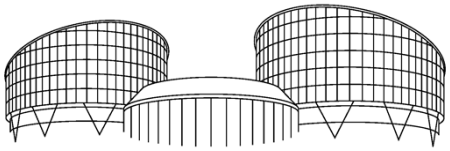

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DAUGAARD SORENSEN v. DENMARK

(Application no. 25650/22)

JUDGMENT

Art 3 and Art 8 • Positive obligations • Withdrawal of charges against an alleged perpetrator of rape, in view of at least three consecutive errors committed by the Prosecution Service, in particular a failure to comply with a statutory time-limit • Mistakes led to the very serious consequence of preventing prosecution • Applicant not secured an effective prosecution or judicial review in respect of the rape offence she reported to the police • Significant flaws in the respondent State's procedural response

Prepared by the Registry. Does not bind the Court.

STRASBOURG

15 October 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Daugaard Sorensen v. Denmark,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Gabriele Kucsko-Stadlmayer*, President*,
Faris Vehabović,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu,
Mateja Đurović*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 25650/22) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Danish national, Ms Emma Daugaard Sorensen ("the applicant"), on 17 May 2022;

the decision to give notice of the application to the Danish Government ("the Government");

the parties' observations;

Having deliberated in private on 24 September 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the withdrawal of charges against an alleged perpetrator of rape, in view of errors that occurred at the Regional State Prosecutor's Office, in particular a failure to comply with a statutory time-limit. The applicant, being the alleged victim, complained under Articles 3, 6, 8 and 13 of the Convention.

THE FACTS

2. The applicant was born in 2000 and lives in Helsingør. She was represented by Mr Tyge Trier, a lawyer practising in Copenhagen.

3. The Government were represented by their Agent, Ms Vibeke Pasternak Jørgensen, of the Ministry of Foreign Affairs, and their co-Agent, Ms Nina Holst-Christensen, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. CRIMINAL PROCEEDINGS AGAINST A

5. On 7 June 2021 the applicant reported to the police that she had been raped by A during the night of 6 to 7 June 2021. Later that day, the applicant was interviewed by the police in the presence of a lawyer.

6. On 8 June 2021 the District Court remanded A in custody, finding that there were reasonable grounds for suspecting that he was guilty of rape under Article 216 § 1 of the Penal Code (*Straffeloven*) and of sexual activity without consent other than sexual intercourse under Article 225 (see paragraph 27 below). The District Court also referred to the fact that the police had not yet had the opportunity to interview a number of relevant witnesses and thus further investigate the matter. In addition, since A and the witnesses knew and associated with each other, there were grounds to assume that A would interfere with the criminal investigation proceedings if he remained at large.

7. The police investigated the case, which included interviewing the applicant and a number of individuals, examining the scene of the crime and the applicant's clothes, and searching A's home.

8. A was released on 18 June 2021.

9. On 30 July 2021, with reference to section 721(1)(ii) of the Administration of Justice Act (see paragraph 28 below), the first-instance public prosecutor (at the relevant police department) decided to drop the charges against A, finding that due to insufficient evidence, it could not be proven in court that A was guilty of rape. It was taken into account, *inter alia*, that there were two opposing statements and that no other evidence conclusively corroborated the statement of either side.

10. On 18 August 2021 the applicant appealed against the decision.

11. On 16 September 2021 the second-instance public prosecutor, the Regional State Prosecutor (hereinafter "the prosecutor") decided, following a review of the matter, to reverse the decision of 30 July 2021 to drop the charges (see paragraph 9 above). It appears that an email to this effect was sent to the first-instance prosecutor shortly after.

12. By virtue of section 724(2) of the Administration of Justice Act (see paragraph 28 below), the prosecutor's decision of 16 September 2021, to proceed with the prosecution, had to be served on A before 30 September 2021, that is to say within two months from the date of the initial decision of 30 July 2021 (see paragraph 9 above), either through A's Digital Post account (*e-Boks*) or by registered letter. Under Danish law it is compulsory for all citizens over the age of fifteen to have a Digital Post account in order to ensure secure digital communication between them and the public authorities. Dispensations can only be granted if the person concerned cannot use a computer due to physical or mental disabilities or other difficulties.

13. On 16 September 2021 the prosecutor sent a letter to A notifying him that the charges (see paragraph 6 above) were maintained. However, owing to a typing error in the entry concerning A in the prosecutor's database, it was incorrectly assumed that A was not able to receive letters through a Digital Post account. Consequently, a registered letter was sent. It appears that an email to this effect was sent to the first-instance prosecutor's office on the same day. However, on account of another error in the prosecutor's database, it was not written in the address field of the letter that A had a c/o address

(that is to say, he was registered and lived at the address, but his name was not on the letterbox). The letter was therefore returned to the prosecutor's office on 23 September 2021 with a stamp stating: "addressee unknown at this address".

