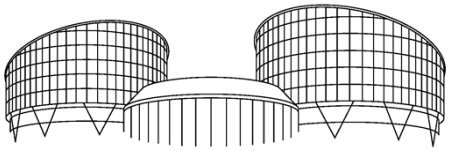

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF M.Ș.D. v. ROMANIA

(Application no. 28935/21)

JUDGMENT

Art 8 • Positive obligations • Private life • Inadequate criminal legal framework, at the material time, not affording the applicant protection against acts of online harassment committed by her former intimate partner consisting of the non-consensual public dissemination of intimate photographs of her • Failure to conduct prompt and thorough criminal investigation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 December 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 M.Ș.D. v. Romania,

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

Lado Chanturia*, President*,
Faris Vehabović,
Tim Eicke,
Jolien Schukking,
Lorraine Schembri Orland,
Ana Maria Guerra Martins,
Sebastian Răduleţu*, judges*,
and Simeon Petrovski, Deputy *Section Registrar,*

Having regard to:

the application (no. 28935/21) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Ms M.Ș.D. ("the applicant"), on 26 May 2021;

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

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

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Advice on Individual Rights in Europe Centre ("the AIRE Centre"), which was granted leave to intervene by the President of the Section;

Having deliberated in private on 12 November 2024,

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

INTRODUCTION

1. The case concerns the national authorities' response relating to the applicant's complaint concerning alleged acts of online harassment committed by her former intimate partner from motives of revenge consisting of the public dissemination without her consent of intimate photographs of her. The applicant relies on Articles 6, 8 and 14 of the Convention.

THE FACTS

2. The applicant was born in 1997 and lives in Craiova. She was represented by Ms T.C. Godîncă-Herlea, a lawyer practising in Cluj-Napoca.

3. The Government were represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs.

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

I. THE CIRCUMSTANCES OF THE CASE

A. The background to the case

5. During the summer of 2016, the applicant, who was eighteen years of age at that time, met V.C.A., who was twenty years of age, on the Facebook social media platform. The applicant had been admitted to a university and was going to study at the same faculty as V.C.A. They started exchanging online messages, together with intimate photographs of each other. Their online friendship developed into a brief romantic relationship that ended around the middle of October 2016.

6. Around the same time as their relationship ended, V.C.A. got into an argument with one of the applicant's male friends because V.C.A had become jealous of that friend. After this incident, on 21 October 2016, V.C.A. created several fake Facebook accounts by using the identities of some of the applicant's friends in order to disseminate the applicant's intimate photographs.

7. On the same date V.C.A. sent the intimate photographs of the applicant to her brother, uncle and some of her brother's close friends. The applicant attempted to get V.C.A. to stop, but in response he posted the same intimate photographs, together with her name and telephone number, on several websites advertising escort services. Soon thereafter he contacted her and informed her that he had no intention of stopping.

8. Following the posts left by V.C.A. on the escort service websites the applicant received numerous telephone calls from unknown persons soliciting sexual services.

9. According to the applicant, V.C.A. had also behaved aggressively towards her both physically and verbally after their breakup. In particular, he had pushed the applicant on one occasion in October and he had threatened the applicant on the telephone and had told her that he was hoping that she would commit suicide in November.

10. The applicant alleged that V.C.A. had also written to her brother on 21 October 2016 that V.C.A.'s friends were going to spread the printed intimate photographs of the applicant around the university where V.C.A and the applicant were studying. V.C.A. continued to post intimate photographs of her on the websites advertising escort services until 21 November 2016, and he eventually ceased his acts at the end of November 2016.

B. The criminal investigation

1. The criminal complaint by the applicant

11. On 31 October 2016 the applicant lodged a criminal complaint against V.C.A. with Bucharest police station no. 8 ("BPS 8"), presented the authorities with the information described in paragraph 7 above and asked

them to take appropriate legal action against him. In addition, she submitted a USB allegedly containing recordings of conversations that she had had with V.C.A. and with his mother and evidence of the telephone calls described in paragraph 9 above.

12. On 29 November 2016 the applicant supplemented her criminal complaint and presented the authorities with the information recounted in paragraph 9 above.

2. The investigation conducted by BPS 8

13. The official reports indicated that from 25 December 2016 until 10 August 2018 a police officer attached to the BPS 8 – namely, one I.T.A. – attempted to contact the applicant repeatedly, mostly by telephone, to summon her to BPS 8 to give a statement in respect of the case. His attempts to contact the applicant remained mostly unsuccessful because the applicant was not responsive. However, according to two reports drafted by BPS 8 on 9 May and 10 August 2018 the applicant appeared at BPS 8 and stated that she would return on another date to give her statement. On 9 May 2018 she also stated that she had been aware that V.C.A. had been investigated by the police in 2015 for drug possession and had been ordered to perform unpaid community work and that she had no intention of causing him any harm.

14. On 4 May 2017 BPS 8 opened a criminal investigation *in rem* (that is, without a designated suspect) for the offences of threatening behaviour (*amenințare*) and violation of private life (*violarea vieții private*), under, respectively, Articles 206 § 1 and 226 § 2 of the Criminal Code ("the CC").

15. On 22 August 2018 both the applicant and V.C.A. appeared at BPS 8 to give their statements in respect of the case.

16. In her statement, apart from essentially reiterating the information that had been included in her initial complaint (see paragraph 11 above), the applicant presented to the authorities the information set out in paragraph 6 above. She also stated that V.C.A. had accompanied his posts on the websites advertising escort services with information that had included her home address, and that the posts in question had been erased automatically after two or three days. She further stated that V.C.A. had not hit her or threatened her with acts of physical violence.

17. V.C.A. denied that he had ever hit or threatened the applicant. Nevertheless, he admitted to having committed the acts described in paragraph 7 above through the medium of Facebook. He further stated that he had acted in this manner from jealousy and rage, because he had seen the applicant behaving affectionately towards the applicant's friend mentioned in paragraph 6 above and because the applicant had disseminated to some of her colleagues a picture of him taken after the argument that he had had with the man in question, accompanied by an offensive comment.

18. On 22 August 2018 I.T.A. informed the applicant that he needed to take a witness statement from her brother (who was living abroad), and she

agreed to inform BPS 8 of the date of her brother's next visit to the country when she learned of it.

19. On 11 December 2018 the applicant lodged a challenge (*recuzat*) against I.T.A. with the prosecutor's office attached to the Bucharest District Court ("the prosecutor's office"). She asserted that before her interview of 22 August 2018 (see paragraph 16 above) I.T.A. had called her repeatedly in order to summon her to BPS 8 and that one evening he had even cut in front of her in his car as she had been walking along the street and had threatened that he would either close the investigation or fine her if she refused to comply with the summons. At the same time I.T.A. had discouraged her from engaging a lawyer, telling her that it would be useless to do so. Furthermore, he had summoned V.C.A. to attend the police station at the same time as her, and she had had to face V.C.A. there – even though the applicant had specifically asked I.TA. to summon V.C.A. at a different time and had told him that V.C.A. continued to scare her. In addition, I.TA. had repeatedly tried during the interview of August 2018 to persuade the applicant to withdraw her complaint by telling her that her complaint was doomed to fail in court.

20. The applicant argued that I.T.A. had lacked impartiality and had acted unprofessionally (given her very delicate psychological state), and that his conduct had scared her and had caused her to suffer from insomnia.

21. On 14 December 2018 the applicant retained a lawyer.

3. Online article and public protest concerning the applicant's case

22. On 14 December 2018, an online publication published an article on the applicant's case under the headline "The supreme humiliation" (*Umilința supremă*). It alleged, *inter alia*, that the applicant had been confronted in her quest for justice by the authorities' ironic attitude (*atitudine ironică*), accusations of wrongdoing and pressure on her to withdraw her complaint. According to the article, BPS 8 had essentially refused to register the applicant's criminal complaint, which, as indicated in the article, had been submitted on 29 October 2016, and had asked her to return two days later. The police officers had also asked the applicant to print out the nude photographs that had been disseminated online and to bring them with her, and had even suggested that she only return if accompanied by her father, so that they could be certain that her complaint was genuine. Moreover, I.T.A. had volunteered to mediate between V.C.A. and the applicant, and had encouraged her to take money offered by V.C.A.

23. On 16 December 2018, following the publication of the article, a public protest was held in Bucharest in solidarity with the applicant.

4. The investigation conducted by the Criminal Investigation Service of the General Directorate of the Bucharest Police

24. On 17 December 2018 the prosecutor's office transferred the applicant's case from BPS 8 to the Criminal Investigation Service of the General Directorate of the Bucharest Police (*Serviciul de Investigații Criminale din cadrul Direcției Generale a Poliției Municipiului București* – "the SIC") on the grounds that since March 2015 the SIC had been the body with jurisdiction to investigate the offence provided by Article 226 § 2 of the CC. It also dismissed the applicant's challenge against I.T.A. (see paragraphs 19-20 above) as irrelevant.

25. On 11 January 2019 the SIC took a statement from the applicant in the presence of her chosen lawyer. She reiterated some of the information included in her earlier statements and in the online article concerning V.C.A.'s acts (see paragraphs 9, 11, 16 and 22 above) and repeated her request for V.C.A. to be brought to justice. Moreover, she presented the SIC with the information described in paragraph 10 above. Lastly, the applicant submitted to the SIC screenshots and recordings which allegedly contained information confirming her and the article's (see paragraph 22 above) allegations concerning V.C.A.'s acts.

26. On 30 and 31 January 2019 the SIC heard the testimony of three witnesses in the case, including the applicant's brother.

