



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

THIRD SECTION

**CASE OF X v. GREECE**

*(Application no. 38588/21)*

JUDGMENT

Art 3 and Art 8 • Positive obligations • Failure of investigative and judicial authorities to adequately respond to rape allegations and submit the case to the careful scrutiny required • Adequate legal and regulatory domestic framework not applied in practice as investigation ineffective • Investigating authorities' failure to take measures to prevent the applicant's further traumatisation, take sufficient account of her needs and inform her of her rights as a victim, in the light of relevant international standards and recommendations • No analysis by the prosecution and criminal court of the circumstances of the case from the perspective of gender-based violence

Prepared by the Registry. Does not bind the Court.

STRASBOURG

13 February 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 X v. Greece,**

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

Pere Pastor Vilanova, *President*,

Jolien Schukking,

Yonko Grozev,

Darian Pavli,

Ioannis Ktistakis,

Andreas Zünd,

Oddný Mjöll Arnardóttir, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 38588/21) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Ms X (“the applicant”), on 7 July 2021;

the decision to give notice to the Greek Government (“the Government”) of the complaints concerning Articles 3 and 8 § 1 of the Convention and to declare inadmissible the remainder of the application;

the decision not to have the applicant’s name disclosed;

the decision of the United Kingdom’s Government not to avail themselves of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the parties’ observations;

Having deliberated in private on 23 January 2024,

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

## INTRODUCTION

1. The application concerns the applicant’s allegations that the national authorities did not comply with their positive obligations under Articles 3 and 8 of the Convention to conduct an effective investigation and criminal proceedings into her allegations of rape while protecting her rights as a victim of gender-based violence.

## THE FACTS

2. The applicant was born in 2000 and lives in Dewsbury, the United Kingdom. At the time of the events in question, she was eighteen years old. She was represented by Mr M. Polak, a lawyer practising in London.

3. The Government were represented by their Agent, Ms S. Trekli, Senior Adviser at the State Legal Council.

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

## I. RECORD OF THE ALLEGED INCIDENT AND POLICE INVESTIGATION

5. On 22 September 2019 the applicant arrived in Parga for a holiday with her mother. On 25 September 2019 she and her mother went to the bar of a hotel near the hotel where they were staying and met the accused, who was employed there as a bartender. On the evening of 26 September 2019, at around 9 p.m., the applicant and her mother went to the hotel bar again. They chatted to the bartender while having drinks. At some point during the evening the mother returned to her room and the applicant stayed with the accused without anyone else being present. She sent her mother a text message at 2.50 a.m. saying that everything was okay. After some time the applicant went back to her room and told her mother that the accused had forced her into having sexual intercourse with him using physical violence. At around 4 a.m. her mother called the Parga police and reported that her daughter had been raped.

6. According to the applicant, soon after the call two male police officers arrived and explained that there was nothing they could do until 9 a.m. Her mother insisted that they take action. They eventually led the two women to the police car and drove them around for a while before going back to the hotel where the alleged incident took place and then driving them to the police station. According to the applicant, six other male officers were present. She was asked whether she wanted to speak to the accused, who was in a different room at the police station, but she refused. Her mother went to speak to him while the police officers stood with their backs to him and had no involvement. The applicant was then asked to identify the alleged perpetrator without any official procedure being followed. He was dragged into the room and she was asked to confirm whether it was him, which she did. She was not given anything to drink or eat while she was at the police station, from around 7 a.m. to 11 a.m. The Government did not comment on the applicant's account of events.

7. According to the applicant, she requested an official translator in order to give her statement, but was told that no one was available so the owner of the hotel where she had been staying assisted with it. According to her, his English was extremely poor, the statement was written in Greek and, as it was not read back to her, she could not confirm its accuracy. According to the Government, the person in question was an agent representing the travel company which had organised the applicant's holidays; he was sworn in and appointed as the interpreter and translator of her statement.

8. The applicant gave her statement to a male investigating officer and a female police officer as part of the preliminary investigation carried out by the police. According to her statement, she had two alcoholic cocktails at the bar. She drank another drink that the accused had bought for her. He came out of the bar and sat next to her, then put his arm on her shoulder to get

closer. At one point, he said “let me show you something” and led her to the basement of the hotel, where there were bathrooms and showers. In the lobby of this area, he took off her clothes and his clothes. As she was dizzy from drinking alcohol, she did not resist and told him to stop, but he did not. He then made her kneel down, pushing her violently with his hands, and would not let her get up. He approached her from behind and had sexual intercourse with her against her will. Her face was pushed against a towel rail. She could not shout out and the pressure on the towels hurt her neck. She did not know whether he had worn a condom. She had blood on her, which she washed off in the shower. They then both got dressed and he offered her to accompany her to her hotel. She did not refuse because she was scared and he walked her to the entrance of her hotel. At the end she stated “I want him to be prosecuted and punished”. She lodged a criminal complaint.

9. The applicant’s mother also provided a witness statement. She stated that they had been sitting at the bar where the accused worked and had chatted together while having drinks. She then left her daughter alone with the accused and went back to her room. She received a message from her daughter at 2.50 a.m. saying that everything was fine. At some point her daughter came back frightened and told her that the accused had had sexual intercourse with her against her will, so she informed the police.

10. The applicant and her mother were then taken in a police vehicle to the Parga Health Centre. According to the applicant, blood samples were taken, even though she was not provided with any information on the type and purpose of the medical examinations. According to the Government, blood and urine samples were taken at the Parga Health Centre to detect the presence of alcohol and drugs. The applicant and her mother were then taken to the Department of Forensic Medicine at the Ioannina University Hospital. The applicant submitted that the accused had been in the car in front of her and that at some stages of the journey their cars had been side by side. She was also confronted with him at the hospital. According to her, she was given no information about the examinations and no explanation of the hospital’s procedure.

11. At the hospital, a physical examination was conducted by a male doctor, which revealed a bruise (largest diameter 1.5 cm) on the front inner side of the left thigh (in the middle), a bruise on the outer side of the right thigh (largest diameter 1 cm, on the lower third) and two bruises on the outer side of the right tibia (largest diameter 2.5 cm and 3 cm respectively, on the upper third). The bruises on the thighs were found to be at the stage of resolution. A small abrasion on the outer side of the right knee joint was also found to have been caused recently. A genital examination revealed a perforated hymen, in particular two ruptures at the 5 and 7 o’clock position accompanied by swelling and redness. Small deep red bruises were found in the vulvar vestibule at the 3 and 9 o’clock position. Those injuries (*κακώσεις*) were found to have been caused recently. The examination concluded that the

findings supported “entry of a blunt object in the vagina” and that “other lewd acts (*ασεληγείς πράξεις*) could not be excluded or confirmed by forensic examination”. The cotton swab used for a vaginal smear test and the applicant’s underwear were handed to the police.

12. According to the applicant, no explanation was given to her during or after the examinations, despite her mother’s requests. She submitted that while she had been waiting at the hospital, she had been sitting directly across from the accused, who had not been kept separate from her. The police then drove her back to the hotel without providing her with any information or documents relating to the examinations. She was not given any medication.

13. According to the applicant, she was informed that the next day she would be picked up to go to another hospital, without being told why. However, on 28 September 2019 police officers instead took her to the Preveza police station, where she was told that she had to sign documents in Greek even though she was not provided with an official translation or an official translator. She submitted that she had signed the documents which, according to a lady who worked in the office brought in by the police to speak to her, were evidence. She was scared and worried about what might happen if she refused.

## II. JUDICIAL INVESTIGATION AND CRIMINAL PROCEEDINGS

14. On 28 September 2019 the prosecutor at the Preveza Criminal Court of First Instance requested the Preveza investigating judge to conduct the main investigation and criminal proceedings for rape were brought against the accused. On 30 September 2019 he gave his defence statement. He was banned from leaving the country and released. On the same date the applicant was informed by the British embassy in Athens that the accused had been released pending trial. On 6 July 2020 the main investigation was closed.

15. The prosecutor issued her proposal on 9 September 2020, citing Article 336 § 1 of the Criminal Code on rape (see paragraph 20 below). She held as follows:

“...Subjectively, for the establishment of rape, intent is required (*dolus eventualis* suffices), which consists in the will of the offender to coerce another person by physical force or by the threat of grave and imminent danger or both to engage in or tolerate a sexual act and the knowledge, even in the sense of *dolus eventualis*, that the other person does not consent to it ... Furthermore, to establish force it is not necessary for the victim to have actively resisted, but it is sufficient for the lewd act to have been carried out against his or her will, which was expressed and became apparent to the offender in one way or another. Accordingly, rape also occurs where the victim, out of surprise or fear of the consequences of resistance, or because of weak physical strength or other circumstances, reasonably considered that resistance was impossible or futile and did not resist the perpetrator’s physical violence at all. *A fortiori*, it is not required that the physical violence and, accordingly, the resistance to it be perpetual, that is to say until the act is completed.”