14. It followed from the internal guidelines of the prosecutor's office that the returned letter should have been examined in order to determine whether it had been sent to the correct address; whether the charged person had registered at a new address in the meantime; whether the two-month period set out in section 724(2) of the Administration of Justice Act (see paragraph 28 below) had expired; and whether it would be possible to make another attempt to serve the letter. Owing to yet another error, the prosecutor's office found no reason to look up A's address again, and therefore A was not notified of the prosecutor's decision of 16 September 2021 (see paragraph 11 above) before the deadline of 30 September 2021.

15. On 13 October 2021 the first-instance prosecutor filed an indictment with the District Court, seeking to schedule a court hearing. In November 2021, A's defence lawyer asked for the criminal proceedings against A to be dismissed, since the two-month time-limit under section 724(2) of the Administration of Justice Act (see paragraph 28 below) had not been complied with. The prosecutor agreed and, accordingly, on 16 November 2021 the District Court dismissed the case against A. It was thus no longer possible to prosecute A in court for the alleged rape.

16. By a letter of 30 November 2021, the prosecutor informed the applicant's lawyer about the failure to notify A and apologised on that occasion for the unfortunate procedural error.

II. COMPENSATION PROCEEDINGS BEFORE THE CRIMINAL INJURIES COMPENSATION BOARD (*ERSTATNINGSNÆVNET)*

17. On 21 December 2021 the applicant applied to the Criminal Injuries Compensation Board for compensation in respect of injury to feelings (*tortgodtgørelse*) under the rules of the State Compensation to Victims of Crime Act (*Lov om erstatning fra staten til ofre for forbrydelser*, see paragraphs 38-41 below).

18. On 15 November 2022 the Criminal Injuries Compensation Board rejected the applicant's claim for compensation. The Board found that the applicant had not sufficiently established that she had been the victim of a crime.

19. The applicant did not bring civil proceedings against the Criminal Injuries Compensation Board.

III. COMPENSATION PROCEEDINGS UNDER CHAPTER 93A OF THE ADMINISTRATION OF JUSTICE ACT

20. By letter of 1 December 2022 the Director of Public Prosecutions (*Rigsadvokaten*) notified the applicant's lawyer of the possibility of lodging a claim for compensation against the police and the prosecutor in view of the administrative errors committed during the proceedings.

21. The Director of Public Prosecutions and the applicant's lawyer also discussed the possibility of claiming compensation under Chapter 93a of the Administration of Justice Act, in particular section 1018h (see paragraphs 30 and 31 below), which provides for a summary procedure in certain cases concerning compensation in relation to criminal proceedings. The Director of Public Prosecutions pointed out that it was uncertain whether the applicant's claim for compensation could fall within the scope of Chapter 93a of the Administration of Justice Act (there was no relevant case-law), and that if it fell outside the scope of that Chapter, the applicant could lodge her claim against the police or the Prosecution Service in ordinary civil proceedings.

22. The applicant's lawyer did not consider the remedy under section 1018h to be effective. Nonetheless, on 31 January 2023 the applicant claimed compensation in respect of pecuniary and non-pecuniary damage from the prosecutor in accordance with Chapter 93a of the Administration of Justice Act. The claim was divided into: (a) compensation for pain and suffering; (b) compensation for medical and rehabilitation expenses; (c) damages for ruined clothes; and (d) compensation for injury to feelings. Items (a)-(c) related to the rape reported to the police, whilst item (d), regarding compensation for injury to feelings, related to both the rape reported to the police and the administrative errors committed by the Regional State Prosecutor during the case proceedings.

23. On 6 March 2023 the Government requested that the examination of the case be suspended before the Court pending the outcome of the proceedings on compensation. This request was denied by the Court.

24. On 24 April 2023, the prosecutor rejected the applicant's claims, finding that they fell outside the scope of Chapter 93a of the Administration of Justice Act (see paragraph 30 below), and that they should instead be brought in civil proceedings. In the reasoning, the prosecutor stated, *inter alia*, that the elements of the claim relating to damage sustained as a consequence of a criminal act did not fall within the scope of section 1018h of the same Act (see paragraph 31 below). Moreover, the element of the claim that concerned the administrative errors committed during the case proceedings did not fall within the scope of section 1018h of that Act, since that provision only applied if the claim for compensation was attributable to an official procedural act carried out during the criminal prosecution of the person claiming compensation.

25. The applicant appealed against that decision to the Director of Public Prosecutions, who upheld it on 30 June 2023, and added the following:

> "My decision is final. For that reason, your client cannot appeal against the decision. This follows from section 1018e(3) of the Administration of Justice Act.
>
> Your client may ask the court to decide on the claim for compensation, including whether it falls within the scope of Chapter 93a of the Administration of Justice Act. If your client wants the court to decide on the claim for compensation, you must notify the State Prosecutor of Copenhagen of such intention no later than two months after the date on which you received this decision. This follows from section 1018f(1) of the Administration of Justice Act.
>
> If your client asks the court to decide on the claim for compensation under Chapter 93a of the Administration of Justice Act, the Prosecution Service will submit the defence that the court should dismiss the case.
>
> Civil proceedings
>
> A claim can also be brought in civil proceedings and will thus be considered under the framework of the civil procedure rules, in particular under the general rules of Danish law on compensation. Reference is made in that connection to sections 224, 240(2) and 243 of the Administration of Justice Act, which concern, *inter alia*, compensation for non-contractual damage.
>
> It is observed that the outcome of the assessment of the conduct giving rise to liability for damages would be the same as an assessment in pursuance of section 1018h."