27. On 28 February 2019 the applicant asked the prosecutor's office to extend the criminal investigation (*extinderea urmăririi penale*) to encompass other offences, namely: (i) computer-related forgery (*fals informatic*); (ii) harassment and incitement to harass (*hărțuire și instigare la hărțuire*); and (iii) threatening behaviour.

28. On 8 April 2019 the SIC held that according to the available evidence, including the USB stick (see paragraph 11 above) that it had studied on 14 January 2019, there was a reasonable suspicion that V.C.A. had committed the offence of violation of private life. It therefore decided that the part of the criminal investigation concerning that offence (see paragraph 14 above) should be continued against V.C.A. personally (rather than *in rem*). The prosecutor's office confirmed those findings.

29. On 23 April 2019 the SIC notified the applicant's lawyer of its intention to interview V.C.A. on 29 April 2019. The applicant's lawyer unsuccessfully requested that V.C.A.'s interview be rescheduled because 29 April was a public holiday (namely Easter Monday), and she could not attend the interview.

30. On 29 April 2019 V.C.A. reiterated his earlier statement (see paragraph 17 above) and acknowledged that he had created several fake Facebook accounts, which he had used for the purpose of disseminating the applicant's intimate photos – including one account that had displayed the applicant's personal information.

31. On 9 May and 9 August 2019 the applicant's lawyer asked the prosecutor's office to provide her with a copy of V.C.A.'s statement, which was done on 4 September 2019.

32. On 3 October 2019 the applicant reiterated her request for extension of the investigation (see paragraph 27 above). On 14 November 2019 the prosecutor's office extended the investigation against V.C.A. to encompass the offence of computer-related forgery under Article 325 of the CC. It held that, according to the available evidence, V.C.A. had unlawfully created four fake Facebook accounts and had used them to disseminate the applicant's photographs publicly with the aim of denigrating the applicant and affecting her rights to dignity and to her own image.

33. On 6 November 2019 the applicant complained before the Bucharest District Court ("the District Court") regarding the allegedly excessive length of the criminal proceedings against V.C.A. and asked that the court order the relevant authorities to expedite the investigation.

34. By an interlocutory judgment of 27 November 2019 that was not amenable to appeal, the District Court acknowledged that the length of the investigation had been excessive and ordered the prosecutor's office to conclude it within four months of it being notified of the court's judgment (3 December 2019). It found that the investigating authorities had for no reason remained inactive from 14 June 2017 until 9 May 2018, from 22 August 2018 until 11 January 2019, and from 29 April until 14 November 2019. It held that the case was not complex and that the authorities had not faced any notable difficulties in carrying out the necessary procedural acts. In addition, both the applicant and V.C.A. had responded to the investigating authorities' requests and had conducted themselves appropriately. Furthermore, there had been no legislative changes affecting the investigation, and the relevant authorities had not argued that they were overloaded with work.

35. On 9 December 2019 the prosecutor's office ordered the SIC to notify V.C.A. of its decision of 14 November 2019 (see paragraph 32 above) and to examine him as a suspect in respect of the offence in question. On 10 January 2020 the SIC heard V.C.A. who reiterated his statement of 29 April 2019 (see paragraph 30 above).

5. The termination of the investigation

(a) The SIC proposal

36. On 15 January 2020, the SIC proposed that the investigation against V.C.A. in respect of the offence of violation of private life be closed (*clasată*) because his alleged acts had not constituted an offence under criminal law, since the applicant had sent him her intimate photographs willingly. It further proposed that the investigation against V.C.A. in respect of the offence of computer-related forgery be dropped (*renunțare la urmărirea penală*)

because there was no public interest in pursuing the investigation. It proposed that V.C.A. be ordered to apologise publicly to the applicant and to perform unpaid community work for a total of sixty days.

(b) The decision of the prosecutor's office of 10 June 2020

37. On 10 June 2020 the prosecutor's office accepted the SIC's above-noted proposal (see paragraph 36 above) and held that the investigation should be closed in so far as the offences of harassment and threatening behaviour were concerned because the constituent elements of the offence of harassment had not been present in the applicant's case and because, in any event, the statutory limitation period (*prescripţia*) in respect of the two offences had already expired.

38. As to the offence of violation of private life, it held that V.C.A. had obtained the applicant's intimate photographs lawfully and that the essential constituent element of that offence had therefore not been present.

39. As to the offence of computer-related forgery, it held that it was beyond doubt that V.C.A.'s conduct had been reprehensible and that it had been characterised by a certain degree of social danger (*pericol social*), since it had entailed a risk that the applicant would be subjected to a certain degree of psychological trauma. Nevertheless, according to the available evidence, the criminal investigation could be dropped for the following specific reasons.

40. The prosecutor's office stated that the above proposal would be beneficial to the applicant. It took the view that indicting V.C.A. could prolong the proceedings and force the applicant to relive her negative experiences of 2016, given that during a trial some of the available evidence might be re-examined and new evidence might be collected. It considered that in such circumstances the applicant could experience again or even feel an aggravation of the state of anxiety that she had (according to her) felt when she had been interviewed by the investigating authorities.

41. Moreover, given the facts of the case, V.C.A.'s indictment had constituted an excessive "penalisation", which had gone against the subdued and exceptional role that criminal proceedings generally played in forming, developing and educating youngsters. It pointed to the fact that at the time of the events in question V.C.A. and the applicant had been students who had not had much life experience and who had been prone to act instinctively rather than rationally, spurred by the desire to experience age-specific sexual experiences.

42. Furthermore, by choosing to regularly send V.C.A. photographs of herself in "indecent poses" the applicant herself had contributed substantially to transforming her relationship with him into one that had been "centred on an exacerbated sexuality (*sexualitate exacerbată*)".

43. Also, V.C.A. had had a rather childish aim in committing the acts in dispute – namely, vengeance motivated by jealousy – and that he had been

prompted to act in such a manner by a cumulation of factors (including his young age and lack of experience).

44. The applicant had barely responded to the investigating authorities' initial summonses to give a statement in respect of the case – even though her clarifying the details of her grievance had been essential for the initiation and conduct of an effective and speedy investigation (given that some of the evidence had been stored online or on computers). By contrast, once the applicant and her legal representative had clarified all the accusations levelled against V.C.A., the latter had appeared before the relevant authorities each time that he had been summoned, had acknowledged his acts and had cooperated with the investigators.

45. The prosecutor's office concluded that given the circumstances, its proposed solution (see paragraphs 36-37 above) constituted sufficient punishment for V.C.A. and fair compensation for the applicant from the standpoint of criminal law.

(c) Judicial finding regarding the allegations of computer-related forgery

46. By an interlocutory judgment of 30 July 2020 that was not amenable to appeal, the District Court, sitting as a single pre-trial judge (namely, C.B.), confirmed the prosecutor's office's decision in respect of the offence of computer-related forgery (see paragraphs 36-37 above) following a request by the said office. It held that the prosecutor's office had interpreted and applied correctly the relevant provisions of the Code of Criminal Procedure that allowed for the criminal investigation to be dropped.

6. The applicant's challenge lodged with the senior prosecutor in respect of the decision of the prosecutor's office of 10 June 2020

47. On 3 July 2020 the applicant challenged the decision of 10 June 2020 before the senior prosecutor attached to the prosecutor's office ("the senior prosecutor"). She submitted that that decision had not been served on her and that her challenge was based on excerpts thereof that had been cited by the press. She had therefore been unable to lodge a duly reasoned challenge.

48. Moreover, the finding of the prosecutor's office that V.C.A. had had a rather childish aim in committing the acts in question supported a narrative to which the investigating authorities had subscribed throughout the investigation – namely, that the person actually responsible for the dissemination of her intimate photos had in fact been her.

49. Furthermore, the findings of the prosecutor's office concerning her conduct during the investigation had been irrelevant and had ignored I.T.A.'s conduct towards her and the District Court's findings described in paragraph 34 above. Also, from the moment that she had retained a lawyer she had responded to all summonses and had insisted on maintaining her complaint.

50. On 5 October 2020 the senior prosecutor dismissed the applicant's challenge as ill-founded, and upheld the above-mentioned decision.

7. The challenge lodged by the applicant with the District Court against the decision of the prosecutor's office of 10 June 2020

51. On 22 September 2020 the applicant lodged with the District Court a challenge against the decision of the prosecutor's office of 10 June 2020, a copy of which she had obtained from V.C.A.'s lawyer, and reiterated the arguments that she had raised before the senior prosecutor (see paragraphs 47-49 above).

52. Subsequently, she added that the decision to close the investigation in respect of the offence of violation of private life had been unlawful because the relevant domestic doctrine and practice confirmed almost unanimously that the constituent elements of the offence under Article 226 § 2 of the CC would be deemed to have been present provided that the dissemination of the private images had been carried out in an unlawful manner – regardless of whether the images in question had been obtained lawfully or unlawfully within the meaning of Article 226 § 1. Therefore, the fact that the applicant had sent V.C.A. intimate photographs of herself willingly was irrelevant, given the fact that the photographs in question had been private at that time and that V.C.A. had disseminated them unlawfully.

53. Only the above-mentioned interpretation afforded practical and effective protection to a person's private life from the perspective of a State's positive obligations under Article 8 of the Convention, as reflected by the case-law of the Court (reference was made to *Rodina v. Latvia,* nos. 48534/10 and 19532/15, 14 May 2020). To hold otherwise would be to essentially exclude from the sphere of application of the offence in question precisely the kind of conduct that had the most serious and visible social impact.

54. Also, the decision to close the investigation in respect of the offences of harassment and of threatening behaviour on the grounds that they had become time-barred had been equally unlawful.

