



20 February 2026

President, Section IV
European Court of Human Rights
67075 Strasbourg CEDEX
France

BY FAX AND POST

Dear President,

**RE: Written submissions of joint third-party interveners in the case of [REDACTED]
[REDACTED] v. Georgia, Application No. 16777/23**

The Sulkhani-Saba Orbeliani University Legal Clinic, The Berkeley Center on Comparative Equality and Anti-Discrimination Law, The Equality Law Clinic of the ULB (Université Libre de Bruxelles, Belgium), The Center for the Advancement of Equality, Gender and Inclusion Studies (AEGIS) of the University of Portsmouth (UK), SAPARI and WISG (Women's Initiatives Supporting Group) would like to thank the Court for its letter dated 30 January 2026 acceding to our request to make joint submissions in the above case in accordance with Rule 44 § 3 and hereby respectfully submit the enclosed written comments in this case.

As per the Court's request, the written submissions of the intervening parties are of a general nature and do not comment on the facts of the case and do not exceed ten pages of typescript. Our written submissions have been communicated to the Court registrar by post and fax by 20 February 2026.

Three printed copies are sent to the Court by post in accordance with the practice directions.

The intervenors remain at the disposal of the Court if anything further is required.

Yours faithfully,

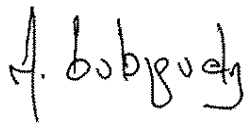
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Also, on behalf of the interveners

IN THE EUROPEAN COURT OF HUMAN RIGHTS

 against Georgia
(Application no. 16777/23)

WRITTEN COMMENTS

Submitted jointly by

Sulkhan-Saba Orbeliani University Legal Clinic
The Berkeley Center on Comparative Equality and Anti-Discrimination Law
The Equality Law Clinic of the ULB (Université Libre de Bruxelles, Belgium)
Centre for the Advancement of Equality, Gender and Inclusion Studies (AEGIS) of the
University of Portsmouth (UK)
SAPARI
WISG

20 February 2026

By mail and fax

Introduction

1. These written comments are made jointly by the Sulkhan-Saba Orbeliani University Legal Clinic, The Berkeley Center on Comparative Equality and Anti-Discrimination Law, The Equality Law Clinic of the ULB (Université Libre de Bruxelles, Belgium), The Center for the Advancement of Equality, Gender and Inclusion Studies (AEGIS) of the University of Portsmouth (UK), SAPARI and WISG (Women's Initiatives Supporting Group) pursuant to leave granted by the Vice-President of the Fourth Section of the Court in accordance with Rule 44 § 3 on 30 January 2026. This submission analyzes how retaliatory defamation suits against survivors of sexual violence engage Article 14 of the Convention in conjunction with Articles 10 and 8, framing such litigation as a gendered restriction on expression and privacy. By drawing on the systemic dimensions of gender-based violence in Georgia, the transnational rise of #MeToo-related SLAPPs, and comparative anti-SLAPP frameworks alongside *Allée v. France*, the intervention urges the Court to recognize these proceedings as discriminatory obstacles to reporting abuse.

I. Case Context: Sexism and Sexual Violence in Georgia

i. The Prevalence and Structural Dimensions of Gender-Based Violence in Georgia

2. The second National Study on Violence against Women in Georgia, conducted jointly by UN Women and National Statistics Office of Georgia in 2022, established that 50.1% of women aged 15–69 in Georgia have experienced at least one form of violence in their lifetime.¹ Intimate partner violence remains the most prevalent form, disproportionately affecting women with lower levels of education, those who married at an early age, and those residing in rural areas.² The survey conducted in 2020-2021 in Georgia shows that 33.3% of the 461 respondents confirmed that they had experienced sexual harassment in the public service (in Tbilisi, this figure reaches 40%). Additionally, approximately 31% of women reported experiencing more than one form of sexual harassment, while about 75% of employees do not file complaints with the relevant authorities due to potential consequences such as dismissal from work, victim-blaming, humiliation, and other related outcomes.³ These findings are corroborated by GREVIO's Baseline Evaluation Report on Georgia (2022), which documented continuing challenges in the effective prevention, investigation, and prosecution of all forms of violence against women.⁴

3. The CEDAW Committee, in its Concluding Observations on Georgia's sixth periodic report (March 2023), identified persistent patriarchal attitudes and deep-rooted gender stereotypes regarding the roles and responsibilities of women and men in the family and in society.⁵ The Committee further expressed concern at the high prevalence of gender-based violence and inadequate investigation, prosecution, and sanctioning of perpetrators.⁶

4. Georgia ratified the Istanbul Convention on 19 May 2017, thereby assuming obligations under Article 12(1) to take measures to eradicate prejudices, customs, traditions, and practices based on the

¹ UN Women, National Study on Violence against Women in Georgia, Tbilisi, 2022, 54–55.