26. The applicant did not bring civil proceedings against the police or the prosecutor.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE PENAL CODE

27. The relevant provisions of the Penal Code applicable at the time of the alleged offence read as follows:

Article 216

> "(1) A penalty of imprisonment for a term not exceeding eight years for rape is imposed on any person who has sexual intercourse with a person without consent."

Article 225

> "The provisions of Articles 216-224 apply, with the necessary modifications, to sexual activity other than sexual intercourse."

II. THE ADMINISTRATION OF JUSTICE ACT (*RETSPLEJELOVEN*)

28. The relevant provisions on decisions to drop charges read as follows:

Section 721

"(1) Criminal charges may be withdrawn in full or in part if:

...

(ii) there is otherwise no expectation that the person charged will be convicted if prosecuted."

Section 724

"(1) When a decision is made to withdraw or dismiss charges, the person charged and the victim or, if the victim has died, the victim's close relatives, must be notified. The same applies to everybody else assumed to have a reasonable interest in the matter. A decision to withdraw charges can be appealed against to the higher prosecution authority under the rules of Chapter 10. A person charged may appeal against a decision to dismiss charges under the same rules.

(2) Where a decision has been made to withdraw or dismiss charges, prosecution of the person can be continued only by the superior prosecution authority if notice to that effect has been served on the person in question, via his or her Digital Post account or by registered letter [the latter sentence was inserted by the amending Act 2021-06-08, in force as of 1 July 2021] within two months from the date of the decision, unless the circumstances of the charged person have prevented the notification from being served in due time or the conditions for reopening of the proceedings under section 975 have been met."

29. The applicant's case attracted public and political interest, in particular after a news feature had been broadcast about it by a national media outlet (*Danmarks Radio*) in May 2022.

In June 2022 the then Minister of Justice announced that the notification rules and procedure at prosecution level would be strengthened. He and the applicant were questioned twice before the Legal Affairs Committee of the Parliament (*Folketingets Retsudvalg*).

In 2022, based on the case at hand, the Regional State Prosecutors clarified and emphasised the written guidelines for processing cases in which a decision to withdraw charges was subsequently reversed. They also established quality control procedures for such cases, including the appointment of a coordinator. As a result of other cases, an additional number of initiatives were taken by the Director of Public Prosecutions, the Regional State Prosecutors and the prosecutors at the local police stations in order to reduce the risk of error when a decision to withdraw charges was reversed.

In March 2023 the above-mentioned national media outlet produced a podcast series in which the applicant and a few other women told their stories about different errors committed by the police and the Prosecution Service in various criminal cases.

In March 2023 the new Minister of Justice stated in an interview with the national media outlet that he would bring about four different improvements in this legal area.

On 20 September 2023 the Government agreed with several parties in Parliament on initiatives relating to the maximum period for the reversal of the decision to withdraw charges in criminal cases.

As the first consequence of the agreement, the scope of application of section 1018h of the Administration of Justice Act (see paragraph 31 below) will be extended so that in criminal cases, it will become possible to proceed with claims for compensation lodged by victims of rape, child abuse or sexual activity other than sexual intercourse under the summary procedure provided for in Chapter 93a of the Administration of Justice Act (see paragraph 30 below), when there have been errors in criminal prosecution committed by the police or the Prosecution Service concerning the maximum period in which it is possible to reverse the decision to withdraw charges. This means that claims will be considered by the Prosecution Service and that, upon request, the Prosecution Service will bring decisions to refuse any such claims in connection to criminal prosecution before the courts, which will normally consider the claims under the framework of the criminal procedure rules. This means, *inter alia*, that Regional State Prosecutors must see to the transmission of case files and set out the facts of the relevant cases before the courts. There is no case law concerning such cases under the present rules, and such claims would presumably be determined under the general rules on compensation in ordinary civil proceedings. In view of the revision, it will, however, not be necessary in future to institute civil proceedings.

The second consequence of the agreement is that the maximum period of time under section 724(2) of the Administration of Justice Act (see paragraph 28 above) will be extended from the current two months to four months to ensure that the police or the Prosecution Service will have more time and thus, in combination with the new guidelines, a better chance of rectifying matters relating to the maximum period in which to reverse the decision to withdraw criminal charges.

The final consequence of the agreement was that the Ministry of Justice promised by the end of February 2024, to provide a sound basis for taking a political decision by setting out the benefits and drawbacks of a special scheme to provide compensation for errors committed by the police or Prosecution Service, in particular if they failed to observe the maximum time-limit in which to reverse the decision to withdraw charges in criminal cases.

The proposed amendments to the Administration of Justice Act in the political agreement of 20 September 2023 have not yet been enacted.