55. The examination of the applicant's challenge was assigned to Judge C.B. (see paragraph 46 above). The applicant requested that he be recused arguing that C.B. had already expressed an opinion regarding the issues in dispute.

56. By an interlocutory judgment that was not amenable to appeal, the District Court, sitting as a single judge (namely A.M.S.), dismissed the applicant's challenge in respect of Judge C.B. as ill-founded. It found that on 30 July 2020 C.B. had not examined or expressed an opinion regarding any of the conclusions listed in the decision of the prosecutor's office relating to the offences of harassment, threatening behaviour and violation of private life.

57. By an interlocutory judgment of 15 December 2020 that was not amenable to appeal, the District Court, sitting as a single judge (namely,

C.B.), dismissed the applicant's challenge against the decision of the prosecutor's office of 10 June 2020 (see paragraphs 51-54 above).

58. The District Court held that the constituent elements of the offence of violation of private life had not been present because V.C.A. had not obtained intimate photographs of the applicant in an unlawful manner. She had sent the photographs in question to him willingly. The fact that V.C.A. had disseminated those photographs publicly without the applicant's consent could have engaged at the most his civil liability if the applicant had been able to prove the damage allegedly suffered by her.

59. As to the offence of computer-related forgery, the District Court held that it had already examined the ruling of the prosecutor's office in this regard in its interlocutory judgment of 30 July 2020 (see paragraph 46 above) and could therefore not examine that part of the ruling during the current proceedings.

60. As regards the offences of threatening behaviour and harassment, the District Court held that one of the essential conditions for both offences had not been met in the applicant's case – namely, that V.C.A.'s acts could not have been capable of striking fear into the applicant. The District Court took the view that the fact that the applicant had been contacted by numerous individuals seeking sexual services after the dissemination of the photographs could not have brought the offence of harassment into play: at the most, this could have engaged V.C.A.'s civil liability, provided that the applicant could have proved the damage allegedly suffered by her.

8. The applicant's extraordinary appeal for annulment of the District Court's judgment of 30 July 2020

61. On 2 November 2020 the applicant lodged with the District Court an extraordinary appeal for annulment (*contestație în anulare*) of the interlocutory judgment of 30 July 2020 (see paragraph 46 above). She argued, *inter alia*, that the court had violated her right to equality of arms, because it had examined the case on 30 July 2020 without summoning the applicant in a lawful manner.

62. By means of an interlocutory judgment of 2 February 2021, which was not amenable to appeal, the District Court allowed the applicant's extraordinary appeal for annulment and quashed the interlocutory judgment of 30 July 2020. It referred the case back to the prosecutor's office and ordered it to resume the investigation in respect of the offence in question. The court essentially accepted the applicant's argument that her right to equality of arms was violated. In addition, the District Court found that there was a reasonable suspicion that V.C.A. had committed the offence in question and disagreed with the conclusion of the prosecutor's office that there was no public interest in pursuing the investigation against V.C.A. (see paragraphs 36-39 above).

63. The court held in this connection that according to his own statements, V.C.A.'s acts had been fuelled by a desire for revenge because he had felt betrayed by the applicant. His acts indicated that he was a socially dangerous person who was prepared to violate criminal-law rules in order to satisfy basic physiological urges. Also, they had demonstrated a lack of respect for extremely important social values such as those pertaining to a person's psychological freedom and private life. V.C.A.'s acts had been aimed at defaming the applicant and her image, both publicly and within the circle of her friends and family, and that their level of seriousness had been further aggravated by the psychological damage suffered by the applicant.

64. The District Court could therefore not agree with the prosecutor's office that the reasons behind V.C.A.'s acts had been childish or that the continuation of the criminal investigation against him could constitute an excessive penalty. It took the view that the acts in question had been highly dangerous given the maximum and minimum penalty provided for by law that could be imposed for the offence in dispute and that they had violated social standards that not only protected a person's private life and image but also protected people against identity theft and fake information.

65. The District Court found that the statement made by the prosecutor's office, noted in paragraph 42 above, was "incomprehensible". It had not constituted objective grounds that could have been relied on for an assessment of whether a criminal investigation should have been dropped or not.

66. As to the argument of the prosecutor's office that the applicant had barely responded to the authorities' initial invitations to give a statement in respect of the case, the District Court held that the applicant's reluctance to answer telephone calls from unknown numbers had been pardonable given that at the time she had been constantly harassed by a large number of calls and messages received from unknown individuals looking for sexual services. The District Court took the view that the applicant's conduct had been equally understandable – even assuming that it could be said that she had intentionally avoided participating in the police interview in question – given the anxiety and possible emotional instability that she might have been suffering from because of V.C.A.'s online harassment of her.

9. The decision of the prosecutor's office of 6 January 2022 concerning the offence of computer-related forgery and the applicant's subsequent challenges

67. On 6 January 2022, the prosecutor's office again closed the investigation in respect of the offence of computer-related forgery. It held that the applicant's extraordinary appeal for annulment should have been rejected as inadmissible. Moreover, V.C.A. had complied with the obligations imposed on him by the final interlocutory judgment of 30 July 2020 (see paragraphs 36-37 and 46 above). Thus, the criminal investigation against him

in respect of the offence of computer-related forgery could no longer be pursued without violating the *ne bis in idem* principle.

68. On 28 February 2022, the senior prosecutor dismissed the applicant's challenge against the above decision confirming the prosecutor office's view that the reopening of the proceedings violated the *ne bis in idem* principle.

69. The applicant lodged with the District Court a challenge against the decisions of the prosecutor's office of 6 January and 28 February 2022. By an interlocutory judgment of 21 July 2022 that was not amenable to appeal, the District Court found that by reviewing the interlocutory judgment of 2 February 2022, the prosecutor's office had acted like a court – even though it had not had any authority to do so. Moreover, it had refused to follow the District Court's instructions to resume the criminal investigation in respect of the case – even though it had been lawfully obliged to do so. Furthermore, the *ne bis in idem* principle could not have been violated in V.C.A.'s case by the fact that the proceedings had simply been allowed to continue.

70. Nevertheless, the District Court held that the criminal investigation into the offence of computer-related forgery had to be closed because the statutory limitation period in respect of the said offence had expired in November 2021.

C. Other information

1. Query by a member of parliament concerning the applicant's case

71. On 18 December 2018 a member of parliament ("MP") questioned the Minister of Internal Affairs and the Minister of Justice about the authorities' failure to take action in respect of the applicant's case. The MP asked for an investigation into the online article's allegations (see paragraph 22 above) and for swift action against those found responsible for any unlawful conduct.

72. On 15 and 31 January 2019 the Minister of Internal Affairs and the Minister of Justice, respectively, responded to the MP's query. They stated that the investigation into the applicant's case was ongoing and that a disciplinary investigation had been opened against I.T.A.

2. Opinion issued by the National Council for Combating Discrimination

73. On 23 November 2022, following a request made by the Government, the National Council for Combating Discrimination (*Consiliul Naţional Pentru Combaterea Discriminării* – CNCD) issued a guiding and non-binding opinion regarding whether the statement issued by the prosecutor's office on 10 June 2020 (see paragraph 42 above) had been discriminatory.

74. The CNCD found the statement in question to have been excessive and noted that the applicant, by having sent the photographs to V.C.A., had not consented to their public dissemination. The classification by the

prosecutor's office of the applicant's poses in the photographs in question as "indecent" had constituted a subjective assertion – in the form of a personal insult. That kind of value judgment was objectionable when delivered within an institutional framework and when serving as an argument advanced in order to exonerate an alleged perpetrator. All the above-noted elements could have been subject of legal examination, possibly giving rise to civil liability in tort, that could have established whether the applicant's rights to human dignity and to private and family life had been violated or not.

75. The CNCD could not conclude with certainty whether the decisive factor prompting the statement of the prosecutor office had been the applicant's sex. It stated that, had she been male, (i) the applicant would not have benefitted from different and more advantageous treatment (under the same circumstances), and (ii) the prosecutor's office would have likewise included the statement in question in the arguments used for its decision. The conduct of the prosecutor's office had been generated by its subjective assessment of the applicant's conduct during her relationship with V.C.A. rather than by the applicant's sex.

3. Reports produced by the applicant's psychologists

76. Two psychologists who had conducted, between February and July 2019 and from November 2022 onwards, counselling sessions with the applicant (aimed at treating problems that had been prompted by the events of 2016), produced two separate reports in respect of the applicant.

77. The first report stated that the applicant's self-esteem had been affected, which in turn had influenced her performance at university and her relationship with her colleagues. She had also been avoiding going to classes in order not to encounter V.C.A.

78. The second report stated that the applicant had been diagnosed with generalised anxiety and that the public exposure of her photographs had strongly affected her trust in people and capacity to feel safe in romantic relationships. The statement made by the prosecutor's office (see paragraph 42 above) had contributed significantly to the worsening of the applicant's generalised anxiety.

II. RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic law and practice

1. Domestic law

79. The relevant provisions of the CC read as follows:

Article 206 – Threatening behaviour

"(1) The act of threatening a person with a crime or with an act prejudicial to [him or her], or to another person, if it is such as to induce fear [in the person threatened], is punishable by [a term of] imprisonment of between three months and one year, or by a fine ...

(2) The [relevant] criminal [proceedings] shall be set in motion upon the injured party ... [lodging a] complaint."

Article 208 - Harassment

"...

(2) Making telephone calls or [undertaking] communication by means of remote transmission, which, by [their] frequency or content, induce fear in a person, is punishable by [a term of] imprisonment of between one and three months, or by a fine ...

(3) The [relevant] criminal [proceedings] shall be set in motion upon the injured party ... [lodging a] complaint."

