



ARTICLE 19

IN THE EUROPEAN COURT OF HUMAN RIGHTS

APP NO. 16777/23

BETWEEN :

XY

Applicants

-v-

GEORGIA

Respondent Government

WRITTEN SUBMISSIONS OF ARTICLE 19

17 February 2026

INTRODUCTION AND SUMMARY

1. This third-party intervention is submitted by ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19), an international human rights organisation which defends and promotes freedom of expression and the right to information globally. Taking its name and mandate from Article 19 of the Universal Declaration of Human Rights, ARTICLE 19 frequently submits amicus curiae briefs to international and regional human rights bodies and national courts, including interventions in over 50 cases before this Court. Among them were interventions in key freedom of expression cases such as *S.A.S v France*, *Delfi AS v Estonia* and *OOO Flavius v Russia*. We have intervened in multiple cases involving defamation, such as *Prager & Oberschlik v Austria*, as well as cases concerning gender-based discrimination, for example *S.A.S v France* and *Macate v Lithuania*.
2. ARTICLE 19 welcomes the opportunity to intervene as the third party in this case, as granted by the Court on 30 January 2026. We believe that this case should be seen in the context of growing misuse of defamation lawsuits against victims of gender-based discrimination and sexual harassment who publicly denounce or speak out against their perpetrators. We submit that the Court's examination of this interference, particularly in light of the necessity test and the risk of chilling effect on other victims of gender-based offences, will be a pivotal step in furthering its case-law on the issue. Drawing on the recent judgment in *Allée v France*, our intervention addresses two key points.
 - First, the relevance of the right to speak about experiences of gender-based discrimination and sexual harassment in defamation cases; and
 - Second, the proper application of defamation principles to the specific context and power dynamics of sexual harassment and gender-based discrimination.
3. As directed, these submissions do not comment on the facts or merits of the case.

(I) The right to speak about sexual harassment and gender-based discrimination

4. ARTICLE 19 submits that the scope of the right to freedom of expression firmly encompasses not only the abstract right to speak but also and practical ability to raise and communicate allegations of sexual harassment and gender-based discrimination. In matters of such public significance, freedom of expression serves as an enabling right as it empowers victims to vindicate related fundamental rights, including the right to dignity, equality, and non-discrimination.
5. The right to speak out about sexual harassment and gender-based discrimination is essential to both individual justice and collective accountability. When those who experience gender-based harm are prevented or deterred from sharing their experiences, the broader public is deprived of critical information about systemic patterns of abuse. Such speech often constitutes a form of social reporting, exposing conduct that may otherwise remain hidden due to power imbalances, fear of retaliation, or institutional silence. Freedom of expression ensures that victims can participate fully in public debate on issues of gender equality and workplace safety, and that society as a whole can confront, debate, and remedy these harms. Therefore, restrictions on this expression, whether through defamation suits or other forms of

legal intimidation, undermine not only the rights of those directly involved but also the public's right to receive information about gender-based discrimination and harassment.

6. In this sense, safeguarding the ability to voice allegations of sexual harassment aligns with the Court's established jurisprudence that freedom of expression constitutes one of the essential foundations of a democratic society. It is only through robust protection of such speech that trust in justice, equality, and solidarity between individuals can be maintained and strengthened
7. This understanding is also firmly grounded in international standards. For instance, under the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, States have due diligence obligations and "must adopt and implement diverse measures to tackle gender-based violence against women [...] including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice."¹ CEDAW also highlights the "inextricable link" between discrimination and "the stigmatization of women who fight for their rights."²
8. The Human Rights Committee, in the **General Comment No. 34**, an authoritative interpretation of Article 19 of the International Covenant on Civil and Political Rights (ICCPR), explicitly states that the scope of the right to freedom of expression includes discussion of human rights, as well as commentary on one's own and on public affairs.³ Sexual harassment and gender-based violence certainly involve human rights issues, as they concern the rights to physical and mental integrity and to equal protection under the law. As such, reporting of these abuses is firmly protected by the right to freedom of expression.
9. In a work setting, protection against sexual harassment is essential to the fulfilment of socioeconomic rights and closely linked to the effective exercise of freedom of expression. **International Labour Organisation (ILO) Convention No. 190 on violence and harassment at work** recognises "the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment", and also states that the latter "can constitute a human rights violation or abuse, and [...] is a threat to equal opportunities, [which] is unacceptable and incompatible with decent work".⁴ The ILO Convention also stipulates that victims must have easy access to safe, fair and effective reporting and complaint mechanisms, as well as be protected against victimisation and retaliation.⁵
10. While the case law of the European Court of Human Rights is examined in more detail in relation to the specifics of defamation, we find it important to note at this stage that the Court has consistently ruled that Article 8 of the European Convention creates positive obligations for State authorities in terms of providing adequate protection to victims of sexual assault. This entails the duty of prompt and thorough investigation and prosecution, but also protection of victims from secondary victimisation and implementation of appropriate measures to mitigate distress.⁶
11. **The Joint Declaration on Freedom of Expression and Gender Justice**, co-signed by freedom of expression mandate holders and prepared with ARTICLE 19's assistance, stipulated:

