishing the Foundation on 15 April, and the Bundesrat on 7 May 2021. The objective of the Federal Foundation is to accelerate gender equality policy at all levels across Germany by providing information, supporting practitioners, networking with stakeholders in a "House of Gender Equality," and backing the development of innovative ideas for implementing gender equality (para. 57).

From the above-mentioned commitments, it is clear that Germany has taken a range of solid steps toward achieving gender equality. However, the question remains whether equality is given the same level of consideration in sexual assault cases. Or even within the private sphere of intimate relationships, where rape and other forms of sexual violence against women occur? Regretfully, the answer to whether gender equality analysis is used in relation to sexual offences in practice is still ambiguous. Hence, this article aspires to persuade the reader of the inevitability of the inclusion of gender equality analysis in sexual assault cases.

The rationale behind such an approach is understanding the core of the issue – inequality. In order to understand the real value as well as applicability of equality principle in sexual violence case analysis one should very carefully follow the explanations of the professor MacKinnon, where she questions analytical rigor of the most commonly cited sexual violence cases (M.C. v. Bulgaria, 2003 & Karen Tayag Vertido v. Philippines, 2008) observing a notable absence of equality-based reasoning in favor of an extended focus on consent. In her view, which constitutes the reasonable and gender-sensitive interpretation of the case, the analyses of the aforementioned cases were deficient in their treatment of gender equality, which was considered only marginally and in a constrained, superficial manner. In other words, the rationales of those two cases, given by the respective bodies (ECtHR and CEDAW) Committee - albeit involuntarily, but still undermined the real bases of the issue – gender inequality - due to building their adjudications and judgements on confrontation between consent, on one hand and the force, threat or coercion, on the other hand (MacKinnon, 2016a, pp. 463-464). What

is noteworthy in such an approach is how it constructs the essence of rape: “when rape is recognised as a crime of gender inequality, gender belongs on the list of inequalities that, when drawn upon as a form of power and used as a form of coercion in sexual interactions, make sex rape” (MacKinnon, 2016a, p. 469).

In view of the foregoing analysis, Professor MacKinnon (2016a) reasonably suggests that:

The transnational definitions of sexual assault that take inequality into account can be combined to redefine rape domestically as: a physical invasion of a sexual nature under circumstances of threat or use of force, fraud, coercion, abduction, or of the abuse of power, trust, or a position of dependency or vulnerability” (p. 474).

However, without recognising patriarchy as the structural foundation of inequality, any attempt to engage with Professor MacKinnon’s analysis of sexual assault remains incomplete. Correspondingly, one should genuinely understand what patriarchy is and how it shapes behaviour.

Sometimes the confusion and resistance to feminist approaches arise just because people cannot differentiate between patriarchy as a kind of society and the people who participate in it. That’s why it is important to understand that it is a system that significantly influences the societal meaning of various occurrences and phenomena. In this regard, it is important to consider how such a system could run us, whether we have anything to do with shaping it, and, if so, how? (Johnson, 2005, p.76). Engaging with this perspective within sexual violence analysis allows for a more comprehensive understanding of the ways in which systemic inequality forms the foundation of sexual assault, thereby situating it as a manifestation of gender-based violence.

This is why sexual assault cases should not be restricted to individual behaviour or reduced to the actions of a particular man and woman. “From an individualistic perspective, we might ask why a particular man raped, harassed or beat a woman... but we would not ask, however, what kind of society would promote persistent patterns of such behaviour?” (Johnson, 2005, p.77). The better approach would have been to focus on gender hierarchy, which is pertinent to patriarchal structure and thus affects women as a class.

e) Problematic judicial practice and lacunae in German law

The given article reflects and supports radical feminist theories, in which sexual violence is viewed as an expression of gendered power relations (Bjørnholt, 2020, p.23). To make this statement persuasive and summarising, the analysis will be built on a gender equality prism pertaining to one German case, which, in my opinion, failed to meet the contemporary standards for the interpretation of sexual assault cases because of neglecting and excluding the gendered character of the case.

Lawyers who argue for the practicability and validity of the “consent-based model” believe that, in this way, gender equality is protected too. However, they miss the very important point that “saying yes to unwanted sex that goes with it, is fundamental to consent as a concept, as if embracing it effectuates sex equality guarantees” (MacKinnon, 2016a, p. 465). To demonstrate the consistency of MacKinnon's reasoning in practice, a specific case should be examined. The dismissal of the charges in the following case resulted from the failure to consider inequality in the legal analysis.