30. Chapter 93a of the Administration of Justice Act contains rules on claims for compensation relating to criminal prosecution. In certain cases, there is a summary procedure, where the victim or the person applying for compensation only needs to establish his or her loss and request a judicial review, following which, the prosecutor refers and presents the case to the courts.

31. The relevant provisions of Chapter 93a of the Administration of Justice Act read as follows:

Section 1018e

"(1) The Prosecutor shall decide claims for compensation in pursuance of this Chapter. ...

(2) Any claim lodged after the expiry of the period referred to in subsection (1) can be considered if the failure to observe the time-limit is found to be excusable.

(3) The Director of Public Prosecutions shall consider appeals of decisions made by the prosecutors concerning claims for compensation. An appeal regarding a decision by the Director of Public Prosecutions in that regard cannot be lodged with the Minister of Justice. Appeals against decisions made by a Regional State Prosecutor must be lodged with the same Regional State Prosecutor."

Section 1018f

"(1) If a claim for compensation is not granted in a decision made by the Director of Public Prosecutions or the Minister of Justice, the person claiming compensation may request, within a period of two months from the date of the request, that the claim be brought before the district court hearing the criminal case. The matter must be brought before the court by the relevant prosecutor. If a criminal case has not been heard in court, the prosecutor shall bring the claim for compensation before the district court ...

(2) If the person claiming compensation so requests, counsel must be assigned to him or her. The rules applicable to defence counsel also apply to counsel assigned in compensation proceedings.

(3) Compensation proceedings must be conducted under the framework of criminal procedure rules. Courts may refuse to consider claims for compensation lodged by someone who has not been charged if that claim cannot in any reasonable manner be considered under the framework of criminal procedure rules. The victim is then free to claim compensation under the framework of the civil procedure rules."

Section 1018h

"Claims for compensation which are raised by accused persons, convicted persons or others in connection with criminal prosecution, on the basis of the general compensation rules of Danish law, are dealt with on request according to the rules in this Chapter."

III. GENERAL RULES OF DANISH LAW ON COMPENSATION FOR NON-CONTRACTUAL DAMAGE

32. It follows from the general rules of Danish law on compensation that any person who has sustained a loss or an injury due to another person's actions or omissions, and who has accordingly sustained a pecuniary loss and/or a non-pecuniary loss can claim compensation from the person who caused the loss or injury in civil proceedings. This also applies in situations where any loss or injury was caused by a public authority. The general basis of liability under Danish law is fault-based liability, which implies that

liability will emerge for any loss or injury caused by intentional or negligent conduct.

33. In addition to the existence of fault-based liability, in order to find a person liable for paying compensation, it must be established that there is a causal connection between the loss or injury sustained and the actionable circumstances. In addition, the loss or injury must be a foreseeable consequence of the tortious act in order for that person to incur liability.

34. The types of damage for which a victim can claim compensation are set out in, *inter alia*, the Danish Liability for Damage Act (*Erstatningsansvarsloven*). Those items comprise compensation for both pecuniary and non-pecuniary damage. One example of compensation for non-pecuniary damage is compensation for injury to feelings.

35. The relevant provision of the Liability for Damage Act concerning compensation for injury to feelings reads as follows:

Section 26

> "(1) Any person who is liable for the unlawful violation of another person's freedom, peace, honour or person shall pay compensation for injury to feelings in respect of that injury.
>
> (2) In determining the amount of compensation, weight may be attached to the fact that the violation was committed in connection with an offence involving a contravention of the provisions of Chapter 23 or 24 of the Penal Code, including if the violation was caused to a person under eighteen years of age."

36. Claims for compensation in respect of injury to feelings can also be brought against public authorities for any unlawful violations. One example can be found in the Supreme Court judgment of 22 April 2021, reproduced on page 3343 of the Danish Weekly Law Reports (*Ugeskrift for Retsvæsen* – UfR) for 2021. The case concerned a claim against a local authority for payment of compensation to a disabled person who had not received the support person she was entitled to. The Supreme Court confirmed that in principle compensation for injury to feelings would be possible in such a case. However, in the specific case no compensation was awarded.

37. In addition, it is possible to claim compensation, in Danish courts, in respect of non-pecuniary damage (including compensation for injury to feelings), when public authorities have violated an individual's rights under the European Convention on Human Rights, in accordance with the principle in section 26 of the Liability for Damage Act (see paragraph 35 above), read together with Article 13 of the Convention and in pursuance of the case-law of the Court concerning Article 41 of the Convention. An illustration of this is contained, among others, in paragraph 42 of the Supreme Court judgment of 22 April 2021 (reproduced on page 3343 of the Danish Weekly Law Reports 2021). In that case, the Supreme Court found as follows concerning the issue of compensation for violations of rights under the Convention:

"If the European Convention on Human Rights or any protocol thereto is violated, it follows from Article 13 of the Convention, read with the principles set out in section 26 of the Liability for Damage Act, that a person must be awarded compensation if that person would be entitled to compensation in pursuance of the case-law of the European Court of Human Rights relating to Article 41 of the Convention, see, *inter alia*, the Supreme Court judgments of 21 June 2017 (reproduced on page 2929 of the Weekly Law Reports for 2017 (UfR 2017.2929)) and of 10 September 2019 (reproduced on page 4010 of the Weekly Law Reports for 2019 (UfR 2019.4010))."