When women speak out about sexual and gender-based violence, States should ensure that such speech enjoys special protection, as the restriction of such speech can hinder the eradication of violence against women. States should [...] enact comprehensive legislation to discourage vexatious or frivolous defamation cases and strategic lawsuits against public participation (SLAPPs) that are intended to intimidate and silence women and drive them out of public participation.⁷

12. The Joint Declaration also specifically noted in relation to defamation as retaliation for speaking out against sexual violence:

Women who publicly denounce alleged perpetrators of sexual or gender-based violence should not be charged with criminal libel, prosecuted for false reporting of crimes or be subjected to frivolous or vexatious defamation lawsuits.⁸

13. In her 2021 report “Gender Justice and Freedom of Opinion and Expression”, **the UN Special Rapporteur on the Right of Freedom of Opinion and Expression** criticised structural barriers faced by women in denouncing gender-based discrimination and harassment. The Rapporteur pointed out the increasing use of defamation suits to silence victims and noted that “[w]eaponizing the justice system to silence women feeds impunity while also undermining free speech”.⁹ In a similar vein, **the UN Special Rapporteur on Violence against Women** stated that “women who speak out about their abuse online are frequently and increasingly threatened with legal proceedings, such as for defamation, which aims to prevent them from reporting their situation.”¹⁰

(II) The application of defamation principles to allegations of sexual harassment and gender-based discrimination

14. The right to freedom of expression, while not absolute, may only be restricted in accordance with the well-established three part test of legality, legitimate aim and necessity and proportionality, reflected in the case law of this Court under Article 10 para 2 of the European Convention of Human Rights.¹¹ Any limitation must therefore be based on clear and foreseeable law, pursue one of the legitimate aims exhaustively listed in the Convention, and be shown to meet a pressing social need through measures that are proportionate and the least restrictive means available. We are aware that defamation actions pursue the legitimate aim of protecting reputation, one of the recognised legitimate aims for restricting freedom of expression. However, the pursuance of this aim must be carefully counter-weighted against the right to freedom of expression and the sensitivities of sexual harassment and work discrimination cases. In such contexts, the assessment of necessity and proportionality must take into account the profound public interest in enabling victims to speak out without fear of legal reprisal.

a) Comparative jurisprudence on defamation in cases of sexual harassment and gender-based violence

15. ARTICLE 19 submits that an extensive body of defamation jurisprudence confirms that allegations of sexual assault and harassment, particularly in a workplace, are matters of clear public interest. This public interest dimension must form an integral part of the balancing exercise when assessing restrictions on freedom of expression. Furthermore, it is well-established that sexual harassment and gender-based discrimination causes psychological harm, trauma and suffering.¹² Many victims frequently experience re-victimisation due to a

widespread and pervasive victim-blaming culture, which tends to stigmatise them and deter them from reporting.¹³