## 16. She proceeded to hold as follows:

“... From the evidence collected ... the following facts have emerged: ... On 25 September 2019 the complainant and her mother went to the bar of the ... Hotel ... and during their time there they met the accused, chatted with him and a climate of intimacy developed, especially between the accused and the complainant. Subsequently, on 26 September 2019 at around [9 p.m.], the women went to the above bar again and the accused, when he saw them, greeted them and started chatting. There was flirting between the accused and the complainant, which was observed by the complainant’s mother, who suggested to the accused to take her daughter out for food and drinks. When the other customers left the bar and the hotel restaurant was closed, the complainant’s mother left for her room. The accused was left alone with the complainant; he offered her an extra drink and came out from the bar to approach her and get closer to her. He put his hand on her shoulder, at the same time expressing his intention to kiss her, and the complainant responded without any objection. The accused then suggested that they go down to the basement of the hotel to have more privacy, to which she agreed. The fact that at around [2.50 a.m.] the complainant contacted her mother and told her that everything was fine is indicative of the fact that everything went smoothly and according to the wishes of both of them. Subsequently, when they went down to the basement of the hotel, where there were toilets, showers and furnished storage areas, they started kissing and had intercourse. During this time, the accused noticed that the complainant was bleeding owing to a rupture of her vaginal hymen and asked her why she had not told him that she had never had sexual intercourse before, but she did not respond, smiled and hugged him. Subsequently, the accused suggested that they take a shower and when they were finished the complainant began kissing the accused again, led him to the toilets and they again engaged in intercourse. When the act of intercourse was completed, they put on their clothes, the accused led the complainant to the bar area and he went down to the basement to clean the area. After about ten minutes, the accused returned to the bar, found the complainant waiting for him and then offered to accompany her to the hotel where she was staying, which they did. When the complainant returned to her room, she told her mother that the accused had forced her into having intercourse with him using physical violence ... In her complaint, the complainant alleges that the accused led her to the basement of the hotel, removed all her clothes and subsequently took off his own and that, despite telling him to stop, the accused continued against her will. She also claimed that he had used physical violence and his superior physical strength, forced her to go down on her knees and with his hands immobilised her so that she could not get up, approached her from behind and had intercourse [with her] against her will. She claimed that when the accused had held her down on her knees, her face had been pushed against a [towel rail] and for that reason she could not cry out for help. However, the above allegations of the complainant are unfounded. In particular, according to the forensic report ... bruises of 1.5, 2.5, 3 cm were found on the front inner side of the left thigh, the outer side of the right thigh and the right tibia, which were at the stage of resolution ... In addition, a recently caused small abrasion on the outer side of the right knee and small deep reddish abrasions were found at the 3 o’clock and 9 o’clock positions in the vulvar vestibule, [as well as] swelling, redness and a rupture of the vaginal hymen. However, it follows from the above that the examination of the complainant did not reveal any objective findings confirming her allegations that she was immobilised by the accused and that her resistance was overcome by his superior physical strength, while the findings in respect of the perigenital region are not indicative of physical violence, but are consistent with the act of intercourse and the rupture of the hymen. Moreover, in addition to the above, the complainant has not provided a convincing explanation as to how she got from the bar area to the basement of the hotel and why the accused, who

had previously raped her according to her allegations, accompanied her to the hotel where she was staying with her mother. On the contrary, the accused's assertion that the complainant consented to the act of intercourse is considered to be well-founded.

It follows from all the above that there were no indications that the accused has committed the offence of rape and [that] for this reason your Indictments Division should decide to drop the charges against him ...”

17. On 2 October 2020 the Indictments Division of the Preveza Criminal Court of First Instance issued decision (*βούλευμα*) no. 59/2020, which started by citing the prosecutor's proposal (see paragraphs 14-16 above) Then, considering the evidence gathered during the investigation, in particular the witness statements, forensic report, documents and the accused's defence statement, it referred to the facts as established in the prosecutor's proposal and ruled that there were insufficient indications to pursue a public criminal trial against the accused for the offence of rape under Article 336 § 1 of the Criminal Code and that the charges should be dropped. It lifted the ban on him leaving the country and stated that costs should not be charged against the complainant (the applicant) as it had not been established that her complaint was entirely false and had been made with intent or gross negligence or was fraudulently distorted.

### III. SUBSEQUENT EVENTS

18. On 10 November 2020 the applicant's representative emailed the consul at the British embassy in Athens for an update, stating that her family were having difficulties receiving information on the case. The consul replied on the same day that, according to the Preveza police, the case file was being dealt with by the Preveza prosecutor but the prosecutor's office would not share any details of the case with the embassy. On 13 January 2021 the consul informed the applicant's representative that the embassy had received unconfirmed information that the accused “had been acquitted” and the representative responded that the family was not aware of that and that the applicant had not been invited to give evidence. On 14 January 2021 the consul informed the representative by email that, according to the prosecutor's office, decision no. 59/2020 had been issued on 2 October 2020 “to absolve the accused”, and he was sent the contact details of the Preveza Criminal Court of First Instance and the Preveza prosecutor's office. The consul also advised the applicant's family to appoint a local lawyer and provided them with a list of lawyers. On the same date the representative emailed the court and the prosecutor's office, requesting information on the case.

19. On 25 January 2021 the applicant emailed the Preveza prosecutor's office herself, requesting all police and hospital records and information on the procedure to access them. On 29 January 2021 the prosecutor's office replied, stating that, in accordance with Greek criminal procedural law, she



was not a civil party to the case as she had not declared that in her statement and paid the relevant fee and that, moreover, the relevant time-limit had expired. She could not therefore receive a copy of the file. The prosecutor's office did inform her, however, that the case against the accused had been dismissed on the merits by decision no. 59/2020 of the Preveza Indictments Division. On 1 February 2021 the prosecutor's office reiterated in an email to the British embassy in Athens that the applicant had not been notified of that decision because in her statement she had not declared that she was joining the proceedings as a civil party and had not paid the relevant fee. They also stated that she had not appeared to testify before the investigating judge the day after the incident or appointed a lawyer to represent her. They stated that the prosecutor at the Ioannina Court of Appeal had been notified of the decision but that as no appeal had been lodged, the file had been returned to the Preveza prosecutor's office, which had agreed to provide a copy of the decision to any lawyer appointed by the embassy.

## RELEVANT LEGAL FRAMEWORK

### I. RELEVANT DOMESTIC LAW

#### A. Criminal Code

20. The relevant parts of Article 336 of the Criminal Code on rape, as applicable at the relevant time, provided as follows:

“1. Anyone who, through physical violence or threat of serious and imminent danger to life or physical integrity, forces another into engaging in or tolerating a sexual act shall be punished by imprisonment of up to ten (10) years.

...

4. Anyone who, except in the case referred to in paragraph 1, performs a sexual act without the consent of the victim, shall be punished by imprisonment of up to ten (10) years.”

#### B. Code of Criminal Procedure

21. The relevant provisions of the Code of Criminal Procedure provide as follows:

##### Article 82

##### Declaration in support of the charges

“1. Anyone who has the right to support the charges ... in the criminal court ... may declare that he or she is joining the proceedings to support the charges.

...

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3. A declaration in support of the charges shall not replace the criminal complaint in cases where [the criminal complaint] is necessary for the prosecution ... nor shall the criminal complaint itself be treated as a declaration in support of the charges.

4. Anyone who declares that he or she is joining the proceedings to support the charges shall acquire the status of party to the proceedings immediately after [his or her] declaration, pursuant to the requirements laid down in the following Article.”

**Article 83**  
**Declaration requirements**

“1. A declaration in support of the charges shall be made either in the complaint or in a separate document, [during] the investigation ... to the competent prosecutor, either in person or by a lawyer who has power of attorney ... The statement may be also submitted to the person conducting the preliminary investigation or investigation, even during the period when the person entitled to it is being questioned as a witness.”

**Rights of the parties**  
**Article 89**  
**Appointment and number of parties’ representatives**

“1. No party may be represented ... by more than two lawyers during the pre-trial stage and three during the trial stage.

2. A representative for the suspect, accused or person [who has joined the proceedings] to support the charges shall be appointed ...”

**Article 92**  
**Measures during which parties may be present**

“1. The parties shall have the right to be represented by a lawyer during every investigative act with the exception of the examination of witnesses and the accused... For this reason, the parties are invited in good time to attend themselves or be represented by their lawyers.”

**Article 100**  
**Right of access to the case material**

“1. The investigating judge, as soon as the accused appears or is brought before him or her to submit his or her defence, shall inform [the accused] of the content of the indictment and the investigation documents. The accused is also allowed to consult the indictment and investigation documents him or herself or via his or her representative. A copy of the indictment and investigation documents shall be provided to the accused at [his or her] written request and at his or her own cost.”

**Article 107**  
**Rights of persons in support of the charges**

“Anyone who [has joined the proceedings] to support the charges shall have the rights referred to in Articles 92 and 100. The right under Article 100 may be exercised from the time the suspect is invited to provide explanations or the accused is summoned to submit his or her defence, or from the time an arrest warrant or forcible summons is issued against him or her.”

**Article 233**  
**Appointment of an interpreter**

“1. Interpretation shall be provided without delay at every stage of the criminal proceedings, when suspects, accused persons or witnesses who do not speak or sufficiently understand the Greek language are about to be questioned ... If necessary, communication technology such as videoconferencing, telephone or Internet may be used, unless the physical presence of the interpreter is considered necessary by the investigating authority.

2. The interpreter shall be appointed from a list drawn up by the Indictments Division of the Criminal Court of First Instance, following a proposal from the prosecutor, within the last ten days of September of every year, from among persons residing or working at its headquarters, preferably civil servants ... In extremely urgent cases, and where it is impossible to appoint an interpreter from those on the list, a person who is not included in the list may be appointed as interpreter ...

3. By decision of the Minister of Justice ... the qualifications of persons who may be included in the list shall be determined.”