Article 226 - Violation of private life

"(1) The violation of [a person's] private life by unlawfully photographing, capturing, or recording images of, by listening to using technical means or by audio recording [that] person in [his or her] home or [own] room or an annex thereto, or a private conversation [engaged in thereby], is punishable by [a term of] imprisonment of between one and six months or by a fine.

(2) The unlawful disclosure, broadcast, presentation or dissemination of the [kind of] sounds, conversations or images provided in paragraph 1 to another person or to the public is punishable by [a term of] imprisonment of between three months and two years or by a fine.

(3) The [relevant] criminal [proceedings] shall be set in motion upon the injured party ... [lodging a] complaint.

(4) An act provided in paragraphs 1 and 2 shall not constitute an offence ...

(a) [if it is committed] by [a person] who participated in a meeting with the injured party during which the images, conversations or sounds [in question] were captured, ... [and he or she can demonstrate that the act in question] is justified by a legitimate interest;

(b) if the injured party acted explicitly with the intention of being seen or heard by the perpetrator;

..."

Article 325 - Computer-related forgery

"The act of unlawfully entering, altering or deleting computer data or of unlawfully restricting access to such data, resulting in inaccurate data, for the purpose of [that inauthentic data] being used to bring about legal consequences, constitutes an offence and is punishable by [a term of] imprisonment of between one and five years."

80. On 17 May 2023 Parliament adopted Law no. 171/2023, which entered into force on 18 June 2023. The said Law amended and supplemented Article 226 of the CC so that it reads as follows:

> "(1) The violation of [a person's] private life by unlawfully photographing, capturing ... images of ... a person in [his or her] home or [own] room or an annex thereto ... is punishable by [a term of] imprisonment of between one and six months or by a fine.
>
> (2) The unlawful disclosure ... or dissemination of the [kind of] ... images set out in paragraph 1 to another person or to the public is punishable by [a term of] imprisonment of between three months and two years or by a fine.
>
> (2^1) The disclosure ... or dissemination, by any means, of an intimate picture of a person identified or identifiable through the information provided, without [that] person's consent, [which is] capable of causing to the person [in question] ... mental suffering or damage to [his or her public] image, is punishable by [a term of] imprisonment of between six months and three years or by a fine.
>
> (2^2) [The term] "intimate picture" ... is understood [to mean] any reproduction ... of an image of a nude person, which exposes completely or partially [his or her] genital organs, anal region, or pubic area or, in the case of women, breasts ...
>
> (3) The [relevant] criminal [proceedings] shall be set in motion upon the injured party ... [lodging a] complaint.
>
> (4) An act set out in paragraphs 1 and 2 shall not constitute an offence ...
>
> (a) [if it is committed] by [a person] who participated in a meeting with the injured party during which the images ... were captured, ... [and he or she can demonstrate that the act in question] is justified by a legitimate interest;
>
> (b) if the injured party acted with the explicit intention of being seen or heard by the perpetrator;
>
> ..."

81. The explanatory memorandum to Law no. 171/2023 stated that Article 226, as in force before Law 171/2023 entered into force, had been insufficient to hold the perpetrators of acts of "revenge pornography" criminally liable because most intimate pictures held by perpetrators were obtained consensually.

82. It further stated that Article 226 could not cover situations in which intimate pictures had been taken in a setting other than that of "a house or room, or an annex thereof". Moreover, a single act, or even repeated acts, of "revenge pornography" could not encompass the constituent elements of offences such as harassment and incitement to harass in circumstances where the photographs had been sent to persons other than the victim. The acts in question could also not encompass the constituent elements of the offences of threatening behaviour or blackmail. Furthermore, the civil remedies were insufficient to deter perpetrators from committing such acts. Civil proceedings were lengthy and costly, placed on the victim the difficult burden of proving non-pecuniary damage and could not guarantee that unlawful photographs would be removed from webpages hosting them, given that civil court judgments were binding only on the parties to the proceedings.

83. It concluded that the criminalisation of "revenge pornography" was necessary in order for such acts to be accorded a level of social stigma that was appropriate, given the serious psychological, professional and personal consequences for the victims of this crime.

2. Domestic practice

84. By decision no. 51 of 24 June 2021 the High Court of Cassation and Justice ("the Court of Cassation") allowed a request by a Court of Appeal for a preliminary ruling on points of law (*hotărâre prealabilă pentru dezlegarea unor chestiuni de drept*) as to whether the sounds, conversations or images had to have been obtained in an unlawful manner in order for the constituent elements of the offence provided by Article 226 § 2 of the CC to be deemed to have been present. The requesting court noted that the national doctrine (*doctrina națională*) in respect of the point of law under review was divergent (that is, inconsistent), and so was the relevant case-law of the national courts.

85. The Court of Cassation held that the constituent elements of the offence that was set out by Article 226 § 2 of the CC would be met in the event that the sounds, conversations or images in question had been disclosed or disseminated to another person or to the public in an unlawful manner. It was irrelevant whether such sounds, conversations or images had been obtained lawfully or unlawfully. This decision was published in the Official Gazette on 3 November 2021 and was legally binding on national courts from the moment of its publication.

B. International materials

1. United Nations

86. The relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women ("the CEDAW Convention") – which Romania ratified on 7 January 1982 – and the relevant recommendations of the United Nations Committee on the Elimination of Discrimination against Women ("the CEDAW Committee") – the UN expert body that monitors compliance with the CEDAW Convention and makes general recommendations to the States parties on any specific matters concerning the elimination of discrimination against women – were presented in *Volodina v. Russia* (no. 41261/17, § 51-55, 9 July 2019).

87. In its concluding observations on the combined seventh and eighth periodic reports on Romania (examined on 6 July 2017), the CEDAW Committee expressed concern about, *inter alia*, (i) women's lack of trust in the judicial system and (ii) the stigmatisation of victims, which led to the under-reporting of cases of gender-based violence against women and girls, including psychological and economic violence, sexual harassment and marital rape. It recommended, among other measures, that the Romanian

authorities (i) take measures to destigmatise victims and raise awareness about the criminal nature of gender-based violence against women and girls and (ii) ensure that all reported cases of gender-based violence against women and girls were properly investigated, perpetrators were prosecuted and sentences imposed were commensurate with the gravity of the crime committed.

88. Further relevant findings of (i) a 2015 report entitled "Cyberviolence against Women and Girls: A World-wide Wake-up Call" by the UNESCO-ITU Broadband Commission for Digital Development's Working Group on Broadband and Gender, (ii) a report on online violence against women and girls from a human-rights perspective (A/HRC/38/47, 18 June 2018) issued by the United Nations Human Rights Council's Special Rapporteur on violence against women, and (iii) a mapping study on online violence (released on 9 July 2018) conducted by the Cybercrime Convention Working Group on online bullying and other forms of online violence (especially against women and children), are set out in *Volodina v. Russia (no. 2*) (no. 40419/19, §§ 22-24, 14 September 2021).

2. Council of Europe

89. The relevant provisions of the Convention on Preventing and Combating Violence against Women and Domestic Violence of 7 April 2011 ("the Istanbul Convention"), which entered into force in respect of Romania on 1 September 2016, are presented in *M.G. v. Turkey* (no. 646/10, § 54, 22 March 2016) and *J.L. v. Italy* (no. 5671/16, § 65, 27 May 2021).

90. The Istanbul Convention contains also the following provisions:

Article 3 – Definitions

"For the purpose of this Convention:

a. "violence against women" is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

b "domestic violence" shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;

..."

Article 40 – Sexual harassment

"Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating,

hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction."

91. In its General Recommendations no. 1 on the digital dimension of violence against women adopted on 20 October 2021, the Group of Experts on Action against Violence against Women and Domestic Violence monitoring the Istanbul Convention ("the Istanbul Convention Group of Experts") made the following conclusions: (i) manifestations of violence against women and girls in the digital sphere were to be regarded as expressions of gender-based violence against women covered by the Istanbul Convention (paragraph 18 thereof); (ii) the non-consensual sharing of or threats to share nude or sexual images of a person in the digital sphere (also known as "revenge pornography") constituted sexual harassment that could also take the form of impersonating a victim and sharing sexual content (paragraph 38 (a) and (d) thereof); (iii) many of the forms of violence against women perpetrated through digital means (including sexual harassment online or through digital means) fell within the bounds of intentional behaviour, which States Parties to the Istanbul Convention were required to criminalise (paragraph 36 thereof).

92. In a baseline evaluation report on Romania that it issued on 4 March 2022, the Istanbul Convention Group of Experts underlined the need to "ensure appropriate investigation, prosecution and sanctions in cases of violence against women" – including by increasing the frequency of the reporting of such cases. The report pointed to the mistrust of the criminal justice system – in particular of law-enforcement agencies, for women's reluctance to report violence (especially in the event that the perpetrator was an intimate partner). "Police officers were frequently the first persons to come into contact with a victim, and their attitude and actions were crucial in determining whether a victim decided to report the violence in question and chose to participate in further legal action" (paragraph 341 thereof).

93. The report noted that concerns had been expressed (i) that "as a result of prejudice and discriminatory attitudes deriving from a patriarchal culture, victims who were treated insensitively or unsympathetically often decided not to continue with the legal process", and (ii) about "the pervasiveness of myths and negative stereotyping of women victims among law-enforcement officials that could sometimes go as far as showing reluctance or refusing to register or process complaints" (paragraph 342 of the report).