IV. STATE COMPENSATION FOR VICTIMS OF CRIME ACT

38. The scheme to compensate victims of crime was set up by Law no. 277 of 26 May 1976 on State Compensation for Victims of Crime. The rationale of the scheme is to help victims of crime who have difficulties in obtaining compensation from the offenders, as in most cases offenders are unable to pay compensation, and liability for damages is usually not covered by liability insurance (see the explanatory notes on the State Compensation for Victims of Crime Bill (Bill No. 144) in columns 2489-2490 of Supplement A to the Official Report on Parliamentary Proceedings (*Folketingstidende*) for 1975-76). When compensation is paid under the scheme, the State will be subrogated to the victim's rights against the perpetrator.

39. Decisions on compensation in accordance with the State Compensation for Victims of Crime Act are made on the basis of written documents by the Criminal Injuries Compensation Board, which is appointed by the Minister of Justice (section 11(1)). The Chair and Deputy Chairs must be High Court judges, (section 11(2)) and are appointed for a period of four years like the additional members (section 11(4)). Administrative decisions made by the Board in the cases brought before it will be final, (section 16). However, decisions of the Criminal Injuries Compensation Board can be brought before the courts in civil proceedings instituted by the person claiming compensation against the Board.

40. It follows, *inter alia*, from section 6 of the State Compensation for Victims of Crime Act that compensation can be awarded under the rules of the Act even though no criminal proceedings have been brought. The same applies in cases where, for example, charges have been withdrawn. In such cases, the Criminal Injuries Compensation Board is the authority determining whether the conditions for awarding compensation have been met, including whether a criminal act has occurred and whether personal injury was sustained as a consequence of that act.

41. The relevant provisions of the State Compensation for Victims of Crime Act read as follows:

Section 1

"(1) The State awards compensation to victims of crime for personal injury inflicted by a violation of the Penal Code or the Danish Act on Restraining Orders and Eviction

Orders (*Lov om tilhold, opholdsforbud og bortvisning*) if the offence was committed within Danish territory. The same applies to personal injury arising in the course of assistance to the police in connection with an arrest or in the course of acts performed for the purpose of a lawful citizen's arrest or the prevention of criminal offences.

(2) Compensation is also awarded for damage to or loss of clothes and other ordinary personal belongings, including any small amounts of cash that the victim had on his or her person when the personal injury was inflicted."

Section 6

"(1) Compensation is awarded even though the perpetrator is

(i) unknown or cannot be located;

(ii) under fifteen years of age; or

(iii) of unsound mind.

(2) Compensation is awarded even though the defendant has been acquitted in criminal proceedings, if the conditions set out in this Act are otherwise met."

Section 10

"(1) Eligibility for compensation is subject to the condition that the offence has been reported to the police within 72 hours and that the victim claims compensation from the perpetrator in any subsequent criminal proceedings.

(2) The condition that the offence must be reported to the police within 72 hours does not apply to cases of violation of Articles 210, 216 and 222-226, or Article 227 § 1 of the Penal Code, and to cases of violation of Articles 218-221 and Article 225 of the Penal Code committed by persons under eighteen years of age.

(3) The provision of subsection (1) hereof may be derogated from if justified by the circumstances.

(4) The police shall advise the victim on his or her right to be awarded compensation under this Act."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

42. Relying on Articles 3 and 8 of the Convention, the applicant complained that she had been deprived of her right to an effective prosecution and judicial review in respect of the alleged rape. In so far as relevant, those Articles read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8

"1. Everyone has the right to respect for his private ... life ..."

43. In respect of her above complaint, the applicant also argued that she had not had access to a court or effective remedies, in contravention of Articles 6 and 13 of the Convention.

44. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case and that it is not bound by the characterisation given by an applicant or a Government (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018, and *S.M. v. Croatia* [GC], no. 60561/14, §§ 241-43, 25 June 2020). Having regard to the circumstances of the case and the manner in which the applicant's complaints were formulated, it considers it more appropriate to examine the complaints only under Articles 3 and 8 of the Convention.

A. Admissibility

1. The Government's objection of non-exhaustion of domestic remedies

45. The Government submitted that the application should be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention, since the applicant's complaints and the subject-matter of the application had not been considered by the national courts, as they could have been. Alternatively, the complaints should be declared manifestly ill-founded.

46. They emphasised that, following a dialogue between the Director of Public Prosecutions and the applicant's lawyer about the potential possibility of claiming compensation under Chapter 93a of the Administration of Justice Act (see paragraph 21 above), such claims were indeed lodged with the prosecutor on 31 January 2023 (see paragraph 22 above). They were rejected by the prosecutor on 24 April 2023 (see paragraph 24 above) and, on appeal, by the Director of Public Prosecutions on 30 June 2023 (see paragraph 25 above), both finding that the claims did not fall within the scope of the rule on summary procedures provided for in section 1018h of the Administration of Justice Act (see paragraph 31 above). On the latter date, the Director of Public Prosecutions also informed the applicant, that within a period of two months from the receipt of the decision, she could bring it before the courts, including to obtain a decision on whether they fell within the scope of the rule on summary procedures in Chapter 93a of the Administration of Justice Act (see paragraph 30 above). Alternatively, the applicant could lodge her claim for damages directly in civil proceedings. The matter would thus be considered as all other civil proceedings under civil procedure rules. The latter remedy was still available to the applicant.