**C. Law no. 4478/2017 transposing Directive 2012/29/EU into Greek Law**

22. The relevant provisions of Law no. 4478/2017, transposing the Victims’ Rights Directive (2012/29/EU) into Greek law, read, at the material time, as follows:

**Article 56 – Right of victims to understand and be understood (Article 3 of Directive 2012/29/EU)**

“2. During their first contact with the victim, the police or other competent authority shall use simple and accessible language in communicating with the victim, orally or in writing ... For that purpose, a rights guide is available, written in the most commonly spoken languages, as well as in Braille.”

**Article 58 – Right of victims when making a complaint (Article 5 of Directive 2012/29/EU)**

“1. Victims shall receive, if they so request, a copy of the complaint they have made. For that purpose, the official receiving the complaint is obliged to inform the victims of this right.

...

3. Victims who do not understand or speak the Greek language, shall receive translation, free of charge, of the document provided for in paragraph 1, if they so request, in a language that they understand.”

**Article 59 – Right of victims to receive information about their case (Article 6 of Directive 2012/29/EU)**

“1. Victims shall be notified without unnecessary delay of their right to receive information, if they so request, about the criminal proceedings instituted as a result of their complaint of a criminal offence, in particular as regards:

(a) any order or decision not to charge or to end prosecution or not to prosecute the offender, including the reasons or a brief summary of the reasons for the order or decision;

(b) the time and place of the trial and the nature of the charges against the offender;

(c) information about the criminal proceedings instituted and the final decision issued, in accordance with the provisions of the Code of Criminal Procedure, provided that the victim has become a lawful party to the criminal proceedings.

...

2. The information referred to in paragraph 1 may be sent to an email address provided by the victim or handed to the victim personally or to the victim's appointed lawyer if the victim has declared that he or she wishes to join the proceedings as a civil party.

3. The victim can revoke anytime his or her request relating to the exercise of ... the rights laid down in the present Article, except for the right of information deriving from his or her capacity as a civil party."

**Article 60 – Right to interpretation and translation (Article 7 of Directive 2012/29/EU)**

"8. ... The victim has the right to lodge objections against a decision that interpretation is unnecessary or where the quality of the interpretation is insufficient. Objections shall be decided by the prosecutor during the preliminary investigation, by the Indictments Division during the main investigation and by the court during the main proceedings."

**Article 65 – Right to avoid contact between victim and offender (Article 19 of Directive 2012/29/EU)**

"1. ... The victim may request in writing that measures be taken to avoid contact between him or her and, if required, his or her family and the offender in the premises where the criminal proceedings are conducted. The Criminal Court of First Instance shall decide on such a request by final decision ... at any stage of the proceedings ..."

**Article 68 – Individual assessment of victims to identify specific protection needs (Article 22 of Directive 2012/29/EU)**

"1. ... The law enforcement, prosecuting and judicial authorities before which a case is pending shall inform and refer victims, if they so request, to the ... services, which shall conduct an individual assessment of the victim in a timely manner to identify any special protection needs, to assess whether and to what extent the victim can benefit from special protection measures during the criminal proceedings ..."

**Article 69 – Right to protect victims with specific protection needs during criminal proceedings (Articles 23 and 24 of Directive 2012/29/EU)**

"2. (d) all interviews with victims of sexual, gender-based or domestic violence, unless conducted by a prosecutor or a judge, shall be conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced."

## II. RELEVANT INTERNATIONAL LAW AND PRACTICE

### A. European Union law and materials

#### 1. *Victims' Rights Directive (2012/29/EU)*

23. On 25 October 2012 Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime (“the Victims’ Rights Directive”) was adopted, replacing Council Framework Decision 2001/220/JHA. It was transposed into Greek law by Law no. 4478/2017 (see paragraph 22 above). The relevant parts provide as follows:

#### **Recital 19**

“A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them ...”

#### **Recital 22**

“The moment when a complaint is made should, for the purposes of this Directive, be considered as falling within the context of the criminal proceedings. This should also include situations where authorities initiate criminal proceedings *ex officio* as a result of a criminal offence suffered by a victim.”

#### **Recital 37**

“Support should be available from the moment the competent authorities are aware of the victim and throughout criminal proceedings and for an appropriate time after such proceedings in accordance with the needs of the victim and the rights set out in this Directive ...”

#### **Recital 53**

“The risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a coordinated and respectful manner, enabling victims to establish trust in authorities. Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through, for example, video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his or her family, associates or members of the public. To that end, Member States should be encouraged to introduce, especially in relation to court buildings and police stations, feasible and practical measures enabling the facilities to include amenities such as separate entrances and waiting areas for victims. In addition, Member States should, to the extent possible, plan the criminal proceedings so that contacts between victims and their family members and offenders are avoided, such as by summoning victims and offenders to hearings at different times.”

**Article 3 – Right to understand and to be understood**

“1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.

2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood ...”

**Article 4 – Right to receive information from the first contact with a competent authority**

“1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

(a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;

(b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;

(c) how and under what conditions they can obtain protection, including protection measures;

(d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;

(e) how and under what conditions they can access compensation;

(f) how and under what conditions they are entitled to interpretation and translation;

(g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;

(h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;

(i) the contact details for communications about their case;

(j) the available restorative justice services;

(k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

2. The extent or detail of information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.”

**Article 5 – Right of victims when making a complaint**

“1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.

2. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.

3. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint provided for in paragraph 1, if they so request, in a language that they understand.”

**Article 6 – Right to receive information about their case**

“1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:

(a) any decision not to proceed with or to end an investigation or not to prosecute the offender;

(b) the time and place of the trial, and the nature of the charges against the offender.

2. Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:

(a) any final judgment in a trial;

(b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.

...

3. Information provided for under paragraph 1(a) ... shall include reasons or a brief summary of reasons for the decision concerned ...

4. The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.

5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention ... .

...”

**Article 7 – Right to interpretation and translation**

“1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.

2. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.

3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim’s request, reasons or a brief summary of reasons for such decision ... .

...

6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

7. Member States shall ensure that the competent authority assesses whether victims need interpretation or translation as provided for under paragraphs 1 and 3. Victims may challenge a decision not to provide interpretation or translation. The procedural rules for such a challenge shall be determined by national law.

8. Interpretation and translation and any consideration of a challenge of a decision not to provide interpretation or translation under this Article shall not unreasonably prolong the criminal proceedings.”

**Article 8 – Right to access victim support services**

“1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in



accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

4. Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.

5. Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.”

#### **Article 9 – Support from victim support services**

“1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:

(a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;

(b) information about or direct referral to any relevant specialist support services in place;

(c) emotional and, where available, psychological support;

(d) advice relating to financial and practical issues arising from the crime;

(e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:

(a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;

(b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.”

#### **Article 19 – Right to avoid contact between victim and offender**

“1. Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.”

#### **Article 20 – Right to protection of victims during criminal investigations**

“Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that during criminal investigations:

(a) interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority;

(b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;

(c) victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary;

(d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.”

**Article 22 – Individual assessment of victims to identify specific protection needs**

“1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

...

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

...

6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.”

**Article 23 – Right to protection of victims with specific protection needs during criminal proceedings**

“1. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 22(1), may benefit from the measures provided for in paragraphs 2 and 3 of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

2. The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22(1):

(a) interviews with the victim being carried out in premises designed or adapted for that purpose;

(b) interviews with the victim being carried out by or through professionals trained for that purpose;

(c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;

(d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.”

#### **Article 25 – Training of practitioners**

“1. Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.”

#### *2. European Union Agency for Fundamental Rights survey on violence against women*

24. The European Union (EU) Agency for Fundamental Rights (FRA) published a report in 2015 based on interviews with 42,000 women across the then twenty-eight EU member States, which, according to the Agency, contained the first results from the most comprehensive survey to date at EU level on women’s diverse experiences of violence. The report reveals a picture of extensive abuse that affects many women’s lives but has systematically been under-reported to the authorities. For example, one in 10 women have experienced some form of sexual violence since the age of 15, and one in 20 has been raped. Just over one in 5 women have experienced physical and/or sexual violence from either a current or previous partner, and just over one in 10 women report having experienced some form of sexual violence from an adult before they were 15 years old. Yet, for illustration, only 14% of women have reported their most serious incident of intimate partner violence to the police, and 13% have reported their most serious incident of non-partner violence to the police.

25. According to the report, as regards “Emotional response following the most serious incident of violence since the age of 15” (Table 3.1), practically all respondents reported having had one or several emotional responses. In particular, sexual violence by a non-partner made women feel afraid in 62% of cases; it resulted in anger in 56% of cases and in a feeling of shock in 50% of cases. Women were also likely to say that they felt ashamed (49% of cases), embarrassed (37% of cases) and/or guilty (32% of cases). Annoyance and aggressiveness were experienced in 30% and 23% of cases respectively.

26. As regards “Physical injuries resulting from the most serious incident of violence since the age of 15” (Table 3.3), 35% of the victims suffered bruises and scratches, 7% wounds, sprains, burns, 1% fractures, broken bones, broken teeth, 2% concussion or other brain injury, 5% internal injuries

and 5% other injuries. It is pointed out in the report that almost half of the victims of sexual violence by a non-partner did not suffer any injuries as a result of the most serious incident of violence.

## **B. Council of Europe**

27. By Recommendation Rec(2002)5 on the protection of women against violence, the Committee of Ministers recommended to the member States of the Council of Europe to adopt and implement a series of measures. The relevant parts of Paragraph 35 of the Appendix to the Recommendation provide as follows:

“Member states should provide for appropriate measures and sanctions in national legislation, making it possible to take swift and effective action against perpetrators of violence and redress the wrong done to women who are victims of violence. In particular, national law should:

...