² *Ibid.*, 73.

³ Caucasus Research Resource Center, UN Women, “Workplace Sexual Harassment in the Public Sector in Georgia”, 2020-2021, 25.

⁴ GREVIO, Baseline Evaluation Report: Georgia, GREVIO/Inf(2022)28, 2022, para. 252.

⁵ CEDAW, Concluding Observations on the Sixth Periodic Report of Georgia, CEDAW/C/GEO/CO/6, 2 March 2023, para. 10.

⁶ *Ibid.*, paras. 23–24.

idea of the inferiority of women or on stereotypical gender roles.⁷ GREVIO's findings indicate that these obligations remain incompletely fulfilled.⁸

ii. Defamation Proceedings as a Mechanism of Silencing Survivors in Georgia

5. The above context is compounded by documented deficiencies in the Georgian judicial response to defamation proceedings initiated against survivors. GREVIO has noted that the effective implementation of protective norms in Georgia faces "numerous obstacles, particularly as regards application in gendered contexts."⁹ The 2022 UN Women study documented that self-reported rates of violence remain significantly underreported, with fear of intimidation and retaliation constituting the primary deterrents to disclosure.¹⁰ Research conducted in the Georgian context has established that defamation lawsuits filed against women who publicly disclose experiences of violence operate as a form of continued psychological and economic violence within the meaning of the domestic violence prevention legislation.¹¹

6. Documented judicial practice reveals that Georgian courts have:

(i) failed to utilise the preparatory hearing mechanism under the Law on Freedom of Speech and Expression to dismiss claims bearing SLAPP characteristics;¹²

Articles 209 and 273 of the Civil Procedure Code combined with Article 5(2) of the Law on Freedom of Speech and Expression, provide Georgian courts with authority to dismiss defamation claims at preliminary stages, thereby sparing GBV survivors from involvement in harmful proceedings. However, this potential has never been realised in legal practice.

(ii) declined to extend courtroom speech privilege to survivors' public statements substantively identical to communications made to the Public Defender;¹³

In a documented Tbilisi City Court case¹⁴ where a survivor's social media statements precisely matched those made to investigators, the court declined to classify the statement as privileged courtroom speech and proceeded with the case, notwithstanding verification of the defendant's good faith. This decision exemplifies the formalistic reasoning that pervades Georgian defamation jurisprudence to survivors' systematic disadvantage. The court's refusal to extend privilege to statements identical to those made to investigators prioritizes form over substance. This creates a doctrinal incoherence: a survivor enjoys absolute protection when speaking to officials, yet faces liability for publicly stating the same facts.

(iii) refused to accord appropriate evidentiary weight to the Public Defender's findings;

According to the Supreme Court of Georgia, recommendations of the Public Defender of Georgia are just a type of evidence, which does not have any special weight: *"the Court does not share the cassator's [defendant's] view that the facts established by the recommendation should be regarded as undisputed circumstances in the case. In this respect, the Cassation Chamber refers to Article 105(1) of the Civil Procedure Code, according to which no evidence has predetermined probative value for the court. A judge is not bound by the Public Defender's recommendation."*¹⁵ Similarly, Tbilisi City Court found several women human rights defenders liable for

⁷ Istanbul Convention, CETS No. 210, Art. 12(1).

⁸ GREVIO (n 3), para. 288.

⁹ GREVIO (n 3), paras. 252–257.

¹⁰ UN Women (n 1), 54.

¹¹ Bakhtadze K., *The Qualification of Restricting Freedom of Expression of Women Who Have Experienced Violence as Gender Discrimination*, Tbilisi, 2024, 85–86.

¹² Bakhtadze K., *The Scope of Judicial Discretion when Considering the Admissibility of Claims Filed against Gender-Based Violence Survivors*, in: *Orbeliani Law Review*, Vol. 4, No. 1, 2025, 96.

¹³ Supreme Court of Georgia, Decision of 13 April 2022, No. as-358-2021.

¹⁴ Tbilisi City Court, Case No.2/18681-22, 21 November 2023.

¹⁵ Supreme Court of Georgia, Decision of 13 April 2022, No.as-358-2021.

*defamation when they publicly expressed, in social media, their concerns on the individual against whom the Public Defender also substantiated allegations of sexual harassment.*¹⁶

(iv) inconsistently applied the statutory burden of proof.¹⁷

Following the amendments of 26 June 2025, the burden allocation previously favouring defendants has been abolished and the defendant is required to prove that the allegedly defamatory statement is not entirely false.¹⁸ This legal position is not compatible with Article 55 of the Istanbul Convention, which makes clear that survivors of gender-based violence should not be required to shoulder the burden of proving the violence committed against them; this responsibility lies with the competent authorities. The amended law's requirement for survivors to substantiate experiences of violence when speaking publicly effectively reverses the evidentiary burden, directly undermining the Convention's protective logic and violating the State's international obligations.