94. The report further noted that concerns had been raised about investigative practices that had a "revictimising" effect – such as "lengthy questioning, making demeaning comments and assumptions, and even pressurising victims to reconcile with the perpetrators of the violence" against them. Such attitudes minimised the credence ascribed to victims' accounts of violence, "hindered the recognition of the seriousness and specificity of the violence and prevented the full application of provisions and measures

designed to protect victims and to offer them the possibility of remedial action" (paragraph 343 of the report).

C. European Union

95. On 13 June 2024 the Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, OJ 2024, L entered into force and has to be implemented by the member States by 14 June 2027 at the latest. Article 5 § 1 (a) of the Directive in question (which concerned the non-consensual sharing of intimate or manipulated material) provided that member States should ensure that intentional conduct (consisting of making accessible to the public, by mean of information and communication technologies, images, videos or similar material depicting the intimate parts of that person without that person's consent) likely to cause serious harm to a person was punishable as a criminal offence. Article 7 (d) of the Directive (which concerned cyber harassment) provided that member States should ensure that intentional conduct (consisting of making accessible to the public – by means of information and communication technology – material containing the personal data of a person, without that person's consent, for the purpose of inciting other persons to cause serious psychological harm to that person) was punishable as a criminal offence.

96. The relevant findings of an EU-wide survey carried out between March and September 2012 by the European Union Agency for Fundamental Rights and of a report on "Cyber violence against women and girls" produced by the European Institute for Gender Equality in 2017, pertinent at the time of the events in the instant case, were set out in *Buturugă v. Romania* (no. 56867/15, §§ 41-42, 11 February 2020). The latter report was subsequently updated on 25 November 2022.

THE LAW

I. PRELIMINARY REMARKS

97. The Court notes at the outset that some of the applicant's statements in her initial application to the Court may be read as suggesting that the prosecutor's office's proposal concerning the offence of computer-related forgery fell outside the scope of the present application. Nevertheless, having regard to (i) the applicant's submissions to the national authorities and their respective findings (see paragraphs 19, 27, 32, 36-51, 59, 62-66 and 69 above), (ii) the nature and scope of her complaints raised before the Court (see paragraphs 100 and 160 below) and (iii) the intricate link between the offence in question and those complaints, the Court considers that it should assess the context and the situation complained of as a whole.

98. The Government have not raised any express concerns or objections relating to the applicant's impugned statements (contrast *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 98 and 126, 20 March 2018). On the contrary, both parties have relied heavily on and debated the prosecutor's office's findings and the measures proposed in respect of the offence in question (see paragraphs 104-107 and 110-111 below).

II. ALLEGED VIOLATION OF ARTICLES 6 AND 8 OF THE CONVENTION

99. Relying on Article 8 of the Convention, the applicant complained that the national authorities had failed to effectively protect her right to respect for her private life and her right to intimacy in respect of V.C.A.'s acts consisting of (i) the publication of intimate photographs of her on escort service websites, along with her name, telephone number and home address, and (ii) the dissemination of those photographs both to her family and friends and publicly via the social media platform Facebook by maliciously impersonating some of the applicant's friends or the applicant herself (see paragraphs 6-10, 17, 30, 39-45 and 62 above), even though – under the relevant national legislation in force at the relevant time and the Convention – they had been obliged to do so. They had (i) misinterpreted and wrongly applied the national legislation designed to safeguard the rights and freedoms protected by Article 8 of the Convention – specifically, Article 226 of the CC, (ii) intentionally and maliciously conducted an inefficient investigation and (iii) disregarded the relevant domestic doctrine and practice.

Under Article 6 of the Convention, she complained that the national authorities had violated her right of access to court, right to an impartial tribunal and right to proceedings conducted within a reasonable time. The applicant had been unable to bring a civil party claim against V.C.A. because the authorities had closed the criminal investigation in part without an indictment and at a time when the statutory limitation for a separate general tort-law action had already taken effect. Moreover, the pre-trial judge C.B. had lacked impartiality because on 30 July 2020 he had already expressed his opinion in respect of the prosecutor's office's decision of 10 June 2020 to close the investigation in the relevant part. Lastly, the criminal proceedings against V.C.A. had been excessively lengthy for reasons that could not be imputed to the applicant.

100. The Court notes that the above complaints concern an alleged failure by the national authorities to comply with their positive obligation to effectively protect the applicant against the unlawful public dissemination of her intimate photographs by V.C.A. – including by conducting an effective investigation into the circumstances of her case. Being the master of the characterisation to be given in law to the facts of the case (see *Radomilja*

and Others, cited above, §§ 114 and 126), it considers that they fall to be examined only under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

101. The Court notes that this part of 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

102. The applicant argued that the Romanian system did not prohibit and criminalise online violence against women effectively – in particular the non-consensual dissemination of intimate images and the threat thereof. At the relevant time, Article 226 of the CC generated uncertainty as to its interpretation, which the Court of Cassation had eventually clarified on 24 June 2021, that is after the events in her case. Furthermore, it took too long for Law no. 171/2023 to be adopted and in addition, it had been incomplete in that it had not criminalised the publication of intimate images on escort service websites. The perpetrators of such acts could not be prosecuted for harassment because they fell outside the scope of the offence in question.

103. The national authorities had failed to effectively protect her against the online harassment given the ineffective manner in which they had conducted the investigation in respect of her case (reference was made to *K.U. v. Finland* (no. 2872/02, ECHR 2008) and *Volodina (no. 2)* (cited above). In particular, until she had retained a lawyer on 14 December 2018, they had treated her complaint superficially, in the hope that she would withdraw it, and had not attempted to take any measure in order to protect her private life. Therefore, V.C.A. had continued publicly disseminating her intimate photographs and personal information as late as November 2016. The investigation into her case had lasted for almost six years because of the unjustified inactivity of the investigating authorities. That had led to the investigation in respect of some offences (namely, threatening behaviour and harassment) to become time-barred.

104. Furthermore, the authorities had misinterpreted Article 226 of the CC and closed the investigation into the offence of violation of private life. Their interpretation of this offence had been contradicted by most of the relevant national doctrine and practice. Moreover, the investigation into the offence of computer-related forgery had been launched on her initiative even though they could have done so of their own motion. They had refused to carry on with that investigation even after the District Court had ordered them to do so. The prosecutor's office had dropped the investigation in respect of that offence ignoring certain relevant elements – such as V.C.A.'s remarks during his recorded conversations with the applicant suggesting that he had enjoyed the devastating psychological impact that his acts had had on her – and downplaying the seriousness of V.C.A.'s conduct. Such an approach placed the blame for V.C.A.'s acts on her – because she was a woman, could have prompted female victims to drop their complaints in similar circumstances and may have served to encourage acts of "revenge pornography". It also ignored the fact that the authorities were solely responsible for clarifying the accusations against V.C.A. – especially since she had pointed out all the relevant aspects of her complaint against V.C.A. from the very beginning.

105. The arguments advanced by the prosecutor's office had illustrated a general tendency among the investigating authorities involved in such cases to remain passive in the face of similar complaints unless the victim persisted with his or her complaint and essentially did their work for them. The authorities also took advantage of the fact that most victims could not afford lawyers as a tool to pressure them into withdrawing their complaints and settling cases.

106. The CNCD's opinion (see paragraphs 73-75 above) had acknowledged that the reference and comments provided by the prosecutor's office in respect of the applicant's "indecent poses" in the photographs that she had sent to V.C.A. had been excessive.

107. Lastly, the fact that V.C.A. had been required to undertake community work and to publish a "small" public apology had been insufficient to redress the violation of her rights.

(b) The Government

108. The Government argued that the national legal system had afforded adequate protection to the applicant and had prohibited and criminalised online violence against women – in particular the non-consensual dissemination of intimate images and the threat thereof. The Court of Cassation's judgment of 24 June 2021 (see paragraphs 84-85 above), which had been binding on all national courts, had clarified the meaning of Article 226 § 2 of the CC. As a result, that provision applied to circumstances resembling those concerning the applicant's case. The Law no. 171/2023 further clarified and consolidated the above-mentioned legal framework by

addressing "revenge pornography" explicitly and by defining from a human-rights perspective the term in question in line with the relevant international documents (see paragraph 88 above). In particular, the Law addressed both the issue of the non-consensual dissemination of images by any means (including online), and the issue of the aim of such an action – namely, to shame or harm the victim (see paragraph 80 above).

109. According to the Government, the authorities had taken adequate measures to investigate the applicant's complaints concerning V.C.A.'s acts and had – in respect of his online harassment of her by means of disseminating her intimate photographs – afforded her an effective remedy capable of having a deterrent effect. In this connection, they pointed to the applicant's evasive conduct in responding to the investigators' invitations to her to give statements in respect of the case – conduct that had also been noted by the authorities (see paragraphs 13 and 44 above).

110. The Government noted that the national authorities had initiated an investigation in respect of the case that had established the identity of the perpetrator. Their decision not to indict V.C.A. had been based on a thorough assessment of the circumstances of the case – including that (i) the continuation of the proceedings could have caused additional harm to the applicant, (ii) V.C.A. could have been excessively penalised, given the limited role that criminal law was supposed to play in the formation, education and development of young persons, and (iii) both parties to the proceedings had been young and had lacked life experience. Furthermore, the authorities had imposed appropriate sanctions on V.C.A. (see paragraphs 36-37 above) that from a criminal-law perspective had been capable of providing the applicant with fair reparation for the harm suffered by her. The above elements were sufficient to distinguish the applicant's case from that of the applicants in *K.U. v. Finland* and *Volodina (no. 2)* (both cited above).