- penalise any sexual act committed against non-consenting persons, even if they do not show signs of resistance;

...”

28. On 5 May 2011 the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (“the Istanbul Convention”) was adopted and it entered into force on 1 August 2014. The Convention was signed by Greece on 11 May 2011, was ratified on 18 June 2018 by Law no. 4531/2018 and entered into force in its respect on 1 October 2018. The relevant parts provide as follows:

### **Article 15 – Training of professionals**

“1. Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.

2. Parties shall encourage that the training referred to in paragraph 1 includes training on coordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.”

### **Article 18 – General obligations**

“1. Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.

2. Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of

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this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention.

3. Parties shall ensure that measures taken pursuant to this chapter shall:

– be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim;

– be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment; – aim at avoiding secondary victimisation;

– aim at the empowerment and economic independence of women victims of violence;

– allow, where appropriate, for a range of protection and support services to be located on the same premises;

– address the specific needs of vulnerable persons, including child victims, and be made available to them.

4. The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.

5. Parties shall take the appropriate measures to provide consular and other protection and support to their nationals and other victims entitled to such protection in accordance with their obligations under international law.”

### **Article 19 – Information**

“Parties shall take the necessary legislative or other measures to ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand.”

### **Article 20 – General support services**

“1. Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.

2. Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services.”

### **Article 21 – Assistance in individual/collective complaints**

“Parties shall ensure that victims have information on and access to applicable regional and international individual/collective complaints mechanisms. Parties shall promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints.”

### **Article 22 – Specialist support services**

“1. Parties shall take the necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution, immediate, short- and long-term specialist

support services to any victim subjected to any of the acts of violence covered by the scope of this Convention.

2. Parties shall provide or arrange for specialist women's support services to all women victims of violence and their children."

#### **Article 25 – Support for victims of sexual violence**

"Parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims."

#### **Article 36 – Sexual violence, including rape**

"1. Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

(a) 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;

(b) engaging in other non-consensual acts of a sexual nature with a person;

(c) causing another person to engage in non-consensual acts of a sexual nature with a third person.

2. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.

..."

#### **Article 49 – General obligations**

"1. Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.

2. Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention."

#### **Article 50 – Immediate response, prevention and protection**

"1. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.

2. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence."

**Article 55 – *Ex parte* and *ex officio* proceedings**

“1. Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant [*sic*] upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.

2. Parties shall take the necessary legislative or other measures to ensure, in accordance with the conditions provided for by their internal law, the possibility for governmental and nongovernmental organisations and domestic violence counsellors to assist and/or support victims, at their request, during investigations and judicial proceedings concerning the offences established in accordance with this Convention.”

**Article 56 – Measures of protection**

“1. Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:

(a) providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;

(b) ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;

(c) informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;

(d) enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;

(e) providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;

(f) ensuring that measures may be adopted to protect the privacy and the image of the victim;

(g) ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;

(h) providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;

...”

29. The Explanatory Report to the Istanbul Convention states, as regards Article 19, as follows:

“124. In the immediate aftermath of violence, victims are not always in a position to take fully informed and empowered decisions and many lack a supportive environment. This provision lays particular emphasis on the need to ensure that victims are provided with information on the different types of support services and legal measures available to them. This requires providing information on where to get what type of help, if necessary in a language other than the national language(s), and in a timely manner,

meaning at a time when it is useful for victims. This, however, does not oblige Parties to the Convention to offer information in any language but to concentrate on the languages most widely spoken in their country and in accessible form. The term ‘adequate information’ refers to information that sufficiently fills the victim’s need for information. This could include, for example, providing not just the name of a support service organisation, but handing out a leaflet that contains its contact details, opening hours and information on the exact services it offers.”

30. Recommendation CM/Rec(2019)1 to member States on preventing and combating sexism, adopted by the Committee of Ministers on 27 March 2019, noted that sexism and gender stereotyping within the civil, administrative and criminal justice and law-enforcement systems were barriers to the administration of justice. It could result in decision makers making misinformed or discriminatory judgments based on preconceived beliefs and inherent biases rather than on relevant facts. It invited the governments of member States to consider measures such as : regular and adequate training for all judges and magistrates on human rights and gender equality (II.F.1); training of all law-enforcement personnel on violence against women and facilitating the reporting to police of such behaviour (II.F.2.); ensuring that systems for reporting violations and access to law enforcement are secure, available and appropriate; alleviate financial charges or other deterrents that prevent victims from reporting or pursuing cases in the appropriate forum, taking steps to address the risk of revictimization (II.F.4.).

31. On 14 November 2023 the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its Baseline Evaluation Report on Greece (GREVIO/Inf(2023)23), the relevant parts of which read as follows:

“116. According to Law No. 4478/2017 women victims of violence in Greece have the right to receive adequate information about their rights, in a simple and accessible language, during their first contact with the authorities. Furthermore, pursuant to the same law, all victims of crime should receive information from the authorities as regards the procedure for filing a complaint, the available legal aid, interpretation services and other legal measures. However, GREVIO was informed that many women victims of gender-based violence do not receive comprehensive information on their rights, nor on the support services available.

...

120. GREVIO strongly encourages the Greek authorities to ensure the wider dissemination of easily accessible and timely information on the support services and legal measures available to women victims of all forms of violence covered by the Istanbul Convention, in a language that they understand ...

...

261. GREVIO strongly encourages the Greek authorities to take further steps to improve the response of the law-enforcement authorities to women victims of all forms of violence covered by the Istanbul Convention. They should in particular: a. provide all relevant law-enforcement authorities with the resources, knowledge and powers to respond promptly, appropriately and with a gender-sensitive perspective to all forms of



violence covered by the Istanbul Convention, including sexual violence, forced marriage and stalking; b. develop standard operating procedures for law-enforcement officials with regard to all forms of violence against women covered by the scope of the Istanbul Convention, on the basis of an evaluation of the implementation in practice of existing guidelines on domestic violence; c. identify and address any factors contributing to low reporting rates of sexual violence; d. consider amending current practices to allow for forensic examination and collection of evidence in cases of sexual violence and rape regardless of whether the victim reports the incident to the police.

...

263. GREVIO was informed that no co-operation protocols between prosecutors' offices, victims' support organisations and state-provided social services are in place ... Standard operating procedures regarding co-operation between civil and criminal courts, adequate procedures for interviewing the victim or co-operation protocols with bar associations do not exist and there is no interagency co-ordination mechanism involving the judiciary.

264. GREVIO is concerned that high rates of attrition emerge from an analysis of the limited data available on reporting and conviction rates in cases of gender-based violence against women. ... The numbers for rape also show a significant gap between police reports and convictions. While 202 women reported rape in 2020, the available data only indicate eight convictions. Thus, in 2020, conviction rates ... did not reach 4% in cases of rape.

265. Such low conviction rates suggest either that investigation procedures are ineffective or that an unreasonably high threshold required to reach a conviction is applied.

...

295. Law 4478/2017 provides a comprehensive set of rights for victims of crime. It includes standards such as the fact that interviews with victims during criminal investigations should be conducted in premises designed or adapted for that purpose. It also provides that all interviews should be conducted, where possible, by a woman if the victim is a woman victim of gender-based violence, unless the interview is conducted by a prosecutor or a judge ...

296. Despite the existence of these protection measures, information brought to GREVIO's attention indicates that most of the provisions of Law 4478/2017 are not fully implemented in practice and that the experience of the criminal justice system is still highly traumatic for many women and girl victims of gender-based violence."

### C. United Nations

32. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by United Nations (UN) General Assembly Resolution 40/34 of 29 November 1985, provides that victims of crime should be treated with compassion and respect for their dignity (Article 4) and should be informed of their rights in seeking redress through judicial and administrative mechanisms (Article 5). Moreover, the responsiveness of judicial and administrative processes to the needs of victims should be facilitated by, *inter alia*: (a) informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases,

especially where serious crimes are involved and where they have requested such information; (b) allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) providing proper assistance to victims throughout the legal process; and (d) taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation (Article 6).

33. On 2 September 2022 the UN General Assembly adopted Resolution 76/304 on International cooperation for access to justice, remedies and assistance for survivors of sexual violence. The text condemns all forms of sexual and gender-based violence and urges member States to take effective action, through their national legal systems and in line with international law, to provide access to justice, remedies and assistance for victims and survivors of sexual and gender-based violence, including by: (a) providing relevant, comprehensive, gender-responsive legal protection, in full respect of human rights and centred on such victims and survivors; (b) ensuring timely and unimpeded access to justice and to effective legal assistance so that they can make informed decisions regarding, *inter alia*, legal proceedings, so that all cases of violence are brought to justice; (d) establishing multisectoral services, programmes and responses centred on victims and survivors that are, when possible, in a language that they understand and in which they can communicate and that include effective and coordinated action by the police and the justice sector, providers of legal aid services, health services, medical and psychological assistance, counselling services and protection; (e) responding to all forms of violence, through multisectoral and coordinated approaches to investigate, prosecute and punish the perpetrators of such violence and end impunity, and to provide protection and equal access to appropriate remedies and redress and to comprehensive social, health and legal services; (f) establishing and/or strengthening, including court, judicial system, law enforcement, health and social workers' and counsellors' and other practitioners' response protocols and procedures to ensure that all appropriate actions are coordinated and taken to protect and respond to the needs of all victims and survivors of such violence; (g) developing awareness to prevent impunity and providing victims and survivors with information on access to justice, remedies, reparations and assistance.