II. Extended Context: #MeToo and the Backlash of SLAPP Lawsuits

i. The Specificity of SLAPP Proceedings Targeting Women Survivors

7. The phenomenon of strategic lawsuits against public participation is well documented in the broader contexts of journalism, environmental activism, and political speech. The EU Anti-SLAPP Directive of 11 April 2024¹⁹ and the Council of Europe Committee of Ministers Recommendation CM/Rec(2024)2²⁰ both address the general threat which abusive litigation poses to democratic participation. However, the interveners respectfully submit that the Court's attention should be drawn to a distinct and under-examined subcategory of SLAPP litigation: defamation proceedings brought by alleged perpetrators of sexist and sexual violence against the women who report such violence.

8. This subcategory differs from conventional SLAPPs in a critical respect that engages Article 14 of the Convention. Whereas SLAPP proceedings are ordinarily understood as targeting journalists, media organisations, or non-governmental organisations - categories in which the defendant's gender is incidental to the litigation dynamics - defamation proceedings brought against survivors of sexual violence target women qua women. The victims of sexual violence are overwhelmingly female; the survivors who publicly disclose such violence are overwhelmingly female; and the defamation proceedings brought in retaliation for such disclosure are consequently directed overwhelmingly against women.²¹ As comparative research has documented, the known defamation cases in this context are "primarily directed against women" and, therefore, there "appears to be an infringement on women's freedom of expression specifically because they are women." This observation constitutes the novel Article 14 nexus which the present intervention seeks to bring before the Court.

ii. Epistemic Harm and the Structural Function of Defamation Proceedings

9. The structural function of such proceedings extends beyond the mere chilling effect on speech recognised in the Court's general Article 10 jurisprudence. Harradine has demonstrated that defamation law, when deployed against women reporting sexual violence, inflicts a specific form of

¹⁶ Tbilisi City Court, Case №2/18834-18, 19 May 2025

¹⁷ Law of Georgia "On Freedom of Speech and Expression", Art. 7(6) (prior to amendments of 26 June 2025).

¹⁸ Bakhtadze, 2025 (n 12), 107.

¹⁹ Directive (EU) 2024/1069 of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings, OJ L, 2024/1069.

²⁰ Recommendation CM/Rec(2024)2 of the Committee of Ministers on countering the use of SLAPPs, 5 April 2024.

²¹ Leader A.R., A "SLAPP" in the Face of Free Speech: Protecting Survivors' Rights to Speak Up in the "Me Too" Era, in: First Amendment Law Review, Vol. 17, 2019, 441.

epistemic harm: it operates to delegitimise women's testimony about their own experiences by subjecting their credibility to legal standards that are structurally ill-adapted to the evidentiary realities of sexual violence.²² Defamation proceedings demand factual proof in contexts where sexual violence occurs privately without witnesses and goes underreported, thus making such evidence nearly impossible to produce. This allows alleged perpetrators to instrumentalize the justice system by exploiting the documented structural credibility deficit inherent in women's testimony.

10. This analysis is corroborated by the empirical research of Harsey and Freyd, who have documented the mechanism of DARVO - Deny, Attack, Reverse Victim and Offender - as a systematic response pattern among accused perpetrators.²³ Defamation proceedings frequently represent the juridical formalisation of this DARVO pattern: the alleged perpetrator deploys the legal system to reverse roles, positioning the survivor as wrongdoer and himself as victim.

iii. Comparative Evidence of Increasing Prevalence

11. The increasing prevalence of such proceedings across multiple jurisdictions confirms that the phenomenon before the Court is neither isolated nor peculiar to the Georgian context. The interveners draw the Court's attention to the following emblematic cases, each of which illustrates a distinct dimension of the problem.

France: *Gasparovic v. Moët Hennessy* (17th Chamber, Paris Tribunal, 20 January 2026). The First instance Court in Paris declined to convict a woman who had reported workplace sexual harassment within a major corporation.²⁴ While the full judgment is awaited, reliable press reporting indicates that the court implicitly recognised the risks of SLAPP-type proceedings in this context and condemned the company for abusive proceedings.

France: *Allée v. France* (ECtHR, 18 January 2024). In the only judgment of this Court to date directly addressing the intersection of defamation proceedings and the reporting of sexual violence in an employment context, the Court found a violation of Article 10.²⁵ The applicant, employed as a secretary, had been convicted of defamation for an email reporting her superior's sexual harassment. The Court held that the domestic courts had applied an "excessively restrictive interpretation of freedom of expression," that the evidentiary standard imposed was disproportionate for facts occurring without witnesses, and that even the modest criminal sanction of a €500 suspended fine constituted a deterrent to anyone wishing to report harassment.²⁶ This judgment is of direct relevance to the present case.