47. The Government added that if the applicant was of the opinion that the two-month rule in section 724(2) of the Administration of Justice Act (see

paragraph 28 above) in itself was contrary to the Convention, she could also bring a civil action in that regard.

48. The applicant disagreed and pointed out that, as an alleged victim of rape, she had made use of the criminal-law remedy available to her. Those proceedings ended on 16 November 2021, when the District Court dismissed the case against A (see paragraph 15 above). The civil-law remedy relied on by the Government could only lead to the payment of damages by the State, not to the identification and punishment of the offender. The arguments of the Government about domestic remedies have changed drastically while the case has been pending before the Court. First the Government demanded that the applicant file a claim under section 1018h of the Administration of Justice Act. Later the Government accepted that section 1018h did not in fact apply, but then claims that the applicant can lodge a claim for damages against the State under the general provisions of Danish law on compensation for damage caused. The Government has not referred to any specific provisions of legislation or any case law remotely similar to the applicant's case.

49. The general principles concerning exhaustion of domestic remedies have most recently been set out in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-145, 27 November 2023). The Court reiterates that the obligation to exhaust the available domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of these remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (ibid., § 139).

50. In the present case, the essence of the applicant's Convention grievances was that she had been deprived of her right to an effective prosecution and judicial review in respect of the alleged rape (see paragraph 42 above).

51. The Court reiterates that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal laws that effectively punish rape, and to apply them in practice through effective investigation and prosecution (see, *inter alia*, *M.C. v. Bulgaria*, no. 39272/98, § 153, ECHR 2003-XII, and *B.V. v. Belgium*, no. 61030/08, § 55, 2 May 2017). That positive obligation further requires the criminalisation and effective prosecution of all non-consensual sexual acts, including in the absence of physical resistance by the victim (see *M.G.C. v. Romania*, no. 61495/11, § 59, 15 March 2016, and *Z v. Bulgaria*, no. 39257/17, § 67, 28 May 2020).

52. It is not in dispute between the parties that effective criminal-law provisions were in place under the Penal Code (see paragraph 27 above). The crux of the matter related to the fact that the District Court had to dismiss the proceedings against the alleged perpetrator because the prosecutor's office had failed to comply with the two-month time-limit set out in section 724(2) of the Administration of Justice Act. The applicant has already tried

two remedies in order to claim compensation. Her claim for compensation under the State Compensation for Victims of Crime Act proved ineffective, as the applicant cannot sufficiently establish that she has been the victim of a crime (see paragraph 18 above). Although her lawyer considered this remedy ineffective, on the advice of the prosecutor she tried to claim compensation under chapter 93a of the Administration of Justice Act. This claim was rejected by the prosecutor as it fell outside the scope of section 1018h of the act. This rejection was upheld by the Director of Public Prosecutions (see paragraph 21-25 above). Given the conflicting advice on effective remedies given to the applicant by the prosecutor, and the uncertainty regarding the third possible remedy – a claim for damages in civil proceedings – the Court finds that even assuming that a civil remedy for compensation could be considered an effective remedy in a case concerning the failure to adequately respond to an allegation of rape (see, among others, *Vučković v. Croatia*, no. 15798/20, § 41, 12 December 2023, and *R.B. v. Estonia*, no. 22597/16, § 65, 22 June 2021, and the references cited therein), in this case it cannot be considered to be effective.

53. It follows that the Government's objection of non-exhaustion of domestic remedies should be dismissed.

2. Other grounds for inadmissibility

54. In the Court's view, the complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. The application must therefore be declared admissible.

B. Merits

1. Arguments by the parties

(a) The applicant

55. The applicant maintained that the State had failed in its obligations under Articles 3, 6 and 8 to carry out an effective investigation and prosecution, and to secure her a judicial review, in respect of the alleged rape offence that she had reported to the police on 7 June 2021 (see paragraph 5 above).

56. In particular, due to a serious mishandling of her case when trying to notify A of its decision of 16 September 2021, the prosecutor's office had failed to comply with the two-month time-limit set out in section 724(2) of the Administration of Justice Act (see paragraphs 13 and 14 above). In the applicant's view, the prosecutor's office could and should have used various other notification methods than the one attempted, and it should have discovered and rectified its mistakes immediately after the registered letter had been returned to its sender.

57. The applicant argued that the first-instance prosecutor's office had also been responsible for the charges against A being dropped, because allegedly it had been aware of the prosecutor's decision to pursue the prosecution of A (see paragraph 11 above) and that a registered letter to this effect had been sent to A on 16 September 2021 (see paragraph 13 above). It should therefore, in the applicant's view, have notified A that the charges had been restored and have submitted an indictment to the District Court.