## THE LAW

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

34. The applicant complained under Articles 3 and 8 of the Convention that the authorities had failed to conduct an effective investigation into her allegations of rape and of shortcomings in the criminal proceedings against the alleged perpetrator and that, in that context, she had been exposed to traumatic experiences which had violated her personal integrity. The relevant parts of those provisions 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 and family life ...”

#### **A. Admissibility**

##### *1. Non-exhaustion of domestic remedies*

###### **(a) The parties’ submissions**

35. The Government argued that the applicant had failed to exhaust domestic remedies because she had not joined the criminal proceedings to support the charges. They submitted that Greek law established in a clear and foreseeable way simple formalities that the victim of a crime had to follow in order to participate as a party and argue with the accused during criminal proceedings. The right to stand in support of the accusation constituted the appropriate means by which a victim could raise his or her arguments. This procedure had been accessible to the applicant both while she had been in Greece, when testifying at the police station or later before the investigating judge, and when she had returned to her own country, when she could have appointed a lawyer during the investigation or at a later stage. She could have filed her declaration to this effect when the case had been pending before the prosecutor and until the latter had issued her proposal on 9 September 2020 (see paragraph 15 above).

36. They further argued that the applicant had decided not to pursue her case. The fact that she had not been informed of the developments in the case or of the decision not to charge the accused was attributed to her failure to join the proceedings by making a declaration in support of the charges. The procedure for this was accessible, since the fees were nominal and legal aid could be provided if requested, and it had been foreseeable and capable of

meeting the applicant's requests to be informed, updated on the case, have access to the case material, participate and provide evidence. Even though the applicant had not been familiar with the procedure under domestic law, she had been of age at the material time and in any event accompanied by her mother and she could have easily appointed a Greek lawyer to assist her, as advised by the British embassy which had provided her with a list. Under Greek criminal procedural law, the case material was not accessible to anybody, and Article 100 of the Code of Criminal Procedure explicitly specified those who had access to it. Had the applicant joined the proceedings to support the charges, she would have had full access to the case file, she could have submitted any evidence she considered crucial and she could have requested the examination of witnesses. She could also have had access to the prosecutor's proposal to dismiss the case against the accused, received a copy of it and filed observations.

37. The Government further argued that the applicant had failed to raise her complaints of a violation of Articles 3 and 8 of the Convention in substance at domestic level. She had directly addressed the Court, complaining of a series of shortcomings in the investigation and prosecution. She had never raised these complaints before a domestic authority, which she could have done during the police's preliminary investigation or the investigation following the investigating judge's order if she had acquired the status of party to the proceedings. The Government reiterated that all member States had rules and procedures for criminal complaints, and that victims of sexual offences in Greece had ample opportunities to have their rights protected and participate in criminal proceedings. The applicant had tried to shift the entire burden on the authorities instead of using legal remedies that had been prompt, sufficient, accessible, simple and capable of providing redress. She had not afforded the authorities the opportunity to hear her complaints, which could have impacted the decisions they had reached. Moreover, she had thus also lost the ability to lodge an appeal with the prosecutor at the Court of Appeal against the decision to dismiss the case against the accused.

38. The applicant challenged the Government's arguments, observing that she had not been provided with any information allowing her to decide whether to join the criminal proceedings. She had not been told in a manner in which she could understand that she was required to pay a fee and apply to join the proceedings to support the charges so that she could protect her rights, or that she would otherwise be totally shut out from any involvement in the matter. The applicant further argued that the State's obligations under Articles 3 and 8 of the Convention and the Istanbul Convention to properly investigate, allow victims of sexual offences to participate and fairly dispense justice in relation to those victims were not obviated by the provisions of the Code of Criminal Procedure allowing victims to participate in criminal proceedings, and that the obligations relating to the proper treatment of

victims, investigation and prosecution were not extinguished by the procedure invoked by the Government.

39. The applicant pointed to the fact that the domestic procedure was complex, required the payment of a fee and could not be realistically used by an individual without the help of a lawyer, especially when he or she did not speak the language, submitting that the State should not be able to “contract out” of the protection of victims. She also dismissed the allegation that she had failed to appear before the investigating judge as untruthful and not based on the evidence in the case (see paragraph 19 above), pointing out that she had expressly stated her willingness to be involved in the criminal proceedings in her witness statement. At the time she had been informed of the outcome of the case, there had therefore been no domestic remedies to pursue, and the only remedy available to her had been an application to the Court.

**(b) The Court’s assessment**

40. The Court has held, albeit in somewhat different contexts, that the authorities’ obligation to investigate effectively does not depend on the initiative of a complainant to take responsibility for the conduct of investigatory procedures (see *Bouyid v. Belgium* [GC], no. 23380/09, § 119, ECHR 2015; *C.N. v. the United Kingdom*, no. 4239/08, § 69, 13 November 2012; and *L.E. v. Greece*, no. 71545/12, § 68, 21 January 2016). The Court also notes that Article 55 § 1 of the Istanbul Convention provides that investigation into or prosecution of rape shall not depend wholly on a report or complaint filed by a victim.

41. In addition, the Court observes that the Government did not contend that the applicant had received information on her rights and the legal measures available. They merely maintained that she had failed to join the criminal proceedings by making a declaration in support of the charges against the accused, stating that this was an accessible procedure established by Greek law in a clear and foreseeable way constituting the appropriate means by which she could have raised her arguments. It appears from the case file that the authorities took no steps to inform her that she had a right to make a declaration while the investigation was ongoing and until the prosecutor issued her proposal, or of the consequences of failing to make a declaration. Such an approach was inconsistent with domestic law on victims’ rights as Article 56 § 2 of Law no. 4478/2017 provides for a rights guide written in the most commonly spoken languages which must be available to victims (see paragraph 22 above). As regards international standards, the Court notes that the Istanbul Convention requires the Contracting Parties to take the necessary legislative and other measures to ensure adequate and timely information on available support services and legal measures in a language they understand and to ensure access to legal counselling and information on and access to applicable complaints mechanism (see Articles 19, 20 and 21 of the Istanbul

Convention, paragraph 28 above; see also Article 4 of the Victims' Rights Directive in conjunction with Recital 19 on the right to receive information on the support the victims can obtain, the procedures for making complaints with regard to a criminal offence and their role, access to legal advice and legal aid, paragraph 23 above). Victims must be in a position to take fully informed and empowered decisions and the State must ensure that they are provided with information on legal measures available to them at a time when it is useful for them in a language that they understand (see also paragraph 29 above on Article 19 in the Explanatory Report to the Istanbul Convention).

42. The Court is not therefore persuaded that the applicant had an effective opportunity to be informed of the possibility of joining the proceedings by making a declaration in support of the charges and the consequences of failing to do so, which would have enabled her to make informed decisions. As regards the fact that the British embassy advised her to appoint a lawyer and sent her a list of lawyers, the Court notes that the State cannot be absolved from its positive obligations in relation to the investigation of gender-based violence in view of this initiative voluntarily taken by the embassy of the applicant's country of nationality.

43. In addition, the Court notes that, in accordance with Article 82 of the Code of Criminal Procedure, the criminal complaint filed by the applicant could not itself be treated as a declaration in support of the charges. It is significant, however, that in her statement to the police, she explicitly stated that she wanted the accused to be prosecuted and punished (see paragraph 8 above). The authorities did not take any steps to inform her of the relevant procedure even though Article 83 of the Code of Criminal Procedure provides that the relevant declaration may be submitted to the person conducting the investigation, even during the period when the person entitled to it is being questioned as a witness (see paragraph 21 above).

44. The Court further observes that, had the applicant joined the proceedings to support the charges, she would have become a party to the proceedings. She would have had the right to be present with a representative at every investigative act, she would have been informed of the content of the indictment and investigation documents and she would have been allowed to consult them, as provided for in Articles 92 and 100 of the Code of Criminal Procedure (see paragraph 21 above), rights which she did not enjoy as a witness and criminal complainant under domestic law. However, the applicant's complaints concerning her treatment by the authorities were broader in scope (see, *mutatis mutandis* *Y. v. Slovenia*, no. 41107/10, § 79, ECHR 2015 (extracts)).

45. The Court emphasises that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without

excessive formalism. Having regard to the circumstances of the individual case and in light of the above, the fact that the applicant did not raise her complaints in substance as a party to the proceedings cannot be held against her as, having filed a criminal complaint she had raised her grievances before the relevant national authorities and had requested that the case be prosecuted while she had not been informed on the possibility to make a declaration in support of the charges against the accused (see also *Z v. Bulgaria*, no. 39257/17, § 81, 28 May 2020, and *Gül v. Turkey*, no. 22676/93, § 59, 14 December 2000). The Government's objection as regards her failure to exhaust domestic remedies must therefore be dismissed.

## 2. *Six-month time-limit*

### (a) **The parties' submissions**

46. The Government contended that the application should be declared inadmissible for non-compliance with the six-month rule because by the time she had lodged it with the Court on 7 July 2021, more than six months had elapsed since 2 October 2020 when decision no. 59/2020 had been issued by the Indictments Division of the Preveza Criminal Court of First Instance. If she had appointed a lawyer, she would have been aware of the outcome and content of that decision and could have requested a copy. The Government further submitted that the applicant should not be absolved from the obligation to abide by this requirement since it had been her fault and owing to her total inaction that she had not taken the necessary steps to obtain information on the outcome of the case.