France: *Fornia v. Joxe* (Cass. 1re civ., 11 May 2022, No. 21-16.156). The French Court of Cassation held that in assessing the good faith defence in defamation cases, domestic courts must evaluate whether the statements relate to a matter of public interest and are based on a sufficient factual foundation, having regard to Article 10 of the Convention as interpreted by this Court.²⁷ The Court of Cassation upheld the finding that minor factual errors did not undermine the overall credibility of the defendant's account, given the passage of time since the sexual harassment incidents committed by a former minister.²⁸

²² Harradine M., Defamation Law and Epistemic Harm in the #MeToo Era, in: *Australian Feminist Law Journal*, Vol. 48, No. 1, 2022, 31.

²³ Harsey S., Freyd J., Defamation and DARVO, in: *Journal of Trauma & Dissociation*, Vol. 23, No. 5, 2022, 481.

²⁴ *Gasparovic v. Moët Hennessy*, 17th Chamber of the Paris Tribunal, 20 January 2026 (full judgment awaited; summary based on press sources).

²⁵ *Allée v. France* [ECtHR], App. no. 20725/20, 18 January 2024.

²⁶ *Ibid.*, paras. 55-58.

²⁷ Cass. 1re civ., 11 May 2022, No. 21-16.156 (*Fornia/Joxe*).

²⁸ *Ibid.*

France: *Muller v. Brion* (Paris Court of Appeal, 31 March 2021). Sandra Muller, the journalist who created the hashtag #BalanceTonPorc, was initially ordered by the Paris Tribunal de grande instance to pay €15,000 in damages to Éric Brion for defamation after publishing a tweet reporting his sexually harassing remarks. The first instance court held that she had failed to provide proof of her allegations and that her expression lacked the requisite "prudence."²⁹ On appeal, the Paris Court of Appeal overturned the conviction, recognising Muller's good faith. The Court of Appeal held that the tweet was part of a "public interest debate on giving women a voice" and was based on a "sufficient factual basis," given that Brion had himself publicly admitted, at least in part, to statements similar to those she reported.³⁰ Crucially, the Court of Appeal held that "any conviction, even civil, would have constituted a disproportionate interference with freedom of expression and could have had a chilling effect on its exercise." The Court applied the criteria of good faith more flexibly, holding that when statements form part of a public interest debate and rest upon a sufficient factual basis, the requirements of absence of personal animosity and prudence in expression must be assessed with corresponding flexibility.³¹

United Kingdom: *Hay v. Cresswell* [2023] EWHC 882 (KB). In the first reported case in which a sexual assault survivor successfully relied on both the defence of truth and the public interest defence under Section 4 of the Defamation Act 2013, the English High Court found that the defendant's account of having been violently sexually assaulted was "substantially true."³² The Court rejected the claimant's argument that the survivor's delay of ten years in making the allegation public undermined her credibility, noting the "numerous reasons why a victim of sexual assault might not want to publicise it."³³ The Court further found that the police's initial decision not to treat the complaint as a crime was the product of a "superficial" and "unsympathetic" approach and did not undermine the survivor's evidence.³⁴ This judgment illustrates that when domestic courts are prepared to apply substantive rather than formalistic analysis, survivors can be protected against retaliatory litigation.

Japan: *Itō v. Yamaguchi* (Tokyo District Court, 18 December 2019; affirmed Supreme Court, 7 July 2022). Shiori Itō, whose case became emblematic of the #MeToo movement in Japan, was subjected to a ¥130 million counter-claim by her assailant, Noriyuki Yamaguchi, after she publicly disclosed that he had raped her while she was unconscious. The Tokyo District Court awarded Itō ¥3.3 million in damages and dismissed the counter-claim as groundless.³⁵ The Japanese Supreme Court upheld the judgment in 2022, confirming that sexual intercourse had occurred without consent.³⁶ However, Itō was simultaneously ordered to pay ¥550,000 in damages for a specific assertion in her book that Yamaguchi had drugged her, which the court found unsubstantiated. The case illustrates both the potential for defamation counter-claims to be deployed as instruments of retaliation and the granular scrutiny to which survivors' accounts are subjected, a scrutiny which the factual circumstances of sexual violence render structurally asymmetric.

United States: California anti-SLAPP litigation. In the United States, the California Anti-SLAPP Project has documented an increasing trend of defamation lawsuits filed against women who report

²⁹ Paris Tribunal de grande instance, *Sandra Muller v. Éric Brion*, 25 September 2019.

³⁰ Paris Court of Appeal (Panel 2 – Chamber 7), *Muller v. Brion*, RG 19/19081, 31 March 2021.

³¹ *Ibid.*

³² *Hay v. Cresswell* [2023] EWHC 882 (KB), para. 130.

