

Sexual Harassment:

Developments in legal protection and litigation practice

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Concept

Council of Europe instruments

- Istanbul Convention
- ECHR/ ECtHR jurisprudence

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Concept

ISTANBUL CONVENTION

- Sexual harassment = VAW; *serious* violation of human rights.
- (Criminal) legal sanction required.
- Article 40. Definition:

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

No intent required.

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ECtHR case law

B.G. c. France (March 2026)

- Alleged SH victim criminally sanctioned for ‘slandorous accusation’
- Without reasons, victim disbelieved regarding lack of consent; accused’s version considered sufficient to sanction victim
- Unfair trial, violation of Article 6§1

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ECtHR case law

B.G. c. France (March 2026)

- Conflicting versions of victim and accused not given equal consideration
- Sanctioning victim not based on ECtHR concept of consent but on stereotypes resulting in victim's word being dismissed
 - She didn't "cry or fight, or clearly verbalise her refusal"

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ECtHR case law

B.G. c. France (March 2026)

- ECHR 'consent' (3rd case reiterating)
 - By nature *revocable*
 - Expressing *free* will to have sex considering *circumstances*
 - *At time* sex occurring
- Insufficient proof = no justification for sanctioning SH victim for 'false' allegations
- Need to protect victims' freedom of expression (2nd case reiterated)

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ECtHR case law

Z v. Iceland (Jan. 2026)

- Minor SH victim not protected: prosecutorial approach not consent-centred
- Instead, narrow interpretation of perpetrator's *intent* (acts admitted)
- Violation of Article 8

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ECtHR case law

Z v. Iceland (Jan. 2026)

- 16 yr old victim intoxicated, 23 yr old perpetrator groping
- Claimed intent not sexual (admitted acts)
- Prosecution discontinued: "necessary to establish an intention to sexually harass"

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ECtHR case law

Z v. Iceland (Jan. 2026)

ECHR general principles (well-established):

- Positive state duty to criminalise *all* non-consensual sexual acts
- Absence of consent = central. No proof of physical resistance may be required
- Direct evidence of lack of consent may be unavailable, focus is on whether valid consent was given

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ECtHR case law

Z v. Iceland (Jan. 2026)

- Adequate domestic law: Consent to be expressed unambiguously, inactivity may not be construed as consent
- Inadequate enforcement: focus on (allegedly lacking) intent to sexually harass to gauge whether acts 'sexual'; no regard for circumstances, incl. age difference, intoxication, and no indication of consent at any stage
- **NB.** Not important that he stopped once she showed dissent. Important that he initiated without any prior indication of consent

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ECtHR case law

Z v. Iceland (Jan. 2026)

No discrimination:

- Iceland took many measures to combat SV/ SH, not ‘complacent’.
- Lack of consent-based prosecutorial approach not indicative of gender stereotyping/ bias
 - Gender-insensitive ECtHR reasoning?

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ECtHR case law

Z v. Iceland (Jan. 2026)

Statistics provided dismissed:

- Women & girls being majority of SV victims not attributable to state.
- Lower prosecution rates for SV explained away by ‘inherent evidentiary challenges’.
- However, same standard of proof used in SV cases as for other violent crime not “in itself” amounting to discrimination.
- No “broader pattern”, “systematic failings”, or “stereotyped reasoning” = no disclosed institutional attitudes; no “bias or disproportionate effect”.

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ECTHR case law

E.A. and Association européenne contre les violences faites aux femmes au travail v. France (Sept. 2025)

Precedent:

- 1) (Non-exhaustive) list of criteria to determine lacking consent;
- 2) 'Coercive control' in sexual relationships concept used + defined;
- 3) Coercive control context relevant to determining consent;
- 4) Only present consent relevant (now outside marriage contexts too);
- 5) Using past consent, esp. in coercive control context > victim-blaming = revictimisation barring access to justice.

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ECTHR case law

E.A. and Association européenne contre les violences faites aux femmes au travail v. France (Sept. 2025)

Facts:

- 1) Abusive, sadomaso relationship with supervisor;
- 2) 'Master-bitch' contract, degradation;
- 3) Anal rapes, other sexual/ physical violence;
- 4) Professional dependency, threats, devaluation;
- 5) Severe health impact.