58. As a result of the above-mentioned errors, the charges against A were dismissed by the District Court on 16 November 2021 (see paragraph 15 above). The applicant claimed that the mistakes committed in her case had been part of a structural and systemic problem in Denmark. She emphasised that two ministers of justice had recognised that new regulations and changes were necessary (see paragraph 29 above).

59. She also maintained that a rigid use of section 724 of the Administration of Justice Act (see paragraph 28 above), combined with a two-month time-limit that was too short, and the lack of a mechanism to ensure proper notification amounted to a *de facto* hindrance to securing her core rights as a victim under the criminal law. She contended that there was no adequate legal framework in place. In support of her argument, she noted, among other things, that the Government intended to extend the time-limit from two to four months (see paragraph 29 above), and to introduce a coordinator who would be in charge of serving notifications to accused persons.

(b) The Government

60. The Government observed from the outset that the two-month time-limit set out in section 724(2) of the Administration of Justice Act sought to balance out the opposing interests of the person charged and the victim and society when ensuring the prosecution of perpetrators. Thus, although the time-limit might be perceived as rigid and unnecessary from the victim's perspective, the person charged with a crime, and therefore at risk of imprisonment, would need a final determination, within a reasonable time, of whether charges were being brought against him or her. Moreover, certain conditions had been embedded in the provision, in particular that the prosecution of an individual could continue if that individual's circumstances had prevented the notification from being served. However, there had been no exemption applicable to situations, like in the present case, in which errors had occurred in the processing of a criminal case due to administrative mistakes on the part of the prosecution service.

61. In the Government's view they had a wide margin of appreciation to determine specific rules on the withdrawal and dismissal of charges, including the appropriate time-limit for notifying a person of the reversal of a decision to drop charges, and they considered that a two-month time-limit could not *per se* be considered inadequate.

62. The Government acknowledged the errors made by the prosecution, and the fact that on account of those errors it had not been, and was no longer, possible to charge the alleged perpetrator. By virtue of section 724(2) of the Administration of Justice Act there had been only two possible ways of notifying A (see paragraph 28 above), and regrettably the mistakes made had resulted in a failure to comply with the two-month time-limit. The errors had been very unfortunate, both for the applicant and the confidence in public authorities, but they had been accidental administrative errors, which had undeniably been made by a public authority. The mistakes did not reflect a structural problem or general incompetence on the part of the prosecution. They had occurred in an isolated incident. In conclusion, the Government maintained that they had not been such significant flaws as to amount to a breach of Articles 3 and 8 of the Convention.

63. The Government also emphasised that the applicant could still claim compensation, in respect of pecuniary and non-pecuniary damage, for the errors that had been committed by the Prosecution Service in civil proceedings (see also the Government's arguments in connection with their objection of non-exhaustion of domestic remedies, summarised in paragraphs 45-47 above).

2. The Court's assessment

64. The Court reiterates that rape and serious sexual assault amount to treatment that falls within the ambit of Article 3 of the Convention and also engages fundamental values and essential aspects of "private life" within the meaning of Article 8. Applying that established principle, the Court considers that the applicant's complaints may be examined jointly under Articles 3 and 8 of the Convention. It observes in particular that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal laws that effectively punish rape, and to apply them in practice through effective investigation and prosecution. Implicit in this context is a requirement to act with reasonable promptness and expedition. A prompt response on the part of the authorities is essential to maintaining public confidence in their adherence to the rule of law and preventing any appearance of collusion in or tolerance of unlawful acts (see, among other authorities, *E.G. v. the Republic of Moldova*, no. 37882/13, §§ 39-40, 13 April 2021 and the cases cited therein).

65. It is noted that on 7 June 2021 the applicant reported to the police that she had been raped by A the previous night. Immediately thereafter, the investigation commenced and A was taken into custody. By a decision of 30 July 2021, the first-instance prosecutor decided to drop the charges against A (see paragraphs 5 to 9 above). On 16 September 2021 the prosecutor reversed that finding and restored the charges against A (see paragraph 11 above). It is not in dispute between the parties that the investigation and the prosecution were effective up until the latter date.

66. The prosecutor had to notify A before 30 September 2021 in order to comply with the two-month time-limit set out in section 724(2) of the Administration of Justice Act (see paragraph 12 above). Owing to an administrative error, the prosecutor's search database wrongly indicated that A did not have a Digital Post account. Instead, the prosecutor sent a registered letter to A, but owing to another administrative error, the prosecutor failed to note that he had a c/o address. Thus, the registered letter was returned on 23 September 2021 with a stamp stating "addressee unknown at this address (see paragraph 13 above). Finally, between 23 and 30 September 2021, the prosecutor failed to rectify the above-mentioned mistakes or to make other attempts to notify A (see paragraph 14 above). Consequently, the charges against A had to be dismissed (see paragraph 15 above).