In German legal literature (Hörnle, 2023), the scenario of the contested rape case is described as follows:

The defendant worked as a case manager at the state employment agency. During an appointment in his office, he asked a young female client to perform oral sex on him, which she refused. He nevertheless opened his pants and guided his penis into her mouth while she remained frozen. The BGH ruled that this was not a criminal offence” (p.142). This case, as an example, shows that the sole reliance on consent, meaning reliance on the word “no”, or searching for some gestures meaning “no”, has led the court to the wrong decision. Whilst assessing the case from a gender-inequality perspective would have clearly revealed its gender-based nature and exposed its discriminatory character against women.

Hence, in view of such a background, the position of the CEDAW Committee, asserting that German courts are to some extent ineffective in sufficiently implementing a gender perspective in their decisions (CEDAW Committee, 2023, para. 9), is to be supported. This is why the Committee recommends that Germany: “increase its efforts to encourage the direct application of the Convention and the Optional Protocol thereto by national courts, law enforcement agencies and lawyers, including through capacity-building for judges, prosecutors and lawyers” (CEDAW Committee, 2023, para. 10). Although professor Hörnle does not engage in equality analysis - as a basis of gender-based discrimination - pertaining the mentioned case, she nonetheless finds the dismissal of charges incorrect and points to several prosecutable scenarios arising from the facts of the case (Hörnle, 2023, p.142).

Finally, as it is correctly stated in the Parallel Report Istanbul Convention by German Women Lawyers Association (2021, (djb)):

Gender-based motives should be considered a circumstance when determining the penalty under Section 46(2) of the German Criminal Code. Such motives are present, for example, if the offence is directed against a woman because she is a woman, or if it is characterised by ideas of gender inequality (p.6).

f) Contemporary Criminal Law Scholarship and Legislative Developments in Germany

“Prior to 2016, the German Criminal Code (StGB) did not provide for the comprehensive criminalisation of all non-consensual sexual acts (Hörnle, 2023, p.141). Only following subsequent legislative amendments was the “No means no” rule incorporated into German criminal law (Kherkheulidze, 2024, p.186). Accordingly, “the central element of the German core offence description of sexual assault is now 'against the discernible will', and the legislative materials expressly stipulate that this offence description is based on a 'No means no' model” (Hörnle, 2023, p.6).

Even though this model adopted by Germany has been increasingly criticized for its inability to adequately encompass the diverse categories of victims of sexual violence who remain passive, but does not consent to sexual act (2024, (djb) p. 9), particularly those experiencing fear-induced paralysis or other trauma responses that prevent verbal or physical resistance (GREVIO, 2022, para. 252), and although there are ongoing legislative discussions regarding its replacement with the “Only yes means yes” approach (Deutscher Bundestag, 2026), as of June 2026 Germany still follows the “No means no” model.

Whilst according to the “No means no” model, sex is considered consensual until one person says no, with the “Only yes means yes” approach, sex is only defined as consensual when all participants have explicitly agreed (Torenz, 2021, p. 719). However, as stated above, the proposals to move towards a consent-based “Only yes means yes” model remain under discussion and have not yet been enacted. If adopted, however, the proposed reform would replace the requirement of an objectively recognisable refusal with a focus on whether the victim voluntarily consented to the sexual act. The proposal is explicitly justified by reference to victims who “freeze” or are otherwise unable to communicate non-consent (Deutscher Bundestag, 2026).

Contemporary rape law scholarship increasingly recognises that victims of rape may experience involuntary trauma responses during sexual assault. As McCormack and Herring observe, “there is considerable evidence that victims of sexual assault can 'freeze' in the face of assault” (McCormack & Herring, 2025, p. 17).

This phenomenon has also been explicitly acknowledged in discussions within the European Parliament. During negotiations concerning the proposed Directive on combating violence against women and domestic violence, Members of the European Parliament emphasized that “trauma responses, such as the “freeze” or the “fawn” must be reflected in legislation and judicial practice” and reiterated their call for gender-based violence to be included among the crimes listed under Article 83(1) TFEU as EU crimes (European Parliament, 2026, section: A new legal framework).

Thus, at the European level, the understanding of consent in rape cases has become a central issue. The European Parliament has called for a common definition of rape across all EU Member States based on the absence of freely given consent (European Parliament, 2026, section: Parliament wants the Commission to propose legislation establishing a common definition of rape based on freely given, informed, and revocable consent). In this regard, Civil Liberties Committee rapporteur Evin Incir has advocated a shift in the conceptual framework of rape law away from the traditional “No means no” paradigm towards a more victim-centred model grounded in the principle of affirmative consent.

In this context, she has stated that:

“It is both morally and legally unacceptable that women are not protected by 'Only yes means yes' legislation across the EU” (European Parliament, 2026, section: Quotes).

Considering these legislative debates across the European Union, including those taking place in Germany, a prospective transition from an objection-based to a consent-based definition of rape under § 177 StGB has the potential to strengthen substantive gender equality and to address structural barriers that disproportionately affect women.

