

SEXUAL VIOLENCE

ЩО ТАКЕ СЕКСУАЛЬНЕ НАСИЛЬСТВО?

Sexual violence can manifest as one of the forms of both gender-based violence (GBV) and domestic violence, depending on the unique aspects of each specific case. However, sexual violence may be none of these categories if it lacks their characteristic features, remaining solely sexual violence as a criminal offense.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011, the Istanbul Convention) defines sexual violence as the following forms of intentional behaviour:

- ▶ engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
- ▶ engaging in other non-consensual acts of a sexual nature with a person;
- ▶ causing another person to engage in non-consensual acts of a sexual nature with a third person.

There are several definitions of the term "**sexual violence**" in Ukrainian legislation.

The Law of Ukraine "**On Ensuring Equal Rights and Opportunities of Women and Men**" defines sexual harm or suffering as one of the consequences of GBV. This definition is broader, meaning that it can cover any act that causes sexual harm or suffering.



In turn, **the Law of Ukraine "On Prevention and Combating Domestic Violence"** defines sexual violence precisely as one of the forms of domestic violence, which is a narrower concept since domestic violence has its own features in the context of the offender and the survivor (find more about domestic violence, concepts, forms and liability in briefing note No. 5 "Domestic Violence: Understanding the Nuances").



Accordingly, Ukrainian legislation provides for criminal liability for sexual violence as a form of GBV and a form of domestic violence.

Article 153 of the Criminal Code of Ukraine defines sexual violence as the commission of any violent acts of a sexual nature not related to penetration into the body of another person without his/her voluntary consent. **This definition is narrower than the definition in the Istanbul Convention** and reflects one of the forms of intentional behaviour that this Convention defines as sexual violence.

The broader concept of sexual violence in the **Istanbul Convention** also includes acts such as rape (Article 152 of the Criminal Code of Ukraine) and coercion into sexual intercourse (Article 154 of the Criminal Code of Ukraine).

A necessary condition for criminal liability for sexual violence is **the absence of the survivor's voluntary consent**. A consent is considered voluntary if it is the result of a person's free will, taking into account the accompanying circumstances. At the same time, **the consent given in the conditions of the survivor's stay in financial or other dependence on the offender cannot be considered voluntary**.

According to Ukrainian legislation, **a person is considered to be one who can give conscious and voluntary consent to sexual interaction with another person from the age of 16**. Therefore, the legislator has singled out criminal responsibility for sexual violence against children, namely:

- committing acts of sexual nature with a person under the age of 16, even with his/her consent (Article 155 of the Criminal Code of Ukraine)
- vaginal, anal or oral penetration of a sexual nature of the body of a person under the age of 14 with any bodily part or object is considered as rape (Part 4 of Article 152 of the Criminal Code of Ukraine)
- sexual violence against a person under the age of 14, regardless of his/her voluntary consent (Part 4 of Article 153 of the Criminal Code of Ukraine)
- debauched actions committed with regard to a person under the age of 16 (Article 156 of the Criminal Code of Ukraine)
- harassment of a child for sexual purposes, which means a proposal of a meeting made by an adult, including through the use of information and telecommunication systems or technologies, to a person under the age of 16, for the purpose of committing any acts of sexual nature or debauched acts against him/her, where after such a proposal at least one action was taken to ensure that meeting will take place (Article 156-1 of the Criminal Code of Ukraine)

It is also worth noting that today in Ukraine the issue of **recognizing and combating conflict-related sexual violence is relevant**. Briefing Note No. 17 "Conflict-Related Sexual Violence" addresses this topic specifically.



WHAT IS SEXUAL EXPLOITATION?

Sexual exploitation is a form of GBV, but it differs from the general concept of GBV in that sexual exploitation takes place in a relationship where one party has a specific power (privileges, access to goods or services), and the other needs help (for example, it is a relationship between employer and employee, doctor and patient, teacher and student, etc.), i.e. the survivors dependent on exploitative relationships to ensure their basic needs.

The UN^[1] defines sexual exploitation as the actual or attempted abuse of a position of vulnerability, differential power or trust for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.

[1] [UN protocol on the provision of assistance to victims of sexual exploitation and abuse from December 12, 2019](#)

The main features of sexual exploitation:

- one of the parties has a specific power (privileges, access to benefits or services), and the other needs help, i.e. the survivor is dependent on exploitative relationships to ensure basic needs;
- exchange of sexual services for benefit (material, financial, political);
- refusing or threatening to refuse help in exchange for sexual favours.

A relationship with a sex worker is considered sexual exploitation, even if it is legal in a particular country.

In international legal regulation, a distinction is made between sexual exploitation and sexual abuse. Sexual abuse means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. Therefore, if the power party provides certain help in exchange for sexual services, such behaviour is considered sexual exploitation. If there is no exchange, i.e. the vulnerable party is subjected to the fact or attempt to commit unwanted acts of a sexual nature and, at the same time, does not receive a certain profit (good or services), it is considered sexual abuse.

There is no definition of sexual exploitation in Ukrainian legislation but criminal liability is provided for the following actions that have characteristics of sexual exploitation:

- ➔ **human trafficking for sexual exploitation (Article 149 of the Criminal Code of Ukraine);**
- ➔ **coercion to engage in acts of a sexual nature (Article 154 of the Criminal Code of Ukraine);**
- ➔ **production, distribution of objects of a pornographic nature, including child pornography, forced participation in their production (Articles 301, 3011 of the Criminal Code of Ukraine);**
- ➔ **conducting a spectacular event of a sexual nature with the participation of a minor (Article 3012 of the Criminal Code of Ukraine);**
- ➔ **establishment or maintenance of places of debauchery and prostitution (Article 302 of the Criminal Code of Ukraine);**
- ➔ **pimping or involving a person in prostitution (Article 303 of the Criminal Code of Ukraine).**

This briefing note has been produced by the Danish Refugee Council (DRC) with funding from the European Union and the generous support of the American people through the USAID's Bureau for Humanitarian Assistance.

Some of the terms used in this document are taken from the draft laws or current legislation. The authors are solely responsible for the content of this briefing note. The views expressed in this document can in no way be taken to reflect the official position of the European Union, USAID, the US Government or the DRC. Neither the European Commission nor the United States Government can be held responsible for any use which may be made of the information contained in this briefing note.