16. These considerations are reflected in recent case-law in the Council of Europe member states. For instance, the 2026 case of *Maria Gasparovic v. Moët Hennessy*, factually very similar to the present case, demonstrates how courts may treat defamation claims brought in response to allegations of workplace harassment and discrimination. According to media reports, Gasparovic wrote LinkedIn posts alleging harassment, gender discrimination, bullying and mismanagement by senior colleagues in the company, Moët Hennessy. She had previously raised these concerns internally with HR in a whistleblower report. Moët Hennessy fired her “for gross misconduct” and filed a defamation lawsuit, seeking damages for false allegations and removal of the posts. In January 2026, the national court reportedly concluded that the company failed to prove that Gasparovic had defamed them through her LinkedIn allegations of bullying and harassment. The lawsuit was found “frivolous” and aimed at restricting her freedom of expression, awarding her damages from Moët Hennessy for pursuing the defamation case.¹⁴
17. In the 2024 high-profile defamation case of *Lehrmann v Network Ten Pty Ltda* in Australia, Lehrmann, a former federal political staffer, sued the media outlet for defamation over a broadcast, where it was alleged that he had raped Brittany Higgins, another staffer, in a Parliament House office. Although the criminal proceedings had resulted in a mistrial and Lehrmann had never been convicted of rape, the defamation case was not resolved in Lehrmann’s favour. The court highlighted that the case engaged matters of freedom of expression and high public interest, including political accountability, workplace safety, and public confidence in institutions. The media outlet relied on the substantial truth defence and successfully defeated the defamation claim.¹⁵ In the present case, the victim was likewise subjected to harassment within a state institution building, thereby engaging comparable concerns as to institutional responsibility and the integrity of workplace environments within public institutions.
18. In the 2021 case of *Priya Ramani v. M.J. Akbar*, former Indian Union Minister M.J. Akbar sued journalist Priya Ramani for criminal defamation after she publicly accused him of sexual harassment during her journalism career. The Indian court acquitted Ramani, holding that raising allegations of sexual harassment was in public interest. The verdict explicitly acknowledged barriers to reporting workplace sexual harassment, including shame, stigma, and lack of effective legal mechanisms at the time of the incident.¹⁶
19. Comparative case law also comprises examples where the abuser was not a public official or other prominent public figure, but the allegation of sexual harassment or assault was still ruled to be in public interest. An example of this approach can be found in *Hay v Cresswell*, a 2023 case decided by the High Court of England and Wales. Nina Cresswell published online that William Hay, a tattoo artist, had violently sexually assaulted her after they met at a nightclub a decade earlier. Hay brought a libel action against Cresswell. The Court confirmed the application of defences of truth and public interest to the allegedly defamatory statements. The public-interest defence was justified by the existence of potential risk to other victims. The Court also commented that delayed disclosure does not undermine credibility where explained by trauma, fear, or social stigma.
20. ARTICLE 19 submits that comparative law, coupled with international standards discussed above, supports the use of a **public interest defence** in defamation cases that challenge

allegations of sexual harassment and gender-based discrimination. Public interest considerations are apparent when the alleged aggressor is a public figure, but they should also be extended to other cases that involve allegations of sexual harassment and where the public should be informed about a pattern of violence and discrimination that can affect other victims. This is particularly relevant where a whistleblower discloses sexual harassment and gender discrimination practices in a workplace.

21. Comparative case law also supports the application of **a reasonable standard of substantial truth** in these cases. Under the defence of substantial truth, a defendant in defamation proceedings is not required to painstakingly prove every detail of the publication to be true. It is sufficient that the *substantial* part or the *gist* of the imputations is shown to be true. This defence recognises that minor inaccuracies should not defeat an otherwise valid claim of truth.¹⁷ In this context, it cannot be expected of an alleged victim of harassment or discrimination to accurately prove every detail of their allegations. The evidentiary standards applied in criminal and civil cases are different. Where a criminal conviction for an assault is impossible due to a lack of evidence or other reasons, it should not preclude the right of the victim to speak up. A civil defamation case should not require a stringent standard of proof, as it would produce a chilling effect on other victims. They already suffer from fear, trauma, and social stigma, which makes it difficult to report the allegations and present evidence.
- b) Court's jurisprudence on whistleblowing applicable to cases of sexual harassment and gender-based violence*
22. ARTICLE 19 also observes that this Court has developed extensive legal criteria on disclosing wrongdoing in a workplace. It has consistently found that disclosing information concerning unlawful acts or practices in a workplace entails strong public interest. Sexual harassment and gender-based discrimination are certainly a serious type of workplace misconduct. Therefore, we believe that the principles previously used to assess where sanctions for reporting wrongdoing violate Article 10 should be generally relied upon in defamation cases involving workplace sexual harassment.
23. The Court summarised the six conditions for granting protection to whistle-blowers in *Guja v. Moldova (2008)* and *Halet v Luxembourg (2023)*, with a particular emphasis on disclosure of unlawful practices in a workplace: availability of alternative channels for disclosure; the public interest in the disclosed information; the authenticity of the disclosed information; the detriment to the employer; whether the whistle-blower acted in good faith; and the severity of the sanction.¹⁸ What we find particularly important for potential application in sexual harassment cases is that the criteria of authenticity and good faith do not require from the whistle-blower to adhere to a high evidentiary standard, such as would be mandatory in a criminal case. It is generally sufficient that the whistleblower had reasonable grounds to believe that the information disclosed was accurate, even if it was subsequently proved wrong or could not be proved correct.¹⁹
24. In *Hrachya Harutyunyan v. Armenia (2024)*, the Court found a violation of Article 10 in the civil penalties for defamation applied to a whistleblower exposing their colleague's corruption. The Court stressed that the national case should not have been treated purely as a private defamation claim but should have been examined in the light of whistleblower protection.²⁰ We find it noteworthy that the domestic courts refused to apply the public interest argument on the grounds that it did not apply to "ordinary citizens", but only to media representatives. The Court explicitly criticised this approach and confirmed that the applicant's reports enjoyed the same protection.²¹ This case shows that the whistleblower