47. The applicant submitted that no information, and definitely none in English or through an interpreter, had been provided to her in relation to the procedure for joining the proceedings. She had also participated in all of the investigative acts and had left the jurisdiction after leaving her contact details, but she had not received any information that would have allowed her to challenge the prosecutor's proposal and the court's decision when they had been made. She had not been contacted by the authorities or informed of the progress of her case and no central point of contact had been given to her, which in itself constituted a violation of the Convention. The applicant submitted that the State should not be able to profit from its failure to update the applicant on her case, which was part of her complaint, and have the case declared inadmissible. She further added that her representative and the British High Commission in Greece had repeatedly submitted requests to the authorities requesting updates on the case, with no response. She had therefore lodged her application within the required time-limit after learning that the charges against the accused had been dropped.

**(b) The Court's assessment**

48. From the point of view of the six-month rule, the Court reiterates that the requirements contained in Article 35 § 1 concerning the exhaustion of domestic remedies and the six-month period are closely interrelated (see *Kitanovska and Barbulovski v. North Macedonia*, no. 53030/19, § 41, 9 May 2023). Where no effective remedy is available to an applicant, the time-limit expires six months after the date of the acts or measures about which he or she complains (see *Hazar and Others v. Turkey* (dec.), no. 62566/00 et seq., 10 January 2002). The Court has also held that, in cases concerning an investigation, applicants are expected to show a duty of diligence and take steps to keep track of the investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective criminal investigation (see *mutatis mutandis, Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 263-69, ECHR 2014 (extracts)).

49. The applicant's representative had meaningful contact with the British embassy in Athens, arguing that the applicant's family were having difficulties receiving information on the case. On 10 November 2020, despite the final decision already having been issued eight days before, the embassy gave him tangible indications that, according to the police, the criminal proceedings were still ongoing (see paragraph 18 above). On 13 January 2021 the consul had informed the applicant's representative that, according to unofficial information, the accused had been exonerated and on 14 January 2021, the day after, the representative contacted the court and the prosecutor's office for information. On 25 January 2021 the applicant also contacted the prosecutor's office herself, which replied on 29 January 2021 that as she had not joined the criminal proceedings to support the charges, she could not receive a copy of the case file. They did however inform her of decision no. 59/2020 not to charge the accused, issued on 2 October 2020 (see paragraph 19 above).

50. The Court notes in this regard that Article 56 § 1 (c) of the Istanbul Convention specifies that the necessary measures to protect victims' rights include informing them, under the conditions provided for by internal law, of the follow-up given to their complaint, the charges, the progress of the investigation or proceedings and their role therein, as well as the outcome of their case. Article 59 § 1 (a) of Law no. 4478/2017 further lays down the right of victims to be notified without delay on their right to receive information, if they so request, as regards a decision not to charge the offender, including at least a brief summary of the reasons. This obligation is not dependent on the victim having the legal status of a party to the proceedings (see that provision in conjunction with Article 59 §§ 1 (c), 2 and 3; see also Article 6 § 4 of the Victims' Rights Directive, which specifies that the wish of the victims to receive information binds the competent authority, unless that information must be provided due to the entitlement of the victim to



active participation in the criminal proceedings). However, the applicant was not notified on her right to receive information about her case and the fact that she was not informed earlier of decision no. 59/2020 cannot be held against her.

51. For these reasons, and in the light of the considerations relating to the Government's objection of non-exhaustion of domestic remedies (see paragraphs 40-45 above), the applicant having lodged her application on 7 July 2021, that is, no more than six months after 13 January 2021, when she was informed, albeit unofficially, that it had been decided not to bring charges against the accused, the Government's objection that the application had been lodged out of time must be dismissed.

52. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

#### **(a) The applicant**

53. The applicant submitted that her treatment by the authorities, from the moment the alleged rape had been reported to the time when the charges had been dropped without her being informed, constituted a violation of Articles 3 and 8 of the Convention. The authorities had failed to investigate and prosecute her allegations of rape and had breached their duty to provide effective legal protection against sexual abuse and protect her as a victim, as she had received no legal advice and had been exposed to trauma which had violated her personal integrity.

54. She argued, in particular, that as a victim of a serious sexual assault in a country where she had not spoken the language and had had no knowledge of domestic law, she had been provided with no interpretation from an objective party. Interpretation had been carried out by the owner of the hotel where she had been staying who, as someone working in tourism sector in a small town, had had an interest in concealing the incident to avoid any damage to local tourism. She had also not been allowed to verify the correctness of her statement.

55. The applicant submitted that the identification procedure at the police station during which she had been brought into direct contact with her attacker disclosed a lack of protection in relation to victims of sexual crimes. During the journey to the hospital, she had also been confronted with the accused on a number of occasions and at the hospital had been sitting directly across from him and led into the examination room in front of him. No effort had been made to keep him separate from her and she had felt extremely uncomfortable and anxious.

56. She argued that she had not been provided with any explanation or documentation relating to the medical procedures and tests she had undergone. While they had been taking place, there had been no translation, which had been an upsetting and worrying experience for her as a young girl in a foreign country. Furthermore, her mother had not been allowed to accompany her into the examination room, without any explanation. She had been told that the health experts would be taking photos of her bruises, but they had actually conducted an internal examination using a metal rod. This process had not been carried out with the care expected for a young woman who had complained of a very recent rape. She had not been provided with any medication, despite her mother's requests, or with any support. She had been treated as an inconvenience rather than as a young victim of a serious offence.

57. The applicant further submitted that she and her mother had felt disorientated and that the authorities had not taken the complaint seriously. No follow-up details or information about the process had been provided to her, which had led her to believe that she would be contacted by the authorities and invited to give evidence.

58. She argued that her rights under Articles 3 and 8 of the Convention had also been violated on account of the subsequent dismissal of the case against the accused. The evidence in the case file had not supported the dismissal of the case against the accused. The prosecutor had not applied an objective approach and had provided a version of the incident which, in the absence of eyewitnesses, seemed to be solely based on the accused's statement, without any explanation. The intimacy and flirting referred to had not been corroborated by the statements she and her mother had made. The description of the accused's actions at the bar and her allegedly positive response contradicted her evidence. There had also been no explanation as to why the accused's account of how they had gone to the basement of the hotel, which had been contrary to her own statement, had been accepted without being tested. The conclusion that the message she had sent her mother before the rape at 2.50 a.m. telling her that everything was fine was indicative of the fact that everything was going according to the wishes of both of them showed a biased view of the evidence. Furthermore, the description of the rape and the events after it also contradicted her account.

59. Furthermore, the forensic doctor had not come to the conclusion put forward by the prosecutor and relied on by the court that a lack of internal injuries was probative as to whether the rape of the applicant had taken place. The prosecutor had referred to the evidence relating to the outside of her body and her genital region to contradict her account that she had been subjected to force and raped. However, the forensic report had not contained either of these findings. The applicant submitted a medical opinion, arguing that it reflected the worldwide scientific consensus supported by the statistics in several studies that non-consensual vaginal penetration could take place

without a woman suffering any internal injuries. However, the external bruising found supported her account rather than contradicted it. Requiring violence for rape was itself in breach of Articles 3 and 8.

60. Lastly, the applicant observed that the Preveza Court of First Instance had taken the prosecutor's misvaluation of the evidence at face value, and had referred to it despite not carrying out any separate assessment. The errors in the evidential evaluation had resulted in a process that fell far short of the protection for victims of sexual offences provided by the Convention.

**(b) The Government**

61. The Government submitted that Greek criminal law contained a detailed provision punishing rape and that there was abundant case-law relating to it. The authorities had responded promptly to their obligation to carry out an effective investigation. The statements given by the applicant and her mother had been taken on 27 September 2019, when the criminal complaint had been filed. A tourism agent and representative of the travel company which had organised the applicant's holiday had been appointed as interpreter when the applicant and her mother had made their statements, and he had translated the recorded statements to them. The Government rejected the applicant's allegation that the record of her statement had been insufficiently translated to her by the hotel owner because, as it appeared from the statements, the translation had taken place in accordance with the procedure provided for by domestic law and with a sworn interpreter.

62. The Government noted that on 27 August 2019 the applicant had been taken in a police vehicle to the Parga Health Centre, where blood and urine samples had been taken, then to the Department of Forensic Medicine at the Ioannina University Hospital to be examined. A forensic doctor had issued a report. The applicant had been accompanied by her mother at all times.

63. The Government also argued that the police officers had promptly brought in the accused and informed the prosecutor at the Preveza Court of First Instance. He had been arrested and a criminal case had been opened against him for rape. On 28 September 2019 the prosecutor had requested the investigating judge to conduct the main investigation and criminal proceedings had been brought against the accused. On 30 September 2019 he had given his defence statement and been banned from leaving the country. A colleague of the accused had been questioned as a defence witness. On 6 July 2020 the main investigation had been concluded. The case had then been transferred to the prosecutor, who had issued her proposal on 9 September 2020. The Indictments Division of the Preveza Criminal Court of First Instance had met on 29 September 2020 and on 2 October 2020 had issued decision no. 59/2020. The case had therefore been examined speedily and properly.

64. The Government submitted that the court's conclusion that there were insufficient indications to pursue a public criminal trial against the accused

for rape and that the charges should be dropped had been based on the evidence in the case file. The potential existence of other elements could have probably led to a different conclusion. As regards the consideration that there were no objective findings indicating physical violence, the Government noted that the events complained of by the applicant concerned her lack of resistance and the violence exercised against her by the accused.