111. The Government argued also that the arguments cited by the prosecutor's office in its decision of 10 June 2020 had constituted merely a position expressed by the prosecutor with regard to both the applicant's and V.C.A.'s conduct. Referring to the opinion submitted by the CNCD (see paragraphs 73-75 above), it could not be claimed with certainty that the motivation for the arguments in question had been the applicant's sex. The argument to the effect that the applicant had contributed substantially to the exacerbation of the sexual nature of the relationship had not excluded the role played by V.C.A. in the said relationship. At the same time, the references to the dissemination of the pictures by the applicant and to the childishness of V.C.A.'s acts had constituted an undisputed factual aspect of the case and not an opinion or judgment offered by the prosecutor.

(c) The third-party intervener

112. The AIRE Centre submitted that it was clear from the Court's case-law that online violence and associated acts of online harassment – together with domestic violence and other acts of gender-based violence – fell within the scope of Article 8 of the Convention. In accordance with the Contracting States' positive obligations, domestic law had to specifically afford protection against such violence. The Court had recognised that acts of online violence – including the sharing of intimate photographs without the consent of the person photographed and with the intention of degrading that person – were sufficiently serious as to require a criminal-law response on the part of the domestic authorities. Civil proceedings, while appropriate in some less serious situations, could not offer sufficient protection in such circumstances.

113. It was further submitted that the national authorities were obliged to take deterrent measures capable of preventing continued violence and had to consider, where relevant, what could and should be done to protect a person from recurring online violence.

114. Moreover, it was clear from the Court's case-law under Article 8 that domestic authorities were in such cases required to act promptly and in good faith, and to carry out an effective and thorough investigation. The national authorities were responsible for any delays in an investigation, regardless of whether those delays were the result of judicial or other structural deficiencies – including delays caused by a lack of clear national provisions in respect of the investigation of online offences and online violence or the reluctance of individual police officers to investigate allegations of such violence. A failure to conduct effective investigations contributed to a feeling of impunity surrounding online violence and of an inability to protect individuals (particularly women and girls) from such acts.

2. The Court's assessment

(a) **General principles**

115. The Court reiterates that the concept of "private life" within the meaning of Article 8 is a broad term which is not susceptible to exhaustive definition, which covers also the physical and psychological integrity of a person (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 126, 25 June 2019, with further references). It moreover extends to aspects relating to personal identity, such as a person's name, picture or image, and the right to control the use of that image (see *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, §§ 87-89, 17 October 2019). Furthermore, a person's body concerns an intimate aspect of private life (see *Y.F. v. Turkey*, no. 24209/94, § 33, ECHR 2003-IX, and *Nicolae Virgiliu Tănase*, cited above, § 126).

116. The object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities. However, this provision does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there are positive obligations inherent in an effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see, among other authorities, *Söderman v. Sweden* [GC], no. 5786/08, § 78, ECHR 2013, and *Nicolae Virgiliu Tănase*, cited above, § 125).

117. The choice of the means calculated to secure compliance with Article 8 of the Convention in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation – regardless of whether the obligations on the State are positive or negative. There are different ways of ensuring respect for private life, and the nature of the State's obligation will depend on the particular aspect of private life that is at issue. Where a particularly important facet of an individual's existence or identity is at stake, or where the activities at stake involve a most intimate aspect of private life, the margin allowed to the State is correspondingly narrowed (see *Söderman*, cited above, § 79, with further references).

118. In the area of violence perpetrated by individuals between themselves, the Court has categorised acts of online violence, online harassment and malicious impersonation as forms of violence against women and children capable of undermining their physical and psychological integrity in view of their vulnerability (see *K.U. v. Finland*, cited above, § 41, and *Volodina (no. 2*), cited above, § 48). The Court has pointed out that "online harassment is currently recognised as an aspect of violence against women and girls and can take a variety of forms, such as online violations of private life ... and the taking, sharing and handling of information and images, including intimate ones" (see *Buturugă*, cited above, § 74, and *Volodina (no. 2*), cited above, § 48).

119. It has further found that online violence, or "cyberviolence", is closely linked with offline, or "real-life", violence and falls to be considered as another facet of the complex phenomenon of domestic violence (ibid., § 49). It has also pointed out that both international instruments and the Court's well-established case-law have emphasised the particular vulnerability of victims of domestic violence and the need for active State involvement in their protection. Along with children and other vulnerable individuals, they are particularly entitled to effective protection (ibid., § 47, with further references).

120. The Court reiterates that States have a positive obligation to establish and apply effectively a system that punishes all forms of domestic violence, whether occurring offline or online, and to provide sufficient safeguards for and adequate protection measures in respect of the victims of domestic

violence in the form of effective deterrence against serious breaches of their physical and psychological integrity (see *Opuz v. Turkey*, no. 33401/02, § 145, ECHR 2009, and *Volodina (no. 2*), cited above, §§ 49 and 58). This positive obligation includes, in particular (in some cases under Articles 2 or 3 and in other instances under Article 8 taken alone or in combination with Article 3 of the Convention): (a) the obligation to establish and apply in practice an adequate legal framework affording protection against violence by private individuals; (b) the obligation to take reasonable measures in order to avert a real and immediate risk of recurrent violence of which the authorities knew or ought to have known; and (c) the obligation to conduct an effective investigation into acts of violence (see *Kurt v. Austria* [GC], no. 62903/15, § 164, 15 June 2021, and *Volodina (no. 2*), cited above, § 49).

121. The Court has held that acts of online violence involving the publication of intimate photographs of the victims, calculated to attract the attention of their family and friends in order to humiliate and degrade them, and the tracking of victims' movements by means of a GPS device and the sending of death threats over social media, causing them to feel anxiety, distress and insecurity, are sufficiently serious as to require a criminal-law response on the part of the domestic authorities. In such cases a civil-law remedy, which might constitute an appropriate remedy in situations of lesser gravity, is not able to achieve the above-mentioned (see paragraphs 119-121) objectives (see *Volodina (no. 2*), cited above, § 57, with further references).

(b) Application of the above principles in the instant case

122. The Court notes that the parties have not disputed the applicability of Article 8 to the instant case and it sees no reason to find otherwise. The applicant was the victim of acts perpetrated by her former intimate partner, namely V.C.A., described in paragraph 99 above. The Court is satisfied that the acts in question can be regarded as online harassment within the meaning of its case-law (see paragraph 118 above).

123. The national authorities have established, albeit in the context of the offence of computer-related forgery, that the acts in question were fuelled by V.C.A.'s desire to take revenge on the applicant and to defame, denigrate and humiliate her both publicly and within the circle of her friends, family and acquaintances because he had felt betrayed by her (see paragraphs 39-43 and 63-64 above). These acts had exposed the applicant to being harassed by unknown individuals for sexual services and, along with the consequences to which those acts gave rise, they had been capable of causing the applicant psychological trauma and damage and emotional instability, as well as instilling in her feelings of anxiety and fear (see paragraphs 39 and 66 above). Indeed, the evaluation reports submitted to the Court confirm that V.C.A.'s acts and their consequences have seriously affected her psychological and physical well-being and that they have had a long-term impact on her psychological health that has ultimately affected the applicant's ability to

coexist – and to form, enjoy and maintain relationships – with others (see paragraphs 76-78 above).

124. The Court also notes that both the national investigating authorities and the courts deemed the acts in question, or at least part thereof, to have been reprehensible (see paragraph 39 above) and to require some form of reaction or compensation from a criminal-law perspective (see paragraphs 45, 62-64 and 69-70 above). The District Court branded them "highly dangerous" and found that they had violated a number of social rules aimed at protecting a person's right to respect for private life – including his or her image and identity (see paragraph 64 above). Although not applicable at the time, the explanatory memorandum to Law no. 171/2023 that amended and supplemented Article 226 of the CC, also concludes that the criminalising of such acts was necessary in order for them to attract the appropriate level of social stigma and that a civil-law remedy under such circumstances would be insufficient to deter perpetrators from committing such acts (see paragraphs 81-83 above).

125. In view of the above and given the Court's case-law on the matter (see paragraphs 115-121 above), the Court is satisfied that V.C.A.'s acts, which considerably affected the applicant, were sufficiently serious as to require a criminal-law response on the part of the domestic authorities. Such a requirement also stems from the international documents, some of which are binding on the respondent State (see paragraphs 86-96 above). The Court also reiterates that both the public interest and the interests of the protection of vulnerable victims from offences infringing on their physical or psychological integrity require the availability of a remedy enabling the perpetrator to be identified and brought to justice (see *K.U. v. Finland*, cited above, § 47, and *Volodina*, cited above, § 100). Accordingly, the fact that the applicant could possibly have also brought civil proceedings against V.C.A., as argued by the District Court (see paragraphs 57-58 and 60 above), cannot be regarded as an adequate substitute of the above requirement.

126. The applicant submitted that the national legal system had not effectively prohibited or criminalised all forms of online harassment – in particular, the non-consensual dissemination (or the threat thereof) of intimate images of a person that had been obtained lawfully by an alleged perpetrator. In addition, she argued that the national authorities had failed to provide her with an effective protection in respect of the online harassment and that they had ineffectively conducted the investigation in respect of her case (see paragraphs 99 and 102-107 above).

127. The Court will therefore examine whether the respondent State had put in place an adequate criminal legal framework affording protection against the specific acts of her former partner and whether the manner in which the national authorities conducted the investigation into the applicant's complaints was effective.

(i) Legal framework

128. The Court notes that the national prosecuting and judicial authorities took the view that the constituent elements of the offence of violation of private life had not been present in the applicant's case and that Article 226 § 2 of the CC could not therefore be applied, because she had sent intimate photographs of herself to V.C.A. willingly (see paragraphs 36, 50 and 57-58 above).