protection principles remain relevance beyond dismissals from a workplace, but also in defamation cases.

c) *Towards the application of relevant principles to sexual harassment cases*

25. In the seminal case *Allee v France (2024)*, this Court stipulated the following criteria used in examination of whether the conviction for defamation was justified: the context and nature of the statements, the situation and intentions of the person concerned, the number and status of the recipients of the disputed statements, the seriousness of the damage to reputation, and the severity of the penalty imposed.²²
26. The Court emphasised the need to provide appropriate protection to persons who report acts of psychological or sexual harassment of which they consider themselves to be victims and criticised the refusal of the domestic courts to apply the criterion of good faith, while requiring a high evidentiary standard from the victim.²³ At the same time, the defence of public interest was not recognised as relevant to the case. Finally, despite that fact that the imposed fine was suspended in its entirety and no other penalty beyond the payment of the costs of the proceedings was ordered by the domestic courts, the Court still found the very fact of criminal conviction to have a deterrent effect likely to discourage other victims from reporting similar allegations.²⁴
27. ARTICLE 19 submits that international standards and comparative case law strongly support the application of public interest considerations in cases of workplace harassment. As we already highlighted earlier, expression about human rights abuses enjoys special protection and should not be retaliated against. The public has the right to receive information about gender-based violence and/or discrimination in a workplace. In any event, where allegations are made about a public figure committing these wrongful practices in the context of public service employment, public interest is especially high. Retaliation against reports of sexual harassment, including in the form of defamation litigation, produces significant chilling effect.
28. We also believe that it is paramount to extend the principles articulated by the Court in its whistleblower protection jurisprudence to defamation cases with an element of sexual harassment or gender-based discrimination in a workplace. Namely, where defamation proceedings arise from allegations of sexual harassment or gender-based discrimination, the national authorities should apply a heightened proportionality test.
29. In particular, courts should assess, *ad minimum*, four key aspects:
 - First, whether the impugned statements concerned matters of public interest, including workplace safety and gender equality;
 - Second, whether the speaker acted in good faith and had reasonable grounds, at the time of publication, to believe the allegations were true, even if they cannot be proved to a criminal standard. In any case, defendants should not be required to adhere to a stringent evidentiary standard in proving, beyond reasonable doubt, that sexual harassment took place;
 - Third, whether the interference with freedom of expression is necessary and appropriate to protect reputation in light of the gravity of the underlying allegations and the structural barriers to reporting; and