³³ *Ibid.*, para. 108.

³⁴ *Ibid.*, paras. 96–99.

³⁵ *Itō v. Yamaguchi*, Tokyo District Court, 18 December 2019.

³⁶ Supreme Court of Japan, Decision of 7 July 2022 (dismissing Yamaguchi's appeal).

sexual violence, particularly in the aftermath of the #MeToo movement.³⁷ In *Dababneh v. Lopez*, a California state legislator filed a defamation suit against the woman who publicly accused him of sexual misconduct; the anti-SLAPP motion was ultimately granted on appeal.³⁸ The TIME'S UP Legal Defense Fund has documented that such proceedings are “mostly being brought against people with few resources” and that the threat of litigation operates as a “play in the playbook” of perpetrators deploying DARVO strategies.³⁹

12. Across multiple jurisdictions, defamation suits are systematically weaponized as a gendered silencing mechanism where alleged perpetrators of sexual violence exploit legal proceedings to impose disproportionate burdens on survivors, thereby creating a pervasive chilling effect that deters others from disclosing similar abuse. This pattern engages Article 14 of the Convention because it produces a discriminatory impact on women's exercise of their right to freedom of expression under Article 10. In *Khadija Ismayilova v. Azerbaijan*, the Court established that States bear positive obligations to ensure safe participation in public discourse without fear of retaliatory harassment.⁴⁰ The UN Special Rapporteur on Violence against Women has characterised such litigation as “intimidation and retaliation.”⁴¹ CEDAW General Recommendation No. 35 has recognised that gender-based violence is perpetuated through, inter alia, practices which restrict women's ability to participate in public life on an equal footing.⁴² The interveners submit that the Court should recognize, for the first time, that defamation proceedings against victims of sexual violence engage Article 14 in conjunction with Article 10, requiring States to ensure such laws do not serve as instruments of gender-based silencing.

III. Growing Consensus Among the States of the U.S. in Favor of Anti-SLAPP Laws

13. Jurisdictions in the United States have increasingly relied on anti-SLAPP legislation as a structural safeguard against abusive litigation.⁴³ A substantial majority of U.S. states (38 of 50 states, together with the District of Columbia) have enacted anti-SLAPP statutes, reflecting a growing legislative consensus that the judicial system should not be used to suppress lawful reporting, advocacy, or participation, particularly where such participation implicates public interests.⁴⁴ In California, the Legislature has created a civil privilege to insulate survivors from an increasing number of defamation lawsuits filed to retaliate against survivors with legal threats and intimidation.⁴⁵ California law provides that any communication of factual information, made without malice, about a person's experience of sexual assault, harassment, or discrimination is privileged.⁴⁶

³⁷ Berkeley Center on Comparative Equality and Anti-Discrimination Law, *Weaponizing Defamation Law to Silence #MeToo Claims*, UC Berkeley School of Law, 2024; <https://www.law.berkeley.edu/research/berkeley-center-on-comparative-equality-anti-discrimination-law/> [16.02.2026].

³⁸ *Dababneh v. Lopez*, Sacramento Superior Court (anti-SLAPP motion granted on appeal).

³⁹ Pauly M., *She Said, He Sued*, in: *Mother Jones*, 2020.

⁴⁰ *Khadija Ismayilova v. Azerbaijan* [ECtHR], App. nos. 65286/13 and 57270/14, 10 January 2019, para. 158.

⁴¹ Report of the Special Rapporteur on Violence against Women, A/HRC/38/47, 2018, para. 25.

⁴² CEDAW General Recommendation No. 35, CEDAW/C/GC/35, 2017, para. 29(c).

⁴³ Reporters Committee for Freedom of the Press, *Anti-SLAPP Legal Guide* (last updated June 2025), <https://www.rcfp.org/anti-slapp-legal-guide/>.

⁴⁴ Reporters Committee for Freedom of the Press, *Anti-SLAPP Legal Guide* (last updated June 2025), <https://www.rcfp.org/anti-slapp-legal-guide/>; e.g., Cal. Civ. Code para. 47.1 (2024) (California creating a privilege for statements regarding “sexual assault, harassment, or discrimination”); Vt. Stat. Ann. tit 15 § 1181(2023) (Vermont defining “abusive litigation” to include victims of sexual assault and litigation advanced for the purpose of “abusing, harassing, intimidating [or] threatening” another party); 14 M.R.S.A. para. 733 (2025) (Maine protecting victims of sexual assault, harassment, or misconduct from retaliatory civil actions).

⁴⁵ *Id.*

⁴⁶ Cal. Civ. Code Section 47.1 (2025).