The affirmative consent model can be understood as advancing substantive equality, insofar as it seeks to correct structural asymmetries in the legal recognition and evidentiary assessment of sexual violence. It further reduces reliance on stereotypical expectations regarding how a ‘real victim’ ought to behave, thereby challenging rape myths that have historically shaped judicial reasoning and outcomes.

Such reforms are of particular importance in light of the intrinsic relationship between rape as a form of gender-based violence and the structural gender inequalities, unequal power relations, and discriminatory social norms that perpetuate it.

By identifying misogynistic attitudes and opposition to gender equality as underlying motives, Germany’s Nationwide Situation Reports on Gender-specific Crimes Against Women confirm that gender-based violence is rooted in structural inequalities between women and men (Federal Ministry for Education, Family Affairs, Senior Citizens, Women and Youth (BMBFSFJ), 2026, p.11). Against this backdrop, it is essential to note that the German Women Lawyers Association has also recalled GREVIO’s recommendation that Germany place greater emphasis on dismantling gender stereotypes and rape myths in the training of law enforcement officials and members of the judiciary (2024, (djb), p. 13).

3. Georgia

a) Recent legislative amendments to Georgian laws as a regression in women's rights

In deference to Germany, where the above-mentioned motives, as alleged by the corresponding report, had been lacking from legislation, in Georgia, until 2025, such motives had already been incorporated in Article 53¹ of the Georgian Criminal Code as “aggravating circumstances” in line with Article 46 of the Istanbul Convention. Since 2017, the last year, both “gender” and “gender identity” have been acknowledged as well-known aggravating circumstances enhancing punishment for the perpetrators acting with such motives.

However, on April 2nd, 2025, the Georgian Parliament adopted a set of legislative amendments that removed all references to “gender” and “gender identity” from a range of laws (Parliament of Georgia, 2025). Not surprisingly, such changes affected key fields, such as anti-discrimination law and criminal law - two main areas on which this article rests.

The amendments have a devastatingly sweeping effect on anti-discrimination laws, as they significantly altered a number of related laws, particularly those addressing gender-based violence against women. Namely, three main pillars underpinning the legal framework for combating gender-based violence in Georgia- laws on "Gender Equality", "Elimination of All Forms of Discrimination" and "Prevention of Violence against Women and/or Domestic Violence, as well as the Protection and Assistance of Victims of Violence - have been significantly altered.

As experts in gender equality and non-discrimination (Dekanosidze, 2025) correctly point out:

The removal of “gender” undermines existing legal and policy frameworks aimed at addressing inequality and discrimination against women. Gender-based violence laws are at risk of being weakened, as they depend on the recognition of harmful gender stereotypes and structural inequality. The amendments contradict Georgia’s international human rights obligations, including those under CEDAW and the Istanbul Convention, which require states to recognise and address gender-based discrimination (pp. 1-2).

This regressive legal reform replaced the term “gender” with “equality between women and men,” framing “gender” as an externally imposed construct associated with Western liberal influence (The Parliament of Georgia, Explanatory Note, 2025). With a view to such an attitude, Georgian legislators not only foster the dismantling of Georgia's anti-discrimination legal framework but also isolate the country from the Western world. While resting on a draconian law named “Foreign Agents Registration Act”, adopted last year (The Parliament of Georgia, 2025), they are also deliberately

shrinking the space for women human rights advocates, raising their voices against gender inequality and discrimination against women.

The above-mentioned amendments were enacted without meaningful public consultation and have faced widespread criticism from civil society and international actors (Dekanosidze, 2025, p.1). One of such organizations acting in Georgia, “Social justice center”, reasonably interpreted for the broader public that, grasping the profound social, legal, and political implications of removing the concepts and principles of gender and gender equality from the legal framework required to first examine the underlying foundations of gender equality in a systematic way (“WOMEN’S RIGHTS / Statement” section), 2025).

The essence of gender equality, along with its significance, was also thoroughly elucidated by them (Social Justice Centre, 2025), mentioning that: Gender equality is a broad concept that recognises that inequality is not limited to biological differences but also encompasses social roles, expectations, and power structures that contribute to the discrimination, oppression, and marginalisation of women. This definition of gender is based on the recognition of women's historical and multifaceted oppression, and it asserts that policies protecting women's rights and promoting gender equality must address the patriarchal social roles, expectations, and historically established political, economic, and cultural power hierarchies (“WOMEN’S RIGHTS / Statement” section). The correct approach, also expressed by them, prioritises a more complex and intersectional perspective to gender, analysing the interrelated nature of various social categories and markers. In the context of developing just policies and advancing gender equality, adopting gender-sensitive approaches is essential, as it enables a critical assessment of existing social hierarchies (Social Justice Centre, 2025, “WOMEN’S RIGHTS / Statement” section).