- Fourth, whether the nature and severity of any sanction are strictly proportionate and avoid creating a chilling effect on other victims who may wish to report similar abuses. In particular, the balancing exercise should not only weigh the protection of reputation against the right to freedom expression, but also the rights to physical and mental integrity and non-discrimination of victims.
30. ARTICLE 19 believes that defamation lawsuits should not be weaponised as retaliation against the victim’s efforts to rectify their rights and dignity and warn potential victims about risks of abuse. In that sense, the judgment in the present case can further develop the criteria applied by the Court in *Alle v France* and stress the importance of avoiding producing chilling effect on other victims.
31. In conclusion, ARTICLE 19 respectfully submits that, in defamation proceedings arising from allegations of sexual harassment or gender-based discrimination, the Court should crystallise a clear standard requiring domestic authorities to treat such expression as a protected form of reporting on wrongdoing, rather than as an ordinary private dispute. In doing so, the Court can confirm that the applicable evidentiary threshold, the assessment of good faith and the evaluation of sanctions must all be calibrated so as to prevent defamation law from being repurposed as a means of silencing victims or deterring future disclosures. This case offers an opportunity to clarify that, where speech concerns sexual harassment or gender-based discrimination in the workplace and beyond, the Convention requires a distinct and victim-sensitive approach to reputation, one that safeguards both the individual and the collective interest in exposing and eradicating such abuse.

JUDr. Barbora Bukovska
Senior Director for Law and Policy
On behalf of ARTICLE 19

¹ Convention on the Elimination of All Forms of Discrimination against Women, adopted 18 December 1979, 1249 UNTS 13, Article 24.

² *Ibid.*, Article 12.

³ UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, CCPR/C/GC/34 (29 Jul 2011), para 11.

⁴ ILO, *Violence and Harassment Convention, 2019 (No. 190)*, Preamble.

⁵ *Ibid.*, Article 10 (b(i)(iv)) and Article 10 (e).

⁶ See, for example, *Z v. Bulgaria*, no. 39257/17, 28 May 2020, para 67; *L. and Others v. France*, nos. 46949/21 and 2 others, 24 April 2025, para 193; *X v. Greece*, no. 38588/21, 13 February 2024, para 86; *X v. Cyprus*, no. 40733/22, 27 February 2025, paras 121-23.

⁷ Joint Declaration on Freedom of Expression and Gender Justice, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur for Freedom of Expression, and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 3 May 2022, Article 3(d).

⁸ *Ibid.*

⁹ *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, U.N. Doc. A/76/258 (2021), para 22.

¹⁰ *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences on online violence against women and girls from a human rights perspective*, U.N. Doc. A/HRC/38/47 (2021), para 31.

¹¹ International Covenant for Civil and Political Rights, Articles 19(3) and 22(3); European Convention on Human Rights, Articles 10(2) and 11(2).

-
- ¹² See, for example, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, *Human Rights Council*, UN Doc. E/CN.4/1995/42 (1994).
- ¹³ Parti, K., & Robinson, R. A. (2021). *What hinders victims from reporting sexual violence: A qualitative study with police officers, prosecutors, and judges in Hungary*. *International Journal for Crime, Justice and Social Democracy*, 10(3), 158-176, <https://doi.org/10.5204/ijcjsd.1851>.
- ¹⁴ Mediapart reporting on the judgment *Maria Gasparovic v. Moët Hennessy* of the Tribunal judiciaire de Paris [Harcèlement sexuel : Moët Hennessy condamné pour avoir tenté de silencier une ex-salariée](#), 20 January 2026.
- ¹⁵ *Lehrmann v Network Ten Pty Ltd* [2024] FCA 369, Federal Court of Australia, Lee J, 15 April 2024.
- ¹⁶ *M.J. Akbar v. Priya Ramani*, CC No. 608/2019 (ACMM, Rouse Avenue Courts, New Delhi, 17 Feb 2021).
- ¹⁷ See e.g. UK Defamation Act 2013, Section 2.
- ¹⁸ *Guja v. Republic of Moldova* [GC], Application no. 14277/04, Grand Chamber judgment, 12 February 2008; *Halet v. Luxembourg*, Application no. 21884/18, Grand Chamber judgment, 14 February 2023.
- ¹⁹ *Ibid.*, *Halet v. Luxembourg*, paras 126-127.
- ²⁰ *Hrachya Harutyunyan v. Armenia*, Application no. 15028/16, Judgment of 27 August 2024, para 54-55.
- ²¹ *Ibid.*
- ²² *Allée v France*, Application no. 20725/20, Judgment of 6 October 2022, para 46.
- ²³ *Ibid.*, para 52.
- ²⁴ *Ibid.*, para 54.