These communications remain privileged even if the individual never filed a complaint about the incident, as long as they would have had a reasonable basis to do so.⁴⁷

14. As a result, under California law, communications about sexual assault, sexual harassment, or workplace harassment or discrimination are privileged communications, and thus protected against defamation actions unless made with malice.⁴⁸ A “communication” is defined as “any factual information regarding an incident of sexual assault, harassment, or discrimination, experienced by the individual making the communication.”⁴⁹ Persons who file defamation actions against those who make such privileged communications face legal costs and triple damages.⁵⁰

IV. Particularities of These Procedures

15. The chilling effect of defamation proceedings initiated against victims of sexual violence constitutes a severe interference with the right to freedom of expression under Article 10 of the Convention. As the Court recognised in *Allée v. France*,⁵¹ such proceedings, when directed at individuals who have disclosed experiences of gender-based violence, operate not merely as conventional restrictions on expression but as instruments designed to silence victims and deter future disclosures. The Court has further established in *C. v. Romania*⁵² that the exposure of sexual violence victims to re-traumatising judicial processes may constitute secondary victimisation incompatible with the State's positive obligations under the Convention. The interveners submit that the Court must assess these proceedings through a gender-sensitive lens, recognizing that defamation litigation against survivors of sexual violence is a structurally gendered form of silencing. Under the Convention, read alongside the Istanbul Convention and CEDAW standards, the State is obligated to ensure legal frameworks do not deter or penalize victims for disclosing gender-based violence.

V. New Questions for the Court: Joint Violation of Articles 14 and 10 and Joint Violation of Articles 14, 10 and 8

16. The interveners submit that the core legal question in the present case is one of **gender discrimination in the enjoyment of Convention rights**, which has the following specific dimensions: a) **gender discrimination in the enjoyment of the right to private life**, which must be examined under **Article 14 read in conjunction with Article 8**; b) **gender discrimination in the exercise of freedom of expression**, which must be examined under **Article 14 read in conjunction with Article 10 ECHR**; and c) **gender discrimination in the enjoyment of the right to private life while exercising the right to free expression**, which must be examined under **Article 14 ECHR read in conjunction with both Article 10 ECHR and Article 8 ECHR**. As the Court's case law with respect to the first dimension above is already well established, the present intervention is focusing on the second and third dimensions.

i. Background: Sex as a “suspect ground”

17. The Court has consistently applied a graduated intensity of review depending on the ground of discrimination at issue under Article 14. Certain grounds, such as sex are treated as inherently

⁴⁷ *Id.*

⁴⁸ See Cal. Civ. Code Section 47.1 (2025).

⁴⁹ Assem. Comm. on Judiciary, Analysis of A.B. 933, 2023–2024 Reg. Sess. (Cal. 2023).

⁵⁰ *Id.*

⁵¹ *Allée v. France* [ECtHR], no. 20725/20, 18 January 2024, paras. 55–58.

⁵² *C. v. Romania* [ECtHR], no. 47358/20, 30 August 2022, paras. 83–86.

suspect. Since its landmark plenary judgment in *Abdulaziz, Cabales and Balkandali v. the United Kingdom*,⁵³ the Court has maintained that, when sex constitutes the basis for differential treatment, the State bears the burden of demonstrating particularly convincing and weighty justifications, and the margin of appreciation is correspondingly narrow.⁵⁴ The interveners submit that this standard of review is directly applicable to the present case, in which the impugned proceedings and their effects are inextricably linked to sex and specifically to a woman's status as a survivor of gender-based violence or harassment who has made relevant disclosures.

ii. Development of case law where Articles 2 or 3 ECHR are combined with Article 14 of the ECHR (domestic violence, then sexual violence outside the intimate sphere)

18. In *Opuz v. Turkey*⁵⁵ the Court delivered its first judgment recognising the failure of State authorities to protect women against domestic violence as amounting to discrimination on the ground of sex, in violation of Article 14 taken in conjunction with Articles 2 and 3 of the Convention. The Court held that the State's systemic failure to provide effective protection amounted to gender-based discrimination, irrespective of whether such failure was intentional, finding that "the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional."⁵⁶ Critically, the Court established that general and discriminatory judicial passivity - manifested through the tolerance of domestic violence by law enforcement, the inadequacy of protective measures, and the impunity enjoyed by perpetrators, mainly affected women and therefore constituted a form of structural, gender-based discrimination engaging State responsibility under the Convention.⁵⁷ In reaching this conclusion, the Court drew extensively on CEDAW General Recommendation No. 19, thereby aligning its jurisprudence with the well-established recognition in international human rights law that violence against women constitutes a form of discrimination.⁵⁸ The interveners submit that the principles established in *Opuz* are directly applicable to the present case: the deployment of defamation proceedings against women who disclose sexual violence, when tolerated or facilitated by the State's judicial apparatus, reproduces the same structural pattern of gender-based judicial passivity that the Court identified and condemned in that landmark judgment.