The foregoing reasoning aligns with the prioritisation of a gendered understanding of rape, framing it as a form of gender-based violence that constitutes discrimination against women when analysed through the lens of gender equality.

b) The need for reconceptualising rape within the Georgian criminal code

Yet another contentious issue in Georgian legislation, also reflecting gender stereotypes, is an outdated definition of rape (Kherkheulidze, 2024, pp. 182-195). Georgia’s criminal code still continues to require the use of violence/coercion as constituent elements of crimes of sexual violence (including rape, Article 177). Regardless of which model Georgia adopts in the future for the regulation of sexual offences - the “Only yes is yes” or “No

means no” approach – gender analysis must be applied in the process of the practical exercise of the law.

Legislative strategy amending Georgian law on sexual offences in the future could also benefit from the guideline principles on sexual violence, namely, *The Hague Principles on Sexual Violence*, derived from the Civil Society Declaration on Sexual Violence (Women’s Initiatives for Gender Justice, 2019), explaining the substance of such a crime as an act that:

Involves singular, multiple, continuous, or intermittent acts, which, in context, are perceived by the victim, the perpetrator, and/or their respective communities as sexual in nature. This includes acts that are committed forcibly or against a person who is unable or unwilling to give genuine, voluntary, specific, and ongoing consent (“key principles for policymakers on sexual violence” section, principle 2, p.105).

However, none of the strategies will work unless the inequality as a core problem, creating a coercive atmosphere, is taken into account, both during the elaboration of the draft law and the adjudication of a case on sexual assault.

It is also extremely important to consider that “consent is not voluntary or genuine and it does not have any significance when it is expressed in a coercive environment (Public Defender of Georgia, 2020, p.11). In view of this, an opinion or an assertion that inequality does not establish a coercive environment, together with socially prescribed gender stereotypes, amounts to the ignorance of the range of international treaties on human rights at large.

Sole reliance on consent expressed in words “yes” or “no” will bring neither law nor the judiciary to justice. As Professor MacKinnon assesses: “It seems that these international adjudicators imagine that if consent is the rule, what the woman says she said or felt at the time will determine the legal outcome - a view that, at minimum, lacks basis in reality” (MacKinnon, 2016a, p.464). Thus, the issue of gender equality needs to be prioritised on the political agenda of both countries, as articulated in this article.

Conclusion

Sexual crimes, and in particular rape, which continue to generate divergent scholarly perspectives in Western legal discourse, cannot be adequately evaluated or explained from a single standpoint. While such conduct is primarily regulated within criminal law and therefore falls within its scope, this legal framing alone is insufficient. Given that rape constitutes a form of gender-based violence, disproportionately affecting women, its social and cultural context cannot be disregarded. The socio-cultural dimension is closely intertwined with gender, as it plays a central role in the formation of gender norms and the reproduction of hierarchical relations between women and men.

Ultimately, such an unequal distribution of power is harmful to women's rights (Freeman et al., 2012, p. 25). Hence, this study broadens the apprehension of criminal law due to its inevitable entanglement with feminism, which has developed in the merits of the social movement.

Consequently, the study advocates considering the Nordic experience in regulating sexual offences, positioning feminism in criminal law as an instrument for achieving gender equality. Such an interrelatedness between feminism and criminal law enables us to view rape not only as the result and expression of gender inequality, but also as an attack on and something that is detrimental to gender equality (May-Len Skilbrei et al. 2020, p.4).

Thus, while supporting a “consent - based” approach in the regulation of sexual violence, as it is called upon by the Istanbul Convention, the policy-makers as well as judges should bear in mind that, “under unequal conditions, many women acquiesce in or tolerate sex they cannot as a practical matter avoid or evade” (MacKinnon, 2016a, p. 465).

In certain situations, women tend to feel obliged to consent to sex. Hence, sexual compliance under particular circumstances can be regarded as consent to unwanted sex (Torenz, 2021, p. 721). Such consent does not render the sexual act consensual in a meaningful sense, nor does it establish equality between the parties involved (MacKinnon, 2016a, p. 465). Eventually, all these lead to unequal power relations, which constitute the main basis for gender inequality.

Against this background, the removal of the term “gender” from Georgian legislation and the Criminal Code will definitely significantly undermine the protection of women from gender-based violence.

Yet at an extended scale it “reflects a broader pattern of democratic backsliding and disregard for inclusive and rights-based framework in Georgia” (Dekanosidze, 2025, p.2). Therefore, the protection of gender equality within a country not only contributes to the recognition of women’s rights and the fair adjudication of sexual violence cases, but also serves as an indicator of the country’s political trajectory and its overall human rights situation.

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