129. However, in its judgment of 24 June 2021 the Court of Cassation noted that at the time of the events in question both the domestic doctrine and practice were divided as to the correct interpretation of Article 226 § 2 of the CC and that it was unclear whether all the constituent elements of the offence set out by this Article were present, where the perpetrator had obtained intimate images lawfully but had disseminated them unlawfully – namely, without the victim's consent.

130. The applicant seems to have acknowledged that Article 226 of the CC could have been capable, at least in theory, of providing her with some protection (see paragraph 102 above). At the same time, the Government have asserted that Article 226 § 2 of the CC as interpreted by the Court of Cassation's judgment of 24 June 2021 (see paragraphs 84-85 above) had afforded effective protection in respect of online violence against women – in particular, it had prohibited and criminalised the non-consensual dissemination of intimate images obtained lawfully by the perpetrator and the threat thereof. The Court of Cassation's above-mentioned judgment had clarified that Article 226 § 2 of the CC was applicable to circumstances resembling the applicant's case (see paragraphs 108 above).

131. It is true that the Court of Cassation's judgment of 24 June 2021 had validated the Government's standpoint with binding effect. However, it had only *ex nunc* effect and was delivered more than six months after the proceedings in the applicant's case had ended in a final court judgment (see paragraphs 57-58 above).

132. The Court notes the Government's argument that the changes made to Article 226 of the CC by Law no. 171/2023 had afforded adequate protection to victims of "revenge pornography" such as the applicant for the reasons described in paragraph 108 above. However, even if that argument could be accepted (see paragraphs 81-83 above) – despite the applicant's assertions noted in paragraph 102 above – the Court notes that the amendments in question entered into force only in June 2023 (that is to say quite some time after all the criminal proceedings in respect of the applicant's case had ended in final court judgments) and could therefore have had no bearing on her case.

133. Given the circumstances of the case, the Court concludes that the provisions of Article 226 of the CC, as they stood at the time of the events in question, did not afford the applicant adequate protection in practice against the specific acts of her former partner.

134. The Court also notes that the Government have not suggested other criminal-law provisions that would have been capable of adequately protecting the applicant against V.C.A.'s acts. Nevertheless, it will assess whether the provisions other than Article 226 under CC relied on during the domestic proceedings (see paragraphs 11, 16, 36-45, 57-60 and 62-70 above) were capable of affording the applicant an effective protection.

135. Regarding the offences of threatening behaviour and harassment or instigation to harassment, the national authorities' view was likewise that V.C.A.'s acts had not contained the constituent elements of such offences (see paragraphs 60 and 81-83 above).

136. As to the offence of computer-related forgery, the Court notes that the conduct that constituted elements of the offence in question was different from the constituting elements of the offence under Article 226 of the CC (see paragraphs 36-45, 57-60 and 79 above). Even assuming that the offence set out by Article 325 of the CC could have been used to hold V.C.A. accountable for some of the acts imputed to him by the applicant (see paragraphs 6-7 above), it could not have afforded the applicant the requisite type of protection, in terms of both form and extent, against all the acts allegedly perpetrated by V.C.A.

137. In the light of the foregoing, the Court concludes that at the relevant time the respondent State had not put in place an adequate criminal legal framework capable of providing the applicant with the requisite protection against the specific acts of V.C.A.

(ii) Criminal investigation

138. As to the manner in which the domestic authorities conducted the investigation into the applicant's allegations, the Court reiterates that, in order to be effective, an investigation must be prompt and thorough. The authorities must take all reasonable steps to secure evidence concerning the incident in question – including forensic evidence (see *Volodina (no. 2)*, cited above, § 62). Failure to conduct proceedings concerning acts of online violence with the requisite diligence may engage the authorities' responsibility for failure to ensure that the perpetrators of such acts are brought to justice (see *Volodina (no. 2)*, cited above, § 67).

139. The Court notes in this connection that the authorities opened an investigation into the applicant's allegations on 4 May 2017 – that is, more than six months after the applicant had lodged her criminal complaint of 31 October 2016 (see paragraphs 11 and 14 above). The investigation was opened *in rem* – even though the applicant had submitted incriminating evidence concerning V.C.A. (see paragraph 11 above). The authorities questioned V.C.A. for the first time in respect of the accusations brought against him by the applicant in August 2018 – more than a year and eight months after the applicant had lodged her complaint (see paragraphs 11, 15 and 17 above).

140. During this time the authorities appear to have attempted only to obtain further statements from the applicant in respect of the circumstances of the case (see paragraphs 11-17 above). They failed to take any measures aimed at collecting and securing promptly any other evidence concerning the case even though some of the evidence in question, which was available online or on computers of persons whose identity could have been easily established, could have been lost and therefore (as the prosecutor's office acknowledged) would have affected the effectiveness and promptness of the investigation (see paragraphs 16 and 44 above). They also apparently failed to take any measures capable of protecting the applicant against or mitigating any possible further abuse from V.C.A. – in spite of the fact that she had expressly stated in her initial complaint that V.C.A. had contacted her and had informed her that he had no intention of ceasing his behaviour (see paragraphs 7 and 11 above). The fact that V.C.A. eventually acted on his threat and continued his behaviour – even after the applicant had lodged her initial complaint against him (see paragraphs 6-12 above) – only came to confirm and highlight the need for such measures.

141. The Government have pointed to the applicant's evasive attitude to responding to the investigators' invitations to her to give statements during the proceedings in respect of the case as a possible explanation for the authorities' conduct (see paragraph 109 above). However, the Court is not persuaded that the authorities' conduct during the initial stages of the investigation could be explained by the applicant's alleged evasive conduct or that she was responsible for their inactivity for the following reasons.

142. The District Court found that the applicant's conduct could be explained by factors outside her control, such as anxiety, possible emotional instability, and being constantly harassed by a large number of calls and messages from unknown individuals looking for sexual services, and that she could therefore not be blamed for it (see paragraph 66 above). In addition, the applicant herself pointed to alleged statements made and measures taken by the investigator responsible for her case that in her view had been intended to prompt her to doubt herself or to abandon the criminal complaint that she had lodged against V.C.A. (see paragraphs 19-20, 49 and 105 above). The applicant's allegations were reiterated by the press report concerning her case (see paragraph 22 above). The above allegations regarding the conduct and statements of the investigator in question reflected a pattern which seems to occur repeatedly in cases of violence between intimate partners and which raises concerns about the effectiveness of the protection mechanism provided in respect of the victims of such acts (see paragraphs 87 and 92-94 above). However, the complaints lodged with the national authorities (both by the applicant and by an MP) about the statements allegedly made and measures allegedly taken by the investigator did not provide any tangible results. In this connection the Court notes that the Government have not informed it of the results of the alleged disciplinary proceedings against I.T.A., as well as the

details that prompted the authorities to dismiss the applicant's complaint in this respect (see paragraphs 71-72 above).

143. The Court also notes that even after the investigators questioned the applicant and V.C.A. on 22 August 2018 the authorities remained passive in their attitude to investigating the case – even though the applicant's intention to pursue her case was clear and V.C.A. had acknowledged committing most of the acts of which he was accused (see paragraphs 15-21 above).

144. Subsequently, the case was transferred from BPS 8 to the SIC in an apparent attempt to reinvigorate the investigation (see paragraph 24 above). However, the Court cannot but note that that transfer occurred only after the applicant's case and the authorities' alleged misconduct during the investigation of her case had been publicised by the press and had generated a public protest (see paragraphs 22-24 above). In addition, it was prompted by considerations that shed serious doubt on the efficiency and thoroughness of the investigation conducted so far in respect of her case, given that from at least 4 May 2017 the authorities had clearly known or ought to have known that BPS 8 lacked jurisdiction to investigate the applicant's allegations concerning V.C.A. (see paragraphs 14 and 24 above).

145. The Court notes that the national authorities opened an investigation in person against V.C.A. in respect of the offence of violation of private life only on 8 April 2019 – more than two years and five months after the moment when the applicant lodged her criminal complaint and more than seven months after V.C.A. admitted to having committed the acts of which he was accused (see paragraphs 11, 17 and 28 above). Moreover, they decided to extend the criminal investigation to encompass the offence of computer-related forgery only after the applicant had asked them repeatedly to do so and almost seven months after V.C.A. had acknowledged that he had used several fake Facebook accounts to disseminate the applicant's photographs (see paragraphs 17, 27, 30 and 32 above). The Court notes that in the case of the offence of computer-related forgery the national authorities could have opened an investigation of their own motion – they did not have to wait until the applicant lodged a preliminary complaint (see paragraph 79 above). Noteworthy is that on 27 November 2019 the District Court acknowledged that the investigation conducted until then in respect of the applicant's case had been excessively lengthy for reasons that could not be imputed to the applicant. It also ordered the prosecutor's office to expedite its completion (see paragraph 34 above).

146. Even assuming that the prosecutor's office complied with the above-mentioned acceleration order, the Court notes that it terminated the investigation in respect of the offence of violation of private life for reasons that were controversial, given the inconsistent domestic practice concerning the interpretation of Article 226 of the CC at the time (see paragraphs 36-45, 51-54, 57-58 and 84-85 above). In addition, it dropped the investigation in respect of the offence of computer-related forgery for reasons that were

contested by the District Court, which considered those reasons to be in part "incomprehensible". The court emphasised that the reasons in question had not amounted to objective grounds on which the prosecutor's office could have based its assessment of whether the criminal investigation should be dropped or not (see paragraphs 36-45 and 62-66 above). Lastly, the investigation in respect of the offences of harassment and threatening behaviour was discontinued because the prosecution of these offences had become time-barred.