iii. Context-sensitive approach in different areas

19. The Court's jurisprudence since *Opuz* has consolidated and expanded the principle that the lack of adequate preventive and protective measures, when predominantly affecting women, reflects gender-based discrimination triggering a strict assessment of State justifications. Gender stereotypes and institutional indifference have been consistently identified as factors reinforcing discriminatory treatment and engaging State responsibility. In *Volodina v. Russia*,⁵⁹ the Court clarified that once a large-scale structural bias against women has been demonstrated, the applicant is not required to prove individual prejudice in the authorities' handling of her particular case, thereby shifting the evidential burden and reinforcing the demanding standard of scrutiny applicable to sex-based

⁵³ *Abdulaziz, Cabales and Balkandali v. the United Kingdom* [ECtHR], nos. 9214/80, 9473/81 and 9474/81, 28 May 1985, para. 78.

⁵⁴ See, *inter alia*, *Konstantin Markin v. Russia* [GC] [ECtHR], no. 30078/06, 22 March 2012, para. 127; *Emel Boyraz v. Turkey* [ECtHR], no. 61960/08, 2 December 2014, para. 51; *Carvalho Pinto de Sousa Morais v. Portugal* [ECtHR], no. 17484/15, 25 July 2017, para. 45.

⁵⁵ *Opuz v. Turkey* [ECtHR], no. 33401/02, 9 June 2009.

⁵⁶ *Ibid.*, para. 191.

⁵⁷ *Ibid.*, para. 200.

⁵⁸ *Ibid.*, paras. 185–187, referring to CEDAW Committee, General Recommendation No. 19: Violence against Women, UN Doc. A/47/38, 1992. See also the subsequent CEDAW General Recommendation No. 35, UN Doc. CEDAW/C/GC/35, 2017, which updated and reinforced General Recommendation No. 19.

⁵⁹ *Volodina v. Russia* [ECtHR], no. 41261/17, 9 July 2019, paras. 110–132.

distinctions. Where procedural rules or institutional practices disproportionately disadvantage women - whether through the inadequacy of legislative frameworks, the passivity of law enforcement, or the impunity enjoyed by perpetrators - the Court has assessed whether structural discrimination exists, applying a rigorous proportionality test that leaves the respondent State a correspondingly narrow margin of appreciation.⁶⁰

20. In its most recent case law, the Court has extended this analysis to condemn the use of sexist stereotypes in criminal proceedings, particularly in cases of sexual violence. In the landmark judgment of *L. and Others v. France*,⁶¹ the Court for the first time explicitly recognised that judicial reasoning employing sexist stereotypes, blaming the victim and causing secondary victimisation, amounts to sex-based discrimination in violation of Article 14 taken in conjunction with Articles 3 and 8. This judgment built upon the foundations laid in *J.L. v. Italy*,⁶² where the Court held that victim-blaming reasoning and gender bias in judicial decision-making, including unjustified references to the applicant's clothing, sexual orientation, and lifestyle, constituted a failure to protect the victim's dignity, and confirmed a line of authority further developed in *I.C. v. Moldova*⁶³ and *X v. Cyprus*.⁶⁴ Moreover, in *F.M. and Others v. Russia*,⁶⁵ the Court delivered the first judgment finding a violation of Article 14 taken in conjunction with Article 4 of the Convention, holding that the authorities' failure to protect Central Asian women from trafficking and forced servitude, and to investigate the crimes committed against them, reflected discriminatory attitudes towards women and foreign migrant workers, thereby establishing an intersectional approach to gender-based discrimination in the context of modern slavery.⁶⁶

iv. It is *necessary* to examine Article 14 read in conjunction with Article 10 and Article 8

21. In this regard, it should be noted that the potential **chilling effect** that defamation proceedings against sexual harassment/sexual violence survivors may generate is **gendered** in that it is considerably more likely to **affect disproportionately larger numbers of women**. As such, **gender discrimination is a fundamental aspect** of the legal question(s) around the enjoyment of freedom of expression and it is, therefore, **necessary to examine Article 14**, regardless of the Court's findings in relation to Article 10 or any other pertinent Convention provisions. It is well established in the Court's case law that, once the facts fall within the ambit of a substantive right, the Court is under a duty to examine the discrimination aspect of the complaint "if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case".⁶⁷ In such cases, the alleged discriminatory harm is analytically and normatively distinct from the harm caused in the enjoyment of other Convention rights.

22. In *Opuz v. Turkey*, the Court articulated a clear and authoritative statement of principle on this point. After completing its analysis under Articles 2 and 3, the Court held that, because the factual matrix fell within the scope of those Articles, it was **required** to examine the Article 14 complaint⁶⁸ because "[t]he general and discriminatory judicial passivity in Turkey in the face of domestic violence

⁶⁰ See also *Talpis v. Italy*, no. 41237/14, 2 March 2017, paras. 141–148; *Bălșan v. Romania*, no. 49645/09, 23 May 2017, paras. 85–90; *Eremia v. The Republic of Moldova*, no. 3564/11, 28 May 2013, para. 89.