## 2. *The Court's assessment*

### (a) **General principles**

65. It is settled in the Court's case-law that rape and serious sexual assault amount to treatment falling within the ambit of Article 3 of the Convention. Since rape and serious sexual assault typically implicate fundamental values and essential aspects of "private life", the Court has also examined cases relating to the positive obligation to investigate cases of rape under Article 8 of the Convention (see, for instance, *M.C. v. Bulgaria*, no. 39272/98, §§ 149-53, ECHR 2003-XII, and *Y v. Bulgaria*, no. 41990/18, §§ 62-65, 20 February 2020, and the case-law cited therein). Having regard to the nature and substance of the applicant's complaints, the Court finds that they fall to be examined jointly under Articles 3 and 8 of the Convention.

66. The obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals. On that basis, States have a positive obligation inherent in Article 3 of the Convention to enact criminal-law provisions that effectively punish rape and to apply them in practice through effective investigation and prosecution (see *M.C. v. Bulgaria*, cited above, §§ 149-53). The Court reiterates that the positive obligations under Articles 3 and 8 of the Convention must be interpreted in the light of the obligations arising out of the other applicable international instruments (see *X and Others v. Bulgaria* [GC], no. 22457/16, §§ 179 and 192, 2 February 2021) and in its case-law on violence against women, the Court has often been guided by the relevant international law standards on the matter (see, for instance, *J.L. v. Italy*, no. 5671/16, §§ 63-69, 27 May 2021).

67. Furthermore, positive obligations on the State are inherent in the right to effective respect for private life under Article 8; these obligations may involve the adoption of measures even in the sphere of the relations of individuals between themselves. While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is in principle within the State's margin of appreciation, effective deterrence against serious acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law

provisions (see *M.C. v. Bulgaria*, cited above, § 150). The Court has not excluded the possibility that the State's positive obligation under Article 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (*ibid.*, § 152).

68. The Court has also accepted that positive obligations under Articles 3 and 8 include the protection of the rights of victims in criminal proceedings and these obligations require measures to be taken to avoid secondary victimisation (see *Y. v. Slovenia*, cited above, §§ 97, 101-04, and *J.L. v. Italy*, cited above, § 119). Additionally, the member States' positive obligations under Articles 3 and 8 of the Convention must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim (see *M.C. v. Bulgaria*, cited above, §§ 156-66).

69. In order to be effective, the investigation must be sufficiently thorough and objective. The authorities must take the reasonable measures available to them to obtain evidence relating to the offence in question such as by taking witness statements, obtaining expert reports and gathering forensic evidence (see, among other authorities, *M.N. v. Bulgaria*, no. 3832/06, § 39, 27 November 2012, and *W. v. Slovenia*, no. 24125/06, § 64, 23 January 2014). Any investigation should, in principle, be capable of leading to the establishment of the facts of the case and to the identification and – if appropriate – punishment of those responsible for an offence. This is not an obligation of result but of means. Whilst this requirement does not impose an obligation for all prosecutions to result in conviction, or indeed in a particular sentence, the national courts must not, under any circumstances, be prepared to allow physical or psychological suffering to go unpunished. A requirement of promptness and reasonable expedition is also implicit in this context (see *W. v. Slovenia*, cited above, § 64; *M.N. v. Bulgaria*, cited above, § 46; *A, B and C v. Latvia*, no. 30808/11, § 149, 31 March 2016; and *J.L. v. Italy*, cited above, § 118). It is also not the Court's role to interfere with the lines of inquiry pursued by the national authorities unless they have manifestly failed to take into account relevant elements or are arbitrary. However, a failure to pursue an obvious line of inquiry can decisively undermine the effectiveness of an investigation (see, *Y. v. Bulgaria*, cited above, § 82).

70. The Court has already held, on several occasions, that criminal proceedings should be organised in such a way as not to unjustifiably imperil the life, liberty or security of witnesses, and in particular those of victims called upon to testify, or their interests coming generally within the ambit of Article 8 of the Convention. The interests of the defence are therefore to be balanced against those of witnesses or victims called upon to testify (see *Doorson v. the Netherlands*, 26 March 1996, § 70, *Reports of Judgments and Decisions* 1996-II). Notably, criminal proceedings concerning sexual offences are often conceived of as an ordeal by the victim, in particular when

the latter is unwillingly confronted with the defendant (see *Y. v. Slovenia*, cited above, § 103).

**(b) Application of these principles to the present case**

71. The applicant's complaints concern whether the national authorities complied with their obligation to effectively investigate and conduct criminal proceedings in a case of alleged rape, while protecting her personal integrity and sufficiently taking into consideration her rights as a victim of such an offence. The Court's task is to examine whether or not the relevant legislation and practice and their application in the case at hand, combined with the alleged shortcomings in the investigation, were so significantly flawed as to amount to a breach of the respondent State's positive obligations under Articles 3 and 8 of the Convention. The Court is not concerned with allegations of errors or isolated omissions in the investigation; it cannot replace the domestic authorities in the assessment of the facts of the case; nor can it decide on the alleged perpetrator's criminal responsibility (see *M.C. v. Bulgaria*, §§ 167-68, and *J. L. v. Italy*, § 122, both cited above).

72. The Court considers it necessary to emphasise that it is mindful of and endorses the growing awareness of the importance of the protection of victims' rights, having regard to the gendered understanding of violence, and it will take those rights into account in its assessment of the State's compliance with their positive obligations under Articles 3 and 8 of the Convention. The Istanbul Convention applies to all forms of violence against women and provides a comprehensive framework to prevent, prosecute and eliminate violence against women and to protect victims (see paragraph 28 above). In addition, the Victims' Rights Directive reinforces the rights of the victims of crime, laying down minimum standards on their rights, support and protection and imposing corresponding obligations on member States (see paragraph 23 above). Similar obligations also stem from other international instruments, such as the following two UN General Assembly Resolutions: the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Resolution 40/34 of 29 November 1985, see paragraph 31 above, and *J.L. v. Italy*, cited above, § 63) and International cooperation for access to justice, remedies and assistance for survivors of sexual violence (Resolution 76/304 of 2 September 2022, see paragraph 33 above).

73. At the outset, the Court agrees with the Government that once the authorities were informed of the incident, they responded promptly to their obligation to carry out an investigation. They proceeded directly to taking statements, carrying out medical examinations, obtaining a forensic report and arresting the alleged perpetrator. After the applicant filed the criminal complaint, the police's preliminary investigation and the main investigation were conducted and concluded, and the prosecutor's proposal and the criminal court's decision were then issued without delay. The proceedings lasted approximately one year in total (see paragraphs 6-17 above).

*(i) The police investigation*

74. As regards the applicant's complaint that she did not receive an impartial interpretation by a skilled interpreter and could not verify the correctness of her statement, the Court notes that a sworn interpreter did participate in the investigation and that the content of her statement was translated to her by that person. It notes, however, that under domestic law interpreters are normally appointed from a list drawn up annually by the Criminal Court of First Instance, on a proposal from the prosecutor, from among persons with certain qualifications residing or working at its headquarters, preferably civil servants. In extremely urgent cases, and where it is impossible to appoint an interpreter from those on the list, a person who is not included in the list can be appointed as interpreter (see paragraph 21 above, Article 233 of the Code of Criminal Procedure).

75. It appears from the case file that the person in question was a tourism agent and representative of the company which had organised the applicant's holiday. This fact does not rule out the possibility that he was also the owner of the hotel where the applicant was staying, which the Government did not disprove. The Government did not provide any information or documentation on the existence of a list, on the authorities' eventual specific explanations on the existence of "an extremely urgent case" or their efforts to use the relevant list, which was impartial and contained the verified skills of each person on it, in order to appoint an interpreter (see also Article 56 § 1 (h) of the Istanbul Convention). The authorities did not inform the applicant of her right to submit objections against the quality of the interpretation either as provided by domestic law (see Article 60 of Law no. 4478/2017).

76. The Court also notes that the allegation relating to the identification procedure at the police station and the allegation that the applicant was sitting across from the accused at the hospital and was led into the examination room in front of him (see paragraphs 55-56 above) were not challenged by the Government, which suggests that the authorities did not take measures to avoid contact between them and ensure the applicant's privacy by using a method of identification and collection of evidence which would avoid intimidation and distress without undermining the effectiveness of the investigation (see also Article 56 § 1 (a), (f) and (g) of the Istanbul Convention, and paragraph 66 above).

77. The applicant gave her statement to a male police officer in the presence of a female police officer acting as a second investigating officer, which was contrary to the requirement under domestic law that interviews with victims of sexual violence be conducted by a person of the same sex as the victim, provided that the course of the criminal proceedings will not be prejudiced (Article 69 of Law no. 4478/2017).

78. Lastly, the applicant complained that she had not been provided with any information relating to the medical examinations or on the process of criminal investigation in a language that she could understand, and that she

had had difficulties following the entire process and had felt misled. The Government did not refute these arguments. The Court notes that, under domestic law, the official who receives a complaint from a victim of a crime is obliged to inform him or her of the right to receive a copy of it and a translation free of charge (Article 58 § 1 and 3 of Law no. 4478/2017). There is nothing to show that the competent authorities gave the applicant a copy of her complaint translated in written form and it does not appear that after her contact with them they took any measures to provide her with the relevant information on her rights and the general progress of her complaint (see also Article 56 § 1 (c) of the Istanbul Convention, and paragraph 66 above).