147. Viewed within the overall context of the manner in which the national authorities conducted the investigation in respect of the applicant's case, the above-noted findings of the District Court raise serious concerns about and point to (i) a lack of impartiality on the part of the prosecutor's office in dealing with the applicant's case (see also paragraphs 73-75 above), (ii) an objectionable disdain displayed by the prosecutor's office that had a demeaning and "revictimising" effect on victims who were involved in relationships that it considered "centred on an exacerbated sexuality" owing to photographs taken of the victims in allegedly "indecent poses" which those victims had sent to their intimate partners (see paragraph 42 and the CNCD opinion in paragraphs 73-75 above), and (iii) an apparent absence of (or a lack of quality in) the training, centred on the needs of the victims of such acts and the prevention of "revictimisation", that the respondent State is bound under its international obligations to provide to those of its professional personnel who deal with victims of violence between men and women (see paragraphs 87 and 92-94 above).

148. The Court therefore shares the District Court's view that the above-noted arguments and considerations advanced by the prosecutor's office (see paragraph 42 above) were neither relevant or useful for the purposes of assessing the termination of the investigation in respect of V.C.A. (a question that could have been examined in the light of the objective facts and the results of the proceedings opened by the applicant against V.C.A.), nor decisive for the resolution of the case (see, *mutatis mutandis*, *J.L. v. Italy*, cited above, § 137, with further references).

149. The Court reiterates that an investigation's capacity to base its conclusions on a thorough, objective and impartial analysis of all relevant elements of a case is one of the inter-related parameters which – taken jointly – enable the Court to assess the degree of effectiveness of an investigation and therefore the authorities' compliance with the procedural obligation incumbent on them under, *inter alia*, Article 8 of the Convention (see *S.M. v. Croatia* [GC], no. 60561/14, §§ 312-20, 25 June 2020, in the context of Article 4 of the Convention; *N.Ç. v. Turkey*, no. 40591/11, § 97, 9 February 2021, in the context of Articles 2 and 3 of the Convention; and *J.L. v Italy*, cited above, § 124).

150. The District Court confirmed the decision of the prosecutor's office in respect of the offence of violation of private life without expressly touching

on the applicant's arguments that it had been unlawful and, particularly, that domestic practice regarding the interpretation of Article 226 of the CC in the relevant regard was inconsistent (see paragraphs 51-53 and 57-58 above). At the same time, it quashed the decision of the prosecutor's office in respect of the offence of computer-related forgery and instructed it to resume the investigation in respect of that offence. Nonetheless, the prosecutor's office refused to follow the court's instructions for reasons which were not only essentially deemed unlawful by the national courts (see paragraphs 67-70 above), but which the Court also finds surprising, given that in January 2022 the investigation could have been closed purely on the grounds that the statutory limitation period in respect of the offence in question had expired in November 2021 (see paragraphs 69-70 above). The Court finds the prosecutor's office's decision particularly worrying, given that it signals a blatant refusal to follow a court's instructions, even though – as pointed out by the District Court – it was lawfully obliged to do so.

151. The Court notes also that, even though the District Court appears to have shared the applicant's view that the investigation should have been reopened again (see paragraphs 69-70 above), the court could no longer do so because the statutory limitation period in respect of the offence of computer-related forgery, similarly to the investigation in respect of the offences of harassment and threating (see paragraph 146 above), had expired.

152. There is no doubt that the authorities were or should have been fully aware from the very start of the proceedings of the specific date on which the statutory limitation period for each of the offences under investigation could expire, given the absence of any apparent possible misapprehension about the dates in question for reasons connected, for example, to changes in the relevant national legislation (see paragraph 34 above) or case-law. Nevertheless, they failed to comply with their inherent obligation to conduct an investigation that ended before the limitations in question expired.

153. The Government have not pointed to any convincing evidence that the applicant was responsible in any way for the limitation period expiring, given that she had presented the investigators with all the pertinent information and evidence about V.C.A.'s acts sufficiently early in the proceedings to afford them ample time to investigate and to assign the appropriate legal classification to V.C.A.'s acts and to bring him to justice.

154. The Court considers that the authorities' above-mentioned failure (see paragraph 152 *in fine*) and its effects shed further doubts on their ability and willingness to conduct a prompt and thorough investigation in the applicant's case, which was vital for maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

155. The Court notes the Government's argument that the authorities had complied with their duty to conduct an effective investigation given that they had imposed appropriate sanctions on V.C.A. that had been capable of

providing the applicant with fair reparation, from a criminal-law perspective, for the harm suffered by her (see paragraph 110 above). However, the Court observes that the District Court found that the reasons given by the prosecutor's office for its decision to impose the sanctions in question had (i) failed to take into account the public interests at stake and (ii) ignored the highly dangerous nature of V.C.A.'s acts and the serious psychological damage suffered by the applicant (see paragraphs 62-66 above).

156. The Court cannot therefore accept the Government's above-mentioned argument. In the Court's opinion, the reasons advanced by the District Court, together with the outcome of the investigation in respect of the applicant's case, are sufficient to shed doubts on the ability of the national authorities' legal machinery to produce sufficiently deterrent effects to protect victims, such as the applicant, from such acts allowing the perpetrators to escape accountability (see *Volodina (no. 2)*, cited above, § 67).

157. The reasons advanced above, including its findings in paragraphs 147-154 above, are sufficient for the Court to conclude that the national authorities failed to mount an effective investigation into the applicant's allegations related to the specific acts of her former intimate partner.

(iii) Conclusion

158. In sum, the Court finds that the inadequate criminal legal framework put in place by the authorities (which failed to provide protection against the specific acts of online violence of which the applicant was a victim) and the manner in which they handled the applicant's case (characterised notably by a reluctance to conduct an expeditious and thorough criminal investigation capable of having a deterrent effect) disclosed a failure to discharge their positive obligations under Article 8 of the Convention.

159. There has accordingly been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

160. The applicant complained about the reasoning provided in the prosecutor's office's decision of 10 June 2020 to drop the criminal investigation against V.C.A. in respect of the offence of computer-related forgery (see paragraphs 39-45 above). Having regard to the Court's competence regarding the characterisation to be given in law to the facts of the case (see paragraph 100 above), it considers that the above submissions include allegations of unequal treatment on grounds of sex, and accordingly, fall to be examined under Article 14 of the Convention taken together with Article 8. Article 14 of the Convention reads as follows:

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

161. The Government contested that the applicant had relied explicitly on Article 14 of the Convention and argued that her complaints had concerned only alleged violations of Articles 6 and 8 of the Convention.

162. The applicant argued that the allegations under this head had stemmed from the facts complained of by her.

B. The third-party intervener

163. The AIRE Centre argued that the national authorities were obliged to conduct an adequate and effective investigation into acts of violence. That included ascertaining whether an alleged failure to conduct an effective investigation had been prompted by discriminatory motives or by prejudice based on an individual's personal characteristics.

C. The Court's assessment

164. The Court notes that the allegations under this head are closely connected to the applicant's complaints under Article 8 of the Convention (see paragraphs 99-100 above). In the light of its findings concerning Article 8 (see paragraphs 138-156 above), the Court considers that it is not necessary to examine separately the admissibility and merits of these allegations from the angle of Article 14 taken together with Article 8 (see, among other authorities, *J.L. v. Italy*, cited above, § 147).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

165. Article 41 of the Convention provides:

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

A. Damage

166. The applicant claimed 700 euros (EUR) in respect of the pecuniary damage that she had sustained on account of the costs of the psychological therapy undertaken by her from November 2022 onwards (see

paragraphs 76-78 above) allegedly as a direct consequence of the violation of her right to respect for her private life and of the way she had been treated by the investigating authorities. She submitted copies of invoices and receipts attesting to the payment of the amount claimed.

167. The applicant also claimed EUR 12,000 in respect of non-pecuniary damage for the mental suffering caused to her by the respective acts of V.C.A. and the authorities.

168. The Government contested the applicant's claims, arguing, in particular, that there was no direct causal link between the pecuniary damage claimed and the allegations complained of. They further submitted that the sum claimed in respect of non-pecuniary damage was excessive, that the applicant had already benefited from a form of moral compensation in view of the public apology given by V.C.A., and that the finding of a violation would constitute sufficient just satisfaction in her case.

169. The Court accepts the evidence submitted by the applicant pointing to a causal link between the violation found and the pecuniary damage alleged by her (see paragraphs 76-78 above). The Court therefore awards the applicant EUR 700, plus any tax that may be chargeable, in respect of pecuniary damage.

170. As to the applicant's claim in respect of non-pecuniary damage, the Court considers that a mere finding of a violation by the Court and the public apology given by V.C.A. are insufficient to compensate the applicant for the frustration that she must have felt on account of the authorities' actions. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,500, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

171. The applicant also claimed EUR 215 for the costs and expenses incurred before the domestic courts and the Court. She submitted documents attesting to the amount claimed. Of that sum, she paid EUR 90 for the translation of some documents submitted to the Court. In addition, EUR 80 corresponded to the court fees related to the complaints that had been dismissed by the prosecutor's office or the national courts. Although she had not paid those fees due to lack of funds, they remained payable within five years.

172. The Government invited the Court to award the applicant a reasonable amount for expenses that had been necessarily and actually incurred during the proceedings. They further contested the legal grounds for reimbursement of EUR 170 indicated by the applicant.

173. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum

(see *J.L. v. Italy*, cited above, § 154). In the present case, regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 125 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 of the Convention admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine separately the admissibility and merits of the complaint under Article 14 taken in conjunction with Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 700 (seven hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 125 (one hundred and twenty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

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

Simeon Petrovski	Lado Chanturia
Deputy Registrar	President