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ECtHR case law

E.A. and Association européenne contre les violences faites aux femmes au travail v. France (Sept. 2025)

Facts:

- 6) Criminal proceedings only for violence and sexual harassment - no rape/ sexual violence charges;
- 7) Consent found based on 'master-bitch' contract;
- 8) On appeal, full acquittal.

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ECtHR case law

E.A. and Association européenne contre les violences faites aux femmes au travail v. France

Judgment:

- 1) Lacking consent = central issue;
- 2) Free will < contextual analysis;
- 3) Professional context – power imbalance;
- 4) Particular vulnerability < coercive control > severe impact;

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ECtHR case law

E.A. and Association européenne contre les violences faites aux femmes au travail v. France

Lacking consent – criteria:

- unbalanced relationship accused/ victim;
- perpetrator using a relationship of trust, or status;
- victim's young age/ age difference;
- her capacity for judgment, (lack of) sexual experience;
- victim's psychological fragility/ particular vulnerability; perpetrator's knowledge thereof;
- drunken/ intoxicated state;
- 'freezing' in the moment;
- psychological impact of acts;
- factors for coercion - deserted place, multiple aggressors.

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ECtHR case law

E.A. and Association européenne contre les violences faites aux femmes au travail v. France

Coercive control (sexual contexts) definition (GREVIO-based):

- entirety of behaviours
- typical of relationships marked by domination
- one partner aiming to persistently control other & their life
- affecting their psychological integrity & personal autonomy
- likely to reduce victim to particular vulnerability & affect their judgment
 - Relevant to consent.

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ECtHR case law

E.A. and Association européenne contre les violences faites aux femmes au travail v. France

Judgment:

- 1) French law & enforcement deficient re non-consensual acts
 - No reference to consent in legislation;
- 2) Secondary victimisation of A.E. < finding of consent;
- 3) Violation Articles 3 and 8 ECHR.

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ECtHR case law

Allée v. France (2024)

- Victims' reporting of workplace SH = protected expression/ freedom of
 - Need to protect victims;
- Proof of SH required = disproportionate burden;
- Criminal conviction = disproportionate sanction;
- Violation Article 10 ECHR.

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ECtHR case law

Allée v. France (2024)

Facts:

- Allegations emailed to 6 people
 - 5 in positions to receive SH reports;
 - Only 1 unaware;
 - Previous complaints – no resolution;
- Some factual basis/ proof;

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ECtHR case law

Allée v. France (2024)

Facts:

- Alleged harasser brought 'public defamation' case;
- Courts found insufficient factual basis for SH allegations
 - Questioned 'good faith';
- Criminal conviction + fine.

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ECtHR case law

Allée v. France (2024)

Judgment:

- Need to adapt ‘sufficient factual basis’ and ‘good faith’ criteria to SH;
- Requiring full proof – disproportionate;
- Balance of reputation and FoE. Criteria:
 - Allegations’ context & nature;
 - Victim’s situation & intent;
 - Recipients’ number & positions;
 - Reputational damage;
 - Sanction’s impact.

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ECtHR case law

C v. Romania (2022)

Precedent:

- 1st ruling that Article 8 ECHR protects workplace SH victims
 - Severity threshold;
- 1st acknowledgment SH ‘continue[s] to be significantly underreported and ‘difficult to prove’;
 - Due regard for victims’ statements’ evidentiary value - required;

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ECtHR case law

C v. Romania (2022)

Precedent:

- Implied requirement for ‘sensitive and reverent’ official response;
 - No stigmatisation/ blaming of victims;
- Required contextualization of SH complaints - power imbalances;
- Required victim-protective measures in proceedings – dignity-based
 - No unnecessary confrontation;
- Implied requirement for (public) employer mechanisms v. SH;
- Forced resignation = element of SH.

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ECtHR case law

C v. Romania (2022)

Facts:

- 2 years SH by manager;
- Employer did nothing, surprise-confronted her w/ abuser, forced her to resign;
- Police investigation confirmed facts;
- Prosecutor denied impact (‘not humiliated’) & copied victim-blaming;
- Courts upheld.

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ECtHR case law

C v. Romania (2022)

Judgment:

- No protection from revictimisation – victim stigmatisation;
- No psychological evaluation to determine impact;
- Professional power dynamics ignored;
- Victim submissions not considered proof;
- Forced resignation ignored.