*(ii) The prosecutor's proposal and the criminal court's decision*

79. The Court recognises that the judicial authorities were faced with the difficult task of having to decide a rape case on the basis of two conflicting versions of events and does not underestimate the efforts made by the prosecutor and the court. As the Court has already held in similar cases, the presence of two irreconcilable versions of the facts calls for a context-sensitive assessment of the credibility of the statements made and for verification of all the surrounding circumstances (see *M.C. v. Bulgaria*, cited above, § 177). In that respect, the Court observes that the applicant's mother, who was with her immediately after the alleged incident, and a colleague of the accused, whose statement was not submitted to the Court, were questioned as witnesses (see paragraph 63 above). The prosecutor and the domestic courts, however, did not refer to these statements. They, further, did not address in any way the applicant's psychological state after the incident or the credibility of the alleged perpetrator's version of events in light of, for example, the applicant's age and inexperience or the existence of any potential reason for her to make false accusations against him.

80. As there were no eyewitnesses to the alleged event, it seems that the prosecutor accepted without any reservations the accused's version of the facts (see paragraph 16 above), which was not provided to the Court, while describing the applicant's allegations as unfounded. The reference to there being flirting between the applicant and the accused, which was allegedly observed by the mother, who allegedly suggested to the accused to take her out for food and drinks, seems to have resulted from the accused's version and it was not corroborated by the statements given by the applicant and her mother. The conclusion that the message sent by the applicant at 2.50 a.m. to her mother telling her that everything was fine was indicative of the fact that everything was going according to the wishes of both of them was contrary to the applicant's statement, according to which they were still at the bar at that time, and no attention was devoted to her assertion that the alleged attack happened after this.

81. The prosecutor's proposal also made reference to the forensic report and concluded that the medical examination of the applicant had not revealed



any objective findings confirming her allegations that she had been immobilised by the accused and that her resistance had been overcome by his superior physical strength, while the findings in respect of the perigenital region were not indicative of physical violence, but were consistent with the act of intercourse and the rupture of the hymen. However, the Court cannot overlook the fact that that report did not contain any conclusions as regards immobilisation and resistance being overcome by superior physical strength and did not contain any element contradicting the applicant's statement that she was made to kneel, was pushed down violently and was stopped from getting up. It found two bruises on her thighs at the stage of resolution, one recently caused small abrasion on the outer side of the right knee joint and two bruises on the outer side of the right tibia, but it was not specified when they had been caused. It also found recently caused injuries (*κακώσεις*) to the genitals without any conclusive finding as to whether the applicant had been raped *per se* (see paragraph 11 above).

82. The proposal also stated that the applicant had not provided a convincing explanation as to how she had got from the bar area to the basement of the hotel and why the accused, who she alleged had just raped her, had accompanied her to the hotel where she was staying with her mother. It then concluded that, on the contrary, the accused's assertion that the complainant had consented to the act of intercourse was well-founded. The Court attaches particular weight to the fact that the prosecutor made an insufficiently substantiated conclusion and surmised that the applicant had consented, also inferring this from the fact that she had gone to the basement area. The prosecutor also failed to sufficiently assess the credibility of the applicant's statement that she did not refuse to be accompanied to the entrance of her hotel because she was scared and to take into account her potential psychological state as a victim of sexual violence. In that regard, the Court refers to the FRA report on "Emotional response following the most serious incident of violence since the age of 15" as regards the emotional responses to sexual violence by a non-partner, which revealed that women in the majority of cases felt afraid or in a state of shock, while feelings of shame, embarrassment or guilt were very often reported (paragraph 25 above).

83. The Court further notes that the prosecutor's proposal failed to assess the applicant's state of mind – she herself acknowledging that she had consumed three alcoholic drinks and had felt dizzy (see paragraph 8 above) – while no reference was made to the results of the blood and urine tests obtained (see paragraph 10 above). The applicant's personal circumstances, such as her young age and lack of sexual experience, were not considered either.

84. Similarly, the court referred to the prosecutor's proposal as regards the establishment of the facts and their judicial assessment and ruled that there were insufficient indications to pursue a public criminal trial against the accused for the offence of rape involving physical violence under

Article 336 § 1 of the Criminal Code and that the charges should be dropped. The Court thus considers that the judicial authorities failed to explore the available possibilities for establishing all the surrounding circumstances and did not sufficiently assess the credibility of the different versions of events.

(iii) *Conclusion*

85. In view of the above, the Court notes that the respondent State has enacted criminal-law provisions on rape and has provided for its prosecution and effective punishment. Certain rules on the procedures to be followed, which must be efficient and respect the physical and psychological integrity of the victim, are also provided for in domestic law and in the international materials by which Greece is bound. The Court is satisfied that there exists an adequate legal and regulatory framework in Greece which is relevant to the specific circumstances of the present case. However, it is of the opinion that the authorities did not apply it in practice by conducting an effective investigation. Further, in implementing the criminal-law mechanisms, the authorities should have been mindful of the alleged victim's rights and avoided secondary victimisation.

86. The intimate nature of the subject matter, the applicant's young age and the fact that she claimed to have been raped while on holiday in a foreign country were points of particular sensitivity which called for a correspondingly sensitive approach on the part of the authorities. Following the submission of the applicant's complaint, the investigating authorities did not take measures to prevent her further traumatisation and did not take sufficient account of her needs. They did not take any measures to inform her of her rights as a victim, such as the right to legal assistance or counselling and psychological support, the right to receive information and the right to object to the interpretation. Furthermore, the investigating authorities did not take adequate measures to mitigate what was clearly a distressing experience for the applicant, such as the interview, the direct confrontation with the accused, the identification procedure and the medical examination, which should have been subject to more careful assessment (see, *mutatis mutandis*, *Y. v. Slovenia*, cited above, § 106).

87. In addition, neither the prosecution nor the court analysed the circumstances of the case from the perspective of gender-based violence. They failed to explore the available possibilities for establishing all the surrounding circumstances (see, for instance, *M.C. v. Bulgaria*, cited above, §§ 177-82) and to take account of the particular psychological factors involved in rape cases such as the present one, and to make a context-sensitive assessment of the credibility of the various statements. There was no serious attempt to clarify the discrepancies or to assess the applicant's state of mind and personal circumstances. Those elements, in addition to the manner in which they assessed the forensic report, which did not actually contradict the

applicant's version of events, were not isolated errors but significant shortcomings.

88. In view of the above, the Court, without expressing an opinion on the guilt of the accused, finds that the failure of the investigative and judicial authorities to adequately respond to the allegations of rape shows that they did not submit the case to the careful scrutiny required for them to properly discharge their positive obligations under the Convention.

89. These considerations are further supported by GREVIO's recent report on Greece issued in November 2023 (see paragraph 31 above), in which it was pointed out that many women victims of gender-based violence did not receive comprehensive information on their rights or on the support services available, that no co-operation protocols were in place between prosecutors and support services or with bar associations and that there was no interagency co-ordination mechanism involving the judiciary. GREVIO expressed concerns about low conviction rates (only eight convictions for 202 reported rapes in 2020), which suggested either that investigation procedures were ineffective or that an unreasonably high threshold required to reach a conviction was applied. It noted that, despite Law no. 4478/2017 providing a comprehensive set of rights for victims of crime, most of its provisions were not fully implemented in practice and that the experience of the criminal justice system was still highly traumatic for many women and girl victims of gender-based violence. It encouraged the Greek authorities to ensure, among other things, wider dissemination of information on legal measures and support services and improve the response of the law-enforcement authorities to women victims of violence so that they respond with a gender-sensitive perspective.

90. The Court thus concludes that the failure of the investigative and judicial authorities to adequately respond to the allegations of rape in the present case amount to a violation of the positive obligations of the State under Articles 3 and 8 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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.”

### **Damage and costs and expenses**

92. In a letter dated 18 May 2023, the applicant claimed “non-pecuniary damage as quantified by the Court as per its discretion under the Convention having regard to what is equitable”. She also claimed costs and expenses

incurred before the Court in the amount of 3,600 British pounds (GBP). In support of this request, she submitted an invoice for the amount of GBP 3,000 representing the fees of her representative plus VAT of GBP 600.

93. In their additional observations of 4 May 2023, the Government noted that the applicant had not submitted any claims for just satisfaction in her observations of 30 March 2023. As regards the claims contained in the letter of 18 May 2023, they argued that they had not been submitted in time and in compliance with the formal requirements laid down in the Convention and the Rules of Court. They also stated that the finding of a violation should, in itself, constitute sufficient just satisfaction and that the claim for costs and expenses was excessive and unjustified.

94. Under Rule 60 § 2 of the Rules of Court, an applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of his or her observations on the merits. If the applicant fails to comply with these requirements, the Court may reject the claim in whole or in part (Rule 60 § 3).

95. In its letter to the applicant of 25 November 2022, the Court invited her to send written observations and any claims for just satisfaction by 6 January 2023, drawing her attention to the Practice Direction on Just Satisfaction Claims available on the Court's website. In its letter of 16 February 2023, the Court set a new time-limit for the applicant to submit observations and any just satisfaction claims by 31 March 2023. The applicant did not make any claims for just satisfaction and costs and expenses in her reply of 30 March 2023. In her letter of 18 May 2023, by which she submitted claims for just satisfaction claims (see paragraph 92 above), she did not explain why she had failed to file the claims in time.

96. Having regard to Rule 60, as the just satisfaction claims were not submitted in time, the Court makes no award in respect of non-pecuniary damage and costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of the respondent State's positive obligations under Articles 3 and 8 of the Convention;
3. *Dismisses* the applicant's claim for just satisfaction.

X v. GREECE JUDGMENT

Done in English, and notified in writing on 13 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško  
Registrar

Pere Pastor Vilanova  
President