⁶¹ *L. and Others v. France* [ECtHR], nos. 46949/21, 24989/22 and 39759/22, 24 April 2025, paras. 195–230.

⁶² *J.L. v. Italy* [ECtHR], no. 5671/16, 27 May 2021, paras. 133–141.

⁶³ *I.C. v. Moldova* [ECtHR], no. 67579/19, 27 February 2025.

⁶⁴ *X v. Cyprus* [ECtHR], no. 40733/22, 27 February 2025.

⁶⁵ *F.M. and Others v. Russia* [ECtHR], nos. 71671/16 and 40190/18, 10 December 2024.

⁶⁶ Rorive I., *Obligations positives face aux violences sexuelles et de genre – Discriminations, inégalités, exclusions* (2023 and 2024), in: *Intersections – Revue Droit & Genre*, 2024, paras. 2–9 and 2025, paras. 1–6.

⁶⁷ *Airey v. Ireland* [ECtHR], no. 6289/73, 9 October 1979, para. 30.

⁶⁸ *Opuz v. Turkey*, para. 185.

affects mainly women and [...] is gender based”.⁶⁹ This reasoning has particular force where structural or group-based disadvantage may create indirect horizontal discriminatory effects. According to the Explanatory Report to Protocol no. 12 ECHR,⁷⁰ Article 1 of that Protocol creates positive obligations to protect from such indirect effects in relations between private persons. Given that the meaning of the term “discrimination” in Article 1 of Protocol no. 12 “was intended to be identical to that in Article 14 [...]”,⁷¹ it is submitted that the nature and scope of positive obligations under Article 14 should also be the same as under Article 1 of Protocol 12.⁷²

23. Additionally, the **gendered chilling effect** of defamation proceedings may constitute an **interference with the right to private life**. This is particularly the case when the acts or omissions of state actors involved in these proceedings are such as to **not only discourage survivors from exercising their freedom of expression, but also discourage them from reporting incidents of gender based violence and harassment in the first place**. As the Court confirmed in its recent judgment on *N.T. v. Cyprus*, when the language or arguments used by national authorities in the context of judicial proceedings around gender based violence “convey prejudices and sexist stereotypes”, this language and these arguments are “**liable also to discourage women’s confidence, as victims of gender-based violence, in the justice system**” [emphasis added].⁷³ In situations, therefore, where there is evidence of possible **underlying structural gender discrimination**, gendered acts (or omissions) of state actors that may undermine the confidence of survivors in the justice system should be considered under the light of Article 14 read in conjunction with both Article 10 and Article 8.

Conclusion

24. The interveners respectfully submit that this body of jurisprudence demonstrates that sex/gender is firmly established as a suspect ground of discrimination in the Court’s case law. Differences of treatment or differences in the impact of ostensibly neutral rules, policies or practices based on sex/gender are presumed incompatible with the Convention unless justified by particularly serious, objective, and proportionate reasons, reflecting the Court’s broader commitment to substantive gender equality and the dismantling of structural and institutional discrimination. In contexts of systemic violence against women - such as in Georgia, where the restrictive legislative environment and the documented pattern of institutional hostility towards women who disclose gender-based violence are well-attested⁷⁴ - it is particularly important to take into account the gender dimension of measures that operate to silence victims. The present case affords the Court an opportunity to rule, for the first time, on a violation of Article 14 of the Convention taken in conjunction with Article 10, recognising that defamation proceedings deployed against women who disclose sexual violence constitute a gendered restriction on freedom of expression that engages the prohibition of discrimination. Such a finding would represent a natural and necessary extension of the principles established in *Opuz v. Turkey*, *Volodina v. Russia*, *L. and Others v. France*, and *F.M. and Others v. Russia* to the specific context of the chilling effect on victims’ speech.

⁶⁹ Ibid, para. 191.

⁷⁰ Explanatory Report to Protocol no. 12 ECHR, para. 24.

⁷¹ *Sejdić and Finci v. Bosnia and Herzegovina* [ECtHR], nos. 27996/06, 34836/06, 22 December 2009, para. 55.

⁷² See also Kapotas, P., Discrimination - General Prohibition of, in: Istrefi, K. et al, *The Companion of the European Convention on Human Rights* (Brill, 2025), 250-253.

⁷³ *N.T. v Cyprus* [ECtHR], no. 28150/22, 3 July 2025, para. 83.

⁷⁴ See the *Identoba and Others v. Georgia* group of cases (no. 73235/12 and others), currently under enhanced supervision by the Committee of Ministers; and the findings of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) regarding Georgia.