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ECtHR case law

Vučković v. Croatia (2023)

- Effective punishment for SH/SV required;
- Prison sentence commuted to community service > violation

Articles 3 and 8 ECHR;

- Sentence commutation – careful scrutiny required;
- Must consider victim's interests when sentencing;
- VAW > efficient, deterrent response required;

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ECtHR case law

Vučković v. Croatia (2023)

Facts:

- Commuting court ignored aggravating circumstances:
 - Impact on victim;
 - Perpetrator's behaviour after crimes - no remorse, no effort to compensate;
 - Established v. high degree of criminal liability, v. strong intent
 - Crimes repeated in short period;
 - No adequate reasons;
- > Indicative of leniency re VAW;
- > Discouraging victims' reporting.

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ECtHR case law

Špadijer v. Montenegro (2021)

- Severe harassment as retaliation for whistleblowing of workplace SH
- No domestic protection < ineffective law/ enforcement

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ECtHR case law

Špadijer v. Montenegro (2021)

Facts:

- Prison guard severely bullied by colleagues after reporting colleagues for (arguable) SH against inmates
 - Disciplinary sanctions for ‘indecent acts’;
 - Continuous H, assault on person & car;
 - Courts required proven weekly incidents over 6 months;
 - Ignored retaliatory nature.

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ECtHR case law

Špadijer v. Montenegro (2021)

Judgment:

- Inadequate approach;
- Required:
 - Contextual, case-by-case assessment;
 - Recognition of reprisals;
- Article 8 ECHR positive duty to effectively enforce serious harassment bans - v. important in whistle-blowing cases.

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ECtHR case law

Garamukanwa v. UK (2019)

- Sanctioned harasser complained about privacy breach
 - Messages revealed in investigation – basis for dismissal
- Inadmissible complaint

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ECtHR case law

Garamukanwa v. UK (2019)

Facts:

- Revenge harassment after workplace breakup
- Police investigation
- Police provided employer with photos & messages, so did harasser & other employees

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ECtHR case law

Garamukanwa v. UK (2019)

Judgment:

- Sufficient notice given of allegations
- > No reasonable expectation material could remain private.

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CJEU case law

Case C-558/17 P, OZ v. European Investment Bank (2019)

Article 41, Charter of Fundamental Rights:

- SH victim has right to be heard in proceedings
 - Access file; be given reasons for decision
- Good administration principle/ right
 - Right to have affairs handled impartially, fairly & in reasonable time by EU institutions.

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Thank you for your attention.

Comments, questions?

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Further reading (case law commentary)

- (2025) [E.A. v. France: Judicial revictimisation of a survivor of sadistic sexual harassment at work. Ignoring a coercive control context to impute 'consent' to the victim](#) (ECHR Blog)
- (2025) [L. et Autres c. France: A Landmark Judgment Concerning Sexist Judicial Bias - Himpathy and Victim-Blaming – in Cases of Sexual Violence Against Girls](#), Human Rights Here (Republished)
- (2025) [L. and Others v. France: Sexist Judicial Bias, Himpathy and Victim-Blaming](#), ECHR Blog ([in top 10 posts for 2025](#))
- (2025) [Trauma-sensitive, survivor-centric strategic litigation against discrimination](#) ([read here](#)) Forum, Journal of the Academy of European Law (ERA, Trier)
- (2024) [Decentering Survivors as *Dominus Litis* in European Court of Human Rights Law](#), EJIL: Talk!
- (2024) [Handbook on Identifying and Using Equality Data in Legal Casework – Equinet](#) ([equineteurope.org](#))
- (2023) [Safeguards and redress for victimisation](#) (*European Equality Law Review*) (co-authored)
- (2022) [J.I. v. Croatia: Violence against Roma women - discrimination not an issue?](#) (*EJIL: Talk!*)
- (2022) [C. v. Romania: A 'sensitive and reverent' but gender-blind standard for assessment of sexual harassment cases? The ECtHR's long and winding road to gender-responsiveness in sexual predation contexts](#) (*Opinio Juris*)
- (2021) [J.L. v. Italy: A Survivor of Trivictimisation - Naming A Court's Failure to Fully \(Recognise and\) Acknowledge Judicial Gender-Based Revictimisation](#) (*Strasbourg Observers*)

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