67. Both the Prosecution Service (see paragraph 16 above) and the Government (see paragraph 62 above) have acknowledged and regretted the above-mentioned mistakes. In the Government's opinion though, the errors were not so serious as to amount to a violation of the provisions relied on by the applicant.

68. The Court is generally not concerned with allegations of minor errors or isolated omissions in the investigation or prosecution. In the present case, however, the mistakes committed on the part of the prosecution led to the very serious consequence that it was prevented from prosecuting the alleged perpetrator of the rape. The Court will therefore proceed to examine whether the undisputed shortcomings in the notification alone, or, as claimed by the applicant, combined with the legislation and its application, had such significant flaws as to amount to a breach of the respondent State's positive obligations under Articles 3 and 8 of the Convention (see, for example, *M.C. v. Bulgaria*, cited above, §§ 167-168).

69. The Court's task is not to review the relevant legislation or an impugned practice in the abstract. Instead, it must confine itself, as far as possible, without losing sight of the general context, to examining the issues raised by the case before it (see, *inter alia*, *Aggerholm v. Denmark*, no. 45439/18, § 101, 15 September 2020). Taking into account the material before it, the Court is not convinced by the applicant's assertion that section 724(2) of the Administration of Justice Act by itself amounted to an obstacle for her to obtain a judicial review in respect of the reported rape offence, and that the mistakes committed in her case were part of a structural and systemic problem in Denmark (see the applicant's arguments in this respect, summarised in paragraphs 58 and 59 above). The Court has no reason to doubt that in general it has been unproblematic for the prosecution to reverse a decision by the first-instance prosecution to withdraw the charges, and to notify the relevant person thereof, within two months. It notes that there are only two methods of notification prescribed by section 724(2), namely by a Digital Post account or by registered letter (see paragraph 28 above). With the Danish system of compulsory Digital Post accounts in place

(see paragraph 12 above), notification would normally succeed instantly. The relatively short time limit does, however, require diligence from the Prosecution Service in order to ensure that notifications happens before the time limit expires.

70. The Court cannot ignore the fact that in the present case, at least three consecutive errors were committed – and acknowledged – by the Prosecution Service (see paragraph 13-14 above), including a failure to follow the internal guidelines of the prosecutor's office when the registered letter was returned to its sender on 23 September 2021. The Court thus notes that the prosecution had ample time, before the deadline of 30 September 2021, to verify whether the registered letter had been sent to the correct address, whether A had a new address and whether it would be possible to make another attempt to serve the letter of notification. It would also have been appropriate to verify whether the prosecutor's database was indeed correct in indicating that A, quite exceptionally, did not have a compulsory Digital Post account (see paragraph 12 above). Regardless of whether the first-instance prosecutor, or other administrative authorities, may also have been responsible for the failure to notify A within the prescribed two-month deadline (see the applicant's arguments in this respect, summarised in paragraph 57 above), the result remained the same; the charges against A were dismissed by the District Court on 16 November 2021 (see paragraph 15 above), and consequently, the applicant was not secured an effective prosecution or judicial review in respect of the rape offence that she had reported to the police.

71. The foregoing considerations are sufficient to enable the Court to conclude that there have been such significant flaws in the procedural response to the applicant's allegations of rape that there has been a violation of the respondent State's positive obligations under Articles 3 and 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

73. The applicant claimed 32,000 euros (EUR) in respect of non-pecuniary damage.

74. The Government found the amount excessive. They submitted that a finding of a violation would in itself constitute sufficient just satisfaction.

75. The Court considers it undeniable that the applicant sustained non-pecuniary damage on account of the violations found under Articles 3 and 8 of the Convention. Making its assessment on an equitable basis as required by Article 41 of the Convention, it awards EUR 10,000 under this head (see, for example and *mutatis mutandis*, *E.G. v. the Republic of Moldova*, cited above, § 55, and *El-Asmar v. Denmark*, no. 27753/19, § 84, 3 October 2023).

76. The applicant claimed EUR 14,340 in respect of pecuniary damage, relating to the consequences of the alleged rape, including illness, medical expenses, damaged clothing and a delay to her studies.

77. The Government submitted that this claim only related to the alleged criminal offence and not to the violations found.

78. The Court notes that this claim has not been substantiated. In any event, the applicant has failed to show the existence of a causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

B. Costs and expenses

79. The applicant claimed 213,890 Danish Kroner (DKK – equivalent to approximately EUR 28,700) for the costs of the proceedings before the Court. She alleged that she incurred legal fees for a total of 157 hours of work carried out by her representative and his legal team.

80. The Government found the amount excessive. They added that the applicant could apply for and be expected to be granted legal aid under the Danish Legal Aid Act (*Lov 1999-12-20 nr. 940 om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer i henhold til menneskerettighedskonventioner*). Where legal aid was granted, the Department of Civil Affairs would usually pay up to DKK 40,000 (equivalent to approximately EUR 5,400) on a provisional basis. In the Government's view, that sum would be sufficient to cover the legal costs related to the case before the Court.

81. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10,000, covering the costs for the proceedings before it (see, among other authorities, *El-Asmar*, cited above, § 88).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Articles 3 and 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President